

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 173/2000

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SECTION OFFICER (Judl.)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 173/2000

OF 199

Applicant(s)

Nirmal Ch. Das

Respondent(s)

Union of India and or.

Advocate for Applicant(s)

Mr. B. Malakar.

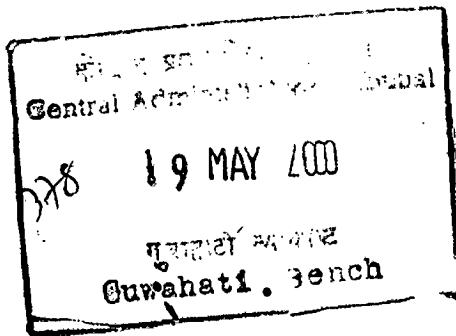
Advocate for Respondent(s)

C. G. S.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form and within time.</p> <p>E. F. of Rs. 50/- deposited vide IPO RD No. 452/2000</p> <p>Dated 12.5.2000</p> <p>9M 14/5/00</p> <p>25.5.2000</p> <p>Copy of the order has been sent to the D/Sec. for issuing the same to the L/Advocate of the parties.</p> <p>1468 & 1463 d. 30.5.2000.</p>	19.5.00	<p>Heard Mr B. Malakar, learned counsel for the applicant and considered the application. Considering the facts of the case and the pleadings it appears that the applicant is having a second wife and in view of this departmental enquiry on this ^{Count} ground cannot be stayed. In my opinion the applicant has no case to challenge the departmental enquiry. Hence the O.A. is rejected in limine at the admission stage.</p> <p><i>[Signature]</i></p> <p>Member (J)</p>

✓

Notes of the Registry	Date	Order of the Tribunal



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

GUWAHATI.

O.A. 173 /2000.

Nirmal Ch. Das

Vs.

Union of India & ors.

I N D E X

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Filed by -

Advocate.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

An application under Section 19 of the
Central Administrative Tribunal Act
1985.

Date of filing:

Registration No:

173/2000

Signature:

REGISTRAR

Contd.... 2/-

Filed by
Nirmal Ch. Das
Advocate
B. Malakar
Advocate
18/5/20

1. Particulars of the applicant

- : i) Shri Nirmal Chandra Das
Motor vehicle driver,
Central Water Commission,
NEID - II, Zema Bawk,
Aizul.

1(a) Particulars of the respondents

- : i) The Union of India
represented by the
Superintending Engineer
C.W.C., North-eastern
Investigation Circle
Jamir Manisim,
Nongshilliang,
Shillong.

- ii) The Executive Engineer,
C.W.C. NEID- II, Zema
Bawk, Aizul.

(b) Address for service
of notices

- : As above.

(c) Particulars of the
order against which
this application has
been made

- : Memorandum No. NEID/Conf-1/
C-333, dtd. 11-12-99
issued by the Superintending
Engineer, NEID Circle,
C.W.C., Shillong proposing
to hold an enquiry against
the applicant under rule
14 of the CCS(CCA) Rules,
1965.

2. Jurisdiction of the
Tribunal

- : The applicant declares that
the subject matter of
this application is
within the Jurisdiction
of this Tribunal.

3. Limitation :-

: The applicant further declares that the application is within the limitation prescribed by Section 21 of the CAT Act 1985.

4. Facts of the Case

: (i) The applicant is working under the Respondent No.2 as a Motor Vehicle Driver. He is a permanent employee in the department. The applicant have his married wife Smti Doli Das and there are three female children out of their deadlock.

(ii) That the applicant begs to state that he having 3(three) female children was rather disappointed as a very basic concept of marriage under Hindu Philosophy is to have a son. He having failed in this respect decided to have a second wife to his thinking. The wife of the applicant also gave her consent.

(iii) That the applicant begs to state that there was an work-charged Kallasi in the department named Smti Tulsi Maya who has no other members in her family. Both the applicant and said Smti Tulsi Maya entered into an agreement of marrying each other.

