

30/10/00
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

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Mr. J. H. D. 1/2/17
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FORM NO. 4

(See Rule 42)

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

ORDER SHEET

Original APPLICATION NO. 252 OF 2001

APPLICANT (s) Mr. N. Thungdim

RESPONDENT (s) U. O.I. 90M

ADVOCATE FOR APPLICANT(s) Mr. K.H. Choudhury

Mr. S. Mukherjee

ADVOCATE FOR RESPONDENT(s) Mr. A. Deb Roy, Dr. C.G.S.C.

Notes of the Registry

dated

Order of the Tribunal

13.07.01

Heard Mr. K.H. Choudhury, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents. The application is admitted. Call for the records. Returnable by 4 weeks. Mr. A. Deb Roy, learned Sr. C.G.S.C. accepts notice on behalf of the respondents. List on 16/08/2001 for order.

K.L (Signature)
Member

Vice-Chairman

16.8.01

Mr. A. Deb Roy, learned Sr. C.G.S.C. prays for 4 weeks time to file written statement. Mr. K.H. Choudhury, learned counsel for the applicant, states that the applicant is to retire on February, 2002 and the matter requires to be disposed. Accordingly, the matter is postponed for hearing.

Time is granted to the respondents to file written statement.

List on 10/9/01 for order.

V.C. Ulhaq
Member

Vice-Chairman

Notice/refered and sent to
D/S for issuing the reshorlement
No 1405 by Regd AIA vide
S/D No 2655 (Ch 50) Ad. 26/7/01

Ad.
19/7/01

- ① Service report are still awaited,
- ② No. Reply has been bailed.

By
T.M.S. 01

10.9.01

No written statement so far been filed though time was granted. List the matter for hearing on 10/10/01. The respondents may file written statement, if any, within 2 weeks from today.

List on 10/10/01 for hearing.

No written statement has been filed.

7.9.01

No written statement has been filed.

7.10.01

K. C. Shar

Member

mb

Vice-Chairman

10.10.2001

Heard Mr. K.H. Choudhury, learned counsel for the applicant and also Mr. B.C. Pathak, learned Addl. C.G.S.C.

10.10.2001

Vide order passed in M.P.No.245/2001 amendment has been allowed. The applicant to file the amended application within seven days from today. The respondents shall file written statement, if any within three weeks thereafter and the applicant may file rejoinder, if any, within two weeks thereafter.

List the case for hearing on 22.11.01.

22.10.2001

An amended application has been submitted.

22

K. C. Shar

Member

Vice-Chairman

nk m

22.11.2001

The case is set down for hearing today. Mr. A. Deb Roy, learned Sr. C.G.S.C., stated that the copy of the amended petition has not been furnished. The learned counsel for the applicant stated that steps were already taken by the applicant and the copy of the amended petition was submitted on 19.10.2001 to Mr. B.C. Pathak, learned Addl. C.G.S.C. who appeared on behalf of the respondents, in the absence of Mr. A. Deb Roy and Mr. Pathak also made endorsement in the notice. Besides, additional six copies of the amended petition were also submitted on 19.10.2001. Be that as it may, Mr. Deb Roy is present today and he is advised to take steps for filing written statement, if any. Mrs. R. Das Mozumdar has entered appearance on behalf of respondent No.4. All the parties are directed to exchange their pleadings and the matter shall now be set down

(3)

3

Notes of the Registry

Date

Order of the Tribunal

Copies received on behalf of
Respondents No 1, 2, 3 & 5 & 6
In 25/11/01

Received 23/11
Sear

22.11.2001

for hearing on 18.12.01.

The respondents are directed to make available all the records of the proceeding on the next date of hearing and no further adjournments shall be granted.

K C Usha

Member

[Signature]
Vice-Chairman

nkm

16.12.2001

18.12.2001

W/S submitted
by the Respondents.

[Signature]

List the matter on 24.12.2001
for hearing. The applicant may file
rejoinder within three days from today.

K C Usha

Member

[Signature]
Vice-Chairman

bb

24.12

Heard Mr. K. H. Chandrappa, learned
Counsel for the applicant & Mr. A. Dethay,
Sr. C. G. S. C. for the respondent,
Hearing Concluded.

Judgment reserved.

[Signature]

[Signature]

24/12

20.12.2001
additional W/S submitted
by the Respondents on
amended application

1.1.2002

Judgment pronounced in open court.

The application is allowed with costs.

[Signature]
nkm

K C Usha

Vice-Chairman

The case is ready
for hearing.

21.12.2001

[Signature]
21.12.01

Reply to the Additional
written statement was
filled by the L/Advocate for
the applicant. It is filed.

Notes of the Registry

Date

Order of the Tribunal

Received the judgment
and order dt 1.1.2002
29/1/2002

Office

29/1/2002

Copy of the Judgment
has been sent to the
Opp. for 25/1/2002
and to the parties
as well as to the L/HM
in the Registry.

SL

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH,

O.A./RIAXX No. 252 of 2001

DATE OF DECISION 01-01-2002

Shri Ngulkholund Lhungdim

PETITIONER(S)

Mr K.H. Choudhury and
Mr S. Muktar

ADVOCATE FOR THE
PETITIONER(S)

VERSUS *

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C. and
Ms Rita Das Mazumdar

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 ?

Judgment delivered by Hon'ble Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.252 of 2001

Date of decision: This the 1st day of January 2002

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

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

Shri Ngulkholund Lhungdim,
Resident of Central Revenue Building,
Dibrugarh, Assam.

.....Applicant

By Advocates Mr K.H. Choudhury and Mr S. Muktar.

- versus -

1. The Union of India, through the
Secretary to the Government of India,
Ministry of Finance,
New Delhi.
2. Central Board of Direct Taxes,
Through its Chairman,
North Block, New Delhi.
3. The Director of Income Tax (Vigilance),
Central Board of Direct Taxes,
New Delhi.
4. The Chief Commissioner of Income Tax,
G.S. Road, Guwahati.
5. The Commissioner, Income Tax,
Shillong.
6. The Union Public Service Commission,
Through its Secretary,
Dholpur House, New Delhi.

.....Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C. and
Ms Rita Das Mazumdar.

.....

O R D E R

CHOWDHURY, J. (V.C.)

The legitimacy of the action of the respondents culminating into the imposition of penalty of censure on the applicant vide order dated 14.9.2001 is the subject matter of adjudication in this proceeding.

A thumbnail sketch relevant for the purpose of adjudication of the proceeding is outlined hereinbelow:

 The applicant entered into the service under the respondents as an Income Tax Officer on 26.11.1973. In course of time he was promoted

as Deputy Commissioner, Income Tax and posted at Shillong from 8.6.1988 to 7.7.1992. Since 8.7.1992 the applicant was holding the post of Additional Commissioner of Income Tax, Dibrugarh Range, Assam. As per office record the applicant is to retire from service on superannuation on 28.2.2002.

2. While the applicant was holding the post of Additional Commissioner, Income Tax, Dibrugarh Range, the Under Secretary to the Government of India, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, New Delhi issued a Memorandum dated 29.3.1996/3.4.1996 enclosing Article of charge and statement of imputation of misconduct for alleged contravention of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Service (Conduct) Rules, 1964. The relevant part of the Article of charge is reproduced below:

"Shri N. Lhungdim, while posted and functioning as the Deputy Commissioner, Shillong Range, Meghalaya during 1989 failed to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes contained in Board's letter F.No.212/753/79-ITA-II dated 09.10.1979 and reiterated in Instruction No.1530 dated 16.10.1983 which state that all refund orders should be sent by registered post only. He passed orders, contrary to the letter and spirit of the above mentioned circulars by directing the handing over of refund orders amounting to Rs.62,582/- and Rs.98,020/- to Shri H. Lalanpuia and Shri J. Anthony respectively, the alleged assessee, who turned out to be bogus, thereby putting the state exchequer to a loss of Rs.1,60,602/-. He thereby showed lack of integrity lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964."

3. The applicant submitted his explanation in writing on 30.4.1996 denying and disputing the imputation of misconduct and/or misbehaviour. The applicant in his written reply accepted the factum of giving instructions to the Assessing Officer to hand over the refund orders to the Assessee by hand. Recalling the incident, the applicant informed that those instructions were given under some peculiar circumstances. The said assessee went to him and insisted for taking the refund by hand instead of registered post. Those assessee (though they later on turned out to be fictitious assessee) represented to the applicant and pressed for the refund order to enable them to clear the outstanding

labour payment. According to the applicant the said two assessees represented to him that if it was to be sent by registered post it would delay the process and thereby it would delay the labour payment and the labourers were urging for early payment because of certain festivals and urgent personal expenses. The applicant mentioned in the written statement that those instructions were given by him to maintain good public relation in the area, so much so that most of the grievances of the public in that area was associated with the refund orders. The applicant has stated that he acted bonafide. A part of the explanation of the applicant is reproduced below:

".....As I understand the spirit behind the instruction of the Board to send the refund voucher by post is to minimise or eliminate complaints against the Departmental officials in this matter. In actual field situation sometimes the instruction of the Board could not be followed in letter and spirit. In most cases attempts have been made to follow the spirit of this instructions when there are practical difficulties to follow the instruction literally. Following the instruction literally also sometimes put both the assessees and the Department in lots of inconveniences and difficulties, specially in the Hill Areas/such as in the North East where communication is still in the bad shape and postal delays are common which is known and experienced only by those persons working in region. Sometimes the Officers working in these areas find it difficult to follow the instruction in letter and spirit. In view of the above facts and circumstances it was felt by me that as a measure of good public relation to improve the image of the Department in this score and also to mitigate the problems of the assessees, that instructions were given to the Assessing Officer to hand-over the vouchers personally to the assessees.

It is completely a different matter that so called assessees happened to be only bogus or fictitious assessees trying to defraud the exchequer - Wolves in ships' skin befooling a simple and straightforward person in me who has a weakness in believing that every person is to be believed if not proved otherwise.

It is also further submitted that my instructions to hand-over the vouchers in person did not in anyway change the status of the refunds, the so called assessees filed their returns, these were processed and these were never suspected by the A.O. be bogus or fictitious, otherwise, it would never have been processed for grant of refunds. The Assessing Officer, Shri B.R. Purkayastha is an officer of sterling quality and high moral integrity who would never have done such things at all, he had doubted the genuineness of the return not to speak of granting of refunds. I would restate that even if instructions have not given by me, the so called assessees would in any case have encaashed the refund voucher in course of time with a delay of some weeks or so. Therefore the allegation that my instructions have defrauded the exchequer is not at all tenable. Whether instructions was given or not the so called assessees would have defrauded the exchequer. This fault lies in the system - the system in which there

is.....

is no way to knwo that TDS certificates were genuine or bogus. It was certainly the system failure. Even when there is good system people sometimes fail and in this case since the system was not there people have to fail which happened to the Assessing Officers."

4. By order dated 14.6.1996 the Commissioner, Income Tax, Shillong was appointed as an Inquiry Officer to enquire into the charges. The applicant submitted further additional written statement on 21.2.1997 mentioning about the departmental instructions for prompt delivery of the refund vouchers. He also mentioned about the practical difficulties experienced by the assessees and the department, more particularly as to the inconvenience and difficulties faced in the Hill areas of the North East and the routine postal delay in the area. He also explained the fact as to want of postage stamp due to the perpetual shortage of funds under the head 'office expenses'. The Inquiry Officer finally submitted his report exonerating the applicant. The concluding part of the findings of the Inquiry Officer reads as follows:

"The incident on the basis of which the present proceedings has been drawn up, occurred sometimes during January & February, 1989. At this time, it was apparent that it was a matter of concern to the I.T. Department that there was large numbers of complaints from assessees regarding irregularities in the matter of refund issues. The Board had, vide Instruction No.1647 dated 11.9.1985 issued direction in regard to Expeditious disposal of Refund applications relevant portions of which is reproduced below:

"3. The Board would therefore again like to emphasise that the claims of refund should be disposed off promptly and the refund vouchers should invariably accompany the orders giving rise to the refund.

4. The Board also desires that steps may be takn to carry out surprise inspections by the Commissioner of Income Tax/Inspecting Assistant Commissioner of Income Tax to find out whether refunds are granted promptly and interest is paied in case of delayed refunds. The Commissioner of Income-tax/Inspecting Assistant Commissioner of Income-tax are directed to ensure elimination of delays in the grant of refunds, etc."

FIN DIN GS:

During the course of the hearing and cross examination of witnesses and inspection of documents produced before me, it appears that nothing could be inferred that Shri N. Lhungdim has malafide intention of defrauding the revenue or causing loss to the government exchequer. It is an undenied fact that Shri N. Lhungdim has acted in contravention of the Board's standing Instruction, while issuing instruction to hand over the refund voucher to the claimants by hand. However, this also appears to be an action arising out of his desire to keep up the good image of the department, in its dealing vis-a-vis the public."

The Inquiry Officer submitted his report on 22.10.1997. By Office Order F.No.C-14011/8/96-V&L dated 7.8.1998 the concerned authority sent a copy of the report to the Inquiry Officer to the applicant advising him to submit his comments within the specified period in view of the fact that the Disciplinary Authority was not in agreement with the Inquiry Officer's report on the ground that the applicant did order handing over of the refund orders contrary to the departmental instructions. That apart, since the applicant did not know the assessee's direction to hand over the refund orders personally to such strangers amounted to an act of indiscretion and lack of devotion to duty. The applicant submitted his representation on 18.9.1998 refuting the charge and prayed for dropping of the proceedings. During the pendency of the proceedings his batch mates were promoted on ad hoc basis vide order No.121 of 1997 dated 13.9.1997 and they were promoted on regular basis vide order No.126 of 1998 dated 9.9.1998. The applicant's case was, however, not considered for promotion in view of the pendency of the proceedings. The Chief Commissioner, Income Tax, Bihar, Orissa and North Eastern Region, vide communication dated 26.10.1999 took up the matter of promotion of the applicant. By the said communication the Chief Commissioner of Income Tax recommended for giving him ad hoc promotion and expressed for exonerating the applicant by expeditiously disposing of the departmental proceedings. By another communication dated 26.10.1999 addressed to the Director of Income Tax (Vigilance) the Chief Commissioner requested the authority for exonerating the applicant by expediting the departmental proceedings and to grant him promotion to the cadre of Commissioner from the date his junior Shri L. Nampui became Commissioner by Board's order No.121 dated 13.9.1997. The applicant further submitted representation for expeditious disposal of his departmental proceedings. Failing to get appropriate remedy from the authority the applicant moved the application under Section 19 of the Administrative Tribunals, 1985 on 11.7.2001 assailing the legitimacy of the action of the respondents including continuance of the departmental proceedings. While the matter was pending the respondents passed the impugned order

of penalty of censure dated 14.9.2001 on the applicant on receipt of the advice from the UPSC vide letter dated 26.6.2001. The applicant amended the application assailing the order of penalty of censure dated 14.9.2001 as well as the recommendation of the UPSC dated 26.6.2001.

5. The respondents contested the claim of the applicant by submitting written statement as well as additional written statement.

6. Mr K.H. Choudhury, learned senior counsel appearing on behalf of the applicant contended that the respondent authority acted illegally and with impropriety in initiating a departmental proceeding in 1996 pertaining to some alleged dereliction those said to have taken place in 1989. The learned senior counsel submitted that the respondent authority initiated the purported disciplinary proceedings obviously to deny the promotional benefit to the applicant and dragged on the persecution, obviously to impair and mutilate the distinguished service career of the applicant and to besmear the track record of the applicant. In support of his contention the learned senior counsel referred to the order promoting a large number of officers, more than one hundred, to the rank of Commissioner, Income Tax which also included around sixtynine persons, who were, admittedly junior to the applicant. The learned senior counsel submitted that the impugned order of penalty was imposed in contravention of the principle of procedural fairness. The learned senior counsel further assailed the findings of the Disciplinary Authority as perverse and arbitrary. The learned senior counsel attacked the order of penalty imposed by the Disciplinary Authority as mechanical exercise of power.

7. Mr A. Deb Roy, learned Sr. C.G.S.C. appearing on behalf of the respondent Nos.1, 2 and 3 and Ms Rita Das Mazumdar, learned counsel for respondent Nos.4 and 5, submitted that the respondent authority imposed the penalty as per law after providing reasonable opportunity to the applicant as per law. The learned counsel for the respondents invited our attention to a number of office instructions which were required to be followed in issuing refund orders. Vociferously denying the charge of impropriety the learned counsel submitted that the respondents at all relevant time acted honestly and bonafide.

8. From the facts mentioned above it thus appears that the Assessing Officers already adjudicated upon the matter and processed the cases under Section 143(1). The Assessing Officer also computed the refund due to the assessees and the refund orders were ready for despatch by registered post to those assessees. The applicant was implicated for his intervention in the matter by directing the Assessing Officer to hand over the I.T. Refund orders personally to the two individuals instead of sending them by registered post. Subsequently, those persons were found to be bogus and fictitious assessees. It was also found that the aforesaid returns were accompanied with bogus TDS certificates and in actual fact there was no such TDS nor any such amount was deposited to the credit of the Government. The exchequer was thus defrauded to the extent of Rs.1,60,602/- through bogus claim of refund. The applicant was not responsible for the assessment and compilation and issuance of the refund order nor was he implicated as such. The applicant was not the assessing officer. His only role was in issuing instructions to the Assessing Officer in writing to hand over the refund orders to the assessees personally. The Inquiry Officer, on consideration of the materials on record and on assessment of the facts, found that the applicant was not guilty of any improper motive. The Inquiry Officer found that there was no malafide intention on the part of the applicant of defrauding the revenue or causing loss to the government exchequer and further held that though the applicant had acted in contravention of the Board's standing instructions, while issuing instruction to hand over the refund vouchers to the claimants by hand, the applicant acted bonafide to keep up the good image of the department in its dealings vis-a-vis the public. In the communication dated 7.8.1998, disagreeing with the findings of the Inquiry Officer, the Disciplinary Authority did not record any reason. It only mentioned that the Disciplinary Authority was not in agreement with the Inquiry Officer's report. It only stated that when the applicant did not know the assessee his direction to hand over the refund orders personally to such strangers amounted to an act of indiscretion betraying lack of devotion to duty. Under the CCS(CCA) Rules the Disciplinary

Authority is free to differ with the findings of the Inquiry Officer, but a duty is cast on it to record its reasons for such disagreement and record its own findings on such charge. Assigning and recording of reasons by the Disciplinary Authority as to its disagreement to the findings of the Inquiry Officer is an integral part of the statutory rule and also an essential part of fair play in action. Reasons are the live links between the constituents (inputs) on which the conclusions are based and the actual conclusions. Duty of assigning reasons is another aspect of the requirements of procedural fairness. Basic fairness requires that the individual must be made aware as to why the findings of the Inquiry Officer were not given effect to. An unreasoned decision cannot be said to be rational. Such decision does not indicate any logical connection between the evidence and the ostensible reasons for the decision. The charged officer in the instant case was denuded of his right to submit an effective representation to enable him to persuade the Disciplinary Authority to take a different conclusion. The applicant was thus robbed of the procedural safeguards as enjoined in the disciplinary rules in the light of the Clause 2 of Article 311 of the Constitution (Ref. The State of Assam and another Vs. Bimal Kumar Pandit, reported in AIR 1963 SC 1612 followed in Punjab National Bank and others Vs. Kunj Behari Misra, reported in (1998) 7 SCC 84). In the instant case the Disciplinary Authority only mentioned that the direction issued by the applicant to hand over the refund orders personally to the strangers amounted to an act of indiscretion betraying lack of devotion to duty. It only conveyed the ipse dixit of the Disciplinary Authority - not the reasons. Where powers are reposed by statute there is a presumption that it will be exercised in a fair and reasonable manner in all situations. Absence of reasons, in the circumstances amounted to breach of fair hearing. Fairness requires that a person who may be adversely affected by the decision, will have an opportunity to represent on his behalf and persuade in his favour. Without knowing the causes or factors that may be counted against his or her interest an affected person cannot make an effective representation. Justice and fairness demanded a prior information to,

the.....

the affected person to enable him to submit a worthwhile representation.

"Right to make representation is of little value, unless the maker has knowledge in advance of the considerations which unless effectively challenged will or may lead to adverse decision" as observed by Lord Mustill in Doody Vs. Secretary of State for the Home Department, reported in (1993) 3 ALL ER 92 (106)

9. In the instant case the Disciplinary Authority acted with procedural impropriety in imposing the impugned penalty in breach of the statutory rule as well as the principles of Natural Justice. Denial of procedural fairness in the set of circumstances caused grave failure of justice and thereby caused prejudice to the applicant.

10. The Inquiry Officer in his report took note of the situation prevailing in January and February 1989 when the alleged incident took place. He referred to the anxiety of the department which had encountered the complaints of the assessees regarding irregularities in the matter of refund orders which impelled the Board to issue the instruction No.1647 dated 11.9.1985 for expeditious disposal of refund applications. By the said circular the Board urged upon the Commissioner of Income Tax/Inspecting Assistant Commissioner of Income Tax to ensure elimination of delays in the grant of refunds etc. The Inquiry Officer on assessment of facts ruled out any improper motive and/or culpability of the applicant in defrauding the revenue or causing loss to the exchequer. The Inquiry Officer while exonerating the applicant reached a clear finding that the charged officer acted bonafide to keep the reputation of the department. The Disciplinary Authority as well as the Union Public Service Commission totally overlooked the materials on record as well as the findings of the Inquiry Officer. Both the authorities did not find any corrupt or dishonest motive in the act of the charged officer. In the memorandum dated 7.8.1998, informing the charged officer its disagreement observed that "his direction to hand over the refund orders personally to the strangers amounted to an act of indiscretion betraying lack of devotion". Indiscretion means lack of discretion, imprudence. A mere indiscretion without something more cannot

be.....

be said to be a lack of devotion. Be that as it may the applicant submitted his explanation in detail. In support of the conclusion of the Inquiry Officer, the applicant admitted that despite the Board's standing instructions he ordered the Assessing Officer to hand over the refund vouchers to the assessees by hand due to some special and peculiar circumstances as mentioned in his written explanation. It was a special order and not an instruction and it was done with the best of intention without the slightest bit of malafide intention to defraud the revenue or causing loss to the government exchequer. The applicant was charged for directing the Assessing Officer in refunding assessees who subsequently turned out to be impostaers. The applicant was charged in facilitating issuance of refund orders to unauthorised persons in disregard of instructions of civility. There was no allegation either express or implied that the act of the applicant was accentuated by corrupt or improper motive or to oblige any person on extraneous consideration. There was no charge of corrupt or improper motive. In fact, the Inquiry Officer ruled out any such corrupt or improper motive. The Disciplinary Authority also did not find any improper motive in the applicant. The Disciplinary Authority, however, acting on the advice of the UPSC imposed the penalty of censure. Under Rule 15 it is the Disciplinary Authority who is to impose the order of penalty on its own assessment. It is not required to act on the direction of any other authority. Under Article 320 (3) the UPSC is required to be consulted on matters specified therein. Under Clause (c) of Clause (3) of Article 320, the UPSC is to be consulted on all disciplinary matters affecting a person. The UPSC is not an Appellate Authority over the Inquiry Officer or for that matter the Disciplinary Authority. The Disciplinary Authority did not independently assess the merit of the materials on record as well as the reasons assigned by the Inquiry Officer. It only mechanically accepted the advice of the UPSC. Stroud, while explaining the term misconduct observed that if misconduct arise from ill motive, acts of negligence, errors of

judgment.....

judgment or innocent mistakes do not constitute misconduct (Stroud's Judicial Dictionary). As was observed by the Hon'ble Supreme Court in P.H. Kalyani Vs. Air France Calcutta, reported in AIR 1963 SC 1756, a single act of omission or error of judgment would not constitute misconduct (also reference: Union of India Vs. J. Ahmed, reported in AIR 1979 SCC 1022).

11. We have gone through the report of the UPSC. In view of the constitutional scheme, more so since the nature of the role of the UPSC in a disciplinary matter we do not find any justification to probe deep into the findings of the UPSC, though in our opinion the UPSC took into consideration irrelevant considerations in reaching its decision and findings. The findings of the UPSC as to the contention of the applicant that there was considerable postal delay in the North Eastern Region did not hold water as the assessees happened to be at Shillong, where the charged officer was also posted and where the refund orders were to be despatched. Postal delays do take place even in the same cities and towns, not to speak of outstations. This aspect of postal delay is so blatant and notorious in this area, that it can be taken judicial notice. The finding of the Commission rejecting the plea of the applicant as to why he ordered for personal delivery of the refund orders to maintain the image of the department as an afterthought is seemingly perverse on the face of the materials on record. The materials on record unerringly pointed that in the given circumstances the officer acted to the best of his judgment. No dishonesty or corrupt motive was discernible from the evidence on record. The Commission reached its conclusion on no evidence and without proper appreciation of the background and circumstances of the case. There was nothing on record that the applicant had an oblique motive in ordering for hand delivery of the refund orders. There was no dispute that the applicant issued instructions to hand over refund vouchers in contravention of the Board's standing instructions, but he was not imputed with any corrupt or deceitful motive. The action of the applicant at best could be said to be an error of judgment, but in the absence of anything more the applicant could not be charged for misconduct. It seems that the Disciplinary Authority mechanically

accepted the advice of the UPSC and imposed the penalty without independently holding the applicant guilty of any misconduct. The materials on record did not indicate any misconduct of betraying lack of devotion. The Disciplinary Authority for that matter failed to take note of the report of the Inquiry Officer as well as the evidence on record. The Chief Commissioner of the region by his communication dated 26.10.1999 pithily dealt with the matter, the relevant part of which is reproduced below:

Without prejudice to the request for ad-hoc promotion made in the earlier paragraph it is further submitted, that, in view of following facts the disciplinary proceedings initiated against the Officer are required to be filed and he is required to be promoted as Commissioner from the date on which his junior Sri L. Nampui assumed charge of Commissioner in accordance with order No 121 of 1997, dated 13th Sept. 1997.

- a) The inquiry Officer, after sifting the facts and evidence has given a clear finding in his report, dated 22nd Oct.'97 that the only fault of Sri N. Lhungdim was that he had acted in contravention of the Board's standing instructions but no malafide intention could be attributed to him.
- b) Had the intention of Sri Lhungdim been to defraud the Government Exchequer, he would not have issued written instructions to the Assessing Officer working under his administrative control but would have issued verbal instructions to hand over the refund orders to the two assessees.
- c) At the time when the two assessees met, Sri Lhungdim, with a request that the refund orders may be handed over to them, the assessing Officer had already processed these cases u/s 143 (1)(a) and had computed the refund due to the assessees and the refund orders were also ready for despatch by registered post to those assessees. The intervention of Sri Lhungdim had not resulted in the loss to the Government Exchequer but it had merely expedited the loss it is relevant to observe that the information that the TDS certificates on the basis of which refund had arisen to the assessees were bogus, was not received by the department immediately on the date on which refund orders were prepared and were ready for despatch to the assessees. Therefore sending of relevant orders even by registered post would not have prevented the loss of Rs.1,60,602.
- d) In the case of M.N. Quereshi v/s Union of India and others (1989) 9 ATC (Ahmedabad Bench) and in the case of P.L. Khandelwal v/s Union of India and others (1989) 9 ATC 509: ATR, 1989 (1) CAT 402) it was held, that, mere irregular or erroneous exercise of quasi-judicial functions does not amount to misconduct. In the case of Bejoy Gopal Mukherjee v/s Union of India and others (1989) 9 ATC 369 (Calcutta), it was held that mere negligence/carelessness in performance of duty could not be considered misconduct unless the degree of culpability was very high in the instant case, Sri Lhungdim had acted in a bonafide manner for maintaining the better image of the department by trying to be helpful to the assessee who were persons not known to him and, therefore,

his action could not be considered as misconduct liable to be punished under the conduct rules.

e) Even after initiation of the disciplinary proceedings against, Shri Lhungdim and denial of promotion to him, he has remained a loyal and devoted Officer of the department and due to personal interest taken by him he has been able to acquire land of 4 Bighas for the department at Duliajan without the need to make any payment to OIL INDIA LTD. Due to the personal interest taken by the Officer expenditure of about Rs.25 lakhs has been saved and the conduct of the Officer was appreciated by his Commissioner on 24th Sept. 1997, i.e. near about the date on which he was denied promotion on ad-hoc basis."

12. The alleged incident was that of 1989. The disciplinary proceeding was initiated on 29.3.1996. The Inquiry Officer submitted its report on 22.10.1997. The Disciplinary Authority took about ten months to take the tentative decision not to agree with the report of the Inquiry Officer vide communication dated 7.8.1998. The charged officer submitted his representation on 18.9.1998. The Disciplinary Authority took about two years to take a final decision on the matter only on 14.9.2001, i.e. after institution of the O.A. During this period the respondents promoted more than hundred officers to the next higher rank including the persons junior to the applicant without even considering the case of the applicant for ad hoc promotion as per the professed norms. No justifiable reasons are discernible in dragging out the disciplinary proceedings and merely procrastinating the promotion of the applicant.

13. In the facts and circumstances of the case and for all the reasons stated above the impugned order dated 14.9.2001 imposing the penalty of censure on the applicant on the advice of the UPSC is set aside and quashed and the respondents are directed to give all consequential benefits to the applicant accordingly. The respondents are directed to take up the issue of promotion of the applicant by opening the sealed cover and in the event he is found suitable the benefit of promotion is to be given effect from the date his junior L. Nampui became Commissioner vide order No.121 dated 13.9.1997 of the Board with all consequential benefits. The respondents are directed to complete

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the exercise as expeditiously as possible preferably within one month from the date of receipt of the order.

14. The application is allowed with costs.

LC (LSharma)
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

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

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केन्द्रीय प्रसंसिक अधिकार	Central Administrative Tribunal
<u>APPENDIX</u>	
11 JUL 2001	
APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL ACT,	
Guwahati Bench 1985	

Title of the case : Original Application No. 252 /2001

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Ngulcholend Lhengdeu
Signature of the Applicant

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GAUHATI BENCH
AT GUWAHATI.

ORIGINAL APPLICATION NO. 252/2001

MR. NGULKHOLUND LHUNGDIM

SON OF LATE HEMTHANS~~S~~ LHUNGDIM

Resident of Central Revenue Building,
Dibrugarh, P.O. & P.S. Dibrugarh,
Dist. Dibrugarh, Assam.

..... Applicant.

-VERSUS-

1. The Union of India, through the
Secretary to the Govt. of India,
Ministry of Finance, New Delhi.
2. Central Board of Direct Taxes,
through its Chairman, North Block,
New Delhi-110001.
3. The Director of Income Tax(Vigilance),
Central Board of Direct Taxes,
1st Floor, Dayal Singh Public Library
Building, 1-Deen Dayal Upadhyay Marg,
New Delhi-110002.
4. The Chief Commissioner of Income Tax,
Saikia Commercial Complex, Sreenagar,
G.S. Road, Guwahati-5.
5. The Commissioner, Income Tax, Shillong,
Shillong-793001.

..... Respondents.

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Filed by an applicant
through - Sheikh Muktar, Advocate
10-7-2001

Ngulkholand Cheengdim

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

(i) Memorandum Vide F.NO.C-14011/8/96 V&L dated 7.8.98 issued by the Director(V&L), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Govt. of India.

(ii) Non consideration of the case of the applicant for reviewing to give adhoc promotion to the Cadre /rank of Commissioner of Income Tax w.e.f. 13.9.97 along with his immediate juniors and placing his above them.

(iii) Non-disposing of the Departmental Proceeding till date inspite of submission of comments on 18.9.98 by the applicant as per Memorandum dated 7.8.98 regarding disagreement of the Disciplinary Authority with the Inquiry Report of Inquiry Officer.

(iv) Keeping alive the subject matter of present Departmental Proceeding for last 12 years.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that 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 in section 21 of the Administrative Tribunal Act. 1985.

4. FACTS OF THE CASE :

4(i) That the applicant joined the Income Tax Department on 26.11.83 as Income Tax Officer (under training) at Nagpur where he had undergone one year professional training at Indian Revenue Service Staff College, Nagpur, thereafter, he was posted at Guwahati Income Tax Office on the job training for four months and was sent to four months Foundation Course Training at Lal ^aBhadur Sastri Academy of Administration, Missouri. On completion of the said training, he was posted as Income Tax Officer at Jorhat from 11.8.75 to 30.7.83, thereafter, on

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H. G. Mukherjee and Shri

promotion as Assistant Commissioner of Income Tax, he was posted at Tezpur as Appellate Assistant Commissioner from 1.10.83 to 17.6.85, on transfer to Calcutta he joined as Inspecting Assistant Commissioner from 18.6.85 to 31.5.88 and then he was transferred to Shillong as Deputy Commissioner of Income Tax from 8.6.88 to 7.7.92 and since 8.7.92 till date the applicant has been working as Additional Commissioner of Income Tax, Dibrugarh Range, Assam. The applicant will retire from service on superannuation on 28.02.2002.

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N gurkha leem Chengde

4(ii) That the Under Secretary to the Govt. of India, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, New Delhi issued a Memorandum vide F.No.C-14011/8/96-V&L dated 29.3.96/3.4.96 enclosing Article of Charge and statement of Imputation of mis-conduct in support of Article of Charge to be framed against the applicant. In the said Article of Charge, only one charge has been levelled against the applicant inter-alia stating that while the applicant was working as the Deputy Commissioner, Shillong Range during 1989 failed to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes (CBDT) in short) contained in Board's Letter F.No.212/753/79-ITA-II dated 9.10.79 and reiterated in Instruction No.1530 dated 16.10.83 which state that all refund orders should be sent by registered post only. He passed orders contrary to the letter and spirit of the above mentioned Circular by directing the handing over of refund orders amounting to Rs.62,582/- and Rs.98,020/- to Shri H. Lalangpua and Shri J. Anthony respectively, the alleged assessees, who turned out to

be bogus, thereby putting the state exchequer to a loss of Rs.1,60,602/- and thereby the applicant showed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS(Conduct) Rules, 1964.

A photocopy of the said Memorandum dated 3.4.96 is annexed hereto and marked as Annexure-A.

4(iii) That on 30.4.96, the applicant submitted his written submissions of defense against Memorandum of Charges denying the charges of lack of integrity and devotion to duty inter-alia stating that the applicant had given instructions directing the Assessing Officer to hand over refund orders under some peculiar circumstances. The Assessee came to the office and told him that they were to receive refunds and if these were ~~to receive~~ sent by registered post, it would take sometime months to reach them and they told that their labour payments were over-due and the labourers were pressing for early payment because of certain festivals and urgent personal expenses. Hence, the applicant gave the instructions as a measure of good public relation. Whether the refund order were handed over in person or sent by post, the defrauding remained due to the system failure.

A photocopy of the said written submission dated 30.4.96 is annexed hereto and marked as Annexure-B.

N Guilkha and Assessee

4(iv) That the applicant states that in 1989 while he was working as Deputy Commissioner of Income Tax, Shillong Range, Meghalaya, he gave instructions directing the Assessing Officer to hand over refund orders of Rs.62,582/- and Rs.98,020/- to the assessees namely, Shri H. Lalanpuia and Shri J. Anthony respectively under some peculiar circumstances. The said assessees (who later on became bogus or fictitious assessees) came to the applicant and told they were to receive funds and if those were sent by registered post it would take two weeks to months sometime to reach them. They stated that their labour payments were overdue and the labours were pressing for early payment because of certain festivals and urgent personal expenses. They further stated that as they were in Shillong, they requested that they should be allowed to take vouchers in person to avoid postal delays which was common in that part of the Country. The applicant had given the said instructions as a measure of good public relation as in that area, the Department was having very bad public relation mainly due to issue of refund orders. In actual field situation sometimes the instruction of the Board i.e. CBDT could not be followed in letter and spirit. In most cases attempts were made to follow the spirit of the instruction issued by the CBDT when there were practical difficulties to follow the instruction literally. In view of the above facts and circumstances, the applicant bonafide in good faith issued instruction to the Assessing Officer to hand over the vouchers personally to the assessees as a measure of good public relation to improve the image of the Department and as such the applicant has

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has not committed any illegality due to lack of integrity and devotion to duty or conduct unbecoming of a Govt. servant and for the same the applicant has not contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS(Conduct) Rules, 1964.

4(v) That the Under Secretary to the Govt. of ~~Assam~~ India, Ministry of Finance, Department of Revenue CBDT passed an order vide F. No.C-14011/8/96 V&L dated 14.8.96 whereby one Shri V. Tochhwang, Commissioner of ~~Income~~ Tax, Shillong was appointed as Inquiry Authority to enquire into the charges framed against the applicant. Thereafter, the Director (V&L) Government of India, Ministry of Finance, Department of Revenue, CBDT issued an order vide F.No.14011/8/96-V&L dated 9.12.96 whereby Shri N. Sahay, DSP, CBI, was appointed as the Presenting Officer. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said order dated 9.12.96 at the time of hearing of the case.

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A photocopy of the said order dated 14.8.96 is annexed hereto and marked as Annexure-C.

4(vi). That the Commissioner of Income Tax, North Eastern Region, Shillong issued an Office Mrmorandum vide F.No.Viz-23/Con/CT/93-94/Pt.IV/1781-83 dated 16.12.96 whereby the applicant was informed that the Preliminary Hearing in the Departmental Inquiry against the applicant would be held on ~~8~~ 3.1.97 from 10.00 A.M. at Shillong in the office of the Inquiry Officer.

A photocopy of the said Memorandum dated 16.12.96 is annexed hereto and marked as Annexure - D.

4 (vii). That Preliminary Hearing of the Departmental Inquiry against the applicant was held on 21.2.97 and the Inquiry Officer of the Inquiry issued the Daily Order Sheet dated 21.2.97 wherein it has been inter-alia mentioned that Preliminary Hearing was held on that day and the applicant pleaded not guilty and denied the charge. It was also stated that all preliminaries should be completed before end of March, 1997 and the regular hearing will be held in 2nd week of April, 1997.

Photocopy of the said Daily Order Sheet dated 21.2.97 is annexed hereto and marked as Annexure - E.

4 (viii). That on 21.2.97 the applicant submitted Additional Written Submission of Defence against Memorandum of Charge in addition to his earlier written submission inter-alia stating that in paragraph 16(4) of the paragraph 16 Chapter XVII of office procedure 2 Section II, 3 - 6 issued by DIRSP / 1965 it has been stated that Refund Voucher of over Rs. 5,000/- should be delivered personally, unless the assessee specifically asks otherwise, in which case, they may be sent by registered post, acknowledgement due, at his risk. In Instruction No. 1647 of the CBDT dated 11.9.85 it has been stated as "It is a matter of concern for the Board that a feeling continues to persist among the tax-payers that the refunds are not granted promptly and

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that the Refund vouchers are not being sent in most of the case alongwith the orders giving rise to refund. Also complaints are being received by the Board in this regard. The Board would, therefore, again like to emphasise that the claims of refund should be disposed of promptly and the Refund vouchers should invariably accompany the orders giving rise to the refund. The CIT/IAC are directed to ensure elimination of delay in the grant of refunds. " The applicant further reiterated that there was not a slightest malafide intention in directing the Assessing Officer to hand over the refund voucher to the assessee personally and his instructions did not in any way facilitated the defrauding of the exchequer. The applicant maintained absolute integrity and devotion to duty and did not show any misconduct unbecoming of a Govt. Servant, therefore, there was no contravention of Rule 3 (1), (II) and (III) of CCS (Conduct) Rules, 1964.

N. Gullabchand Meengsee

Photocopy of the said additional submission dated 21.2.97 is annexed hereto and marked as Annexure- F.

4 (ix). That the Under Secretary to the Govt of India, Ministry of Finance, Department Revenue issued order No. 121 of 1997 vide F. NO. A - 32011/ 6/ 97 - Ad. VI dated 13.9.97 whereby 127 Nos. of Deputy Commissioners of Income Tax were promoted on purely adhoc basis to officiate in the grade of Commissioners of Income Tax w.e.f. the date they assume charge of the higher post. The names of the 79 persons shown at Serial Nos. 49 to 127 in the said order dated 13.9.97 are junior to the applicant. As per seniority position the name of the applicant should have found place in between P.K. Deb Burman and L. Nampui whose names appear at Serial Nos. 48 and 49 respectively of the said order dated 13.9.97. Subsequently the cadre/rank of Deputy Commissioner of Income Tax was redesignated as Additional Commissioner of Income Tax.

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Photocopy of the said order dated

13.9.97 is annexed hereto and marked as

Annexure-G.

4(x). That the applicant states that the Ministry of Personnel, Public Grievances, Govt. of India, Department of Personnel and Training issued an Office Memorandum vide No. 22011/4/91-Estt(A) dated 14.9.92 in regard to (Promotion of Government servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation process and guidelines to be followed, where in in paragraph 2 it has been stated that the Departmental Promotion Committee (DPC in short) shall assess the suitability of the Govt. servants in respect of whom a charge sheet has been issued and the disciplinary/Court proceedings are pending and the assessment of the DPC including 'unfit for promotion' and the grading awarded by it will be kept in a sealed cover. In paragraph 5 of the said Memorandum dated 14.9.92, it has been mentioned that in cases where the disciplinary case/criminal prosecution is not concluded even after two years from the date of meeting of the first DPC, which kept its findings in a sealed cover, the appointing authority may review the case, provided the Govt. servant is not under suspension, to consider desirability of giving him adhoc promotion keeping in view certain aspects.

*N. Gopalakrishnan
Chengalur*

Photocopy of the said office memorandum dated 14.9.92 is annexed hereto and marked as Annexure-H.

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4(xi). That the applicant states that the DPC which recommended the cases of 127 (48 senior and 79 junior to the applicant) Deputy Commissioner of Income Tax, considered the case of the applicant and kept the assessment of the DPC in a sealed cover as Departmental Proceeding was pending against the applicant.

4(xii) That the regular hearing of the Departmental Inquiry against the applicant commenced from 25.9.97 and the Inquiry Officer issued daily order sheet dated 25.9.97 wherein inter-alia it has been mentioned that the applicant telephonically informed him that he would not be present in person on that day and requested to consider his written submission already submitted by him.

Photocopy of the said daily order sheet dated 25.9.97 is annexed hereto and marked as Annexure - I.

4(xiii) That the applicant states that the Commissioner of Income Tax, Shillong, the Inquiry Officer of the Departmental Inquiry against the applicant submitted his Inquiry Report vide P.No.Vig-23/Con/CT/93-94/Pt.IV dated 22.10.97 wherein in his findings it has been stated as "During the course of the hearing and cross examination of witnesses and inspection of documents produced before me, it appears that nothing could be inferred that Shri N. Lhungdim has malafide intention of defrauding the revenue or causing loss to the Government exchequer. It is an undenied fact that Shri Lhungdim has acted in contravention of the Board's standing Instruction while issuing instruction to hand over the refund voucher to the claimants by hand. However, this also appears to

be an action arising out of his desire to keep up the good image of the department, in its dealing vis-a-vis the public". Thus, the applicant was exonerated of the charges levelled against him.

Photocopy of the said inquiry report dated 22.10.97 is annexed hereto and marked as Annexure-J.

4(xiv). That the applicant states that the Inquiry Officer considered all aspects of the matter in its true perspective and came to the aforesaid findings exonerating the applicant of all the charges and the said findings of the Inquiry Officer contained in Inquiry Report dated 22.10.97 is correct, good, just, proper, legal and valid in all manners. Though the Inquiry Officer in his Inquiry Report dated 22.10.97 has clearly stated that nothing could be inferred that the applicant had malafide intention of defrauding the revenue or causing loss to the Govt. exchequer and the action arising out of his desire to keep up the good image of the department, the authority did not open the sealed cover with a view to give the applicant promotion to rank/cadre of Commissioner of Income Tax on adhoc basis as has been given to 79 junior officers of the applicant vide aforesaid order dated 13.9.97. The action of the respondents in not opening the sealed cover with a view to giving adhoc promotion to the applicant with effect from the date of promotion of the said 79 junior Deputy Commissioners of Income Tax inspite of the findings in the enquiry report dated 22.10.97 exonerating the

Narshikshayam Bhagya

applicant of all the charges is illegal, unjust, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in celerable exercise of power for collateral purpose by taking extraneous and irrelevant considerations by overlooking the relevant considerations being violative of the said office Memorandum dated 14.9.92 and the Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

4(xv). That the Director (V&L), Govt. of India, Ministry of Finance, Department of Revenue, CBDT issued a Memorandum vide F. No. C-14011/8/96-V&L dated 7.8.98 wherein it has been stated that the Disciplinary Authority is not in agreement with the Inquiry Officer's report on the ground that the applicant did order handing over of the refund orders across the table which has not been denied by anyone, including the officer himself in violation of departure from the departmental instructions to the contrary, further the applicant did not know the assessee and therefore, his direction to handover the refund order personally to such strangers amounted to an act of indiscretion betraying lack of devotion to duty. Hence the disciplinary authority is in disagreement with the inquiry authority and the applicant was directed to submit his comments within 15 days from the date of receipt of the said memorandum.

A photocopy of the said memorandum dated 7.8.98 is annexed hereto and marked as Annexure-K.

4(xvi). That the applicant states that inspite of correct and clear findings of the Inquiry Officer in his Inquiry Report dated 22.10.97, the Disciplinary Authority disagreed with the said Inquiry Report. There is absolutely no ground or material for disagreeing with the said Inquiry Report and as such the disagreement of the Disciplinary Authority with the Inquiry Report is without any basis/foundation. The Disciplinary Authority disagreed with the Inquiry Report dated 22.10.97 only to deprive the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax alongwith his immediate juniors. As such, the action of Disciplinary Authority in disagreeing the Inquiry Report dated 22.10.97 by its Memorandum dated 7.8.98 after waiting for about 10 months is illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in colourable exercise of power for collateral purposes by taking extraneous and irrelevant considerations by overlooking the relevant considerations being violative of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India and as such, the Memorandum dated 7.8.98 is illegal and null and void.

W. S. Khobald, Bangalore

4(xvii) That the Under Secretary to the Govt. of India, Ministry of Finance, Department of Revenue issued order No.126 of 1998 dated 9.9.98 whereby 113 Additional Commissioners of Income Tax were promoted to officiate as Commissioner of Income Tax on regular basis w.e.f. the date of taking over charge. The 69 Additional Commissioners of Income Tax whose names

appear from serial No. 45 to 113 in the said order dated 9.9.98 are junior to the applicant consider the seniority position of the applicant, his name should have been shown in between P.K. Deb Verma and L. Nampui whose names appear at Serial No. 44 and 45 respectively in the said order dated 9.9.98.

A photocopy of the said order dated 9.9.98 is annexed hereto and marked as Annexure-L.

