

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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213/2000

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SECTION OFFICER (JUDI.)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.

213/2000 OF 199

Applicant(s) Sri. Upen Saikia.

Respondent(s) Union of India and others.

Advocate for Applicant(s) Mr. Abrar Ahmed.

Advocate for Respondent(s)

C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
<p>16/6/2000 This application is in form and within time C. F. of Rs. 50/- deposited vide IPO B1 No. 592465 dated 16/6/2000 B 16/6/2000 16/6/2000 16/6/2000</p>	14.6.00	<p>Present : The Hon'ble Mr D.C.Verma, Judicial Member.</p> <p>Heard Mr A.Ahmed, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents.</p> <p>Issue notice to show cause as to why this application be not admitted and interim relief be granted. Reply to the show cause be filed within 3 weeks.</p> <p>List on 6.7.2000 for show cause and admission.</p> <p>pg 16/6/2000</p>

Member (J)

Notice prepared and sent
to the Respondent No 1 to 3

vide D/No 1688 6/6/90

dd 20/6/00

16/6/2000

Notice duly served on
Respondent No 3

Notes of the Registry	Date	Order of the Tribunal
<p><u>5.7.2000</u></p> <p>(1) Service report are still awaited.</p> <p>(2) No. Show cause has been filed.</p> <p><u>By</u></p>	6.7.00	<p>Present: Hon'ble Mr. S. Biswas, Administrative Member.</p> <p>Heard counsel for the parties. Application is admitted. Issue notice to the respondents by registered post. Returnable by 6 weeks. List on 7.8.00 for orders and written statement, before Division Bench.</p> <p><u>S. Biswas</u> Member(A)</p>
<p><u>7/7/00</u> Order dtd. 6/7/00 communicated to the respondents No 1 to 3 with D/Nos <u>1801/1803</u> dtd <u>10/7/00</u></p> <p><u>By</u> <u>7/7/00</u></p> <p>(1) Service report are still awaited.</p> <p>(2) No. written statement has been filed.</p> <p><u>By</u> <u>14/11/2000</u></p> <p>No. written statement has been filed.</p> <p><u>By</u> <u>6/12/2000</u></p> <p>Notice duly served on respondents No. 3, 1&2 are awaited</p> <p><u>By</u> <u>8/12/00</u></p> <p>(1) W/Ls has been filed</p> <p>(2) No. Rejoinder has been filed.</p> <p><u>By</u> <u>4/4/01</u></p>	<p>1m <u>7/7/2000</u></p> <p>7.8.00</p> <p>8.9.00</p> <p>15.11.00</p> <p>1m <u>15/11/2000</u></p> <p>7.12.00</p> <p>1m <u>6.4.2001</u></p>	<p>This is no Bench adj.</p> <p>6-8-9-00</p> <p>15.11.00</p> <p>Present: Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman.</p> <p>Three weeks time is allowed to file affidavit. List on 7.12.00 for orders.</p> <p><u>Vice-Chairman</u></p> <p>Written statement has been filed by the respondents which is on record. List this case for hearing on 6.4.2001.</p> <p>In the meantime, the applicant may file rejoinder within two weeks from today.</p> <p><u>Vice-Chairman</u></p> <p>There is no hearing today, the case is adjourned to 6.4.2001.</p> <p><u>By</u> <u>6.4.2001</u></p>

③ O.A. 213/2000

Notes of the Registry	Date	Order of the Tribunal
<p>Rejoinder on behalf of the Appellant in reply to the W/S submitted by the Respondent No. 1, 2 & 3 filed.</p> <p><u>Pass.</u></p>	8.5.	<p>Hearing Concluded, order reserved.</p> <p>Md A.G. F.I.</p>

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Notes of the Registry	Date	Order of the Tribunal

Notes of the Registry	Date	Order of the Tribunal
<p>13.6.2001</p> <p>Copy of the Judgment has been sent to the Office for saving of time on the application as well as to the Director for the Record.</p> <p>AS</p>	23.5.01 bb	<p>Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of in terms of the order. There shall, however, be no order as to costs.</p> <p>K. I. Shar</p> <p>Member</p> <p>Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
1. 2010-01-01	2010-01-01	1. 2010-01-01
2. 2010-01-02	2010-01-02	2. 2010-01-02
3. 2010-01-03	2010-01-03	3. 2010-01-03
4. 2010-01-04	2010-01-04	4. 2010-01-04
5. 2010-01-05	2010-01-05	5. 2010-01-05
6. 2010-01-06	2010-01-06	6. 2010-01-06
7. 2010-01-07	2010-01-07	7. 2010-01-07
8. 2010-01-08	2010-01-08	8. 2010-01-08
9. 2010-01-09	2010-01-09	9. 2010-01-09
10. 2010-01-10	2010-01-10	10. 2010-01-10
11. 2010-01-11	2010-01-11	11. 2010-01-11
12. 2010-01-12	2010-01-12	12. 2010-01-12
13. 2010-01-13	2010-01-13	13. 2010-01-13
14. 2010-01-14	2010-01-14	14. 2010-01-14
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16. 2010-01-16	2010-01-16	16. 2010-01-16
17. 2010-01-17	2010-01-17	17. 2010-01-17
18. 2010-01-18	2010-01-18	18. 2010-01-18
19. 2010-01-19	2010-01-19	19. 2010-01-19
20. 2010-01-20	2010-01-20	20. 2010-01-20
21. 2010-01-21	2010-01-21	21. 2010-01-21
22. 2010-01-22	2010-01-22	22. 2010-01-22
23. 2010-01-23	2010-01-23	23. 2010-01-23
24. 2010-01-24	2010-01-24	24. 2010-01-24
25. 2010-01-25	2010-01-25	25. 2010-01-25
26. 2010-01-26	2010-01-26	26. 2010-01-26
27. 2010-01-27	2010-01-27	27. 2010-01-27
28. 2010-01-28	2010-01-28	28. 2010-01-28
29. 2010-01-29	2010-01-29	29. 2010-01-29
30. 2010-01-30	2010-01-30	30. 2010-01-30
31. 2010-01-31	2010-01-31	31. 2010-01-31

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.K. NO. 213 of 2000

DATE OF DECISION 23.5.2001

Shri Upen Saikia

APPLICANT(S)

Mr. Abrar Ahmed

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Others

RESPONDENT(S)

Mr. A. Dab Roy, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR. JUSTICE D. N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR. K. K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

5.

Judgment delivered by Hon'ble **Administrative Member**

KK Sharma

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.213 of 2000.
Date of Order : This is the 23rd Day of May 2001.

HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN
HON'BLE MR. K.K.SHARMA, ADMINISTRATIVE MEMBER.

Shri Upen Saikia,
Junior Telecom Officer, Planning,
Office of the General Manager, Telecom,
Kamrup District, Guwahati. Applicant.

By Advocate Mr. Abrar Ahmed.

- Vs. -

1. Union of India, represented by
the Secretary to the Government of India,
Department of Telecommunication,
New Delhi - 1.
2. General Manager Telecom,
Kamrup Telecom District,
Guwahati - 7.
3. Director (Maintenance),
Eastern Telecom Region,
Shillong - 793 001.

By Advocate Mr. A.Deb Roy, Sr. C.G.S.C.

O R D E R

K.K.SHARMA : By this application under Section 19 of the
Administrative Tribunal Act the applicant has challenged the
initiation of Departmental Proceedings and imposition of penalty
of reduction in the pay of the applicant by four stages from
Rs. 8500/- to Rs. 7500/- with effect from 1.2.98 as well as the
order dated 5.8.99 passed by the General Manager, Telecom Kamrup
Telecom District, Guwahati, on the appeal filed by the applicant
maintaining the penalty imposed on the applicant. The applicant
has challenged the above mentioned orders on the ground that the
charges against the applicant were malefide and were based on the
findings of the inquiry authority. It is stated that the applicant
has been penalised for an incident which took place outside the
place of work and that the applicant had no official link with the
officer on whose complaining the proceedings were initiated. There
was non application of mind by the appellate authority. The
applicant has also challenged the validity of the order dated 5th

16/6/01

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August 1999 of the appellate authority.

2. The applicant was initially appointed as Junior Engineer in the North east Telecom Circle, Shillong. At the relevant time he was posted at Sattelite Project at Shillong. In the year 1994 the applicant was transferred to Tezpur and continued there till 1997. The applicant was elected as an Assistant Secretary of the Junior Telecom Officers Association, Assam Circle in the year 1990. Being an officer bearer of the association, the applicant on some occasions also met Shri K.Balasubramaniam, the Telecom District Engineer, Tezpur in connection with the matters relating to the members of the Association. At that time the Telecom District Engineer was staying in the Inspection Bungalow of the department at Tezpur. It is stated in the O.A. that he was staying unauthorisedly in Inspection Bungalow. On 15.6.94 the applicant's wife's health deteriorated and the applicant on the early morning of 16.6.94 proceeded to Guwahati and he made an application for 4 (four) days casual leave. As condition of his wife further deteriorated the applicant sent an application for EL on medical ground. On 12th July, the applicant was surprised to see Shri B.N.Biswas, Vigilance Officer, at his Guwahati address in connection with the investigation of an alleged assault and attempted murder of Shri K.Balasubramaniam, TDE at Tezpur. The applicant was informed that the said TDE had lodged a FIR with the Tezpur Police on 16.6.94 alleging assault on him by the applicant and another person and an attempt to kill him. The applicant denied to the Vigilance Officer any knowledge of the incident. As a measure of precaution the applicant obtained anticipatory bail from the Hon'ble High Court on 16.7.94. The Vigilance Officer recommended intitiation of Departmental proceedings against the applicant. As memorandum of charges dated 3.8.94 was issued to the applicant. The applicant submitted his written statement denying all allegations as well as

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denying his presence in the Inspection Bungalow at the time of the alleged. An enquiry Officer was appointed. The applicant participated in the enquiry and the enquiry report was submitted on 19.5.97. On 4th Feb'1998 an order was passed imposing a major penalty of reduction of pay by four stages from Rs.8500/- to 7500/- for a period of 3 years. On receipt of the aforesaid penalty order the applicant submitted an Appeal before the Authority on 16.9.98. The appellate authority passed appellate order on 5.8.99 confirming the penalty imposed with some minor modifications. It is stated that in the FIR lodged by the complainant TDE, it was alleged that the applicant alongwith another person had severely beaten the TDE causing serious injuries and attempted to murder him with sharp weapon and lathi. However before the Enquiry Officer it was stated that the accomplice of the applicant and not the applicant had beaten him and that the applicant did not save him. The Enquiry report is silent about the sharp weapon and the lathi. It goes to show that the applicant was not involved in the incident. It is also stated that the authorities were pre-determined to prove the applicant guilty by any means to punish the applicant. It is also stated that the order dated 5th August 1999 is in contravention of the guidelines and as well as principles of law.

3. The respondents have filed their written statements. The respondents have stated that the allegations made that the TDE was staying in the Bungalow with some unauthorised persons are motivated. It is not mentioned by the applicant as to who conspired against the applicant to harass him. It is also stated that the allegation that the recommendation of the Vigilance Officer was dictated by somebody is false and motivated.

4. We have heard Mr. A.Ahmed learned counsel for the applicant as well as Mr. A.Deb Roy, Sr. C.G.S.C. for the respondents. The charge sheet dated 3.9.94 mainly refers to the incident of 15.5.94 when the applicant went to I8 at where the TDE was staying at 11.30 PM and forced open the door. The applicant made entry into the room

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- 4 -

and he and his accomplice assaulted TDE and attempted to murder him and soon after the incident the applicant applied for 4 days CL to avoid arrest by police. In the enquiry report dated 19.5.97 the enquiry Officer has held the charges to be established. The finding of the enquiry officer is as under :

" S.W.4 Shri B.N.Biswas who has made the inquiry into affairs after a month of the reported ugly incident is nothing better than a hearsay witness. The SPS could not find any one to appear as defence witness. On his behalf and therefore he offered himself as a defence witness under Rule 14(17) of CCS (CCA). He was examined-in-Chief by the defence assistant and cross-examined by the P.O. In course of his own deposition he has purposely avoided to state anything about the charge against him but has simply harped only alleged serious illness of his wife. However in his deposition he has admitted in reply of cross-question No.4 that he was present at Tezpur till the morning of 16th June'94 whereas the said ugly incident has taken place at 11.30 P.M. of 15.6.94 and his visit to the room of TDE Tezpur (S.W.3) in the I.B. at 11.30 P.M. odd hours on 15.06.94 has effectively been confirmed by S.W.1 and at the sametime SPS has never denied his presence there during the entire course of inquiry.

I need hardly mention that in departmental proceedings, it is not the direct or indirect evidence which counts but it is the Preponderance of Probability which matters. Here in this case, the circumstantial evidences have emerged at the inquiry evidently goes against the SPS and accordingly I hold rather strongly, that the charge of violating the well defined provisions of Rule 3(1)(iii) of the CCS (Conduct) Rule-1964 against the SPS is ESTABLISHED. In other words the charge is PROVED.

The disciplinary authority has passed a detailed order imposing the penalty of reduction of pay. It is stated that though the charge sheet was issued on 3.8.94 an enquiry officer was appointed on 20.8.94, the regular enquiry could not start as C.A.T., Guwahati Bench, Guwahati had granted stay. The hearing could start after the vacation of Stay by C.A.T. on 16.6.95. The Disciplinary authority has mentioned that the applicant had never denied his presence at the odd hour on 15.6.94 at the I.B., TDE, Tezpur. The Disciplinary authority has agreed with the remarks of I.O. that the charge is proved. The applicant had explained

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regarding his disappearance on 16.6.94. In the enquiry report as well as in the disciplinary authority's order, it is mentioned that the applicant could not produce any evidence of serious illness of his wife. The disciplinary authority while imposing the penalty has observed as follows.

"Further, the incidence caused irreparable damage to the image of the Department. It is quite evident from the News Paper clippings,

While taking extreme care that innocent should not be punished, sufficient opportunities have been given to the SPS for his representation & consideration.

The charges levelled are very serious and the official deserves a severe punishment but considering his long association with the Department and the existing possibility of himself realising his grave mistakes and mending his attitude, I take a lenient view."

The applicant has challenged the proceedings on the ground that at the relevant time the applicant was on deputation. As such the penalty could not be imposed by the disciplinary authority as incident took place while he was on deputation. The enquiry report, the penalty order as well as the appellate order are Dtd. 19.5.97, 28.1.98 and 5.8.99 respectively. The applicant at the relevant time was not on deputation. The applicant has referred the Rule 20 in this regard. Rule 20 (2)(ii) is reproduced in this regard.

"If the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceeding of the enquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such orders thereon as it may deem necessary, or, if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass such orders on the case as it may deem necessary."

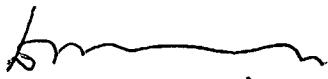
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1c 11/1/98,

At the time of penalty imposed the applicant had reverted back to the Telecom Department. The penalty has been imposed by the Telecom Department. We also do not find that by the presidential order dated 8th August '95 by which the Director (ETR), Shillong was appointed as disciplinary authority any prejudice was caused to the applicant. The presidential order was passed in the applicant's interest only, as the vigilance officer who had conducted the initial investigation, had by that time become the disciplinary authority. It was necessary that the disciplinary authority should be one who was not associated with the investigation. We do not find any infirmity in the proceeding against the applicant or the penalty imposed. The applicant has not established any malafide and irregularity in the proceedings. The application filed by the applicant is without any merit. The applicant has not been able to prove that proceedings were in any way vitiated. The applicant was afforded opportunities to prove that the charges against him were not sustainable. From the record and pleadings, we are not in a position to accept the applicant's prayer for setting aside the impugned orders.

The application is disposed of as above. There shall be no order as to costs.


(K.K. SHARMA)
ADMINISTRATIVE MEMBER


(D.N. CHOWDHURY)
VICE-CHAIRMAN

437 13 JUN
Case No. 213
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

Title of the Case : O.A. No. 213 of 2000

BETWEEN

Shri Upen Saikia,
Junior Telecom Officer, Planning, ~~at present 520(R)~~
Office of the General Manager, Telecom,
Kamrup Telecom District,
Guwahati - 7.

--- Applicant

AND

union of India and others

--- Respondents

I N D E X

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2.	Verification	33
3.	Annexure - 1 Investigation Report dated 17.7.94.	34
4.	Annexure - 2 Memorandum, Articles of charges.	35 to 39
5.	Annexure - 3 F.I.R.	40 & 41
6.	Annexure - 4 Inquiry Report dated 19.5.97.	42 to 47
7.	Annexure - 5 Final order dated 19.5.97 28.1.98	48 to 58
8.	Annexure - 6 Appellate Order dated 5.8.99.	59 & 60
9.	Annexure - 7 Deposition of witnesses	61 to 69
10.	Annexure - 8 Guideline dated 17.9.66	70 & 71
11.	Annexure - 9 Presidential order dated 8.8.95.	72
12.	Annexure -10 Notification dated 25.5.59.	73

Filed by : *Abrar Ahmed* Date of Filing.
Advocate Registration No.

13
Filed by
Abbas & Sons
Advocates
Guwahati, 20/2/2000

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Cohen Saikia

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

TITLE OF THE CASE : O.A. NO. 213 OF 2000

BETWEEN

Shri Open Saikia,

Son of Late Thakurwar Saikia.

Junior Telecom Officer, Planning, at present SDO (T)
Office of the General Manager, Telecom,
Kamrup District, Guwahati.