Handwritten signature

Smti Tulsi Maya was aware of the fact that the applicant was a married man and he had three female children. The negotiation was conducted in presence of the first wife of the applicant Smti Dolit Das who gave her consent willingly in the hope that the applicant's desire to get a son might be fulfilled. Accordingly, the marriage between the applicant and Smti Tulsi Maya took place on 14.11.98 at Puspak Shiva Mandir as per Hindu Retuals. At the time of marriage, the first wife of the applicant and his three female children were also present.

(iv) That the applicant begs to state that the marriage having been performed as above. A Joint complaint was lodged by some of the employees of the department before the respondent No.2 alleging that Smti Tulsi Maya and the applicant got the marriage performed without the consent of the guardian of Smti Tulsi Maya. By this conduct of the applicant, the residents of CWC Collony got annoyed and complained that their conduct created nuisance and the law and order problem was also created.

A copy of the said complaint is annexed herewith and marked as Annexure- A to this application.

(v) That on receipt of the said Complaint, the

[Handwritten signature]

Executive Engineer i.e. the Respondent No.2 lodged a first information report with the D.C. Bawmkawn Police Station, Aizawl to inquire into the performance of the marriage and to report the matter to him and on getting the same information, the O.C. sent an ~~xxx~~ inquiry report to the Respondent No.2 on 30.12.98. In this report, the O.C. stated that during interrogation both Shri Nirmal Chandra Das and Tulsi Maya admitted their marriage at Puspak Mandir on 14.11.98.

A copy of the said report is annexed herewith and marked as Annexure - B to this application.

(vi) That the applicant begs to state that both the applicant and Smti Tulsi Maya sworn an affidavit before the Magistrate, 1st Class, Aizawl admitting their Marriage. Another affidavit was also sworn by the First wife of the applicant Smti Doli Das stating that she gave her consent freely and voluntarily that she did not have any objection as the first wife to have second marriage between her husband and Smti Tulsi Maya in the hope of getting a male child.

Copies of the affidavit are annexed herewith and marked as Annexure - C and C¹ respectively.

(vii) That the applicant begs to state that on

AAS-2

receipt of this report, from the Police, the respondent No.2 submitted a confidential report to respondent No.1 on 19.1.99 vide letter No.NEID-II/Conf-II/98-99/122. In this letter, the respondent No.2 informed the respondent No.1 that illegal marriage took place between Smti Nirmal Chandra Das, driver with Smti Tulsi Maya, work-charged Kallasi. Along with this letter, the Police report, ~~the~~ affidavit sworn were also sent to the respondent No.1 for further action.

A copy of the letter is annexed herewith and marked as Annexure- D to this application.

(viii) That on receipt of the said letter, the respondent No.1 issued a memorandum under No. NEIC/Conf-I/99/C-333, dtd. 11.12.99 proposing to hold an enquiry against the applicant on the ground of his alleged misconduct of marrying second time during the life time of first wife. Alongwith the memorandum, the articles of charge and the statement of imputation were also submitted. The article of charge reads :

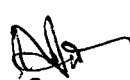
" That the said Shri Nirmal Chandra Das while functioning as motor Vehicle driver in North-Eastern W C.W.C., Aizawl during the period from 14.11.98 to the date entered into/Conduct the second marriage with Smti Tulsi Maya, an employee of NEID-II, C.W.C., Aizawl on 14.11.98 inspite of having spouse. Since Shri Nirmal Ch. Das

11/2

is a Central Government employee, his action amounts to mis-conduct or mis-behaviour under Rule 21 (II) or CCS (Conduct Rules, 1965) and dis-qualified him for continuation in Government service."

(ix) That on receipt of the said memorandum and the article of charge, the petitioner filed a written statement on 29.12.99 stating inter alia that the performance of marriage by him with Smti Tulsi Maya, a Khalasi working in the Wx C.W.C. is true that the said marriage was performed with due consent from the first wkfe of the applicant and Smti Tulsi Maya was also aware of the fact that the applicant had a spouse living with three female children. The applicant further stated that the marriage was performed with due consent from his first wife Smti Doli Das and it was considered a religious obligation to have a female children as per the Hindu belief. The applicant further stated that none of the parties to the marriage lodged any complaint but the complainant was lodged by some other envious persons who had no locus-standi.