4(xviii). That the applicant states that by the aforesaid order dated 9.9.98, the adhoc promotion of 113 Deputy ^{Additional} Commissioners of Income Tax to the rank of Commissioner of Income Tax was regularised, out of which 69 Additional Commissioner of Income Tax ^{who} were junior to the applicant have superseded the applicant and the respondents have deprived the applicant from getting his due promotion by disagreeing with the Inquiry Report dated 22.10.97 without any foundation/material and the applicant has been kept hanging without giving due promotion. As such the action of the respondents in not promoting the applicant alongwith his immediate junior Officers who were regularly promoted to the cadre/rank of Commissioner of Income Tax vide order dated 9.9.98 is illegal, unjust, improper, unreasonable, discriminatory and the same has been done in colourable exercise of power for collateral purposes, vitiated by bias and malafide and the same has been done by taking extraneous and irrelevant considerations by overlooking the relevant considerations being violative of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

M. S. Gulzar and Khengarji

4(xix), That the applicant states that on 18.9.98, he submitted his comments as per direction given in the aforesaid memorandum dated 7.8.98 wherein inter-alia he has stated that in addition to his written submission and additional submission he further stated that the main instructions in the matter regarding granting and delivery of refund voucher to the assessees have been clearly mentioned in paragraph 16, Chapter-XVII of the Office procedure section 13-6 issued by DIRSP, 1965, wherein in paragraph 16(4) it is stated that refund vouchers of over Rs.5,000/- should be delivered personally, unless the assessee specifically asks otherwise, in which case, they may be sent by registered post with acknowledgement due, at his risk and the latest instruction dated 18.11.97 speaks of sending refund vouchers irrespective of the amount of the refund involved by registered post with acknowledgment due. It was also stated that the applicant gave written instruction to hand over the refund vouchers to the assessees in person with the best of intention and bonafide reason as a measure of good public relation to improve the image of the department in the area of the work. It was also stated therein that the Inquiry Officer having inquired the facts and circumstances of the case had rightly concluded that there was no malafide intention of the applicant and had exonerated him of all the charges stating that actions were taken out of the desire to keep up the good image of the department in its dealing vis-avis the public. It was unfortunate that the disciplinary authority did not agree on the ground of technicality as the

*N. Gopalakrishnan
Kheengar*

applicant was discharging quasi-judicial function and ⁱⁿ none of the charges in the memorandum there was express or implied allegation that the action taken by the applicant was actuated by any corrupt motive to oblige any person on account of extraneous consideration. The applicant also referred the judgment in the case of ~~Mr~~ Union of India vs. R.K. Desai, in Civil Appeal No. 560 of 1991 dated 25.3.92 wherein it has been observed "In the present case the allegation against the respondents are merely to the effect that the refunds were granted to unauthorised person and this was done in disregard to the instruction of the CBDT. There is no allegation, however, either express or implied, that these actions were taken by the respondent actuated by any corrupt motive or to oblige any person on account of extraneous consideration. In this circumstances, merely because such order of refund were made, even assuming that they were erroneous or wrong, no disciplinary actions could be taken as the respondent was discharging quasi-judicial function. If any erroneous order had been passed by him, the correct remedy is by way of an appeal or revision to have such order set aside". Hence the applicant submitted that his case may be considered in the proper and correct perspective with due appreciation for finally dropping all charges against the applicant. But till date the respondents have not done anything in this regard.

Wazir Khan (Liaqat Ali)

A photocopy of the said comments dated 18.9.98 is annexed hereto and marked as Annexure-M.

4(xx). That the Chief Commissioner of Income Tax (Bihar, Orissa and North-Eastern Region) wrote a letter to the member (P&V), CBDT, North Block, New Delhi-1 vide A.O. No. CC/Vig/IL-10/87/88/6212-15 dated 26.10.99 regarding promotion of the applicant to the cadre of Commissioner inter-alia stating the entire facts of the case in regard to the disciplinary proceeding and it was further stated that even after initiation of disciplinary proceedings ^{against} the applicant and denial of promotion to him, he has remained a loyal ^{employee} and devoted ^{the applicant} of the department and due to personal interest taken by him he has been able to acquire land of 4 Bighas of the department at Duliajan without the need to make any payment to OIL INDIA LTD. Due to the personal interest taken by the applicant expenditure of about Rs. 25 lakhs has been saved and the conduct of the applicant was appreciated by his Commissioner on 24th September, 1997, i.e. near about the date on which he was denied promotion on adhoc basis. Hence he requested that the applicant may be given adhoc promotion immediately and after expediting departmental proceedings he may be exonerated from the alleged mis-conduct and should be promoted to the cadre of Commissioner from the date, his junior Shri L. Nampi, became Commissioner by the Board's order No.121 dated 13.9.97.

/V.Gulabandhu Ahmed

Photocopies of the letter dt. 26.10.99 and appreciation letter dt. 24.9.97 are annexed hereto and marked as Annexures-N and O respectively.

4(xx). That the Chief Commissioner of Income Tax (Bihar, Orissa and North-Eastern Region) (J.S. Ahluwalia) wrote another letter to the Director of Income Tax, (Vigilance) on 26.10.99 inter-alia stating that the only fault of the applicant was that he had acted in contravention of the Board's standing instruction that the refund order should be sent by registered post, but on the basis of evidence available no malafide intention can be attributed to him. The intervention of the applicant had merely expedited the encashment of the refund orders. Had the applicant not interfered, the refund would have been encashed and the loss would have been occurred to Government exclusively on account of system failure and at best the applicant can be warned to be careful and not to go against the spirit of Board's instructions even for improving public Relation of the Department. The applicant was denied promotion in Board's order dated 13.9.97 on the ground that his conducts were responsible for the loss of Rs.1,60,602/- due to issue of refund orders. Hence he requested to expedite the departmental proceedings against the applicant and to exonerate him from the alleged misconduct and to grant promotion to the cadre of Commissioner of Income Tax from the date of his junior Shri L. Nampi became Commissioner vide Board's order No.121 dated 13.9.97.

A photocopy of the said letter dated 26.10.99 is annexed here to and marked as Annexure-P.

4(xxii). That the applicant states that on 29.4.2000, he submitted a representation to the Chairman, CBDT for expeditious disposal of departmental proceedings pending against him and also for promotion to the cadre of Commissioner of Income Tax. The said representation dated 29.4.2000 was sent to the Commissioner of Income Tax, Shillong by his forwarding letter dated 1.5.2000 requesting him to forward the same to the higher authorities concerned with a request for early disposal and promotion to the post of Commissioner of Income Tax at the earliest. Thereafter, on 12.7.2000, the Chief Commissioner of Income Tax, Guwahati forwarded the said representation dated 29.4.2000 submitted by the applicant to the Chairman, CBDT, New Delhi requesting him to consider the request of the applicant so that ^{he could} get his due promotion without further delay. But till date the authority has not done anything to complete the disciplinary proceeding without any valid ground only to deprive the applicant from getting his promotion to the cadre of Commissioner of Income Tax.

V. Sankardev Choudhury

Photocopies of the forwarding letters dated 21.5.2000 and 12.7.2000 are annexed hereto and marked as Annexures-Q and R respectively.

4(xxiii). That the applicant states that he joined the Income Tax Department on 26.11.73 as a member of Indian Revenue Service (IRS in short) Officers and as such, the applicant belongs to the 1973 batch of IRS Officers. The latest order for promotion to the cadre/rank of Commissioner of Income Tax was passed on 23.6.2000 whereby the 1982 batch of IRS Officers have been promoted to the cadre of Commissioner of Income Tax.

As a result of which now the applicant has to work under the IRS Officers of 1982 batch who are 9 years junior to him and in fact, now the applicant has to work under Shri L. Nampui, the present Commissioner of Income Tax, Shillong, who is immediately junior to the applicant, as such, the applicant has been subjected to great humiliation and mental agony as the Disciplinary Authority even after passing of 3 years from the date of meeting of the DPC which kept the findings/assessment in respect of the applicant in a sealed cover, has not reviewed the case of the applicant for giving him adhoc promotion though the applicant is/was not under suspension and the promotion of the applicant will not be against the public interest, the charges against the applicant are not grave enough to warrant continued denial of promotion, there is no likelihood of the case of the applicant coming to a conclusion in the near future, the delay in finalisation of the departmental proceedings is not directly or indirectly attributable to the applicant and there is no likelihood of misuse of official position which the applicant may occupy ~~after~~ after adhoc promotion, which may adversely affect the conduct of the departmental proceeding. As such, the action of the Respondents in not reviewing the case of the applicant even after 3 years from the date of meeting of the DPC which kept the findings on the applicant in a sealed cover, in order to give adhoc promotion to the applicant is illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in colourable exercise of

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power for collateral purposes by taking extraneous and irrelevant consideration by overlooking the relevant consideration being violative of the Office Memorandum dated 14.9.92 and Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

4(XXiv). That the applicant states that the authority expressed its disagreement with the Inquiry Report by its Memorandum dated 7.8.98, since the submission of comments by the applicant on 18.9.98, about 3 years have passed but the authority has not done anything to conclude the departmental proceeding till date and there is no likelihood of dispensing of the said departmental proceeding against the applicant before his retirement on superannuation on 28.2.2002 and in that case the applicant will not get promotion to the cadre/rank of Commissioner of Income Tax during his service period. As per Office Memorandum dated 14.9.92 the authority should review the case of the applicant for giving his adhoc promotion to the cadre of Commissioner of Income Tax as more than two years have passed since the date of meeting of the IPC which kept the findings in respect of the applicant in a sealed cover. But the Disciplinary Authority has not reviewed the case of the applicant till date which is illegal, unjust, unreasonable arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in colourable exercise of power for collateral purpose by taking extraneous and irrelevant considerations by overlooking the relevant considerations being violative of the said Office Memorandum dated 14.9.92 and the Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

4(xxiva) That the applicant states that the Disciplinary Authority expressed its disagreement with the Inquiry Report of the Inquiry Officer dated 22.10.97 without any basis, foundation, ground and material vide Memorandum dated 7.8.98 and as per direction contained in the said Memorandum, the applicant has submitted his comments on 18.9.98. But the Disciplinary Authority has not yet, i.e. after passing of about 3 (three) years, disposed of the said Departmental Proceeding against the applicant thereby keeping the applicant in a hanging situation by illegally depriving the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax and allowing his ~~junior~~ junior officers to supersede him without any cause, basis and/or foundation which has caused mental agony and prejudice to the applicant and has seriously affected the fundamental and Constitutional rights of the applicant. The Disciplinary Authority has not disposed of the Departmental Proceeding against the applicant even after about 3 years from disagreeing with the Inquiry Report dated 22.10.97 and submission of comments by the applicant on 18.9.98 by taking extraneous and irrelevant considerations by overlooking relevant considerations which is illegal, unjust, improper, unreasonable, arbitrary, capricious, discriminatory, malice-in-law as well as malice-in-facts being violative of the Articles 14 and 21 of the Constitution of India and for the same the action of the Disciplinary Authority in delaying and not disposing of the Departmental Proceeding against the applicant even after passing of about 3 (three) years from its disagreement with the Inquiry Report of Inquiry Officer and submission of comments by the applicant on 18.9.98 is bad in law and liable to be declared as illegal and null and void.

4(xxivb) That the cause of action of the instant Departmental Proceeding arose in 1989 but the ~~same~~ has ~~not yet~~ ~~been disposed of~~ ~~without any ground just to deprive~~ not been disposed of without any ground just to deprive the applicant from getting his due promotion. As such, the action of the Respondents in keeping the matter of 1989 still alive for last 12 years is vitiated by bias and malafide and the same has been done by taking extraneous

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and irrelevant considerations by overlooking the relevant considerations which is illegal, unjust, unreasonable, arbitrary, discriminatory being violative of Articles 14, 19 (1) (g) and 21 of the Constitution of India.

4(xxv) That the applicant states that since his date of joining as Income Tax Officer till date, he has been discharging his duties, functions and responsibilities with utmost sincerity and dedication to the satisfaction of all concerned and at no point of time any complaint or allegation (except the present departmental proceeding) has been made against the applicant and as such he has earned and almost unblemished service record.

4(xxvi) That the applicant states that no adverse remark has ever been recorded in his Annual Confidential Report (ACR in short). The authority has recorded "outstanding" in the ACR of the applicant for the years 1996, 1997, 1998 and 1999 and the same has been accepted for the year 2000, the authority has not yet recorded anything in the ACR of the applicant.

4(xxvii) That the applicant states that from the facts and circumstances of the case as stated above it is apparently clear that the actions of the Respondents in disagreeing with the Inquiry Report by memorandum dated 7.8.98 and not reviewing the case of the applicant even after passing of about 3(three) years from the date of the meeting of the DPC which kept the findings in respect of the applicant in a ~~sealed~~ sealed cover and not disposing of the Departmental proceeding by the Disciplinary Authority even after passing of about 3 years from the date of submission of comments on 18.9.98 by the applicant are out and out illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide being violative of the office Memorandum dated 14.9.92

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and Articles 14, 16, 19(i) (g) and 21 of the Constitution of India. The applicant further states that it is a fit case wherein Your Lordships may be pleased to set-aside and quash the memorandum dated 7.8.98(Annexure-K) issued by the Director (V&L), Govt of India, Ministry of Finance, Department of Revenue, CBDT and/or direct the respondents to review the case of the applicant for giving ad-hoc promotion to the cadre/rank of Commissioner of Income Tax, and/or declare the action of the Disciplinary Authority in delaying and not disposing of the Departmental Proceeding against the applicant even after passing of about 3 years from the date of submission of comments by the applicant on 18.9.98 and keeping alive the subject matter of present Departmental Proceeding for last 12 years since 1989 as illegal and null and void and/or direct the respondents to complete the disciplinary proceeding against the applicant at the earliest, so that the applicant can be promoted to the cadre/rank of Commissioner of Income Tax before his retirement on 28.2.2002 w.e.f. the date of ad-hoc promotion of Sri L.Nampui to the cadre of Commissioner of Income Tax. The actions of the respondents in not disposing of the departmental proceeding against the applicant for last 5(five) years and not giving ad-hoc promotion to the applicant to the cadre/rank of Commissioner of Income Tax compelling him to work under his juniors have seriously jeopardised the fundamental and other rights of the applicant and as such the balance of convenience is in favour of the applicant. Pending disposal of this application, your Lordships may be pleased to direct the respondents to give ad-hoc promotion to the applicant to the rank/cadre of Commissioner of Income Tax by reviewing the case of the applicant as per Office Memorandum dated 14.9.92. And if the aforesaid interim order, as prayed for is not granted the applicant shall suffer irreparable loss and injury which cannot be compensated by any

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other means and the whole application shall become infructuous.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

A. For that the Inquiry Officer gave his findings in his Inquiry Report dated 22.10.97 after considering all aspects of the matter and as such the Inquiry Report including the findings exaherating the applicant of the charges framed against him are correct, good , just, proper, legal and valid in all manners. But the respondents were silent for about 10(ten) months after the aforesaid Inquiry Report and thereafter, vide Memorandum dated 7.8.98 expressed its disagreement with the Inquiry Report without any ground or material just to deprive the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax and as such the said disagreement of the disciplinary authority is without any basis/ foundation/material which is illegal, unjust, improper , unreasonable, arbitrary , discriminatory , vitiated by bias and malafide and same has been done in colourable exercise of power for collateral purposes by taking extraneous and irralevant considerations by overlooking the relevant considerations and null and void being violative of Articles 14,16,19(1)(g) and 21 of the Constitution of India and for the same the said memorandum dated 7.8.98 is liable to be set aside and quashed.

/V Subrahmanyam Rao

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B. For that as per office memorandum dated 14.9.92 the disciplinary authority should review the case of the applicant for giving ad-hoc promotion to the cadre of Commissioner of Income Tax as even after more than two years from the date of meeting of the DPC which kept the findings in respect of the applicant in a sealed cover, the departmental proceeding against the applicant has not ~~xxxx~~ yet concluded. But the disciplinary authority has not yet i.e. even after 3(three) years from the date of meeting of the DPC which kept the findings in regard to the applicant in a sealed cover, concluded the departmental proceeding nor has reviewed the case of the applicant for giving him ad-hoc promotion to the rank/cadre of Commissioner of Income Tax ~~only~~ though the applicant was/~~is~~ never under suspension only to deprive the applicant from getting his due promotion to the cadre/rank of Commissioner of Income Tax and to allow a large number of Junior officers to supersede the applicant. As such, the action of the disciplinary authority in not reviewing the case of the applicant for giving ad-hoc promotion to the cadre/rank of Commissioner of Income Tax inspite of the fact that the departmental proceeding against the applicant has not yet been concluded even after 3(three) years from the date of meeting of the DPC which kept the findings in respect of the applicant in a sealed cover is illegal, unjust, improper, unreasonable arbitrary discriminatory and ~~xxxx~~

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vitiated by bias and malafide and same has been done in colourable exercise of power for collateral purposes by taking extraneous and irrelevant consideration by over looking the relevant considerations and null and void being violative of the Office memorandum dated 14.9.92 and Articles 14.16, 19 (1) (g) and 21 of the Constitution of India.

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Point C. That the applicant states that the Disciplinary Authority expressed its disagreement with the Inquiry Report of the Inquiry Officer dated 20.10.97 without any basis, foundation, ground and material vide Memorandum dated 7.8.98 and as per direction contained in the said Memorandum, the applicant has submitted his comments on 18.9.98. But the Disciplinary Authority has not yet, i.e. after passing of about 3(three) years, disposed of the said Departmental Proceeding against the applicant there-by keeping the applicant in a hanging situation by illegally depriving the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax and allowing his junior officers to supersede him without any cause, basis and/or foundation which has caused mental agony and prejudice to the applicant and has seriously affected the ~~four~~ fundamental and Constitutional rights of the applicant. The Disciplinary Authority has not disposed of the Departmental Proceeding against the applicant even after about 3 years from disagreeing with the Inquiry Report dated 22.10.97 and submission of comments by the applicant on 18.9.98 by taking extraneous and irrelevant consideration by overlooking relevant considerations which is illegal, unjust, improper,

unreasonable, arbitrary, capricious, discriminatory, malice in-law as well as malice-in-facts being violative of the Articles 14 and 21 of the Constitution of India and for the same the action of the Disciplinary Authority in delaying and not disposing of the Departmental Proceeding against the applicant even after passing of about 3(three) years from its disagreement with the Inquiry Report of Inquiry Officer and submission of comments by the applicant on 18.9.98 is bad in law and liable to be declared as illegal and null and void.

D. For that the cause of action of the instant Departmental Proceeding arose in 1989 but the same ^{yet} has not ^{yet} been disposed of without any ground just to deprive the applicant from getting his due promotion. As such, the action of the Respondents in keeping the matter of 1989 still alive for last 12 years is vitiated by bias and malafide and the same has been done by taking extraneous and irrelevant consideration by overlooking the relevant considerations which is illegal, unjust, unreasonable, arbitrary, discriminatory being violative of Articles 14, 19 (1) (g) and 21 of the Constitution of India

E. For that the applicant ^e belongs to the 1973 batch of Indian Revenue Service Officers and the latest order for promotion was issued on 23.6.2000 whereby the 1982 batch of IRS Officers have been promoted to the rank of Commissioner of Income Tax and as a result of which the applicant has to work under the Officers who are 9(nine) years junior to him. In fact, Shri L.Nampui, who is immediate junior to the applicant has been working as Commissioner of Income Tax, Shillong and the applicant has to work

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under him as the respondents have not yet reviewed the case of the applicant for giving him ad-hoc promotion to the rank/cadre of Commissioner of Income Tax as per Officer Memorandum dated 14.9.92 which is a matter of great humiliation and mental agony at the fag end of his service career as the applicant will retire from service on superannuation on 28.2.2002. As such, the action of the respondents in not reviewing the case of the applicant for giving him ad-hoc promotion to the cadre/rank of Commissioner of Income Tax is illegal, unjust, improper, unreasonable, arbitrary, discriminatory and vitiated by bias and malafide and same has been done in colourable exercise of power for collateral purposes by taking extraneous and irrelevant considerations by over looking the relevant considerations and null and void being violative of the Office memorandum dated 14.9.92 and Articles 14, 16, 19 (1) (g) and 21 of the Constitution of India. and the same is liable to be declared illegal and null and void.

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F For that the authority has recorded "outstanding" in the Annual Confidential Report (ACR) of the applicant for the years 1996, 1997, 1998, and 1999 and the same has been accepted by the authority concerned and nothing has been recorded in the ACR of the applicant for the year 2000. But inspite of consistently excellent performance of the applicant for which appreciation was given to the applicant, the disciplinary authority has not yet reviewed the case of the applicant for giving him ad hoc promotion to the rank/ cadre of commissioner of Income Tax inspite of the fact that the departmental proceeding against the applicant has not yet been concluded even after 3(three) years from the date of meeting of the DPC which kept the findings in respect of the applicant in a sealed cover, only to deprive the applicant from getting his due promotion to the rank/ cadre of Commissioner of Income Tax alongwith his immediate junior officers which is illegal, unjust improper, unreasonable, arbitrary, discriminatory and vitiated by bias and malafide and same has been done in colourable exercise of power for call- ateral purposes by taking extraneous and irrelevant considerations by over looking the relevant considerations and null and void being vialative of the office memorandum dated 14.9.92 and Articles 14,16, 19(1) (g) and 21 of the Constitution of India.

W. S. Gopalakrishnan (Signature)

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6: DETAILS OF THE REMEDIES EXHAUSTED :

The applicant declares that he has availed all the remedies available to him.

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

The applicant further declares that this matter was not filed earlier and no application has been filed before any Bench of the Tribunal, as such at present no application is pending before any Tribunal or Court of Law.

8. RELIEFS SOUGHT :

In view of the facts mentioned in paragraph 4 and grounds mentioned in paragraph 5 above, the applicant prays for the following reliefs :-

A. To set aside and quash the memorandum vide F.No.C-14011/8/96- V& L Dated 7.8.98 (Annexure- K) issued by the Director (V & L), Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi.

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B. To direct the respondents to promote the applicant to the rank / cadre of Commissioner of Income Tax w.e.f. the date of ad-hoc promotion of Shri L. Nampui, who is immediate junior to the applicant, to the rank / cadre of Commissioner of Income Tax and placing the applicant above him.

C. To declare the action of the Disciplinary Authority in delaying and not disposing of the Departmental Proceeding against the applicant even after passing of about 3 years from its disagreement with the Inquiry Report dated 22.10.97 of the Inquiry Officer and submission of the comments by the applicant on 18.9.98 as illegal and null and void.

D. To declare the action of the Disciplinary Authority in keeping alive the subject matter of present Departmental Proceeding for last 12 years since 1989 as illegal and null and void.

E. The cost of the case.

F. Any other relief to which the applicant is entitled under the law.

9. INTERIM ORDER IF ANY PRAYED FOR :

Pending final decision on the application, the applicant humbly prays for following interim order.

To direct the respondents to give ad-hoc promotion to the applicant to the rank/cadre of Commissioner of Income Tax by reviewing the case of the applicant as per office memorandum dated 14.9.92.

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10. PARTICULARS OF THE POSTAL ORDER IN
RESPECT OF THE APPLICATION :

1. No. of Indian Postal Order. 6G 791204
2. Name of the issuing post office. Main P.O., Guwahati.
3. Date of issue of Postal Order. 10-07-2001
4. Post Office at which payable, Guwahati
Head post office.

11. LIST OF ENCLOSURES :

As per Index.

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VERIFICATION

I, Mr. Ngulkholund Lhungdim, son of Late Hemthans Lhungdim, aged about 59 years 4 months, by profession service resident of Central Revenue Building, Dibrugarh, P.O. & P.S.- Dibrugarh, District : Dibrugarh, Assam do hereby verify that the contents of paragraphs 4(iii), 4(iv), 4(viii), 4(xi), 4(xiv), 4(xvi), 4(xviii), 4(xix), 4(xx), 4(xxv), 4(xxii), 4(xxiii), 4(xxiv), 4(xxv), 4(xxvi), and 4(xxvii) — — — are true to my knowledge and those made in paragraphs 4(i), 4(ii), 4(v), 4(vi), 4(vii), 4(ix), 4(x), 4(xii), 4(xxiii), 4(xv) and 4(xvii) being matters of record are true to my information and the rest are my humble submissions made before this Hon'ble Tribunal and that I have not suppressed any material fact.

Ngulkholund Lhungdim

Signature of the Applicant.

Date : 03.07.2001.

F.No.C-14011/8/96-V&L.
 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 DEPARTMENT OF REVENUE
 CENTRAL BOARD OF DIRECT TAXES

* * *

New Delhi, the 29 March, 1996.
 3rd April, 1996

M E M O R A N D U M

The President proposes to hold an Inquiry against Shri N. Lhungdim, DCIT 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 N. Lhungdim, DCIT 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. Lhungdim, DCIT 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 N. Lhungdim, DCIT 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

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*Attended
S/o
Advocate*

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dealt with in these proceedings it will be presumed that Shri N. Lhungdim, DCIT is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged.
By order and in the name of the President.


(SANJAY PURI)
UNDER SECRETARY TO THE GOVT. OF INDIA.

✓ Shri N. Lhungdim,
Deputy Commissioner of Income-tax,
Through
(The Commissioner of Income-tax, NER, Shillong)

Alber
for

ANNEXURE-I

Article of Charge to be framed against Shri N. Lhungdim, the then Deputy Commissioner of Income-tax, Range Shillong, Meghalaya.

ARTICLE-I

Shri N. Lhungdim, while posted and functioning as the Deputy Commissioner, Shillong Range, Meghalaya during 1989, failed to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes contained in Board's letter F.No. 212/753/79-ITA-II dated 09.10.1979 and reiterated in Instruction No. 1530 dated 16.10.1983 which state that all refund orders should be sent by registered post only. He passed orders, contrary to the letter and spirit of the above mentioned circulars by directing the handing over of refund orders amounting to Rs. 62,58/- and Rs. 98,020/- to Shri H. Lalanpua and Shri J. Anthony respectively, the alleged assessees, who turned out to be bogus, thereby putting the state exchequer to a loss of Rs. 1,60,602/-. He thereby showed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964.

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Statement of Imputation of mis-conduct in support of Article of Charge to be framed against Shri N.L. Lhungdim, the then Deputy Commissioner of Income-tax, Range Shillong, Meghalaya.

Shri N. Lhungdim was posted and functioning as DCIT, Shillong Range, Shillong (Meghalaya) during 1989.

2. Two Returns of income in the names of Shri H. Lalanpua of Happy Valley Shillong and Jonthui Anthony of Assam Rifles Colony, Nangstrin, Shillong were filed in the charge of ITO, Ward-I, Shillong. These were not supported by any claim of refund as required u/s 239 of the Income-tax Act, 1961 read with Rule 41 of Income-tax Rules, 1962. The returns were assessed u/s 143(1) by Shri B.R. Purkayastha, ITO, Ward-I, Shillong and he also issued IT refund Order No. B/6-252922 dated 14.02.1989 for Rs. 62,582/- and B/6-252918 dated 10.02.1989 for Rs. 98,020/- for the assessment years 1986-87, 87-88, 88-89 and 1986-87, 87-88, 88-89 respectively in the name of the aforesaid two individuals.

3. Contrary to directions contained in Board's letter F.No. 212/753/79-ITA-II dated 09.10.1979 and reiterated in Instruction No. 1530 dated 16.10.1983, Shri N. Lhungdim ordered Shri B.R. Purkayastha, ITO, Ward-I, Shillong vide letter No. A-35/88-89/2853 dated 10.02.1989 and No. A-35/88-89/2890 dated 14.02.1989 to hand over the I.T. refund orders to the concerned assessee personally instead of sending them by registered post. The proper procedure in respect of issue of refund orders was not followed, and the refund orders were handed over to the two individuals who were subsequently found to be bogus and fictitious assessees. It was also found that the aforesaid returns were accompanied with bogus TDS certificates and in actual fact there was no such TDS nor any such amount was deposited to the credit of the Government. Thus the exchequer was defrauded to the extent of Rs. 1,60,602/- through bogus claim of refund. This was facilitated by the Instructions dated 10.02.1989 and 14.02.1989 issued by Shri N. Lhungdim, DCIT, to the ITO, Ward-I, Shillong.

4. Shri N. Lhungdim thereby failed to maintain absolute integrity and devotion to duty and showed conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964.

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To

The Under Secretary, (By name)
 Govt. of India, Ministry of Finance,
 Department of Revenue,
 Central Board of Direct Taxes,
New Delhi.

Sub: Written submissions of defence
 against Memorandum of charges-

Sir,

In response to Memorandum No. C-14011/A/
 96-V&L dated 3.4.96 issued to me which was duly received
 by me on 22.4.96, I hereby submit the written submissions
 of my defence to the charges as follows -

ARTICLE -1.

With respect of Article-1 of the charges,
 I respectfully but vehemently deny the imputation of
 misconduct or misbehaviour as alleged in the article of
 charges brought against me. I admit that while functioning
 as DCIT, Shillong Range, Meghalaya during 1989, I have
 given instructions directing the Assessing Officer to
 hand-over refund orders to the assessees which was not
 in conformity with the existing instructions which required
 it to be sent by Registered Post. As far as I remember the
 said instruction was given under some peculiar circumstances.
 The said assessees (who later on become bogus or fictitious
 assessees) came to me and told me that they were to receive
 refunds and if these were sent by Registered Post it would
 take two weeks sometime months to reach them. They stated
 that their labour payments have been overdue and the labour-
 ers pressing for early payments because of certain festivals
 and urgent personal expenses. They further stated that as
 they were in the town/capital, they requested that they
 should be allowed to take vouchers in persons to avoid postal
 delays which was and is a common in this part of the country.
 I had given the instructions as a measure of good public
 relation as in this area of the work that the Department has
 been having a very bad public relation and criticism. Till
 today it is mainly in refund orders issue that most of the
 complaints against the Department are related to. As I
 understand the spirit behind the instruction of the Board

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to send the refund voucher by post is to minimise or eliminate complaints against the Departmental officials in this matter. In actual field situation sometimes the instruction of the Board could not be followed in letter and spirit. In most cases attempts have been made to follow the spirit of the instructions when there are practical difficulties to follow the instruction literally. Following the instruction literally also sometimes put both the assessees and the Department in lots of inconveniences and difficulties, specially in the Hill Areas/ such as in the North East where communication is still in the bad shape and postal delays are common which is known and experienced only by those persons working in region. Sometimes the Officers working in these areas find it difficult to follow the instruction in letter and spirit. In view of the above facts and circumstances, it was felt by me that as a measure of good public relation to improve the image of the Department in this score and also to mitigate the problems of the assessees, that instructions were given to the Assessing Officer to hand-over the vouchers personally to the assessees.

It is completely a different matter that so called assessees happened to be only bogus or fictitious assessees trying to defraud the exchequer - Wolves in ships' skin befooling a simple and straightforward person in me who has a weakness in believing that every person is to be believed if not proved otherwise.

It is also further submitted that my instructions to hand-over the vouchers in person did not in anyway change the status of the refunds, the so called assessees filed their returns, these were processed and these were never suspected by the A.O. to be bogus or fictitious, otherwise, it would never have been processed for grant of refunds. The Assessing Officer, Shri B.R.Purkayastha is an officer of sterling quality and high moral integrity who would never have done such things at all, he had doubted

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the genuineness of the return not to speak of granting of refunds. I would restate that even if instructions have not given by me, the so called assessee would in any case have encashed the refund voucher in course of time with a delay of some weeks or so. Therefore, the allegation that my instructions have defrauded the exchequer is not at all tenable. Whether instructions was given or not the so called assessee would have defrauded the exchequer. This fault lies in the system - the system in which there is no way to know that TDS certificates were genuine or bogus. It was certainly the system failure. Even when there is good system people sometimes fail and in this case since the system was not there people have to fail which happened to the Assessing Officers.

ARTICLE -2

As regard Article 2 of the charges, I only wanted to submit that Shri B. R. Purkayastha, ITO, Ward-1 was having jurisdiction of pure refund cases which comprises mainly assessees belonging to tribal communities. Meghalaya is a tribal state and Shillong being the capital of State maximum number of pure refunds cases are from local tribal communities. There has always been pressure from this group of assessees to file returns and claim the refunds from our offices. The Assessing Officers have always been hard pressed for early processing of return and immediate grant of refunds. Shri B. R. Purkayastha, the Assessing Officer is an Officer whose integrity is beyond doubt and is a man of sterling quality and man of head and heart, he must have been under pressure to grant the refunds. However, I strongly defend my officer of any malafide intention which is not simply possible with him.

ARTICLE -3

As regard Article-3 of the charges, I once again admit that instructions were given by me to hand-over the refund vouchers in persons instead of sending them by registered post as a measure of good public relation which

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was considered to be need of the hour at that time thereby helping the assessees to eliminate the postal delay. I would like to restate once again that it was a completely different matter that the persons happened to be bogus or fictitious assessees - Wolves in sheep's skin. It was entirely my fault that I could not see person beyond their appearances. Further, I vehemently deny the charges and the defrauding of the exchequer. My instruction in a new way changed the status of the refund. Whether it was handed over in persons or sent by post, the defrauding remained due to the system failure.

ARTICLE -4

As regard Article-4 of the charges, I once again deny any malafide intention in giving the instruction. In fact, it was given as a measure of good public relation on a bonafide intention to improve the public relation image of the Department and also to mitigate the problems (so-called problems) of the assessees (fictitious assessees). In my long career of over 20 years of service, I have been always maintaining absolute integrity and devotion to my duty. My integrity has been my value procession and work is worship in my attitude towards my service. Till date, I have been maintaining absolute integrity and devotion to my duty which will be testified and confirmed by all my superiors under which I have been working. The above incident happened due to wrong judge of the people - wrong judging of wrong people, which I will try my best not to repeat in future if at all possible. I, therefore, once again deny the imputation of misconduct or misbehaviour in the Article of charges brought against me.

If my written submissions here-in-above fails to satisfy you and if further clarification and/or explanation is desired, I may be given an opportunity of being heard in person.

Yours faithfully,

(N. LHUNGDIM)
30/4/96
Additional Commissioner of Income-tax,
Range ::::: Dibrugarh,
DIBRUGARH.

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ANNEXURE-C 641

F.No.C-14011/8/96-V&L
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES

New Delhi, 14/8/96

ORDER

WHEREAS an enquiry under Rule 14 of Central Civil Services (Classification, Control & Appeals) Rules, 1965 is to be held against Shri N. LHUNGDIM, Additional Commissioner of Income Tax.

AND WHEREAS the President considers that an Inquiring Authority should be appointed to inquire into the charges framed against the said Shri N. LHUNGDIM, Additional Commissioner of Income Tax.

NOW, THEREFORE, the President in exercise of the powers conferred by sub-rule (2) of Rule 14 of CCS(CCA) Rules hereby appoints Shri V. TOCHHWANG Commissioner of Income Tax, Shillong, as Inquiry Authority to inquire into the charges framed against Shri N. LHUNGDIM, Additional Commissioner of Income Tax.

By Order and in the name of the President.

Sanjay Puri
(SANJAY PURI)
UNDER SECRETARY TO THE
GOVERNMENT OF INDIA

✓ Shri N. LHUNGDIM, Additional Commissioner of Income Tax,
Dibrugarh.

(Through Chief Commissioner of Income Tax, Patna)

Copy to:

1. The Chief Commissioner of Income Tax CIT, Patna, along with copies for Sh. Tochwang and Sh. N. Lhungdim.
2. The Inquiry Officer Shri V. TOCHHWANG alongwith copies of charge sheet and the written statement of defence.
3. The Central Vigilance Commission, New Delhi.
4. The Director of Income Tax (Vigilance), New Delhi.

(SANJAY PURI)
UNDER SECRETARY TO THE
GOVERNMENT OF INDIA

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ANNEXURE -D

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SPEED POST

IMMEDIATE
REGISTERED WITH A/D

REGISTRATION A/D

F.No.Vig-23/Con/CT/93-94/Pt.IV/ 1781-83

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME-TAX DEPARTMENT

Post Box-20, Dhankheti,
Shillong-793001, Meghalaya

Dated 16.12.1996

OFFICE MEMORANDUM

Subject:-Departmental Inquiry under Rule 14 of the CCS(CCA) Rules, 1965 against Shri N.Lhungdim, Addl.Commissioner of Income-tax, Dibrugarh Range, Dibrugarh-NER Charge.

The undersigned will hold the Preliminary Hearing in the above mentioned case on 3.1.1997, from 10.00 A.M. at Shillong in the Office of the Inquiry Officer at the above mentioned address. The Presenting Officer and the Charged Officer alongwith his defence assistant, if any, are required to attend the proceedings failing which the proceedings shall be held ex parte.

In case the charged officer desires to have the assistance of a defence assistant, he may submit his proposal in this regard to the I.O. and the disciplinary authority and get their approval before the date of the Preliminary Hearing.

While nominating a serving Government servant as Defence Assistant, as also a retired Government servant the instructions on the subject should be kept in view.

The PO may keep all the listed documents (in original) ready for inspection by the CO immediately after the PH.

No witness will be examined on this date.
Receipt of this O.M. should be acknowledged.

(V. Tochhawng)

Commissioner of Income-tax,
North Eastern Region, Shillong

Inquiry Officer,
Tel. 223587

To
1. Shri N.Lhungdim, Addl.Commissioner of Income-tax, Dibrugarh Range, Dibrugarh, Central Revenue Building, Chowkidinthee, Dibrugarh-786003.

Presenting Officer,
2. Shri N. Sahay, DSP, CBI, ACR, Guwahati/SHG.,
THROUGH: The Dy. Inspector General of Police, CBI, N.E. Region,
Chenikuthi Hill Side, Guwahati-781001.

Copy to:- Shri Sunil Gupta, Under Secretary to the Government of India, Central Board of Direct Taxes, New Delhi-110001.

Dated
8/12/96

ANNEXURE-E

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No. VIG-23/CON/CT/93-94/Pt. IV/ 2193-98

OFFICE OF THE COMMISSIONER OF INCOME TAX
NORTH EASTERN REGION :::: POST BOX NO.20
SHILLONG - 793 001.

Dated : 21-02-97

Subject :- Departmental inquiry against Shri N. Lhungdim,
Addl. Commissioner of Income-tax, Dibrugarh
Range, Dibrugarh.

Present :- Shri N. Lhungdim, Charged Officer

Shri N. Sahay, Presenting Officer

Daily Order Sheet.

The Preliminary Hearing was held today. Shri N. Lhungdim confirmed that he has received the charged memo. 3-4-96 along with the annexures. He has also submitted a reply dated 30-4-96 to the charged memo. Shri Lhungdim pleaded not guilty and denied the charge today.

2. Some photo copies of the listed documents are in the court, so therefore, the PO has assured that he would get the copies of the same from the court after due permission is received from the court, and make them available to the CO, to enable the CO to make his submission, if any, to the IO latest by 14th March, 1997.

3. The IO asked the CO whether he would like to have any Defence Assistant to assist him in the case to which the CO replied that he would not need any Defence Assistant and the CO also stated that he not have any Defence Witness.

4. All these preliminaries should be completed before end of March'97. The regular hearing will be held in 2nd week of April, 1997.

5. A copy of the order sheet is sent to the PO and another copy is given to the CO for their compliance and record.

(V. TOCHHAWNG)
Inquiry Officer.

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Charged Officer.

.....
Presenting Officer.

Copy for information and necessary action to:-

1. Board, Attn: Shri Gupta, Under Secretary to the Govt. of India.
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10/2/97

ADDITIONAL WRITTEN SUBMISSION OF DEFENCE AGAINST MEMORANDUM OF CHARGES:

In addition to the written submission in response to Memorandum No. C-14011/8/96-V&L dated 3.4.96, the following submissions are further submitted.

PARA I

In para-16 Chapter XVII of Office Procedure 2 section II, 3-6 issued by DIRSP/1965 detail instruction regarding delivery of Refund Voucher had been stated. In sub-para (2) of para-16 it is stated that Refund Voucher exceeding Rs.500/- and upto Rs.1,000/- may be sent by Regd. post, acknowledgement due and in case of non-delivery, the assessee may be asked to come to the office and take delivery personally. In para-16(3) for Refund Voucher over Rs.1,000/- and upto Rs.5,000/- an intimation should be sent to the assessee to take delivery of the same, but if he asks it to be sent by post, it should be sent by Regd. post, acknowledgement due and in para-16(4) Refund Voucher of over Rs.5,000/- should be delivered personally, unless the assessee specifically asks otherwise, in which case, they may be sent by Regd. post, acknowledgement due, at his risk.

It has also been mentioned that "care should be taken to despatch Refund Vouchers immediately they have been signed by the ITO, also, if, in any case, the ITO doubts that the Refund Voucher will not reach the person for any reason, he may ask the assessee to take delivery of it in the office". Instruction No. 1647 of the CBDT dated 11.9.85 had stated "it is a matter of concern for the Board that a feeling continues to persist among the tax-payers that the refunds are not granted promptly and that the Refund vouchers are not being sent in most of the case along with the orders giving rise to refund. Also complaints are being received by the Board in this regard. The Board would, therefore, again like to emphasise that the claims of refund should be disposed of promptly and the Refund vouchers should invariable accompany the orders giving rise to the refund.

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The CIT/IAC are directed to ensure elimination of delay in the grant of refunds". The above instruction including such other instructions in this regard have partially modified after the Board had reviewed the position and as per the letter F.No. 225/244/88-ITA.II dated 12.4.1988 had decided that -

(I) Refunds upto Rs.2500/- will henceforth be sent through Notice Servers. However, in case of outstation assessees the Assessing Officer may, if he considers that it will be more convenient and economical to send these refunds by Regd. post, send the refund vouchers by Regd. post(AD). In such cases clear cut direction should be issued to the effect that the Notice Server will in no case, keep any refund voucher with him for more than 10 days whereafter he shall handover the vouchers to the office for immediate despatch by Regd. post. Assessing Officers will have to take steps that these instructions are strictly adhere to.

(II) Refunds of amount exceeding Rs.2500/- will continue to be sent by Registered post.

(III) In order to curb refund frauds, all refund voucher will be marked "A/C Payee only", as against the present practice merely crossing refund vouchers upto Rs.999/-.

It is submitted that all instructions and circulars regarding issue, despatch and delivery of refund vouchers have been made with the sole intention to ensure that the proper person/the claimant/the assessee receive the refund vouchers. In other words, the instructions, circulars are meant for ensuring the receipt of the refund vouchers by the proper/correct claimant/assessee or the addressee. It may also be submitted that no where it is mentioned that if the claimant/the assessee comes personally to collect it, it should be refused.

As I have already stated in my earlier submission one of the unstated reason behind the various instructions to send the refund vouchers by post is to minimise or to remove complaint against the Departmental officials in this

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matter. In actual field situations sometimes most of the instructions of the Board could not be followed in letter and spirit. In many cases if the instructions are followed literally sometimes practical difficulties have been experienced putting both the assessee and the Department into inconveniences and difficulties specially in the Hill areas such as in the North East where postal delay is a routine affair and road communication in a pretty bad shape. These problems and difficulties are experienced only by those people working in such areas. It may also be noted that sometime the office concerned has no postage stamps due to the perpetual shortage of funds under the head 'office expenses' and number of refund vouchers are to be held up because of this reason. In such situation the Assessing Officers faces two pressures, one from the higher authorities for expeditious issue and delivery of refunds and other from the assessee. The delay in such matter mainly form the ground of most of the grievances petitions received by the Department from the assessee.

As stated above in the earlier instructions, the assessees were to take delivery of the refund vouchers personally if the refund voucher was over Rs.1000/- which however, have been modified. However, there is not definite and clear instruction to refuse to handover the refund voucher if the assessee, the claimant comes to the office personally. As I have submitted above the whole intention of all the instructions is only to ensure that the addressee/ the claimant/the assessee receive the refund voucher.

In the instant case the assessee (who later on were found to be bogus or fictitious) had met me and requested for taking delivery of the refund voucher personally as if the vouchers were sent by the Regd. post it would take some weeks, sometime months to reach them on the ground that postal delays are very common and road communications are mostly unreliable and pretty bad. They also stated that because of certain local festivals the labourers were pressing for early payments. In the spur of the moment with the

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bonafied believe that they are the genuine assessee having real and genuine problems had given instructions to the Assessing Officer to handover the refund vouchers to them. As I have stated earlier I had done this as a measure of good public relation as I found that after I joined the Range in the middle of 1988, the image of the Department was not upto the mark and much more measures had to be taken to improve the public relation of the Department.

It was or it is a completely different matter that the so called assessees are found out later on to be only bogus or fictitious assessee trying to defraud the ex-chequer. My instruction to handover the vouchers in persons did not in any way change the status of the refund. The so called assessees had filed their returns, the returns were processed and these were never suspected by the Assessing Officer to be bogus or fictitious. If there had been any inkling of doubting the genuineness of the returns, it would never have been processed for grant of refund by the Assessing Officer, Shri B. R. Purkayastha who is one of the officers of the Department having sterling quality of head and heart and also a very high moral integrity with whom I had worked in the last more than 20 years. Instead of having processed the returns, necessary steps would have been taken to book the culprit/the defrauder and this would have alerted many such people indulging in such kind of nefarious activities putting many of the Departmental officials into embarrassment and trouble in their discharge of their duties. I would submit once again that even if instruction have not been given by me the so called assessee would in any way have encashed the refund vouchers in course of time with the delay of some weeks or so. The allegations that my instruction have defrauded the ex-chequer is not at all tenable. Whether instruction was given or not the so called assessee would have defrauded the ex-chequer due to the defect in system in which there was no way to check or to know that TDS certificates are genuine or bogus. Even when there is more or less a perfect system, there are sometimes deficiencies in the working of the official and in the present case there was total deficiency in the system and the officials are made scapegoats for the failure of the system.

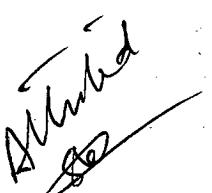
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I would, therefore, hereby reiterate that there was not a slightest malafide intention in directing the Assessing Officer to handover the refund vouchers to the assessee personally. My instruction had not in any way facilitated the defrauding of the ex-chequer. This did not obviate my maintaining absolute integrity and devotion to duty. This also did not in any way also had shown my conduct unbecoming of a Govt. servant. Therefore, there was no contravention of Rule 3(I), (II) & (III) of CCS Conduct Rule, 1994. Rather it was taken with the bonafide intention as a measure of good public relation to improve the public image of the Department which is found wanting most of the times. It would rather be noted that as a responsible officer to live upto the expectation of the service to which I happen to belong. I had been doing a fairly good and commendable work in improving the public relation works of the Department thereby enhancing the good image of the Department. It may also be mentioned that considerable appreciations and favourable comments from the public i.e. the assessee have been received by me during the last 20+ years of my service in the Department. It is rather a cruel joke played on me that while trying to do maximum good public relation work serious aspersions have been cast on my integrity for such a stray bonafide action taken without any trace of malafide intention which as an officer has to be taken in the actual field situations in the day to day running of the administration.

