

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE OA 56 OF 1988

NAME OF THE PARTIES S.R.C. Agarwal Applicant

Versus

..... Union of India Respondent

Part A.

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CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Dated 26/12/2011

Counter Signed.....



Section Officer/In charge

Signature of the
Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE O.A. 56 of 1988 (4)Name of the parties S.R.C. Agarwal

Applicant.

Versus.

Union of India

Respondents.

Part A.B.C.

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(81)

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No.

of 198

APPLICANT (s)

S.R.C. Agrawal

RESPONDENT(s)

Union of Edig and 2 others.

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ?
2. (a) Is the application in the prescribed form ?
(b) Is the application in paper book form ?
(c) Have six complete sets of the application been filed ?
3. (a) Is the appeal in time ?
(b) If not, by how many days it is beyond time ?
(c) Has sufficient case for not making the application in time, been filed ?

ys

ys

ys

5 complete sets of an application have been filed.

ys

—

—

4. Has the document of authorisation, Vakalat-nama been filed ?
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?

ys, but the stamps affixed are valued for Rs. 1.50 and instead of Rs. 50/-

ys, DD 05 9991

27-27/4/01

ys

7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?

ys

- (b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?

ys

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?
11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with Annexures filed ?
- (a) Identical with the original ?
- (b) Defective ?
- (c) Wanting in Annexures

Nos...../Pages Nos..... ?

13. Have file size envelopes bearing full addresses, of the respondents been filed ?
14. Are the given addresses, the registered addresses ?
15. Do the names of the parties stated in the copies tally with those indicated in the application ?
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?
17. Are the facts of the case mentioned in item No. 6 of the application ?
- (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 indicated with reasons ?
19. Whether all the remedies have been exhausted.

Yes

Yes

Yes

No. The applicant has filed an application before our Hon'ble Tribunal, which was disposed of on 19-1-80.

Filed two copies of application and signed

Yes

Yes

—

—

No

N.A.

Yes

N.A.

Yes

Yes

Yes

Yes

No

Yes.

If agreed by, case may be listed before the Hon'ble Court on 21-07-80.

Red

[Signature]

ORDER SHEET

(A3)

O.A. 56 of 88 (C)

S.R.C. Agarwal Vs. D.O.

(1) 21.7.88

Hon'ble Mr. Ajay John

Admit Due notice

22.8.88 for order.

(2)

22.7.88

Notice issued to opp. parties 1 to 3
for 22.8.88. Copy of Judgement
sent to Respt. No. 3.

(2)

22.8.88

Hon. A. John A.M.

fnsh
28/8/88

On the request of counsel for
the applicant, case 2 adjourned to
23.9.88.

(3)

23.9.88

Acad
27/9

3
A.M.

OR

This case was fixed for 23.9.88
but the file was not traceable on that date
and as such it could not be placed before
the Hon'ble court. It is being fixed on 25.10.88
at the request of both the parties.

Submitted for order.

fnsh

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUGANO.

O.A./T.A. No. 56 198(0000)

S. R. C. Agarwal Applicant(s)

Versus
J. D. 2

Respondent(s)

Cr. No.	Date	Orders
	2/12/00	<u>GB</u> Amendment made today Submitted for order before D.R.(J)
(7)	19/12/00	No sitting. Adjourned to 22.12.00 J.D. 2/12 h 19/12
(8)	22/12	No sitting. Adjourned to 24.1.01 h 22/12
(9)	24/1	<u>GB</u> No reply filed. Reply may be filed by 9.2.01. D.R.
(10)	9.2.01	<u>D.R.</u> No reply filed. Reply may be filed 8.3.01. D.R.
(11)	8.3.89	<u>D.R.</u> counsel for applicant present. The reply may be filed by 30/3/89. D.R.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. OA.No.56/88(L) of 198

APPELLANT
APPLICANT

S.R.C. Agrawal,

VERSUS

DEFENDANT
RESPONDENT

Union of India & ors

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
(15) 12/5/89	<p><u>Hon' Mr. K.J. Raman, A.M.</u></p> <p>Shri M. Dubey, learned counsel for the applicant is present and he is filing rejoinder, copy of which has been received by the representative of the department/respondents. This case be listed for <u>hearing on 26-5-89.</u></p> <p><i>[Signature]</i> A.M.</p> <p>(sns)</p>	
(16) 26-5-89	<p>No sitting. Adjourned to <u>7-7-89</u> for hearing.</p> <p><i>[Signature]</i> B.O.C.</p>	<p>OR The case is submitted for hearing <i>[Signature]</i></p>
(17) 7/7/89	<p><u>Hon' Mr. Justice K. Nath, V.C.</u> <u>Hon' Mr. K.J. Raman, A.M.</u></p> <p>Shri M. Dubey, learned counsel for the applicant is present. There is confusion about what counter affidavit or supplementary affidavit or rejoinder affidavit are to be read or not to be read in this case. The learned counsel for the applicant may ^{clarify} clear it and list the case again for final hearing on <u>18-7-89.</u></p> <p><i>[Signature]</i> A.M. <i>[Signature]</i> V.C.</p>	

(sns)

And the findings of the DPC were kept in a sealed cover of which information was given to the applicant by letter dated 25-8-88.

The learned Counsel for the opposite parties is not able to say exactly when the proceedings of investigation by the Vigilance Department commenced.

The opposite parties are directed to produce the record which will indicate the date on which the process of investigation by the vigilance officers of the office of the P.M.G. was commenced as also the date on which the vigilance officer's report was confirmed by the Vigilance Cell of P&T Directorate referred to in para 9 of the Court's affidavit. They will also produce the findings of the D.P.C. (which Shri Ravi Sharma says is already with him) and the case be listed for hearing

Remd on 27-9-89
for Secy
D.S. Rao
14.2.90

V.C.

OR
Cases submitted
for hearing

26/5

1/2/90

27/9/89

Hon. Justice K. Nath, V.C.
Hon. Mr. K. Obayya, AM

Arguments Heard, Judgement reserved

Remd on 31/9/90
for Secy
Shri T.J.R.

AM

V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

Lucknow Circuit Bench

O.A.NO. 56 1988.(L)
~~1988~~

DATE OF DECISION 30.1.90

S.R.C. Agrawal

PETITIONER.

B. Saloman

Advocate for the
Petitioner(s)

VERSUS

Union of Indis & others

RESPONDENT

D.S. Randhawa

Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. Justice Ram Leshwar Nath, J.C.

The Hon'ble Mr. K. Obayya, Jm.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether to be circulated to other Benches ? *no*

Dinesh/

h
30.1.90

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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW CIRCUIT BENCH
Registration O.A. No.56 of 1988 (L)

S.R.C. Agrawal Applicant

Versus

Union of India & Others Opposite Parties.

Hon. Justice K. Nath, V.C.

Hon. K. Obayyar, A.M.

(By Hon. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for a direction to the opposite parties to allow the applicant to cross the Efficiency Bar at the stage of Rs.810/- with effect from 1.1.83 in the scale of Rs. 650 - 1200 and to pay him consequential arrears with interest and damages for harassment.

2. The applicant was working as an Assistant Engineer in the P & T Department at Lucknow between 31.1.77 and 21.10.82. He reached the stage of Rs.810/- on 1.1.83 when he was expected to cross the Efficiency Bar. While the case for crossing the Efficiency Bar was in process, certain irregularities in his working during the period from 31.1.77 to 21.10.82 came to light. The Vigilance Officer of the office of P.M.G. U.P. Circle, Lucknow conducted an enquiry on the basis of which the Department took a decision to initiate major penalty proceedings against the applicant. A chargesheet dated 3.7.87 was served upon the applicant on 10.7.87 in respect of the allegations of misconduct; the inquiry on the chargesheet is still pending.

3. In the meantime, the applicant had been

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making representations dated 21.6.83, Annexure-A1, 16.11.83, Annexure-A.2, 25.5.85, Annexure-A.3 for consideration of his case in the matter of Efficiency Bar. By letter dated 31.5.85, Annexure-A.5 the applicant was informed that since the disciplinary proceedings were in process, the case of Efficiency Bar would be considered only after they were concluded.

4. The applicant's case is that on the due date i.e. 1.1.83 no disciplinary proceedings were contemplated against him and that no adverse remarks had ever been communicated to him and therefore having regard to the provisions of paragraphs 1 & 2 of Section 6 of Chapter V of C.P.W.D. Manual Volume I, 1975 Edn. he could be denied Efficiency Bar only if his work was not satisfactory and only if a chargesheet had been served upon him prior to the due date.

5. It appears that the applicant filed O.A. No.199 of 1987 before this Tribunal in the matter of his Efficiency Bar which was decided by a judgement dated 19.1.88, Annexure-7. The Tribunal directed the authorities to pass proper orders regarding the crossing of the Efficiency Bar with liberty to the applicant to move this Tribunal afresh if he was not satisfied by the order which might be passed by the authorities. Final orders having not been passed by the opposite parties despite directions of the Tribunal and the applicant's representation dated 2.3.88, Annexure-A.8, the applicant filed the present application on 18.7.88.

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However on 25.8.88 the opposite parties communicated an order by Annexure-A.9 indicating that the case of the applicant's crossing the Efficiency Bar had been considered by the D.P.C. but the findings had been placed in a sealed cover as per Rules and the case would be further examined after the disciplinary proceedings are concluded. By an order dated 24.11.88, the applicant was allowed to amend the petition whereby he challenged the communication dated 25.8.88, Annexure-A.9 on the ground of its being wrong, malicious, evasive and mentioning nothing about the applicant's suitability to cross the Efficiency Bar on the due date i.e. 1.1.83.

6. This Tribunal ordered the opposite parties to produce the result of the D.P.C. proceedings in consequence of which the proceedings of the D.P.C. meeting dated 23.3.88 were placed before us. The D.P.C. after the review of the Character Roll recommended clearance of the Efficiency Bar of the applicant with effect from 1.1.83 subject to the final decision on the pending disciplinary proceedings.

7. The question^{is} whether in the facts and circumstances of this case, the opposite parties are justified in refusing to allow the applicant to cross the Efficiency Bar with effect from 1.1.1983.

8. It would be appropriate to be clear about facts and circumstances of the case before the law is applied to them. As already mentioned the applicant was working as Assistant Engineer in Lucknow from 31.1.77 to 21.10.82 and that his Efficiency Bar fell

of

due on 1.1.83. Shri D.S. Randhawa, the learned counsel for the opposite parties has filed photo stat copies of letters containing the action taken by the opposite parties in the matter of complaints against the applicant during the aforesaid period. In para 23 of the counter it was stated that Vigilance Enquiry was pending since before 1.1.83. In para 20 of the rejoinder it was stated that the case in para 23 of the counter was "redundant and deserves to be ignored".

9. Photo copy of a report dated 3.4.1982 of Vigilance Officer(I) mentions that inquiries on complaints against the applicant were done by him between 6th and 11th November, 1981 at some stations and between 6th and 7th January, 1982 at other stations and that certain irregularities were found established. It is clear therefore that Vigilance enquiry was already in progress in the service matters of the applicant before the due date of crossing the Efficiency Bar.

10. Photo copy of a letter dated 6.1.84 of the Assistant Director (Vigilance) to P.M.G. Lucknow mentioned that it has been decided in consultation with C.V.C. that disciplinary proceedings for major penalty may be initiated against the applicant.

11. Annexure-D is a report of the Assistant Director General (Vigilance) endorsed on 30.1.84 indicating that evidence available during the enquiries made out a prima facie case on complaints of irregularities

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committed by the applicant, that investigations were completed and that it was decided to initiate major penalty proceedings as requested on 6.1.84. This report is mentioned at the top of the paper as approved by the P & T Board in its meeting held on 7th and 10th September, 1984.

12. Annexure-'E' is a letter dated 6.2.84 of the Assistant Director General (C Wing) of C.P.W.D. to S.E. on the subject of issue of Vigilance Clearance Certificate stating that the vigilance case was pending against the applicant.

13. These official records leave no manner of doubt that in respect of the period from 31.1.77 to 21.10.82 a vigilance inquiry into complaints of irregularities allegedly committed by the applicant had been conducted as early as in November, 1981, that evidence in support of the allegations was available and that in January, 1984 it had been decided that a regular departmental disciplinary inquiry for major penalty may be initiated against the applicant.

14. The further progress after the decision taken in January, 1984 seems to be slow because even though the applicant had been informed by a letter dated 31.5.85, Annexure-C.1 that the investigations revealed commission of irregularities by the applicant and that further disciplinary proceedings were in process, the chargesheet itself was prepared on 3.7.87 and was served upon the applicant on 10.7.87. That inquiry is still pending. The

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only explanation of the opposite parties in respect of the lapse of time between January, 1984 and July, 1987 is that processing of the papers by the Department took time. This explanation is not very convincing and indeed the applicant had to file O.A. No.199 of 1987 before this Tribunal for directions to the authorities to pass proper orders in the matter of crossing Efficiency Bar which was decided on 19.1.88, Annexure-A.7 issuing appropriate directions.

15. Consequently a D.P.C. met on 23.3.1988 and examined the case of the applicant. On an assessment the D.P.C. recommended clearance of the Efficiency Bar of the applicant with effect from 1.1.83 subject to the final decision on the pending disciplinary proceedings. This result has been kept in a sealed cover.

16. The case of the applicant is that in accordance with the paragraphs 1 & 2 of Section 6 of Chapter V of C.P.W.D. Manual, Volume-I enclosed with the applicant's representation, Annexure-A.4 the Vigilance enquiry or the disciplinary case could not stand in the way of allowing the applicant to cross the Efficiency Bar. Para 2 runs as follows :-

" In a case where a disciplinary case has been initiated against a Govt. servant, consideration of his suitability for crossing efficiency bar should be postponed and be dealt with in accordance with the Ministry of Finance OM F.1(ii)-E-III-A/67 dated 21.9.67

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(14)

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after the proceedings against him have concluded. Disciplinary proceeding for the purpose is deemed to have been initiated with the presentation of chargesheet to him. Consideration of suitability for crossing efficiency bar in such cases should be withheld only where the due date for crossing the bar falls during the pendency of the disciplinary proceedings. In a case where such proceedings are initiated on a date later than the date on which the Govt. servant was due to cross the bar, his suitability for crossing the bar should be considered with reference to that date and if found fit on that date, he may be allowed to cross the Efficiency Bar."

This instruction says that where a disciplinary case has been initiated, consideration of suitability for crossing Efficiency Bar should be postponed and should be dealt with further in accordance with O.M. dated 21.9.67 after the proceedings are concluded. The important feature is that, according to this instruction, disciplinary proceeding for the purpose is deemed to have been initiated with the presentation of the chargesheet to the Govt. servant. Since the chargesheet was served on the applicant on 10.7.87, disciplinary proceedings, according to the applicant, had not been initiated against him before that date.

17. The instruction further says that in such cases consideration of suitability for crossing Efficiency Bar should be withheld only where the due date for crossing the Efficiency Bar falls during the

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pendency of the disciplinary proceedings. Since the due date in the present case fell much prior to the period of pendency of disciplinary proceedings, consideration of his case for crossing Efficiency Bar, according to the applicant, could not have been withheld.

18. The instruction lastly says that where such proceedings are initiated on a date later than the due date of crossing Efficiency Bar, his suitability for crossing the Efficiency Bar should be considered with reference to "that date" and if found fit on that date he may be allowed to cross the Efficiency Bar. The contention of the learned counsel for the applicant is that since the disciplinary proceedings in his case were initiated after the due date, unsuitability for crossing the Efficiency Bar should be considered with reference to 1.1.83 and if found fit on that date, he may be allowed to cross the Efficiency Bar.

19. These instructions, in our opinion, provide for two situations in such matters. Firstly, they deal with cases in which a disciplinary case has been initiated by serving a chargesheet; it does not deal with those cases in which disciplinary proceedings have not been initiated but investigation into allegations of misconduct had been initiated before the due date of crossing the Efficiency Bar and ⁱⁿ ~~at any~~ course of time, materialise into institution of disciplinary proceedings. These instructions therefore cannot be applied to a case

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where investigation had been commenced before the due date of crossing Efficiency Bar and it was decided after the due date to initiate a disciplinary proceeding.

20. In the second place, the provision that suitability for crossing the Efficiency Bar should be considered with reference to the date on which the crossing of Efficiency Bar was due only signifies the material on the basis of which the suitability for crossing the Efficiency Bar must be considered i.e. the material on the date on which the Efficiency Bar was due to be crossed. The learned counsel for the opposite parties tried to interpret this portion of the instructions to signify that where disciplinary proceedings are initiated on a date later than the due date, the suitability for crossing the Efficiency Bar has to be considered with reference to the date of initiation of the disciplinary proceedings and not with reference to the due date of crossing the Efficiency Bar. We are unable to agree with this interpretation, because the settled law is that the only relevant material for examining suitability of a Govt. servant to cross the Efficiency Bar is the material before the due date of crossing the Efficiency Bar. The interpretation sought to be placed by the learned counsel for the opposite parties is clearly contrary to the settled law because it would permit a consideration of that

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material and service record which may have come into being after the due date of crossing the Efficiency Bar.

20. The crux of the matter lies not on the date of initiation of disciplinary proceedings only but on the material on the service record of a Govt. servant prior to the due date of crossing the Efficiency Bar. The question is whether this material must necessarily have been gathered and brought on the service record in the form of a Character Roll entry or otherwise before the due date of crossing of Efficiency Bar or whether it can also be brought on record subsequently in view of the particular facts and circumstances of a particular case. We are of the opinion that so long as the material pertains to the period prior to the due date of crossing the Efficiency Bar, it is of no consequence whether that material is brought on the record before or after the due date of crossing of the Efficiency Bar. How far a delay in bringing that material on the record would affect its admissibility for the purpose, is a different matter; but as the matter of principle, the material can be brought on record even after the due date of crossing the Efficiency Bar specially in a case where the material concerns complaints which have been subject matter of a Vigilance enquiry since before the due date of crossing the Efficiency Bar and have afterwards matured into a regular disciplinary proceeding on establishment of a prima facie case on evidence.

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21. The opposite parties have placed reliance on Ministry of Home Affairs O.M. dated 4.9.84, Annexure-C.2 which says that if on the date of actual D.P.C. disciplinary proceedings are contemplated or pending the finding of the D.P.C. should be placed in a sealed cover to be opened after the conclusion of the proceedings. According to the applicant, this Office Memorandum is not relevant because it has no retrospective operation. The contention of the applicant in this regard cannot be accepted. In the first place, the instruction contained in the letter is procedural and not substantive. It is well-settled that no vested rights accrue in matters of procedure and therefore unless there is a clear intention to the contrary, changes in procedure will apply to all matters which are pending at the time when the instruction is issued. Secondly, this O.M. is in partial modification of an earlier O.M. of 5.11.75. Unless it is shown that the O.M. dated 5.11.75 did not contemplate cases where disciplinary proceedings were contemplated, it cannot be said that the decision in O.M. dated 4.9.84 created for the first time the procedure of withholding decision on the question of crossing of Efficiency Bar in contemplation of disciplinary proceedings. Thirdly, there are still earlier decisions of the Govt. which contemplate postponement of determination of Efficiency Bar cases during the course of vigilance investigation.

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At pages 123 and 124 of Swamy's Compilation of F.R.S.R. Part-I, General Rules, 9th Edn. Reprint, reference is given of the Department of Personnel & Administrative Reforms O.M. No. 29014/2/75-Estt.(A) dated 6.4.79 which examined the case of a Govt. servant "whose case for crossing the Efficiency Bar has not been considered on account of the pendency of a disciplinary/vigilance case against him". The decision of the Govt. was that "if after the conclusion of the proceedings, the Govt. servant is completely exonerated he may be allowed to cross Efficiency Bar with effect from the due date retrospectively, unless the competent authority decides otherwise.....Such cases can be considered only with effect from a date following the conclusion of the disciplinary/vigilance case taking into account the outcome of the disciplinary/vigilance case". The following statement at page 124 may also be reproduced usefully :-

" (b) When conduct is under investigation, ^{Some} procedure as at (a) above may be followed after the conclusion of the investigation and where competent authority on consideration of the results of investigation, has formed the opinion that a chargesheet may be issued to the Govt. servant concerned on specific imputations where departmental action is contemplated....."

The procedure at (a) is the one which has been mentioned just above. It is clear from these decisions of the

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Govt. of India that as early as 6.4.79 the Govt. had decided that pending not only disciplinary case but also investigation by Vigilance Department, the decision on the question of crossing the Efficiency Bar may be postponed till the conclusion of the investigation or if as a result of investigation it is proposed to hold a disciplinary enquiry on chargesheet then upto the time of conclusion of the disciplinary enquiry. In this situation, the refusal of the opposite parties to permit the applicant to cross Efficiency Bar cannot be said to be illegal.

22. The only question is ^{whether} having regard to the delay caused by the opposite parties in this respect, the applicant can claim to be considered for ^{crossing} Efficiency Bar immediately. As already mentioned, due date for crossing Efficiency Bar was 1.1.83, alleged irregularities committed by the applicant during the period after 31.1.77 came to light for the first time by spot enquiry in November, 1981 and January, 1982 to the Vigilance Officer, the Vigilance Officer submitted his report on the facts then found on 3.4.82, but the Department took decision to initiate major penalty disciplinary proceedings in January, 1984 of which the applicant was informed by letter dated 31.5.85, Annexure. A and the chargesheet, drawn on 3.7.87, was served upon the applicant on 10.7.87. There is no satisfactory explanation for the opposite parties to take almost

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2 years after the Vigilance Officer's report dated 3.4.82 to take a decision in January, 1984 to initiate major penalty proceedings and further thereafter in preparing the chargesheet, almost 3½ years later, on 3.7.87. These facts bring out a clash between legality and propriety. The delay on the part of the opposite parties does not result in illegality, but it certainly results in impropriety.

23. The learned counsel for the opposite parties relied upon a decision of the Delhi High Court in the case of Bramha Deo Seth Vs. Union of India 1974(1) SLR 680 to show that delay in such matters is inevitable. There the employee was due to cross Efficiency Bar on 12.9.65. By an order dated 29.4.66 he was not allowed to cross Efficiency Bar till completion of enquiry pending against him on charges of gross negligence in discharge of official duties. The enquiry ended on 25.7.67 and punishment of 'Censure' was awarded. By an order dated 29.8.67, the employee was again disallowed to cross Efficiency Bar on the basis of his performance and was ultimately allowed to cross the Efficiency Bar with effect from 12.9.68 without benefit of back wages. The Court held in para 12 as follows :-

" Even when disciplinary proceedings relate to inefficiency or negligence of duty during a particular period, it is generally not possible to start disciplinary proceedings immediately after that period ends. Such matters come to notice after fairly long periods and then have to be processed before the disciplinary proceedings actually commence".

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24. The Court observed that merely because disciplinary proceedings were commenced in April, 1965 there was no violation of Article 16. It will be noticed that the due date of crossing the Efficiency Bar was 12.9.65 whereas disciplinary proceedings had commenced in April, 1965 and had ended in July, 1967. Thus not only the proceedings had commenced before the due date of crossing the Efficiency Bar but also came to an end promptly within two years. That is not the situation before us.