A copy of the said written statement is enclosed herewith and marked as Annexure - E to this application.



(x) That the applicant begs to state that Section 494 IPC provides "whoever having a husband or wife living marrying in any case in which such marriage is void by using of its taking during the life of such husband and wife shall be punished with imprisonment or either for a term which may extend to save yourself and shall also be liable void. In this section, the mensrea i.e. guilty knowledge is necessary ingredience of offence under Section 494 and in order to attract Section 494, the first marriage must be valued one capable of creating a legal marital relationship. In this case, no doubt, the second marriage took place, but the consent was obtained from the first wife and as such the gravity of the offence is cooled down.

(xi) That the applicant begs to state that this being the position. There is no need of initiating a proceeding by the authority against him. The police has already registered a case and in the case so registered by police, regular trial is expected. The authority would have ample time to proceed against the applicant in the event the case before the police is proved. The proceeding contemplated therefore is of no use.

(xii) That the applicant begs to state that though the proceeding against him is started there will be lot of obligation and the applicant who is a poor employee

Hase

will have to suffer. Therefore, the applicant filed this application bonafide and for the ends of justice.

REMEDIES EXHAUSTED :

5. The applicant filed written statement, both the wife sworn affidavits stating that both ~~th~~ of them were consenting parties to the marriage, the respondent authority has not considered the same.

MATTERS NOT PREVIOUSLY FILED OR PENDING
BEFORE THE COURT :-

6. The applicant has not filed any case in any Court in connection with this matter.

RELIEF SOUGHT :-

7. Under the circumstances, the applicant prays that the proceeding contemplated by the respondent authority vide Memo No.NEIC/Conf-I/99-c-333, dtd. 11-12-99 be set-aside and quashed.

LEGAL GROUND :-

8. The applicant prays that pending disposal of this application, the proceeding contemplated against the applicant may kindly be stayed.

Particulars of I.P.O. :

AA~

NO. OF IPO :

OG 4972 48

Name of Post Office :

Gumwahab

Office at which payable :

Gumwahab

9. List of Annexures :

1. Combine complaint.
2. Police report.
3. Affidavits.
4. Report by Respondent No.2 to Respondent No.3.
5. Memorandum dated 11.12.99 issued by
Superintending Engineer, NE Circle
6. Written statement by the appellant.

~~AS~~

VERIFICATION

I, Shri Nirmal Chandra Das, aged about 48 years, the applicant abovenamed do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4 (1, II, III, VI (x, x) 5, 6, 7, 8, 9 of the application are true to my knowledge and those made in paragraphs 4 (iv, v, vi, vii)

being matters of record are true to my information derieved therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

Nirmal Ch. Das

SIGNATURE

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ANNEX-III (Part I)

- A -

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To

The Executive Engineer,
North Eastern Inv. Divn. II,
Central Water Commission,
Aizawl.

Sub : Combine complaint regarding illegal marriage
according to Hindu Marriage Act.

Sir,

We, the residents of CWC colony complex, Zemabawk, Aizawl
stating / submitting a combine complaint on the untoward
happening in our colony complex.

Miss Tulsi Maya, age 25 yrs. and her brother Shri Sukh
Bahadur was adopted by the residents/employees of CWC colony
complex, after expiry of her father late H.B. Pradhan then Casual
labour. Miss Tulsi Maya was given a service on the compassionate
ground as W/C Khalasi and provided sympathetically a guardian to
guide / look after for the sister and brother on the approval of
the Executive Engineer and senior residents of colony to Shri
Hindu Rai, Driver and stayed in the quarter of Hindu Rai, Driver
(share accomodation).

