

50100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

Re. P-48/2002 ordered pg-1 INDEX

Dismissed date-05/04/2002

O.A/T.A No. 2731/2002

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E.P/M.A No. 48/2002

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET O.A.

APPLICATION NO. 273/2000

OF 199

Applicant(s) Sri M.Chinsuan Guite

Respondent(s) Union of India & Ors.

Advocate for Applicant(s) Mr A.Ahmed

Advocate for Respondent(s) Mr A.Deb Roy, Sr.C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
Notice preferred No 1 to 5 and served to D/S. for giving the respondents wide D/No 1975 to 1979 and 22/10/00 21/9/00 Notice duly served on Respondent No 183, § 24.85 is still admissable	20.9.00 19/9/2000	Present : The Hon'ble Mr Justice D.N. Choudhury, Vice-Chairman. Application is admitted. Issue notice on the respondents. List on 14.11.2000 for written statement and further orders. Heard Mr A.Ahmed, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents on the interim prayer. Issue notice to show cause as to why the interim order as prayed for shall not be granted. Returnable by 14.11.2000. In the meantime further proceeding in the departmental case initiated vide Memo No. 7/55/95-Vig New Delhi, dated 9.6.2000 and also letter No.C-13013/41/94-SW(V)-I/Vol.II/214 dated 19.6.2000 at Annexure A shall remain suspended until 14.11.00.

(2)

Notes of the Registry	Date	Order of the Tribunal
① Service report are still awaited.	14.11.00	Mr A. Deb Roy, learned Sr. C.G.S.C seeks further four weeks time to file written statement. Prayer allowed.
② No. written statement has been filed.		List on 14.12.2000 for order. Meanwhile the interim order dated 20.9.2000 shall continue.
<i>34 13/11/2000</i> Notice due served on R No. 1, 2 & 3. 4 & 5 are awaited. <i>13/12/00</i>	pg 14.12.00	<i>Vice-Chairman</i>
Written statement has been filed by the respondent No. 1, 2, 3, 4, 5.	13-12-2000 pg 26.3.01	It has been stated that written statement has been filed. Case is ready for hearing. List on 26.3.2001 for hearing. The applicant may file rejoinder, if any, within two weeks from today.
<i>19.3.2001</i> Additional W/S submitted by respondent Nos. 1, 2, 3, 4 and 5.	9.4.2001 1.5 15.5	<i>Member (A)</i> List on 9.4.01 to enable the applicant to take necessary instructions. <i>Vice-Chairman</i>
<i>23-03-01</i> No rejoinder by W/S filed.		<i>19.3.2001</i> There is no decision ready today. The case is adjourned to 1.5.2001. <i>Member (A)</i> None appears on call. W/S again on 15.5.2001. <i>Vice-Chairman</i>
		<i>15.5</i> On the prayer of Mr. A. Ahmed, learned Counsel for the applicant, the case is adjourned to 1.5.2001. <i>Mr. A. K. Jy.</i> <i>15.5</i>

Notes of the Registry	Date	Order of the Tribunal
<p><u>30.5.2001</u></p> <p><u>Copys of the Judgment</u> <u>has been sent to the Dpeo</u> <u>for sending the same to the</u> <u>applicant as well as to the</u> <u>L/P.Dr. for the Respon.</u></p> <p>HS</p> <p>8</p>	<p>16.5.2001</p> <p>nkm</p>	<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><u>I C M Shan</u> Member</p> <p><u>h</u> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. No. 273. of 2000

DATE OF DECISION 16.5.2001

M. Chinsuan Guite APPLICANT(S)

Mr A. Ahmed 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.

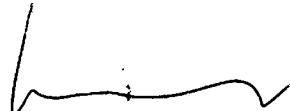
THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

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



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.273 of 2000

Date of decision; This the 16th day of May 2001

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

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

M. Chinsuan Guite,
Assistant Surveyor of Works (Civil),
Civil Construction Wing,
All India Radio, Guwahati Division,
Guwahati.

.....Applicant

By Advocate Mr A. Ahmed.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Information and Broadcasting,
New Delhi.
2. The Chief Executive Officer,
Prasar Bharati,
Broadcasting Corporation of India,
New Delhi.
3. The Director General,
Prasar Bharati,
Broadcasting Corporation of India,
Civil Construction Wing, All India Radio,
Government of India,
New Delhi.
4. The Chief Engineer-I,
Civil Construction Wing,
All India Radio,
New Delhi.
5. The Superintending Engineer,
Civil Construction Wing,
All India Radio,
Guwahati.

.....Respondents

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

.....



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O R D E R (ORAL)

CHOWDURY.J. (V.C.)

A departmental proceeding was initiated against the applicant in exercise of the powers conferred under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 with a view to hold an enquiry under Rule 14. The respondent authority by Memorandum dated 19.6.2000 issued the Memorandum dated 9.6.2000 to the applicant accompanied by the substance of the imputations of misconduct or misbehaviour in respect of which the enquiry was proposed to be held. A statement of the articles of charges alongwith a list of documents as well as the list of witnesses was also served on the applicant. The applicant objected the proceeding drawn after a long lapse of time and submitted a representation dated 28.6.2000 before the authority, questioning the move for initiation of the disciplinary proceeding after a long lapse of time. The applicant failing to get appropriate response from the department moved this application assailing the legitimacy of the proceeding mainly on the ground of delay.

2. The respondents submitted their written statement and outlined the reasons for the delay in initiating the disciplinary proceeding.

