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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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O.A./T.A No. 221/2000
R.A/C.P No.
E.P/M.A No.

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SECTION OFFICER (Judl.)

(India 2010', 54th Edition, Chapter 20, 'Justice and Law, Page 720, published by the Government of India, Ministry of Information and Broadcasting, Soochna Bhawan, CGO- Complex, New Delhi-110003).

4.3 That, the applicants beg to state that by an impugned order dated the 14th day of January, 2010, issued vide memo no. II.25011/65/2009/Fin/42, the Directorate General Assam Rifles, directed all the units/formation of Assam Rifles to recover licence fee from civilian staff and A R cadre officer of Assam Rifles who are occupying government quarter in Assam Rifles formations/units, in the plea that A G (Audit) has raised objection regarding non-recovery of licence fee. In paragraph 2 of the said order the Directorate General Assam Rifles clarified it that the licence fee is to be recovered from civilian staff and A R cadre officers under S R 317-B-12(1), i.e., Allotment of Government Residences (General Pool in Delhi) Rules, 1963.

The type copy of the impugned order no. II.25011/65/2009/Fin/42, dated the 14th day of January, 2010, is annexed herewith and marked as ANNEXURE-I.

4.4 That, the applicants beg to state that the respondent authorities after issuing the above referred order started to deducting the licence fee from the applicants salary every months without issuing any notice or without giving any information.

The respondent authorities have been deducting the licence fee from the applicants every months, which is as follows :

SL. No.	Name	Amounts
1.	5420040 Kanu Acharjee	Rs. 310
2.	5450035 Bimal Kumar Jha	Rs. 205
3.	5320067 Konika Bezboruah	Rs. 310
4.	5430042 Sumita Dey	Rs. 310
5.	5430084 Rajesh Kumar Rai	Rs. 310
6.	5430007 Jitendra Choudhury	Rs. 310

Kanu Acharjee

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 221/2000 OF 199

Applicant(s) Sri Madam Chandu Gayatri

Respondent(s) Union of India others.

Advocate for Applicant(s) Mr. J. L. Sarkar
Mr. M. Chandra.

Advocate for Respondent(s) Mrs. N. D. Goochani

Notes of the Registry	Date	Order of the Tribunal
<p>This application in form and within time of R. S. deposited vide IPO BD No. 457211 Dated 24.5.2000</p> <p>19/6/00 Requisite not filed</p> <p>21/6/00 Requisite received and notice prepared and sent to S/S for issuing the Respondent No. 1 to 6 Retd. No 1, 2 & 6 by Regd Post & No 3, 4 & 5 by hand. vide D/No 705 to 1740 dtd 22/6/00</p>	<p>16.6.00</p> <p>pg 15/6/2000</p>	<p>Present : The Hon'ble Mr D.C.Verma, Judicial Member.</p> <p>Heard Mr J.L.Sarkar, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents.</p> <p>Application is admitted. Issue notice to all the respondents. Written statement be filed within 3 weeks.</p> <p>List on 10.7.00 for further order.</p> <p>As regards interim prayer no ground is made out. Accordingly the interim prayer is rejected.</p> <p>Member(J)</p>

Notes of the Registry	Date	Order of the Tribunal
<p><u>7-7-00</u></p> <p>No O/S has been filed.</p> <p>h.</p>	10.7.00	<p>Present: Hon'ble Mr S. Biswas, Administrative Member</p> <p>At the request of Mr A. Deb Roy, learned Sr. C.G.S.C. four weeks time is granted to file written statement. Post on 26.7.00 for orders. Mr M. Chanda, learned counsel for the applicant is present.</p> <p><i>S. Biswas</i> Member(A)</p>
<p>No. wfs has been filed.</p> <p><u>7.11.2000</u></p> <p><u>7.11.2000</u></p> <p>Written statement has been filed by the respondents.</p> <p><u>29-1-2001</u></p> <p>Reminders has been filed by the applicant Advocate.</p> <p>Pass</p>	<p>nkm</p> <p>26.7.00</p> <p>30.8.00</p> <p>30.8.00</p> <p>8.11.00</p> <p>lm</p> <p>28.2.</p> <p>20.3.</p> <p>27.4.01</p> <p>22.5.01</p>	<p>There is no Bench. Adj. 30.8.00.</p> <p>No Bench. Adj. 1-8-11-00.</p> <p>Written statement has already been filed. Case be listed for hearing on 28.2.2001.</p> <p><i>Vice-Chairman</i></p> <p>Adj. 20.3.2001.</p> <p>Hear in part. 28.2.2001. Lost it again on 23/3/2001.</p> <p>Adj. 20.3.</p> <p>Left over. Adj. 22-5-01.</p> <p>Hear in part. List on 24-5-01.</p>

Notes of the Registry	Date	Order of the Tribunal
<p>19.5.2001</p> <p>Copy of the Judgment has been sent to the Office for issuing the same to the Applicant as well as to the L/Don for the Respondent.</p> <p>nk</p>	24.5.2001	<p>Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.</p> <p><i>K. L. Shetty</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

nkm

Notes of the Registry

Date _____

Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. No. . 221 of 2000

DATE OF DECISION .24.5.2001.....

Shri Madan Chandra Gayari

APPLICANT(S)

Mr J.L. Sarkar, Mr M. Chanda and

and Mrs N.D. Goswami

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb 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 Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.221 of 2000

Date of decision: This the 24th day of May 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Madan Chandra Gayari,
Resident of Tarun Nagar,
Guwahati.

.....Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda
and Mrs N.D. Goswami.

- versus -

1. The Union of India, through the
Secretary to the Government of India,
Ministry of Telecommunication,
Department of Communication,
New Delhi.
2. The Director General,
Department of Telecommunication,
Government of India,
New Delhi.
3. The Chief General Manager, Telcom,
Assam Circle,
Ulubari, Guwahati.
4. Shri G.D. Yadav,
General Manager, Telecom,
Kamrup, Assam Circle,
Ulubari, Guwahati.
5. Shri Subrata Ghorai,
Deputy General Manager, Telcom,
Assam Circle,
Ulubari, Guwahati.
6. Shri A.B. Saran,
Officer on Special Duty,
Department of Telecommunication,
Bihar Circle, Patna.

.....Respondents

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

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

This application under Section 19 of the
Administrative Tribunals Act, 1985 is directed against the
order of penalty on the applicant by reducing the pay of
the applicant by four stages from Rs.6800 to Rs.6200/- for
a period of three years in the scale of pay of Rs.5000-

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150-8000 with effect from 1.10.1999 with cumulative effect, as well as the order of the Appellate Authority rejecting the appeal vide order dated 7.2.2000 reducing the penalty from four stages to two stages.

2. The applicant is presently functioning as Phone Inspector. While discharging his duty as such the applicant was served with a Memorandum of charges dated 15.7.1994 under Rule 14 of the CCS(CCA) Rules, 1965. The following article of charge was brought against him:

"While Shri M.C. Goyari, was posted and functioning as Phone Inspector in the O/o S.D.O. Phone(West) Guwahati during the year 1991-92 failed to maintain absolute integrity and devotion to duty as such as he gave genuiness certificates on the body of the original telephone shifting applications of telephone Nos.33211 and 34610 to SRC Thakur Bazar Athgaon, A.T. Road, Guwahati without verification of genuiness of the same and also shifted the telephone No.34610 (New No.31464) to the adjacent building named "Bhola Market" of SRC Thakur Bazar, Athgaon, A.T. Road, Guwahati and thereby he contravened the provisions of Rule 3 (1) (2) of CCS (Conduct) Rule, 1964."

The applicant submitted his explanation in writing denying the charge and the respondents thereafter appointed an Inquiry Officer to conduct the enquiry and the Inquiry Officer in due course submitted his report holding the applicant guilty of the charge of misconduct under 3(i)(ii) ofn the CCS (Conduct) Rules (i.e. failure to maintain devotion ot duty levelled against him). The Inquiry Officer exonerated the applicant from the charge of misconduct under Rule 3(i) of the CCS (Conduct) Rules (failure to maintain absolute integrity) for want of evidence on record. The respondent authority communicated the report of the Inquiry Officer against which the applicant submitted his representation. The Disciplinary Authority accepted the report of the Inquiry Officer and imposed.....

imposed the penalty and ordered for reduction of the pay of the applicant by four stages from Rs.6800 to Rs.6200 for a period of three years in the scale of pay of Rs.5000-150-8000 with effect from 1.10.1999. The applicant preferred an appeal against the said order. The Appellate Authority considered the facts and circumstances of the case and reduced the penalty by reducing the pay of the applicant by two stages from Rs.6800 to Rs.6500 for a period of one year in the scale of pay of Rs.5000-150-8000 with effect from 1.10.1999 without cumulative effect. Hence this application assailing the legality and validity of the order imposing the penalty vis-a-vis the order of the Appellate Authority.

3. Mr J.L. Sarkar, learned counsel for the applicant, firstly, submitted that there was no material basis for the Inquiry Officer to hold the applicant guilty of the charge of misconduct under Rule 3(i)(ii) of the CCS (Conduct) Rules. Mr Sarkar pointing to the materials on record, submitted that the applicant only discharged his lawful duty as enjoined upon him. As a Phone Inspector the applicant was to submit his feasibility report and he submitted his feasibility report. The applicant in course of discharging duty might have faltered here and there, but, that by itself did not amount to misconduct. The learned counsel submitted that the loss that was incurred to the Government, could not be put at his door since the applicant, as an Inspector, only gave the feasibility report and nothing more. The realisation of the bill from the subscribers in time or to take any other care, cohesive measure was not the responsibility of the Phone Inspector, submitted Mr Sarkar.

4. Mr A. Deb Roy, learned Sr. C.G.S.C., supporting the order of penalty, submitted that the Telephones were shifted only on the basis of the genuineness certificate given by the applicant as Phone Inspector. Before shifting of the telephones under the rule a feasibility report is to be submitted by the Phone Inspector and on his report the telephones in question were shifted.

5. We have given our anxious consideration in the matter. The applicant was charged for the alleged misconduct in giving the genuineness certificate for shifting. The applicant before giving the genuineness certificate made further verification and scrutiny, but that by itself will not amount to a misconduct either lacking absolute integrity or devotion to duty. In discharge of duty there could be some error of judgment, but unless the same can be imputed with some corrupt or improper motive, it would not be appropriate to hold one for lacking either of those two. The Inquiry Officer on enquiry also exonerated the applicant from misconduct of not maintaining absolute integrity. The integrity of the applicant was not in doubt as per the report of the Inquiry Officer. As alluded earlier the applicant could go for further scrutiny, but in this case he did not go for further probe and was satisfied with his own enquiry and submitted his report. The report was acted upon by the higher authority, without any reservation. In judging the order of penalty the aforesaid reasons were not taken care of by the respondent authority. We are, however, not inclined to remit the matter to the authority for a fresh reconsideration of the quantum of punishment. Since the applicant has already undergone the period of punishment and the order of penalty has already served the period and the order did not have any cumulative effect, we are not

inclined.....

inclined to send back the matter to the respondents for consideration of the punishment, though we are of the opinion that the punishment imposed was disproportionate on the fact situation. The applicant has already been exonerated by the Inquiry Officer from the charge of failure to maintain absolute integrity and since nothing intriguing was found against the applicant, so far his integrity was concerned, we hold that the said order of penalty has spent its force and for that reason we hold that the penalty shall not effect his service career and the said penalty shall not be counted for any purpose.

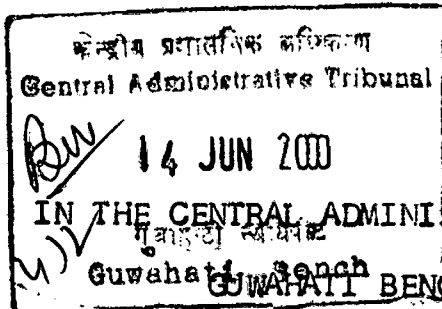
6. With the above observation the application stands disposed of. There shall, however, be no order as to costs.



(K. K. SHARMA)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN



(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O.A. No. 221 /2000

Shri Madan Chandra Gayari : Applicant.

- Versus-

Union of India and Ors. : Respondents.

I N D E X

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Date :

Filed by

(Signature)
Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative
Tribunals Act, 1985).

Original Application No. 224/2000

BETWEEN

Sri Madan Chandra Gayari
Son of late Galar Ram Gayari
Resident of Tarun Nagar
Guwahati-781005

..... Applicant

-AND-

1. The Union of India
Through the Secretary to the
Government of India, Ministry
of Telecommunication, Department
of Communication, New Delhi.
2. The Director General
Department of Telecommunication,
Government of India,
Sanchar Bhawan,
New Delhi.
3. The Chief General Manager Telecom
Assam Circle, Ulubari
Sony Ram Bora Road
Ulubari, Guwahati-7
Assam

Contd...

Madan Ch. Gayari

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4. Shri G.D.Yadav,
General Manager Telecom,
Kamrup, Assam Circle,
Ulubari, Sony Ram Bora Road,
Ulubari, Guwahati-7,
Assam.
 5. Shri Subrata Ghorai
Deputy General Manager, Telecom,
Assam Circle, Ulubari, Sony Ram
Bora Road, Ulubari, Guwahati-7,
Assam.
 6. Shri A.B. Saran,
Officer on Special Duty
Department of Telecommunication,
Bihar Circle,
Patna

.... Respondents

DETAILS OF APPLICATION

1. Particulars of order against which this application
is made.

This application is made against the impugned Memorandum of chargesheet issued under letter No. TDM/X-19/93-94/1 dated 15.7.1999 and also against the impugned order of penalty issued under letter bearing No. GM/10-~~20~~/99-00/28 dated 7.2.2000 and also against the impugned Appellate Order issued under letter bearing

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Madan Ch. Gargi

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

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

4. Facts of the Case

4.1 That the applicant is a citizen of India as such he is entitled to all the rights and privileges guaranteed by the Constitution of India. The applicant initially appointed as Phone Inspector in the month of July 1975 against the recruitment year 1973. Presently he is serving as Phone Inspector in the pay scale of Rs.5000-150-2000 (Pre revised Rs. 1320-2000) per month in the office of the Telecom District Manager, Sony Ram Road, Ulubari, Guwahati-781007.

4.2 That it is stated a criminal case was instituted against the applicant during the year 1993 before the court of Special Judge, Assam, Guwahati which was registered as Special Case No. 37(C)/93 (State Vs. Madan Chandra Gayari & Ors.). The allegation was that the present applicant and one Shri Oblesh Kumar Sharma, employees of the Telecom Department had entered into criminal conspiracy with some other persons to cheat the Telecom Department to the tune of Rs. 9,57,500/-. In pursuance of the said conspiracy Accused No.1 and Accused

Madan Ch. Gayari

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No.2 of the aforesaid criminal case applied for shifting of two telephones to S.R.C. Thakur Bazar Market and the present applicant being the Phone Inspector submitted the report, but the telephones were shifted to some other place. Thereafter the telephones were used by the accused No.5, Accused no. 2 and accused no.3 for STD and long distant calls and the telephones were used illegally and the arrear bills accumulated to the tune of Rs. 9,57,500/-. The said amount was never paid and thus the Telecom department was cheated. The aforesaid criminal case was decided by the Learned Special Judge vide its judgement and order dated 13.8.1996 after threadbare discussion of the charges as well as the evidence on records. Ultimately the Learned Special Judge in its judgement and order dated 13.8.1996 held as follows :

"Actual shifting to Bhola Market instead of SRC Thakur Bazar Market was done allegedly by Ablesh Sharma and other co-accused. Admittedly, Phone Inspector has got no part in the actual shifting. It is further alleged that accused Madan Gayari submitted his report regarding genuineness of the applicant without verification. Accused Mithilesh Thakur and Raj Kumar Narula are the two accused persons of this case. They are, thus, not fictitious persons. It is further alleged that the Phone Inspector did not verify or obtain necessary documents regarding tendency agreement or otherwise in respect of the new place of shifting in favour of the applicants. This is not case of providing new

Contd..

Madan Ch. Gayari

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connection and the applicants were already subscribers in respect of two telephones. There is no other incriminating materials against the accused Madan Ch. Gayari except of his alleged negligence for not consulting required documents before submission of the report. So, the accused may be dealt with departmentally. On consideration of the materials and perusal of the report I hold that for this alleged negligence and carelessness in discharge of his official duties, no criminal liability cannot be fastened on the accused Madan Gayari in absence of any incriminating materials against him.

In the result, I find a prima facie case to proceed against accused Mithilesh Thakur, Nandalal Sharma and Raj Kumar Narula U/S 120B and 420 IPC and accordingly, charge under the above section of law is framed, readover and explained to the accused persons.

Two accused persons present in the Court plead not guilty. Accused Nanda Lal Sharma pleads not guilty through his counsel.

In view of the forgoing discussion, I also find a prima facie case to proceed against the accused Ablesh Sharma U/S 120B/420 IPC and Sec.13(2) r/w section 13(1) (d) of the P.C. Act. Accordingly, charge under the above section of law is framed, read over, explained to him and he pleaded not guilty.

There is no prima facie case to proceed against accused Madan Gayari. Madan Gayari is discharged.

Madan Ch. Gayari

Fix 9.10.96 for trial. Prosecution to produce the witnesses."

It appears from the above judgement of the Learned Special Judge that the Phone Inspector has got no part in the actual shifting. It is also held by the Learned Special Judge that the accused Mithilesh Thakur and Raj Kumar Narula of the said criminal case are not fictitious persons. As regard the allegation in respect of the present applicant that he did not verify or obtained necessary documents regarding agreement or otherwise in respect of new place of shifting in favour of Mithilesh Thakur and Raj Kumar Narula, the Learned Special Court held that this is not the case of providing new connection and the applicants/subscribers were already subscribers in respect of the said two telephones. It is specifically held by the learned special judge "There is no other incriminating materials against the accused Madan Ch. Gayari except for his alleged negligence for not consulting required documents before submission of the resport" However the learned Special Judge stated in the said judgement that the accused Madan Chandra Gayari may be dealt with departmentally and finally learned Special Judge held that there is no prima facie case to proceed against the present applicant and was pleased to discharge the applicant from the criminal liability.

A copy of the judgement and order dated 13.8.96 passed by the learned Special Judge in Special Case No. 37(C)/93 is annexed as Annexure-1.

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Madan Ch. Gayari

4.3 That your applicant begs to state that on 15.7.94 the respondents issued a Memorandum of chargesheet bearing Memo No. TDM/X-19/93-94/1 dated 15.7.94 under Rule 14 of the CCS(CCA) Rules, 1965 whereby article of charges were brought against the applicant while he was functioning as Phone Inspector in the office of the SDO Phone(W), Guwahati during the year 1991-1992 and it was alleged that the applicant failed to maintain absolute integrity and devotion to duty in as much as he gave genuineness certificate on the body of the Original telephone shifting application Nos. 33211 and 34610 (31464 new to SRC Thakur Bazar Aatgaon, A.T.Road Guwahati) without verification of genuineness of the same and also shifted the telephone No. 34610 to the adjacent building named Bhola Market of SRC Thakur Bazar and thereby he contravened the provisions of Rule 3(1)(i) & (ii) of CCS (Conduct) Rule 1964. After issuance of the Memorandum of chargesheet the authority remained silent for several years and did not proceed with the proceeding with the anticipation that the applicant might be convicted in the criminal proceeding which was pending before the learned Special Judge, Kamrup Guwahati on the same subject matter. When the Learned Special Judge exonerated the applicant from the criminal liability on the same charge which was levelled against the applicant by instituting a criminal proceeding before the Learned Special Judge but when the authority found that the Learned Special Judge discharged the applicant from criminal liability even thereafter they remained silent and did not proceed with the departmental proceeding.

Meanwhile the applicant approached the Central Administrative Tribunal, Guwahati Bench by way of filing the Original Application No. 58 of 1996 (Sri M.C.Gayari

Maden ch. Gayari

Vs. U.O.I. & Ors.) whereby the applicant prayed before the Hon'ble Tribunal for direction to the respondents to allow him to complete the training required for promotion to the post of Junior Telecom Officer which he could not complete due to sickness while he was sent for training during the year 1989. ~~The said O.A. was~~ In the said O.A. the applicant also challenged the illegal conditions which was imposed by the authority for sending him in training for promotion to the post of Junior Telecom Officer. The said O.A. was decided by the Hon'ble Tribunal on 2.7.1997. The illegal condition was imposed by the respondents was set aside by the Hon'ble Tribunal vide its judgement and order dated 2.7.1997 and the matter of seniority was left for consideration of the respondents. The respondents immediately thereafter filed a Review Application against the Judgement and Order dated 2.7.97 passed in O.A. No. 59/96 which was registered as R.A. No. 6 of 1998 (O.A. 59/96). The said R.A. was also dismissed being infructuous while the learned counsel for the respondents informed the Hon'ble Tribunal that the Government has decided to send the applicant for training to facilitate the promotion to the post of Junior Telecom Officer from Assam Circle. A contempt Petition was also filed before the Hon'ble Tribunal by the applicant at the relevant time for non-implementation of judgement and order dated 2.7.1997 which was registered as Contempt Petition No. 14/97 (O.A. 59/96). The said Contempt Petition was also closed when the respondents informed the Hon'ble Tribunal that they need two months time to comply with the order passed by the Hon'ble Tribunal and the respondents have also taken a decision to comply with

Madan Ch. Goyan

with the judgement and order passed in O.A. No. 59/96. The respondents although informed the Hon'ble Tribunal that they have taken a decision to comply with the order dated 2.7.97 passed in O.A. No. 59/96 but they got annoyed with the applicant as the applicant impleaded some of the high officials in the contempt petition. The respondents as such became vindictive towards the applicant and again started the departmental proceeding after a lapse of nearly five years and also after a lapse of two years from the pronouncement of the judgement and order dated 13.8.1996 passed in Spedial Case No. 37(C)/93.

Copy of the judgement order dt. 2.7.97 passed in O.A. No. 59/97, judgement and order dt. 1.4.98 in R.A. 6/98 and order dated 1.5.98 in C.P. No. 14/98 are annexed as Annexures-2,3 and 4 respectively.

4.4 That your applicant begs to state that immediately after receipt of the judgement and order dated 2.7.1997 the respondents started the departmental proceeding again on the same subject matter which was decided by the Learned Special Judge in Special Case No. 37(C)/93 and first hearing of the departmental proceeding took place on 9.2.1998 and thereafter hearing held on 10.2.98, 11.2.98, 28.6.99 and 29.6.99 and 11.7.99. In course of the regular hearing it would be evident from the daily order sheet of the proceeding that no evidence against the applicant was available. A mere reading of the enquiry report dated 2.9.1999 also makes it clear that charges were not established against the applicant which was brough against him through Memofandum dated 15.7.1994.

Madan Ch. Garg

On a careful scrutiny of the Memorandum of chargesheet would further reveal that a bogus charge is brought against the applicant which is not sustainable in the eye of law. The relevant portion of the article of charges is quoted below :

" A N N E X U R E - I

While Shri M.C.Gayari was posted and functioning as Phone Inspector in the % S.D.O. phones (West), Guwahati during the year 1991-92, failed to maintain absolute integrity and devotion to duty as much as he gave guineness certificates on the boady of the original telephone shifting applications of telephone nos. 33211 and 34610 (31464 new) to SRC Thakur Bazar, Athgaon, A.T. Road, Guwahati without verification of genuineness of the same and also shifted the telephone No. 34610 (new no. 31464) to the adjacent building named "Bhola Market" of SRC Thakur Bazar. Athgaon, A.T.Road, Guwahati and thereby he contravened the provisions of Rule 3 (1) (i) & (ii) of CCS (Conduct) Rule 1964."

From above it appears that the Article of charges levelled against the applicant is that he has given genuineness certificates on the body of the Original telephone shifting applications no. 33211 and 34610 to SRC Thakur Bazar, A.T.Road, Guwahati without verification of the genuineness of the same and also shifted telephone No. 34610 to adjacent building name Bhola Market, A.T.Road, Guwahati and thereby he contravened the provisions of Rule 3 (1) (i) & (ii) of CCS Conduct Rule 1964. After detail hearing an enquiry report was

Madan Ch. Gayari

served on the applicant vide letter bearing No. OSD (Pt)/82/97 dated 2.9.1999 whereby the enquiry officer after discussion held as follows :

"Considering the facts, circumstances and evidence on record, I am of the opinion that PREPONDERANCE OF PROBABILITY goes against the SPS Sri Madan Chandra Gayari. Accordingly I hold that the charge of misconduct under 3(1) (ii) of CCS (Conduct) Rule 1964 (i.e. failed to maintained devotion to duty) levelled against the SPS under Annexure I to the memorandum of charges stands ESTABLISHED whereas the other charge of misconduct under 3(1) (i) of CCS (Conduct) Rule 1964 (i.e. failed to maintain absolute integrity) could not be proved in absence of evidences on record.

In other words the charge of misconduct under 3(1) (ii) only of CCS (Conduct) Rule 1964 of Annexure-I stands PROVED."

The applicant immediately after receipt of the inquiry report submitted a detailed representation against the findings of the enquiry officer vide his letter dated 29.9.1999 address to the General Manager, Kamrup Telecom. In the said representation the applicant rebutted the entire findings of the enquiry officer with detail reasons and stated that no documentary evidence made available to support the charges which is brought against the applicant. The applicant also categorically mentioned in the said representation that the word genuineness has been misinterpreted by the enquiry

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officer and also mentioned the relevant rules regarding verification of documents. The representation contained altogether 15 pages. But most surprisingly the disciplinary authority namely Shri Subrata Ghorai, DGM(P&A) office of the General Manager, Kamrup, Telecom, Guwahati without going through the representation of the applicant prepared the order of penalty dated 1.10.1999 under Memo No. G/X-19/99-00/23 except mentioning two lines ~~from the representation~~ i.e. :

"Accordingly the Govt. servant Sri Gayari, sent his representation to the U/S. The U/S carefully gone through his representation."

Under the said order the applicant has been imposed penalty of reduction of 4 stages from Rs.6800 to Rs.6200. for a period of three years in the scale of pay of Rs.5000-150-8000 with effect from 1.10.1999 with cumulative effect. The relevant portion of the order dated 1.10.99 is quoted below :

"It is therefore ordered that the pay of Sri Madan Chandra Gayari, P.I. O/o the G.M. Kamrup Telecom District Guwahati be reduced by four stages from Rs.6800 to Rs.6200 for a period of three years in the scale of pay Rs.5000-150-8000 with effect from 1.10.1999 with cumulative effect."

Copy of the Enquiry report dated 2.9.99 and representation dated 19.9.1999 and order of penalty dated 1.10.1999 are annexed as Annexures-5,6 and 7 respectively.

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4.5 That your applicant begs to state that immediately after receipt of the order of penalty dated 1.10.1999 submitted a ~~xxxxxxx~~ an appeal ~~xxxxxxx~~ dated 29.10.1999 addressed to the General Manager, Kamrup Telecom District, Ulubari, Guwahati, wherein the applicant submitted in brief a detail history of the case and also claimed that the memorandum of chargesheet dated 15.7.1994 was void ab initio and also submitted that the genuineness feasibility report submitted by the applicant was in conformity with the guidelines and instructions laid down by the Telecom Department and also declared that the stand of the applicant even today that the certificate furnished by him is valid and in conformity with the rules and also stated that this particular aspect has not been considered either by the enquiry officer of disciplinary authority. As such the impugned memorandum of chargesheet dated 15.7.1994 and order of penalty dated 1.10.1999 are liable to be set aside and quashed.

The applicant categorically stated in the appeal dated 29.10.1999 that financial loss to the tune of Rs. 7,48,218/- incurred by the Telecom Department due to inaction as well as due to serious negligence of the Telephone Revenue Accounts Section of the Telecom department. Further he brought to the notice of the appellate authority that it is mandatory on the part of the TRA Section as per Telecom Rule to disconnect the telephone lines if the outstand telephone bill is not paid by the subscribed within a span of 35 days from the date of billing. But in the instant case no such step for disconnection was initiated by the TRA

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Section even during the span of more than one year in case of telephone No. 33211 and no steps were taken more than 9 months in case of telephone No. 31464. As a result huge amount of outstanding started accumulating against the aforesaid telephones.