---- APPLICANT

AND

1. Union of India, represented by
the Secretary to the Government of India,
Department of Telecommunication,
New Delhi - 1.

2. General Manager Telecom,
Kamrup Telecom District,
Guwahati - 7.

3. Director (Maintenance),
Eastern Telecom Region,
Shillong - 793 001.

---- RESPONDENTS

Contd.....

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Cohen Saikia

- 2 -

DETAILS OF THE APPLICATION

**1. PARTICULARS OF THE ORDERS AGAINST WHICH
APPLICATION IS MADE :**

(i) Memorandum issued vide Memo No. DM/ETR/GH/X-1/T2/US/94-95 dated 3-8-1994 by the Director Maintenance, Eastern Telecom Region, Guwahati along with statement of Articles of charges and statement of imputation of misconduct or misbehaviour against the applicant Shri Upen Saikia.

(Annexure - 2)

(ii) Inquiry Report dated 19-5-98 submitted by Shri A.B. Sharon, Inquiry Officer along with his findings thereof on the charges levelled against the applicant. (Annexure - 4)

(iii) Order No. 44-12/95/DM/ETR/SH dated 28-1-98 passed by the Director (Maintenance) Eastern Telecom Region, Shillong communicated vide No. 44-12/95 dated 4-2-98 imposing penalty of reduction in the pay of the applicant by 4 (four) stages from Rs.8500/- to Rs.7500/- for a period of three years in the time scale of Rs.7500-250-12000/- with effect from 1-2-98 along with other penalties.

(Annexure - 5)

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(iv) Order No. GMT/Staff/OS-69/13 dated 5-8-99 passed by the General Manager, Telecom, Kamrup Telecom District, Guwahati on the appeal filed by the applicant maintaining the penalty imposed on the applicant vide Annexure - 5 with some minor modification.

(Annexure - 6)

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the application for which the applicant seeks redressal is within the jurisdiction of the Tribunal.

3. LIMITATION :

The applicant further declares that the present application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4.1. That the applicant was initially appointed as Junior Engineer by the General Manager, North East Telecom Circle, Shillong in the year 1980 and after successful completion of training, he was sent on deputation under General Manager, Sattelite Project, New Delhi and was posted at Sattelite Project, Shillong.

U/Gen/Gen/10/5/2

It may be mentioned herein that the North East Telecom Circle has been subsequently bifurcated and on bifurcation of the said Circle, the Chief General Manager, Telecom, Assam Circle becomes the authority (Appointing & Disciplinary) in respect of and in connection with the conditions of service of the applicant. But the applicant remains on deputation even thereafter till before his repatriation in the year 1997.

4.2. That the applicant states that on completion of the Sattelite Project at Shillong in the year 1983, the services of the applicant were placed at the disposal of the General Manager, Eastern Telecom Region, Calcutta again on deputation and the applicant was posted at Kohima Sattelite Station. In the year 1984, the applicant was transferred to Tezpur Microwave Station and till before the applicant was reverted back to his parent establishment in the year 1997, the applicant was in service at Tezpur Microwave station on deputation.

4.3. That during this short tenure of service at different places, the applicant by his sincere and hard working nature and amiable behaviour, impressed upon all concerned as a dignified Government servant. The applicant was thus elected as an Asstt. Circle Secretary of the

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Junior Telecom Officers Association, Assam Circle
in the year 1990 and, as such, as an office bearer
of the Association, the applicant was often
required to meet the various authorities of the
Department in connection with the matters relating
to members of the Association.

4.4. That the applicant begs to state that
being an office bearer of the Association as
aforesaid, the applicant on some occasions also
met Shri K. Balasubramaniam, Telecom District
Engineer, Tezpur in connection with the matters
relating to members of the Association serving
under the control of the said Telecom District
Engineer. Besides, there is no other official
link of the applicant with the said Telecom
District Engineer.

It may be mentioned herein that the said
Telecom District Engineer was at the relevant time
staying in the Inspection Bungalow of the Depart-
ment at Tezpur with some unauthorised persons even
without making any entry in the concerned Register
of the Bungalow as required. Moreover, some
anti social elements were also very often seen to
have visited the said District Engineer during
odd hours of the night in spite of the fact that
the Bungalow was manned by one Chowkidar, one
care taker and some home-guard personnel.

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Liberen Saikia

4.5. That the applicant begs to state that the wife of the applicant was at the relevant time suffering from various ailments. On 15.6.94 the condition of his wife deteriorated and 15.6.94 being a weekly rest day for the applicant, the applicant was attending his wife throughout the whole day and night of 15.6.94. As there was no sign of any improvement of his wife, on the advice of the attending doctor to shift the patient to Guwahati immediately and without any delay, the applicant on the early morning of 16.6.94 hurriedly wrote an application for 4 (four) days' C.L. ^{alongwith his leave address} and sent it to the authority through a messenger and proceeded to Guwahati in the early hours of 16.6.94. Till that time, the applicant was in the genuine and bona fide belief that as the illness of his wife for some time past was known to his superiors as well as other colleagues, he will get all help and sympathy from all of them in such crisis. It was beyond the imagination of the applicant that behind his back a large conspiracy was going on to harass the applicant by any means. However, at Guwahati when the condition of his wife was further deteriorated, the applicant sent an application for E.L. on medical ground giving therein his leave address as well.

contd.....

Cohen Banerjee

4.6. That the applicant begs to state that in the month of July (on or about 12th July, 1994), the applicant was shocked and surprised to see Shri B.N. Biswas, Vigilance Officer, ETR, Calcutta at his leave address at Guwahati in connection with the investigation of an alleged assault and attempted murder of Shri K. Balasubramaniam, T.D.E., Tezpur by the applicant. It is for the first time that the applicant came to learn from the said Vigilance Officer that the said T.D.E. has lodged an F.I.R. with the Tezpur Police on 16.6.94 alleging assault on him by the applicant and another person and attempted to kill him with sharp weapon and lathi. On being asked by the Vigilance Officer, the applicant submitted a statement denying his knowledge or involvement in any such incident. The applicant was at that point of time being in serious anxiety over deteriorating illness of his wife, could not make any further enquiry into the matter to know the actual truth behind the episode and as to how his name figured therein. However, the applicant was in the genuine belief that as he was in no way connected with any such incident as alleged, the matter will automatically die its natural death. But as a measure of precaution, the applicant thereafter obtained anticipatory bail from the Hon'ble Gauhati High Court on 16.7.94. The Vigilance Officer also failed to collect any material against the applicant.....

applicant to bring home the allegation made by the T.D.E. Subsequently it is found that the said Vigilance Officer submitted his report as follows :

"Visited Tezpur on 10th and 11th July, 1994. Though I tried to collect information about the incident from a number of staff but nobody could enlighten about the incident of assault on Shri K. Balasubramaniam, T.D.E., Tezpur by Shri Upen Saikia, J.T.O., Microwave, Tezpur as per the complaint of the CGMT, Assam Circle".

The concluding portion reads as follows :-

"Hence on the above reasons, viz.

1. Criminal case under investigation as per FIR,

2. Attempt to avoid arrest by the police

...

...

Therefore, appropriate disciplinary proceedings may be initiated against the said Shri Saikia."

A copy of the aforesaid Investigation Report dated 17.7.94 is annexed herewith and marked as ANNEXURE - 1.

Copy on Saikia

22
Chembur Police

4.7. That the applicant begs to state that on going through the entire investigation report, it is clear enough to understand that in spite of failure to collect any material against the applicant to *prima facie* show his involvement in any such incident as alleged and even thereafter recommendation for initiation of departmental proceeding is nothing but a part of larger conspiracy against the applicant. The recommendation of the Vigilance Officer is not based on the findings of the investigation but at the instance and direction/dictation of some body else which is mala fide and motivated.

4.8. That the applicant begs to state that on the basis of the aforesaid mala fide, motivated and biased investigation report and recommendation for drawing up appropriate disciplinary proceeding, the authorities without applying its mind to the fact situation coming out in the report and without forming its own *prima facie* opinion, accepted the findings/recommendation in the report of the Vigilance Officer and prepared and issued a Memorandum along with Article of charges etc. vide No. DM/ETR/GII/X-1/TZ/US/94-95 dated 3.8.94 under Rule 14 of the CCS (CCA) Rule, 1965 and served the same on the applicant with a direction to submit his written statement within 10 days from the date of receipt of the same.

Copies.....

Open Saikia

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Copies of the aforesaid Memorandum, Articles of charges along with its annexures are annexed herewith and marked as ANNEXURE -2 series.

4.9. That the applicant on receipt of the aforesaid Memorandum and Articles of charges could realise that he has no other option but to face the proceeding being a pre-planned one to get rid of the applicant as Assistant Circle Secretary of the J.T.O. Association, Assam Circle, who by virtue of being an office bearer of the Association turned out to be a hurdle in the way of exploiting the members of the Association by the authorities to fulfil their evil design and, as such, taking advantage of his sudden and temporary absence from the station because of compelling circumstances of illness of his wife, the authorities tried to rope in the applicant by taking recourse to false and illegal means.

4.10. That the applicant thereafter collected a copy of the F.I.R. lodged by the T.D.E., Tezpur and from the FIR it is seen that it was alleged by the said T.D.E. that on the night of 15.6.94 at about 11-30 P.M. Shri Upen Saikia, J.T.O. Microwave Station (the present applicant), Tezpur with another youth of the same age group forcefully opened.....

Caben Sa'lio

opened the door and entered in the Inspection Bungalow room of the complainant and after some hot altercation severely beaten the said T.D.E. for about 10/15 minutes causing grievous injuries on his face and attempted to kill him with sharp weapon and lathi.

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A copy of the said FIR is annexed herewith and marked as ANNEXURE -3.

4.11. That the applicant thereafter submitted his written statement denying all the allegations made against him as well as denying his presence in the Inspection Bungalow at the relevant time and involvement in the alleged incident. The applicant in support of his absence and circumstances compelling him to proceed to Guwahati in the early morning of 16.6.94 submitted as many as 15 (fifteen) documents (mostly doctors prescription) along with the written statement showing serious illness of his wife and expressed his ignorance and knowledge about any such incident as alleged. But the authorities, as stated earlier, were pre-determined to prove the applicant guilty by any means and without considering the merit of the case found the explanation/written statement of the applicant to be not satisfactory and rejected the same.

4.12. That the authorities thereafter appointed Shri A.B. Sharon, O.S.D. (Departmental Enquiry).

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Cohen Sailega

- 12 -

B. Region, Patna as Inquiring Authority vide Memo No. DM/ETR/GH/X-I/TZ/US/94-95(i) dated 20.8.94 and Shri K.P. Sinha, Sr. S.D.E., Co-axial, Maintenance, Patna as Presenting Officer to enquire into the charges levelled against the applicant.

4.13. That thereafter the said Inquiring Authority conducted the inquiry and on completion of the inquiry submitted his report dated 19.5.97 which concluded as follows :-

"I need hardly mention that in departmental proceedings, it is not the direct or indirect evidence which counts but it is the Preponderance of probability which matters. Here in this case, the circumstantial evidences have emerged at the inquiry evidently goes against the SPS and accordingly I hold rather strongly, that the charge of violating the well defined provisions of Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964 against the SPS is established. In other words the charge is proved."

A copy of the Inquiry Report dated 19-5-97 is annexed herewith and marked as Annexure-4.

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4.14. That the applicant begs to state that on receipt of the aforesaid Inquiry Report dated 19.5.97, the Respondent No. 3 passed the Final Order dated 4th February, 1998 imposing a major penalty of reduction of pay of the applicant by four stages from Rs.8500/- to Rs.7500/- for a period of three years with effect from 1.2.98 along with other penalties.

A copy of the aforesaid Final Order dated 28.1.98 is annexed herewith and marked as
ANNEKURE -5.

4.15. That the applicant begs to state that on receipt of the aforesaid Final Order dated 4.2.98, the applicant submitted an Appeal before the Appellate Authority, Respondent No. 2 on 6.3.98 raising various pleas and pointing out the discrepancies of the charge-sheet and Inquiry Report, etc. as well as other legal pleas. But the Appellate Authority also seems to have passed the Appellate Order on 5.8.99 without applying his mind to the relevant facts and without considering the materials on record as well as the legal position on the subject most mechanically passed his order maintaining the punishment imposed by the Disciplinary Authority with some minor modification.

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A copy of the order dated 5.8.99 passed by the Appellate Authority is annexed herewith and marked as ANNEKURE -6.

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4.15. That the applicant begs to state that in the FIR lodged by the complainant, T.D.E. it was alleged that the applicant along with another person severely beaten the complainant T.D.E. causing serious injuries on his face and attempted to murder him with sharp weapon and lathi. But in the Inquiry Report (Annexure-4) none of the witnesses (except S.W. 1 Chowkidar who has deposed under coercion and duress) has stated to have seen the applicant near about the Inspection Bungalow at the relevant time of the alleged incident. The complainant T.D.E. at the time of his deposition as S.W. 3 before the Inquiring Authority also shifted his stand by deposing contrary to the allegation made in the FIR and the Article of charges and stated that it was not Shri Saikia (SPS), the present applicant who has assaulted him but it was his associate who has beaten him in black and blue causing grievous injuries and the SPS, the present applicant did not stop the assailant from beating the TDE. It is to be noted herein that the deposition of the complainant TDE also does not disclose anything about the sharp weapon and lathi as alleged in the FIR. The Inquiry Report is also completely silent about such weapon and attempted murder as charged in the charge sheet and statements of imputation of misconduct or misbehaviour. On the other hand, the complainant TDE in his deposition before the Inquiring Authority specifically.....

Jaffer Jani/o/s

specifically denied the allegation of assault on him by the applicant. All these statements of witnesses and the circumstances that emerged out of all the materials on record clearly goes to show that the applicant was ignorant about the alleged incident and not at all involved in any such alleged incident by any stretch of imagination.

Copies of the deposition of witnesses are annexed herewith and marked as ANNEXURE -7 series.

4.18. That the applicant further begs to state that from the deposition of witnesses as well as from the statement of the complainant T.D.E., it is clearly seen that the Chowkidar of the Inspection Bungalow, S.W. 1 was in the ground floor of the Bungalow while the care taker of the Bungalow was near the stair case at the time of occurrence of the alleged incident. Besides, three other co-residents of the T.D.E. were also in the adjacent rooms of the complainant T.D.E. at the time of occurrence of the alleged incident and they came to the rescue of the T.D.E. at the time of occurrence and thereafter attended the injuries of the T.D.E. as alleged. But the Respondents did not make any attempt to produce these vital witnesses who were allegedly eye-witnesses to the incident, nor produced the care taker of the Bungalow to corroborate the evidence of S.W. 1

Shyam.....

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Umesh Sawant

Shyam Lal (Chowkidar) in order to establish the presence of the applicant in the Inspection Bungalow at the relevant time of the alleged incident, S.W. 1 Chowkidar (who deposed under coercion and duress) though in his deposition stated to have seen the applicant along with another at the Inspection bungalow, but denied to have seen any lethal weapon or lathi with the accused persons. Besides, no attempt whatsoever has been made by the prosecution to identify the assailant Shri Bora and to establish the link of Shri Bora with SPS, the applicant. Thus the prosecution miserably failed to establish the charge against the applicant and prove his guilt.

4.1g. That the applicant begs to state that the Inquiring Authority in the concluding portion of his report mentioned in bold letters 'Preponderance of probability' even failed to understand or realise that here in the present case all preponderance of probability and circumstances that emerged from the materials on record are in favour of the SPS, the applicant and thereafter holding 'rather strongly' that the charge of violating the well defined provisions of Rule 3(1)(iii) of the CCS (Conduct) Rule, 1964 against the SPS is established is sufficiently indicative of the fact that the authorities were pre-determined to punish the applicant by any means to mitigate their mala fide intention and all those exercises were gone through only to somehow justify their motivated action.

4.29. That the applicant begs to state and submit that on a plain reading of the FIR (Annexure -3), Investigation Report (Annexure -1), Memorandum and Articles of charges (Annexure -2 series) it is clear enough to presume that the entire episode of alleged assault and framing of charge thereof are nothing but a conspiracy with mala fide intention and subsequent exercise of appointing Inquiring Authority, etc. and the Inquiry Report are motivated action on the part of the Respondents in order to fulfil their evil design to harass the applicant. All these are based on the facts and reasons other than the bona fide and truth.

4.20. That the applicant begs to submit that the charge sheet at Annexure-2 has been framed by the Respondent Authority only on the basis of the findings/recommendations made by the Vigilance Officer in his investigation report without applying its mind and without forming its own opinion and the said investigation report on the other hand is entirely based on suspicion and conjecture. It is well settled principles of law that suspicion cannot be made a ground for charging a person nor a charge based on the findings of Vigilance Department is maintainable unless Disciplinary Authority forms its *prima facie* opinion having accepted such findings.

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John Bajic

4.21. That the applicant further begs to submit that S.W. 4 Shri B.N. Biswa, Vigilance Officer in his cross-examination stated that he has got the leave address of the applicant from his leave application which was sent by the applicant on 18.6.94 and Shri Biswas met the applicant at his leave address and in spite of this fact, he has written in his findings that the applicant attempted to avoid arrest which is nothing but mala fide.

4.22. That the applicant further begs to state that the guidelines issued by the Government of India under No. 18-38/64-TE dated 17.9.1966 regarding rationalisation of the set up of the Telecommunication Regions clearly laid down the powers and functions of different authorities in the Telecom Department which is included in the CCS(CCA) Rules also. Any power or function exercised by any authority in contravention of the aforesaid guideline and the relevant Rules is unauthorised and beyond jurisdiction of that authority.

