

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW.

INDEX SHEET

CAUSE TITLE C.A. 308 OF 1989 (U)

Name of the parties \_\_\_\_\_

Dr. V. Verma

Applicant.

Versus.

Union of India

Respondents.

Part A.B.C.

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20/6/11

Certified  
certified that this file is fit for consignment  
Pg. 23 En/wh  
527,

CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCULAR BENCH, LUCKNOW

Seniority  
Promotion (DB)  
(AI)

Representation No. 308 of 1989 (L)

APPLICANT(S) \_\_\_\_\_

RESPONDENT(S) \_\_\_\_\_

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent? Yes
2. a) Is the application in the prescribed form? Yes
- b) Is the application in paper book form? Yes
- c) Have six complete sets of the application been filed? Four sets filed
3. a) Is the appeal in time? Yes
- b) If not, by how many days it is beyond time? -
- c) Has sufficient case for not making the application in time, been filed? -
4. Has the document of authorisation/ Vakalatnama been filed? Yes
5. Is the application accompanied by B.C./Postal Order for Rs. 50/- Yes No DP 839251 dt. 21/1/85
6. Has the certified copy/copies of the order(s) against which the application is made been filed? Yes
7. a) Have the copies of the documents/referred upon by the applicant and mentioned in the application, been filed? Yes
- b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly? Yes
- c) Are the documents referred to in (a) above neatly typed in double space? Yes
8. Has the index of documents been filed and paging done properly? Yes
9. Have the chronological details of representation made and the date of such representation been indicated in the application? Yes
10. Is the matter raised in the application pending before any court of law or any other Bench of Tribunal? No

(A)

Particulars to be Examined

Endorsement as to result of examination

- 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. \_\_\_\_\_ pagesNos \_\_\_\_\_ ?
- 13. Have the file size envelopes bearing full addresses of the respondents been filed ?
- 14. Are the given address the registered address ?
- 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.

Two sets

Yes

-

-

ND

Yes

Yes

NA

Yes

Yes

Yes

Yes

Yes

Yes

grushy

3/1/28

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:: \* ::

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
---------------------------------	--	--

6 <sup>11</sup>/<sub>89</sub>

Hon'ble D.K. Agrawal, J.M.  
Hon'ble K. Dhoyya, J.M.

Shri A.P. Shukla counsel for the applicant heard. Issue notice to show cause as to why the petition be not admitted and interim order prayed for be not granted. The cause shall be shown by the respondents alongwith the disciplinary proceedings of the applicant. List this case on 4-12-89 for order/hearing on admissions.

*[Signature]*  
A.M.

*[Signature]*  
J.M.

CR  
Notice could not be issued. Short ss Head of Michaba already moved to the same. The supply is await

4/12/89

(SND)  
Hon. Justice K. Nath, VC.  
Hon. K.J. Ramani, J.M.

Dr. Dinesh Chandra files v. K. Nath & Co. on behalf of opposite party No. 1 and accepts notice on behalf of both the opposite parties. Notices could not be sent because of lack of postage stamps. The office to deliver copies of the application to Dr. Dinesh Chandra. He may file a short reply indicating the stage at which the inquiry proceedings stand and the position regarding the applicant's <sup>seniority</sup> ~~complaint~~ <sup>vis-à-vis</sup> the R.D. Verma Cmo. who is being posted by Annexure-8 allegedly junior to the applicant. Put up on

Dinesh 7/12/89 for admission/orders.

*[Signature]*  
A.M.

*[Signature]*  
VC

CR  
Submitting for order admission

*[Signature]*

AXI

CENTRAL ADMINISTRATIVE TRIBUNAL, Lucknow Bench,  
Registration (O.A.) No. 308 of 1989

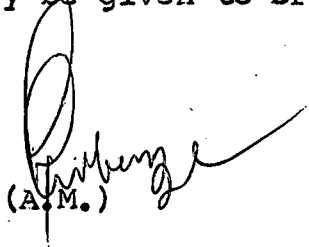
Dr. V. Verma ... Applicant  
Vs.  
Union of India and others ... Respondents

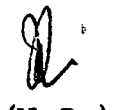
23-7-1990:

Hon'ble Mr. Justice K. Nath, VC,  
Hon'ble Mr. K. Obayya, AM

(Delivered by Hon'ble Mr. Justice K Nath, VC)

Sri A.K. Bhatnagar for the petitioner and Dr. Dinesh Chandra for the respondents are present. By our judgment dated 4-4-1990 it was directed that the respondents shall consider the case of the applicant for promotion and, if found suitable, given promotion, seniority and other benefits as would be found due to him. The applicant alleges that since the Tribunal did not fix any time limit within which the directions of this Tribunal could be complied with, the respondents are not taking any effective step to comply with the order dated 4-4-1990. More than three months have already <sup>been</sup> passed. Considering the fact that the matter regarding promotion and seniority benefits is pending disposal for considerable time, we direct the respondents to comply with the above judgment within two months from today. Dr. Dinesh Chandra accepts notice of this direction, who will communicate it to the department concerned for faithful compliance. A copy of this order may be given to Dr. Dinesh Chandra.

  
(A.M.)

  
(V.C.)

ES/

MA.P. 432/90 (L)

2n.

OA 308/09 (L)

AS

OR

This case has been decided on 4/4/90 by Hon. Justice K. Nall, V.C. & Hon. Mr. R. Obayya, A.M.

LC for the applicant has filed MA.P. No. 432/90(L) for fixing of time for the implementation of the subject ent. duly served on the reports.

S.P.O.

h  
19/7/90

23.7.90

Hon'ble Mr. Justice K. Nall V.C.  
" " K. Obayya, A.M.

Please see our orders of date on a separate sheet.

(A.M.)

(V.C.)

*[Signature]*

Recd copy  
25/7/90

Recd copy  
J. K. Nall  
A.M.

X

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD  
\*\*\*\*\*  
CIRCUIT BENCH, LUCKNOW.

O.A.NO. 308 of ~~1990~~ 1989  
~~XXXXXX~~.

DATE OF DECISION March 30, 1990

DR. V. VERMA PETITIONER

Mr. L.P. Shukla Advocate for the  
Petitioner(s)

VERSUS

Union of India & ors. RESPONDENT

Dr. Dinesh Chandra. Advocate for the  
Respondent(s)

COPAM :

The Hon'ble Mr. Justice Kamleshwar Nath, V.C.

The Hon'ble Mr. K. Obayya, Adm. Member.

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

Dinesh/

~~AM.~~

~~MS.~~

\*\*\*\*\*

*[Handwritten Signature]*  
4/4/90

(A6)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH,  
LUCKNOW

Original Application No.308/89(L)

Dr. V. Verma ...Applicant.

versus

Union of India & others ...Respondents.

HON. MR. JUSTICE K. Nath, V.C.  
HON. MR. K. Obayya, Adm. Member.

(K. OBAYYA, A.M.)

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed challenging the departmental enquiry proceedings initiated on the basis of a charge sheet issued to the applicant on 1.8.1984 (Annexure 3) and to direct the respondents to promote the applicant to the post of Chief Medical Officer with effect from 14.3.1988.

2. The applicant, Dr. V. Verma is working as a Senior Medical Officer in the Central Government Health Scheme (C.G.H.S. for short) at Lucknow. He joined the service in the year 1967 as a Junior Medical Officer and was promoted as a Senior Medical Officer with effect from 1.1.1978. As per the Seniority List of Medical Officers notified by the Department on 1.2.1988, he stood at serial No. 340. While he was working as Medical Officer in-charge at Jaipur, during the year 1980-81, there was an enquiry by C.B.I. which led to the registration of an

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F.I.R. against the applicant for alleged wrong drawal of conveyance allowance. The F.I.R. listed 58 such wrong claims amounting to Rs 5497.00. Detailed investigations, however, established that there were only 21 false claims and the amount covered Rs 288.75. A Memo dated 12.4.1983, accompanied by a statement of imputations of mis-conduct was served on the applicant under rule 16 of C.C.S.(C.C.A.) Rules, 1965. The applicant submitted reply on 22.7.1983 denying the charges. The disciplinary authority, however, decided to proceed <sup>further</sup> with the enquiry. Therefore, the charge-sheet dated 1.8.1984 was served on the applicant for minor penalty. The charge was for claims of false conveyance allowances amounting to Rs 288.75 for visits not actually made by the applicant which showed lack of integrity and thus contravening the provisions of rule 3 of C.C.S. (Conduct) Rules, 1964. To this the applicant, in his reply dated 14.8.84 indicated that <sup>as the</sup> charge sheet contained the same statement of imputations issued to him earlier on 12.4.1983, his reply to that statement may be taken as reply to the charge-sheet. Thereafter, the enquiry was held on different dates between 20.5.85 to 27.6.1988 and concluded on 31.8.1988. The Enquiry Officer held that the charges were established in respect of 9 visits involving Rs 123.75. Copy of the enquiry report was given to the applicant to which he made his written submissions. No decision, however, has been taken on the enquiry report by the disciplinary authority.

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AB

3. The contention of the applicant is that he has put in more than 22 years of service without any blemish in his record but he was overlooked for promotion while many of his juniors were promoted to the post of Chief Medical Officer on 14.3.88 and 8.7.88, on the the ground that there is departmental enquiry against the applicant. He alleges that this enquiry was unduly delayed for no fault of his, own with a malafide intention by the authorities to deny him of his due promotion. His representations to the concerned authorities evoked no final response.

4. The respondents, in their counter affidavit, denied the allegations regarding malafides. According to them, C.B.I. enquiry was based on certain information received by them. They admit that the case of the applicant was not considered for promotion due to pendency of disciplinary proceedings. The delay in the finalisation of enquiry proceedings was due to changes of enquiry officer and Presiding Officer, and on account of administrative reasons, according to them, officers against whom disciplinary proceedings are pending, are barred from promotion to higher post during the pendency of such proceedings.

5. In the rejoinder filed by the applicant, he denied that there was any delay on the part of the applicant to proceed with the enquiry. The applicant also contended that in terms of Government Department of Personnel and Training Office No. 22011/20/86-Establishment (A) dated 12.

AM

was entitled to be promoted on adhoc basis due to long pendency of the enquiry (Annexure S.A.-1).

6. We heard the learned counsel for the parties and have also gone through the record carefully. The main thrust of the arguments of the learned counsel for the applicant was on the delay in proceeding with the enquiry, in spite of persistent efforts of the applicant to get enquiry completed early. He also pointed out that denial of promotion to the applicant was against rules, in as much as D.P.C., which met, should have considered his candidature and findings placed in a sealed cover according to rules. He also relied on the decision of this Tribunal in Ramesh Moreshwar Surengapure vs. Chief Vigilance Officer, Central Board of Excise and Customs, New Delhi and another (1988) 7, A.T.C. 59, Calcutta Bench). In this case the applicant who was an Inspector in Central Excise, was charge-sheeted for clearing certain imported packages of dry fruit which were in excess of permissible weight. The enquiry dragged <sup>on</sup> /for six years and thereafter the disciplinary authority took 8 more years to impose penalty of reduction in pay scale by one stage for one year. The punishment was upheld in appeal. Relying on the decision of Orissa High Court in Manas Ranjan Das vs. State of Orissa (1973 (2) SLR 533) in which the disciplinary proceedings were quashed due to reasons of inordinate delay and also the decision of the Supreme Court in Ramchander vs. Union of India ( A.T.R. 1986(2) S.C. 252), <sup>in the above cited case</sup> the Tribunal/quashed the punishment as also the disciplinary proceedings by observing " We cannot overlook that the applicant has already suffered mental agony and obliquy for about 2 decades during which the disciplinary proceedings were conceived and proceeded with!"

v B

In MP. SINGH VS. GOVERNMENT OF INDIA & OTHERS 1988 (7) ATC 605 the Circuit Bench (Shimla) of this Tribunal held that prolonging an enquiry for unduly long period was illegal and unjust, as this results in denial of opportunities for career advancement during pendency of enquiry. The issue involved in this case was delay in departmental enquiry leading to non consideration of the charged officer for promotion on the ground of pendency of enquiry. The Tribunal also observed:

"a government servant is entitled to know at the earliest possible time the outcome of disciplinary proceedings initiated against him instead of hanging over his head like Democles' Sword for many years.

A similar view was taken in BUPATI KUMAR SARDAR VS. UNION OF INDIA 1989(10) A.T.C. 209, Calcutta in which it was held that pendency of disciplinary enquiry based on minor penalty charge sheet could never stand in the way of giving the promotion. The learned counsel also cited the decision of Karnataka High Court in Sadashiv A. vs. State of Karnataka and another 1982 (3) SLR 364 in which it was held :

"withholding of promotion of a person who has been found fit by DP.C. during pendency of departmental enquiry, is unreasonable."

7. From the record it is noticed that in this case the enquiry was for the alleged misdeed relating to the year 1980-81. A memo was served on the applicant on 18.7.83, followed by a formal charge sheet on 1.8.84. The applicant submitted his reply on 16.8.84 and the enquiry dragged on till 31.8.88. Thereafter, another year was taken by the department to furnish copy of the enquiry report to the applicant, which was done on 30.10.89 for which written submissions were made by him promptly thereafter. No decision has been taken by the

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department on the enquiry report. The alleged amount involved in false claims, which has come down to Rs 123.75. The explanation of the respondents that the delay was due to the fact that there was change of enquiry officer, presenting officer and that also due to other procedural delays, cannot be a satisfactory explanation to account for nearly more than 7 years of pendency of the enquiry. It is also admitted that the case of the applicant was not considered for promotion due to pendency of the departmental enquiry. This is in clear violation of the rules and instructions on the subject. The rules and instructions lay down that in cases where the officer is facing departmental enquiry, the D.P.C. should consider such officers if falling within the zone of consideration, assess their suitability for promotion and keep its decision in a sealed cover, to be opened after the proceedings are concluded. A six monthly review of such cases is also provided. Admittedly, though promotions of juniors of the applicant were made, the applicant's name was not even considered. On this ground alone the application deserves to be allowed. The enquiry officer has also observed that the sum involved is petty and a senior Doctor of the standing of the applicant has already suffered for 7 long years, though we consider that the sum involved is not the criteria in such matters but the very act that is reprehensible nevertheless we feel that unduly long delay in enquiry for no fault of the applicant is not justified.

8. Taking into consideration the facts of the case of this Tribunal in similar cases, we are of the view that the delay in enquiry proceedings exhibit very casual and indifferent attitude. It is apparent that

*[Handwritten signature]*

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sense of seriousness or urgency is lacking. This has been allowed to drag on in a very routine manner. The applicant has been under clouds for 7 long years and subjected to mental agony, watching all his juniors overtaking him for no fault of his. We consider that it is a fit case to quash the disciplinary proceedings initiated by a charge dated 1.8.84 and accordingly we order that the disciplinary proceedings initiated on the basis of charge sheet dated 1.8.84 be quashed. We also direct that the respondents should consider the case of the applicant for promotion on merits and if found suitable, be promoted giving him seniority and other benefits as are due to him under the rules. The petition is disposed of as above with no order as to costs.

  
ADM. MEMBER.

 1.4.90.  
VICE CHAIRMAN.

Dated the ~~March~~<sup>4<sup>th</sup> April</sup>, 1990.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW

Dr. V. Verma ..... Applicant

Versus

Union of India & another ..... Respondents

APPLICATION UNDER SECTION 19 OF THE  
ADMINISTRATIVE TRIBUNALS ACT, 1985

For use in Tribunal's Office :

Date of filing \_\_\_\_\_

Registration No. \_\_\_\_\_

Central Administrative Tribunal  
Circuit Bench, Lucknow  
Date of Filing ..... 3/11/89  
Date of Receipt by Post.....

Deputy Registrar (J)

*[Signature]*  
3/11/89

*Received by*  
*Noted for 6/11/89*  
*[Signature]*  
*L.P. Shukla*  
*3/11/89*

AMM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

O.A. No. 308 of 1989 (L)

Dr. V. Verma ..... Applicant

Versus

Union of India & another ..... Respondents

I N D E X

- 1. Application. 1 - 13
- 2. Memo of statement of imputation dated 12.4.1983. 14 - 16
- 3. Applicant's reply dated 22.7.1983 to the memo of statement of imputation. 17 - 22
- 4. Chargesheet dated 1.8.1984 alongwith the list of documents and witnesses. 23 - 29
- 5. Written brief submitted by the applicant on 20.7.1988. 30 - 52
- 6. Applicant's representation dated 28.3.88. 53
- 7. Applicant's representation dated 12.9.88. 54 -
- 8. Applicant's representation dated 16.10.89. 55 -
- 9. Dy. Director's order dated 25.10.1989 directing the applicant to hand over charge to Dr. R.D. Verma and work as his immediate sub in-charge. 56
- 10 Letter dt. 18-10-89 along with Enquiry Report dt. 31-8-88 57 - 77

*[Handwritten mark]*

*Kanhu Prasad Shukla*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW

O.A. No. 308 of 1989 (L)

Dr. V. Verma ..... Applicant

Versus

Union of India & another ..... Respondents

DETAILS OF APPLICATION

I. Particulars of the applicant :

(i) Name of the applicant:	Dr. V. Verma,
(ii) Name of father :	son of Sri R.N.Verma,
(iii) Age of the applicant :	aged about 50 years,
(iv) Designation and office: in which employed	Senior Medical Officer, Central Health Services,
(v) Address for service of : notices	CGHS Lucknow, resident of B 251 Indiranagar, Lucknow.

II. Particulars of the respondents:

(i) Name or designation of the respondents	} 1. Union of India through the Secretary to the Govt. of India, Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi.
(ii) Office address of respondents	
	2. Dy. Director, Central Government Health Scheme, 7-A Rana Pratap Marg, Lucknow.

III. Particulars of the order against which application is made :

The application is directed against quashing the departmental enquiry pending against the applicant



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-2-

on the basis of the minor penalty chargesheet dated 1.8.1984 on account of undue delay and consequent promotion of the applicant on the post of Chief Medical Officer from 14.3.1988 when his juniors were promoted.

IV. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order is within the jurisdiction of the Tribunal.

V. Limitation :

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

VI. Facts of the case :

The facts of the case are given below :-

1. That the applicant joined the Central Government Health Scheme as Junior Medical Officer on 22.12.1966 and was promoted as Senior Medical Officer of Central Health Services on 1.1.1978.
2. That the applicant's seniority position in the civil list of Senior Medical Officers of the Central Health Services as on 1.2.1988 is at serial No.340.
3. That the applicant, while posted as Medical Officer Incharge and designated as Senior Medical Officer Central Government Health Scheme (CGHS for short) Dispensary at Jaipur in 1981, was subjected to a C.B.I. enquiry . This enquiry was initiated on a complaint

*[Handwritten signature]*

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the 58 visits shown, as false in the preliminary enquiry and the 21 visits shown as false in the regular enquiry only one visit was common which clearly establishes that the C.B.I. enquiry against the applicant was motivated and carried out in a slipshod and arbitrary manner with the sole aim of falsely implicating the applicant.

8. That a memo of statement of imputation, dated 12.4.1983 was served on the applicant on 18.7.1983 for a false claim of 21 visits involving a total amount of Rs.288.75 paise. A photostat copy of memo of statement of imputation dated 12.4.1983 is filed as Annexure No.1 to this application.

Annexure -1

9. That the applicant submitted his reply to the aforesaid memo of statement of imputation on 22.7.1983. A photostat copy of the applicant's reply is filed as Annexure No.2 to this application.

Annexure-2

10. That the applicant was served with the chargesheet dated 1.8.1984 alongwith a list of documents and witnesses by the Dy. Secretary to the Government of India, Ministry of Health and Family Welfare. The said chargesheet under Rule 16(1)(b) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, is a minor penalty chargesheet. It was issued in continuation of the memorandum of statement of imputation dated 12.4.1983 but it does not indicate that the chargesheet is being issued as the reply of the applicant to the statement of imputation was not found satisfactory. A photostat copy of the chargesheet dated 1.8.1984 alongwith the list of documents

made by one Dr. P.C. Meena who had been a Sarpanch of his village and had also contested the election for the State Assembly and was posted under the applicant.

4. That the complaint of Dr. Meena was out of malice and grudge against the applicant. Dr. Meena was generally indisciplined and the applicant had occasion to pull up Dr. Meena for his undesirable activities in the last week of August, 1981. Dr. Meena got the applicant physically assaulted by his men at about 8 p.m. in front of the Medical College at Jaipur on September 6, 1981.

5. That the applicant reported the matter to the Director, CGHS and an F.I.R. was lodged with P.S. Moti Doongri on 10.9.1981 with report No.803.

6. That the Director, CGHS personally visited Jaipur to look into the incident and later in the month of September ordered the transfer of Dr. Meena to another dispensary. Dr. Meena was very annoyed because of his transfer as this dispensary was quite far from the medical college hostel where Dr. Meena was staying. He was, therefore, instrumental in getting a C.B.I. case registered against the applicant through a relation/friend P.D. Meena who was at that time Inspector of C.B.I. at Jaipur.

7. That on the aforesaid motivated complaint a preliminary C.B.I. enquiry showed 58 visits made by the applicant in his professional capacity as false. Thereafter a regular enquiry made by C.B.I. showed 21 visits made by the applicant to be false. Out of

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Annexure-3

and witnesses is filed as Annexure No.3 to this application.

11. That a perusal of the charges further reveals that they are merely a verbatim repetition of the statement of imputation. But the chargesheet was served on the applicant after lapse of more than one year from the date of his reply, that is, 22.7.1983 to the statement of imputation.

12. That the applicant by his letter dated 14.8.1984 pointed out that as the charges in the memo of statement of imputation dated 12.4.1983 and in the chargesheet dated 1.8.1984 were the same, the applicant's reply to the memo of statement of imputation dated 22.7.1983 may be read as reply to the chargesheet dated 1.8.1984.

13. That the Inquiry Officer and the Presenting Officer were appointed by letter dated 23.3.1985 and the date of hearing was fixed on 20.5.1985. The applicant presented himself before the Inquiry Officer on the date fixed, that is, 20.5.1985.

14. That no enquiry proceedings were held between 20.5.1985 to 27.6.1988. The dates for hearing before the Inquiry Officer were fixed on 27.6.1988 and 8.7.1988 after a lapse of more than 3 years from 20.5.1985. The parties were thereafter required to submit their written brief and the applicant accordingly submitted his written brief on 20.7.1988. A photostat copy of the written brief submitted by the applicant on 20.7.1988 is filed as Annexure No.4 to this application.

APP

15. That after the conclusion of the enquiry proceedings on 8.7.1988 and the submission of the applicant's written brief on 20.7.1988 no action was taken to finalise the enquiry.

16. That meanwhile on 14.3.1988 a list of promotion on the post of Chief Medical Officer (CMO) was declared. The applicant's name from the aforesaid list of promotees was withheld while persons junior to the applicant have been promoted as Chief Medical Officers.

17. That as already indicated above, the applicant is placed at serial No. 340 in the seniority list of Senior Medical Officers of the Central Health Services as on 1.2.1988. Meanwhile on the basis of the list of promotees dated 14.3.1988 promotions as Chief Medical Officer have been made upto serial No. 608. Thus 258 persons, junior to the applicant, have been promoted as Chief Medical Officer by list dated 14.3.1988.

18. That against the aforesaid promotions and withholding of the applicant's name from the list of 14.3.1988 the applicant made a representation dated 28.3.1988 to the Secretary, Government of India, Ministry of Health and Family Welfare.

19. That another list of promotions to the post of Chief Medical Officer dated 8.7.1988 was released in which promotions to the post of Chief Medical Officer were made upto serial No. 727. Thus taking both the lists into consideration in all 387 officers

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junior to the applicant have been promoted while the claim of the applicant was ignored and he was bypassed and superseded by his juniors. ...

20. That the aforesaid promotions on the post of Chief Medical Officer were made on the basis of seniority-cum-fitness with a view to remove the backlog and stagnation in service.

21. That the applicant <sup>again</sup> made a representation on 12.9.1988 against withholding of his name from the list of promotees. The applicant finally made another representation dated 16.10.1989 against withholding his name from the list of promotees and his supersession by his juniors in service. No action on the aforesaid representations has been taken or communicated to the applicant. Photostat copies of the representations dated 28.3.1988, 12.9.1988 and 16.10.1989 are filed as Annexure Nos. 5, 6 and 7 respectively to this application.

Annexure Nos.5,6 & 7

22. That on 1.9.1989 Dr. S.C. Dutt has taken over as Dy. Director, CGHS, at Lucknow. He is junior to the applicant being placed at serial No.392 but he has been posted as immediate superior of the applicant. The applicant has thus been subjected to humiliation.

23. That by order dated 25.10.1989 passed by the Dy. Director, Dr.S.C. Dutt, Dr. R.D. Verma, junior to the applicant has been posted as Medical Officer Incharge at CGHS dispensary No.2 at Lalbagh Lucknow where the applicant is presently posted as Medical Officer Incharge. The applicant by the aforesaid order has been directed

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to hand over charge to Dr. R.D. Verma as Medical Officer Incharge and work as his immediate sub in-charge. Dr. R.D. Verma is placed at serial No.608 in the seniority list and is, therefore, very junior to the applicant and the applicant has thus been subjected to humiliation of working under him. A photostat copy of the Dy. Director's order dated 25.10.1989 is filed as Annexure No.8 to this application.

Annexure-8

24. That by letter dated 13/18.10.1989 received by the applicant on 30.10.1989 he was served with the enquiry report duly signed by the Inquiry Officer dated 31.8.1988. Thus it is evident that the enquiry report dated 31.8.1988 has been served on the applicant by letter dated 18.10.1989 after a lapse of more than one year. The delay in furnishing the enquiry report is, therefore, malafide and with the view to postpone the finalisation of the enquiry as long as possible in order to harass and harm the applicant and jeopardise his chances of promotion. *Photocopy of letter dt. 18-10-89 along with Enquiry Report dt. 31-8-88 is filed as Annexure No 9.*

Annexure-9

25. That prolonging the enquiry proceedings for an undue long time and withholding the applicant's promotion from the list of promotions made on 14.3.1988 and thereafter on 8.7.1988 is wholly illegal, arbitrary and without jurisdiction.

26. That undue prolongation of departmental enquiry against the applicant is wholly malafide particularly in view of the fact that the pending departmental enquiry is based on a minor penalty chargesheet which cannot be a bar to the applicant's promotion.

A28

27. That the delay in the departmental enquiry is not attributable to the applicant and as such he cannot be deprived of his chance of promotion particularly in view of the fact that nearly 387 persons junior to the applicant have been promoted.

28. That the applicant has put in more than 22 years regular service in the Central Health Services; meanwhile getting only one promotion from the post of Medical Officer to the post of Senior Medical Officer in January 1978. The promotions on the post of Chief Medical Officer as per lists dated 14.3.1988 and 8.7.1988 have been made to remove stagnation in service. The promotion in question is a time bound promotion to which the applicant is normally entitled on the basis of his seniority-cum-fitness. There is nothing adverse against the applicant in his entire record of service except the present departmental enquiry which is still pending since September 1981. In the circumstances the pending departmental enquiry against the applicant deserves to be quashed and the applicant is entitled for promotion on the basis of his seniority from 14.3.1988 to the post of Chief Medical Officer in the scale of Rs.3700-5000.

G R O U N D S

- (A) Because the pending departmental enquiry against the applicant has been unduly prolonged for no fault or delay on the part of the applicant.
- (B) Because the charges against the applicant in

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the minor penalty chargesheet are not serious enough to warrant undue delay in finalising the enquiry.