It is also categorically pointed out by the applicant that he is surprised to note that Telecom authority shirk their responsibility as because no charges were initiated against the officers and staff of TRA Section for such serious negligence and financial loss.

The applicant categorically pointed out that the chargesheet is initiated against him is bogus, baseless, vindictive and without having relevancy and not on factual basis, which is brought against him vide Memorandum dated 15.7.1994. He also claimed in the appeal that the genuineness and feasibility report regarding shifting of telephone Nos. 33211 and 31464 has no relevancy with the financial loss for non clearance of outstanding balance of Rs. 7,48,218/-. As such the chargesheet dated 15.7.1994 and order of penalty dated 1.10.1999 are liable to be set aside and quashed as the same has been drawn up in total violation of sub Rule 3 (i) (ii), (a), (b) of Rule 15 of CCS (CCA) Rules, 1965. The applicant also drawn the attention of the Appellate Authority in his appeal dated 29.10.99 by stating that Shri R.K.Narula one of the subscribers of the telephone moved an application before the Hon'ble Gauhati High Court under Section 438 Code of Criminal Procedure wherein it is categorically admitted in the said application of pre-arrest bail that he has 5 telephones including

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telephone No. 31464. In para 3 of the said application he had stated that it is an admitted position that he is the subscriber of 5 telephones including telephone No. 31464. Therefore report for genuineness and feasibility certificate issued by the applicant cannot be questioned or linked up with the financial loss of Rs. 7,48,218/- and therefore charges drawn up against him under Memorandum dated 15.7.94 and subsequent order of penalty dated 1.10.99 are liable to be set aside and quashed.

It is also stated that it appears to him that initiation of disciplinary proceeding against him without impleading the culprits who were in fact responsible i.e the officers and staff of TRA Section. It also appears that these have been done to safeguard the interest of the officers and staff of the TRA Section and the initiation of the proceeding against the applicant is an eye wash and with a view of intention to victimise the service career of the applicant deliberately and with an ulterior motive. The applicant further stated in his appeal dated 29.10.1999 that Shri Subrata Ghorai, DGM (P & A), Office of the General Manager, Kamrup Telecom District, Guwahati even did not discuss in ~~his~~ the impugned order dated 1.10.1999 what was the actual charge brought against the applicant as per CCS Conduct Rules, 1964. The applicant also stated in para 3 that wrongful identification of the persons held responsible for loss of departmental revenue. But surprisingly not a single point raised in the appeal dated 29.10.99 in the impugned Appellate Order dated 7.2.2000. In paragraph 6 of the appeal dt. 29.10.1999

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the applicant categorically stated that the enquiry officer Shri A.B. Saran misinterpreted the word genuineness in his enquiry report and thereby shifted the responsibility to the shoulder of the present applicant misinterpreting the departmental rules of genuineness and feasibility which was correctly given by the applicant in terms of departmental guidelines. In the said para it is also stated that since there was no doubt about the genuine existence of the said subscriber. He did not feel necessary to take a copy of the rent receipt. The applicant also quoted the relevant ~~DOT~~ DOT guidelines dated 13.7.92 for shifting the telephones which also supports the process adopted by the applicant and the said guidelines makes it clear that there was no violation in submitting the genuineness and feasibility report in connection with the shifting of the telephones mentioned above. The applicant also pointed out that the enquiry officer as well as disciplinary authority without considering the ~~xxx~~ circumstantial evidence held the applicant responsible for not taking the copy of rent receipt ~~xxx~~ at the time of verification and suddenly jumped to the conclusion that he had not visited the spot at all at the time of verification. It is also stated that this was a ridiculous findings than whatever could imagine with an ulterior motive and it has in fact initiated the unfair proceeding and on the basis of which no action could be legally taken. The applicant in paragraph 7 categorically stated that the impugned order of penalty is a non speaking order without discussin the points raised by the applicant

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in his representation dated 29.9.99. As such the impugned memorandum of charge sheet dated 15.7.1994 and order of penalty dated 1.10.99 are liable to be set aside and quashed.

A copy of the appeal dated 29.10.99 is annexed as Annexure-8,

4.6 That most surprisingly the General Manager Telecom Kamrup, Guwahati Sri G.D.Yadav passed the impugned order dated 7.2.2000 issued under letter No. GM/X-19/99-00/28 whereby he has confirmed the order of penalty imposed by the disciplinary authority. However he has reduced the penalty of reduction of pay from four stages to two stages i.e. from Rs. 6800 to Rs.6500 for a period of one year instead of three years in the scale of pay of Rs. 5000-150-8000 with effect from 1.10.1999 without cumulative effect. It appears from the Appellate Order dated 7.2.2000 that he did not discuss any of the points raised in the appeal dated 29.10.99 by the applicant. Surprisingly rather he has used borrowed same word from the enquiry report and without adding any additional word he has confirmed the order of penalty imposed by the disciplinary authority but the penalty has been reduced from four stages to two stages. In the impugned Appellate Order dated 7.2.2000 it is mechanically held by the Appellate Authority that the applicant did not follow the procedure while issuing the genuineness and verification certificate. This conclusion has been arrived at by the Appellate Authority just mechanically without application of mind. He has noted the departmental guidelines issued under letter dated 29.11.84 but wrongly came to the

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conclusion the the procedure has not been followed without specifying the procefdure/rule which was alleged to have been violated by the present applicant. He also came to a peculiar finding that the genuineness verification certificate was issued on the bady of the application. In this connection it is relevant to mention here that there is no rule as such that the verification or feasibility report should be given in a particular prescribed form so far the rules concerned in shifting of telephones as such this finding is totally bogus, baseless and whimsical.

The authority totally failed to record the reasons in support of his decision which is applicable, as a result the decision arrived at is capricious, whim and fancy and the impugned Appellate Order is a non speaking and also with containing any reason. As such the impugned Appellate order dated 7.2.2000 is passed mechanically and without application of mind. Therefore the impugned order 7.2.2000 is also liable to be set aside and quashed. The order of penalty passed by the disciplinary authority is also suffers from essential legal requirements which is necessary on the part of the disciplinary authority to pass speaking and reasoned order. It is stated that both the disciplinary authority and the Appellate Authority failed to consider the factual position as well as the legal position as highlighted by the applicant both in his defence statement as well as in the representation made against the enquiry report, and in his appeal preferred before the Appellate authority. As such the impugned ~~order~~ memorandum of chargesheet dated 15.7.1994, impugned order

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of penalty dated 1.10.99 and Appellate Order dated 7.2.2000 confirming the order of penalty are liable to be set aside and quashed. It is categorically stated that the impugned order of penalty dated 1.10.1999 was passed by the disciplinary authority in total violation of Rule 15 of CCS(CCA) Rules, 1965 and the Appellate Authority also passed the impugned order dated 7.2.2000 in total violation of the rules and procedure laid down in sub rule 2 of Rule 27. It is also categorically stated that the finding of the disciplinary authority are warranted by the evidence of records but in the instant case the findings of the disciplinary authority is not based on records. A mere perusal of the deposition made by SW1, SW2, SW3, SW4, SW5, and SW6 made it clear beyond all doubts that none of the evidence supports the charges levelled against the applicant in the impugned memorandum dated 15.7.94 rather it appears that the charges itself is bogus, baseless, not definite and justified and on that score alone the impugned chargesheet dated 15.2.94 is liable to be set aside and quashed as the same is void ab initio and the same is not supported by any rules and not based of factual position as well as it the settled position of rule or law. As such the impugned memorandum of chargesheet dated 15.7.94 as well as the impugned order of penalty dated 1.10.99 and the impugned Appellate Order dated 7.2.2000 are liable to be set aside and quashed.

Copy of the deposition of SW1 to SW6 are annexed as Annexure-9(series).

4.7 That your applicant begs to state that the memorandum of charges brought against the applicant is of tribal

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nature. The procedure of rule laid down in connection with shifting of telephone which followed by the applicant even does not warrant to initiate even charges under rule 11 of the CCS Rules whereas in the instant case major penalty chargesheet was issued under rule 14 of the CCS (CCA) Rules 1965. It is categorically mentioned in sub rule 2 of rule 3 of CCS Conduct Rules 1964 that the disciplinary authority should first specify themselves that the alleged act of misconduct attract the provision of any specific rules before taking recourse to Rule 3 (i) of CCS conduct rules 1964 and also directed the disciplinary that disciplinary proceeding under Rule 3 (i) should not be initiated on the ground which are unjustified. The relevant portion of Rule 3 (i) of CCS Conduct rules and sub rule 2 of rule 3 are quoted below :

" 3. General

(1) Every Government servant shall at all times-

- (i) maintain absolute integrity
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government servant."

(2) Cases of trivial nature should be eliminated Rule 3 (1) of the Central Civil Services (Conduct) Rules, 1964 provides that a Government servant shall at all time maintain absolute integrity and devotion to duty and to nothing unbecoming of a Government servant. This rule serves the specific ~~provisions~~ purpose of covering acts of misconduct not covered by other specific provisions of the Rules. It is, therefore, necessary that disciplinary authorities should first satisfy themselves

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that the alleged acts of misconduct do not attract the provisions of any specific rule before taking recourse to Rule 3(1) *ibid*. Where action is taken under Rule 3(1) particularly on grounds of unbecoming conduct, special care should be taken to eliminate cases of a trivial nature. Supervisory officers should look into this matter during periodic inspections and ensure that disciplinary proceedings under Rule 3(1) are not initiated on grounds which are unjustified."

A mere perusal of the above provision of the CCS (Conduct) Rules it establishes beyond all doubts that there is no ground to initiate any proceeding against the applicant under rule 14 of the CCS (CCA) Rules 1965. The charges which is brought against the applicant under rule 14 of the CCS CCA through memorandum of chargesheet dated 15.7.94 is as follows :

" While Shri M.C.Gayari was posted and functioning as Phone Inspector in the o/o S.D.O. Phones (West), Guwahati during the year 1991-92, failed to maintain absolute integrity and devotion to duty as much as he gave genuineness certificates on the body of the original telephone shifting applications of telephone nos. 33211 and 34610 (31464 new) to SRC Thakur Bazar, Athgaon, A.T.Road, Guwahati without verification of genuineness of the same and also shifted the telephone No.34610 (new no. (~~no.~~ 31464) to the adjacent building named "Bhola Market" of SRC Thakur Bazar, Athgaon, A.T. Road, Guwahati and thereby he contravened the provisions of Rule 3(1) (i) (ii) of CCS Conduct) Rule, 1964."

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From above article of charges it is alleged that the applicant has issued the genuineness certificate on the body of the applications of telephone No. 33211 and 34610 to SRC Thakur Bazar, A.T.^Koad, Guwahati without verification and genuineness of the same shifted the telephones. Now if the Hon'ble Tribunal looks into the provisions laid down in the rule for shifting of telephones, guidelines issued by the department of Telecommunication in their letter bearing No. 2/26/84-PHA dated 29.11.84 which is quoted below :

"No. 2-26/84-PHA, dated 29.11.84

Subject : Shift of telephone connections - Policy.

The policy on shift of telephone has been outlined in Circular No. 11-7/67-PHA/Coll.XII, dated 6.2.1968 and 9.9.1968. A revised OB procedure was put into operation in all major and minor Telephone Districts from 1.2.1972 which was in vogue in Metro Telephone Districts earlier.

2. In Telephone District, shift of telephone is ordered straightaway after checking the genuineness by verifying the signatures of the applicant from cardex for shifting in the same Exchange. Admissibility of the shift is checked in case of inter-exchange shifts before orders are issued.
3. In Telecom Circles, shift of telephone is ordered after getting technical feasibility report from the field staff.
4. In order to avoid irritation due to the formalities referred above, it has been decided

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that shift of telephones will be straightaway ordered on receipt of applications from a subscriber. Instructions for taking statement from the applicant or his authorised representative testifying that he/she is actually the person who applied for the telephone, were issued vide this Office Circular No. 144-3/82-PHA dated 15.7.1982."

From above policy/guidelines it appears from paragraph 2 of the said letter that (shifting of telephone is required to be ordered straightaway after checking the genuineness by verifying the signatures of the applicant/subscriber from cardex for shifting in the same Exchange. Admissibility of the shifting to be checked in case of inter-exchange shifting before order is issued. It is relevant to mention here that in the instant case the request for shifting was made within the jurisdiction of the same exchange. Paragraph 2 of the above letter it is abundantly clear that the genuineness for verification is required to be ~~verified~~ arrived at by tallying the signature of the subscriber which is required to be observed except verification of the signature of the subscriber who has applied for shifting of his telephone. This is the sole guidelines for verification of genuineness. It is also relevant to mention here that in the said policy letter dated 29.11.1984 the authority also drawn the attention of their 1982 policy. It is evident from paragraphs 2.1 and 2.2 of the 1982 policy wherein it is clearly stated that the procedure outlined in para 2.1 and 2.2

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may be followed in case of shifting of telephone connection. It is further stated in para 3.2 th t in ~~xx~~ case of doubt of statement as in Annexure C may be obtained from the subscribed but in the instant case the subscriber themselves categorically admitted that they have applied for shifting of telephones which would be evident from the statement given by Shri Nanda Lal Sarma// ownere of telephone no. 33211 before the CBI authority and his application dated nil is also reflect th t he has signed the same and also given detail address of the place of shifting.

Copy of the Appellate order dated 7-2-2000 and Note of Sri Nanda Lal Sarma, 5 and his application
are annexed for kind~~x~~ perusal of the Hon'ble Tribunal and marked as Annexure-10, and 11.

Similarly Shri R.K.Narula who approached the Hon'ble Gauhati High Court for pre-arrest bail petition categorically admitted in the said bail petition wherein it is categorically stated by Sri R.K.Narual that he had applied for shifting of telephone no. 31464 at SRC Thakur Bazar with the intention to open an office at SRC Thakur Bazar, AT Road, Guwahati. It is also stated in the said application that he has submitted application for shifting of the said telephone on 16.4.1991. Therefore it appears that the applicant verified the genuineness of the subscriber in terms of rule mentioned above and no fault can be find out that the applicant as regard the process adpoted by him following the Department of Telecom guidelines while issuing the genuineness certificate and feasibility report on the body of the application of the subscribers

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As such the findings of the enquiry officer in his enquiry report is bogus, baseless and arbitrary. It appears that he has no idea about the departmental rules and regulations although he was entrusted with the job to act as an enquiry officer in a departmental proceeding under CCS(CCA) rules, 1965. It is beyond imagination that ~~the~~ the enquiry officer who had no idea about rules and regulations of the department and misinterpreted the rules and misinterpreted the rules. Therefore the action taken against the ~~applicant~~ applicant is liable to be set aside and quashed as because the enquiry officer has not discharged his duty in a proper manner as was required under the relevant rules of CCS(CCA) Rules 1965. It is categorically mentioned in the judgement and order dated 13.8.96 passed by the learned Special Judge, Guwahati in Special Case No. 37(C)/93 (State versus M.C.Gayari & Ors). The relevant portion of the judgement and Order dt. 13.8.96 is quoted below :

"Now coming to the case of Madan Ch. Gayari, the prosecution allegation is that he was telephone Inspector during the relevant time and application for shifting of the above two telephones was referred to him and as phone Inspector he was required to submit the report regarding the genuineness of the subscriber and feasibility of shifting. The reports submitted by the Madan Gayari states that the parties are genuine and shifting is feasible. Except the above report no other act has been attributed to this accused in the alleged conspiracy. So far the feasible report regarding shifting is concerned, there is no dispute that the shifting was feasible.

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Actual shifting to Bhola Market instead of SRC Thakur Bazar Market was done allegedly by Ablesh Sharma and other co-accused. Admittedly, Phone Inspector has got no part in the actual shifting. It is further alleged that accused Madan Gayari submitted his report regarding genuineness of the applicant without verification. Accused Mithilesh Thakur and Raj Kumar Narula are the two accused persons of this case. They are, thus, not fictitious persons. It is further alleged that the Phone Inspector did not verify or obtain necessary documents regarding tendency agreement or otherwise in respect of the new place of shifting in favour of the applicants. This is not case of providing new connection and the applicants were already subscribers in respect of two telephones. There is no other incriminating materials against the accused Madan Ch. Gayari except for his alleged negligence for not consulting required documents before submission of the report. So, the accused may be dealt with departmentally. On consideration of the materials and perusal of the report I hold that for this alleged negligence and carelessness in discharge of his official duties, no criminal liability cannot be fastened on the accused Madan Gayari in absence of any incriminating materials against him."

From above it is quite clear that in the same set of facts and circumstances and also same set of allegation the learned Special Judge held that as Phone Inspector the applicant was required to submit the report regarding the genuineness of the subscriber and feasibility

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of shifting. The report submitted by the applicant Shri M.C.Gayari states that the parties are genuine and shifting is feasible except above report no other act had been attributed to the applicant M.C.Gayari in the alleged conspiracy. It is also held by the learned Special judge so far the feasibility report regarding shifting is concerned there was no dispute ~~that~~ the shifting was feasible. It is also held by the learned Special Judge that actual shifting to Bhola Marker instead of SRC Thakur Bazar Market was done allegedly by Ablesh Sharma and other co-accused, admittedly Phone Inspector has got no part in the actual shifting. It is also discussed in detail regarding allegation that accused applicant M.C.Gayari submitted his report regarding genuineness of the subscriber without verification. In this connection it is held by the learned Special Judge that accused Mithilesh Thakur and Raj Kumar Narula two accused persons of the criminal case, there are thus no fictitious persons as such. There is no other incriminating materials against Sri M.C. Gayarai except the alleged negligence for not consulting required documents before submission of the report. The above observation of the Learned Special Judge and discharge of the applicant from criminal liability on the same set of allegation. The applicant was set free from the criminal liability by the Learned Special Judge as because he did not find any incriminating materials to proceed further in the criminal proceeding. In this connection it is also relevant to mention here that so far departmental rules and circulars are concerned regarding shifting of

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telephones there is no provision laid down in 1984 policy to consult any documents for issuance of genuineness certificate as well as feasibility report. As such the very initiation of departmental proceeding is ab initio and also without jurisdiction of law.

It is further stated that the very initiation of departmental proceeding against the present applicant after his acquittal from criminal liability on the same set of charges/allegations are also contrary to the rule and provision laid in sub rule (8) of Rule 19 of CCS (CCA) Rules, 1965 wherein it stated as follows :

"..... If the facts or allegations had come to be examined by a Court of competent jurisdiction and the Court has given a finding that the allegations, are not true, then it is not permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations. If, on the other hand, the Court has merely expressed a doubt as to the correctness of the allegation, then there may be no objection to hold a departmental enquiry on the same allegations if better proof than what was produced before the Court or was then available is forthcoming. Then again if the Court has held that the allegations are proved but do not constitute the criminal offence with which the Government servant is charged, then also there would be no objection to hold a departmental enquiry on the basis of the said allegations if such proved allegations are considered good and sufficient ground for departmental disciplinary action. So, also, it is permissible to hold a departmental enquiry after the

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acquittal, in respect of a charge which is not identical with or similar to the charge in the criminal case, and is not based on any allegations which have been negatived by the criminal Court. Furthermore, if the allegations had not yet been examined by a Court of law but are considered good and sufficient grounds for departmental disciplinary action, there is no bar to taking such action.

(See Proviso under Rule 10(4) as inserted by Notification, dated the 7th September, 1981)."

In view of the above provisions of the rules it is made clear that a departmental enquiry cannot be initiated when the same has been examined by a competent court and given the finding to the extent that an allegation are not true, it is not possible to hold a departmental proceeding in respect of the charge based on the same facts or allegations. In the instant case there is a categorical finding of the Learned Special Judge that the allegation are not proved against the present applicant as such the memorandum of charge which has been issued through memorandum of charge sheet dt. 15.7.1994 and a disciplinary proceeding initiated against the applicant on the same set of charges are liable to be set aside and quashed on this score alone.

It is also stated that the impugned memorandum of charge sheet was issued on 15.7.1994 and whereas on the same subject matter a criminal case was registered before the Learned Special Judge during the year 1993 which was numbered as 37(C)/93. The Learned Special Judge discharged the applicant from the criminal charge on 13.8.1996 but

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surprisingly the respondents with an ulterior motive particularly the disciplinary authority as well as the enquiry officer started the proceeding after receipt of the judgement and order dated 13.8.1996 in total violation of the provisions of Rule (8) of Rule 19 of CCS (CCA) Rules 1965. The applicant repeatedly brought those facts of his discharge from the criminal liability to the authority on the same set allegation through his defence statement dated 19.8.1999, also in the representation dated 29.9.99 against the enquiry report dated 2.9.99 and also in his appeal dated 29.10.99 but unfortunately this fact neither considered by the disciplinary authority while passing the impugned order of penalty dated 1.10.1999 nor the appellate authority while passing the Appellate order dated 7.2.2000. As such on that ground alone the impugned memorandum of chargesheet dated 15.7.94, penalty order dated 1.10.99 and the impugned appellate order dated 7.2.2000 are liable to be set aside and quashed.

4. That your applicant begs to state that the memorandum of chargesheet dated 15.7.94 is void ab initio as because the charges against the applicant is brought in total violation of sub rule (3) of Rule 14 as because the charge is bogus, baseless and indefinite and the charges are not definite as such the impugned memorandum of charge sheet dt. 15.7.94 is liable to be set aside and quashed on that score alone.

4. That it is stated that there is not factual basis for initiation of charges under Rule 14 of the CCS(CCA) Rules 1965 as because there is no violation of rules which is further made clear by the Learned Special Judge while dealing with the same set of allegation/charges which was also brought against the applicant

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through criminal case No. 37(C)/93 before the Special Judge, Guwahati. As such the impugned order of memorandum of chargesheet dated 15.7.94, penalty order dated 1.10.90 and impugned Appellate Order dated 7.2.2000 are liable to be set aside and quashed.

~~Copy of the Judgement and order dt. 13.8.96~~

(W) ~~Statement of C.B.I, application for shifting~~
~~of telephone, Bail Petition and memorandum dated~~
15.7.94 and statement of Nandalal Sarma are
annexed hereto and marked as Annexures- ~~11, 12, 13, 14,~~
(W) and 1~~4~~ respectively.

4. That it is stated that it is a fit case where the Hon'ble Tribunal should interfere with and be pleased to stay the operation of the impugned order of penalty dated 1.10.99 and Appellate order dated 7.2.2000 be stayed till disposal of this Original Application.

4. That your applicant further begs to state that the charges brought before the Special Judge in Special Case No. 37(C)/93, it would be evident that the charges were same and identical which subsequently brought in the departmental proceeding vide memorandum issued under letter No. TDM/X-19/93-94/1 dated 15.7.94. The basic charge in the criminal proceeding was that genuineness report as well as feasibility report regarding shifting of telephone Nos. 33211 and 34610 (31464 new) to SRC Thakur Bazar, A.T. Roac Guwahati without verification and the applicant with dishonest intention shifted the said phones and installed at Bhola Market in front of P.C.O. of Shri Mithilesh Sarma. Same charge also brought against the applicant in the departmental proceeding. It is also categorically stated that the following 11 witnesses were examined in the

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criminal Proceeding instituted through Special Case No. 37(C)/93 as witnesses.

1. Shri Anil Ch. Saikia, A.E., (Plg.), G.M. TD, Guwahati.
2. Shri C.Dey, Sub(Telex), Telephone Exchange, Panbazar, Guwahati.
3. Sri Sri Bhola Sharma, Son of Lt. BOWILAL Sharma, Owner of Bhola Market, Athgaon, A.T.Road, Guwahati.
4. Sri Dilip Sharma, Son of Bhola Sharma, Athgaon, A.T. Road, Guwahati.
5. Sri Jagdish Pd. Singh, R.M., Son of Shiv Pd. Singh, Ambari, Guwahati.
6. Sri Dinesh Sharma, Businessman, Son of Mahavir Pd. Sharma, Partner of Hotel Ambar Palace, Fancy Bazar, Guwahati-1.
7. Sri Manmohan Dey, A.O. (SBP), G.M., TD, Guwahati.
8. Sri Manabendra Saha Sr. A.O. (SBP), CGMT, Guwahati-7.
9. Sri Madan Ch. Talukdar, P.I., SDOP (W), Guwahati.
10. Sri K. Barman, Inspector, CBI, S.P., CBI/ACB, Guwahati.
11. Sri S.P. Deb, SDE (Plg), G.M., TD, Guwahati.

and the evidence of the same 11 witnesses were relied on in the departmental proceeding. Therefore when the learned Special Judge acquitted the present applicant from the charges of criminal liabilities by its judgement and order dated 13.8.96 after consider the deposition submitted by the same witnesses as such initiation of departmental proceeding on the very same charge is total violation of Sub rule 8 of Rule 19 of the CCS(CCA) Rules 1965. It is stated that it is a settled position of law that once an employe is acquitted from criminal charge by a competent court of law on merits, on the very same charge further departmental proceeding cannot be continued as such the order of imposition of penalty on the basis of witnesses tendered by the same witnesses is contrary to

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the law and on that score alone the impugned memorandum of chargesheet dated 15.7.94 and the order of penalty dated 1.10.99 and Appellate order confirming the penalty dated 7.2.2000 are liable to be set aside and quashed.

The applicant urged to produce the mode of deposition made by the same witnesses in the criminal proceeding in Special Case No. 37(C)/93.

Copy of the prosecution sanction order of the criminal proceeding ~~as annexed as Annexure~~ and the letter dated 13.1.98 are annexed as Annexures-15 and 16 respectively.

4. That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that the initiation of departmental proceeding and imposition of penalty against same set of charge which was brought in the criminal proceeding and the Hon'ble Court vide its judgement and order dated 13.8.96 (Annexure-1) acquitted the petitioner in Special Case No. 37(C)/93 (State Vs. M.C.Gayari & Ors.) it is held by the Learned Special Judge that there is no materials to proceed with against the applicant as such the departmental proceeding is not sustainable on the very same charge as such memorandum of charge sheet ~~order~~ dt. 15.7.94, order of penalty dated 1.10.99 and the Appellate Order dt. 7.2.200 are liable to be set aside and quashed.

Nandan Ch. Garm

- 5.2 For that the departmental proceeding on the same set of facts and charges and also in the same set of documents and witnesses are not sustainable in the eye of law when the applicant was acquitted by the Learned Special Judge vide its judgement and order dated 13.8.96.
- 5.3 For that the Learned Special Judge categorically held in its judgement and order dated 13.8.96 that so far the feasibility report regarding shifting is concerned, there is no dispute that the shifting was feasible, actual shifting to "Bhola Market" instead of SRC Thakur Bazar Market was done allegedly by Ablesh Sarma and other co-accused, admittedly Phone Inspector has got no part in the actual shifting. It is further held that so far submission of genuineness report of the applicant without verification, that subscribers are not fictitious persons. as such the Hon'ble Special Judge acquitted the applicant. Hence departmental proceeding on the same set of charge of submission of genuineness certificate and feasibility report for shifting of telephones cannot be initiated after acquittal from the criminal charge on merit. Therefore, Hon'ble Tribunal be pleased to set aside the Memorandum of Charge-sheet dated 15.7.94 and penalty order dated 1.10.99 and Appellate order dated 7.2.2000.
- 5.4 For that departmental proceeding has been initiated under memorandum dated 15.7.94 has been issued in total violation of sub rule 8 of Rule 19 of the

Madan Ch. Gargi

- CCS (CCA) Rules 1965. On that score alone the memorandum of chargesheet dated 15.7.94, penalty order dated 1.10.99 and Appellate Order dated 7.2.2000 are liable to be set aside and quashed.
- 5.5 For that decision of the respondents for initiation of disciplinary proceeding against the applicant is based on extraneous consideration with a mala fide intention and the very charge is also framed in contrary to the rules.
- 5.6 For that the charges brought against the applicant in the departmental proceeding is vague, indefinite, and not distinct. On that score alone the impugned memorandum of chargesheet dated 15.7.94, penalty order dated 1.10.99 and Appellate order dated 7.2.2000 are liable to be set aside and quashed.
- 5.7 For that none of the grounds taken by the applicants either in the written statement or in representation made against the Inquiry report or in the appeal has not been considered neither by the disciplinary authority nor by the Appellate authority.
- 5.8 For that there was no discussion of evidence as required under the Rule by the Disciplinary Authority as well as by the Appellate Authority.
- 5.9 For that the Penalty has been imposed by the disciplinary authority without looking into the representation made by the applicant against the enquiry report and there was no discussion of the grounds raised by the applicant.