A copy of the aforesaid guideline dated 17-9-1966 is annexed herewith and marked as ANNEXURE -8.

Lefben Sarjia

It is pertinent to mention herein that in the mean time and on completion of the aforesaid formalities the respondents managed to get a Presidential order issued on 8th August, 1995 in contravention of the relevant Guideline (Annexure-8) and service law and standing instructions of the Government of India (Annexure-) as well as settled principles of law, nominating the Director, Maintenance, ETR, Shillong as ad hoc Disciplinary Authority and CGMM, ETR, Shillong as Appellate Authority.

A copy of the said Presidential order dated 8.8.1995 is annexed herewith and marked as ANNEXURE - 9.

4.29. That the applicant begs to state that the Government of India vide Notifications issued under No. GI M.H.A. No. 7/5/1959-Estt.(A) dated 25th May, 1959 and Deptt. of Per & Trg. No. 11012/19/84-Estt. (A) dated 28th July, 1986 clearly provide that

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"statutory rules have the force of law and alterations in conditions of recruitment and service to be notified by amendments to statutory rules". The said Notifications further reiterated that "..... validity of any alterations in the conditions of service made by executive orders alone remains open to challenge in a Court of law."

A copy of the said Notification is annexed herewith and marked as ANNEXURE - 10.

4.24. That the applicant begs to submit that in the face of and in contravention of the aforesaid guideline (Annexure-6) and the Government Standing Instruction (Annexure-7) issuance of the Presidential order substituting the Disciplinary and Appellate Authority is not sustainable under the law and, as such power vested under such illegal order is also not sustainable and liable to be set aside.

4.25. That the applicant begs to submit that the impugned penalty imposed by an unauthorised and incompetent authority is colourable exercise of power is arbitrary, illegal and, as such, not sustainable under the law and the same is, therefore, liable to be set aside and quashed.

4.26. That the applicant begs to submit that the impugned order of the appellate authority on the appeal.....

appeal of the applicant also having been passed without applying his mind to the relevant facts, the same is also not sustainable and liable to be set aside and quashed.

4.28. That the applicant begs to submit that the charge framed against the applicant on the basis of the investigation report of Vigilance Officer is also not justified and or in other words the allegation levelled against the applicant is not substantiated by the investigation report, rather the same has been disproved by the investigation report and hence the Memorandum and the Article of charge framed against the applicant is not sustainable and is liable to be set aside and quashed.

4.29. That the applicant begs to submit that the impugned action of the respondents in issuing the Memorandum and Articles of charge against the applicant and the report of the Inquiring Authority on the basis of which the impugned penalty and subsequent appellate order, all are based on facts and reasons other than the truth and lawful and the same are arbitrary, illegal, malafide and motivated based on extraneous considerations and, as such, the entire exercise of the respondents in the process and the orders passed by the authorities penalising the applicant in colourable exercise.....

exercise of power are all liable to be declared illegal, unsustainable and are liable to be set aside and quashed.

4.29. That the applicant begs to submit that malice in fact and malice in law is apparent on the face of the record in the instant case and, as such, all actions of the respondents penalising the applicant is liable to be set aside and quashed.

4.30. That the applicant begs to submit that the impugned action of the respondents in holding the applicant guilty of misconduct or misbehaviour and in penalising the applicant on the basis of illegal, malafide and motivated report is violative of Articles 14, 16 and 21 of the Constitution of India and, as such, the same are liable to be set aside and quashed.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

(a) For that the charges levelled against the applicant is motivated, malafide and not based on any materials on record and, as such, the same is not sustainable and liable to be set aside and quashed.

(b) For that the charge based on the findings of the Vigilance Officer and the Authority without.....

without forming its own prima facie opinion have accepted such findings which are not tenable in law and the same are, therefore, liable to be set aside and quashed.

(c) For that it is well settled principle of law that the suspicion cannot be made a ground for charging a person and such charges are unsustainable in law and liable to be set aside and quashed.

(d) For that the investigation conducted by the Vigilance Officer Shri B.N. Biswas and his report dated 7.7.94 clearly goes to show that even after failure to collect any evidence or material against the applicant, the Vigilance Officer recommended initiation of appropriate disciplinary proceeding only on the basis of FIR and alleged attempt to avoid arrest is nothing but malafide and motivated and, as such, charges based on such malafide and motivated findings only on the basis of suspicion is not tenable in law and liable to be set aside and quashed.

(e) For that it is the well settled principle of law that the charge framed against the Government servant must be clear and unambiguous so as to enable the charged employee....

John Banks

employee to deny or admit the same and the Inquiring Authority has no power or authority under the law to mould the charge in any other manner to establish the guilt of the employee in any other way except or beyond the charge framed by the Disciplinary Authority. Here in the instant case while the charge is of assault and attempted murder by the applicant himself with another person failing to prove the same in the face of contrary statement made by the complainant himself and thereafter holding the applicant guilty of not resisting another person from beating the complainant is beyond the Memorandum and Articles of charges and, as such, findings of the Inquiring Authority is perverse and beyond jurisdiction and, as such, any punishment or penalty based on such perverse and illegal findings is also perverse and liable to be set aside and quashed.

(f) For that Rule 3(1)(iii) of the CCS (conduct) Rule, 1964 does not cast any duty on any Government servant (except PSO of Police personnel) to resist anybody from assaulting any other Government servant at the place of residence of that other Government servant and that too when the presence of the charged employee is not proved by any cogent and independent evidence and, as such, the findings of the Inquiring Authority is in clear misconception of law and

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the penalty imposed on such misconceived findings is not tenable under the law and liable to be set aside and quashed.

(g) For that in the Article of charges it was alleged that the applicant committed a serious offence of assaulting a departmental officer Shri K. Balasubramaniam, Telecom District Engineer, Tezpur at about 11:30 P.M. of 15.6.94 and further alleged to have attempted to murder him with the help of sharp weapon and lathi. But in the Inquiry Report it appears that none of the witnesses has deposed in support of the charge, nor even the complainant T.D.E. himself. Besides there is no evidence of any sort nor even a whisper in the Inquiry Report about any sharp weapon and lathi as alleged in the Article of charges and, as such, the Inquiry Report miserably failed to establish the charge or guilt of the applicant or even his presence at the relevant time by any cogent or independent and reliable evidence and, as such, the findings of the Inquiry Authority is not based on the evidence on record, but on extraneous and irrelevant consideration and the same is, therefore, malafide and motivated and, as such, penalty imposed on such malafide and motivated findings is not sustainable under the law and is liable to be set aside and quashed.

Open Sailing

(h) For that admittedly there were 3 (three) other co-residents of the complainant in the Inspection bungalow at the relevant time who have allegedly come to the rescue of the T.D.E. at the time of occurrence of the incident and allegedly attended the complainant T.D.E. immediately after the alleged assault and, as such, they ought to have been the vital witnesses of the alleged incident. But none of them has been produced as witness in the instant case. The enquiry is thus vitiated by non-production of vital witnesses and, as such, the inquiry report and the impugned punishment on the basis of such vitiated inquiry report is not sustainable under the law and is liable to be set aside and quashed.

(i) For that the penalty imposed on the applicant is a major penalty and the authority imposing such penalty is not empowered to impose such penalty in terms of the provisions of Rule 20 of the CCS (CCA) Rule, 1965 and the guideline issued by the Government of India (Annexure) and in that view of the matter also, the impugned order imposing a major penalty on the applicant as well as the order of the Appellate Authority for non-consideration of the above provisions of law is not sustainable under the law and the same are, therefore, liable to be set aside and quashed.

John Jacob

(j) For that it is the well settled principle of law that an existing law or rule cannot be substituted by any executive or administrative order which has been further re-enforced by the Standing Instructions issued by the Government of India vide Notifications dated 25th May, 1959 and 28th July, 1986 (Annexure 1) and, as such, the Presidential order dated 8.8.95 (Annexure -8) substituting the Disciplinary Authority prescribed under the Rule as well as under the Guideline in this behalf is violative of the settled principle of law as well as contrary to the Standing Instruction of the Government of India is not tenable in law and hence the power exercised by such authority on the basis of illegal and untenable Presidential order is also not tenable in law and, as such, the penalty imposed on the applicant on the basis of illegal vesting of power is also illegal and liable to be set aside.

(k) For that the order passed by the appellate authority without considering the above position and proposition of law and without applying his mind to the relevant facts is unsustainable and liable to be set aside and quashed.

(l) For that there is no official service link between the complainant and the applicant and the....

Uben Sarao

the alleged incident took place outside the place of work and beyond office hours and even if it would have been proved that the applicant was involved in such incident, the same does not attract the provisions of the relevant service law and, as such, the entire exercise of the respondents under the service law is beyond jurisdiction and, as such, the penalty imposed on the applicant by the impugned orders (Annexure) are beyond jurisdiction and the same are, therefore, not tenable under the law and liable to be set aside and quashed.

(m) For that the respondents or the Inquiring Authority did not make any attempt to identify the alleged assailant one Shri Bora and to establish his link with the applicant in any manner and as such unless the identity of the alleged assailant and his link with the applicant is established, the Inquiry Report and the findings thereof is vitiated by non-fulfilment of vital aspect of the matter and, as such, any punishment on the basis of illegal and untenable findings is not tenable in law and liable to be set aside.

(n) For that the order passed by the Appellate Authority on the appeal filed by the applicant is also vitiated by his non-application of mind

to.....

to the entire matter and, as such, the appellate order passed by the appellate authority is mechanical one and the same is, therefore, liable to be set aside and quashed.

(o) For that the findings of the Inquiring Authority holding the appellant guilty of the charge is based on no evidence or is such as could be reached by an ordinary prudent man and the same is perverse or is made at the dictate of some superior authority. It has been held by the Hon'ble Supreme Court in a case reported in (1999) 5 SCC 762 that though strict rule of evidence are not applicable to departmental enquiry, but the charge is to be established by evidence, albeit not by mere conjecture and surmises, acting upon which reasonably and objectively a reasonable man could uphold the charge. In that view of the matter also the impugned punishment imposed upon the applicant is not maintainable and the same are therefore liable to be set aside and quashed.

(p) For that in any view of the matter, the impugned orders imposing penalty on the applicant as well as the order passed by the appellate authority with some minor modifications are biased, arbitrary, illegal, malafide and motivated and, as such, the same are liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED :

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

7. MATTERS NOT PENDING WITH ANY OTHER COURT OR TRIBUNAL:

The applicant further declares that the matter regarding which this application has been made is not pending before any other Court of law or any other authorities or any other Bench of the Tribunal.

8. RELIEF SOUGHT FOR :

Under the facts and circumstances stated above, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to admit this application, call for the records of the case and upon hearing the parties on cause or causes that may be shown and on perusal of the records be pleased to grant the following relief to the applicant :-

- (a) To set aside and quash the Memorandum and Articles of charges (Annexure-2 series) issued against the applicant only on the basis of the recommendation of the Vigilance Officer based on no evidence or material on records.

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Upon Filing.

- (b) To set aside and quash the Inquiry Report dated 19.5.98 (Annexure-4) also based on no evidence and beyond the Articles of charges framed against the applicant.
- (c) To set aside and quash the Final Order dated 19.5.97 (Annexure-5) passed by the Respondent No. 3 being unauthorised, beyond jurisdiction and based on no materials on record and is arbitrary, illegal and mala fide.
- (d) To set aside and quash the order dated 5.8.99 passed by the appellate authority, Respondent No. 2 (Annexure-6) most mechanically and without applying his mind to the relevant facts as well as law.
- (e) To pay all back wages deducted by way of punishment in reducing the basic pay of the applicant on the strength of arbitrary, illegal and malafide orders (Annexure 526).
- (f) Cost of the application.
- (d) Any other relief or reliefs to which the applicant is found entitled as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

The applicant does not pray for any interim order at this stage, but craves leave of the Hon'ble Tribunal to pray for the same, if so required at a subsequent stage of the proceeding.

10. The application is filed through an Advocate.

11. PARTICULARS OF THE I.P.O. :

- 1) I.P.O. No. OG. 497465
- 2) Date 12-6-2000
- 3) Payable at Guwahati.

12. LIST OF ENCLOSURES :

35- CS, 42- Report As indicated in the Index.

Violation of natural justice - Not calling 3 vital witness
Verification.....

(999) (8)SCC - 582

Hardwari Lal vs St. of UP -
Page 11

VERIFICATION

I, Upen Saikia, Son of Late Thulswar Saikia
aged about 42 years, at present serving as
Junior Telecom Officer, Planning, in the office of
the General Manager, Telecom, Kamrup Telecom District,
Guwahati - 7 under the Respondent No. 2, do hereby
verify and state that the statements made in paragraphs
4.16 4.5, 4.7, 4.9, 4.11, 4.12, 4.17 to 4.21
are
true to my knowledge, those made in paragraphs 4.6, 4.8,
4.10, 4.13, 4.14, 4.15, 4.16, 4.22, 4.23 being matters of records are
true to my information derived therefrom and the rests
are my humble submissions before this Hon'ble Tribunal.

ASSault to TDE
And I sign this verification on this the 12th
day of June, 2000 at Guwahati.

CS - 35

F.R 40

Report 42

Penalty 48

Abheal 59

Upen Saikia
Signature of the Applicant.

R/I

-34-

ANX-4

Investigation report on the complaint of assault on Shri K.Balasubramaniam, TDE, Tezpur by Shri Upen Saikia, JTO, Microwave, Tezpur on 15th June, 1994.

Visited Tezpur on 10th and 11th July, 1994. Though I tried to collect information about the incident from a number of staff but nobody could enlighten about the incident of assault on Shri K.Balasubramaniam, TDE, Tezpur by Shri Upen Saikia, JTO, Microwave, Tezpur as per the complaint of the CGMT, Assam Circle. The acting TDE Shri P.Paying produced one copy of the FIR lodged by Shri Balasubramaniam in the Police station, Tezpur on 16th June, 1994. As per FIR it is revealed that the said Shri Balasubramaniam was severely beaten by Shri Saikia and another person and attempted to kill him by sharp weapons and lathi. As per the DC, Tezpur's report, the police raided several places but Shri Saikia could not be arrested. Shri Saikia was absent from duties since 16th June, 1994 with an application of 4 days' casual leave followed by Earned leave for 40 days on M/C. It appears that Shri Saikia has been trying to avoid arrest by the police on the basis of FIR.

It is worth mentioning that the undersigned visited Shri Saikia at his leave address at Guwahati. On being asked by the undersigned to submit a detailed report about the aforesaid incident, he could not submit a detailed report but submitted a statement denying his involvement in the incident.

Hence on the above reasons viz:

1. Criminal case under investigation as per FIR.

and

2. Attempt to avoid arrest by the police.

On the basis of the above reasons the said Shri Saikia appears to have prima facie violated the provisions as mentioned under item 15 of G.I.Decision (24) below Rule 3 of CCS(Conduct) Rules 1964. Therefore, appropriate disciplinary proceedings may be initiated against the said Shri Saikia.

B.N.BISWAS 17/7/94
(B.N.BISWAS)

Vigilance Officer,
E.T.R., Calcutta.

Certified to be
true copy
Biswaranjan
Advocate

GOVERNMENT OF INDIA

Department of Telecommunications

Office of the Director Maintenance, Eastern Telecom Region,
Senapati Road, Silpukhuri, Guwahati-781003

Memo No. DM/ETR/GH/X-1/TZ/US/94-95 Dated at Guwahati 3-8-1994.

M E M O R A N D U M

The undersigned proposes to hold an inquiry against Shri Open Saikia, Junior Telecom. Officer, Microwave Maintenance, Tezpur under Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules-1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). A statement of the imputations 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 article of charge is proposed to be sustained are also enclosed (Annexure-III and IV).

2. Shri Open Saikia, Junior Telecom. Officer, Microwave Maintenance, Tezpur is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

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

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

5. Attention of Shri Open Saikia, Junior Telecom. Officer, Microwave Maintenance, Tezpur is invited to Rule-20 of the Central Civil Services (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 interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Open Saikia, J.T.O. Microwave Maintenance, Tezpur is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule-20 of the CCS (Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged.

*Certified to be
true copy
Dhr. P. P. Dhar
Asst. Secy.*

To
Shri Open Saikia
J.T.O., M/W Mce.
Tezpur

378/94
(CHANDRA PRAKASH)
Director Maintenance
Eastern Telecom. Region
Guwahati.

statement of articles of charges framed against Shri Open Saikia, J.T.O
rowave Maintenance, Tezpur (Assam).

Article-I:

That, the said Shri Open Saikia while functioning as J.T.O
rowave Maintenance Tezpur reported to have committed a serious offence
assaulting a departmental officer Shri K. Balasubramanian, Telecom.
strict Engineer, Tezpur at about 11.30 P.M of 15-6-94 and further
leged to have attempted to murder the latter with the help of sharp
upon and lathi.

Thus, by his above act, the said Shri Open Saikia committed a grave
conduct in terms of criminal offence and acted in a manner which was
becoming of a Govt. servant and thereby appears to have violated the
visions of Rule-3¹(1)(iii) of CCS (Conduct) Rules-1964.

*Certified to be
true copy.*

*Abrar Khan
Advocate*

SEN 3/8/94

work of imputation of misconduct or misbehaviour in support of the
charge framed against Shri Open Saikia, J.T.O. Microwave
Maintenance, Tezpur.

A. SWB

50

That, the said Shri Open Saikia has been functioning as J.T.O.
Maintenance, Tezpur since 30-4-84 and continuing till date.