25. The applicant has referred to the case of Padam Singh Jhina Vs. Union of India & Others 1974(1) SLR 594 decided by the Hon'ble Supreme Court. In that case the employee was due to cross the Efficiency Bar on 27.6.63 which was refused on 10.5.65 on the ground that he was not amenable to service discipline. The Supreme Court held that there was no Rule that an order refusing to allow to cross the Efficiency Bar should be passed before the due date, but in fairness it ought to be passed either before the due date or shortly thereafter. Even so, the Supreme Court did not direct the crossing of the Efficiency Bar but observed as follows :-

" But no effective relief at this date can be given to the appellant for failure to make an order immediately after 27.6.63. Mr. Sachthy appearing on behalf of the respondents 1 & 2 has assured us that appropriate orders after consideration of the record of the appellant will be passed before 31.10.67 in respect of the period after 27.6.63".

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26. The Hon'ble Supreme Court dismissed the appeal with the observation that the authorities would consider the appellant's case for crossing the Efficiency Bar in the light of the service record. We think that in the case before us also, it may not be possible to direct that the applicant be permitted to cross the Efficiency Bar, but it would be appropriate to direct the opposite parties to conclude the enquiry promptly and decide the question of Efficiency Bar expeditiously.

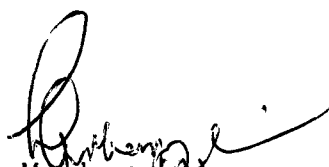
27. The applicant has also referred to the case of Sardar Santokh Singh Bhandi Vs. State of Punjab 1975(1) SLR 446 decided by the High Court of Punjab and Haryana. There by an order dated 22.2.57, Efficiency Bar of the employee was withheld with effect from 26.3.57 because enquiry was pending which ultimately ended in a dismissal order dated 3.9.62. That dismissal order was quashed in a Writ Petition on 7.3.67. In the meantime another enquiry was instituted in 1960 relating to subsequent events. The Hon'ble High Court held that with the quashing of the dismissal order, the reason for withholding the Efficiency Bar had disappeared and the subsequent enquiry of 1960 relating to events after due date could not be taken into account in the matter of Efficiency Bar which was due on 26.3.57. This decision is of no help to the applicant except to show that, material only for the period prior to the due date of crossing the Efficiency Bar can be taken into account. That is the very basis on which we have proceeded.

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28. On a careful consideration of all the matters this application is dismissed, but the opposite parties are directed to complete the enquiry on chargesheet dated 3.7.87 within six months from the date of receipt of a copy of this judgement, unless already done. In the event of the opposite parties' failure to do so within the time specified above, they shall decide the case of crossing the Efficiency Bar within one month after that period on the basis of the finding of the D.P.C. which met on 23.3.88 and whose result is kept in the sealed cover irrespective of the fact of pendency of the disciplinary enquiry proceedings. In any event, it will be permissible for the opposite parties to conclude the disciplinary enquiry irrespective of the orders that may be passed in the matter of the applicant's crossing the Efficiency Bar.

29. Parties shall bear their costs of this petition.


Member (A)


Vice Chairman

Dated the 30th Jan., 1990.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH LUCKNOW.

Registration No. 56 of 1988. (4)

S. R. C. Agarwal ... Applicant.

Versus

Union of India & others ... Respondents.

INDEX

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12.	Postal Order for Rs.50/-	

LUCKNOW:

DATED: May, 31, 1988.

Shishu

APPLICANT.

List this case on 21.07.88.

made in 21.7.88

18/7

Q25

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL
ACT 1985.

For use in Tribunal's Office.

Date of filing 18/1/00

or

Date of receipt
by post

Registration No. CA 56 of 00 (L)

Signature:

Registrar:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL
BENCH, LUCKNOW.

Between

S.R.C. Agarwal Applicant.

And

(i) Union of India ... Respondents.

(ii) Chief Engineer, Telecom.
Civil, New Delhi.

(iii) Superintending Engineer,
Telecom. Civil Circle,
Lucknow.

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1.

Details of applicant:

- (i) Name of the applicant: S.R.C. AGARWAL.
- (ii) Name of the Father : Late Shri Ram Gopal Agarwal.
- (iii) Designation & office : Assistant Engineer,
in which employed . Telecom.Civil Sub/Dn.II
PMG's Office Compound
Lucknow/226 001.
- (iv) Office Address : As above in item(iii)
- (v) Address for service : As above.
of all notices:

2.

Particulars of the respondents:-

- (i) Name and/or designation/ of the respondents:-
- (i) Union of India.
- (ii) Chief Engineer,
Telecom.Civil,
New Delhi.
- (iii) Superintending
Engineer, Telecom
Civil Circle,
Lucknow.
- (ii) Office address of the respondents: (i) Union of India, through
the Secretary to the
Govt. of India, Minis-
try of Communication,
New Delhi.
- (ii) Chief Engineer,
Telecom.Civil ,
New Delhi.
- (iii) Superintending
Engineer , Telecom
Civil Circle, Lucknow.

3.

Particulars of order against which application is made.

The application is against the following :-

- (i) ~~Order No. 11(1) against the following orders:-~~

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-3-

Amendment made today
22/12

Amended
vide order
dated 24.11.88
w/le
21/12/88

- (i) Order No.11(1)SEPT/LKO/1098 and order no 22(2)/SETL/1938 - Annexure A-9
(ii) Date - 31.5.85 and 25-8-88.

(iii) Passed by : Superintending Engineer, P&T Civil Circle, Lucknow

~~Add non-compliance of the Tribunal's directions dated 19.1.88 and Deleted~~

(iv) Subject in brief:

The applicant was due to cross his Efficiency-Bar at the stage of Rs.810-845/- w.e.f. 1.1.83 in the scale of Rs.650-30-740-35-810-EB-35-880-40-EB-40-EB-40-1200 w.e.f. 1.1.83, but no order was passed. The applicant submitted his representations dated 21.6.83, 16.11.83, 25.5.85, 20.11.85 and 20.11.86, but to no avail. No charge-sheet has been issued to the applicant and no enquiry ^{was} pending against him. No adverse comment has ever been communicated to the applicant. His E.B. has been withheld maliciously and ^{was preferred in the Tribunal at Allahabad which} arbitrarily. An application was registered as application No.199 of 1987 and after hearing direction was issued to the respondents to pass orders, by order dated 19.1.88, which has not been complied with.

4. Jurisdiction of the Tribunal:-

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. Limitation/-

The applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunal Act, 1985.

6. Facts of the case:-

The facts of the case are given below:-

...4/...

A28

I. That the applicant was appointed as Junior Engineer on 15.7.1965 by the Superintending Engineer, P&T Civil Circle, Calcutta and confirmed in the said Cadre in the year, 1969. The applicant was promoted to work in the Cadre of Assistant Engineer on 31.1.1977 and was made regular with effect from April, 1978. The applicant has put in about 23 years of un-blamished services.

II. That the applicant's Efficiency Bar(EB) at the stage of Rs.810/- in the scale of Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 was due to be crossed on 1.1.1983, but the competent authority did not pass any order preventing the applicant from crossing the E.B. either before the appointed date of 1.1.1983 or immediately thereafter and thus, the applicant was prejudiced in arbitrarily withholding him at the Efficiency Bar without passing any order. The applicant was neither under suspension, nor any disciplinary case was pending or contemplated against him on 1.1.1983, the due date of E.B., nor anything adverse in his confidential report was ever communicated to the applicant. There was no reason or justification, not to allow the applicant to cross efficiency bar due on 1.1.1983. Under the Rule, the applicant's case should have been examined well before the due date and reasons for deferring the efficiency bar, if any, should have been intimated to him before or immediately after 1.1.1983, which was not done by the respondents and the applicant's Efficiency-Bar due on 1.1.1983 was not allowed to be crossed prejudicially, maliciously and arbitrarily.

III. That the applicant preferred representations dated 21.6.83, 16.11.83 and 25.5.85 and then only the respondent No.3 vide his letter dated 31.5.85 informed the applicant that certain investigations carried out against him while working as Assistant Engineer(M.C.W.), Postal, in Postal Circle, Lucknow w.e.f. 31.1.77 to 21.10.82 had revealed some

A29

irregularities and further disciplinary proceedings against him were under progress and that the case for crossing the efficiency Bar stage would be examined only after his disciplinary proceedings were concluded; The respondents no.3, however, did not reveal, when the alleged irregularities came to notice and whether the case of the applicant for E.B. was ever considered before 1.1.1983.

IV. That the applicant submitted further representation dated 20.11.85, enclosing therewith an extract of paragraphs 2.2 of Section-6 of Chapter-V of C.P.W.D. Manual Vol.I, 1975 Edition, to the Superintending Engineer, Telecom.Civil Circle, Lucknow; respondent no.3, pointing out that withholding of crossing of E.B. on the ground of proceedings subsequently ~~entry~~ proposed to be drawn was not provided for under any rule, on the contrary the existing rules prohibit the stoppage of the crossing of E.B. on proceedings subsequent to the due date. It was also stated in the representation that in his case, there was no proceeding pending even subsequent to the due date although a period of 4 years had passed. No enquiry or charge had come in existence and the action against the applicant by withholding his E.B. was arbitrary and malicious. The applicant did not receive any reply to his representation dated 20.11.85 from respondent no.3.

V. That being aggrieved by the in-action of the opposite parties, the applicant filed an application in the Central Administrative Tribunal, Additional Bench, Allahabad on 4.3.87, which was registered as No.199 of 1987, the applicant claimed for the following reliefs:-

- i) The respondents be directed to allow crossing of E.B. of the applicant at the stage of Rs.810--845/- u.e.f. 1.1.1983 in the scale of Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 and pay all the consequential arrears with interest at Bank's rate viz. 18 % per annum.

- ii) Damages for Rs.5,000/- be allowed to be paid by the applicant for the harassment and mental torture to which he had been subjected from 1.1.1983 to onwards.
- iii) The cost of the case be allowed in favour of the applicant and against the respondents.
- iv) Any other relief, which is deemed to be just, proper and appropriate be allowed in favour of the applicant.

(VI.) That the opposite parties filed WS/CA and disputed the claim on the ground that the applicant could not be allowed to cross the efficiency bar and he while working as Assistant Engineer(MCW) under PMG, UP, Circle, Lucknow for the period from 31.1.77 to 21.10.1982, was involved in grave irregularities in the special and annual repairs of Post Office Buildings and favouritism to contractors. He was, therefore, not given vigilance clearance from the Vigilance Cell of the department, which is a pre-requisite for clearance for efficiency bar. The opposite parties also referred to Ministry of Home Affairs OM No.29014/3/84 Estt(A) dated 4.9.84, stating that if on the date of the actual departmental Promotion Committee, the concerned Government servant is under suspension or disciplinary proceedings against him are contemplated or pending, the findings of the D.P.C. in regard to his crossing the E.B. stage should be placed in a sealed cover, to be opened after the conclusion of the proceedings. The opposite parties' contended that it is only after the finalisation of the disciplinary proceedings that the result of crossing over efficiency bar or otherwise can be known, which is being done in this case after completing certain formalities. It may be stated here that the opposite parties concealed when the case of the applicant for crossing E.B. was considered, when the so-called irregularities came to notice, when the alleged enquiry was contemplated or came in existence against

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-7-

the applicant, under what rule or authority a vigilance clearance was necessary for crossing the E.B. and how the said Govt. order dated 4.9.84 was applicable to the applicant's case in which E.B. was due on 1.1.1983 much before the issue of the Govt. orders. The respondents also enclosed a copy of letter no. 9/126/81/Vig.1 dated 30.1.84 from the Assistant Director General (Vig.), New Delhi and contended that the authority concerned have indicated that the applicant is involved in some irregularities. This letter dated 30.1.84, it may be stated, has no bearing on the applicant's case, as it was not in existence on 1.1.83 when the E.B. was due and the letter dated 30.1.84 cannot be given retrospective effect. Moreover, this letter indicated that there was no previous complaint against the officer (applicant) in the proceeding five years vide item No.6 of the report contained in the said letter dated 30.1.84.

VII. That the applicant filed his rejoinder dated 29.10.87 denying the contentions and pleas advanced by the opposite parties, which were repugnant to the contents of the application and re-asserted the contents of the application adding that in Padam Singh Jhina Versus Union of India (1974) ISLR, 594(SC), it has been held that "In fairness to a public servant, the order preventing him from crossing the efficiency bar should be passed either before the appointed date or shortly thereafter and in S.Chandra Shekharan Versus District Officer, Madras Telephones and others (1972, ILL of 54(56) (Mad), it has been held that "FR/25 explicitly says that the government servant is not entitled to the increment above efficiency bar without the specific sanction of the authority empowered to withhold his increment. The expression specific sanction of the authority is significant. It is not possible to infer such specific sanction merely from the fact that an order stopping the concerned government servant from crossing the efficiency bar was not passed and communicated to him. In order to enable the affected government servant to prefer an appeal to the higher authorities, the order must be

..8/...

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communicated to him. Because, it is not a punishment under CCS(CMA) Rules 1965, it does not follow that the government servant would be kept in ignorance of the order passed in the office file. The applicant was greatly prejudiced by not communicating the order, if any, passed in his ^{case} ~~encl.~~.

VIII. That the case came up for hearing on 13.1.88 and after hearing both the parties, the Hon'ble Tribunal passed the order dated 19.1.88 directing the respondents to pass proper order regarding crossing the efficiency bar. It was further observed that in case, the applicant's request is granted the matter would rest. The applicant will be at liberty to move this Tribunal in case, he is not satisfied with the order passed by the authorities concerned.

IX. That the applicant met the authorities concerned personally and also furnished a copy of the Tribunal's order dated 19.1.88 and requested for passing an early order in the case. He waited for the order, but when he did not receive any order, he submitted a written representation dated 2.3.1988 to the respondents no.3 and requested him to intimate the action taken on the directives of the Administrative Tribunal. ~~But~~ ^{the} ~~respondent no 3 after a long time communicated~~ ^{no reply whatsoever, has yet been received by the applicant} ~~his order dated 25.8.88 Annexure A-9. This~~ ^{to his representation dated 2.3.1988.} ~~order is wrong, malicious and evasive and~~ ^{does not say anything about the applicant's}

X. That the applicant has, thus, no alternative, but to file this application before this Hon'ble Tribunal for adjudication of his case in view of the facts and circumstances stated above.

7. RELIEFS SOUGHT:-

In view of the facts mentioned in para-6 above, the applicant prays for the following reliefs:-

- i) The respondents be directed to allow the applicant to cross the efficiency bar at the stage of Rs.810 to Rs.845/- w.e.f. 1.1.1983 in the scale of Rs.650-30-

740-35-810-EB-35-880-40-1000-EB-40-1200 and pay to him all the consequential arrears with interest at Bank's rate viz. 18% per annum.

- ii) Damages for Rs.5000/- be allowed to be paid by the respondents to the applicant for the harassment and mental torture to which he has been subjected from 1.1.1983 onwards.
- iii) The cost of the previous application as well as of ~~this application as well as of~~ this application be allowed in favour of the applicant and against the respondents.
- iv) Any other relief, which is deemed, just and proper be allowed in favour of the applicant.

8. Interim order, if prayed for :-

No interim order is prayed for. It is, however, prayed that the case be adjudicated expeditiously.

9. Details of the remedies exhausted:-

The applicant declares that he has availed of all the remedies available to him under the relevant service rules and made the following representations without any result:-

- 1) Representation dated 21.6.83 (Annexure:A-1).
- 2) " " 16.11.83 (" :A-2).
- 3) " " 25.5.85 (" :A-3).
- 4) " " 20.11.85 (" :A-5).
- 5) " " 20.11.86 (" :A-6).
- 6) " " 2.3.88 (" :A-8).

10. Matter not pending with any other court etc.

The applicant further declares that the matter regarding which the application has been made is not pending before any Court of Law or any other authority or any other Branch of the Tribunal.

11. Particulars of Postal Order in respect of this application fee:-

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- i) Number of Indian Postal Order: DD 059991
ii) Name of issuing Post Office: Lalbagh, Lucknow.
iii) Date of issue of the Postal Order: 27.4.88
iv) Post Office at which payable: G.P.O., Allahabad.

12. Details of Index:-

An index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of enclosures:-

- 1) Postal Order Fee for Rs.50/-
- 2) Index in duplicate.
- 3) Copies of documents as per index.

In verification:-

I, S.R.C. Agarwal, son of late Shri Ram Gopal Agarwal, age 44 years working as Assistant Engineer in the office of the Assistant Engineer, Telecom.Civil Sub Division-II, PMG's Office Compound, Lucknow, resident of 26-B, Narain Nagar, Faizabad Road, Lucknow do hereby verify that the contents from 1 to 6 and 9 to 13 are true to my personal knowledge and para 7 and 8 believed to be true on legal advice and that I have not ^{suppressed} ~~supposed~~ any material fact.

Place: Lucknow.

Dated: 31.5.88

18.7.88

Shri R.C. Agarwal
Signature of the Applicant.

To,

The Registrar,
Central Administrative Tribunal Bench,
Lucknow.

(135)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH LUCKNOW.

Registration No. of 1988

S.R.C. Agarwal Applicant.

Versus

Union of Indian & others. .. Respondents.

LIST OF DOCUMENTS TO BE RELIED UPON

1. Copy of representation dt. 21.6.83 - Annexure A-1.
2. " " " " 16.11.83 - " :A-2.
3. " " " " 25.5.85 - " :A-3.
4. " " " " 20.11.85 - " :A-4.
5. " " reply dated 31.5.85 - " :A-5.
6. " " representation dt. 20.11.86 - " :A-6.
7. " " Tribunal Order dt. 19.1.88 - " :A-7.
8. " " representation dt. 2.3.88 - " :A-8.

LUCKNOW:
Dated: May, 31/5, 1988.

18/7/88

SRISTY 
APPLICANT.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH LUCKNOW

Registration No. of 1988

S.R.C.Agarwal Applicant.
Versus
Union of India & Others Respondents.

ANNEXURE :A-1

From:

S.R.C.Agarwal,
Asstt.Engineer,
P&T Civil Sub Division,
Simla-171001.

To,

The Superintending Engineer,
P&T Civil Circle,
Ambala Cantt.

(Through Proper Channel)

Sir,

I was due to cross E.B. at the stage 810-EB-35-880-40-1000-EB-40-1200 in the scale of 650-30-740-35-810-EB-1200 with effect from 1.1.83. I have already passed the departmental examination of accounts. It is, therefore, requested that necessary step may kindly be taken to allow me to cross my E.B.stage please.

Thanking you,

Yours faithfully,

Dated:21.6.83

Sd/-
(S.R.C.Agarwal)

ATTESTED
TRUE COPY.



A 27

Registration No. of 1988.

S.R.C. Agarwal ... Applicant.

Versus

Union of India & Others ... Respondents.

ANNEXURE: A-2

From: S.R.C.Agarwal,
Assistant Engineer,
P&T Civil Sub/ Division,
Simla-171001.

To,
The Superintending Engineer,
P&T Civil Circle,
Ambala Cantt.

(Through Proper Channel)

Sir,

Kindly refer my application dated 21.3.83 in which the request was made to allow me to cross the efficiency bar on 1.1.1983, but the same has not been cross^{ed}. In this connection, I am to state that I had been relieved from O/O the Postmaster General U.P.Circle,Lucknow on 21.10.82. And from that date I was on leave,before,joining the P&T Civil Sub Division,Smla.

It is, therefore, requested that necessary step may kindly be taken to allow me to cross the efficiency Bar at the stage of 810-EB-35-880-1200.

Thanking you,

Yours faithfully,

Sd/-

(S.R.C. Agarwal)
Assistant Engineer,
P&T Civil Sub-Division,
Shimla.

Dated: 16.11.83

ATTESTED
TRUE COPY

Walter

(135)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH LUCKNOW

Registration No. of 1988.

S.R.C.Agarwal ... Applicant.
Versus
Union of India & Others ... Respondents.

ANNEXURE:A-3

From:

S.R.C.Agarwal,
Assistant Surveyor of Works,
P&T Civil Circle,Lucknow.

To,

The Superintending Engineer,
P&T Civil Circle,Lucknow.

(Through Proper Channel)

Sub: Crossing of E.B.w.e.f.1.1.83 - Case of S.R.C.
Agarwal, ASW .

...

Sir, Respectfully, I beg to state that I was due to cross the E.B. at the stage of Rs.810-845 in the scale of Rs.650-30-740-35-810-EB-880-40-1000-EB-40-1200 w.e.f.1.1.83, but I have not been permitted to cross the E.B.so far. In this connection,it may be stated that according to G.I.C.S.(Deptt.of Personnel) Office Order No.40/1/75-Ests(M) dated 31.12.83(incorporated as G.I.order no.3 below F.R.25) the cases of Govt.servants for crossing the efficiency bar in the time scale of Pay are required to be considered at the appropriate time and in case the decision is to enforce the bar against the Govt.servant,he should be informed of the decision. In contravention of these orders, I have not been informed of any decision of the competent authority so far regarding withholding of increment at the E.B.stage. In this regard,I submitted an application(copy enclosed)on 21.6.83 to the Superintending Engineer,P&T CivilCircle,Ambala Cantt.,but with no response. I, therefore, again reminded in the matter/ on 16.11.83 vide copy of application enclosed but no reply has so far been given to me.

I,therefore, earnestly request that my case of E.B.may kindly be considered at your earliest in the light of orders issued by Govt.from time to time and your kind decision communicate

Thanking you,

Yours faithfully,

Dated: 25.5.85

Sd/-(a a a a)

*Attended
True copy
[Signature]*

Registration No. of 1988.

S.R.C.Agarwal Applicant.

Versus

Union of India & others Respondents.

ANNEXURE: A-1

To,

The Superintending Engineer,
Telecom.Civil Circle,
Lucknow.

Sub: Crossing of E.B.w.e.f.1.1.83- Case of
S.R.C.Agarwal,ASH.

...

Sir,

Adverting to the correspondence resting with your office letter no.11(1)SEPT-LKO/1098 dated 31.5.85 on the subject noted above, I am to state that as already stated I was due to cross the E.B.at the stage of Rs.810-845 w.e.f. 1.1.83. On that date, no disciplinary case was ~~pending~~^{contemplated} contemplated/~~intimated~~ against me. Neither any charge sheet has so far been issued to me. It is, therefore, requested that my case for crossing the E.B.may kindly be examined in the light of the provisions contained in paragraph 1-2 of section 6 of Chapter V of CPWD Manual Vol.I,1975 edition(copy enclosed).

Thanking you,

Yours faithfully,

Dated:20.11.85

Sd/-
(S.R.C.Agarwal)
Assistant Engineer of Works
Telecom.Civil Circle,Lucknow.

ATTESTED
TRUE COPY

M. D. Dey
Sd/-
G. L. Dey

(160)

Efficiency Bar :

1. No officer is allowed to cross efficiency bar when his work and conduct has been adjudged to be not satisfactory. For this purpose, his Confidential Reports should be reviewed at the time of consideration of the case of crossing efficiency bar.