3. Mr A. Ahmed, learned counsel for the applicant, submitted that the applicant was at the relevant time serving as an Assistant Engineer immediately after joining the department in 1988 and the alleged lapses mentioned in the charges pertained to the year 1988-90. Mr Ahmed submitted that the construction was done long back and whatever alleged lapses for not complying with the specifications were known to the authority. After a long lapse of time it is hardly expected of the applicant to recall the relevant facts or the documents on the basis of which the alleged action was taken by the respondents. The learned counsel for the applicant, in support of his argument, referred to a host of decisions, more particularly the decision of the Supreme

Court in State of Madhya Pradesh vs. Bani Singh, reported in ATR 1990 (1) SC 581. The learned counsel also referred to a Bench decision of the Tribunal in Bejay Gopal Mukherjee vs. Union of India, reported in 1989 (9) ATC 369.

4. We have given our anxious consideration on the matter. A belated exercise, *prima facie*, causes prejudice to the Government servant. But then, if an action *par se* appears to be arbitrary and discriminatory, no doubt, the Tribunal has the power to interfere. An inordinate delay in a given exercise may be ground, but delay *par se* will not invalidate the action. Where the delay is explained it is difficult to hold the action as arbitrary and discriminatory and violative of Article 14.

5. Considering all the aspects of the matter we are of the view that this is a matter where the proceeding needs to be enquired into by the authority and come to a conclusion. Mr Ahmed submitted that the department has already enquired into and for that purpose we feel that it is a case where the authority should complete the proceeding with utmost expedition. We direct the applicant to submit his written statement, if he has not yet done so, within one month from the date of receipt of this order. In the meantime, if he needs inspection of any document he may ask for inspection of the documents and submit additional written statement thereafter. The respondents, on receipt of such written statement may take an appropriate decision in the matter and complete the enquiry as early as possible, preferably within six months from the date of receipt of the written statement of the applicant. Needless to say that the applicant shall be entitled to raise all the issues before the respondents either in the written statement or in the arguments which were already taken in this application and defend his case as per law.

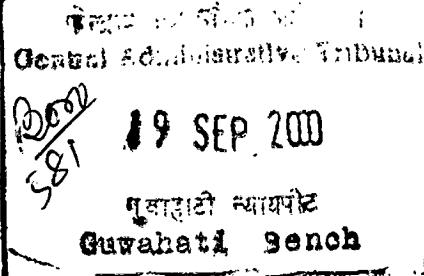
6. With the above observation the application is accordingly disposed of. There shall, however, be no order as to costs.

7. The interim order dated 20.9.2000 stands vacated.

K. K. Sharma
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

D. N. Chowdhury
(D. N. CHOWDHURY)
VICE-CHAIRMAN

nk m



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 273 OF 2000.

M. CHINSUAN GUISTE

...Applicant.

-Versus-

Union of India & Others

... Respondents.

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Filed by
Signature
Advocate. (ADIL AHMED)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. 273 OF 2000.

B E T W E E N

M. CHINSUAN GUITE
S/o Late M. Kaizathang Guite
Assistant Surveyor of Works,
(Civil), Civil Construction
Wing, All India Radio,
Guwahati Division,
Tarun Nagar, Bye Lane No. 1,
Guwahati-781005.

... Applicant.

-AND-

- 1] The Union Of India,
represented by the Secretary
to the Government of India,
Ministry of Information and Broad-
casting, New Delhi.
- 2] The Chief Executive Officer,
Prasar Bharati,
Broadcasting Corporation of India,
Doordarshan Bhawan,
Copernicus Marg, Mandi House,
New Delhi-1.

Filed by
Shri M. Chinsuan Guite
[Applicant
Advocate
through
Chin Guite
Advocate R]

3) The Director General,
Prasar Bharati (Broadcasting
Corporation of India, Civil
Construction Wing, All India
Radio, Government of India,
New Delhi-1.

4) The Chief Engineer-I Civil
Construction Wing, All India Radio
PTI Building, 2nd Floor,
New Delhi-110001.

5) The Superintending Engineer,
Civil Construction Wing,
All India Radio,
Zoo Narengi Road,
Guwahati-21.

•Respondents.

DETAILS OF THE APPLICATION:

1. PARTICULARS OF THE ORDER AGAINST
WHICH THE APPLICATION IS MADE:

This instant Original Application is directed against the Office Memo No. 7/55/95-Vig New Delhi, dated 09-06-2000 and also Letter No. C-13013/41/94-SW(V)-I/Vol.II/214 dated 19-06-2000 at Annexure-A) issued by the Respondents and also prayer for quashing impugned Memorandum of charges brought against the applicant by the Respondents after 12 years.

2. JURISDICTION OF THE TRIBUNAL:



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

3. LIMITATION:

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

4. FACTS OF THE CASE:

Facts of the case in brief are given below:

4.1. That your humble applicant a citizen of India and as such, he is entitled to all the rights and privileges and protection granted by the Constitution of India.

4.2. That your applicant is a Bachelor of Engineering (B.E.) and he got his degree from Regional Engineering College, Calicut. He was selected by the Union Public Service Commission as Assistant Engineer (Civil) in Civil Construction Wing, All India Radio. He joined on 23-03-1988 at ~~Shurachandpur~~^{Imphal}, Manipur. Since then he has been discharging his duties sincerely and to entire satisfaction to all concerned. Now he has been posted as Assistant Surveyor of Works (Civil), Civil Construction Wing, Guwahati Division, Guwahati-5.