That, at about 11.30 P.M. of 15-6-94, the said Shri Saikia ^{reagn} ~~with another person whose name is reported to be Mr. Barah, attended~~ ^{could not} ~~force opened the door of the room~~ ^{be sustained} inspection Bunglow, which is incorporated in the 2nd floor of the office at Kacharigaon, Tezpur and ~~force opened the door of the room~~ ^{supri} ~~Shri K. Balasubramanian, T.D.E., Tezpur has been residing.~~ ^{sustained}

That, while the said Shri Saikia entered into hot altercations ^{supri} ~~with~~ ^{with} ~~Shri Balasubramanian within the aforesaid room, the later~~ ^{supri} ~~alleged to have been severely beaten to the extent of grievous~~ ^{sustained} ~~on his face by both Shri Saikia and his aforesaid accomplice.~~

That, Shri Saikia and his said accomplice alleged to have ^{supri} ~~murder~~ ^{supri} ~~the said Shri Balasubramanian with a sharp weapon and~~ ^{supri} ~~in the~~

That, an FIR has been lodged with the Tezpur Police Station No. 347/94, dated 16-6-94 against the said Shri Saikia on a criminal ^{supri} ~~at the instance of a written complaint dated 16-6-94 made by Shri~~ ^{supri} ~~Balasubramanian, T.D.E., Tezpur to the Officer-in-charge Tezpur Police~~

That, while the police conducted raid at several places to ^{supri} ~~totally~~ ^{supri} ~~the miscreants the said Shri Saikia was reported to have been~~ ^{supri} ~~fabricated~~ ^{at no. methi} ~~since 16-6-94 and evading arrest.~~ ^{in his house}

That, soon after the incident, said Shri Saikia had submitted application for 4 days C/L w.e.f 16-6-94 which has not been granted by authority, followed by 40 days E/L on M/C to his Controlling Officer JTO Microwave Maintenance, Tezpur and left his head quarter station without necessary permission presumably to avoid arrest by police ^{supri} ~~the reasons nothing other than the criminal offence allegedly~~ ^{supri} ~~and by him on 15-6-94 night.~~ ^{supri} ~~different~~ ^{supri} ~~as per his~~ ^{supri} ~~charge sheeted~~ ^{supri} ~~separately~~ ^{supri} ~~suspicious~~

Thus, by his above act Shri Open Saikia, JTO Microwave Maintenance, Tezpur committed criminal offence which amounts to grave ^{supri} ~~offence in terms of conduct rule read with G.I. decision (25) item No. 1 for the heading "The following acts and omissions amount to act", below Rule-3 ibid and acted in a manner which was unbecoming Government servant and thereby appears to have violated the~~ ^{supri} ~~terms of Rule-3(1) (iii) of CCS (Conduct) Rules-1964.~~

Certified to be
True copy
K. Barah
Advocate

16/11/11

of documents by which the articles of charge framed against Shri Saikia, J.T.O Microwave Maintenance, Tezpur is proposed to be carried.

Statement dated 11-7-94 of Shri Shyam Lal Sah, Chowkidar, O/O. the T.D.E Tezpur deposed before and recorded by the V.O., E.T.R, Calcutta.

Complaint of Shri K. Balasubramanian, T.D.E, Tezpur dated 16-6-94 addressed to the Officer-in-charge, Police Station, Tezpur.

Certified true copy of the First Information Report against Tezpur (P.S. case) No. 347/94 Dated 16-6-94 signed by Shri N.N. Buragohain, Inspector O.C. (T) P.S.

Telegraphic message No. DC/PA/94/3719 Dated 20-6-94 from the Dy. Commissioner Sonitpur addressed to the Director of Public Relations, Govt. of Assam and copy for information of Shri K. Shridhara, C.G.M.T., Assam Circle Ulubari, Guwahati, Commissioner Tezpur & Secretary Home & Political DPR.

Statement dated 11-7-94 of Shri Yogendra Sinha, Assitt Engneer, Microwave Maintenance, Tezpur addressed to the V.O., E.T.R, Calcutta.

Investigation Report dated 15-7-94 of Shri B.N. Biswas, V.O., E.T.R, Calcutta.

*Certified to be
true copy
Abbar Mohan
Aho call*

list of witness by whom the article of charges framed against Shri Open
aikia, J.T.O Microwave Maintenance, Tezpur is proposed to be sustained.

Shri Shyam Lal Sah, Chowkidar, O/O. the T.D.E, Tezpur under the
control of T.D.E. Tezpur.

Shri Yogendra Sinha, A.E. Microwave Maintenance, Tezpur under
the control of D.E. Microwave Maintenance, Guwahati.

Shri K. Balasubramanian, T.D.E., Tezpur under the control of Area
Director, Guwahati.

Shri B.N. Biswas, V.O., E.T.R, Calcutta under the control of
C.G.M, E.T.R, Calcutta.

Certified to be
true copy
Aborah
Brocale

The Officer In-Charge
Police Station, Tezpur.

Sub:- F.I.R.

Sir,

I have the honour to state that yesterday night at about 11.30 PM Shri Upen Saikia, JTO, Microwave Station, Tezpur along with another youth of same age group force fully opened the door and entered my Inspection Bungalow room and after some hot altercations I was severely beaten by them for ^{about} 15 minutes causing grievous injuries on my face and attempted to kill me by a sharp weapon and lathi. They threatened me not to lodge complaint with police and went out from my room.

Hence, I would like to request you to take necessary action as per law so that the miscreants are caught redhanded. Also necessary police protection may be arranged for three days at least, hence forth in my office. The other miscreants could be able to identify by me if seen and he introduced him as Shri Bora to me.

Yours faithfully,

Dated at Tezpur, the
16-6-94.

Received

(K. BALASUBRAMANIAN)
TELECOM. DISTRICT ENGINEER
TEZPUR.

Certified to be
true copy
Abbas Patel
Advocate

- 41 -

FIRST INFORMATION REPORT

Inspector of Police

Officer-in-charge

Tezpur, P.S. 14-7-94

First information of a cognisable crime reported under Section 154, Criminal Procedure Code.

Police Station Jobpur

SUB-DIVISION

Jobpur

DISTRICT

Sivasagar

Case No 347/94

Date and hour of occurrence

15-6-94 at 11.30 AM

Date and hour when reported	Place of occurrence and distance and direction from Police Station	Date of despatch from Police Station
15-6-94 10.30 A.M.	Telecom office Kachariganj Moga - Mahabubnagar About 2 Km, North West	16-6-94

N.B.—A first information must be authenticated by the signature mark or thumb impression of informant attested by the signature of the officer recording

Name and residence of informant and complainant 1	Name and residence of accused 2	Brief description of offence with Section and of property carried off if any 3	Steps taken regarding investigation explanation of delay in recording information 4	Results of the case 5
Ala Subramaniam 1. T.S. Com. dist. engineer Jobpur	① Upen Saikia ② Sri Baruah	U.P.C. 457/325/ 307/506/ 34 I.P.C.	TSI, T. Basak will investigate of the Case	

Sd/- N.N. Beugadain
Signed..... Inspector
Designation..... O.C. (D) 16-6-94

(FIRST INFORMATION TO BE RECORDED BELOW)

16-6-94

First information report filed. Complaint received at P.S. which is noted as F.I.R. and recorded hereunder.

Sd/- N.N. Beugadain
Inspector
O.C. (D) 16-6-94

Note—The signature seal or Mark of Informant should be offered at foot of the information

O.C. (D) 16-6-94

GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS

INQUIRY REPORT

NO. OSD(PT)/35/94

DATED: 19.05.97

PRESENT

: SRI A.B.SHARAN
OFFICER ON SPECIAL DUTY
(DEPARTMENTAL INQUIRY)
E.REGION, G.P.O. BUILDING,
P A T N A - 800 001

PRESENTING OFFICER

: SRI K.P.SINHA
SR. S.D.E., CXL., MTCE.,
TELEPHONE EXCHANGE CAMPUS, PATNA.

DEFENCE ASSISTANT

: SRI N.K.SINGHANIA
J.T.O. CABLE (NORTH), GUWAHATI.

Disciplinary proceedings under Rule 14 of CCS(CCA)
Rules 1965 against SRI UPEN SAIKIA, JTO M/W Mtce., Tezpur.

The aforesaid Suspected Public Servant Sri Upen Saikia, JTO (hereinafter referred to as SPS) was chargesheeted vide memo No. DM/ETR/GH/X-1/TZ/US/94-95 dated 03.08.1994 issued by the Director Maintenance Eastern Telecom Region, Guwahati (hereinafter referred to as the Disciplinary Authority). The undersigned was appointed as Inquiring Authority vide Disciplinary Authority Memo No. DM/ETR/GH/X-1/TZ/US/94-95/(i) dated 20.08.94. Simultaneously Shri K.P.Sinha, Sr. S.D.E., Co-axial Maintenance, Patna vide Disciplinary Authority Memo No. DM/ETR/GH/X-1/TZ/US/94-95/(ii) dated 20.08.94 was appointed as Presenting Officer (hereinafter referred to as P.O.) to present the case in support of the charges before the Inquiring Authority on behalf of Disciplinary Authority. The SPS first took assistance of Shri S.C.Chanda, Chief T.M. (Retd.), Guwahati, and then of Shri N.K.Singhania, JTO Cable (North), Guwahati

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*Certified to be
true copy
Abrar Ali
Advocate*

as his defence assistant. Subsequently because of changed situation and circumstances prevailed, the Director, Mtc., ETR, Shillong was appointed as ADHOC DISCIPLINARY AUTHORITY under presidential order as communicated to the undersigned vide memo No. ETR/CA-VIG/499/21/50 dated 13.11.96 issued by Shri M.R.Das, Vigilance Officer, %CGMM ETR, Calcutta.

Before however I proceed with the case, I may mention that the SPS has moved an application in the CAT bench of Guwahati to direct the department not to proceed with the departmental proceedings against him but the honourable CAT was pleased to reject his application and accordingly the undersigned was directed by D.E. M/W Mtc., Guwahati vide his memo No. DEMW/GH/X-1/95-96 dated 16.06.95 to proceed with the departmental inquiry as entrusted to me.

The sitting started with its Preliminary Hearing on 19.09.1995 when the SPS categorically denied the charges levelled against him and preferred a personal hearing in the case. In consequence, the P.O. was directed to proceed with the presentation of the case against the SPS and to begin with the P.O. was directed to get examined and inspected by the SPS all the documentary evidences as enumerated in Annexure-III of the memorandum of chargesheet. Simultaneously, the SPS was directed to submit a list of documents if any, required by him for his defence. He was further directed to submit a list of defence witness if any, which he wanted to produce and examine in support of his defence case. The SPS alongwith his defence assistant inspected the listed documents on 19.09.95. On completion of these formalities, the Regular Hearing started.

In course of Regular Hearing on 13.02.96, 03.06.96 and 11.10.96, the P.O. adduced all the documents as enlisted in Annexure-III of the chargesheet and all such documents have been taken on records as State Exhibits as under:

1. S.Ext.01 - Statement dated 11.07.94 of Shri Shyam Lal Sahi, Chowkidar % the T.D.E. Tezpur deposited before and recorded by the V.O., ETR, Calcutta.
2. S.Ext.02 - Complaint of Shri K.Balasubramanian, T.D.E. Tezpur dated 16.06.94 addressed to the Officer-in-charge, Police Station, Tezpur.
3. S.Ext.03 - Certified copy of the First Information Report against Tezpur P.S. case No. 347/94 dated 16.06.94 signed by Shri N.N.Buragohain, Inspector OC(T) P.S.
4. S.Ext.04 - Telegraphic message No. DC/PA/94/3719 dated 20.06.94 from the Dy. Commissioner, Sonitpur addressed to the Director, Public Relation, Govt. of Assam and copy for information to Shri K.Shrividhara, C.G.M.T. Assam Circle Jorhat, Guwahati, Commissioner Tezpur & Secretary Home & Political DPR.

Contd. on 3/...

5. S.Ext.05 - Statement dated 11.07.94 of Shri Yogendra Sinha, Asstt. Engineer, M/W, Mtce., Tezpur addressed to the V.O., % C.G.M.T., ETR, Calcutta.

6. S.Ext.06 - Investigation Report dated 15.07.94 of Shri B.N.Biswas, V.O., ETR, Calcutta.

Also in course of Regular Hearing, the P.O. could adduce all the four state witnesses mentioned in Annexure IV of the chargesheet in support of charges who were examined-in-Chief by P.O. and cross-examined on behalf of SPS. They are as under:

1. S.W.1 - Shri Shyam Lal Sah, Chowkidar, % TDE Tezpur.
2. S.W.2 - Shri Yogendra Sinha, A.E., M/W Mtce., Tezpur.
3. S.W.3 - Shri K.Balasubramanian, T.D.E. Tezpur.
4. S.W.4 - Shri B.N.Biswas, V.O., ETR, Calcutta.

The following defence document, adduced by the SPS, was also taken on record as D.Ext. as under:

1. D.Ext.1 - English translated copy of the statement dated 11.07.94 of Shri Shyam Lal Sah (S.W.1).

At the end of oral hearing both the parties were directed to submit their respective briefs within stipulated time. The prosecution brief of P.O. dated 08.11.96 was received on 12.11.96 and the defence brief of the SPS dated 24.12.96 was received on 03.01.97.

Thus all the documentary evidences adduced and submissions made were thoroughly examined. At the sametime both the parties (i.e. Prosecution and the defence) were afforded full and reasonable opportunities which they availed to the best of their satisfactions and at the same time there is — absolutely no complaint in this regard from the either side.

The following article of charge was framed against the SPS as contained in Annexure I of the chargesheet.

"That, the said Shri Upen Saikia while functioning as JTO Microwave Maintenance, Tezpur reported to have committed a serious offence by assaulting a departmental Officer Shri K.Balasubramanian, Telecom Distt. Engineer, Tezpur at about 11.30 P.M. of 15.06.94 and further alleged to have attempted to murder the later with the help of sharp weapon and lathi.

Thus, by his above act, the said Shri Upen Saikia committed a grave misconduct in terms of criminal offence and acted in a manner which was unbecoming of Govt. servant and thereby to have violated the provisions of Rule 3 (1)(iii) of CCS (Conduct) Rules - 1964".

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On the language used in article of charge mentioned in the Annexure I to the memorandum of charges, Shri Saikia has been charged with serious offences like assault on a govt. officer amounting to attempt of murder. It is needless to stress that such charges like assault on govt. servant amounting to attempt to murder are serious offences which attract the relevant provision of I.P.C. and are to be tried only by a competent court of law.

In the context aforesaid, I, as a departmental inquiring authority, consider it fair and proper to restrict the perview of my inquiry only to the extent which attracts the provisions of Rule 3(1)(iii) of CCS (Conduct) Rule 1964.

DISCUSSION

The crux of the charge/imputation against the SPS is that he alongwith his associate named Shri Bora, unauthorisedly entered the I.B. on 15.06.94 at odd hours of 11.30 P.M. where the T.D.E. Tezpur Shri K.Balasubramanian used to stay right since his posting there. Having entered in the room of TDE, they entered into hot discussion and altercations with the TDE which ended in severe beating and assault on the TDE by the said Shri Bora in direct presence of the SPS who did not prevent his associate despite request and appeal of TDE and for this act and Connivance, he has been charged with violation of Rule 3(1)(iii) of the CCS (Conduct) Rule-1964.

The plea of Shri Saikia (SPS) is total denial and complete rejection of the aforesaid charge against him. Now it has to be examined how far the prosecution has been able to sustain the charges against the SPS and how far the SPS has been able to refute and to demolish the charge against him. It stands admitted that there is absolutely no eye witness in the case but there are ample and sufficient circumstantial evidences which go in favour of and in support of the case of the disciplinary authority against the SPS.

Shri Shyam Sal Sah S.W.1 who happens to be the Chowkidar of the Inspection Bungalow and was on duty from 06.00 P.M. of 15.06.94 to 06.00 A.M. of 16.06.94, had in his very initial statement made before the V.O., marked as S.Ext.01, stated in very clear and categorical terms in his reply to Q.3 & Q.4 that the SPS alongwith his associate entered in the room of I.B. in which the TDE Tezpur was staying at odd hours of 11.30 P.M. in the night of 15.06.94. This witness has stated in clear words that he recognised Shri Saikia (SPS) as he used to visit the TDE very frequently but he did not at all recognise his associate. He further stated that both the SPS and his associate, came out of the I.B. altogether after 10 to 15 minutes. As soon as they went out, he came to know from co-resident of TDE in the I.B. that some incidence of assault to TDE had taken place and immediately he went upstairs to the room of the TDE where

Contd. on 5/....

he observed three co-residents were attending to the injury inflicted on TDE's forehead and face. Evidently during the very period of 10-15 minutes during which the SPS and his associate stayed in the room of TDE. The natural inference which can safely and logically be drawn is that the TDE was inflicted injuries on his body by the associate of the SPS in as much as the aforesaid co-resident/guests of the TDE were not at all expected to indulge in such criminal behaviour.