Madan Ch. Gargi

u8

5.10 For that the Appellate Authority confirmed the order of penalty without application of mind and also without discussing the points raised by the applicant in his appeal.

5.11 For that it is a settled law of the land that once the applicant is acquitted from criminal charge on merit in a same charge in the criminal proceeding it is barred on the part of the respondents to initiate a further departmental proceeding on the same charge.

6. Details of remedy exhausted.

The applicant begs to state that there is no other remedy under any rule than to file this application.

7. Matter not pending before any other Court.

The applicants further declares that he had not filed any application, writ petition or suit regarding the matter in respect of which the application has been made before any court of law or any other authority or any other Bench of the Tribunal and/or any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for :

Under the facts and circumstances of the case the applicant prays that Your Lordships would be pleased to issue notice to the respondents to show cause as to why the relief sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :

Madan Ch. Gargi

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order of initiation of departmental proceeding under memorandum of charge-sheet issued under letter No. TEM/X-1A/93-94 dated 15.7.94, Penalty order issued under memo No. GM/X-19/99/00/23 dated 1.10.99 and impugned Appellate Order issued under letter No. GM/X-19/99/00/28 dated 7.2.2000.

8.2 Costs of the Application.

8.3 Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and as may deemed fit and proper by the Hon'ble Tribunal.

99 Interim Reliefs prayed for :

9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned order of penalty dated 1.10.99 and Appellate order dated 7.2.2000 till disposal of this application.

10.

This application is filed through advocate.

11. Particulars of Postal Order

i.	I.P.O. No.	: 06-497311
ii.	Date of Issue	: 31-05-2000
iii.	Issued from	: G.P.O., Guwahati.
iv.	Payable at	: G.P.O., Guwahati.

12. Particulars of Enclosures.

As stated in the Index.

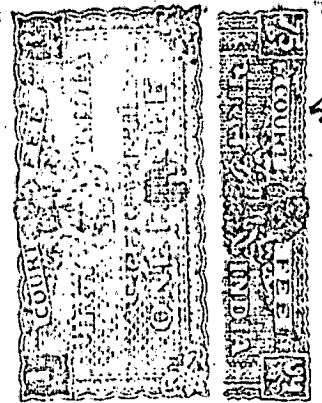
Madan Ch. Dey

V E R I F I C A T I O N

I, Madan Chandra Gayari, son of late Golar Ram Gayari, aged about 47 years, resident of Tarun Nagar, working as Phone Inspector, in the office of the Telecom District Manager, Sony Ram Bora Road, Ulubari, Tuwahati do hereby verify the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 14th day of June, 2000.

Madan Ch. Gayari
Signature



Date of application for copy : 30/8/96
 Date on which the copy was made for : 31/8/96
 Date of making over the copy to the : 31/8/96

RP
 31/8/96

Court of Special Judge
 Assam Guwahati

IN THE COURT OF THE SPECIAL JUDGE ::: ASSAM :: GUWAHATI.

Special Case No.37(C) of 1993.

S T A T E

- Vs. -

Madan Ch. Gayari & Ors.

Present :- Shri P.G. Agarwal, M.A., LL.B.,
 Special Judge, Assam,
 Guwahati.

DATE
 13.8.96

O R D E R

4 accused person are present. Accused
 Mandalal Sarma is absent. Seen petition
 No.497/96 filed on his behalf. He is allowed
 to be represented for today only. The accused
 is directed to appear personally on the
 future dates.

The prosecution allegation in this
 case is that accused Madan Ch. Gayari and
 Oblesh Kumar Sharma are the employees of
 Telecom Department. They entered into criminal



RP
 31/8/96

Contd...2/-

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Sri A.B.Sharan, I.O. has started with preliminary hearing on 9-5-97 and regular hearings held on 9-2-98, 10-2-98, 11-2-98, 28-6-99, 29-6-99 and 1-7-99.

The P.O. adduced as many as Six state witnesses only in support of charges out of Thirteen as enrolled in Annexure-IV to the chargesheet and the rest were dropped by P.O. on the same plea that they are not relevant to the charges.

At the end of oral hearing, both the parties were directed to submit their respective briefs and accordingly the prosecution brief of the P.O. dated 16-7-99 was received on 23-7-99 and the defence brief of the SPS dated 19-8-99 was received on 23-8-99 by the Inquiry officer.

On scrutiny of the whole case and relevant documents submitted by both the Parties, the Inquiry officer has submitted his Inquiry Report vide his Memo No. OSD(PT)/82/97 dt. 2-9-99.

On receipt of I/O report as per the rules, a copy of the same was forwarded to the Govt. servant Sri M.C. Gayari, for any representation/submission. Accordingly the Govt. servant Sri Gayari, sent his representation to the U/S. The U/S carefully gone through his representation.

On careful perusal of the Inquiry Report and all aspects of the proceeding against the SPS, I fully agree with the findings of the inquiry officer.

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

Hence, I, Sri Subrata Ghorai, DGM(P&A) Kamrup Telecom District, Guwahati, in exercise of powers conferred upon me under Rule-14 of the CCS(CCA) Rules, 1965, hereby decide that Sri Madan Chandra Gayari, P.I. O/D G.M. Kamrup Telecom District, Guwahati should be reduced his pay by four stages for a period of three years with effect from 1-10-99.

O-R-D-E-R.

It is therefore ordered that the Pay of Sri Madan Chandra Gayari, P.I. O/D the G.M. Kamrup Telecom District Guwahati, be reduced by four stages from Rs:-6800/- to Rs:-6200/- for a period of three years in the scale of Pay Rs. 5000-150-8000 with effect from 1-10-99 without cumulative effect.

Subrata Ghorai 11/10/99
Sri Subrata Ghorai.
DGM (P&A)

O/D the G.M. Kamrup Telecom
District, Guwahati.

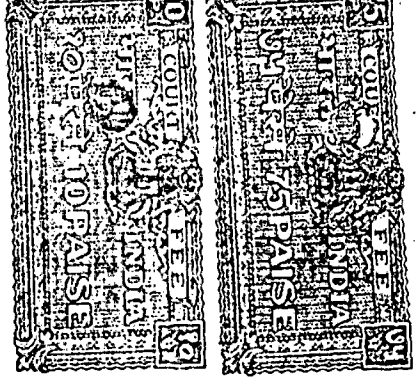
Copy to:-

1. AGM(Admn) O/D the CGMT, Guwahati for information and necessary action with reference to his letter No. STES-21/121/51 Dt. 25-8-99.

2. Sri M.C. Gayari, P.I., O/D the G.M.T.D, Kamrup, Guwahati.

3. A.O. (cash) O/D G.M.T.D, Kamrup, Guwahati.

L/10

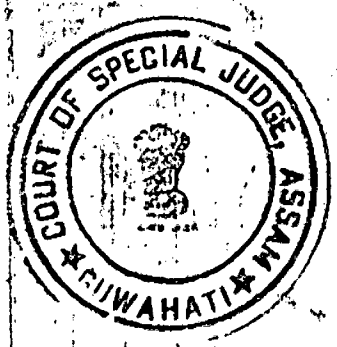


- 2 -

13.8.96
Contd.

conspiracy with A1, A2 and A3 to cheat the Telecom Department to ^{the} tune of Rs.9,57,500/-. In pursuance of the said conspiracy, A1 & A2 applied for shifting of two telephones to S.R.C. Thakur Bazar Market. A4 being the phone-Inspector submitted the report. But the telephones were shifted to other place. Thereafter, with the help of A5, A1, A2 and A3 used the above telephone for STD and long distant calls and the telephone was used illegally and the arrear Bill ran into six figures. The above amount was never paid and, thus, Telecom Department was cheated.

On perusal of the statement of witnesses recorded u/s 161, CrPC, and the seized documents, I find that there is a prima facie material against the A1, A2 and A3. These accused persons used the above two telephones illegally and thereby made wrongful gain to themselves for the ^{some of} approx. Rs.10 lakhs and in spite of receipt notices the amount was not paid.



Phas
31/8/96

Contd...3/-

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- 3 -

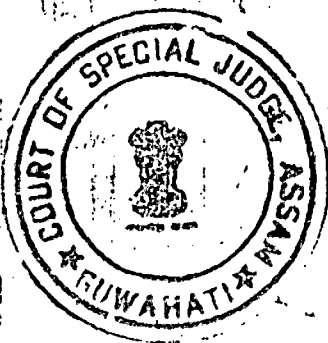
54

13.8.96
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From the statement of witnesses, I find that A5 Ablesh Kumar Sharma was the Prime conspirator in all the alleged illegal acts and he was deeply involved. Some incriminating materials were also recovered and seized from his house during the course of house search .

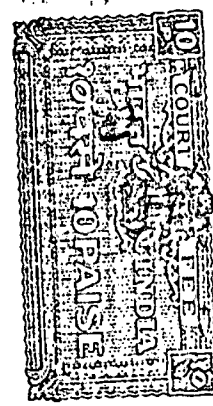
There is statement of witnesses showing that this accused was in leagus with accused A1, A2 and A3.

Now coming to the case of Madan Ch. Gayari, the prosecution allegation is that he was telephone Inspector during the relevant time and application for shifting of the above two telephones was referred to him and as phone Inspector he was required to submit the report regarding the genuineness of the subscriber and feasibility of shifting. The reports submitted by the Madan Gayari states that the parties are genuine and shifting is feasible. Except the above report no other act has been attributed to this accused in the alleged conspiracy. So far the feasible report regarding shifting is concerned, there is no dispute that the shifting



31/8/96

Contd...4/-



- 4 -

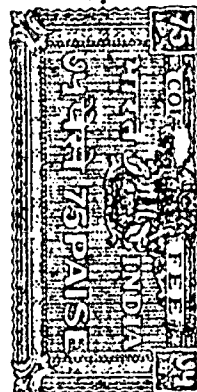
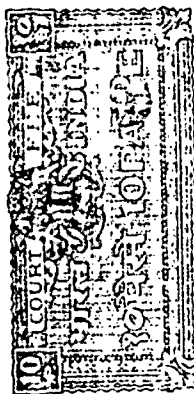
13.8.96
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was feasible. Actual shifting to Bhola Market instead of SRC Thakur Bazar Market was done allegedly by Ablesh Sharma and other co-accused. Admittedly, Phone Inspector ^{has} ~~was~~ got no part in the actual shifting. It is further alleged that accused Madan Gayari submitted his report regarding genuineness of the applicant without verification. Accused Mithilesh Thakur and Raj Kumar Murula are the two accused persons of this case. They are, thus, not fictitious persons. It is further alleged that the Phone Inspector did not verify or obtain necessary documents regarding tendency agreement or otherwise in respect of the new place of shifting in favour of the applicants. This is not case of providing new connection and the applicants were already subscribers in respect of two telephones. There is no other incriminating materials against the a accused Madan Ch. Gayari except for his alleged negligence for not consulting required documents before submission of the report. So, the accused may be dealt with departmentally. On consideration of the



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31/8/96

Contd...5/-



- 5 -

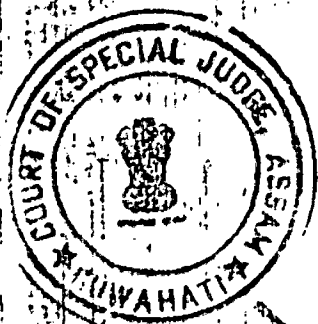
13.8.96
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materials and perusal of the report I hold that for this alleged negligence and carelessness in discharge of his official duties, no criminal liability cannot be fastened on the accused Madan Gayari in absence of any incriminating materials against him.

In the result, I find a prima facie case to proceed against accused Mithilesh Thakur, Nandalal Sharma and Raj Kumar Nurulla U/s 120B and 420 IPC and accordingly, charge under the above section of law is framed, readover and explained to the accused persons.

Two accused persons present in the Court plead not guilty. Accused Nanda Lal Sharma pleads not guilty through his counsel.

In view of the forgoing discussion, I also find a prima facie case to proceed against the accused Ablesh Sharma U/S 120B/420 IPC and Sec.13(2) r/w section 13(1) (d) of the P.C.Act. Accordingly, charge under



Phan
31/8/96

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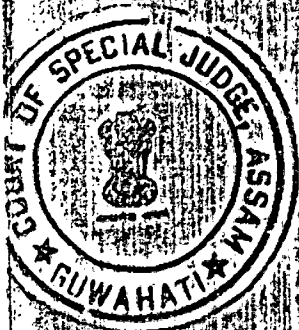
46
- 6 -

13.8.96
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the above the section of law is framed, read over, explained to him and he pleaded not guilty.

There is no prima facie case to proceed against accused Madan Gayari. Madan Gayari is discharged.

Fix 9.10.96 for trial. Prosecution to produce the witnesses.



Sd/- P.G. Agarwal,

Special Judge, Assam,
GUWAHATI.

Typed By : D. Das

Compared By : SKM
31.8.96

Read By : H
31/8/96

Certified to be true copy

Upendra Kishor Naik
31-8-96

Special Judge's Charistadar,
Authorised U/A 70, A.P. 1 of 1879

P-2.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No-59 of 1996.

Date of decision: The 2nd day of July 1997.

The Hon'ble Justice Mr. D.N. Baruah, Vice-Chairman.

The Hon'ble Mr. G.L. Sanglyine, Administrative Member.

Shri Madan Chandra Gayari

Resident of Tarun Nagar

Guwahati

-----Applicant

By Advocate Mr. J.L. Sarkar and Mr. M. Chanda.

--VERSUS--

1. The Union of India, through the
Secretary to the Govt. of India
Ministry of Communications
Department of Telecommunication
New Delhi.
2. The Director General
Department of Telecom
New Delhi.
3. The Chief General Manager,
N.E. Telecom Circle, Shillong.
4. The Chief General Manager,
Assam Telecom Circle, Guwahati.

By Advocate Mr. S. Ali, Sr. C.G.S.C.

ORDER

BARUAH, J. (V.C.).

In this application, the applicant has prayed for issuance of appropriate direction to the respondents.

2. Facts for the purpose of disposal of this application are:

In 1975 the applicant was appointed Phone Inspector. His next promotional avenue was Junior Telecom Officer (for short JTO). The applicant was selected in the qualifying departmental examination in the year 1985. He was to undergo training for the post of JTO at Jabalpur. The training was for a period of thirtyseven weeks. The applicant, however, could complete only thirtytwo weeks as he fell sick as a result he was compelled to return. The training was necessary for the purpose of promotion and it was the duty of the department also to make necessary arrangements for imparting the training. As the applicant could not complete the training because of his illness

Continued on page-2

the applicant approached the competent authority by submitting representation on 10.9.91, the applicant was allowed to resume his training for the second time. However, this time the authority imposed the conditions that on successful completion of the period of training the applicant would be required to serve in the N.E. Circle and also he shall be made junior to the other persons who received the training. According to the applicant this imposition of conditions is illegal, unreasonable and unfair.

3. We have heard Mr. J.L. Sarkar, learned counsel for the applicant and Mr. S. Ali, learned Sr. C.G.S.C. Mr. Sarkar submits that the imposition of the conditions, namely, that he shall be junior to the other candidates who received training earlier, was not in accordance with the provision of rules. The learned counsel further submits that there is no such rule enabling the authority to impose such conditions. Mr. Sarkar also submits that no such conditions were imposed on the persons who were sent for training earlier and also subsequently. Mr. S. Ali, on the other hand, support the impugned action of the respondents. According to Mr. Ali the imposition of condition was reasonable and just.
4. On the rival contention of the parties it is now to be seen, whether the authority could impose such conditions. The admitted fact is that the authority two conditions namely, that the applicant, after completion of the period of training would be required to work in the N.E. Circle, and that he should be made junior to the other persons who received training earlier. So far the first condition is concerned there is no such provision under the rules. At least Mr. S. Ali has not been able to show anything in that regard. Such conditions had not been imposed on the earlier candidates.
5. Considering all the aspects of the matter we find that the condition of asking the applicant to work in the N.E. Circle is not just, proper and fair. According to us it was an arbitrary act of the respondents. Therefore, we hold that the imposition of such a condition cannot sustain in law. Accordingly we set aside the condition that he should work in the N.E. Circle after completion of the training. So far as the second condition is concerned, namely, that he shall be made junior to the other persons, we, however, are not inclined to pass any order and leave it to the authority to consider the same and pass a reasonable order as to why he should be made junior to the other persons who had participated in the training earlier. This must be done as early as possible, at any rate within two months from the date of receipt of this order.
6. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to cost.

Sd/VICE-CHAIRMAN
Sd/MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: : : : GUWAHATI
C.P.NO.14/97 in O.A.59/96.

Sri M.C.Gayari ----- Applicant.
Versus
Sri K.Padmanabhan -----Respondent

-P R E S E N T-

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE-CHAIRMAN
THE HON'BLE SHRI G.L.SANGLYINE, MEMBER(A)

For the Applicant: Mr.M.Chanda,
Mrs.N.D.Goswami. Advocates.

For the Respondent: Mr.S.Ali, Sr.C.G.S.C.

1-4-98 | This contempt Petition has been filed
| for non-compliance of the order dated
| 2-7-97 passed in O.A.No-59/96.Mr.S.Ali,
| learned Sr.C.G.S.C.has entered appearance
| on behalf of alleged contemner.Mr.Ali
| submits that due to certain difficulties
| the order could not be complied.The authori-
| ty has already taken decision to comply with
| the order passed by this Tribunal.For that
| purpose he needs another 2 months time.We
| feel asking for 2 months time is reasonable.
| Accordingly,we allow 2 months time.We do not
| find any material to proceed with contempt.
| Accordingly,Contempt Petition is closed.

Sd/-VICE-CHAIRMAN

Sd/-MEMBER(A)

P-4.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

R.A.NO-6/98 in O.A.No-59/96.

Union of India & Others-----Applicants.
Versus
M.C.Gayari -----Respondent.

- P R E S E N T -

THE HON'BLE JUSTICE SRI D.N.BARUAH, VICE-CHAIRMAN
THE HON'BLE SRI G.L.SANGLYINE, MEMBER(A)

For the Applicants. :Mr.S.Ali, Sr.C.G.S.C

For the Respondent :Mr.J.L.Sarkar
Mr.M.Chanda &
Mrs.N.D.Goswami, Advocates.

1.5.98 : This review Application has been filed
against the order dated 1.7.1997 passed in
O.A.No-59/96.Mr.S.Ali, learned Sr.C.G.S.C
for the petitioner today informs that the
Government has decided to sent the opposite
party sri M.C.Gayari to Jabalpur Training
Centre for receiving J.T.O's training from
Assam Circle.Heard Mr.J.L.Sarkar, learned
counsel for the opposite party also.In view
of the above, the review Application has
become infructuous and accordingly it is
dismissed as infructuous.

Sd/-VICE-CHAIRMAN

Sd/- MEMBER(A)

Memo.No-1322 Dated 18/5/98
Copy for the information and necessary action to:

- 1.The Secretary to the Govt.of India, Ministry of Communications, New Delhi.
- 2.The Director General, Deptt.of Telecom, Govt.of India
- 3.The Chief General Manager, N.E.Telecom Circle, Shillong
- 4.The Chief General Manager, Assam Telecom Circle Guwahati.
- 5.Sri Madan Chandra Gayari, Resident of Tarun Nagar Guwahati.

Sd/-

SECTION OFFICER(J)

49
Dr. ...
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GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS

INQUIRY REPORT

NO. OSD(PT)/82/97

DATED : 02.09.1997

PRESENT:

: SRI A. B. SHARAN
OFFICER ON SPECIAL DUTY
(DEPARTMENTAL INQUIRY)
E.REGION, G.P.O. BUILDING
PATNA - 800.001.

PRESENTING OFFICER

: SRI S.P.SINGH YADAV
INSPECTOR, CBI/SPE,
GUWAHATI.

DEFENCE ASSISTANT

: SRI S.R.SWARGIARY
SR. S.S.(O), PIG SECTION,
% G.M., KTD, GUWAHATI.

Disciplinary proceeding under Rule 14 of the CCS (CCA) Rules 1965 against SHRI MADAN CHANDRA GAYARI, P.I., % G.M., K.T.D., Guwahati.

See page 1

The aforesaid Suspected Public Servant Shri M.C.Gayari, P.I., % G.M., KTD, Guwahati (hereinafter referred to as the SPS) was chargesheeted vide memo No. TDM/X-19/93-94/1 dated 15.07.94 issued by Telecom District Manager, Guwahati Telephones, Guwahati. On upgradation of this Telephone District the Dy.G.M.(Admin.), % the G.M.Telecom Guwahati on behalf of the then T.D.M. will hereinafter referred to as the Disciplinary Authority in the case under Rule 14 of the CCS (CCA) Rules 1965. The SPS admitted to have received the chargesheet on 23.07.94 and pleaded not guilty for any of the charges vide his reply dated 09.08.94 to the chargesheet memo. The undersigned was appointed as Inquiring Authority vide the then Disciplinary Authority memo No. TDM/X-19/96-97/9 dated 19.02.97 to inquire into the charges levelled against the SPS. Shri S.P.Singh Yadav, Inspector, CBI/ACB, Guwahati was appointed as Presenting Officer (hereinafter referred to as P.O.) vide memo No. TDM/X-19/96-97/10 dated 19.02.97 to present the case on behalf of Disciplinary Authority. The SPS took the assistance of Shri S.R.Swargiary, S.S.(O), % G.M., KTD, Guwahati as his Defence Assistant.

Contd. on 2/....



Sri Madan Chandra Gayari, P.I.
O/O G.M (Kamrup) Guwahati.

No. GM/X-19/97-20/21

Dated G.H., 14.9.99

Sub - Disciplinary Proceedings under Rule-14 of
the CCS (CCA) Rules, 1965 against Sri Madan
Chandra Gayari, P.I. O/O G.M (Kamrup) Guwahati.

Enclosed please find herewith a copy of
the Inquiry Report of the Inquiry authority. In
this regard, you are hereby required to submit,
if you so desires, your written representation
or submission to the undersigned within fifteen
days from the date of receipt of this Inquiry
Report.

Encls - Inquiry Report
Attaching 9 logs

For Author: 18/9/99.
By: General Manager (P&A):
O/o the G.M. Telecom
Kamrup Telecom District
Ulubari, Guwahati-7

Copy to:-

- 1) Sri A. B. Saran, Inquiry Authority,
OSD (D.I) O/O G.M.T. Bihar Circle,
Patna - 800001 for information w.r.t. to
letter No. OSD (PT)/84/97 dt. 3.9.99

7 copies

sd/_____
By: General Manager (P&A):
O/o the G.M. Telecom
Kamrup Telecom District
Ulubari, Guwahati-7

It is imperative to highlight that the case was inordinately delayed for the cause of the SPS who on receipt of the chargesheet moved to the Court of Law and prayed for not initiating any disciplinary action on the same subject till his court case was finalised. The Court of Law in its judgement dated 31.06.96 decided that no criminal liability can be fastened on Shri M.C.Gayari (SPS) in absence of any incriminating materials against him. However the SPS may be dealt with departmentally for his alleged negligence and carelessness in discharge of his official duties. Accordingly on getting clearance from the Court of Law, the disciplinary authority appointed the undersigned as the Inquiring Authority in Feb.'97 and the Inspector, CBI as Presenting Officer also in Feb.'97 i.e. after lapse of more than two and half years from the date of issue of chargesheet to the SPS.

The departmental proceedings then started with Preliminary Hearing on 09.05.97 and after completing inspection of listed documents by the SPS alongwith all other pre-hearing formalities, the Regular Hearings held on 09.02.98, 10.02.98, 11.02.98, 28.06.99, 29.06.99 and 01.07.99. In the meantime when the SPS's claim of pre-promotion training for Jr. Telecom Officer was rejected by the authority due to the pendency of the departmental proceedings against him, he preferred to move an application to the Hon'ble CAT, Guwahati Bench, who passed an order on 21.04.99 to complete the disciplinary proceeding as early as possible at any rate within a period of three months from the date of receipt of this order. The said order was forwarded to the undersigned by the G.M., Kamrup Telecom District, Guwahati vide his letter No. TDM/X-19/93-94/12 dated at Guwahati 13.05.99 received at Patna office on 25.05.99. Honouring the CAT verdict the hearing of the case was concluded on 01.07.99 by giving full and reasonable opportunity to the SPS as well as to the P.O. during the hearing. On conclusion of the hearing, the prosecution brief of the P.O. dated 16.07.99 was received by I.O. at Patna office on 26.07.99 but the defence brief of the SPS was received on 23.08.99 much behind the schedule.

On the last date of Regular Hearing i.e. on 01.07.99, a note was given on the DAILY ORDERSHEET by the I.O. which was endorsed to A.D.T.(Legal), % C.G.M.Telecom, Guwahati requesting him for filing to the Hon'ble CAT, Guwahati Bench for extending minimum two months time from the deadline for the completion of the departmental proceedings. In consequence, as per the FAX message from G.M., KTD, Guwahati on 26.08.99, the Hon'ble CAT granted six week more time w.e.f. 23.08.99 to dispose off the disciplinary case of Shri M.C.Gayari (SPS).

During the course of Regular Hearing, the P.O. could adduce as much as sixteen documentary evidences in support of the charges out of thirty listed in Annexure III to the chargesheet. They remain undisputed during the entire course of inquiry and therefore taken on record and marked as S.Exts. as under :-

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1. S.Ext.01 - The Exchange copy of the advice note No. NPC-09977 dated 16.02.91 in respect of telephone No. 31309 in the name of MSH Travels, S.J.Road, Athgaon, Guwahati-1 issued by the T.D.M. Guwahati.
 2. S.Ext.02 - Telephone advice note No. 5088 dated 07.06.91 (shifting case) issued by S.D.O.P.(W), Guwahati.
 3. S.Ext.03 - Jumper slip for telephone STD/PCO in the name of Shri Mithilesh Thakur, SRC Thakur Bazar, A.T.Road, Athgaon dated 13.03.91 issued by J.T.O.(W), % SDOP Guwahati.
 4. S.Ext.04 - Jumpering slip dated 12.11.91 for telephone No. 31309 in the name of MSH Travels, S.J.Road, Athgaon issued by J.T.O.(West), % SDOP, Guwahati.
 5. S.Ext.05 - Jumpering slip dated 11.06.91 for telephone No. 33211 (shifting case) in the name of Shri Nandlal Sharma C/o Kamlesh Kumar Thakur, SRC Thakur Bazar, 1st floor, A.T.Road issued by Phone Inspector.
 6. S.Ext.06 - Jumpering slip dated 18.05.91 of telephone No. (34610) new 31464 in the name of Shri R.K.Narula, SRC Thakur Bazar, A.T.Road, Athgaon issued by JTO (1.3).
 7. S.Ext.07 - Original application for shifting of telephone No. 33211 for new address C/o Kamlesh Kumar Thakur, SRC Thakur Bazar, A.T.Road, Athgaon, 1st floor, Guwahati submitted by Shri Nandlal Sharma.
 8. S.Ext.08 - Original application dated 16.04.91 for shifting of telephone No. 34610 with STD facility to SRC Thakur Bazar, A.T.Road, Athgaon, Guwahati.
 9. S.Ext.09 - SRC in respect of telephone No. 33211 in the name of Shri Nandlal Sharma H/o Dinesh Baishya near Relief Nurshing Home, Shantipur, Guwahati-9.
 10. S.Ext.10 - SRC in respect of telephone No. 31309 in the name of MSH Travels, S.J.Road, Athgaon, Guwahati-1.
 11. S.Ext.11 - SRC in respect of telephone No. 31464 in the name of Shri R.K.Narula, SRC Thakur Bazar, Athgaon, Guwahati (Three sheets).
 12. S.Ext.12(A)
 - (B) Fault card in respect of telephone No. 31309,
 - (C) 31464 and 33211 respectively.
 13. S.Ext.13 - Disconnection (special disconnection) list No. DMT/TRA/GH/SPL/3 dated Nil for telephone No. 31309.
 14. S.Ext.14 - Statement of Shri Manomohan Dey, A.O.(SBP), % TDM Guwahati recorded on 16.10.93 by Shri K.Burman, Investigating Officer of the case (Two sheets).
 15. S.Ext.15 - Statement of Shri Manabendra Saha, A.O.(TRA), % T.D.M. Guwahati recorded on 16.10.93 by Shri K.Burman, Investigating Officer of the case (One sheet).