- (C) Because the departmental enquiry on the basis of alleged charges is motivated and malafide and the charges are false and baseless.
- (D) Because no misconduct on the basis of the false and baseless charges is made out against the applicant.
- (E) Because the enquiry proceedings in the facts and circumstances of the case deserve to be set aside.
- (F) Because the applicant on account of denial of his promotion to the next higher post of Chief Medical Officer, while persons junior to him have been promoted, has been discriminated in service in violation of Articles 14 and 16 of the Constitution of India.
- (G) Because the applicant is entitled for promotion as Chief Medical Officer from 14.3.1988 on the basis of his seniority and fitness when persons junior to him were promoted.
- (H) Because there is no impediment to the applicant's promotion as Chief Medical Officer w.e.f. 14.3.1988.

VII. Details of the remedies exhausted :

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

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VIII. Matters not previously filed or pending with any other court :

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them.

IX. Reliefs sought :

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

- (i) to quash the departmental enquiry proceedings pending against the applicant on the basis of the minor penalty chargesheet dated 1.8.1984;
- (ii) to direct the respondent to promote the applicant on the post of Chief Medical Officer w.e.f. 14.3.1988 when persons junior to the applicant were promoted.

X. Interim order, if any prayed for :

Pending final decision on the application, the applicant seeks issue of the following interim order :-

This Hon'ble Tribunal may be pleased to direct the respondents to promote the applicant on ad hoc basis on the post of Chief Medical Officer pending disposal of the applicant and further stay the operation of the order dated 25.10.1989 directing the applicant to hand over charge to his junior Dr. R.D. Verma as Medical Officer Incharge Dispensary No.2.

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XI. Particulars of postal order in respect of the application fee :-

1. Number of Indian Postal Order DD 839251  
6
2. Name of the issuing Post Office High Court Branch  
Lucknow
3. Date of issue of Postal Order 2-11-89
4. Post Office at which payable Allahabad

XII. List of enclosures:-

1. Memo of statement of imputation dated 12.4.1983.
2. Applicant's reply dated 22.7.1983 to the memo of statement of imputation.
3. Chargesheet dated 1.8.1984 alongwith the list of documents and witnesses.
4. Written brief submitted by the applicant on 20.7.1988.
5. Applicant's representation dated 28.3.1988.
6. Applicant's representation dated 12.9.1988.
7. Applicant's representation dated 16.10.1989.
8. Dy. Director's order dated 25.10.1989 directing the applicant to hand over charge to Dr. R.D. Verma and work as his immediate sub charge.

Verification

I, Dr. V. Verma, aged about 50 years, son of Sri R.N. Verma, Senior Medical Officer, Central Health Services, CGHS, Lucknow, resident of B-251 Indiranagar, Lucknow, do hereby verify that the contents



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of paras  
are true to my personal knowledge and paras  
believed to be true on legal advice and that I have  
not suppressed any material fact.

Date : 2 -11-1989.

*[Handwritten Signature]*  
Signature of the applicant.

Place: Lucknow.

*[Handwritten Signature]*  
Counsel for applicant

In the Central Administrative Tribunal  
Lucknow Bench Lucknow

वकालत श्रीमान

महोदय

वादी (मुद्दे)  
मुद्दे (मुद्दालेह)

का

वकालतनामा

O.A. No

4/1989

Dr. V. Verma

Union of India बनाम

प्रतिवादी (रेस्पॉन्डेन्ट)

नं० मुकद्दमा

सन

पेशी की ता०

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ऊपर लिखे मुकद्दमा में अपनी ओर से श्री L. P. Shukla, Advocate

C-700 Sector C Mahangera Lucknow वकील

एडवोकेट महोदय

को अपना वकील नियुक्त करके (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तस्दीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी। मैं यह भी स्वीकार करता हूं कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूंगा। अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

नाम अरालन

नं० मुकद्दमा

नाम फरीकन

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD

CIRCUIT BENCH, LUCKNOW.

Registration C.A. No. 308 of 1989 (L)



Dr. V. Verma

.....

.....

Applicant

Versus.

Union of India & Others

.....

.....

Opposite Parties.

COUNTER AFFIDAVIT ON BEHALF OF THE OPPOSITE PARTIES.

I, Dr. S.C. Datta, aged about 53 years, son of

Late Chandra Chandra Datta, Dy. Director, Central Govt.

Health Services, 9-A, Rana Pratap Marg, Lucknow, do hereby solemnly affirm and state as under :-

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1. That the deponent is Dy. Director, Central Govt. Health Services and has been authorised to swear this affidavit on behalf of Opposite Party No. 1 also.

2. That the deponent has read the application and the supplementary affidavit filed by Dr. V. Verma and has understood the contents thereof.

3. That the deponent is well conversant with the facts of the case deposed hereinafter.

4. That the contents of para I to V are formal and need no comments.

5. That in reply to the contents of para VI.1 to VI.2 it is submitted that the applicant joined Central

Sitish Ch. Dutt



1983

Health service as a regular medical officer on 19.6.67 and(not on 22.12.66 as stated by the applicant) as per Seniority list of Service Medical officers as on 1.2.88. Rest of the contents are admitted.

6. That in reply to the contents of paras VI.3 to VI.6 it is submitted that the case against the applicant was registered on the basis of sources information and not on the basis of any complaint from Dr. Meena. Rest of the contents need no comments.

7. That the contents of para VI.7 are admitted to the extent that the false visits by the applicant recorded in the F.I.R. by the C.B.I. were 58 but after detailed investigation the false visits were brought to be 21 only as indicated in the statement of Imputation of misconduct served on the applicant. Rest of the contents need no comments.

8. That in reply to the contents of para VI.8 it is submitted that the Investigation report received from the C.B.I. had been examined by the Disciplinary Authority and it was found that a prima-facie case existed against the applicant and it has <sup>been</sup> decided that formal disciplinary proceedings should be instituted under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 for imposition of a minor penalty on the applicant. Accordingly, a Memorandum No. C-13011/2/82-V&CD (V&EMR) dated the 12th April, 1983, accompanied by a statement of imputations of misconduct or misbehaviour was served on the applicant.

9. That the contents of para <sup>VI</sup> 9 are admitted.

10. That in reply to the contents of paras VI.10 to VI.12 it is submitted that the applicant denied the charges in response to the Memorandum dated the 12th April,

Sitch Ch. Qat



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1983. As the applicant had denied the charges and further evidence on which the charges had to be substantiated was partly oral, the Disciplinary Authority decided to hold an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14 of the CCS (CCA) Rules, 1965. Accordingly, as per the provision of Rule 16 (1) (b) *ibid* another charge-sheet was served on the same charges on the applicant vide Memorandum No. C-13011/2/82-V&CD (V&EMR) dated the 1st August, 1984. Again the applicant denied all the charges necessitating holding of an oral enquiry for the purpose of which an Inquiry officer and a Presenting Officer were appointed on 22nd March, 1985.

11. That the contents of para VI.13 are admitted.
12. That ~~xxx~~ in reply to the contents of paras VI.14 and VI.15 it is submitted that the oral enquiry was held as per procedure laid down in sub-rules (3) to (23) of Rule 14 of the CCS (CCA) Rules, 1965 and the enquiry report received from the Inquiry Officer was examined by the Disciplinary Authority with reference to documents/depositions of the witnesses during the oral enquiry.

In accordance with the latest instructions issued by the Department of Personnel & Training vide their office Memorandum No. 11012/13/85-Estt (A) dated the 26th June, 1989, it has now become necessary in all cases on the part of the Disciplinary Authority, where it is different from the Inquiring Authority, to furnish a copy of the inquiry report to the accused Government servant to enable him to make his submissions, if any, in regard to the findings of the inquiry before passing its final orders. Accordingly, a copy of the inquiry report was served on the applicant vide this Ministry's letter No. C-13011/2/82-V&CD (Vig.) dated the 13th/18th October, 1989. The applicant's representation on the findings of the inquiry had been re-



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

O.A. No. of 1989 (L)

Dr.V. Verma ..... Applicant  
 Versus  
 Union of India & another ..... Respondents

List of Enclosures

1. Memo of statement of imputation dated 12.4.1983. 14- 16
2. Applicant's reply dated 22.7.1983 to the memo of statement of imputation. 17- 22
3. Chargesheet dated 1.8.1984 alongwith the list of documents and witnesses. 23- 29
4. Written brief submitted by the applicant on 20.7.1988. 30- 52
5. Applicant's representation dated 28.3.88. 53-
6. Applicant's representation dated 12.9.88. 54-
7. Applicant's representation dated 16.10.1989. 55
8. Dy. Director's order dated 25.10.1989 directing the applicant to hand over charge to Dr. R.D. Verma and work as his immediate sub in-charge. 56-
9. Letter dt, 18-10-89 along with Enquiry Report dt 31-8-88 57- 77

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Dr. V. Verma ..... Applicant

Verus

Union of India & another ..... Respondents

ANNEXURE No 1

23/3/83  
27/3/83

No.C.13011/2/82-VBCD (Pt.II)  
Government of India  
Ministry of Health & Family Welfare

14 APR 1983  
3226

Nirman Bhavan, New Delhi  
Dated the

MEMORANDUM

12 APR 1983

Dr. V. Verma, a G.D.O. Grade I officer of the M.S.S. is hereby informed that it is proposed to take action against him under rule 16 of C.C.S.(C.C.A.) Rules, 1965. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above, is enclosed.

2. Dr.V.Verma is hereby given an opportunity to make such representation as he may wish to make against the proposal.
3. If Dr.V.Verma fails to submit his representation within 10 days of the receipt of this Memorandum it will be presumed that he has not representation to make and orders will be liable to be passed against Dr.V.Verma ex-parte.

By order and in the name of the President.

*B.K.D. Negi*  
(B.K.D. NEGI)

DEPUTY SECRETARY TO THE GOVT. OF INDIA

TO

Regd. AD

Dr. V. Verma,  
~~G/o Health Secretary,  
Government of Arunachal Pradesh,  
Itanagar.~~

Recd 16/7/83

Reply 27/7/83

c/o Chief Medical Officer,  
C.G. H.S.

116/117, Pandu Nagar,  
Kamrup

Attested True Copy

*[Signature]*  
S. S. SHARMA

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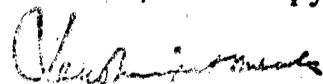
STATEMENT OF IMPUTATION AGAINST DR. V. VERMA, THE THEN MEDICAL OFFICER INCHARGE, CGHS DISPENSARY NO. 1, CHAURA RASTA, JAIPUR NOW POSTED WITH GOVT. OF ARUNACHAL PRADESH.

Dr. V. Verma, a G.D.O. Grade I Officer of the C.H.S., now posted at Arunachal Pradesh while working as Medical Officer Incharge, C.G.H.S. Dispensary No. 1, Chaura Rasta, Jaipur during the period October 1980 to June 1981 claimed false conveyance allowance by showing visits as under:

1. On 19.12.80 Dr. Verma has shown to have examined two family members namely Miss Vikky (daughter) and Mrs. Lal (wife) of Shri Kesarlal holder of CGHS token No. 1795 in the same visit but he has claimed two visits in his Visit Register. Similarly on 25.1.81 and 9.2.81 he has shown to have examined two patients viz. S/Shri Chandra Mohan Sharma and Sh. P.C. Kewal Ramani holder of CGHS token No. 6392 and 6689 respectively, and has shown and claimed two visits in each case whereas actually he paid only one visit to the house of each said CGHS beneficiaries. Thus in the aforesaid 3 instances Dr. Verma has claimed and obtained conveyance allowance for one extra visit in each house and thus total 3 visit shown and claimed by Dr. Verma are not genuine.
2. Dr. V. Verma was residing at 3T/42, Jawahar Nagar, Jaipur and Sh. P.C. Gupta a CGHS beneficiary was residing at 3T/41, Jawahar Nagar, Jaipur. Thus both Sh. Gupta and Dr. Verma are next door neighbour. Dr. Verma has shown to have examined the family members of said Shri P.C. Gupta on 7.3.81, 9.3.81, 12.4.81, 20.4.81, 6.5.81, 22.5.81, 11.6.81 and 23.6.81 either after the Dispensary hours or before the Dispensary hours. These visits have been shown to have been performed by car. But since Sh. Gupta is next door neighbour of Dr. Verma, the journey by car is not feasible or required at all. As such the conveyance allowance claim made by Dr. Verma for these 8 visits are not genuine.
3. Dr. Verma has shown to have examined Sh. Deepak S/o Sh. Liladhar Narain Shukla on 23.10.80 and 13.12.80. Actually the name of the son of Sh. Liladhar Narain Shukla is Rajiv which is confirmed by Shri Liladhar Narain Shukla and also the same name is mentioned in the family folder of Sh. Shukla, maintained at the Dispensary. Thus the conveyance allowance claimed and obtained for both these visits. are not genuine.
4. Dr. Verma has shown to have visited the house of S/Sh. Narain Lal Gupta holder of CGHS token No. 6478, Mool Chand, holder of token No. 13884, Bhagwan Sahai Pareek holder of token No. 2032; Suresh Chandra Mathur holder of token No. 3278 and Nawal Kishore holer of token No. 13932. The house of Sh. Mool Chand has been shown to have been visited 3 times i.e. on 1.11.80, 15.12.80 and 6.1.81 and the house of rest of the aforesaid person shown to have been visited once in each case to examine either themselves or the family members of these CGHS card holders. None of these persons have called Dr. Verma to their respective houses and as such these visits shown to have been paid by Dr. Verma are not genuine.
5. On 14.11.80 Dr. Verma has shown to have paid one visit and examined Sh. B.L. Mathur. The address has been shown as Ghatgate and

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L. P. SHUKLA  
Advocate

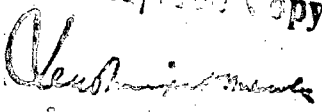
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the token number has been shown as 5128. The token number 5128 belong to Sh. Manak Ram Narolia who resides in Ghatgate locality whereas Sh. B.L. Mathur is residing at Motikatra and his token No. is 6553. Dr. Verma has shown 6 other visits to the house of Sh. B.L. Mathur for which the token number and the address has been shown correctly. It shows that the visit on 14.11.80 shown to have been made to the house of holder of CGHS token No. 5128 is not genuine, and thus claim made and obtained for this single visit is not genuine.

Thus in all Dr. V. Verma has claimed and obtained conveyance allowance for 21 visits which are not genuine. Therefore, a sum of Rs. 288.75 corresponding to these visits have been falsely claimed and obtained by Dr. Verma for these 21 visits during the period.

By his above acts of omission and commission Dr. Verma displayed lack of his integrity and contravened thereby the provision of Rule 3.1 (i) of the CCS (Conduct) Rules, 1964.

Attested/True Copy  
  
 L. P. Singh  
 Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW.

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Dr. V. VERMA

Applicant

VERSUS

Respondents

UNION OF INDIA & others

CONFIDENTIAL.

ANNEXURE NO. 2

From,

Dr. V. Verma ,  
M.D.  
Senior Medical Officer,  
C.G.H.S. Dispensary , Gandhi Gram,  
G.T. Road,  
Kanpur.

Kanpur. Dt. 22nd July, 1983.

To,

Shri B.K.D. Negi,  
Dy. Secretary to the Govt. of India,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi-110 001.

Ref. Memorandum no. C-13011/2/82-V & CD(PtII)  
dated 12th April, 1983/7th July, 1983.  
received by me on 16th July, 1983.  
-----

Sir,

Whereas it has been proposed to take  
action against me under rule 16 of C.C.S. (CCA) Rules, 1965  
on the basis of the imputation as contained in the state-  
ment of the imputation annexed to the above referred  
to memorandum, I beg leave to submit in reply thereto  
as here-under :-

1. In reply to para 1 of the Memorandum  
it is respectfully submitted that the visits were  
made to the houses of these three named beneficiaries,  
and patients examined. The visit register maintained  
by me give all the details as to the date, time, name  
of the patient, token number and address etc. When  
two patients were examined on the visit, it had been  
entered as such in the register. The time of examination  
of the second patient after the first patient was

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effort on my part to hide, alter or misrepresent the  
fact. My bonafides finds support by the fact that  
there is no allegation against me that I had not

*L. P. Shukla*  
L. P. SHUKLA  
Advocate

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filled in the correct date and time of examining the patients of the same house.

Kindly refer to para 3 of letter no. F.4.11/72-CGHS(P) dated 10th July, 1974 Bharat Sarkar, Swasthya Aur Parivar Niyojan Mantralaya (Swasthya Vibhag) (Copy enclosed) which state ".....

The controlling officer will certify on the basis of the visit book maintained by the Medical Officers/ Sptias to the admissibility of the conveyance allowance in a particular month". According to the orders the visit register was sent to the office of the C.M.O. C.G.H.S., Jaipur along with the claim of the conveyance allowance. The register was checked in the office of the C.M.O. and by the C.M.O. personally; who had put his initials in the visit book, and it was after this that the C.M.O. (Controlling Officer) after being satisfied as to the admissibility of conveyance allowance, had sanctioned the conveyance allowance to me. It was for the controlling officer to have disallowed the allowance to these visits if it was not admissible.

2. In reply to para 2 of the Memorandum it is respectfully submitted that Mr. P.C. Gupta I.A.S. Retired Secretary to the Govt. of Rajasthan was my neighbour. We had separate independent houses with separate boundary walls, garrages and gates. The wife of Mr. P.C. Gupta was a patient of chronic Rheumatoid Arthritis with contractures virtually confined to her bed. She frequently wish to have consultation from me. Being a considerate man normally,

Mr. P.C. Gupta did not like to disturb me during

Attested/True Copy

*L. P. Shukla*  
 L. P. SHUKLA  
 Advocate

*L. P. Shukla*  
 L. P. SHUKLA  
 Advocate

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off dispensary hours .He either asked for a visit from me while going to the dispensary or while coming back from the dispensary .So most of the visits paid to his residence by me were either before or after the dispensary timings.I had been using my car for going and coming to the dispensary, and on way I used to visit the house of Sri P.C.Gupta ,which had been entered as such in the visit register.

According to Para 5 and 7 of letter No.F-4-11/72 C.G.HA(P) dated 10th July,1974( copy enclosed ) a Medical Officer can claim ,who is entitled to the conveyance allowance,the allowance for a visit even if his every visit is not made by his conveyance ,provided his vehicle is not out of order /not in use for any other reason for a period of more than 15 days at a time. I made the visits to the house of Sri P.C.Gupta by my own car.Assuming without admitting that I made the concerned visit to the house of Mr.P.C.Gupta ,even on foot,I had not made any false claim.Further the distance to which the visit is made is not at all material and no such limit is prescribed.

3.In reply to para 3 of the memorandum it is respectfully submitted that my visit to the house of Sri L.N.Shukla to examine his son is not disputed. I had visited the residence of Sri L.N.Shukla on many occasions to give consultations to other family members besides his son.I had been calling his son Deepak and it was never pointed out to me by Sri Shukla or any of his family members that this was not his correct name .So when I visited his son I had

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*L. P. Shukla*  
 L. P. SHUKLA  
 Advocate

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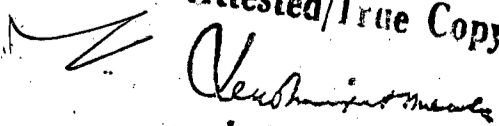
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entered his name as Deepak in the register.

4. That I would like to submit that there is back ground out of which the present proposed disciplinary case against me arose.

Only because I had been vigilant and sincere to my duties, I have been put to all these troubles under a planned conspiracy. This has reference to one Dr. P. C. Meena, who had been working under me in C. G. H. S. Dispensary, Chaura Rasta. I could not tolerate, in the interest of the department, his being indisciplined, indecent, and his practice of sitting with undesirable persons inside the dispensary during and after working hours, which resulted in inconvenience to patients and deterioration of discipline in the dispensary staff. My request to him to mend his ways and ultimately my complaint to C. M. O. resulted in my being man-handled by Dr. P. C. Meena's men on 6th September, 1981. I lodged a complaint of the said incident to the Director C. G. H. S. and to the Police (Report no. 803 dated 10.9.81) of P. S. Moti Doongri, Jaipur. As there was constant danger to my person and property, my wife Dr. (Mrs.) I. Verma went to Delhi and reported the incident to Dr. Khare, Director C. G. H. S. personally. The Director visited Jaipur later in the same month and ordered the transfer of Dr. Meena from that dispensary to Station Road Dispensary. Dr. Meena was very annoyed on this change. He wanted to be in Chaura Rasta Dispensary as it was near to Medical College, where he used to reside in the Hostel with his friends.

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L. P. SHUKLA  
Advocate

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This person Dr.P.C.Meena was instrumental in getting the C.B.I.enquiry instituted against me with the help of his relation/friend Mr.P.D.Meena, an Inspector of C.B.I.at Jaipur.

As to the allegation that none of the mentioned persons S/Sri Murari Lal Gupta Token no.6478 ,Mool Chand Token no.13884,Bhagwan Sahai Pareek Token no.2032 Suresh Chand Mathur Token no.3278 and Nawal Kishore Token no.12932 called me to their respective houses for visit is totally incorrect and false.I must have visited their houses to see patients if it is entered in the visit register.

Not only Dr.P.C.Meena got the C.B.I.enquiry instituted against me but he tried to influence the enquiry and the witnesses in my case himself and also through his friends .Out of a large number of my patients he could manage to influence these few mentioned persons .

5.In reply to para 5 of the memorandum ,it is respectfully submitted that the visit entered on 14.11.80 must have been performed by me in the locality mentioned but the name and token number must have been wrongly communicated to me by the person who demanded the visit.It some times happens that the request for visit comes by some relations other than family members or friends or neighbourers and on many a occasion the token card is not brought by the person demanding immediate visit due to serious condition of the patient .In such circumstances

Attested/True Copy

*L. P. Shukla*

L. P. SHUKLA  
Advocate

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the persons simply tell the name of the patient , and the locality .Under such circumstances the Medical Officer proceed on the visit writing down the particulars regarding the name of the patient, his office, token number and the locality as narrated by the person demanding the visit .Cases of impersonation by non-entitled persons of C.G.H.S.in getting the medical help from C.C.H.S. are far from few .Some times these cases are detected but it can not be said with surety that non-entitled members do not illegally success in getting medical benefits from Scheme .I have myself on many occasions detected this type of impersonation by people while ~~was~~ working in C.H.S.Delhi , Meerut and Jaipur .This might have been one of these type of cases.

In view of my representation given above, I humbly submit that I had not made any false claim for Rs 288.75 P. All my visits were duly checked and verified by the Controlling Officer .I have put in 15 years of service in C.G.H.S. and my integrity was never doubted .I deny the charges and submit that none of my acts or omission displayed lack of integrity and have not infringed the provisions of rule 3-1.(1) of C.C.S.(Conduct ) Rules ,1964.The entire episode which is the result of a conspiracy has lowered my prestige and <sup>put me li</sup> constant mental agony.

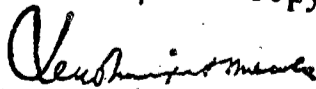
It is ,therefore, respectfully prayed that no action be taken against me in the matter.

Yours faithfully,

Enclosures :As above.

(Dr.V.Verma )

Attested/True Copy



L. P. SHUKLA  
Advocate

Dr. V. VERMA

VERSUS

UNION OF INDIA

ANNEXURE No 3

NO. C. 13011/2/82-V & CD (VERMA)  
Govt. of India  
Ministry of Health & Family Welfare

Nirman Bhawan, New Delhi  
Dated the 1st AUG 1984

MEMORANDUM

In continuation of this Ministry's Memorandum No. C. 13011/2/82-V & CD (Pt. II) issued under Rule 16 of the CCS (CCA) Rules 1965, the President is of the opinion that it is necessary to hold an enquiry against Dr. V. Verma under Rule 16(1)(b) of the CCS (CCA) Rules, 1965. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statements of article of charge (Annexure I). A statement of the imputation of misconduct or misbehaviour 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 (Annexures III & IV).

2. Dr. V. Verma is directed to submit within ten days of the receipt of this Memorandum a written statement of defence and also to state whether he desires to be heard in person.

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

4. Dr. V. Verma 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 and 16 of the CCS (CCA) Rules 1965 or the orders/directions issued in pursuance of the said Rules, the Inquiring Authority may hold the inquiry against him ex-parte as per the Rules.

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

6. The receipt of this Memorandum may be acknowledged.

By order and in the name of the President)

(A. SURI)  
DY. SECY, TO THE GOVT. OF INDIA

By  
Regd/  
AD  
Dr. V. Verma  
C/o Chief Medical Officer  
Central Govt. Health Scheme,  
116/117, Pandu Nagar,  
Kanpur (UP)

L. P. S.  
Advocate

ANNEXURE - I

Statement of Articles of charge framed against Dr. V. Verma,  
GDO Gr. I of the CHS.



Dr. V. Verma, a GDO Gr. I Officer of the CHS, now posted with CGHS, Kanpur while working as Medical Officer Exchange CGHS Disp. No. I, Chaura Rasta, Jaipur, claimed and obtained false conveyance allowance by showing some visits which are not genuine during the period October, 1980 to June, 1981. Dr. Verma thus, falsely claimed and obtained Rs. 288.75ps from Government.

Thus Dr. Verma has displayed lack of integrity, failed to maintain devotion to duty and acted in a manner which is unbecoming of a Government servant. He has, thereby, contravened the provisions of Rules 3.(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Attested/True Copy .....

L. P. SHUKLA  
Advocate

ANNEXURE - II

STATEMENT OF IMPUTATION AGAINST DR. V. VERMA, THE THEN MEDICAL OFFICER INCHARGE, C.G.H.S. DISPENSARY NO. 1, CHAURA RASTA, JAIPUR, NOW POSTED WITH CGHS, KANPUR.

STATEMENT OF IMPUTATION AGAINST DR. V. VERMA, THE THEN MEDICAL OFFICER INCHARGE, C.G.H.S. DISPENSARY NO. 1, CHAURA RASTA, JAIPUR, NOW POSTED WITH CGHS, KANPUR.

Dr. V. Verma, a GDO Grade-I Officer of the CGS, now posted with CGHS, Kanpur, while working as Medical Officer Incharge, CGHS Dispensary No. 1, Chaura Rasta, Jaipur, during the period from October 1980 to June 1981 claimed false conveyance allowance by showing visits as under:-

1. On 19.12.1980, Dr. V. Verma has shown to have examined two family members namely Vikky (daughter) and Mrs. Lal (Wife) of Shri Kesar Lal holder of CGHS Token No. 1795 in the same visit but he has claimed two visits in his Visit Register. Similarly on 25.1.81 and 9.2.1981 he has shown to have examined two patients viz. S/Shri Chandra Mohan Sharma and Shri P.C. Kewal Ramani holder of CGHS Token No. 6392 and 6689 respectively, and has shown and claimed two visits in each case whereas actually he paid only one visit to the house of each said CGHS beneficiary. Thus in the aforesaid 3 instances Dr. V. Verma has claimed and obtained conveyance allowance for one extra visit in each house and thus total 3 visits shown and claimed by Dr. Verma are not genuine.