All of a sudden on the 24th Dec '98 we came to know that
Tulsi Maya married with a already married person, • Shri Nirmal
Chandra Das, Driver of this office (just very next neighbour of
Hindu Rai, guardian) having a wife and three daughters without
any consent from guardian and her brother, which is absolutely
illegal according to hindu marriage act.

The matter / happens was reported by Hindu Rai, guardian to
yourself and together all the residents went to the quarter of
Shri Nirmal Chandra Das to confirm the matters. Both Nirmal Chandra
Das and Tulsi Maya declared publically in the presence of
yourself and residents of colony that "we have married before
1 and half month in the Pushpak Mandir". Nirmal Chandra Das, he is
keeping both wives in his allotted quarter. Due to this residents
are annoyed to their unexpected behaviour created nuisance,
disturbing law and order in the residents people of colony.

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Hence the residents of CWC Colony desires to investigate the matter from the competent authority whether they have been married or not. If married they should be out from the colony complex immediately as well as suitable action may be taken up from your end please.

The above statement was made in my presence.

Yours faithfully,

S/No. Name & Designation

Signature

1. N. K. Upadhyay, Assistant Engineer

[Signature]

2. A. P. Kalra J.E.

[Signature] 22. N. Das, Khalesi

3. S. S. J.E.

[Signature]
28/11/58

4. S. Mishra J.E.

[Signature] 28/12/78
[Signature]

5. P. Koley L.D.C.

6. Th. N. Das L.D.C.

7. S. Chakraborty L.D.C.

8) NARAY Rana Driver

9) Hemlika Driver

10) Mangal Kishor, Khalesi

11) E. F. N. T. Term

12) R. Chakraborty L.D.C.

13) A. H. Choudhary - Kh

14) Manikam Goss

15) Neelachand J. Kh

16) A. M. Choudhary G.P.O.

17) S. K. Chakraborty G.O.

18) Mr. Sundar Lal Cooper

19) Radha Shyam Singha

20) Rana Lal Lala Kh

[Signature] Ram Singh Lani
CIT -
Muzaffarpur Thapra

145

B

~~ANNEX-III (Part-2)~~

No. 4/1125/98/3100-13 dt. 30/11/98.

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To,

The Executive Engineer,
C.W.C. Zemabawk.

Subj : Enquiry report.

Ref. Memo. no. NEID-11-27/E-1/Conf. 2/98/3966-67
dt. 23/10/98.

Sir,

With reference to the memo cited above I am to inform that Sri.Nirmal Chandra Das, driver of C.W.C. and his two wives were called at Police Station and an enquiry was conducted, During their preliminary interrogation they Nirmal Chandra Das and Tulsi Maya admitted that both married at Pushpak Mandir, Zemabawk on 14.11.98 and in this regards they have submitted in writing which are forwarded to you. They have been allowed to go back to their residence.

Enclosed:-

1. Three letters, written by Nirmal Chandra Das, Tulsi Maya and Doli Das, all of C.W.C. Zemabawk.

Yours faithfully,

SI(D.P. MAHTO)
Bawngkawn Police Station,
Aizawl : : Mizoram.