4.3. That your applicant begs to state that the Office of the Respondent No. 3, i.e., The Director General of All India Radio, Civil Construction Wing, New Delhi issued an Office Memo No. 7/55/95-Vig New Delhi, dated 09-06-2000 and also Letter No. C-13013/41/94-SW(V)-I/Vol.II/214 dated 19-06-2000 at Annexure-A) to the applicant by which your applicant was charged under Rule 14 of the Central Civil Service (Classification, Control & Appeal) Rules, 1965. The applicant received the Office Memo on 27-06-2000. In the said Article of Charges brought against the applicant during his posting from 23-03-1988 to 11-05-1990 as Assistant Engineer(Civil) in Civil Construction Wing, All India Radio, Churachandpur, Manipur.

Annexure-A is the photocopies of Office Memorandum Memo No. 7/55/95-Vig New Delhi, dated 09-06-2000 and also Letter No. C-13013/41/94-SW(V)-I/Vol. II/214 dated 19-06-2000 at Annexure-A) issued by the Office of the Respondents.

4.4] That your applicant begs to state that the Article of Charges which were brought against him at a belated stage, i.e., after 10 to 12 years during his posting as Assistant Engineer (Civil) at Churachandpur, Manipur in between 23-03-1988 to 11-05-1990. The above charges brought against him are totally baseless and mala fide. Immediately after receiving the Article of Charges the applicant

filed a representation before the Authority by which he totally denied the charges leveled against him. It may be stated here that before serving the Article of charges on the applicant the Respondents never served copy of proposal to conduct inquiry against the applicant nor any notice was served to him to give him opportunity to defend his case.

Annexure-B is the photocopy of representation submitted by the applicant on 28-06-2000.

4.5 That the applicant begs to state that the Article of charges which was brought against the applicant the Respondents have not explained the inordinate delay for issuing the above Article of charges after 10 to 12 years. There are deep conspiracy against the applicant by some interested persons who are trying to harass the applicant for their personal illegal gain.

4.6 That your applicant begs to state that in many cases the Hon'ble Supreme Court of India and various Hon'ble Central Administrative Tribunals held that inordinate delay in issuing charge memo would amount to bias and mala fide, the proceeding. In case of State of Madhya Pradesh Vs- Bani Singh it was held by the Hon'ble court Where the Departmental Inquiry was initiated after 12 years and there was no satisfactory explanation for the inordinate delay in issuing the Charge Memo and

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it would be unfair to permit the Departmental Inquiry to be proceed with at this stage.

4.7 That the applicant submits that the matters, which were charged against him, are very old matters of more than 10 years and things are out of his memory also it is not possible for the applicant to defend his case after so many years. There are every possibility of lost of evidence or documents which can prove the innocence of the applicant. The witnesses, who would be examined & cross-examined by the Inquiry Officer will not be able to give clear and perfect explanation of the case. It will be unfair and unjust for the applicant at this belated stage if the Department proceed furthers in this matter.

4.8 That your applicant submits that it will be very difficult for him to recollect all the materials, documents and records for submission of reply against the charge Memo which was issued against the applicant after 10 to 12 years and as such, it is fit case to interfere by the Hon'ble Tribunal by giving necessary direction to the Respondents for quashing the entire proceedings brought against him by the Memo of Charges dated 19-06-2000.

4.9 That your applicant submits the Respondents deliberately done serious injustice by giving mental trouble to the applicant by issuing Memo or charges against your applicant after 10 to 12 years.

4.10] That your applicant submits that the actions of the Respondents are violative of the Principles of Natural Justice.

4.11 That this application is filed bona fide and for the interest of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1 For that, in *prima facie* a disciplinary action cannot be taken against a Government Servant at a belated stage. A belated exercise *prima facie* causes prejudice to the Government Servant in defending his case.

5.2 For that, the Memorandum of Charges cannot be initiated against an Official after 10 to 12 years. Law is well settled that the Departmental enquiry cannot be initiated against a person after lapse of many years and as such Departmental Proceeding is required to be revoked or quashed.

5.3 For that, for last 10 to 12 years the Department has not initiated any inquiry in this matter it amounts to *mala fide* and on the part of the Respondents and accordingly judicious interference is called for this matter.

5.4 For that, it is very difficult for applicant to recollect all the relevant

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materials, documents and records after long 10 to 12 years for submission of reply in defence and as such, the impugned Departmental proceeding is liable to be set aside and quashed.

5.5 For that, whole matters are out of memory of applicant and as such the entire Departmental Proceeding is liable to be set aside and quashed.

5.6 For that it will be very unfair and unjust for the applicant at this belated stage if the Department Proceed further in this matter and as such it may be set aside and quashed.

5.7 For that in many case the Hon'ble Supreme Court of India and Hon'ble Central Administrative Tribunal held that inordinate unexplained delay initiating proceeding vitiates enquiry.

5.8 For that if a disciplinary action is taken against a Government servant after a long lapse of time the Department should explain the delay. If the delay is not explained it would amount to arbitrary exercise of power. But in the instant case the delay is not explained by the Department and as such the entire Disciplinary proceeding is mala fide, illegal and also motivated against the applicant.

5.9 For that, in any view of the matter the action of the respondents are not sustainable

and hence the same is liable to be set aside and quashed.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

6. DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

That the applicant further declares that she has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court, authority, nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the applicant most respectfully prays that your Lordship may be pleased to admit this petition and may call for records of the case, issue rule calling upon the



Respondents to show cause as to why the relief should not be given to the applicant and after hearing the parties on the cause or causes that may be shown and on perusal of records your Lordships may be pleased to grant the following relief to the applicant.