2. Dr V. Verma was residing at 3E 42, Jawahar Nagar, Jaipur. Shri P.C. Gupta, a CGHS beneficiary was also residing at 3E 41 Jawahar Nagar, Jaipur. Thus both Shri Gupta and Dr. Verma were next door neighbours. Dr. Verma has shown to have examined the family members of said Shri P.C. Gupta on 7.3.81, 9.3.81, 12.4.81, 4.8.81, 5.81, 22.5.81, 11.6.81 and 23.6.81 either after the Dispensary hours or before the dispensary hours. These visits have been shown to have been performed by car. But, since Shri Gupta was next door neighbour of Dr. Verma, the journey by car is not feasible or required at all. As such the conveyance allowance claim made by Dr. Verma for these 8 visits are not genuine.

3. Dr. Verma has shown to have examined Sh. Deepak S/o Shri Liladhar Narain Shukla on 23.10.1980 and 13.12.1980. Actually the name of the son of Shri Liladhar Narain Shukla is Rajiv which is confirmed by Shri Liladhar Narain Shukla and also the same name is mentioned in the family folder of Shri Shukla, maintained at the Dispensary. Thus, the conveyance allowance claimed and obtained for both these visits are not genuine.

4. Dr. Verma has shown to have visited the house of S/Shri Murarilal Gupta holder of CGHS Token No. 6478, Mool Chand, holder of token No. 13884, Bhagwan Sahni Pareek, holder of token No. 2032 Suresh Chandra Mathar, holder of token No. 3278 and Nawal Kishore holder of token No. 13932. The house of Shri Mool Chand has been shown visited 3 times i.e. on 1.11.1980, 15.12.1980 and 6.1.1981 and the houses of rest of the aforesaid persons have been shown to have been visited once in each case to examine either themselves or the family members of these CGHS card holders. None of these persons had called Dr. Verma to their respective houses and as such these visits shown to have been paid by Dr. Verma are not genuine.

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Advocate

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List of documents by which the articles of charges framed against Dr. V. Verma are proposed to be sustained.

.....

1. G.P.I.R. of RC -45/81 of SBE/JAIPUR
2. Visit Register of Dr. Verma Medical Officer Licence, 30.3 Dispensary No. 1, Chaura Rasta, Jaipur.
3. Circular No. A.27020/4/78 CGHS II dated 31-1-1979 issued by Shri S.P. Pathak, Dy. Director (Adm.), CGHS, Dir. Gen. of Health Services, New Delhi addressed to Chief Medical Officer, CGHS, Jaipur.
4. Circular No. F.4-11/72 CGHS (P) dt. 10.7.1974 issued by Sh. V. Rama Chandran, Under Secy. Ministry of Health & FW New Delhi.
5. Circular No. A. 27020/1/79-CGHS II dated 23.7.1980 issued by Sh. S.P. Pathak, Dy. Dir. (Adm.) CGHS, New Delhi addressed to CMO, Jaipur.
6. Circular No. A. 27017/2/79 CGHS(P) dated 21.5.1980 issued by Shri S.P. Goswami, Under Secretary, M/O Health & FW, New Delhi addressed to Director General of Health Services New Delhi.
7. Copy of Order No. A. 27020/1/79 CGHS II dated 17.1.1980 issued by Sh. S.P. Pathak, Dy. Dir. (Adm.) CGHS addressed to Pay and Accounts Officer, CGHS, New Delhi and copy to CMO CGHS, Jaipur.
8. Original Conveyance Bill and acquittance roll of Dr. Verma M.O.I/c, CGHS Dispensary No. 1, Chaura Rasta, Jaipur for the period from May, 1979 to Sept. 79 for Rs. 258.75.
9. Original Conveyance Bill and acquittance roll of Dr. V. Verma for the period July 79 to Sept. 79 for Rs. 596.25.
10. Original Conveyance Bill and acquittance roll of Dr. Verma for the period Oct. 79 to Dec. 79 for Rs. 551.25.
11. Original Conveyance Bill and acquittance roll of Dr. Verma for the period Jan. 1980 to March 1980 for Rs. 675.00.
12. Original Conveyance Bill and acquittance roll of Dr. Verma for the period April 1980 to June 1980 for Rs. 562.50.
13. Original Conveyance Bill and acquittance roll of Dr. Verma for the period 21.5.80 to 31.5.80 & June 80 for Rs. 62.50.
14. Original Conveyance Bill and acquittance roll of Dr. Verma for the period Oct 1980 to Dec. 80 for Rs. 756.25.

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ANNEXURE - IV

List of witnesses by whom the articles of charge framed against Dr. V. Verma are proposed to be sustained



1. Sh. Liladhar Narain Shukla holder of CGHS token No. 4924, Jaipur.
2. Shri Murari Lal Gupta holder of CGHS token No. 6478, Jaipur.
3. Sh. Mool Chand holder of CGHS token No. 13884, Jaipur.
4. Shri Bhagwan Sahai Pareek holder of CGHS token No. 2032, Jaipur.
5. Sh. Suresh Chandra Mathur holder of CGHS token No. 3278, Jaipur.
6. Shri Nawal Kishore holder of CGHS token No. 13932, Jaipur.

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L. P. SHUKLA  
Advocate

Dr. V. VERMA ..... Applicant.  
VERSUS  
UNION OF INDIA & others ..... Respondents.

ANNEXURE No 4

WRITTEN BRIEF OF DEFENCE ASSISTANT, DEFENDING  
DR. V. VERMA, THE CHARGED OFFICIAL, BEFORE  
KM. VIJAY LAXMI SHARMA, THE COMMISSIONER FOR  
DEPARTMENTAL INQUIRIES AT NEW DELHI IN PURSUANCE  
OF MEMORANDUM OF CHARGES ISSUED BY DEPUTY SECRETARY  
IN MINISTRY OF HEALTH AND FAMILY WELFARE VIDE  
HIS LETTER NO.C-13011/2/82-V & CD(Pt.II) DATED  
01 AUGUST, 1984.

INTRODUCTION

At the outset, it is essential to explain the background of affairs in the Chaura Rasta CGHS Dispensary, Jaipur; where Dr. V. Verma, the charged official, was Medical Officer In-Charge in 1981. Dr. V. Verma, Senior Medical Officer is a conscientious and disciplinarian officer. While MO in-charge of the Chaura Rasta Dispensary he earned the wrath of Dr. P.C. Meena, who had been working under him in the said dispensary. As MO in-charge of the dispensary, Dr. Verma could not tolerate the indisciplined conduct of Dr. Meena who used to take his duties casually and was in the habit of sitting with undesirable persons inside the dispensary during and after working hours. This caused inconvenience to patients and deterioration of discipline amongst the dispensary staff. When Dr. Verma's repeated requests to Dr. Meena for mending his ways failed, Dr. Verma called a meeting of medical officers of the dispensary in August 1981 whereat he exhorted all to maintain devotion to duty and discipline in the dispensary. This advice was taken amiss by Dr. Meena and Dr. Verma and his wife, Dr. (Mrs) I. Verma were manhandled by Dr. Meena's men on 06 September 1981.

2. In connection with the assault, Dr. Verma lodged a complaint to the Director CGHS and to the local police (Report No.803 dated 10-9-81) of PS Moti Doongri, Jaipur. A photocopy of the police report is at Annexure-1. When the danger to Dr. Verma's person and his wife persisted, Dr. (Mrs) I. Verma visited New Delhi and reported the incident to Dr. (Miss) Khare, Director, CGHS. The Director then visited Jaipur later in the month of September and ordered the transfer of Dr. P.C. Meena from the Chaura Rasta Dispensary to the Station Road Dispensary, Jaipur. This transfer further infuriated Dr. Meena who wanted to remain in Chaura Rasta Dispensary

Annexure DB-1

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*[Signature]*  
B. P. SHUKLA  
Advocate

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as it is near to the Medical College, where he used to reside in the Hostel with his friends. Immediately thereafter, later in the month of September itself, the CBI unit at Jaipur started an enquiry against Dr. Verma. Dr. P.C. Meena was instrumental in getting the CBI enquiry instituted against Dr. Verma with the help of his relation/friend, Mr. P.D. Meena, CBI Inspector at Jaipur. Dr. Meena has continued to remain posted at Jaipur, except for a short gap, and has remained in a position to influence witnesses.

3. The above background is material and was explained by the Co in his defence statement. Non-rebuttal of this background to institution of the CBI enquiry, contained in defence reply dated 22 July 1983, by the Presenting Officer who himself belongs to the CBI, in his Prosecution Brief lends veracity to the truthfulness of Dr. Verma's stand. The complaint to the CMU, manhandling of the Co, police report in connection with the assault, the report to Dr. Khare and transfer of Dr. P.C. Meena are incidents immediately preceding the CBI enquiry. The nexus between Dr. P.C. Meena and Mr. P.D. Meena, CBI Inspector, establishes that the CBI enquiry was taken up in a motivated manner. The CDI is requested to bear these factors in mind while evaluating the "evidence" produced by the Presenting Officer.

RC-45/81 of SPE JAIPUR (Exhibit)

4. The registration of FIR under Regular Case No.45/81 by the Special Police Establishment, Jaipur was a direct off-shoot of the nexus between the two Meenas. The Preliminary Enquiry was conducted by the CBI in a very perfunctory and hurried manner with the result that the FIR made sweeping statements. Due to the case being motivated, sensational claims were made in the FIR and a large number of witnesses cited. The fact that from the allegation that Rs.5,497/- was obtained as false claims, the amount was reduced to Rs.288/75 at the end of the investigation speaks volumes. The fact that none of the FIR named persons was called as a Prosecution Witness is conclusive evidence of the motivated manner of registration of the CBI case.

5. Framing of charges against the Co under the provisions of IPC and Prevention of Corruption Act

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L. P. SHUKLA  
Advocate

1947 provide further evidence to the defence stand regarding the motivation:

Section 5(1)(d) of PC Act reads:-

"If he by corrupt or illegal means or by otherwise abusing his position as a Public Servant obtains for himself or any other person any valuable thing or pecuniary advantage."

"The abuse of position in order to come within the mischief of S.5(1)(d) must necessarily be dishonest so that it may be proved that the accused caused deliberate loss to the Department. It is for the prosecution to prove affirmatively that the accused, by corrupt or illegal means or by abusing his position, obtained any pecuniary advantage for some other person."

AIR 1979 SC 826

"The Juxtaposition of word "otherwise" with words 'corrupt and illegal means' and dishonesty implicit in the word abuse indicate the necessity for dishonest intention on the part of public servant to bring him within the meaning of S.5(1)(d)."

AIR 1963 SC 1116

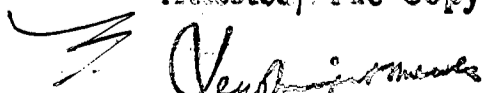
"S.5(1)(d) imply some dishonest intention on the part of the public servant. Dishonesty cannot be inferred from mere contravention of any provision of law and thereby conferring any benefit on a certain person."

(Emphasis supplied) 1979 All Cri R 136

OBSERVATION

6. From the above citations it is clear that dishonest intention on the part of public servant has to be established affirmatively and no inference of contravention of any provision of law will come within the ambit of S.5(1)(d). In the instant case, if the formalities required to be completed are properly understood with regard to preparation and passing of conveyance bills then there is no case at all against

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L. P. SUNKLA  
Advocate

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the CO. Before a domiciliary visit is made, the name of the beneficiary or the dependant is to be recorded in the visit register maintained for the purpose. The family folder is to be completed after examination of the patient. The prescription is another document besides the record of medicines drawn from the dispensary. The conveyance bills are scrutinised by the office of CMO and finally by the CMO himself before the bill is passed and certificates to the effect are appended by the concerned officials. So unless there is connivance of all these functionaries, it is not possible to get a conveyance bill approved. To suggest that for conveyance allowance amounting to Rs.288.75 spread over a period of one year, three persons, including two gazetted Class 1 officers, connived will find no acceptors, nor is such a proposition logical and justifiable.

7. It is important here to mention that ignorance of the rules and the checks and balances provided in the rules led the CBI to conclude that the CO had taken pecuniary advantage of Rs.5497/- which in the final charge sheet shrank to Rs.288.75 - a conclusion again based on ignorance of the rules. During the investigation of the case, the CBI had examined the 150 odd patients to whose houses Dr. Verma had made visits over a period of one year. All these persons were cross-examined while the CBI investigation was pursued for more than one year. At the end of these labours, the CBI dragnet closed on just 5 witnesses composed of 2 mazdoors, one durban and two Lower Division Clerks - none of which had found mention in the FIR. All of them belong to the economically weaker sections of employees and are vulnerable to pressure. The witnesses cited in the RC were never put in the witness box for cross examination.

8. Apart from the above aspects, the admissibility of conveyance allowance for domiciliary visits to doctors of CGHS will be discussed under a separate heading "Government letter of 10 July 1974".

9. CDI may kindly keep these facts in mind while taking stock of the evidence before her. Credibility of individual witnesses, who deposed before CDI, would be discussed in detail while refuting the memorandum of charges. Attested/True Copy

*[Handwritten signature]*

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AMB

ARTICLES OF CHARGE AND EVALUATION OF EVIDENCE PRODUCED THEREOF

10. The statement of imputations of misconduct against Dr. Verma were issued by the Ministry of Health and Family Welfare vide memorandum No.C-13011/2/82-V & CO(Pt.11) dated 7 July, 1983. This memorandum alleged contravention of Rule 3.1(i) of the CCS(Conduct) Rules 1964. The CO sent his explanation on 22-7-1983 (Annexure DB-II). Nothing was heard by the CO till the Ministry issued another order after one year vide memo of even number dated 1 August, 1984. This memorandum alleged contravention of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS(Conduct) Rules. There is nothing in the second Memorandum to show that the earlier explanation of the CO was not satisfactory and it is evident that the second Memorandum was issued without any application of mind.


11. Of the five statements of imputation of misconduct brought against Dr. Verma, two statements are based on ignorance of the rules on the part of the CBI. Had the explanation of the CO been read in the Ministry, these charges would not have figured at all in the imputations of misconduct.

12. The grant of conveyance allowance to CGHS doctors is governed by the Government of India, Ministry of Health and Family Welfare letter No.F.4-11/72/CGHS(P) dated 10 July 1974. Misinterpretation of this Government letter has provided an excuse to the CBI to cause CO's continued agony for the last seven years. Thus in the first place, logical interpretation, then Article-wise strip examination of the imputation and evaluation of PO's evidence before enquiry is necessary.

Government letter F.4.11/72 CGHS(P) dated 10 July 1974

13. Rules regarding grant of conveyance allowance to Medical Officers/Specialists under CGHS were issued vide the above cited letter. Admissibility of conveyance allowance, under the provisions of Government letter *ibid*, for paying domiciliary visits/and performing other official duties, is related to the maintenance of conveyance. The distance covered or actual use of conveyance for the purpose is irrelevant. Conveyance allowance is divided in three

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L. P. SHUKLA  
Advocate

categories, firstly those who maintain cars, secondly those who maintain scooter/cycles and thirdly those who maintain neither cars nor scooters/cycles. The letter proceeds to prescribe different rates of conveyance allowance which is linked only to the number of visits per month. Para 5 and 7 of the Government letter *ibid* need reproduction for a clearer understanding of the rationale behind the said letter. It reads:-

Para 5

"In case the conveyance is not maintained or is not available for use, owing to its being out of order or is not used for official duty/domiciliary visits for any other reasons for a period of more than 15 days at a time, no conveyance allowance will be admissible during any such period."


(Emphasis added)

Para 7

"Medical Officer/Specialist, in receipt of conveyance allowance will not be entitled to draw any daily allowance or mileage allowance for journeys on official duty, whether within or beyond a radius of eight kilometers but taking within area covered by Central Government Health Scheme."

(Emphasis added)

14. There is no ambiguity in the cited paras which, inter alia, mean that maintenance of the car and it not being out of use for any reason for more than 15 days is the sole criterion for the admissibility of the conveyance allowance. The actual distance covered is not material and it stands to reason that if a Medical Officer's car is out of order for less than 15 days, visits can be made by other means, including on foot, and conveyance allowance at rates prescribed for car shall still be admissible. There is a specific clause for sanctioning of the conveyance allowance to CGHS medical officers and no log book is required to be maintained. To repeat, the linkage of conveyance allowance is to the number of visits, rather than to the distance. Finding fault for one odd domiciliary visit made by a CGHS doctor by not using his vehicle is untenable because such a contingency is covered in

Attested by  
  
D. P. SINGH  
Advocate

.....7.

the stipulation that his vehicle should not be out of order for more than 15 days at a time. Unless this condition is satisfied, non-admissibility of conveyance allowance does not arise.

Memorandum of Charges dated 01 August 1984

15. As mentioned earlier, before the issue of memorandum of 01 August 1984, a memorandum of charges was issued bearing No.C-13011/2/82 V & CD(Pt.II) dated 7 July 1983 by Ministry of Health and Family Welfare. The CO duly replied the said charge-sheet and made submissions on all counts to the Ministry vide his representation dated 22 July '83 (by registered A/D) (Copy at Annexure DB-11). The Ministry's Memorandum of 01 August 1984 is therefore, a continuation of their earlier Memorandum dated 7 July 1983. On receipt of the Memorandum of 01 August 1984, the CO reiterated his submissions of 23 July 1983 vide his application dated 14 August 1984. While the earlier memo alleged violation of Rule 3(1)(i) of CCS(Conduct) Rules 1964, the later held that cited acts of omission and commission contravened provisions of Rule 3(1)(i), (ii) and (iii). An omnibus invocation of Rule 3(1) makes non-application of mind, for and on behalf of the President of India, apparent.

16. Annexure 11 to memorandum dated 01 August '84 is a statement of imputation of misconduct or misbehaviour against the charged official, Dr. Verma. During Regular Hearing on 27-6-88 and 8-7-88 at the office of CDI, six witnesses have deposed in an attempt to corroborate charges at Sl.Nos.3 & 4, while imputation at Sl.Nos.1, 2 and 5 go abegging and no effort whatsoever has been made to lead evidence to prove them. Under these circumstances the defence shall discuss these charges seriatim and evaluate the evidence adduced before CDI, including the credibility of witness and thereby present defence of CO.

Para 1

17. The first charge relates to examination of two patients each at three different beneficiaries' houses. The charge itself confirms that two patients were examined when Dr. Verma went to the houses. The only disputed point is whether examination of two patients at the same address at roughly the same time should count as two visits or one visit for the purpose of claim/grant of conveyance allowance.

Annexure DB-11

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*L. P. Shukla*  
L. P. SHUKLA  
Advocate

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18. As stated, the visits were made to the houses of these named beneficiaries and patients examined. The visit register (Exhibit S-38) maintained for the purpose indicates date, time, name of patient, token number and address. When two patients were examined during the visit, these have been shown as such including time of examination of each patient and intervening gap, depending upon the time taken to examine the first patient. The entries in the register are verified as to their correctness by the office of CMO and finally by CMO himself and each page is initialled by him before sanctioning the conveyance allowance. Entries in the visit register relate to examination of each patient. One patient means one entry and two patients mean two entries. No malafides have been attributed/established by Presenting Officer, as to intention of CO. On the CO's part, there was no attempt to hide any facts relating to the time etc. Unless the bonafides of entries are doubted, the question of making false claim of conveyance allowance does not arise.

19. It is pertinent to mention that no departmental instructions bar the examination of two patients during the same transaction at a beneficiary's house and claiming it as two visits.

20. For the first time, Dr. Verma was shown the letter from Dr. (Miss) V.N. Khare, Director CGHS, which is Prosecution Document 33, in February 1988 - six years after the date of issue of the said letter - in which Dr. Khare has opined that a single trip to a building in which two patients of the same household are examined should count as one visit. Neither at that stage, nor in the subsequent six years, has the Ministry deemed it necessary to clarify this point to either the CMO, Jaipur, who was the sanctioning authority, or to issue a general circular/clarification in this regard. In the face of the Ministry itself not being convinced about the issue, Dr. Verma cannot be accused of having obtained any conveyance allowance which was not due to him.

21. Dr. Khare's opinion that such examination of two members of a household shall count as one visit also suffers from inherent inconsistencies and contradictions

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as this opinion shall not stand before logical scrutiny in cases of (a) two different card holders sharing a house, (b) members of a house-hold falling ill in two different premises and requiring domiciliary visits and (c) different card holders living in multi-storoyed buildings where physical separation of accommodation is often less than two rooms in a large house. If this criterion is applied about 50% of the visits performed by Medical officers of CGHS Delhi shall be disallowed. The criterion, therefore, cannot be either of buildings or households but has to relate to the patients examined.

22. Dr. Verma had no malafide intention in claiming two visits when he examined two patients. If such a claim was not admissible, it was for the CMD, as the controlling officer, to disallow them. In this context the observation of Director (CGHS), Dr. (Miss) V.N. Khare in letter bearing nil number dated 12-4-82 to SP, SPE, CBI Jaipur (Document No.33 to Annexure III of memorandum of charges) is reproduced below:-

"Regarding the role of CMD, it is stated that the CMD verifies claims on the basis of visits duly verified by the Medical Officer in-Charge. As such, the primary responsibility lies with the Medical officer-in-Charge of the dispensary."

From Dr. Khare's observation it is evident that for medical officers falling under the control and supervision of the medical officer in-charge of the dispensary, the incharge shall be responsible for verification. Likewise, for medical officers incharge of dispensaries, the primary responsibility would lie with the CMD, the controlling authority, for verification of claims. Dr. Verma was the Senior Medical Officer in-charge of the Chaura Rasta dispensary and therefore, the primary responsibility lay with the CMD, Jaipur, to disallow such a claim if it was not admissible.

Para 2

23. With reference to para 2, it is stated that Mr. P.C. Gupta, IAS, retired Secretary to the Government of Rajasthan was a neighbour of the CO. Both had independent houses. Mr. Gupta's wife was a chronic patient of Rheumatoid Arthritis with contractures and she was practically confined to her bed. She frequently had consultations from CO. Mr. Gupta, being a considerate

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man, did not normally disturb the doctor during off dispensary hours. He either asked a visit from CO while coming back from dispensary or while going to the dispensary and, therefore, most of the visits paid to the residence of Mr. Gupta by CO were either before or after dispensary timings. The CO has been using his car for going and coming to his dispensary and on his way used to visit the residence of Mr. Gupta, which had been entered in the register faithfully and truthfully. In this context, the correct understanding of para 5 and 7 of Government letter of 10 July '74 given in para 13 is relevant. The visits themselves have at no stage been disputed. In fact the visits were made as recorded. When the Conveyance Allowance rules themselves do not stipulate any distance and a provision exists for use of other modes of conveyance, this charge appears absurd. In fact, this aspect was explained at length in the explanation of the CO, and this charge should have been dropped.

24. In his brief, the PO has held the claim to be against the "spirit of the rules". While there is an implicit admission in this statement that, per se, the claim is not against the rules, it is further submitted that the claim was neither against the rules nor against the spirit of the rules. The PO has continued to reflect the ignorance of the rules in his brief.

Para 3

25. The charge vide para 3 relates to examination of a patient named Deepak s/o Shri L.N. Shukla on two occasions. It has been held that as the actual name of Shri Shukla's son is Rajiv (and merely for this reason), the visits are not genuine. In fact the genuineness of these two visits has not been questioned. Shri Shukla in his statement has also confirmed the visits of the doctor. As regards name of 'Deepak' creeping in in place of 'Rajiv', an inadvertent slip could have occurred, particularly when the child is addressed only by the pet name - Titoo in this case. In the entries, however, the name of the child has further been qualified with the name of the father, Shri Liladhar Shukla and his department i.e. IB and his CGHS token number. The only slip is in writing name of the patient which might

  
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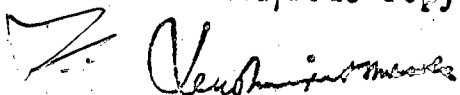
have been the result of the multifarious duties of CO, as Medical Officer in-charge of the dispensary, which place a heavy burden on a person as a physician as well as an administrator. For building a proper rapport with patients, doctors often address a patient by name. Considering that during the course of a day, a CGHS doctor examines 80 patients or more and sees many more names on CGHS Token Cards, one error in writing a wrong name over the course of more than one year cannot be treated as a crime. At this distant point of time, it is difficult to visualise the situation. Four-fold factors like name of father, department of card holder, his token number and address, however, leave little room for doubt as to the identity of the beneficiary. No evidence has been produced by PO during Regular Hearing to the contrary. Thus visits are genuine and the record stands testimony to that fact. In the face of above noted circumstances it is unreasonably unjust to jump to the conclusion that conveyance allowance claimed and obtained by CO for these two visits was not admissible.

26. It would not be out of place to mention here that Shri Lila Dhar Narain Shukla was the only well read witness of any social standing produced by the prosecution. His statement, which was given before the CBI and which he accepted as his own before the CDI contains as many as 9 wrong dates. All the visits mentioned in the statement of Shri Shukla between 20-3-80 to 14-8-80 and 16-7-80 are wrong, as these visits are not registered in the visit register of CO to which mention is made by Shri Shukla. It is left to the judgement of the CDI to assess the extent to which the statements of the remaining illiterate witnesses reflect the facts.

Para 4

27. The charge in para 4 relates to seven visits to residences of S/Shri Murarilal Gupta (one), Mool Chand (three), Bhagwan Sahai Pareek (one), Suresh Chandra Mathur (one) and Naval Kishore (one), paid by CO being denied by these card holders. In order to prove CBI's deduction of visits not being genuine, all these five persons were called for deposition as prosecution witnesses at Regular Hearing of CDI enquiry.

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28. Their depositions are evaluated below:-

(i) Shri Bhagwan Sahai Pareek, Durban, SW 1

He was working as Durban (Choukidar in common parlance) and his terms of duties involve working in different shifts. During cross-examination to a pointed question he stated that "No visit was made till date" and that he was not aware that doctors pay house visits also. He contradicted himself immediately when he was asked whether Dr. (Mrs) Inou Verma had visited his house on 1-11-80 when he had himself gone to the dispensary to call the doctor. He admitted that Dr. (Mrs.) Verma had been called by him to his residence after 1982. In this connection it is relevant to point out that Dr. V. Verma and Dr. (Mrs) I. Verma left Jaipur on transfer in August '82, so she must have paid the visit earlier to the date of transfer.

The witness has contradicted himself by first stating that no visit was made at his house and thereafter admitting that on one occasion Dr. (Mrs) I. Verma visited his house. Either his memory cannot be relied upon or his statement has been given under some pressure. Shri bhagwan Sahai Pareek's defective memory cannot supersede the documentary evidence i.e. visit register of CO. Under these circumstances to place reliance on his memory tutored by the CBI would be improper.

(ii) Shri Mool Chand, Mazdoor SW 5

At the time of his statement before CBI on 31-3-82, he was working as a mazdoor (labourer). His deposition that he did not know Dr. Verma, nor he has taken any consultation from him and that he never visited CGHS dispensary Chaura Rasta for his own or for the medicines of his dependent family members is absolutely false. Shri Mool Chand has taken consultation from Dr. V. Verma on 4 different occasions for himself prior to his statement to CBI. He had consultations from Dr. Verma on 28-7-80, 30-7-80, 15-6-81 and 18-6-81. This can be verified from his family folder, Sl.No.27 of Annexure III of Memorandum.

His son Rajesh had 71 consultations between 19-1-80 and 30-12-81 from the dispensary. Out of these 71 consultations, Dr. Verma alone has given the consultation on 20 different occasions. (There were 8-9 Medical Officers posted to this dispensary during that time). This fact

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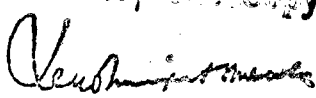
can be verified from the family folder, Sl.No.27 of Annexure III of Memorandum. Further on the one hand Shri Mool Chand maintains that whenever his child fell sick he used to take leave from his office and on the other he maintains that he never visited the dispensary. It is incredible that a father whose son has been so chronically ill as to need about 3 consultations on an average in a month never came to the dispensary with his son. It is also not unusual/unnatural that a child who has been keeping so sick was visited on three occasions in a span of one year.