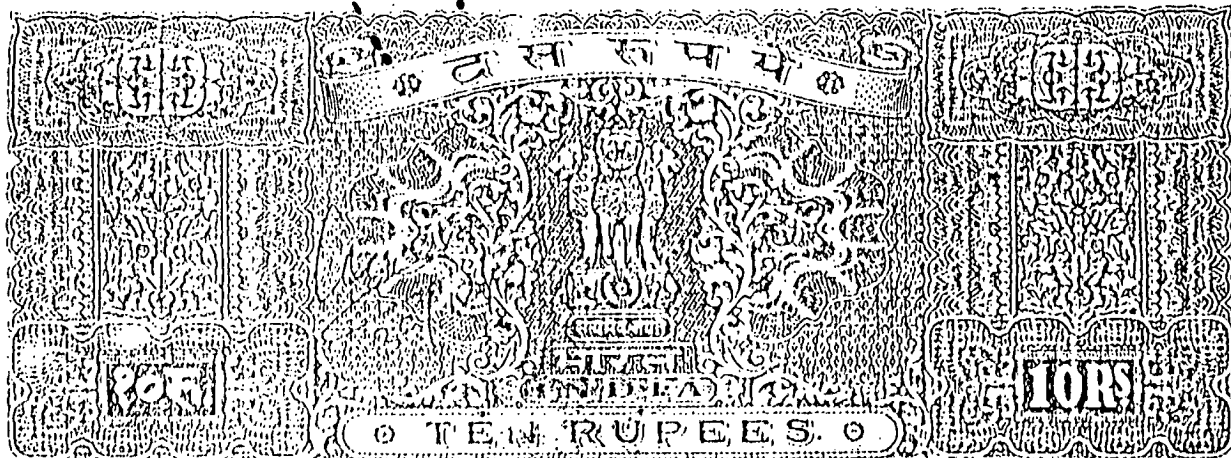
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30/11/98
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10RS.



AFFIDAVIT AS PROOF OF HAVING NO OBJECTION FOR THE SECOND MARRIAGE OF MY HUSBAND NIRMAL CHANDRA DAS WITH SMT. TULSI MAYA D/O LATE H.B. PRADHAN.

I Smt. Duli Das daughter of late Nilmoni Saha existing wife of Shri Nirmal Chandra Das Driver, do hereby solemnly affirmed and declares as follows:

1. That I am the existing legal wife of Shri Nirmal Chandra Das, we have three female issue with my husband.
2. That, I do hereby freely and voluntarily declared that, I have no any objection as a wife to get married my husband with Smt. Tulsi Maya, as we are in want of male child.
3. That, my husband have married to Smt. Tulsi Maya with my own consent and permission.

I so hereby verify that the contents of this affidavit is true to the best of my knowledge. In witnesses whereof I hereby put my signature on this 30th December 1998. AD.

Affidavit is dropted as per version of the affiant, and the same was explained to the deponent in the language known to her and thereafter executed.

WITNESS :

1. (Smt. Duli Das)
 2. (Smt. Duli Das)
- Signed before me

DEPONENT

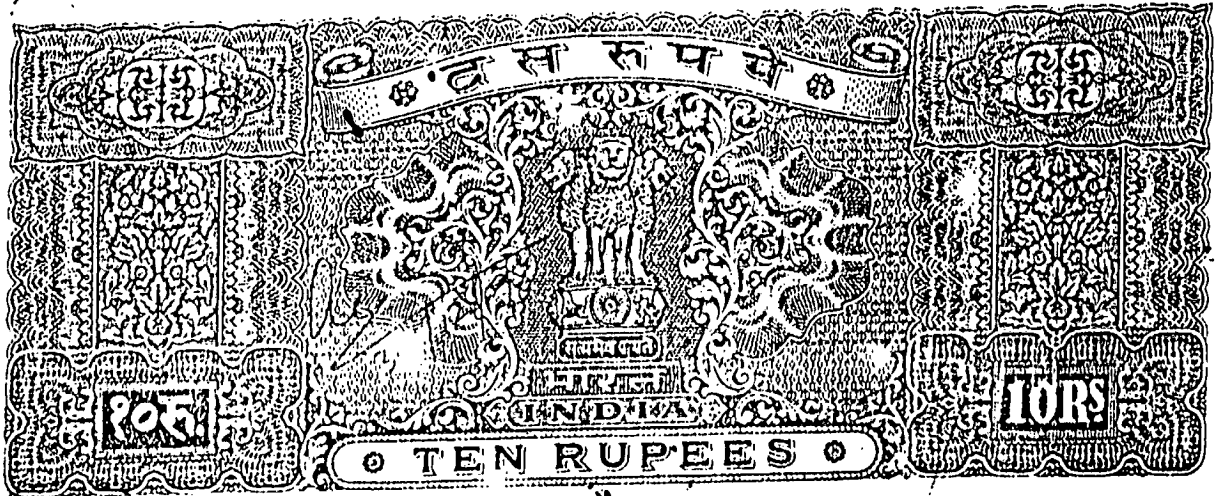
(SMT. DULI DAS)

MAGISTRATE FIRST CLASS AIZAWL

Magistrate 1st Class
Aizawl Dist. Aizawl

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10RS.