- 8.1 To direct the Respondents to pass order declaring the Memo No. 7/55/95-Vig New Delhi, dated 09-06-2000 and also Letter No. C-13013/41/94-SW(V)-I/Vol.II/214 dated 19-06-2000 at Annexure-A) issued by, the Respondents are illegal, unconstitutional and non-warranted by the facts and circumstances of the case.
- 8.2 To grant such further or other relief or reliefs to which the applicant may be entitled having regard to the facts and circumstances of the case.
- 8.3 Grant the Cost of this application to the applicant.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the Original Application the applicant most respectfully prays for an interim order directing the Respondents not to proceed further with the Departmental Proceeding vide Office Memo No. 7/55/95-Vig New Delhi, dated 09-06-2000 and



also Letter No. C-13013/41/94-SW(V)-I/Vol.II /214 dated 19-06-2000 at Annexure-A) till final disposal of this instant Original Application.

10. Application Is Filed Through Advocate.

11. Particulars of I.P.O.:

I.P.O. NO. OG 497709

Date Of Issue 3.7.2000

Issued from Guwahati G.P.O.

Payable at Guwahati

12. LIST OF ENCLOSURES:

As stated above.

... Verification.

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RANU

VERIFICATION

I, M. CHINSUAN GUITE, S/o Late M. Kaizathang Guite, Assistant Surveyor of Works, (Civil), Civil Construction Wing, All India Radio, Guwahati Division, Tarun Nagar, Bye Lane No. 1, Guwahati-781005 do hereby solemnly verify that the statements made in paragraphs [to 4.2, 4.4 to 4.6] are true to my knowledge those made in paragraphs - 4.3 - are being matters of records are true to my information derived therefrom which I believe to be true and those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification today on this the 8th day of September 2000.

M. Chinsuan Guite
Declarant

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ANNEXURE - A

CONFIDENTIAL
Speed Post

PRASAR BHARTI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL: ALL INDIA RADIO
CIVIL CONSTRUCTION WING

2nd floor, PTI Building
New Delhi.

No. C-13013/41/94-SW(V)-I/Vol.II / 214

Dt 19.6.2000.

✓ Sh.M.C.Guite
Assistant Surveyor of Works©
CCW ,AIR
Guwhati

SUB: C/o 10 KW Transmitter & Building including 8 nos. S/Q for TV centre at
Churachandpur - Memo - reg.

Find enclosed herewith Memorandum no. 7/55/95-Vig. dt. 9.6.2000 of
DG AIR on the subject cited above.

It is further directed to send the dated acknowledgment in triplicate as per
the proforma enclosed for onward transmission to DG AIR urgently.

MR.K.NAJR
- (M.R.K.NAJR)
SURVEYOR OF WORKS©VIG.-I

Encl: 1) Memorandum No. 7/55/95-Vig.
Dt. 9.6.2000 in original
2) Acknowledgment slips in triplicate.

Copy to:

1. Sh. Naresh Jaiswal, S.O.(V) DG AIR Akashwani Bhawan, w.r.t. their
memorandum no. 7/55/95-Vig. dt. 9.6.2000 for further necessary action.

27/6/2000
/ SURVEYOR OF WORKS©VIG.-I

*After 1st
Advise*

PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL : ALL INDIA RADIO

No: 7/55.95-Vig.

New Delhi, dated the 7.6.2002

23.3.1988

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri M.C. Guite, Assistant Engineer (C), CCW, AIR, Guwahati 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-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures-III and IV).

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

5. Attention of Shri Guite is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Guite is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules, 1964.

... Contd... 2/-

Attested
S. L.
Anvole

—16—

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6. The receipt of the Memorandum by the following:

21/6/2000
RATNA SHAH

Additional Secretary
to the Minister of India
of State for Environment

Shri M.S. Guria,
Assistant Engineer (C),
CCW, 911 Indira Ridge,
SUWAHATI

Thirteenth Floor, CCW,
AIRPORT ROAD, CCW,

DATTA
DATT

1990. Construction of 10 KW Transmitter & Office Building & Staff Quarters

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ANNEXURE - I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI M.C. SUITE, THE THEN AE(C), CCW, AIR, CHURACHANDPUR, PRESENTLY WORKING AS AE(C), CCW, AIR, GUWAHATI.

ARTICLE - I

That the said Shri M.C. Suite, while functioning as Assistant Engineer (C) in CCW, All India Radio, Churachandpur, during 23.03.1988 to 11.05.1990, was incharge of the work of construction of 10 KW Transmitter and office building including 8 Nos. of staff quarters for Television Centre at Churachandpur. The aforesaid work was executed under agreement No. EE/SLC/42/89-90. The said Shri M.C. Suite was duty bound to supervise and execute the aforesaid work by maintaining quality, strictly according to the CPWD specifications and conditions of aforesaid agreement. The aforesaid work executed at the transmitter and office portion was found defective and substandard. The reason for defect had been got investigated by the Department from expert committee of B.I.T. Mesra, Ranchi. That it was found that the except for few, all structural members such as columns, beams and slabs were at lesser strength than required as per specifications. Some of the plinth beams were damaged/cracked due to bad quality, over-burden of excavated earth, and large area of honeycombing were noticed on the members, which showed the bad quality of work executed. Sufficient overlapping to reinforcement were also not been found provided, which was main cause of cracks at junctions of beams and columns. Accordingly, the aforesaid expert committee suggested various remedial measures to bring the building into use. ✓

That a total of nine numbers of running bills were paid to the agency amounting to Rs. 19,76,477/- and the tenth bill was prepared but not paid for the gross amount of Rs. 20,93,348/-. The said Shri M.C. Suite had prepared first and fourth R/A bill amounting to Rs. 5,67,027/- during his tenure. The specifications/ modifications on the work, according to the expert committee's report costed the exchequer an amount of Rs. 2,06,355/- including the fees charged by the B.I.T. Mesra, Ranchi, which was an infructuous expenditure to the exchequer, due to bad supervision on the supervisory staff at site. The said Shri M.C. Suite was one of the officials responsible for the loss to the exchequer.