(N. LHUNGDIM)
Addl. Commissioner of Income-tax,
Range :::: Dibrugarh.

21.2.97



Kind attention, e.g. PATNA

F.No.A - 32011/6/97- Ad.VI
 Government of India
 Ministry of Finance
 Department of Revenue

New Delhi, the 13th Sept. 1997

ORDER NO. 121 of 1997.

SUBJ: Adhoc promotion from the grade of Deputy Commissioner of Income Tax to the grade of Commissioner of Income Tax.

The President is pleased to order that the following Deputy Commissioners of Income Tax be promoted on purely adhoc basis, to officiate in the grade of Commissioners of Income Tax (Scale Rs.5800 - 6700) w.e.f the date(s) they assume charge of the higher post until further order.

S/Shri

1. Gurjeet Singh
2. B. Biswanth
3. Ram Pankaj
4. T. Vinay Mohan
5. C. Rokhama
6. N. K. Shukla
7. Smt. Rama Dua
8. Sunita Chandra
9. Sudhodhi Kumar Sinha
10. P. C. Chhotaray
11. Smt. Arti Sawhney
12. A. R. Malhotra
13. Anhwini Kumar
14. Kum. Usha Govindan
5. M. P. Sharma
6. M. Naradlalappa
7. C. S. Kahlon
8. D. P. Kar
9. Debabrata Dua
0. Smt. Meenakshi Singh
1. O. P. Sachan
2. A. K. Randa
3. B. R. Sudhakar
1. Rmji Singh
1. Vineet Sahai
1. Smt. Usha Gupta

Dated
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27. S.S. Khorana
 28. R.K. Singh
 29. A.K. Aneja
 30. Prem Verma
 31. Smt. Utpala Kanjilal
 32. M.N. Tiwari
 33. Kanan Singh
 34. D.K. Gupta
 35. Smt. Rupinder Kayer
 36. A.K. Jain
 37. Durgesh Shanker
 38. Prakash Chandra
 39. M.S. Rai
 40. Milap Jain
 41. B.L. Khati
 42. Balip Singh
 43. S.R. Singh
 44. Ramchandra Sethi
 45. A. Das
 46. Debarnjan Mitra
 47. M.C. Katherly
 48. P.K. Deb Burman
 49. C. Nampi
 50. N.L. Meena
 51. Smt. P. Sahi
 52. P.P. Srivastava
 53. Laxman Das
 54. P. K. Khati
 55. A.K. Basu
 56. V.K. Prakash
 57. B.S. Sondi
 58. M.C. Joshi
 59. P. Ranganathan
 60. G.B. Kanungo
 61. R.K. Jain
 62. Smt. D. Kohli
 63. Y.S. Rawat
 64. S.C. Bhattacharya
 65. Smt. Hardeep Srivastava
 66. Smt. K. Arathy Gupta
 67. Smt. V. Surie
 68. Gautam Chaudhuri
 69. A. Kacker
 70. V.K. Bhatia
 71. P.M. Sharma
 72. A.K. Jha
 73. K. Vaidyanathan
 74. M.N. Dajpal
 75. A. Prasad
 76. S.C. Gupta II

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100. B.S. Bhillon*	- do -
101. Kamla Kant Tripathi	- do -
102. Smt. Vinita Chopra	- do -
103. S.C. Gangwar	- do -
104. R.K. Singh	CIT (A) VII Calcutta
105. D.P. Shah	M(AA) Bangalore
106. P.K. Chopra	CIT (A) Barisell
107. Smt. Hardeep Kaur	CIT Amritsar
108. C.K. Kohli	DIT (Inv.) Chandigarh
109. Smt. Manju Lakhnepuri	Competent authority, Delhi.
110. L.K. Koolwal	CIT (A) VII Ahmedabad
111. J.K. Goel	CIT (A) Allahabad
112. Narinder Singh	CIT (A) Rohtak
113. N.P. Sen Gupta	CIT (A)-II Calcutta
114. R.K. Pandey	CIT (A) Varanasi
115. Y.K. Aggarwal	CIT (A) Udaipur
116. A.K. Malik	CIT (A) X Calcutta
117. D. Chatterjee	CIT (A) III Calcutta
118. A.S. Thakur	CIT (A) I Mumbai
119. Y.S. Wahl	M(AA) Mumbai
120. P.Ray	CIT DR ITSC Delhi
121. S.O. Kapil	CIT DR II ITSC Delhi
122. P.C. Sinha	CIT (A) XXVI Delhi
123. Shalini Sharma	CIT (A) XXVII Delhi
124. K. Ranghabhushyan	CIT (A) XX Delhi
126. P.L. Singh	CIT VIII Delhi
126. Smt. Saroj Bala	CIT (A) XXX Delhi
127. R.Q. Mathada	CIT (A) Chandigarh

CIT (A) PATIALA
CIT JUNAGADH
CIT RAJKOT
CIT (A) BHOPAL
CIT (A) Varanasi
CIT (A) XXXI Mumbai
CIT Amritsar
DIT (Inv.) Ludhiana
CIT Jammu
DIT-(A) Shimla/Dehradoon
CIT-III Ahmedabad
CIT Allahabad
CIT Rohtak
CIT-VI Calcutta
CIT Varanasi
CIT Udaipur
CIT X Calcutta
CIT VII Calcutta
CIT XIV Mumbai
DI, ITSC Mumbai
DIT DOM&S, Delhi
DI, ITSC Mumbai
CIT DR II ITSC Delhi
CIT DR II ITSC Delhi
Delhi
CIT (DR) I ITSC
Delhi
CIT VIII Delhi
CIT I Delhi
DI (RSPAPR)
Delhi
DIT (Inv.)
Chandigarh

4. The Commissioners of Income Tax who have been holding additional charge will be relieved of the same w.e.f the date(s) the incumbents so promoted/transferred take over their new assignments. Officers who are at Smt Nos. 5, 15, 22, 24, 30, 39, 51, 61, 63, 64, 65, 66, 67, 68, 69, 78, 84, 94, 96 and 100 on deputation/long term training are requested to join their place of posting on promotion by 23/9/97 positively, failing which the vacant posts will be offered to the officers who are in the extended panel strictly according to their seniority and as per the directions of the Appointments Committee of the Cabinet.

(J.L. Sawhney)
Under Secretary to the Government of India

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North Block, New Delhi - 110001

Dated, the 14th Sept., 1992.

OFFICE MEMORANDUM

Subject: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose Conduct is under Investigation - Procedure and guidelines to be followed.

Estt. A dt. 31.8.80
Estt. Adt. 22.12.84
77-Estt. A
77
78-Estt. A
78
79-Estt. A
79
80-Estt. A
80
81-Estt. A
81

Government
to whom Sealed
procedure will be
applied.

to be followed
In respect of
Government servants
abroad.

ure by subsequent
after completion of
any case/criminal
prosecution.

The undersigned is directed to refer to Department of Personnel & Training OM No. 22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgement dated 27.08.1991 of the Supreme Court in Union of India etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension;
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.

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

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

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

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

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the bare minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be

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1. 2. done subsequently also every six months. The review should, *inter alia*, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite the completion.

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

- a) Whether the promotion of the officer will be against public interest;
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

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

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

- i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and this promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

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

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

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

8. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions have been issued after consultation with the Comptroller and Auditor General of India.

9. Hindi version will follow.

(Signature)
(M.S. BALI)
DIRECTOR

To All Ministries and Departments of the Government of India with usual number of copies.

No. 22011/4/91-Estt(A) Dated the 14th Sept., 1992.

Copy forwarded for information to:-

1. Central Vigilance Commission, New Delhi.
2. Central Bureau of Investigation, New Delhi.
3. Union Public Service Commission, New Delhi.
4. Comptroller and Auditor General, New Delhi.
5. President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Senate Secretariat and Prime Minister's Office.
6. Chief Secretaries of All States and Union Territories.
7. All Officers and Administrative Sections in the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.

(Signature)
(M.S. BALI)
DIRECTOR

Dated
20/9/92

ANNEXURE - I 854.

Fig-23/CON/CT/93-94/Pt.IV/1082

GOVERNMENT OF INDIA
MINISTRY OF FINANCE

OFFICE OF THE COMMISSIONER OF INCOME TAX
SHILLONG : POST BOX NO.20, DHANKHETI,
SHILLONG-793001

Dated, Shillong, the 25th September, 1997.

Subject:- Departmental Inquiry against Shri
N. Lhungdim, Addl. Commissioner of
Income-tax, Dibrugarh Range, Dibrugarh

Present : 1. Mr. N. Sahay, Presenting Officer

DAILY ORDER SHEET

The Regular Hearing (RH) commenced today. Shri N. Lhungdim, the Charged Officer has conveyed to the IO on telephone that he does not wish to be present in person on this day. He has only requested that his Written Submission already submitted may be taken into consideration.

The Presenting Officer, Shri N. Sahay is present for the hearing today. He has also produced seven witnesses who will be produced before the court as and when required. The Presenting Officer has also produced photocopies of documents listed which are submitted today.

Six witnesses were duly presented and examined, and their recorded statements have been submitted and taken into record and duly marked PW-1 to PW-6. The seventh witness, Shri Amulya Ranjan Bhattacharjee has been dropped by the PO.

For the rest of witnesses who have not appeared today, the PO does not insist on their appearance.

The PO does not wish to submit any brief in this case. His oral arguments were heard.

The Original Documents in this case could not be produced by the PO as the same are required in the Court. Hence, only photocopies had been submitted which have been accepted. A copy of this order is to be given to the PO and CO.

25/9/97
(V. TOCHHAWNG)
Inquiry Officer

Copy to :- IDSP/EBI

- ✓ 1. The Under Secretary to the Govt. of India (V&L), Central Board of Direct Taxes, New Delhi-110001.
2. The CII (Vigilance), New Delhi.
3. The Chief Commissioner of Income-tax, Patna.

*Almend
D.S.G.*

ANNEXURE - J

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F. No. Vig-23/Con/CT/93-94/Pt. IV/

OFFICE OF THE COMMISSIONER OF INCOME-TAX, SHILLONG :::: POST BOX NO. 20 SHILLONG - 793 001 (MEGHALAYA)

Dated: 22.10.1997

Sub : Departmental inquiry against Shri N. Lhungdim, Deputy Commissioner of Income-Tax, Shillong Range, Meghalaya.

REPORT OF THE INQUIRY OFFICER

I. THE PROCEEDING

The ministry of Finance (Income-tax Department) initiated disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 against the officer as mentioned below:

Name and designation Of the charged officer	Disciplinary Authority	Order appointing the Inquiry Officer (IO) and Presenting Officer (PO)
Shri N. Lhungdim, DCIT, Shillong Range, Shillong.	Commissioner of Income- Tax, North Eastern Region, Shillong.	F. No. C-14011/8/96-V&L dated 14.8.96 and dated 9.12.96.

1. I was appointed as Inquiry Officer (IO) and Shri N. Sahay, DSP, CBI, Guwahati was appointed as Presenting Officer (PO) in the case cited above.

Proceeding has been held in respect of the above named officer, by holding preliminary as well as regular hearing.

2. Shri N. Lhungdim was functioning as the Deputy Commissioner of Income-tax, Shillong Range, Meghalaya during the relevant period, i.e., during 1989.

3. The allegations which are the subject matter of these inquiries proceedings against the officer relates to his failure to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes by passing order to hand over refund orders to the persons who made the claims, contrary to the said Board's instruction, resulting in refunds to the tune of Rs. 1,60,602/- being given against claims which were later found to be fictitious and based on bogus Tax Deduction Certificates.

4. The preliminary hearing of the case was held on 21.02.97. As some photo copies of the listed documents were lying in the Court, the P.O. assured that copies of the same would be obtained and make them available to the Charged Officer. The Charged Officer also stated that he would not need any Defence Assistant, and that he would not have any witnesses in his defence. Subsequently, Shri N. Lhungdim, the Charge Officer, was requested to contact Shri N. Sahay, the P.O. for the purpose of examining the documents, prior to the regular hearing to be fixed. Vide his letter F. No. Estt-1/E-195/92-93/4094 dated 12.9.97, Shri N. Lhungdim, C.O. had intimated on phone that he did not wish to be physically present, and that his written submission against the memorandum of charges may only be considered in his defence. The same has been duly noted in the Daily Order Sheet.

THE CASE AGAINST SHRI N. LHUNGDIM - IN DETAILS

5. The Department cited 25 documents and 12 witnesses in support of the charge in the Annexure-I and II to the charged memo. However, during the regular hearing, the P.O. dropped

Planned

one witness, namely Shri Amiya Ranjan Bhattacharjee who was to prove that A/C No. H/1/160 dated 15.02.89 was introduced by him. Five witnesses at Sl. 1, 4, 10, 11 and 12 as per Annexure-IV did not appear, and the P.O. did not insist on their subsequent appearance. Copies of the depositions of witnesses who appeared were submitted to the P.O and I.O. The witnesses were examined. The P.O. declined to submit any written briefs in this case.

II. ARTICLES OF CHARGE

6. The statement of articles of charge against Shri N. Lhungdim are reproduced below:

ARTICLE I

Shri N. Lhungdim, while posted and functioning as the Deputy Commissioner, Shillong Range, Meghalaya during 1989 failed to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes contained in Board" letter F. No. 212/753/79-ITA-II dated 09.10.1979 and reiterated in Instruction No. 1530 dated 10.10.1983 which state that all refund orders should be sent by registered post only. He passed orders, contrary to the letter and spirit of the above mentioned circulars by directing the handing over of refund orders amounting to Rs. 62,582/- and Rs. 98,020/- to Shri H. Lalanpuia and Shri J. Anthony respectively, the alleged assessee, who turned out to be bogus, thereby putting the state exchequer to a loss of Rs. 1,60,602/- He thereby showed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964.

III THE CASE OF THE DISCIPLINARY AUTHORITY

7. The case of the disciplinary authority as given in the statement of imputations is given below:

Shri N. Lhungdim was posted and functioning as DCIT, Shillong Range, Shillong (Meghalaya) during 1989.

2. Two Returns of income in the names of Shri H. Lalanpuia of Happy Valley, Shillong and Jonthui Anthony of Assam Rifles Colony, Nangstrin, Shillong were filed in the charge of ITO, Ward-I, Shillong. These were not supported by any claim of refund as required u/s 239 of the Income-tax Act, 1961 read with Rule 41 of Income-tax Rules, 1962. The returns were assessed u/s 143(21) by Shri B.R. Purkayastha, ITO, Ward-I, Shillong and he also issued I.T. refund order No. B/6-252922 dated 14.02.1989 for Rs. 62,582/- and B/6-252918 dated 10.02.1989 for Rs. 98,020/- for the assessment years 1986-87, 87-88, 88-89 and 1986-87, 87-88, 88-89 respectively in the name of the aforesaid two individuals.

3. Contrary to directions contained in Board's letter F. No. 212/753/79-ITA-II dated 09.10.1979 and reiterated in Instruction No. 1530 dated 16.10.1983, Shri N. Lhungdim ordered Shri B.R. Purkayastha, ITO, Ward-I, Shillong vide letter No. A-35/88-89/2853 dated 10.02.1989 and No. A-35/88-89/2890 dated 14.02.1989 to hand over the I.T. refund orders to the concerned assessee personally instead of sending them by registered post. The proper procedure in respect of issue refund orders was not followed, and the refund orders were handed over to the two individuals who were subsequently found to be bogus and fictitious assessee. It was also found that the aforesaid returns were accompanied with bogus TDS certificates and in actual fact there was no such TDS nor any such amount was deposited to the credit of the Government. Thus the exchequer was defrauded to the extent of Rs. 1,60,602/- through bogus claim of refund. This was facilitated by the Instructions dated 10.02.1989 and 14.02.1989 issued by Shri N. Lhungdim, DCIT, to the ITO, Ward-I, Shillong.

4. Shri N. Lhungdim thereby failed to maintain absolute integrity and devotion to duty and showed conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

*Subh
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IV ANALYSIS OF THE CASE

The case records, including the oral submission of the P.O. and the written submission of the C.O. have been examined carefully.

SOME FACTS RELEVANT TO THE CASE

As I have recorded in the course of the regular hearing, the C.O. did not wish to examine the documents, and was not also physically present at the hearing. In a word, the CO has not disputed the imputation of misconduct as laid out in the Statement at Annexure-II, made in support of the Article of charges framed against him, and has not challenged any of the documents or witnesses as submitted by the department. The P.O. has also not submitted any briefs in writing. Accordingly, the case is to be considered against the statement of imputation as per Annexure-II. The gist of the case is that two returns were submitted in the names of Shri H. Lalanpuia of Happy Valley, Shillong and Shri Jonthui Anthony of Assam Rifles Colony, Nongstrin, Shillong to the ITO, Ward-I, Shillong. These returns were not supported by any claim of refund as required u/s 239 of the Income Tax Act, 1961, read with Rule 41 of the Income-tax Rules, 1962. The returns were assessed u/s 143(1) by Shri B.R. Purkayastha, ITO, Ward-I, Shillong, who also issued I.T. refund orders No. B/6-252922 dated 14.02.1989 for Rs. 62,582/- and B/6-252918 dated 10.02.1989 for Rs. 98,020/- for the Assessment years 1986-87, 87-88, 88-89, and 1986-87, 87-88, 88-89 respectively in the names of the aforesaid two individuals. As per directions contained in Board's letter F. No. 212/7532/79-ITA-II dated 09.10.1979 and reiterated in instruction No. 1530 dated 16.10.1983, all refunds orders should be sent by registered post only. As such, the above mentioned refunds amounting to Rs. 62,582/- and Rs. 98,020/- respectively, were also required to be sent by registered post only, as per procedure laid down by the Board. The two persons named above, namely S/Shri H. Lalanpuia and Jonthui Anthony approached the ITO, Shri B.R. Purkayastha, and requested that the refund orders may be given to them by hand, but Shri Purkayastha did not allow the same, as recorded in his statement. Thereafter, the concerned two persons aforesaid met Shri N. Lhungdim, who was the Deputy Commissioner in charge of Shillong Range, and made the same request. As per the statement made by the C.O. in his written statement, he gave instructions directing the Assessing Officer (Shri B. R. Purkayastha, in this case) to hand over the refund orders to the assessee (AS/Shri H. Lalanpuia and J. Anthony) which he admits was not in conformity with the existing instructions which required it to be sent by Registered post. However, in this regard, the C.O. has submitted, through his written submission, the following plea:

9. As far as he could remember, the said instructions were given under peculiar circumstances. The said assessee (who later on became bogus or fictitious assessee) came to him and told him that they were to receive refunds and if these were sent by Registered post it would take two weeks sometimes months to reach them. They stated that their labour payments have been overdue and the labourers were pressing for early payments because of certain festivals and urgent personal expenses. They further stated that as they were in the town/capital, they requested that they should be allowed to take vouchers in person to avoid postal delays which was common in this part of the country. The C.O., therefore, states that he had given the instructions as a measure of good public relation as the Department had been having a very bad public relation and criticism in this area. His understanding of the spirit behind the Board's instructions to send refund vouchers by post is to minimise or eliminate complaints against the Department officials in this matter. In actual field situations, he states that it is not always possible to follow the Board's instructions literally due to many practical difficulties which often puts both the department and the assessee to difficulties and inconvenience, specially in the North-East where communication is bad and postal delays are common. The instruction, according to the C.O., was passed with the best of intention, namely to improve the image of the department and also to mitigate the problems of the assessee. The C.O. also states that his instructions to hand over the vouchers in person did not in anyway change the status of the refunds. The returns were filed by these so called assessee, and were processed for grant of refund, without Shri B.R. Purkayastha, an officer of sterling quality and high moral integrity ever suspecting that these were bogus or fictitious, states the C.O. He therefore asserts that even if such instructions had not been given by him, the so called assessee would in any case have encashed the refund vouchers in course of time with a delay of some weeks or so. He therefore

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denies the charge that his instructions have defrauded the exchequer. According to him the fault lies in the system as there was no way to know whether TDS Certificates were genuine or bogus.

10. The incident on the basis of which the present proceedings has been drawn up, occurred sometimes during January & February, 1989. At this time, it was apparent that it was a matter of concern to the I.T. Department that there were large numbers of complaints from assessee regarding irregularities in the matter of refund issues. The Board had, vide Instruction No. 1647 dated 11.9.1985 issued direction in regard to Expedited disposal of Refund applications relevant portions of which is reproduced below :

"3. The Board would therefore again like to emphasise that the claims of refund should be disposed off promptly and the refund vouchers should invariably accompany the orders giving rise to the refund.

4. The Board also desires that steps may be taken to carry out surprise inspections by the Commissioner of Income-Tax/Inspecting Assistant Commissioner of Income-Tax to find out whether refunds are granted promptly and interest is paid in cases of delayed refunds. The Commissioner of Income-tax/Inspecting Assistant Commissioner of Income-tax are directed to ensure elimination of delays in the grant of refunds, etc."

FINDINGS:

During the course of the hearing and cross examination of witnesses and inspection of documents produced before me, it appears that nothing could be inferred that Shri N. Lhungdim has malafide intention of defrauding the revenue or causing loss to the government exchequer. It is an undenied fact that Shri N. Lhungdim has acted in contravention of the Board's standing Instruction, while issuing instruction to hand over the refund voucher to the claimants by hand. However, this also appears to be an action arising out of his desire to keep up the good image of the department, in its dealing vis-à-vis the public.

(V. TOCHHAWNG)
Commissioner of Income-Tax,
Shillong.
Inquiry Officer.

*Altered
by
S. S. S.*

ANNEXURE - K

59.

F.NO.C-14011/8/96-V&L
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 7th Aug, 1998.

MEMORANDUM

A Memorandum of charge dated 3.4.96 was issued to Shri N.Lhungdim, DCIT alleging failure to maintain absolute integrity and devotion to duty and conduct unbecoming of a Government Servant.

2. Shri N.Lhungdim denied the charges. Consequently, an oral inquiry was ordered in his case. The Inquiry Officer has submitted his report dated 22.10.97 exonerating Shri Lhungdim of the charges.

3. However, the Disciplinary Authority is not in agreement with the I.O's report on the ground that Shri N.Lhungdim did order handing over of the refund orders across the table which has not been denied by anyone, including the officer himself in violation of departure from the departmental instructions to the contrary. Further, Shri N.Lhungdim did not know the assessees and, therefore, his direction to hand over the refund orders personally to such strangers amounted to an act of indiscretion betraying lack of devotion to duty.

4. In view of the fact that the Disciplinary Authority is in disagreement with the Inquiry Authority, Shri N.Lhungdim is required to submit his comments within 15 days of receipt of this Memorandum. A copy of the IO's report is enclosed.

(PRAMILA SHRIVASTAV)
DIRECTOR(V&L)

Shri N.Lhungdim,
Additional Commissioner of Income tax,
Dibrugarh.
(Through Chief Commissioner of Income tax, Patna)

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ANNEXURE - L

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PAGE 2

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F. No. A-10011-4-93-1/2/VI
 Government of India
 Ministry of Finance
 (Department of Revenue)

New Delhi, the 9th September, 1995

ORDER NO. 175 OF 1995

The following Additional Commissioners of Income Tax are hereby promoted to office of Commissioner of Income Tax on regular basis w.e.f. the date(s) they take over charge and will further orders:-

S.NO.	Name of the Officer	Present Posting as Commissioner of Income Tax (on adhoc basis)
(1)	(2)	(3)
S/SHRI		
01.	Ram Pankaj	CIT(A)-I, Ahmedabad
02.	C. Rokhams	On deputation to Govt of Mizoram
03.	N. K. Shetha	CIT(A)-IX, Delhi
04.	Smt. Rama Das	CIT(A)-XLV, Mumbai
05.	Sudhir Chandra	CIT(A)-L Mumbai
06.	Subodh Kumar Singh	CIT(A)-Ranchi
07.	P. C. Chouray	CIT(CO), Mumbai
08.	Smt. Arti Sawhney	CIT(A)-IV, Bangalore
09.	A. R. Malhotra	CIT(A)-II, Ahmedabad
10.	Ashwani Kumar	CIT(A)-XX, Delhi
11.	Kum. Usha Govindan	CIT(A)-V, Bangalore
12.	N. P. Sharma	On deputation to NICD, Delhi
13.	N. N. Nanjappa	CIT, Mysore
14.	C. S. Kahlon	DIT(Inv.), Bhopal
15.	D. P. Kar	CIT(A)-XV, Calcutta
16.	Debabrata Das	CIT(AXC)-I, Calcutta
17.	Smt. Meenakshi Singh	N(AA), Lucknow
18.	A. K. Haq	CIT(OSD), Mumbai
19.	B. R. Sathguru	CIT(A)-III, Chennai
20.	Ramji Singh	CIT(A)-VI, Delhi
21.	Virend Sahai	CIT(A)-F, Faridabad
22.	Smt. Usha Gupta	CIT(A)-L, Lucknow
23.	S. S. Khorana	CIT(A)-VI, Calcutta
24.	R. K. Singhal	N(AA), Lucknow
25.	A. K. Aneja	CIT(A)-II, Cochin
26.	Prem Venka	DIT(Tra), RTI, Hazaribagh
27.	Smt. U. Gopal Hegde	CIT(AXC)-II, Calcutta
28.	N. N. Tiwari	CIT(A)-IV, Calcutta
29.	Karan Singh	CIT(A)-VII, Chandigarh
		On deputation to Delhi VJIB Board, Delhi

Dated

1792/100-31-1E- 35

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(1)	(2)	(3)
		S/No
31.	Smt. Ranjinder Nayal	
32.	A.K. Jain	On deputi M/o P&P.G., Delhi
33.	D. T. Gopal Shantakar	CIT(A)-XIV, Meenakshi
34.	Rakesh Chandra	CIT(A)-XIV, Ahmedabad
35.	M.C. Fad	CIT(A)-XXV, Delhi
36.	Nilup Jain	CIT(A)-XV, Delhi
37.	B.L. Khati	CIT(A)-XVII, Delhi against it. is leave
38.	Datin Singh	vacancy
39.	S.P. Singh	CIT(A)-I, Jaipur
40.	Bairi Chandra Sethi	CIT(A)-VII, Mumbai
41.	A. Das	CIT(A)-I, Jodhpur
42.	Debabani Mitra	CIT(A)-XIV, Mumbai
43.	Madhukar Chandra Katheriya	CIT(A)-XV, Ahmedabad
44.	P.K. Deb Verma	CIT(A)-VI, Calcutta
45.	<u>L. Nampal</u>	On deputi NEHU, Shimla
46.	M.L. Meen	CIT(A)-I, Udaipur
47.	Smt. P. Sehgal	On deputi to PGI, Chandigarh
48.	P.P. Srivastava	CIT(A)-XIV, Mumbai
49.	Laxman Das	CIT(A)-XVI, Ahmedabad
50.	D.S. Rastogi	CIT(A)-II, Baroda
51.	A.K. Baru	CIT(A)-IV, Hyderabad
52.	V.K. Sridhar	CIT(A)-I, Puna
53.	B.S. Sonchil	CIT(A)-I, Delhi
54.	M.C. Joshi	On deputi, Enforcement Dir. Delhi
55.	P. Rangarathan	CIT(A)-IX, Chennai
56.	G.B. Ranwago	CIT(A)-XI, Chennai
57.	R.K. Jain	CIT(A)-X, Ahmedabad
58.	Smt. D. Kohli	On deputi, MCD, Delhi
59.	Y.S. Rawal	CIT(A)-XI, Ahmedabad
60.	S.C. Gupta	CIT(A)-Jallandhar
61.	Smt. Hardeep Srivastava	On deputi, Nuclear Corps of India, Mumbai
62.	Smt. K. Aravathy Gupta	CIT(A)-XII, Ahmedabad
63.	Smt. V. Suri	CIT(A)-XVII, Calcutta
64.	Gautam Choudhuri	CIT(A)-I, Calcutta
65.	R.N. Tripathi	Posting Order to be issued separately
66.	A. Kacker	On deputi SEBI, Mumbai
67.	V.K. Bhada	CIT, Delhi charge (on study leave)
68.	P.M. Sharma	M(AA), Ahmedabad
69.	A.K. Jha	CIT(A)-XI, Calcutta
70.	K. Visadevan	DIT(Inv.), Kanpur

Amritpal
Amritpal

(1)

(2)

(3)

	S/No	
71.	A. Prasad	CIT(A)-III, Lucknow
72.	S.C. Gupta	CIT(A)-III, Jaipur
73.	K.C. Sarangi	CIT(A)-II, Bhubaneswar
74.	A. Majumdar	CIT(A)-XIV, Calcutta
75.	Smt. Aruna Bhada	On deput NBCC, Delhi
76.	S.K. Chakraborty	CIT(A)-VIII, Calcutta
77.	S.P. Pandey	CIT(A)-VII, Ahmedabad
78.	A.K. Gary	CIT(A)-XXIII, Delhi
79.	Quaser Shamim	CIT(A)-XXX, Delhi
80.	S.K. Mitra	CIT(A)-XII, Calcutta
81.	Sudhakar Tiwari	CIT(A), Cuttack
82.	K.M. Sultan	On foreign deput
83.	V. Jha	CIT(A)-I, Rajkot
84.	K.G. Bansal	CIT(A)-XXIX, Delhi
85.	B.R. Kaushik	CIT(A)-C-II, Chandigarh
86.	K. Argal	DIT(Inv.) Cochin
87.	T.C. Pant	CIT, Delhi charge, on Trg. abroad
88.	Smt. M. Kacker	CIT(A)-XLVI
89.	Anil Kumar	CIT(A), Bhatinda
90.	H.C. Sakherwal	CIT(A), Gwalior
91.	Smt. P.M. Vaish	M(AA), Mumbai
92.	Smt. Bharti Mandal	CIT(A)-IX, Calcutta
93.	Smt. Nitima Meesukhani	CIT(A)-XLVIII, Mumbai
94.	Vikas Khurana	On deput NBCC, Delhi
95.	Kalyan Chaudhary	CIT(A)-III, Baroda
96.	T. Vinay Mohan	CIT(A)-I, Cochin
97.	Kalyan Chaudhury	CIT(A)-X, Calcutta
98.	Brahma Prakash Gaur	CIT(A), Kohlapur
99.	Baljeet Singh Dhillon	CIT(A), Patiala
100.	Kanika Kanu Tripathi	CIT(A), Belgaum
101.	Smt. Vinita Chopra	CIT(A)-VIII, Ahmedabad
102.	S.C. Gangwar	CIT(A), Bhopal
103.	Mukesh Bhend	CIT(A)-III, Calcutta
104.	Smt. P.K. Saxena	CIT(A)-II, Jaipur
105.	M.L. Kuppurwadi	CIT(A), Calcutta
106.	S.S. Rana	CIT(OSD), Delhi
107.	Manoj Misra	CIT(A), Rohilkhand
108.	Ajai Kumar	CIT(A)-C-II, Ranchi
109.		CIT(A)-III, Hyderabad
110.	Smt. Lakshmi Prasad	CIT(A)-V, Delhi
111.	S.N. Bhuyan	CIT, Guwahati
112.	Smt. Sovarani Baru	On deput EPIL, Delhi
113.	S.S. Prasad Singh	CIT(A), Thane

(B.K. Arora)

Under Secretary to the Government of India

Attested
S. S. Prasad Singh

ANNEXURE -M

-63-

To
The Director (V & L),
Central Board of Direct Taxes,
North Block,
New-Delhi-110 001

Dated, Dibrugarh the 18th Sept '98.

Sir/Madam,

(Through Proper Channel)

Kindly refer to memorandum F. No. C-14011/8/96-V & L dated 7.8.98, which was duly received by me on 09.09.98. As desire in para 4 of the memorandum mentioned above I am submitting my comments as under:

2. As already stated in my written submission in response to the memorandum No. C-14011/8/96-V & L dated 3.4.96 and also the additional submission made before the Inquiry Officer it is further submitted that in the matter regarding granting and delivery of refund voucher to the assessee several instructions had been issued by the Board in the past. It is however noted that the core instructions have been clearly mentioned in para 16, chapter XVII of the Office Procedure section 13-6 issued by DIRSP, 1965. In para 16 (4) it was stated that refund vouchers of over Rs. 5,000/- should be delivered personally, unless the assessee specially asks otherwise, in which case, they may be sent by registered post with acknowledgement due, at his risk. This original instruction had undergone several changes in the last 30+ years and the latest instruction dated 18.11.97 being the send any refund vouchers irrespective of the amount of the refund involved by registered post with acknowledgement due. As I have stated earlier the whole objective and intention of all these instructions is to ensure that the addressee/ the claimant/ the assessee receive the refund voucher. And the unstated reason behind this instruction is, if I am not wrong, to minimise or reduce or eliminate malpractices usually happening at the lower level of the officials while delivering the refund vouchers in the office to the assessee.

3. In the instant case it is not denied by me nor any one that written instruction to hand over the refund voucher to the assessee in person was given to the assessing officer. It was not done verbally or surreptitiously. It was done in writing with the best of intention and bonafide reason as a measure of good public relation to improve the image of the department in this area of the work and also to mitigate the problems of the assessee at the relevant time. As I could remember the assessee (it is different matter that they were bogus or fictitious ones) met me in my office and stated that they were to receive refunds and if sent by registered post would take a minimum of 2 weeks or some time a month to reach them because of poor postal services and bad road communication in the hill area and since they were in the town they might be allowed to receive the refund vouchers in person as their labours were pressing for early payment because of some local festivals and also urgent personal expenditures. It was in the spur of moment with the bonafide belief that they were genuine assessee with real and genuine problems the assessing officer was directed in writing to hand over the refund voucher in person. It may be noted that in the last 25 years of my service in the department not in a single instance have I come across a bogus or fictitious assessee and never been cheated or betrayed by any one except this incident which I considered as an aberration. The instruction to hand over the refund vouchers to the assessee in persons in the instant case were done on some special and peculiar circumstances as stated above. It is not a general instruction nor an order to all assessing officers working under me. It was done with the best of intention without the slightest bit of malafide intention to defraud the revenue or causing loss to the government exchequer. It may be mentioned that if there was a slightest of doubt there was no question of giving instruction for handing over the

Subhajit
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voucher in person. I would rather have got them arrested who claimed themselves to be assessee coming to the office with an evil intention to defraud the revenue. In actual field life situations it is not always possible to follow many of the instructions from the higher authorities in letter and spirit. Sometimes carrying out the instructions literally put both the assessees and the department in embarrassment, inconveniences and difficulties specially in this part of the country commonly known as NER where communications whether by AIR, by road, by train or postal and telecommunication are still in a pretty bad conditions. Over and above this whole region has become the playgrounds of innumerable parties and factions of insurgent militant groups and people working in this situations circumstances sometimes have to make minor adjustments as per the demands of the situations and in spite of all these problems the officers and members of the staff of the department have been working sincerely to achieve the target fixed by the department and also to make the administration more efficient, responsive and transparent. Sometimes when there are practical difficulties to follow literally the instructions attempts have always been made to follow at least the spirit in spite of heavy odds confronting the department as a whole and officers and members of the staff in particular.

4. It is totally a different matter that the so-called assessees happened to be fictitious ones. The instruction to hand over in person will in no way change the status of the refund orders. Even if it was sent by registered post they would have received after 2 weeks or a month and encashed it. The return were filed by the assessees and these were processed for grant of refund by the assessing Officer as this were cases of what is called 'Pure refund case'. The assessing Officer Shri B.R. Purkayasta, an officer of sterling quality and high moral integrity who is considered one of the cleanest and most honest officers of the department, never suspecting that these were bogus and fictitious cases, had passed order to issue refund voucher. It is very sad that an officer of such quality of head and heart had to suffer because of such incident and also lost his promotion. I shall never forgive myself for causing such hurt and set back to the officer who in fact deserved appreciation and reward and not punishment.

5. As regards to the charge that I had ordered handing over of the refund voucher to the assessee whom I did not know, I would like to say that in the station where I was working at the relevant time there were more than 15,000 (Fifteen-thousand)-assessees and it was not humanly possible to know each and every assessee personally nor was really necessary. An assessee is an assessee whether we know him personally or not. They are our public. The tax administrators which include the officers and members of the staff are working as facilitators-facilitating the assessees to pay their taxes and also to render services as an employee of the department to the public i.e., the assessees. In view of the above, I feel that it is not always necessarily possible to know personally with whom we are dealing while working in the office. The only things I have been maintaining is that the person who comes to office or to me should have a problem regarding his tax matters or in other words he should be a tax payer and as a tax man it was my duty and responsibility to help him out if there is any problem.

As regards the charge of lack of devotion to duty in my 25+ years of service in the department in no time and in no place have I been showing lack of devotion to duty which had been testified by all my controlling officers with whom I had the occasions to work under them. Seriousness and sincerity in my work is valued principles in life. In spite of such frustrating set back in my service career, I have been continuously creating a series of experiments and reforms in office management, public relation, environmental cleanliness, space and record management, establishment of centralised reference libraries and staff welfare vis-à-vis tax administration. To day, I can proudly claim to have the first and the only Range in the country having centralised reference libraries organised and established in all the field stations of my Range, my office and all the offices in my range are the best in public relations and I have the distinctions of having the most well maintained office and also the cleanest Income-tax Office in the whole country which is the pride of the department and to believe it one has only to see it.

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It is no surprise that the Inquiry Officer having enquired the facts and circumstances of the case had rightly concluded that there was no malafide intention committed by me and had exonerated me of all the charges and also stated that whatever actions was taken were out of the desire to keep up the good image of the department in its dealing vis-à-vis the public. It is unfortunate that the disciplinary authority did not agree on the ground of technicality as I was only discharging quasi-judicial function and in non of the charges in the memorandum there was expressed or implied allegation that the action taken by me was actuated by any corrupt motive or to oblige any person on account of extraneous consideration. In the case of Union of India v/s R.K. Desai, in Civil Appeal No. 560 of 1991 dated 25.3.92 the learned judge observed "In the present case the allegations against the respondent are merely to the effect that the refunds were granted to unauthorised person and this was done in disregard to the instruction of the C.B.D.T. There is no allegation, however, either expressed or implied, that these actions were taken by the respondent actuated by any corrupt motive or to oblige any person on account of extraneous consideration. In this circumstances, merely because such order of refund were made, even assuming that they were erroneous or wrong, no disciplinary actions could be taken as the respondent was discharging quasi-judicial function. If any erroneous order had been passed by him, the correct remedy is by way of an appeal or revision to have such order set aside".

In view of the facts and circumstances surrounding the case which have been clearly stated by me it is submitted that the case may be considered in the proper and corrective perspective with due appreciation for finally dropping all charges against me.

Yours faithfully,

(N. LHUNGDIM)
Addl. Commissioner of Income-Tax,
Range - Dibrugarh,
Dibrugarh.

Dibrugarh
S. S.

ANNEXURE - N

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D.O. No. CC/Vig/II-10/87-88/ 3212-15

GOVERNMENT OF INDIA
CHIEF COMMISSIONER OF INCOME-TAX,
(Bihar, Orissa & North Eastern Region)
CENTRAL REVENUE BUILDING, BIRCHAND PATEL MARG, PATNA-110001
CAMP - DIBRUGARH

Dated, Dibrugarh, the 26th October, 1999.

J.S. Ahluwalia,

Dear Shri

Sub:- Promotion of Sri N. Lhungdim, Addl. Commissioner of Income-Tax,
Dibrugarh Range to the cadre of Commissioners - Request regarding -

Kindly refer to the subject mentioned above.

During my tour to Dibrugarh, Sri N. Lhungdim, Addl. CIT, Dibrugarh Range has brought the following facts to my notice and submitted that he is entitled to promotion as Commissioner of Income-Tax in accordance with the rules.

- a) The name of Shri Lhungdim (73052) appears at page 52, Sl. No 12 of the Civil list 1998.
- b) His batch mates were promoted on ad-hoc basis vide order No. 121 of 1997 (F.No. A-32011/6/97 Ad-VI, dated 13th Sept 1997). They were promoted on regular basis vide order No. 125 of 1998 (F. No. A-12011/6/97 Ad-VI, dated 9th Sept. 1998).
- c) He was not considered for promotion because vide memorandum F. No. C-14011/8/96-V & L dated 29-3-1996/29/4/1996 an inquiry was ordered under rule 14 of the Central Civil Services (classification, control and appeal) rules 1965.
- d) Shri V. Tochhawng, CIT, Shillong was appointed as inquiry officer who vide F. No. Vig-23/Con/CT/93-94/ Part-IV, dated 22nd Oct. 1997 submitted his report to the disciplinary authority. In his report, the inquiry authority held that Sri N. Lhungdim had no malafide intention of defrauding revenue or causing loss to the Government Exchequer although he had acted in contravention of Board's standing instructions, while issuing instructions that the refunds be sent to by registered post only. However, this appeared to the I.O. to be an action arising out of the Officer's desire to maintain cordial relations with public by being helpful.
- e) The CBDT vide memorandum F. No. C-14011/8/96-V&L, dated 7th August, 1998 informed Sri Lhungdim that the disciplinary authority was not in agreement with I.O.'s report. Accordingly he was asked to submit his comments afresh to the disciplinary authority. Sri Lhungdim submitted his comments vide his letter dated 18th Sept. '98 and suggested that his case maybe considered in proper perspective and charges against him may be dropped. Thereafter, Sri Lhungdim received no communication regarding the status of Departmental Proceedings in his case.

2. As Sri N. Lhungdim is a competent Officer it is presumed, that, while promoting his batch mates his name must have been kept in a sealed cover till Departmental Proceedings against him are finally decided by the disciplinary authority. The case of Sri Lhungdim is covered by the revised guidelines for promotion/confirmation of employees against whom the disciplinary proceedings are pending or whose conduct is under investigation. These guidelines were issued by Department of Personnel and Training vide OM No. 22011/4/91-Essstt.(A), dated 14th September, 1992. In paragraph 5 of the said OM, the Department of Personnel and Training has laid down that in the cases like the one under consideration if disciplinary proceedings are not concluded even after the expiry of 2 years from the date of a meeting of the first DPC, which it had kept its finding regarding the Government servant in a sealed cover, the appointing authority could review the case of Government servant and grant ad-hoc promotion if the conditions laid down for the said OM were fulfilled. While considering the cases of promotion of 1973 Batch and other batches, the appointing authority was not in a position to promote them on regular basis in 1997 and accordingly, the officers were promoted on ad-hoc basis on 13th September, 1997. However, they were granted regular promotion on 9th September 1998. As now, more than 2 years have elapsed from the date on which the finding of the DPC could be said to be kept in sealed cover if the regular promotions had actually taken place in 1997. Sri Lhungdim is required to be given ad-hoc promotion immediately as period of two years

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prescribed in the O.M. is over. It is submitted that departmental proceedings were initiated against the Officer on the ground that he had issued instructions to his Assessing Officer that two refund orders should be handed over to two assessee without following the guidelines of the Board that all refund orders should be despatched by Registered Post. The Officer had given written instructions to the assessing Officer after two assessee – Shri H. Lalanpua and Shri J. Anthony had met him and requested that the refund orders may be handed over to them because the refund orders prepared by the Assessing Officer if sent to them by post would be delayed. Sri Lhungdim had no occasion to doubt the bona fides of the two assessee and for ensuring that the department's helpful image does not suffer, he instructed the Assessing Officer to hand over the refund orders. Subsequently, it came to the notice of the department that the claim of Shri H. Lalanpua and Shri J. Anthony for refund was based on bogus TDS certificates and hence the State Exchequer had to suffer a loss of Rs. 1,60,602/- It is relevant to observe that had Sri Lhungdim not given written instructions to hand over the refunds to two bogus assessee, the same would have been sent to the assessee by registered post and the alleged loss to the Government Exchequer would have still occurred. Therefore, the only fault of Sri Lhungdim is that for maintaining a better image of the department, he allowed the handing over of relevant orders against the specific instructions of the CBDT that the refund orders should be sent only by registered post. At best, Sri Lhungdim could have been advised to be careful in future and not to issue any instruction against the spirit of Board's directions. The starting of departmental proceedings against him appears to be over reaction of the department to a minor bona fide mistake of an otherwise efficient Officer. If the matter is viewed from this angle, granting of ad-hoc promotion could not be considered against public interest because the charge against the officer is not grave enough to warrant continual denial of promotion. It is further relevant to observe that the delay in finalisation of the proceedings was not directly or indirectly attributable to Sri Lhungdim and if he is promoted as CIT on ad-hoc basis, even then he would not be in a position to influence the conduct of the disciplinary proceedings. It is further submitted that no departmental case or criminal report have been filed against the Officer. Therefore, I am of the opinion that keeping in view the spirit of the Department of Personnel and Training OM No. 22011/4/91 – Esstt. (A) dated 14th September 1992, Sri Lhungdim can be granted promotion on ad-hoc basis immediately because vacancies are available.

3. Without prejudice to the request for ad-hoc promotion made in the earlier paragraph, it is further submitted, that, in view of following facts the disciplinary proceedings initiated against the Officer are required to be filed and he is required to be promoted as Commissioner from the date on which his junior Sri L. Nampui assumed charge of Commissioner in accordance with order No 121 of 1997, dated 13th Sept. 1997.

- The inquiry Officer, after sifting the facts and evidence has given a clear finding in his report, dated 22nd Oct. 97 that the only fault of Sri N. Lhungdim was that he had acted in contravention of the Board's standing instructions but no malafide intention could be attributed to him.
- Had the intention of Sri Lhungdim been to defraud the Government Exchequer, he would not have issued written instructions to the Assessing Officer working under his administrative control but would have issued verbal instructions to hand over the refund orders to the two assessee.
- At the time when the two assessee met, Sri Lhungdim, with a request that the refund orders may be handed over to them, the assessing Officer had already processed these cases u/s 143 (1) (a) and had computed the refund due to the assessee and the refund orders were also ready for despatch by registered post to those assessee. The intervention of Sri Lhungdim had not resulted in the loss to the Government Exchequer but it had merely expedited the loss. It is relevant to observe that the information that the TDS certificates on the basis of which refund had arisen to the assessee were bogus, was not received by the department immediately on the date on which refund orders were prepared and were ready for despatch to the assessee. Therefore sending of relevant orders even by registered post would not have prevented the loss of Rs. 1,60,602.
- In the case of M.N. Quereshi v/s Union of India and others (1989) 9 ATC (Ahmedabad Bench) and in the case of P.L. Khandelwal v/s Union of India and others (1989) 9 ATC, 509: ATR, 1989 (1) CAT 402) it was held, that, mere irregular or erroneous exercise of quasi-judicial functions does not amount to misconduct. In the case of Bejoy Gopal Mukherjee v/s Union of India and others (1989) 9 ATC 369 (Calcutta), it was held, that, mere negligence/ carelessness in performance of duty could not be considered misconduct unless the degree of culpability was very high. In the instant case, Sri Lhungdim had acted in a bona fide manner for maintaining the better image of the department by trying to be helpful to the assessee who were persons not known to him and, therefore, his action could not be considered as misconduct liable to be punished under the conduct rules.