Shri Yogendra Sinha S.W.2 in his deposition has stated that, though he was not an eye witness to the aforesaid ugly seen, he has confirmed that from the very next day, the SPS disappeared from the place after having sent one casual leave application through a messenger and he ultimately converted and extended his leave for forty days from Guwahati on the unsupported ground of his wife's illness. Evidently neither he has obtained Prior permission to leave the headquarter nor, he has taken any such permission even telephonically, which a person possessing a departmental residential telephone connection should normally do. He has forgotten that neither the sanction of leave of any kind can be presumed, nor leave can be claimed as a matter of right even in case of any exigencies. Here again that because of the aforesaid ugly incident, the SPS had considered it safe to leave Tezpur abruptly, else there was even possibility of being apprehended by the police. In leaving his headquarter abruptly and without prior permission of the competent authority, he has definitely acted in utter violation of the relevant rules on the subject.

Shri K.Balasubramanian the victim of assault was examined as S.W.3 and in his deposition he has confirmed vividly the story of the early discussed incident which he had reported/complaint more than a year back. However he has made it amply clear in his deposition that it was not Shri Saikia (SPS) who has assaulted him but it was his associate (who had given his name as Shri Bora) who has beaten him in black and blue causing grievous injuries. He has further made it clear that despite his repeated request and appeal to the SPS, he (SPS) did not stop his associate from assaulting/beating the TDE. This action on the part of the SPS definitely amounts to his deliberate connivance.

S.W.4 Shri B.N.Biswas who has made the inquiry into affairs after a month of the reported ugly incident is nothing better than a hearsay witness. The SPS could not find any one to appear as defence witness on his behalf and therefore he offered himself as a defence witness under Rule 14(17) of CCS (CCA). He was examined-in-Chief by the defence assistant and cross-examined by the P.O. In course of his own deposition he has purposely avoided to state anything about the charge against him but has simply harped only alleged serious illness of his wife. However in his deposition he has admitted in reply of cross-question No.4 that he was present at Tezpur

another charge
Contd. on 6/....

till the morning of 16th June '94 whereas the said ugly incident has taken place at 11.30 P.M. of 15.06.94 and his visit to the room of TDE Tezpur(S.W.3) in the I.B. at 11.30 P.M. odd hours on 15.06.94 has effectively been confirmed by S.W.1 and at the sametime SPS has never denied his presence there during the entire course of inquiry.

I need hardly mention that in departmental proceedings, it is not the direct or indirect evidence which counts but it is the Preponderance of Probability which matters. Here in this case, the circumstantial evidences have emerged at the inquiry evidently goes against the SPS and accordingly I hold rather strongly, that the charge of violating the well defined provisions of Rule 3(1)(iii) of the CCS (Conduct) Rule-1964 against the SPS is ESTABLISHED. In other words the charge is PROVED.

A. B. Sharai
(A. B. SHARAN)

INQUIRING AUTHORITY

*Certified to be
true copy
A. B. Sharai
Advocate*

CONFIDENTIAL / REGISTERED WITH A/D



Government of India
Department of Telecommunications
Office of General Manager Maintenance
Eastern Telecom Region
Top Floor, TAX Building
Shillong - 793001.

No. 44-12/95

Dated at Shillong, 4th February, 1998

To
Shri Upen Saikia, ✓
JTO M/W (Mtce),
Department of Telecom.,
Tezpur (Assam)

(Through proper channel)

Sub: Final Orders pertaining to the disciplinary proceedings under Rule
14 of CCS (CCA) 1965 against Shri Upen Saikia, JTO M/W, Tezpur

Kindly find enclosed herewith the "Final Orders" pertaining to the above case.

The orders will be implemented as per directions mentioned. This is for your information and necessary action. Please acknowledge the receipt of Final Orders through proper channel.

Enclo: As above.

V. Sampathkumar 1/2/98
(V. Sampathkumar)
Director (Mtce), ETR, Shillong

Copy to Mr. Upen Saikia.

*Certified to be
true copy
Abrao Ahmed
Advocate*

Confidential

- 49 -



Government of India
Department of Telecommunications
Office of General Manager Maintenance
Eastern Telecom Region
Top Floor, TAX Building
Shillong - 793 001.

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1/10

No : 44-12/95 / DM/ETR/SH Dated at Shillong 28.1.1998
FINAL ORDER

(Under the Rule 14 of CCS (CCA) Rules 1965 against Mr. Upen Saikia JTO Microwave Mtce. Tezpur)

Mr. Upen Saikia, JTO Microwave Mice, Tezpur (accused)
versus

Mr. K Balasubramanian, Ex TDE, Tezpur (Petitioner)

a) References cited in the order :

1. Charge sheet issued by Director Mtce, ETR, Guwahati to Mr. Upen Saikia
Memo No : DM/ETR/GH/X-1/TZ/US/94-95 dated 03.08.1994.
2. Complaint lodged by Ex TDE, Tezpur, Mr. K Balasubramanian with Tezpur Police station dated 16.06.1994.
3. Copy of FIR registered by Tezpur Police station against Mr. Upen Saikia
P S Case No 347/94 Dated 16.6.1994 by OC Tezpur P.S
4. Copy of anticipatory bail issued to Mr. Upen Saikia by Guwahati High Court.
OA 529/94 dated at Guwahati 16.7.94 by M Sharma, Judge, High court.
5. Copy of vacation of stay order issued by CAT, Guwahati bench
OA: 173/94 dated 18.5.1995: CAT, Guwahati Bench, Hon J Chaudhary Vice chairman.
6. Inquiry officer's report on the above case along with related enclosures.
No ODS (PT) 135/94 Dated 19.05.1997 at Patna

b) Abbreviations used in the order :

1. CAT :Central administrative Tribunal
2. I O :Inquiry officer (Mr. A B Saran, OSD, Patna)
3. SPS :Suspected /delinquent public / government servant (Mr. Upen Saikia)
4. SW1: State witness 1 (Mr. Shyam Lal Sah, Ex Chowkidhar, Tezpur)
5. SW2:State witness 2 (Mr. Yogendra Sinha, Ex A E Microwave Mtce, Tezpur)
6. SW3 :State witness 3 (Mr. K Balasubramanian, Ex TDE, Tezpur,)
7. SW4 :State witness 4 (Mr. B N Biswas, Vigilance Officer, O/O CGMM, ETR, Calcutta)

**DIRECTOR (MAINTENANCE)
EASTERN TELECOM REGION
SHILLONG-793 001
PHONE No.220050 (OFFICE)**

2/10

1. Review of back ground of the Case:

In accordance with the Presidential orders communicated to me through the DoT letter No # No 4 -1/95 - vig III from the Director DE & VP, dated 8.8.95, I, V Sampathkumar, Director Mtce, Shillong, was nominated as adhoc disciplinary authority in the disciplinary case against Mr. Upen Saikia (SPS). Hence, as per the powers vested in me as adhoc disciplinary authority, I have carefully gone through Inquiry Report received from the I O along with the all the relevant documents submitted by the Inquiry officer and other documents maintained by the concerned Director Mtce, Guwahati, under whose jurisdiction the SPS is working. My observations & findings are as shown below:

a). Based on the complaint lodged by SW 3 with OC Tezpur P S on 16.6.1994, an FIR was registered by O C, Tezpur Police station against the SPS, under the following sections of IPC:

IPC / 34 Acts done by several persons in furtherance of common intention.

“When a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it is done by him alone”.

IPC 307: Attempt to murder.

IPC 325: Punishment for voluntarily causing grievous hurt

IPC 457: Lurking house trespass or house breaking by night in order to commit offence punishable with imprisonment.

IPC 506: Punishment for criminal intimidation.

b). A Charge sheet as cited above was issued to the SPS (Mr. Upen Saikia) under Rule 14 of CCS(CCA) 1965, whose extract is given below:

The SPS, while functioning as JTO Microwave, Tezpur has committed a serious offence in his involvement of assault on the SW3 (a departmental officer Mr. K Balasubramanian, Ex TDE Tezpur) on 15.6.94 at 11.30 Hr. at the departmental Inspection Bungalow at Tezpur.

By this act, the SPS has committed a grave misconduct in terms of criminal offence and acted in a manner which was unbecoming of a Gov. servant and thereby appears to have violated the provisions of Rule 3(1)(iii) of CCS Conduct Rules 1964.

**DIRECTOR (MAINTENANCE)
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SHILLONG-793 001
PHONE No.220050 (OFFICE)**

Not proved

not maintained with evidence

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now out of the

1. The SPS and another accomplice (Mr. Borah) at 11.30/Hr. on 15.6.94 went to IB at the O/O TDE Tezpur and forced open the door , where the SW 3 is residing .
2. The SPS entered into hot altercation with SW 3 and the SPS was severely beaten to the extent of grievous injuries on his face .
3. The SPS & his accomplice made an attempt to murder the SW3 with a sharp weapon .
4. The SPS , in spite of several raids by Police , could not be traced and he was absconding to avoid arrest .
5. Soon after the incident , the SPS applied for 4 days CL through a messenger without necessary permission , presumably to avoid arrest by Police due to the criminal offence committed by him
6. Thus the SPS has committed criminal offence , amounting to grave misconduct and acted in a manner which was unbecoming of a govt. servant .

C. The following are the list of witness by whom the charges are to be sustained.

W. M. M. Director

- a) SW 1 , Mr. Shyam Lal Sah ,
Ex Chowkidhar , O/O TDE, Tezpur .
- b) SW 2 , Mr. Yogendra Sinha ,
Ex AEMW Tezpur , under DE MW Mtce , GH
- c) SW 3 , Mr. K Balasubramanian ,
Ex TDE Tezpur , under CGM Assam Circle , GH
- d) SW 4 , Mr. B N Biswas ,
Ex V.O. ETR , Calcutta , O/O CGMM , ETR , Calcutta

The inquiry officer , duly appointed by the disciplinary authority , has completed the proceedings and forwarded his inquiry report along with necessary enclosures to the undersigned , the adhoc disciplinary authority for necessary action for passing final orders .

2. Analysis of Inquiry report:

- a) Based on the complaint of SW 3 regarding the incidence of physical assault on 15.6.94 and thereafter an FIR registered against the SPS , a charge sheet was issued to the SPS on 3.8.94 .
- b) Though the appointment of Presenting officer & Inquiry officer was done on 20.8.94 , due to the CAT , Guwahati Bench decision , regular hearing could not be initiated ~~as~~ till the vacation of CAT decision on 16.6.95 .

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SHILLONG-793 001
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c) Thereafter, regular hearing was conducted on 13.02.96, 03.06.96 & 11.10.96 after completing the formalities.

The charges to be sustained by the P O are:

*Charge is not
sustained*

"The SPS reported to have committed a serious offence by assaulting a departmental officer SW 3 & further alleged to have attempted to murder the SW 3 with the help of sharp weapon & lathi. Thus the SPS committed a grave misconduct in terms of criminal offence and acted in a manner which was unbecoming of Govt. servant & thereby violating the provisions of Rule 3 (1) (III) of CCS Conduct rules 1964."

*not logically
several other
facts conclude
as acon. the
denial of presence
the SPS not recorded
no material arrived
to deal with the
conclusion
imposed on extra
is based on extra
and irrelevant
original documents
on grounds which have
the basis whatsoever and accordingly
it is liable to be quashed*

The Inquiry report clearly & logically derives the involvement of the SPS on the night of 15.6.94 at the IB, Tezpur, where the SW 3 was residing. The circumstantial evidence adduced in the course of inquiry proves beyond doubt the grave misconduct of the SPS, attracting the provisions of Rule 3 (1) (iii) CCS conduct Rules 1964. In addition, the Inquiry report specifically points out the utter disregard shown by the SPS to follow minimum norms & rules of Government. Also the SPS, in the entire course of inquiry, never denied his presence at the odd hours of 15.6.94 at the IB, TDE Tezpur, where the incidence took place. In the above circumstances, I fully agree with the remarks of IO "the charge is proved"

3. Analysis & review of Prosecution brief:

I have carefully gone through the prosecution brief and reviewed the briefs, submitted by the Presenting officer and my findings are as follows:

It is well established that the SPS on 15.6.94 at about 11.00 PM went to IB of TDE Tezpur and returned after about 15 minutes, as per the depositions of SW 1. In other words, Mr. Saikia was very much present at the place of incidence. Moreover, the fact that SPS did not act in a normal way on 16.6.94 (next day) in attending his place of duty (Tezpur microwave), getting due

**DIRECTOR (MAINTENANCE)
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5/b

That is personal
view not justified
with proper facts.

permission before leaving head quarters, indicates clearly that SPS was fully aware of the gravity of the incident and his involvement and its implications and consequences. The reason mentioned in his C L as "urgent piece of works" is mysterious, while he later mentioned that he was busy with his serious ailing wife with pre-natal complication, which is an afterthought. Had he been innocent, his actions cannot be so abnormal and erratic from next day onwards.

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The deposition of SW 3 is quite narrative with minor most details of the incident and there is every reason to believe that SPS was fully involved in inciting his accomplice for furthering his criminal acts. The representation of the SPS that how could SW 3 remember the minor details accurately even after one year. The incident happened is too gruesome to be forgotten for any body in that circumstances why one year, it may be in the entire life period of the person. In spite the fact that the SPS was holding earlier a post of office bearer of a reputed Departmental association, he (the SPS) remained silent on the so called "lapses" of the SW3 in observing the IB rules, instead of taking up the matter with higher authorities of the Department. This only shows clearly the much more deep rooted ulterior motives of the SPS leading him to the extent of committing an act of criminal intimidation. This is especially so due to the latest development of hatred and friction in the personal relation between the SPS and the victim SW3.

Thus the act of misconduct of the SPS is proved beyond doubt. More over the joint application with his accomplice for anticipatory bail proves beyond doubt that a well planned conspiracy has been hatched out in a cold blooded manner. This can be proved beyond doubt with the statement of SPS himself, where he is charging several allegations against the victim SW 3 regarding his private affairs, which is none of business of the SPS. The SPS was very/ much aware of his involvement and its consequence leading to the arrest of him (The SPS) during and after the occurrence of the incidence.

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6/10

4. Final representation of the SPS & analysis:

On receipt of IO report, as per the rules, a copy of the same was forwarded to the Gov. servant Mr. Saikia for any representation / submission. Accordingly the Gov. servant Mr. Saikia sent his representation to the U/S. The U/S carefully gone through his representation and the findings are: *in para 5* *up*

5. Analysis of representation and defence brief of the SPS:

29/1/95
The deposition of SW 1, clearly says that the SPS was present at about 11.30 Hr. on 15.6.94 at the I B, the O/O TDE Tezpur, where the incident took place, along with his accomplice (Mr. Biswajit Barua). It is a circumstantial evidence that the SPS had a definite role in the incident where the SW 3 (Ex TDE Tezpur) was assaulted. It is not absolutely essential that he should be a direct eye witness to prove the role and involvement of the SPS.

If one tries to understand the background / character of the accomplice, who was directly & physically involved in the above incident of assault, there is every reason to believe that why the three co residents () of TDE Tezpur, who were present at the time of incidence, could not come to rescue of the SW 3. Not only that, while understanding the gravity of the situation prevailed at the time of incident, the TO intentionally avoided in summoning them, as it was not required so much. The same is true while the SW 3 did not try to take their help in the proceeding.

While it is crystal clear that SPS is quite aware of many so called "scandalous deals" under "shadow of serious public scrutiny of the SW 3" even much earlier, why was the SPS silent till things went worse? Did he carried out his minimum duties as a citizen of India in exposing the so called "people under shadow"? It only shows that the SPS, since from the starting tried his best to take shelter pointing out the petty loop holes and lapses of bearucratic procedures.

How much duration the accused took, inside the I B Tezpur on the night of 15.6.94? The "Time" is relative to an observer. A duration of 10 minutes may look like 10 Hrs. or

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vice versa depending on the circumstances of the observer. A statement of "10 minutes" as mentioned by SW 1, that too of a gr. D official may have an error of 5 minutes. It is the concept that matters, not the pin point accuracy, that too in our society where the value of time is yet to be realized, at least in Gov. offices.

It is clear from the depositions of SW3 (the controlling officer) that good relations did prevail between the SPS & his controlling officer (SW 2) . In spite , the CL was not sanctioned , though the controlling officer is fully competent for the same . Having fully known the so called " genuine " back ground of disappearance / absconding of the SPS , it is hard to believe that his controlling officer did not come forward to protect the SPS at any stage . This clearly proves the mysterious / suspicious circumstances , under which the SPS disappeared from the scene at Tezpur soon after the incidence . Is it a child 's play to mislead an IAS officer , who was holding the post of DC Tezpur , to launch a campaign against the SPS with no reason ?

Regarding the delay of 12 Hrs in filing FIR by the SW 3 , it is to be noted that the SW 3 was under tremendous mental and physical tension due to the above incidence . After the incident of assault , that too after severe threats from the notorious accomplice not to inform police , it is quite normal for any normal human being that it will take some time to come to senses , taking a definite amount of risk for further actions . This clearly justifies not only the delay in filing FIR but also for not using any other means of communication like telephones or messenger in the mean time .

While the SPS pleads that he was all the time busy at his home with his serious ailing wife, he could not produce any witness / proof for the same at any stage. On the contrary there was nothing for the SPS to prove that the statement of SW I as false, in regard to the presence of SPS during the incidence at the place of incidence.

While the SPS is very confident about the motives and the background of "dark cloud" of the SW 3, it remains an unanswered question that why did the SPS maintain silence, in

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instead of taking up the matter with the competent higher authorities for stern actions ? Why should one wait till the situation went worse and tries to take law in own hand ?