By his above act, the said Shri M.C. Suite showed lack of devotion to duty and acted in a manner unbecoming of Government Servant thereby violating the provisions of Rule 3(1)(ii) and 3(1)(iii) of CCS(Conduct) Rules, 1964.

✓

*Handed
J.S.
Anita*

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ANNEXURE - II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST SHRI M.C. SUITE, THE THEN ASSISTANT ENGINEER (C), CCW, AIR, CHURACHANDPUR, PRESENTLY WORKING AS AE(C), CCW, AIR, GUWAHATI.

ARTICLE - I

That the said Shri M.C. Suite while working as Assistant Engineer (C), CCW, AIR, Churachandpur during the period 23.03.88 to 11.08.90 had supervised and executed the work of C/o 10 KW Transmitter and Office Building i/c B Nos. staff quarters for T.V. Centre, under agreement No. EE/SLC/42/89-90 in the capacity of Assistant Engineer (C). He was duty bound to execute and supervise the work by maintaining quality as per CPWD specifications and to check the measurements of the item executed as per terms of the agreement and CPWD Manual.

✓ Shri M.C. Suite had executed the work and paid first and fourth R/A bills amounting to Rs. 5,67,027/- . The portion of work executed at transmitter and office building had been found sub-standard and the department had entrusted Birla Institute of Technology, Mesra, Ranchi to investigate the reasons for defective work and to suggest its remedial measures. The report of B.I.T. revealed that except very few, all structural members such as R.C.C. columns, beams and slabs, the strength attained were less than 15 N/Sq.mm (210 Kg/Sq.cm as mandatorily required as per CPWD specifications 1977 para 5.4.10.3). The reasons for such a situation were due to bad supervision, using low quality materials such as sand, aggregate for the concrete and also due to improper curing. The plinth beams of the structure were damaged/cracked due to overburden of excavated earth to a height of 2.5 metre to 3.0 metre. Large area of honeycombing was also noticed in the R.C.C. Members. As per the CPWD specifications 1977 para 5.4.7.2, it is the responsibility of Engineer-in-Charge to ensure that honeycombing should not affect the quality of work and structural stability of structure. Sufficient overlapping to the reinforcement as per I.S.-456 design code were also not been found provided and it was the main cause of cracks at junctions of beams and columns.

✓ The cube test register maintained at site showed that all the cube tests had passed seven days test results. Even though no tests had been conducted for the concrete at the defective portions, the result recorded in the cube test register was contradictory to the test result obtained by the B.I.T. team with impact hammer and ultrasonic method. Three tests were conducted during the tenure of Shri Suite and results of two only had been authenticated by him in the register. The results of BIT tests showed that the supervisory staff at site were not only negligent in supervising the work properly but also found to have cooked up the cube test register.

...Contd. 2/-

A/H/T
O/L
H.S.

As per CPWD Manual-I, Para-7, page -12, it is the duty of the Assistant Engineer (C) incharge of the work to keep the check on the workmanship and highlight the defects of the work and should not measure or propose the item for payment before complete execution of the same as per specification and agreement conditions. Shri M.C. Guita during his tenure had also check measured the items amounting to Rs. 3,58,523/- which also showed that he did it without proper check on the quality of items executed at site.

As per the technical advice from B.I.T. Mesra, Ranchi, remedial/modification work were taken up to bring the structure into use costing the exchequer an expenditure of Rs. 2,04,355/- including the fees charged by B.I.T. Mesra, Ranchi which was considered as an infructuous expenditure due to the negligence and bad supervision on the part of officials. Shri M.C. Guita was one of the officials responsible for the execution of the said work at substandard specifications.

By his above act, the said Shri M.C. Guita showed lack of devotion to duty and acted in a manner unbecoming of a Govt. Servant thereby violating the Rule 3(i)(ii) and 3(i)(iii) of CCS(Conduct) Rules, 1964.

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Shri M.C. Guita
Answer

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SHRI M.C. SUITE, THE THEN ASSISTANT ENGINEER (C), CCW, AIR, CHURACHANDPUR, PRESENTLY WORKING AS ASSISTANT ENGINEER (C), CCW, AIR, GUWAHATI, ARE PROPOSED TO BE SUSTAINED.

1. Agreement No. EE(E)/SLC/42/89-90.
2. Measurement Books No. 34/BMP, 35/BMP, 36/BMP, 55/BMP, 60/BMP, 61/BMP, 74/GhyII - 7 Nos.
3. Running A/C Bills 1 to 9.
4. Inspection Report of Birla Institute of Technology, Mesra, Ranchi.
5. Cube Test Register.
6. Cement Register.
7. Letter No. EE/SLC/CHU-TV/Works/032/878-79/1544-45 dated 07.10.97 with Annexures 'A', 'B', 'C' and 'D'.
8. Letter Nos. AIR/CCW/SE-GH/PA-1/95/95-CW.i dated 24.09.97.
9. CPWD Specifications 1977 Para 5.4.7.2.
10. CPWD Specifications 1977 Para 5.4.10.3.
11. CPWD Manual Vol.I, Page-7, Page-12.