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16. S.Ext.16 - Statement of Shri S.P.Deb, JTO under S.D.O.P. (West), Ambari, Guwahati recorded on 05.10.93 by Shri K.Burman, the Investigating Officer of the case.

The rest documents were consented to be dropped by P.O. on the plea that they are not relevant to this case.

The P.O. adduced as many as six state witnesses only in support of charges out of thirteen as enrolled in Annexure-IV to the chargesheet and the rest were dropped by P.O., on the same plea that they are not relevant to the charges. The adduced state witnesses are as under :-

1. S.W.1 - Shri C.Dey, the then S.D.E.(Vig.), % TDM Guwahati.
2. S.W.2 - Shri Manomohan Dey, the then A.O.(TRA), % T.D.M. Guwahati.
3. S.W.3 - Shri Manabendra Saha, the then A.O.(TRA), % T.D.M. Guwahati.
4. S.W.4 - Shri M.C.Talukdar, the then P.I., % S.D.O.P.(W), Guwahati.
5. S.W.5 - Shri S.P.Deb, the then JTO (Outdoor)(West), % S.D.O.P.(West), Guwahati.
6. S.W.6 - Shri K.Burman, Inspector, CBI/ACB, Guwahati (Investigating Officer of the case).

It would not be out of place to mention that the P.O. failed to produce private witnesses (prosecution side) of Guwahati base before the inquiry in consequence of the summons were not served to them by him. He alleged that the private witnesses did not allow to be served on them the notices/summons to attend the inquiry on due dates. He in his prosecution brief has held I.O. responsible for enforcing their appearance. Actually in disciplinary proceedings, notices to private witnesses may preferably be served through the Presenting Officer who should himself ensure that his witnesses are present. In the instant case, the notices for private witnesses were sent to the P.O. for served upon to the local witness which could not be served to them by him for his own official cause only.

The SPS preferred not to requisition for any defence documents nor any defence witness to be adduced in his behalf under Rule 14(17) and as such the SPS was questioned by I.O. under Rule 14(18) which was recorded.

At the end of oral hearing, both the parties were requested to submit their respective briefs within stipulated time. The prosecution brief of the P.O. dated 16.07.99 was received on 23.07.99 and the defence brief of the SPS dated 19.08.99 was received on 23.08.99 by the I.O. at his Patna office.

Thus all the documentary evidences adduced and submission made were thoroughly examined. At the same time both the parties (i.e. the prosecution and the SPS) were offered full and reasonable opportunities which they availed to the best of their satisfaction.

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

ANNEXURE - I

"While Shri M.C Gayari was posted and functioning as Phone Inspector in the % S.D.O. Phones (West), Guwahati during the year 1991-92, failed to maintain absolute integrity and devotion to duty as much as he gave genuineness certificates on the body of the original telephone shifting applications of telephone nos. 33211 and 34610 (31464 new) to SRC Thakur Bazar, Athgaon, A.T.Road, Guwahati without verification of genuineness of the same and also shifted the telephone No. 34610 (new No. 31464) to the adjacent building named "Bhola Market" of SRC Thakur Bazar, Athgaon, A.T.Road, Guwahati and thereby he contravened the provisions of Rule 3(1) (i) & (ii) of CCS (Conduct) Rule 1964."

DISCUSSION

The crux of the charge/imputation against the SPS is that he while posted and functioning as Phone Inspector in the office of S.D.O.P.(W), Guwahati during the year 1991 - 92 gave the genuineness certificate/report on the body of the telephone shifting applications of Sri Raj Kumar Narula and of Sri Nand Lal Sharma bearing telephone numbers 34610 (31464 new) and telephone No. 33211 respectively without actually verifying of the genuineness of these two telephone subscribers at the shifted place. It was further alleged that no agreement of rent between the owners of the said building and the subscribers Sri Nand Lal Sharma/Sri Raj Kumar Narula for possession/occupation till date of shifting of the said two telephones was held. Also the said two telephones after being shifted were misused by one Sri Mithilesh Thakur a private person running STD PCO No. 40997 in the same building where the said two telephones were shifted allegedly with malafide intention on the genuinity certificate furnished by the SPS resulting an outstanding dues of Rs. 7,48,213.00.

The plea of Sri Gayari (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 charges against him. It stands admitted that the charges are mainly based on the documentary evidences on record which go in favour of and in support of the case of the disciplinary authority against the SPS.

Shri C.Dey (S.W.1) happens to be S.D.E.(Vig.) at the relevant period deposed in his examination-in-Chief that he conducted a surprise check on the basis of the complaint received by C.G.M.Telecom, Guwahati in January '93 against a STD PCO booth at A.T.Road, Guwahati owned by Shri Mithilesh Thakur. Report was prepared on this surprise check

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of the said STD PCO and finally the case was handed over to CBI office.

In his deposition S.W.1 narrated the system and procedure of verification of addresses while giving new telephone connection or shifting of telephone from one place to the other. He added that it was the personal responsibility of the field officer who conducted the verification and furnished the report in respect of genuinity/bonafideness of the subscribers at the shifted place in case of shifting of telephones. As per the DOT instructions the field officer to whom the advise note was sent for execution, he should satisfy himself that the subscriber is genuine and bonafide at the place where the shifting is sought so that defaulter if any, may not be escaped. In reply to I.O's question no. 2, he deposed that primarily the officials who are directly verifying the genuinity of the subscribers and his premises, they are responsible/accountable for furnishing any false certificate causing any loss to the govt. revenue. SDO being the counter-signing authority may only conduct a percentage check/checking of documents submitted by the field officer in support of bonafideness of the subscribers at the new place. In the instant case no supporting document in respect of bonafideness of subscribers seems submitted to the SDO by the field officer who furnished the genuinity certificate in case of shifting. He further authenticated the signatures of Sri M.C. Gayari, Phone Inspector (SPS) before I.O., on the original phone shifting applications of Sri Nand Lal Sharma (S.Ext.07) and Sri Raj Kumar Narula (S.Ext.08) whereon Sri Gayari has specifically written "party is genuine and connection is feasible". The addresses where the telephones are required to be shifted were already reflected at the shifting application forms (S.Ext.07 and 08) for easy localisation of the spot by the SPS where shifting are sought.

S.W.2 Sri Manamohan Dey worked as A.O.(TRA) from 13.05.91 to Dec.'91 in the office of T.D.M. Guwahati admitted in examination-in-Chief that the outstanding amount against telephone No. 33211 and 34610 (31464 new) for the period 16.05.91 to 15.11.91 is Rs. 1,38,864/= and Rs. 3,09,233/= respectively and the said amount could not be realised as yet. In reply to cross-question he deposed that the telephone is to be disconnected on 35th day from the date of billing if the payment is not made by the subscriber. He made the group clerk responsible for non-disconnection of the defaulter telephone after the due date of payment is over. In the relevant case the defaulter telephone No. 33211 was disconnected after more than one year (on 03.07.92) and that of telephone No. 31464 was disconnected after more than nine months in spite of non-payment of telephone bills for several months together. In reply to I.O's question No. 2 about the non-disconnection of the said two defaulter telephones for a period of time causing huge outstanding, he replied that the matter was not brought to his notice by his subordinate officials resulting his ignorance about the huge outstanding. The I.O. apparently feels that the deposition of this witness is confined to the huge outstanding bills against the two said telephones which were caused shifting on the genuinity report of the SPS.

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S.W.3 Shri Manabendra Saha worked as A.O.(TRA) with effect from 29.04.92 till 16.10.93 in the office of TDM Guwahati when his statement was recorded by the Investigating Officer of the case. In his confirmed statement he admitted that it was his duty to issue the disconnection list of the concerned telephone exchange for disconnection of telephones for default of the telephone bills. The SRC in respect of the telephone no. 40997 (STD PCO), 33211, 31464 and 31309 was being maintained in his section and the outstanding dues against telephone no. 31309 for the bill period 16.05.92 to 15.09.92, against telephone No. 33211 for the bill period 16.04.92 to 15.07.92 and the telephone no. 40997 for the bill period 01.09.92 to 16.10.92, 01.11.92 to 15.11.92 and 16.11.92 to 26.11.92 are of his working period there as officiating A.O.(TRA). He further stated that the disconnection list was not prepared and put up to him for telephone no. 33211, 31464 and 31309 in spite of non-payment of bills for several months together. In nutshell he made responsible to his Group Clerk of TRA section for not initiating the disconnection process in time and for not bringing it to the notice of the concerned A.O.(TRA). This witness further proves the outstanding dues against the said telephone in question which could not be realised for the obvious reason of non-bonafide subscribers at the shifted place.

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S.W.4 Shri M.C.Talukdar working as P.I. at the relevant period under SDOP(W), Guwahati deposed during the cross-examination that the two adjacent building in question which was known as SRC market and the Bhola Market are different buildings separated by a space of about nine inches. Though the buildings are separate but a common corridor is there. He admitted that as the working site of the two P.Is are not defined, they used to work together on certain occasion as per the instruction of SDO/JTO. In reply to P.O's question under re-examination he admitted that he had visited the SRC Market in connection with genuinity report of other new telephone connection with the SPS after shifting of the telephone of Shri Nandlal Sharma bearing telephone no. 33211. On the other hand the SPS in his defence brief claimed that he inspected the SRC Thakur Market with Sri Talukdar (S.W.4) before giving the genuineness certificate. His this contention gets refuted in the reply given by S.W.4 in the re-examination question no. 2 which says that he never verified any genuinity report in respect of shifting the above telephone nos. and he visited the SRC market only after the shifting with Shri Gayari.

S.W.5 Shri S.F.Deb was working as J.T.O. Outdoor (West) at the relevant period under SDOP(West), Guwahati. During cross-examination he narrated the practice in respect of giving genuinity certificate for shifting of telephones followed at the relevant time. He added that the inspecting officer should ascertain and satisfy about the genuinity of the location and the person with his own intelligency and style by which he is satisfied about the genuineness of location and person. In the instant case this witness is a hearsay witness and has no contribution either in prosecution or the defence side other than exploring the procedure in practice.

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S.W.6 Shri K.Burman, Inspector, CBI/ACB, Guwahati branch was the Investigating Officer of the case. During examination-in-Chief he deposed that the said two telephones were shifted and connected in a separate building adjacent to SRC Thakur Bazar. Sri Gayari (SPS) was the P.O. who had given the genuineness certificate without verifying the genuineness of the same because no room or any establishment were there in the name of Sri Sharma and Sri Narula in SRC Thakur Bazar causing wrongful loss to the department to the tune of Rs. 3,66,995/= and Rs. 3,29,233/= in respect of telephone no. 33211 and 31464 respectively. The defence in his cross-examination failed to refute the above claim of the Investigating Officer.

The defence in his lengthy defence brief told that the genuinity of the two said subscriber is not fictitious as they are multimillionairs genuine persons and both were physically present with him in the Court of Law. With these points, it appears that the SPS concept about the genuinity is wrong. Actually the basic meaning of the bonafide/genuineness of a person in case of shifting of telephones fetches that the person should be bonafide at the place where his telephone is required to be shifted and certainly not by his bonafideness at his old place of telephone from where shifting is desired. He should possessed some short of residential/official establishment either own/rented at the place of shifting so that he can well be identified there and there would not be any possibility of not realising the raised telephone bills. The defence has also dealt about the 'Easy area' where in case of shifting, genuinity report is not required to be obtained. There is no dispute about it as the rules are very clear but the tragedy is that the SPS failed to understand the difference in meaning of the genuinity of a person and his genuinity at a specified place as well as the meaning of an 'EASY' area. The first doubt is made clear above whereas 'Easy area' means next known establishment of the new place where shifting is desired. None of these two vital criteria were taken into consideration by the SPS while furnishing the genuinity report on S.Ext.07 and S.Ext.08. I am not able to understand how the SPS being a senior field official tried to mislead the inquiry explaining the wrong meaning of bonafide/genuine of a subscriber at a shifted place and that of Easy area. The defence though mentioned in his defence brief that he examined the rent receipts during his visit to the shifting place but obtaining the copies of the rent receipts were not necessary as per the latest order of the department. His this contention has no leg to stand because the claim of the investigating officer (S.W.6) in his examination-in-Chief that "No room or any establishment were there in the name of Sri Sharma and Sri Narula in SRC Thakur Bazar" was never refuted by the SPS either by adducing any documentary or oral evidence before the inquiry. I agree with the contention of the defence that it was practically difficult for him to complete the inspection of all the subscribers premises within scheduled period in his working are but I do not understand why he did not inspect the shifted place for which he furnished the bonafide report and the installation was carried out by his subordinate staff.

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Further at one side the SPS enclosed the copy of the DOT order No. 2-43/76-PHA dated 17.02.77 which says that within a week or fortnight of the opening or shifting of a number, the Telephone Inspector/Junior Engineer should visit the site specially to make discreet enquiries about the bonafides. Further vide No. 25/79-PHA dated 27.04.79, in case of difficult area, the official verifying the bonafide of the shift can examine rent receipt, an allotment letter or a letter from land lord to the subscriber or a close relative for satisfying himself about the genuineness of the shift of a residential telephone and on the other side he claim in his defence brief that "verification of bonafide by P.I. before shifting of old telephone to new address is or was not necessary at all". Definitely his such contention is not tenable at all. In fact the long arguments advanced by the defence in his very lengthy defence brief could hardly put any valuable defence points worth consideration.

Considering the facts, circumstances and evidences on record, I am of the opinion that PREPONDERANCE OF PROBABILITY goes against the SPS Sri Madan Chandra Gayari. Accordingly I hold that the charge of misconduct under 3(1)(ii) of CCS (Conduct) Rule 1964 (i.e. failed to maintained devotion to duty) levelled against the SPS under Annexure I to the memorandum of charges stands ESTABLISHED whereas the other charge of misconduct under 3(1)(i) of CCS (Conduct) Rule 1964 (i.e. failed to maintain absolute integrity) could not be proved in absence of evidences on record.

In other words the charge of misconduct under 3(1)(ii) only of CCS (Conduct) Rule 1964 of Annexure-I stands PROVED.


(A. B. SHARAN)
INQUIRING AUTHORITY

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To :
The General Manager,
Kamrup Telecom District,
Ulubari, Guwahati-781007.

Sub : A representation against the findings of Shri A.B. Saran, Inquiry Officer.

Ref : Inquiry Report No. OSD (PT)/ 82/97 dated 02.09.99.

Sir,

With due respect and an heavy heart, I do prefer hereby a representation against a biased Inquiry Report prepared and submitted by Shri A.B. Saran Inquiry Officer to you which was even over ruled the findings of the court of Law, without his authority on this subject. So, I do hereby request you to kindly not to accept that report as per Rule-15 of CCS (CCA) Rules of 1965 and maintain your unbiased stand on the subject which is befitting at per your status and is warranted as per rules on this subject.

That sir, the instant representation and request to you as mentioned in aforesaid paragraph has been stemmed from following reasons :-

(1) The preface of the Report on false premises :-

That sir, at the very beginning of the report vide the 1st line of the 2nd page (or second para), the I.O. mentioned that "the case was inordinately delayed for the cause of SPS who on receipt of the charge sheet moved to the court of law and prayed for not initiating any disciplinary action on the same subject till his court case was finalised". But the fact stands that it was not the SPS but the Department and the CBI authorities which had lodged the Departmental case and court case simultaneously, and while the court case was moving in reasonably in adequate speed - the Departmental case moved in a snails speed with a view to keep all my prepromotional trainings to J.T.O. cadre pending on the plea of pendency of the disciplinary case, which itself was illegal one as per judgement of CAT Guwahati and other courts. It may be mentioned here that while the CBI filed the court case on the same subject in early part of 1993, the department had also charge sheeted me on 15.7.94 through its No. TDM/X-19/93-94/1 dated

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15.7.94, with same charges, but on receipt of my reply of the charge sheet, the department remained silent for a period of 4 years and kept my promotion undecided. However on 13.8.96 the honourable special Judge of the court of special Judge Assam - gave his judgement :-

"There is no prima facie case to proceed against accused Madan Gayari. Madan Gayari is discharged".

On receipt of the above mentioned Judgement the CBI authority and having realised the groundlessness of the charges against me the CBI did not appeal to the higher court to prosecute me in the said case, but taking the plea of the comment of the Judge that "There is no other incriminating materials against the accused Madan Ch. Goyari except for his alleged negligence for not consulting the required documents before submission of the report. So, the accused may be dealt with departmentally", the CBI and the Inquiry officer maliciously implicated me in the case which was absolutely baseless.

(ii) Reason of the hostile attitude of the I.O. to the undersigned :-

That sir, while the charge sheet was issued to me on 15.7.94, and I had submitted my written representation against it within 10 days not only by denying all the charges brought against me but also by substantiating my denials through logical arguments and documents, the then disciplinary authority remain silent on it for about 3 and 4 year by which it should have been assumed that the charges against me was virtually dropped. But surprisingly on receipt of courts Judgements which stated in clear term that no prima facie case to proceed against me, the D.A. issued a letter to Shri A.B. Saran on 19th February 1997, by appointing him as an I.O. in my case, since I was repeatedly representing for my prepromotional training to J.T.O. cadre forfor which I was already qualified after passing departmental examination.

That sir, mentionable here that our circle vigilance officer Mr. L. Boro - who had some personal grudge against me owing to his lower social status than mine in our private and

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social lives, had influenced the circle office illegally for denying the promotion of mine owing to pendency of the disciplinary case whereas the same circle V.O. did not object to the promotions of the other accused on the same case who has not yet been exonerated from the charges by the court. I also observed the C.V.O. used to meet the I.O. very frequently during those days of inquiry in absence of mine, and he hatched the conspiracy to prove me as guilty one with the help of the Inquiry officer by violating all the departmental norms so that my promotion can be denied.

That sir, the Inquiry officer Mr. A.B. Saran on receipt of the letter from the then Disciplinary Authority on 19th February 1997 remained silent and on 7/5/97 (ie., after three months) he started the first hearing on 09.05.97 and there after remained silent for more than two years. When his negligence came notice of the honourable court, the court directed him to submit the Inquiry Report within three months. On this the Inquiry Officer became very much furious and therefore wrote the Inquiry Report against me neither on the basis of documentary evidences nor on the basis of state witnesses. Most amazingly so as to justify his biased findings - he has put a few words into the mouth of Shri C. Dey, state witness No. 1, which the same person had never spoke in the enquiry sitting.

(111) Weakness and infirmity of the charges and in material weakness :-

That sir, while into the charge sheet it was stated that I had failed to maintain absolute integrity and devotion to duty on the plea that "he (means I) gave genuiness certificates on the body of the original telephone shifting applications of Telephone Nos. 33211 and 34610 to SRC Thakur Bazar A.T. Road, Guwahati without verification of genuiness of the same and also shifted the telephone No. 34610 (New No. 31464) to the adjacent building named "Bhola Market" of SRC Thakur Bazar, Athgaon, A.T. Road, Guwahati and thereby he contravened the provision of Rule 3(1) (2) of CCS (conduct) Rules 1964".

But sir, the special Judge of the special court of Law, Assam, in his verdict specifically stated :-

"Now coming to the case of Madan Ch. Gayari, the prosecution allegation is that he was telephone inspector during

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the relevant time and application for shifting of the above two telephones was referred to him and as phone inspector he was required to submit the report regarding the genuiness of the subscriber and feasibility of Shifting. The reports submitted by Shri Madan Ch. Goyari states that the parties are genuine and shifting is feasible. Except the above report no other act has been attributed to the accused in the alleged conspiracy. So far feasibility report regarding shifting of is concerned, there is no dispute that the shifting was feasible. Actual shifting was done allegedly by Ablesh Sharma and other co-accused. Admittedly the phone Inspector has got no part in actual shifting. It is further alleged that the accused Madan Gayari submitted his report regarding genuiness of the applicant without verification. Accused Mithilesh Thakur and Raj Kumar Narula are the two accused persons of the case. They are thus, not fictitious persons. It is further alleged that the phone Inspector did not verify or obtain necessary documents regarding tenancy agreement or otherwise in respect of new place of shifting in favour of applicants. Thus is not the case of providing new connection and the applicants were already subscribers in respect of two telephones. There is no other incriminating materials against the accused Madan Ch. Gayari except for his alleged negligence for not consulting the required documents before submission of the report. So the accused may be dealt with departmentally. On consideration of the materials and perusal of the report. I hold that for this alleged negligence and carelessness in discharge of his official duties, no criminal liability can be fastened on the accused Madan Gayari in absence of any incriminating materials against him. There is no prima facie case to proceed against the accused Madan Goyari. Madan Goyari is discharged." (Annexure - I).

That sir, while the department had asked me about the genuiness of the subscribers applying for shifting and also the feasibility report of shifting of Telephones to new places, all of which came to me after completing all departmental formalities. I had submitted the genuiness certificate and its feasibility reports as required. The honourable court has certified the fact that the concerned two telephone subscribers were not fictitious persons, which means that they were genuine. The honourable court has further stated that there was no doubt that shifting of Telephones to those places were feasible.

Into the departmental charge sheet also the prime charges against me was that I had given wrongful certificates of

genuiness and feasibility, both of which could not withstand at all in the legal test in the court of law - which had ultimately exonerated me from charges.

Now the Inquiry officer has again jumped over the allegation that I had not verified the rent receipts or any such things on the plea that I had not obtained the copy of it at the time of verifying the genuiness. But he has deliberately ignored the fact that the departmental procedures says that the subscriber himself at the time of applying for shifting should furnish the documents of rent receipts or documents of land or house under his possession to which shifting is proposed to the commercial officer and the SDO section (or its officer) after verification of the signatures of the application for shifting alongwith original application applied during acquiring new telephone connections, should straight way order for shifting of Telephones, without going through the process of verifications by P.Is. etc. In fact so long the subscriber is a genuine person available in the locality and easily identifiable during the time of verification this genuinity reports and feasibility reports given by P.I. for new Telephone connection or shifting of Telephones has got no relations in the matter of collection of Telephone Revenues, which are the duties of TRA section. To implicate a P.I, who has no role to play in the matter of certificates for shifting of Telephones, as guilty for non-payment of Telephone rents by subscribers and to exempt TRA sections officials/officers, is a deliberate conspiracy - which is easily discernable. And in the instant case where the genuinity certificate and feasibility report was proved as correct ones, which was countersigned and admitted by my concerned SDO under whom I was working, which has also been accepted by court of law, it is very strange to see that the Inquiry officer in the matter of genuinity certificate and feasibility report - has tried to interpret the meaning of genuinity and feasibility by himself forgetting the fact that right to interpret the rules vested on the D.O.T. only who has framed the rules and issued the order. It is therefore easily understandable that the I.O. has unauthorisedly ventured to interpret the dictionary meaning and departmental meaning of genuinity of a Telephone subscriber in his own way (rather misinterpreted) only with a malafide intention to attribute the undersigned as guilty one by hook or by crook, and in the same manner he has not only violated the rules of Judisprudance, but

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Attchd
W.L.R.
Adv.

natural law of Justice also.

That sir, the I.O. has mentioned that I had not refuted the claim of the investigating officer (S.W.6) in his examination in chief that "No room or any establishments were there in the name of Shri Sharma and Shri Nurula in SRC Thakur Bazar", whereas the fact stands that even the court of Law did not accept such plea of Shri Nurula and Shri Sharma, they themselves also didnot say so in the court of law. Further the owner of the building said that he had allowed Shri Nurula and Shri Sharma to use that place at free of cost. While both of them made a desparate bid to evade the departmental dues on the plea that those two telephones were fitted in different places other than to where they had proposed for shifting and thereby they were not the actual user of those two telephones though these were belonged to them, I am afraid of that such an assertion by I.O. on the basis of his foul type imagination may help the culprits to evade the departmental dues by shifting entire blame on the undersigned on departmental officials.

That sir, during cross examination to Shri Madan Ch. Talukdar, P.I., it surfaced that two buildings SRC Thakur Bazar and Bhola Markets were having a distance of 9 inches only (ie. no distance at all) and they were knowing both buildings are situated in the locality of SRC Thakur Bazar, and Bhola Markets was named at a later date. Hence the P.Is (he himself) used to know that SRC Thakur Bazar and Bhola Markets are same place.

That sir, apart from that one salient point has been missed by both the investigating team and I.O. that investigating team had never accompanied the undersigned to the spot wherefrom the said telephones were working when the complaint cropped up. As a result the undersigned could not comment on the point that whether the investigating team had seized the said telephones from the original place of shifting or from the other place - where the subscriber himself might have shifted at his own without informing the department. Moreover, the Departmental Officers of the investigating team also did not say that they had seized the telephone No. 34610 from the Bhola Market. It is the imagination of CB officer only who was not accompanied during the time of seizure. Needless to mention here that now-a-days shifting of Telephones from one place to other place in the same building or to other building situated at 9

Contd. p/7

inches, 9 feet or 19 feet distances through a drop wire is such a easy thing that help of any departmental official is not at all necessary. In fact, now a days house wiring of telephones or shifting of Telephones - without touching DPS - can be done or are allowed to be done (with due permission) by private parties. Hence to find the telephone of a particular number in some other place than its original installation (while there is or was no complaint from the subscriber) does not necessarily mean that it was wrongfully fitted or illegally shifted to other places by the departmental officials only. In the instant case if such shifting has been done illegally from its original place of shifting to another place (as alleged) it has been definitely done by the subscriber with ulterior motives, for which departmental official should not be held as guilty.

That sir, the main thrust of the case was for Lapses of collection of Telephone Revenues for which such an huge amount was accumulated and disconnection notice was also issued at a much later date. In such cases the P.I. who is entrusted to the duties of certifying the genuiness of New Telephone subscribers (and not the old subscribers) has no role to play for collection of Telephone Revenues from subscribers. But the I.O. or the C.B.I. in the instant case has skipped off this point mysteriously.

That sir, I am astonished to know the fact that even after occurring of evasion of Telephone Rents and revenues ie. call charges, by Mr. Nurula and Mr. Nandalal Sharma in the year 1992 again a large number of cases has cropped up from 1992 onwards where the following named subscribers could manage to evade several lakh of rupees of Telephone revenues :-

- | | | | |
|----|---|-----|----------------|
| 1. | Shri V.K. Tibrewala
PNB Building, Fancybazar
T/No. 31888 - | O/S | Rs. 6,12,695/- |
| 2. | Barjatya Trading Co.
Prop. Bhagchand Jain
T.R.P. Road,
T/No. 41395 - | O/S | Rs. 5,63,593/- |
| 3. | Parameswarlal Harit
Above PNB 1st floor, GHY-1
T/No. 548653 | O/S | Rs. 50,374/- |
| 4. | Mrs. Chinu Das
Beltola, Gauhati-28
T/No. 63014 - | O/S | Rs. 1,46,659/- |

5. Sri Ram Prasad Sharma
Opp. Helliipad, N.H. 37
Bellola, Guwahati-28.
T/No. 63298 - O/S Rs. 5,57,081/-
6. Mrs. Oley Bhuyan
M/s Singh Brothers
Munni Market
G.S. Road, Bhagagarh
T/No. 64048 - O/S Rs. 1,16,185/-
7. Bajranglal Purahit
Pahari Sadan
S.R.C.B. Road, Fancybazar
Guwahati - 1
T/No. 521861 (New - 630303) O/S Rs. 6,47,956/-

In all these above mentioned cases, the loss incurred by the Department is more than 26 lakhs of rupees, whereas in none of the above mentioned cases P.I. was implicated, whereas in the instant case - the I.O. has preferred to held P.I. as guilty without realising the position of P.Is. in the field.