2. In a case where a disciplinary case has been initiated against a Govt. Servant, consideration of his suitability for crossing efficiency bar should be postponed and be dealt with in accordance with the Ministry of Finance OM F.1(ii)-E-III-A/67 dated 21st September, 1967 after the proceedings against him have concluded. Disciplinary proceeding for the purpose is deemed to have been initiated with the presentation of chargesheet to him. Consideration of suitability for crossing efficiency bar in such cases should be withheld only where the due date for crossing the bar falls during the pendency of the disciplinary proceedings. In a case where such proceedings are initiated on a date later than the date on which the Govt. servant was due to cross the bar, his suitability for crossing the bar should be considered with reference to that date and if found fit on that date, he may be allowed to cross the efficiency bar. ✓

Extrat of Paragraphs I-2 of Section 6
of Chapter V of CPWD Manual Vol.I, 1975 Edition.

Attested
True copy.
M. A. S.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH LUCKNOW.

Registration No. of 1988

S.R.C. Agarwal Applicant.
Versus

Union of India & Others Respondents.

ANNEXURE: A-1

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

No. 11(1) SEPT/LKO/1098

Dated: 31.5.85

P&T Civil Circle
Lucknow-226007.

MEMORANDUM

With reference to his representation dated 23.5.85 regarding crossing of efficiency bar stage, Shri S.R.C. Agarwal, Assistant Surveyor of Works is informed that certain investigations carried out against him while working as Assistant Engineer(M.C.W.) Postal in Postal Circle, Lucknow w.e.f. 31.1.77 to 21.10.82 have revealed some irregularities. Further disciplinary proceedings against him are under process.

The case of crossing the efficiency bar stage shall be examined only after the disciplinary proceedings are concluded.

Sd/-
(D.N.Bhatia)
Superintending Engineer

To

Shri S.R.C. Agarwal
Asstt. Surveyor of Works
P&T Civil Circle, Lucknow.

Attested
True copy.
[Signature]
[Signature]
[Signature]

(A42)
(A42)

In the Central Administrative Tribunal Additional Bench
Lucknow

Registration No. of 1988.

S.R.C. Agarwal

..... Applicant.

Versus

Union of India & others Respondents.

ANNEXURE A-6

To,

The Superintending Engineer,
Telecom. Civil Circle,
Lucknow.

Sub: Crossing of E.B. w.e.f. 1.1.83- Case of S.R.C. Agarwal
Asstt. Engineer (Civil).

Sir,

Kindly refer to my letter dated 20.11.83
(copy enclosed) for ready reference on the subject
noted above.

Inspite of the position explained by me therein,
neither any reply has so far been given to me (although a
period of about one year has elapsed since then) nor I
have been permitted to cross the E.B. at the stage of
Rs. 810-845 w.e.f. 1.1.83 in the scale of Rs. 650-30-740-
35-810-EB-35-880-40-EB-40-1200. In view of the facts
that no charge sheet has so far been issued to me, it is
quite evident that the department has prima facie no
disciplinary case pending against me. I am unnecessarily
being harassed mentally tortured and put to constant
financial loss by the departmental authorities without
any rhyme and reasons. I, therefore, again request to
you kindly review my case immediately and allowed to
cross the E.B. from the due date failing which I will
be constant to take my case to the Court of Law and
or to the Central Tribunal as permissible under the
extent rules after the expiry of the prescribed period.

An early action is solicited please.

Yours faithfully,

ad/-

Dated: 20.11.86

Attested copy
[Signature]
(S.R.C. AGARWAL)

(AUS) 19

Central
IN THE ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH LUCKNOW.

Registration No. of 1988

S.R.C. Agarwal Applicant.

Versus

Union of India & Others Respondents.

ANNEXURE NO. 7

CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
23-A, Thorahill Road, Allahabad.

No. CAT/Alld/

Dated Allahabad, the 20.1.88

29.1.44

: OFFICE MEMOR

Registration No. OA.199 of 1987.

S.R.C. Agarwal Applicant.

Versus

U.O. India & Others. Respondents.

A copy of the Tribunal's Order/Judgement dated
19.1.88 in the above noted case is forwarded for necessary
action.

Sd/-
Deputy Registrar.

Enclosure: Copy of Order/Judgement Dated 19.1.88.

To

1. Sri M. Dubey, Advocate,
4th Lane, Naya Ganesh Ganj, Lucknow.
2. Sri M. B. Singh, Adv.

Attested true copy

Sharma

(AM) (20)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH LUCKNOW.

Registration No. of 1988.

S.R.C.Agarwal Applicant.
Versus
Union of India & Others. .. Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No. DA No.199 of 1987

S.R.C.Agarwal Applicant.
Versus
Union of India & Others..... Respondents.

Hon.S.Zaheer Hasan, V.C.
Hon.Ajay Johri, A.M.

(By Hon.S.Zaheer Hasan,V.C.)

This is an application under section 19 of the
Administrative Tribunals Act XIII of 1985.

2. The applicant S.R.C.Agarwal was working as confirmed Assistant Engineer. His grievance is that he was not allowed to cross Efficiency Bar at the stage of Rs.810/- in the scale of Rs.650-1200 w.e.f.1.1.1983. Various representations were of no avail. No charge sheet was submitted nor any adverse remark was communicated to him nor to his knowledge any enquiry was pending against him. So he has prayed that the authorities be directed to permit him to cross Efficiency Bar from the afore-said date and to award him damages amounting to Rs.5,000/-.

3. The defence is that some irregularities are alleged to have been committed by the applicant between 1977 to 1982 and since the irregularities were under investigation so he was not permitted to cross efficiency bar.

4. The Efficiency Bar was due on 1.1.1983. We do not know on what date the irregularities of the year,1977 to 1982 came to light. So far no charge sheet has been submitted nor any specific order has been passed in this connection. In view of the above the authorities are directed to pass proper order regarding crossing the Efficiency Bar. In case his request is granted the matter would rest. The applicant will be at liberty to move this Tribunal in case he is not satisfied with the order passed by the authorities concerned. There is no question of awarding damages at this stage. The petition is disposed of accordingly with no order as to costs.

Member(A) Vice Chairman

Dated:19th Jan.1988

Sd/-(D.S.Dubey)
Section Officer
Central Administrative Tribunal
Allahabad.

Attested
true copy
[Signature]

A-
ANNEXURE: 8

Registration No. of 1988.

S.R.C. Agarwal Applicant.

Versus

Union of India & Others. ... Respondents.

To

The Superintending Engineer
Telecom. Civil Circle,
Lucknow.

Sub: Consideration of case of Shri S.R.C.
Agarwal, Asstt. Engineer (Civil) for
Crossing of E.B.w.e.f. 1.1.1983.

Respected Sir,

Respectfully, I am to state that I was due to cross the E.B.w.e.f. 1.1.1983. As per time schedule prescribed for crossing of E.B. cases by the Departmental Promotion Committee vide Government of India CS (Department) of Personnel O.M.No. 29014/1/76-ESTT(A) dated 18.10.1976 incorporated as G.I. order No. 5 below FR-25, my case for crossing of E.B. should have been considered by the D.P.C. in the month of January 1983, itself or in the next quarter of April to June, in pursuance of the instructions contained in Government of India CS (Department of Personnel) O.M.No. 40/1/73/Estt(A) dated 31.12.1973 incorporated as G.I. order no. 3 below FR 25, I have not so far been informed of the decision(s) of the DPC. As I was never informed of the decision of the D.P.C. immediately after 1.1.1983 or thereafter at any stage, it is conclusively proved that I was never held up at the E.B. stage on the due date on account of unfitness to cross the E.B. as a result of the Recommendation of D.P.C. Accordingly, I approached the Central Administrative Tribunal, Allahabad against inaction of the Department. The Hon'ble Tribunal have ordered that the authorities are directed to pass proper orders regarding crossing of the E.B. The action taken on the directives of the Administrative Tribunal may kindly be intimated.

In this connection, it may also kindly be intimated whether my case for crossing the E.B. was ever considered by the D.P.C. in the year 1983 or thereafter in terms of the FR-25, read with G.I. Order No. 5 ibid. If so, an extract of the proceedings of the D.P.C. may kindly be supplied to me. Alternatively, the date on which the final orders withholding my increment at the E.B. stage were passed may kindly be intimated.

Thanking you,

Yours faithfully,

2.3.1988.

*Attested
me by
[Signature]*

Sd/-
(S.R.C. Agarwal)
Asstt. Engineer (Civil)

ब अदालत श्रीमान् C.A.T. Adl Bench Burkhown

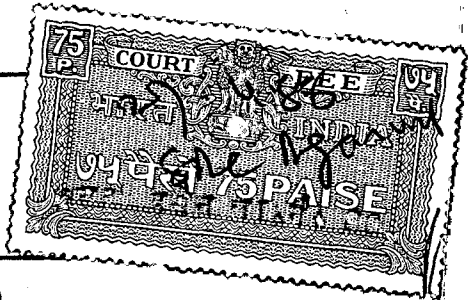
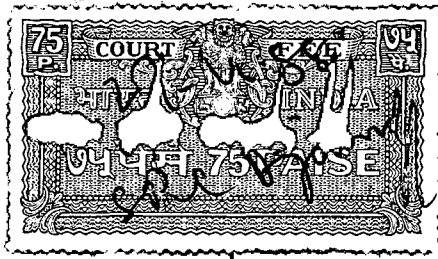
महोदय

[वादी अपीलान्ट]

S R C Agarwal

वफालतनामा

प्रतिवादी [रेस्पाडेंट]



S R C Agarwal

वनाज

प्रतिवादी (रेस्पाडेंट)

469 & others

नं० मुकद्दमा

सन् 1988

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ऊपर लिखे मुकद्दमा में अपनी ओर से श्री B. Solomon Adv

and M. Duley Adv

वकील

महोदय

एडवोकेट

नाम अदालत
मुकद्दमा नं०
नाम फरीकन

फो अपना वकील नियुक्त करके प्रतिज्ञा (इफरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पंरवी व जवाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से ठिगरी जारी करावे और रुपया वसूल करें या फुलहनामा व इफ्ताल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हारी विपक्षी (फरीफसानी) का दाखिल फिया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा फी गई वह सब कार्यवाही हमफो सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं फि मैं हर पेशी पर स्वयं या फिसी अपने पंरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पंरवी में एक तरफ मेरे खिलाफ फंसला हो जाता है उसफी जिम्मेबारी मेरे वकील पर नहीं होगी इसलिए यह वफालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

Shirley Agarwal

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १६ ८८ ई०

स्वीकृत

B. Solomon Adv.

M. Duley Adv.

COURT NO. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

CIRCUIT BENCH AT LUCKNOW.

Registration (O.A.) No. 56 of 1988

S.R.C. Agarwal Applicant.

Versus

Union of India & others Respondents.

Hon'ble Ajay Johri, A.M.

Heard Sri M. Dubey on behalf of the applicant.

This application has been filed under Section 19 of the Administrative Tribunals Act XIII of 1985. The reliefs prayed by the applicant are that the respondents be directed to allow the applicant to cross the Efficiency Bar w.e.f. 1.1.1983, damages for Rs.5,000/- be paid to him and the costs of the previous application may also be paid.

2. In another Registration (O.A.) No.199 of 1987 the applicant had come up before this Tribunal seeking the same reliefs and the Tribunal had passed ^{in that application} ~~an~~ orders on 19.1.88. The operative portion of the order reads as follows :

"In view of the above the authorities are directed to pass proper order regarding crossing the Efficiency Bar. In case his request is granted the matter would rest. The applicant will be at liberty to move this Tribunal in case he is not satisfied with the order passed by the authorities concerned. There is no question of awarding damages at this stage."

3. The learned counsel for the applicant submits that

Ans

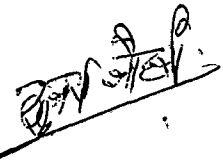
-: 2 :-

the respondents have taken no action to implement the orders of the Tribunal passed on 19.1.1988. He has not come up by this application against any order about which he is not satisfied, but he has come because the directions given by the Tribunal have not been implemented.

4. The application under Section 19 of the Act cannot be moved in such circumstances. He had to take the proper course of action which is not ^{by an} ~~on~~ the application under Section 19 of the Act.

5. This application is not maintainable and should be put up before a Division Bench for orders. List this case for orders before a Division Bench on 22.8.1988.

A copy of this order may be given to the learned counsel for the parties to-day.



MEMBER (A).

Dated: July 21, 1988.

PG.

25.12.88 M. Debi
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

Registration (OA) No. 56 of 1988

S.R.C. Agarwal

.... Applicant

Versus

Union of India & others

..... Respondents

SUPPLEMENTARY AFFIDAVIT

I, S. R.C. Agarwal aged about 44 years s/o late Shri Ram Gopal Agarwal, r/o 26B, Narain Nagar, Faridabad Road, Lucknow and working as Asstt. Engineer, Telecom Sub Division II, PMG's Office Compound, Lucknow do hereby state on oath as under :

1. That the deponent is the applicant in the above noted case and he is fully conversant with the facts deposed to in this affidavit.
2. That the respondents did not pass any order in compliance to the judgement and order passed by the Hon'ble Tribunal at Allahabad in Registration (OA) No. 199 of 1987 on 19.1.88 and consequently the deponent filed the instant application before this Tribunal, which was registered as OA No. 56 of 1988.
3. That the instant Registration (OA) No. 56 of 1988 was heard on 21.7.88 before this Hon'ble Tribunal and it was observed that the deponent (applicant) did not come up against any order about which he was not satisfied, but he had come because the directions of the Tribunal had not been implemented. The Tribunal further observed that the applicant had to take proper course of action which is not by an application under section 19 of the Act. The application was ordered to be put up before a Division Bench for orders.

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- 2 -

4. That the deponent, thereafter, moved an application on 22.8.1988 under section 17 of the Act, in Regn. No. 199 of 1987, which was registered as Misc. Contempt application no. 2 of 1988, which is now fixed for 25.10.88.

5. That immediately after the filing of contempt application by the applicant, on 22.8.88, the respondents who became aware of it, passed an order dated 25.8.88 without indicating the reasons as to why the deponent was not allowed to cross his EB due on 1.1.83. The respondents have not commented on the deponent's claim for ~~for~~ allowing him EB w.e.f. 1.1.83 for which the deponent had filed his earlier application before the Tribunal at Allahabad. A photostat copy of this order dated 25.8.88 is Annexure A-9.

6. That the applicant is aggrieved and not satisfied with the orders dated 25.8.88, which is not just and proper and does not say anything about the ~~xxx~~ crossing of EB w.e.f. 1.1.83 and the date of holding the DPC. No disciplinary proceeding was pending against the deponent on or before 1.1.83 and the charge sheet issued subsequently on 3.7.87 cannot deprive him of his due EB w.e.f. 1.1.1983.

7. That the deponent is entitled to be allowed to ~~xxx~~ cross the EB due on 1.1.83 with all the consequential benefits arising out of it.

8. That the order dated 25.8.88, Annexure A-9, being irrelevant and improper is liable to be quashed and the prayer made by the deponent in his instant application deserves to be allowed.

9./ That it would be expedient in the interest of justice that the matter be adjudicated, the order dated 25.8.88 (Annexure A-9) be ~~quashed~~ and the prayer made by the applicant be allowed.

Lucknow

Deponent

Dated : 23.9.88

VERIFICATION

I, the abovenamed, deponent, do hereby verify that the contents of paras 1 to 6 are true to his knowledge

Sd/-

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and those of paras 7 to 9 are believed to be true.

Nothing material has been suppressed.

Verified and signed this 23rd day of
September, 1988 at Lucknow.

Lucknow

SATISH
Deponent

Dated 23.9.88

I identify the deponent, who
has signed before me.


(M. Dubey)
Advocate

Confidential / By hand (15)

DEPARTMENT OF TELECOMMUNICATION
(Civil Wing)

No.22(2)/SETL/1935

Dated: ~~August 24~~ 25-8-88

To

Shri S.R.C. Agarwal,
Asstt. Engineer,
Telecom. Civil Sub-Dn. II,
GMT Office Compound, Lucknow

Subject:- Crossing of E.B-Case of Shri SRC Agarwal, AE
(Civil).

With reference to your representation dated 2.3.88 on the above subject, it is to inform you that your E.B. Case has been considered by the D.P.C. and findings of the DPC have been kept in the sealed cover, as per rules.

Since the Charge Sheet for disciplinary proceedings has been served to you by the GMT U.P. vide their letter No. Vig/M-9/82/87/1 dated 3.7.87, your case for crossing the Efficiency Bar shall be further examined only after the above disciplinary proceedings are concluded.

D.N. Bhatia
(D.N. Bhatia)
Superintending Engineer,
Telecom. Civil Circle, Lucknow

SRCTD *P*

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Mr. Duhant
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Filed today
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In the Hon'ble Central Administrative Tribunal
Additional Bench, Allahabad
Circuit Bench,
Lucknow.

O.A. No.56 of 1988.

S.R.C. Agarwal ----- ... Applicant
Versus
Union of India and others ... Respondents.

Counter Affidavit on behalf of Respondents

I, V.C. ² Saxena, aged about 45 years, son of late Shri M.L. Saxena, resident of 230, Chandra Lok Colony, Lucknow, hereinafter described as the deponent, do hereby solemnly affirm and state as under :-

1. That the deponent is Engineering Assistant in the Office of Superintending Engineer, Telecommunication, Civil Circle, Lucknow and he has been arrayed as Respondent No.3 in the present case. He is also competent to affirm this Affidavit on behalf of the Respondents Nos. 1 and 2.
2. That the deponent has read and understood the contents of the claim application as well as the supplementary Affidavit filed in the present case. He is well conversant with the facts of the case deposed hereinafter.
3. That the contents of paras 1, 2, 3(i), 3(ii) and 3(iii) being the matter of record, need no reply.
4. That in reply to the contents of para 3(iv), it is submitted that the applicant worked as Assistant

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Engineer (Minor Civil Works) in the Office of Post Master General, U.P. Circle, Lucknow from 31-1-77 to 21-10-82. He was transferred and posted as Assistant Engineer (Civil) under P&T Civil Circle, Ambala where he joined on 31-5-83 and then he was transferred and posted as Assistant Engineer (C) under P&T Civil Circle, Lucknow which he joined on 22-11-84. The necessary action for crossing of Efficiency Bar of the applicant at the stage of Rs.810/- with effect from 1-1-83 in the old scale of Rs.650-30-740-35-810-EB-35-880-40-1000-BE-40-1200 was initiated by the Superintending Engineer, P&T, Civil Circle, Ambala in the year 1983. For processing the E.B. case, his Confidential reports, Service book and Vigilance clearance from Vigilance Cell of P&T Directorate were required. Since the records were required to be collected from various units, it took some time.

The applicant's representation for non-crossing of E.B. at the stage of Rs.810/- w.e.f. 1-1-83 in the old scale of Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 were being dealt on their merits and the position was intimated to the applicant from time to time orally and vide this office letter No.11(1)/SEPT-LKD/1098, dated 31-5-85, a True Copy of which is filed herewith as Annexure No. C-I. The applicant is well aware of formalities involved for crossing of E.B. He was informed vide Annexure No.C-I that certain investigations carried out against him while working as Assistant Engineer (MCW) Postal in Postal Circle, Lucknow w.e.f. 31-1-77 to 21-10-82 had revealed some irregularities.

The enquiry was conducted against the applicant by the Vigilance Officer, Office of PMG, U.P. Circle, Lucknow, where the applicant was serving during that



period. On the basis of the inquiry conducted against the applicant, the department decided to **initiate major penalty proceedings**. The charge sheet containing imputation of charges for the period from 31-1-77 to 21-10-82 when he was working under Post-Master General, U.P. Circle, Lucknow was served on the applicant by the General Manager, Telecommunication, U.P. Circle, Lucknow, vide his letter No.VID/M-9/82/87/1, dated 3-7-87, which was received by the applicant on 10-7-87. The inquiry on the aforesaid charge-sheet is still pending.

As per Directives of the Hon'ble Administrative Tribunal vide its Order dated 19-1-88 on the application bearing Registration No.O.A. 199 of 1987, the necessary action for conducting the Departmental Promotion Committee meeting has already been taken. The findings of the D.P.C. meeting have been placed in a sealed cover as per departmental instructions issued by the Ministry of Home Affairs Memo. No.29014/3/84-Estt.(A), dated 4-9-84. A true copy of the aforesaid Memo. is filed herewith as Annexure No.C-II. The applicant has been informed about this fact vide this office letter No.22(2)/SETL/1935, dated 25-8-88. Therefore, in view of above, the allegations of the applicant that E.B. case has been withheld maliciously and arbitrarily are false and hence denied.

5. That the contents of paras 4 and 5 of the application need no reply.
6. That in reply to para 6(i) of the writ petition, it is submitted that the contents are factually correct about the applicant service in the Department. However, the applicant's claim that he has served with an unblemished records are not correct. The applicant

while working as Assistant Engineer (Minor Civil Works) under Post-master General, U.P. Circle, Lucknow for the period from 31-1-77 to 21-10-82 was involved in grave irregularities in the Special Annual Repairs of P.O. Building and favouritism to the contractor. An Inquiry was conducted by the Vigilance Officer in the Office of the Post-master General, U.P. Circle, Lucknow against the Officer sometime in the year 1981 for the irregularities committed by the applicant while working as Assistant Engineer (MCW) during the above period from 1979 to 1981.

7. That in reply to the contents of para 6(ii), (iii) & (iv), it is submitted that the applicant's E.B. case at the stage of Rs.810/- in the old scale could not be crossed as he was found to be involved in grave irregularities in the Special Annual Repairs of P.O. Building and while doing favouritism to the contractor during the years from 1979-1981. While considering the E.B. case of the applicant, which is a pre-requisite for crossing the E.B., Vigilance clearance was sought from the Vigilance Cell of the Department. The Vigilance Cell did not give vigilance clearance in respect of the applicant as there were charges of irregularities and favouritism to the contractor in U.P. Circle and it was decided to initiate major penalty proceedings against the applicant. The applicant was intimated about the same vide this office letter dated 31-5-1985.

In accordance with the existing instructions of the Ministry of Home Affairs O.M.No.29014/3/84-Estt.(A), dated 4th September 1984, if on the date of the actual D.P.C., the concerned Govt. servant is under suspension or disciplinary/court proceedings against him are contemplated or pending, the findings of the DPC in regard to his crossing of E.B. stage should be placed

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in a sealed cover and he opened after conclusion of the proceedings. It is, therefore, only after finalisation of the disciplinary proceedings against the applicant that the findings of the D.P.C. about the crossing of E.B. can be known.

The conduct of the applicant was under investigation at the stage when he was due to cross the E.B. After conclusion of the investigations, the competent authority, on the consideration of result of investigation ² has formed the opinion that a charge sheet should be issued to the applicant about specific imputations. The formal charge sheet has already been served on the applicant on 10-7-87 by the competent authority, i.e. G.M. Telecommunication, U.P. Circle, Lucknow vide his letter No. Vid/M-9/82/87/1, dated 3-7-87. A true copy of the charge sheet is filed herewith as Annexure No. C-III.

8. That with regard to the contents of para 6(v) being the matter of record, need no reply.
9. That the contents of para 6(vi), it is submitted that as stated above, the irregularities came to the notice during the year 1980-81 when a detailed inquiry was conducted against the applicant by the Vigilance Officer of the Office of P.M.G., U.P. Circle, Lucknow where the applicant was serving during the period. On the basis of inquiry conducted against the applicant, the Department decided to initiate major penalty proceedings. This was confirmed by the Vigilance Cell of the P&T Directorate from whom the Vigilance clearance was sought for crossing the E.B. For crossing of the E.B. case, necessary action for completion of formalities such as collection of CRs, obtaining vigilance clearance, service book etc. was initiated well in time.