To conclude ,

1. The SPS nowhere clearly mentioned about his acceptance / denial of charges with a reasonable proof either in his defence brief or final representation ..
2. The SPS , in stead of his submission /representation , he was only trying to find fault with the quality of performance of IO , certain minor loopholes in the formalities , thereby trying his best to take shelter under these points .
3. The SPS says that approach of IO as " Partial " , which was not so .
4. The SPS says that motive behind the incident was not established , which is not the vital point in this case .
5. Even if it is assumed that the character of SW 3 " is not fair & proper , the incident of assault cannot be just ignored , especially while strong circumstantial evidence were highlighted in the Inquiry Report .
5. The SPS says that the IO report is biased , which is not so .

6. Additional points :

It is proven fact that the SPS along with his accomplice got anticipatory bail with a bond of Rs 5000/- each , which clearly indicates that the SPS himself was fully aware of his own grave nature of criminal involvement and its consequences and the pre-planned conspiracy hatched by himself and his accomplice . Had he been innocent where is the question of obtaining such anticipatory bail ?

As a temporary relief from the clutches of law , the SPS initially depended on CAT Guwahati Bench for quashing / suspending the whole departmental inquiry to be started and even he went to the extent of nullifying the proposed " dies non " by the department . Subsequently the CAT Guwahati vacated the stay facilitating the restarting of departmental proceedings , as both the criminal court trials and departmental proceedings can go side by side as per the views of CAT Guwahati .

Assuming that SPS was not involved at all , for argument sake , there was absolutely no need for him to abscond from the

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PHONE No.220050 (OFFICE)

scene. In stead he could have approached his officer personally for any type of help like sanction of leave and permission to leave HQ, especially due to the fact that his controlling officer was quite happy with him and his performance. In fact It is not uncommon that during such circumstances, where the wife of the SPS was seriously ill with pre natal complications, a Gov. servant could have availed more help in the way of transportation by governmental vehicles etc. But this type of fair development did not take place on the part of the SPS. On the contrary, the type of strange approach exhibited by the SPS like disappearing from the scene clearly indicates his involvement in the incidence. Even while the SPS can afford to visit several times Guwahati for his Medical treatment, which he claims it is difficult to believe that he did not make any effort to contact his higher officer (D E) in the same Guwahati, especially in the odd circumstances or even to talk to his higher officers by telephone. This more and more proves that he was making willful & conscious efforts to escape from the clutches of legal proceedings after committing a grievous crime.

Though it may be a fact that physically the SPS has not attacked the SW 3 on the night of 15.6.94, it is proved beyond doubt that he (the SPS) was present at the place of incidence, acting as a key person, in furthering the process of criminal offence of attempt to murder and causing of grievous injury with the help of his accomplice. This act is much more serious than himself (the SPS) physically assaulting the SW 3 and certainly can not be ignored by any standards. On the contrary quantum of punishment to be offered to the SPS, should be much more.

If one carefully goes through the relevant documents, it is very easy to prove that the SPS had serious grudges against the SW 3 due to certain clashes affecting not only the vested interest of the SPS, but also the vested interest of some of his close relatives. Thus it is proved beyond doubt that the SPS did involve in the grave offence of assault on SW 3 on the night hours of 15.6.1994.

**DIRECTOR (MAINTENANCE)
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SHILLONG-793 001
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because characters officers
Further, the incidence caused irreparable damage to the image of the Department. It is quite evident from the News paper clippings)

no quantum of opportunity
While taking extreme care that innocent should not be punished, sufficient opportunities have been given to the SPS for his representation & consideration.

No charges
They could prove
The charges levelled are very serious and the official deserves a severe punishment, but considering his long association with the Department & the existing possibility of himself realising his grave mistakes and mending his attitude, I take a lenient view.

Ad hoc disciplinary authority
Thus, as per the powers vested in me as a adhoc disciplinary authority, I, V. Sampathkumar, Director, Mtce, ETR, Shillong, hereby decided that Mr. Upen Saikia, JTO Microwave, Tezpur should be reduced to a pay of Rs 7500/- for a period of three years with effect from 1.2.1998.

ORDER

Ad hoc disciplinary authority
It is therefore ordered that the pay of Mr. Upen Saikia, JTO, Microwave, Tezpur, be reduced by four stages from Rs 8500/- to Rs 7500/- for a period of three years in the time scale of pay Rs 7500/- 250 - 12,000/- with effect from 1.2.1998. It is further directed that Mr. Upen Saikia will not earn increments of pay during the period of reduction and that on the expiry of this period, reduction will have the effect of postponing his future increments of pay.

V. Sampathkumar

28.1.98

(V. Sampathkumar)
Director Mtce, ETR, Shillong
O/O GMM, ETR Shillong,

DIRECTOR (MAINTENANCE)
EASTERN TELECOM REGION
SHILLONG-793 001
PHONE No.220050 (OFFICE)

*Certified to be
true copy
Abraar Ali
Advocate*

CONFIDENTIAL

DEPARTMENT OF TELECOMMUNICATIONS
 OFFICE OF THE GENERAL MANAGER TELECOM
 KAMRUP TELECOM DISTRICT
 GUWAHATI-7

NO. GMT/Staff/QS-69/13

Dated at Guwahati, 05.08.1999

ORDER

Shri Upen Saikia, JTO Microwave, Tezpur, presently working as JTO Planning, O/O General Manager Telecom. Kamrup District, Guwahati has submitted an appeal dated 06.03.98, addressed to General Manager (Maintenance), ETR, Shillong against the order passed vide Memo No. 44 - 12/95/DM/ETR/SH dated 28.01.98 by Director Maintenance, ETR, Shillong, awarding punishment of reduction of pay by four stages for a period of three years with effect from 01.02.98.

2. Shri Upen Saikia, JTO vide his letter dated 10.11.98 had also requested for personal hearing alongwith his Defence Asstt. Shri S.K. Sikidar, SDE,M/W(Survey),Task Force,Guwahati. Personal hearing done on 30.11.98 at 1230 hours in the office Chamber of General Manager Telecom. Kamrup, where Shri Upen Saikia, and his Defence Asstt. was present. The important points raised by Sri Upen Saikia are indicated in Para 2(a) and 2(b).

(a) Director Maintenance is not competent to impose major penalty:

After going through the record it is found that Director Maintenance was appointed as Disciplinary Authority by the President of India, Ministry of Communications, Department of Telecommunications vide Order No. 4-1/95-VIG-III dated 8th August, 1995.

(b) Charges are different in charge-sheet and in Inquiry report.

Charges as per chargesheet was "assault and attempt to murder" whereas as per Inquiry Officer's report charge is that SPS (Suspected Public Servant i.e Shri Upen Saikia) did not resist the person who was assaulting.

The charge indicated in the charge sheet at Article-I of Memo No. DM/ETR/GH/X-1/Tz/US/94-95 dated at Guwahati , 03.08.94, are as below ;

Contd.: 2

578759

TELECOM
 DISTRICT
 GUWAHATI

"That, the said Shri Upen Saikia, while functioning as JTO, Microwave Maintenance, Tezpur, reported to have committed serious offence by assaulting a Departmental Officer, Shri K. Balasubramanian, Telecom District Engineer, Tezpur at about 1130 PM of 15.06.94 and further alleged to have attempted to murder the later with the help of sharp weapon and lathi.

Thus, by this above act, the said Shri Upen Saikia, committed a grave misconduct in term of criminal offence and acted in a manner which was unbecoming of a Government servant and thereby appears to have violated provision of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

As per the inquiry report submitted by Inquiry Officer vide No. OSD(PT)/35/94 dated 19.05.97, it is concluded that "circumstantial evidences have emerged at the inquiry evidently goes against the SPS and accordingly I hold rather strongly that the charge of violating the well defined provision of Rule-3(1)(iii) of the CCS(Conduct) Rules, 1964 against the SPS is established."

SPS stands for suspected public servant (Shri Upen Saikia)

3. After going through the record and after personal hearing of the Shri Upen Saikia in the presence of his Defence Assit., it is found that in view of violation of Rule-3(1)(iii) of CCS (Conduct) Rules, 1964, punishment is warranted by the evidence on the record. However, I take a lenient view and as per the power vested with me as an Appellate Authority, I Shri G.D. Yadav, General Manager Telecom, Kamrup, Guwahati, as conferred in Rule-24 of CCS (CCA) Rules, 1965 and in exercise of the power conferred by Rule 27(2) of the said Rule, giving opportunity to the Appellant to over-come the shortcoming, reduce the punishment from "reducing of pay by four stages for a period of 3 years with effect from 01.02.98" to "reduction of pay by four stages from Rs. 8500/- to Rs. 7500/- for a period of one year in the time scale of Rs. 7500 - 250 - 12,000/- with effect from 1.2.1998 with cummulative effect."

23/11/98
(G.D. Yadav) 5.8.98

General Manager Telecom
Kamrup Telecom District
Guwahati-7

*Certified to be
true copy
Abrar Shah
Advocate*

NO. OSD(PT)/55/94
DATED AT GHY, 13.02.1996.

VENUE, %-Chief G.M., Assam
Telecom Circle, Guwahati.

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965
against Shri Upen Saikia, J.T.O. M/W Mts., Tejpur.

DEPOSITION OF S.W.I

Deposition of Shri Shyam Lal Sah aged about 50 years, at the relevant period I was working as Chowkidar, % T.O.S. Tejpur. At present I am working as Chowkidar, Store under H.D. (Group), Rajapur.

Examination-in-Chief by P.O.

I do confirm my questionaries and the answer thereof given by me which are my reply to the questionaries and I agree with my answers. I also confirm my signature in Hindi at the right bottom of both the pages of questionaries. I was on duty as Chowkidar in the office of T.D.E. Tejpur in the night of 15.06.94 the day of the T.D.E. Tejpur was residing in the I.B. in the second floor of T.D.E. office premises. The incident took place during my duty hours. There were two person came at about after 11.00 hours at night and asked me to open the gate. One was Shri Saikia Saheb and the other I do not recognize. I opened the gate as Shri Saikia Saheb used to come to meet T.D.E. Saheb during night hours. Shri Saikia Saheb and the other man came out after a lapse of about 10 minutes. After that I came to know from co-resident of T.D.E. in the I.B. that some incidence of assault on T.D.E. Shri K. Balasubramanyam had taken place. The co-resident asked me, why the door was opened. I replied that the door was opened on the request of well-known person. Then after knowing about the incident I went to the room where the T.D.E. was residing and observed three co-resident were uttering to the injury inflicted on his forehead and face.

(Concluded)

Cross-examination on behalf of SPS

Q.1. Since when you are working at Tejpur as Chowkidar ?
Ans. I was working as Chowkidar since 01.05.1980.

Q.2. What was the duty as Chowkidar on 15.06.94 ?
Ans. My duty as Chowkidar from 6.00 p.m. of 15.06.94 to 6.00 a.m. of 16.06.94.

Q.3. When T.D.E. Saheb came to I.B. after office hour on 15.06.94 ?
Ans. T.D.E. Saheb came at about 10.00 p.m. at night, alone.

Q.4. When the co-resident of T.D.E. entered the I.B. on that day ?
Ans. They were already residing in the I.B. for more than a week out of which one was serving at Tejpur and residing with him. They were non-departmental and adult.

Q.5. When Shri Saikia and his associate entered, whether they were possessing any lethal weapon and what was the noise heard in the I.B. room ?
Ans. No lethal weapon was possessed by them but some hue and cry was heard by me which was at low pitch.

Q.6. When you entered the room have you seen any abnormality/disorder of furniture setting in T.D.E. room ?
Ans. No.

Q.7. Whether some medical attendant came at that moment during your duty hours to extent medical assistance to T.D.E. ?
Ans. Till my duty hour nobody from outside entered the I.B.

21/11/94/2112

Contd. on 2/....

Subhankar
13.2.96

Parimal
13/2/96

Chaitan
13.2.96

Subhankar
13.2.96

OSD(PT)/35/94

Contd. from page 1 Deposition of S.W.1

Q.8. Whether T.D.E. Tezpur had asked you to call anybody on that day
Ans. No.

Q.9. Whether anybody else than Shri Saikia used to come to meet
T.D.E. after office hours ?
Ans. No.

Q.10. Whether any home guard was on duty on that night ?
Ans. No.

Q.11. How you could you come to know that the other person accompanied
Shri Saikia was his man ?
Ans. I thought that the man accompanying him was with him as I allowed
him entry.

SH The other man entered alongwith Shri Saikia hence I presumed
that he was his man. So I allowed his entry.

Q.12. Whether T.D.E. was residing permanently in the I.B.
Ans. Yes. He was residing there since his posting at Tezpur.

Q.13. Whether you have intimated about the incident came to your notice to anybody of your office and to your superiors ?
Ans. I did not tell anybody as it was already known to all staff by
next day.

E.X/2.

(Concluded)

Re-examination by P.O.

Q.1. You told in the first paragraph of your deposition that Shri
Saikia Saheb and the other man came out after a lapse of about
ten minutes. Did both of them come out together ?
Ans. Both of them came out altogether.

(Concluded)

R.O. & A.C.

21/11/1996

(Shyam Lal Sah)
S.W.1

Chander
13/10/96
(Open Saikia)
S.P.S.

Chander 13/10/96
(S.C. Chanda)
Def. Asstt.

Shyam Lal Sah
(K.P. Sinha) 13/10/96
P.O.

Received copy:

1. *Chander* 13/10/96.

2. *Chander*
13/10/96.

Q.B. Sharai
(A. B. SHARAN)

INQUIRING AUTHORITY

13/10/96

Certified to be
true copy
Aborar Shukh
Procaci

NO. OSD(PT)/33/94
DATED AT GHY, 13.02.1996.

VENUE: 9/ Chief G.M., Assam
Telecom Circle, Guwahati.

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965
against Shri Upen Saikia, J.T.O. M/W, Mtce., Tejpur.

DEPOSITION OF S.W.2

Deposition of Shri Yogendra Sinha, aged about 55 years, at the relevant period I was working as A.E. M/W Mtce., Tejpur and at present I am working as S.D.E. (Cable) Kankarbagh, Patna.

Exam. by Chief by P.O.

I do confirm my statement regarding incident occurred on 15th June, 1994 marked under S. Ext. 05 which is written and signed by me and I agree with the contents. I can have nothing to say in addition to my statement as I could know the incident only through Director (Mtce.), STR, Guwahati on phone when I reported my duty in Micro-wave station on 16th June, 1994.

Q.1. When you came to your office on 16th June '94 ?
Ans. At about 10.30 hours.

Q.2. How your M/W station was manned on 16th June, 1994 ?
Ans. Microwave duty of the staff was manned shift-wise by J.T.O. AND T.T.A. from 0600 hours to 2100 hours but from 2100 hours to 0600 hours manned by Chowkidar only.

Q.3. Do you remember the duty of Shri Saikia, J.T.O. on 15.06.94 and 16.06.94 ?
Ans. As per my memory Shri Saikia was on off duty on 15.06.94 and 18-21 hours duty on 16.06.94.

Q.4. Did Shri Saikia came to the office physically on 16.06.94 ?
Ans. No.

Q.5. Did you receive any leave application from Shri Saikia on 16th June, 1994 and if so, how ?
Ans. I received the leave application of Shri Saikia on 16.06.94 at about 1300 hours through messenger.

Q.6. What was the ground on which the leave was sought ?
Ans. As per the application the ground was "for an urgent piece of work".

Q.7. As the last para of your statement you have received a telegram on 22.06.94 at 1500 hours. Please mention the place and date of origin of that telegram.
Ans. It was sent from Guwahati on 18th June '94.

Q.8. Did Shri Saikia speak to you before sending his C/L application dated 15.06.94, duly received by you on 16.06.94 ?
Ans. No.

Q.9. Did you confirm Shri Saikia that grant whether his casual leave for four days and station leave permission was granted by you ?
Ans. No.

Q.10. Did Shri Saikia approach you to know whether his application was granted and station leave permission given ?
Ans. No.

(Concluded)

Cross-examination on behalf of SPS

Q.1. How long Shri Saikia was working under you.
Ans. Shri Saikia was working under me since 1st May 1993.

Contd. on 2/...

W. Sinha
13.2.96
P.O.

W. Sinha
13.2.96
P.O.

OSD(PT)/35/94

Contd. from page 1. Deposition of S.W.2

Q.2. Being the sanctioning authority why you have sent the C/L application to D.E.M/W.Mtes., Guwahati for sanction ?

Ans. It was as per the verbal instruction of D.E. M/W Mtes. O/W

Q.3. Whether you have received any written confirmation from D.E. M/W to do so ?

Ans. No written confirmation had been received by me.

Q.4. Who has granted dies-non for 16th & 17th of June '94 ?

Ans. I have granted dies-non for the said period.

Q.E.

(Concluded)

Re-examination by P.O. - Declined.

R.O. & A.C.

Yogendra Sinha
13/2/96

(Yogendra Sinha)
S.W.2

U. Saikia
(Open Saikia)
S.P.S.

S. C. Chanda
13/2/96
(S.C. Chanda)
Def. Asstt.

K. P. Sinha
13-2-96
(K.P. Sinha)
P.O.

A. B. Sharai
(A. B. SHARAN)
13/2/96
INQUIRING AUTHORITY

Certified to be
true copy
Abrajan
Advocate

NO. OSD(PT)/28/94
DATED AT CALCUTTA, 11.10.1996.

VENUE: C.T.O. INSPECTION QUARTER,
CALCUTTA.

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965
against Shri Upon Saikia, J.T.O. M/W Mtce. Tezpur.

DEPOSITION OF S.W.O.

Deposition of Shri K. Balasubramanian, at the relevant period was
working as T.D.E. Tezpur and at present as officiating D.G.M. Vellore.

Examination-in-Chief by P.Q.