The deposition of Shri Mool Chand before CDI that he did not know Dr. Verma, nor he has taken any consultation from him and that at the time of giving his statement to CBI on 31-3-82 he had never visited CGHS Dispensary Chaura Rasta for his own or for the medicine of his dependent family members is an absolute lie. The witness has made a false statement atleast on two different counts and such a witness can go to any extent to speak a lie on other counts i.e. denying the visit of the doctor to examine and advise during the illness of his child, under influence of some persons of CBI.

(iii) Shri Murarilal, Auditor SW 2

Shri Murari Lal admitted that he was aware that a change of address in the CGHS Token Card is a mandatory requirement, but even then he did not get the address changed. His token card continued to have the old address. At the time of visit, his card had the old address which was noted down in the visit register. The new address could not have been entered in it as it was not mentioned in the Token card and was not the correct official address.

It would also be pertinent to mention that Chandpole and Brahmipuri are adjacent localities in Jaipur. Unlike Delhi, there are no convenient sign boards on roads and colonies specially in the old city area. Dr. Verma could not have detected the discrepancy in address as even local residents are hard put to exactly identify a particular house as belonging to a particular locality. Dr. Verma was posted in Jaipur for a short period - he has neither lived in the city long enough to identify all localities nor was it his duty to do so.

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In his statement, Shri Morarilal has stated that "as far as he can recollect" no domiciliary visit was made. On the other hand, the prosecution documents show that the CO paid a visit to medically examine Master Ajoy, son of Shri Morarilal at 1005 hrs. on 24-1-81. Not only this, the medicines were also drawn on the same day by the beneficiary as is evident by the entries in the family folder (Sl.No.25 of Annexure III). These two supplementary documentary evidences prove that the visit was made. A doubtful statement/assertion cannot be compared with the definite entries in the official records at two places by CO at the time of visit. It is clear that the witness is denying the visit to cover his own failure to get his address changed which would have rendered him ineligible for CGHS benefits.

(iv) Shri Suresh Chandra Mathur SW-3

In his statement before CDI Shri Mathur has deposed that he does not remember if he has ever taken any treatment from the CO or not. He was also emphatic that he had not had any X-Ray or any other special investigation done upto April '82 i.e. upto the time of giving his statement to CBI. It is evident from the entry in the visit register that a visit was made by the CO on 8-1-81. The fact that the visit was made on 8-1-81 is further substantiated by the fact that there is an entry of issuing of medicines the same day in the name of Shri Mathur. The family folder (Sl.No.30 of Annexure III of Memorandum) also bears an entry against his name dated 8-1-81 which shows that an X-Ray L.S. Spine was NAD. This proves that X-Ray Spine of Shri Mathur was done before the visit on 8-1-81. It is gratifying to note that the FO in his brief has compared a domiciliary visit by a doctor to a trip to London and held that such a visit would be remembered. In a similar way, having an X-Ray done is also not as routine an activity like eating meals. A witness who emphatically denies having any X-Ray taken as also any visit by a doctor cannot be relied upon when the documents show both - the X-Ray report as well as the visit by the doctor. The overwhelming documentary evidence in the family folder showing the X-Ray report and medicines drawn authenticates the visit. It is for the CDI to draw her just and logical conclusions.

  
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(v) Shri Naval Kishore, Mazdoor, MES SW 4

Shri Naval Kishore is the epitome of the kind of witnesses produced by the PD to establish a failing case. Shri Naval Kishore's statement is full of contradictions and discrepancies. He stated that he entered Government service in 1978 and that at present his age is about 25 years. This means that he entered Government service at the age of 15 years - a fact that shows that he must have lied to enter into service. This is also a fact which any official agency like the CBI can use to put pressure on him, as he would be in danger of losing his job or facing departmental action.

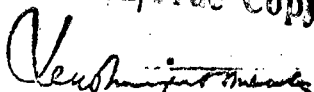
During his cross examination, he did not remember the age of his eldest child or when he had shifted to his own house. In fact, about the only thing that he remembered was that Dr. Verma had not visited his residence. When asked a second time about his daughter's age, he stated definitely that her date of birth was 24-8-80. In fact from the official documents, the date of birth of his daughter is 7-3-80 (The name and date of birth in the official documents are entered on the written request of the Government servant supported by the birth certificate. The date of birth can be verified from the family folder of Shri Naval Kishore Sl.No.26 of Annexure III). This proves that either the memory of Shri Naval Kishore cannot be relied upon at all or he has been tutored and is purposely lying. By shifting the date of birth by 5 months he was also probably hoping that he would show the visit to have taken place at a time when the patient was not born. The record, however, exposes his lie and the statement of Shri Naval Kishore shows forgetfulness at best and tutored lying at worst to save his own job in government service.

The CDI might decide to what extent the statement of such a person can be relied upon.

Observation regarding depositions.

29. After reading statements of the above cited witnesses, it is apparent that out of the 150 odd visits investigated by the CBI, the CO could produce just 5/6 witnesses who are pliable and, in the words of the PD himself, illiterate (2 mazdoors, a durban, besides one auditor and a lower division clerk). Their testimony is not sound when pitted against the documentary records of the CO. The CBI have picked up these persons because

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they could get their statements on the dotted line. The maxim is that the faintest ink is stronger than the strongest memory, but the CBI in their initial motivated over-zealousness and subsequent efforts to save face attempted to prove otherwise. The individual statements have been examined above and none of them stand proper scrutiny.

30. In his brief the PO has stated that "some" of the witnesses have deposed that they were not aware of the facility for domiciliary visits. In fact it was only one of the witnesses who made this statement - Shri Bhagwan Sahai Pareek. As explained earlier, his statement is full of contradictions and he has himself availed the benefit of visit by a doctor to his residence.

31. During cross-examination, it was evident that none of the witnesses could be relied upon. The PO in particular made much of the claims of the witnesses that they did not remember any visit of the CO to their residences. When their so-called memory was challenged and exposed to be defective, the PO in his brief has explained it away as "challenging the memory of illiterate witnesses by asking irrelevant questions." It is submitted that in depositions of this kind, it is the memory that has to be tested and not some other quality like physical prowess etc. The questions asked were relevant and just because a tutored/motivated witness is not able to answer a question to the satisfaction of the PO it does not make the question irrelevant. The assertion by PO in his brief that his witnesses were very definite while replying that Dr Verma had never visited their house, but were answerless about his son's date of birth etc. and the other questions asked by CO and his Defence Assistant/ In fact the witnesses were very definite only in denying the visit of Dr. Verma and not in replying to any questions put by CO and DA. This itself shows that the witnesses were tutored.

Para 5

32. Vide para 5, the CO has been charged that of the 7 visits made to the residence of one Shri B.L. Mathur, the first visit on 14-11-80 is not genuine as the address and token number are not correct. It is this single visit which has not been accepted as genuine while the other six have been accepted as genuine. No evidence was led to prove this charge. No mention is mentioned by PO before the CBI.

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The PO has also not referred to this charge in his brief.

33. Despite the above, it may be stated that it is well known that the CGHS system works well within its limitations. The inherent limitations however include cases of impersonation and gross misuse of the facilities. Specially in CGHS organisation outside Delhi where there are hardly any/no Government residential colonies. The CGHS beneficiaries by impersonation and gross misuse get the facilities from CGHS for their non entitled friends, neighbours and relations. The CO has provided some written statements of beneficiaries misusing the CGHS facilities out of a very large number of such instances which have come to his notice. These may be seen at Annexure DB-III(i-vii).

Annexure DB-III

34. There is at least one case to the notice of the CO that two different CGHS beneficiaries were issued Token Cards bearing the same number. Photocopies of these cards may be seen at Annexure DB-IV (i-iv). In addition, there is a system of issuing temporary authority to beneficiaries when they visit or shift to other CGHS cities. If the numbers of these authorities happen to coincide with the numbers of any of the existing cards issued at that station attached to that particular dispensary, confusing situations are bound to arise.

Annexure DB-IV

35. Visits are not infrequently made on the requests of minor children or even neighbours. Very often the beneficiaries do not bring their cards and only give the number as they remember it. An urgent domiciliary visit cannot be denied by a CGHS doctor simply because the card has not been produced while asking a visit and so a mistake may occur in communicating the card number etc. while asking for an urgent visit from a CGHS doctor.

36. It is likely that the wrong entry in the case of Shri B.L. Mathur was made because of any of the above, or a combination of the above, factors. The visit itself, was, however, performed as is borne out by the record. There was no malafide intention because if there had been any such intention, the fabrication could hardly have been in respect of a beneficiary to whose house six subsequent visits were made.

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Para 6 - Sum of Rs.288/75 falsely claimed

37. Explanation of each objected visit has been given in preceding paragraphs and cumulative effect is that these charges were motivated and remained unsubstantiated during CDI enquiry. Witnesses produced have proved unequal to the task of proving the pre-ponderance of probability which a reasonable man would accept.

38. The prosecution effort has been to exploit minor clerical inaccuracies rather than imputing any maleficent intent or even vaguely alleging undeserved pecuniary advantage. The system of maintaining family folders, which is peculiar to only CGHS Jaipur, has been used by the PO to show a few discrepancies in record keeping. It deserves mention that the system of maintenance of family folders was/is in vogue in Jaipur only and not anywhere else in India though the Central Government Health Scheme is an all India phenomenon. This system generates so much paper work that one or two odd inaccuracies are bound to creep in. Additionally, the CO was Medical Officer-In Charge of Dispensary which calls for extra administrative work.

39. It may be borne in mind that the CBI thoroughly investigated more than 150 visits of the CO and he is being charged with false claims based on misunderstanding of the relevant rules and the statements of five discredited witnesses.

Para 7 - Contravention of Rule 3(1), (i), (ii) & (iii) of CCS(Conduct) Rules, 1964.

40. Before we discuss the contravention of provisions of Rule 3(1), (i), (ii) and (iii) of CCS(Conduct) Rules, 1964, Appendix 18 of Chaudri's Compilation of the Civil Services Regulations (12th Edition - 1982 page 329) which states that framing of charges is a serious matter and requires application of mind and deliberation. The charges should be specific, unambiguous and clear. Strictly speaking the violation ought to be of Sub Rule 1 and the application of Sub Rule (i) or (ii) or (iii) that the disciplinary authority has invoked shows that the authority has not applied his mind properly when acting for and on behalf of the President of India. This infirmity renders the entire charge sheet non-est-in law. None of the

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witnesses have said a word to impeach devotion to duty of Dr. V. Verma. Statement of Shri L.N. Shukla, SW-5 before CBI contains the following:-

"Whenever I required the consultation of the doctor and I was not in position to visit dispensary when I made a telephonic call to Dr. Verma and he came to my residence to examine my family members...."  
No prosecution witness or PO has said a word against devotion to duty of Dr. Verma. The fact that Memorandum of 12 July '83 attracted rule 3(1)(i) while Memorandum of 01 August '84 added rule (1)(ii) and (iii) in its ambit is a major defect. The CBI is requested to keep this defect in mind.

#### CONCLUSION

41. The Departmental Enquiry against Dr.V. Verma, the CO, relates to alleged misconduct in the period October 1980 to June 1981. The case has hence been pending for almost seven long years causing mental anguish to the CO and his wife, Dr.(Mrs) I. Verma. The long pendency of the case has caused economic hardship as well as demoralisation of the officer, besides lowering him in the estimation of his colleagues.

42. The delays in this case are entirely attributable to the Government at every stage and the following time-table, which is a matter of record, amply shows how the delays have made a mockery of justice:-

- 1) CBI starts preliminary enquiry - September 1981
  - 2) CBI registers Regular case - 11-12-1981
  - 3) CBI investigation continues during 1982 and early 1983.
  - 4) Cbi submits final report - Date not known.
  - 5) Memo No.13011/2/82 V&CD(Pt.II) giving statement of imputations of misconduct issued on 11-4-1983 by the Deputy Secretary and issues on - 7-7-83. It may be noted that the letter was sent to Dr. Verma c/o Health Secretary, Arunachal Pradesh where Dr. Verma was never posted. He received it only on 16-7-83.
  - 6) Dr. Verma submits his explanation - 22-7-83
  - 7) Memo No.C13011/2/82-V&CD (V&EMR) giving statement of imputations of misconduct issues from Deputy Secretary - 1-8-1984.
- (8) Dr. Verma reiterates earlier explanation - 14-8-1984 after receiving said memo on 7-8-1984

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- 9) Deputy Secretary conveys appointment of PO and IO, Shri Banerjee vide Order of even number on - 22-3-1985
- 10) Preliminary hearing held by Shri A.R. Banerjee, CDI, CVC on - 20-5-1985
- 11) CO informs CDI and Ministry about his UA on - 26-8-1985
- 12) After 26-8-1985, inordinate delay was occasioned by (1) changing of the PO and (2) Complete silence from the Ministry regarding approval to appointment of UA. In fact such formal approval has not been communicated by the Ministry till date.
- 13) Hearing adjourned in March 1986 due to appointment of new PO.
- 14) PO again changed by CBI on - 8-9-1987
- 15) Km. V.L. Sharma, CDI appointed I.O. in place of Shri Banerjee on - 8-9-1987.

43. From the above it shall be evident that there were long delays in the Ministry of Health and Family Welfare. It was only after the appointment of Km. V.L. Sharma that matters were expedited. Unfortunately a few delays took place in the period subsequent to September 1987 due to letters being sent to Dr. Verma at his old place of posting (Kanpur) and thus being received by him after the dates fixed for examination of documents and brief hearing. The CO had no hand in delaying the proceedings; on the contrary he has been keen for the expeditious conclusion of the enquiry.

44. Because of the pendency of the CVC enquiry, Dr. Verma has not been able to earn his well deserved promotion to the rank of CMD. Between March 1988 and now, as many as 387 Senior Medical Officers junior to him have been promoted to the rank of CMD. (In this context, the CO's representation dated 28-3-88 is annexed at Annexure UB-V). They include doctors who have entered into the CGHS service even 8 years after Dr. Verma. In a professional field, supersession by such juniors is an insult which is repeated each day that the doctor attends the dispensary. Dr. Verma has been holding charge of the dispensaries of his posting almost continuously since 1971. Now, after 17 years as Medical Officer in-Charge of the dispensaries, he is likely to be placed in a subordinate position and suffer the ignominy of working under one of his juniors.

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45. It may be mentioned that even if the CO is fully exonerated now, it would mean denial of status and pay for the period from March 1988, when he would have been promoted, till date. In effect, the officer has already been inflicted severe punishment.

46. In the motivated action against Dr. Verma, the CBI has persisted with a weak case which may be called a non-case. Starting with an amount of Rs. 5,497/- and citing of 19 persons in the FIR, the amount shrank to Rs. 288.75 at the end of detailed CBI investigation. During this investigation, all visits made by the CO were minutely examined by the CBI and about 150 patients cross-examined in depth. However, not one of the FIR cited witnesses was used in the DE and, instead, five witnesses of very dubious reliability produced as PWs.

47. The amount of Rs. 288.75 finally arrived at relates to 21 visits and these have been fully dealt with earlier. To summarise:-

(a) 3 visits relate to two patients examined during the course of one transaction. No malafide intent has been alleged during the hearing, much less proved. As explained, there is no instruction of the Ministry in this regard, nor has the Ministry issued any clarification in the past six years after the CBI had sought a clarification in this matter. As there is room for ambiguity in the interpretation of the rules, it was for the Ministry to lay down clear guidelines. It may be mentioned that in the recent case of Dr. J. Dutta, railway doctor of Jaipur, the CVC has given benefit of doubt to the delinquent officer on the grounds that the rules are not clear.

(b) 8 visits relate to consultations at the house of Shri P.C. Gupta. While it has not been contested by the PO that the visits were made, they have been held to be not genuine merely because of proximity of the doctors and patients houses. As amply explained, Conveyance Allowance to CGHS doctors is governed by rules which do not link distance travelled to the claim. The PO, in his brief has also referred to those visits as "against the spirit of the rules" and has thereby conceded that there is no violation of any rule.

(c) Two visits during which the son of Shri L.N. Shukla were examined have been held to be not genuine merely because of a wrong name being given. This has been dealt in detail

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earlier. Suffice it to say that when the PW, Shri Shukla has himself confirmed that the visits were made, no misconduct can be attributed to the CO.

(d) Seven visits relate to houses of five beneficiaries who also gave statements before the CBI. In the words of the PO, these witnesses were "illiterate". It is not really surprising that out of about 150 beneficiaries, the CBI could only produce witnesses from the economically weaker sections which is more susceptible to being brow-beaten by the CBI. The deposition of all the witnesses were full of contradictions and all the witnesses had some reason to stick to their false statements. Not one of the FIR named witnesses was produced as PW.

(e) One visit was held to be not genuine in the imputation of misconduct to the residence of Shri B.L. Matnur. Interestingly, no evidence was led to establish the allegation, the PO did not mention it before the CBI and no reference is made to this in the PO's brief. Nonetheless, this aspect has been fully explained in this brief.

48. From the above, it is clear that the prosecution has miserably failed to establish the charges and has at no stage been able to even hint at malafide intent. There is a clear distinction between a malafide claim and an irregular claim. The irregularities pointed out are in the nature of petty contradictions and it would be improper to jump to conclusions on the basis of minor discrepancies - particularly as no witness can be expected to remember every detail after a lapse of 8 years. In respect of minor irregularities in claims, the decision rests with the audit or controlling authority and not on any third party. It is worth repeating that the primary responsibility was that of the CMO, Jaipur as per Prosecution Document No.33. It passes understanding why the CO should be made to suffer for 7 long years for no fault of his.

49. In view of the facts that there was no application of mind while framing charges, that the initial explanation of the CO was not even read and never held to be unsatisfactory that the PO did not even refer to some charges during the enquiry, that unreliable witnesses were produced in an attempt to establish one charge and that the CO has suffered mental agony for about seven years, it is in the interest of justice, equity and fair play that the CO be exonerated completely and honourably.

Attested/True Copy

P. SHUKLA  
Associate

50. We place on record our appreciation for the CDI's considerate and humane approach towards the charged officer and the Defence Assistant during the course of the enquiry.


20-7-1988



(Surinder Singh)  
Defence Assistant

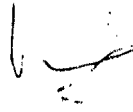
I agree.

Attested/ Copy



L. P. ...  
Advocate

20-7-1988



(Dr. V. Verma)  
C.O.

Dr. V. VERMA

Applicant.

VERSUS

UNION OF INDIA & others

Respondents.

AGP

ANNEXURE No 5

From: Dr. V. Verma, M.D.,  
Senior Medical Officer,  
M.O. Incharge, CGHS Dispensary No. 2,  
9, Valmiki Marg,  
LUCKNOW (U.P.)

To: The Secretary,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
NEW DELHI

THROUGH PROPER CHANNEL

Subject: Representation of Dr. V. Verma for promotion  
to the rank of Chief Medical Officer.

Sir,

I would like to lay down the following lines  
for your kind consideration and favourable orders:

I joined the CGHS as Junior Medical Officer  
on 22-12-1966 and was promoted as Senior  
Medical Officer on 1-1-1978.

(ii) My name appears at Sl. No. 460 of the seniority  
list of Senior Medical Officers No. A 12034/76/  
82-CHS IV dated 13th September 1982.

(iii) Vide Order No. A32012/1/88-CHS II, dated 14th  
March 1988, the Under Secretary to the  
Government of India, Ministry of Health &  
Family Welfare has circulated a list of 389  
Senior Medical Officers who have been promoted  
to the rank of Chief Medical Officer. My name  
however, does not figure in this list. This  
list extends to about Sl. No. 758 of the seniority  
list of Senior Medical Officers and, in effect,  
about 300 doctors junior to me have been promoted  
to the post of Chief Medical Officer.

(iv) I am not aware of any reason why the department  
has seen it fit not to promote me to the rank  
of Chief Medical Officer.

2. I shall be grateful if the matter could be  
kindly got looked into and suitable orders for my  
promotion with effect from the date of promotion of  
juniors be passed so that I do not suffer the humiliation  
of working under Medical Officers who are junior to me.

Thanking you,

Yours faithfully,

Attested/True Copy

(V. Verma)

28-3-88

L. P. SHUKLA  
Advocate

54

Dr. V. VERMA ..... Applicant.  
UNION OF INDIA Doctors ..... Respondents

AGCA

ANNEXURE No. 6

From:

Dr. V. Verma  
Senior Medical Officer  
C.G.H.S. Dispensary  
9, Valmiki Marg,  
Lucknow(U.P.)

To,

The Secretary  
Ministry of Health & Family Welfare  
Nirman Bhawan,  
New Delhi.

Through Proper Channel.

Subject: Representation of Dr.V.Verma Sr.Medical Officer for promotion to the rank of Chief Medical Officer of Central Health Services.

Sir,

I would like to lay down the following lines for your kind consideration and favourable orders.

- (1) I joined C.G.H.S. as Jr.Medical Officer on 22/12/66 and was promoted as Senior Medical Officer on 1-1-1978.
- (ii) My name appears at Sl.No.340 of the civil list of Senior Medical Officers as on 1.2.88.
- (iii) Vide order No.A 32012/1/88-C.H.S.II Dated 14th March, 1988 and even number dated 8th July, 1988 the under secretary to the Govt. of India, Ministry of Health & Family Welfare has circulated lists of 444 Senior Medical Officers who have been promoted to the rank of Chief Medical Officer. My name however does not appear in any of the lists. These lists extend to above sl.No.727 of the Seniority list of Senior Medical Officer and, in effect, about 387 doctor's Junior to me have been promoted to the post of C.M.O..
- (iv) I am not aware of the reason why the department has seen it fit not to promote me to the rank of Chief Medical Officer.
- (2) I have already put up my representation for promotion on 28/3/88 forwarded by C.M.O.C.G.H.S.Lucknow vide his letter No.4-200/88-C.G.H.S./Lucknow/83-84 Dt.8.4.88, for which I have not received any communication.
- (3) I shall be grateful if the matter could be kindly got looked into and suitable orders for my promotion with effect from the date of promotion of Juniors be passed so that I do not suffer the humiliation of working under Medical Officers who are Junior to me.

Thanking you,

Yours faithfully,

Attached Copy

Dated: 11th September, 1988.

( Dr.V. Verma )

*L. P. SHUKLA*  
L. P. SHUKLA  
Advocate

Dr. V. VERMA ..... Application  
 VERSUS ..... Respondent  
 UNION OF INDIA JAWANS .....  
 REGISTERED A/D. ANNEXURE no 7

Dated: 16.10.88

From: Dr. V. Verma,  
 M.D.  
 Senior Medical Officer,  
 C.G.H.S. Dispensary,  
 6, Valmiki Marg,  
 LUCKNOW (U.P.)

To: The Secretary, to the Govt. of India,  
 Ministry of Health & Family Welfare,  
 Nirman Bhawan,  
 New Delhi.

Sub: Representation for promotion to the post of Chief Medical Officer of Central Health Services, and alleviation of the grievance and humiliation of made to work under a junior.

Sir,

I would like to submit the following for your kind consideration and favourable orders.

1. I joined C.G.H.S. as Jr. Medical Officer on 22.1.66 and was promoted as Senior Medical Officer of C.H.S. on 1.1.1978.
2. My name appears at Sl.No. 340 of the Civil list of Senior Medical Officers of C.H.S. as on 1.2.1988.
3. Vide order No. A 32012/1/88-CHS II dated 14th March, 1988 even number dated 8th July 1988 and subsequent lists the under secretary to the Govt of India Ministry of Health & Family Welfare has circulated lists of about 500 Sr. Medical Officers who have been promoted to the post of C.M.O. My name do not appear in any of the lists. These lists extend beyond Sl. No. 770 of the seniority list of Senior Medical Officers and, in effect, about 430 officers junior to me have been promoted to the post of C.M.O.
4. That consequent upon retirement of Dr. R.P. Pande from the post of Dy. Director G.G.H.S. Lucknow, a much junior officer to me namely Dr. S.C. Dutt has been handed over the charge of Dy. Director C.G.H.S. Lucknow w.e.f. 1.9.1989. The name of Dr. S.C. Dutt appear at Sl. No. 392 while my name appear at Sl. No. 340 of the Civil list of Sr. Medical Officers of the C.H.S. as on 1.2.88. This position of making my junior as my immediate superior has caused humiliation and harassment to me in service. This is also discriminatory against me. This position has also caused me lot of mental anguish.
5. I have already put up my representation for promotion on 28.3.88 and 12.9.88, for which I have not received any reply.
6. An enquiry was started against me in 1981 and a Charge Sheet No. C-13011/2/82-V & CD(V & EMR) dated 1st Aug. 1984 was issued under Rule 16(1)(b) of the Central Civil Services (Classification Control & appeal rules 1965). Since long I do not have any communication from the department. I presume that no substance in the charges was found and that they have been dropped.
7. I shall, therefore, request that my promotion to the post of C.M.O. be released at the earliest with effect from the date of promotion of my junior, restoring my seniority at my due place, so that I do not suffer the humiliation and ignominy of working under my junior.

Thanking you,

Yours faithfully,

(Dr. V. Verma)

Attested/True Copy

L. P. SHUKLA  
 Advocate

Dr. V. VERMA

Applicant.

VERSUS

UNION OF INDIA Teachers

Respondents.

ANNEXURE No 8

No. 3-90/89-CGHS/LKS/2088-91  
Govt. of India,  
Central Govt. Health Scheme,

Dated : 24.10.89

2-11-89

OFFICE ORDER

The transfer of following Chief Medical Officers working in CGHS, Lucknow are hereby ordered with immediate effect to the dispensaries as mentioned against each.

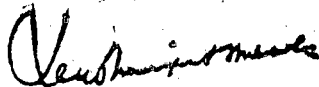
Sl. No.	Name & Designation	Place of posting	Place of Transfer
1.)	Dr. R.D. Verma, CMO & MOI/c	MOI/c Disp. No. 1	MOI/c, Disp. No. 2
2.)	Dr. (Mrs) Namita Dutt, C.M.O.	Disp. No. 1	MOI/c, Disp. No. 1

(Dr. J.C. Dutt)  
Dy. Director,  
C.G.H.S., LUCKNOW.

Copy to :-

- 1.) Dr. R.D. Verma, CMO, Disp. No- 1, with the instruction to handover complete charge of MOI/c to Dr. (Mrs.) N. Dutta & get himself relieved from Disp. No. 1 & report for duty at Disp. No. 2 to takeover the charge of MOI/c.
- 2.) Dr. (Mrs) N. Dutta, with the instruction to takeover complete charge of MOI/c, Disp. No. 1 & submit charge handing over/taking over report to the Dy. Director.
- 3.) MOI/c Disp. No. 2 for information & with the instruction to handover the complete charge of MOI/c, Disp. No. 2 to Dr. R.D. Verma, CMO & submit charge taking over/handing over report to the Dy. Director.
- 4.) Accounts Section, CGHS, Lucknow.

Attested True Copy



L. P. ...UKLA  
Advocate

Dy. Director  
C.G.H.S., Lucknow.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW.