Hence - while it is proved beyond doubt that genuinity and feasibility certificates for old Telephone subscribers were not required at all as per latest order of D.O.T. on this subject, and while the undersigned has correctly verified and certified on the genuinity of persons, and feasibility reports of shifting, of their Telephones, and the persons concerned and thier telephones were identifiable and available till the last date of its (Telephones) disconnection and the CBI officers meet them more than once and recorded their statements, the P.I. like me under no circumstances be held responsible for non-payment of telephone dues, on the plea that P.I. has not collected further copies of rent receipts of the subscribers before certifying his genuiness for the purpose of shifting.

And while I have carried out all the works correctly as asked by my supervisory officer S.D.O. (W), I should not be charged for violations of the provisions of the Rules 3(1) and (2) of CCS (conduct) Rule 1964, while there is no complaint from my immediate officer.

Under the circumstances as stated above, while it has been proved beyond doubt that I am not guilty of the alleged case, I would request you to kindly record your disagreements on

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: 9 :

the report of Inquiry officer, as per provisions of Rule 15(1) or 15(2) of CCS (CCA) Rules 1965, and restore the rule of justice and fair-play.

And for this act of your kindness, I shall ever pray.

Thanking you,

Yours faithfully,

Madan Chandra Gayari

(MADAN CHANDRA GAYARI) 29.9.88

P.I.

Office of the GMT/
Kamrup Telecom District
Guwahati.

Noted Below :-

For your convenience, the copy of the following documents are attached herewith :-

1. Final verdict of the court case - while Shri M.C. Gayari was discharged, (ie. freed from charges).
2. D.O.T's order No. 2-26/84 - PHA dated 29.11.1984, where it is stated that shift of Telephones should be straight way ordered on receipt of applications from a subscriber. The process of verification by field staff was withdrawn. Subscribers themselves made entitled to carry telephones to their new place of shifting.
3. Court cases verdict between Sri Gurnath Pradhan Vs. State of Orissa (1979) 47 C.L.T. 532, where it is stated that Disciplinary authority cannot take a view contrary to the Judicial view on the same charge and on same evidence on record.
4. D.O.T's order No. 144-8/82 - PHA, dated 13-7-1982 where it is stated that field staff should take great care so that applicant donot feel harrassed at the time of verification.

*Atk - A
Chm
Adv.*

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GOVT. OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
O/O THE G.M. KAMRUP TELECOM DISTRICT.
ULUBARI, GUWAHATI-7

MEMO NO-GM/X-19/99-00/23

Dated 1-10-99.

Sri Madan Chandra Gayari, P.I., O/O G.M. Kamrup telephone District, Guwahati, was proceeded under Rule-14 of CCS(CCA) Rule, 1965 vide TDM/GH Memo No. TDM/X-19/93-94/1 Dt. 15-7-94. The article of charge as Annexure-1 was that while Sri Madan Chandra Gayari, was posted and functioning as Phone Inspector in the O/O SDO Phones (West) Guwahati during the year 1991-92, failed to maintain absolute integrity and devotion to duty as much as he gave genuiness Certificates on the body of the original Telephone shifting applications of Telephone No. 33211 and 34610 (31464 new) to SRC Thakur Bazar, Athgaon, A.T. Road, Guwahati without verification of genuiness of the same and also shifted the Telephone No-34610 (New 31464) to the adjacent building named "Bhola Market" of SRC Thakur Bazar, Athgaon, A.T. Road, Guwahati and thereby he contravened the provisions of Rule: 3(1)(i) & (ii) of CCS (Conduct) Rule 1964.

That the charges as per Annexure-II are that the said Sri Madan Chandra Gayari, while posted and functioning as Phone Inspector in the O/O SDOP (West) Guwahati during the year 1991-92 gave genuiness Certificate/Report on the body of the Telephone shifting applications of Sri Raj Kumar Nurula and of Sri Nand Lal Sharma bearing Telephone No. 34610 (New 31464) and Telephone No-33211 respectively without actually verifying of the genuiness of these Two Telephone Subscribers at the shifted place. It was further alleged that no agreement of rent between the owners of the said building and the Subscribers Sri Nand Lal Sharma/ Sri Raj Kumar Nurula for possession/occupation till date of shifting of the said Two Telephones was held. Also the said Two Telephones after being shifted were misused by one Sri Mithilesh Thakur, a private person running STD PCO No-40997 in the same building where the said Two Telephones were shifted allegedly with Malafide intention on the genuinity Certificate furnished by Sri Madan Chandra Gayari, P.I. resulting an outstanding dues of Rs: 7,48,213=00

Having received the reply from the said Sri M.C. Gayari, for non-acceptance of the charges, the Dy. G.M. (Admn) O/O the G.M. Telecom, Guwahati (Disciplinary Authority) appointed the Inquiry Officer Sri A.B. Sharan, officer on special duty (Departmental Inquiry) O/O CGMT, Bihar Circle, Patna vide the then Disciplinary Authority Memo No-TDM/X-19/96-97/9. DT. 19-2-97 to inquire into the charges levelled against Sri M.C. Gayari, Sri S.P. Singh Yadav, Inspector, CBI/ACB, GH was appointed as Presenting Officer vide Memo No-TDM/X-19/96-97/10. Dt. 19-2-97 to present the case on behalf of Disciplinary Authority. Sri M.C. Gayari, nominated Sri S.R. Swargiary, Sr. SS (O, Plg. section, O/O G.M. Kamrup, Guwahati, as Defence Assistant.

Continued on page 2.

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Sri A.E.Sharan,I.O.has started with preliminary hearing on 9-5-97 and regular hearings held on 9-2-98,10-2-98,11-2-98, 28-6-99,29-6-99 and 1-7-99.

The P.O.adduced as many as six state witnesses only in support of charges out of Thirteen as enrolled in Annexure-IV to the chargesheet and the rest were dropped by P.O.on the same plea that they are not relevant to the charges.

At the end of oral hearing,both the parties were directed to submit their respective briefs and accordingly the prosecution brief of the P.O.16-7-99 was received on 23.7.99 and the defence brief of the SPS Dated 19-8-99 was received on 23-8-99 by the Inquiry Officer.

On scrutiny of the whole case and relevant documents submitted by both the Parties,the Inquiry Officer has submitted his Inquiry Report vide his Memo No-OSD(PT)/82/97 Dtd.2-9-99.

On receipt of I/O report as per the rules,a copy of the same was forwarded to the Govt.servent Sri M.C.Gayari,for any representation/submission ."Accordingly the Govt. servant Sri Gayari,sent his representation to the U/S.The U/S carefully gone through his representation."

On careful perusal of the Inquiry Report and all aspects of the proceeding against the SPS,I fully agree with the findings of the Inquiry Officer.

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

Hence ,I,Sri Subrata Ghorai,DGM(P&A) Kamrup Telecom District,Guwahati,in exercise of powers conferred upon me under Rule-14 of the CCS(CCA) Rules,1965,hereby decide that Sri Madan Chandra Gayari,P.I. O/O G.M.Kamrup Telecom District,Guwahati should be reduced his pay by four stages for a period of three years with effect from 1-10-99.

O-R-D-E-R.

It is therefore ordered that the pay of Sri Madan Chandra Gayari,P.I.O/O the G.M.Kamrup Telecom District,Guwahati wahati during the year 1991-92

gave genuiness Certificate/Report on the body of the Telephone shifting applications of Sri Raj Kumar Nurula and of Sri Nand Lal Sharma bearing Telephone No.34610(New 31464) and Telephone No-33211 respectively without actually verifying of the genuiness of these Two Telephone Subscribers at the shifted place.It was further alleged that no agreement of rent between the owners of the said building and the Subscribers Sri Nand Lal Sharma/ Sri Raj Kumar Nurula for possession/occupation till date of shifting of the said Two Telephones was held.Also the said Two Telephones after being shifted were misused by one Sri Mithilesh Thakur,a private person running STD PCO No-40997 in the same building where the said Two Telephones were shifted allegedly with Malafide intention on the genuinity Certificate furnished by Sri Madan Chandra Gayari,P.I.resulting an outstanding dues of Rs: 7,48,213=00

Having received the reply from the said Sri M.C.Gayari, for non-acceptance of the charges,the Dy. G.M.(Adm) O/O the G.M.

To:
The General Manager,
Kamrup Telecom District,
Ulubari, Guwahati-7.

Sub : Appeal against order of Punishment issued by Shri Subrata Ghorai, DGM (P&A), O/O the GM, K.T.D., Guwahati against Shri M.C. Gayari P. 9 in compliance to Rule 23(II) & (IV) of C.C.S. (CCA) Rules 1965.

Ref : Memo No. GM/X-19/99-00/23 dated 1-10-99 signed by Shri Subrata Ghorai DGM (P&A) O/O the GM, Kamrup (Annexure I) and also the Inquiry Report No. OSD(PT)/82/97 dt. 02.09. 1999 signed by Shri A.B. Sharan Inquiry officer (Annexure-II).

Sir,

With reference to the above mentioned order No. GM/X-19/99-00/23 dated Guwahati 1-10-99 (Annexure I) issued by Shri S. Ghorai DGM (P&A) O/O the GM, KTD ordering the reduction of pay to the instant petitioner at the stage of Rs. 6,200/- for a period of three years in the scale of pay Rs. 5,000-150-8,000 with effect from 1-10-99 without cumulative effect, the undersigned/ petitioner Shri M.C. Gayari prefers to submit an appeal to your honour with a request to exempt the petitioner from unwarranted and unethical, non-speaking order of punishment which was issued without any reason and without compliance to the rule of justice and fair play.

2. The history of the case :

That sir, the history of the goes as follows -

That sir, in the year 1991-1992, telephone subscribers of the department namely Shri Raj Kumar Nurula and Shri Nandalal Sharma was evading the payment of telephone revenue for the period 1991-1992 to the tune of Rs. 7,45,213.00. The vigilance section of TDM, Guwahati then handed over the case to the CBI, and the CBI authority on scrutiny found that the telephone subscribers namely Shri R.K. Nurula and Shri Nandalal Sharma had applied for shifting of their telephones Nos. 34610 (31464) and 33211 in the month of April, 1991 and June 1991 respectively to SR.C Thakur Market building at A.T. Road, Guwahati and incidentally before shifting of their telephones to the newly proposed places the department had entrusted me to verify the genuiness of the party and feasibility of shifting of those telephones to their newly proposed places. Accordingly I had given the genuiness & feasibility certificates on the basis of which the SDOP (West) had issued advice notes to execute the shifting. Accordingly the lines were erected by the concerned S9/L.M. of the

section and the jumper ships were issued by the sectional J.T.O. and thus shifted the said telephones at the newly proposed places. But on accumulations of huge amount of Rs. 7,48,213.00 by Shri R.K. Nurula & Shri Nandalal Sharma, the CBI authority straight way attributed all blames upon me on the basis of my genuiness report whereas the said two telephones were not disconnected for more than one year due to non-payment of accumulating amount. The CBI authority filed two cases against me - one at the special court of CBI in the year 1993 and department in the year 1994 by holding me responsible for such a loss incurred by the department against those telephones and attributed me as a party of conspirators for cheating the state for the amount of Rs. 7,48,213.00.

That sir, in both the cases ie. judicial and departmental, the charges mentioned therein were same, though the departmental and judicial clauses or panel codes were different.

However, while the departmental charge sheet and the case at the court of special Judge was launched simultaneously in the year 1993. The Judge of the special court, Assam ultimately exonerated me from all the charges in August, 1996 by stating in its Judgement dated 13.8.96 - "There is no prima facie case to proceed against accused Madan Gayari. Madan Gayari is discharged (Annexure - III).

But sir, even after disposal of the court case - which certified that no prima facie case to proceed against Shri Madan ChoudhuRy Gayari, the department was not sending me to J.T.O. training on the plea of pendency of departmental inquiry, for which I approached to the CAT Guwahati and the CAT Guwahati having seen that the charge sheet was issued on 15.7.94 which has not yet been disposed of till 31st March, 1999, therefore the Hon'ble C.A.T. has directed the department on 31st March, 1999 that the enquiry report must be submitted within three months from the date of the receipt of the verdict of the CAT's case. Again though the department sought extension for another three months time for completion of the enquiry report, the CAT has given only six weeks time to complete the inquiry report from the date of verdict ie. w.e.f. 23-8-99. In compliance with the verdict of the CAT's case which virtually or indirectly criticised the inquiring authority, the Inquiry officer completed the departmental

inquiry humbly and submitted his report on 02.09.99 and said that charges of misconduct under 3(i) (ii) of CCS (conduct) Rule 1964 stands established, whereas the other charge of misconduct under 3(I) (i) of CCS (conduct) Rules 1964 ie. failed to maintain absolute integrity could not proved.

On receipt of the inquiry report the DGM (P&A) O/O the GM, Kamrup telecom District, Guwahati forwarded its copy to me on 15.9.99 and asked me to submit my representation within 15 days of its receipt. On receipt of the inquiry report on 16.9.99, I submitted my representation on 29.9.99 (Annexure-IV) by rebutting the findings of the inquiry officer along with all documents of the courts and departmental orders and also on the basis of state witness but surprisingly the DGM (P&A) O/O the GM/KTD, Guwahati without touching a single point of my representation, received by J.T.O. (vigilant) in the evening of 29.9.99 - dictated, typed, signed, the order on 1-10-99 and delivered it to me on 4.10.99. Thus before 15th day of the calling for any representation from me, and within 24 hours of the receipt of the representation from me he dictated his order and executed it without applying his mind and virtually without going through my representation dt. 29-9-99 and without discussing the points raised therein, mechanically passed the Impugned order of penalty dt. 1-10-99, being annoyed with the order of Hon'ble Tribunal, granting only six weeks time for finalisation of departmental case. So in order to complete the disciplinary proceeding, the DGM (P&A) O/O the GM/KTD, Guwahati even without looking into the representation submitted by the undersigned on 29-9-99, passed the final order without any discussion of the points raised by the undersigned in representation dt. 29-9-99.

At against my representation dt. 29-9-99 it is replied in the penalty order dt. 1-10-99 in the following manner -

"On receipt of I/O report as per rules, a copy of the same was forwarded to the Govt. servant Sri M.C. Gayari, for any representation/submission. Accordingly the Govt. servant Sri Gayari sent his representation to the U/s. The U/s carefully gone through his representation".

It appears from above that the order of penalty dt. 1-10-99 have been passed arbitrarily for the sake of completion of departmental proceedings and it also appears that

disciplinary authority was pre-determined to impose the penalty. Therefore the penalty has been imposed without looking into my representation dt. 29-9-99 which is contrary to relevant CCS (CCA) Rule 15 of CCS (CCA) Rule 1965 and particularly in total violation of sub-rule 1-B of Rule 15 of aforesaid Rule. On that score alone the impugned order of penalty is liable to be set aside and quashed.

It is categorically stated that in the impugned order of penalty dt. 1-10-99, there is no findings, no reason recorded and also there is no discussion in the impugned order dt. 1-10-99 by the disciplinary authority which is violative of Rule 15 of CCS (CCA) Rule 1965 and moreover the order is mechanical cryptic one. Therefore the same is liable to be set aside and quashed.

That it is stated that the article of charges which is brought against the undersigned vide memorandum No. TDM/X-19/93-94/1 dt. 15-7-94 is vague, bogus, baseless and same is not definite and distinct and moreover the substance of imputations of misconduct or misbehaviour in support of article of charges did not contain any relevant fact rather the article of charges is irrelevant to the fact as because the charge of genuineness and feasibility report has no relevancy in the instant case of incurring of financial loss to the tune of Rs. 7,48,213 by the telecom Department.

It is categorically stated that genuineness and feasibility report submitted by the undersigned is in conformity with the guide lines and instructions laid down by the telecom Department and the stand of the undersigned even to-day that the certificates furnished by the undersigned is valid and in conformity with the rules this aspect has not been considered either by the Inquiry authority or disciplinary authority. As such the charges which is brought against me is void-ab-initio and the memorandum of charges dated 15-7-94 and order of penalty dated 1-10-99 are liable to be set aside and quashed.

It is categorically stated that the financial loss of Rs. 7,48,218.00 incurred by the telecom Department due to inaction as well as due to serious negligence of the telephone Revenue Accounts section of the telecom Department. In this connection it is stated that it is mandatory on the part of the T.R.A. section as per Telecom Rule to disconnect the

telephone lines if the outstanding telephone bill not paid by the subscriber by the subscribers within a span of 35 days from the date of billing but in the instant case No. such step for disconnection was initiated by the TRA section even a span of more than one year in case of telephone no. 33211 and more than nine months in case of tele No. 31464 and as a result a huge amount of outstanding bills started accumulating against the said two telephones. It is surprised to note that the telecom authority shirk responsibility - no charges initiated against the officers and staff of TRA section for such serious negligence and financial loss. *discon*

But most surprisingly a bogus, baseless, indefinite and without any relevancy and factual basis, charges brought against the undersigned vide memorandum No. TDM/X-19/93-94/1 dt. 15-7-94. It is stated that the genuineness and feasibility report regarding shifting of telephone Nos. 33211 and 31464 has no relevancy with the financial loss for non-clearance of outstanding balance of Rs. 7,48,213.00. As such the memorandum of charge sheet 15-7-94 and Penalty order dt. 1-10-99 are liable to be set ^{aside} as the same has been drawn up in total violation of sub-rule 3(i)(ii), (a), (b) of Rule 15 of CCS (CCA) Rule 1965.

It is relevant to mention here that by Shri R.K. Nurula in an application moved before the Hon'ble Guwahati High Court under section 438 of the court of criminal procedure it is categorically admitted in the application of pre-arrest bail that he had 5 (five) telephones including tele No. 31464. In para 3 of the said application therefore it is an admitted position that he is a subscriber of 5 (five) telephones including tele No. 31464 of the telecom Department. Therefore submission of genuineness and feasibility report on my part cannot be cause of financial loss to the tune of Rs. 7,48,213.00. It is the duty of the concerned subscribers to retain telephone in their safe custody for proper use of telephones. Therefore my report for genuineness and feasibility cannot be questioned or linked up with the financial loss of Rs. 7,48,213.00 and therefore charges drawn up against me under memo No. TDM/X-19/93-94/1 dt. 15-7-94 and the subsequent penalty order dt. 1-10-99 are liable to be set aside and quashed.

It is relevant to mention here that this aspect as stated above has been carefully dealt by the learned special

Judge in special case No. 37(C) of 1993 (state vrs and others) where the same charges were brought against me in the criminal proceedings before the court of special, Assam, Guwahati, where the Hon'ble special Judge acquitted me by dropping the similar charges vide Judgement and order dt. 13-8-96 (Annexure) as the learned special Judge didnot find any material to proceed against the undersigned. The relevant portion of the Judgement and order dt. 13-8-96 are quoted as below -

"Now coming to the case of Madan Chandra Gayari, the prosecution allegation is that he was telephone Inspector during the relevant time and application for shifting of the above two telephones was referred to him and as phone Inspector he was required to submit the report regarding the genuiness of the subscriber and feasibility of shifting. The reports submitted by Madan Gayari states that the parties are genuine and shifting is feasible. Except the above report no other act has been attributed to this accused in the alleged conspiracy. So far the feasible report regarding shifting is concerned, there is no dispute that the shifting was feasible. Actual shifting to Bhola Market instead of S.R.C. Thakur Bazar Market was done allegedly by Ablesh Sharma and other co-accused. Admittedly, phone Inspector has got no part in the actual shifting. It is further alleged that accused Madan Gayari submitted his report regarding genuiness of the applicant without verification. Accused Mithilesh Thakur and Raj Kr. Nurula are two accused persons of this case. They are, thus, not fictitious persons. It is further alleged that the phone Inspector did not verify or obtain necessary documents regarding tenency agreement or otherwise in respect of new places of shifting in favour of applicants. This is not case of providing new connection and the applicants were already subscribers in respect of two telephones. There is no other incriminating materials against the accused Madan Ch. Gayari except for his alleged negligence for not consulting required documents before submission of the report. So, the accused may be dealt with departmentally. On consideration of the materials and perusal of the report I hold that for this alleged negligence and carelessness in discharge of his official duties, no criminal liability cannot be fastened on the accused Madan Gayari in absence of any incriminating materials against him.

In the result, I find a prima facie case to proceed against accused Mithilesh Thakur, Nandalal Sharma and Raj Kr. Nurula u/s 120B and 420 IPC and accordingly, imarge under the above section of law is framed, readover and explained to the accused persons.

Two accused persons present in the court plead not guilty. Accused Nandalal Sharma pleads not guilty through his counsel.

In view of the forgoing discussion, I also find a prima facie case to against the accused Ablesh Sharma u/s 120B/420 IPC and sec. 13(2) r/w section 13(1)(d) of the PC Act. Accordingly, charge under the above section of law is framed, readover, explained to him and he pleaded not guilty.

There is no Prima facie case to proceed against accused Madan Gayari. Madan Gayari is discharged."

From above it is quite clear that the learned special Judge after detail scrutiny on the same charge, did not find any material to proceed against the undersigned in criminal proceedings but surprisingly even after discharged from criminal proceedings the departmental proceedings on the same charge is initiated against me and subsequently the penalty was imposed upon on me on a baseless and bogus charge.

The initiation of departmental proceedings as well as criminal proceedings against me without implicating the real culprits who were in fact responsible i.e. officers and staff of the TRA section, now appears to me that this has been done to safeguard the interest of officers and staff of the TRA section and the initiation of the proceedings against me is an eye wash and with the view of intention to victimise the service career of the undersigned deliberately and with an ulterior motive.

This fact is well established as the disciplinary authority did not even look into my representation dt. 29.9.99 submitted against the inquiry report while imposing the Major penalty of reduction by four stages from Rs. 6,800/- to Rs. 6,200/- for a period of three years in the scale of pay Rs. 5000-150-8000 with effect from 1-10-99 without cumulative effect.

This the findings of the Inquiry officer is vague and contrary to the existing Rules guidelines, instructions laid down regarding submission of genuiness and feasibility certificates.

The DGM (P&A) O/O the GM/KTD, Guwahati even did not discussed in his impugned order dt. 1-10-99 what was the actual charges brought against me as per CCS (conduct) Rules 1964 and what portion of the charges were said to be established as per Inquiry officer's report, and what portions are not proved. He also did not discussed which one of the portion of charges i.e established portions (as per inquiry officer) and not proved portions, was heavier one. He also did not adduce the reason as to why he decided to impose penalty as per CCS (CCA) Rule II(V) i.e reduction to a lower stage in time scale of pay for a specified period and not the other punishments as per provisions of (i) to (iv) of Rule 11 of CCS(CCA) Rules 1965, while Rule 3(1)(i) of CCS (conduct) Rules 1964, was not violated by the undersigned as per report of Inquiry officer, which on the other hand means that absolute integrity of the accused is not lacking i.e his honest intention and working with good faith is or was not found inadequate as per report of the Inquiry officer (Annexure-II).

Under the circumstances mentioned above, the petitioner feel's that it is a fit case to be appealed against and therefore begs to point out the various inconsistency and lacunas prevailed during the process of the case and on the action of the DGM (P&A) O/O the GM/KTD, Guwahati who has suddenly appeared as punishing authority.

3. Wrongful identification of the persons responsible for loss of departmental revenues :

Needless to mention here that the present case has taken such a serious turn since due to ulterior motives of the subscribers namely Shri R.K. Nurula and Shri Nandalal Sharma, the department had to incur the loss of revenue to the tune of more than rupees seven lakhs in one year. The case was initially detected by the District vigilance cell, which after seizure of all sets of Telephones of these two subscribers handed over the case to CBI for further

investigation and prosecution, while the CBI was to take serious notes on the actions of TRA bill section due to non-disconnect of the said telephones for the long period and on the activities of Shri R.K. Nurula and Shri Nandalal Sharma it suddenly charged the cannons towards the p i who generally does not come into picture, specially for shifting of Telephones from one place to other place under same exchange as per DOT order No. 2-26/84-PHA dt. 29-11-1984. (Annexure - (V).

The DOT as prescribed instructions that on receipt of application with required documents such as rent receipt of supporting documents for their tenancy for shifting of telephones, the commercial officer/ SDOP of the section should verify the signatures of the subscriber with the signature in the original application for new telephone connection and order for shifting of telephones should be straightway ordered. But in the instant case without stressing on these appropriate points, the CBI has stressed all blames to be attributed to the P.I only, who had given genuiness and feasibility certificates to the subscribers. Unfortunately the Inquiry officer has also been succumbed to that illogical conceptions and failed to understand that while the subscriber is well known easily identifiable and already having few telephones at their possessions, all of them stands genuine and therefore to take a copy of the rent receipt or as a taken of his or their genuiness immaterial. But without understanding the proper spirit of DOT's instructions the Inquiry Officer has held the undersigned - as a guilty one for not taking the copy of the rent receipt (which is supposed to be submitted with their shifting applications in the CO/SDOP office) even though the subscribers are genuine. The charges against the undersigned therefore does not stand valid at all since the genuiness certificates given by the undersigned itself is genuine even though it was superfluous and therefore therefore the undersigned is liable to be exempted from the charges.

4. Weakness of the material witnesses :

So as to confuse the disciplinary authority and the others, the I.O stated that about huge number of documents (16 Nos) were produced during inquiry - by which the offence done

by the petitioner has been proved. But the fact stands that 16 Nos documents mentioned by I.O. are the documents through which it could be known as to how the applications for shifting of telephones came to the hands of the petitioner after crossing various stages. The petitioner also never denied that he was not involved in the process of shifting. In fact whatever he asked to do by his superior officer he did it correctly. Thus he gave the genuiness and feasibility certificate to the applicants for shifting of their telephones very correctly and he had also seen the original copy of the house rents of the subscriber whose photocopy was of course not taken by him, as it appeared to him as not necessary, since the circumstantial evidences provides that the proposer of shifting of the concerned telephones were genuine ones. It was also found that after shifting of their telephones to the newly proposed venue they also did never complained that it was not shifted to their places. Thus to agree with the tone of the tax-evader telephone subscribers after thoughts that their telephones were not shifted to their proposed places (while no complaint was there from their own side till one year) keep great marks of interrogations on the intention of the Inquiry officer and DGM (P&A) O/O the GM/KTD, who are providing scopes to them to evade telephone revenue of about 7½ lakhs rupees. The petitioner therefore prays to his present appeallate authority to go deep into the case and see that the telephone revenue evaders are not scot free by any means by diverting all the blames on the undersigned.

5. Violation of courts verdict in the matter of alleged shifting of there two telephone nos :

The disciplinary authority (who issued charge sheet) had alleged misconceptionally with the tune of CBI authority that the said telephones were found in other places than their proposed places of shifting and they attributed all blames to departmental officials without considering the facts that such displacements of telephones from one place to other place in the same building or in the adjacent buildings can be done by the subscribers themselves when no change of Pillar DPs or cable is involved. In the instant case it is found that some one (definitely with the active consent of the subscribers) had shifted their two telephones from one room of SRC Thakur Market to other room of Bhola Market situated at nine inches

distances. But most astonishingly the CBI officers assessed along with the tune of the subscribers their telephones were shifted to Bhola Market instead of S.R.C. Thakur Market without their consent, Astonishingly the subscribers did not lodged any complaint for the entire period till the case is hand over to the CBI authority for such incidences while both of them were old subscribers and acquainted with the rules of the Telecom Department on this subject very well. The investigating officer of the department has remained critically silent over it, though the special Judge of the court did not agree to such statements as placed by the subscribers, that the said two telephones were shifted to the other places than whatever the subscribers themselves had suggested. In this way by accepting the allegation of the CBI officer, the Inquiry officer & DGM (P&A) has denied or disagreed with the findings of the court and acted erroneously.