After
JL
Answer

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ANNEXURE - IV

LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGE FRAMED AGAINST
SHRI M.C. GUITE, THE THEN ASSISTANT ENGINEER (C), CCW, AIR,
CHURACHANDPUR, PRESENTLY WORKING AS AE (C), CCW, AIR, GUWAHATI,
ARE PROPOSED TO BE SUSTAINED.

1. Shri Munshi Lal, retired Chief Engineer (C)-II, CCW, AIR.
2. Shri S.K. Das, the then Superintending Engineer (C), Guwahati, presently working as Superintending Surveyor of Works (C), CCW, AIR, New Delhi.
3. Shri A.K. Khan, Surveyor of Works (C), CCW, AIR, Calcutta.
4. Shri R.K. Singh, Executive Engineer (C), CCW, AIR, Hyderabad. ✓
5. Shri A.K. Chakraborty, Surveyor of Works (C), CCW, AIR, Calcutta.
6. Shri M. Sozalian, formerly Assistant Engineer (C), CCW, AIR, presently working in the Cadre of Indian Forest Services, Ministry of Environment and Forest.
7. Shri Praveen Sharma, Junior Engineer (C), CCW, AIR, Chandigarh.
8. Shri Kedar Mandal, Junior Engineer (C), CCW, AIR, Guwahati.
9. Shri N.C. Das, Junior Engineer (C), CCW, AIR, Calcutta.
10. Shri Debasis Kar, Junior Engineer (C), CCW, AIR, Guwahati.

(Signature)

*Atted
F. G. S.
Advocate*

To

Sri Rajeev Ratna Shah,
Additional Secretary to the Govt. of India
& Disciplinary Authority

Dated: 28-06-2000

Sub: Memorandum No. 7/55/95-Vig. Dated 9-6-2000 of D.G. AIR on the subject of construction of 10 KW TV Transmitter and office building i/c 8 Nos. staff quarters for TV centre at Churachandpur.

Sir,

This has reference to the above letter proposing to hold an inquiry against me under Rule 14 of Central Civil Service Rules, 1965. It is quite surprising to receive such charge sheet after a lapse of 10(ten) years without having served any notice or explanation to me regarding the above case before framing the above charge sheet. Rather this is the first communication stating that there is a proposal to conduct an inquiry against me.

I have gone through Annexure I & II of your above memorandum. I would like to inform that : I TOTALLY DENY THE CHARGES LEVELLED AGAINST ME.

✓

Yours faithfully,

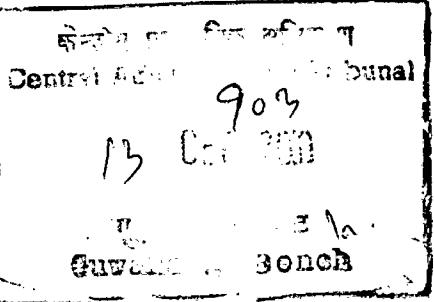
(M.C. Guite)
(M.C. Guite)

Assistant Surveyor of Works(Civil)
CCW AIR Guwahati Division

*Attested
P.M.C.
A. Guite*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH



O.A. NO. 273 OF 2000

Shri M.C.Guite

- VS -

Union of India & others.

Filed by

13/12
(A. DESAI)
Sr. C. J. C.
C.A.T. Court, Guwahati Bench

IN THE MATTER OF

Written statement submitted by respondents No. 1, 2, 3, 4 and 5.

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

1. That with regard to Para 1, 2, 3, 4.1, 4.2 and 4.3 the respondents beg to offer no comment.
2. That with regard to Para 4.4 the respondents beg to state that averment made in this para is denied. The act of omission and commission on the part of the applicant are based on evidence on records, specific charge has been framed against the applicant after due enquiry as framed as per Rules. It is a fact that he has denied the charge. As a natural justice he will be afforded sufficient opportunity to prove his innocence during the oral enquiry as per Rule 14 of CCS(CCA) Rules, 1965.
3. That with regard to Para 4.5 the respondents beg to state that the averment made in this para is denied. The charge has been framed after due enquiry, examination of various documents, and after obtaining approval of all competent authorities. Hence, it is denied that there is any conspiracy against him.

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4. That with regard to Para 4.6 the respondents beg to offer no comment.
5. That with regard to Para 4.7 the respondents beg to state that, the charge has been framed against him on the basis of documentary evidence and the list of documents has been furnished to him. If he desires, all the listed documents will be provided to him as per rules, during the course of oral enquiry to prove his innocence.
6. That with regard to Paras 4.8 the respondents beg to state that the charge has been framed on the listed documents and the applicant will be afforded opportunity to examine the relevant documents to prove his innocence. Since the specific charge has been framed against him under Rule 14 of CCS(CCA) Rules, 1965, there is no question of quashing the charge-sheet.
7. That with regard to Para 4.9 the respondents beg to state that the charge sheet has been issued to the applicant for his act of omission and commission in respect of works, after due enquiry. Hence, there is no question of meting out injustice deliberately, as alleged.
8. That with regard to Para 4.10 the respondents beg to state that the action against the applicant has been initiated according to the provisions of Rules 14 of CCS(CCA) Rules, 1965. He will be afforded sufficient opportunity to prove his innocence. Hence there is no violation of natural justice in this case.
9. That with regard to Para 4.11 the respondents beg to offer no comment.
10. That with regard to Para 5.1 the respondents beg to state that disciplinary action is to be taken as per the provisions of Rule 14

of CCS(CCA) Rules, 1965 which will cause no prejudice to the applicant.