I do confirm the contents under S. Ext. 02 which was prepared and
signed by me. In token of my signature confirmation, I made my counter
signature before I.C. on the bottom of the contents letter.

Q.1. You were at Tezpur as T.D.S. Tezpur. Please mention the period
of your stay there at Tezpur as T.D.S. ?

Ans. From 6th July 1992 to 2nd July 1996.

Q.2. Was Shri Upon Saikia known to you?

A ns. Yes, he was known to me.

Q.3. How did you know Shri Upon Saikia ?

Ans. He was working as J.T.O. M/W as J.T.O. Association representative
there. He met me with other J.T.Os(local) for consulting some
association problem.

Q.4. What were you doing at the time of occurrence like 11.30 p.m. on
15.06.94 ?

Ans. I was lying on the bed, and my room was opened when Shri Upon
Saikia with some other person alongwith another person entered
in my room.

Q.5. What happened thereafter ?

A ns. I asked him why are you coming now. He replied "I want to discuss
something." Then I told come and be seated. They sat on the cot.
I was sitting on a chair. The other man asked me what is your
Tamil Nadu address. I asked him why are you asking. I want your
address, he told like that. I asked Shri Saikia what is the
reason, let him tell. Immediately the other man got up and told
do you want reason and started attacking me on my face. By listening
the sound my friends who were seeing I.V. in the next room
entered in my room. By that time I got some five or six kicks on
my face. On seeing them, he attacked them and hit the three of all
the three friends and they run away upto the bathroom. Then once
again he entered in my room and he pulled me and put me on the
cot, and with his two hands he caught my neck and pressed. After
sometimes he left my neck and attacked me on my back side, head
back side and through out my face with one small weapon made of
two wooden handle connected one side by chain. At the time of
attacking, J.T.O. Shri Saikia was telling, "This is Assam, don't
think it is Tamil Nadu". Previously I saw Shri D.B. Saikia, T.D.E.
Tezpur. Then I asked what I have done. Then the other person told
what you have done, you want to know. While telling this he was beating me. Then I told Shri Saikia, tell him to stop
beating me, but he has not told anything. Then he told the other
man the other man told me don't inform police. If you informed
police, once again we will come and attack you. This the warning
for you. Be careful. Then they left.

Sworned

Q.6. While the other man accompanied Shri Saikia was attacking on you
what was the role of Shri Saikia ?

A ns. He was simply standing and observing. When I asked Shri Saikia
to request the other men to stop beating, he was not telling anything.

Q.7. Had you ever seen the other man?

Contd. on 2/....

Arulvindan

11.10.96

P.O.

Samuel

11.10.96

John Thomas

11.10.96

Nirmalanie

11.10.96

D.A.

11.10.96

- (2) -

DEPOSITION OF SWS (CONTD.)

Ans. No, I have not seen him earlier.

Q.8. Did you try to know the identity of the other person either from him or from Shri Saikia?

Ans. I have not tried but the other men told me if your office people are asking, you tell them Mr. Bora came and beaten me.

Q.9. At night whether the gate of the campus is usually closed or open?

Ans. The main gate near the road side remains closed at night hours. The other gate near the staircase remains kept open and one watchman will be sitting there.

Q.10. After the occurrence did you inquire from the chowkidar how the persons entered into the office building?

Ans. After they left, the watchmen Shri Shyam Lal and I.B. caretaker both entered in my room. I asked the watchmen have you closed the main gate after my jeep left the campus. He replied, immediately he closed and locked.

(Concluded)

Cross-examination on behalf of BPS

Q.1. Whether being an Assistant Circle Secretary of J.A.T.O. Association Shri Saikia verbally or written protested you way of functioning?

Ans. My way of functioning as T.D.E., he had not protested either in writing or verbal.

Q.2. As per Shri Saikia, he has protested over (a) your staying in I.B., Tezpur (b) keeping non-departmental person in I.B. permanently (c) misusing departmental fund (i) as cable work laying, building repair works, electrical works expenditure of approximately sixty lakhs?

Ans. Nobody protested when he was also having one servant accompanier in the same room.

One bank manager was frequently coming and staying with me. This was known to all the staff of office of T.D.E., Tezpur and nobody objected. Shri Saikia was not protested for my staying at I.B. Tezpur. Cable laying was done by the concerned A.E.s as per departmental provisions funds were released to the sub-divisions whenever there was cable laying work. There was no mis-use by me of fund by me. The building maintenance was done after getting approval from Area Manager, Telecom, Guwahati. Tenders were called for carrying Civil and Electrical works and works were carried out with the funds allotted by the Circle office for such maintenance.

Q.3. Whether there was any care taker of I.B. was present there at the relevant time?

Ans. Yes, one by name Shri Raj Kumar was present there as who was I.B. care taker.

Q.4. Whether I.B's caretaker statement was taken regarding incident if any?

Ans. I don't know.

Q.5. Why in your F.I.R. to the police you have not mentioned the name of the I.B. caretaker?

Ans. In F.I.R. I have not given that person since it will come out only in inquiry stage.

Contd. on 2/...

Ar. T. M. Saikia 11-10-96
11-10-96

McGraw-Hill
11-10-96

D.A.

J.S. / mark
11-10-96

DEPOSITION OF S.N.3 (CONT'D.)

Q.6. As alleged much injuries to you, whether you have taken any medical aid and at what time. If any medical report obtained thereof ?
 Ans. Yes, the X-ray was taken in Zill-Hil clinic next day of the nose at 10.00 O'clock and around 12.30 at Tezpur Civil Hospital two stitching on my upper lip was put. Then I consulted S.N.T. specialist and eye specialist in the evening hour same day. The treatment was taken at so many places, medical report was not taken but now it can be obtained.

Q.7. Whether you were having telephone at that time ?
 Ans. Yes.

Q.8. Whether you had intimated the about the incident to the police immediately ?
 Ans. Immediately not intimated.

Q.9. Whether motivated by protest of Shri Saikia or stave motivated you to trap him in this case ?
 Ans. No, not like that

Q.10. Please disclose the identity of the three persons present at the time of incidence as narrated by you ?

Ans. Shri Chandra Shekhar, Bank Manager, Shri Abu Bakar from my native place, Shri Param Shivam from my native place.

Q.11. Whether their entries made in the I.B. register ?

The I.O. dis-allow this question of defence as totally irrelevant to the charges. The defence is hereby directed to ask only the relevant questions.

Q.12. Did you send the detailed report to higher authority about the incidence immediately after the incident ?

Ans. Next day morning at 10.00 O'clock I informed Area Manager Telecom Guwahati over phone. Next day the C.G.M. Guwahati and Area Manager Guwahati came to Tezpur and inquired what happened.

Q.13. When chowkidar applied for his transfer and when he actually transferred ?

Ans. It is not in my memory but till I was at Tezpur he was not transferred.

Q.14. Whether you helped him in his transfer as it was in very short period happened after the incident ?

Ans. I was have not helped, as usual the application was forwarded.

(CONCLUDED)

Re-examination by P.O.

Q.1. Did you receive any complaint of protest from J.T.O. Association in writing on association form and signed by any benefited office bearer of the Association Branch ?

Ans. Time to time J.T.O.'s representative meet me, they give their staff pending local problem and all settled.

Q.2.

(CONCLUDED)

Question by I.C.

Q.1. Please tell from your memory the cause behind such mishappening occurred with you.

Ans. As per my knowledge, during my stay at Tezpur I did not come to know any of the staff in the department of Telecom was not satisfied with my way of functioning. Even three days before the incidence a function was held in the office of T.D.E. Tezpur and everyone of my staff appreciated me for arranging such a function. Hence the incidence was a shock for me.

(Uppn. Saikia)

(K.P. Sinha), P.O.

(K. Palgopgamanan)

11-10-96

11/10/96

11.10.96

P.O.

A. B. SHARAN 11.10.96
 INQUIRING AUTHORITY
 certified to be
 true copy
 D. R. Dutt
 Advocate

D.A.

N. K. Ganguli
 11.10.96

NO. OSD(PT)/35/94
DATED AT GHY, 13.02.1996.

VENUE: % Chief G.M., Assam Telecom
Circle, Guwahati-7.

EXHIBIT EX-XXX.4

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965 against Shri Upen Saikia, J.T.O. M/W Mte., Tejpur

DEPOSITION OF S.W.4

Deposition of Shri B.N.Biswas, at the relevant period I was working as V.O., ETR, Calcutta and at present working as Director (Mte) Silpukhuri, Guwahati.

Exam-in-Chief by P.O.

I do confirm the investigation report under S.Ext. 06 which is prepared and signed by me and I agree with the contents. During my investigation I wanted to take statements of different official and officers working to the office of T.D.E. Tejpur. But nobody except Shri Shyam Lal Sah, Chowkidar, % T.D.E. Tejpur made an statement about the incident of assault on 15.06.94. One statement made by Shri Yogendra Sinha, A.R. M/W, Mte. Tejpur under whom Shri Upen Saikia was working was received. As Shri Saikia was not available in Tejpur I met Shri Shyam Lal Sah at his Guwahati address. He was asked to submit some statement but he only verbally reported that he was innocent. He was sick then and he would submit his report after his recovery.

(Concluded)

Cross-examination on behalf of SPS

Q.1. Whether you got any material witness regarding assault of Shri K.Balasubraniyam the then T.D.E. Tejpur in the night of 15.06.94
Ans. No. I did not get any witness.

Q.2. Incident occurred at 11.30 night on 15.06.94 and P.I.R. lodged at 12.30 noon of 16.06.94. Did you inquire the cause for the delay?
Ans. As Shri K.Balasubraniyam was not available, the delay of lodging P.I.R. could not be inquired.

Q.3. As per D.C. Tejpur report, Shri Saikia was absconding and you met him at his leave address at Guwahati. Which one is correct?
Ans. I met Shri Saikia at his Guwahati address one month after the incident and it is correct.

Q.4. From where you got the leave address of Shri Saikia?
Ans. The leave address of Shri Saikia was available from his leave application.

Q.5. You have intimated to the inquiry that you have received the statement of Shri Shyam Lal (S.Ext.01) but I find it is not an statement but a questionnaires - Please clarify.
Ans. As I wanted the relevant statement from Shri Shyam Lal the questionnaires were made and his reply was given.

Q.6. ~~Ques~~ Now you & Why did you ask whether Shri Upen Saikia was there or not?
Ans. Because Shri Upen Saikia was to be confirmed as mention in the P.I.R.

2.8. B.N.Biswas
13/2/96

(Concluded)

Contd. on 2/....

(Biswas)
13/2/96

(M.Sah)
13-2-96

(Biswas)
13/2/96

(S.W.4)
13/2/96

OSD(PT)/35/94

- (2) -

Contd. from page 1.

Deposition of S.W.4

Re-examination by P.O. - Declined.

R.O. & A.C.

(Concluded)

~~(S. C. Chanda) 13/2/96~~
(Uppen Saikia)
S.P.S.

~~Chanda 13/2/96~~
(S.C.Chanda)
Def. Asstt.

B.M.Biswas 13/2/96

~~W. D. Sinha 13.2.96~~
(B.N.Biswas)
(K.P.Sinha)
P.O.

~~A. H. SHARAN 13/2/96~~
INQUIRING AUTHORITY

Certified to be
true copy

SECTION 12
ORGANISATIONAL MATTERS.

-70-

12.1
No.4-3/64-NM dated 9-3-1964.

(To all Heads of Circles and R.Ds.T.)

Subject:- Coordination meeting between circles & regions.

A scrutiny of the statements of interruption on long distance telephone and telegraph circuits received from the Circles from time to time has shown that the figures of interruptions furnished by the Circles and those furnished by the Regional Engineers and Divisional Engineers Long Distance vary considerably. It has also been noticed that the efficiency of some of the circuits is very poor.

2. To determine the various causes resulting in low efficiency of circuits and also to ensure that the proper remedial action is taken monthly meetings should hereafter be held between the Circle authorities and the representative of the Regional Directors. In the case of circuits in the Northern Region, such meetings will be held by the Circle authorities with the Regional Engineer Maintenance New Delhi, and the Divisional Engineer Telegraphs Long Distance or the Divisional Engineer Telegraphs, Coaxial Maintenance, New Delhi, whosoever is concerned. The reasons of poor performance of the telephone and telegraph circuits and action considered necessary to improve the working of the inefficient circuits should be discussed in these meetings. The variation in the figures should also be reconciled.

3. The circle authorities should forward a list of those circuits whose performance is poor to the Regional representatives at least one week before the scheduled date of the meeting. The action proposed to be taken for improvement in the performance of the circuits should be detailed in the minutes of the meeting. During the subsequent meeting, a review should be made to determine if the action which was required to be taken has been taken or not.

4. The Regional Directors and the R.E.M. New Delhi in case of Northern Region, will be the conveners of these meetings. The minutes of the meeting should also be forwarded to the P&T Directorate for information and for any action requiring policy decision from the Directorate.

Deputy Director General.(T)

12.2
No.4-4/65-NM dated 12-5-1966.

(To all Heads of Circles and R.Ds.T.)

Subject:- Monthly coordination meetings on circuit efficiency.

Reference is invited to this office letter No.4-8/64-NM dated 9-3-64 (refer 12.1) through which Regional Directors Telecommunication Calcutta, Madras and Bombay had been asked to convene coordination meetings with the Circles to examine the performance efficiencies of trunk and telegraph circuits. Since the issue of this letter a Telecommunication Region has also been formed at Delhi.

2. A recent review on the procedure adopted for such

coordination meetings has shown that there is no uniformity in the practice followed in the four Regions. In some cases efficiency statements are being compiled by the Sub Fault Control Centre; in other cases these are received from the Regional Controller Telegraph Traffic or Regional Traffic Supdt; in other cases reports are received direct from the various Divisions and the Telegraph Offices. In order to ensure that the coordination meetings are most useful, it is necessary that sufficient advance information is available with the Region with regard to the performance of the trunk and telegraph circuits. Circles are therefore requested to obtain the relevant information from the concerned Divisions and Telegraph Offices, etc, and to send consolidated fortnightly statements to the Regional Directors Telecommunications. These reports can thereafter be discussed at the periodical coordination meetings.

Deputy Chief Engineer (M)

12.3
No.18-38/64-TE dated 17-9-1966.

(To all Heads of Circles and R.Ds.T)

Subject:- Rationalisation of the set-up of the Telecommunication Regions.

There are, at present, four Telecom. regions with headquarters one each at Madras, Bombay, Calcutta and New Delhi. They are responsible for maintaining control and coordination over the long distance net works including coaxial, Microwave and Electrification Maintenance Divisions in their Regions. The Bombay and Madras Regions are also looking after the Acceptance Testing and Carrier and VFT Installation works in their Regions. The Madras Region has, in addition, the Auto Installation work also under its control.

2. Each of these Regions is under the control of a Regional Director (Telecommunications) in the Junior Administrative Grade of T.E.S. Class I on the revised scale of Rs.1300/1600 plus usual allowances. All these Regional Directors (Telecom.) have been declared as Heads of Circles and also Heads of Departments under S.R.2(10)

3. The question of re-organising and bringing a uniform organisational set-up in all these Regions has been under the consideration of the Government for some time past. The President has been pleased to decide that the under-mentioned arrangements should be adopted with immediate effect in all these Regions.

4. The non-gazetted posts including leave reserve posts in the entire Telecom. Regions i.e. both in the Headquarters Office as well in all the constituent Units of the Region shall be sanctioned by the Regional Directors concerned under the usual rules and regulations. The posts in the R.D.T's office proper as well as in the constituent units of the Region in the Headquarters shall be included in the strength of the Circles concerned except that, in the case of Delhi Telecom. Region the headquarters staff and the staff posted at Delhi shall be borne on the strength of the Delhi Telephone District. The posts in the Constituent units like Long Distance Divisions etc. situated outside the headquarters shall be

strength of the regular territorial Maintenance Divisions in respect of Divisional cadres. According to the requirements of the R.D.T. in respect of vacancies against the posts created by him, the concerned Head of Circle or the G.M.T. Delhi shall recruit and train the requisite number of staff for units falling under his jurisdiction and also appoint these staff against the posts in the Regional Organisation.

5. The day to day control of the staff posted in the Region shall be exercised by the Regional Director concerned and his subordinate officers. This control shall include:-

- a) Allocation, control and supervision of the technical and official duties of all the staff;
- b) Transfer of staff from one installation to another installation in the same Telecom. Region and within the concerned unit of recruitment (Circle or Division as the case may be);
- c) Drawl and disbursement of pay and allowances to the entire staff in the Region;
- d) Grant of leave to the staff;
- e) Maintenance of their service records and
- f) Minor punishments.

6. As regards financial arrangements, the R.Ds.T. shall issue sanction for contingent expenditure. He shall also look after the budgetary matters. Petty works and Annual Open Estimates in respect of Long Distance Units shall be prepared by the A.E.s (Long Distance) and sanctioned by the R.D.T.

Necessary imprests for the A.E.s (L.D.) shall be provided and recouped by the Local Divisional Engineers in charge of Maintenance Divisions as in the case of their own Sub Divisional Offices.

The Circle/Delhi Telephone District shall be responsible for the preparation of estimates and sanctioning and execution of all large works other than the petty works and Annual Open estimates.