Dr. V. VERMA

Applicant

VERSUS

UNION OF INDIA Teachers

Respondents

ANNEXURE NO 9

CONFIDENTIAL  
REGISTERED A/D

No.C-13011/2/82-V&CD(Vig)  
Government of India  
Ministry of Health & Family Welfare

New Delhi, Dated

To

Dr.V.Verma,  
Senior Medical Officer,  
CGHS Dispensary No.2,  
6, Valmiki Marg,  
Lucknow (U.P).

Subject: Departmental proceedings against Dr.V.Verma under  
Rule 16 of the CCS(CCA)Rules, 1965.

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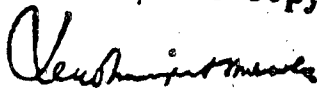
Sir,

I am directed to refer to this Ministry's Order of even number dated the 8th September, 1987 appointing Kum V.L.Sharma, CDI as Inquiring Authority in the above mentioned case. Kum. Sharma has since submitted her report No.D7/VLS/35(39) dated the 31st August, 1988.

The report of the Inquiry Officer is enclosed. The Disciplinary Authority will take a suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the Disciplinary Authority within 15 days of receipt of this letter.

Attested/True Copy

Yours faithfully,



L. P. SHUKLA  
Advocate

  
(Veena Maltra)  
Director

DR. V. VERMA

Applicant

APZ

VERSUS

UNION OF INDIA & others

Respondents

ANNEXURE NO 9

भारत सरकार  
GOVERNMENT OF INDIA  
केन्द्रीय सतर्कता आयोग

**CENTRAL VIGILANCE COMMISSION**

अनुभाग  
SECTION

पत्राचार  
LETTERS/CORRESPONDENCE

फाइल नं०  
File No. D-1/VLS/35(30)

खण्ड  
Volume

Report (4th Copy)

विषय  
Subject

DE against Dr. V. Verma,  
Sr. M.O., CGHS, Kanpur

को सूचित की गई  
Indexed on

कॉपी  
Record A/B

कॉपी  
Record C. Destroyed in

में नष्ट की जाए

भागीय नोट बुक नोट किया जाए  
नोट न किया जाए

to be noted In Section Note Book

to be noted

अ. अ. / अधीक्षक के आदेश पर

Initials of S.O./Supdt

Initials of Clerk

Attested/True Copy

*(Signature)*

L. P. SHUKLA  
Associate

पिछले हवाले  
Previous References

बाद के हवाले  
Later References

No. 37/VLS/35(39)  
GOVERNMENT OF INDIA  
CENTRAL VIGILANCE COMMISSION

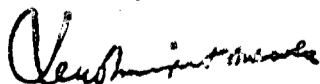
DEPARTMENTAL INQUIRY AGAINST DR. V. V.  
SENIOR MEDICAL OFFICER, CCHS, KANPUR.

R E P O R T

Vide Order No.C.13011/2/82-V&CH(V&EMB)  
dated 8.9.1987, issued by Sh. S.P. Goswami, Deputy  
Secretary to the Govt. of India, Ministry of Health  
and Family Welfare, New Delhi, I was appointed as  
the Inquiry Officer to hold an oral inquiry against  
Dr. V. Verma, Senior Medical Officer, CCHS Dispensary,  
Gandhi Gram, Kanpur, who was charge-sheeted under  
Rule 16(1)(b) of the Central Civil Services (Classi-  
fication, Control & Appeal) Rules, 1965, vide  
Memorandum No.C.13011/2/82-V & CH (V&EMB) dated  
1-8-1984. Regular Hearing was started from 27.6.88.  
40 Prosecution Documents i.e. Exs. 2-1 to Ex.2-40  
were taken on record. 6 Prosecution Witnesses, SW-1  
to SW-6 were examined and cross-examined. The  
defense did not produce any witness nor did they  
cite any document in support of their case. The  
charged officer did not appear as a witness in his  
own case, his general examination was conducted  
by the undersigned.

2. The article of charge framed against  
Dr. V. Verma, Senior Medical Officer, C.C.H.S.  
Dispensary, Gandhi Gram, G.T. Road, Kanpur, read  
as under :-

Attested/True Copy



L. P. K. KLA  
Advocate

ARTICLE OF CHARGE

"Dr. V. Verma, a GEO Gr. I Officer of the CHS, now posted with CGHS, Kanpur while working as Medical Officer Incharge CGHS Disp. No.1, Chaura Rasta, Jaipur, claimed and obtained false conveyance allowance by showing some visits which are not genuine during the period October, 1980 to June 1981. Dr. Verma thus, falsely claimed and obtained Rs.288.75ps from Government.

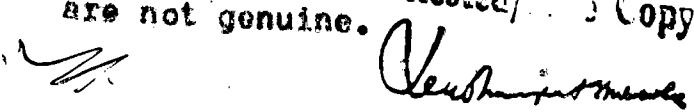
Thus, Dr. Verma has displayed lack of integrity, failed to maintain devotion to duty and acted in a manner which is unbecoming of a Government servant. He has, thereby, contravened the provisions of Rules 3.(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964."

3.0 Case for the prosecution

3.1 Dr. V. Verma, a GDO Grade I Officer of CHS, now posted with CGHS, Kanpur, while working as Medical Officer Incharge, CGHS Dispensary No.1, Chaura Rasta, Jaipur, during the period from October 1980 to June 1981 claimed false conveyance allowance by showing visits as under :-

3.1.1 On 19.12.1980, Dr. V. Verma has shown to have examined two family members namely Vikky (daughter) and Mrs. Lal (wife) of Shri Kesar Lal holder of CGHS Token No.1795 in the same visit but he has claimed two visits in his visit Register. Similarly on 25.1.81 and 9.2.82 he has shown to have examined two patients viz. S/Shri Chandra Mohan Sharma and Shri P.C. Kewal Kamani holder of CGHS Token No. 6392 and 6689 respectively, and has shown and claimed two visits in each case whereas actually he paid only one visit to the house of each said CGHS beneficiary. Thus in the aforesaid 3 instances Dr. V. Verma has claimed and obtained conveyance allowance for one extra visit in each house and thus total 3 visits shown and claimed by Dr. Verma are not genuine.

Attested/True Copy

  
L. P. SHUKLA

3.1.2 Dr. V. Verma was residing at 3T 42, Jawahar Nagar, Jaipur. Shri P.C. Gupta, a CGHS beneficiary was also residing at 3T 41 Jawahar Nagar, Jaipur. Thus both Shri Gupta and Dr. Verma were next door neighbours. Dr. Verma has shown to have examined the family members of said Shri P.C. Gupta on 7.3.81, 9.3.81, 12.4.81, 20.4.81, 16.5.81, 22.5.81, 11.6.81 and 23.6.81 either after the dispensary hours or before the dispensary hours. These visits have been shown to have been performed by car. But, since Shri Gupta was next door neighbour of Dr. Verma, the journey by car is not feasible or required at all. As such the conveyance allowance claim made by Dr. Verma for these 8 visits are not genuine.

3.1.3 Dr. Verma has shown to have examined Shri Deenak S/o Shri Liladhar Narain Shukla on 23.10.80 and 13.12.80. Actually the name of the son of Shri Liladhar Narain Shukla is Rajiv which is confirmed by Shri Liladhar Narain Shukla and also the same name is mentioned in the family folder of Shri Shukla, maintained at the Dispensary. Thus, the conveyance allowance claimed and obtained for both these visits are not genuine.

3.1.4 Dr. Verma has shown to have visited the house of S<sup>r</sup>/Shri Murarilal Gupta holder of CGHS Token No.6478, Mool Chand, holder of token No.13884, Madan Sahnii Pareek, holder of token No.2032 Suresh Chandra Mathur, holder of token No.3278 and Nawal Kishore holder of token No.13932. The house of Shri Mool Chand has been shown visited 3 times i.e. on 1.11.1980, 15.12.1980 and 6.1.1981 and the houses of rest of the aforesaid persons have been shown to have been visited once in each case to examine either themselves or the family

members of these card holders. None of these persons has called Dr. Verma to their respective houses and as such these visits shown to have been paid by Dr. Verma are not genuine.

3.1.5 On 14.11.80, Dr. Verma has shown to have paid a visit and examined Shri B.L. Mathur. The address has been shown as Ghatgate and the token number has been shown as 5128. The token No. 5128 belongs to Shri Nanak Ram Narain, who resides in Ghatgate locality whereas Sh. B.L. Mathur is residing at Motikatra and his token No. is 6553. Dr. Verma has shown 6 other visits to the house of Shri B.L. Mathur for which the token No. and address has been shown correctly. It shows that the visits on 14.11.1980 shown to have been made to the house of the holder of CCS token No. 5128 is not genuine, and thus, the claim made and obtained for this single visit is not genuine.

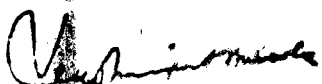
3.1.6 Thus Dr. V. Verma has claimed and obtained conveyance allowance for the above mentioned visits which are not genuine. A sum of Rs. 288.75 corresponding to these visits has been falsely claimed and obtained by Dr. V. Verma from Government for these visits for the period.

3.1.7 Thus Dr. Verma has displayed lack of integrity, failed to maintain devotion to duty and acted in a manner which is unbecoming of a Government servant. He has thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules 1964.

#### 4.0 Case for the Defence

4.1 It is the case of the Charged Officer that the charges framed against him are "motivated" and that "the prosecution effort has been to exploit

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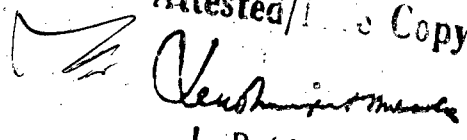
L. P. SHUKLA  
Advocate

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A77

minor clerical inaccuracies rather than imputing any malefide intent or even vaguely alleging undeserved pecuniary advantage." The CO has alleged that the institution of CBI enquiry against him is the outcome of enmity between him and one Dr. PC Meena, who was working under him. That he and his wife had been man-handled by Dr. Meena's men on 6.9.81 and when this incident was reported by the CO to the Director, CGHS, Dr. Meena was transferred to another dispensary in Jaipur, which only infuriated him further; "with the help of his relation/friend, Mr. P.D. Meena, CBI inspector at Jaipur" to start a CBI enquiry against the charged officer. It is the contention of the CO that in the FIR registered against him by the Special Police Establishment, it had been alleged that Rs.5,497/- had been obtained by the CO as false claims; which amount was reduced to Rs.288.75 at the end of investigations. The CO has further argued that "none of the FIR named persons was called as a Prosecution witness is conclusive evidence of the motivated manner of registration of the CBI case." Further that "the CBI dragnet closed on just 5 witnesses composed of 2 mazdoors, one durban and two Lower Division Clerks - none of which had found mention in the FIR. All of them belong to the economically weaker sections of employees and are vulnerable to pressure." It has been stressed by the C.O. that "the CBI thoroughly investigated more than 150 visits of the CO and he is being charged with false claims based on misunderstanding of the relevant rules and the statements of five discredited witnesses."

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P. SHUKLA  
Advocate

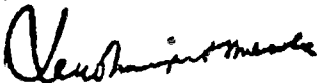
(64)

(A78)

4.2 It is the contention of the CO that the admissibility of conveyance allowance under Govt. letter F.4.11/72 CGHS(P) dt. 10.7.74 - Ex.S-4, for paying domiciliary visits/and performing other official duties is related to the maintenance of conveyance. That "the distance covered or actual use of conveyance for the purpose is irrelevant," It has also been argued by the CO that "no log book is required to be maintained. The linkage of conveyance allowance is to the number of visits, rather than to the distance. Finding fault for one odd domiciliary visit made by a CGHS doctor by not using his vehicle is untenable because such a contingency is covered in the stipulation that his vehicle should not be out of order for more than 15 days at a time."

4.3 The charged officer has pleaded that "out of the 150 odd visits investigated by the CBI the CO could produce just 5/6 witnesses who are pliable and, in the words of the PO himself, illiterate (2 mazdoors, a durban, besides one auditor and a lower division clerk). Their testimony is not sound when pitted against the documentary records of the CO." It has further been contended by the CO that "these witnesses were 'illetterate'. It is not really surprising that out of about 150 beneficiaries, the CBI could only produce witnesses from the economically weaker sections which is more susceptible to being browbeaten by the CBI. The deposition of all the witnesses were full of contradictions and all the witnesses had some reason to stick to their false statement." It is the plea of the CO that unreliable witnesses have been produced by the prosecution in an attempt to establish charges framed against him, but "the

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L. P. SHUKLA  
Advocate

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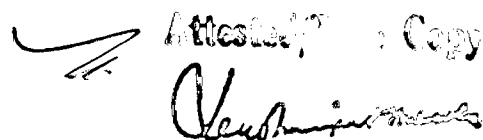
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prosecution has miserably failed to establish the charges and has at no stage been able to even hint at mala fide intent."

4.8 It has however been admitted by the CO there could be "minor clerical 'inaccuracies' due to the system of maintaining family folders, which was peculiar to only CGHS Jaipur and which "generated so much paper work that one or two odd inaccuracies are bound to creep in. "Additionally, the C.O. was Medical Officer-In Charge of Dispensary which calls for extra administrative work."

5.0 Assessment of Evidence

5.1 There is only one article of charge against the charged officer pertaining to the year 1980-81. The charge relates to claiming false conveyance allowance for a number of visits specified in Annexure II to the charge sheet. The crux of the case is the Ministry's letter dt.10.7.74 governing the grant of conveyance allowance to Medical Officer & Specialists under the CGHS-at Ex. 1-4. Vide this Ministry exhibit the maximum amount of conveyance allowance admissible, per month, to the medical officers was revised w.e.f. 1.3.74 and the entitled officers were categorised into three, with the stipulation that for entitlement to the maximum amount of conveyance allowance every medical officer was required to take on an average a minimum of 20 dispensary visits in a month, to be computed for a period of 3 months. Under these instructions, the Medical Officer drawing conveyance allowance was also required to maintain a visit book giving details of the visit- made-date, time, place of the visit and the name of the patient. This visit book was required to be seen by the controlling officer, before certifying the

Attested Copy  
  
P. S. SHUKLA  
Advocate

admissibility of the conveyance allowance in a particular month. According to these instructions if the conveyance could not be available for use, owing to its being out of order or its not being used for official journeys/domiciliary visits, for a period of 15 days at the time, no conveyance allowance would be admissible during that period. It is thus crystal clear from Ex.S-4, that the conveyance allowance is not dependent upon the distance covered but only on the number of visits made by a Medical Officer.

5.2 It is the case of prosecution that the visits specified in five paras of Annexure II to the charge-sheet are false and wrongly shown in the visit book - Ex.S-2 to claim conveyance allowance. Each case is dealt with in detail below:-

5.3 Visits paid to the residence of S/Sh. Karam Lal, Chander Mohan Sharma and P.C. Koyal Banni.

5.4 It is the case of the prosecution that as per the clarification issued by the Director CGHS vide letter dt. 14.4.62 - Ex.S-33 in response to the CBI's letter dt. Ex.S-32, visit paid to one residence to consult/examine two patients of the same CGHS card holder i.e. of the same family, can not be counted as 2 visits for the purposes of claiming the conveyance allowance. Director CGHS in Ex.S-33 has clearly stated that if patients belong to the same household and stay in the same building, the visit can be counted only as a single visit. A perusal of the visit register of the CO - Ex.S-2 clearly shows that on 19.12.60 the CO examined Vikky and Mrs. Lal, daughter and wife of Shri Kesar Lal, holder of CGHS Card No.1795, at their residence at Brahm Puri. The time of examination is given as 9 AM and 9.05 AM respectively. It is the case of the charged officer that they are no departmental instructions to bar the examination of two patients, during the same transaction in one house and claim the same as two visits. The charged officer has claimed that even after the clarification

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Advocate

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given in Ex.8-33, no general circular or clarification has been issued in this regard. On this point the CO appears to be <sup>under</sup> a wrong impression. No specific instructions appear necessary, since it appeals to the common sense that examination of one or more patients, in one house at a time can only be counted as a single visit. The time difference in the examination of these two patients in question is only 5 minutes, and both were examined during his one visit to the residence of Sh. Kesar Lal as such the ~~visit~~ visit can be counted only as one and not two.

5.5 With regard to the allegation against the visit paid to the residence of S/Shri Chander Mohan Sharma and P.C. Kewal Ramni it is evident from Ex.8-2 that on 25.1.81 the CO examined Sharad and Sukumar, sons of Sh. C.M. Sharma, who were beneficiaries of CGHS card No.6312. The addresses given in both the cases is however different i.e. Bharadvaj Bhavan and Kamdriya Bhavan respectively and the time of examination is given as 6.10 PM and 6.30 PM. respectively. In this case the relationship of Sharad to Sh. C.M. Sharma is not specified but it is clear that both the beneficiaries were not examined at the same place and at the same time. According to Ex.8-33 the visit would only count as a single ~~visit~~ visit if "both the patients belong to the same house hold and were staying in the same building". Since in this case the visits have not been paid to one building but two different places, the visits have rightly have been counted as two.

5.6 Similarly as per Ex.8-2 the CO examined Sh. P.C. Kewal Ramni and one female member of his family on 9.2.81 under CGHS card No.6689, at the same address, although the time gap between the two examinations, is half an hour. This case would clearly fall within the scope of the clarification issued vide Ex.8-33 and hence should be counted as one visit. The CO's argument that the clarification at Ex.8-33 suffers from certain inherent defects like two

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different card holders sharing a house, Members of a house-hold falling ill at 2 premises, and requiring domiciliary visits and different card holders living in multi-storey building is basically wrong since it is clearly stated in Ex.5-33 that the tax visits is only to count as one if "both the patients belong to the same house-hold and were staying in the same building". The CO's further contention that his claiming the visits as tax has not been objected to by the CMO, the controlling officer, only shows that the verification conducted by the CMO was done in a very casual and superficial manner and only as a matter of routine.

3.7 Visits paid to the residence of Sh. P.C. Gupta

3.8 It is the case of the prosecution that Sh. P.C. Gupta was the next door neighbour of the CO and that the CO visited his house to examine the family members of Sh. Gupta on 7.3.81, 9.3.81, 12.4.81, 6.5.81, 22.5.81, 11.6.81 and 23.6.81 - as borne out by Ex.5-2; and claimed these visits for the purposes of conveyance allowance, contrary to the instructions on the subject. It has already been pointed out above that as per Ex.5-4 the conveyance allowance tax is dependent not upon the distance covered but upon the number of visits paid. Clarification on this point had also been sought by the prosecution, vide Ex.5-32, but the GA reply given in Ex.5-33 obviously does not go in their favour. The prosecution has not alleged that the visits are false or have been wrongly catered, but only that these are not to be counted for the purposes of claiming conveyance allowance. Since Ex.5-4 covers such visits, the case of the prosecution with regard to these 8 visits fails.

3.9 Visit paid to the residence of Sh. L.N. Shukla

3.10 It is the case of the prosecution that as per Ex.5-2 on 23.10.82, and 13.12.80, the CO examined Master Deepak S/o Sh. L.N. Shukla holder of CGHS card No.4924, which is wrong since the name of Sh. Shukla's son is Rajeev and not Deepak. Shri L.N. Shukla who appeared as his son's name as Rajeev. Ex.5-28 which is the family

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folder of Sh. Shukla also shows the name of his only son to be Rajeev Shukla. SW-5 has neither in his deposition nor in his statement, tendered to the CMI, at Ex.S-40 denied the visits of the CO to his residence on 23.10.80 and 13.12.80 to examine his son. The only point on which he is categorical is that his son is named Rajeev and not Deepak and that he does not remember his son ever being called as Deepak by the CO. In Ex.S-40, SW-5 stated that he does not remember whether for those visits any medicine was prescribed by the CO or not. In his deposition SW-5 has stated that normally medicines prescribed were issued from the dispensary except when they were already available in his house. The CO has rightly argued that the entry of "Deepak" in place of "Rajeev" could be an inadvertent slip, since the child was addressed only by the pet name of Titoo, as confirmed by SW-5 and that since the name of the child was further qualified with the name of the father, Card card No. and the Deptt. - I.B., there could be no mistake as to the identity of the patient examined. As claimed by the C.O. "the only slip is in writing the name of the patient which might have been the result of the multi-farious duties of the CO as Medical Officer incharge of the dispensary, which places a heavy burden on a person as a physician, as well as an administrator". He has further contended that "One error in writing a wrong name over the course of more than one year cannot be treated as a crime. Four-fold factors like name of father, department of card holder, his token number and address, however, leave little room for doubt as to the identity of the beneficiary. No evidence has been produced by PD during Regular Hearing to the contrary". This contention of the CO is full of substance. As such the charge of false visits paid to the residence of Sh. L.N. Shukla is found to be unsubstantiated.

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Advocate

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9.11 Visits paid to the residences of S/Sha. Murarilal Gupta, Mool Chand, B.S. Parook, S.C. Mathur and J. S. Mathur.

9.12 It is the case of the prosecution that the CO was not called to the residence of any one of the aforementioned beneficiaries of the CGHS; yet visits to their houses are indicated in Ex.5-2 by the CO to claim conveyance allowance.

9.13 All the five above mentioned persons, appeared as witnesses. Murarilal Gupta, Asstt. Audit Officer, appeared as SV-2 and confirmed his statement at Ex.5-35, SV-2 denied his deposition and in Ex.5-36 that he had ever called the CO or any other Doctor of the said dispensary at his residence to examine either himself or any other member of his family. On seeing the entry at serial No.11, showing a visit to his house on 24.1.51 at 10.05 to examine his son Ajay, at Ex.5-35, SV-2 denied the visit and also stated that the Chandpol Bazar address indicated therein was wrong, as he had already vacated the said house and shifted to a near by locality in Brahapuri. During his cross-examination, SV-2 admitted that it was his duty to have the address changed on his CGHS card; but he had not <sup>done</sup> so; perhaps because the change of address did not entail a change in the dispensary. The C.O. has argued that since the address on the card had not been changed, he wrote down the address available thereon, in Ex.5-2 and that he "could not have detected the discrepancy in address as even local residents are hard put to exactly identify a particular house as belonging to a particular locality". It has also been pointed out by the CO that Chandpole and Brahapuri are adjacent <sup>localities</sup> ~~localities~~ and that since he was posted in Jaipur for <sup>a</sup> short duration, he could not personally identify the different localities. The CO has contended that the denial of SV-2 of a domiciliary visit by the CO to his residence is an attempt to cover up his lapse in not having the address changed on his CGHS card.

9.14 The C.O. has, however, drawn attention to Ex.5-15, which is the family folder of SV-2, which is the family folder of SV-2, in which there is an entry on the card pertaining

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Advocate

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to Master Ajay, for 24.1.81, indicating drawal of medicines in the form of two syrups. It is the C.O.'s contention that this entry is proof of the fact of his having visited SW-2's residence to examine his son. This plea is untenable since all that Ex.8-23 proves is that the C.O. examined Master Ajay on 24.1.81, it does not in any way support the contention of the C.O. that a house visit was paid. For if that be the case, then Ex.8-23 also contains entries for the dates 12.1.81 and 16.3.81, amongst others, with no corresponding entries in Ex.8-2. The C.O. also failed to confront SW-2 with Ex.8-23 to verify his contention or to put on record the reply of the witness. In view of the express denial of SW-2 of having called C.O. to his residence and not changing his stand even in the cross-examination, the plea of the C.O. merely on basis of Ex.8-23 holds no ground. That SW-2 failed to have his address changed on the CGHS card, is not within the purview of this enquiry. No other evidence, documentary or oral has been adduced by the C.O. to dispute the veracity of SW-2's statement. This charge, therefore, is held to be substantiated.

5.17 Sh. Mool Chand - Three domiciliary visits are said to have been performed in the case of Shri Mool Chand holder of token No.1384; i.e. on 1.11.80, 15.12.80 and 6.1.81. This is evident from Ex.8-2 which shows that on the three occasions Sh. Rajesh S/o Shri Mool Chand - SW-5 was examined. SW-5 is illiterate, as admitted by him during his deposition, but on being read out, he has confirmed his statement at Ex.8-27. During the enquiry he has repeated the stand taken in Ex.8-27, that the C.O. never visited his residence. In fact SW-5 has stated that he does not know the C.O. at all nor has he ever consulted him; or visited the Dispensary at Chaura Hasti. That only his wife used to visit the Dispensary for treatment of herself and the Children. Ex.8-27, which is the family folder of SW-5 does not support the deposition of SW-5, as it clearly holds a card in the name of SW-5 himself (addressing Dispensary taken on various occasions right from March 1980 - June 81. That all these entries are incorrect or false, is

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not the prosecution brief. All these entries clearly show that the statement of SW-5 during his cross-examination, that "I had never visited CGHS dispensary, Chora Rusta for my medicine" to be utterly false. Ex. S-27 does not have any entry of medicines having been given in the name of Rajesh on 1.11.80, 15.12.80 or 6.1.81. It is clear from Ex. S-27, as contended by the CO that <sup>SW-5's</sup> son Rajesh had 71 consultations between 19.1.80 and 30.12.81 from the dispensary, but he does not explain as to how the patient was not issued any medicines on any of the dates indicated in Ex. S-2. CO had taken support of the family folder in respect of SW-2, but has failed to do so in the case of SW-5. This goes to show that Rajesh s/o SW-5 was not examined at all on the said three dates.

As mentioned above, SW-3 has not correctly deposed with regard to his on treatment from the CGHS dispensary and he may be lying in respect of the domiciliary visits also; but no substantial proof has been addressed by the CO in support of his contention - in fact even the examination of Rajesh is not borne out by Ex. S-27. Further in Ex. S-39 recorded on 31.3.82 SW-5 had stated, in the concluding para that the CO had visited his house on the previous day to influence <sup>Ex-</sup> in the CBI investigation on being held against <sup>the C.O.</sup> Ex. S-39 had been made

all. From the evidence brought on record, the three visits shown to have been made to the residence of SW-5 appear to be wrong and hence the ~~CO's~~ go in respect of these visits holds good.

5.16 Shri B.K. Pareek - Shri Bhagwan Sahay Pareek, holder of Token No. 2032 appeared as SW-1, and deposed that "No visit was made till date nor I was aware that the Doctors <sup>working</sup> visit to the beneficiaries house also". SW-1 was ~~examined~~ as a Darbman, on shift duty, at the relevant point of time. As per Ex. S-2, CO paid a visit to the residence of SW-1 on 1.11.80, to examine N.K. Pareek s/o SW-1 at 8.10 P.M. That

N.K. Pareek is the son of SW-1 is confirmed by Ex. S-29 which is the family folder on SW-1, Ex. S-29 however,

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does not show that on 1.11.80, the CO had examined N.S. Kulkarni. The CO has argued that SW-1 has contradicted himself when at one stage he has said that he was unaware of doctors' paying house-visits and at another (during cross-examination) has said that Dr. Indu Verma had been called in 1982 - by which time, the said Doctor had been transferred out of Jaipur. Even if this argument be accepted, it is to be noted that the question was asked in relation to examining SW-1's wife by a lady doctor; whereas under inquiry is the visit paid by the C.O. to examine the son of SW-1 on 1.11.80 which is not borne out by Ex.8-29. It is curious to note that whereas the CO has relied upon the family folders of witnesses in support of his contention, where the corresponding entries exist; he has blissfully ignored the same, as in this case, where the supportive evidence is non-existent. That the veracity of the witness is to be doubted has to be borne out by documentary evidence. Since certain entries made in Ex.8-2 are under dispute, in the absence of supportive documentary evidence, they cannot be treated as genuine. CO has not adduced any other evidence, except relying on Ex.8-2 in his defence. In respect of this visit, therefore, the charge of entering a false visit in Ex.8-2 stands.