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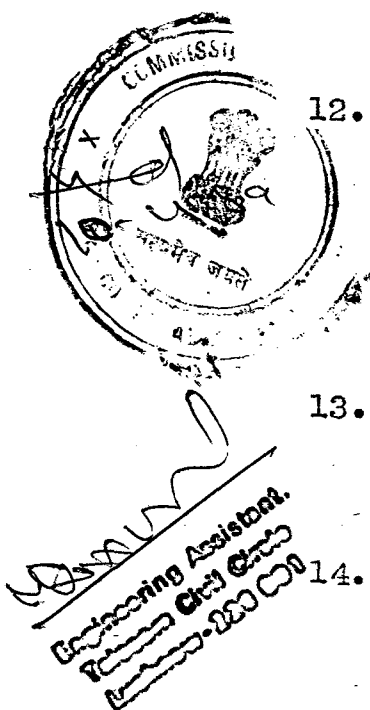
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[Handwritten signature]
Engineering Assistant.
Punjab Civil Circle
Ludhiana-141 001

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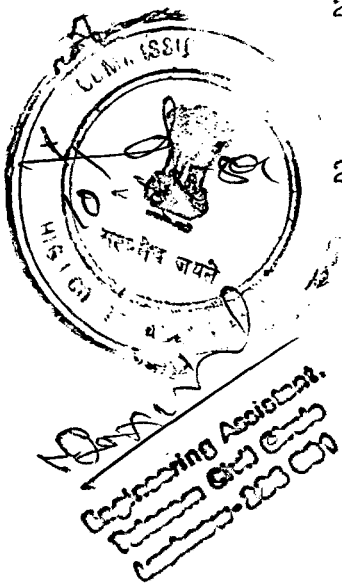
The Vigilance clearance was, however, not given by the Vigilance Cell of the Department. Therefore, in accordance with the rules, the findings of the D.P.C. on the E.B. case of the applicant were placed in a sealed cover and the applicant was informed about the same.

10. That the contents and contentions of para 6(vii) are not admitted specially in view of the position stated in the foregoing paragraphs of this Counter affidavit. The latest development in the matter has already been mentioned above. Accordingly, the applicant on 25-8-88 was informed that his Efficiency Bar had been considered by the D.P.C. and his findings were kept in a sealed cover as per relevant instructions of the Government. On the conclusion of the disciplinary proceedings, his case for crossing the E.B. would be decided. The photostat copy of the letter dated 25-8-88 which was served on the applicant is filed herewith as Annexure No.C-IV.
11. That the contents of para 6(viii) being the matter of record, need no reply.
12. That the contents of para 6(ix) need no further reply in view of the above mentioned letter No.22(2)/Stel/1935, dated 25-8-88 of the answering Opposite Party which has duly served on the applicant.
13. That the contention as raised in para 6(x) is not admitted.
14. That the deponent has been advised to state that the applicant at this stage, in view of the position stated above, in this Counter affidavit, is not entitled to any relief as prayed for in para 7 of the application.



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15. That the contents of para 8 of the application need no reply.
16. That in reply to the contents of para 9 of the application, it is submitted that the applicant has not yet exhausted the remedy available to him under relevant service rules as the disciplinary proceedings are still pending against him and his case of crossing E.B. also remains to be decided because of the pendency of these disciplinary proceedings and the findings of the D.P.C. have been kept under a sealed cover in accordance with the relevant instructions of the Govt. of India.
17. That the contents of para 10 of the application are not admitted. It is submitted that the matter of his crossing E.B. is still pending before the competent authorities of the Department.
18. That the contents of para 11 to 13 need no reply.
19. That the deponent also prefers to reply to the contents of the Supplementary Affidavit of the applicant filed in this case O.A. No.56 of 1988.
20. That the contents of paras 1 and 2 of the Supplementary affidavit need no reply.
21. That in reply to the contents of para 3 of the supplementary affidavit, it is submitted that it is entirely wrong to say that he had again come up before the Hon'ble Tribunal "because the directions of the Tribunal had not been implemented". In fact, in view of the pendency of the disciplinary proceedings against the applicant Shri S.R.C. Agarwal, no final decision could be taken in the matter of his crossing E.B. As already stated above, in this Counter Affidavit,



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the findings of the D.P.C. have been kept in a sealed cover as per relevant instructions of the Govt. of India. It is significant to mention that the final decision in the matter of his crossing E.B. can be taken only after the conclusion of the pending disciplinary proceedings against him. This position has already been communicated to the applicant through letter dated 25-8-88 by the Respondent No.3, Superintending Engineer, Telecommunication, Civil Circle, Lucknow. Thus, it is evident that this fresh application in the matter of crossing E.B. is premature at this stage. It may be added that his case in the matter of crossing his E.B. as filed earlier on 4-3-87 and registered as O.A. No.199 of 1987 (S.R.C. Agarwal Versus Union of India and others) was decided on 19-1-1988.

22. That in reply to the contents of para 4 of the Supplementary Affidavit, it is pointed out ~~that~~ ² that the contempt application No.2 of 1988 as filed by the applicant Shri S.R.C. Agarwal was finally heard on 23-2-1989 by this Hon'ble Tribunal at Lucknow and the Judgement was reserved ~~and...~~ ²

23. That in reply to the contents of para 5 of the Supplementary affidavit, it is submitted that the Vigilance Inquiry was pending against the applicant much prior to 1-1-1983, while he was working as A.E. (MCW), Lucknow during the period from 1980 to 1982 and consequently disciplinary proceedings have been initiated against him and a charge sheet in this regard has already been served on him on 10-7-1987.

Now, in view of the pendency of the disciplinary proceedings against him no final decision in the matter of his crossing E.B. can be taken, although, the D.P.C. has given its findings which have been kept in a sealed cover in accordance with the relevant instructions



Engineering Assistant.
Telecom Civil Circle
Lucknow-226 001

of the Government of India.

24. That the contentions as raised in paras 6 to 9 of the supplementary affidavit are not admitted and it submitted that the letter dated 25-8-88 as contained in Annexure No. A-9 of the supplementary affidavit is not in order passed by the Respondent No.3. In fact, it is only the letter communicating the position in the proceedings taken up in the matter of his crossing E.B. Thus there is no question of quashing the aforesaid letter dated 25-8-88.
25. That the deponent has been advised to state that in view of the position stated above, in this counter affidavit, the applicant Shri S.R.C. Agarwal cannot legally claim any relief by way of only this supplementary affidavit, unless his claim application registered as O.A. No.56 of 1988 is amended and the relief as sought in this supplementary affidavit is duly incorporated in the pending claim application. Further, since no final decision has been taken in the matter of his crossing E.B., no fresh cause of action has arisen and as such, the present claim application is not maintainable.
26. That in view of the position stated above, in this Counter affidavit, the applicant Shri S.R.C. Agarwal is not entitled to any relief prayed for in the present claim application mentioned in the Supplementary Affidavit. The applicant's case is devoid of any merit and it is liable to be dismissed with costs.



Engineering Assistant,
Telecom Civil Circle,
Lucknow-220 039

Deponent.

Lucknow

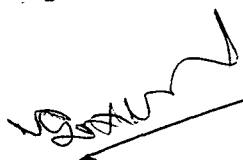
Dated: April 10, 1989.

Contd..10

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VERIFICATION

I, the above named deponent do hereby verify that the contents of para 1 and 2 of this Counter affidavit are true to my own knowledge and the contents of paras 3 to 24 are true to my knowledge derived from the official records and the contents of paras 25 and 26 of this affidavit are believed by me to be true on the basis of legal advice. No part of this affidavit is false and nothing material has been concealed. So help me God.


Deponent.

Dated: April , 1989.

I identify the deponent who is personally known to me and has signed before me.


B. S. Randhawa
(B. S. Randhawa)
Advocate,
senior Standing Counsel
Central Government.

Solemnly affirmed before me on 12.4.89 at 11-45

A.M./P.M. by the deponent Shri V. C. Saxena

..... who is identified by Shri B. S.

Randhawa, Advocate, High Court of Judicature

at Allahabad, Lucknow Bench, Lucknow

I have fully satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read over to him by me.


N. D. AHUJANI
OATH COMMISSIONER

High Court Lucknow Bench Lucknow

No. 118
Date 10-4-89

V.S. RAO,
Asstt. Director General (Vig.A)
Phone : 380 266

CONFIDENTIAL/REGISTERED

D.O. No.9/126/81-Vig.I.

P&T Directorate,
Dak Tar Bhavan,
Sansad Marg,
New Delhi-110001.

Dated : -1-1984.

Dear Shri Sakalkale,

Kindly refer to your office D.O. letter No. Vig/43 CO/81/3 dated 19.3.83 from Shri Raghav Lal, Vigilance Officer regarding allegations against Shri S.R.C. Agarwal, A.E. (MCW) o/o Postmaster General, U.P. Circle, Lucknow.

It has been decided, in consultation with CVC, that disciplinary proceedings as for a major penalty may be initiated against Shri S.R.C. Agarwal AE(MCW) and Shri P. Mittal JE for lapses noticed against him during enquiry. Further action will be taken by this office.

I would, therefore, request you kindly to send the draft charge-sheet, alongwith the relevant documents duly referenced and flagged, to the Vig-II Section of the Directorate for further action. It is also requested that an officer may kindly be nominated for appointment as Presenting Officer and his particulars furnished to this Directorate immediately.

Necessary entries may kindly be made in the relevant C.V.O. registers.

With regards,

Yours sincerely,

V.S. Rao
(V.S. Rao)

Shri D.S. Sakalkale,
Postmaster General,
Lucknow.

nnj/-o.

15/84

VO I

17.1

For urgent action

Most Urgent in file

12.1

50

15/1
16/30

A64 32/C

INQUIRY REPORT

A large number of complaints had been recently received against Shri S.R.C. Agarwal, Assistant Engineer (Minor Construction Works), Office of the P.M.C., Lucknow. Some of these complaints were received directly and some through the P&T Directorate.

Only concrete allegation of such these complaints as have been acknowledged by the senders have been enquired into by me. Enquiries were done with the assistance of Investigating Inspector (Vigilance I) at Dehradun, Srinagar Garhwal, Rudra Prayag, Pauri, Lansdowne and Kotwar between 6th and 11th November 1981 and at Saharanpur and Meerut with the assistance of I.I.(II) on 6th and 7th January 1982. Inquiries also entailed the subsequent examination of a number of files in the Circle Office at Lucknow.

The various allegations with the findings thereon are discussed in detail below:

- I- Alleged favouritism of M/S Kunwar Pal Singh and Bishanbar Dayal Contractors, Meerut by Shri Agarwal because of their having paid bribes

This allegation has been made by one Hari Lal Jyoti Prasad, Contractor 343 Rajban Bazaar, Tadale Mohalla, Meerut Cantt. (Complaint 1/c confirmed vide 8/C, other complaints at 12-1/C & 18/C). He has alleged that Shri S.R.C. Agarwal ~~has~~ favoured the above contractors by awarding the tenders to the above firm in the year 81-82 even though the rates preferred by this firm of Meerut at PMC office were much higher than the prevailing rates accepted by the SSPCs Meerut in respect of similar items. He has further alleged that consequently the work done by A.I. (MCW) at Meerut was much more expensive than the work got done by SSPCs Meerut. He has also alleged that the annual repairs of some buildings in Meerut and Saharanpur had been got done by SSPCs Meerut/Saharanpur but the A.I. MCW with a view to favour the above contractors once again assigned the same works to them, to the extent that in some cases annual repairs were done during the monsoons.

In this connection, efforts were made to contact the complainant at Meerut to elicit specific details in respect of these allegations. He was however not available in Meerut on 7th or 8th of January 1982. It was informed by his grandson, one Shri An Chand that he was out of station.

AGS

In this connection it is pointed out that as a general rule, works upto Rs.5000/- are handled by the concerned Sr. Supdt. of Post Offices, and those between Rs.5000/- and 20,000/- by the A.E. (MCW) on behalf of the PMG's Works greater than this amount are taken up for execution by the P&T Civil Wing.

Enquiries in this regard revealed that the accepted rates for annual repairs of the SSPOs Meerut as per the tenders called for by him in 1981-82 were as follows:-

Zone A	44.75%	below	(Delhi Schedule Rates of 1974)
Zone B	46.60%	"	-do-
Zone C	52.75%	"	-do-
Zone E	53.35%	"	-do-

The regions covered by different zones are:-

- Zone A - Baraut, Bagpat, Doghat, Sardhana, Hastinapur and rented buildings in the area.
- Zone B - Modinagar, Govindpuri, Hapur, Jani and rented buildings.
- Zone C - Bulandshahar, Khurja, Anupshahr, Dadri and rented buildings.
- Zone E - Saharanpur, Muzaffarnagar and Bijnor.

This was notified by the SSPOs Meerut vide his memo. No.D/Tenders/81-82 dated 28.9.81, as a result of opening of tenders on 22.5.81. The gap in taking the decision was due to the fact that the matter was referred to the DPS Dehradun Region by the SSPOs and was decided after some correspondence between the two. The tender notices, correspondence with DPS etc. are attached as annexures to this report.

It was found during enquiries that the A.E. (MCW) had taken up the annual repair of the following buildings during the year 1981-82 till the date of enquiries.
- Baraut, Khatauli, Meerut Kutchery, Head P.O. quarters, Mawana Road Colony and City P.O.

In this connection as regards Baraut P.O., the work was ordered to be got done by A.E. (MCW) vide his letter no. AEMCW(P)SHN/780/81-82 20.5.81 with immediate effect at an estimated cost of Rs.7491/- and to be finished by 20.6.81. The rate of the contractor (M/s. Kunwal Pal Singh, Meerut) was 20% above the Delhi Schedule of Rates 1974.

It is therefore clear that the rates of the AEMCW were much higher than those of the SSPOs Meerut (20% above against 44.75% below) as alleged in the complaint. It may however be pointed out that the rates appro

ABC

by SSPOs Meerut are unrealistically low - from 44% to 53% below the 1974 schedule of rates and therefore it is not so that the AE (MCW) C.O. can be accused of accepting exorbitant rates in his tenders. ~~He~~

A However it may be seen that the AEMCW ordered for this building to be taken up just before the beginning of the monsoon. It was also noticed that during the year 1980-81, annual repairs of this very building had been got completed by the SSPOs Meerut, between 19.2.81 and 28.2.81 (at 56% below DSR 1974) at an estimated cost of Rs.1276/- (SSPOs Meerut file No.D-12/AR/Baraut/3/77-78). It is therefore not understood what urgency the AEMCW(P) had in ordering the annual repairs of the same building barely three months later, just before the monsoon was about to break out, particularly when the annual repair of the building had earlier been in SSPOs competency. The AEMCW(P) should be asked to clearly explain his compulsions in acting in such undue haste.

B So far as Khatauli (Muzaffarnagar) P.O. is concerned, the AEMCW(P) took up the annual repair of this P.O. even though it was to be undertaken by the SSPOs Meerut as per the letter of the DPS Dehradun No.Bldg/MTC/RIg/80 dated 25.4.81. This work was again ordered by the AEMCW to taken up by M/s. Kunwar Pal Singh, Meerut (at 20% above DSR as against SSPOs Meerut's approved tender rate of 53.35% below) between 6.6.81 to 8.8.81. A.E. MCW's letter No.AEMCW(P)/SHN/779/81-82 dated 20.5.81 refers. It was learnt that Khatauli P.O. is much smaller than Baghat or Hapur which were got done by the SSPOs Meerut in 1981-82 or Baraut which was got done by SSPOs in 1980-81 within his power of Rs.5000/-. Thus the A.E. showed undue interest in taking over this work. Further the fact that the work was got done entirely during the rainy season, lends serious doubts on the bonafides of the AE(MCW) in taking over this work. He should be asked to explain therefore ~~annual repair by AEMCW during 81-82.~~

The estimate etc. for annual repair by AEMCW during 81/82 of Meerut Kutchery P.O. were not available with the SSPOs Meerut, but it was learnt that this P.O. was taken ^{up} by him and allotted to M/s. Kunwar Pal Singh contractor despite the fact that last year this work too was handled by the SSPOs Meerut.

Head P.O. quarters were ordered to be undertaken by the AE(MCW) between 8.5.81 and 25/6/81 i.e. just before

AGP

the onset of the monsoon. The work was allotted to Kunwar Pal Singh too. This is also required to be explained.

Mawana Road Colony was ordered to be taken up at an estimated cost of Rs.18836/- vide the AE MCW (P)'s memo dated 13.5.81. The work was ordered to be done by Kunwar Pal Singh from 27/5/81 to 28/7/81; also on the onset of the monsoon. Similarly City P.O. Meerut was ordered to be done by the officer from 8/5/81 to 25/6/81 also to Kunwar Pal Singh. As stated above, the bonafides of Shri SRC Agarwal AE MCW in ordering all these works in the manner that he has are strongly suspect.

It has also been alleged by the complainant that the AE (MCW) allotted the work of tar-^{fitting} and fitting of tiles to M/s. Kunwar Pal and Bishambar Dayal Contractors. It is not known what objection the complainant has to such a thing having been done.

No evidence could be found to support the allegation that the complainant had been prevented by the AE (MCW) from preferring a tender for 1981-82, as alleged. No malafides could be proved regarding the allegation of delay in payment to the contractor for the work done by him at Muzaffarnagar, Mawana Colony, Meerut H.P. and Vikaspuri Meerut. In case of Muzaffarnagar his earnest money was forfeited as he did not start the work by the assigned date of completion (file No. AE MCW/SHN/632/80-82). For Meerut H.C. the payment was made despite delay (No. SHN/631/80-81) as also for Vikaspuri (file No. SHN/629/80-81)-

2- Alleged wastage of money in substandard works done by Shri S.R.C. Agarwal AE MCW in Pauri Division, in collusion with Sh. Mittal JE (MCW) Saharanpur.

The complaint (at 24-2/C of the file) has been lodged by Sri D.P. Naithani, ^{Divisional} Secretary AIPEU III Pauri. The complainant has cited specific building cases which have been dealt with below:-

(a) Rudraprayag P.O. Building : It has been alleged that during 1979-80, more than Rs. 1 lakh has been spent in the renovation of the lavatories and bathrooms, in the change of doors, and to set right the leakage of the roof of the P.O. Works were allegedly again taken

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up in 1980-81 on paper only. It has been alleged that old material has been taken away without crediting the cost and has been replaced by poor quality material.

The concerned files were examined and the site was also visited by me.

(i) Special repairs for 1979-80 - On receipt of letter no. 241 dated 17.2.79 from SPM Rudraprayag (Pauri) addressed to SPCs Pauri and copy endorsed to Sri Pradeep Mittal J.C. MCW (P) Saharanpur, An estimate for special repair was prepared by the said ~~AE~~^{MCW} and submitted to the AE MCW(P) (C PMG U.P. Circle Lucknow vide letter no. SC/MCW/P/SHN/78, dated 21.2.79. The estimated cost of this special repair amounting to Rs.19002/- was sanctioned by D.P.S. Dehradun on 21.12.78 and the work orders were placed with Shri Sheo Chand Kumar Contractor 8 Janak Puri, Saharanpur U.P. vide A.E. MCW letter No. AE/MCW/P/SHN/310/79-80 dated 27.12.79.

The work was to be started by 11.1.80 and completed by 11.3.80. The S.C. MCW (P) Saharanpur requested the District Supply Officer, Gopeshwar Chamoli vide his letter No. SC/MCW(P)/SHN/79-80 dated 11.1.80 for issuing a permit for 60 bags of cement in favour of the Contractor. From the perusal of the items in the work order as many as 60 bags of cement were not justified by the work done. The fresh Running Account (RA) bill for Rs.17203/- showing the date of start of work as 28.12.79 was submitted through S.(MCW) who verified the same on 30.3.80 and a sum of Rs.14467/- was sanctioned on 31.3.80 by the AE(MCW). A sum of Rs.2726/- was deducted by him for the following counts.

Rs. 1720/-	Security Deposit
172/-	Water Charges
344/-	Income Tax
200/-	Test Check AE/S
200/-	Test Check PE/S
100/-	Delay
<hr/>	
2726/-	

The second RA bill showing the date of start of work as 28.2.80 and completion as 10.6.80 duly verified by S.C. MCW on 24.7.80 was submitted to A.E. MCW and a sum of Rs.4169/- was sanctioned for payment vide A.E. MCW memo no referred to above dated 29.7.80. A sum of Rs.624/- was deducted from the second R.A. bill as detailed below:

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Rs.480/- on account of Security Deposit
 48/- Water charges
 96/- Income Tax
624/-

The SPM Rudraprayag vide his letter no. Bdg/Repair/79-80 dated 24.7.80 received in the office of the AE MCW pointed out the following defects:

- 1- Leakage in the roof due to improper plastering.
- 2- Fixing of old water tank and its non painting from the inside and the leakage of the taps fitted in tanks.
- 3- Non-repair ~~and~~ roof which was damaged due to removal of old water tank due to which water was falling inside the P.O. hall. This had been reportedly pointed out by the SPM to the contractor and the overseer but they did not do any thing.
- 4- The walls which were damaged on account of change of doors, were not properly repaired and cemented.

Use of inferior quality of wood in doors. The S.O. MCW Saharanpur was asked by the AE MCW vide letter dated 1.8.80 to send a detailed report. The S.O. MCW instead of visiting the site, asked the contractor to remove the leakage vide a docket telegram dated 30.7.80. The A.O. C/O DPS Dehradun vide his D.O.No. Bdg/R Prayag/10/19 dated 15.9.80 also requested the Sri SRC Agarwal A.E. MCW to look into the defects and get them removed Sri Mittal S.O. MCW vide letter no.80/MCW/P/SIN/1/80-81 dated 12.9.80 reported to the AE (MCW) that all defects pointed out by the SPM had been removed by the contractor on 8.9.80. However the completion certificate from SPM Rudraprayag reported to be attached with the said letter is not available in AE's file. The AO of DPS and SPOs Pauri were informed accordingly by AE (MCW) vide his letter dated 26.9.80. The amount of security deposit and other deductions ~~is~~ made were sanctioned as below:

- (i) Rs.1850/- vide memo dated 9.2.81 Security Deposit
- (ii) Rs. 850/- " " 11.9.81

(550/- balance of S.D)
 200/- AE TC
100/- Delay
850/-

An inspection of the work done by me revealed that the waterproofing work has yet not been done on the roof of the P.O. outside the residence of the spm

A70

(which is on the first floor). It has not been done near the point where new water tanks were installed (as ^{an} item of the same estimate). This is the item No.3 in the work estimate and no.2 in the contractor's second RA bill in which Rs.2000/- has been charged as payment + 80% charge for this work. JE (MCW) Saharanpur should explain how he certified the satisfactory completion of the work in this manner.

Some of the doors alongwith the frames were also to be changed as per the estimate prepared. It was found on physical check that the doors changed (during 1979-80) viz. the inner door in the bath room and the main door leading to the SPM's residence from the P.O., did not require to be changed at all. Only the door frames had been eaten up by the white ants. The old doors are still ^{preserved} in the P.O. Unnecessary expenditure has been incurred on the doors. (Item 14 of the estimate and 9th in the 2nd RA bill)

It is also not known what happened to the replaced taps etc. as none of these appear to have been given to the Post Office staff for disposal.