11. That with regard to Para 5.2 the respondents beg to state that action is to be taken for the cognisable act of omission and commission on the part of the applicant, which has been initiated after due enquiry by competent authority in accordance with the Rules 14 of CCS(CCA) Rules, 1965.
12. That with regard to Para 5.3 the respondents beg to state that the omission and commission of lapse has been duly enquired into and is based on evidence on records. Hence, there is no malafide intention on the part of Respondents.
13. That with regard to Paras 5.4 and 5.5 the respondents beg to state that the applicant will be afforded sufficient opportunity to prove his innocence during the oral inquiry. He will also be given copies of all the listed documents if he so desires. Hence, there is no question of quashing the charge-sheet.
14. That with regard to Para 5.6 the respondents beg to state that since the proceedings is being conducted as per the provisions of CCS(CCA) Rules, 1965, no unfair means shall be adopted. Hence, no injustice will be meted out to the applicant.
15. That with regard to Para 5.7 the respondents beg to offer no comment.
16. That with regard to Para 5.8 it is stated that the omission and commission on the part of the applicant and others involved in this case has been enquired into thoroughly by examining various documents and obtaining approval of competent authorities. Only thereafter charge has been framed against the applicant. Hence, the proceedings against the applicant is in order in accordance with the provisions of CCS(CCA) Rules, 1965.

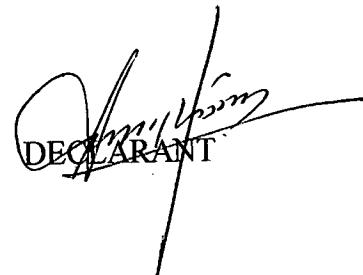
17. That with regard to Para 5.9 the respondents beg to state that since the proceedings against the applicant is in progress under the provisions of CCS(CCA) Rules, 1965, there is no question of setting it aside.

18. That with regard to Para 6,7,8,9,10,11 and 12 the respondents beg to offer no comment.

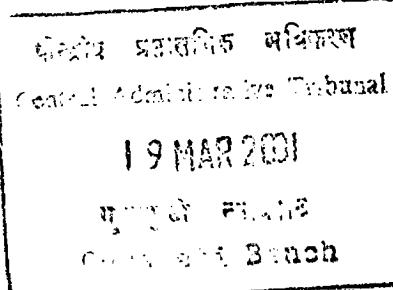
VERIFICATION

I Shri A. P. Divakaran, Superintending Engineer(Civil), Civil Construction Wing, All India Radio, Guwahati Circle being authorized do hereby solemnly affirm and verify that, the statements made in the written statement are true to my knowledge and information and I have not suppressed any material fact.

And I sign this verification on this 11 day of
December, 2000.


DECLARANT

Crctcase/MCG/4-7



File No. 07/19/3/01
 (A. D. Roy, S. C. S. C.
 Sr. C. C. S. C.
 C. A. T. Guwahati Bench)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH :::: GUWAHATI

O.A. No. 273 OF 2000 .

Shri M.C. Guite

- Vs -

Union of India and Others.

In the matter of :

Additional Written Statement submitted by Res-
 pondents No. 1, 2, 3, 4 and 5.

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

1. That with regard to paras 1, 2, 3, 4.1, 4.2 and 4.3, the respondents beg to offer no comments except that the prayer of the petitioner for quashing impugned Memorandum is not tenable legally, and may not be granted.
2. That with regard to para 4.4, the respondents beg to state that averment made in this para is denied. The act of omission and commission on the part of the applicant are based on evidence on records, specific charge has been framed against the applicant after due enquiry and framed as per Rules. It is a fact that he has denied the charge. As a natural justice he will be afforded sufficient opportunity to prove his innocence during the oral enquiry as per Rule 14 of CCS(CCA) Rules, 1963.

Contd.

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3. That with regard to para 4.5, the respondents beg to state that the averment made in this para is denied. It is also stated that, having been come to the notice of CCW, AIR, Guwahati on 07.08.1991, that the on going construction of transmitter and office building at Churachandpur is unsafe, they had entrusted specialised investigation into the matter to B.I.T., Ranchi, on 29.10.1991 for conducting non-destructive test to the structural members of the building. The B.I.T., Ranchi submitted its report on 02.11.1992 to CCW, Guwahati Circle for corrective measures of the building. Thereafter, on 02.11.1994, the matter was referred to Vigilance Set up of CCW, New Delhi, for examination for punitive action against the erring officers. CCW submitted its P.E. Report to this Directorate on 21.09.1995, which was sent to the Ministry of I & B on 30.10.1995 for taking CVC's advice. The advice of CVC dated 04.07.1997, received in this Office on 21.07.1997. According to the advice, Shri M.C. Buite, alongwith nine other officers were required to be charge-sheeted for major/minor panalty proceedings respectively, under Rule 14 and 16 of CCS(CCA) Rules, 1965. Thereafter, CCW, AIR, was required to send the draft charge sheet in respect of aforesaid officers together with their service particulars and other related documents, in original, as well as authenticated copies thereof, vide this Directorate's letter dated 06.08.1997. The requisite original documents for initiating department proceedings against the petitioner and others were finally received only 16.05.2000 in this office. Thereafter the petitioner was served with Memo of charge sheet vide this Directorate's Memorandum No. 7/55/95-Vig. dated 09.06.2000. The case involves technical issues which

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necessitated a specialised and long drawn investigation. Collection of service particulars and other related documents of 10 charged officers took a lot of time. Therefore, the delay is attributable to the very complex nature of the case and this does not absolve the charged officer of his responsibility. The charge has, therefore, been framed after due enquiry, examination of various documents, and after obtaining approval of all competent authorities. Hence, it is denied that there is any conspiracy against him.