3.17 Shri Suresh Chandra Mathur - Shri S.C. Mathur, appeared as SW-3 and stated that "I have perused Ex.8-2 and state that entry dt. 8.1.81 made by the CO in respect of visit to my residence is false, as he never visited my residence." In his statement at Ex.8-27, too, SW-3 denied having called the CO or any other Doctor to his residence, although he has admitted knowing the CO as the incharge of the dispensary. As per Ex.8-2, the CO examined SW-3 at 5.30 PM at Gata Baza Bhandari, Amer Road. Ex.8-30, which is the family folder of SW-3, does show an entry against the name of SW-3 for 6.1.81 and in this <sup>besides</sup> medicines prescribed, E-Ray and some other test had also been prescribed. On 16.1.81, SW-3 had been referred to N.S. Kulkarni which implies that the visit was continuous, since on 5.1.81, too SW-3 had been referred to N.S. Kulkarni.

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SW-3 was confronted with this factual position during the cross-examination but stated that "I do not remember if I have ever taken any treatment from the CO or not. There was no special investigation of mine including special medical X-Ray or cat-scan, upto April, 1982." This is obviously contrary to the documentary evidence on record, through Ex.8-30. It clearly proves that SW-3 was ~~deposited~~ depositing falsely. As such the charge relating to this visit is found to be unsubstantiated.

9.18 Sh. Naval Kishore - CGHS Token No. 13992.

9.19 Sh. Naval Kishore, appeared as SW-4 and appeared to be illiterate. In his deposition as well as in his statement at Ex.8-38, he has denied knowing the CO or having called him to his residence to treat any member of his family. Ex.8-2 indicates that on 28.11.80, the CO examined Asha D/o the CO at 8.40 AM. Ex.8-26 is the family folder of SW-4 which confirms that SW-4 has a daughter named Asha, with date of birth as 7.3.80. Ex.8-26 does not however show that the CO had examined Asha on 28.11.80. The only entry on her card is for dated 7.1.81 and surprisingly the age at that time on the respective card is shown as 5 months. During the cross-examination, SW-4 was specifically asked about the date of birth of En. Asha; and he had stated it as 24.8.80; which tallies with what appears on the card of En. Asha in Ex.8-26; though on the cover of Ex.8-26, the date of birth is indicated as 7.3.80. There is apparently a mistake in recording the date of birth. In this case also except Ex.8-2, no other evidence has come forth to support the CO's contention.

9.20 Shri B.L. Mathur - It is the case of the prosecution that the visit on 14.1.80, shown in Ex.8-2, to the residence of Shri B.L. Mathur is incorrect. On perusal of Ex.8-2 it is seen that as per entry made by C.O. he examined Shri B.L. Mathur of AG's Office on 14.11.80 at 8.15 AM, with card No.5123 at Chabgate. As per Ex.8-31, which is the

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family folder of N. nag Ram Harolia, he is the holder of Token No.5128 and his address is of Ghatgate, Jaipur. Shri Harolia belongs to A's Office. The correct particulars of Shri B.L. Mathur are: token No.6993, residing at Botikatra. As per Ex.4-2, CO had visited the residence of Shri B.L. Mathur on 20.11.80, 2.12.80, 23.2.81, 16.3.81, 4.4.81 and 23.5.81, when the correct token no. and address have been indicated. In defence the CO has stated that "It is well known that the CENS system works well within its limitations. The inherent limitations however include cases of imprisonment and gross misuse of the facilities. Specially in CENS organisation outside Delhi where there are hardly any/no Government residential colonies. The CENS beneficiaries by imprisonment and gross misuse get the facilities from CENS for their non entitled friends, neighbours and relations." It has also been contended by the CO that "Visits are not infrequently made on the requests of minor children or even neighbours. Very often the beneficiaries do not bring their cards and only give the number as they remember it. An urgent domiciliary visit cannot be denied by a CENS doctor simply because the card has not been produced while asking a visit and so a mistake may occur in communicating the card number etc. while asking for an urgent visit from a CENS doctor." and that "It is likely that the wrong entry in the case of Shri B.L. Mathur was made because of any of the above, or a combination of the above, factors. The visit itself, was, however, performed as is borne out by the record. There was no malafide intention." Those arguments of the CO are a little farfetched for even in the circumstances mentioned by him, the address cannot possibly be wrong; especially when on 14.11.80, date of the visit in question, he had examined Sh. B.L. Mathur himself and not any minor member of his family.

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Advocate

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3.21 It has been argued by the C.O. ~~has contended~~ that "out of 150 odd visits investigated by the CBI, the PO could produce just 6 witnesses "who are pliable and illiterate" and their testimony is not sound when pitted against the documentary records of the CO". Ex.8-1 is the FIR dt. 11.12.81 filed against the CO in which it had been alleged that the CO had made false entries in Ex.8-2 "to cheat the deptt. by claiming false/bogus conveyance allowance totalling to Rs.5,497/-". After investigations however, the charge against the C.O. whittled down to only Rs.288.75 p. for the 21 visits said to be false, as per details given in Annexure II of the charge sheet. All the said visits have been discussed above, in detail, with reference to the documentary evidence on record and as would be evident, out of those 21 visits ~~only~~ only 9 visits can be said to be not genuine, involving an amount of Rs.123.75. (Apparently each visit amount to allowance of Rs.13.75 as computed from the figures of 21 visits and amount of Rs.288.75). In those cases, the entries in Ex.8-2, which are not duly supported by the corresponding entries in the family folders or the categorical statements of the witnesses, cannot be termed as "clerical inaccuracies". The CO has pleaded that due to the system of maintaining family folders, "which is peculiar to only CGHS Jaipur," a lot of paper work was generated and hence "one or two ~~clerical inaccuracies~~ inaccuracies are bound to creep in". This plea only shows that entries in Ex.8-2 were not made at the time of visit or immediately thereafter for otherwise no such mistakes could "creep in", if all the records are maintained properly and timely.

3.22 The C.O. has also contended that as per Ex.8-33, the primary responsibility is that of the C.M.O., who as per Ex.8-4 has to verify the visit ~~register~~ register - Ex.8-2 to determine the admissibility of conveyance allowance. In the instant case, except for visits referred to

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of Annexure II, i.e. where two visits each were claimed for examining two members of a household, and in respect of which CMO's role has been commented upon, the CMO (D.L.K.) could not be expected to verify the details of each entry made. It is in fact the primary responsibility of the charged officer to ensure that correct entries are made in Ex.8-2.

5.23 Nevertheless, it may be pointed out that the sum involved is indeed a petty amount for a senior Doctor of the CO's standing and the fact that the CO has already suffered for seven long years.

6.0 FINDINGS

6.1 In view of the above discussions, I find the charge to be partially proved.

*Vijai L. Sharma*  
(VIJAI LAKSHMI SHANNA)  
INQUIRY OFFICER AND  
COMMISSIONER FOR DEPARTMENTAL INQUIRIES

PLACE: NEW DELHI.

DATE: 31-8-1988.

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Advocate

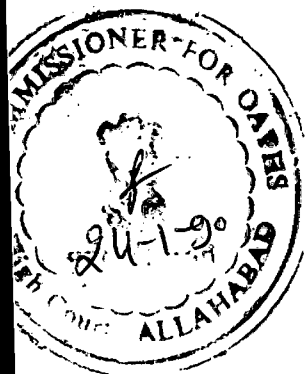
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received in this Ministry vide his letter dated the 11th November, 1989 and 12th December, 1989 which are under examination by the Disciplinary Authority. The delay in finalisation of the inquiry proceedings has been partly due to changes of Inquiry Officer and presenting officers on account of administrative reasons and partly due to non-finalisation of the issue of engagement of the Defence Assistant. The applicant also did not inspect the listed documents in time.

13. That in reply to the contents of paras VI.16 to VI.21 it is submitted that the eligible Central Health Service medical officers working as Senior Medical Officer in the scale of pay Rs. 3000-4500/- have been promoted to the post of Chief Medical <sup>Officers</sup> ~~XXXXXX~~ carrying scale of pay Rs. 3700-5000 from time to time. Till now Senior Medical Officers upto S.No. 779 of the Civil List of Senior Medical Officer as on 1.8.82 have been promoted to the post of Chief Medical Officer. Representations dated the 28.3.88, 12.9.88 and 10.10.89 from the applicant were received and considered by the competent authority. According to existing instructions, officers are barred from promotion to the next higher post if any disciplinary proceedings are pending against the officer. As disciplinary proceedings were pending against the applicant, he could not be promoted to the post of Chief Medical Officer.

14. That in reply to the contents of paras VI.22 and VI.23 it is stated that the applicant was not considered for the post of Chief Medical officer due to pendency of the aforementioned disciplinary proceedings. Departmental promotion Committee has not met in 1989 on account of which the applicant's name has not been considered. Consequently,

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Dr. S.C. Dutt being the seniormost Chief Medical Officer in CGHS, Lucknow was assigned the charge of the office of Deputy Director, CGHS, Lucknow. For the same reason Dr. R.D. Verma who was junior to the applicant was promoted as Chief Medical Officer and posted as Medical Officer Incharge at CGHS, Dispensary No. 2 at Lalbah, Lucknow. As such the applicant's contention that he was subjected to humiliation does not hold water.

15. That in reply to the contents of paras VI.24 to VI.27, submission made in paragraphs 12 above are reiterated.

16. That in reply to the contents of paras 4.28 it is stated that the position has been explained in the <sup>young</sup> foreign paragraphs of this Counter affidavit.



GROUND'S

17. That para-wise comments are given below :-

Para (A) and (B) :-

position has been explained in paragraphs 12 above.

Paras (C) to (E) :-

In the investigations conducted by the CBI, it was found that prima-facie a case existed against the applicant relating to claiming and obtaining false conveyance charges during 1980 and 1981. Accordingly disciplinary proceedings for minor penalty under Rule 16 of the CCS (CCA) Rules, 1965 were instituted against the applicant.

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Para (F) to (H) :-

Officers against whom disciplinary cases are pending are barred from promotion to the next higher post during the pendency of such proceedings.

18. That the contents of para VII and VIII need no comments.

19. That in view of the submissions made in the preceding paragraphs, the relief sought for in para IX and interim order prayed for in para X of the application are not tenable and the application is liable to be dismissed with costs.

20. That the contents of para XI and XI are formal and need no comments.

Lucknow ;

Dated : 24-1-90

X Suresh Ch. Shrivastava  
Deponent.

VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 - 4 are true to the best of my knowledge and those of paras ~~are~~ 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 are true <sup>based on records</sup> on my belief. No part of it is false, and nothing material has been concealed. So help me God.

Signed and verified this the 24 day of 1990 at Lucknow.

Lucknow ;

Dated : 24-1-90

X Suresh Ch. Shrivastava  
Deponent.

I identify the deponent who has ....7.



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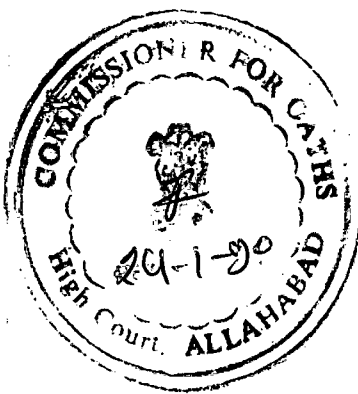
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signed before me and also personally known to me.

J. (S. S.)  
Advocate.

Solemnly affirmed before me on 24-1-90 by the deponent Dr. S. E. Patta at 5 am./p.m. who is identified by Shri Dr. D. Chandra Advocate, High Court, Lucknow Bench, Lucknow.

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



Raj Kumar Mishra  
JUDGE  
HIGH COURT, ALLAHABAD  
1st Bench  
No. 90/12-5  
Date 24-1-90

(A.P.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,  
LUCKNOW.

OA No. 308/89 (L)

Dr. V. Verma . . . . . Applicant

Versus

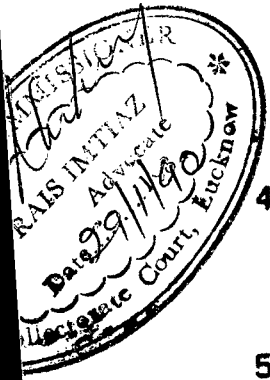
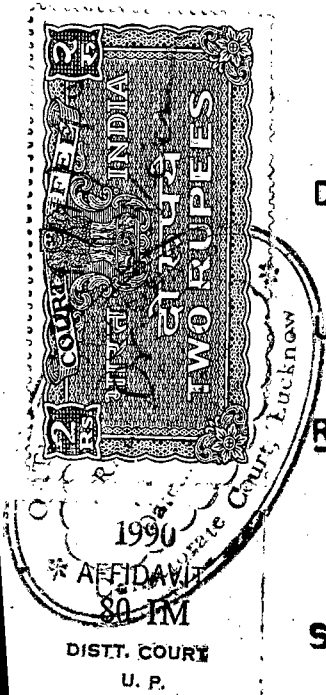
Union of India & others . . . . . Opposite Parties.

REJOINDER AFFIDAVIT TO THE COUNTER AFFIDAVIT FILED BY OPPOSITE PARTIES

I, Dr V. Verma, aged about 50 years, S/o Sri R. N. Verma, Senior Medical Officer, Central Health Services, C.G.H.S. Lucknow, resident of B-251, Indira Nagar, Lucknow do hereby solemnly affirm and state on oath as under:-

1. That the deponent is applicant in the above noted case and as such is fully acquainted with the facts of this case and the following facts are deposed hereunder:-
2. That the contents of para 1 to 4 of counter affidavit need no comments.
3. That in reply to para 5 of counter affidavit it is submitted that the applicant was appointed in C.G.H.S. on 23-12-66 (22-12-66 in para VI(1) of the application is a typing error). The date of appointment in Central Health Services is 19-6-67.
4. That contents of para 6 of counter affidavit are not admitted as framed.
5. That the contents of para 7 of counter affidavit it is submitted that 58 visits in the F.I.R. relate to 9 card holders. It is surprising that none of the persons whose names were cited

contd..2



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2/2/90

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by C.B.I. in the F.I.R. could be produced by the presenting officer of C.B.I. before the inquiry officer in support of the case. The claim by C.B.I. that the department was cheated for Rs. 5497/= came down to Rs. 288/75 Paise after detailed investigation, the amount has further shrank to Rs. 123/75 Paise in the report of inquiry officer (Annexure 9 of application).

It is necessary to bring this fact before this Hon'ble Court that C.B.I. after about 2 1/2 months of preliminary enquiry lodged F.I.R. on 11-12-81.

- 6. That the contents of para 8 of counter affidavit are not admitted as framed. Memorandum No. C 13011/2/82-V&CD (V & EMR) dated 7-7-83 (not 12-4-83) was delivered to the deponent on 16-7-83; deponent replied on 22-7-83. Thus there was no delay on the part of the deponent.
- 7. Contents of para 9 of counter affidavit need no coment.
- 8. That in reply to para 10 of counter affidavit it is submitted that another charge sheet dated 1-8-84 on the same charges delivered to deponent on 7.8.84; was replied on 14-8-84. Thus there was no delay on the part of the deponent. It is evident that the ~~department~~ department issued the charge sheet dated 1-8-84 after a lapse of one year from receiving the reply dated 22-7-83 given by the deponent. Presenting officer and inquiry officer were appointed by the department after a lapse of six months on 22.3.85.



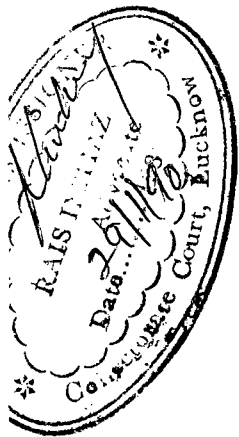
*[Handwritten signature]*

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- 9. The contents of para 11 of counter affidavit need no comments.
- 10. The contents of para 12 of counter affidavit are not admitted as framed. It may be mentioned here that the enquiry officer took about 3 1/2 years to complete the enquiry and submitted the report on 31-8-88, as is evident from annexure 9 of the application. The opposite parties reasons best known to them did not finalise the enquiry for fourteen months, after receiving the report of inquiry officer. Letter dated 18-10-89 delivered the report of inquiry officer to the deponent on 30-10-89. The deponent represented on 11-11-89 within given time.

Supplementary representation dated 11-12-89 was given by deponent enclosing copy of department circular no. A 27023/2/87-CHS V (A) dated Nov. 2, 1989 waving off the condition of maintenance of visit book effective retrospectively w.e.f. 1-10-87 (It may be pointed out that visit book has been the only record of visit of the doctor, and that it was on the basis of this record that conveyance allowance was paid. It is on the basis of this record only that this departmental enquiry is pending against the deponent for the last 9 years. This very condition of ~~deponent for the~~ maintenance of visit book has now been abolished by the department.

It is further submitted that there was no delay on the part of the deponent in inspection of the listed documents, as alleged by the opposite parties. It is evident from deponent letters dated 2/1/88, 5/1/88, 27/1/88 and 12/2/88. It may be clarified here that letter dated 8/1/88 by inquiry officer was delivered to the deponent on 10/2/88, well after the date fixed for inspection of documents, thus inspection could not be done. The inspection of some of the listed documents was given by C.B.I. on 23/2/88, but 5 listed documents were



AP 02

not shown to deponent inspite of asking for them. The deponent also requested Inquiry officer by letter dated 27/2/88 and subsequent reminder dt. 29/3/88 and 1/8/88 for the documents. The deponent also wrote to C.B.I. for the inspection of the remaining documents on 9/8/88. After all these efforts of the deponent the C.B.I. supplied with the photocopy of the documents after a lapse of 4 months, thereby delaying the inquiry.

It is evident that the inquiry officers have repeatedly written to the deponent to obtain the clearance/consent from the Disciplinary Authority, with regards to engaging the Defence Assistant. They have also written letters to the controlling authority and Disciplinary authority in this regard on 19/3/86, 3/12/87. As directed by the inquiry officers the deponent wrote letters to disciplinary authority on 29/3/88, 2/1/88, 5.1.88 and 27.1.88 to clear defence assistant and expedite finalisation of Defence Assistant to enable the deponent to proceed further in the long pending enquiry, but no action was taken by Disciplinary authority on these requests, resulting into undue delay in the proceedings of the enquiry. A chart showing the delay on the part of department in finalising the enquiry is annexed as annexure no. RA-1 to this rejoinder affidavit.

11. That contents of para 13 of counter affidavit are not admitted as framed. In case of long pending enquiry as in the case of deponent he was liable to be promoted even on adhoc basis in terms of Govt. of India, Dept. of Per & Trg. office Memo No. 22011/2/86-Estt(A) dated the 12th January, 1988 = Annexure SA-I to supplementary affidavit.



A103

There is also law laid down by Hon<sup>ble</sup> Central Administrative Tribunal that Minor Penalty Charge Sheet is no bar to promotion; as in the case of Bhupati Kumar Sardar Vs. Union of India and others decided on 8/7/88. (1989) 10 ATC 209.

12. That in reply to para 14 of counter affidavit it is submitted that non consideration of deponents name for promotion and subsequent review due to pending enquiry is violative of Article 14, 18 and 21 of the constitution of India. It is also violative of law laid down by Hon<sup>ble</sup> Supreme Court of India. It is also violative of OM. dated 12-1-1988. This descrimination caused humiliation and mental agony to the deponent. In view of this reply the contents of para 14 of counter affidavit are not admitted.

13. That submission made in reply to para 12 of counter affidavit along with content of para VI 24 to VI 27 of the application are reiterated as correct, and contents of para 15 of counter affidavit are denied.

14. That contents of para 16 of counter affidavit are denied. Contents of para VI 28 of the application are reiterated as correct.

15. Contents of para 17 to 19 of counter affidavit are not admitted in view of the facts mentioned in foregoing para and further contents of para A to H of grounds and para VII and VIII are of the application are reiterated as correct; and the applicant is entitled for the relief claimed. The application deserves to be allowed with cost.

16. Para 20 of counter affidavit needs no comments.



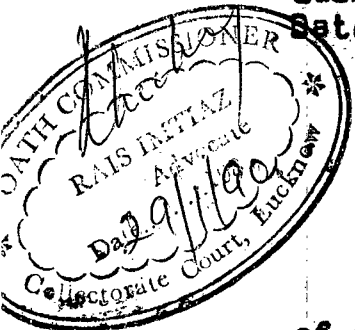
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In view of the foregoing paragraphs it can be seen that the process of enquiry against the applicant was started as far back as 11.12.81, when C.B.I. filed a F.I.R. against the applicant. About 9 years have passed and the disciplinary proceedings have not yet been completed for no fault or delay on the part of the applicant, as will be evident from the Annexure No. RA-I.

That the applicant has a legal right for consideration for promotion. Disciplinary proceedings based on minor penalty charge sheet could never stand in the way of getting promotion to the applicant. It is also been held that where departmental enquiry is prolonged for unduly long time withholding of vigilance clearance is not justified.

LUCKNOW:  
Dated: 29<sup>th</sup> Jan 1990.

*[Signature]*  
DEPONENT



VERIFICATION

I, the above named deponent do hereby verify that the contents of paragraphs 1 to 16 of this affidavit are true to the best of my knowledge. No part of it is false and nothing material has been concealed, so help me God.

Signed and verified on this 29<sup>th</sup> day of January, 1990 at Lucknow.

LUCKNOW:  
Dated: 29<sup>th</sup> Jan 1990.

*[Signature]*  
DEPONENT

I, identify the deponent who has signed before me.

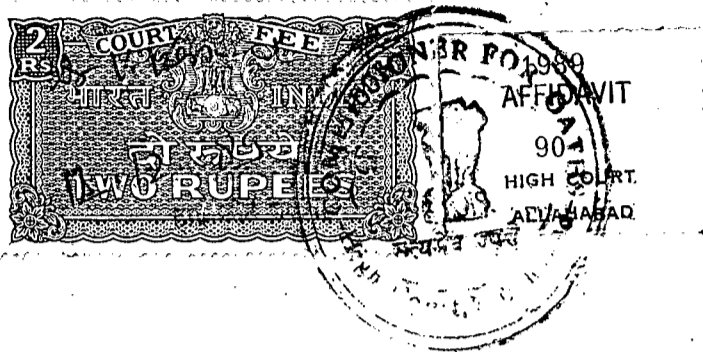
*A. K. Bhattacharya*  
ADVOCATE.

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ADMINISTRATIVE  
BEFORE THE HON'BLE CENTRAL TRIBUNAL, LUCKNOW.

308

O.A.No. 308/89(L)



Dr. V. Verma ----- Applicant  
Versus  
Union of India and Others ----- Opp. Parties

SUPPLEMENTARY AFFIDAVIT

I, Dr. V. Verma, aged about 50 years, S/o Shri R. N. Verma, Senior Medical Officer, Central Health Services, C.G.H.S., Lucknow, resident of B-251, Indiranagar, Lucknow, do hereby solemnly affirm and state on oath as under :-

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1. That the deponent is applicant in the above noted case and as such is fully acquainted with the facts of this case and the following facts are deposed hereunder:

2. That the deponent filed an application for quashing of the departmental proceedings pending against the applicant since 1981 and to direct the opposite parties to promote the applicant on the post of Chief Medical Officer from 14.3.88 when the applicant's next junior was promoted.

3. That it is necessary to mention here that



A107

the names of the Senior Medical Officers (pay scale Rs. 3000-4500) were considered by the Departmental Promotion Committee in the year 1987 for promotion to the post of Chief Medical Officers (pay scale Rs. 3100-5000) on the basis of seniority cum fitness, in order to remove stagnation in the cadre and the deponent's name was also considered by the Departmental Promotion Committee as per C.C.S. (C.C.A.) Rules 1965. A relevant photo copy of the Rules is annexed as Annexure SA-1 to this affidavit.

4. That it is also necessary to bring before this Hon'ble Tribunal that subsequently in the year 1989 August, the Departmental Promotion Committee considered the name of the deponent for Chief Medical Officer (Non functional Selection Grade Promotion) in the pay scale of Rs. 4500-5700 because the deponent was eligible for the same.

5. That vide order dated 25.10.89, the Deputy Director, in violation of Rule 7 of the said Rules, directed the deponent to hand over the charge of the Dispensary to Dr. R. D. Verma who is junior to applicant. It may be clarified here again that the applicant's name in the seniority list of Senior Medical Officers finds place at serial no. 340 and the name of Dr. R.D. Verma is at serial no. 608. It is specifically



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mentioned ~~herein~~ in the aforesaid Rule that where the junior is promoted earlier than his senior, whose case is placed under sealed cover, the junior officer should not, as far as possible, be made the immediate superior of the senior, whose case is kept under sealed cover.

6. That if the above order dated 25.10.89 is implemented the deponent will have to work under his junior which will naturally cause great humiliation to the deponent.

7. That the deponent after filing the application sent a representation to the Deputy Director against the order dated 25.10.89. A photo copy of the representation is annexed as Annexure 5A-2 to this affidavit. The representation is still lying undisposed.

8. That a representation has already been submitted by the deponent against the report of the enquiry officer which has already been annexed with the application as Annexure No. 9 and the representation of the deponent is annexed as Annexure No. 5A-3 to this affidavit for kind consideration

of this Hon'ble Tribunal. A perusal of representation will make it clear that ~~conclusion~~ the conclusion reached by the enquiry officer is not based on facts therefore bad in law & violative to principles of natural justice.

Lucknow

DEPONENT

Dated: 12.12.89.

VERIFICATION

I, the deponent named above do hereby verify that the contents of paragraphs 1 to 8 of the above affidavit are true to my own knowledge.



A109

No part of it is false and nothing material has been concealed, so help me God.

Signed and verified this the day of December 1989 at Lucknow.

Lucknow  
Dated: 12-12-89.

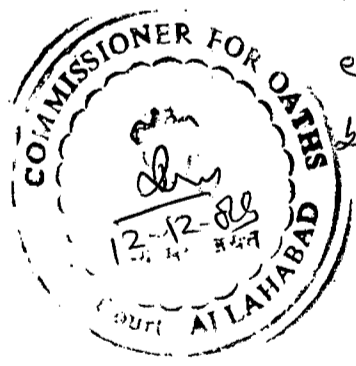
*[Signature]*  
DEPONENT

I identify the deponent who has signed before me.

A. K. Bhattacharya  
ADV. ASV.  
ADVOCATE

Solemnly affirmed before me on 12-12-89 at 5-30 P.M. the deponent who is identified by Sri A.K. Bhattacharya, Advocate, High Court, Lucknow Bench, Lucknow.

I have satisfied myself by examining the deponent that he has understood the contents of this affidavit which have been read over and explained by me.



*[Signature]*  
OATH COMMISSIONER  
High Court, Allahabad  
Lucknow Bench

No... 50/253  
Date... 12.12.89

Before the Hon'ble Central Administrative  
Tribunal, Lucknow

AI/10

O. A. No 308/89 (L)

Dr V. Verma vs Union of India & others

AN- SA-1

Supplement

to

Swamy's Compilation of

C.C.S. (C.C.A.) RULES, 1965

1988

Page 192, Decision 19 (a)

Substitute the following for the existing matter, retaining 19 (b) on pages 198 - 200:—

### Sealed Cover Procedure

Promotion of Government servants against whom disciplinary/court proceedings are pending or whose case is under investigation

Government of India, Dept. of Per. & Trg., Office Memo No. 22011/2/86-Estt. (A), dated the 12th January, 1988.