In this case it may also be pointed out that the contractor submitted 1st RA bill (6/C) showing the date of start of work as 28.12.79, while in subsequent bills he showed the date of start of work as 28.2.80. As per SPM Rudra Prayag letter no. 188 dated 29.2.80 addressed to SPOs Pauri the contractor started work on 29.2.80 and he was quite unaware as to what work and repair would be carried out by the contractor. ^{from} the II RA bill as also the SPMs letter no. 188 dated 29.2.80, it is quite clear that the contractor, submitted his 1st RL bill showing the incorrect date of start of work as 28.12.79 which he corrected in subsequent bills. The SO (MCW) or AE (MCW) did not come to verify whether the work was taken up by the contractor or not and certified that the work for which payment was claimed were done. It may be further pointed out that while sanctioning the II RA bill, completion certificate from SPM Rudra-Prayag was not insisted. Explanation of the SO (MCW) and AE (MCW) should be called for in this regard.

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(ii) Special repairs for 1980-81 - The work order for Rs. 16158/- for renovation of bath rooms and other minor works in P.O. building ^{was} awarded to Shri Sulekh Chand Contractor 38 A Saharanpur Road Dehradun vide AE(MCW) letter No. AE/MCW/P/SHN/565/80-81 dated 29.1.81. The work was to be started immediately and completed by 25.3.81. The first RA bill showing date of start of work as 15.2.81 duly verified by S.A. MCW on 21.2.81 was received in the office of AE (MCW) and a sum of Rs.7818/- was sanctioned on 24.2.81 after deducting the following:

Rs. 921/-	Security deposit
92/-	Water Charge
184/-	Income tax
200/-	Check by AE
<u>1377/-</u>	

In this case it was found from the ~~x~~ movements of the JE that he was no where near ~~Kana~~ Rudra Prayag when he certified to have personally checked the particulars in this RA bills after having visited the site. The concerned measurement book, his T.A. bill, movement diary have been taken in custody from his office at Saharanpur. He has also admitted the irregularity in his statement. Major penalty proceedings can be initiated against him for giving a bogus certificate in this manner.

The contractor reported vide letter dated 29/5/81 that the work was completed by 8.4.81. The second RA bill showing the date of start of work as 5.3.81 and date of completion of work was shown as 25.4.81, was received and put up on 13.8.81 and sanctioned on 14.8.81. A sum of Rs.4280/- was released for payment vide memo. dated 14.8.81. The following amounts were deducted from the 2nd RA bill.

Rs. 556/-	S.D.
56/-	water charges
111/-	Income tax
300/-	Defect
250/-	Delay
<u>1273/-</u>	

The SPOs Pauri reported the following defects vide his letter no. D-41/A dated 4/8/81 addressed to DPS Dehradun and copy endorsed to A.E. MCW (what was received by AE(MCW) on 11.8.81 as per his endt. on the letter).

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(1) Door in the main hall has been sofixed that it opened inside rather than on the outside.

(ii) Non repair of wash basin of SPM's residence.

(iii) ~~Km~~ Leakage of water tanks above the SPM's residence.

(iv) Use of cheerpine wood in the doors instead of deodar charged for.

(v) Inferior work relating to plastering etc.

(vi) Work mentioned at serial 4,5,6,7,16 and 17 of the work estimate for 80-81 not at all attended by the contractor.

The SPM Rudraprayag, subsequently reported vide letter no. 56/Bldg dated 4.9.81 that the defect pointed out earlier were removed by the contractor. This letter was addressed to AE(MCW) and copy endorsed to SPOs Pauri and to the contractor. The amount of security deposit etc. amounting to Rs.1477/- was released vide memo dated 24/10/81(16/C). In course of my visit the following defects were noticed.

(ii) Chger wood has been used instead of Deodar on the doors provided (item 2). A sample of the wood is available with me, which had been knifed out by me from one of the doors fixed. It has been sent to Shri Ramesh Chandra, Chief Technical Examiner Jaganagar House, New Delhi 110001 for examination.

(iii) The old doors (shutters) were perfectly alright and were of better quality in comparison to present ones provided unnecessarily.

(iv) Cement used in doing the plastering work was of a very poor quality. A sample has been collected by me from near the rear door replaced during the work done in 1980-81. It has also been sent to the CTE New Delhi for examination.

(v) No glass panes were changed. Three windows-panes are still lying broken. This work was mentioned in the estimate but not attended by the contractor. It was not pointed out by the J.E. either.

(iv) 'Malha' has been thrown in the compound but charged for by the contractor (item 19 of estimate, item 12 of final third RA bill).

In this case too the contractor failed to carry out the work strictly in accordance with the work order. The short comings pointed out by the SPOs Pauri vide

A23

letter dated 4.8.81, were not taken into consideration properly while sanctioning the II RA bill. A sum of Rs.300/- deducted as per remark of J.A.O. dated 14.8.81 at 2/N of the AE's file was not in commensurate with the amount of unattended item nos. 4,5,8,7,16 and 17 by the SPOs in his letter dated 4.8.81. The estimated cost of these items was Rs.712/- (+94% surcharge).

Further before releasing the amount the report from the SPOs Pauri, who reported the defects, should have been called for.

It may be further pointed out that at the time of preparing the estimates, the S.O. (MCW) (P) Saharanpur did not see actually what items were to be required and to be changed. For instance the shutter of the doors were of Deodar wood and were not to be changed but they were changed for reasons best known to him. He also failed to supervise the work properly and verified the bills incorrectly. The A.E. (MCW) relied more on the certificates of the J.E. than on the reports of poor work from the superintendent post offices Pauri himself. The allegations in the case of this building are therefore not baseless.

MO b) Srinagar (Garhwal) LSG P.O. building - It has been alleged that more than 3 lakhs has been spent during the last three years. Baths and latrines of the SPM have been unnecessarily provided with tiles, and that payment has been made without verification certificate from Sub-Postmaster.

The S.P.M. Srinagar requested the SPOs Pauri vide his letter no. H/Bldg-Ch.I dated 21.7.79 for the following repairs and new works to be got done in P.O. building with a copy to A.E. MCW and S.O. MCW(P) Saharanpur.

- (i) Releveling of P.O. compound
- (ii) Provision of drains
- (iii) Provision of iron grills
- (iv) Repair of leakage
- (v) Replacement of broken doors of bath room.

On receipt of above letter, the S.O. (MCW) prepared and submitted an estimate for the renovation of P.O. bathroom, raising of level (back side) and other minor works including ~~xxx~~ white washing etc. with cost of Rs.19820/- which was sanctioned by DPS Dehradun

(A74)

on 21.12.79. The work was awarded to Sri Sheo Chand Kumar Contractor, 8 Janakpuri Saharanpur vide letter no.AE/MCW/P/SHN/363/79-80 dated 28.12.79 with the direction to start the work by 10.1.80 and complete the same by 11.3.80. The first RA bill dated nil for Rs.13400/- prepared by the contractor and verified by the S.C. on 29.7.80, was sanctioned on the same day viz. 29.7.80 and payment orders for Rs.11258/- was issued vide A.E. MCW memo dated 29.7.80. As per first RA bill the work was started on 15.6.80. The second and final bill for Rs.723/- was also preferred by the contractor showing the date of completion as 25.2.81 which has not yet been sanctioned. The S.C. MCW (P) Saharanpur made the following remarks about the completion of work.

"The work has been completed satisfactory and no complaint has been received after removing the defects, hence balance S.D. (Security deposit) may be released.

Sd/-
S. MCW
10.9.81

No certificate from the SPM Srinagar, was insisted for completion of work. He made a report pointing out certain defects vide his letter no.11/Bldg/Ch.I dated 29.1.81 to DPS Dehradun with copy to SPCs Pauri, AE MCW (C) PMG Lucknow, but this letter is not available in the concerning file in AE's office nor any action was taken in this regard. However at the time of my visit, it was noticed that many of the smaller items in the estimate had not been taken up (e.g. items 7 & 27 of the estimate: teak wood partitioning and ~~fresh~~ French polishing). It was noticed that in fact the bath and latrine of the SPM's residence have been provided with tiles, a privilege not shared by many more senior officers in the Department. However the work has actually been done, and not merely on paper as alleged.

It is pointed out that the AE MCW had ^{only} handed over this file to me when asked to give the files relating to the works of the last 3 years in respect of Srinagar P.O. However when I reached the Supdt's office Pauri (after visiting Srinagar) and asked for the works done at Srinagar it was learnt that many other works were at hand.

A75

An examination of the building files of Srinagar mentioned in the office of SPOs Pauri revealed that the following work orders were also to be undertaken by the AE (MCW) (C. PMG U.P. Lucknow.

- (i) AE/MCW/P/SHN/627/80-81 dated 27.12.80 provision of Treasury Cage in P.O. building at the cost of Rs.13270/-
- (ii) Work Order No. AE/MCW/P/SHN/XX dated XX for renovation of inspection house/bath room and steel grille in front side of P.O. - Rs.19960/-.
- (iii) AE/MCW/P/SHN/672/80-81 dated 30.1.81 - Provision of grill on left/right side of boundary wall Rs.19800/-
- (iv) AE/MCW/P/SHN/762/81-82 dated 19.5.81 P/F colour glazed tiles on the wall of P.O. hall with cost of Rs.18943/-
- (v) AE/MCW/P/SHN/763/81-82 dated 26/5/81 for raising level of P.O. compound (front side) Rs.19259/-
- (vi) AE/MCW/P/SHN/760/81-82 dated 27.5.81 raising of compound level (left side) Rs-19820/-
- (vii) AE/MCW/P/SHN/771/81-82 dated 21.5.81, raising of compound level right side with cost of Rs.19310/-
- (viii) AE/MCW/P/SHN/791/81-82 dated 2.8.81 for special annual repair - Rs.9612/-.

22 From the above it may be seen that during the 80-81 and 81-82, eight work orders for annual repairs and other works at the cost of Rs.1,39,965/-, were issued by the AE MCW Lucknow out of which the works mentioned at serial V to VIII were not taken up till the date of my visit viz. 9.11.81.

The work relating to raising of compound level, has been split up into 3 parts as mentioned at serial V, VI and VII above, estimated cost of which come to Rs.58,389/- which appears to have been done in order to bring down each item of work within the financial power of the A.E. (MCW). Instead of getting the work split, he should have approached the competent authority for his approval and sanction.

The provision of glazed tiles in the walls of the P.O. hall at the cost of Rs.18943/- as per work order detailed at serial IV above was actually quite unnecessary as it is not giving any better look in the P.O. It is learnt that this sort of unnecessary expenditure has also been incurred in a number of Post Offices in the Circle.

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In Pauri Division alone, it has been undertaken at Rudraprayag, Srinagar and Satpuli. We may ask AF(MCW) to ~~repeal~~^{stop} from getting this work done unnecessarily. The Regional Directors may also be requested to keep this in mind while sanctioning the estimates.

From the perusal of the tour programme file of the J.E. at Saharanpur, it was found that there was completely no check on his movements. His tour programmes w.e.f. April 80 to August 80 were approved at one stroke by the AF(MCW) when the latter visited Saharanpur on 14.11.80. The tour programme from Sept., 80 to Feb., 81 were again approved only on 28.3.81 by the AF(MCW). It is not understood why the tour programmes upto Nov., 80 could not be approved in Nov., 80 by the A.E.

It has also been seen from the T.A. bills of the J.E. sanctioned by the SSP Saharanpur that he never submits numbers of bus tickets purchased by him for journeys in hill areas ~~onostensibly~~ on the plea that since no railway is available in hilly areas he has no other alternative but to go by bus.

In the circumstances, the bonafides of the J.E. are but suspect. He was found to have given a bogus certificate (for Rudraprayag) only because he ~~erred~~ in adjusting the purported visit to Rudraprayag in his T.A. bill and tour programme.

We should direct the A.E. to obtain the JE's tour programme in advance or at best within a week of the completion of the journey, this will leave no scope for manipulations later by the JE in his TA bill when a certificate of the ~~maxmax~~ JE's inspection of the site has to be given to a contractor before the sanctioning of a running - ^{bill} account. It is feared that the J.E. is manipulating his tour programme and TA bill to suit the dates on which he purportedly visits the site (but actually he does not) and accords the certificate to this effect before sending the bill of the contractor to the A.E.

(c) Works at Pauri

(i) Drainage work at Pauri Colony

The work has been alleged to be unnecessary and incompletely done, and to have verified by the J.E. without visiting the site.

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As requisitioned by the SPOs Pauri vide his no.D-11C dated 1.10.80 and 26.11.80 the estimate for provisions of drain and connecting drainage to municipality drain, amounting to Rs.19,910/- was prepared and submitted by Sd MCW (P) C/O SPOs Saharanpur. The estimate was sanctioned by DPS Dehradun on 22/1/81 and the work order was awarded to Shri Sulekh Chand contractor 38 A Saharanpur Road, Dehradun vide A.I. MCW C/O PMG, UP Lucknow, letter no.AE/MCW/P/SHH/674/80-81 dated 29.1.81.

The work was to be started immediately and completed by 25.3.81. The contractor was reminded on 5.3.81 and 18.4.81 to complete the work early. He, however, vide his letter dated 16.5.81 reported that the work could not be started due to delay in procurement of pipes. He ^{promised} ~~undertook~~ to complete the work by 25.5.81. He prepared 1st RA bill for Rs.9962/- duly verified by S.O. MCW Saharanpur on 16.5.81. It was put up to AE (MCW) on the same day viz. 16.5.81 and was sanctioned vide AE(MCW) memo. no referred to above dated 16.5.81. Although the file was marked to JAO but was not put up to him for the reasons best known to AE(MCW).

The Postmaster Pauri vide his letter No.D/Bldg/81 dated 29.6.81 reported that the contractor used the water from the P.C. taps and requested to deduct the charges in this regard. This letter was endorsed to Sd MCW by the AE vide letter dated 22.7.81 for his report. The contractor submitted the second and final bill for Rs.4054/- intimating his date of start of work as 25.4.81 and completion as 18.6.81. This bill was verified by Sd MCW on 25.7.81 and a sum of Rs.3418/- was sanctioned vide memo dated 14.8.81. The water charges were not deducted from the bill nor the Sd MCW submitted his report as called for in this connection by AE(MCW). The contractor applied for grant of extension for completion of work vide application dated 10.9.81 which was allowed and a sum of Rs.1851/- deducted on account of security deposits/Testcheck/delay etc. was refunded vide order dated 24.10.81. A.E.(MCW) may be asked to explain in this regard.

On my visit to the site, I found that the work had been completed. The technical details of the work as detailed in the work estimate (digging, measurements, details of masonry work material used etc) could not be properly assessed by me. It was however from all accounts a work of subsidiary importance that was got

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The main item to be tackled was the overflow of night soil in the colony as Central Septic tank in the colony is higher than all the smaller tanks. The AE (MCW) may be asked to personally examine the problem afresh.

Incidentally, it was noticed that the colony is not provided with electricity though it is in the heart of the town. DPS Dehradun may be asked to make personal efforts in this regard.

The allegation of verification by JL without a visit could not be proved in view of the fact that he has mentioned visits to Pauri during the dates and also claimed T.A. therefore. The shortcomings in the matter of T.A. bills tour programme etc. have been earlier pointed out.

(ii) Tin Garage for the jeep at Pauri H.O.

It has been alleged that the garage at Pauri H.O. meant for the jeep of the JPs has not been properly constructed. It is neither durable nor constructed as per specifications. Moreover the stone used in the construction of the retaining wall was not brought from anywhere by the contractor (as charged) but was available in P.O.

Inquiries in this regard revealed the following results:-

The work order for construction of Jeep garage in Head P.O. compound by the demolition of the old P.O. canteen with an estimated cost of Rs.17534/- was awarded to Sri Sulekh Chand Sharma, contractor 38-A Saharanpur Road Dehradun vide A.E. (MCW) C/O PMG UP Circle Lucknow letter No. AE/MCW/P/SHN/610/80-81 dated 5.11.80.

The first RA bill showing the date of start of work as 20.1.81 for Rs.15343/- was preferred through S.O. (MCW) Saharanpur who submitted the same to AE (MCW) duly verified on 21.2.81. A sum of Rs.13149/- was sanctioned vide memo no referred to above dated 24.2.81. The contractor reported vide letter dated 29.5.81 that the work was completed by 31.3.81 and requested for making final payment. There is nothing on record to show as to why the contractor sent completion report on 29.5.81 i.e. after a gap of 2 months when the work was completed by him on 31.3.81. The S.O. (MCW) Saharanpur was asked to certify satisfactory completion of work vide AE (MCW) letter dated 19.6.81. The second RA bill dated 25.7.81 verified by the S.O. on the same date viz. 25.7.81 on ~~which~~ which the date of completion of work was shown

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as 25.6.81, A sum of Rs.2693/- was sanctioned vide memo dated 14.8.81 and a sum of Rs.300/- was ordered to be withheld for removal of defects as pointed out by the SPOs Pauri vide letter no. D-2/Ch.IV dated 4.8.81. No action, what so ever, was taken by AE(MCW) to have the defects removed before the release of the payment in respect of II RA bill. The copy of the letter of SPOs was forwarded to S.C.(MCW)(P) Saharanpur on 28.8.81 for his report but he failed to send any report in this connection. However when the contractor, approached, vide letter dated 22.10.81 to refund the amount deducted on account of delay in completion of work giving the plea of non availability of cement, the SO MCW (P) Saharanpur who was camping at Lucknow on 24.10.81, made the following remarks at 3/N of AE's file.

"Work has been completed satisfactorily. Some defects pointed out by SPOs Pauri, contractor has removed and no further complaint have been received after removing the defects. I visited the site on 20.10.81 and found no defect in the work hence final bill is submitted.

Sd/- 24.10.80

"Work is completed on 25.6.81 hence security deposit may be refunded"

Sd/- 24.10.81

On the basis of above remarks of S.C. MCW(P) a sum of Rs.1910/- being the amount deducted on account of the security deposit/Test check/delay/water charges, was sanctioned and released vide memo. no. referred to above dated 24.10.81(16/C). At the time of my visit on 9.11.81 I noticed the following defects.

- (i) As against item No.11 of the estimate in file 610,2 iron sheet gates costing (725.80+94% surcharge) were provided insted of rolling shutters. The estimated cost of the original item was Rs.5486/- (+94% surcharge) It is not understood how the contractor could make this change in the structure.
- (ii) Against item 14 only one window was provided. No work for ventilators or doors etc. done. The estimated cost against this item was Rs.261/- (+94% surcharge). It is not understood how the design was compromised in this case.
- (iii) The contractor used the stones of old wall which was dismantled at the time of construction of jeep garage to raise the floor level of the garage confirmed by V.D. Joshi

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at the time of construction. Shri S.P. Khumani, P.M. has clearly stated that the rubble used for construction of the retaining wall by the side of the garage was obtained by the demolition of the P.O. Canteen. An amount to the tune of 3168/ + 94% has been charged in the estimate in file No. ALMCW/SHH/76/81-82 and on this account alone for the transport of stone for the purpose. The JE prepared an exaggerated estimate on this account which after approval of AE was sanctioned by the DPS Dehradun. The payment on this account has yet not been made by the A.T. and the work is still reported to be in progress.

In regards to the removal of leakage, this could not be located as the rainy season was over. However the position would be clear during the coming rainy season. From the above it may be seen that the report of the S.O. (MCW) dated 24.10.81 (at 3/N of AE's file) was in correct. He should have checked the above points at the time of his visit dated 20.10.81 and pointed out to the contractor, as also to the AE MCW. Further, when the SPOs pointed out certain defects in construction of the jeep garage, he should have been consulted while visiting the site. AE MCW should also have been vigilant in this connection and obtained the report of SPOs Pauri also about satisfactory completion of work by the contractor. The entire machinery including So, AE, was very prompt in sanctioning the bills of the contractor but very reluctant about taking action in removing the defects. It is a matter of great surprise that the contractor vide his letter dated 29.5.81 reported that the work was completed by 31.3.81 while as on 2nd RA bill dated 25.7.81 date of completion was shown as 25.6.81. It is also not clear as to why the contractor did not submit the final bill instead of submitting 2nd RA bill on 25.7.81. These points were not checked before issuing the payment orders.

Moreover as already pointed out the contractor did not follow the design in the estimate approved by the DPS. He was allowed to construct in connivance with the JE the garage according to his own convenient design (not approved by DPS) but aggregate bills of approximately the same amount as envisaged in the estimate approved by the DPS were promptly sanctioned by the AE (MCW) despite the continuous objection of the SPOs Pauri.

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(iii) Pauri H.C. building - It has been alleged that while the P.C. had very strong and good quality deodar wooden doors at the entrance of the public hall and also good deodar wood ventilators, these have been replaced by new ones having cracks and knots. It has been alleged that the old material has been taken away by the contractor without crediting the cost.

On examination of the building file of Pauri H.C. at the office of the SPCs Pauri, the following orders were found:

- 1) AFMCW(P)/SHN/673/80-81 dated 30.1.81 for Rs.19870/- for providing steel grills on the back wall, wooden shelves, partition in the SPCO branch, wooden shutters in the HPC building etc. Work awarded to M/s. Sulekh Chand 8 A Saharanpur Road, Dehradun.
- 2- AFMCW/SHN/676/80-81 dated 29.1.81 for Rs.19,430/- for providing collapsible steel shutters and for renovation of the bathroom at the Pauri H.C.
X Work awarded to Sulekh Chand, Dehradun.
- 3- AFMCW/SHN/769/81-82 dated 10.5.81 for Rs.19197/- for construction of retaining wall near the jeep garage and steel grills in Pauri H.C. (discussed earlier with tin garage etc.).
- 4- AF MCW(P)/SHN/792/81-82 dated 3.8.81 for annual repair in HPC building costing 13073/- work awarded to Nanda B-6/44 Patel Nagar Saharanpur.

The files of the AF MCW (P) were not available at the time of the visit to the site and the work done was examined with reference to the copies of the estimates (taken from the respective files of the SPCs) rather than the bills sanctioned. The files of the AF were later studied in Lucknow.

It was noticed as regards the first work (673) that even though it was envisaged in the work order that the grille work be completed between 30.1.81 and 25.3.81, it was still continuing in November 81. In the estimate in item No.3 it had been envisaged that 3 door frames be changed, but actually only 2 had been changed. It was also found that 4 new doors were fitted on these 2 new door frames. The old deodar doors (4 in number) are in perfect condition as personally seen by me and have been replaced absolutely unnecessarily by poor substitutes for the reasons that should be explained by the AB and JE. It was also seen that new latches and handles have been

changed for while fitting the new doors while the old latches and handles were much sturdier, bigger and far superior to the new ones which replace them, also absolutely unnecessarily. This expenditure incurred by the AE and JE on the replacement of doors for no rhyme or reason lends doubts on the bonafide intentions of both.

Item No.12 of the estimate (stone work) was not locatable to have been done. The disposal of malba (rubbish) had also not been done properly (item 13).

As regards, estimate 676, it was found that while 5 ventilators were changed by the contractor but only two were handed over to the PM, the ^{both} in these two have also been taken away. Item No.13 (mirror in bath room) was not traceable to have been fixed.