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e) Even after initiation of the disciplinary proceedings against Sri Lhungdim and denial of promotion to him, he has remained a loyal and devoted Officer of the department and due to personal interest taken by him he has been able to acquire land of 4 Bighas for the department at Duliajan without the need to make any payment to OIL INDIA LTD. Due to the personal interest taken by the Officer expenditure of about Rs. 25 lakhs has been saved and the conduct of the Officer was appreciated by his Commissioner on 24th Sept. 1997, i.e., near about the date on which he was denied promotion on ad-hoc basis.

Keeping the facts and the legal position indicated in the earlier paragraph and the fact that it is a classic case of system's failure it is requested that, Sri Lhungdim may be given ad-hoc promotion immediately and after expediting departmental proceedings he may be exonerated from the alleged misconduct and should be granted promotion to the cadre of Commissioners from the date, his junior Sri L. Nampui became Commissioner by the Board's orders No. 121, dated 13th September, 1997.

With

Yours

Sri A. Balasubramanian,
Member, (P & V)
Central Board of Direct Taxes,
North Block,
New Delhi – 110 001.

(J.S. AHLUWALIA)

Memo No. CC/Vig/II-10/87-88/ 3212-15 dated, 26th Oct. '99.

Copy to :

1. Member (L) CBDT for information.
2. Director of Income-Tax (Vigilance) New Delhi for information.

(J.S. AHLUWALIA)

Skipped

तार : आयकर
दूरभाष कार्यालय : 226918
आवास : 223698
Telephone { Office: 226918
Res. : 223698

ANNEXURE — 0^{a3}

आयकर आयुक्त

-69-



प. वा. न. 20, शिलांग - 793001
COMMISSIONER OF INCOME-TAX

Post Box 20, Shillong - 793001
(MEGHALAYA)

V. TOCHHAWNG

D.O.No. R-3/Pt.II/B&S/97-98/ 26155

Date September 24, 1997.

My Dear Nguikkhen, M

Acquisition of land for the Department at Duliajan has been an achievement to count and this has understandably come through because of your personal interest and efforts.

I congratulate you on this, especially being instrumental in acquiring the plot of land.

With

warm regards

Yours

Sincerely
(V. TOCHHAWNG)

To
Mr. N. Lhungdim
Addl. Commissioner of Income-tax,
Dibrugarh Range,
DIBRUGARH.

Attested
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ANNEXURE - Part -

-70-

D.O. No. CC/Vig/II-10/87-88/ 3211

GOVERNMENT OF INDIA

CHIEF COMMISSIONER OF INCOME-TAX,

(Bihar, Orissa & North Eastern Region)

CENTRAL REVENUE BUILDING, BIRCHANDPATEL MARG, PATNA-110001

CAMP - DIBRUGARH

Dated, Dibrugarh, the 26th October, 1999.

J.S. Ahluwalia,

Dear Shri

Sub:- Departmental proceeding against Sri N. Lhungdim, Addl. Commissioner of Income-Tax, Dibrugarh Range, Dibrugarh – regarding –

Kindly refer to Directorate memorandum F. No. C-14011/8/96 – (V & L), dated, 7.8.99 and the submission of Sri Lhungdim, dated, 18.9.98 on the subject mentioned above.

In my separate D.O. No. CC/Vig/II-10/87-88/ 3212 dated 26th October, 99 addressed to member (P&V) and copy of which was endorsed, I had requested that on the basis of the inquiry report submitted on 22nd Oct. '97 and the submissions of Sri Lhungdim, submitted on 18th Sept. '98, the proceedings against the Officer are required to be dropped. The only fault of the Officer is that he had acted in contravention of the Board's standing instruction that the refund orders should be sent by registered post, but on the basis of evidence available no malafide intention can be attributed to him. On the date on which Sri H. Lalanpua and Sri J. Anthony met the Officer and requested that the refund orders may be handed over to them, the Assessing Officer had already processed the returns and refunds had been calculated and the refund orders were about to be sent by registered post. The intervention of Sri Lhungdim had merely expedited the encashment of refund orders. Had Sri Lhungdim not intervened, the refund would have been encashed and a loss would have occurred to Government Exchequer on account of system failure. At best Sri Lhungdim can be warned to be careful and not to go against the spirit of Board's instructions even for improving public relations of the department. It is interesting to note that Sri Lhungdim was denied promotion in Boards order No. 121 of 1997 (F. No – A 32011/6/97 – Ad-VI dated, 13th Sept. '97 on the ground that his conduct was responsible for the loss of Rs. 1,60,602 suffered by State Exchequer due to issue of refund orders to Shri H. Lalanpua and J. Anthony. Near about that date, CIT, Shillong vide his letter dated 14th Sept. '97 appreciated the conduct of the Officer for saving expenditure of Rs. 25 lakhs by personally requesting OIL INDIA LTD. to provide land for construction of Office without the need to make any payment. A copy of the letter written by CIT, Shillong is enclosed for ready reference.

Keeping in view the submissions made above and in my D.O. to Member (P&V) (copy of which was endorsed to you), I shall be grateful if departmental proceedings against the Officer are expedited and he is exonerated from the alleged misconduct and is granted promotion to the cadre of Commissioners from the date his junior Shri L. Nampui became Commissioner by Boards order No. 121, dated 13th Sept. '97.

With

Yours

(J.S. AHLUWALIA)

Sri N.B Singh
Director of Income-Tax (Vigilance)

Memo No. CC/Vig/II-10/87-88/

Copy to :-

1) The Commissioner of Income-Tax, Shillong, for information.

Revised

S/C

(J.S. AHLUWALIA)

ANNEXURE - Q^{as}

-71-

F. No. Esst-1/E-195/99-2000/ 197

OFFICE OF THE
ADDL. COMMISSIONER OF INCOME-TAX,
RANGE - DIBRUGARH.

Dated: Dibrugarh, the 1st May 2000.

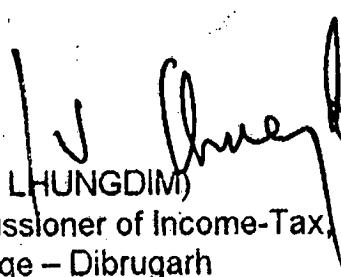
To
The Commissioner of Income-Tax,
Aayakar Bhawan,
Shillong-793 001.

Attn:- Shri S. Kharpur, DCIT (Head Quarter)

Sub:- Representation for expeditious disposal of departmental proceedings under
Rule 14 of the Central Civil Service (Classification, Control and Appeal)
Rule, 1965 and also promotion as Commissioner of Income Tax
- Regarding - Forwarding thereof -

I am submitting herewith a representation by me to the Chairman, Central Board of Direct Taxes for expeditious disposal of departmental proceedings and also for promotion as Commissioner of Income-Tax in triplicate. I would like to request you to kindly forward to the higher authorities concerned with a request for early disposal and also for promotion to the post of Commissioner of Income-Tax at the earliest convenience.

Encl:- As stated above.


(N. L. HUNGDIM)

Addl. Commissioner of Income-Tax
Range - Dibrugarh


D. S. Kharpur
as

ANNEXURE - R ^{ab} 72

Government of India : Ministry of Finance
Department of Revenue
OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX
"Saikia Commercial Complex" : (2nd Floor)
G. S. Road : "Sreenagar" : Guwahati - 781 005

F.No.Per-26/NL/CCIT/GHY/2000-2001/

July 09, 2000.

12,

To
The Chairman,
Central Board of Direct Taxes,
NEW DELHI.

Sir,

Sub :- Representation of Shri N. Lhungdim,
Addl.Commissioner of Income-tax,
Dibrugarh for consideration of his case
for promotion as C.I.T. -
Forwarding of -
.....

The representation dated 29-04-2000 submitted by Shri N. Lhungdim,
Addl. CIT, Dibrugarh, addressed to the Board, is forwarded herewith. The representation
speaks for itself. His request may kindly be considered sympathetically, so that he can
get his due promotion without further delay.

Yours faithfully,

Sdf
(M. S. THANVI)

Chief Commissioner of Income-tax
Guwahati

M. S. THANVI
Enclo. :-
As stated above.

Memo No.Per-26/NL/CCIT/GHY/2000-2001/ 2301-02

June 09, 2000.

12,

Copy to :-

1) The Commissioner of Income-tax, Post Box No.20, Shillong - 793 001, with
reference to his letter No.VIG-23/CON/CT/93-94/Pt.III/135 dated 09-05-2000.

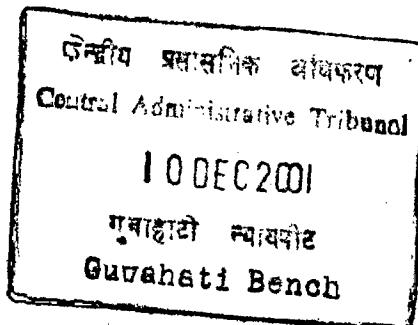
✓ 2) Shri N. Lhumgdim, Addl.CIT, Dibrugarh Range, C.R.Building, Dibrugarh.

A. M. SANGMA
(A. M. SANGMA)

Addl.Commissioner of Income-tax, Hqrs.
for Chief Commissioner of Income-tax
Guwahati

81/24

Amritpal Singh



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

Filed by

(A. DEB NORI)
Sr. C. C. S.C.
C. A. T., Guwahati Bench

O.A. No. 252 OF 2001

Shri N. Lhungdim

-vs-

Union of India & Ors.

- And -

In the matter of:

Written Statements submitted by the Respondents

The Written Statements of the above noted respondents are as follows:

1. That with regard to the statements made in Para 1 to 3 and 4.1 to 4.iii, of the application, the respondents beg to state that the matter of records.
2. That with regard to the statements made in Para 4.iv, of the application, the respondents beg to state that the officer has been charged under the general Rule 3 of the CCS(Conduct) Rules , 1964 and the charges levelled against him are looked into.
3. That with regard to the statements made in Para 4.v to 4.xiii, of the application, the respondents beg to state that the matter of records.
4. That with regard to the statements made in Para 4.xiv, of the application, the respondents beg to state that the I.O. after concluding the

hearing submitted the report on 22-10-1997 to the Disciplinary Authority {Director(V&L), Central Board of Direct Taxes, New Delhi} who is to take a final decision on merit of the case. Promotion order to the rank of CIT was passed on 13-09-1997 which was much earlier to the Inquiry report submitted by the I.O. The findings of the I.O. do not conclude the proceedings and till the proceeding is finally concluded by the Disciplinary Authority, the DPC assess only the suitability for promotion of the officers/officials to the higher post. There is, therefore, nothing illegal, unjust or unreasonable in the instant case the Disciplinary Authority has passed the penalty of Censure u/r 15 of CCS(CCA) Rules vide F.No. C-14011/8/96-V&L dated 14-09-2001.

5. That with regard to the statements made in Para 4.xv, of the application, the respondents beg to offer no comments.

6. That with regard to the averments made in Para 4.xvi, of the application, the respondents beg to state that it is an admitted fact that the applicant issued directions for handing over the refund orders to the assessees across the table and these directions were violative of the Board's instructions on the subject. The I.O. chose to exonerate the applicant despite the undenied fact is in itself a good ground for disagreement with the I.O.'s findings by the Disciplinary Authority and this has been clearly brought out in Para 3 of Memorandum dated 07-08-1998. The fact that the UPSC, which is an independent Advisory Body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O.'s findings.

Photocopy of Board's instruction No.1530 dated 16.10.1983

enclosed as per Annexure A.

It is, therefore, denied that the D.A. disagreed with the Inquiry Report to deprive the applicant from getting his due promotion. The D.A. has acted according to his own powers and functionary. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry Report of the I.O. by the Disciplinary Authority.

7. That with regard to the statements made in Para 4.xvii, of the application, the respondents beg to offer no comments.

7A. As regards the averments made in Para 4.xviii the respondents would reiterate what has been submitted against Para 4.xvi of the application in Para 6 of the Written Statement of the respondents. Hence, there is no violation of the provisions Art. 14, 16, 19, 21 of the Constitution as alleged.

7B. As regards the averments made in Para 4.xix, the respondents beg to submit that all the comments/submissions made by the applicant in his letter dated 18-09-1998 were examined and taken into consideration before referring the matter to the UPSC for their advice.

Further we may add that the case quoted by the applicant applies only to cases where quasi-judicial functions are involved. However, the directions of the superior to ITO concerned to issue refund orders in violation of the relevant instructions cannot be considered as a quasi-judicial function.

8. That with regard to the statement made in Para 4.xx, of the application, the respondents beg to state that it is a fact that the applicant received letter of appreciation from the Commissioner of Income-tax, Shillong for taking personal interest in acquiring land for Income-tax Department at Duliajan. But the initiation of Disciplinary Proceedings against the applicant by the issue of Memorandum of charge dated 29-03-1996/03-04-1996 is on different footing altogether and has to be disposed of as per prescribed procedure under CCS(CCA) Rules.

9. That with regard to statements made in Para 4.xxi, of the application, the respondents beg to offer no comments.

10. That with regard to statements made in Para 4.xxii, of the application, the respondents beg to state that the matter of records.

11. That with regard to statements made in Para 4.xxiii, of the application, the respondents beg to state that the procedure towards finalisation of the Disciplinary Proceedings are done with considerable thought having been given by various hierarchy in the Department as well as the Advisory bodies connected with such matters. Since the inquiry proceedings have been initiated, it is only reasonable and proper that the due process of law must be allowed to be completed.

There is, therefore, no ground for any cause of grievance for the applicant that the due consideration of relevant DOP&T O.M. No. 22011/4/91-Estt(A) dated 14-09-1992 is overlooked.

12. That with regard to the statements made in Para 4.xxiv, of the application, the respondents beg to reiterate what has been submitted against Para 4.xvi of the application in Para 6 of the Written Statement of the respondents.
13. That with regard to the statements made in Para 4.xxiva, of the application, the respondents beg to state that the charges levelled against the officer/applicant are examined at various stages by the Disciplinary Authority and references to the Advisory Bodies, whenever necessary, are made for further advice as per the procedure prescribed to conclude the proceedings fast. It is, therefore, denied that there is delay in disposing of the proceedings rather than the procedural time it reasonably takes.
14. That with regard to the statements made in Para 4.xxivb, of the application, the respondents beg to state that to finalise the proceedings, due process of law must be completed and the procedural delay cannot be considered to justify the applicant's grievance.
15. That with regard to the statements made in Para 4.xxv to Para 4.xxvi, of the application, the respondents beg to offer no comments.
16. That with regard to the statements made in Para 4.xxvii, of the application, the respondents beg to state that the nature and circumstances of the case are being investigated. The consideration for ad-hoc promotion to the applicant can follow on the basis of result of investigation and as per the prescribed guideline.

17. That with regard to the statements made in Para 5-A, of the application, the respondents beg to state that it is denied that the Memorandum dated 07-08-1998 has been issued to deprive the applicant from getting his due promotion. This has been issued on facts available on records and after application of mind. The applicant's request for quashing of the Memorandum dated 07-08-1998 is devoid of any merit in view of the facts brought out herein before and is liable to be rejected.

18. That with regard to the statements made in Para 5-B, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxiii above.

19. That with regard to the statements made in Para 5-C, of the application, the respondents beg to reiterate what has been stated herein before vide Para 6 that it is an admitted fact that the applicant issued direction for handing over the refund orders to assessees across the table and these directions were violative of the Board's instructions on the subject. The I.O. chose to exonerate the applicant despite this undenied fact is in itself a good ground for disagreement with the I.O.'s findings and this has been clearly brought out in Para 3 of the Memorandum dated 07-08-1998. The fact that the UPSC, which is an independent advisory body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O.'s findings.

20. That with regard to the statements made in Para 5-D, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxivb above.

21. That with regard to the statements made in Para 5-F, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxiii above.

22. That with regard to the statements made in Para 5-F, 6 and 7, of the application, the respondents beg to state that the paras matter of record.

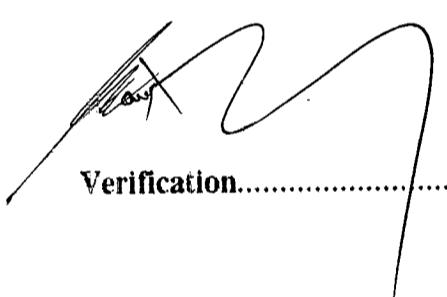
23. That with regard to the statements made in Para 8-A, of the application, the respondents beg to state that the Memorandum dated 07-08-1998 is a part of the inquiry proceedings and was issued after considering in depth by the Departmental Disciplinary hierarchy. Hence, there is no ground to set aside and quash the Memorandum in the mid way of the ongoing process. Also refer the comments at Para 5-A above.

24. That with regard to the statements made in Para 8-B, of the application, the respondents beg to offer no comments.

25. That with regard to the statements made in Para 8-C, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxiva above.

26. That with regard to the statements made in Para 8-D, of the application, the respondents beg to state that the nature and circumstances of the case have been investigated by the CBI and the Disciplinary Proceedings have been started against the applicant thereafter with the issue of Memorandum of charge sheet dated 29-03-1996/03-04-1996 on the basis of the CBI's findings and facts of the case.

27. That with regard to the statements made in Para 9, of the application, the respondents beg to offer no comments.

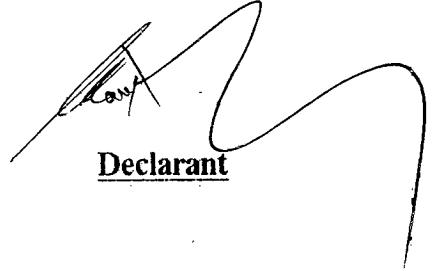

Verification.....

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

I, Shri GULEN HANGSHING.....

being authorised do hereby solemnly affirm and declare that the statements made in this Written Statement are true to my knowledge and information and I have not suppressed any material fact.

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


Declarant

Instruction No. 1530

F. No. 212/1252/83-IIA.II
 Government of India
 Central Board of Direct Taxes

New Delhi, the 16th Oct. 1983

To

All the Commissioners of Income-tax.

Sir,

Subject:- Issue of refund orders - Instructions
 regarding -

The Board have in its letter dated 9th October, 1979 issued from file No. 212/753/79-IIA.II conveyed its decision, inter alia, that all refund orders should be sent to the assessee by Registered Post acknowledgement due within seven days of the passing of the order resulting in the refund. The corresponding advice notes in cases of refunds of Rs. 1,000/- and above are also required to be sent to the banks simultaneously. The Board have been receiving complaints that these instructions are not being followed and refund orders continue to be despatched through notice servers. The Board desire to reiterate their earlier instructions on the subject and to say that it should be ensured at all levels that refund orders are sent by Registered Post acknowledgement due only.

2. These instructions may please be brought to the notice of all the officers working under your charge.
3. Hindi version is on the reverse.

Yours faithfully,

M.G.C.Goyal

(M.G.C.Goyal)
 Under Secretary, Central Board of Direct Taxes.

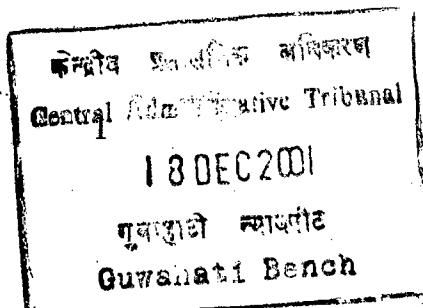
Copy forwarded to:-

1. P.S. to Chairman, P.S. to Member (IT), Member (L), Member (Inv.), Member (S&T), Member (R&A) and Member (WT&J).
2. All Directors of Inspection.
3. All Registrars of Income-tax Appellate Tribunals.
4. Comptroller and Auditor General of India (40 copies).
5. Bulletin Section, Directorate of Inspection (PS&PR), 6th floor, Mayur Bhavan, New Delhi (10 copies).
6. Statistician (Income-tax) - (6 copies).
7. Director of Inspection (O&MS), Aiwan-e-Ghalib, Mata Sundri Lane, New Delhi (6 copies).
8. Director of Inspection (RS&PR), Mayur Bhavan, N. Delhi (6 copies).

Contd. 2/4.

11/10/83
 11/10/83

2. The DIT (Visitation) 101.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

GUWAHATI

ORIGINAL APPLICATION NO. 252/2001

IN THE MATTER OF :

O.A. No. 252/2001

Mr. Ngulkholund Lhungdim

-----Applicant

-Versus-

Union of India & Ors.

-----Respondents

-And-

IN THE MATTER OF :

A reply filed by the applicant in regard to the written statements filed by the Respondents.

REPLY TO THE WRITTEN STATEMENTS

The humble applicant begs to submit his reply as follows:-

1. That the statements made in paragraph 4 of the written statement, so far as " there is, therefore, nothing illegal, unjust or unreasonable in the instant case the Disciplinary Authority has passed the penalty Censure U/R 15 of CSS(CCA) Rules vide F.N. 14011/8/96- V & L dated 14-09-2001" are incorrect and hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 4(xiv) of the Original Application.

Filed with the applicant
through Sankar Mukherjee
Advocate

Ngulkholund Lhungdim
Advocate

18-12-01

2. That the statements made in paragraph 6 of the written statement, so far as " the I.O. chose to exonerate the applicant despite the undenied fact is in itself a good ground for disagreement with the I.O.'s findings by the Disciplinary Authority and this has been clearly brought out in Para-3 of Memorandum dated 07-08-1998. the fact that the UPSC, which is an independent Advisory Body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O.'s findings" and the statements so far as " It is, therefore, denied that the D.A. disagreed with the Inquiry Report to deprive the applicant from getting his due promotion. The D.A. has acted according to his own powers and functionary. There is, therefore, nothing illegal , unjust or unreasonable for disagreement with the Inquiry report of I.O. by the Disciplinary Authority." are incorrect and hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraphs 4(xvi) of the Original Application.

3. That the statements made in paragraph 7A of the Written statement, so far as "Hence, there is no violation of the provisions Art.14, 16,19, 21 of the Constitution as alleged." are incorrect and hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 2 of this reply and paragraph 4(xviii) of the Original Application.

N/gul/ds/leed cheengadhi

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4. That the statements made in paragraph 7B of the Written Statement, so far as "However, the direction of the superior to ITO concerned to issue refund orders in violation of the relevant instructions cannot be considered as a quasi-judicial function" are incorrect and hence denied by this deponent and begs to reiterate and reaffirm the statements made in paragraph 4(xix) of the Original Application.

5. That the statements made in paragraph 11 of the Written Statement, so far as " There is, therefore, no ground for any cause of grievance for the applicant that the due consideration of relevant DOP & TOM. No. 22011/4/91-Estt(A) dated 14-09-1992 is overlooked" are incorrect and misleading, hence denied by this applicant and states that after initiation of inquiry proceedings, the Disciplinary Authority is not at liberty, under law, to delay the matter unreasonably in violation of the relevant instructions at its own sweet will and whims at the cost of the interest of the charged official. The applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxiii) of the Original Application.

6. That with regard to the statements made in paragraph 12 of the written statements, the applicant begs to reiterate and reaffirm the statements made in paragraph 2 of this reply and paragraph 4(xxiv) of the Original Application.

(N.Gulabchand Khenglo)

7. That the statements made in paragraph 13 of the written statement, so far as " It is, therefore, denied that there is delay in disposing of the proceeding rather than the procedural time it reasonably takes" are incorrect and misleading, hence denied by this applicant and states that the Disciplinary Authority cannot be allowed to delay unreasonably in disposing of the proceedings at its sweet will in the name of procedural time in violation of the relevant instructions in this regard. The applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxiv) of the Original Application.

8. That the statements made in paragraph 14 of the written statements, so far as " the procedural delay cannot be considered to justify the applicants grievance" are incorrect and misleading, hence denied by this applicant and states that to finalise the proceedings, the Disciplinary Authority cannot be allowed to delay the matter unreasonably in the name of procedural delay in violation of the relevant instructions in this regard and at the cast of the interest of the charged official. The applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxivb) of the Original Application.

9. That with regard to the statements made in paragraph 16 of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxvii) of the Original Application.

Nonetheless please

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10. That the statements made in paragraph 17 of the written statement so far as "it is denied that the Memorandum dated 07-08-1998 has been issued to deprive the applicant from getting his due promotion. This has been issued on facts available on records and after application of mind. The applicants request for quashing of the Memorandum dated 07-08-1998 is devoid of any merit in view of the facts brought out herein before and is liable to be rejected" are incorrect and misleading, hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 5-A of the Original Application.

(Signature)

11. That with regard to the statements made in paragraph 18 of the written statements, the applicants begs to reiterate and reaffirm the statements made in paragraph 5 of this reply and paragraph 5-B of the Original Application.

12. That the Statements made in paragraph 19 of the written statements so far as "The I.O. Chose to exonerate the applicant despite this undenied fact is in itself a good ground for disagreement with the I.O.'s findings and this has been clearly brought out in Para 3 of the Memorandum dated 07-08-1998. The fact that he UPSC, which is an independent advisory body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O.'s findings" are incorrect and hence denied by this applicant and begs to reiterate and reaffirm the

statements made in paragraph 2 of this reply and paragraph 5-C of the Original Application.

13. That with regard to the statements made in paragraph 20 of the written statements, the applicant begs to reiterate and reaffirm the statements made in paragraph 8-D of this reply and paragraph 5-D of the Original Application.

14. That with regard to the statements made in paragraph 21 of the Written statements, the applicant begs to reiterate and reaffirm the statements made in paragraph 5-E of this reply and paragraph 5-F of the Original Application.

15. That the statements made in paragraph 23 of the written statements so far as " and was issued after considering in depth by the Departmental Disciplinary hierarchy. Hence, there is no ground to set aside and quash the Memorandum in the mid way of the ongoing process" are incorrect and misleading, hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 8-A of the Original Application and paragraph 10 of this reply.

16. That with regard to the Statements made in paragraph 25 of the written statements, the applicant begs to reiterate and reaffirm the statements made in paragraph 7-D of this reply and paragraph 8-C of the Original Application

Nonetheless please

17. That with regard to the statements made in paragraph 26 of the written statement, the applicant does not admit anything which is contrary to and inconsistent with the records of the case and begs to reiterate and reaffirm the statements made in paragraph 8-D of the Original Application.

18. That the applicant most respectfully begs to state and submit that from the facts and circumstances of the case as stated above, it is apparently clear that the interference of this Hon'ble Tribunal is required for allowing the reliefs prayed by this applicant in paragraph 9 of the Original Application.

Well deserved hearing

VERIFICATION

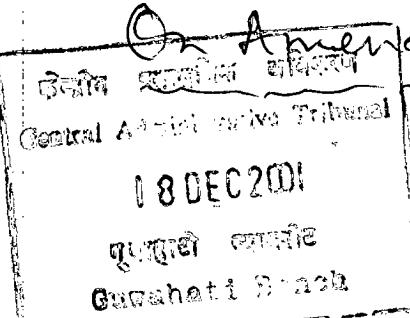
I, Mr.Ngulkholund Lhungdim, son of late Hemthans Lhundim aged about 59 years 9 months, by profession service, resident of Central Revenue Building, Dibrugarh, P.O. & P.S. -Dibrugarh, Dist- Dibrugarh, Assam do hereby verify that the contents of paragraphs 140 18

are true to my knowledge and those made in paragraphs

being matters of record are true to my information and the rest are my humble submissions made before this Hon'ble Tribunal and that I have not suppressed any material fact.

Ngulkholund Lhungdim
Signature of the applicant

Date: 15.12.2001



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

Filed by

18/12/01
Guwahati Bench

O.A. No. 252 OF 2001

Shri N. Lhungdim

-vs-

Union of India & Ors.

- And -

In the matter of:

Addl. Written Statements submitted by the Respondents

The Written Statements of the above noted respondents are as follows:

1. That with regard to the statements made in Para 1 to 3 and 4.1 to 4.iii, of the application, the respondents beg to state that the matter of records.

2. That with regard to the statements made in Para 4.iv, of the application, the respondents beg to state that the officer has been charged under the general Rule 3 of the CCS(Conduct) Rules , 1964 and the charges levelled against him are looked into.

3. That with regard to the statements made in Para 4.v to 4.xiii, of the application, the respondents beg to state that the matter of records.

4. That with regard to the statements made in Para 4.xiv, of the application, the respondents beg to state that the I.O. after concluding the

hearing submitted the report on 22-10-1997 to the Disciplinary Authority {Director(V&L), Central Board of Direct Taxes, New Delhi} who is to take a final decision on merit of the case. Promotion order to the rank of CIT was passed on 13-09-1997 which was much earlier to the Inquiry report submitted by the I.O. The findings of the I.O. do not conclude the proceedings and till the proceeding is finally concluded by the Disciplinary Authority, the DPC assess only the suitability for promotion of the officers/officials to the higher post. There is, therefore, nothing illegal, unjust, unreasonable, unconstitutional or any infringement of fundamental rights in the instant case as the Disciplinary Authority has passed the penalty of Censure u/r 15 of CCS(CCA) Rules vide F.No. C-14011/8/96-V&L dated 14-09-2001 which is again acted as per the procedures established by law.

Photocopy of penalty order u/r 15 dated 14.9.2001 vide

Annexure S of amended O.A.

5. That with regard to the statements made in Para 4.xv, of the application, the respondents beg to offer no comments.

6. That with regard to the averments made in Para 4.xvi, of the application, the respondents beg to state that it is an admitted fact that the applicant issued directions for handing over the refund orders to the assessees across the table and these directions were violative of the Board's instructions on the subject. The I.O. chose to exonerate the applicant despite the undenied fact is in itself a good ground for disagreement with the I.O.'s findings by the Disciplinary Authority and this has been clearly brought out in Para 3 of Memorandum dated 07-08-1993. The fact that the UPSC, which is an

independent Advisory Body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O's findings.

It is, therefore, denied that the D.A. disagreed with the Inquiry Report to deprive the applicant from getting his due promotion. The D.A. has acted according to his own powers and functionary. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry Report of the I.O. by the Disciplinary Authority.

Photocopy of Board's instruction No.1530 dated 16.10.1983
enclosed as per Annexure A1 of this Statement.

7. That with regard to the statements made in Para 4.xvii, of the application, the respondents beg to offer no comments.

7A. As regards the averments made in Para 4.xviii the respondents would reiterate what has been submitted against Para 4.xvi of the application in Para 6 of the Written Statement of the respondents. Hence, there is no violation of the provisions of Art. 14, 16, 19(1)(g) and 21 of the Constitution as alleged.

7B. As regards the averments made in Para 4.xix, the respondents beg to submit that all the comments/submissions made by the applicant in his letter dated 18-09-1998 were examined and taken into consideration before referring the matter to the UPSC for their advice.

Further we may add that the case quoted by the applicant applies only to cases where quasi-judicial functions are involved. However, the directions of the superior to ITO concerned to issue refund orders in violation of the relevant instructions cannot be considered as a quasi-judicial function.

8. That with regard to the statement made in Para 4.xx, of the application, the respondents beg to state that it is a fact that the applicant received letter of appreciation from the Commissioner of Income-tax, Shillong for taking personal interest in acquiring land for Income-tax Department at Duliajan. But the initiation of Disciplinary Proceedings against the applicant by the issue of Memorandum of charge dated 29-03-1996/03-04-1996 is on different footing altogether and has to be disposed of as per prescribed procedure under CCS(CCA) Rules.

Photocopy of Memorandum of charge dated 29.03.96/03.04.96

vide Annexure A of amended O.A.

9. That with regard to statements made in Para 4.xxi, of the application, the respondents beg to offer no comments.

10. That with regard to statements made in Para 4.xxii, of the application, the respondents beg to state that the matter of records.

10.1 That with regard to the statements made in para 4 (xxii)a of the application, the Respondents beg to state that the matter of records.

10.2 That with regard to the statements made in para 4 (xxii) b of the application, the respondents beg to state that since the Disciplinary Authority did not agree with the findings of the I.O., it had sought the advice of the Union Public Service Commission (UPSC) which is an independent Advisory Body to decide the case in a befitting manner. Since the process of obtaining necessary advice from U.P.S.C. took considerable time, the order of penalty u/r 15 of CCS (CCA) Rules, based on the advice of the UPSC, was passed only on 14.9.2001 i.e. incidentally at a date later than filing of O.A. 252/2001 by the applicant.

It is, therefore, denied that the D.A. disagreed with the Inquiry Report only to deprive the applicant from getting his due promotion. The Disciplinary Authority has acted according to his own powers and functionary and is at liberty to seek advice from UPSC at any time. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry Report of the Inquiry Officer by the Disciplinary Authority.

10.3 That with regard to the statement made in para 4 (xxii) c of the application, the respondents beg to state that a Government officer/official has to exercise extreme caution while issuing Refunds of huge amounts and it shall not be in the fitness of things to ignore important checks before issuing huge refunds just in order to keep up the good image of the Department. Maintaining excellent public image cannot be at the cost of disregarding important instructions thereby resulting in huge loss to the Government exchequer. It is for these very reasons the Disciplinary Authority disagreed with the findings of the Inquiry Officer. The Disciplinary Authority has every

right to agree or disagree with the findings of the Inquiry officer depending upon the circumstances of the cases. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry Report of the Inquiry Officer by the Disciplinary Authority.

10.4 That with regard to the statement made in para 4 (xxii) d and 4 (xxii) e of the application, the respondents beg to state that the UPSC, an independent Advisory Body, has tendered its advice to impose penalty after considerable application of thought and has rightly pointed out that the applicant for no genuine reason has instructed his subordinate Officer to hand over the Refund Vouchers personally to the assesses instead of sending them by Registered Post in contravention with Board's instruction. The flimsy plea taken by him as regards postal delay also does not hold water since Refund vouchers were to be despatched from Shillong, the applicant's Headquarters to the assessees at Shillong. The UPSC has also precisely pointed out that the applicant in a bid to boost the image of the Department had taken no precautionary measure while instructing for personal delivery of Refund Vouchers to persons totally unknown to him. Even ordinary prudence demands that suitable measures have to be taken before issuing huge refunds and handing them over personally to strangers and that too in contravention of Board's existing instructions.

It is, therefore, denied that the advice of the UPSC was not based on concrete findings and only in order to deprive the applicant from getting his due promotion to the rank/cadre of CIT. There is, therefore, nothing illegal, unjust or unreasonable about the advice of the UPSC and it is not violative of Articles 14,19(1)(f) and 21 of the Constitution of India.

10.5 That with regard to the statement made in para 4 (xxii) f of the application, the respondents beg to state that the order of penalty u/r 15 was sent directly to the applicant by the Disciplinary Authority by Speed Post and a copy of the same has again been sent by FAX and Speed Post from this office on 1.10.2001 vide this office letter No. CAT-11/NL/VIG/CC/414 dated 1.10.2001. Hence the contention of the applicant that he got a copy of the order on his visit to CCIT, Guwahati's office is incorrect and has no merit.

Photocopy of this office letter No. CAT-11/NL/VIG/CC/414 dated 1.10.2001 is enclosed as per Annexure A2 of this Statement.

10.6 That with regard to the statement made in para 4 (xxii) g of the application, the respondents beg to state that the order imposing penalty u/r 15 of the CCS(CCA) Rules was based on the facts of the case and advice of the UPSC. It is, therefore, denied that there is nothing illegal, unjust, improper, unreasonable or arbitrary about the order and it is not violative of any Article of the Constitution.

10.7 That with regard to para 4 (xxii) h of the application, the respondents beg to state that as per existing Departmental Instructions the currency period of "Censure" penalty is one year reckoning from the date of passing of order, as in the instant case. Non-mentioning of period of penalty in the order proper cannot make it illegal unjust, improper, unreasonable, arbitrary or being violative of the Constitution of India.

11. That with regard to statements made in Para 4.xxiii, of the application, the respondents beg to state that the procedure towards finalisation of the Disciplinary Proceedings are done with considerable thought having been given by various hierarchy in the Department as well as the Advisory bodies connected with such matters. Since the inquiry proceedings have been initiated, it is only reasonable and proper that the due process of law must be allowed to be completed.

There is, therefore, no ground for any cause of grievance for the applicant that the due consideration of relevant DOP&T O.M. No. 22011/4/91-Estt(A) dated 14-09-1992 is overlooked.

Photocopy of DOP&T's O.M.No.22011/4/91-Estt.(A) dated
14.9.1992 vide Annexure H of amended O.A.

12. That with regard to the statements made in Para 4.xxiv, of the application, the respondents beg to reiterate what has been submitted against Para 4.xvi of the application in Para 6 of the Written Statement of the respondents.

13. That with regard to the statements made in Para 4.xxiva, of the application, the respondents beg to state that the charges levelled against the officer/applicant are examined at various stages by the Disciplinary Authority and references to the Advisory Bodies, whenever necessary, are made for further advice as per the procedure prescribed to conclude the proceedings fast. It is, therefore, denied that there is delay in disposing of the proceedings rather than the procedural time it reasonably takes.

14. That with regard to the statements made in Para 4.xxivb, of the application, the respondents beg to state that to finalise the proceedings, due process of law must be completed and the procedural delay cannot be considered to justify the applicant's grievance.

15. That with regard to the statements made in Para 4.xxv to Para 4.xxvi, of the application, the respondents beg to offer no comments.

16. That with regard to the statements made in Para 4.xxvii, of the application, the respondents beg to state that the nature and circumstances of the case are being investigated. The consideration for ad-hoc promotion to the applicant may follow on the basis of result of investigation and as per the prescribed guideline.

17. That with regard to the statements made in Para 5-A, of the application, the respondents beg to state that it is denied that the Memorandum dated 07-08-1998 has been issued to deprive the applicant from getting his due promotion. This has been issued on facts available on records and after application of mind. The applicant's request for quashing of the Memorandum dated 07-08-1998 is devoid of any merit in view of the facts brought out hereinbefore and is liable to be rejected.

Photocopy of Memorandum dated 07-08-1998 vide

Annexure K of amended O.A.

18. That with regard to the statements made in Para 5-B, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxiii above.

19. That with regard to the statements made in Para 5-C, of the application, the respondents beg to reiterate what has been stated herein before vide Para 6 that it is an admitted fact that the applicant issued direction for handing over the refund orders to assessees across the table and these directions were violative of the Board's instructions on the subject. The I.O. chose to exonerate the applicant despite this undenied fact is in itself a good ground for disagreement with the I.O.'s findings and this has been clearly brought out in Para 3 of the Memorandum dated 07-08-1998. The fact that the UPSC, which is an independent advisory body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O.'s findings.
20. That with regard to the statements made in Para 5-D, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxivb above.
21. That with regard to the statements made in Para 5-E, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxiii above.
22. That with regard to the statements made in Para 5-F, of the application, the respondents beg to state that the Annual Confidential Reports are confidential in nature and it is further clarified that only the adverse entries in the Confidential Reports can be communicated to the official concerned. But as it appears that he got access over his Annual Confidential Report, it can simply be said that a good work, if any, is always appreciated and it does not provide any immunity from a bad work.

22A. That with regard to the statements made in Para 5-G, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.2.

22B. That with regard to the statements made in Para 5-H, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.3.

22C. That with regard to the statements made in Para 5-I, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.4.

22D. That with regard to the statements made in Para 5-J, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.6.

22E. That with regard to the statements made in Para 5-K, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.7.

22F. That with regard to the statements made in Para 5-L, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.4.

22G. That with regard to the statements made in Para 6 and 7, of the application, the respondents beg to state that the paras matter of record.

23. That with regard to the statements made in Para 8-A, of the application, the respondents beg to state that the Memorandum dated 07-08-1998 is a part of the inquiry proceedings and was issued after considering in depth by the Departmental Disciplinary hierarchy. Hence, there is no ground to set aside and quash the Memorandum in the mid way of the ongoing process. Also refer the comments at Para 5-A above.

24. That with regard to the statements made in Para 8-B, of the application, the respondents beg to offer no comments.

25. That with regard to the statements made in Para 8-C, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxiva above.

26. That with regard to the statements made in Para 8-D, of the application, the respondents beg to state that the nature and circumstances of the case have been investigated by the CBI and the Disciplinary Proceedings have been started against the applicant thereafter with the issue of Memorandum of charge sheet dated 29-03-1996/03-04-1996 on the basis of the CBI's findings and facts of the case.

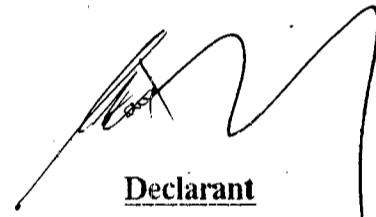
27. That with regard to the statements made in Para 9, of the application, the respondents beg to offer no comments.

VERIFICATION

I, Shri GOWLEN HANGSHING.....

being authorised do hereby solemnly affirm and declare that the statements made in this Written Statement are true to my knowledge and information and I have not suppressed any material fact.

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



Declarant

*Joint Commissioner of Income-tax, Vigilance.
O/o. the Chief Commissioner of Income-tax,
Guwahati.*

Instruction No. 1530

F. No. 212/1252/83-IIA. II
 Government of India
 Central Board of Direct Taxes

New Delhi, the 16th Oct. 1983

To

All the Commissioners of Income-tax.

Sir,

Subject:- Issue of refund orders - Instructions
 regarding -

The Board have in its letter dated 9th October, 1979 issued from file No. 212/753/79-IIA. II conveyed its decision, inter alia, that all refund orders should be sent to the assessee by Registered Post acknowledgement due within seven days of the passing of the order resulting in the refund. The corresponding advice notes in cases of refunds of Rs. 1,000/- and above are also required to be sent to the banks simultaneously. The Board have been receiving complaints that these instructions are not being followed and refund orders continue to be despatched through notice servers. The Board desire to reiterate their earlier instructions on the subject and to say that it should be ensured at all levels that refund orders are sent by Registered Post acknowledgement due only.

2. These instructions may please be brought to the notice of all the officers working under your charge.

3. Hindi version is on the reverse.

Yours faithfully,

M.G.C.Goyal

(M.G.C.Goyal)

Under Secretary, Central Board of Direct Taxes.

Copy forwarded to:-

1. P.S. to Chairman, P.S. to Member (IT), Member (L), Member (Inv.), Member (S&T), Member (R&A) and Member (WT&J).
2. All Directors of Inspection.
3. All Registrars of Income-tax Appellate Tribunals.
4. Comptroller and Auditor General of India (40 copies).
5. Bulletin Section, Directorate of Inspection (PS&PR), 6th floor, Mayur Bhavan, New Delhi (10 copies).
6. Statistician (Income-tax) - (6 copies).
7. Director of Inspection (O&MS), Aiwan-e-Ghalib, Mata Sundri Lane, New Delhi (6 copies).
8. Director of Inspection (RS&PR), Mayur Bhavan, N. Delhi (6 copies).

Contd... 2/-.

2. The DIT (Vigilance) 1/26

15
SPEED POST
705
129
ANNEXURE-A2

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX
SAIKIA COMMERCIAL COMPLEX, SREENAGAR, G.S. RD.
Guwahati - 781005.

Dated 01.10.01

F.No. CAT-11/NL/VIG/CCI

4/4

To,
Shri N. Lhungdim,
Addl. Commissioner of Income-tax,
Dibrugarh.

Sir,

Sub:- Forwarding of order u/r 15 of the CCS(CCA) Rules, 1965.

I am directed to forward the above order contained in Board's F.No. C-14011/8/96-V&L, dt. 14-9-2001 along with a copy of UPSC's advice contained in their letter F-3/275/99-S-1, dt. 26-6-2001 for necessary action at your end.

Yours faithfully,

(G. HANGSHING),

Joint Commissioner of Income-tax, Hqrs.
For Chief Commissioner of Income-tax,
Guwahati.

Dated 01.10.01

Memo No. CAT-11/NL/VIG/CCI

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Copy forwarded to the Chief Commissioner of Income-tax, Shillong along with copies of order u/r 15 of the CCS(CCA) Rules, 1965 and UPSC's advice as stated for favour of his kind information and necessary action.

(G. HANGSHING),

Joint Commissioner of Income-tax, Hqrs.
For Chief Commissioner of Income-tax,
Guwahati.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI, BENCH
GUWAHATI.

2, DEC 2001

Guw

bench

ORIGINAL APPLICATION NO. 252/2001.

130

IN THE MATTER OF :

O.A. NO. 252/2001.

Mr. Ngulkholund Lhungdim

..... Applicant.

- Vs -

Union of India & Ors.

..... Respondents.

- AND -

IN THE MATTER OF :

A reply filed by the applicant
in regard to the Additional
written statements filed by
the respondents.

REPLY TO THE ADDITIONAL WRITTEN STATEMENT.

The humble applicant begs to submit his reply as
follows :

1. That with regard to the statements made in paragraph 1 of the Additional written statement, the applicant begs to reiterate and reaffirm the statements made in paragraphs 1, 2, 3 and 4(i) to 4(iii) of the Original Application.
2. That with regard to the statements made in paragraph 2 of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 4(iv) of the Original Application.
3. That with regard to the statements made in paragraph

File by the applicant
N. G. N. - Shekhar
Bench - 21-12-01

3 of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 4(v) to 4(xiii) of the Original Application.

4. That the statement made in paragraph 4 of the written statement, so far as, "There is, therefore, nothing illegal, unjust, unreasonable, unconstitutional or any infringement of fundamental rights in the instant case as the Disciplinary Authority has passed the penalty of Censure U/R 15 of CCS (CCA) Rules vide F. No. C- 14011/8/96-V & L dated 14-09-2001 which is again acted as per the procedures established by law" are incorrect and hence denied by this applicant and states that the authority has violated the provisions of Office Memorandum dated 14-9-92 (Annexure-H to the Original Application) in case of the applicant which is unjust and unsustainable in law. The applicant begs to reiterate and reaffirm the statements made in paragraph 4(xiv) of the Original Application.

5. That with regard to the statement made in paragraph 5 of the written statements, the applicant begs to reiterate and reaffirm the statements made in paragraph 4 (xv) of the Original Application.

6. That the statements made in paragraph 6 of the written statement, so far as " the I.O. chose to exonerate the applicant despite the undenied fact is in itself a good ground for disagreement with the I. O.'s findings by the Disciplinary Authority and this has been clearly brought out in Para-3 of ~~the~~ Memorandum dated 07-02-1998. The fact that the UPSC, which is an independent Advisory Body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O.'s findings" and the statements so far as " It is, therefore, denied that the D.A. disagreed with the Inquiry Report

Nizamulhaq Khan

to deprive the applicant from getting his due promotion. The D.A. has acted according to his own powers and functionary. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry report of I.O. by the Disciplinary Authority." are incorrect and hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 4(xvi) of the Original Application.