A reference invited to the Ministry of Home Affairs, O.M. No. 39/4/56-Estt. (A), dated the 3rd November, 1958, and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment of the Supreme Court in Civil Appeal No. 2964 of 1986 — Union of India and another v. Tajinder Singh decided on 26-9-1986. As a result of the review, and in supersession of all the earlier instructions on the subject (referred to below), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras. of this O.M. for their guidance:

O.M. No. 39/3/59-Estt. (A), dated 31-8-1960.

O.M. No. 7/28/63-Estt. (A), dated 22-12-1964.

O.M. No. 22011/3/77-Estt. (A), dated 14-7-1977.

O.M. No. 22011/1/79-Estt. (A), dated 31-1-1982.

2. Cases where "Sealed Cover Procedure" applicable.—At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:—

(i) Government servants under suspension;



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- (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;
- (iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise.

**2.1 Procedure to be followed by DPC in respect of those under cloud.**—The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending or contemplated against them or where the investigation in progress. The assessment of the DPC including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of.....in respect of Shri.....(name of the Government servant)'. Not to be opened till the termination of the disciplinary case/criminal prosecution/investigation against Shri..... The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

**2.2 Procedure by subsequent DPCs.**—The same procedure outlined in para. 2.1 above will be followed by the subsequent Departmental Promotion Committee convened till the disciplinary case/criminal prosecution/investigation pending or contemplated against the Government servant concerned is concluded.

**3. Action after completion of disciplinary case/criminal prosecution.**—On the conclusion of the disciplinary case/criminal prosecution, or an investigation which results in dropping of allegation or complaints against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the Junior most officiating person. He may be promoted notionally with



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reference to the date of promotion of his junior but he will not be allowed any arrears of pay for the period preceding the date of actual promotion.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC, in the normal course and having regard to the penalty imposed on him.

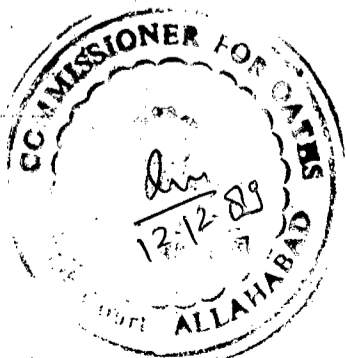
3.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, 'warning' should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Government servant, at least the penalty of censure should be imposed.

4. Six monthly review of "Sealed Cover" cases.—It is necessary to ensure that the disciplinary case/criminal prosecution/investigation instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, *intra alia*, cover the following aspects:—

- (i) The progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion;
- (ii) Scrutiny of the material/evidence collected in the investigation to take a decision as to whether there is a *prima facie* case for initiating disciplinary action or sanctioning prosecution against the officer.

If, as a result of the review, the appointing authority comes to a conclusion in respect of cases covered by item (ii) above, that there is no case for taking action against the Government servant concerned, the sealed cover may be opened and he may be given his due promotion with reference to the position assigned to him by the DPC.

5. Sealed Cover Procedure for confirmation.—The procedure outlined in the preceding paras. should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in a sealed cover by the DPC.



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6. Procedure for *ad hoc* promotion.—In spite of the six monthly review referred to in para. 4 above, there may be some cases, where the disciplinary case/investigation/criminal prosecution against the Government servant are not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him *ad hoc* promotion keeping in view the following aspects:—

- (a) Whether the promotion of the officer will be against public interest;
- (b) Whether the charges are grave enough to warrant continued denial of promotion;
- (c) Whether there is no likelihood of the case coming to a conclusion in the near future;
- (d) Whether the delay in the finalisation of proceedings, departmental or in a court of law or the investigation is not directly or indirectly attributable to the Government servant concerned;
- (e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after *ad hoc* promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau. Where the investigation as contemplated in para. 2 (iv) above is still pending, the C.B.I. or the other authorities concerned should be consulted.

6.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow *ad hoc* promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on *ad hoc* basis. Where the Government servant is considered for *ad hoc* promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution/investigation against him.

6.2 After a decision is taken to promote a Government servant on an *ad hoc* basis, an order of promotion may be issued making it clear in the order itself that—

- (i) the promotion is being made on purely *ad hoc* basis and the *ad hoc* promotion will not confer any right for regular promotion; and



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(ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the *ad hoc* promotion and revert at any time the Government servant to the post from which he was promoted.

6.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings or the investigation did not lead to criminal prosecution/disciplinary proceeding the *ad hoc* promotion already made may be confirmed and the promotion treated as a regular one from the date of the *ad hoc* promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his *ad hoc* promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para. 3 above.

(b) on

6.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the *ad hoc* promotion granted to him should be brought to an end.

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7. Sealed cover applicable to officers coming under cloud before promotion.—A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para. 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also.

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Clarification.—It has been decided that in case where the junior is promoted earlier than a senior, whose case is placed in the sealed cover, the junior officer should not, as far as possible, be made the immediate superior to the senior, whose case is kept in the sealed cover. This will not, however, apply in cases, where the case of the senior was not kept in the sealed cover and the senior was superseded by the junior.

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[Dept. of Per. & Trg., O.M. No. 22011/2/87-Estt. (A), dated the 6th April, 1987.]

Page 200, Decision 20

Delete.



O.A. No 308/89(L)

Dr. V. Verma vs Union of India & another

AW- S-A-2

CONFIDENTIAL

AMIS

To,

Dr. S.C. Dutt,  
Deputy Director,  
C.G.H.S.,  
Lucknow.

Sub: Representation against posting of Dr. R.D. Verma  
as M.O. Incharge C.G.H.S. Dispensary No. 2

Ref: Office order No. 3-90/89-C.G.H.S./LKO/2088-91  
Dated 25.10.89.

Sir,

Reference your office order No. 3-90/89-C.G.H.S./LKO/2088-91 dated 25.10.89, Dr. R.D. Verma C.M.O. and M.O. I/C C.G.H.S. dispensary No. 1 has been transferred as M.O. I/CCG.H.S dispensary No. 2, where I am M.O. I/C since Nov. 87. I have been instructed to hand over the complete charge of M.O. I/C dispensary No. 2 to Dr. R.D. Verma. Since there are no further orders of my posting, it means that I shall have to work as subcharge to Dr. R.D. Verma.

Following is submitted for your kind consideration and favourable orders :

(1) That in the civil list of senior Medical Officers of C.H.S as on 1.2.1988 my name is at Sl. No. 340, while the name of Dr. R.D. Verma is at Sl.No. 608 .

(2) That vide order No. A 32012/1/88-C.H.S. II Dated 14th March, 1988 and even No. dated 8th July, 1988 the under secretary to the Govt. of India ministry of Health and F.W. has circulated lists of promotions of Senior Medical Officers to the post of Chief Medical Officers of C.H.S. on an officiating basis. My name does not appear in the list; while many officers junior to me including Dr. R.D. Verma have been promoted to C.M.O.

(3) After release of promotion list of C.M.O. in March, 88 3 C.M.O's were posted at dispensary No. 1 and 2 C.M.O's at dispensary No. 3, while at dispensary No. 5, Dr. R.R. Kishore and at dispensary No. 6 Dr. V.K. Bansal, and subsequently at dispensary No. 3 Dr. A. Good all S.M.O's continued to work as M.O. I/C. Even amongst S.M.O there work S.M.O's Senior to Dr. A. Sood and Dr. V.K. Bansal who were not working as incharges. There were work also 3 C.M.O. who were not working as incharges. There is also precedence where amongst C.M.O. Seniors were not working as M.O. I/C while juniors were working as M.O. incharge; to name Dr. A.K. Mitra was made made M.O. incharge of dispensary No. 6, while C.M.O. Senior to him Dr ( Mrs.) I. Verma and Dr. (Mrs) N. Dutta were working as subcharge to Dr. R.D. Verma at dispensary No. 1.



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(4) Department of personnel and Training O.M.No. 22011/2/87-Estt (A) dated 6th April 1987 has given a clarification, "It has been decided that in case where the junior is promoted earlier than a senior, whose case is placed in the sealed cover, the junior officer should not, as far as possible, be made the immediate superior to the senior whose case is kept in the sealed cover"

(5) Since a departmental enquiry is pending against me for the last many years, even before the D.P.C. for promotion to the post of C.M.O. was held my name has not been released in the list of promotees.

(6) In view of the past precedence and the clarification of the Department of Personnel and Training O.M. No. 22011/2/87- Estt(A) dated 6th April 1987, it will neither be justified nor proper to post Dr. R.D.Verma as my immediate superior who is 258 No. junior to me.

(7) It is therefore submitted that I may be allowed to work as M.O. I/C C.G.H.S. Dispensary No. 2; and the order dated 25.10.89 be suitably amended to avoid harassment, humiliation and victimisation to me by posting my junior as immediate superior to me.

Thanking you.

Yours faithfully,

Dated: 15/11/1989.

(Dr. V. VERMA)



Before the Hon'ble Central Administrative Tribunal  
Lucknow

O. A. No 308/89(L)

Dr. V. Verma vs Union of India & another

AW-SA-3

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From: Dr. V Verma  
Senior Medical Officer  
CGHS Dispensary No. 2  
6 Valmiki Marg  
Lucknow (UP)

To : Dr. Veena Maitra  
Director (Vigilance)  
Ministry of Health and Family Welfare  
Govt. of India  
New Delhi

Sub: DEPARTMENTAL PROCEEDINGS AGAINST DR. V. VERMA UNDER RULE 16  
OF THE CCS (CCA) RULES, 1965.

Madam,

Kindly refer to your letter No. C-13011/2/82-V&CD(Vig)-dt. October 13/18, 1989 which was received by me on October 30.

As desired, my representation on the report of the Inquiring Authority is enclosed.

I request you to kindly give careful consideration to the points brought out by me in the enclosure. I would also like to reiterate that the departmental proceeding was started for imposing a minor penalty and, due to the pendency of the proceeding, I have been denied my promotion and stand superceded by as many as 430 doctors junior to me. The motivated CBI case and the long pending departmental enquiry have been causing me mental agony since 1981 and I shall be grateful if the department could take early sympathetic action.

Thanking you.

Yours faithfully

( Dr. V. Verma )

Dt. 11th Nov., 1989



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REPRESENTATION OF DR. V VERMA AGAINST THE REPORT OF THE  
INQUIRING AUTHORITY IN DEPARTMENTAL PROCEEDINGS AGAINST DR.  
V. VERMA.

My representation on the report of the Inquiring Authority is placed below.

In view of the fact that in her report, the Inquiring Authority (I.A.) has continued to reflect some of the misconceptions which have led to my being harassed for years, it has been necessary to explain at length several points which have been explained earlier also. The salient points which need to be borne in mind are as under :-

1. A motivated CBI case was instituted against me in September 1981. The CBI tried to sensationalise the case by alleging that I had wrongly obtained Rs. 5,497/-. After detailed investigation, during which the CBI examined 150 odd domiciliary visits made by me, the CBI came to the conclusion that only 21 visits were not proved, involving a sum of Rs. 288.75.
2. The departmental enquiry was started against me for imposing a minor penalty. According to the report of the I.A., she has now come to the conclusion that not 21 but only 9 visits "can be said to be not genuine", involving an amount of Rs. 123.75. While even this finding is contested it shall be clear that I am being made to suffer mental agony since September 1981 over an extremely petty matter.
3. There were delays in the departmental enquiry at every stage, which were wholly ascribable to the Department or the C.V.C. Even the report of the I.A., dated 31.8.88 was sent to me after a delay of more than one year for my comments. Such delays by the Ministry have resulted in unnecessary harassment to me as a result of which I have been denied my promotion to the rank of CMO and I stand to suffer the humiliation of working under my juniors.
4. The departmental enquiry for awarding a minor penalty related to one charge pertaining to the year 1980-81, namely claiming of false conveyance allowance. The 21 visits were broken up into 5 imputations of charge. The I.A., in her report has held as under:-
  - a. Charge 1:- relating to three visits. Charge does not hold in respect of one visit.

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APP

-: 2 :-

- b. Charge 2 - relating to 8 visits. The case of the prosecution fails.
- c. Charge No. 3 - relating to 2 visits - charge was found to be substantiated.
- d. Charge No. 4 - relating to 7 visits to the houses of 5 persons. Charge found to be incorrect in respect of one visit.
- e. Charge No. 5 - relating to one visit - charge found to be correct.

From the above, it shall be seen that of the 21 visits in respect of which the departmental enquiry was conducted, only 9 visits "can be said to be not genuine", in the words of the I.A.

Of the 9 visits regarding which doubt has been expressed, 2 visits relate to visits paid to the houses of beneficiaries where two patients were examined during the course of one transaction. The I.A. has held that when two patients, belonging to the same household, are examined at the same place the visit should count as one for the purpose of conveyance allowance. My case, as explained in detail in the enclosure, is that under CGHS Conveyance Allowance Rules, conveyance allowance is not related to either the mode of conveyance, the distance travelled or the inter-relationship between the patients. It can be related only to the examination of a patient at his residence. In fact, this is the only service which is rendered by the doctor. Once conveyance allowance is delinked from the distance or the mode of conveyance, it is highly illogical to count the examination of two persons under one roof as one or two merely because their names happen to be on different CGHS cards.

One visit which has been held as not genuine related to a visit made to the house of Shri B L Mathur. Shri B L Mathur was not called as a witness and no evidence led in this regard during the departmental hearing. Nonetheless, in the enclosure I have explained that this visit is also genuine.

5. To show that the remaining 6 visits were not genuine, 4 witnesses were produced by the prosecution. Out of these 4, the I.A. herself observed regarding Shri S C Mathur that he was "deposing falsely". Regarding Shri Moolchand, the I.A. observed that he "has not correctly deposed with regard to his own treatment from the CGHS dispensary and he may be lying in respect of the domiciliary visits also." As amply explained in my written brief, all 4 witnesses had dubious credentials and the I.A. has also termed two of them as liars. This fact vindicates my stand that motivated witnesses were produced by the CBI and all of them had reasons of their own for deposing incorrectly.



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Numbering of the ...

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Based on the unconvincing statements of the witnesses, the I.A. has come to the wrong conclusion regarding the non-genuineness of the visits. It is to be noted that the I.A. has worked on the assumption that the visit book is a document which has been proved to be wrong rather than trying to establish the entries in the visit book as incorrect by the testimony of the witnesses. Her wrong assumption is reflected in her statement in para 5.16 where she has observed that "since certain entries made in EX.S-2 are under dispute, in the absence of supportive documentary evidence, they cannot be treated as genuine." This statement reveals that the I.A. has started off with the presumption of guilt and expects me to prove my innocence beyond all shadow of doubt.

It is submitted that the stand of the I.A. is against all tenets of natural justice. It is for the prosecution to prove its case. Unfortunately, the I.A. expects the defence to prove its innocence. It needs to be pointed out that the onus of proof always lies on the prosecution. A ruling of the Calcutta CAT has put this principle most succinctly in the case of Sachidanand Singh Vs Union of India when it was observed: "the charge - onus of proof - held is on the prosecution - It is not for the charged employee to prove his innocence - if prosecution fails to discharge its onus, charge will automatically fail". (1989 - 10 ATC - page 565 - Ruling of February 23, 1989).

Because of a motivated CBI case and unnecessarily long pending departmental enquiry, I stand superceded by about 430 of my juniors and have to suffer the ignominy of having to work under doctors much junior to me. A departmental enquiry for awarding minor punishment has already caused me mental agony and humiliation which is totally disproportionate to any minor penalty that could have been imposed.

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## SUBMISSION OF DR. V.VERMA ON THE REPORT OF THE INQUIRING AUTHORITY

In the Departmental Enquiry against me, there was only one article of charge pertaining to the year 1980-81 alleging that I had wrongly claimed Conveyance Allowance for 21 visits.

2. During the hearing, I did not cite any witness for the simple reason that in a transaction of the kind where a doctor visits a patient's house, it is impossible to gather witnesses who would testify to the presence of the doctor in a patient's house. No documents were cited by me in support of my case as all the so called Prosecution Documents strengthen my case. Additionally, with my written brief I have submitted several documents including copy of a police report made by me against Dr. P.C.Meena.

3. While it is correct that I did not give any written statement that I am appearing as a witness in my own case, it is submitted that I was present during the hearing and I was often asked to explain procedures etc. to the Inquiring Authority (I.A.). Several points were clarified by me during the course of the hearing. My General Examination was also done by the I.A.

4. While examining the final report of the I.A. the following facts which have got a direct bearing on the enquiry may kindly be considered:-

i) The enquiry relates to the period 1980-81, when the cause of action against me is alleged to have arisen. The CBI had instituted a motivated enquiry in September 1981. No case could be made out and the CBI accordingly referred the matter to the Department.

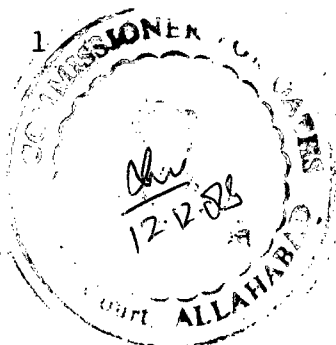
ii) On the basis of the CBI report, the Department issued me a charge sheet on 1-8-1984 for imposing a minor penalty.

iii) To enquire into the charges, Shri A.R.Banerjee, CDI, CVC, was appointed as the I.O. vide letter No.C-13011/2/82-V&CD(V&EMR) dated March 22, 1985. (The report of the Inquiry Officer only mentions her date of appointment as I.O. on 8-9-1987).

iv) The report of the I.A. was sent to me vide letter No.C-13011/2/82-V&CD(Vig) dated 13/18-10-1989. The report was submitted by the I.A. to the Ministry on 31-8-1988. This shows that the report was sent to me more than one year after it had been submitted to the Ministry.

v) From the foregoing, it is clear that for an alleged misdemeanour in 1980-81, an enquiry against me has been pending for more than 8 years. At each stage, there have been undue delays in the Ministry and the CVC. I was at no stage and in no way responsible for any delay but it is me who has been kept in a state of agony and mental torture.

vi) The Departmental Enquiry was started for awarding a minor penalty under Rule 16. No final decision has yet been taken. On the other hand, if no enquiry had been conducted against me and even if it was presumed by the Department that the offence was established, and



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the minor penalty imposed on me at that stage; the effect of that minor penalty would have long back been wiped out and nothing would have stood against me for my promotion to the rank of CMO in 1988.

vii) Though the findings of the I.A. are not based on correct appreciation of the circumstances or the material presented by the Presenting Officer, the C.V.C. has still realised the torture which I have undergone during these eight long years. In this connection, para 5.23 at page 19 of the report of the I.A. may be seen.

5. My submissions in respect of the report of the I.A. are placed below.

6. It is submitted that in the Assessment of Evidence, the I.A. has totally disregarded the circumstances under which the CBI started a motivated case against me. These circumstances were explained in detail in my preliminary explanation, in my defence statement before the I.A. as well as in my written brief. No attempt whatsoever was made by the Presenting Officer (an officer of the CBI) to rebutt my statement. The I.A. also has not commented on these developments, which are the genesis of a motivated and mischievous game for which I have been made to suffer for more than 8 years.

IMPUTATION OF MISCONDUCT: PARA NO.1.

7. This allegation referred to examination of the family members of (a) Shri Kesar Lal (b) Shri Chandra Mohan Sharma and (c) Shri P.C.Kewal Ramani.

8. This charge was neither mentioned nor was any evidence led regarding this allegation by the prosecution during the hearing. The Inquiry Authority also did not mention this charge or seek any information on it from me or the Presenting Officer.

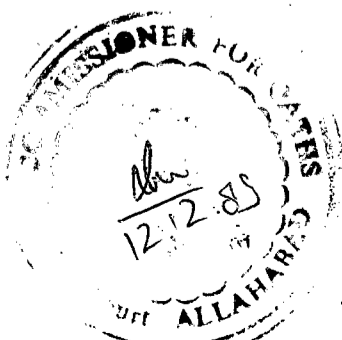
9. Despite the fact that no mention of the charge was made during the hearing; to set the record straight, my written brief fully explained how the charge had been made due to wrong interpretation of rules.

10. In her findings, vide para 5.5, the I.A. has found the charge in respect of Shri C.M.Sharma not proved.

11. I would here like to explain the case in detail because despite my having explained this point at considerable length orally as well as in my written brief, I have found that the I.A. in her report has continued to reflect preconceived notions about what should be Conveyance Allowance and what constitutes a visit. In this connection the following points are submitted:-

(i) The claiming of two visits while examining two patients during one transaction is not against any rules or regulations of the Department.

(ii) Keeping in view the regulations aspects, the CBI had specifically asked the Director, CGHS vide D-32, which is a



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confidential letter, whether showing of two visits in the visit register when two patients were examined was admissible. A request had been made that "any rule or circular, in support of your reply may also be sent." No such rule was cited by the Director in her reply, (D-33) and her statement that the visit "can account only as a single visit since both the patients belonged to the same house-hold and were staying in the same building" is a mere opinion.

(iii) I would reiterate that the opinion of the Director, CGHS, expressed in D-33 was expressed in a confidential document. This was not shown to any person. It was shown to me more than six years after its date of issue. In fact, this document had not been shown to me alongwith other prosecution documents and I could see it only 15 days before the regular hearing started, that too after repeated requests.

(iv) A confidential letter, which is not shown to any person, which expressed an opinion cannot be construed to be the rule or regulation.

(v) An attempt is made to further clarify the position regarding visits:-

(a) According to letter No.F.4.11/72.CGHS(P) dated July 10, 1979 governing the grant of Conveyance Allowance to CGHS Doctors, the use of a particular mode of conveyance is not material to claim of the Conveyance Allowance for which it is being claimed. Thus a car need not be used to get conveyance allowance at car rates, provided the doctor maintains a car.

(b) According to the aforementioned letter, the distance travelled is not material as long as the movement is within the area covered by the CGHS. This letter includes journeys beyond 8 KMs. but, at the same time, it includes journeys which may be walking distance or even a few feet away from the dispensary. Thus, according to this letter the distance travelled is totally immaterial.

(c) In my written brief, I had raised the issue of two families residing in the same house or several families living in a multi-storied building. To counter this argument, the I.A. has cited the letter of the Director, CGHS, mentioned earlier, according to which if two patients of one house-hold are examined at one place, the two examinations would count for one visit, and by implication, if two persons belonging to two house-holds are examined at the same location the examinations would count as two visits.

(d) Under existing CGHS rules, when the husband and wife are both Central Government employees they have the option to have separate CGHS cards. Accepting the I.A.'s interpretation, this implies that separate visits can be claimed when the husband and wife having separate CGHS cards are examined at the same time at their residence.

(e) From the above it is clear that Conveyance Allowance for the purpose of visit is not linked either with the mode of conveyance used, the distance travelled or the relationship between the two patients. It is my stand that a domiciliary visit can be linked only to the

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examination of a patient at his residence. If one person is examined, it is one visit and if two persons are examined they are to be counted as two visits.

(f) From the above it should be amply clear that the term visit cannot be viewed with its every day meaning and it is definitely not a case where "no specific instructions appear necessary, since it appeals to the common sense that examining of one or more patients in one house at a time can only be counted as a single visit as held by the I.A. in para 5.4. Since the term visit defies common sense under existing rules, clarifying orders were necessary, particularly as my case atleast was in the knowledge of the Director, CGHS since April, 1982.

(g) The fact that no clarifying orders were issued and the clarification of the Director, CGHS, was a confidential document, it shows that the Department itself has not taken any stand on the issue.

(vi) It is again reiterated that in the visit register maintained by me, the entries related to examination of patients at their residences. This includes the date and time. I have not made any effort to hide anything. No malafide intent has been attributed by the prosecution at any stage regarding these entries. The prosecution has also not contested that the patients were in fact examined. In view of my arguments given above, allowance for two visit was, therefore, admissible to me.

(vii) Even if the allowance was not due to me, I have only maintained the visit register in the correct proforma reflecting the factual position. The visit books are processed by the Controlling Officer. In my case at that time it was the C.M.O., CGHS, Jaipur. The amount admissible is not filled up by the claimant and is filled in by the Controlling Officer's office after due processing. According to the letter of the Director, CGHS, the "primary responsibility" is of the C.M.O. The I.A. has held that "the verification conducted by the C.M.O. was done in a very casual and superficial manner and only as a matter of routine" (Para 5.6). While this assumption of the I.A. is itself contested, it is further submitted that even if the verification was superficial, I cannot be held guilty of it.

(viii) It is further submitted that even if the Conveyance Allowance was not admissible for the visits, the C.M.O. could have disallowed the same and it would not have been paid to me. As the worst case, which also is not admitted, this is a case of inadvertant overpayment rather than a crime for which I should be harassed for so long.

12. In respect of the visits for examination of family members of Shri Kesar Lal and Shri P.C.Kewal Ramani, the I.A. has held that the examination of two patients should "be counted only as one and not two" visits. It may be noted that the imputation of misconduct was that the "visits shown and claimed by Dr.Verma are not genuine." The findings of the I.A. are at considerable variance with the charge and therefore the charge cannot be said to have been proved.

13. The only point brought out in the findings of the I.A. is



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whether the examination of two patients is one visit or two. As amply explained in above, the examination of two patients has to count as two visits as the term "visit", once it cannot be related to distance, building or family, must be related to the examination of a patient at his residence. Since medical attendance is the primary service offered by a doctor, examination of one patient is one visit and examination of two patients are two visits. The prosecution has not at all contested that two patients were examined. The only dispute is whether one or two visits were admissible. In view of the foregoing, it is clear that two visits were admissible. It is therefore submitted that the charge in respect of Shri Kesar Lal and Shri P.C.Kewal Ramani stands totally disproved.

IMPUTATION OF MISCONDUCT: PARA NO.2.

14. Vide para 5.8 of the report of the I.A., the "case of the prosecution with regard to these visits fails."

14.1. I have no further submission as my stand has been vindicated.

IMPUTATION OF MISCONDUCT: PARA NO.3.

15. Vide para 5.10 of the report of the I.A., the allegation was "found to be unsubstantiated."

16. I have no further submission to make.

IMPUTATION OF MISCONDUCT: PARA NO.4.

17. Vide para 4 of the Imputation of Misconduct, it was alleged that visits made to the houses of five CGHS beneficiaries were not genuine.

18. Before discussing these allegations and the statements of the witnesses, I may be permitted to explain, in brief, the procedure for maintaining family folders, a system which was peculiar to CGHS in vogue at Jaipur. I consider this necessary as inadequate understanding of the system has probably led the I.A. to wrong conclusions.

19. Family folders were opened for each family in the dispensary on the basis of the CGHS Index Card. Whenever any beneficiary visited the dispensary for treatment, he was required to take the folder from the clerk. The doctor was required to enter the treatment given and medicines prescribed in the folder. No medicine slips were issued as the entry was made in the folder. The folder was retained by the doctor and later sent to the clerk. If a doctor prescribed medicines while on a visit and the beneficiary drew those medicines, an entry was made in the folder. If no medicines were drawn, no entry was made. In the case of a domiciliary visit, no entry was required to be made in the family folder or at any other place, except the visit book. As per Departmental instructions, the name, address and other particulars as available, were filled in the visit book by the doctor before leaving the dispensary for the visit.



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20. My submission in respect of the allegations is as under:-

20.1. Shri Suresh Chandra Mathur (SW-3): The I.A., vide para 5.17 of her report, has held that the statements and evidence on record "clearly proves that SW-3 was deposing falsely."