In so far as the annual repair is concerned, neither the work estimate nor the concerned file of AE(MCW) was available with me when I visited the site. However it was noticed that petty items like attending to falling plaster (e.g. on the back wall of the H. building) and repair of cement flooring (on the backside of the H.C.) were not attended to by the JE or AE either in the annual repairs or in any of the numerous works tackled by the AE(MCW). It seems that neither one are the AE/JE interested in such works nor the contractors, for the reasons best known to them.

(e) Lansdowne P.O.

It has been alleged that nearly two lakh rupees were spent but leakage of the P.O. building is continuing. Heavy amounts were spent on signaller's quarter, which is to be dismantled.

As per AE(MCW), the special repairs to Lansdowne Head Post Office building, were carried out during 1978-79 and 80/81 by him. The two files maintained in this connection by the AE(MCW), as also the relevant files of the SPOs Pauri and P.M. Lansdowne were examined by me. Besides spot examination was also carried out with the result indicated below:-

1- The estimate amounting to Rs.18155/- for special repair to P.O. building Lansdowne which was included the work mainly relating to repair of leakage in the roof. flooring, change of some of the doors and windows was prepared by S.O. Minor Civil Works (Postal) C/O SSPOs Saharanpur checked by AE(MCW) and sanctioned by the DPS (Wes t) as 1.9.78. Work orders were placed to M/s. Shev Chand

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Kumar contractor, 8 Janakpur, Saharanpur vide AE (MCW) letter no. AE/MCW/P/SHN/215 dated 2.9.78 with specific instructions to the contractor to start the work on or before 16.8.78 and complete it by 16.11.78. He was also instructed to complete the work in time and to submit the bill with the completion certificate of the officer I/C of P.C. building viz. P.M. Lansdowne. Dates of the start and completion of the work were also to be reported to the AE(MCW), soon after the receipt of the work order, the contractor approached the AE(MCW) vide letter dated 6.9.78 to address the district supply officer Pauri to supply 200 bags of cement for the above work and the AE(MCW) on his turn requested the said supply officers to supply the 200 bags cement as per demand of the contractor vide letter dated 6.9.78. There is nothing on record as to what criteria was adopted in judging the requirement of the 200 bags of cement for repairing of leakage etc. and recommending for the same to the Supply Officer. The requirement of 200 bags seems to be exorbitant keeping in view the work order. The Supdt. of Post Offices Pauri, vide letter No.D-32/Ch.I dated 15.9.78 addressed to the contractor with copy to AE(MCW) requested to get the work completed early. The AE(MCW), also issued reminders to the said contractor vide letter dated 28.9.78, 27.10.78 and 15.2.79 but in vain. The SPOs Pauri again reminded Circle Office as well AE(MCW) vide letter dated 16.2.79 on which the SO MCW(P) C/O SPOs Saharanpur was asked to intimate the progress of the work. The contractor submitted first running account bill for Rs.3269/- duly recommended by Sri Mittal SO (MCW) Saharanpur dated 7/4/79 which was received in the office of AE(MCW) and was put up to him on 9.4.79 and a sum of Rs.2794/- was sanctioned most promptly by him on the very date vide sanction memo in file no referred to above dated 9.4.79. The second RA for Rs.9853/- duly verified by the SL MCW(P) on 12.10.79 was put up to AE(MCW) on 12.10.79 and a sum of Rs.8373/- was sanctioned and released vide memo dated 12.10.79. The III RA bill for Rs.6469/- duly verified by the said S.O. on 15.12.79, was put up through J.A.O. on 18.12.79 and sanctioned on the same date. Payment orders for Rs.5627/- were issued vide memo dated 18.12.79. The fourth and final bill for Rs.378/- was sanctioned vide memo dated 12.10.81. As per 1st RA and 2nd RA the work was started on 28.3.79 while as, per III RA bills,

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his work was started on 23.3.79 and was in progress. In the IV and final bill the dates of start of work was initially written ^{as} ~~on~~ 28.2.80 and completion as 10.6.80, were scored out and written as 23.3.79 and 17.4.80 respectively. From the above it may be seen that the contractor himself was not in a position to intimate the correct date of start and completion of the work but he wrote the dates as suited him and managed to have the bills ~~xxxx~~ sanctioned from the AE(MCW). The explanation of the JV and AE(MCW) should be called for not taking any notice in the matter. It is further strange to note that as per SPCs Pauri letter No.D-32/Ch.II dated 25.6.79 available at serial 13/C of AE's file, the contractor did not start the work by the date. Again the SPCs informed vide his letter dated 17.8.79 that the work was not started till then. In the last the Postmaster Lansdowne reported vide tele. XP/1380/2 that contractor attended the above special repair work in the month of Oct.,79 and then too left it incomplete and the building was still badly leaking. This telegram was received on 5.1.80 and Shri Pradeep Mittal SO(MCW) Postal was telegraphically asked on 8.1.80 to ask the contractor to remove the defects. The SO(MCW) vide his letter dated 10.1.80 requested the contractor to attend and remove the defects pointed out to him (contractor) while visiting the site. The details of the defects were not mentioned in the said letter. Since the contractor, did not repair the leakage, the postmaster Lansdowne had to again complain before the AE(MCW) to get the same done vide XP/Docket dated 18.7.80 which was then issued to the SD. The contractor promised vide letter dated 29/7/80 to remove the leakage soon afterwards and one another application requested for refund of 10% which had been deducted from his bills. He also requested to refund another sum of Rs.250/- deducted on account of delay in completion of the work, which was acceded to by the AE(MCW) and the contractor was allowed to complete the work by 17.4.80 vide letter no. nil dated 29.7.80 and a sum of Rs.1719/- was ~~xxx~~ sanctioned and refunded vide memo dated 29.7.80

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The SC (MCW) (P) C/O SSPOs Saharanpur, vide letter no. SC/MCW/P/SHN/7/80-81 dated 15.9.80 reported to AE(MCW) that the defects were removed by the contractor on 10.9.80 and thereafter no complaints were received. The Postmaster Lansdowne and SPOs Pauri were informed accordingly by the AE(MCW) vide letter dated 26.9.80. On receipt of this letter the SPOs Pauri enquired from the P.M. Lansdowne about the position of leakage vide letter dated 7.10.80 who in turn reported that the contractor's men attended Lansdowne and did some cement work but as the monsoon season was ^{over} near, he was not in a position ^{to} intimate if the leakage was repaired or not. The chapter was thus closed at all ends.

I visited Lansdowne P.O. on 11/11/81 and noticed that almost all the walls of the P.O. were damp due to last monsoon in July/Aug-81. This only leads me to conclude that the leakage was not properly repaired and the correspondence of the SPOs Pauri and Postmaster Lansdowne to get the defects removed, did not carry any weight with the AE(MCW) and his J.L. who instead of taking proper action for removing the defects before the rainy season i.e. July/August 79 attended the work after expiry of the rainy season sometime in October 79 and could not ensure after two subsequent seasons (monsoons of 1980 and 1981) that the leakage in the P.O. was properly attended to.

From the above it may also be seen that the contractor preferred first RA for Rs.3269/- which was verified by Sri P.K. Mittal SC MCW on 7.4.79, showing the incorrect date of start of work as 28.3.79 while ~~as~~ the work was actually taken up by the contractor in Oct., 79. Even if the ~~x~~ version of the contractor is taken to be true that the work was completed in April 80, he took about 1 year 7 months time for this petty item of work which was also done most haphazardly and ~~in~~ incompletely. The defects of leakage were said to have been removed in September 80 after 2 years of original work order. As per time in the work order the work was to be completed by 16.11.78 which was extended upto 17.4.80 by the AE(MCW) vide letter dated 29.7.80 on which date the amount deducted on account of delay was also refunded to the contractor. This shows that ~~this was an informal order that too in order to favour the contractor for refunding the amount deducted for delay.~~ It may not be out of place to mention that neither the AE(MCW) nor S.C. MCW insisted ^{on} the product

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of certificate of satisfactory completion of work from the Postmaster Lansdowne and sanctioned the bills without checking whether the works were actually carried out by the contractor or not. It is also to be mentioned that the contractor approached the AE (MCW) for recommending issue of permit for 200 bags of cement for repair of Lansdowne P.O. which was complied with and supply officer Pauri was requested accordingly vide letter dated 6.9.78. There is nothing on record as to when and in what quantity the cement was procured and how much of it was consumed on the above work.

The above facts project the AE (MCW) and his JE at Saharanpur in a very poor light and show that the AE is not in a position to exercise his proper judgement in the matter of checking the proper completion of works before ~~xxxxxx~~ sanctioning the bills.

~~Reside~~ Besides the defects in repair of roof, a check at the site revealed the following items were either not touched or were repaired defectively:-

Estimate No. 215

Item 14 - Provision of glass panes, 3 mm thick quality 6 sq. metres, estimated cost Rs. 245/- (+35%). No window panes have been repaired by the contractor at all. This was reported by the PM to SPOs Pauri also vide his letter No. D-2/Ch. I dated 9.5.81 also. However the item was not charged in any of the bills of the contractor either. In this connection it is pointed out that the movement diaries of the JE for 1979 could not be produced by him for inspection at Saharanpur.

Special repair during 1980-81 - The work order, for special annual repair of P.O. building of Lansdowne for the year 1980-81 with the estimated cost of Rs. 5240/- duly sanctioned by RDPS Dehradun, was placed with Shri Anil Kumar contractor 147 B.C. Line, Meerut vide AE (MCW) C/O PMG U.P. Circle, Lucknow letter No. AE/MCW/SHN/548/80-81 dated 7.2.81.

The distempering, painting and change of broken glass panes. The Postmaster Lansdowne requested the AE (MCW) vide letter No. D2/Ch 5/81 dated 26.2.81 for supply of copy of estimate alongwith the specifications in order to enable him to check up the items of work to be done. He, further, mentioned there in that unless these documents were provided, he would not allow the contractor to start the work. This letter was received on 2.3.81 and put up to AE MCW on 4/3/81 who in his

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turn passed orders to supply the copy of the estimate, but this appears not to have been done at all. The 1st RA bill for Rs.4397/- duly verified by SO(MCW) Saharanpur on 27.3.81 was put up on 28/3/81 and was checked by JAO on the same day and sanctioned by AE(MCW). The sanction order for Rs.3625/- was issued vide AE(MCW) memo no referred to above dated 28.3.81. In the first RA bill the date of start of work was shown as 20.2.81 and the SO(MCW) furnished a certificate that the work for which payment was claimed had been done actually by the contractor to his SO's satisfaction and the bill was passed ignoring the letter of P.M. Lansdowne dated 26.2.81 (3/C) wherein he requested to supply the copy of estimates and had informed that in absence he would not allow the contractor to start the work. Neither the AE(MCW)/JAO nor SDC who put up the bill cared to give any weightage or reliance to this letter, and passed the bill of the contractor where in it was mentioned that the work was started on 20.2.81 and was in progress where as the contractor had not even touched Lansdowne by 26.2.81 as per report of the P.M. what to say of start of the work. It, is further to be mentioned that as per contractor's letter dated 23.2.81 received in the Office of AE(MCW) on 30.3.81 the work was completed by 23.2.81 on which report was called for from S.O. MCW Saharanpur vide letter dated 13.4.81. Again a copy of C.O. letter no.Bldg/D-1/53/7/L dated 22/4/81 through which the attention of AE(MCW) was drawn to the SPCs Pauri letter no. D-32/Ch.II dated 9/4/81 relating to item 9, 10, 11, 12 and 13 were not at all touched by the contractor, and that only one coat of water washing was carried out by the contractor against item no.5 of the estimate, was forwarded to the said SO(MCW) vide letter no.referred to above dated 22.7.81 with a copy to PMG U.P. Circle Lucknow with reference to above circle office letter getting no reply from the AE(MCW), he was again reminded under C.O. letter no referred to above dated 11.8.81 and was asked to furnish certain informations which are yet to be replied. The report about the completion of work, has not so far been received. The contractor has, however, informed vide letter dated 10.8.81 that the defects pointed out at site were removed. But on my visit I noticed that the following works were not done by the contract

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Item 9- S/P glass panes at the cost of Rs.114/- not done by the contractor but this was not done by the SPs

Item 10- French spirit polishing at the cost of Rs.210/- (less 27.5%) - Not done but already charged for Rs.81.20 and paid for by the AE (MCW) vide item No.6/10 of 1st RA bill of even no. dated 28.2.81.

Item 11- P/F M.S. Tower bolts at the cost of Rs.16/- Not done neither charged for.

Item 12- P/F M S handle with necessary screws Rs.11/- This work could not be located.

Item 13- P/F M S ~~handle~~ with sliding door bolts (bright finished) at the cost of Rs.20/- Not done, not charged for yet.

From the above it is concluded that the work of annual repair was taken up by the contractor sometime in March/April 81 and ^{left the} left the above work half done. ~~As~~ The AE (MCW) who was to look after the work did not take trouble to examine if the work was actually started if so ^{to} with what extent these were done, though in his T.A. bill he has shown a journey to Lansdowne on 7/3-8/3/81. The A.E. (MCW) also failed to take proper action into the matter even on receipt of references from circle office. The AE (MCW)/S (MCW) Saharanpur, who were very prompt in processing the sanction of 1st RA bill of the contractor have failed to watch the interest of the deptt. by not taking action against the contractor who failed to carry out the annual repair properly and timely.

d) Kotdwar P.O.

It has been alleged that more than one lakh has been spent in the name of renovation of the P.O. face lifting special repairs during last three years but no work has actually been done ~~White~~ files were provided only 25 sq. met~~er~~; in bath room instead of 120 sq. metre as charged for. No special repairs or face lifting done. The patches and cement plaster ~~work~~ work never attended. The work of iron grills were not completed but payment was made.

As per C.O. letter no. Fst.C/D-1 dated 20.6.75 the work of maintenance of postal buildings and building works of Pauri Division, was placed under the jurisdiction of S.P.Os Haridabad who had to get the annual special repairs and petty works done within this financial power of Rs.5000/- per annum. He had to carry out the building works as under:

- During the year, the special annual repair was carried out by one Sri Anil Kumar contractor 147 BC Line Meerut as per AL(MCW) C/O PMG UP Circle Lucknow work orders no. AL/MCW/SHN/550/80 dated 7.2.81 on an estimated cost of Rs.5016/-. As per letter no. ~~nil~~ nil dated nil from the SPM addressed to AL(MCW) office of PMG UP Lucknow, only the white washing and distempering

(15)

and painting work was done by the contractor Sri Anil Kumar. He could not intimate the details of work to be done in absence of copy of estimate. This letter is available at serial 16/C of AE (MCW) file no. AE/MCW/P/SHN/550/80-81. An examination of the AE's file referred to above revealed that ^{an} estimate for annual repair of Kotdwar P.O. was containing 14 items of work to be carried out at the cost of Rs.5016/- and 3% contingencies 150/- total amount of Rs.5170/- duly prepared by S.O. MCW(P), C/O SPOs Saharanpur was received and submitted to sub-divisional clerk/AE on 4/9/80. The AE passed an order dated 8.9.80, "Any requisition from SPOs "at 1/N of the file". The case was discussed by SDC and again submitted to AE on 8.1.81 who in turn submitted to DPS Behradun on 30.1.81 for approval. It was approved by EPS on 3/2/81 and the work order was issued vide AE's letter no referred to above dated 7.2.81 addressed to the contractor with copies to AE (MCW) Saharanpur, DPS Behradun, SPOs Tehri and SPM Kotdwara. Copy of estimate, showing details of work to be done was not sent to the SPM concerned. This letter was incorrectly endorsed to SPOs Tehri instead of SPOs Pauri (2/C of AE's file). As per work order, the work was to be started on 21.2.81 and completed by 25.3.81. The SPM could not intimate actually when the work was started and when the same was completed. But as per ^{first} R/A bill submitted by the contractor on dated nil countersigned by AE (MCW) Saharanpur on 27.3.81, (5/C of AE's file) the work was started on 16.2.81 and was in progress. This bill was for Rs.3337/- which was sanctioned for Rs.2703/- after deducting the following memo no. referred to above dated 28.3.81.

Rs. 334/-	on a/c of security deposit
33/-	" water charges
67/-	" income tax
200/-	" test check security

Rs. 634/-

As the above quoted bill does not bear the date stamp of circle office or AE (MCW), it could not be stated, as to when this bill was received here. But from the noting at page 3/N, ~~that~~ this bill was put up by DC on 28/3/81, checked and signed by SDC and JAO on 28/3/81 and finally sanctioned by the AE on the same date. It is also not clear as to how the bill which was countersigned by AE (MCW) Saharanpur on 27.3.81 reached in the hand of D.C. on 28.3.81 (without being ~~checked~~ ^{checked}).

(490)

date stamped) who giving up all the ~~afkar~~ other work put up the bill and got it sanctioned on the very day.

As per contractor's letter dated 25.2.81 (7/C), which was received in AE's office on 30.3.81, the work was completed by 25-2-81. But the Sps Pauri vide letter no.D-31(A) dated 6.3.81 received in AE's office on 12.3.81, the following works were left by the contractor:-

- (a) Glass panes were neither cleaned nor broken ones ~~areas~~ replaced.
- (b) Plaster work was not attended at all.
- (c) Broken flooring and other cement/patch work were ~~more~~ not at all attended.
- (d) Polishing of floor was not got done.
- (e) Scraping of surface with sand paper before white washing etc. not at all done.
- (f) No kunda, handles etc. provided where actually needed.
- (g) Removing white or colour wash by repairings and preparing the surface work was not done at all.
- (h) French sprit polishing work was not done at all.
- (i) (not legible properly)
- (j) (-do-)
- (k) M.S. sliding door bolts work not attended at all
Simultaneously work at serial 12, 13 and 14 of the work order had not been attended at all despite requests.

Copy of the letter was endorsed to SO (MCW) who received the same on 27.3.81 by hand for enquiry and report. But he failed to send his specific report even on issue of reminders on 13.4.81, 19.6.81, 24.8.81 and 2.9.81. He simply reported vide letter no.SO/MCW/6/SHN/81-82 dated 22.9.81, that the bills were pending and that the satisfactory completion of work was intimated by the postmaster. He promised to send further report after his visit to the site. He in proof of the satisfactory completion of work, submitted the letter of SPM dated nil (placed at 18/C of the file) in which there is nothing as stated by the SO (MCW) in his report. On receipt of the said report, the AE (MCW) vide his letter dated 22.10.81, asked the SO (MCW) to submit the final bill, reply of which is not available in the file. The report called for by the BPS Dehradun vide his no. Bdg/Kotdwar/16/22 dated 2.4.81 referring to the Sps. Pauri letter cited above about non-attending to the work entrusted to the contractor, has not yet been sent. This letter was put up before the AE on 15/4/81

(941)

as per 4/N but he returned the same only on 11.6.81 and the S.O. was reminded as per his orders on 19.6.81 and the copy thereof was endorsed to D.P.S. The S.O. (MCW) who was given a copy of objection on 27.3.81 remained quiet for about 6 months and submitted an incomplete report on 22.9.81. The A.E., failed to challenge the incorrect report of the S.O. (MCW) instead he passed an order dated 19.10.81 to call for the final bill. Since there were certain objection from the SPS Sauri, as also the report was to be submitted to DPS Dehradun, the S.O. (MCW) should have given importance and visited the site and got the incomplete works completed, instead of leaving the work on the money of the contractor. The visit of the S.O. after a gap of more than 6 months will be of no use.

In course of my enquiry I visited the place and noticed the following short comings.

Work entrusted as per estimate 1/C

- | | | |
|--------|---|---|
| Item 1 | Removing white or colour wash by scraping sand papering 1100 sqm at the cost of Rs.143/- | This work was not at all done as was noticed at the time of visit. |
| 2 | White washing with lime on old works (two or more coats) 750 square m. Rs.188/- | No white washing appears to have been done before colour wash but Rs.106/72 have been paid for in 1st RA bill. |
| 3. | Finishing walls with water proofing, cement paints of appd brand and manufacture and of required shade on new work at the cost of Rs.3515/- | Finishing of walls with water proofing cement paint has been done in name only but Rs.2802/68 have been paid for in 1st RA bill. |
| 6. | French spirit polishing 90 sq. m. Rs.252/- | No such work done nor charged for. |
| 7. | Wall painting (one or more coats) with plastic emulsion paint of appd brand and manufacture on old work to give an even shade Rs.390/- | No plastic emulsion paint at all nor charged for. Besides it is not understood how plastic emulsion paint was considered necessary in an LSG office when the rooms of many senior officers of the Department such as PMG and DPS are not even painted with it. AE & JE should explain this. |

A92

- | | | |
|--------|---|---|
| Item 8 | Repair to plaster in patches of 2.5 sqm. | No repair to plaster done whatsoever nor charged for. It is still chipping all over e.g. near the P.O. barsati, on slab over the entrance door on right side etc. |
| 10 | Painting of vent pipes with black anticorrosive bita mastic paint of appd brand 120 mt. Rs.65/- | Pipes have been painted with charcoal waste of which comes off on rubbing with the hand Bill for painting not yet submitted. |
| 12) | P/F MS tower bolts with | Not at all provided |
| 13) | necessary screws and MS handles with necessary screws. | nor charged for yet. |
| 14 | Repairing of flooring 3 sqm Rs.29/- | Public gallery floor is still broken. Not charged for yet. |

A copy of the SPM Kotdwar letter no.Bld/KDR/80-81 dated 17.3.81 addressed to SPCs Pauri which is appended with the report and letter dated nil through which he intimated that only white washing distemper and painting works were done are enclosed which confirms the result of actual verification ~~was noticed in course of my visit.~~

It was seen in this case also as in the other cases that the contractor took up only such of the items as he wanted to leaving the others.

Provision of white tiles in bath room

It is alleged that 120 sq.m. white tiles were to be provided in the bath room at Kotdwar P.O. but only 25 sqr. metre white tiles were provided and the full payments were made by the JE(MCW) (C) PWC U.P. Lucknow.

An examination of building file of SPCs Pauri (D.31/A) revealed that the work orders relating to renovation of bath room and provision of white tiles, were placed by the SPCs Moradabad, (to whom the building work of Pauri Division was previously attached) vide his no. D/Kotdwar dated 3.12.79 at a cost of Rs.4550/- to M/s. Sulekh Chand at a cost of Rs.4550/-.
The SPCs Pauri, did not allow the contractor to start the work for want of estimates etc. as also the details of work to be done, but an intervention of DPS Dehradun vide his no. Bdg/Kotdwar/11/79 dated 24.12.79, the work was allowed and white tiles were provided in the bath room of the Kotdwar P.O. This work was not got done by A.E. (MCW)

A93

Face lifting : It was reported that a portion of the land belonging to the Postal Deptt, infront of P.O. was left out side the boundry wall at the time of construction of P.O. and demarcation of the boundry wall. This resulted in demolition of the old wall and its fresh construction. This face lifting work at the cost of Rs.40 0/- was got done by the SSPOs Moradabad through Sri Sulekh Chand Contractor 39 A Saharanpur Road Dehradun. The work order was placed by the SSPOs Moradabad to the said contractor vide his no. D/Kotdwar dated 3.12.79. In this case too there was no involvement of Sri Agarwal AE (MCW).

Provision of iron grilles : The examination of SPOs Pauri SPM Kotdwar's building file revealed that the works relating to the provision of iron grilles were got done by the AE(MCW) and as also by SSPOs Dehradun. There were three work orders as detailed below available in the SPOs file.