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V. S. Malhotra (Signature)

The applicant further states that the authority disagreed with the Inquiry Report absolutely without any ground, material or basis/ foundation, similarly, the UPSC has found the applicant guilty of misconduct without any ground, material or basis/foundation and has tendered its advice to impose penalty of censure on the applicant mechanically, without any application of mind and contrary to the findings in the Inquiry Report.

The disciplinary Authority cannot have unguided powers to act according to its sweet ~~will~~ will at the cost of the interest of the applicant which is arbitrary, discriminatory and without jurisdiction.

Though in the Board's Instruction No. 1530 dated 16-10-1983 it is stated that all refund orders should be send to the assessees by registered post with acknowledgement, the applicant acted bona-fide in allowing to handover the refund orders to the two assessees by hand only to maintain good relationship between the Department and the assessees. At the relevant point of time there was no check valve or scope to verify the genuineness of the refund claims made on TDS certificates.

7. That with regard to the statements made in paragraph 7 of the written statement, the applicant begs to reiterate and

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reaffirm the statement made in paragraph 4(xvii) of the Original Application.

8. That the statements made in paragraph 7 A of the written statement, so far as, " Hence, there is no violation of the provisions of Article, 14, 16, 19 (1) (g) and 21 of the Constitution as alleged" are incorrect and hence denied by this applicant and begs to reiterate and reaffirm the statement made in paragraph 6 of the reply and 4 (xviii) of the Original Application.

9. That the statements made in paragraph 7B of the Written Statement, so far as " However, the direction of the superior to ITO concerned to issue refund orders in violation of the relevant instructions cannot be considered as a quasi-judicial function" are incorrect and hence denied by this dependent and begs to reiterate and reaffirm the statement made in paragraph 4(xix) of the Original Application.

10. That with regard to the statements made in paragraph 8 of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 4(xx) of the Original Application. The applicant further states that the appreciation should be counted in future and the authority should consider that the applicant has acted bona-fide without any malice in allowing to handover the refund orders to the two ~~assessess~~ by hand.

11. That with regard to the statement made in paragraphs 9, 10 and 10.1 of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraphs 4(xxi), 4(xxii) and 4(xxii)a of the Original Application.

Applicant pleads that his

12. That the statements made in paragraph 10.2 of the written statements so far as, " It is, therefore, denied that the D.A. disagreed with the Inquiry Report only to deprive the applicant from getting his due promotion. The Disciplinary Authority has acted according to his own powers and functionary and is at liberty to seek advice from UPSC at any time. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry Report of the Inquiry Officer by the Disciplinary Authority" are incorrect and hence denied by this applicant and states that the authority is not at liberty to delay the disciplinary proceedings unreasonably in violation of the relevant instructions at its own sweet will and whims at the cost of the charged official. The applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxii)b of the Original Application.

Naresh Kumar

13. That the statements made in paragraph 10.3 of the written statements, so far as " The Disciplinary Authority has every right to agree or disagree with the findings of the Inquiry Officer depending upon the circumstances of the cases. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry Report of the Inquiry Officer by the Disciplinary Authority " are incorrect and misleading, hence denied by this applicant and states that the applicant acted bonafide in directing to hand over the Refund Vouchers personally and at the relevant point of time there was no instruction either from the CBDT or from any authority for verification of the genuineness of the T.D.S. certificates. The Disciplinary Authority has right to agree or disagree with the findings of the Inquiry officer, but it must be on the basis of just and reasonable ground. The applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxii) c of the Original Application. At the relevant time many instructions by CBDT for granting refunds promptly were also in force.

14. That the statements made in paragraph 10.4. of the written statements are incorrect and misleading, hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraphs 4 (xxii) d and 4(xxii) e of the Original Application. The applicant states that at the relevant time it was the usual practice to hand over the refund vouchers personally to the assessees and there was no instruction from any authority to verify the genuineness of the T.D.S. certificates. On 26.12.1989, for the first time, the Commissioner of Income Tax, North Eastern Region, Shillong issued instructions to all the Assessing Officers for close verification of the T.D.S. Certificates in all cases of refunds. The applicant acted bonafide in directing to hand over the refund vouchers personally to the said two assessees and at that time there was no check valve or scope for scrutiny/ verification of the genuineness of the T.D.S. Certificates.

A copy of the said Instruction dated 26. 12.89 is annexed hereto and marked as Annexure-I.

15. That the statements made in paragraph 10.5 of the written statements, so far as " Hence the contention of the applicant that he got a copy of the order on his visit to CCIT, Guwahati's office is incorrect and has no merit" are incorrect and hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 4(xxii) f of the Original Application.

16. That the statements made in paragraph 10.6, of the written statements so far as " It is, therefore, denied that there is nothing illegal, unjust, improper, unreasonable or arbitrary about the order and it is not violation of any Article of the Constitution", are incorrect and misleading, hence

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Guwahati Income Tax

denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 4(xxii) g of the Original Application.

17. That the statements made in paragraph 10.7 of the written statements are incorrect and misleading, hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 4 (xxii)h of the original application. The applicant further states that in case of all officers where penalty of censure is imposed, a particular period is mentioned regarding its effect, but in case of the applicant the authority has intentionally not mentioned any period only to deprive the applicant from getting promotion to the higher rank/cadre. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon some penalty order of censure in regard to some other officers at the time of hearing of this case.

18. That the statements made in paragraph 11 of the Written Statement, so far as " There is, therefore, no ground for any cause of grievance for the applicant that the due consideration of relevant DOP & TOM. No. 22011/4/91-Estt(A) dated 14-09-1992 is overlooked" are incorrect and misleading, hence denied by this applicant and states that after initiation of inquiry proceedings, the Disciplinary Authority is not at liberty, under law, to delay the matter unreasonably in violation of the relevant instructions at its own sweet will and whims at the cost of the interest of the charged official. The applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxiii) of the Original Application.

19. That with regard to the statements made in paragraph 12 of the written statements, the applicant begs to reiterate and reaffirm the statements made in paragraph 6 of this reply and paragraph 4(xxiv) of the Original Application.

Yogesh Chawla

20. That the statements made in paragraph 13 of the written statement, so far as " It is, therefore, denied that there is delay in disposing of the proceeding rather than the procedural time it reasonably takes" are incorrect and misleading, hence denied by this applicant and states that the Disciplinary Authority cannot be allowed to delay unreasonably in disposing of the proceedings at its sweet will in the name of procedural time in violation of the relevant instructions in this regard. The applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxiva) of the Original Application.

21. That the statements made in paragraph 14 of the written statements, so far as " the procedural delay cannot be considered to justify the applicants grievance" are incorrect and misleading, hence denied by this applicant and states that to finalise the proceedings, the Disciplinary Authority cannot be allowed to delay the matter unreasonably in the name of procedural delay in violation of the relevant instructions in this regard and at the cost of the interest of the charged official. The applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxivb) of the Original Application.

22. That with regard to the statements made in paragraph 15 of the written statements, the applicant begs to reiterate and reaffirm the statements made in paragraphs 4 (xxv) and 4(xxvi) .

23. That with regard to the statements made in paragraph 16 of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 4(xxvii) of the Original Application.

Gulhakda Cheengfa

24. That the statements made in paragraph 17 of the written statement so far as " it is denied that the Memorandum dated 07-08-1998 has been issued to deprive the applicant from getting his due promotion. This has been issued on facts available on records and after application of mind. The applicants request for quashing of the Memorandum dated 07-08-1998 is devoid of any merit in view of the facts brought out herein before and is liable to be rejected" are incorrect and misleading, hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 5-A of the Original Application.

Maulkhan Khan

25. That with regard to the statements made in paragraph 18 of the the written statements, the applicants begs to reiterate and reaffirm and statements made in paragraph 5 of ~~this~~ this reply and paragraph 5-B of the Original Application.

26. That the Statements made in paragraph 19 of the written statements so far as " The I.O. Chose to exonerate the applicant despite this undenied fact is in itself a good ground for disagreement with the I.O.'s findings and this has been clearly brought out in Para 3 of the Memorandum dated 07-08-1998. The fact that ~~is~~ the UPSC, which is an independent advisory body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O.'s findings" are incorrect and hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 2 of this reply and paragraph 5-C of the Original Application.

27. That with regard to the statements made in paragraph 20 of the written statement, the applicant begs to

reiterate and reaffirm the statements made in paragraph 21 of this reply and paragraph 5-D of the Original Application.

28. That with regard to the statement made in paragraph 21 of this reply and paragraph 5-E of the Original Application.

29. That with regard to the statements made in paragraph 22 of the written statements, the deponent begs to reiterate and reaffirm the statements made in paragraph 5-F of the Original Application and states that the applicant has not done anything wrong/bad, he acted bona-fide in directing to issue the refund vouchers personally to the assessees in the interest of the department. There is no allegation either express or implied that the applicant has done anything ~~any~~ by any corrupt motive or to oblige any person on account of extraneous consideration.

30. That with regard to the statement made in paragraph 22A of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 12 of this reply and paragraph 5-G of the Original Application.

31. That with regard to the statements made in paragraph 22B of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 13 of this reply and paragraph 5-H of the Original Application.

32. That with regard to the statements made in paragraph 22C of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 14 of this reply and paragraph 5-I of the Original Application.

33. That with regard to the statements made in para-

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K. Gullu/land Chevra/

graph 22D of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 16 of this reply and paragraph 5-J of the Original Application.

34. That with regard to the statements made in paragraph 22E of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 17 of this reply and paragraph 5-K of the Original Application.

35. That with regard to the statements made in paragraph 22F of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 14 of the reply and paragraph 5-L of the Original Application.

36. That with regard to the statement made in paragraph 22G of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraphs 6 and 7 of the Original Application.

37. That the statements made in paragraph 13 of the written statements so far as " and was issued after considering in depth by the Departmental Disciplinary hierarchy. Hence, there is no ground to set aside and quash the Memorandum in the mid way of the ongoing process" are incorrect and misleading, hence denied by this applicant and begs to reiterate and reaffirm the statements made in paragraph 8-A of the Original Application and paragraph 24 of this reply.

38. That with regard to the statements made in paragraph 24 of the written statement, the applicant begs to reiterate and reaffirm the statements made in paragraph 8-B of the Original Application.

Nguloklouk Cheung
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Nandkishor Chougule

39. That with regard to the statements made in paragraph 25 of the written statements, the applicant begs to reiterate and reaffirm the statements made in paragraph 20 of this reply and paragraph 8-C of the Original Application.

40. That with regard to the statements made in paragraph 26 of the written statement, the applicant does not admit anything which is contrary to and inconsistent with the records of the case and begs to reiterate and reaffirm the statements made in paragraph 8-D of the Original Application.

41. That the applicant most respectfully begs to state and submit that from the facts and circumstances of the case as stated above, it is apparently clear that the interference of this Hon'ble Tribunal is required for allowing the reliefs prayed by this applicant in paragraph 9 of the Original Application.

VERIFICATION

I, Mr. Ngulkholund Thungdim, son of late Hemthans Lhundim aged about 59 years 9 months, by profession service, resident of Central Revenue Building, Dibrugarh, P.O. & P.S. -Dibrugarh, Dist- Dibrugarh, Assam do hereby verify that the contents of paragraphs 1 to 41

are true to my knowledge and those made in paragraphs _____ being matters of record are true to my information and the rest are my humble submissions made before this Hon'ble Tribunal and that I have not suppressed any material fact.

I sign this verification on this 19th day of December, 2001 at Guwahati.

Ngulkholund Thangpaa

Signature of the Applicant

CONFIDENTIAL

Ref. No. 1/Misc/Con/CT/88-89/143154-218
 OFFICE OF THE COMMISSIONER OF INCOME TAX
 NORTH EASTERN REGION :: POST BOX NO. 20
 SHILLONG - 793001 (MEGHALAYA)

Dated, Shillong, the 26th December, 1989.

To

All Assessing Officers (By Name)
 in this charge.

Sub :- Bogus T.D.S. certificates, -
 doubtful claims of T.D.S. etc.

Please refer to my earlier Circular No. 1/Misc/Con/CT/88-89/1436-1510 dated 5.12.88 on the above subject.

2. It has come to the notice of the department that the TDS Certificates issued by the following alleged authorities are not genuine -

- i) Shri V. S. Gupta, Executive Engineer, Postal Civil Division, Shillong.
- ii) Executive Engineer, North Eastern Circle, Telecom Civil Division, Shillong.
- iii) Divisional Manager (Engineering), Food Co-operation of India, North Eastern Circle, Shillong.
- iv) Commandant (Engineering), Engineering Cell, Assam Rifles Hqrs, Shillong, North Eastern Region, Shillong.

3. It has been seen that the persons mentioned in Annexure 'A' attached herewith have claimed a large number of refunds on the basis of TDS Certificates issued by the aforesaid alleged authorities at para 2 above.

4. It has also been ascertained that certain persons have also claimed bogus refunds on the basis of certificates allegedly issued by the following authorities some of whom have categorically denied that any such persons worked under them:

- a) Executive Engineer Capital Project, Civil Division No. III, Itanagar, Arunachal Pradesh
- b) Executive Engineer Tawang Division, FWD, Arunachal Pradesh.

Contd ... 2/-

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c) Executive Engineer,
Bomdila Electrical Division
(PWD) P.O. Bomdila,
Arunachal Pradesh.

d) Divisional Manager,
IEC, Ltd., (Marketing Division)
P.O. New Missamari,
Dist. Sonitpur (Assam)

A list of some such claimants is at Annexure 'B'.

5. In the above context you are to be extremely vigilant while processing claims of TDS and especially in cases of certificates issued by the above mentioned alleged authorities the genuineness or otherwise of the certificate must be conclusively established before refunds are issued on the basis of these certificates.

6. Please note that the fraudulent claims may not be limited to the above alleged disbursing authorities or the persons mentioned in Annexure 'B' only. In many cases, other names may also be used. Close verification of the certificates of TDS should be made in all cases of refunds which are large or frequent so that such frauds can be effectively controlled. Any doubt should immediately be reported to the Range DCIT under intimation to this office.

(G. L. Sangliyine) 22/12/89
Commissioner of Income-tax
North Eastern Region
Shillong.

Memo No. 1/Misc/COMPT/88-89/13124-28: Dated 26/12/89
Copy for information to :-

- 1) All Deputy Commissioners of Income-tax of this Charge.
- 2) The Chief Commissioner of Income-tax, (Admn.), Patna, Central Revenues Building, Burchand Patel Marg, PATNA - 800 001.

(G. L. Sangliyine)
Commissioner of Income-tax
North Eastern Region
Shillong.

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8/

AMENDED APPLICATION

इन्डोनेशियन अधिकरण
Central Administrative Tribunal
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APPENDIX

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE

TRIBUNAL ACT 1985

Title of the Case : Original Application No. 252 / 2001

I N D E X

<u>Sl. NO.</u>	<u>Description of Documents relied upon</u>	<u>Page No.</u>
1.	Application	1 - 42
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3.	Affidavit	44
4.	Annexure -A (Memorandum dtd. 3-4-96)	45- 48
5.	Annexure- B Written Submission dtd. 30-4-96)	49- 52
6.	Annexure -C (Order dated 14-8-96)	53
7.	Annexure- D (Office Memorandum dtd. 16-12-96)	54
8.	Annexure -E (Order Sheet dtd 21-2-97)	55
9.	Annexure- F (Additional submission dtd 21-2-97)	56 60
10.	Annexure- G (Order dtd 13-9-97)	61 - 63
11.	Annexure- H (Office Memorandum dtd 14-9-92)	64 - 65
12.	Annexure- I (Order sheet dtd 25-9-97)	66
13.	Annexure -J (Inquiry Report dtd. 22-10-97)	67 - 70
14.	Annexure -K (Memorandum dtd. 7-8-98)	71
15	Annexure -L (Order dtd. 9-9-98)	72 - 74
16.	Annexure- M (Comments dated 18-9-98)	75 - 77
17.	Annexure- N (D.O. Letter dated 26-10-99)	78 - 80

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18. Annexure -O (Appreciation letter dated 24-9-97)	81
19. Annexure- P (D.O. Letter dtd. 26-10-99)	82
20. Annexure-Q (Forwarding dtd. 1-5-2000)	83
21. Annexure -R (Forwarding dtd.	84
22 Annexure -S (Order dated 14-9-2001)	85 - 86
23. Annexure- T (UPSC advice dated 26-6-2001)	87 - 92

Ngulhohud Ahang
Signature of the Applicant

For use in the Tribunal's Office

Date of Filing 19.10.2001

Or

Date of receipt by post *By hand.*

Registration No.:

Signature of the Registrar

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GAUHATI BENCH
AT GUWAHATI.

ORIGINAL APPLICATION No. 252/2001

Filed by the applicant
Nang-Sreeni Muktar, Advocate
19-10-2001

MR. NGULKHOLUND LHUNGDIM

SON OF LATE HEMTHANS LHUNGDIM

Resident of Central Revenue,
Building. Dibrugarh, P.O. & P.S.-
Dibrugarh, Dist.- Dibrugarh,
Assam.

.....Applicant.

-VERSUS-

1. The Union of India, through the Secretary to the Govt. of India, Ministry of Finance, New Delhi.
2. Central Board of Direct Taxes, through its Chairman, North Block, New Delhi-110001.
3. The Director of Income Tax (Vigilance), Central Board of Direct Taxes, 1st Floor, Dayal Singh Public Library Building, 1-deem Dayal Upadhyay Marg, New Delhi-110002.
4. The Chief Commissioner of Income Tax, Saikia Commercial complex, Sreenagat, G.S.Road, Guwahati-5.
5. The Commissioner, Income Tax, Shillong, Shillong-793001.
6. The Union Public Service Commission, through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110011.

.....Respondents.

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

i) Memorandum Vide F.NO. C-14011/8/96 V&I. Dated 7-8-98 issued by the Director (V&L) Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Govt. of India.

ii) Non consideration of the case of the applicant for reviewing to give adhoc promotion to the Cadre/rank of Commissioner of Income Tax w.e.f.13-9-97 along with his immediate juniors and placing his above them.

iii) Non-disposing of the Departmental proceeding till date inspite of submission of comments on 18-9-98 regarding disagreement of the Disciplinary Authority with the Inquiry Report of Inquiry Officer.

iv) Keeping alive the subject matter of present Departmental proceeding for last 12 years.

(V) Advice of the Union Public Service Commission tendered vide letter dated 26-6-2001 to impose penalty of 'Censure' on the applicant.

(VI) Order vide F.No. C-14011/8/96-V&L dated 14-9-2001 issued by the Under Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes.

2. JURISDICTION OF THE TRIBUNAL :-

The applicant declares that 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 in section 21 of the Administrative Tribunal Act.1985.

4 FACTS OF THE CASE:-

Non-disposing of the Departmental proceeding till date inspite of submission of comments on 18-9-98 regarding disagreement of the Disciplinary Authority with the Inquiry Report of Inquiry Officer.

4(i) That the applicant joined the Income Tax Department on 26-11-73 as Income Tax Officer (under training) at Nagpur where he had undergone one year professional training at Indian Revenue Service Staff College, Nagpur, thereafter, he was posted at Guwahati Income Tax Office on the job training for four months and was sent to four months Foundation Course Training at Lal Bahadur Sastri Academy of Administration, Missouri. On completion of the said training, he was posted as Income Tax Officer at Jorhat from 11-8-75 to 30.7.83, thereafter, on promotion as Assistant Commissioner of Income Tax, he was posted at Tezpur as Appellate Assistant Commissioner from 1.10.83 to 17.6.85, on transfer to Calcutta, he joined as Inspecting Assistant Commissioner from 18.6.85 to 31.5.88 and then he was transferred to Shillong as Deputy Commissioner of Income Tax from 8.6.88 to 7.7.92 and since 8.7.92 till date the applicant has been working as Additional Commissioner of Income Tax, Dibrugarh Range, Assam. The applicant will retire from service on superannuation on 28.02.2002

4(ii) That the under Secretary to the Govt. of India, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, New Delhi issued a Memorandum vide F.N. C-14011/8/96-V&L dated 29.3.96/3.4.96 enclosing Article of charge and statement of Imputation of mis-conduct in support of Article of charge to be framed against the applicant. In the said Article of charge, only one charge has been leveled against the applicant inter-alia stating that while the applicant was working as the Deputy Commissioner, Shillong Range during 1989 failed to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes (CBDT in short) contained in

Highly Cleared Case No

Board's Letter F.NO.212/153/79-ITA-II dated 9.10.79 and reiterated in Instruction No.1530 dated 16.10.83 which state that all refund orders should be sent by registered post only. He passed orders contrary to the letter and spirit of the above mentioned Circular by directing the handing over of refund orders amounting to Rs.62,582/- and Rs.98,020/-to Shri H.Lalanpua and Shri J.Anthony respectively, the alleged assesses, who turned out to be bogus, thereby putting the state exchequer to a loss of Rs.1,60,602/-and thereby the applicant showed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

A photocopy of the said Memorandum dated 3.4.96 is annexed hereto and marked as Annexure-A.

4(iii) That on 30.4.96 the applicant submitted his written submissions of defence against Memorandum of charges denying the charges of lack of integrity and devotion to duty inter-alia stating that the applicant had given instructions directing the Assessing Officer to hand over refund orders under some peculiar circumstances. The Assessee came to the office and told him that they were to receive refunds and if these were sent by registered post, it would take sometime months to reach them and they told that their labour payments were over-due and the labourers were pressing for early payment because of certain festivals and urgent personal expenses. Hence, the applicant gave the instructions as a measure of good public relation. Whether the refund order were handed over in person or sent by post, the defrauding remained due to the system failure.

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A photocopy of the said written submission dated 30.4.96 is annexed hereto and marked as Annexure- B.

4.(iv) That the applicant states that in 1989 while he was working as Deputy Commissioner of Income Tax, Shillong Range, Meghalaya, he gave instruction directions directing the Assessing Officer to hand over refund orders of Rs. 62,582/- and Rs. 98,020/- to the assessee namely, Shri H. Lalanpua and Shri Anthony respectively under some peculiar circumstances. The said assessee (who later on became bogus or fictitious assessee) came to the applicant and told they were to receive refunds and if those were sent by registered post it would take two weeks to months sometime to reach them. They stated that their labour payments were overdue and the labours were pressing for early payment because of certain festivals and urgent personal expenses. They further stated that as they were in Shillong, they requested that they should be allowed to take vouchers in person to avoid postal delays which was common in that part of the Country. The applicant had given the said instructions as a measure of good public relation as in that area, the Department was having very bad public relation mainly due to issue of refund orders. In actual field situation sometimes the instruction of the Board i.e. CBDT could not be followed in letter and spirit. In most cases attempts were made to follow the spirit of the instruction issued by the CBDT when there were practical difficulties to follow the instruction literally. In view of the above facts and circumstances, the applicant bonafide in good faith issued instruction to the Assessing Officer to hand over the vouchers personally to the assessee as a measure of good public relation to improve the image

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of the Department and as such the applicant has not committed any illegality due to lack of integrity and devotion to duty or conduct unbecoming of a Govt. servant and for the same the applicant has not contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

4. (v) That the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue CBDT passed an order vide F.No. C-14011/8/96 V&L dated 14.6.96 whereby one Shri V.Tochvang, Commissioner of Income Tax, Shillong was appointed as Inquiry Authority to enquire into the charges framed against the applicant. Thereafter, the Director (V&L) Government of India, Ministry of Finance, Department of Revenue, CBDT issued an order vide F.No. 14011/8/96-V&L dated 9.12.96 whereby Shri N. Sahay, DSP, CBI, was appointed as the Presenting Officer. The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said order dated 9.12.96 at the time of hearing of the case.

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A photocopy of the said order dated 14.8.96 is annexed hereto and marked as Annexure:C.

4. (vi) That the Commissioner of Income Tax, North Eastern Region, Shillong issued an Office Memorandum vide F.No. Viz-23/Con/CT/93-94/Petitioner.IV/1781-83 dated 16.12.96 whereby the applicant was informed that the Preliminary Hearing in the Departmental Inquiry against the applicant would be held on 3.1.97 from 10:00 A.M. at Shillong in the Office of the Inquiry Officer.

A photocopy of the said Memorandum dated 16.12.96 is

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annexed hereto and marked as Annexure:D.

4. (vii) That Preliminary Hearing of the Departmental Inquiry against the applicant was held on 21.2.97 and the Inquiry Officer of the Inquiry issued the Daily order Sheet dated 21.2.97 wherein it has been inter-alia mentioned that Preliminary Hearing was held on that day and the applicant pleaded not guilty and denied the charge. It was also stated that all preliminaries should be completed before end of March, 1997 and the regular hearing will be held in 2nd week of April 1997.

Photocopy of the said Daily order sheet dated 21.2.97 is annexed hereto and marked as Annexure:E.

4. (viii) That on 21.2.97 the applicant submitted Additional Written Submission of Defence against Memorandum of charge in addition to his earlier written submission inter-alia stating that in paragraph 16(4) of the paragraph 16 Chapter XVII of office procedure 2 Section II, 3-6 issued by DIRSP/1965 it has been stated that Refund Voucher of over Rs. 5000/- should be delivered personally, unless the assessee specifically asks otherwise, in which case, they may be sent by registered post, acknowledgement due, at his risk. In Instruction No. 1647 of the CBDT dated 11.9.85 it has been stated as "It is a matter of concern for the Board that a feeling continues to persist among the tax-payers that the refunds are not granted promptly and that the Refund vouchers are not being sent in most of the case along with the orders giving rise to refund. Also complaints are being received by the Board in

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this regard. The complaints are being received by the Board in this regard. The Board would, therefore, again like to emphasize that the claims of refund should be disposed of promptly and the Refund vouchers should invariably accompany the orders giving rise to the refund. The CIT/IAC are directed to ensure elimination of delay in the grant of refunds. "The applicant further reiterated that there was not a slightest malafide intention in directing the Assessing Officer to hand over the refund voucher to the assessee personally and his instructions did not in any way facilitated the defrauding of the exchequer. The applicant maintained absolute integrity and devotion to duty and did not show any misconduct unbecoming of a Govt. Servant, therefore, there was no contravention of Rule 3(1), (ii) and (iii) of CCS (Conduct) Rules, 1964.

Photocopy of the said additional submission dated 21.2.97 is annexed hereto and marked as Annexure:F.

4.(ix) That the Under Secretary to the Govt. of India, Ministry of Finance, Department Revenue issued order No. 121 of 1997 vide F.No. A-32011/6/97- Ad.VI dated 13.9.97 whereby 127 Nos. of Deputy Commissioner of Income Tax were promoted on purely adhoc basis to officiate in the grade of Commissioners of Income Tax w.e.f. the date they assume charge of the higher post. The names of the 79 persons shown at Serial Nos. 49 to 127 in the said order dated 13.9.97 are junior to the applicant. As per seniority position the name of the applicant should have found place in between P.K.Deb Burman and L.Nampui whose names appear at Serial Nos. 49 and 49 respectively of the said order dated 13.9.97.

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Subsequently the Cadre/rank of Deputy Commissioner of Income Tax was redesignated as Additional Commissioner of Income Tax.

Photocopy of the said order dated 13.9.97 is annexed hereto and marked as Annexure:G

4. (x) That the applicant states that the Ministry of Personnel, Public Grievances, Government of India, Department of Personnel and Training issued an office Memorandum vide No. 22011/4/91-Estt(A) dated 14.9.92 in regard to (Promotion of Government Servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation process and guidelines to be followed, wherein in paragraph 2 it has been stated that the Departmental Promotion Committee (DPC in short) shall assess the suitability of the Govt. servants in respect of whom a charge sheet has been issued and the disciplinary/Court proceedings are pending and the assessment of the DPC including "Unfit for Promotion" and the grading awarded by it will be kept in a sealed cover. In paragraph 5 of the said Memorandum dated 14.9.92, it has been mentioned that in cases where the disciplinary case/criminal prosecution is not conducted even after two years from the date of meeting of the first DPC, which kept its findings in a sealed cover, the appointing authority may review the case, provided the Govt. servant is not under suspension, to consider desirability of giving him adhoc promotion keeping in view certain aspects.

Photocopy of the said office memorandum dated 14.9.92 is annexed hereto and marked as Annexure:H.

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4(xi). That the applicant states that the DPC which recommended the cases of 127 (48 senior and 79 junior to the applicant) Deputy Commissioner of Income Tax, considered the case of the applicant and kept the assessment of the DPC in a sealed cover as Departmental proceeding was pending against the applicant.

4(xii) That the regular hearing of the Departmental Inquiry against the applicant commenced from 25.9.97 and the Inquiry officer issued daily order sheet dated 25.9.97 wherein inter-alia it has been mentioned that the applicant telephonically informed him that he would not be present in person on that day and requested to consider his written submission already submitted by him.

Photocopy of the said daily order sheet dated 25.9.97 is annexed hereto and marked as Annexure:I.

4(xiii) That the applicant states that the Commissioner of Income Tax, Shillong, the Inquiry Officer of the Departmental Inquiry against the applicant submitted his Inquiry Report vide P.No. Vig-23/Con/CT/93-94/Pt.IV dated 22.10.97 wherein in his findings it has been stated as "During the course of the hearing and cross examination of witnesses and the inspection of documents produced before me, it appears that nothing could be inferred that Shri N. Lhungdim has malafide intention of defrauding the revenue or causing loss to the Government exchequer. It is an undenied fact that Shri Lhungdim has acted in contravention of the Board's standing Instruction while issuing instruction to hand over the refund voucher to the claimants by hand. However, this also appears to be an action arising out

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his desire to keep up the good image of the department, in its dealing vis-à-vis the public". Thus, the applicant was expected of the charges leveled against him.

Photocopy of the said inquiry report dated 22.10.97 is annexed hereto and marked as Annexure:J.

4. (xiv) That the applicant states that the Inquiry Officer considered all aspects of the matter in its true perspective and come to the aforesaid findings exonerating the applicant of all the charges and the said findings of the Inquiry Officer contained in Inquiry Report dated 22.10.97 is correct, good, just, proper, legal and valid in all manners. Though the Inquiry Officer in his Inquiry Report dated 22.10.97 has clearly stated that nothing could be inferred that the applicant had malafide intention of defrauding the revenue or causing loss to the Government exchequer and the action arising out of his desire to keep up the good image of the department, the authority did not open the sealed cover with a view to give the applicant promotion to rank/cadre of Commissioner of Income Tax on adhoc basis as has been given to 79 junior officers of the applicant vide aforesaid order dated 13.9.97. The action of the respondents in not opening the sealed cover with a view to giving adhoc promotion to the applicant with effect from the date of promotion of the said 79 junior Deputy Commissioners of Income Tax inspite of the findings in the enquiry report dated 22.10.97 exonerating the applicant of all the charges is illegal, unjust, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in colourable

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exercise of power for collateral purpose by taking extraneous and irrelevant considerations by overlooking the relevant considerations being violative of the said office Memorandum dated 14.9.92 and the Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

4. (xv) That the Director (VIL), Government of India, Ministry of Finance, Department of Revenue, CTBT issued a Memorandum vide F.No. C-14011/8/96-V&L dated 7.8.98 wherein it has been stated that the Disciplinary Authority is not in agreement with the Inquiry Officer's report on the ground that the applicant did not order handing over of the refund orders across the table which has not been denied by anyone, including the officer himself in violation of departure from the departmental instructions to the contrary, further the applicant did not know the assesses and therefore, his direction to handover the refund order personally to such strangers amounted to an act of indiscretion betraying lack of devotion to duty. Hence the disciplinary authority is in disagreement with the inquiry authority and the applicant was directed to submit his comments within 15 days from the date of receipt of the said memorandum.

A photocopy of the said Memorandum dated 7.8.98 is annexed herewith and marked as Annexure:K.

4. (xvi) That the applicant states that inspite of correct and clear findings of the Inquiry Officer in his Inquiry Report dated 22.10.97, the Disciplinary Authority disagreed with the said Inquiry Report. There is absolutely no ground or material for disagreeing with the said Inquiry Report and as such

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the disagreement of the Disciplinary Authority with the Inquiry Report is without any basis/foundation. The Disciplinary Authority disagreed with the Inquiry Report dated 22.10.97 only to deprive the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax along with his immediate juniors. As such, the action of the Disciplinary Authority in disagreeing the Inquiry Report dated 22.10.97 by its Memorandum dated 7.8.98 after waiting for about 10 months is illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in colourable exercise of power for collateral purpose by taking extraneous and irrelevant considerations by overlooking the relevant considerations being violative of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India and as such, the Memorandum dated 7.8.98 is illegal and null and void.

4(xvii) That the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue issued order No. 126 of 1998 dated 9.9.98 whereby 113 Additional Commissioner of Income Tax ^{were promoted to officiate as Commissioner of Income Tax} on regular basis w.e.f. the date of taking over charge. The 69 Additional Commissioners of Income Tax whose names appear from serial No. 45 to 113 in the said order dated 9.9.98 are junior to the applicant consider the seniority position of the applicant, his name should have been shown in between P.K.Deb Verman and L. Nampui whose names appear at Serial No. 44 and 45 respectively in the said order dated 9.9.98.

A photocopy of the said order dated 9.9.98 is annexed hereto and marked as Annexure:L

4(xviii). That the applicant states that by the aforesaid

Ninth Schedule

order dated 9.9.98 the adhoc promotion of 113 Deputy/Additional Commissioners of Income Tax to the rank of commissioner of Income Tax was regularized, out of which 69 Additional Commissioner of Income Tax who were junior to the applicant have superseded the applicant and the Respondents have deprived the applicant from getting his due promotion by disagreeing with the Inquiry Report dated 22.10.97 without any foundation/material and the applicant has been kept hanging without giving due promotion. As such the action of the Respondent in not promoting the applicant along with his immediate junior officers who were regularly promoted to the cadre/rank of Commissioner of Income Tax vide order dated 9.9.98 is illegal, unjust, improper, unreasonable, discriminatory and the same has been done in colourable exercise of power for collateral purposes, vitiates by bias and malafide and the same has been done by taking extraneous and irrelevant considerations by overlooking the relevant considerations being violative of Articles 14,16,19(1)(g) and 21 of the Constitution of India.

4(XIX) That the applicant states that on 18.9.98, he submitted his comments as per direction given in the aforesaid memorandum dated 7.8.98 wherein inter-alia he has stated that in addition to his written submission and additional submission he further stated that the main instructions in the matter regarding granting and delivery of refund voucher to the assessee have been clearly mentioned in paragraph 16, chapter-XVII of the Office procedure section 13-6 issued by DIRSP, 1965, wherein in paragraph 16(4) it is stated that refund vouchers of Rs.5,000/- should be delivered personally, unless the assessee specifically asks otherwise, in which case, they may be sent by

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registered post with acknowledgement due, at his risk and the latest instruction dated 18.11.97 speaks of sending refund vouchers irrespective of the amount of the refund involved by registered post with acknowledgement due. It was also stated that the applicant gave written instruction to hand over the refund vouchers to the assesses in person with the best of intention and bonafide reason as a measure of good public relation to improve the image of the department in the area of the work. It was also stated therein that the Inquiry officer having inquired the facts and circumstances of the case had rightly concluded that there was no malafide intention of the applicant and had exonerated him of all the charges stating that actions were taken out of the desire to keep up the good image of the department in its dealing vis-a-vis the public. It was unfortunate that the disciplinary authority did not agree on the ground of technicality as the applicant was discharging quasi-judicial function and in none of the charges in the memorandum there was express or implied allegation that the action taken by the applicant was actuated by any corrupt motive to oblige any person on account of extraneous consideration. The applicant also referred the judgment in the case of Union of India vs. R.K. Desai, in Civil Appeal No. 560 of 1991 dated 25.3.92 wherein it has been observed "In the present case the allegation against the Respondents are merely to the effect that the refunds were granted to unauthorised person and this was done in disregard to the instruction of the CBDT. There is no allegation, however, either express or implied, that these actions were taken by the Respondent actuated by any corrupt motive or to oblige any person on account of extraneous consideration. In this circumstances. Merely because such order of refund error made, even assuming that they were erroneous or

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wrong, no disciplinary actions could be taken as the Respondent was discharging quasi-judicial function. If any erroneous order had been passed by him, the correct remedy is by way of an appeal or revision to have such order set aside". Hence the applicant submitted that his case may be considered in the proper and correct prospective with due appreciation for finally dropping all charges against the applicant. But till date the Respondents have not done anything in this regard.

A photocopy of the said comments dated 18.9.98 is annexed hereto and marked as Annexure-M.

4 (XX). That the Chief Commissioner of Income Tax (Bihar, Orissa and North-Eastern Region) wrote a letter to the member (P&V), CBDT, North Block, New Delhi-1 vide D.O. No.CC/Vig/II-10/87/88/3212-15 dated 26.10.99 regarding promotion of the applicant to the cadre of Commissioner inter-alia stating the entire facts of the case in regard to the disciplinary proceeding and it was further stated that even after initiation of disciplinary proceedings against the applicant and denial of promotion to him he has remained a loyal and devoted employee (the applicant) of the department and due to personal interest taken by him he has been able to acquire land of 4 Bighas of the department at Duliajan without the need to make any payment to OIL INDIA LTD. Due to the personal interest taken by the applicant expenditure of about Rs.25 lakhs has been saved and the conduct of the applicant was appreciated by his Commissioner on 24th September, 1997, i.e. near about the date on which he was denied promotion on adhoc basis. Hence he requested that the applicant may be given ad-hoc promotion immediately and after

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M. G. Mukherjee*

expediting departmental proceedings he may be exonerated from the alleged mis-conduct and should be promoted to the cadre of Commissioner from the date, his junior Shri L. Nompui became Commissioner by the Board's order No.121 dated 13.9.97.

Photocopies of the letter dt. 26.10.99 and appreciation letter dt.24.9.97 are annexed hereto and marked as Annexures-N and O respectively.

4 (xxi) That the Chief Commissioner of Income Tax (Bihar, Orissa and North-Eastern Region) (J.S.Ahluwalia) wrote another letter to the Director of Income Tax, (vigilance) on 26.10.99 inter-alia stating that the only fault of the applicant was that he had acted in contravention of the Board's standing instruction that the refund order should be sent by registered post, but on the basis of evidence available no malafide intention can be attributed to him. The intervention of the applicant had merely expedited the encashment of the refund orders. Had the applicant not interfered, the refund would have been encashed and the loss would have been occurred to Government exchequer on account of system failure and at best the applicant can be warned to be careful and not to go against the spirit of Board's instructions even for improving public Relation of the Department. The applicant was denied promotion in Board's order dated 13.9.97 on the ground that his conducts were responsible for the loss of Rs.1,60,602/-due to issue of refund orders. Hence he requested to expenditure the departmental proceedings against the applicant and to exonerate him from the

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alleged misconduct and to grant promotion to the cadre of Commissioner of Income Tax from the date of his junior Shri L.Nampul became Commissioner vide Board's order No.121 dated 13.9.97.

A photocopy of the said letter dated 26.10.99 is annexed here to and marked as Annexure-P.

4(xxii) That the applicant states that on 29.4.2000, he submitted a representation to the Chairman, CBDT for expeditious disposal of departmental proceedings pending against him and also for promotion to the cadre of Commissioner of Income Tax. The said representation dated 29.4.2000 was sent to the Commissioner of Income Tax, Shillong by his forwarding letter dated 1.5.2000 requesting him to forward the same to the higher authorities concerned with a request for early disposal and promotion to the post of Commissioner of Income Tax at the earliest. Thereafter, on 12.7.2000, the Chief Commissioner of Income Tax, Guwahati forward the said representation dated 29.4.2000 submitted by the applicant to the Chairman, CBDT, New Delhi requesting him to consider the request of the applicant so that he could get his due promotion with out further delay. But till date the authority has not done anything to complete the disciplinary proceeding without any valid ground only to deprive the applicant from getting his promotion to the cadre of Commissioner of Income Tax.

Photocopies of the forwarding letters dated 21.5.2000 and 12.7.2000 are annexed hereto and marked as Annexures-Q and R respectively.

4(xxii)a. That the applicant states that during the

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tendency of O.A. No.252/2001, the Under Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes passed an order vide F.N. C-14011/8/96-V & L dated 14/9/2001 whereby a penalty of "Censure" is imposed on the applicant on the basis of the advice tendered by Union Public Service Commission Vide its letter dated 26/6/2001.

Copies of the said order dated 14.9.2001 and the advice dated 26.6.2001 are annexed hereto and marked as Annexures -S & T respectively.

4 (xxii)b. That the applicant states that the Inquiry Officer considered all aspects of the matter and come to the findings that nothing could be inferred that the applicant had malafide intention of defrauding the revenue or causing loss to the Government Exchequer and thereby exonerated the applicant of all the charges vide his Inquiry Report dated 22-10-97 which is correct, just legal and valid in all manners, but the authority disagreed with the Inquiry Report absolutely without any ground, material or basis/foundation. The Disciplinary Authority vide its Memorandum dated 7-8-98 disagreed with the Inquiry Report dated 22-10-97 only to deprive the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax along with his immediate juniors. Now only after filing of the present O.A. 252/2001, the authority has passed the said penalty order dated 14-9-2001 by taking a tentative decision to hold the Article of charge against the applicant as proved, though the Disciplinary Authority could not establish/prove

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the charge against the applicant. The authority has passed the aforesaid penalty order dated 14-9-2001 in a vindictive manner only to deprive the petitioner from getting promotion to the cadre/rank of Commissioner of Income Tax and as such the said order dated 14-9-2001 is illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in colourable exercise of power for collateral purposes by taking extraneous and irrelevant considerations being violative of Articles 14, 19(1)(g) and 21 of the constitution of India and as such the said order dated 14-9-2001 is illegal and null and void.

4(xxii)c. That the applicant states that the Inquiry officer in his Inquiry Report dated 22-10-97 has given the findings as "During the course of hearing and cross-examination of witnesses and inspection of documents produced before me, it appears that nothing could be inferred that Shri N. Lhungdim has malafide intention of defrauding the revenue or causing loss to the Government Exchequer. It is an undefined fact that Shri Lhungdim has acted in contravention of the Board's standing Instruction while issuing instruction to hand over the refund voucher to the claimants by hand. However, this also appears to be an action arising out of his desire to keep up the good image of the department, in its dealing vis-à-vis the public." As such the materials available with the authority do not connect for establishing the charge against the applicant and the ingredients are not available for imposing punishment on the applicant and the charges

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mentioned in the charge sheet dated 3-4-96 could not be established/proved in the inquiry proceeding, but the Disciplinary Authority without any material, ground or basis/foundation has disagreed with the Inquiry Report dated 22-10-97 by its Memorandum dated 7-8-98 after waiting for about 10(ten) months and now after 3(three) years from the said disagreement and only after filing of the present Original Application, the authority has passed the order of penalty dated 14-9-2001 on the basis of the advice of the Union Public Service Commission(UPSC) tendered vide its letter dated 26-6-2001 only to deprive the applicant from getting his due promotion to the rank/cadre of commissioner of Income Tax and as such the said advice dated 26-6-2001 and the order dated 14-9-2001 are illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide being violative of Articles 14,19(1) (g) and 21 of the Constitution of India.

Notwithstanding the fact

4 (xxii)d. That the applicant states that the UPSC has tendered its advice vide letter dated 26-6-2001 to impose the penalty of censure upon the applicant though there is no material/evidence to establish/prove any misconduct on the part of the applicant which is clear from the Inquiry Report dated 22-10-97. The charge against the applicant has not been proved as per the Inquiry Report dated 22-10-97, but the UPSC has tendered its advice to impose penalty of Censure on the applicant mechanically and without any application of mind and contrary to the findings in the Inquiry Report and as such the said

advice of the UPSV tendered vide its letter dated 26-6-2001 is out and out without jurisdiction of law. The said advice of the UPSC has brought slur on the service career of the applicant at this fag end of his service life and as such the said advice of the UPSC can not be allowed to be implemented for the ends of justice. The advice of the UPSC tendered vide its letter dated 26-6-2001 is given in colourable exercise of power for collateral purposes and the same has been done by taking extraneous and irrelevant considerations by overlooking the relevant consideration and as such the said advice of the UPSC tendered vide its letter dated 26-6-2001 is illegal, unjust, improper, unreasonable, arbitrary, being violative of Article 14,19(1)(g) and of the Constitution of India and as such the said advice of the UPSC tendered vide letter dated 26-6-2001 is illegal and null and void.

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4(xxii)e. That the applicant states that the UPSC has tendered advice vide its letter dated 26-6-2001 and the said advice is perverse to the record and the Inquiry Report and the findings of the UPSC in its advice is non existent and not based on record. The applicant had no malafide intention and malafide in passing order for handing over of refund order to the said two assesses and he did the same only to maintain good relation and effective approach and functions of the Deptt. towards the assesses, more particularly in the North Eastern Region where the postal service is not up to the mark of standard. Due to the personal interest taken by the applicant an expenditure of

RS.25 lakhs was saved for the department and for that the applicant was highly appreciated. No malafide intention or malafide in the part of the applicant has been alleged in the charge sheet dated 3-4-96, inquiry report dated 22-10-97 and the advice of the UPSC. Lack of integrity of the applicant has not been proved either in the inquiry report or not alleged in the advice of the UPSC. As such, the advice of the UPSC vide its letter dated 26-6-2001 and order dated 14-9-2001 are illegal, unjust, improper, unreasonable, arbitrary, being violative of Article 14, 19(1)(g) and 21 of the Constitution of India.

(Writ Petition filed by the applicant)

4(xxii)f. That the applicant states that the inquiry report dated 22-10-97 is in favour of the applicant and 11(eleven) months after the inquiry report the authority disagreed with the inquiry report the authority disagreed with the inquiry report vide memorandum dated 7-8-98 and thereafter for last three years the matter was kept lying and this Hon'ble Tribunal was pleased to admit the present O.A. No.252/2001 on 13-7-2001 and inspite of giving 2(two) opportunities the Respondents have not filed written statement and till date nothing has been done. In the first week of October, 2001 the applicant has come to know from other source, that order of penalty against him has been issued and somehow he has personally collected the said order dated 14-9-2001 from the office of the Chief Commissioner of Income Tax, Guwahati-5 wherein for the first time he came to know about the UPSC advice dated 26-6-2001. Now the Respondents ,instead the filing of written statement, have issued the penalty order dated 14-9-2001. Now the applicant has no other alternative, equally efficacious, effective and appropriate remedy is available for challenging the advice of the UPSC

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tendered vide its letter dated 26-6-2001 and the order dated 14-9-2001, and this Hon'ble Tribunal is only forum which is efficacious, effective and appropriate remedy challenging the said advice of the UPSC dated 26-6-2001 and the order dated 14-9-2001. Hence this application for amendment of the original application has been filled for challenging the UPSC advice dated 26-6-2001 and order dated 14-9-2001.