7. The administrative and financial work shall be undertaken by the office of the Regional Director centrally.

8. The territorial circle/Delhi Telephone District as the case may be shall be responsible for the matters regarding:-

- 1) Seniority
- 2) Confirmation
- 3) Promotion
- 4) Major Disciplinary matters and
- 5) Pension.

of the staff in the Region. The staff shall remain included in the gradation list of the circle/Delhi Telephone District concerned for these purposes. The concerned authorities in the Circle/Delhi Telephone District shall endorse a copy of the orders pertaining to appointments, permanency, promotion, seniority and other service matters of the staff to the R.D.T. concerned so that necessary entries may be made in the service records of the staff maintained in the Regions.

9. The staff in the Region should not normally be transferred outside their unit of recruitment viz. Circle/Division unless there are exceptional circumstances. Any such transfer should be made by the R.D.T. only after obtaining the concurrence of the Head of the Circles/Organisations concerned.

10. With immediate effect, the works relating to the Acceptance Testing and Carrier and VFT Installations shall be transferred from the R.Ds.T. Madras, Bombay to the Addi-

tional Chief Engineer, Jabalpur. In respect of the Madras Telecom. Region, in addition to the above mentioned items of works, the Auto Installation works shall also be transferred to the control of the Adchon, Jabalpur. The particulars of posts requiring diversion as a result of this transfer may be intimated to this office in due course for issue of formal sanction.

11. Four temporary posts of Accounts Officers in G.C.S. Class II on their revised scale of Rs.590/900 plus usual allowances on each in the office of the four R.Ds.T. are hereby sanctioned. The A.Os. will assist the R.Ds.T. in discharging the administrative and financial powers devolving on them. The A.O. shall also work as Heads of offices.

Two posts of time scale clerks in the scale of Rs.110/240 plus usual allowances shall also be sanctioned in each of the Regional offices by the R.Ds.T. concerned under their own powers.

12. The expenditure involved in this Memo. is debitable to the Head "Pay of Officers" under the relevant abstract and should be met from the sanctioned grants.

13. This memo issued with the concurrence of the M.F. (C) vide their U.O.No.4485-PTI/66 dated 12.9.66.

Assistant Chief Engineer (TE).

12.4

No: 18-11/67-TE dated 12.12.1967.

(To R.Ds.T. CA/ND with copy to P.Ms.G.PT/CA/LW and others.)

Subject:- Reorganisation of jurisdiction of the Maintenance organisations in the Eastern and Northern Telecom Regions.

I am directed to convey the approval of the Director General for the following reorganisation in the maintenance organisations in the Eastern and Northern Regions with immediate effect:

a) First and Second line maintenance of the Coaxial route upto and including Varanasi Repeater Station should be transferred under the maintenance unit of the Eastern Telecom. Region, Calcutta. The Regional Director, Telecom Calcutta will also be responsible for the second line maintenance control of the Railway Electrification Cables upto and including Mughalsarai station.

b) First and Second line maintenance of all other repeater stations in U.P. Circle will be the responsibility of Maintenance Organisation of the Regional Director Telecom, New Delhi.

c) The boundary between the two regions will follow the boundary of U. P. Circle except the Coaxial cable route upto and including Varanasi and R.E. Cable upto and including Mughalsarai will be in the jurisdiction of Eastern Region.

Assistant Chief Engineer (TE).

12.5

No.11-26/71-NM dated 31-12-1971.

(To all Heads of Circles and R.Ds.T.)

Subject:- Carrier system maintenance in Regions.

With the introduction of new microwave and coaxial systems and the consequent changes in the open-wire carrier network, proposals are received from field mainte-

Certified to be
true copy
Ranjan
Advocate

Confidential

No.4-1/95-Vig.III
 Government of India
 Ministry of Communications
 Department of Telecommunications
 Telecom.Commission
 Dak Bhawan, Sansad Marg
 New Delhi-110001.

Dated, the 8th August, 1995.

O R D E R

WHEREAS, it has been reported to the President that disciplinary proceedings against Shri Upen Saikia, JTO, Microwave, Tezpur have been contemplated for his alleged assault on a departmental officer Shri K. Balasubramanian, TDE, Tezpur on 15.6.94 and his alleged attempt to the murder, the latter with the help of sharp weapon and a lathi.

2. AND WHEREAS, it has been reported to the President that Shri Chandra Prakash, Director Maintenance, ETR, Guwahati, the disciplinary authority in the present case, has been transferred on promotion as V.O., ETR, Calcutta has been posted as Director(ETR), Guwahati and Shri B.N. Biswas being a material witness in support of charges, cannot function as disciplinary authority under CCS(CCA) Rules.

3. NOW, therefore, the President hereby orders to nominate Director, Maintenance, ETR, Shillong as adhoc disciplinary authority to proceed the case of Shri Upen Saikia, JTO, Microwave, Tezpur with powers to impose all penalties specified under Rule 11 of CCS(CCA) Rules, 1965. Appeal against any of the orders passed by the nominated/adhoc disciplinary authority may lie to CGMM, ETR, Shillong.

By order and in the name of the President.

Sunil Mishra
 (Sunil Mishra)
 Director (DE&VP)

Shri Upen Saikia,
 JTO, Microwave,
 Tezpur.

(Through V.O., ETR, Calcutta)

*Certified to be
 true copy
 Sunil Mishra
 Advocate*

-73-

Annexure -10
of b

RULE 31

C.C.S. (C.C.A.) RULES

5

MINISTRY OF URBAN DEVELOPMENT

The President's Garden Establishment and the Estate Office.

[G.I., M.H.A., Notification No. 7/5/1959-Ests. (A), dated the 25th May, 1959 and
Dept. of Per. & Trg., Notification No. 11012/19/84-Estt. (A), dated the 28th July, 1986.]

MINISTRY OF TOURISM AND CIVIL AVIATION
AND MINISTRY OF SHIPPING AND TRANSPORT

(i) Locally recruited staff in Tourist Offices abroad.

(ii) Work-charged personnel of the Mangalore Projects and the
Tuticorin Harbour Project.

[G.I., M.H.A., Notification No. 7/1/66-Ests. (A), dated the 11th April, 1966.]

GOVERNMENT OF INDIA'S INSTRUCTIONS

(1) Statutory rules have the force of law and alterations in conditions of recruitment and service to be notified by amendments to statutory rules.—Under the Constitution the conditions of service of the Central Government servants are to be regulated by an Act of Parliament, by rules made by the President or such person as he may direct. The corresponding rules which were in force at the commencement of the Constitution have also continued in force in so far as they are not inconsistent with the provisions of the Constitution. All the statutory rules have the force of law, and no amendment in any such rule acquires legal validity unless it is formally made and notified in the same manner as the original rules concerned.

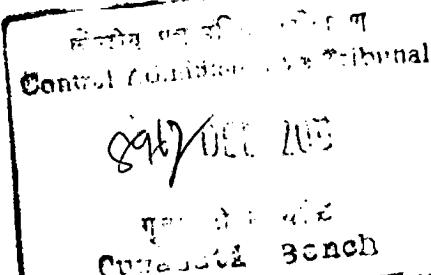
During the past few years there have been several occasions for amending in different respects the conditions of service prescribed by the various statutory rules. It has been noticed that in some of these instances the changes were effected only by an executive order and not by a formal amendment of the relevant rules although the validity of any alterations in the conditions of service made by executive orders alone remains open to challenge in a Court of Law.

All concerned are, therefore, requested to note and observe the following instructions in this regard:—

*Continued
One copy
to be
sent and
forwarded*

- (i) In all cases in which conditions of service already embodied in rules are to be altered, such alteration should invariably be made by a formal amendment of the rules made and notified in the appropriate manner.
- (ii) Where the intention of the alteration is to liberalize the rules in favour of the Government servants, there may be no objection to giving effect to the intention by means of an executive order in advance of the formal amendment of rules. But the formal amendment should invariably be made as soon as possible.

[G.I., M.H.A., O.M. No. F. 4/3/57-Ests. (A), dated the 13th September, 1957.]



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI.

O.A. NO. 213 OF 2000.

Shri Upen Saikia

- Vs -

Union of India & Others.

- And -

In the matter of :

Written Statement submitted by

Respondents Nos. 1, 2 and 3.

The humble respondents beg to submit the written statement as follows :

1. That with regard to paras 1(i), 1(ii), 1(iii), 1(iv), 2 and 3 the beg offer no comments.
2. That with regard to para 4.1 the respondents beg to state that, it is true that the applicant was initially appointed as Junior Engineer. Regarding Disciplinary Authority in respect of the applicant the respondents beg to state that Shri V. Sanpath Kumar, Director Mtce, ETR, Shillong was nominated as Adhoc - Disciplinary Authority by the President of India vide D.T. letter No. 4-1/95-Vig. III dated 8.8.1995.

Copy of letter dated 8-8-95 is annexed hereto and marked as Annexure - A.

Contd.....

2. That with regard to para 4.2 and 4.3, respondents beg to offer no comments as these are matter of records.

4. That with regard to para 4.4 the respondents beg to state that the allegations made in this para that the Telecom District Engineer was staying in the I.B. with some with some unauthorised persons etc are false and motivated.

5. That with regard to para 4.5 the respondents beg to 4.5 have applications are matter of record. It is not mentioned who conspired against the applicant to harass him by any means. The respondents do not know any thing about such conspiracy.

6. That with regard to para 4.6 the respondents beg to 4.6 the respondents beg to offer no comments as these are matter of records.

7. That with regard to para 4.7 the respondents beg to state that neither the applicant nor the Vigilance Officer can go through the investigation report as this is a matter of Police and the Court. The Vigilance Officer was in opinion that disciplinary Proceeding should be initiated against the applicant and the allegation that the recommendation of the Vigilance Officer was at the dictation of some body is false and motivated.

8. That with regard to para 4.8 the respondents beg to offer no comments as these are matter of records.

9. That with regard to para 4.9 the respondents beg to state that the respondents never exploited the employees in any way and there is no such instance against any of the respondents or against any other Senior Officials and there is no question of having any evil design against any employee.

10. That with regard to para 4.10, 4.11, 4.12, 4.13 and 4.14 the respondents beg to offer no comments.

11. That with regard to para 4.15 the respondents beg to state that Respondent No.2, the Appellate Authority examined the Appeal and passed order accordingly.

12. That with regard to para 4.16 the respondents beg to state at no point of time the Chowkidar, S.W.1 complained that he deposed under coercion and duress as alleged by the applicant.

13. That with regard to para 4.17 the respondents beg to state that these are matter of records and hence offer no comments.

14. That with regard to para 4.18 the respondents beg to state that there is no reason whatsoever to be pre-determined to punish the applicant by any means. After proper enquiry he was awarded punishment.

15. That with regard to paras 4.19 , 4.20 and 4.21 the respondents beg to offer no comments as these are matter of records.

16. That with regard to para 4.22 , 4.23, 4.24 and 4.25 respondents beg to state that Adhoc Disciplinary Authority was nominated/appointed by the President of India (Annexure - A).

It is pertinent to say that the President of India cannot be managed as alleged by the applicant.

17. That with regard to paras 4.26, 4.27, 4.28, 4.29 and 4.30 the respondents beg to state that the charges were framed on the report of the Vigilance Officer, which are based on facts. Nothing is done arbitrarily or illegally. Nothing is done malafide and motivated in violation of Article 14, 16 and 21 of the Constitution of India.

18. That with regard to paras 5 (a), 5(b), 5(c), 5(d), 5(ed), 5 (f), 5(g), 5 (h), 5(i), 5(j), 5(k), 5(l), 5(m), 5(n), 5(o), and 5 (p) the respondents beg to state that in view of statements made above the applicant is not entitled to get any relief on the grounds submitted in the foregoing paras from 5(a) to 5(p).

19. That with regard to paras 6 and 7 the respondents beg to offer no comment.

20. That with regard to paras 8 (a) to 8(g) the respondents beg to state that the applicant is not eligible to get any relief in view of the statements made above.

21. That with regard to paras 9, 10, 11 and 12 the respondents beg to offer no comments.

VERIFICATION

I, Biswanath Dasgupta D.E. (Technical)
SH.
being authorised do hereby solemnly declare that the statements made in the written statement are true to my knowledge and information and I have not suppressed any material fact.

And I sign this verification on this 7th day of December 2000.

Dasgupta
Declarant.

केन्द्रीय प्रशासनीय विधान न्यायालय
Central Administrative Tribunal
9 APR 2001
गुवाहाटी न्यायालय
Guwahati Bench

Filed 9/3/2001
Siger Saikia
At the Bench
of the Court
6/28/2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI BENCH
GUWAHATI

IN THE MATTER OF:-

O.A.No. 213 of 2000

Sri Upen Saikia ... Applicant

-Vs-

Union of India & Ors. ..Respondents.

-AND-

IN THE MATTER OF:-

Rejoinder on behalf of the Applicant
in reply to the Written Statement
submitted by Respondents No.1, 2 & 3.

The humble applicant begs to submit the
Rejoinder as follows:-

1. That with regard to the statement made in paragraph 2 of the Written Statement, the applicant begs to state that at the relevant time, the applicant was on deputation and the Chief General Manager, Telecom, Assam Circle was the lending Authority in respect of the Applicant. The punishment by the borrowing authority is a major ~~and~~ punishment which cannot be imposed by the borrowing authority as provided under Rule 20 of the CCS & CCA Rules, 1965. Nomination of Sri V. Snpa~~th~~ Kumar Director, Mtc., ETR, Shillong~~s~~ as the Adhoc Disciplinary Authority amounts to change in the conditions of service which is also prohibited by the

Govt. of India's Notification annexed as Annexure-10 to the Application and as such, the Nomination of Ad-hoc Disciplinary Authority without amending the relevant service rule being impermissible, the action taken by such authority is beyond jurisdiction, illegal and liable to be set aside and quashed.

Open Sailing

2. That the statements made in paragraph 4 of the Written Statement is contrary to their own record is clearly evident from the impugned order issued by the Disciplinary Authority under the Heading "Analysis of representation and defence brief of the SPS at page 54 and the Enquiry Report at page 45 & 46 (internal page 4 & 5) as well as in the evidence of S.W.1 and as such, denial of the same by the Respondents in their written statement is intended to hide the truth of the matter.
3. That with regard to statements made in paragraph 5 of the Written Statement, the applicant begs to state that the entire facts and circumstances of the case and the action of the Respondents authorities itself are sufficient proof of the allegations made in paragraph 4.5 of the application and does not require any further assertion of the same.
4. That with regard to statement made in paragraph 7 of the written statement, the applicant begs to state that the report of the Vigilence Officer itself shows that "inspite of visiting the P.O. at Tezpur on 10th & 11 July, to collect information from a number of staff, but none could enlighten him about

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the occurrence of any such incident as alleged and recommending initiation of Disciplinary Proceeding only on the basis of an FIR without any other material is prima-facie, a bias and malafide action on the part of the Vigilence Officer. Besides, when the Vigilence Officer found the SPS in his leave address, how he could state in his report that the applicant is attempting to avoid arrest by the Police. All these actions support the correctness of the statement made in paragraph 4.7 of the application.

5. That with regard to the statement made in paragraph 9 of the written statement, the applicant begs to state that the way the Disciplinary Proceeding was initiated against the SPS and the manner the same is concluded and the applicant is punished even ~~imx~~ by giving a go-bye to the relevant provisions of CCS & CCA Rules, 1955 is sufficient to prove the allegations made in paragraph 4.9 of the application.

6, That with regard to the statement made in paragraph 11 of the written statement, the applicant begs to state that the Appellate Authority passed the Appellate Order most mechanically without considering the materials on record and without applying his mind to the relevant facts and the law.

7. That with regard to the statements made in paragraph 12 of the written statement, the applicant begs to state that the way the S.W.1 has been made to depose in the case by assuring his transfer to Bihar and after his deposition he has been hurriedly transferred to Bihar which itself speaks of coercion and duress

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Aaben Saikia

under which the S.W.I deposed against the applicant.

8. That with regard to statement made in paragraphs 14 & 16 of the written statements, ~~make~~ the applicant reiterate and reaffirm the statements made hereinabove as well as, in the original application.
9. That with regard to the statements made in paragraph 16 of the written statement, the applicant begs to state that the appointment of Ad-hoc Disciplinary Authority without following the procedure Notified by the Govt. of India by its Notification annexed as Annexure-10 to the original application at page 54 is impermissible and cannot stand in the eye of law and as such any action taken by such Disciplinary Authority is not tenable. However, the applicant never stated in his application that the President of India is ~~manage~~ and the Respondents ought not to bring in the President of India in such a way.
10. That with regard to statements made in paragraphs 17 & 18 of the written statements, the applicant begs to state that since the Respondent themselves admitted that the charges are framed on the basis of the recommendation of the Vigilence Officer without *prima facie* satisfaction of the Disciplinary Authority about the commission of any offence under the relevant service Rule is not ~~make~~ sustainable as the law is well settled in the matter.
11. That with regard to the statements made in

paragraph 20 of the written statement, the applicant begs to state that in view of what has been stated herein this Rejoinder above, the applicant is entitled to the relief prayed for and the Hon'ble Tribunal would be pleased to grant appropriate relief in favour of the applicant.

VERIFICATION

I, Upen Saikia, son of late Thuleswar Saikia, aged about 43 years, at present serving as S.D.O, Phones, Adabari under the General Manager, Telecom, Kamrup Telecom District, Guwahati-7 under the Respondent No.2, do hereby verify and state that the statements made in paragraphs 1 to 11 are true to my knowledge; those made in paragraphs — being matters of records are true to my information derived therefrom which I believe to be true and the rest are my submission before this Hon'ble Tribunal.

And I sign this verification on this the 6th day of April, 2001 at Guwahati.

Upen Saikia

Signature of the Applicant.