The work orders for provision for steel gate and G.I. pipe railing in front side of P.O. building at Kotdwar, with an estimate amounting to Rs.19109/- were placed to M/S. Sulekh Chand Contractor 38 A Saharanpur Road Dehradun, vide AE (MCW) C/O PMG U.P. Circle Lucknow letter No.AE/MCW/P/SHN/684/80-81 dated 21.1.81. There is nothing on record actually when the work was started and completed by the contractor, as per SPOs/SPMs file. @An spot examination revealed that infront side iron grills measuring 65' and two iron doors of 10' each and are small door of 5½' were provided by the contractors.

(B) The works relating to steel grille in the right and left side of the P.O. were got done by the SSPOs Dehradun by splitting the work at the cost of Rs.4985/- and 4990/- respectively vide his no. xx dated 31.8.81. The details of estimates were not furnished by him either to the SPOs Pauri or to SPM Kotdwar. @An spot examination revealed that both the sides were fully provided with the iron grills.

The provisions of steel grills were actually needed for the safety point of view as also for the protection from the encroachment of animals etc.

No irregularities were therefore noticed in so far as the provision of iron grilles etc. was concerned.

494

Some allegations were made by one Shri Raj Kumar, 13 Chowk Lucknow (16/C & 22/C of the file). The complaints are pseudonymous as a letter sent to the complainant from this ^{file} to the complainant was received back undelivered. One of these complaints (16/C) was ordered to be enquired into by the Directorate. The allegations in these with the findings thereon are as follows:-

- (3) Construction of a house whose total value is allegedly beyond his means

As per the property returns of the officer he has the following property in his name:

Location	Details of property	Approx. value	Manner in which acquired
Dehradun U.P.	Land 200 Sq. Yds	4000/-	Purchased from Sadhan Sahkari Samati Ltd., Dehradun in April 1976
Lucknow	a) Land 400 sq. yds.	purchased on 23.11.80 @ Rs.18 per Sq. Yds	From Narain Nagar Coop. Society
	House		
	b) House under construction on land at (a)	Present value Rs.90000/-	

As per the information given by the officer regarding the details of funds required for the construction of the present house he has stated that he got Rs.58,000/- as House Building Advance Rs.5000/- as GPF advance, 1740/- from Sahu Investment 2527/80 each from closure of 2 S/B accounts in the name of his daughter and wife, Rs.2348/75 from the closure of another S/B A/C in the name of another minor daughter Rs.5000/- received from one brother and Rs.2000/- from another brother, Rs.5000/- from his sister-in-law and the remaining amount from his personal savings.

It is not clear whether the transactions of the officer with his brother and sister-in-law were reported to the Government. The officer can be asked this.

The price of land stated by the officer is also too low for the land in Lucknow and it is feared that his statement in this regard is not correct.

From the assets available with him it is not possible to definitely say whether he can collect these with his 16 years service in the Department (including his years ^{as} on a non-gazetted official) legitimately or not.

Agg

The complainant has also alleged that the officer took Rs.2000/- from each contractor for giving them good rates. It is a vague allegation which was not enquired.

As regards the allegation about erroneous distribution of works between JE's the same has been rectified notified by the Additional PMG vide the PMG office order No.11 dated 4.11.81

It has also been alleged that he does not issue tenders to the following contractors.

In this case enquiries revealed that for the year 1981-82 tenders were not issued to the following Shri Rajvir Singh - Dehradun.

M. Ajmer - Kanpur
Nathi Lal - Mathura
Rameshwar Prasad - Lucknow
C.P. Haride - Dehradun
Pradeep Kumar - Lucknow
Jai Ram Das - Varanasi

The reason cited by the AE (MCW) in this regard was that these contraction were not in a position to produce their "enlistment letters". The AE further informed me that the list of approved ^{contractors} contraction is not available with him.

The allegation could thus not be proved x

CONCLUSION

It was proved during the enquiries that annual repairs work at Meerut ^{were} ~~was~~ got done by the AE (MCW) during the monsoon season last year. The bonafides of the AE are definitely suspect in getting such a thing done.

It was also noticed that it has become a practice with the AE to get an estimate approved and then allow the contractor and AE to work without following the terms of the work order to the contractor. The result is that the contractor tackles only such of the items as he would prefer leaving the non-profitable and minor ones alone. The contractor also does not stick to the time schedule fixed in the work order but is paid the full amount claimed by him, or after a petty deduction.

The estimates prepared by the JE are for all practical purposes the final word on what is essential or not in a particular repair or construction work. Many items are replaced when repair would have been good enough. It has also feared that his T.A. bills sanctioned by SSP Saharanpur are not all genuine.

1296

The RA bills have in not a single case been checked by the AE(MCW) as per the DC P&T ruling No.43-1/72-TE dated 30.9.72 vide which he has to personally measure not less than 50% of the measurements recorded by the JE before any running/final bill is paid.

In terms of the financial implications involved, the irregularities noticed against any of the Postal Divisional Superintendents in any of my earlier enquiry reports are mere peccadillos compared to what has been noticed in the enquiries against Shri S.R.C. Agarwal AE(MCW), and the JE Saharanpur, Shri P. Mittal.

Rafael 3/4/72
VIGILANCE OFFICER I

Copy

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

A/C-1

No. 11(1) P.T.D.-S.P./1098

DATED 31-5-85 ✓
For Civil Circle
Lucknow 2600721.5.85

With reference to his representation dated 25.5.85 regarding awarding of efficiency bar stage, Shri S.D.S. Agarwal, Assistant Surveyor of Works is informed that certain investigations carried out against him while working as Assistant Engineer (T.O.) posted in Postal Circle, Lucknow, 21.1.77 to 21.10.82 have revealed some irregularities. Further disciplinary proceedings against him are under process.

The case of awarding the efficiency bar stage shall be examined examined only after the disciplinary proceedings are concluded.

Sd/-
(S.D.S. Bhatia)
Superintending Engineer

To

Shri S.D.S. Agarwal
Assistant Surveyor of Works
Civil Circle, Lucknow.

1.1.85.

Copy to:-

Shri Rajan Singh, (T.O.) Surveyor of Works Civil Circle, Lucknow. The present position of disciplinary case may please be got ascertained.

Sd/-
Superintending Engineer

Copy of O. M. No. 29014/3/84-Estt.(A) dated the 4th of Sept. 1984 from Ministry of Home Affairs to D.G. P&T.

Office Memorandum

Subject:- Efficiency Bar- Delay in consideration -
Records of performance to be considered.

.-.

The undersigned is directed to refer to this Department's O.M. No. 29014/2/75-Estt.(A) dated the 15th of November, 1975 which provides for consideration of the Efficiency Bar case of a Government servant by the Departmental Promotion Committee on the basis of records of performance available up-to-date at the time of such consideration. Attention is also invited to this Department's O.M. No. 29014/1/76-Estt(A) dated 18.10.1976-

which prescribed the time-schedule for consideration of Efficiency Bar cases. It has come to the notice of this Department that in many cases the schedule prescribed by this Department for consideration of Efficiency Bar cases have not been observed by various Ministries/Departments. It is, therefore, once again reiterated that the schedule outlined in the O.M. dated 18.10.1976 should be strictly adhered to, and it should be ensured that C.Rs are completed on schedule and DPCs are held on time. Several instances have also come to the notice of Government where the DPCs have met after a considerable gap of time after the Efficiency Bar became due. These DPCs have taken into consideration the CRs of the intervening period also, thereby influencing the ultimate decision of the DPC at time adversely and at other times favourable.

2. In partial modification of the O.M. dated 15.11.75 referred to above, it has now been decided that in the event of the DPC being convened after a gap of time following the date on which the Government servant became due to cross the Efficiency Bar, the Committee should consider only those Confidential Reports which it would have considered had the DPC been held as per the prescribed schedule. In the event of the Government servant who is found unfit to cross the Bar from the due date, the same DPC would be competent to consider the report for the subsequent year also, if available. Thus, the same DPC could examine whether the Government servant is fit to cross the Bar from the next successive years also.

3. At present in cases where departmental proceedings etc. are in progress, the Efficiency Bar case of the official concerned is not cleared till the proceedings are completed. It has been decided that if on the date of the actual DPC, the concerned Government servant is under suspension or disciplinary/criminal court proceedings against him are contemplated or pending, the findings

Contd....2/-

True Copy
attested

E. A. to Superintendent, Engineer

1/15/85

: : 2 : :

of the DPC in regard to his crossing the Efficiency Bar stage should be placed in a sealed cover. The sealed cover should be opened after conclusion of the proceedings. If he is fully exonerated, the recommendations in the sealed cover may be considered by the competent authority who may lift the bar retrospectively from the date recommended by the DPC. In that case, the Government servant will be entitled to the arrears of the increment(s). In case, however, the proceedings do not result in complete exoneration of the Government servant, he cannot be allowed to cross the bar with retrospective effect. His case will be considered by the next DPC which meets after the final orders on the basis of the proceedings have been passed, and the Committee will then consider him for crossing the bar from a prospective date. While doing so, the Committee will take into account the order passed on the conclusion of the disciplinary proceedings.

4. In the case of officials who are undergoing any of the punishments mentioned in the CCS (CCA) Rules, other than 'censure', at the time their case for consideration the Efficiency Bar is considered, while they may be cleared for crossing the bar if they are otherwise considered fit by the DPC, actual effect of crossing the Efficiency Bar may be given only after the period of punishment is over.

5. In so far as the personnel of the Indian Audit and Accounts Department are concerned, these orders issued after consultation with the Comptroller and Auditor General of India.

Sd/- Miss Manjula Subramaniam

Under Secy. to the Govt.
of India.

True Copy

attested

8/5/07

By the Secretary to the Government

8/5

(2) (2c) Confidential/By hand

ANNEXURE "C"

(1100)

DEPARTMENT OF TELECOMMUNICATION

(Civil Wing)

L.D.22(2)/S.E.1/1935

Dated: ~~23/8/88~~ 24/8/88

5

Shri S.L.G. Agarwal,
Asstt. Engineer,
Telecom. Civil Sub-Div. II,
S.E. Office Compound, Lucknow

Subject:—Crossing of L.D. Case of Shri S.L.G. Agarwal, AE
(Civil).

With reference to your representation dated
2.3.88 on the above subject, it is to inform you
that your L.D. Case has been considered by the D.P.C.
and findings of the D.P.C. have been kept in the
scaled copy for perusal.

Since the Charge Sheet for disciplinary
proceedings has been served to you by the S.E. U.P.
vide their letter D.S.G./L-9/82/87/1 dated 3.7.87,
your case for crossing the Efficiency Bar shall be
further examined only after the above disciplinary
proceedings are concluded.

(D.D. Datta)
Superintending Engineer,
Telecom. Civil Circle, Lucknow

23/8/88

101

ANNEXURE "D"

/ copy /
VIGILANCE SECTION

ANNEXURE "D"

PROFORMA APPROVED BY THE P&T BOARD VIDE ITEM 87
OF THE MINUTES OF MEETING HELD ON 7th AND 10th
SEPTEMBER, 1984.

1. Name and designation of officer. Shri S.R.C. Agarwal, AE(C)
U.P. Circle, Lucknow.
2. Nature and source of complaint. Grave irregularities in
the special and annual
repairs of P.O. bldg.s and
favouritism to the contrac-
tor, in U.P. Circle.
3. Nature of allegations made.
4. Stage of the investigation. Investigation since completed
and decided to initiate major
penalty proceedings against
the officer and one J.E. (PMG,
U.P.) requested on 6.1.84 to
take further necessary action.
5. Whether enquiries so far made show
evidence of a prima facie case
against the officer justifying a
note being taken by the D.P.O. or
competent authority. Yes.
6. Whether there was any previous
complaint in the past five
years against the officer
and if so, whether any enquiry
was made and with what result. No.

Sd/-
Asstt. Director General (Vig.)

NO. 9/126/81-Vig.I
Forwarded to ----- CWG
The Memo NO. 17/35/83-CWG

Dated
Section with reference to
dated 9.1.84

Sd/- 30.1.84
Section officer (Vig.)

CWG Section

True Copy
attest
8/5

CONFIDENTIAL

INDIAN POSTS AND TELEGRAPHS DEPARTMENT
OFFICE OF THE DIRECTOR GENERAL POSTS AND TELEGRAPHS
CIVIL WING GAZETTED, SANCHAL BHAWAN NEW DELHI

NO. 17/35/83-CWG

Dated 6.2.84.

To

The Superintending Engineer (C)
P&T Civil Circle,
Ambala.

Sub:- Vigilance clearance Certificate of a few Asstt. Engineers (C) of P&T Civil Circle, Ambala.

Sir,

I am directed to refer to your office letter NO. 1(156)SEP&T/AB/9952-53/9954-56 dated 28.12.83 wherein the vigilance clearance certificates of S/Shri D.P. Singh, S.R.C. Aggarwal, S.S. Ghai, and Bahal Singh were sought for considering their case of crossing Efficiency bar. It has been ascertained from the vigilance Branch of the Directorate that there are no disciplinary/vigilance cases pending against S/Shri D.P. Singh and S.S. Ghai, AE's (Civil). However, we have been informed that there is a vigilance case pending against Shri S.R.C. Aggarwal, the details of which are given in the Annexure. The vigilance clearance of Shri Bahal Singh, AE(C) has already been conveyed vide this office letter NO. 17/84/83-CWG dated 18/1/84.

Yours faithfully

Sd/-

(B.D.JUNG)

Encl:- Annexure

Asstt. Director General (CW)

True Copy

attached

8/5/87

8/5

ITEM-9/82/87/1

Dated at LW, the 03-7-1987.

ANNEXURE "F"

MEMORANDUM

The President/Undersigned proposes to hold an inquiry against Shri S.R.C. Agarwal, Asstt. Engg. under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The substance of the imputations of misconduct 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 (Annexure-I). A statement of the imputations of misconduct or mis-behaviour in support of each article of charge is enclosed (Annexure-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 (Annexure-III & IV).

2. Shri S.R.C. Agarwal, Asstt. Engg. 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. He should, therefore, specifically admit or deny each article of charge.

4. Shri S.R.C. Agarwal, Asstt. Engg. 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 (C.C.A) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him exparte.

5. Attention of Shri S.R.C. Agarwal, A.E. is invited to Rule 20 of the Central Civil Services (Conduct) Rule, 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 interest 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 within these proceedings it will be presumed that Shri S.R.C. Agarwal Asstt. Engg. is aware of such a 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) Rule, 1964.

Contd. page 2.

6. The receipt of the Memorandum may be acknowledged.

S.R.C. Agarwal

NAME & DESIGNATION OF THE COMPETENT
AUTHORITY

To,

Shri S.R.C. Agarwal, the then

A.E.(MCW) Lucknow presently working

as A.E.Telecom Civil Sub Division,

TAX Building AGRA.

A105

ANNEXURE I.

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI S.R.C. AGARWAL, THE THEN A.E.(MCW) LUCKNOW AND NOW ASW, o/o SEN P&T CIVIL CIRCLE, LUCKNOW.

ARTICLE I.

Shri S.R.C. Agarwal, while functioning as A.E.(MCW) Lucknow during the period from 1980 to 1982, took undue interest in getting the repair work to Post office Buildings, in consideration of some monetary gain, through a solitary contractor, Shri Kunwar Pal Singh, just before the break of the monsoon, specially when one of the works had already been completed just three months earlier and in another work, there were clear instructions by the DPS, Dehradun that the same should be undertaken by the SSPOs, Meerut.

Thus, by his above acts, Shri S.R.C. Agarwal had failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule 3 (1) (i) and (iii) of the CCS (Conduct) Rules 1964.

ARTICLE II

The said Shri S.R.C. Agarwal while working as aforesaid during the aforesaid period, did not exercise proper check while executing work relating to special repairs to Post office Building at Rudra Prayag and sanctioned bills of the contractor without properly verifying the date of actual start of the work and without verifying whether the work was completed in accordance with specifications.

Thus, Shri S.R.C. Agarwal, by his above acts had failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule 3 (1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

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ARTICLE III

Shri S.R.C. Agarwal, while functioning as aforesaid during the period, did not exercise proper check over the work of his SO(MCW), Shri Pradeep Mittal relating to execution of work of renovation of bath rooms in Post office Building at Rudraprayag and hurriedly sanctioned the T.A. bill without taking any care that the work was incomplete.

Thus, Shri S.R.C. Agarwal, by his above acts had failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule 3 (1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

ARTICLE IV

Shri S.R.C. Agarwal, while functioning as aforesaid during the aforesaid period, sanctioned T.A. bill for Rs.3,757.00 relating to the work of construction of Jeep Garrage at Pauri Head Office, even after defects in the work are pointed out by the SPOs, Pauri. He did not care to carry out checks as prescribed for AE and has, therefore, contravened the provisions of instructions contained in DG P&T order No.43-1/72-TE dated 30-4-72.

Thus, Shri S.R.C. Agarwal, by his above acts had failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule 3 (1) (i), (ii) & (iii) of the CCS (Conduct) Rules 1964.

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ANNEXURE II.

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST SHRI S.R. C. AGARWAL , THE THEN A.E.(MCW) LUCKNOW AND NOW ASW, o/o SEN, P&T CIVIL CIRCLE, LUCKNOW.

ARTICLE I.

(1). Shri S.R.C. Agarwal was functioning as A.E.(MCW) Lucknow during the period from 1980 to 1982. He ordered the following items of Annual repairs work to be carried out by the solitary contractor, just before monsoon by issuing work orders although one of those works had been undertaken in Feb 1981 just a few months earlier by the SSPOs Meerut and yet in another case ordered for annual repairs by Shri S.R.C. Agarwal. There were specific orders of the DPS, Dehradun that this may be undertaken only by the SSPOs concerned. The details of these works are given below :-

a.) A R Work, Baraut PO Building, Meerut for an estimated cost of Rs.7,491-00 was issued to Shri Kunwar Pal Singh, Contractor, Gurkul Dorli, Meerut on 25-5-81 and was completed on 19-6-81. Final bill in this case was issued on 20-4-82 under the signature of Shri S.R.C. Agarwal. In this case, it came to light that the AR Work of the concerned building for estimated cost of Rs.1,276-00 was already completed by the SSPOs, Meerut between 19-2-81 to 28-2-81. It is not understood as to why the necessity arose for the repair work of the building just after three months of the original repair completed on 28-2-81.

b.) AR Work Khatauri PO Building, Meerut relating to SPM residence work at an estimated cost of Rs.6,968-00 was given to Shri Kunwar Pal Singh, Contractor by A.E.(MCW) Shri S.R.C. Agarwal on 20-5-81. The work was completed on 16-6-81 and the final bill was paid to

the contractor under the signature of Shri S.R.C. Agarwal on 13-8-81. It came to light that this work was to be undertaken by the SSPOs Meerut as per DPS, Dehradun order No.Bldg/MTC/Rlg/80 dated 25-4-81.

c.) Annual repair work to type I and type II quarters in HPO Meerut compound including PM's residence was issued by A.E.(MCW), Shri S.R.C. Agarwal on 8-5-81 to Shri Kunwar Pal Singh, Contractor at an estimated amount of Rs.9,718-00. This work was completed on 15-7-81 and the final bill was paid to the contractor on 20-4-82 under the signature of Shri S.R.C. Agarwal. It is observed that this work had started just before the start of the monsoon.

d.) AR Work of Mawana Road Colony Postal quarters, Meerut was issued to Shri Kunwar Pal Singh, Contractor for an estimated amount of Rs.18,836-00 with instructions to the contractor to start the work on or before 29-5-81 and to complete it by 28-7-81. This work had started on 13-5-81 and was completed on 8-12-81. This work had also started just before the monsoon session.

From the above analysis, it is clear that ~~the work was given to Shri S.R.C. Agarwal~~ Shri S.R.C. Agarwal had given the contract of all the 4 works order to a solitary contractor, Shri Kunwar Pal Singh just before the monsoon session. As regards work indicated in (a) above, it is clear that the repair work had already completed just three months before the start of the repair- work by Shri S.R.C. Agarwal. In the case at (b) above, the work was taken up by Shri S.R.C. Agarwal, although there were clear instructions from the DPS, Dehradun that this work should be undertaken by the SSPOs, Meerut. Shri S.R.C. Agarwal had taken undue interest in all the repair works with some monetary gain.

Thus, by his above acts, Shri S.R.C. Agarwal had failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule 3 (1) (i) & (iii) of the CCS (Conduct) Rules, 1964.

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ARTICLE II

Shri S.R.C. Agarwal was functioning as aforesaid during the aforesaid period. He issued work order under his signature to a contractor, Shri Sheo Chand Kumar, 8-Janakpuri, Saharanpur under his order No. AE/MCW/P/SHN/310/79-80 dated 27-12-79 at an estimated cost of Rs.19,002-00 relating to special repair of PO Building, Rudraprayag with instructions to the contractor to start the work on or before 11-1-80 and to complete it by 11-3-80. He sanctioned first RA Bill dated 30-3-80 amounting to Rs.17,203-00 which had an entry of date of start of work as 28-12-79 on 31-3-80 vide sanction No. AE/MCW/P/SHN/310. While doing so, he did not care as to whether there was any possibility under which, the work, just on the next day of issue of work order dated 27-12-79 could start on 28-12-79. The contractor, in second bill for Rs.4,793-00 mentioned the date of the start of work as 28-2-80 and completion of work as 10-6-80. Shri S.R.C. Agarwal did not care the least on the issue that two different dates were mentioned in the two bills against column of the date of start of the work, viz. 28-12-79 and 28-2-80 respectively. He sanctioned the second bill for Rs.4,793-00 under his order No. AE/MCW/P/SHN/310 dated 29-7-80 without ensuring satisfactory completion of the work from SPM Rudraprayag. It came to light that the contractor had actually started the work in Feb'1980 as also reported by the SPM, Rudraprayag in his letter dated 29-2-80 to the SPOs Pauri. From the above, it is clear that the said Shri S.R.C. Agarwal sanctioned first RA Bill containing a false date of start of work and did not exercise proper check as required of him.

Thus, Shri S.R.C. Agarwal, by his above acts had failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule 3 (1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

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ARTICLE III

Shri S.R.C. Agarwal was functioning as aforesaid during the aforesaid period. He did not exercise proper check over the work of his subordinate, Shri Pradeep Mittal, the then SO(MCW), Saharanpur, who had made false entry in MB No. 76 at pages 42-44 dated 20-2-81 without visiting the site relating to renovation of bath rooms and other minor works in TO Building at Rudraprayag. This is evident from his T.P. and T.A. bill of Feb'81 and also his own statement dated 6-1-82 before Shri M.S.Bora, Investigation Inspector Vig.II, C.O. Lucknow. This has resulted in sanction of Rs.9,215.00 on 24-2-81 under No.AE/MCW/P/SHN/563/80-81 and Rs.5,553.00 on 14-8-81 under No.AE/MCW/P/SHN/563/80-81 against defective and as well as incomplete work as pointed out in the report of the SPOs, Pauri vide No.8-41/(A) dated 4-8-81 addressed to DPS and copy endorsed to AE (MCW) Lucknow. Shri S.R.C. Agarwal had approved the tour programme of Shri Pradeep Mittal, SO (MCW), Saharanpur for the period from April'80 to August'80 at one stroke on 14-11-80, on his visit at Saharanpur in stead of approving it in advance or just after completion of journey. He also approved TP of the aforesaid SO (MCW) for period from Sept'80 to Feb'81 on 28-3-81 without carrying that the TP for Sept'80 to Nov'80 was already approved earlier. Shri S.R.C. Agarwal, after having been apprised of the defect in the work on receipt of copy of report No.8-41/A dated 4-8-81 from SPOs Pauri on 11-8-81 sanctioned second RA bill under his No.AE/MCW/P/SHN/563/80-81 dt.14-8-81 without considering the aspect of defective and incomplete work against which the bill was sanctioned.