6. Mis-interpretation of the word genuiness by the Inquiry officer :

That sir, the plain meaning of genuiness is known to all when the department wanted, genuiness certificate of two particular subscribers who wanted shifting of their telephones to their newly proposed places (though as rule - it was not required specially for shifting of telephones of pre-identified subscribers), I had correctly given the same and the court of law has also accepted that there is no doubt that these persons were genuine and feasibility reports were also correctly given (Annexure-III). However the court stated that it was the matter, left to the department to decide whether verification of rent receipts of the subscribers were correctly done by me or not. In that matter, I beg to state that as per instructions of the department house rents receipts was not the only document to be verified. The departments instructions that any one of the documents such as (1) Rent receipt (2) Ration card (3) Gas card (4) Milk card, (5) Sale tax certificates (6) LIC policy etc. may be verified and copy of any one of them may be taken, if there is any doubt. That sir, since there is or was no doubt about the genuine existence of the subscribers, I admitted that I did not feel necessary to take another copy of the rent receipt than what the subscribers was supposed to submit along with his original application of shifting of telephones to the commercial officer/ SDOP who issued advice notes, though I had

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again saw it at the time of verifying the genuineness of the subscriber. The DOT's No. 144-8/82-PHA dt. 13-7-1982 (Annex-VI) also proved that the field staff of the department exercise great tact and discretion in dealing with a telephone applicant and on no account the subscribers should be made to feel harassed. But surprisingly the Inquiry officer and the DGM(P&A) O/O the GM/KTD, without considering all the circumstantial evidences, held me responsible for a fault for not taking a copy of rent receipt during the time of verification and suddenly jumped to the conclusion that I had not visited the spot at all at the time of verification. This was a most ridiculous findings than whatever anybody can imagine, and is aimed at to hold some one responsible for fault of other, which has ultimately vitiated the Inquiry report on the basis of which no action can be legally or logically taken. But unfortunately - the DGM (P&A) having been pre-determined to the action of the Inquiry Officer has accepted his report without applying his mind and thus he failed to arrive at correct assessments of the incidence and made the undersigned as the victim of the wrongful findings.

7. Issuance of non-speaking order :

While passing an order for awarding punishments to the petitioner, the DGM (P&A) O/O the GM/KTD Guwahati - did not issue any speaking order - which is ultravires to the law on this subject. As per departmental rules and also as per legal verdicts issued by the court of law from time to time, any order of punishments must be a speaking order. It is not sufficient to say that I have seen the representation and gone through it and after considering all the pros and cons of the incidence arrive at the decision. In fact speaking order means the concerned authority must discuss the points raised by the undersigned and should say why his arguments or points of defence is not acceptable to him. But nothing of this sort has been done, him, as a result, there is genuine ground to arrive at the conclusion by the undersigned that the DGM (P&A) had prepared the order of punishment before receiving the representation and just on the following day of the receipt of the representation of the petition (i.e in the evening of 29.9.99) he signed the order of punishments on 1-10-99, arranged to deliver it on 4-10-99, so as to make an eye wash that procedures have been followed. Thus he violated the

spirit of the departmental orders and legal proceedings on this subject, and made an innocent official victim of his faulty action.

8. Consideration of gravity of offence and quantum of punishments :

That sir, while the Inquiry officer, in his biased report also could not prove that the petitioner had failed to maintain his integrity, he jumped on Rule 3(1)(ii) of CCS (conduct) Rules 1965 to say that the petitioner has failed to maintain devotion to duty while to maintain integrity and devotion to duty, both are interlinked, still then, if the finding of the Inquiry officer is assumed as correct (though not admitted by the petitioner), then it is established that the petitioner has acted honestly and on good faith at he maintain his absolute integrity. Then again if he had failed to maintain devotion to duty, then it stands that the mistake was unintentional while acting on good faith and on his independent best judgement as per Rule 3(2)(ii) of CCS (conduct) Rules 1964. Again in the instant case it is established beyond doubt that the persons concerned applied for shifting of telephones were genuine, the existence of SRC Thakur Market at A.T. Road - was also genuine and feasibility report was also correctly given, though the petitioner having seen the rent receipts of the subscribers did not press for its copy. In fact, genuiness certificate is required for the new subscribers - so that in case of default of payments. The subscriber or concerned persons can be identified and prosecuted at the court of law when required. In the instant case all these conditions have been satisfied. But in the instant case the DGM (P&A) did not adduce the reason, as to why the non-procurement of rent receipt from the subscribers after verification of it has been assumed as so serious and charges were brought while objective of genuiness certificate and feasibility certificate has been surely and sufficiently achieved owing to the independant judgement and wisdom of the undersigned. Unfortunately under the above mentioned circumstances, the DGM (P&A), Mr. Ghorai without assesing the circumstances involved in it and without coming to the conclusion on the alleged mistake of the undersigned in the logical manner has issued a major punishment under Rule 11(V) of CCS(CCA) Rules 1965, which is neither justified nor

equitable to the gravity of alleged mistake or error. The punishment order is liable to be cancelled on this score alone.

9. Hence, under the circumstances stated above while it is proved beyond doubt that -

- (a) The Petitioner has been wrongfully identified by CBI officers and the disciplinary authority as responsible in the matter of loss of departmental revenue to the tune of Rs. 7,48,213.00 while it was solely the duty of the TRA bill section for not disconnecting the said two telephone for several months.
- (b) While inherent weakness of the voluminous material evidences and witness does not prove anything against the petitioner while it goes to some one else.
- (c) While the departmental judgement and its interferences goes against the findings and judgements of courts in the matter of genuiness & feasibility certificates, who exempted the petitioner unconditionally.
- (d) While the power to interpret departmental rules and orders vests on DOT, whereas the Inquiry officer violating rules and distorting all the plain meanings and departmental meanings of "genuiness" has wrongfully held the petitioner as responsible for misunderstanding the word "genuiness" of a person.
- (e) While non-issuance of speaking order by Mr. S. Ghorai DGM (P&A) O/O the GM/KTD, Guwahati has vitiated the disciplinary proceedings and thus, the order of punishment is liable to be set aside.
- (f) While the disputed punishing authority has not considered nor discussed the gravity of the offences mistakes as per findings of the Inquiry officer, which is required as per normal procedures, natural law of justice and Rule 15 of CCS (CCA) on this subject, the punishment order issued by the present authority is liable to be cancelled.

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: 15 :

In view of the points raised above, the impugned memorandum of chargesheet dt. 15.7.94 and inquiry report dt. 2.9.99 as well as the impugned order of penalty dt. 1-10-99 issued by the disciplinary authority are liable to be set aside and quashed.

AND

During consideration of my appeal it is requested to stay the impugned penalty order dt. 1-10-99 till the disposal of appeal.

With profound regards.

Yours faithfully,

(MADAN CHANDRA GAYARI)

P.I

under Telephone Directory Officer
O/O the GM, Kamrup Telecom District.

ENCLOSURES (ANNEXURE)

- I. DGM (P&A)'s memo No. GM/X-19/99-00/ 23 dt. 1-10-99.
- II. I/O's Report No. OSD(PT)/82/97 dt. 2.9.99.
- III. Order of special court's case No. 37(C) of 1993 dt. 13-8-96.
- IV. Representation of the undersigned dt. 29-9-99.
- V. DOT's No. 2-26/84 PHA dt. 29-11-1984.
- VI. DOT's No. 144-8/82 PHA dt. 13-7-1982.

Copy to :-

The DGM (P&A) of the GM/K.T.D., Guwahati.

GOVERNMENT OF INDIA.

DEPARTMENT OF TELECOMMUNICATION.
O/O THE G.M.KAMRUP TELECOM DISTRICT.
ULUBARI, GUWAHATI:-7.

MEMO NO. G/X-19/99-00/23

Dated.1-10-99.

Sri Madan Chandra Gayari, P.I., O/O G.M.Kamrup Telephone District, Guwahati, was proceeded under Rule-14 of CCS(CCA) Rule, 1965 vide TDM/GH Memo No. TDM/X-19/93-94/1. Dt. 15-7-94. The article of charge as Annexure-1 was that while Sri Madan Chandra Gayari, was posted and functioning as Phone Inspector in the O/O SDO Phones (West) Guwahati during the year 1991-92, failed to maintain absolute integrity and devotion to duty as much as he gave genuineness Certificates on the body of the original Telephone shifting applications of Telephone No. 33211 and 34610 (31464 New) to SRC Thakur Bazar, Athgaon, A.T. Road, Guwahati without verification of genuineness of the same and also shifted the Telephone No. 34610 (New No. 31464) to the adjacent building named "Bhola Market" of SRC Thakur Bazar, Athgaon, A.T. Road, Guwahati and thereby he contravened the provisions of Rule:3(I)(i)&(ii) of CCS(Conduct) Rule 1964.

That the charges as per Annexure-II are that the said Sri Madan Chandra Gayari, while posted and functioning as Phone Inspector in the O/O SDOF (West) Guwahati during the year 1991-92 gave genuineness Certificate/Report on the body of the telephone Shifting applications of Sri Raj Kumer Narula and of Sri Nand Lal Sharma bearing Telephone Nos. 34610 (31464 new) and Telephone No. 33211 respectively without actually verifying of the genuineness of these Two Telephone Subscribers at the Shifted place. It was further alleged that no agreement of rent between the owners of the said Building and the Subscribers Sri Nand Lal Sharma/Sri Raj Kumer Narula for possession/occupation till date of Shifting of the said Two Telephones was held. Also the said Two Telephones after being Shifted were misused by one Sri Mithilesh Thakur, a private person running STD PCO No. 40997 in the same building where the said Two Telephones were Shifted allegedly with Malafide intention on the genuinity certificate furnished by Sri Madan Chandra Gayari, P.I., resulting an outstanding dues of Rs:- 7,48,213=00.

Having received the reply from the said Sri M.C. Gayari, for non-acceptance of the charges, the Dy.G.M. (Admn) O/O the G.M. Telecom, Guwahati (Disciplinary Authority) appointed the Inquiry Officer Sri A.B. Sharan, officer on special duty (Departmental Inquiry) O/O CGMT. Bihar Circle, Patna vide the then Disciplinary Authority Memo No. TDM/X-19/96-97/9. dt. 19-2-97 to inquire into the charges levelled against Sri M.C. Gayari, Sri S.P. Singh Yadav, Inspector, CBI/ACB, GH was appointed as presenting officer vide Memo No. TDM/X-19/96-97/10. dt. 19-2-97 to present the case on behalf of Disciplinary Authority. Sri M.C. Gayari, nominated Sri S.K. Swargiary Sr. SS(O), Plq. Section, O/O G.M. Kamrup Guwahati, as Defence Assistant.

NO. OSD(PT)/82/77
DATED AT GUWAHATI, 09.02.1998.

VENUE: CONFERENCE HALL, (Semi)
% C.G.M.T., GUWAHATI.

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965 against Shri Madan Chandra Goyary, P.I., % G.M., TD, (Commercial Section), Guwahati. 99

DEPOSITION OF S.N.1.

Deposition of Shri C.Dey aged about 47 years at the relevant period I was working as S.D.E. (Vig), and at present working as S.D.E. (Telex & Internet Mtce), Main Telephone Exchange, Panbazar, Guwahati.

Examination-in-Chief by P.O.

on the
basis of

Presently I am posted as S.D.E., SPC Telex, Hynet and Inter Net. and in January '93 I was working as S.D.E. (Vig) under TDM Kamrup Telecom District, Guwahati. In January '93 a complaint received by the Chief General Manager Telecom, Guwahati and on letters direction I alongwith Shri S.P. Deb the then J.T.O. (West), Shri K.C. Medhi, S.D.O. (West) and Shri L. Borb the then A.V.O. conducted a surprise check on a PCO booth at A.T. Road, Guwahati. and on the basis of the report submitted by the aforesaid official the case was finally handed over to CBI.

Q.1. Kindly explain, if you know, the system and procedure of verification of addresses etc. while giving telephone connection or shifting of the telephone ~~xxx~~ from one address to another address and the personal responsibility for the said verification on the part of individual concerned telecom officials as per DOT instruction and local advice?

Ans. So far my knowledge goes there were no any specific procedure laid down by the local authority for the genuinity verification of the subscribers report putting to the connection but so far as the DOT instruction the field officer to whom the advice note is sent for execution, he should satisfy himself before issuing the jumping slip to the exchange that the customer is genuine and address is correct.

Q.2. Now I am shown document serial listed S.Ext.02, 03, 04 and 05 and 06 and on being asked recognised the signatures of Shri S.P. Deb appended thereon as J.T.O. (W) while issuing jumping slip etc. I am also shown documented listed as S.Ext.07 and S.Ext.08 and on being asked recognise the signatures of Shri Madan Chandra Goyary the then Phone Inspector under SDO(P) (West) who verified the genuinity of the respective applicant and their addresses as reflected in the shifting application form while S.Ext.07 and 08.

(Concluded)

Cross-examination on behalf of SPS

Q.1. What is meant by genuineness in respect of shifting of a telephone ?

Ans. There are many processes but the concerned P.I. should satisfy himself by seeing his documentary evidence like original demand note, last bill voucher, his ration card, his Gas card, his agreement to the landlord etc. The most important thing is that he must be convinced that the subscriber and his address are genuine by exploring all possible documentary evidences.

Q.2. (Concluded)

Re-examination by P.O. Declined.

Question by I.O.

Q.1. In the departmental procedure in practice, who is responsible field officer competent to furnish the bonafied certificate in respect of local shifting of a telephone ?

Ans. In practice JTO and P.Is are competent and responsible for verifying the genuinity and the address of the subscriber but SDO also give a sample check as because work order has issued directly to SDO.

Contd. on 2/.....

9/2/98

Madan Chandra Goyary
9.2.98

9.2.98

85 (2)
Deposition of S.W.1 (Contd.) Dt. 09.02.98

Q.2. If the SDO put his countersignature on any of the bonafied certificate furnished by the JTO or the P.I. who are the field officers, does it mean that the SDO is fully satisfy with the certificate furnished by his field official and if anything goes wrong, the responsibility lies only on the SDO and not on the official who has furnished the certificate ?

Ans. Primarily the officials who are directly verifying the genuinity of the subscriber and his premises they are responsible but SDO should countersign only after seen the relevant documents collected by the JTOs and the PIs in support of the genuinity and the documents should be preserved. A certain percentage of the genuinity must also be verify the SDO himself

(Concluded)

Read over and accepted as correct.

Madan Chandra Goyary
(Madan Chandra Goyary) 9.2.98
S.P.S.

09/02/98
(C. Dey)
S.W. 1

A. B. SHARAN
INQUIRING AUTHORITY 9.2-98

NO. OSD(PT)/ 82/97
DATED AT GUWAHATI, 10.02.1998.

VENUE: CONFERENCE HALL,
% C.G.M.T., GUWAHATI.

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965 against
Shri Madan Chandra Goyari, P.I. (Commercial Section), % G.M., TD, Guwahati.

~~DEPOSITION~~
DEPOSITION OF S.W.2

Deposition of Shri Manomohan Dey aged about 52 years, at the relevant period I was working as A.O. (TRA), % T.D.M. Guwahati and at present working as Sr. A.O., % Ex. Engineer, Civil Dn., Guwahati.

Examination-in-Chief by P.O.

I agree to the contents of my statement taken by the Investigating Officer of this case on 06.10.93, marked as S, Ext. 14 and I do not defer on any points content therein. In token of this I put my signature today before I.O. As asked I state that outstanding amount against telephone No. 33211 and 31464 (new number) 34610 (old number) for the period 16.05.91 to 15.11.91 ~~are~~ is Rs. 1,38,864 and Rs. 3,09,233 for the period 16.05.91 to 15.12.91 respectively. and the said amount could not be realised as yet.

(Concluded)

Cross-examination on behalf of SPS

-Q.1. After how many days the telephone is dis-connected if a subscriber's outstanding dues are not paid within due date ?

Ans. On 35th day from the date of the billing if the payment is not made.

-Q.2. Who is responsible for non disconnection after ~~xxxxxx~~ months of defaulter telephone for several months ?

Ans. The Group Clerk is responsible to prepare disconnection list in respect of the telephone the dues of which is outstanding after the due date of payment is over.

Q.3. In the relevant case of telephone no. 33211 and 31464 the telephones were disconnected after more than one year and the later after more than nine months. Whether the field officers are responsible for its being not disconnected ?

Ans. After the issue of disconnection list it is the responsibility of the field officer to disconnect the telephone.

Q.4. After the issue of the disconnection list is there any responsibility of the field staff for ~~dis~~ making disconnection ?

Ans. Yes, the field staff to whom the disconnection ~~xxxxx~~ list is issued is responsible to disconnect the telephone.

Q.5. ~~In whom the disconnection list is generally~~ ^{is generally} ~~the above mentioned telephones~~ ~~xxxx~~ 2

~~xxxx~~

Q.5. The above mentioned telephone nos. belongs to strouser exchange of Panbazar, Guwahati. Please tell to whom the disconnection list in respect of the above two telephone nos. were sent.

Ans. To A.E. (MC), Panbazar Telephone Exchange, Guwahati generally. But I do not remember that this disconnection was done during my tenure in TRA/GH (Concluded)

Re-examination by P.O. Declined.

Question by I.O.

Q.1. As A.O. (TRA) how you are monitoring the date of disconnection actually done by the field staff ?

Ans. One copy of the disconnection list duly executed is sent to TRA by the Exchange I/C and from there the TRA Section monitors the actual date of disconnection.

Q.2. In the relevant case the telephones were not disconnected for a period of time through the payment was not made causing huge outstanding. In these cases how your monitoring process was effected ?

Ans. The matter was not brought to my notice by the sub-ordinate officials resulting my ignorance about the huge outstanding.

Q.3. Was there any other cell working under you to check the huge outstanding dues ?

Ans. No. There was no such cell.

~~10.2.98~~

Madan Chandra Goyari
10/2/98

[Signature]
10.2.98

Contd. on 2/.....

Deposition of S.W.2 (Contd.) Dt. 10.02.98

Q.4. Please tell to inquiry how the huge outstanding dues subscriber were being identified, brought to your notice and ordered for disconnection ?

Ans. The method relating to outstanding in respect of the telephones in question were not brought to my notice during my tenure in TRA. As a general practice sometimes from the outstanding register the outstanding position comes to the light. Sometime special outstanding review cell were constituted from ~~that~~ also outstanding position comes to light.

(Concluded)

Read over and ~~xxxx~~ accepted as correct.

Madan Chandra Goyary
10/2/98
(Madan Chandra Goyary)
S.P.S.

(Manomohan Dey)
S.W.2

A. B. SHARAN 10.2.98
INQUIRING AUTHORITY

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules against Shri Madan Chandra Goyary, P.I., % G.M., TD, Kamrup, Guwahati.

DEPOSITION OF S.W.3

Deposition of Shri Manabendra Saha aged about 54 years, at the relevant period I was working as A.O.(TRA), % T.D.M. Guwahati and at present working as Sr. A.O.(SBP), % C.G.M.T., Guwahati.

Examination-in-Chief by P.O.

I agree to the contents of my statement recorded by the Investigating Officer of this case on 06.10.93 marked as S.Ext.15 and do not defer on any of the points contend therein. In token of this I put my signature today before I.O.

(Concluded)

Cross-examination on behalf of SPS

Q.1. Please peruse S.Ext.13 and say how it was delivered ?

Ans. The disconnection list is being sent to the exchange authority through a peon book mentioning the telephone no. and the total numbers.

Q.2. What is the date of issue of this disconnection list ?

Ans. Since these numbers are related to headquarter and in this connection the procedure is maintained to issue the disconnection list on the same date i.e. the date on which they are to be disconnected.

Q.3. On the face of the S.Ext.13 there is no indication about the date of ~~xxxx~~ the letter and also as to how it was delivered to the addressee ? Are you in a position to ~~produce any authentic~~ say whether it was actually delivered to the addressee ?

Ans. In my previous reply already I have stated the procedure of sending disconnection list to exchange authority how is being send from TRA. From my memory I am stating again the same procedure followed in this case also.

Q.4. Please peruse the entries on S.Ext.09 and say whether the part bill allowed by the TDM was ever realised ?

✓ Ans. From the face of SRC of telephone no. 33211 it is seen that the case was dealt from PRO file and provisional bill also issued but the same is not paid by the concerned subscriber.

Q.5. Please peruse the contains of D.Ext.01 and tell if any rebate/concession was granted to the subscriber on the ~~xxxx~~ of ~~xxxx~~ M/s H.India on the ground of faulty meters ?

Ans. All the particulars regarding cancellation of bill date 01.08.94 which is written on the face of SRC which is transparent. Moreover the particulars of the face of SRC is not signed by me.

Q.6. Generally after how many days the defaulter telephones at the relevant period are being disconnected if the bills were not paid within stipulated date ?

Ans. The rule prevailing during the period under review, disconnection process in case of non payment of telephone bill within the stipulated period should be completed within 40 days from the date of issue of bill and the telephone should be disconnected on 40th day.

Q.7. Please peruse S.Ext.09 in respect of telephone no. 33211, the telephone was disconnected on 03.07.92 only for the period (bill) 16.05.91 outstanding i.e. after a lapse of more than one year. Who is responsible ~~xxxx~~ for this late disconnection ?

Ans. It is seen from the face of SRC that there are three bills bill dated 01.12.91, 01.02.92 and 01.04.92 for which period I was not attached to TRA Section. ~~xxxx~~ ~~xxxx~~ ~~xxxx~~ Subsequently it was disconnected on 03.07.92 when I was working as A.O. The disconnection process should be initiated and completed in due time by the concerned Group Clerk in due time and bring to the notice of the concerned A.O. through S.S. and J.A.O.

(Concluded)

Re-examination by P.O. Declined

Read over and accepted as correct.

Madan Chandra Goyary
(M.C.Goyary) 11/2/98
S.P.S.

(Manabendra Saha)
S.W.3

INQUIRING AUTHORITY 11-02-98

- 89 -

NO. OSD(PT)/82/97
DATED AT GUWAHATI, 11.02.1998.

VENUE: CONFERENCE HALL,
% C.G.M.T., GUWAHATI. 104

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965 against Shri Madan Chandra Goyari, P.I., % G.M., TD, Kamrup, Guwahati.

DEPOSITION OF S.M. 4

Deposition of Shri Madan Chandra Talukdar, P.I. aged about 48 years, at the relevant period I was working as P.I. under S.D.O.P(West), Guwahati and at present working as P.I. under S.D.O.P. (East-1), Guwahati.

Examination-in-Chief by P.O.

The P.O. consented to drop this state fitness however if the defence wants to cross-examine, he may be allowed.

Cross-examination on behalf of SES

- Q.1. During your tenure as P.I. under S.D.O.P(West), did you find any demarkation/difference between SRC Thakur Market and the Bhola Market building at Guwahati ?
Ans. Actually demarkation is there as these two buildings are separated by space of about nine inches i.e. the buildings are different but the stair cases are linked to these buildings.
- Q.2. Do you find a common corridor for both the buildings at the relevant period
Ans. A common corridor is there which being used as a common road.
- Q.3. Did you find any sign board appearing from outside showing the SRC Market and the Bhola Market ?
Ans. No sign board was there at the relevant period in the both the buildings.
- Q.4. Will you please tell which of these two market came later out of the above noted two markets ?
Ans. I understood earlier that these two markets were one and the same ~~as was~~ and known as SRC Market later on it came to my notice that the Bhola Market was adjacent to SRC Market.
- Q.5. You being the P.I. of the SRC/Bhola Market, during your official visit could you notice any irregularities of received any complaint about the any irregularities ?
Ans. No such complain came to my notice at the relevant period.

(Continued)

Re-examination by P.O.

I alongwith Shri Madan Chandra Goyari working under S.D.O.P. (West). There were no separate jurisdiction of the area of operation between me and Shri Madan Chandra Goyari. We used to worked together as on certain occasion as per the instruction of SDO/JTO.

- Q.1. Whether you ever attended any complain in connection with the PCO No. 40997 owned by Shri Nithilesh Thakur at SRC Thakur Bazar, A.T.Road, GHY ?
Ans. No. I never attended any complaint of this particular STD PCO.
- ✓ Q.2. Whether you ever attended any complaint or the shifting of telephone Nos in respect of 33211, 31464 (old number) 34610 and 31309 ?
Ans. I never attended any complain in respect of telephone nos. at SRC Thakur Bazar, Guwahati. nor I had verified any genuinity report in respect of shifting of the above telephone nos.
- Q.3. Do you ever visited the Bhola Market or SRC Market ?
Ans. I have visited the SRC Market in connection with genuinity report of other new telephone connections. After shifting of the telephone of Shri Mandlal Sharma bearing 33211 I alongwith Shri M.C. Goyari visited SRC Thakur Bazar.
- ✗✗✗

(Concluded)

Read over and accepted as correct.

Madan Chandra Goyari
11/2/98
(Madan Chandra Goyari)
S.P.S.

(M.C. Talukdar)
S.M. 4

A. B. SINGH
JUNIOR JUDGE

11/02/98

90 -
NO. OSD (PT) / 82 / 97

DATED AT GUWAHATI, 28-6-99.

VENUE: CONFERENCE HALL,
O/O CGMT, GUWAHATI.

Disciplinary proceedings under Rule 14 of the CCS (CCA) Rule 1965 against
Shri. Madan Chandra Goyari, P.I. o/o G.M., TD, Kamrup, Guwahati.

DEPOSITION OF S.W. 5th of working as JTO outdoor

Deposition of Shri S.P. Deb at the relevant period I was working
as J.T.O. Outdoor (West) under S.D.O.P. (West) Ambari, Guwahati and
at present working as S.D.O. (Commercial Officer-II) O/o G.M. KTD
Guwahati. From January, 1993.

Examination-in-chief by P.O. stated that the verification of feasible
to be executed in case of shifting by JTO
I perused my statement dated 5.10.93 recorded by Sri K. Barman,
Inspector, CBI, CB, Guwahati, the investigating officer of the case
marked as S. Ext. 16, in which I defer the contents therein in second
para of the first page to "detection of unauthorised telephone conn-
ection within my jurisdiction. The genuineness of subscribers are
to be ascertained before connection and use of jumper slips". In place
of this I want to depose that if any irregularity noticed or came to
my knowledge I am to report the matter to the higher authority. The
genuineness to be ascertained before issuing A/N and jumper slips.

In page two paragraph 3 3rd line I defer that "I have verified and
STD/PCO of Sri Mithilesh Thakur" against this I am to depose that
I have installed the STD/PCO of Sri Mithilesh Thakur. He also could not

In page two para-4 it is mentioned that the "jumper slip for
telephone 33211 was issued by Sri M.C. Goyari P.I." In place of this
I am to depose that wrongly mentioned the name of Sri M.C. Goyari,
actually it should be of Sri M.C. Talukdar, P.I.. The jumper slip S. Ext. 05
bears the signature of M.C. Talukdar above the stamp JTO phones in the
capacity for.

I do not have any idea regarding this fact.
In page 3, para-1 third line I defer "I had verified the genuine-
ness of his STD/PCO". In place of this I am to depose that I had not
verified the genuineness of the STD/PCO.

Except the above noted modification in my statement I confirm
the contents written therein.

Q-18 Please perused S. Ext-07 and 08 which are application for shifting
of telephone No. 33211 and 34610 respectively and kindly ascertain
whose signature are therein below the noting "The party is genuine
and connection is feasible"

Anx:- It is the signature of Sri M.C. Goyari, P.I. working under me on
both the cases.

CROSS EXAMINATION on behalf of the SPS 6/99

Q-1:- What is the procedure in shifting case in general of a telephone?

Anx:- As my memory it will be. The procedure for executing shifting
during that period was as follows :-

On receipt of the subscriber's application SDOP directs either
JTO or P.I. to verify the genuineness of the said application and
the place where connection is requested. The official whoever is entrusted
the job shall submit the report in writing to the SDO. The SDO if
satisfied with the report so submitted shall issue order for issuing
the A/N on receipt of the A/N by the section JTO the jumper slip will
be issued in consultation with the official who submitted the verifi-
cation report and shall issue jumper slip after completion of the out-
door work under supervision of the said official.

Q-2:- What amounts to the genuineness ascertaining of a subscriber?

Anx:- The practice follows during that time the inspecting official
should ascertain genuinity of the location with his own intelligency
and style by which he is satisfied about the genuineness of the
location and the person, provided the same is accepted by his super-
vising officer ordered him for such verification.