4(xxii)g. That the applicant states that in the Inquiry Report there is nothing against the applicant and without anything against the applicant in the Inquiry Report the Disciplinary Authority has imposed the penalty of censure on the applicant vide order dated 14-9-2001 which is non existent and as such the imposition of penalty of censure on the applicant is without jurisdiction and for the same the said order dated 14-9-2001 is illegal, unjust, improper, unreasonable, arbitrary, being violative of Article 14,19(1)(g) and of the Constitution of India.

4(xxii)h. That the applicant states that the order of imposition of penalty on the applicant is contrary to the findings in the Inquiry Report wherein no charge against the applicant is proved and as such the imposition of penalty of censure on the applicant is without any authority of law. In the order dated 14-9-2001 whereby penalty of censure is imposed on the applicant, there is no mention of the period during which the penalty of censure against the applicant will remain in force and as such the imposition of penalty of censure is out and out mechanical, total non application of mind and unprecedent to the service jurisprudence and as such the said order dated 14-9-2001 is illegal, unjust, improper, unreasonable, arbitrary, being violative of Article 14,19(1)(g) and

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of the Constitution of India and as such the said advice of the UPSC tendered vide letter dated 26-6-2001 and order dated 14-9-2001 are illegal and null and void."

4 (xxiii) That the applicant states that he joined the Income Tax Department on 26.11.73 as a member of Indian Revenue Service(IRS in short) officers and as such, the applicant belongs to the 1973 batch of IRS Officers. The latest order for promotion to the cadre/rank of Commissioner of Income Tax on was passed on 23.6.2000 whereby the 1982 batch of IRS officers have been promoted to the cadre of Commission of Income Tax. As a result of which now the applicant has to work under the IRS Officers of 1982 batch who are 9 years junior to him and in fact, now the applicant has to work under to Shri Nampui, the present commissioner of Income Tax, Shillong, who is immediately junior to the applicant, as such, the applicant has been subjected to great humiliation and mental agony as the Disciplinary Authority even after passing of 3 years from the date of meeting of the DPC which kept the findings/assessment in respect of the applicant in a sealed cover, has not reviewed the case of the applicant for giving him adhoc promotion though the applicant is/was not under suspension and the promotion of the applicant will not be against the public interest, the charges against the applicant are not grave enough to warrant continued denial promotion, there is no likelihood of the case of the applicant coming to a conclusion in the near future, the delay in finalisation of the departmental proceedings is not directly or indirectly attributable to the applicant and there is no likelihood of misuse of official position which the applicant may occupy after adhoc promotion, which may

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adversely affect the conduct of the departmental proceeding. As such, the action of the Respondents in not reviewing the case of the applicant even after 3 years from the date of meeting of the DPC which kept the findings on the applicant in the sealed covered, in order to give adhoc promotion to the applicant is illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in colourable exercise of power for collateral purposes by taking extraneous and irrelevant consideration by overlooking the relevant consideration being violative of the office Memorandum dated 14.9.92 and Articles 14,16,19(1)(g) and 21 of the Constitution of India.

4 (xxiv) That the applicant states that the authority expressed its disagreement with the Inquiry Report by its Memorandum dated 7.8.98, since the submission of comments by the applicant on 18.9.98, about 3 years have passed but the authority has not done anything to conclude the departmental proceeding till date and there is no likelihood of disposing of the said departmental proceeding against the applicant before his retirement on superannuation on 28.2.2002 and in that case the applicant will not get promotion to the cadre/rank of the Commissioner of Income Tax during his service period. As per Office Memorandum dated 14.9.92 the authority should review the case of the applicant for giving his adhoc promotion to the cadre of Commissioner of Income Tax as more than 2 years have passed since the date of meeting of the IPC which kept the findings in respect of the applicant in a sealed cover. But the Disciplinary Authority has not reviewed the case of the applicant till date which is illegal, unjust, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the

Sankalpdeep Chog

same has been done in colourable exercise of power for collateral purpose by taking extraneous and irrelevant considerations by overlooking the relevant consideration being violative of the said Office Memorandum dated 14.9.92 and Articles 14,16,19(1)(g) and 21 of the Constitution of India.

4(xxiv) That the applicant states that the Disciplinary Authority expressed its disagreement with the Inquiry

Report of the inquiry Officer dated 22.10.97 with out any basis, foundation, ground and material vide Memorandum dated 7.8.98 and as per direction contained in the said Memorandum, the applicant has submitted his comments on 18.9.98. But the Disciplinary Authority has not yet, i.e. after passing of about 3 years, disposed of the said departmental proceeding against the applicant thereby keeping the applicant in a hanging situation by illegally depriving the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax and allowing his junior officers to supersede him without any case, basis and/or foundation which has caused mental agony and prejudice to the applicant and has seriously affected the fundamental and constitutional rights of the applicant. The Disciplinary Authority has not disposed of the Departmental Proceeding against the applicant even after about 3 years from disagreeing with the Inquiry Report dated 22.10.97 and submission of comments by the applicant on 18.9.98 by taking extraneous and irrelevant consideration by overlooking relevant consideration which is illegal, unjust, improper, unreasonable, arbitrary, capricious, discriminatory, malice-in-law as well as malice-in-facts being violative of the Articles 14 and 21 of the Constitution of India and for a same the action of the

Appellee's *objection*

/EX

Disciplinary Authority in delaying and not disposing of the Departmental Proceeding against the applicant even after passing about 3 years from its disagreement with the Inquiry Report of Inquiry Officer and submission of comments by the applicant on 18.9.98 is bad in law and liable to be declared as illegal and null and void.

4 (xxivb) That the cause of action of the instant Departmental Proceeding arose in 1989 but the same has not yet been disposed of without any ground judge to deprive the applicant from getting his due promotion. As such, the action of the Respondents in keeping the matter of 1989 still alive for last 12 year is violated by bias and malice and the same has been done by taking extraneous and irrelevant considerations by overlooking relevant consideration which is illegal, unjust, improper, unreasonable, arbitrary, discriminatory, being violative of Articles 14, 19(1) (g) and 21 of the Constitution of India

/Unsolved Chgcl

4 (xxv) That the applicant states that since his date of joining as Income Tax Officer till date, he has been discharging his duties, functions and responsibilities with utmost sincerity and dedication to the satisfaction of all concerned and at no point of time any complaint or allegation (except the present departmental proceeding) had been made against the applicant and as such he has earned and almost unblemished service record.

4 (xxvi) That the applicant states that no adverse remark has ever been recorded in his annual confidential report (ACR in short). The Authority has recorded "outstanding in the ACR of the applicant for the years 1996, 1997, 1998 and 1999 and the same has been accepted

for the year 2000, the Authority has not yet recorded anything in this year of the applicant.

4(xxvii) That the applicant states that from the facts and circumstances of the case as stated above it is apparently clear that the action of the Respondents in disagreeing with the Inquiry Report by Memorandum dated 7.8.98 and not reviewing the case of the applicant even after passing of above 3 (three) years from the date of the meeting of DPC which kept the findings in respects of the applicant in a sealed cover and not disposing of the departmental proceeding by the Disciplinary Authority even after passing of about 3 years from the date of submission of comments on 18.9.98 by the applicant are out and out illegal, unjust, improper, unreasonable, arbitrary, discriminatory, violated by basis and malafide being violative of the Office Memorandum dated 14.9.92 and Articles 14, 16, 19(1) (g) and 21 of the Constitution of India. The applicant further stated that it is a fit case wherein Your Lordships may be pleased to set aside and quash the Memorandum dated 7.8.98 (Annexure-K) issued by the Director (V&L) Government of India, Ministry of Finance, Department of Revenue, CBDT and/or direct the Respondents to review the case of the applicant for giving ad-hoc promotion to the cadre/rank of Commissioner of Income Tax, and/or declare the action of the Disciplinary Authority in delaying and not disposing of the Departmental proceeding against the applicant even after passing of about 3 years from the date of submission of comments by the applicant on 18.9.98 and keeping alive the subject matter of present Departmental proceeding for last 12 years since

/Gulabdeed Chagday

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1989 as illegal and null and void and/or direct the Respondents to complete the disciplinary proceeding against the applicant at the earliest, so that the applicant can be promoted to the cadre/rank of Commissioner of Income Tax before his retirement on 28.2.2002w.e.f. the date of ad-hoc promotion of Sri L.Lampui to the cadre of Commissioner of Income Tax. The actions of the Respondents in not disposing of the departmental proceeding against the applicant for last 5 years and not giving ad-hoc promotion to the applicant to the cadre/rank of commissioner of Income Tax compelling him to work under his juniors have the applicant and as such the balance of convenience is in favour of the applicant. Pending disposal of this application give ad-hoc promotion to the applicant to the rank/cadre of Commissioner of Income Tax by reviewing the case of the applicant as per office Memorandum dated 14.9.92 . And if the aforesaid interim order, as prayed for is not granted the applicant shall suffer irreparable loss and injury which cannot be compensated by any other means and the whole application shall become infructuous.

Worthwhile being done

5. GROUND FOR RELIEF WITH LEGAL PROVISION :-

- A. For that the Inquiry Officer gave his findings in his Inquiry Report dated 22.10.97 after considering all aspects of the matter and as such the Inquiry Report including the findings exonerating the applicant of the charges framed against him are correct, good, just, proper, legal and valid in all manners. But the Respondents were silent for about 10(ten) months after the aforesaid Inquiry Report and thereafter, vide

Memorandum dated 7.8.98 expressed its disagreement with the Inquiry Report without any ground or material just to deprive the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax and as such the said disagreement of the disciplinary authority is without any basis foundation/material which is illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and same has been done in colourable exercise of power for collateral purposes by taking extraneous and irrelevant considerations by overlooking the relevant considerations and null and void being violative of Articles 14, 16, 19(1)(g) and 21 of the Constitution of India and for the same the said memorandum dated 7.8.98 is liable to be set aside and quashed.

B. For that as per office memorandum dated 14.9.92 the disciplinary authority should review the case of the applicant for giving ad-hoc promotion to the cadre of Commissioner of Income Tax as even after than two years from the date of meeting of the DPC which kept the findings in respect of the applicant in a sealed cover, the departmental proceeding against the applicant has not yet concluded. But the disciplinary authority has not yet i.e. even after three years from the date of the meeting of the DPC which kept the findings in regard to the applicant in a sealed cover, concluded the departmental proceeding nor has reviewed the case of the applicant for giving him ad-hoc promotion to the rank/cadre of Commissioner of Income Tax though the applicant was/is never under suspension only to deprive the applicant from getting his due promotion to the cadre/rank of Commissioner of Income Tax and to allow a large number of junior officer to supersede the

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applicant. As such, the action of the disciplinary authority in not reviewing the case of the applicant for giving ad-hoc promotion to the cadre/rank of Commissioner of Income Tax inspite of the fact that the departmental proceeding against the applicant has not yet been concluded even after three years from the date of meeting of the DPC which kept the findings in respect of the applicant in a sealed cover is illegal, unjust, improper, unreasonable, arbitrary, discriminatory and vitiated by bias and malafide and same has been done in colourable exercise of power or collateral purposes by taking extraneous and irrelevant consideration by overlooking the relevant considerations and null and void being violative of the office memorandum dated 14.9.92 and Articles 14,16,19(1)(g) and 21 of the Constitution of India.

C. For that the applicant states that the Disciplinary Authority expressed its disagreement with the Inquiry Report of the Inquiry Officer dated 20.10.97 with out any basis, foundation, ground and material vide Memorandum dated 7.8.98 and as for direction contain in the said Memorandum, the applicant has submitted his comments on 18.9.98. But the Disciplinary Authority has not yet, i.e. after passing of about three years, disposed of the said Departmental proceeding against the applicant thereby keeping the applicant in a hanging situation by illegally depriving the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax and allowing the junior officers to supersede him without any cause, basis and/or foundation which has caused mental agony and prejudice to the applicant and has seriously affected the fundamental and constitutional rights of the applicant. The Disciplinary Authority has not dispose

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Yashkumar Chogda

of the Departmental Proceeding against the applicant even after about three years from disagreeing with the Inquiry Report dated 22.10.97 and submission of comments by the applicant on 18.9.98 by taking extraneous and irrelevant consideration by overlooking relevant considerations which is illegal, unjust, improper, unreasonable, arbitrary, capricious, discriminatory, malice-in-law as well as malice-in-facts being violative of the Articles 14 and 21 of the constitution of India and for the same the action of the Disciplinary Authority in delaying and not disposing of the Departmental Proceeding against the applicant even after passing of about three years from its disagreement with the Inquiry Report of the Inquiry Officer and submission of comments by the applicant on 18.9.98 is bad in law and liable to be declared as illegal and null and void.

Writ Petition filed by

D. For that the cause of action of the instant Departmental Proceeding arose in 1989 but the same has not yet been disposed of without any ground just to deprive the applicant from getting his due promotion. As such, the action of the Respondents in keeping the matter of 1989 still alive for last 12 years is vitiated by bias and malafide and the same has been done by taking extraneous and irrelevant considerations by overlooking the relevant consideration which is illegal, unjust, unreasonable, arbitrary, discriminatory being violative of Articles 14, 19(1) (g) and 21 of the constitution of India.

E. For that the applicant belongs to the 1973 batch of Indian Revenue Service Officers and the latest order for promotion was issued on 23.6.2000 whereby the 1982 batch of IRS Officers have been promoted to

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the rank of Commissioner of Income Tax and as a result of which the applicant has to work under the Officers who are nine years junior to him. In fact, Shri L.Nampui, who is immediate junior to the applicant has been working as Commissioner of Income Tax , Shillong and the applicant has to work under him as the Respondents have not yet reviewed the case of the applicant for giving him ad-hoc promotion to the rank/cadre of Commissioner of Income Tax as per Office Memorandum dated 14.9.92 which is a matter of great humiliation and mental agony at the fag and of his service career as the applicant will retire from service on superannuation on 28.2.2002. As such the action of the Respondents in not reviewing the case of the applicant for giving him ad-hoc promotion to the cadre/rank of Commissioner of Income Tax is illegal, unjust, improper, unreasonable ,arbitrary, discriminatory and vitiated by bias and malafide and same has been done in colourable exercise of power for collateral purposes by taking extraneous and irrelevant considerations buy over looking the relevant considerations and null and void being violative of the office memorandum dated 14.9.92 and Articles 14,16,19(1) (g) and 21 of the Constitution of India, and the same is liable to be declared illegal and null and void.

F. For that the authority has recorded "outstanding" in the Annual Confidential Report (ACR) of the applicant for the years 1996,1997,1998 and 1999 and the same has been accepted by the authority concerned and nothing has been recorded in the ACR of the applicant for the year 2000. But inspite of consistently excellent performance of the applicant for which appreciation was given to the applicant, the disciplinary authority has not yet reviewed the

case of the applicant for giving him ad-hoc promotion to the rank/cadre of Commissioner of Income Tax inspite of the fact that the departmental proceeding against the applicant has not yet been concluded even after three years from the date of meeting of the DPC which kept the findings in respect of the applicant in a sealed cover, only to deprive the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax along with his immediate junior officers which is illegal, unjust, improper, unreasonable, arbitrary, discriminatory and violated by bias and malafide and same has been done in colourable exercise of power for collateral purposes by taking extraneous and irrelevant considerations by over looking the relevant considerations and null and void being violative of the office memorandum dated 14.9.92 and Articles 14,16,19(1)(g) and 21 of the Constitution of India.

G. For that the Inquiry Officer considered all aspects of the matter and come to the findings that nothing could be inferred that the applicant had malafide intention of defrauding the revenue or causing loss to the Government Exchequer and thereby exonerated the applicant of all the charges vide his Inquiry Report dated 22-10-97 which is correct, just, legal and valid in all manners, but the authority disagreed with the Inquiry Report absolutely without any ground, material or basis/foundation. The Disciplinary Authority vide its Memorandum dated 7-8-98 disagreed with the Inquiry Report dated 22-10-97 only to deprive the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax along with his immediate juniors. Now only after filling of the present O.A.252/2001, the authority has passed the said penalty order dated 14-9-2001 by

H. Gulluhood Chingda

taking a tentative decision to hold the Article of charge against the applicant as proved, though the Disciplinary Authority could not establish/prove the charge against the applicant. The authority has passed the aforesaid penalty order dated 14-9-2001 in a vindictive manner only to deprive the petitioner from getting promotion to the cadre/rank of Commissioner of Income Tax which is illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide and the same has been done in colourable exercise of power for collateral purposes by taking extraneous and irrelevant considerations by overlooking the relevant considerations being violative of Articles 14, 19(1) (g) and 21 of the Constitution of India and as such the said order dated 14-9-2001 is illegal and null and void and liable to be set aside and quashed.

H. For that the Inquiry Officer in his Inquiry Report dated 22-10-97 has given the findings as "During the course of hearing and cross-examination of witnesses and inspection of documents produced before me, it appears that nothing could be inferred that Shri N. Lhungdim has malafide intention of defrauding the revenue or causing loss to the Government Exchequer. It is an undenied fact that Shri Lhungdim has acted in contravention of the Board's standing Instruction while issuing instruction to hand over the refund voucher to the claimants by hand. However, this also appears to be an action arising out of his desire to keep up the good image of the department, in its dealing vis-à-vis the public." As such the materials available with the authority do not connect for establishing the charge against the applicant and the ingredients are not available for imposing punishment on the

(Appellate) hearing

applicant and the charges mentioned in the charge sheet dated 3-4-96 could not be established/proved in the inquiry proceeding, but the Disciplinary Authority without any material, ground or basis/foundation has disagreed without the Inquiry Report dated 22-10-97 by its Memorandum dated 7-8-98 after waiting for about 10(ten) months and now after 3(three) years from the said disagreement and only after filing of the present Original Application, the authority has passed the order of penalty dated 14-9-2001 on the basis of the advice of the Union Public Service Commission tendered vide its letter dated 26-6-2001 only to deprive the applicant from getting his due promotion to the rank/cadre of Commissioner of Income Tax which is illegal, unjust, improper, unreasonable, arbitrary, discriminatory, vitiated by bias and malafide being violative of Article 14, 19(1)(g) and 21 of the Constitution of India and as such the said advice dated 26-6-2001 and order dated 14-9-2001 are liable to be set aside and quashed.

I. For that the UPSC has tendered its advice vide letter dated 26-6-2001 to impose the penalty of censure upon the applicant though there is no material/evidence to establish/prove any misconduct on the part of the applicant which is clear from the Inquiry Report dated 22-10-97. The charge against the applicant has not been proved as per the Inquiry Report dated 22-10-97, but the UPSC has tendered its advice to impose penalty of censure on the applicant mechanically and without any application of mind and contrary to the findings in the Inquiry Report and as such the said advice of the UPSC tendered vide its letter dated 26-6-2001 is out and out without jurisdiction of law. The said advice

Nonetheless they do

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of the UPSC has brought slur on the service career of the applicant at this fag end of his service life and as such the said advice of the UPSC can not be allowed to be implemented for the ends of justice. The advice of the UPSC tendered vide its letter dated 26-6-2001 is given in colourable exercise of power for collateral purposes and the same has been done by taking extraneous and irrelevant considerations by overlooking the relevant consideration and as such the said advice of the UPSC tendered vide its letter dated 26-6-2001 is illegal, unjust, improper, unreasonable, arbitrary, being violative of Article 14, 19(1)(g) and 21 of the Constitution of India, and as such the said advice of the UPSC tendered vide letter dated 26-6-2001 and order dated 14-9-2001 are liable to be set aside and quashed.

J. For that in the Inquiry Report there is nothing against the applicant and without anything against the applicant in the Inquiry Report the Disciplinary Authority has imposed the penalty of censure on the applicant vide order dated 14-9-2001 which is non existent and as such the imposition of penalty of censure on the applicant is without jurisdiction and for the same the said order dated 14-9-2001 is illegal, unjust, improper, unreasonable, arbitrary, being violative of Article 14, 19(1)(g) and 21 of the Constitution of India and for the same the said order dated 14-9-2001 is liable to be set aside and quashed.

K. For that the order of imposition of penalty on the applicant is contrary to the findings in the Inquiry Report wherein no charge against the applicant is proved and as such the imposition of penalty of censure on the applicant is without any

Nonetheless they do

authority of law. In the order dated 14-9-2001 whereby penalty of censure is imposed in the applicant, there is no mention of the period during which the penalty of censure against the applicant will remain in force and as such the imposition of penalty of censure is out and out mechanical, total non application of mind and unprecedent to the service jurisprudence and as such the said order dated 14-9-2001 is illegal, unjust, improper, unreasonable, arbitrary, being violative of Article 14, 19(1)(g) and 21 of the Constitution of India and as such the said advice of the UPSC tendered vide letter dated 26-6-2001 and order dated 14-9-2001 are liable to be set aside and quashed.

L. For that the UPSC has tendered advice vide its letter dated 26-6-2001 and the said advice is perverse to the record and the Inquiry Report and the findings of the UPSC in its advice is non existent and not based on record. The applicant had no malafide intention and malafide in passing order for handing over of refund order to the said two assesses and he did the same only to maintain good relation and effective approach and functions of the Deptt. towards the assesses, more particularly in the North Eastern Region where the postal service is not up to the mark of standard. Due to the personal interest taken by the applicant an expenditure of Rs.25 lakhs was saved for the department and for that the applicant was highly appreciated. No malafide intention or malafide in the part of the applicant has been alleged in the charge sheet dated 3-4-96; inquiry report dated 22-10-97 and the advice of the UPSC. Lack of integrity of the applicant has not been proved either in the inquiry report or not alleged in

Ngulchuk and Chyda

the advice of the UPSC. As such, the advice of the UPSC vide its letter dated 26-6-2001 and order dated 14-9-2001 are illegal, unjust, improper, unreasonable, arbitrary, being violative of Article 14, 19(1)(g) and 21 of the Constitution of India and for the same the said UPSC advice dated 26-6-2001 and order dated 14-9-2001 are liable to be set aside and quashed.

6. DETAILS OF THE REMEDIES EXHAUSTED :-

The applicant declares that he has availed all the remedies available to him.

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

The applicant further declares that this matter was not filed earlier and no application has been filed before any Bench of the Tribunal, as such at present no application is pending before any Tribunal or Court of Law.

8. RELIEFS SOUGHT :-

In view of the facts mentioned in paragraph 4 and grounds mentioned in paragraph 5 above, the applicant prays for the following reliefs:-

A. To set aside and quash the memorandum vide F.No.C-14011/8/96-V&L Dated 7.8.98 (Annexure-K) issued by the Director (V&L) Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi.

Worchester - May 2001

B. To direct the Respondents to promote the applicant to the rank/cadre of Commissioner of Income Tax w.e.f. the date of ad-hoc promotion of Shri L.Nampui, who is immediate junior to the applicant, to the rank/cadre of Commissioner of Income Tax and placing the applicant above him.

C. To declare the action of the Disciplinary Authority in delaying and not disposing of the Departmental Proceeding against the applicant even after passing of about 3 years from its disagreement with the Inquiry Report dated 22.10.97 of the Inquiry Officer and submission of the comments buy the applicant on 18.9.98 as illegal and null and void.

D. To declare the action of the Disciplinary Authority in keeping alive the subject matter of present Departmental Proceeding for last 12 years since 1989 as illegal and null and void.

D.1. To set aside and quash the advice of the Union Public Service Commission tendered vide its letter dated 26-6-2001 to impose penalty of Censure on the applicant.

D.2. To set aside and quash the order vide F.No. C-14011/8/96/ V & L dated 14-9-2001 issued by the under secretary to the Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes.

E. The cost of the case.

F. Any other relief to which the applicant is entitled under the law.

9. INTERIM ORDER IF ANY PRAYED FOR :

Hon'ble Sir, kindly do

Pending final decision on the application, the applicant humbly prays for following interim order.

To direct the Respondents to give ad-hoc promotion to the applicant to the rank/cadre of Commissioner of Income Tax by reviewing the case of the applicant as per officer memorandum dated 14.9.92.

10. PARTICULARS OF THE POSTAL ORDER IN RESPECT OF THE APPLICATION:

1. No of Indian Postal order-6G791204
2. Name of the issuing post office-Main P.O.-Guwahati.
3. Date of issue,of Postal Order -10-07-2001
4. Post Office at which payable, Guwahati Head Post Office.

11. LIST OF ENCLOSURES :-

As per Index.

Notwithstanding the above

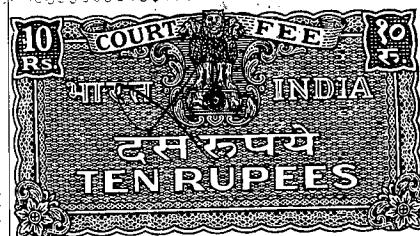
V A R I F I C A T I O N

I, Mr. Ngulkholund Lhungdim, Son of Late Hemthans Lhungdim, aged about 59 years 7 months, by profession service, resident of Central Revenue Building, Dibrugarh, P.O. & P.S. Dibrugarh. District ^{Dibrugarh} Assam do hereby verify that the contents of paragraphs 4(iii), 4(iv), 4(viii), 4(xi), 4(xiv), 4(xvi), 4(xviii), 4(xix), 4(xx), 4(XXI), 4(xxii), 4(xxii)b, 4(xxii)c, 4(xxii)d, 4(xxii)e, 4(xxii)f, 4(xxii)g, 4(xxii)h, 4(xxiii), 4(xxiv), 4(xxivb), 4(xxv), 4(xxvi) and 4(xxvii) are true to my knowledge and those made in paragraphs 4(i), 4(ii), 4(v), 4(vi), 4(vii), 4(ix), 4(x), 4(xii), 4(xv), 4(xvii) and 4(xxii)a being matters of record are true to my information and the rest are my bumble submissions made before this Hon'ble Tribunal and that I have not suppressed any material fact.



Signature of the Applicant

Date 18-10-2001.



IN THE COURT OF JUDICIAL MAGISTRATE AT GUWAHATI

A F F I D A V I T

I, Mr. Ngulkholund Lhungdim, Son of Late Hemthans Lhungdim, aged about 59 years 7 months, by profession service, resident of Central Revenue Building, Dibrugarh, P.O. & P.S. Dibrugarh, District ^{Dibrugarh, Assam} do hereby solemnly affirm and declare as follows:-

1. That I am the applicant of the enclosed Application and as such I am well acquainted with the facts and circumstances of the case.
2. That the statement made in this affidavit and in paragraphs 4(iii), 4(iv), 4(viii), 4(xi), 4(xiv), 4(xvi), 4(xviii), 4(xix), 4(xx), 4(XXI), 4(xxii), 4(xxii)b, 4(xxii)c, 4(xxii)d, 4(xxii)e, 4(xxii)f, 4(xxii)g, 4(xxii)h, 4(xxiii), 4(xxiv), 4(xxivb), 4(xxv), 4(xxvi) and 4(xxvii) are true to my knowledge and those made in paragraphs 4(i), 4(ii), 4(v), 4(vi), 4(vii), 4(ix), 4(x), 4(xii), 4(xv), 4(xvii) and 4(xxii)a being matters of record are true to my information derived therefrom which I believe to be true and the rest are my humble submissions made before this Hon'ble Court and I sign this affidavit on this 18th day of October, 2001 at Guwahati.

Identified by me

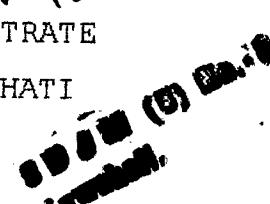
Sheikh Muktar

Advocate
(8-10-2001)

Solemnly affirmed and declare before me by the deponent who is identified by Sheikh Muktar, Advocate on this 18th day of October, 2001 at Guwahati.

[Signature] DEPONENT

MAGISTRATE
GUWAHATI



ANNEXURE - A

Speedy-poni

9/45
F.No.C-14011/8/96-V&L.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES

* * *

New Delhi, the 29 March, 1996.

3rd April, 1996

MEMORANDUM

The President proposes to hold an Inquiry against Shri N. Lhungdim, DCIT 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 N. Lhungdim, DCIT 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. Lhungdim, DCIT 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 N. Lhungdim, DCIT 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

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Advocate*

dealt with in these proceedings it will be presumed that Shri N. Lhungdim, DCIT is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged.
By order and in the name of the President.

Sanjay Puri
(SANJAY PURI)
UNDER SECRETARY TO THE GOVT. OF INDIA.

✓ Shri N. Lhungdim,
Deputy Commissioner of Income-tax,
Through
(The) Commissioner of Income-tax, NER, Shillong

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Article of Charge to be framed against Shri N. Lhungdim,
the then Deputy Commissioner of Income-tax, Range Shillong,
Meghalaya.

ARTICLE-I

Shri N. Lhungdim, while posted and functioning as the Deputy Commissioner, Shillong Range, Meghalaya during 1989 failed to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes contained in Board's letter F.No. 212/753/79-ITA-II dated 09.10.1979 and reiterated in Instruction No. 1530 dated 16.10.1983 which state that all refund orders should be sent by registered post only. He passed orders, contrary to the letter and spirit of the above mentioned circulars by directing the handing over of refund orders amounting to Rs. 62,58/- and Rs. 98,020/- to Shri H. Lalanpuia and Shri J. Anthony respectively, the alleged assessees, who turned out to be bogus, thereby putting the state exchequer to a loss of Rs. 1,60,602/-. He thereby showed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964.

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Statement of Imputation of mis-conduct in support of Article of Charge to be framed against Shri N.L. Lhungdim, the then Deputy Commissioner of Income-tax, Range Shillong, Meghalaya.

Shri N. Lhungdim was posted and functioning as DCIT, Shillong Range, Shillong (Meghalaya) during 1989.

2. Two Returns of income in the names of Shri H. Lalanpuia of Happy Valley Shillong and Jonthui Anthony of Assam Rifles Colony, Nangstrin, Shillong were filed in the charge of ITO, Ward-I, Shillong. These were not supported by any claim of refund as required u/s 239 of the Income-tax Act, 1961 read with Rule 41 of Income-tax Rules, 1962. The returns were assessed u/s 143(1) by Shri B.R. Purkayastha, ITO, Ward-I, Shillong and he also issued IT refund Order No. B/6-252922 dated 14.02.1989 for Rs. 62,582/- and B/6-252918 dated 10.02.1989 for Rs. 98,020/- for the assessment years 1986-87, 87-88, 88-89 and 1986-87, 87-88, 88-89 respectively in the name of the aforesaid two individuals.

3. Contrary to directions contained in Board's letter F.No. 212/753/79-ITA-II dated 09.10.1979 and reiterated in Instruction No. 1530 dated 16.10.1983, Shri N. Lhungdim ordered Shri B.R. Purkayastha, ITO, Ward-I, Shillong vide letter No. A-35/88-89/2853 dated 10.02.1989 and No. A-35/88-89/2890 dated 14.02.1989 to hand over the I.T. refund orders to the concerned assessee personally instead of sending them by registered post. The proper procedure in respect of issue of refund orders was not followed, and the refund orders were handed over to the two individuals who were subsequently found to be bogus and fictitious assessees. It was also found that the aforesaid returns were accompanied with bogus TDS certificates and in actual fact there was no such TDS nor any such amount was deposited to the credit of the Government. Thus the exchequer was defrauded to the extent of Rs. 1,60,602/- through bogus claim of refund. This was facilitated by the Instructions dated 10.02.1989 and 14.02.1989 issued by Shri N. Lhungdim, DCIT, to the ITO, Ward-I, Shillong.

4. Shri N. Lhungdim thereby failed to maintain absolute integrity and devotion to duty and showed conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964.

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Failed to maintain
absolute integrity & devotion to
due & Show Conduct
unbecoming of a Govt
servant.

To

The Under Secretary, (By name)
Govt. of India, Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
New Delhi.

Sub: Written submissions of defence
against Memorandum of charges-

Sir,

In response to Memorandum No. C-14011/A/
96-V&L dated 3.4.96 issued to me which was duly received
by me on 22.4.96, I hereby submit the written submissions
of my defence to the charges as follows -

ARTICLE - 1.

With respect of Article-1 of the charges,
I respectfully but vehemently deny the imputation of
misconduct or misbehaviour as alleged in the article of
charges brought against me. I admit that while functioning
as DCIT, Shillong Range, Meghalaya during 1989, I have
given instructions directing the Assessing Officer to
hand-over refund orders to the assessees which was not
inconformity with the existing instructions which required
it to be sent by Registered Post. As far as I remember the
said instruction was given under some peculiar circumstances.
The said assessees (who later on become bogus or fictitious
assessees) came to me and told me that they were to receive
refunds and if these were sent by Registered Post it would
take two weeks sometime months to reach them. They stated
that their labour payments have been overdue and the labour-
ers pressing for early payments because of certain festivals
and urgent personal expenses. They further stated that as
they were in the town/capital, they requested that they
should be allowed to take vouchers in persons to avoid postal
delays which was and is a common in this part of the country.
I had given the instructions as a measure of good public
relation as in this area of the work that the Department has
been having a very bad public relation and criticism. Till
today it is mainly in refund orders issue that most of the
complaints against the Department are related to. [As I
understand the spirit behind the instruction of the Board

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to send the refund voucher by post is to minimize or eliminate complaints against the Departmental officials in this matter. In actual field situation sometimes the instruction of the Board could not be followed in letter and spirit. In most cases attempts have been made to follow the spirit of the instructions when there are practical difficulties to follow the instruction literally. Following the instruction literally also sometimes put both the assessees and the Department in lots of inconveniences and difficulties, specially in the Hill Areas/ such as in the North East where communication is still in the bad shape and postal delays are common which is known and experienced only by those persons working in region. Sometimes the Officers working in these areas find it difficult to follow the instruction in letter and spirit. In view of the above facts and circumstances, it was felt by me that as a measure of good public relation to improve the image of the Department in this score and also to mitigate the problems of the assessees, that instructions were given to the Assessing Officer to hand-over the vouchers personally to the assessees.

It is completely a different matter that so called assessees happened to be only bogus or fictitious assessees trying to defraud the exchequer - Wolves in sheep's skin befooling a simple and straightforward person in me who has a weakness in believing that every person is to be believed if not proved otherwise.

It is also further submitted that my instructions to hand-over the vouchers in person did not in anyway change the status of the refunds, the so called assessees filed their returns, these were processed and these were never suspected by the A.O. to be bogus or fictitious, otherwise, it would never have been processed for grant of refunds. The Assessing Officer, Shri B.R.Purkayastha is an officer of sterling quality and high moral integrity who would never have done such things at all, he had doubted

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the genuineness of the return not to speak of granting of refunds. I would restate that even if instructions have not given by me, the so called assessee would in any case have encash the refund voucher in course of time with a delay of some weeks or so. Therefore, the allegation that my instructions have defrauded the exchequer is not at all tenable. Whether instructions was given or not the so called assessee would have defrauded the exchequer. This fault lies in the system - the system in which there is no way to know that TDS certificates were genuine or bogus. It was certainly the system failure. Even when there is good system people sometimes fail and in this case since the system was not there people have to fail which happened to the Assessing Officers.]

ARTICLE -2

As regard Article 2 of the charges, I only wanted to submit that Shri B. R. Purkayastha, ITO, Ward-1 was having jurisdiction of pure refund cases which comprises mainly assessees belonging to tribal communities. Meghalaya is a tribal state and Shillong being the capital of State maximum number of pure refunds cases are from local tribal communities. There has always been pressure from this group of assessees to file returns and claim the refunds from our offices. The Assessing Officers have always been hard pressed for early processing of return and immediate grant of refunds. Shri B. R. Purkayastha, the Assessing Officer is an Officer whose integrity is beyond doubt and is a man of sterling quality and man of head and heart, he must have been under pressure to grant the refunds. However, I strongly defend my officer of any malafide intention which is not simply possible with him.]

ARTICLE -3

As regard Article-3 of the charges, I once again admit that instructions were given by me to hand-over the refund vouchers in persons instead of sending them by registered post as a measure of good public relation which

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was considered to be need of the hour at that time thereby helping the assessees to eliminate the postal delay. I would like to restate once again that it was a completely different matter that the persons happened to be bogus or fictitious assessees - Wolves in sheep's skin. It was entirely my fault that I could not see person beyond their appearances. Further, I vehemently deny the charges and the defrauding of the exchequer. My instruction in a new way changed the status of the refund. Whether it was handed over in persons or sent by post, the defrauding remained due to the system failure.

ARTICLE -4

As regard Article-4 of the charges, I once again deny any malafide intention in giving the instruction. In fact, it was given as a measure of good public relation on a bonafide intention to improve the public relation image of the Department and also to mitigate the problems (so-called problems) of the assessees (fictitious assessees). In my long career of over 20 years of service, I have been always maintaining absolute integrity and devotion to my duty. My integrity has been my valued procession and work is worship in my attitude towards my service. Till date, I have been maintaining absolute integrity and devotion to my duty which will be testified and confirmed by all my superiors under which I have been working. The above incident happened due to wrong judge of the people - wrong judging of wrong people, which I will try my best not to repeat in future if at all possible. I, therefore, once again deny the imputation of misconduct or misbehaviour in the Article of charges brought against me.

If my written submissions here-in-above fails to satisfy you and if further clarification and/or explanation is desired, I may be given an opportunity of being heard in person.

Yours faithfully,

(N. LHUNGDAH)
Additional Commissioner of Income-tax,
Range : : : : Dibrugarh,
BIBRUGARH.

Attested
R.S.

F. No. C-14011/8/96-V&L
 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 DEPARTMENT OF REVENUE
 CENTRAL BOARD OF DIRECT TAXES

New Delhi, 14/8/96

ORDER

WHEREAS an enquiry under Rule 14 of Central Civil Services (Classification, Control & Appeals) Rules, 1965 is to be held against Shri N. LHUNGDIM, Additional Commissioner of Income Tax;

AND WHEREAS the President considers that an Inquiring Authority should be appointed to inquire into the charges framed against the said Shri N. LHUNGDIM, Additional Commissioner of Income Tax.

NOW, THEREFORE, the President in exercise of the powers conferred by sub-rule (2) of Rule 14 of CCS(CCA) Rules hereby appoints Shri V. TOCHHWANG, Commissioner of Income Tax, Shillong, as Inquiry Authority to inquire into the charges framed against Shri N. LHUNGDIM, Additional Commissioner of Income Tax.

By Order and in the name of the President.

Sanjay Puri

(SANJAY PURI)
 UNDER SECRETARY TO THE
 GOVERNMENT OF INDIA

Shri N. LHUNGDIM, Additional Commissioner of Income Tax,
 Dibrugarh;

(Through Chief Commissioner of Income Tax, Patna)

Copy to:

1. The Chief Commissioner of Income Tax CIT, Patna along with copies for Sh. Tochwang and Sh. N. Lhungdim.
2. The Inquiry Officer Shri V. TOCHHWANG alongwith copies of charge sheet and the written statement of defence.
3. The Central Vigilance Commission, New Delhi.
4. The Director of Income Tax (Vigilance), New Delhi.

(SANJAY PURI)
 UNDER SECRETARY TO THE
 GOVERNMENT OF INDIA

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ANNEXURE - D

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SPEED POST

REGISTERED A/D

F.No.Vig-23/Con/CT/93-94/Pt.IV/ 1781-83

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME-TAX DEPARTMENT

Post Box-20, Dhankheti,
Shillong-793001, Meghalaya

Dated 16.12.1996

OFFICE MEMORANDUM

Subject:-Departmental Inquiry under Rule 14 of the CCS(CCA) Rules, 1965 against Shri N.Lhungdim, Addl. Commissioner of Income-tax, Dibrugarh Range, Dibrugarh-NER Charge.

The undersigned will hold the Preliminary Hearing in the above mentioned case on 3.1.1997 from 10.00 A.M. at Shillong in the Office of the Inquiry Officer at the above mentioned address. The Presenting Officer and the Charged Officer alongwith his defence assistant, if any, are required to attend the proceedings failing which the proceedings shall be held ex parte.

In case the charged officer desires to have the assistance of a defence assistant, he may submit his proposal in this regard to the I.O. and the disciplinary authority and get their approval before the date of the Preliminary Hearing.

While nominating a serving Government servant as Defence Assistant, as also a retired Government servant the instructions on the subject should be kept in view.

The PO may keep all the listed documents (in original) ready for inspection by the CO immediately after the PH.

No witness will be examined on this date.
Receipt of this O.M. should be acknowledged.

(V. Tochhawng)
Commissioner of Income-tax,
North Eastern Region, Shillong

Inquiry Officer,
Tel. 223587

To
1. Shri N.Lhungdim, Addl. Commissioner of Income-tax, Dibrugarh Range, Dibrugarh, Central Revenue Building, Chowkidinjee, Dibrugarh-786003.

Presenting Officer
2. Shri N. Sahay, DSP, CBI, ACB, Guwahati/SHC.,
THROUGH: The Dy. Inspector General of Police, CBI, N.E. Region,
Chenikuthi Hill Side, Guwahati-781001.

Copy to:- Shri Sunil Gupta, Under Secretary to the Government of India, Central Board of Direct Taxes, New Delhi-110001.

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No. VIG-23/CON/CT/93-94/Pt. IV/ 2193-98

OFFICE OF THE COMMISSIONER OF INCOME TAX
NORTH EASTERN REGION :::: POST BOX NO. 20
SHILLONG - 793 001.

Dated : 21-02-97

Subject :- Departmental inquiry against Shri N. Lhungdim,
Addl. Commissioner of Income-tax, Dibrugarh
Range, Dibrugarh.

Present :- Shri N. Lhungdim, Charged Officer

Shri N. Sahay, Presenting Officer

Daily Order Sheet.

The Preliminary Hearing was held today. Shri N. Lhungdim confirmed that he has received the charged memo. 3-4-96 along with the annexures. He has also submitted a reply dated 30-4-96 to the charged memo. Shri Lhungdim pleaded not guilty and denied the charge today.

2. Some photo copies of the listed documents are in the court, so therefore, the PO has assured that he would get the copies of the same from the court after due permission is received from the court, and make them available to the CO, to enable the CO to make his submission, if any, to the IO latest by 14th March, 1997.

3. The IO asked the CO whether he would like to have any Defence Assistant to assist him in the case to which the CO replied that he would not need any Defence Assistant and the CO also stated that he not have any Defence Witness.

4. All these preliminaries should be completed before end of March '97. The regular hearing will be held in 2nd week of April, 1997.

5. A copy of the order sheet is sent to the PO and another copy is given to the CO for their compliance and record.

(V. TOCHHAWNG)
Inquiry Officer.

Presenting Officer.

Copy for information and necessary actions:-
1. Board, Attn: Shri Gupta, Under Secretary to the Govt. of India.

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ADDITIONAL WRITTEN SUBMISSION OF DEFENCE AGAINST MEMORANDUM OF CHARGES:

In addition to the written submission in response to Memorandum No. C-14011/8/96-V&L dated 3.4.96, the following submissions are further submitted.

PRRA I

In para-16 Chapter XVII of Office Procedure 2 section II, 3-6 issued by DIRSP/1965 detail instruction regarding delivery of Refund Voucher had been stated. In sub-para (2) of para-16 it is stated that Refund Voucher exceeding Rs.500/- and upto Rs.1,000/- may be sent by Regd. post, acknowledgement due and in case of non-delivery, the assessee may be asked to come to the office and take delivery personally. In para-16(3) for Refund Voucher over Rs.1,000/- and upto Rs.5,000/- an intimation should be sent to the assessee to take delivery of the same, but if he asks it to be sent by post, it should be sent by Regd. post, acknowledgement due and in para-16(4) Refund Voucher of over Rs.5,000/- should be delivered personally, unless the assessee specifically asks otherwise, in which case, they may be sent by Regd. post, acknowledgement due, at his risk.

It has also been mentioned that "care should be taken to despatch Refund Vouchers immediately they have been signed by the ITO, also, if, in any case, the ITO doubts that the Refund Voucher will not reach the person for any reason, he may ask the assessee to take delivery of it in the office". Instruction No. 1647 of the CBDT dated 11.9.85 had stated "it is a matter of concern for the Board that a feeling continues to persist among the tax-payers that the refunds are not granted promptly and that the Refund vouchers are not being sent in-most of the case along-with the orders giving rise to refund. Also complaints are being received by the Board in this regard. The Board would, therefore, again like to emphasise that the claims of refund should be disposed of promptly and the Refund vouchers should invariable accompany the orders giving rise to the refund.

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The CIT/IAC are directed to ensure elimination of delay in the grant of refunds". The above instruction including such other instructions in this regard have partially modified after the Board had reviewed the position and as per the letter F.No. 225/244/88-ITA.II dated 12.4.1988 had decided that -

(I) Refunds upto Rs.2500/- will henceforth be sent through Notice Servers. However, in case of outstation assessees the Assessing Officer may, if he considers that it will be more convenient and economical to send these refunds by Regd. post, send the refund vouchers by Regd. post(AD). In such cases clear cut direction should be issued to the effect that the Notice Server will in no case, keep any refund voucher with him for more than 10 days whereafter he shall handover the vouchers to the office for immediate despatch by Regd. post. Assessing Officers will have to take steps that these instructions are strictly adhere to.

(II) Refunds of amount exceeding Rs.2500/- will continue to be sent by Registered post.

(III) In order to curb refund frauds, all refund voucher will be marked "A/C Payee only", as against the present practice merely crossing refund vouchers upto Rs.999/-.

It is submitted that all instructions and circulars regarding issue, despatch and delivery of refund vouchers have been made with the sole intention to ensure that the proper person/the claimant/the assessee receive the refund vouchers. In other words, the instructions, circulars are meant for ensuring the receipt of the refund vouchers by the proper/correct claimant/assessee or the addressee. It may also be submitted that no where it is mentioned that if the claimant/the assessee comes personally to collect it, it should be refused.

As I have already stated in my earlier submission one of the unstated reason behind the various instructions to send the refund vouchers by post is to minimise or to remove complaint against the Departmental officials in this

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matter. In actual field situations sometimes most of the instructions of the Board could not be followed in letter and spirit. In many cases if the instructions are followed literally sometimes practical difficulties have been experienced putting both the assessee and the Department into inconveniences and difficulties specially in the Hill areas such as in the North East where postal delay is a routine affair and road communication in a pretty bad shape. These problems and difficulties are experienced only by those people working in such areas. It may also be noted that sometime the office concerned has no postage stamps due to the perpetual shortage of funds under the head 'office expenses' and number of refund vouchers are to be held up because of this reason. In such situation the Assessing Officers faces two pressures, one from the higher authorities for expeditious issue and delivery of refunds and other from the assessee. The delay in such matter mainly form the ground of most of the grievances petitions received by the Department from the assessee.