4. That with regard to para 4.6, the respondents beg to submit that the facts and circumstances of the case of petitioner are different, therefore, the authority cited by the petitioner does not apply to his case. Hence, the contention of petitioner is not legally tenable and denied.

5. That with regard to para 4.7, the respondents beg to state that the charge has been framed against him on the basis of documentary evidence and the list of documents has been furnished to him. If he desires, all the listed documents will be provided to him as per rules, during the course of oral enquiry to prove his innocence. Therefore, the contention of the petitioner contained in above said para is not tenable and denied, ~~thatxxix~~

-: 4 :-

6. That with regard to Paras 4.8, the respondents beg to state that the charge has been framed on the basis of listed documents and the applicant will be afforded opportunity to examine the relevant documents to prove his innocence. Since the specific charge has been framed against him under Rule 14 of CCS(CCA) Rules, 1965, there is no question of quashing the charge-sheet subject to above, the contention made by the petitioner in abovesaid para is wrong and denied.
7. That with regard to Para 4.9, the respondents beg to state that the charge-sheet has been issued to the applicant for his act of omission and commission in respect of works, after due enquiry. Hence, there is no question of meting out injustice deliberately, as alleged. Therefore, the contents of the abovesaid para are denied.
8. That with regard to Para 4.10, the respondents beg to state that the action against the applicant has been initiated according to the provisions of Rules 14 of CCS(CCA) Rules, 1965. He will be afforded sufficient opportunity to prove his innocence. Hence, there is no violation of natural justice in this case and the same allegation is wrong and denied.
9. That with regard to Para 4.11, the respondents beg to submit that the contention of the petitioner made in this para is not tenable and is denied.
10. That regard to Para 5.1, the respondents beg to state

-5-

that disciplinary action is to be taken as per the provisions of Rule 14 of CCS(CCA) Rules, 1965 which will cause no prejudice to the applicant subject to the above the para of O.A. is denied.

11. That with regard to para 5.2, the respondents beg to state that action is to be taken for the cognisable act of omission and commission on the part of the applicant, which has been initiated after due enquiry by competent authority in accordance with the Rules 14 of CCS(CCA) Rules, 1965. The contention of the petitioner is wrong and denied.

12. That with regard to para 5.3, the respondents beg to state that the omission and commission of lapse has been duly enquired into and is based on evidence on records. Hence, there is no malafide intention on the part of Respondents and the allegation is denied. The petitioner has not made out any case for the interference of this court.

13. That with regard to paras 5.4 and 5.5, the respondents beg to state that the applicant will be afforded sufficient opportunity to prove his innocence during the ofal inquiry. He will also be given copies of all the listed documents if he so desires. Hence, there is no question of quashing the charge sheet. Hence, the contention made by the petitioner in above paras is wrong and denied.

14. That with regard to para 5.6, the respondents beg to state that since the proceedings is being conducted as per the provisions of CCS(CCA) Rules, 1965, no unfair means shall be adopted. Hence, no injustice will be meted out to the applicant. Hence the presumption of the applicant is wrong and denied.

15. That with regard to para 5.7, the respondents beg to submit that in the facts and circumstances of the case. The contention of applicant is not tenable and is not admitted.

16. That with regard to para 6.5.8, it is stated that the omission and commission on the part of the applicant and others involved in this case has been enquired into thoroughly by examining various documents and obtaining approval of competent authorities. Only thereafter charge has been framed against the applicant. Hence, the proceedings against the applicant is in order in accordance with the provisions of CCS(CCA) Rules, 1965. The delay is attributable to the very complex nature of the case and this has been explained in para 3 above. Therefore, the contention and allegation of the applicant contained in above said para are not tenable and denied strongly.

17. That with regard to para 5.9, the respondents beg to state that since the proceedings against the applicant is in progress under the provisions of CCS(CCA) Rules, 1965, there is no question of setting it aside. Hence, the contents contained in para 5.9 of the O.A. are not tenable and denied. The petitioner cannot take any ground all of a sudden, unless the notice of the same is given to the respondents.

18. That with regard to para 6 and 7, the respondents submit that the petitioner has got no cause of action, so the question of exhausting remedies does not arise.

19. That with regard to para 8 and 9 the respondents submit that the petitioner is not legally entitled to any of the reliefs prayed for, hence the above said paras of the O.A. are not admitted.

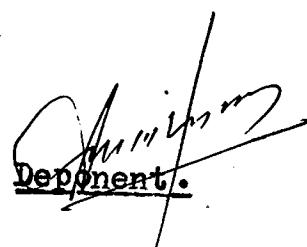
20. That with regard to para 10, 11 and 12, the respondents need not to reply.

Therefore, in view of the reply given herein above, and the submission which are to be made at the stage of hearing and argument, the O.A. may please be dismissed with costs because the O.A. is devoid of merits.

VERIFICATION

I, A.P. Divakaran, Superintending Engineer (Civil), Civil Construction Wing, All India Radio, Guwahati Circle being authorised do hereby solemnly affirm and verify that the statements made in the written statement are true to my knowledge and information and I have not suppressed any material fact.

And I sign this verification on this 14 day of March, 2001, at Guwahati.


Depponent.