Thus, by his above acts, Shri S.R.C. Agarwal had failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule 3 (i) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

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ARTICLE IV

Shri S.R.C. Agarwal was functioning as aforesaid during the aforesaid period. He sanctioned first RA bill for Rs.15,343.00 and second RA bill for Rs.3,457.00 under his order No.AE/MCW/P/SHN/610/80-81 dated 24-2-81 and 14-8-81 respectively against the work of construction of Jeep Garrage at Pauri HO through SPOs Pauri vide his letter No.D-2/2-Ch.IV dated 4-8-81 addressed to DPS Dehradun and copy endorsed to AE (MCW). Some defects were reported in the said work done by the said contractor. Shri S.R.C. Agarwal signed the report of the SPOs Pauri on 11-8-81 and even after having been apprised of the defects in work through the said report, sanctioned second RA bill on 14-8-81 and thereafter directed SO (MCW), Saharanpur under his No.AE/MCW/P/SHN/610/80-81 dated 28-8-81 and a copy of the aforesaid letter of SPOs Pauri visit the site and sent the report. Shri S.R.C. Agarwal did not measure personally 50% of the measurement recorded by JE in this case before sanctioning the running account bill as was required of him under the provisions of instructions contained in DG P&T order No.43-1/72-TE dated 30-4-72 and has, therefore, contravened the provisions of DGP&T order No.43-1/72-TE dated 30-9-72.

Thus, Shri S.R.C. Agarwal, by his above acts had failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening the provisions of Rule 3 (1) (i) , ~~xxx~~ (ii) & (iii) of the CCS (Conduct) Rules, 1964.

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Annexure - III

List of documents by which the articles of charge framed against Shri S.T.O. Agarwal, the then AE(MCW) Lucknow and now AE, O/O SRR, P&T Civil Circle, Lucknow are proposed to be sustained.

1. Work order with estimation under AE MCW Lucknow No. AE(MCW)/P/SHN/760 dated 28.5.81.
2. Work order with estimation under AE MCW Lucknow No. AE(MCW)/P/SHN/779/81-82 dated 20.9.81.
3. Work order with estimation under AE MCW Lucknow No. AE/MCW/P/SHN/706/81-82 dated 20.4.82.
4. Work order with estimation under AE MCW Lucknow No. AE/MCW/P/SHN/709/81-82 dated 13.9.81.
5. Work order with estimation under AE MCW Lucknow No. AE/MCW/P/SHN/910/79-80 dated 27.12.79.
6. Work order with estimation under AE MCW Lucknow No. AE/MCW/SHN/563/80-81 dated 20.1.81.
7. Work order with estimation under AE MCW Lucknow No. AE/MCW/P/SHN/610/80-81 dated 5.11.80.
8. Work order with estimation under AE MCW Lucknow No. AE/MCW/P/SHN/548/80-81 dated 7.8.81.
9. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/760 dated 16.6.81.
10. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/760 dated 20.4.82.
11. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/779/81-82 dated 16.6.81.
12. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/779/81-82 dated 13.9.81.
13. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/706/81-82 dated 27.9.81.
14. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/706/81-82 dated 20.4.82.
15. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/709/81-82 dated 16.6.81.
16. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/709/81-82 dated 13.9.81.
17. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/910 dated 31.3.80.
18. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/910 dated 29.7.80.
19. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/563/80-81 dated 14.8.81.
20. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/563/80-81 dated 24.2.81.
21. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/610/80-81 dated 24.2.81.
22. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/610/80-81 dated 14.8.81.
23. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/610/80-81 dated 24.10.81.
24. Bill sanctioned under AE(MCW) O/Lucknow No. AE/MCW/P/SHN/548/80-81 dated 28.3.81.
25. SSP's Memo No. D-12/AR/Secr/3/77/78.
26. P.P.S. Memo No. Bldg/SEC/ALG/80 dated 25.4.81.
27. AE No. 76 Page 42 to 44 dated 20.2.80 of Shri Pradeep Mittal S.O., MCW, Baharampur.

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28. W/O.D. of Shri Pradeep Mittal S.O. MCW Saharanpur dated 4.1.82 before Shri H.S. Datta I.L. Vaj. II S.O. Lucknow.
29. SP/o Pauri letter No. D-41/(A) dated 4.2.81 to DFO with copy to AD MCW.
30. T.P. of Shri Pradeep Mittal to MCW, Saharanpur from April 80 to Feb. 81.
31. DFO Pauri letter No. L-2/2 D IV dated 4.8.81 addressed to DFO and copy to AD MCW Lucknow.
32. AD MCW Lucknow letter No. AD/MCW/2/SUN/610/80-81 dated 26.8.81 addressed to S.O. MCW, Saharanpur.
33. Office copy of T.A. Bill of Shri Pradeep Mittal, S.O. MCW, Saharanpur for Feb'81.
34. MS No. 76 pages 36 to 39 dated 20.2.81 of Shri Pradeep Mittal, S.O., MCW, Saharanpur.
35. J/N of AD MCW CU Lucknow File No. AD/MCW/P/SUN/610/80-81 dated 24.10.81 noted by Shri Pradeep Mittal, S.O., MCW, Saharanpur.
36. P.M.O. U.P. letter No. MDA/L-1/55/7/L dated 22.4.81.
37. T.A. Bill of Shri Pradeep Mittal, S.O. MCW, Saharanpur for March 81 (Office copy).
38. T.P. of Shri Pradeep Mittal S.O., MCW, Saharanpur for March 81.

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List of witnesses by whom the allegations of charges framed against Shri D. S. Agarwal, the then AS (MCs), Lucknow and now D.D., O/O SPM, IIR Civil Circle, Lucknow, are proposed to be examined.

1. Shri Mohan Chandra, the then Dealing Asstt., NOW(P) C.D. Lucknow, now UDC getting Sec. C.O., Lucknow.
2. Shri Mohd. Shafique Khan, Draftsman, NOW(P), O/O MSO, U.P., Lucknow.
3. Shri H.S. Sadana, the then P/A D.D Meerut, now LSG Supervisor, Meerut Kutchery LSG HO.
4. Shri H.C. Ahuja, the then P/A D/O Meerut now UDC SMO Meerut HO I.
5. Shri K.N. Anand LSG O/O DVS Meerut HO.
6. Shri H.S. Singh, I.I. (VLS) C. Lucknow.
7. Shri P.J. Malik, the then Dealing Asstt. O/O SPM Pauri, now Pauri H.
8. *The then Accountant, D/o Saharanpur, who dealt with T.A. Bills of Shri Pradeep Mittal, the then S.O, MCW, Saharanpur.*
9. Shri Jugal Kishore, U.D.C., Lucknow.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH, LUCKNOW.

OA No. 56 of 1988.

S.R.C. Agarwal

Applicant

Versus

Union of India and others

Respondents

REJOINDER AFFIDAVIT OF THE APPLICANT

I, S.R.C. Agarwal, aged about 45 years, son of late Sri Ram Gopal Agarwal, R/O 26 B Narain Nagar, Faizabad Road, Lucknow, do hereby state on oath as under:

1. That the deponent is the applicant in the above noted case and he is fully conversant with the facts deposed to in this affidavit. The deponent has read the contents of the counter affidavit filed by one Sri V.C. Saxena, Engineering Assistant in the office of respondent no. 3, understood its contents and is replying to the same.
2. That in reply to the contents of para 1, it is stated that the counter affidavit/written statement has not been filed by any of the respondents and Sri V.C. Saxena, the so called Engineering Assistant has not filed any authority to have been duly authorised by respondents no. 1 and 2 as required under rule laid down in Central Administrative Tribunal (Procedure) Rules 1987. He has also not disclosed how he contends to be competent to affirm the affidavit on behalf of the respondents no. 1 and 2 as held out. His assertion is vague, indefinite and hence denied. He is not a party in the case and so not competent to file the reply before this Hon'ble Tribunal and the same is liable to be ignored and the application filed by the deponent is liable to be allowed ex-parte.
3. That the contents of para 2 are denied as stated. ^{Saxena} The V.C. Saxena is not a party in the case and he is not competent to file a reply under the Act and Rules. It is also denied that he is well acquainted with the facts of the case. The case relates to non-allowing the Efficiency-Bar with effect from 1.1.83 which is based on the confidential reports and performance of the deponent with

*Received by
D.K.C. Saxena
P.A. 12/5/88*

S.R.C. Agarwal

which Sri V.C. Saxena is in his official capacity as held out by him, has no concern. He is not a party in the case and his averment is irrelevant, unnecessary, uncalled for, incompetent and unwarranted.

4. That the contents of para 3 of the reply needs no comment.

5. That in reply to the contents of para 4 of the reply, this

much is admitted that the deponent was due to cross the Efficiency

Bar at the stage of Rs.810/- w.e.f. 1.1.83 in the then pay scale of

Rs.350-30-740-35-810-EB-35-880-40-1000-EB-40-1200; it is however,

denied that for processing the E.B. case vigilance clearance from vigilance cell of the Post & Telegraph Directorate were required.

There were no such orders in 1983. In fact under the rules, the

E.B. case of the deponent should have been placed before the

Departmental Promotion Committee at least six months before the

due date and the deponent informed of the result before 1.1.83 or

immediately thereafter. But maliciously and prejudicially the case

of the deponent was never placed before the Departmental Promotion

Committee during the period from July 82 to 87 and the deponent had

to approach this Hon'ble Tribunal by filing his application dated

29.10.87 which was registered as Registration No. 199 of 1987. The

respondents are under an obligation to place the entire records

before this Hon'ble Tribunal to indicate when the E.B. case of the

deponent was placed before the Departmental Promotion Committee and

what orders were passed on it. Had it ever been done, the competent

authority must have informed the applicant about the results of

the proceedings of the D.P.C. as required under the extant Rules,

which he never did. On 1.1.83, neither the deponent was under

suspension, nor any enquiry was contemplated nor was pending nor

any adverse comments had ever been communicated to him prior to

1.1.83 and as such there was no reasons to withhold his J.B. on

1.1.83. Even the representations made by the deponent could not

prove of any avail. It is denied that the position of the E.B. case

was intimated to the deponent from time to time. A true copy of

the letter dated 31.5.85 said to have been annexed as annexure C-1

has not been received with the reply. However, this is said to be

dated 31.5.85 and prior to this the deponent was never informed

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that certain investigations were carried out against him while working as Assistant Engineer (new) Postal in Postal Circle, Lucknow from 31.1.77 to 21.10.82 which had revealed some irregularities, nor any adverse comment was ever communicated to him. The reply does not clarify what were the formalities observed for consideration of the E.B. in the case of the deponent and why he was not allowed to cross the E.B. on the due date of 1.1.83. The deponent was never made aware if any enquiry was being conducted against him. Even if there was any enquiry, that could not be the basis for withholding the deponent at the E.B. stage, on mere complaint. The enquiry in itself does not substantiate any lapse and if any irregularities were prima facie found, the deponent could be dealt with accordingly after show cause and opportunity of hearing. The very fact that the respondents have served the deponent with a charge sheet dated 3.7.87 on 10.7.87 makes it abundantly clear that no enquiry was pending on 1.1.83, when the E.B. was due. The enquiry starts after issue of the chargesheet and not before, The withholding of E.B. on 1.1.83 is therefore malicious and arbitrary. The inquiry on the charge sheet is said to be still pending but why it is pending for over 21 months has not been disclosed.

The direction of the Hon'ble Tribunal vide order dated 19.1.88 on the registration no. OA 199 of 1987 has been misconstrued. Para 4 of the Tribunal's order dated 19.1.88 is reproduced below:

"The Efficiency Bar was due on 1.1.1983. We do not know why on what date the irregularities of the year 1977 to 1982 came to light. So far no charge sheet has been submitted nor any specific order has been passed in this connection. In view of the above the authorities are directed to pass proper orders regarding crossing the Efficiency Bar. In case his request is granted, the matter would rest. The applicant will be at liberty to move this Tribunal in case he is not satisfied with the order passed by the authorities concerned. There is no question of awarding damages at this stage. The petition is disposed of accordingly with no order as to costs.

The respondents were directed to pass proper order and the advisability of further action to be taken by the deponent depends

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on the order passed. The application of the deponent was for issuing directions to the respondents to allow him crossing of E.B. w.e.f. 1.1.83 and the respondents were under obligation to pass order regarding crossing of E.B. from 1.1.83. They were also to divulge when the so called irregularities came to notice and when the deponent was made aware of them. The respondents did not pass any order for a pretty long time and, therefore, the deponent had to initiate contempt proceeding by Civil Misc. contempt Application no. 2 of 1988(L) in re OA No. 199 of 1987 and also to file the instant application under OA 56 of 1988(L). It was only after filing of the contempt application that the respondents gave a reply to the deponent by letter dated 25.8.88 a true copy of which has been filed as annexure A-9. This reply does not solve the case at all. It does not say why E.B. was not allowed w.e.f. 1.1.83 and why no reply was given to the deponent in respect of crossing of E.B. from 1.1.83 either before 1.1.83 or immediately after it. The action of the respondents has been arbitrary, prejudicial and malicious in as much as the orders contained in M.H.A.S Memo No. 29014/3/84-Est (A) dated 4.9.84 do not have retrospective effect.

The rest of the contents of para under reply are denied & the contents of para 3(IV) of the application are re-iterated.

6. That the contents of para 5 need no reply.

7. That in reply to the contents of para 6 it is denied that the deponent's claim that he has served the department with an unblemished record is not correct. It is wrong and prejudicial to say that the deponent while serving as Assistant Engineer (Minor Civil Works) under Postmaster General U.P. Circle Lucknow for the period from 31.7.77 to 21.10.82 was involved in grave irregularities in the special Annual Repairs of Post Office building and favouritism to the contractors. The deponent is not aware of any enquiry allegedly having been conducted by the Vigilance Officer in the year 1981 for the alleged irregularities said to have been committed by the deponent during the period from 1979 to 1981. It may be pointed out that the enquiry is alleged to have been conducted in 1981, but neither the deponent was informed of any such enquiry nor any charge

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sheet was given to him prior to 10.7.87. This renders the averment made for the respondent hallow and untenable.

8. That the contents of para 7 of the reply are denied as stated. There was nothing adverse against the deponent on 1.1.83 or prior to it. No disciplinary case was contemplated/initiated against the deponent nor any charge sheet was issued to him nor any adverse comment was even communicated to the deponent so as to debar him from crossing the E.B. on 1.1.83. The deponent submitted representations dated 21.6.83, 16.11.83 and 25.5.85 (annexures A-1, A-2 and A-3 to the application). It was pointed out by the deponent in his representation dated 25.5.85 that under G.I.C.S. (Department of Personnel) office order no. 40/1/75-Ests(M) dated 31.12.83 (incorporated as G.O. order no. 3 below FR-25) the cases of Govt. servants for crossing the efficiency bar in the time scale of pay are required to be considered at the appropriate time and in case the decision is to enforce the bar against the Government servant, he should be informed of the decision. The said Government orders were patently violated. Neither the case of the deponent was considered at the appropriate time, nor any decision of the competent authority for not allowing to cross the E.B. was communicated. It was only after submission of various representations that the respondent no. 3 by his letter dated 31.5.85 gave a vague and indefinite reply that certain investigations carried out against the deponent while working as Assistant Engineer (MCV) Postal in Postal Circle Lucknow w.e.f. 31.1.77 to 21.10.82 had revealed some irregularities and further disciplinary proceedings against him were under process and that the case of crossing the E.B. stage would be examined after the disciplinary proceedings were concluded. Even this reply dated 31.5.85 was not definite and specific as it alleged that some irregularities were revealed. Neither the details of alleged irregularities were furnished, nor the date of their coming to light was intimated nor any charge sheet was given to the deponent. The averment now made that the deponent was found to be involved in grave irregularities is an afterthought and in contravention of their own letter dated 31.5.85. It is wrong to say that vigilance clearance was a pre-requisite for crossing

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of the E.B. and the vigilance did not give clearance. No copy of the vigilance report to indicate its date and contents, has been filed which is simply a suppression of the facts. In fact no vigilance clearance was warranted as alleged nor any clearance was called for prior to 1.1.83 and the deponent was maliciously stopped at the E.B. stage on 1.1.83 without passing any order which they could not. The Govt. orders dated 4.9.84 referred to in this para were issued much after the date when E.B. was due to the deponent and these orders cannot be switched back retrospectively to have effect from 1.1.83. The said order can take effect from 4.9.84 onwards and cannot affect the E.B. case of the deponent which was due on 1.1.83. The rest of the contents of the para under reply are denied as irrelevant ^{for} as already stated earlier there was ~~nothing~~ nothing adverse against the deponent prior to 1.1.83 and nothing adverse was ever communicated to him and there was absolutely no ground for withholding the deponent at E.B. on 1.1.83. The respondents are under obligation to place before this Hon'ble Court Tribunal the entire record showing when his case was put up before the Departmental Promotion Committee before or immediately after 1.1.83 as required under the rules and what decision was taken thereon. The chargesheet dated 3.7.87 forming annexure C III to the counter cannot be a basis for withholding the E.B. on 1.1.83. In Padam Singh Jhina Vs Union of India (1974) ISLR, 594 (SC) it has been held that 'In fairness to a public servant the order preventing him from crossing the efficiency bar should be passed either before the appointed date or shortly thereafter.'

The rules and orders have not been followed in the deponent's case and he has been arbitrarily held up at the E.B. stage from 1.1.83 causing him mental and financial strain and irreparable loss.

9. That the contents of para 8 need no reply.

10. That the contents of para 9 are vague and indefinite. No adverse comment was ever communicated to the deponent. It is denied that the so called irregularities came to notice during the year 1980-81. Had it been so, some adverse report/remarks would have been communicated to the deponent much before 1.1.83 and the

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issue of charge sheet would not have been kept pending till 3.7.87 which show the hollowness of the assertion made by the respondents. As stated earlier there was no occasion or rule to demand a vigilance clearance for crossing the E.B. It is wrong to say that for crossing of the E.B. case, necessary action was initiated well in time. Had it been so, a reply could have been given to the deponent before 1.1.83 or immediately thereafter. The silence on the part of the respondents and non-reply to the representations made by the deponent, reflect on their prejudicial action against the deponent and withholding him at the E.B. stage on 1.1.83 arbitrarily and maliciously. The respondents have secreted as to the date of holding D.P.C. and placing the deponent's case before it.

11. That the contents of para 10 are denied as irrelevant. The assertion made by the respondents do not relate to the relevant date of crossing the E.B. on 1.1.83. Any subsequent incident or happening cannot have retrospective effect. The charge sheet issued on 3.7.87 is altogether different matter having no concern with the E.B. case due on 1.1.83 and the deponent will have to be dealt with in respect of the said charge sheet in accordance with rules. It is pertinent to note that no reply was given to the deponent, despite orders of this Hon'ble Tribunal dated 19.1.88, and the deponent had to initiate contempt proceedings under Civil Contempt No. 2 of 1988. It was thereafter that the reply dated 25.3.88 was issued to the deponent. This reply, it may, be pointed out, ^{this} is of no avail and the deponent's instance case is against/ order.

12. The contents of para 11 need no reply.

13. That the contents of para 12 are evasive and they are denied and the contents of para 6 (IX) are re-iterated.

14. That the contents of para 13 are denied and those of para 6(X) of the application are re-asserted.

15. That the contents of para 14 are denied. The applicant was due to cross the E.B. on 1.1.83 and he is entitled to the reliefs as prayed for by him in para 7 of his application.

16. That para 15 needs no reply.

17. That the contents of para 16 are denied. The applicant submitted representations against his holding at the E.B. but

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to no avail, whereupon he filed application in this Hon'ble Tribunal which was registered as OA No. 199 of 87. The Tribunal was pleased to direct the respondent to pass specific order in the matter of non-allowing crossing of E.B. in the case of applicant w.e.f. 1.1.83 but no such order has been passed and the order dated 25.8.88 is irrelevant and does not satisfy the applicant. Hence the necessity of the instant application .

17. ~~That para 18 needs no reply.~~

18. That the contents of para 17 are denied as wrong and misconceived.

19. That para 18 needs no reply.

20. That ~~no~~ reply to the contents of para 19 it is stated that in view of the supplementary affidavit, an amendment application seeking amendment in the application was moved, which having been allowed by the Hon'ble Court, the application was amended and consequent upon the amendment, the supplementary affidavit has become infructuous and calls for no reply by the respondents and in view of this, paras 19, 20, 21, 22, 23 and 24 are redundant and deserve to be ignored.

21. That the contents of para 25 are denied in view of averments made above.

22. That the contents of para 26 are denied. The application stands amended and the deponent is fully entitled to the reliefs prayed for by him. The deponent's application is based on merit and the claim is liable to be allowed with special cost.

Lucknow, Dated:
May 8, 1989.

Shiv Tyagi
Deponent.

VERIFICATION

I, the above named deponent, do hereby verify that the contents of paras 1 to 19 are true to my knowledge and those of paras 20 to 22 are believed to be true on the basis of record and legal advice. Nothing material has been concealed and no part of it is false. So help me God.

Lucknow, Dated:
May 8, 1989.

Shiv Tyagi
Deponent.

I identify the deponent who has signed before me.

Advocate
Advocate

S.R.C. Agarwal

Applicant

Versus

Union of India and others

Respondents

SUPPLEMENTARY REJOINDER AFFIDAVIT

I, S.R.C. Agarwal, aged about 45 years, son of late Sri Ram Gopal Agarwal, r/o 26 B Narain Nagar, Faizabad Road, Lucknow, do hereby state on oath as under :-

1. That the deponent is the applicant in the above noted case and is fully conversant with the facts of the case deposed to in this supplementary rejoinder affidavit.
2. That the deponent did not reply to paras 19, 20, 21, 22, 23 & 24 of the counter affidavit as the said paras related to the supplementary affidavit filed by the deponent which was not accepted and instead the deponent was required to file an amendment application which was done and the application was amended accordingly, after the amendment having been allowed. In view of this, the supplementary affidavit has been replied to in the counter affidavit, the deponent is filing this supplementary rejoinder affidavit in reply to paras 19 to 24 thereof.
3. That para 19 of the counter reply calls for no comments in view of averment made in para.
4. That para 20 of the counter needs no reply.
5. That the contents of para 21 of the counter are denied. It is true that the deponent had to come before this Hon'ble Tribunal as no compliance to the orders passed by the Tribunal on 19.1.88 was made by the respondents despite having been reminded by the deponent by his representation dated 2.3.88. Although no specific time was given in the order dated 19.1.88 passed by the Tribunal, yet the order was required to be complied with within six months in terms of Government of India Department of Personnel and Training OM

22.8.89

S.R.C. Agarwal