As stated above in the earlier instructions, the assessees were to take delivery of the refund vouchers personally if the refund voucher was over Rs.1000/- which however, have been modified. However, there is not definite and clear instruction to refuse to handover the refund voucher if the assessee, the claimant comes to the office personally. As I have submitted above the whole intention of all the instructions is only to ensure that the addressee/the claimant/the assessee receive the refund voucher.

In the instant case the assessee (who later on were found to be bogus or fictitious) had met me and requested for taking delivery of the refund voucher personally as if the vouchers were sent by the Regd. post it would take some weeks, sometime months to reach them on the ground that postal delays are very common and road communications are mostly unreliable and pretty bad. They also stated that because of certain local festivals the labourers were pressing for early payments. In the spur of the moment with the

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bonafied believe that they are the genuine assessee having real and genuine problems had given instructions to the Assessing Officer to handover the refund vouchers to them. As I have stated earlier I had done this as a measure of good public relation as I found that after I joined the Range in the middle of 1988, the image of the Department was not upto the mark and much more measures had to be taken to improve the public relation of the Department.

It was or it is a completely different matter that the so called assessees are found out later on to be only bogus or fictitious assessee trying to defraud the ex-chequer. My instruction to handover the vouchers in persons did not in any way change the status of the refund. The so called assessees had filed their returns, the returns were processed and these were never suspected by the Assessing Officer to be bogus or fictitious. If there had been any inkling of doubting the genuineness of the returns, it would never have been processed for grant of refund by the Assessing Officer, Shri B. R. Purkayastha who is one of the officers of the Department having sterling quality of head and heart and also a very high moral integrity with whom I had worked in the last more than 20 years. Instead of having processed the returns, necessary steps would have been taken to book the culprit/the defrauder and this would have alerted many such people indulging in such kind of nefarious activities putting many of the Departmental officials into embarrassment and trouble in their discharge of their duties. I would submit once again that even if instruction have not been given by me the so called assessee would in any way have encashed the refund vouchers in course of time with the delay of some weeks or so. The allegations that my instruction have defrauded the ex-chequer is not at all tenable. Whether instruction was given or not the so called assessee would have defrauded the ex-chequer due to the defect in system in which there was no way to check or to know that TDS certificates are genuine or bogus. Even when there is more or less a perfect system, there are sometimes deficiencies in the working of the official and in the present case there was total deficiency in the system and the officials are made scape goats for the failure of the system.

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I would, therefore, hereby reiterate that there was not a slightest malafide intention in directing the Assessing Officer to handover the refund vouchers to the assessee personally. My instruction had not in any way facilitated the defrauding of the ex-chequer. This did not obviate my maintaining absolute integrity and devotion to duty. This also did not in any way also had shown my conduct unbecoming of a Govt. servant. Therefore, there was no contravention of Rule 3(I), (II) & (III) of CCS Conduct Rule, 1994. Rather it was taken with the bonafide intention as a measure of good public relation to improve the public image of the Department which is found wanting most of the times. It would rather be noted that as a responsible officer to live upto the expectation of the service to which I happen to belong. I had been doing a fairly good and commendable work in improving the public relation works of the Department thereby enhancing the good image of the Department. It may also be mentioned that considerable appreciations and favourable comments from the public i.e. the assessee have been received by me during the last 20+ years of my service in the Department. It is rather a cruel joke played on me that while trying to do maximum good public relation work serious aspersions have been cast on my integrity for such a stray bonafide action taken without any trace of malafide intention which as an officer has to be taken in the actual field situations in the day to day running of the administration.

(N. KHUNGDIM)
Addl. Commissioner of Income-tax,
Range :::: Dibrugarh.

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Kind attention : - e.g. PATNA

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Copy of

F.No.A - 32011/6/97- Ad.VI
 Government of India
 Ministry of Finance
 Department of Revenue

New Delhi, the 13th Sept. 1997

ORDER NO. 131 of 1997

SUBJ: Adhoc promotion from the grade of Deputy Commissioner of Income Tax to the grade of Commissioner of Income Tax.

The President is pleased to order that the following Deputy Commissioners of Income Tax be promoted on purely adhoc basis to officiate in the grade of Commissioners of Income Tax (Scale Rs.5000 - 6700) w.e.f the date(s) they assume charge of the higher post until further orders:

S/Shri

1. Gurjeet Singh
2. B. Biswas
3. Ram Pankaj
4. T. Vinay Mohan
5. C. Rokhade
6. N. K. Shukla
7. Smt. Rama Dua
8. Sunita Chandra
9. Sudhodhi Kumar Sinha
10. P. C. Chhotaray
11. Smt. Arti Sawhney
12. A. R. Malhotra
13. Anhwini Kumar
14. Kum. Usha Govindan
5. M. P. Sharma
6. M. Narasimhappa
7. C. S. Kahlon
8. D. P. Kar
9. Debabrata Dab
0. Smt. Meenakshi Singh
1. O. P. Sachan
2. A. K. Banda
3. H. R. Sudhakar
4. Rmji Singh
5. Vineet Bahadur
6. Smt. Usha Gupta

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27. S.S. Khorana
 28. R.K. Singh
 29. A.K. Aneja
 30. Prem Verma
 31. Smt. Utpala Kanjilal
 32. M.N. Tiwari
 33. Karan Singh
 34. D.K. Gupta
 35. Smt. Rupinder Kayer
 36. A.K. Jain
 37. Durgeshi Shankar
 38. Prakash Chandra
 39. M.S. Rai
 40. Milap Jain
 41. B.L. Khatri
 42. Dalip Singh
 43. S.R. Singh
 44. Ranachandra Sethi
 45. A. Das
 46. Debaranjan Mitra
 47. M.C. Kathuriya
 48. P.K. Deb Burman
 49. L. Nampi
 50. N.L. Meena
 51. Smt. P. Sahi
 52. P.P. Srivatsava
 53. Laxman Das
 54. P.D. Khatral
 55. A.K. Basu
 56. V.K. Bridhar
 57. B.S. Sondi
 58. M.C. Joshi
 59. P. Ranganathan
 60. G.B. Kanungo
 61. R.K. Jain
 62. Smt. D. Kohli
 63. Y.S. Rawat
 64. S.C. Mitra I
 65. Smt. Hardeep Srivastava
 66. Smt. K. Arasthy Gupta
 67. Smt. V. Surie
 68. Gautam Chaudhuri
 69. A. Kacker
 70. V.K. Bhatia
 71. P.M. Sharma
 72. A.K. Jha
 73. K. Vasudevan
 74. M.N. Bajpal
 75. A. Prasad
 76. S.C. Gupta II

Before L. Nampi

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SubjectFromTo

100. B.S. Bhillion*	- do -	CIT (A) PATIALA
101. Kamla Kant Tripathi	- do -	CIT JUNAGADH
102. Smt. Vinita Chopra	- do -	CIT RAJKOT
103. S.C. Gangwar	- do -	CIT (A) BHOPAL
104. R.K. Singh	CIT (A) VT Calcutta	CIT (A) Varanasi
105. D.P. Shah	M(AA) Bangalore	CIT (A) XXXI Mumbai
106. P.K. Chopra	CIT (A) Baripad	CIT Amritsar
107. Smt. Hardeep Kaur	CIT Amritsar	DIT (Inv.) Ludhiana
108. C.K. Volka	DIT (Inv.) Chandigarh	CIT Jammu
109. Smt. Manju Bakhshpuri	Competent authority, Delhi.	CIT-(A) Shimla/Dehradoon
110. L.K. Koolwal	CIT (A) VII Ahmedabad	CIT-III Ahmedabad
111. J.K. Goel	CIT (A) Allahabad	CIT Allahabad
112. Narinder Singh	CIT (A) Rohtak	CIT Rohtak
113. N.P. Sen Gupta	CIT (A)-II Calcutta	CIT VI-Calcutta -
114. R.K. Pandey	CIT (A) Varanasi	CIT Varanasi
115. Y.K. Aggarwal	CIT (A) Udaipur	CIT Udaipur
116. A.K. Malik	CIT (A) X Calcutta	CIT X Calcutta
117. D. Chatterjee	CIT (A) III Calcutta	CIT VII Calcutta
118. A.S. Thakur	CIT (A) I Mumbai	CIT XIV Mumbai
119. V.S. Wahl	M(AA) Mumbai	DI, ITSC Mumbai
120. P. Ray	CIT DR ITSC Delhi	DIT DOM&S, Delhi
121. R.C. Kapur	CIT DR II ITSC Delhi	CIT (A) XXXI Mumbai
122. P.C. Sinha	CIT (A) XXVI Delhi	CIT DR II ITSC --- Delhi
123. Shalini Sharma	<u>XXIX</u> CIT XXVII Delhi	CIT (DR) I ITSC Delhi
124. K. Rangabhashyam	CIT (A) XX Delhi	CIT VIII Delhi
125. P.L. Singh	CIT VIII Delhi	CIT I Delhi
126. Smt. Saroj Bala	CIT (A) XXX Delhi	DI (RSP&PR)
127. R.Q. Nathada	CIT (A) Chandigarh	Delhi; DIT (Inv.) Chandigarh

4. The Commissioners of Income Tax who have been holding additional charge will be relieved of the same w.e.f the date(s) the incumbents are promoted/transferred taking over their new assignments. Officers who are at Sis. Nos. 5, 15, 22, 24, 30, 39, 51, 61, 63, 64, 65, 66, 67, 68, 69, 78, 84, 84, 96 and 100 on deputation/long term training are requested to join their place of posting on promotion by 23/9/97 positively, failing which the vacant posts will be offered to the officers who are in the extended panel strictly according to their seniority and as per the directions of the Appointments Committee of the Cabinet.

(J.L. Sawhney)
Under Secretary to the Government of India.....

Attached
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North Block, New Delhi - 110001
Dated, the 14th Sept., 1992.

OFFICE MEMORANDUM

Subject: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation - Procedure and guidelines to be followed.

Estt.A dt.31.8.80
Estt.Adt.22.12.84
1/7-Estt.A
77
1/9-Estt.A
82
1/88-Estt.A
88
1/91-Estt.A
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"Sealed Cover" cases.

The undersigned is directed to refer to Department of Personnel & Training OM No.22011/2/06-Estt.(A) dated 12th January, 1988 and subsequent Instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgement dated 27.08.1991 of the Supreme Court in Union of India etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier Instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension;
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.

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

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

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

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

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

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done subsequently also every six months. The review should, *inter alia*, cover the proceedings initiated in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

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

- Whether the promotion of the officer will be against public interest;
- Whether the charges are grave enough to warrant continued denial of promotion;
- Whether there is any likelihood of the case coming to a conclusion in the near future;
- Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

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

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

- the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserves the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

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

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

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

8. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, those instructions have been issued after consultation with the Comptroller and Auditor General of India.

9. Hindi version will follow.

(Signature)
(M.S. BALI)
DIRECTOR

To All Ministries and Departments of the Government of India with usual number of ~~spare~~ copies.

No. 22011/4/91-Estt(A) Dated the 14th Sept., 1992.

Copy forwarded for information to:-

- Central Vigilance Commission, New Delhi.
- Central Bureau of Investigation, New Delhi.
- Union Public Service Commission, New Delhi.
- Comptroller and Auditor General, New Delhi.
- President's Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Ministry of External Affairs and Prime Minister's Office.
- Chief Secretaries of All States and Union Territories.
- All Officers and Administrative Sections in the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.

(Signature)
(M.S. BALI)
DIRECTOR

Allied
Re

7/19-23/CON/CT/93-94/Pt.IV/1082

GOVERNMENT OF INDIA
MINISTRY OF FINANCEOFFICE OF THE COMMISSIONER OF INCOME TAX
SHILLONG, POST BOX NO.20, DHANKHETI,
SHILLONG-793001

Dated, Shillong, the 25th September, 1997.

Subject:- Departmental Inquiry against Shri
N. Lhungdim, Addl. Commissioner of
Income-tax, Dibrugarh Range, Dibrugarh

Present : 1. Mr. N. Sahay, Presenting Officer

DAILY ORDER SHEET

The Regular Hearing (RH) commenced today, Shri N. Lhungdim, the Charged Officer has conveyed to the IO on telephone that he does not wish to be present in person on this day. He has only requested that his Written Submission already submitted may be taken into consideration.

The Presenting Officer, Shri N. Sahay is present for the hearing today. He has also produced seven witnesses who will be produced before the court as and when required. The Presenting Officer has also produced photocopies of documents listed which are submitted today.

Six witnesses were duly presented and examined, and their recorded statements have been submitted and taken into record and duly marked PW-1 to PW-6. The seventh witness, Shri Amulya Ranjan Bhattacharjee has been dropped by the PO.

For the rest of witnesses who have not appeared today, the PO does not insist on their appearance.

The PO does not wish to submit any brief in this case. His oral arguments were heard.

The Original Documents in this case could not be produced by the PO as the same are required in the Court. Hence, only photocopies had been submitted which have been accepted. A copy of this order is to be given to the PO and CO.

25/9/97
(V. TOCHHAWNG)
Inquiry Officer

Copy to : 1. IDSP/EBI.

✓ 1. The Under Secretary to the Govt. of India (V&L), Central Board of Direct Taxes, New Delhi-110001.
2. The CBI (Vigilance), New Delhi.
3. The Chief Commissioner of Income-tax, Patna.

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ANNEXURE - J

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F. No. Vig-23/Con/CT/93-94/Pt. IV/

OFFICE OF THE COMMISSIONER OF INCOME-TAX, SHILLONG :::: POST BOX NO. 20 SHILLONG - 793 001 (MEGHALAYA)

Dated: 22.10.1997

Sub : Departmental inquiry against Shri N. Lhungdim, Deputy Commissioner of Income-Tax, Shillong Range, Meghalaya.

REPORT OF THE INQUIRY OFFICER

I. THE PROCEEDING

The ministry of Finance (Income-tax Department) initiated disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 against the officer as mentioned below:

Name and designation Of the charged officer	Disciplinary Authority	Order appointing the Inquiry Officer (IO) and Presenting Officer (PO)
Shri N. Lhungdim, DCIT, Shillong Range, Shillong.	Commissioner of Income- Tax, North Eastern Region, Shillong.	F. No. C-14011/8/96-V&L dated 14.8.96 and dated 9.12.96.

1. I was appointed as Inquiry Officer (IO) and Shri N. Sahay, DSP, CBI, Guwahati was appointed as Presenting Officer (PO) in the case cited above.

Proceeding has been held in respect of the above named officer, by holding preliminary as well as regular hearing.

2. Shri N. Lhungdim was functioning as the Deputy Commissioner of Income-tax, Shillong Range, Meghalaya during the relevant period, i.e., during 1989.

3. The allegations which are the subject matter of these inquiries proceedings against the officer relates to his failure to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes by passing order to hand over refund orders to the persons who made the claims, contrary to the said Board's instruction, resulting in refunds to the tune of Rs. 1,60,602/- being given against claims which were later found to be fictitious and based on bogus Tax Deduction Certificates.

4. The preliminary hearing of the case was held on 21.02.97. As some photo copies of the listed documents were lying in the Court, the P.O. assured that copies of the same would be obtained and make them available to the Charged Officer. The Charged Officer also stated that he would not need any Defence Assistant, and that he would not have any witnesses in his defence. Subsequently, Shri N. Lhungdim, the Charge Officer, was requested to contact Shri N. Sahay, the P.O. for the purpose of examining the documents, prior to the regular hearing to be fixed. Vide his letter F. No. Estt-1/E-195/92-93/4094 dated 12.9.97, Shri N. Lhungdim, C.O. had intimated on phone that he did not wish to be physically present, and that his written submission against the memorandum of charges may only be considered in his defence. The same has been duly noted in the Daily Order Sheet.

THE CASE AGAINST SHRI N. LHUNGDIM - IN DETAILS

5. The Department cited 25 documents and 12 witnesses in support of the charge in the Annexure-I and II to the charged memo. However, during the regular hearing, the P.O. dropped

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one witness, namely Shri Amlya Ranjan Bhattacharjee who was to prove that A/C No. H/1/160 dated 15.02.89 was introduced by him. Five witnesses at Sl. 1, 4, 10, 11 and 12 as per Annexure-IV did not appear, and the P.O. did not insist on their subsequent appearance. Copies of the depositions of witnesses who appeared were submitted to the P.O and I.O. The witnesses were examined. The P.O. declined to submit any written briefs in this case.

II. ARTICLES OF CHARGE

6. The statement of articles of charge against Shri N. Lhungdim are reproduced below:

ARTICLE I

Shri N. Lhungdim, while posted and functioning as the Deputy Commissioner, Shillong Range, Meghalaya during 1989 failed to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes contained in Board" letter F. No. 212/753/79-ITA-II dated 09.10.1979 and reiterated in Instruction No. 1530 dated 10.10.1983 which state that all refund orders should be sent by registered post only. He passed orders, contrary to the letter and spirit of the above mentioned circulars by directing the handing over of refund orders amounting to Rs. 62,582/- and Rs. 98,020/- to Shri H. Lalanpuia and Shri J. Anthony respectively, the alleged assessees, who turned out to be bogus, thereby putting the state exchequer to a loss of Rs. 1,60,602/- He thereby showed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964.

III THE CASE OF THE DISCIPLINARY AUTHORITY

7. The case of the disciplinary authority as given in the statement of imputations is given below :

Shri N. Lhungdim was posted and functioning as DCIT, Shillong Range, Shillong (Meghalaya) during 1989.

2. Two Returns of income in the names of Shri H. Lalanpuia of Happy Valley, Shillong and Jonthui Anthony of Assam Rifles Colony, Nangstrin, Shillong were filed in the charge of ITO, Ward-I, Shillong. These were not supported by any claim of refund as required u/s 239 of the Income-tax Act, 1961 read with Rule 41 of Income-tax Rules, 1962. The returns were assessed u/s 143(21) by Shri B.R. Purkayastha, ITO, Ward-I, Shillong and he also issued I.T. refund order No. B/6-252922 dated 14.02.1989 for Rs. 62,582/- and B/6-252918 dated 10.02.1989 for Rs. 98,020/- for the assessment years 1986-87, 87-88, 88-89 and 1986-87, 87-88, 88-89 respectively in the name of the aforesaid two individuals.

3. Contrary to directions contained in Board's letter F. No. 212/753/79-ITA-II dated 09.10.1979 and reiterated in Instruction No. 1530 dated 16.10.1983, Shri N. Lhungdim ordered Shri B.R. Purkayastha, ITO, Ward-I, Shillong vide letter No. A-35/88-89/2853 dated 10.02.1989 and No. A-35/88-89/2890 dated 14.02.1989 to hand over the I.T. refund orders to the concerned assessees personally instead of sending them by registered post. The proper procedure in respect of issue refund orders was not followed, and the refund orders were handed over to the two individuals who were subsequently found to be bogus and fictitious assessees. It was also found that the aforesaid returns were accompanied with bogus TDS certificates and in actual fact there was no such TDS nor any such amount was deposited to the credit of the Government. Thus the exchequer was defrauded to the extent of Rs. 1,60,602/- through bogus claim of refund. This was facilitated by the Instructions dated 10.02.1989 and 14.02.1989 issued by Shri n. Lhungdim, DCIT, to the ITO, Ward-I, Shillong.

4. Shri N. Lhungdim thereby failed to maintain absolute integrity and devotion to duty and showed conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

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IV ANALYSIS OF THE CASE

The case records, including the oral submission of the P.O. and the written submission of the C.O. have been examined carefully.

SOME FACTS RELEVANT TO THE CASE

As I have recorded in the course of the regular hearing, the C.O. did not wish to examine the documents, and was not also physically present at the hearing. In a word, the CO has not disputed the imputation of misconduct as laid out in the Statement at Annexure-II, made in support of the Article of charges framed against him, and has not challenged any of the documents or witnesses as submitted by the department. The P.O. has also not submitted any briefs in writing. Accordingly, the case is to be considered against the statement of imputation as per Annexure-II. The gist of the case is that two returns were submitted in the names of Shri H. Lalanpuia of Happy Valley, Shillong and Shri Jonthui Anthony of Assam Rifles Colony, Nongstrin, Shillong to the ITO, Ward-I, Shillong. These returns were not supported by any claim of refund as required u/s 239 of the Income Tax Act, 1961, read with Rule 41 of the Income-tax Rules, 1962. The returns were assessed u/s 143(1) by Shri B.R. Purkayastha, ITO, Ward-I, Shillong, who also issued I.T. refund orders No. B/6-252922 dated 14.02.1989 for Rs. 62,582/- and B/6-252918 dated 10.02.1989 for Rs. 98,020/- for the Assessment years 1986-87, 87-88, 88-89, and 1986-87, 87-88, 88-89 respectively in the names of the aforesaid two individuals. As per directions contained in Board's letter F. No. 212/7532/79-ITA-II dated 09.10.1979 and reiterated in instruction No. 1530 dated 16.10.1983, all refunds orders should be sent by registered post only. As such, the above mentioned refunds amounting to Rs. 62,582/- and Rs. 98,020/- respectively, were also required to be sent by registered post only, as per procedure laid down by the Board. The two persons named above, namely S/Shri H. Lalanpuia and Jonthui Anthony approached the ITO, Shri B.R. Purkayastha, and requested that the refund orders may be given to them by hand; but Shri Purkayastha did not allow the same, as recorded in his statement. Thereafter, the concerned two persons aforesaid met Shri N. Lhungdim, who was the Deputy Commissioner in charge of Shillong Range, and made the same request. As per the statement made by the C.O. in his written statement, he gave instructions directing the Assessing Officer (Shri B. R. Purkayastha, in this case) to hand over the refund orders to the assessee (AS/Shri H. Lalanpuia and J. Anthony) which he admits was not in conformity with the existing instructions which required it to be sent by Registered post. However, in this regard, the C.O. has submitted, through his written submission, the following plea:

9. As far as he could remember, the said instructions were given under peculiar circumstances. The said assessee (who later on became bogus or fictitious assessee) came to him and told him that they were to receive refunds and if these were sent by Registered post it would take two weeks sometimes months to reach them. They stated that their labour payments have been overdue and the labourers were pressing for early payments because of certain festivals and urgent personal expenses. They further stated that as they were in the town/capital, they requested that they should be allowed to take vouchers in person to avoid postal delays which was common in this part of the country. The C.O., therefore states that he had given the instructions as a measure of good public relation as the Department had been having a very bad public relation and criticism in this area. His understanding of the spirit behind the Board's instructions to send refund vouchers by post is to minimise or eliminate complaints against the Department officials in this matter. In actual field situations, he states that it is not always possible to follow the Board's instructions literally due to many practical difficulties which often puts both the department and the assessee to difficulties and inconvenience, specially in the North-East where communication is bad and postal delays are common. The instruction, according to the C.O., was passed with the best of intention, namely to improve the image of the department and also to mitigate the problems of the assessee. The C.O. also states that his instructions to hand over the vouchers in person did not in anyway change the status of the refunds. The returns were filed by these so called assessee, and were processed for grant of refund, without Shri B.R. Purkayastha, an officer of sterling quality and high moral integrity ever suspecting that these were bogus or fictitious, states the C.O. He therefore asserts that even if such instructions had not been given by him, the so called assessee would in any case have encashed the refund vouchers in course of time with a delay of some weeks or so. He therefore

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denies the charge that his instructions have defrauded the exchequer. According to him the fault lies in the system as there was no way to know whether TDS Certificates were genuine or bogus.

10. The incident on the basis of which the present proceedings has been drawn up, occurred sometimes during January & February, 1989. At this time, it was apparent that it was a matter of concern to the I.T. Department that there were large numbers of complaints from assessee regarding irregularities in the matter of refund issues. The Board had, vide Instruction No. 1647 dated 11.9.1985 issued direction in regard to Expedited disposal of Refund applications relevant portions of which is reproduced below :

"3. The Board would therefore again like to emphasise that the claims of refund should be disposed off promptly and the refund vouchers should invariably accompany the orders giving rise to the refund.

4. The Board also desires that steps may be taken to carry out surprise inspections by the Commissioner of Income-Tax/Inspecting Assistant Commissioner of Income-Tax to find out whether refunds are granted promptly and interest is paid in cases of delayed refunds. The Commissioner of Income-tax/Inspecting Assistant Commissioner of Income-tax are directed to ensure elimination of delays in the grant of refunds, etc.

FINDINGS:

During the course of the hearing and cross examination of witnesses and inspection of documents produced before me, it appears that nothing could be inferred that Shri N. Lhungdim has malafide intention of defrauding the revenue or causing loss to the government exchequer. It is an undenied fact that Shri N. Lhungdim has acted in contravention of the Board's standing Instruction, while issuing instruction to hand over the refund voucher to the claimants by hand. However, this also appears to be an action arising out of his desire to keep up the good image of the department, in its dealing vis-à-vis the public.

(V. TOCHHAWNG)
Commissioner of Income-Tax,
Shillong.
Inquiry Officer.

Attested

ANNEXURE - K

71

F.NO.C-14011/8/96-V&L
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES

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8/9/98 21x

New Delhi, the 7th Aug, 1998.

MEMORANDUM

A Memorandum of charge dated 3.4.96 was issued to Shri N.Lhungdim, DCIT alleging failure to maintain absolute integrity and devotion to duty and conduct unbecoming of a Government Servant.

2. Shri N.Lhungdim denied the charges. Consequently, an oral inquiry was ordered in his case. The Inquiry Officer has submitted his report dated 22.10.97 exonerating Shri Lhungdim of the charges.

3. However, the Disciplinary Authority is not in agreement with the I.O's report on the ground that Shri N.Lhungdim did order handing over of the refund orders across the table which has not been denied by anyone, including the officer himself in violation of departure from the departmental instructions to the contrary. Further, Shri N.Lhungdim did not know the asessees and, therefore, his direction to hand over the refund orders personally to such strangers amounted to an act of indiscretion betraying lack of devotion to duty.

4. In view of the fact that the Disciplinary Authority is in disagreement with the Inquiry Authority, Shri N.Lhungdim is required to submit his comments within 15 days of receipt of this Memorandum. A copy of the IO's report is enclosed.

(PRAMILA SHRI VASTAV)
DIRECTOR(V&L)

Shri N.Lhungdim,
Additional Commissioner of Income tax,
Dibrugarh.

(Through Chief Commissioner of Income tax, Patna)

Attested
8/9/98

Act of indiscretion betraying
Lack of devotion to duty

ANNEXURE -L

26

F No. A-32011/6/97-AD.VI
 Government of India
 Ministry of Finance
 (Department of Revenue)

New Delhi, the 9th September, 1998

ORDER NO. 126 OF 1998

The following Additional Commissioners of Income Tax are hereby promoted to officiate as Commissioner of Income Tax on regular basis w.e.f. the date(s) they take over charge and until further orders:-

S.NO.	Name of the Officer	Present Posting as Commissioner of Income Tax (on adhoc basis)
(1)	(2)	(3)
S/ Shri		
01.	Ram Pankaj	CIT(A)-L, Ahmedabad
02.	C. Rokhams	On deputation to Govt of Mizoram
03.	N. K. Shukla	CIT(A)-IX, Delhi
04.	Smt. Rama Das	CIT(A)-XLV, Mumbai
05.	Sudhir Chandra	CIT(A)-L, Mumbai
06.	Subodh Kumar Sinha	CIT(A), Ranchi
07.	P.C. Chouray	CIT(CO), Mumbai
08.	Smt. Arti Sawhney	CIT(A)-IV, Bangalore
09.	A.R. Malhotra	CIT(A)-II, Ahmedabad
10.	Ashwani Kumar	CIT(A)-XX, Delhi
11.	Kum. Usha Govindan	CIT(A)-V, Bangalore
12.	N.P. Sharma	On deputation to MCD, Delhi
13.	A.Narayappa	CIT, Mysore
14.	C.S. Kahlon	DIT(Inv.), Bhopal
15.	D.P. Kar	CIT(A)-XV, Calcutta
16.	Debendra Das	CIT(A)-C-I, Calcutta
17.	Smt. Meenakshi Singh	MAA, Lucknow
18.	A.K. Hati	CIT(OSD), Mumbai
19.	B.R. Singh, Lata	CIT(A)-III, Chennai
20.	Ranji Sinha	CIT(A)-VI, Delhi
21.	Vineet Sahai	CIT(A), Faridabad
22.	Smt. Usha Gupta	CIT(A)-L, Lucknow
23.	S.S. Khorana	CIT(A)-VI, Calcutta
24.	R.K. Singh	MAA, Lucknow
25.	A.K. Aneja	CIT(A)-II, Cochin
26.	Prem Verma	DIT(Try), RTI, Hazaribagh
27.	Smt. Upala Bhagat	CIT(A)-C-II, Calcutta
28.	M.N. Tiwari	CIT(A)-IV, Calcutta
29.	Karan Singh	CIT(A)-III, Ahmedabad
30.		On deput. Delhi Vidyut Board, Delhi

Attested

FEDERAL GOVERNMENT

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31.	Smt. Rupinder Nayal	On deputi M/o P&P.G., Delhi
32.	A.K. Jain	CIT(A)-3, Meerut
33.	D. Geeta Shankar	CIT(A)-XIV, Ahmedabad
34.	Prakash Chaitin	CIT(A)-XXV, Delhi
35.	M.C. Fazl	CIT(A)-XV, Delhi
36.	Nilam Jain	CIT(A)-XIII, Delhi again, t. s. leave vacancy
37.	B.L. Khati	CIT(A)-4, Jaipur
38.	Dipin Singh	CIT(A)-VII, Mumbai
39.	S.P. Singh	CIT(A)-Jodhpur
40.	Ramendra Sethi	CIT(A)(C)-II, Mumbai
41.	A. Das	CIT, Jharkhand
42.	Desharni Misra	CIT(A)-XV, Ahmedabad
43.	Madhuk Chandra Katheriya	CIT(A)-VI, Chennai
44.	<u>P.K. Deb Vooman</u>	On deputi NEHU, Shillong
45.	<u>L. Nampiul</u>	CIT(A), Udaipur
46.	M.L. Mehta	On deputa to PGI, Chandigarh
47.	Smt. P. Sehgal	CIT(A)(C)-VI, Mumbai
48.	P.P. Srivastava	CIT(A)-XVI, Ahmedabad
49.	Laxman Das	CIT(A)-II, Baroda
50.	D.S. Rastogi	CIT(A)-IV, Hyderabad
51.	A.K. Baru	CIT(A)-I, Bangalore
52.	V.K. Sridhar	CIT(A)-I, Delhi
53.	B.S. Sonchi	On deputi Enforcement Dte. Delhi
54.	M.C. Joshi	CIT(A)-IX, Chennai
55.	P. Rengarajan	CIT(A)-XI, Coimbatore
56.	G.B. Kavurago	CIT(A)-X, Ahmedabad
57.	R.K. Jain	On deputi, MCD, Delhi
58.	Smt. D. Kohli	CIT(A)-XI, Ahmedabad
59.	Y.S. Rawal	CIT(A), Jalandhar
60.	S.C. Gupta	On deputi Nuclear Corps of India, Mumbai
61.	Smt. Hardeep Srivastava	CIT(A)-XII, Ahmedabad
62.	Smt. K. Avasthi Gupta	CIT(A)-XVII, Calcutta
63.	Smt. V. Surtie	CIT(A)-I, Calcutta
64.	Gautam Choudhuri	Posting Order to be issued separately
65.	R.N. Tripathi	On deputi SERI, Mumbai
66.	A. Kacker	CIT, Delhi charge (on study leave)
67.	V.K. Bhata	M/A/A, Ahmedabad
68.	P.M. Sharma	CIT(A)-XI, Calcutta
69.	A.K. Jha	DIT(Inv.), Kanpur
70.	K. Venkadevan	

Attested
[Signature]

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MEMBER LEGISLATIVE

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(1)	(2)	(3)
	S/SHD	
71.	A. Prasad	CIT(A)-III, Lucknow
72.	S.C. Gupta	CIT(A)-III, Jaipur
73.	K.C. Sarangi	CIT(A)-II, Bhubaneswar
74.	A. Majumdar	CIT(A)-XIV, Calcutta
75.	Smt. Aruna Bhattacharya	On deputi NIE, Delhi
76.	S.K. Chatterjee	CIT(A)-VII, Calcutta
77.	S.P. Pandey	CIT(A)-VII, Ahmedabad
78.	A.K. Gary	CIT(A)-XXII, Delhi
79.	Quaiser Shamim	CIT(A)-XXX, Delhi
80.	S.K. Mitra	CIT(A)-XII, Calcutta
81.	Sudhakar Tiwari	CIT(A), Cuttack
82.	K.M. Sultan	On foreign deputa
83.	V. Jha	CIT(A)-I, Raipur
84.	K.G. Banerji	CIT(A)-XXX, Delhi
85.	B.R. Kavabir	CIT(AC)-II, Chennai
86.	K. Argal	DIT(Inv.) Cochin
87.	T.C. Pant	CIT, Delhi charge, on Trg. abroad
88.	Smt. M. Kacker	CIT(A)XLVI
89.	Anil Kumar	CIT(A), Bhatinda
90.	H.C. Sakhawati	CIT(A), Gwalior
91.	Smt. P.M. Vaidya	M(AA), Mumbai
92.	Smt. Bharti Mandal	CIT(A)-IX, Calcutta
93.	Smt. Nilima Mansukhani	CIT(A)XLVIII, Mumbai
94.	Virend Khurana	On deputi NBCC, Delhi
95.	Kalyan Chaudh	CIT(A)-III, Baroda
96.	T. Vinay Mohan	CIT(A)-I, Cochin
97.	Kalyan Chaudhuri	CIT(A)-X, Calcutta
98.	Brahma Prakash Gaur	CIT(A), Kothipur
99.	Baljit Singh Dhillon	CIT(A), Patiala
100.	Kanika Kaur Tripathi	CIT(A)Belgaum
101.	Smt. Vinita Chopra	CIT(A)-VIII, Ahmedabad
102.	S.C. Gangwar	CIT(A), Bhopal
103.	Mukesh Bhindi	CIT(A)-III, Calcutta
104.	Smt. P.K. Saxena	CIT(A)-II, Jaipur
105.	M.L. Kupperwadi	CIT(A), Calcutta
106.	S.S. Rana	CIT(OSD), Delhi
107.	Manoj Misra	CIT(A), Rohilk
108.	Anjani Kumar	CIT(CO), Raipur
109.	Manu Lal Agarwal	CIT(A)-III, Hyderabad
110.	Smt. Lakshmi Prasad	CIT(A)-V, Delhi
111.	S.N. Bhuyan	CIT, Guwahati
112.	Smt. Sovanari Basu	On deputi EPIL, Delhi
113.	S.S. Prasad Singh	CIT(A), Thane

(B.K. Arora)

Under Secretary to the Government of India

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ANNEXURE-M 75

To
The Director (V & L),
Central Board of Direct Taxes,
North Block,
New-Delhi-110 001

Dated, Dibrugarh the 18th Sept '98.

Sir/Madam,

(Through Proper Channel)

Kindly refer to memorandum F. No. C-14011/8/96-V & L dated 7.8.98, which was duly received by me on 09.09.98. As desire in para 4 of the memorandum mentioned above I am submitting my comments as under:

2. As already stated in my written submission in response to the memorandum No. C-14011/8/96-V & L dated 3.4.96 and also the additional submission made before the Inquiry Officer it is further submitted that in the matter regarding granting and delivery of refund voucher to the assessee several instructions had been issued by the Board in the past. It is however noted that the core instructions have been clearly mentioned in para 16, chapter XVII of the Office Procedure section 13-6 issued by DIRSP, 1965. In para 16 (4) it was stated that refund vouchers of over Rs. 5,000/- should be delivered personally, unless the assessee specially asks, otherwise, in which case, they may be sent by registered post with acknowledgement due, at his risk. This original instruction had undergone several changes in the last 30+ years and the latest instruction dated 18.11.97 being the send any refund vouchers irrespective of the amount of the refund involved by registered post with acknowledgement due. As I have stated earlier the whole objective and intention of all these instructions is to ensure that the addressee/ the claimant/ the assessee receive the refund voucher. And the unstated reason behind this instruction is, if I am not wrong, to minimise or reduce or eliminate malpractices usually happening at the lower level of the officials while delivering the refund vouchers in the office to the assessee.

3. In the instant case it is not denied by me nor any one that written instruction to hand over the refund voucher to the assessee in person was given to the assessing officer. It was not done verbally or surreptitiously. It was done in writing with the best of intention and bonafide reason as a measure of good public relation to improve the image of the department in this area of the work and also to mitigate the problems of the assessee at the relevant time. As I could remember the assessee (it is different matter that they were bogus or fictitious ones) met me in my office and stated that they were to receive refunds and if sent by registered post would take a minimum of 2 weeks or some time a month to reach them because of poor postal services and bad road communication in the hill area and since they were in the town they might be allowed to receive the refund vouchers in person as their labours were pressing for early payment because of some local festivals and also urgent personal expenditures. It was in the spur of moment with the bonafide belief that they were genuine assessee with real and genuine problems the assessing officer was directed in writing to hand over the refund voucher in person. It may be noted that in the last 25 years of my service in the department not in a single instance have I come across a bogus or fictitious assessee and never been cheated or betrayed by any one except this incident which I considered as an aberration. The instruction to hand over the refund vouchers to the assessee in person in the instant case were done on some special and peculiar circumstances as stated above. It is not a general instruction nor an order to all assessing officers working under me. It was done with the best of intention without the slightest bit of malafide intention to defraud the revenue or causing loss to the government exchequer. It may be mentioned that if there was a slightest of doubt there was no question of giving instruction for handing over the

Attested
S. S.

voucher in person. I would rather have got them arrested who claimed themselves to be assessee coming to the office with an evil intention to defraud the revenue. In actual field life situations it is not always possible to follow many of the instructions from the higher authorities in letter and spirit. Sometimes carrying out the instructions literally put both the assessees and the department in embarrassment, inconveniences and difficulties specially in this part of the country commonly known as NER where communications whether by AIR, by road, by train or postal and telecommunication are still in a pretty bad conditions. Over and above this whole region has become the playgrounds of innumerable parties and factions of insurgent militant groups and people working in this situations circumstances sometimes have to make minor adjustments as per the demands of the situations and in spite of all these problems the officers and members of the staff of the department have been working sincerely to achieve the target fixed by the department and also to make the administration more efficient, responsive and transparent. Sometimes when there are practical difficulties to follow literally the instructions attempts have always been made to follow at least the spirit in spite of heavy odds confronting the department as a whole and officers and members of the staff in particular:

4. It is totally a different matter that the so-called assessees happened to be fictitious ones. The instruction to hand over in person will in no way change the status of the refund orders. Even if it was sent by registered post they would have received after 2 weeks or a month and encashed it. The return were filed by the assessees and these were processed for grant of refund by the assessing Officer as this were cases of what is called 'Pure refund case'. The assessing Officer Shri B.R. Purkayasta, an officer of sterling quality and high moral integrity who is considered one of the cleanest and most honest officers of the department, never suspecting that these were bogus and fictitious cases, had passed order to issue refund voucher. It is very sad that an officer of such quality of head and heart had to suffer because of such incident and also lost his promotion. I shall never forgive myself for causing such hurt and set back to the officer who in fact deserved appreciation and reward and not punishment.

5. As regards to the charge that I had ordered handing over of the refund voucher to the assessee whom I did not know, I would like to say that in the station where I was working at the relevant time there were more than 15,000 (Fifteen thousand) assessees and it was not humanly possible to know each and every assessee personally nor was really necessary. An assessee is an assessee whether we know him personally or not. They are our public. The tax administrators which include the officers and members of the staff are working as facilitators-facilitating the assessees to pay their taxes and also to render services as an employee of the department to the public i.e., the assessees. In view of the above, I feel that it is not always necessarily possible to know personally with whom we are dealing while working in the office. The only things I have been maintaining is that the person who comes to office or to me should have a problem regarding his tax matters or in other words he should be a tax payer and as a tax man it was my duty and responsibility to help him out if there is any problem.

As regards the charge of lack of devotion to duty in my 25+ years of service in the department in no time and in no place have I been showing lack of devotion to duty which had been testified by all my controlling officers with whom I had the occasions to work under them. Seriousness and sincerity in my work is valued principles in life. In spite of such frustrating set back in my service career, I have been continuously creating a series of experiments and reforms in office management, public relation, environmental cleanliness, space and record management, establishment of centralised reference-libraries and staff welfare vis-à-vis tax administration. To day, I can proudly claim to have the first and the only Range in the country having centralised reference libraries organised and established in all the field stations of my Range, my office and all the offices in my range are the best in public relations and I have the distinctions of having the most well maintained office and also the cleanest Income-tax Office in the whole country which is the pride of the department and to believe it one has only to see it.

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It is no surprise that the Inquiry Officer having enquired the facts and circumstances of the case had rightly concluded that there was no malafide intention committed by me and had exonerated me of all the charges and also stated that whatever actions was taken were out of the desire to keep up the good image of the department in its dealing vis-à-vis the public. It is unfortunate that the disciplinary authority did not agree on the ground of technicality as I was only discharging quasi-judicial function and in non of the charges in the memorandum there was expressed or implied allegation that the action taken by me was actuated by any corrupt motive or to oblige any person on account of extraneous consideration. In the case of Union of India v/s R.K. Desai, in Civil Appeal No. 560 of 1991 dated 25.3.92 the learned judge observed "In the present case the allegations against the respondent are merely to the effect that the refunds were granted to unauthorised person and this was done in disregard to the instruction of the C.B.D.T. There is no allegation, however, either expressed or implied, that these actions were taken by the respondent actuated by any corrupt motive or to oblige any person on account of extraneous consideration. In this circumstances, merely because such order of refund were made, even assuming that they were erroneous or wrong, no disciplinary actions could be taken as the respondent was discharging quasi-judicial function. If any erroneous order had been passed by him, the correct remedy is by way of an appeal or revision to have such order set aside".

In view of the facts and circumstances surrounding the case which have been clearly stated by me it is submitted that the case may be considered in the proper and corrective perspective with due appreciation for finally dropping all charges against me.

Yours faithfully,

(N. LHUNGDIM)
Addl. Commissioner of Income-Tax,
Range - Dibrugarh,
Dibrugarh.

Attested
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D.O. No. CC/Vig/II-10/87-88/ 3212 15

GOVERNMENT OF INDIA
CHIEF COMMISSIONER OF INCOME-TAX,
(Bihar, Orissa & North Eastern Region)
CENTRAL REVENUE BUILDING, BIRCHAND PATEL MARG, PATNA-110001
CAMP - DIBRUGARH

Dated, Dibrugarh, the 26th October, 1999.

J.S. Ahluwalia,

Dear Shri

Sub:- Promotion of Sri N. Lhungdim, Addl. Commissioner of Income-Tax, Dibrugarh Range to the cadre of Commissioners – Request regarding –

Kindly refer to the subject mentioned above.

During my tour to Dibrugarh, Sri N. Lhungdim, Addl. CIT, Dibrugarh Range has brought the following facts to my notice and submitted that he is entitled to promotion as Commissioner of Income-Tax in accordance with the rules.

- a) The name of Shri Lhungdim (73052) appears at page 52, Sl. No 12 of the Civil list 1998.
- b) His batch mates were promoted on ad-hoc basis vide order No. 121 of 1997 (F.No. A-32011/6/97 Ad-VI, dated 13th Sept 1997). They were promoted on regular basis vide, order No. 125 of 1998 (F. No. A-12011/6/97 Ad-VI, dated 9th Sept. 1998).
- c) He was not considered for promotion because vide memorandum F. No. C-14011/8/96-V & L dated 29-3-1996/29/4/1996 an inquiry was ordered under rule 14 of the Central Civil Services (classification, control and appeal) rules 1965.
- d) Shri V. Tóchhawng, CIT, Shillong was appointed as inquiry officer who vide F. No. Vig-23/Con/CT/93-94/ Part-IV, dated 22nd Oct. 1997 submitted his report to the disciplinary authority. In his report, the inquiry authority held that Sri N. Lhungdim had no malafide intention of defrauding revenue or causing loss to the Government Exchequer although he had acted in contravention of Board's standing instructions, while issuing instructions that the refunds be sent to by registered post only. However, this appeared to the I.O. to be an action arising out of the Officer's desire to maintain cordial relations with public by being helpful.
- e) The CBDT vide memorandum F. No. C-14011/8/96-V&L, dated 7th August, 1998 informed Sri Lhungdim that the disciplinary authority was not in agreement with I.O.'s report. Accordingly he was asked to submit his comments afresh to the disciplinary authority. Sri Lhungdim submitted his comments vide his letter dated 18th Sept. '98 and suggested that his case maybe considered in proper perspective and charges against him may be dropped. Thereafter, Sri Lhungdim received no communication regarding the status of Departmental Proceedings in his case.

As Sri N. Lhungdim is a competent Officer it is presumed, that, while promoting his batch mates his name must have been kept in a sealed cover till Departmental Proceedings against him are finally decided by the disciplinary authority. The case of Sri Lhungdim is covered by the revised guidelines for promotion/confirmation of employees against whom the disciplinary proceedings are pending or whose conduct is under investigation. These guidelines were issued by Department of Personnel and Training vide OM No. 22011/4/91-Esstt.(A), dated 14th September, 1992. In paragraph 5 of the said OM, the Department of Personnel and Training has laid down that in the cases like the one under consideration if disciplinary proceedings are not concluded even after the expiry of 2 years from the date of a meeting of the first DPC, which it had kept its finding regarding the Government servant in a sealed cover, the appointing authority could review the case of Government servant and grant ad-hoc promotion if the conditions laid down for the said OM were fulfilled. While considering the cases of promotion of 1973 Batch and other batches, the appointing authority was not in a position to promote them on regular basis in 1997 and accordingly, the officers were promoted on ad-hoc basis on 13th September, 1997. However, they were granted regular promotion on 9th September 1998. As now, more than 2 years have elapsed from the date on which the finding of the DPC could be said to be kept in sealed cover if the regular promotions had actually taken place in 1997. Sri Lhungdim is required to be given ad-hoc promotion immediately as period of two years

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prescribed in the O.M. is over. It is submitted that departmental proceedings were initiated against the Officer on the ground that he had issued instructions to his Assessing Officer that two refund orders should be handed over to two assessee without following the guidelines of the Board that all refund orders should be despatched by Registered Post. The Officer had given written instructions to the assessing Officer after two assessee – Shri H. Lalanpua and Shri J. Anthony had met him and requested that the refund orders may be handed over to them because the refund orders prepared by the Assessing Officer if sent to them by post would be delayed. Sri Lhungdim had no occasion to doubt the bonafides of the two assessee and for ensuring that the department's helpful image does not suffer, he instructed the Assessing Officer to hand over the refund orders. Subsequently, it came to the notice of the department that the claim of Shri H. Lalanpua and Shri J. Anthony for refund was based on bogus TDS certificates and hence the State Exchequer had to suffer a loss of Rs. 1,60,602/- It is relevant to observe that had Sri Lhungdim not given written instructions to hand over the refunds to two bogus assessee, the same would have been sent to the assessee by registered post and the alleged loss to the Government Exchequer would have still occurred. Therefore, the only fault of Sri Lhungdim is that for maintaining a better image of the department, he allowed the handing over of relevant orders against the specific instructions of the CBDT that the refund orders should be sent only by registered post. At best, Sri Lhungdim could have been advised to be careful in future and not to issue any instruction against the spirit of Board's directions. The starting of departmental proceedings against him appears to be over reaction of the department to a minor bonafide mistake of an otherwise efficient Officer. If the matter is viewed from this angle, granting of ad-hoc promotion could not be considered against public interest because the charge against the officer is not grave enough to warrant continual denial of promotion. It is further relevant to observe that the delay in finalisation of the proceedings was not directly or indirectly attributable to Sri Lhungdim and if he is promoted as CIT on ad-hoc basis, even then he would not be in a position to influence the conduct of the disciplinary proceedings. It is further submitted that no departmental case or criminal report have been filed against the Officer. Therefore, I am of the opinion that keeping in view the spirit of the Department of Personnel and Training OM No. 22011/4/91 – Esstt. (A) dated 14th September 1992, Sri Lhungdim can be granted promotion on ad-hoc basis immediately because vacancies are available.