20.1.1. The I.A. has held that the charge was not substantiated. I have nothing to add.

20.2. Shri Mool Chand (SW-5): The I.A. has taken note of the fact that Shri Mool Chand had given a statement during his cross-examination, which, to quote the I.A., was "utterly false" (para 5.15). She has further also observed that SW-5 "has not correctly deposed with regard to his own treatment from the CGHS dispensary and he may be lying in respect of the visit of the domiciliary visits also." (para 5.15).

20.2.1. After considering the statement of SW-5 to be "utterly false" and observing that he may be lying in respect of the domiciliary visits, it is inexplicable how the I.A. has come to the conclusion that the three visits made to the residence of SW-5 "appear to be wrong."

20.2.2. For arriving at her fantastic conclusion, the I.A. has given only one reason - that medicines were not drawn on the days that the visits were made. To make the position amply clear, visits were made to the residence of Shri Mool Chand on 1-11-1980, 15-12-1980 and 6-1-1981 to treat Shri Mool Chand's son, Rajesh. According to Ex.S-27, the file folder of the Mool Chand family, medicines to Rajesh were issued on 27-10-1980 as well as on 28-10-1980. In connection with disease classification No.38 (URTI), one phial each of Ciplin, Phenergan and Bambitine were issued on October 27. The patient was again examined on October 28 and the notes are to the effect that additional medicines (Syrup Cofcur and Bambitine) were issued with advise to continue the same treatment. For a child patient, these quantities were sufficient to last for 6 to 7 days atleast. When the visit was made on 1-11-1980, no additional medicines were required, and therefore, no entry could possibly exist for issue of medicines. As regards the visit on 6-1-81, it is to be mentioned that the visit was made in the evening and Ex.S-27 will bear out that medicines (Syrup Dysfur and Bambitine) were drawn on 7-1-1981. In the case of the visit on 15-12-1980, Ex.S-27 does not show any medicines having been drawn. This, however, does not mean that treatment was not given to the child. Doctors on domiciliary visits are required, under departmental instructions, to carry an emergency bag with essential medicines, BP instrument etc. More often than not, the supply of essential medicines in the bag is sufficient to treat the patient and it is not necessary that medicines must be drawn each and every time. It is also well known that medicines to CGHS beneficiaries are supplied quite liberally and most beneficiaries have a stock of a number of medicines in their homes which are left over after treatment from earlier illness.

20.2.3. As mentioned in para 19, the non-drawal of medicines does not disprove a visit, whereas the drawal of medicines substantiates that a visit was made. The I.A. has, in this particular case, taken non-drawal of medicines as conclusive proof that a visit was not made



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whereas in the case of SW-2, the drawal of medicines the same day having been used to substantiate the visit has been brushed aside by her.

20.2.4. When the veracity of the witness is being doubted by the I.A. herself, the absence of an entry for the drawal of medicines indicates nothing at all and it definitely does not prove that the visit was not made. To deny the visits is to disregard the fact that the patient was frequently falling sick and required as many as 71 consultations in two years. Besides the statement of SW-5, considered by the I.A. herself as possibly untrue, no evidence has been led by the prosecution to show that the visit was not made.

20.2.5. As regards the observation of the I.A. in para 5.15 that I did not question SW-5 about his allegation that I tried to influence him, it needs to be mentioned that the allegation was most vehemently denied and it is again denied. As explained in my written brief, the witnesses were tutored by the CBI and there was absolutely no point in questioning a motivated witness about a patently false statement made by him.

20.3. Shri Bhagwan Sahay Pareek (SW-1): SW-1 had made a categorical statement that "no visit was made till date" and nor was he "aware that doctors pay visits to beneficiaries houses also." During cross-examination, Shri Pareek admitted that a domiciliary visit was made by another doctor for giving treatment to his wife at his residence. This blatant contradiction, which shows that the earlier statement before the CBI and later before the I.A. on 27-6-1988 by Shri Pareek was wrong and motivated, has been disregarded by the I.A. Her observation that the admitted visit of another doctor was in relation to another question is to miss the point altogether. By admitting that another doctor had visited his residence, Shri Pareek has proved his own statement to be false on two counts: (a) that no visit was made till date and (b) that he was not aware of the provision of domiciliary visits. If one part of his statement is false, and prima facie shows motivation, it is not unlikely that the remaining part of his statement is also false.

20.3.1. The I.A. has held that "the veracity of the witness is to be doubted has to be borne out by documentary evidence." (Para 5.16) This is a peculiar statement when the witness is shown to be lying on two counts. Natural justice demands that when a witness is shown to be motivated and contradicts himself, his whole statement should be treated as suspect unless supported by documents. The I.A. seems to have reversed the principle of natural justice and has adopted the stand that a dubious statement of a motivated witness is the gospel truth unless he is proved not only to be wrong but supportive documentary evidence is also adduced by the Charged Officer. On the part of the prosecution apparently, the I.A. does not consider it necessary to produce anything more than a statement of an unreliable witness.

20.3.2. As regards the totally irrelevant observation of the I.A. that "it is curious to note that whereas the CO has relied upon the family folders of witnesses in support of his contention, where the



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corresponding entries exist; he has blissfully ignored the same, as in this case, where the supportive evidence is non-existent", I would submit that (a) as explained earlier, it is not necessary that medicines be drawn for each treatment given in a domiciliary visit and (b) the entries are by no means "corresponding" in the sense of one being dependent on the other. This was explained by me during the hearing but the confusion seems to have persisted, resulting in the I.A. jumping to a wrong conclusion.

20.3.3. As explained in para 19, there can be no documentary record of a visit, except the visit register as per instructions of the Department.

20.4.4. Shri Nawal Kishore (SW-4): The I.A. has held that the visit was not made merely because Ex.S-26 does not show that Asha was examined on 28-11-1980. (Para 5.19). As explained in para 19, as well as in the foregoing paragraph, no entry regarding domiciliary visit in the family folder was made or was required to be made by any doctor. The presence of an entry for drawing medicines supports a visit; the absence of an entry does not disprove a visit.

20.4.1. The I.A. has dilated at length in her report on the issue of the date of birth of Shri Nawal Kishore's daughter, Asha. Though the Ministry is aware, I would still like to explain the procedure for recording the date of birth in CGHS records. The cover of the family folder (S-26 in this case) is filled up from the dispensary part of the Index Card of the beneficiary. The Index Card itself is filled up by the beneficiary under his signature in his office in triplicate. Of the 3 copies, one is kept in the employee's office, one is sent to the CMO, CGHS, and one is sent to the dispensary. The entries are duly certified by the Controlling Officer in the employee's office and, therefore, only the entry made on the cover of the family folder from the Index Card is the authenticated date. When the date of birth of Asha was entered as 7-3-1980, it must have been on the basis of official records. In order to prove an unreliable witness right, it is extremely unfair of the I.A. to wish away the official entry as "apparently a mistake."

20.4.2. SW-4, as already mentioned in my written brief, stated that on the date of deposition (8-7-1988) he was about 25 years of age and had been in Government service since 1978 and was working in a temporary capacity since 1970. This means Shri Nawal Kishore entered service when he was about 7 years of age and had entered Government service at the age of 15. This can only mean either (a) the memory of Shri Nawal Kishore cannot be relied upon at all or (b) that he lied to enter Government service.

20.4.3. The I.A. has observed that SW-4 "appeared to be illiterate." During the cross-examination he did not remember his own age. He did not remember the year in which he shifted to his own house in a far off locality, outside the area covered by the CGHS scheme. He did, however, remember the date of birth of his daughter, Asha, as 24-8-1980. Though he was vehement about this date, even this date is wrong as mentioned earlier. And the only other thing that Shri Nawal Kishore was definite about was that I had not visited his house. This shows

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that the witness was motivated or tutored. The I.A. has, however, accepted his statement of the date of birth as correct and dismissed the official record, which has a detailed procedure as explained above, as "apparently a mistake." The I.A. has exhibited an eagerness to accept portions of the statement of an unreliable witness to positively prove her misconceptions. She has also disregarded the fact that, by his own statement, Shri Nawal Kishore must have been about 15 years of age when he entered Government service and the scope that this fact leaves open to anyone to apply pressure to obtain a false statement. She also seems to disregard the fact that a person who cannot remember the year in which he shifted to a house which he constructed for himself within the past 7/8 years cannot be expected to remember whether or not a doctor visited his house, particularly when that person did not have to spend even a single paisa for the visit.

20.5. Shri B.L.Mathur: Shri B.L.Mathur was not called as a witness by the prosecution. No reference was made to this allegation during the hearing or even in the prosecution brief. The charge was not even mentioned in the gist of allegations in the prosecution brief. No evidence was led at any stage to corroborate the charge. It is also significant that no statement of Shri B.L.Mathur was obtained to the effect that I had not made a visit to his house on 14-11-1980. It may also be noted that no statement of Shri Nanak Ram Narolia was taken by the prosecution nor was he produced as a witness to show that I had not made a visit to his house. It may be further mentioned that unlike the illiterate witnesses produced by the prosecution, Shri B.L.Mathur was a literate person and this could be the main reason for not producing him as a witness. Here it might be recalled that the only literate witness produced was Shri L.N.Shukla, who substantiated that my visits were genuine.

20.5.1. In my written brief, nonetheless, I have explained the several factors which could have led to an inaccurate entry. There were, in all, 7 visits made to the residence of Shri B.L.Mathur. The last six visits have not been contested by the prosecution and were genuine. The allegation is only with regard to the first visit and this visit was also made, even though there may have been a minor clerical error. Since the error was made in the first visit, it is possible that the several factors mentioned in my written brief could have affected the inaccurate entry. The conclusion of the I.A. that the address cannot possibly be wrong is based on the assumption that a doctor, while treating a patient, asks his address before giving him medical attention.

20.5.2. The I.A. has also made the statement that "if all records are maintained properly and timely, no such mistakes could creep in". I would like to submit that under the instructions for maintenance of the visit book, doctors are required to make entry in the visit book, before leaving the dispensary for the visit, of such particulars as might be available on the produced CGHS Card or, if a card is not produced, such information as might be given regarding name, address etc. of the patient by the person requesting a domiciliary visit. As explained in my written brief in detail, visits are sometimes requested telephonically or by neighbours and even by children. In such an

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event, it is not possible for a doctor to either verify the address or the token number etc. and the possibility of an inaccurate entry can always exist. The fact that the entry must be made before leaving the dispensary adds to the probability of mistakes creeping in, whereas if such entries are made later, such errors could be avoided. As mentioned in the written brief, any of the several factors operating could have been responsible for the inaccurate entry.

20.5.3. While one fully agrees with the observation of the I.A. that if all records are maintained properly, no mistakes would creep in; I would still like to submit with all humility and without meaning any disrespect that the I.A.'s report itself contains several inaccuracies. In related documents with this inquiry pending against me also, there are any number of mistakes. To illustrate a few:-

(a) In para 5.8 of the report of the I.A., of the 8 dates mentioned as visits to Shri P.C.Gupta's house in para 3.1.2, 20-4-1981 has not been mentioned. The date 16-5-1981 has also been mentioned as 6-5-1981.

(b) SW-1, Shri Bhagwan Sahay Pareek, has been mentioned with different names, including Bhagwan Sahni Pareek.

(c) The name of Shri P.C.Kewal Ramani has been throughout mentioned by the I.A. as P.C.Kewal Ramni. Adopting the kind of clerical hair-splitting that has been mentioned by the I.A. to 'prove' that my visits were false, I could also claim that Bhagwan Sahay Pareek, produced as SW-1 during the hearing is not the Bhagwan Sahni Pareek mentioned in the imputation of misconduct.

(d) The Ministry of Health and Family Welfare served the show-cause notice to me vide their memo No.C.13011/2/82-82-V&CD(Pt.II) dated 12 April/7 July, 1983. This memo was sent to me C/o Health Secretary, Government of Arunachal Pradesh, Itanagar. I was never posted in Arunachal Pradesh. This is a case where the Ministry gave a wrong address of a Class I Officer in an important matter like a show-cause notice.

(e) Several other names have been differently spelt in different documents.

(f) There are a large number of typographical errors in I.A.'s report including substitution of CO in place of PO in the third line of para 4.3 which, if taken at face value, would contradict the I.A.'s report in terms of her observations in para 1.

20.6 Shri Murari Lal Gupta (SW-2): In the case of Shri Gupta (SW-2), the I.A. has chosen to disregard the entry about drawal of medicines on the same day and further observed that "all that Ex.S-25 proves is that the CO examined Master Ajay on 24-1-1988." To repeat once again, no entry that a domiciliary visit was made was required to be recorded in the family folder or in any other document except the visit register. The fact that there are also other entries in the family folder as mentioned by the I.A. (12-1-81 and 16-3-81, amongst others) neither proves anything or disproves anything beyond the fact

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that medicines were drawn. The other entries could be for consultations in the dispensary or even visits by some other doctors. The reference made by the I.A. to other entries in the family folder reveal her confusion about procedures as well as a queer logic to somehow hold my visits as false.

20.6.1. The change of houses, nearby localities, absence of road/colony names etc. have been mentioned in detail in my written brief. If a doctor accompanies anyone to visit a sick person, he cannot be expected to verify the address from people on the road. If a CGHS Card is produced, or if a folder is available, the visit book shall show the address as officially entered. It is doubtful if a person taking a doctor to a wrong address would himself volunteer the information that he had failed to have his address changed. If I had entered the address claimed by SW-2 as the place where he was living, then the I.A. would have still found the visit false because the visit book showed an address different from the official address.

20.6.2. I, therefore, most emphatically again submit that the visit was genuine and SW-2 has deposed wrongly because of his failure to have his address changed. While the I.A. has mentioned that the failure of SW-2 to have his address changed is not within the purview of the enquiry, the fact cannot be disregarded in terms of its impact on the mental state of the witness, who can be coerced into giving a wrong statement.

20.6.3. The statement of SW-2 in any case is rather tentative and he deposed that "as far as I recollect, I have never shown any of my family member to CGHS doctors at my residence." This shows that SW-2 is not certain himself. His statement cannot be considered an "express denial" as concluded by the I.A.

20.6.4. I submit that against this uncertain statement, the definite record of the visit book, corroborated by drawal of medicines, should prevail. The observation of the I.A. that "no other evidence, documentary or oral, has been adduced by the CO" reveals that the I.A. expects more than the entries in the visit book and drawal of medicines. As explained earlier also, there cannot be any additional documentary proof. On the other hand, I submit that the I.A. has concluded that the visit was not made only on the tentative statement of SW-2. She has not adduced any documentary proof to show that the visit was false. Therefore, the conclusion of the I.A. is irrational, irrelevant and illogical.

21. From the above it is clear that at no stage has any of the charges been established. No malafide intent has either been attributed or proved.

22. A close look at the witnesses at this stage is necessary before coming to any conclusion based on their statements.

22.1. A total of 6 Prosecution witnesses were produced. None of them figured in the CBI FIR. Only one was a witness of some social standing, Shri L.N.Shukla, who was not vulnerable to pressure. Shri Shukla's statement was in my favour.



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22.2. The remaining five witnesses were illiterate (in the words of the Presenting Officer). In the words of the I.A., one of them (Shri S.C.Mathur) was clearly proved to be "deposing falsely." Regarding another, (Shri Mool Chand), the I.A. came to the conclusions that one of his statements was "utterly false" and that he had "not correctly deposed with regard to his own treatment from the CGHS dispensary and he may be lying in respect of the domiciliary visits also." Yet another witness (Shri Nawal Kishore) appeared incapable of remembering even land mark events in his own life. One more witness (Shri B.S.Pareek) made a contradictory statement showing that he was lying or trying to mislead. The degree of credence which can be given to these witnesses, of whom two are accused of lying by the I.A. herself, is a matter on which there can be no two opinions.

23. The I.A. has based her conclusions on the assumption that the visit register is a document, proved to be wrong rather than assessing the testimony of witnesses to ascertain whether some entries in the visit register are wrong. This assumption of the I.A. is clear from her statement in para 5.16 that "since certain entries made in Ex.S-2 (the visit register) are under dispute, in the absence of supportive documentary evidence, they cannot be treated as genuine." This statement shows that the I.A. has presumed that I am guilty and that is why she has gone along with the contradictory and motivated statements made by the witnesses.

24. It is submitted that all entries in Ex.S-2 are genuine. No supportive documentary, or any other, evidence has been adduced to show the contrary. Natural justice demands that the onus of proving the entries as not genuine be on the prosecution. I am not required to prove beyond all shadow of doubt that the entries are genuine.

25. That the onus of proof lies on the prosecution is a well known maxim. It has been reiterated in a Judgement on February 23, 1989 by the Calcutta CAT in the case of Sachidanand Singh vs Union of India. It was ruled "D.E. Charge - Onus of proof - held is on the prosecution - It is not for the charged employee to prove his innocence - If prosecution fails to discharge its onus, charge will automatically fail."

26. In the report of the I.A. as well as the Regular Hearing, no charge has been proved. In fact not even malafide intent has been imputed.

27. The overall aspects of the case also need to be kept in view. The CBI had gone over more than 150 of my visits made over a span of 9 months with a fine toothed comb. They held 21 to be not genuine. Of these now, the I.A. has come to the conclusion that 'only 9 visits can be said to be not genuine'. From an allegation that I had wrongfully gained Rs.5,497, the allegation now is in respect of Rs.123.75. The prosecution could not produce any of the witnesses named in the CBI FIR to support its case. The only witness of any social standing supported me, though he was produced for the prosecution. Of the remaining five witnesses, who gave contradictory statements and showed an inability to remember important events, even the I.A. found that two were lying.

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28. From the foregoing, it can be seen that I have unnecessarily been harassed and humiliated by withholding my due promotions. As many as 430 doctors junior to me have been promoted to the rank of Chief Medical Officer. Many doctors junior to me have been posted against the next higher post of Deputy Director, and even there are orders of posting of an officer much junior to me as M.O. I/C in the dispensary where I am working, placing him as my immediate superior.

29. I request that no action, howsoever minor, is taken on the basis of the I.A.'s report in view of the various infirmities it suffers from and that I be completely exonerated of all the charges against me.

*[Handwritten signature]*

(DR.V.VERMA)

*[Handwritten mark]*



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In the Central Administrative Tribunal, Lucknow

Bench Lucknow.

M. P. No. 432/90 (L)  
O.A.No.308 of 1989 (L)

Dr.V.Verma. ... Applicant.

Versus.

Union of India and others. ... Opp.Parties.

Application for fixing of time for the implementation  
of the judgment and order dt. 4.4.1990 passed by  
Hon'ble K.Nath Vice Chairman and Hon'ble K.Obbayya  
Administrative Member.

For the facts and circumstances given in the accompanying affidavit, it is, respectfully prayed before this Hon'ble Tribunal that opposite parties be directed to comply with the order and judgment dated 4.4.1990 of this Hon'ble Tribunal with in stipulated period of 10 days.

Filed today  
58/187/90

Lucknow; Dated 12/7/90

A. K. Bhatnagar

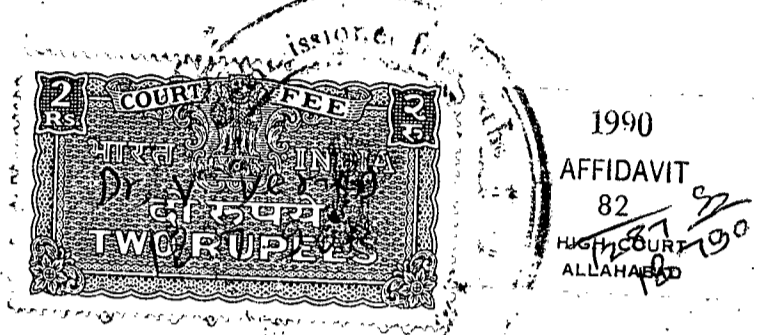
( A.K.Bhatnagar )  
Advocate,

Counsel for Applicant.

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In the Central Administrative Tribunal, Lucknow Bench,  
Lucknow.

Q.A.No.308 of 1989(L)



Dr.V.Verama. ... Applicant.

Versus;

Union of India and others. ... Opp.Parties.

Affidavit.

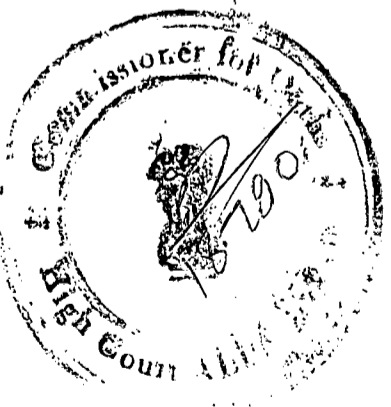
I, Dr.V.Verma, aged about 50 years, son of  
Late Shri R.N.Verma, Resident of B-251, Indira Nagar,  
Lucknow, the deponent do hereby solemnly affirm and  
state on oath as under:-

1. That the deponent is the petitioner in the above  
noted case is well conversant with the facts deposed  
hereunder.

2. That the above noted case was filed against  
the pendency of disciplinary proceedings as well as for  
promotion, the following prayers were made before this  
Hon'ble Tribunal.

- i. to quash the departmental enquiry proceedings pend-  
ing against the applicant on the basis of the minor  
penalty chargesheet dt.1.8.1984.
- 2. to direct the respondent to promote the applicant  
on the post of Chief Medical Officer w.e.f. 14.3.88  
where persons junior to the applicant were promoted.

3. That this Hon'ble Tribunal allowed the case of  
the deponent and passed the following order:



*V. Verma*

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" Taking into consideration the facts of the case of this Tribunal in similar cases, we were of the view that the delay in enquiry proceedings exhibit very casual and indifferent attitude. It is apparent that sense of seriousness or urgency is lacking. This has been allowed to drag on in a very routine manner. The applicant has been under clouds for 7 long years and subjected to mental agony, watching all his juniors overtaking him for no fault of his. We consider that it is a fit case to quash the disciplinary proceedings initiated by a charge dated 1.8.1984 and accordingly we order that the disciplinary proceedings initiated on the basis of charge sheet dt. 1.8.84 be quashed. We also direct that the respondents should consider the case of the applicant for promotion on merits and if founds suitable, be promoted giving him seniority and other benefits as are due to him under the rules. The petition is disposed of as above with no order as to costs."



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4. That the Photo stat copy of the certified copy of the said order was sent to the opposite parties by Registered A.D.Post on 6.4.1990.

5. That more than 3½ months have passed but the opposite parties have failed to comply with the order of this Hon'ble Tribunal.

6. That inspite of repeated request of the deponent, oral as well as written opposite parties did not comply with the order of this Tribunal till date. Photo stat copies of the reminders sent by deponent are annexed herewith this affidavit, as Annexures no-A-1 and A-2 for the perusal of this Hon'ble Tribunal.

7. That the deponent is suffering humiliation of working directing under an officer much junior to him due to non compliance of the judgment of this Hon'ble Tribunal.

8. That non compliance of the order of this Hon'ble Tribunal till date by the opposite parties amounts to contempt of the order of this Hon'ble court and opposite parties are liable to be punished, for the same.

Lucknow; Dated

18.7.1990.

  
Deponent.

Verification.

I, the above named deponent do hereby verify



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that the contents of paras 1 to 7 of this affidavit are true to my personal knowledge <sup>✓ and an record & file to be used</sup> No part of it is <sup>✓</sup> false and nothing material has been concealed. So help me God.

Lucknow; Dated  
18.7., 1990.

*[Signature]*  
Deponent.

I, identify the deponent who has signed before me.

A.K. Bhatnagar  
Advocate.

solemnly affirmed before me on 18.7.90 at 12.00 P.M. by the deponent - <sup>✓</sup> Dr. V. Verma who is identified by Sri A.K. Bhatnagar Advocate High Court at Allahabad.

I have satisfied myself by examining the deponent that he understands the contents of this Affidavit which have been read out and explained to him by me.



Shashi Srivastava  
Smt. Shashi Srivastava  
Advocate  
Oath Commission  
Allahabad High Court  
Lucknow with Lucknow  
No. 82 Date: 18.7.90  
1287

Hon'ble Central Administrative Tribunal, Lucknow Bench, Lucknow  
CA No 308/89(L)  
DR. V. VERMA VERSUS UNION OF INDIA & others.

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REGISTERED - A.D

From: DR. V. Verma.  
M.D.

Senior Medical Officer  
CGHS Dispensary No IV  
Nagiri Building, New Market.  
Nakhas, Lucknow.

To, The Secretary,  
Ministry of Health and F.W.  
Nirman Bhawan,  
New Delhi.

Attention: ~~The~~ Sri P. K. Kapoor,  
Under Secretary to the Govt of India.  
C.H.S II,  
Ministry of Health & F.W.

Subj.: Representation for promotion to the post of  
Chief Medical Officer of Central Health Services

Sir,  
Kindly refer to my registered A.D letter  
dated 6/4/90, enclosing a copy of judgement dated  
4/4/90 of Hon'ble Central Administrative Tribunal,  
Allahabad, Circuit Bench, Lucknow regarding my  
promotion etc.

An application as sent on 6/4/90 is  
again enclosed for your kind consideration and  
an early favourable orders.

Thanking you.

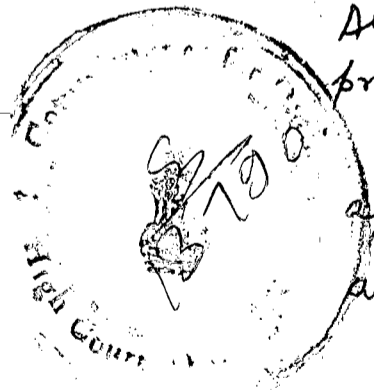
Yours faithfully.

Date 30<sup>th</sup> April 1990.

Enclosure. As above.

V.V.

(Dr. V. Verma)



Hon'ble Central Administrative Tribunal Lucknow Bench, Lucknow  
OA No 308/89(L)

DR. V. VERMA VERSUS UNION OF INDIA & others

AN- A2

AMU

Registered A/D.

From- Dr. V. Verma,  
Senior Medical Officer,  
C.G.H.S. Dispensary No.IV,  
New Market, Nakhas,  
Lucknow, U.P.

To,

The Secretary,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi - 110 001.

Sub:- Promotion to the post of Chief Medical Officer of  
Central Health Services.

Sir,

Kindly refer to my application dated 6.4.90 sent by Registered A/D Post enclosing a copy of judgement dated 4.4.90 of Hon'ble Central Administrative Tribunal, Allahabad, Circuit Bench, Lucknow regarding my promotion. A reminder dated 30.4.90, was also sent by Registered post. It is about three months since the judgement of the Hon'ble Central Administrative Tribunal, but I have got no communication from the department in this regard.

Since about 440 officers junior to me have been promoted, I am suffering, the humiliation of working directly under an officer much junior to me. I shall be obliged if an early action is taken in the matter and orders of my promotion to the post of C.M.O. (and also C.M.O. (N.F.S.G.) if due to me) are issued. It is also requested that orders restoring my due place of seniority and arrears of pay etc be also issued simultaneously, so that I do not suffer the humiliation of working under my junior.

An application dated 6.4.90 is again enclosed for ready reference and early favourable orders.

Thanking you,

Yours faithfully,

Encis: As above.

Dated: 22.6.1990.

( Dr. V. Verma )

Copy to :-

- (1) Sri Balbir Singh, Joint Secretary, Ministry of Health & FW, Nirman Bhawan, New Delhi.
- (2) Sri Ajay Bhattacharya, Dy. Secretary, Ministry of Health & F.W., Nirman Bhawan, New Delhi.
- (3) Sri R.K. Kapoor, Under Secretary, CHB-II, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.

( Dr. V. Verma )