Sd/- 28/6/99
M.C. Goyari
28-6-99

Q3 Thakur contd.,
28/6/99

Deposition of Sri S.P. Deb, continued. CONFERENCE HALL,
O/O COMT, GUWAHATI.
QUESTION BY I.O. under Rule 14 of the CCS (CCA) Rule 1965 against
Q-1: Please tell what was your tenure of working as a JTO outdoor
West Guwahati? (S.P. Deb)

Ans: I worked as JTO outdoor (West) with effect from Oct. 1990 to
30th January, 1993. S.D.O.P. (West) Amheri, Guwahati and
S.D.O. (Commercial Officer-II) O/o G.M. STD

Q-2: You have already deposed that the verification of feasible
and bonafide is to be executed in case of shifting by JTO
also. In the instant case in respect of shifting of telephone
No. 33211 and telephone No. 34610, the genuineness report
furnished by then SPS. As JTO outdoor had you ever felt
it necessary to inspect the new shifted place after giving a
jumper slip? to detection of unauthorized telephone connection
within my jurisdiction. The genuineness report furnished by then SPS.
Ans: No, I did not feel it necessary to inspect the subscriber's
premises. Actually I do not recollect jumper slip in place
of this. I am to report the matter to the higher authority.
Q-3: Sri Narula, the owner of telephone No. 31464 has applied for
shifting of his telephone to S.R.C.B. Market at his proposed
office. He could not get the office in shifted hurriedly
out of Guwahati for treatment of his wife. He also could not
cancelled his shifting application. The telephone was re-
portedly shifted to S.R.C. market where Mr. Narula did not
telephone engaged any office premises. Please through some light how
I am to do the telephone was shifted? In place of this
actually it should be of Sri M.C. Govari. The name of Sri M.C. Govari.
Ans: I do not have any idea regarding this fact. For slip S. Ext. 05
specify for

(CONCLUDED)

In page 3, para-1 third line I defer "I had verified the genuineness
Read over and accepted as correct. I am to depose that I had not
verified the genuineness of the STD/PCO.

Except the above noted modification in my statement I confirm
the correctness of the above. (S.P. Deb)

G-1 (M.C. GOVARI) sed S. Ext-07 and 08 which are as per (S.P. Deb)
of tele. No. 33211 and 34610 respectively and S.W. 5/11 ascertain
whose signature are therein below the noting "The party is genuine
and connection is feasible"

Ans: It is the signature of M.C. Govari. I am to depose that I had not
both the cases. (A.B. SARAN)

CROSS EXAMINATION INQUIRING AUTHORITY.
ON BEHALF OF THE SPS

Q-1: What is the procedure in shifting case in general of a telephone?

Ans: In my knowledge is unknown. The procedure for executing shifting
during that period was as follows:-

On receipt of the subscriber's application SDP directs either
JTO or P.I. to verify the genuineness of the said application and
the place where connection is requested. The official whoever is entrusted
the job shall submit the report in writing to the SDO. The SDO if
satisfied with the report so submitted shall issue order for issuing
the A/N on receipt of the A/N by the section JTO the jumper slip will
be issued in consultation with the official who submitted the verification
report and shall issue jumper slip after completion of the entire
work under supervision of the said official.

Q-2: What amounts to the genuineness ascertaining of a subscriber?

Ans: The practice follows during that time the inspecting official
should ascertain genuineness of the location with his own intelligence
and style by which he is satisfied about the genuineness of the
location and the person, provided the same is accepted by his super-
vising officer ordered him for such verification.

Sd/- 28/6/99
M.C. Govari
28-6-99

Sd/- 28/6/99
A.B. Saran
28-6-99

NO.OSD(PT)/82/97

Dated at Guwahati, the 29.6.99.

VENUE: CONFERENCE HALL,
O/o CGMT, GUWAHATI.

Disciplinary proceeding under Rule 14 of the CCS(CCA) Rules, 1965
against Shri M.C.Goyari, P.I. o/o G.M.KTD? Guwahati.

DEPOSITION OF SW 6

Deposition of Sri K. Barman, Inspector, CBI/ACB, Guwahati Branch,
at the relevant period I was working as Inspector CBI? Guwahati
(Investigating Officer of the case) and now also I am working at
the same place and same capacity.

EXAMINATION-in-CHIEF by P.O.

Q-1: How did you come for investigation of this case?

Ans: This case was registered in CBI Shillong Branch and endorsed
to me for investigation of the case.

Q-2: Against whom this case was registered?

Ans: Initially this case was registered against Sri S.P. Deb the then
JTO and Sri Mitilesh Thakur a private person and others. During
investigation the following persons found involved.

1. Sri Mitilesh Thakur private person Sri Abolesh Sarma, PM
under A.E. Case Sri S.P. Deb, JTO Sri Modan Ch. Goyari, P.I.
Sri Nandalal Sarma, Private person, Sri Raj Kumar Narula, private
person, Sri Nathuni Singh, L.M. & Sri Bogaram Rava and Sri
Haladhar Das, TQA.

Q-3: How did you find the role of ~~Sri S.P. Deb~~ ^{P.I. M.C. Goyari,} leading to
charges of Departmental action against him?

Ans: During investigation it was found that one Sri R.K. Narula,
had applied for shifting of this telephone No. 34610 vide
his application dated 16.4.91 for shifting of his telephone
to S.R.C. Thakur market, A.T. Road, Athgaon Guwahati. Another Sri
Nandalal Sharma, had also applied for shifting of his telephone
No. 33211 vide application dtd. nil for shifting of his telephone
to C/o Kamallesh Kumar Sharma, S.R.C. Thakur Bazar, first floor
A.T. Road, Athgaon Guwahati. These two telephones were shifted and
connected in a separate building adjacent to S.R.C. Thakur bazar.
Sri M.C. Goyari the then P.I. had given genuineness certificate
on the body of the ~~two~~ aforesaid two applications as "the party
is genuine" and feasible from D.P. No." without verifying
the genuineness of the same because no room or any establishment
were there in the name of Sri Sharma, and Sri Narula in S.R.C.
Thakur Bazar.

Q-4: What was the wrong for loss of the department because of the
lapses/ negligence on the part of the delinquent official?

Ans: In respect of telephone No. 33211 and 31464 the wrongful loss
to the department are Rs. 366995/- and Rs. 329233/- respectively.
Then the wrongful loss to the department in respect of telephone
No. 31309 is Rs. 20387/-.

Cross examination on behalf of the SPS :

Q-1: Did you ^{examined} ~~ask~~ the subscriber of telephone No. 33211 which belongs
to Mr. Nandalal Sharma, and Telephone No. 34610 which belongs to
Mr. Raj Kumar Narula during the time of investigation?

Ans: Yes.

Q-2: Did you found any materials of telephone i.e. (instrumental wire)
at the rooms where the shifting alleged?

Ans: Before investigation the Telecom Vigibance Officer Guwahati
and others visited the place after disconnection of the two
telephones namely 33211 and 34610 ~~xxx~~ (new 31464) and by the
department and instrument ~~xxx~~ and wire taken by department.

M. C. Goyari
(M.C. GOYARI) 29.6.99
SPS

CONCLUDED

(A. B. SHARAN)
INQUIRING AUTHORITY

(K. BARMAN)
SW-6

NO.OSD(PT)/82/97
Dated at Guwahati, the 1.7.99.

VENUE : CONFERENCE HALL
O/O CGMT, ASSAM CIRCLE
GUWAHATI-7.

08
QUESTION BY I.O. under Rule CCS (CCA) 14(16).

Q-1 : Please brief to the inquiry the circumstances appearing against you out of the deposition of the state witnesses came before you in their evidence ?

Ans : The misuse of the telephone as per my knowledge due to the not disconnecting at the proper time of the said telephone because the said two telephones are not disconnected for more than 1 year as per statement given by Sri Monomohan Dey, AO TRA and Sri Manabendra Saha, AO TRA. If the said two telephones could have disconnected in due time the outstanding of the said two telephone would not raised so huge amount of bills. So I think this is the main lapses of the department. This is beyond the responsible fox of the SPS.

Q-2 : Please through some light on the procedure adopted at the relevant period for the verification of genuineness / bonafideness of the subscriber in respect of transfer of his telephone to his desired place ?

Ans: As per my knowledge goes and as per departmental norms of verification, in the relevant case the place for shifting of Telephone No. 33211 was rented house named S.R.C. Thakur Bazar. The party (Nandalal Sarma) had shown me rent receipt of the room in the name of Nandalal Sarma and accordingly I submitted the genuineness report of the said telephone on the basis of rent receipt obtain by the party.

In the case of Telephone No. 34610 (31464) the place was rented house and the same places of verification was adopted by me on the basis of rent receipt.

(CONCLUDED)


(A.E. SHARAN)
INQUIRING AUTHORITY.

M.C. Gayari
(M.C. GAYARI)
SPS

CONFIDENTIAL

-94- Annexure - 10
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GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE GENERAL MANAGER TELECOM
KAMRUP TELECOM DISTRICT
GUWAHATI-7

NO. GM/X-19/99-00/28

7.2.2000
Dated at Guwahati, 03.02.2000

Shri Madan Chandra Gayari, Phone Inspector, presently working under SDE (MIS) in the Office of General Manager Telecom, Kamrup District, Ulubari, Guwahati-7, was proceeded under Rule-14 of CCS (CCA) rules, 1965 vide TDM/Guwahati Memo No.TDM/X-19/93-94/1 dated 15.07.1994. The article of charge was that while Shri Madan Chandra Gayari was posted and functioning as Phone Inspector in the Office of SDO Phones (West), Guwahati during the year 1991-92, failed to maintain absolute integrity and devotion to duty as much as he gave genuineness certificates on the body of the original telephone shifting applications of Telephone No. 33211 and 34610 (31464 new) to S.R.C. Thakur Bazar, Athgaon, A.T. Road, Guwahati without verification of genuineness of the same and also shifted the telephone No. 34610 (new No. 31464) to the adjacent building named "Bhola Market" of S.R.C. Thakur Bazar, Athgaon, A.T. Road, Guwahati, and thereby he contravened the provisions of Rule 3(1)(i)(ii) of CCS (Conduct) rules, 1964.

2. Inquiry report was submitted by Inquiry Officer, Shri A.B. Saran, vide Memo No. OSD(Pt)/82/97 dated 02.09.1999, concluding that "circumstances and evidence on record, I am of the opinion that PREPONDERANCE OF PROBABILITY goes against the SPS Shri Madan Chandra Gayari and accordingly, I hold that the charge of misconduct under 3(1) (ii) of CCS (Conduct rules) 1964 (i.e. failed to maintained devotion to duty) levelled against the SPS stands established whereas other charges of misconduct under 3(1)(i) of CCS (Conduct) rules, 1964 could not be proved.
3. Shri Subrata Ghorai, Deputy General Manager (P&A), as Disciplinary authority has passed an order of penalty vide Memo No. GM/X-19/99-00/23 dated 01.10.99 that the pay of Shri Madan Chandra Gayari, Phone Inspector office of General Manager Telecom, Kamrup District, Guwahati be reduced by four stages from Rs. 6800/- to Rs. 6200/- for a period of three years in the scale of pay of Rs. 5000-150-8000/- with effect from 01.10.99 without cumulative effect.
4. Shri Madan Chandra Gayari, Phone Inspector office of the General Manager Telecom, Kamrup Telecom District, Ulubari, Guwahati-7, has submitted an appeal to the General Manager Telecom, Kamrup District, Guwahati-7 vide letter dated 29.10.99 against the order passed by Disciplinary authority vide Memo No. GM/X-19/99-00/23 dated 01.10.99 by Deputy General Manager (P&A) Office of General Manager Telecom, Kamrup Telecom District, Ulubari, Guwahati-7.

*Attended
while
Adv.*

5. Shri Madan Chandra Gayari, Phone Inspector in presence of his Defence Assistant, Shri Sankar Das, was ^{heard} in person on 26.11.99. During the personal hearing Shri B.B. Dutta, SDE (Vigilance) O/O GM Telecom, Kamrup, Guwahati was also present. During personal hearing Shri Madan Chandra Gayari and his Defence Asstt. has expressed that shifting was not done at the wrong address otherwise subscriber should have complain about shifting of his telephone to wrong place. They had also expressed that genuineness does not mean that person is honest or have no malafide intention and also heavy amount of outstanding was due to late disconnection of telephone due to the mistake of TRA branch, not by the genuineness certificate given by Shri Madan Chandra Gayari.

6. After going through the records and after personal hearing, it is found that heavy outstanding got accumulated due to delay in disconnection by the TRA Unit and in order to fix up responsibility, the inquiry is already in progress against the number of Officers/Officials. After going through the records, it is found that outstanding on the above referred telephone started increasing immediately after telephone was shifted to the new location. As per the Departmental guidelines issued vide No. 2-26/84-PHA dated 29.11.84, shift of telephone is ordered straightway after checking the genuineness by verifying the signature of the applicant. Hence, there is no need of genuineness verification by the field P.I./JTO before issuing the shift Advice Notes. However, in this case genuineness verification has been given on the body of the application which was not necessary. As per Departmental Order No. 2-43/76-PHA dated 17.02.1977, within a week or fortnight of the opening or shifting of a number, the Telephone Inspector/JTO should visit the site in order to check the bonafide apart from checking the work man-ship of the job done. In case of reasonable doubt documentary evidence should be asked. In this case this procedure has not been followed by Shri Madan Chandra Gayari, the then Phone Inspector Office of SDO Phones (West), Guwahati.

Shri Madan Chandra Gayari, Phone Inspector has also quoted Court verdict special case No. 37© of 1993 State 'Vs. Others vide judgement and order dated 13.08.96, indicating that there is no prima facie case to proceed against "Shri Madan Chandra Gayari". After going through the Court verdict, it is found that Hon'ble Judge has mentioned in the same court verdict that there is no other incriminating materials against the accused Shri Madan Chandra Gayari, except for his alleged negligence for not consulting required documents before submission of the report. So, accused may be dealt departmentally.

*Attested
@ whole*

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- 3 -

However, I take lenient view and provide opportunity to Shri Madan Chandra Gayari, Phone Inspector for correcting himself in future and as per the powers vested with me as an appellate authority. I Shri G.D. Yadav, General Manager Telecom, Kamrup Telecom District, 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 overcome the shortcomings, reduce the punishment from reduction of pay by 4 stages for a period of 3 years with effect from 01.10.99 to reduction of pay by 2 stages for a period of 1 year with effect from 01.10.99.

ORDER

It is therefore ordered that pay of Shri Madan Chandra Gayari, Phone Inspector Office of the General Manager Telecom, Kamrup Telecom District, Ulubari, Guwahati-7 be reduced by 2 stages from Rs. 6800/- to Rs. 6500/- for a period of 1 year in the scale of pay of Rs. 5000-150-8000/- with effect from 01.10.99 without cumulative effect.

3.1.10.214
Self
(G.D. Yadav)
General Manager Telecom
Kamrup Telecom District
Guwahati-7

Copy to :-

1. The S.P. CBI/ACB/Guwahati. This has a reference to CBI case No. RC-12/A/93-SHG.
2. The Vigilance Officer O/O CGMT/Assam, Guwahati-7
3. DE(Admn) O/O GMT/Kamrup, Guwahati-7
4. Shri A.B. Saran, I/O, OSD, O/O CGMT/Bihar Circle, Patna.
5. Shri M.C. Gayari, P.I. O/O GMT/Kamrup, Guwahati-7
6. The Accounts Officer(Cash) O/O GMT/Kamrup, Guwahati.
7. Spare.

3.1.10.214
General Manager Telecom
Kamrup Telecom District
Guwahati-7

A H estel
Chidre

1.10.214

91 - (Miscellaneous)
98 D/E S
2.9.99 Security S, R
1.10.99 Penalty S
7.10.214 Border S ✓

-97- Annexure-11
DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE DY GENERAL MANAGER, GUWAHATI.
APPLICATION FOR INTER-EXCHANGE SHIFTING

TO

THE COMMERCIAL OFFICER OFFICE OF THE DY.G.M.GUWAHATI.

SUBJECT: SHIFTING OF TELEPHONE NO:- 33211

Sir,

Please arrange for the shifting of my Telephone NO as per particulars given below:-

1. Name of the Subscriber :- NAND LAL SARKAR
(In capital letter whose name the Telephone was sanctioned)
2. Address where the Telephone is working :- 40 Dinesh Voharyan Neer Relief Nursing Home Station
3. (a) Address for correspondence :-
(b) New Billing Address :-
4. (a) Whether Telephone is working at present :- Yes/No.
(b) If not working, give details of the connection (Tick one) :-
(i) Temporarily disconnection due to.....
(ii) Discxn. for Shifting.
5. (a) Accessories with the telephone :-
i. Plug & Socket
ii. Flamm 103/104
iii. Parallal cxns
iv. Long Cord
v. Any other.
6. (b) STD Facility :- Yes/No.
7. (a) Are the processor presently working on telephone required at the new place :- Yes/No.
(b) Address where the Telephone requires to be shifted :- Go Kamlesh kr Thakur SRC Thakur Bazar A.T. Road Forest Colony Guwahati
8. (c) Status of Applicant in the organisation/Firm/Company. :-
(c) Date of Installation :-
9. If shifting is not immediately feasible, whether Telephone exn. should continue working at its present address or should be could under shift. :- Continue to work/Closed under shift.
10. In case Telephone is not eligible for shift whether it should continue to work at its present Address or should be disconnected under safe custody. :- Should continue/To be disconnected
11. Billing Address of the Subscriber during the period of dis/safe custody :-
12. State if subs will carry the instrument with him or to New place of installation:-

Signature of the Subscriber.

[Signature]

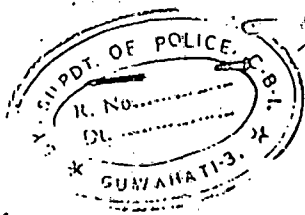
The party is genuine
and can be feasible for
200. 7909/

200. 7909/

PL ISSUED 1/2

After note with 5087
tested with 70691

Sd/- [Signature]
22/11/93



23/11/93
-12
113

DISTRICT : KAMRUP.

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA; MANIPUR;
TRIPURA; MIZORAM AND ARUNACHAL PRADESH)

(CRIMINAL ORIGINAL JURISDICTION)

To

The Hon'ble Shri U.L. Dhat, B.Sc., B.L., the
Chief Justice of the Gauhati High Court &
His Lordship's companion Justices of the said
Hon'ble Court.

on Monday 29/11/93
(1) No FIR
(2) He has been arrested by police
(3) We are [unclear] [unclear]
(4) No ingredients of 438 CrPc

IN THE MATTER OF :

An application Under Section
438 of the Code of Criminal
Procedure.

- AND -

IN THE MATTER OF :

Shillong C.B.I. registered Case
No. RC-12(A)/93 SIO Under Section
120B/420 I.P.C. and Section 13(2)
read with Section 13(1)(d) of the
Prevention of Corruption Act,
1988.

- AND -

-99-

-2-

IN THE MATTER OF :

A Notice dated 6.10.93 issued by
the Inspector of Police, C.B.I.,
Guwahati to the petitioner.

- AND -

IN THE MATTER OF :

Shri R.K.Narula,
Akashdeep Building,
Police Reserve Lane,
Lakhtokia, Guwahati-781001.

... PETITIONER.

- VERSUS -

Union of India ... OPPOSITE PARTY.

The humble petition for and on
behalf of the petitioner above named -

MOST RESPECTFULLY SHEWETH :

1. That the petitioner is a citizen of India and
a reputed businessman of Guwahati. The Petitioner's
business amongst others includes manufacturing of Drugs
(Medicines) and distribution and he is an old Government
contractor in this line.

3. That ...

2. That the petitioner who has his own office building along with his residence at Lakhtokia, Guwahati, had to leave for Delhi suddenly in the month of April, 1991 in view of his illness and the serious illness of his wife. It may be mentioned here that the petitioner's relatives are permanent residents of Delhi and the petitioner along with his wife left for Delhi for urgent medical treatment keeping his own business at Guwahati at a halt.

3. That while in the year, 1991 the petitioner was at Guwahati, he had nearly 5 Telephones including Telephone No.31464 which stood in his own name. At that particular point of time, the petitioner intended to open an office at S.R.C.Thakur Bazar, A.T.Road, Athgaon, Guwahati and with this object in view he engaged one of his office staff to look for a suitable accommodation there. In the meantime, the petitioner thought that in the event of his opening an office there, his urgent need would be of a Telephone and instead of applying for a new Telephone, the petitioner vide his letter dated 16.4.91 addressing the same to the S.D.O. Telephones, Ambari requested to shift the Telephone No.34610 to the address where he intended to open an office. The petitioner applied for the shifting of the telephone even before getting the accommodation as he thought that the formalities in shifting the telephone

normally ...

normally takes a long time. Moreover, the said Telephone No. 34610 was out of order since a long time ^{and} at the time of the petitioner filing the application for shifting.

A copy of the letter dated 16.4.91 written by the petitioner to the S.D.O., Telephone is annexed hereto and marked as Annexure-I to this petition.

4. That during that time, the petitioner was suddenly fell ill and his wife was operated upon in a Private Nursing Home at Guwahati and in view of the post operative complications the petitioner along with his wife left for Delhi where prolong treatment was advised by the Doctors which is still continuing. Due to this disturbed mental condition the petitioner abandoned the idea of opening the office at the place referred to above. The Petitioner ^{though} ~~alongwith~~ due to oversight and in view of his hurried temporary shifting to Delhi could not cancel the letter addressed to the S.D.O., Telephones in connection with the shifting of the telephone, he did not observe other formalities as required under the Rules and he had reason to believe that the matter was closed. The petitioner never opened any office at S.R.C. Thakur Bazar, A.T. Road, Athgaon and the telephone apparatus of Telephone No. 34610 is still lying dead in his residence at Akashdeep Building, Lakhtokia, Guwahati.

5. That ...

702-171

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-5-

5. That in the ^{last} current month, after a lapse of over 1 year, the petitioner visited Guwahati and a few days after arrival, he received a Bill along with a notice from the Telecom District Manager, Kamrup asking for payment of a huge sum of Rs. 3,30,794/- as outstanding from the period from 1.4.91 to 1.3.92 relating to the Telephone No. 31464. No sooner had he replied to the Telephone Department raising objection in the matter of a dead and unused telephone, he received a notice from the Inspector, C.B.I. Guwahati to attend his Office on 11.10.93 in connection with a case registered vide No. RC-12(A)/93.

Copies of the Bill aforesaid and notice appended thereto and a copy of the notice received from C.B.I., Inspector dated 6.10.93 are annexed hereto and marked as Annexures-2 and 3 to this petition.

6. That the petitioner, in strict compliance with the notice sent by the Inspector of C.B.I., Guwahati attend the office at the date and time specified and met the Inspector. The C.B.I. official narrated the petitioner the cause behind summoning and the petitioner was surprised at hearing the whole matter. The C.B.I. Inspector made him know that taking advantage of his letter dated 16.4.91 asking for shifting of the telephone one person of the said area in collusion with some persons of the telecom department got the telephone transferred to Public Call Office (P.C.O.) there. The C.B.I. Inspector

further ...

further informed that in that connection a Case has been registered and two persons have already been arrested. The petitioner rendered his statement as a witness in the case registered and assured the C.B.I. Inspector to come to give further statements as and when necessary.

7. That the petitioner humbly submits that his innocence and good faith has been exploited by certain unscrupulous people and there is no fault on his part in the case under investigation. But the petitioner apprehends that those people may try to implicate him in the case under investigation which may ultimately result arrest and would mean lowering his prestige and honour in the public mind.

8. That the petitioner humbly submits that he should pray to this Hon'ble Court under the provisions of law to grant him bail in the event of his arrest in the case under reference and to prevent the abuse of the process in the interest of justice and law.

9. That this is a fit case where this learned court may exercise its power U/s. 438 of the Code of Criminal procedure and grant the petitioner anticipatory bail.

10. That this petition is filed bonafide and in the interest of justice.

In the ...

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-7-

In the premises aforesaid, it is most humbly and respectfully prayed that your Lordships may be pleased to admit this petition and allow the petitioner to go on bail in the event of his arrest in Shillong C.B.I. Case No. RC-12(A)/93 on such terms and conditions as your Lordships may deem fit and proper and/or pass such further order or orders as your Lordships may deem fit and proper and for this act of kindness, the petitioner, as in duty bound, shall ever pray.

Affidavit ...

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AFFIDAVIT

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I, Shri Raj Kumar Narula, Son of Late Sohan Singh Narula, aged about 57 years, resident of Akash Deep Building, Guwahati-1, by religion Hindu, by profession Business, do hereby solemnly affirm and state as follows :

1. That I am the petitioner of the instant petition and as much I am fully conversant and acquainted with the facts and circumstances of the case.
2. That the statements made in this petition in paragraph 1, 2 and 6 are true to my knowledge, those made in paragraphs 3 & 4 are true to my information derived from records which I believe to be true and rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the th day of November, 1993 at Guwahati.

Identified by me -

DEPONENT

Advocate's Clerk.

- 106 - Annexure - 13

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GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS

NO - TDM/X-14/43-11/1

DATED. 24.6.11
15.7.94

M E M O R A N D U M

The President/undersigned proposes to hold an inquiry against Shri M.C. Gogoi 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 articles of charge (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III & IV).

2. Shri M.C. Gogoi, P.J. is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. Shri M.C. Gogoi, P.J. 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 refused 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 M.C. Gogoi, P.J. is invited to Rule 20 of the Central Civil Services (Conduct) Rule 1964, under which no Government Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri M.C. Gogoi, P.J. is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rule, 1964.
6. The receipt of the Memorandum may be acknowledge.

(By order and in the name of the President).

Name and Designation of the
Competent Authority.

Atkhar S
Chakraborty
Adv.

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DRAFT ARTICLE OF CHARGE TO BE FRAMED AGAINST SHRI MADAN CH. GOYARI, PHONE INSPECTOR IN THE O/O S.D.O. PHONE(WEST) AMBARI, GUWAHATI, ASSAM.

T While Shri M.C. Goyari, was posted and functioning as Phone Inspector in the O/o S.D.O. Phone(West) Guwahati during the year 1991-92 failed to maintain absolute integrity and devotion to duty as much as he gave genuiness certificates on the body of the original telephone shifting applications of telephone Nos. 33211 and 34610 to SRC Thakur Bazar Athgaon, A.T. Road, Guwahati without verification of genuiness of the same and also shifted the telephone No. 34610 (New No. 31464) to the adjacent building named " Bhola Market" of SRC Thakur Bazar, Athgaon, A.T. Road, Guwahati and thereby he contravened the provisions of Rule 3 (1) (2) of CCS (Conduct) Rule, 1964.

Genuiness Certificate
Without verification & genuiness

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K
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N

after shifting along-

~~STATE~~ STATEMENT OF IMPUTATION IN SUPPORT OF THE ARTICLE OF CHARGE PROPOSED TO BE FRAMED AGAINST SHRI MADAN CH. GOYARI, PHONE INSPECTOR O/O THE S.D.O. PHONES(WEST) AMBARI, GUWAHATI IN CASE NO. RC. 12(A)/93-SHG.

Shri M.C. Goyari was posted and functioning as Phone Inspector in the O/o the S.D.O. Phones(West)Guwahati, Assam, during the year 1991-92.

It is alleged that Shri Mithilesh Thakur a private person of Athgaon, opened a STD/PCO No. 40997 on 20/3/91 at Shri Ram Charit (SRC) Thakur Bazar (1st Floor), Athgaon, A.T. Road, Guwahati. ✓

It is alleged that Shri Nandalal Sharma submitted an application dt. Nil for shifting of his telephone No. 33211 to C/O Kamallesh Thakur, SRC Thakur Bazar (1st floor), Athgaon, A.T. Road, Guwahati and shifting was effected on 12/6/91, jumpering slip dtd. 11/6/91 and SRC for telephone No. 33211 and installed in the adjacent room of STD/PCO of Shri Mithilesh Thakur.

It is alleged that Shri Rajkumar Narula submitted an application dt. 16/4/91 for shifting of his telephone No. 34610 to SRC Thakur Bazar, Athgaon, Guwahati and shifting was effected on 18/5/91, jumpering slip dt. 18/5/91 and SRC of telephone No. 3464 (Old No. 34610).