A F F I D A V I T

BEFORE MAGISTRATE FIRST CLASS : AIZAWL

Affidavit as proof of marriage in between Smt. Tulsi Maya daughter of H.B.Pradhan (L) and Nirmal Chandra Das driver N/E IND Divn-II Central Water Commission Zemabawk Aizawl Mizoram.

We the Shri Nirmal Chandra Das son of Sanatan Das (L) and Smt.Tulsi Maya daughter of H.B.Pradhan (L) of Pushpak Zemabawk do hereby voluntarily jointly solemnly affirmed and declared as follows

1. That out of natural have we voluntarily married each other and both accepted each other as husband and wife.
2. That, ritually we married on 14.11.98 at Pushpak Siva Mandir as per Hindu law and Sidur was put on the forehead of bride.
3. That, both the bride and bridgroom has fulfill the requisit condition as provides in the Hindu marriage act.

We do hereby verify that content of paras No. 1,2 & 3 are true, no material facts is concealed therein.

In witness whereof I hereunto set my hand on this 30th days of December 1998 AM.

WITNESS :

1. (LALREMA KAWLNI)

EXECUTANT

1. (NIRMAL CH.DAS)

2. (TULSI MAYA)

K. B. Kumar
K. B. KUMAR B.A. B.Ed LL.B
Magistrate First Class
Aizawl
signed by me

MAGISTRATE FIRST CLASS AIZAWL

True am
BM

17 2
CONFIDENTIAL

Gram : NEIDIV : Aizawl.

Phone : 357266.

NO:NEID-II/CONF- 2A/99/212-13.
Government of India
North Eastern Inv. Divn. II.
Central Water Commission,
Zemabawk, Aizawl-17.

Dated, the 29/12/99/1999.

To,

The Superintending Engineer,
North Eastern Investigation Circle,
Central Water Commission,
Shillong-14; (Meghalaya).

Subject :- Confidential letter Submission regd.

Ref :- No.NEIC/Conf-1/99/333, dated 11-12-99.

Sir,

A confidential sealed letter addressed to
Superintending Engineer, North Eastern Investigation
Circle, Central Water Commission, Shillong received
from Shri N.C. Das, M.V.Driver is sent herewith for
further necessary action please.

Yours faithfully,

[Signature]

(R.K. BATHLA)
EXECUTIVE ENGINEER.

Copy to :-

✓ Shri N.C. Das, M.V. Driver for information.
with reference to his letter dated 29-12-99.

*me am
Bnd*

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Annex - E ✓

To

The Superintending Engineer,
North - Eastern Investigation Circle (C.W.C.)
Jamir Mansion, Nongshilliang
Shillong - 793014.

Ref : No. NEIC/Conf. - 1/99/C-333 on dated 11.12.99.

Subj : Representation answering your memorandum
dated 11.12.99 mentioned above.

Sir,

With due respect and humble submission, I would like to represent, the following fact facts answering your memorandum above mentioned for favour ^{your} of kind consideration and necessary action please.

1. That, by birth I belongs to Low Caste *Little* Das which is one of the recognised Schedule caste by the constitution of India, the constitution (Scheduled castes) order 1950, R/A subs by schedule castes and scheduled tribes order (Amendment) Act of 1976 and I am serving as driver (Motor Vehicle) on the Central Water Commission since for the last 23 yrs. and posted in Division No. II at Aizawl Mizoram since 9.8.83.
2. That, the proposed departmental inquiry is mainly based on the report and the complained lodged by the E/E/CWC/ Division - II Zemaabawk for alleging me creating problems for other staff and also violation of peacefull low and orders in the departmental administration are do hereby strongly denied.
3. That, thereafter the E/E have submitted an first information report to the O/C Bawngkawn Police Station Aizawl Mizoram.
4. That I am a Hindu by religion and born and brought up in Hindu Family. That as per basis of a Hindu marriage, it is said that a Hindu is born on earth with certain specified mission of life viz. to acquire 'Dharma' 'Artha' 'Kama' and 'Moksha'. The Hindu shastras also prescribed that without a wife a dvija is incompetant to do enjoined rites. It has been said that Marriage alone makes one the full man, and full women.