It is alleged that Shri M.C. Goyari, PI gave the genuiness certificate/report on the body of the application of Shri Nandalal Sharma for shifting of telephone No. 33211 without verification of genuiness as under "The party is genuine and connection is feasible from DP. 7909". Similarly Shri Goyari also gave the genuiness certificate/report on the body of the application of Shri Rajkumar Narula for shifting of telephone No. 34610 without verification of genuiness as under "The party is genuine and feasible from DP 9252" on 22/1/3 5/5/91.

It is alleged that the telephone No. 34610 shifted and installed in a room of adjacent building of SRC Thakur Bazar named "Bhola Market" opposite of STD/PCO of Shri Mithilesh Thakur by Shri MC. Goyari, PI with malafide intention.

It is alleged that "SRC Thakur Bazar" and "Bhola Market" never belong to Shri Nandalal Sharma and/or Shri Raj Kumar Narula. There was no agreement of rent between the owners of the said buildings and Shri Nandalal Sharma/Shri Rajkumar Narula for possession/occupation till the date of shifting of the said two telephones.

It is alleged that due to their malafide intention outstanding of the said two telephones after shifting along-

cont/-2....

competent designation of ..

AA est of
Adv

with STD/PCO of Shri Mithilesh Thakur is Rs 7,48,213.00.

The said acts of Shri M.C. Goyari, PI established that he failed to maintain absolute integrity and devotion to duty as enjoyed upon him as public servant.

He thus contravened the provisions of Rule 3 (1) (2) of CCS (Conduct) Rule, 1964.

Statement of Sri Nandalal Sharma (Private Person) owner
of telephone No-33211 S/O Sri Ghanashyam Prasad Sharma
Resident of Santipur H/O Sri Dinesh Sharma, Guwahati-9.
Age-49 years.

Home Address-Vill& PO-Churu, PS-Churu, Dist-Churu
State-Rajasthan.

I am as above at Guwahati since my birth.
Earlier I was a partner of Hotel Manas Sarobar, SRCB
Road, Fancy Bazar, Guwahati. This Hotel was established
in the year 1964-65. We were altogether 8 (eight)
partners including myself. I have now withdrawn my partnership
share in the month of April, 1993, due to my health reason.

On being asked I am to state that the telephone
No-33211 was installed in our Hotel Manas Sarobar, SRCB Road,
Fancy Bazar in Jan, 1988. In the last part of 1988 this
telephone was shifted to Santipur in the address C/O
Dinesh Baishya, near Relief Nursing Home, Santipur, GHY-9
as I was residing there.

On being asked I am to say that I was not sole
Proprietor of the Hotel Manas Sarobar as mentioned in the
telephone address. I was only a partner of the hotel.

An application is shown to me regarding the
shifting of my telephone from Santipur to SRC Thakur Bazar, 1st
floor, Athgaon, A.T. Road, Guwahati and I admitted that I have
submitted this application for shifting of my telephone
No-33211 to the Telecom Deptt. The relevant column of the said
application was filled up by one Sri Dinesh Sharma S/O
Sri Mahabir Prasad Sharma, partner of Hotel Ambar Palace,
Fancy Bazar, Guwahati-1. I only put my signature and submitted
to the Telecom Deptt. Now I could not remember on which date
I had submitted this application for shifting as I did not put
the date below my signature.

I intended to take a room on rent from Kamalesh
Thakur Owner of STD/PCO at SRC Thakur Bazar, Athgaon. He showed
me a room adjacent to his STD/PCO and he assured me to give
this room for business purpose. My son Sri Vijay Sharma intended
to do Share Market business at SRC Thakur Bazar, Athgaon and for
this purpose I approached Sri Kamalesh Sharma for his adjacent
room on rent. But ultimately my son gave up his mind for said
business for good.

On being asked I am to state that I do not know who
is Mithilesh Thakur and who is Kamalesh Thakur. On that day the
young boy aged about 30 years told his name as Kamalesh Thakur.
So I gave my address C/O Kamalesh Thakur.

I do not know when my telephone No-33211 was shifted
to SRC Thakur Bazar, Athgaon, because I went to my native place,
Rajasthan in the month of June 1991, with my family.

Cont on Page-2

Regarding outstanding, I did not receive any telephone bill. The last bill was received 4(four) months ago.

I never used this telephone after shifting. This telephone might have been used by somebody. I am trying to find out any evidence regarding the misuse of my telephone and if found out I shall submit the same for necessary action.

On being asked whether my telephone was used by Sri Mithilesh Thakur owner of STD/PCO at SRC Thakur Bazar, I am to state that since there is no evidence about the use of my telephone, then I can not tell any body's name.

I have given this statement from my own accord.

R.D & A.C

Recorded by me

Sd/
11.10.93
(K.Barman)

Insp/CBI/Guwahati

PROSECUTION SANCTION ORDER.

WHEREAS, it is alleged that while Shri Madan Ch. Goyari, P.I. and Shri Ablesh Sharma, R.H. posted and functioning as Phone Inspector under S.D.O. Phones (West) and Regular Mazdoor under A.E. Cable, Guwahati respectively entered into a criminal conspiracy with Shri Mithilesh Thakur, Shri Nandalal Sharma and Shri Raj Kumar Narula private persons of Guwahati and in pursuance thereof both of you committed the offences of cheating, criminal misconduct etc. The detailed facts are as under ;

It is alleged that Shri Mithilesh Thakur a private person applied for STD/PCO in the name and styled as M/S Fast and Quick Tele Service Centre at 1st Floor of Shri Ram Charit (SRC) Thakur Bazar, Athgaon, A.T. Road, Guwahati and submitted an application dt. 1/1/91 addressed to T.D.M. Guwahati. A STD/PCO in the name of Shri Mithilesh Thakur was allowed and installed at 1st Floor of SRC Thakur Bazar, Athgaon, Vide Advice Note No. TDM/STD PCO-1246 Dt. 25/2/91 and Vide agreement for PCO Dt. 25/2/91 between Shri Mithilesh Thakur and the Department. The STD/PCO No. 40997 (Old No. 33081) connection was effected on 20/3/91 vide Jumping Slip Dt. 13/3/91 and SRC of Telephone STD/PCO No. 40997.

It is alleged that Shri Nandalal Sharma owner of telephone No. 33211 submitted an application for shifting of his telephone No. 33211 from Santipur, Guwahati to SRC Thakur Bazar in the address C/o Kamallesh Thakur, SRC Thakur Bazar (1st Floor) Athgaon, Guwahati.

It is also alleged that Shri Raj Kumar Narula submitted an application Dt. 16/4/91 for shifting of his telephone No. 34610 from "Akash Deep Building" Lakhtokia to SRC Thakur Bazar, Athgaon with STD Facility.

It is alleged that Shri Madan Ch. Goyari, Phone Inspector issued genuiness Certificates/reports in respect of above telephone connections and recommended shifting of above telephones. In respect of telephone Nos. 33211, Shri Goyari submitted his report "The party is genuine and connection is feasible from DP NO. 7909". In respect of telephone No. 34610 he submitted his report as "The party is genuine and feasible from DP 9252/1 on 5/5/91. He submitted the above report/certificate without verifying the genuiness and never obtained any proof/document regarding the possession/occupation of the building "SRC Thakur Bazar" by the aforesaid persons.

Accordingly the telephone No. 33211 was shifted to the adjacent room of STD/PCO of Shri Mithilesh Thakur in the aforesaid building and telephone No. 34610 was shifted in front room of the said PCO and connected with telephone No. 31464. The shifting of

cont/-2.....

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the aforesaid telephones was effected on 12/6/91 and 18/5/91 Vide Advice Note No. SFT/3088 Dt. 7/6/91. Jumpering Slip Dt. 11/6/91 and Advice Note No. SFT/3073 Dt. 18/5/91 Jumpering Slip Dt. 18/5/91 respectively.

It is further alleged that though the telephone No. 34610 was requested for shifting to "SRC Thakur Bazar" but Shri Goyari with dishonest intention shifted the said phone and installed at "Bhola Market" in front room of STD/PCO of Shri Mithilesh Thakur.

It is alleged that thereafter, Shri Mithilesh Thakur and Shri Ablesh Sharma a Regular Mazdoor under A.E. (Cable), Exchange, Pan Bazar, Guwahati made long distance calls through the aforesaid telephones as a result the outstanding against the said telephone Nos. is Rs 3,66,995.00 and Rs 3,29,233.00 respectively till the date of disconnection.

It is alleged that Shri Ablesh Sharma, a Regular Mazdoor took a STD/PCO at Shri Ram Market, Chatribari Road on contract basis from one private person and the telephone No. 31309 was got connected in his STD/PCO. The physical existence of this telephone has been confirmed in his STD/PCO at Chatribari Road. Shri Ablesh Sharma and his younger brother operated this telephone with STD/PCO. As a result the outstanding against the telephone No. 31309 is Rs 2,03,287.00 for the period from 16/5/92 to 15/9/92 till disconnection.

It is alleged that during the search in the residential premises of Shri Ablesh Sharma four telephone sets, telephone wire, Receiver set, Battery eliminator etc were recovered from his possession on 30/9/93, which shows misuse of telephone by unauthorized connection of the above telephones.

Whereas, the above said acts of Shri Madan Ch. Goyari and Shri Ablesh Sharma constitute offences punishable u/s 120B, 420 IPC and Sec. 13(2) r/w Sec. 13(1) (d) of P.C. Act 1988.

And whereas, I
(name of authority who can remove them from service) competent to remove Shri
from Service, on careful examination of facts, circumstance, evidence and materials produced before me, fully satisfied that the aforesaid
..... Should be prosecuted in a Court of Law for the commission of offences detailed above.

cont/-3.....

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Premises of Shri Ablesh Sharma
wire, Receiver set, Battery eliminator etc
from his possession on 30/9/93, which shows
misuse of telephone by unauthorized
connection of the above telephones.

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Now, whereas, I
 being the authority competent to remove
 from Services, Vide Rule No.
 of 1965 Rule 11 (viii) (Name of P&T Dis-
 cipline & Appeal Rule) do hereby accord sanction u/s 10 of
 PC. Act, 1988 for prosecution for the offence/offences arising
 out of the said facts detailed above and for taking up the
 cognizance of the said offences by the Court of competent
 jurisdiction.

(Office Seal)

गुवाहाटी टेलीफोन
 गुवाहाटी टेलीफोन
 गुवाहाटी टेलीफोन
 गुवाहाटी टेलीफोन

Signature
 Name ... R.A.M. KUMAR
 Designation T.D.M. K.A.M. RUP
 (of competent authority)

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NO.OSD(PT)/82/97
Dated at Guwahati, the 29.6.99.

VENUE: CONFERENCE HALL,
O/o CGMT, GUWAHATI.

Disciplinary proceeding under Rule 14 of the CCS (CCA) Rules 1965 against Shri M.C. Goyari, P.I. o/o G.M.KTD? Guwahati.

DEPOSITION OF SW 6

Deposition of Sri K. Barman, Inspector, CBI/ACB, Guwahati Branch, at the relevant period I was working as Inspector CBI? Guwahati (Investigating Officer of the case) and now also I am working at the same place and same capacity.

EXAMINATION-in-CHIEF by P.O.

Q-1: How did you came for investigation of this case?

Ans: This case was registered in CBI Shillong Branch and endorsed to me for investigation of the case.

Q-2: Against whom this case was registered?

Ans: Initially this case was registered against Sri S.P. Deb the then JTO and Sri Mitilesh Thakur a private person and others. During investigation the following persons found involved.

1. Sri Mitilesh Thakur private person Sri Abolesh Sarma, PM under A.R. Calle Sri S.P. Deb, JTO Sri Modan Ch. Goyari, P.I. Sri Nandalal Sarma, Private person, Sri Raj Kumar Narula, private person, Sri Nathuni Singh, L.M. & Sri Bogaram Rava and Sri Haledhar Das, TGA.

Q-3: How did you find the role of ~~Sri S.P. Deb~~ ^{P.I. M.C. Goyari,} Sri ~~S.P. Deb~~ leading to charges of Departmental action against him?

Ans: During investigation it was found that one Sri R.K. Narula, had applied for shifting of ~~this~~ telephone No. 34610 vide his application dated 16.4.91 for shifting of his telephone to S.R.C. Thakur market, A.T. Road, Athgaon Guwahati. Another Sri Nandalal Sharma, had also applied for shifting of his telephone No. 33211 vide application dtd. nil for shifting of his telephone to C/o Kamallesh Kumar Sharma, S.R.C. Thakur Bazar, first floor A.T. Road, Athgaon Guwahati. These two telephones were shifted and connected in a separate building adjacent to S.R.C. Thakur bazar. Sri M.C. Goyari the then P.I. had given genuineness certificate on the body of the ~~two~~ aforesaid two applications as "the party is genuine" and feasible from D.P. No...." without verifying the genuineness of the same because no room or any establishment were there in the name of Sri Sharma, and Sri Narula in S.R.C. Thakur Bazar.

Q-4: What was the wrong for lost of the department because of the lapses/ negligence on the part of the delinquent official?

Ans: In respect of telephone No. 33211 and 31464 the wrongful loss to the department are Rs. 366995/- and Rs. 329233/- respectively. Then the wrongful loss to the department in respect of telephone No. 31309 is Rs. ~~203287/-~~ ^{203287/-}.

Cross examination on behalf of the SPS :

Q-1: Did you ^{examined} ~~ask~~ the subscriber of telephone No. 33211 which belongs to Mr. Nandalal Sharma, and Telephone No. 34610 which belongs to Mr. Raj Kumar Narula during the time of investigation?

Ans: Yes.

Q-2: Did you found any materials of telephone i.e. (instrumental wire) at the rooms where the shifting alleged?

Ans: Before investigation the Telecom Vigibance Officer Guwahati and others visited the place after disconnection of the two telephones namely 33211 and 34610 ~~xxx~~ (new 31464) and by the department and instrumental and wire taken by department.

M. C. Goyari
(M.C. GOYARI) 29.6.99
SPS

CONCLUDED

(A.B. SHARAN)
INQUIRING AUTHORITY

(K. BARMAN)
SW-6

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QUESTION BY I.O. under Rule CCS (CCA) 14(18).

Q-1 : Please brief to the inquiry the circumstances appearing against you out of the deposition of the state witnesses came before you in their evidence ?

Ans : The misuse of the telephone as per my knowledge due to the not disconnecting at the proper time of the said telephone because the said two telephones are not disconnected for more than 1 year as per statement given by Sri Monomohan Day, AO TRA and Sri Manabendra Saha, AO TRA. If the said two telephones could have disconnected in due time the outstanding of the said two telephone would not raised so huge amount of bills. So I think this is the main lapses of the department. This is beyond the responsible fax of the SPS.

Q-2 : Please through some light on the procedure adopted at the relevant period for the verification of genuineness / bonafideness of the subscriber in respect of transfer of his telephone to his desired place ?

Ans: As per my knowledge goes and as per departmental norms of verification, in the relevant case the place for shifting of Telephone No. 33211 was rented house named S.R.C. Thakur Bazar. The party (Nandalal Sarma) had shown me rent receipt of the room in the name of Nandalal Sarma and accordingly I submitted the genuineness report of the said telephone on the basis of rent receipt obtain by the party.

In the case of Telephone No. 34610 (31464) the place was rented house and the same places of verification was adopted by me on the basis of rent receipt.

(CONCLUDED)

A. E. Sharan
(A. E. SHARAN)
INQUIRING AUTHORITY.

M. C. Gayari
(M. C. GAYARI)
SPS

O. A. NO. 221 OF 2000

Shri M. C. Choudhury Gayari

..... Applicant

- VS -

Union of India & others

..... Respondents

In the matter of :

Written statements submitted by Respondents.

The respondents beg to submit ~~the written~~
the written statements as follows :

1. That with regard to para 4.1 the respondents beg to offer no comment.
2. That with regard to para 4.2 the respondents state that it is correct that a case No. 37(C)/93 state Vs M. C. Gayari & others was registered in Special Judge's Court, Assam alongwith other co-accused for incurring loss to the Telecom Department by negligence in duty. The case was initiated by CBI/Guwahati. The Special Judge in his order dated 13-8-1996 discharged the case in respect to Shri M. C. Gayari. Shri Gayari was freed from the criminal liability but as per note in the judgement departmental action for negligence/lapses in duty was open. In view of this note for lapses in duty is perfectly in order.
3. That with regard to para 4.3 the respondents state that the official was charge-sheeted under Rule - 14 for contravening the provisions of Rule 3(I) (i) & (ii) of CCS (Conduct) Rules 1964 and on conclusion of the case of the Special Judge and as per direction of CAT, Guwahati in OA No. 248/98 the inquiry proceedings were started and completed. It is a fact that the applicant had filed different cases seeking various reliefs in CAT, Guwahati such as OA - 59/96, CP-14/97 & RA-6/99 filed by Department. The respondent department has entered into appearance in all the cases by filing rejoinders and

Contd..... 2/P

Filed by

(A. DEBROY)

Sr. C. C. C.

C. A. T., Guwahati Bench

also complied with the judgement and orders passed by the Hon'ble Tribunal.

4. That with regard to para 4.4 the respondents state that the departmental inquiry was not initiated on the same subject matter. The Special Judge gave cognizance to criminal liability whereas departmental proceedings were started for departmental lapses committed by the applicant during execution of shifting of Telephones No. 33211 and 34610. The applicant was phone Inspector of the area during the relevant period and his duty was to see that the phones are shifted to genuine person and proper place but due to lapses of the applicant the phones were misused causing pecuniary loss to the department and the recovery of such loss became remote. As such charge-sheet/under Rule-14 was not ^{same} or relevant to the charges of criminal liability.

Inquiry proceedings was conducted by Sri A. B. Saran, OSD/Patna by hearing on different dates, the charges of misconduct levelled against the applicant was proved. The inquiry officer examined all aspects of the case. The representation of the Applicant dated 29-9-99 against the inquiry report was also assessed and examined by the Disciplinary Authority i.e. DGM (P & A) and after that penalty was imposed taking into consideration the inquiry report, prosecution brief, defence statement and representation of the applicant dtd. 29-9-99. The Disciplinary Authority assessed all the relevant facts including papers started above to come to the conclusion of order of penalty.

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5. That with regard to paras 4.5 and 4.6 the respondents beg to state that after penalty was imposed on the applicant, he preferred an appeal to GM(K) the Appellate Authority, the appeal of the official was duly considered by the Appellate Authority and the quantum of punishment imposed on the official was reduced for a period of one year instead of 3 years and the pay was also reduced by 2 stages in lieu of 4 stages. The Appellate Authority very sincerely considered all aspects of the case and judiciously applied mind and considered for reducing the penalty. As such the applicant's contention that Appellate Authority did not consider all aspects of the case and the order passed was mechanical is not correct. The contention of the applicant is objectionable and not proper.

Both the disciplinary and the Appellate Authority fully applied their mind and thoroughly went through all aspects of the case as such the allegation of the applicant is baseless and not correct.

6. That with regard to para 4.7 the respondents beg to state it was part of the duty of the official to strictly ~~for~~ follow and see that the telephones are shifted to genuine ~~sub~~ subscriber and correct address so that misuse of telephones could be avoided. But in the instant cases the official failed to check the misuse and the phones were shifted to adjacent rooms i.e. not at proper place and thus failed in devotion to duty. Other submissions of the applicant are matters of rules, instructions, records, interpretations etc. as such no comments. Apart from verifying genuinity of the subscribers it was also duty of the applicant that proper shifting of telephones to genuine subscribers is ensured.

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VERIFICATION

I, G. C. Sarma, Asstt. Director Telecom (Legal),
Assam Circle, Guwahati being authorised do hereby
solemnly affirm and verify that the statements made
in this written statement are true to my knowledge,
information and believe. I have not suppressed any
material fact.

And I sign this verification on this 3rd day
of Nov, 2000.

Ganesh Ch. Sarma.

DECLARANT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

কেন্দ্রীয় প্রশাসনিক আদালত
গুৱাহাটী বেঞ্চ
29 JAN 2001
In the matter of :
Guwahati Bench P.A. No. 222/98 221/2000
Shri Madan Chandra Gayari

GUWAHATI BENCH

29 JAN 2001

In the matter of :
Guwahati Bench P.A. No. 222/98 221/2000
Shri Madan Chandra Gayari

-versus-

Union of India & Ors.

-And-

In the matter of :

Rejoinder submitted by the applicant
in reply to the written statement
submitted by the respondents.

The applicant above named most humbly and
respectfully begs to state as under :

1. That with regard to the statements made in
paragraphs 2,3,4 of the written statement by the
respondents the applicant begs to state that the
Learned Special Judge in its judgement and order
dated 13.8.1996 categorically observed as follows :

"This is not case of providing new connection
and the applicants were already subscribers in
respect of two telephones. There is no other
incriminating materials against the accused
Madan Ch. Gayari except for his alleged negli-
gence before submission of the report. So, the
the accused may be dealt with departmentally.
On consideration of the materials and perusal
of the report I hold that for this alleged
negligence and carelessness in discharge of his

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Filed by the applicant
Shriya H.D. Gossain
Advocate

official duties, no criminal liability cannot be fastened on the accused Madan Gayari in absence of any incriminating materials against him."

In view of the above categorical observation of the learned Special Judge there is no scope for the respondents to initiate a departmental proceeding even though mere liberty was given for dealt with departmentally if there was any negligence. Therefore it cannot be said that departmental proceeding can be initiated when there is no material for initiation of any departmental proceeding. The respondents miserably failed to lead any evidence or material even in the departmental proceeding to establish the fact that there was any negligence on the part of the applicant. The order of penalty is imposed in total violation of the rules laws and provision laid down in CCS(CCA) Rules, 1965. Therefore the allegation made in paragraph 3 of the written statement that the present applicant had filed various application before the Hon'ble Tribunal is categorically denied and it is further stated that a mere perusal of the order of the Hon'ble Tribunal it would appear that these respondents misled the Hon'ble Tribunal on different occasions by taking different stands at different time and in fact the applicant was forced to approach the Hon'ble Tribunal at different times as because the respondents attempted/adopted victimisation attitude towards the applicant. It is categorically denied that the respondents have complied with the orders passed by the Hon'ble Tribunal rather the respondents has misled the Hon'ble Tribunal on different occasions. A mere reading of the order of the Hon'ble Tribunal passed

on different occasion would establish beyond all doubts that they have not complied with the order of the Hon'ble Tribunal with a deliberate intention. It is further categorically denied the statement made in paragraph 4 of the written statement that departmental proceeding was not initiated on the subject matter. The charges brought against the applicant in the criminal proceeding (in Special Case No. 37(C)/93 - Sri Madan Gayari Vs. State of Assam & Ors) and charges brought against the applicant in the departmental proceeding through memorandum of chargesheet dated 15.7.94 are identical. Therefore the statement of the respondents are incorrect and the same is misleading. Moreover the respondents could not produce any better proof/evidence or witness in the departmental proceeding. It is categorically stated that right from charges, witnesses and evidences both in the criminal proceeding as well as in the departmental proceeding are common. Therefore although a liberty was given to the respondents simply to deal with the negligence as because the learned Special Judge did not find any material in the criminal proceeding to proceed with the applicant. The respondents even though did not bring any better evidence or witness had proceeded with the departmental proceeding even after acquittal of the applicant in the criminal proceeding which is in fact barred in view of the provision ~~xxxx~~ laid down in Sub Rule (8) of Rule 19 of the CCS(CCA) Rules 1965 and on that score alone the memorandum of chargesheet dated 15.7.94, penalty order dated 1.10.1999 and impugned appellate order dated 7.2.2000 are liable to be set aside and quashed.

It is further categorically denied that the charges misconduct levelled against the applicant is proved. It is

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stated that not a single evidence could be led by the Presiding Officer against the applicant which establishes the fact that the applicant carelessly submitted the report for shifting of the said two telephones. It is categorically observed by the learned Special Judge that it is not the case of providing new connection and the applicants were already subscribers in respect of two telephones. There is no other incriminating materials against the accused Madan Ch. Gayari except for his alleged negligence for not consulting required documents before submission of the report. In view of such categorical findings made by the learned Special Judge there is no scope for the respondents to further deal with this matter by initiating a fresh disciplinary proceeding on the same charges. The scope of consult documents required specially in the case of providing new connection so negligence or carelessness in submitting the report feasibility of shifting of telephones where there was no scope of allegation of negligence or carelessness on the part of the present applicant. It is denied that there was any proper assessment was made as required under the rule by the disciplinary authority after submission of the enquiry report by the enquiry officer and the grounds raised by the applicant in his representation against the enquiry report. None of the ground refuted or discussed as required under the law by the disciplinary authority before imposition of penalty. On that score alone the impugned ~~xxxxx~~ memorandum of chargesheet, order of penalty and the appellate order are liable to be set aside and quashed.

2. That your applicant categorically denies the statements made in paragraphs 5,6, of the written statement

and further begs to state that the appellate authority also passed the impugned appellate order mechanically without application of mind as because the grounds raised by the applicant in his appeal was not discussed as required under sub section (9) (b) of Sub Rule (2) of Rule 27 of the CCS(CCA) Rules, 1965. The relevant portion of the aforesaid rule is quoted below :

"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-
 - i) confirming, enhancing, reducing, or setting aside the penalty; or
 - ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases."

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In view of the above provision it is mandatory on the part of the appellate authority to look into the grounds raised by the applicant in his appeal. It is categorically stated in the appeal that the applicant was acquitted from the criminal charges, therefore initiation of further departmental proceeding in the same subject is barred and in this respect the present applicant like to draw the attention of the Hon'ble Tribunal to the provision laid down in sub rule (8) of Rule 19 of CCS (CCA) Rules 1965. In this connection it is further stated that the acquittal of the applicant from the criminal charges is given by the learned Special Judge not under the benefit of doubt, acquittal was given after detail scrutiny of the evidence witnesses led by the prosecution side. It is needless to mention here that the same witnesses who were present before the learned Special Judge and the same evidences were relied by the respondents in the departmental proceeding. As such the initiation of the proceeding under Rule 14 of the CCS (CCA) Rules 1965 is void ab initio and on that score alone the impugned memorandum of charge sheet dated 15.7.94 and the order of penalty dated 1.10.1999 and the appellate order dated 7.2.2000 are liable to be set aside and quashed. It is further stated that it is categorically stated in the representation as well as in the appeal of the applicant that misuse of telephones could have been avoided if the telephone was disconnected by the TRA Section of the Department within the prescribed time as specified by the department of Telecommunication. It was the duty of the TRA Section to exercise regular check up whether bills of ~~whic~~ each subscribed is paid

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in time or not, if there was any default on the part of the subscriber it was the duty of the TRA Section to take necessary steps by submitting necessary reports for disconnection of the said telephones immediately thereafter. But in the instant case no such steps were taken by the TRA Section but the Department finding fault with the applicant when the present applicant submitted feasibility report in terms of the provisions laid down in the rules of the Telecommunication department for shifting of the telephones to Bhola Market and the same is also categorically observed by the learned Special Judge that it is not the case of providing new connection but the report is being submitted regarding feasibility of shifting. As such learned Special Judge did not find any fault or any material or evidence to proceed with the criminal proceeding. As such initiation of departmental proceeding under Rule 14 of the CCS(CCA) Rules 1965 is contrary. On that score alone the impugned ~~xxxx~~ memorandum of charge sheet dated 15.7.94, order of penalty, dated 1.10.1999 and the appellate order dated 7.2.2000 are liable to be set aside and quashed.

In the facts and circumstances stated the original application is deserves to be allowed with costs.

V E R I F I C A T I O N

I, Sri Madan Chandra Gayari, son of late Golar Ram Gayari, aged about 47 years, resident of Traun Nagar, working as Phone Inspector, in the office of the Telecom District Manager, Sony Ram Bora Road, Ulubari, Guwahati do hereby verify the statements made in the rejoinder and declare that the same are true to my knowledge and belief and I have not suppressed any material fact.

And I sign this verification on this the 22nd day of January, 2001 at Guwahati.

Madan Ch. Gayari
Signature