Among the Hindus the marriage was considered a sacrament and it was obligatory because the birth of a son said to enable one to obtain Moksha'.

The main concept of 'Hindu Marriage' arouse out of religion and spiritual necessity. A Hindu's urge to continue his family could be fulfilled through marriage alone. He knew it too well. He also knew that

*True am
bms*

Contd...2/-

without a legitimate son his line of generation could not be continued further. Marriage among Hindus was thus a necessity a family necessity. It is also a religion necessity too, because the Mukti of a Hindu depended upon the existence of a 'son' who could only carry him to heaven and deliver him from the 'Put Narka'. Thus a son born in the Hindu family is known a 'Putra' because he librate his father from 'Put Narka'.

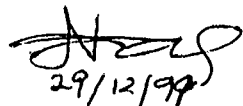
5. That, it essential for a Hindu to have own natural 'Son' in order to fulfill the religious obligation as well as for the survival of ancestral line of Heridity.
6. That, all the memorandum and charges for the proposed departmental inquiry are denied.
7. That, ~~no~~ solemnisation marriage is ^{and} performed as required by the existing Hindu law as alleged.
8. That, it is a facts that we are three brother and all are married, but ^{21st} some have any male issue till date, And now I have a three daughter, there is no hope for having a male issue in future.

As such the condition of our family and the existing generation, there is every possibilities stop gap of our successor if there is no male born child in our family.

Therefore it is earnestly pray your honour kindly to grant a permission to marry another wife only for the fulfillment of my religious obligation ^{not} that for the pleasure of worldly life. As having a son is bonofide requirement for the attainment of Salvation, as per Hindu's belives.

9. That however if such permission can not be grant a person who is belonging to minorities scheduled caste, it is also most humbly pray to your honour kindly allow me to go on voluntary pension without any hindranced as per permissible rules.

Yours faithfully,


29/12/99

(NIRMAL CHANDRA DAS)
Driver,
Central Water Commission
NEID - II, Aizawl.
...

Amr
bms

Gram : SENEK : SHILLONG

Phone : Off. : 2/
Res : 23

भारत सरकार

कार्यालय अधीक्षण अभियन्ता

उत्तर पूर्व अन्वेषण परिमंडल, केन्द्रीय जल आयोग
जमीर मन्सन, नोंगशिल्लियांग, शिलांग-७६३०१४

GOVERNMENT OF INDIA

Office of the Superintending Engineer

NORTH EASTERN INVESTIGATION CIRCLE, CENTRAL WATER COMMISSION
JAMIR MANSION, NONGSHILLIANG, SHILLONG-793014

CONFIDENTIAL

Phone : 230049

No, NEIC/Conf-1/99/c-333

Date 11-12-99

MEMORANDUM

The undersigned proposed to hold an inquiry against Sh. Binmal Chandra Das W/C Driver 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).

2. Shri N.C. Das W/C MVD 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 N.C. Das 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 provision 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.

Contd.: 2/-

5. Attention of Sri N.C. Das 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 matter 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 Sri N.C. Das is aware of such 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 acknowledged.

Encl: As above

To

✓ Sri Nirmal Chandra Das
Motor Vehicle Driver
Through Executive Engineer
North Eastern Inv. Divn. No.II
CWC, Aizawl-17 (Mizoram).

S. C. Awasthy
11/12/90
(S.C. Awasthy)
Superintending Engineer

Copy to Executive Engineer, North Eastern Inv. Divn. No.II, CWC, Aizawl & information and necessary action.

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