3. Without prejudice to the request for ad-hoc promotion made in the earlier paragraph it is further submitted, that, in view of following facts the disciplinary proceedings initiated against the Officer are required to be filed and he is required to be promoted as Commissioner from the date on which his junior Sri L. Nampui assumed charge of Commissioner in accordance with order No 121 of 1997, dated 13th Sept. 1997.

- a) The inquiry Officer, after sifting the facts and evidence has given a clear finding in his report, dated 22nd Oct. '97 that the only fault of Sri N. Lhungdim was that he had acted in contravention of the Board's standing instructions but no malafide intention could be attributed to him.
- b) Had the intention of Sri Lhungdim been to defraud the Government Exchequer, he would not have issued written instructions to the Assessing Officer working under his administrative control but would have issued verbal instructions to hand over the refund orders to the two assessee.
- c) At the time when the two assessee met, Sri Lhungdim, with a request that the refund orders may be handed over to them, the assessing Officer had already processed these cases u/s 143 (1) (a) and had computed the refund due to the assessee and the refund orders were also ready for despatch by registered post to those assessee. The intervention of Sri Lhungdim had not resulted in the loss to the Government Exchequer but it had merely expedited the loss. It is relevant to observe that the information that the TDS certificates on the basis of which refund had arisen to the assessee were bogus, was not received by the department immediately on the date on which refund orders were prepared and were ready for despatch to the assessee. Therefore, sending of relevant orders even by registered post would not have prevented the loss of Rs. 1,60,602.
- d) In the case of M.N. Qureshi v/s Union of India and others (1989) 9 ATC (Ahmedabad Bench) and in the case of P.L. Khandelwal v/s Union of India and others (1989) 9 ATC, 509: ATR, 1989 (1) CAT 402) it was held, that, mere irregular or erroneous exercise of quasi-judicial functions does not amount to misconduct. In the case of Bejoy Gopal Mukherjee v/s Union of India and others (1989) 9 ATC 369 (Calcutta), it was held, that, mere negligence/ carelessness in performance of duty could not be considered misconduct unless the degree of culpability was very high. In the instant case, Sri Lhungdim had acted in a bonafide manner for maintaining the better image of the department by trying to be helpful to the assessee who were persons not known to him and, therefore, his action could not be considered as misconduct liable to be punished under the conduct rules.

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e) Even after initiation of the disciplinary proceedings against Sri Lhungdim and denial of promotion to him, he has remained a loyal and devoted Officer of the department and due to personal interest taken by him he has been able to acquire land of 4 Bighas for the department at Duliajan without the need to make any payment to OIL INDIA LTD. Due to the personal interest taken by the Officer expenditure of about Rs. 25 lakhs has been saved and the conduct of the Officer was appreciated by his Commissioner on 24th Sept. 1997, i.e., near about the date on which he was denied promotion on ad-hoc basis.

Keeping the facts and the legal position indicated in the earlier paragraph and the fact that it is a classic case of system's failure it is requested, that, Sri Lhungdim may be given ad-hoc promotion immediately and after expediting departmental proceedings he may be exonerated from the alleged misconduct and should be granted promotion to the cadre of Commissioners from the date, his junior Sri L. Nampui became Commissioner by the Board's orders No. 121, dated 13th September, 1997.

With

Yours

Sri A. Balasubramanian,
Member, (P & V)
Central Board of Direct Taxes,
North Block,
New Delhi -110 001.

(J.S. AHLUWALIA)

Memo No. CC/Vig/II-10/87-88/ 3212-15 dated, 26th Oct. '99.

Copy to :

1. Member (L) CBDT for information.
2. Director of Income-Tax (Vigilance) New Delhi for information.

Acclered
RS
(J.S. AHLUWALIA)

ANNEXURE — 0

आयकर आयुक्त

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तार : आयकर
दूरभाष कार्यालय : 226918
आवास : 223698
Telephone { Office: 226918
Res. : 223698

पी. वा. न. 20, शिलांग - 793001
COMMISSIONER OF INCOME-TAX

Post Box 20, Shillong - 793001
(MEGHALAYA)

V. TOCHHAWNG

D.O.No. R-3/Pt.II/B&S/97-98/ 26155

Date September 24, 1997.

My Dear Ngulhkhon, M

Acquisition of land for the Department at Duliajan has been an achievement to count and this has understandably come through because of your personal interest and efforts.

I congratulate you on this, especially being instrumental in acquiring the plot of land.

With

warm regards

Yours sincerely

(V. TOCHHAWNG)

To
Mr. N. Lhungdim
Addl. Commissioner of Income-tax,
Dibrugarh Range,
DIBRUGARH.

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ANNEXURE - P

D.O. No. CC/Vig/II-10/87-88/ 3211

GOVERNMENT OF INDIA

CHIEF COMMISSIONER OF INCOME-TAX,

(Bihar, Orissa & North Eastern Region)

CENTRAL REVENUE BUILDING, BIRCHANDPATEL MARG, PATNA-110001

CAMP - DIBRUGARH

Dated, Dibrugarh, the 26th October, 1999.

J.S. Ahluwalia,

Dear Shri

Sub:- Departmental proceeding against Sri N. Lhungdim, Addl. Commissioner of Income-Tax, Dibrugarh Range, Dibrugarh – regarding –

Kindly refer to Directorate memorandum F. No. C-14011/8/96 – (V & L), dated, 7.8.99 and the submission of Sri Lhungdim, dated, 18.9.98 on the subject mentioned above.

In my separate D.O. No. CC/Vig/II-10/87-88/ 3212-1 dated 26th October, 99 addressed to member (P&V) and copy of which was endorsed, I had requested that on the basis of the inquiry report submitted on 22nd Oct. '97 and the submissions of Sri Lhungdim, submitted on 18th Sept. '98, the proceedings against the Officer are required to be dropped. The only fault of the Officer is that he had acted in contravention of the Board's standing instruction that the refund orders should be sent by registered post, but on the basis of evidence available no malafide intention can be attributed to him. On the date on which Sri H. Lalanpua and Sri J. Anthony met the Officer and requested that the refund orders may be handed over to them, the Assessing Officer had already processed the returns and refunds had been calculated and the refund orders were about to be sent by registered post. The intervention of Sri Lhungdim had merely expedited the encashment of refund orders. Had Sri Lhungdim not intervened, the refund would have been encashed and a loss would have occurred to Government Exchequer on account of system failure. At best Sri Lhungdim can be warned to be careful and not to go against the spirit of Board's instructions even for improving public relations of the department. It is interesting to note that Sri Lhungdim was denied promotion in Boards order No. 121 of 1997 (F. No – A 32011/6/97 – Ad-VI dated, 13th Sept. '97 on the ground that his conduct was responsible for the loss of Rs. 1,60,602 suffered by State Exchequer due to issue of refund orders to Shri H. Lalanpua and J. Anthony. Near about that date, CIT, Shillong vide his letter dated 14th Sept. '97 appreciated the conduct of the Officer for saving expenditure of Rs. 25 lakhs by personally requesting OIL INDIA LTD. to provide land for construction of Office without the need to make any payment. A copy of the letter written by CIT, Shillong is enclosed for ready reference.

Keeping in view the submissions made above and in my D.O. to Member (P&V) (copy of which was endorsed to you), I shall be grateful if departmental proceedings against the Officer are expedited and he is exonerated from the alleged misconduct and is granted promotion to the cadre of Commissioners from the date his junior Shri L. Nampui became Commissioner by Boards order No. 121, dated 13th Sept. '97.

With

Yours

(J.S. AHLUWALIA)

Sri N.B Singh
Director of Income-Tax (Vigilance)

Memo No. CC/Vig/II-10/87-88/ _____

Copy to :-

1) The Commissioner of Income -Tax, Shillong, for information.

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S/C

(J.S. AHLUWALIA)

ANNEXURE - Q 83
22a - 1

F. No. Esst-1/E-195/99-2000/ 187
OFFICE OF THE
ADDL. COMMISSIONER OF INCOME-TAX,
RANGE - DIBRUGARH.

Dated: Dibrugarh, the 1st May 2000.

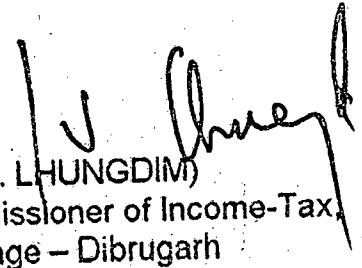
To
The Commissioner of Income-Tax,
Aayakar Bhawan,
Shillong-793 001.

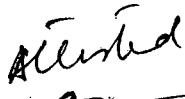
Attn:- Shri S. Kharpor, DCIT (Head Quarter)

Sub:- Representation for expeditious disposal of departmental proceedings under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rule, 1965 and also promotion as Commissioner of Income Tax
- Regarding - Forwarding thereof -

I am submitting herewith a representation by me to the Chairman, Central Board of Direct Taxes for expeditious disposal of departmental proceedings and also for promotion as Commissioner of Income-Tax in triplicate. I would like to request you to kindly forward to the higher authorities concerned with a request for early disposal and also for promotion to the post of Commissioner of Income-Tax at the earliest convenience.

Encl:- As stated above.


(N. L. HUNGDIM)
Addl. Commissioner of Income-Tax
Range - Dibrugarh


S. Kharpor

ANNEXURE - R 84

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Government of India : Ministry of Finance
Department of Revenue
OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX
"Saikia Commercial Complex" : (2nd Floor)
G. S. Road : "Sreenagar" : Guwahati - 781 005

F.No.Per-26/NL/CCIT/GHY/2000-2001/

July 09, 2000.

12,

To
The Chairman,
Central Board of Direct Taxes,
NEW DELHI.

Sir,

Sub :- Representation of Shri N. Lhungdim,
Addl.Commissioner of Income-tax,
Dibrugarh for consideration of his case
for promotion as C.I.T. -
Forwarding of -

The representation dated 29-04-2000 submitted by Shri N. Lhungdim, Addl. CIT, Dibrugarh, addressed to the Board, is forwarded herewith. The representation speaks for itself. His request may kindly be considered sympathetically, so that he can get his due promotion without further delay.

Yours faithfully,

Sd/-

(M. S. THANVI)

Chief Commissioner of Income-tax
Guwahati

M. S. THANVI
Enclo. :-
As stated above.

Memo No.Per-26/NL/CCIT/GHY/2000-2001/ 2001-02

June 09, 2000.

12,

Copy to :-

1) The Commissioner of Income-tax, Post Box No.20, Shillong - 793 001, with reference to his letter No.VIG-23/CON/CT/93-94/Pt.III/135 dated 09-05-2000.

✓ 2 Shri N. Lhungdim, Addl.CIT, Dibrugarh Range, C.R.Building, Dibrugarh.

A. M. SANGMA
(A. M. SANGMA)

Addl.Commissioner of Income-tax, Hqrs.
for Chief Commissioner of Income-tax
Guwahati

A. M. SANGMA
Anil

CCIT GHY

205. 85
 F.No.C-14011/8/96-V&L
 Government of India -
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes

By Speed Post

New Delhi, the 14th September, 2001.

ORDER UNDER RULE 15 OF THE CCS(CCA) RULES

In the case of Shri N. Lhungdim, Addl. Commissioner of Income Tax disciplinary proceedings for major penalty were initiated under Rule 14 of the CCS(CCA) Rules. The Memorandum of charge dated Ex. 4/96 contained the following article of charge :-

Article - I :-

“ Shri N. Lhungdim, while posted and functioning as Deputy Commissioner, Shillong Range, Meghalaya, during 1989, failed to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes contained in Board's letter F.No.212/753/79-ITA-II dated 9.10.1979 and reiterated in Instruction No.1530 dated 16.10.83 which state that all refund orders should be sent by registered post only. He passed orders contrary to the letter and spirit of the above mentioned circulars by directing the handing over of refund orders amounting to Rs.62582/- and Rs.98,020/- to Shri H. Lalanpuia and Shri J. Anthony respectively, the alleged assessee, who turned out to be bogus, thereby putting the state exchequer to a loss of Rs.1,60,602/- He thereby showed lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS(Cconduct) Rules, 1964.”

2. Shri N. Lhungdim denied the imputation of misconduct. He however admitted that he had given instructions in writing to the Assessing Officer to handover refund orders to the assessee which was not in conformity with the instructions of CBDT. Since Shri Lhungdim had denied the charges an oral inquiry was instituted. The Inquiry Officer vide his report dated 20.10.97 held the Article of charge as not proved due to the following reasons :-

“ During the course of hearing and cross examination of witnesses and inspection of documents produced before me, it appears that nothing could be inferred that Shri Lhungdim has malafide intention of defrauding the revenue or causing loss to the Govt. Exchequer. It is an undenied fact that Shri Lhungdim has acted in contravention of the Board's standing instruction, while issuing instruction to handover the refund voucher to the claimants by hand. However, this also appears to be an action arising out of his desire to keep the good image of the Department, in its dealing vis-à-vis the public.”

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3. The Inquiry Officer's finding were not found acceptable and the Disciplinary Authority held Shri Lhungdim guilty of misconduct. The reasons for disagreement with the Inquiry Officer together with a copy of Inquiry report were forwarded to Shri Lhungdim, giving him an opportunity to represent against the findings of the Disciplinary Authority. On analysis of Shri Lhungdim's representation it was seen that he had not mention any new fact and had repeated the submission made by him earlier. After considering his representation the Disciplinary Authority took a tentative decision to hold the article of charge as proved and referred the case to the UPSC for their advice.

4. The UPSC vide letter dated 26.6.2001 (copy enclosed) has tendered their advice. The Commission have observed that there is ample evidence on record, in addition to Shri Lhungdim's own admission that he had issued written orders through the ITO to hand over the refund orders to the concerned assessee personally, instead of sending them by registered post. The two individuals to whom the refund orders were handed over were subsequently found to be bogus and fictitious assessee. According to the UPSC Shri Lhungdim issued instructions to handover the refund orders by hand in contravention of the Board's instruction and that to assessee whom he did not know personally. The action of Shri Lhungdim has put the Govt. to a loss of Rs. 1.60 lakhs. The Commission has advised that the ends of justice would be met in this case if a penalty of censure is imposed upon Shri N. Lhungdim, Addl. CIT. Not to be countersigned

5. After taken into consideration all the relevant facts and circumstances of the case the President is pleased to accept the advice of the UPSC and impose a penalty of "Censure" on Shri N. Lhungdim, Addl. CIT.

(By order and in the name of the President)

(Sandip Garg)

Under Secretary to the Govt. of India.

Encl. : A copy of the UPSC's advice conveyed vide their letter F.3/275/99-S.I dated 26.6.2001.

✓ Shri N. Lhungdim,
Addl. Commissioner of Income Tax,
Dibrugarh.
(Through the Chief Commissioner of Income Tax, Guwahati)

Copy to :

1. CCIT, Guwahati alongwith the copy of Sh. N. Lhungdim.
2. The DGIT(Vigilance), New Delhi.
3. The Union Public Service Commission, wrt their advice received vide their letter No. F.3/275/99-S.I dated 26.6.2001.
4. The D.S. AD. VI/AD-VI-A/DT(Per), CBDT, New Delhi.
5. The Secretary, CVC wrt their O.M. No. W/ITX/74 dated 20.2.98.
6. Office Copy.

(Sandip Garg)

Under Secretary to the Govt. of India.

Attested

ANNEXURE — T

CONFIDENTIAL

F.3/275/99-SI

DT: 26.6.2001

The Secretary to the GOI
Ministry of Finance
(Department of Revenue)
(Central Board of Direct Taxes)
First Floor, Dayal Singh Public Library
1, Deon Dayal Upadhyaya Marg
New Delhi – 110002

(Attention : Shri B.S. Meena, Joint Secretary – Admin)

Subject : Disciplinary proceedings against Shri N. Lhungdim
Addl. CIT.

Sir,

I am directed to refer to your letter No.BP/G/926/Vig/95-96 dated 22.12.2000 on the subject mentioned above and to communicate the advice of the Commission as follows:

2. The Disciplinary Authority vide their memo No. C-14011/8/96-V&L dated 29-0-1996/03-04-1996 conveyed to Shri N. Lhungdim DCIT, Shillong that it was proposed to hold an Inquiry against him under Rule 14 of the CCS (CCA) Rules, 1965 and he was called upon to answer the following article of charge:-

Article of Charge

“ Shri N. Lhungdim, while posted and functioning as Deputy Commissioner, Shillong Range, Meghalaya, during 1989, failed to maintain absolute integrity and devotion to duty in as much as he violated the instructions of Central Board of Direct Taxes contained in Board's letter F.No.212/753/79-ITA-II dated 09-10-

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1979 and reiterated in Instruction No.1530 dated 18-10-1983 which state that all refund orders should be sent by registered post only. He passed orders contrary to the letter and spirit of the above mentioned circulars by directing the handing over of refund orders amounting to Rs.62582/- and Rs.98,020/- to Shri H. Lalanpua and Shri J. Anthony respectively, the alleged assessees, who turned out to be bogus, thereby putting the state exchequer to a loss of Rs. 1,60,602/- He thereby showed lack of Integrity, lack of devotion to duty and conduct unbecoming of a Government Servant and thereby contravened Rule 3(1)(i),3(1)ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964."

3. Annexures II, III and IV to the afore-said memo contained a statement of the imputation of the misconduct/misbehaviour on the part of the CO in support of the article of charge against him, a list of documents by which and a list of witnesses by whom, the article of charge was proposed to be sustained against the CO. The CO vide his letter dated 30-04-1998 denied the charge of misconduct levelled against him. An oral inquiry was, therefore, held. The Inquiry Officer in his report dated 20-10-1999 found the CO not guilty. The Disciplinary Authority, however, disagreed with the findings of the Inquiry officer and held the CO guilty of misconduct. The disagreement of the Disciplinary Authority together with a copy of the Inquiry Report was communicated to the CO on 07-06-1998 giving him an opportunity to represent against the findings of the Disciplinary Authority. The representation dated 18-09-1998 submitted by the CO was received and duly considered. The Disciplinary Authority, after taking into account the report of the Inquiry Officer, the records of the inquiry, the representation submitted by the CO and all other relevant facts and circumstances of the case, held the CO guilty of misconduct and has taken the provisional decision to impose a suitable penalty upon the CO. The case records have been forwarded to the Commission for their advice as to the final orders to be passed by the President in this case.

4. The case records have been examined by the Commission carefully and their observations are as under:

According to the Disciplinary Authority, two returns of income in the names of Shri H. Lalanpua of Happy Valley, Shillong and Jonthui Anthony of Assam Rifles Colony, Nangstrin, Shillong were filed in the charge of ITO-Ward-I, Shillong. These were not supported by any claim

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of refund as required u/s 239 of the Income-tax Act, 1961 read with Rule 41 of the Income-tax Rules, 1962. The returns are assessed u/s 143(1) of the Income-tax by Shri B R Purkayastha, ITO.Ward-I, Shillong and he also issued IT refund Order No.B/6-252922 dated 14-02-18-1989 for Rs.62582/-and No.B/6-252918 dated 10-02-1989 for Rs.98,020/- for the assessment years 1986-87,87-88,88-89 and 1986-87,87-88,88-89 respectively in the names of the afore-said two individuals. Contrary to directions contained in Board's letter F.No.212/753/79/ITA-II dated 09-10-1979 and reiterated in Instruction No.1530 dated 16-10-1983, the CO ordered Shri B R Purkayastha, ITO.Ward-I vide letter No. A-35/88-89/2853 dated 10-02-1989 and No. A-35/88-89/2890 dated 14-02-10989 to hand over the IT refund orders to the concerned assessee personally instead of sending them by registered post. The proper procedure in respect of issue of refund orders was not followed and the refund orders were handed over to the two individuals who were subsequently found to be bogus and fictitious assessee. It was also found that the afore-said returns were accompanied by bogus TDS certificates and in actual fact, there was no such TDS nor any such amount was deposited to the credit of the Government. Thus the exchequer was defrauded to the extent of RS. 1,60,602/-through bogus claim of refund. This was facilitated by the instructions dated 10-02-1989 and 14-02-1989 issued by the CO.

6. The CO denied the imputation of misconduct. He, however, admitted having given instructions to the assessing officer to hand over the refund orders to the assessee which were not in conformity with the instructions of CBDT requiring refund orders to be sent by registered post only. He stated that the said assessee had come to him and pleaded that if the refund orders were sent by post, would take a very long time to reach them, but they needed the money early as their labour payments had become overdue and early payments to the labourers were necessary because of certain festivals and urgent personal expenses. They also requested the CO that since they were in Shillong, they could be allowed to take refund orders in person. The CO further stated that he accepted the request of the assessee as a measure of good public relation. He also stated that the spirit behind the instruction issued by CBDT to send refunds by registered post is to minimise or eliminate complaints against departmental officials. In a field situation, however, there are practical difficulties which do not allow the instructions to be followed literally as it causes problems especially in the hill areas of North-East

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where communication is still in bad shape and postal delays are common. He adds that it is completely a different matter that the concerned ~~assessees~~ happened to be fictitious. He also pointed out that his instruction to hand over the refund orders did not change the status of the refunds, which, in any case, were to be issued to the concerned ~~assessees~~.

7. The Inquiry Officer has observed that the oral and documentary evidence adduced in the inquiry would indicate that in issuing the orders to hand over the refund vouchers to the parties in person, the CO had no malafide intention of defrauding the revenue or causing loss to the Government exchequer. It is an undenied fact that Shri N. Lhungdlim has acted in contravention of the Board's standing instruction, while issuing instruction to hand-over the refund voucher to the claimants by hand. However, this also appears to be an action arising out of his desire to keep up the good image of the department, in its dealings vis-à-vis the public. The IO has held the charge against the CO as not proved. "The Disciplinary Authority, however, disagreed with the findings of the Inquiry Officer. According to the Disciplinary Authority, the findings of the IO are not acceptable because the CO did order handing over of the refund orders across the table which has not been denied by anyone, including the officer in violation of the Departmental instructions to the contrary. Further, the CO did not know the ~~assessees~~ and, therefore, his direction to hand over the refund orders personally to such strangers amounted to an act of Indiscretion betraying lack of devotion to duty.

8. The Commission observe that a perusal of the records reveals that Income Tax returns were filed in the names of Sh. Lalanula, Shillong and Sh. Anthony, Shillong. These returns were not supported by any claim for refund as required by Law. The refund orders for the aforesated amounts for the year 1986 to 1989 in both the cases were issued by the concerned Income Tax Officer. There are clear instructions issued by CBDT vide file No.212/753/79/ITA-2 dated 9/10/79 and instructions no.1530 dated 16.10.1983 stating that all the IT refund orders should be sent by Registered Post only. However, the CO himself admitted that he had given written instructions directing the Assessing Officer to hand over refund orders to ~~assessees~~ in person, as ~~assessees~~ requested personally to hand over the refund orders, instead of sending them by Registered Post as it would take long time for them to receive these orders and they are required to

Attached

make payments for the labourers who have been pressing for early payment. Under these circumstances, he had permitted issuing the refund orders by hand to maintain good public relations. Further, the CO also maintained that it is not always possible to follow the Board's instructions due to many practical difficulties in the North-Eastern States, where communications are bad and postal delays are quite common.

9. The Commission further observe that there is ample evidence on record, in addition to CO's own admission, that he had issued written orders through the ITO to hand over the IT refund orders to the concerned assessee personally, instead of sending them by Registered Post. What really added to the misery of the CO was that the refund orders were handed over to the two individuals who were subsequently found to be bogus and fictitious assessees. The argument of the CO that there are considerable postal delays in the North-Eastern states, does not hold any water, as the assessees happened to be from Shillong itself where the CO was posted and where the refund orders were to be dispatched. The CO's contention that he has ordered for personal delivery of the refund orders to keep up the good image of the department in public eye also appears to be an afterthought, as such refunds were not ordered to be delivered in person in any other cases. To cap it all, CO admitted that he did not know the assessees personally and who unfortunately for the CO turned out to be bogus. It is thus clear that the CO issued instructions to hand over the refund vouchers by hand in contravention of the Board's instructions, that too for the assessees, whom he did not know personally, who he had no means for verifying whether they were genuine parties or bogus imposters and who, in fact, turned out to be bogus claimants, thereby putting the Government to a loss of Rs. 1.60 lakhs. The Commission, therefore, hold the charge of misconduct as proved against the CO.

10. In the light of their findings as discussed above, and after taking into account all other aspects relevant to the case, the Commission are of the view that the ends of justice would be met in this case if the penalty of "Censure" is imposed upon Shri N. Lhungdim, Addl. CIT. They advise accordingly.

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11. The case records, as per the list, are enclosed.
12. A copy of the order passed in this case may be sent to the Commission for perusal and record.

Yours faithfully,

JKP
(G. Krishna Pillai)
Under Secretary

Encl.

1. Case records as per list
2. Two spare copies of the Advice Letter

Attached
to

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

O.A. No. 252 OF 2001

Shri N. Lhungdim

-vs-

Union of India & Ors.

- And -

In the matter of:

Addl. Written Statements submitted by the Respondents

The Written Statements of the above noted respondents are as follows:

1. That with regard to the statements made in Para 1 to 3 and 4.1 to 4.iii, of the application, the respondents beg to state that the matter of records.
2. That with regard to the statements made in Para 4.iv, of the application, the respondents beg to state that the officer has been charged under the general Rule 3 of the CCS(Conduct) Rules ,1964 and the charges levelled against him are looked into.
3. That with regard to the statements made in Para 4.v to 4.xiii, of the application, the respondents beg to state that the matter of records.
4. That with regard to the statements made in Para 4.xiv, of the application, the respondents beg to state that the I.O. after concluding the

hearing submitted the report on 22-10-1997 to the Disciplinary Authority {Director(V&L), Central Board of Direct Taxes, New Delhi} who is to take a final decision on merit of the case. Promotion order to the rank of CIT was passed on 13-09-1997 which was much earlier to the Inquiry report submitted by the I.O. The findings of the I.O. do not conclude the proceedings and till the proceeding is finally concluded by the Disciplinary Authority, the DPC assess only the suitability for promotion of the officers/officials to the higher post. There is, therefore, nothing illegal, unjust, unreasonable, unconstitutional or any infringement of fundamental rights in the instant case as the Disciplinary Authority has passed the penalty of Censure u/r 15 of CCS(CCA) Rules vide F.No. C-14011/8/96-V&L dated 14-09-2001 which is again acted as per the procedures established by law.

Photocopy of penalty order u/r 15 dated 14.9.2001 vide

Annexure S of amended O.A.

5. That with regard to the statements made in Para 4.xv, of the application, the respondents beg to offer no comments.

6. That with regard to the averments made in Para 4.xvi, of the application, the respondents beg to state that it is an admitted fact that the applicant issued directions for handing over the refund orders to the assessees across the table and these directions were violative of the Board's instructions on the subject. The I.O. chose to exonerate the applicant despite the undenied fact is in itself a good ground for disagreement with the I.O.'s findings by the Disciplinary Authority and this has been clearly brought out in Para 3 of Memorandum dated 07-08-1998. The fact that the UPSC, which is an

independent Advisory Body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O's findings.

It is, therefore, denied that the D.A. disagreed with the Inquiry Report to deprive the applicant from getting his due promotion. The D.A. has acted according to his own powers and functionary. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry Report of the I.O. by the Disciplinary Authority.

Photocopy of Board's instruction No.1530 dated 16.10.1983

enclosed as per Annexure A1 of this Statement.

7. That with regard to the statements made in Para 4.xvii, of the application, the respondents beg to offer no comments.

7A. As regards the averments made in Para 4.xviii the respondents would reiterate what has been submitted against Para 4.xvi of the application in Para 6 of the Written Statement of the respondents. Hence, there is no violation of the provisions of Art. 14, 16, 19(1)(g) and 21 of the Constitution as alleged.

7B. As regards the averments made in Para 4.xix, the respondents beg to submit that all the comments/submissions made by the applicant in his letter dated 18-09-1998 were examined and taken into consideration before referring the matter to the UPSC for their advice.

Further we may add that the case quoted by the applicant applies only to cases where quasi-judicial functions are involved. However, the directions of the superior to ITO concerned to issue refund orders in violation of the relevant instructions cannot be considered as a quasi-judicial function.

8. That with regard to the statement made in Para 4.xx, of the application, the respondents beg to state that it is a fact that the applicant received letter of appreciation from the Commissioner of Income-tax, Shillong for taking personal interest in acquiring land for Income-tax Department at Diliajan. But the initiation of Disciplinary Proceedings against the applicant by the issue of Memorandum of charge dated 29-03-1996/03-04-1996 is on different footing altogether and has to be disposed of as per prescribed procedure under CCS(CCA) Rules.

Photocopy of Memorandum of charge dated 29.03.96/03.04.96
vide Annexure A of amended O.A.

9. That with regard to statements made in Para 4.xxi, of the application, the respondents beg to offer no comments.

10. That with regard to statements made in Para 4.xxii, of the application, the respondents beg to state that the matter of records.

10.1 That with regard to the statements made in para 4 (xxii)a of the application, the Respondents beg to state that the matter of records.

10.2 That with regard to the statements made in para 4 (xxii) b of the application, the respondents beg to state that since the Disciplinary Authority did not agree with the findings of the I.O., it had sought the advice of the Union Public Service Commission (UPSC) which is an independent Advisory Body to decide the case in a befitting manner. Since the process of obtaining necessary advice from U.P.S.C. took considerable time, the order of penalty u/r 15 of CCS (CCA) Rules, based on the advice of the UPSC, was passed only on 14.9.2001 i.e. incidentally at a date later than filing of O.A. 252/2001 by the applicant.

It is, therefore, denied that the D.A. disagreed with the Inquiry Report only to deprive the applicant from getting his due promotion. The Disciplinary Authority has acted according to his own powers and functionary and is at liberty to seek advice from UPSC at any time. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry Report of the Inquiry Officer by the Disciplinary Authority.

10.3 That with regard to the statement made in para 4 (xxii) c of the application, the respondents beg to state that a Government officer/official has to exercise extreme caution while issuing Refunds of huge amounts and it shall not be in the fitness of things to ignore important checks before issuing huge refunds just in order to keep up the good image of the Department. Maintaining excellent public image cannot be at the cost of disregarding important instructions thereby resulting in huge loss to the Government exchequer. It is for these very reasons the Disciplinary Authority disagreed with the findings of the Inquiry Officer. The Disciplinary Authority has every

right to agree or disagree with the findings of the Inquiry officer depending upon the circumstances of the cases. There is, therefore, nothing illegal, unjust or unreasonable for disagreement with the Inquiry Report of the Inquiry Officer by the Disciplinary Authority.

10.4 That with regard to the statement made in para 4 (xxii) d and 4 (xxii) e of the application, the respondents beg to state that the UPSC, an independent Advisory Body, has tendered its advice to impose penalty after considerable application of thought and has rightly pointed out that the applicant for no genuine reason has instructed his subordinate Officer to hand over the Refund Vouchers personally to the assesses instead of sending them by Registered Post in contravention with Board's instruction. The flimsy plea taken by him as regards postal delay also does not hold water since Refund vouchers were to be despatched from Shillong, the applicant's Headquarters to the assessees at Shillong. The UPSC has also precisely pointed out that the applicant in a bid to boost the image of the Department had taken no precautionary measure while instructing for personal delivery of Refund Vouchers to persons totally unknown to him. Even ordinary prudence demands that suitable measures have to be taken before issuing huge refunds and handing them over personally to strangers and that too in contravention of Board's existing instructions.

It is, therefore, denied that the advice of the UPSC was not based on concrete findings and only in order to deprive the applicant from getting his due promotion to the rank/cadre of CIT. There is, therefore, nothing illegal, unjust or unreasonable about the advice of the UPSC and it is not violative of Articles 14,19(1)(f) and 21 of the Constitution of India.

10.5 That with regard to the statement made in para 4 (xxii) f of the application, the respondents beg to state that the order of penalty u/r 15 was sent directly to the applicant by the Disciplinary Authority by Speed Post and a copy of the same has again been sent by FAX and Speed Post from this office on 1.10.2001 vide this office letter No. CAT-11/NL/VIG/CC/414 dated 1.10.2001. Hence the contention of the applicant that he got a copy of the order on his visit to CCIT,Guwahati's office is incorrect and has no merit.

Photocopy of this office letter No. CAT-11/NL/VIG/CC/414 dated 1.10.2001 is enclosed as per Annexure A2 of this Statement.

10.6 That with regard to the statement made in para 4 (xxii) g of the application, the respondents beg to state that the order imposing penalty u/r 15 of the CCS(CCA) Rules was based on the facts of the case and advice of the UPSC. It is, therefore, denied that there is nothing illegal, unjust, improper, unreasonable or arbitrary about the order and it is not violative of any Article of the Constitution.

10.7 That with regard to para 4 (xxii) h of the application, the respondents beg to state that as per existing Departmental Instructions the currency period of "Censure" penalty is one year reckoning from the date of passing of order, as in the instant case. Non-mentioning of period of penalty in the order proper cannot make it illegal unjust, improper, unreasonable, arbitrary or being violative of the Constitution of India.

11. That with regard to statements made in Para 4.xxiii, of the application, the respondents beg to state that the procedure towards finalisation of the Disciplinary Proceedings are done with considerable thought having been given by various hierarchy in the Department as well as the Advisory bodies connected with such matters. Since the inquiry proceedings have been initiated, it is only reasonable and proper that the due process of law must be allowed to be completed.

There is, therefore, no ground for any cause of grievance for the applicant that the due consideration of relevant DOP&T O.M. No. 22011/4/91-Estt(A) dated 14-09-1992 is overlooked.

Photocopy of DOP&T's O.M.No.22011/4/91-Estt.(A) dated 14.9.1992 vide Annexure H of amended O.A.

12. That with regard to the statements made in Para 4.xxiv, of the application, the respondents beg to reiterate what has been submitted against Para 4.xvi of the application in Para 6 of the Written Statement of the respondents.

13. That with regard to the statements made in Para 4.xxiva, of the application, the respondents beg to state that the charges levelled against the officer/applicant are examined at various stages by the Disciplinary Authority and references to the Advisory Bodies, whenever necessary, are made for further advice as per the procedure prescribed to conclude the proceedings fast. It is, therefore, denied that there is delay in disposing of the proceedings rather than the procedural time it reasonably takes.

14. That with regard to the statements made in Para 4.xxivb, of the application, the respondents beg to state that to finalise the proceedings, due process of law must be completed and the procedural delay cannot be considered to justify the applicant's grievance.

15. That with regard to the statements made in Para 4.xxv to Para 4.xxvi, of the application, the respondents beg to offer no comments.

16. That with regard to the statements made in Para 4.xxvii, of the application, the respondents beg to state that the nature and circumstances of the case are being investigated. The consideration for ad-hoc promotion to the applicant may follow on the basis of result of investigation and as per the prescribed guideline.

17. That with regard to the statements made in Para 5-A, of the application, the respondents beg to state that it is denied that the Memorandum dated 07-08-1998 has been issued to deprive the applicant from getting his due promotion. This has been issued on facts available on records and after application of mind. The applicant's request for quashing of the Memorandum dated 07-08-1998 is devoid of any merit in view of the facts brought out hereinbefore and is liable to be rejected.

Photocopy of Memorandum dated 07-08-1998 vide
Annexure K of amended O.A.

18. That with regard to the statements made in Para 5-B, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxiii above.

19. That with regard to the statements made in Para 5-C, of the application, the respondents beg to reiterate what has been stated herein before vide Para 6 that it is an admitted fact that the applicant issued direction for handing over the refund orders to assessees across the table and these directions were violative of the Board's instructions on the subject. The I.O. chose to exonerate the applicant despite this undenied fact is in itself a good ground for disagreement with the I.O.'s findings and this has been clearly brought out in Para 3 of the Memorandum dated 07-08-1998. The fact that the UPSC, which is an independent advisory body, has also found the applicant guilty of misconduct on this account itself shows that the Disciplinary Authority had good grounds to differ with the I.O.'s findings.

20. That with regard to the statements made in Para 5-D, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxivb above.

21. That with regard to the statements made in Para 5-E, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxiii above.

22. That with regard to the statements made in Para 5-F, of the application, the respondents beg to state that the Annual Confidential Reports are confidential in nature and it is further clarified that only the adverse entries in the Confidential Reports can be communicated to the official concerned. But as it appears that he got access over his Annual Confidential Report, it can simply be said that a good work, if any, is always appreciated and it does not provide any immunity from a bad work.

22A. That with regard to the statements made in Para 5-G, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.2.

22B. That with regard to the statements made in Para 5-H, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.3.

22C. That with regard to the statements made in Para 5-I, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.4.

22D. That with regard to the statements made in Para 5-J, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.6.

22E. That with regard to the statements made in Para 5-K, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.7.

22F. That with regard to the statements made in Para 5-L, of the application, the respondents beg to submit the comments what have already been made against the foregoing paragraph 10.4.

22G. That with regard to the statements made in Para 6 and 7, of the application, the respondents beg to state that the paras matter of record.

23. That with regard to the statements made in Para 8-A, of the application, the respondents beg to state that the Memorandum dated 07-08-1998 is a part of the inquiry proceedings and was issued after considering in depth by the Departmental Disciplinary hierarchy. Hence, there is no ground to set aside and quash the Memorandum in the mid way of the ongoing process. Also refer the comments at Para 5-A above.
24. That with regard to the statements made in Para 8-B, of the application, the respondents beg to offer no comments.
25. That with regard to the statements made in Para 8-C, of the application, the respondents beg to submit the comments what have already been made against the foregoing Para 4.xxiva above.
26. That with regard to the statements made in Para 8-D, of the application, the respondents beg to state that the nature and circumstances of the case have been investigated by the CBI and the Disciplinary Proceedings have been started against the applicant thereafter with the issue of Memorandum of charge sheet dated 29-03-1996/03-04-1996 on the basis of the CBI's findings and facts of the case.
27. That with regard to the statements made in Para 9, of the application, the respondents beg to offer no comments.

VERIFICATION

I, Shri GOURA NATH HATU SHING.....

being authorised do hereby solemnly affirm and declare that the statements made in this Written Statement are true to my knowledge and information and I have not suppressed any material fact.

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


Declarant

*Joint Commissioner of Income-tax, Vigilance.
Or, the Chief Commissioner of Income-tax.
Guwahati.*

Instruction No. 1530

F. No. 212/1252/83- ITA. II
Government of India
Central Board of Direct Taxes

New Delhi, the 16th Oct. 1983

To

All the Commissioners of Income-tax.

Sir,

Subject:- Issue of refund orders - Instructions
regarding -

The Board have in its letter dated 9th October, 1979 issued from file No. 212/753/79-ITA. II conveyed its decision, inter alia, that all refund orders should be sent to the assessee by Registered Post acknowledgement due within seven days of the passing of the order resulting in the refund. The corresponding advice notes in cases of refunds of Rs. 1,000/- and above are also required to be sent to the banks simultaneously. The Board have been receiving complaints that these instructions are not being followed and refund orders continue to be despatched through notice servers. The Board desire to reiterate their earlier instructions on the subject and to say that it should be ensured at all levels that refund orders are sent by Registered Post acknowledgement due only.

2. These instructions may please be brought to the notice of all the officers working under your charge.
3. Hindi version is on the reverse.

Yours faithfully,

M.G.C.Goyal

(M. G. C. Goyal)
Under Secretary, Central Board of Direct Taxes.

Copy forwarded to:-

1. P. S. to Chairman, P. S. to Member (IT), Member (L), Member (Inv.), Member (S&T), Member (R&A) and Member (WT&J).
2. All Directors of Inspection.
3. All Registrars of Income-tax Appellate Tribunals.
4. Comptroller and Auditor General of India (40 copies).
5. Bulletin Section, Directorate of Inspection (PS&PR), 6th floor, Mayur Bhavan, New Delhi (10 copies).
6. Statistician (Income-tax) - (6 copies).
7. Director of Inspection (O&MS), Aiwan-e-Ghalib, Mata Sundri Lane, New Delhi (6 copies).
8. Director of Inspection (RS&PR), Mayur Bhavan, N. Delhi (6 copies).

Contd... 2/-

~~SPEED POST~~

ANNEXURE-A2

105
26/9

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX
SAIKIA COMMERCIAL COMPLEX, SREENAGAR, G.S. RD.
Guwahati - 781005.

Dated 01.10.01

F.No. CAT-11/NL/VIG/CCI

414

To,
Shri N. Lhungdim,
Addl. Commissioner of Income-tax,
Dibrugarh.

Sir,

Sub:- Forwarding of order u/r 15 of the CCS(CCA) Rules, 1965.

I am directed to forward the above order contained in Board's F.No. C-14011/8/96-V&L, dt. 14-9-2001 along with a copy of UPSC's advice contained in their letter F-3/275/99-S-1, dt. 26-6-2001 for necessary action at your end.

Yours faithfully,

(G. HANGSHING),

Joint Commissioner of Income-tax, Hqrs..
For Chief Commissioner of Income-tax,
Guwahati.

Dated

01.10.01

Memo No. CAT-11/NL/VIG/CCI

415

Copy forwarded to the Chief Commissioner of Income-tax, Shillong along with copies of order u/r 15 of the CCS(CCA) Rules, 1965 and UPSC's advice as stated for favour of his kind information and necessary action.

(G. HANGSHING),

Joint Commissioner of Income-tax, Hqrs.
For Chief Commissioner of Income-tax,
Guwahati.

61C

Afternoon - To maintain good public image
Assessee did not know assessee
personally

Filed by - Shri Nukta Baruah
Advocate
18-12-01

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

AT GUWAHATI.

O.A. No. 252/2001.

Mr. NGULKHOLUND LHUNGDIM

..... Applicant.

Ans F P 36-60

- vs -

22.10.97
EO Examini
Ans J p 67-70

7.8.98
Disc Anning Discren
with E/O -

1. The Union of India.
2. Central Board of Direct Taxes
3. The Director of Income Tax (Vigilance)
4. The Chief Commissioner of Income Tax, Guwahati.
5. The Commissioner of Income Tax, Shillong.
6. The Union Public Service Commission.

..... Respondents.

It is an amount to an
act of Indiscretion
before lack of brech.
K P 71

29-3-96 -

3.4.96

LIST OF DATES :

14.9.2001
Imps order 2 Censu
Ans - # 85-86
2
Reasons ass.
See also
26.6.01
Reasons 2 UP SC
(Commissions Affairs
at the instec 2 Govt Affairs
22.12.2000. See also
Davis

Under Secretary to the Govt. of India, CBDT, Deptt. of Revenue, Ministry of Finance issued a Memorandum enclosing Article of charge and statement of Imputation of misconduct levelling one charge against the applicant that while working as Deputy Commissioner, Shillong Range during 1989 failed to maintain absolute integrity and devotion to duty as much as he violated the instructions of CBDT vide letter dated 9.10.79 reiterated in Instruction No. 1530 dated 16.10.83 that all refund orders should be sent by registered post only. The applicant passed orders contrary to the said instructions directing handing over of refund orders to two assesses, who turned out to be bogus, causing loss of Rs. 1,60,602/- to the state

Exchequer Department

state exchequer.

Para - 4(ii) Page-3

Annexure-A,Page 45.

30.4.96 - Applicant submitted written submissions of defence against Memorandum of charges whereby he denied the charge inter alia stating that he gave the instructions as a measure of good public relation.

Para-4(iii),Page-4

Annexure-B,Page-49.

14.8.96 - Shri V. Tochhwang, Commissioner of Income Tax, Shillong was appointed as Inquiry Authority to enquire into the charges framed against the applicant.

Para -4(v), Page-6

Annexure-C,Page-53.

16.12.96 - Applicant was informed that preliminary Hearing in the Departmental Inquiry would be held on 3.1.97 at Shillong in the office of the Inquiry officer.

Para-4(vi),Page-6

Annexure-D,Page-54.

21.2.97 - Inquiry officer issued the Daily order sheet mentioning that preliminary Hearing was held on that day and the applicant pleaded not guilty and denied the charge and that regular hearing will be held in 2nd week of April, 97.

Para-4(vii),Page-7

Annexure-E,Page-55.

21.2.97 - Applicant submitted Additional written submission in defence against Memorandum of charge inter alia stating that there was no malafide intention in directing the Assessing officer to handover the refund voucher to the assessee personally and his instructions did not in any way facilitated the defrauding of the exchequer.

Para-4(viii),Page-7
Annexure-F,Page-56.

13.9.97 - The Under Secretary to the Govt. of India, Ministry of Finance, Deptt. of Revenue issued the order No. 121 of 1997 whereby 127 nos. of Deputy Commissioner of Income Tax were promoted on purely adhoc basis to officiate in the grade of Commissioner of Income Tax. The names of the 79 persons shown at serial Nos. 49 to 127 in the said order are junior to the applicant. As per seniority position, the name of the applicant should have found place in between P.K. Deb Burman and L. Nampui whose names appear at serial nos. 48 and 49 respectively.

Para-4(ix),Page-8
Annexure-G,Page-61.

14.9.92 - The Ministry of Personnel, Public Grievances and pensions, Govt. of India, Deptt. of Personnel and Training issued the office Memorandum in regard to promotion of Govt. Servants against whom disciplinary/Court proceedings are pending wherein in para-2 it has been stated that DPC shall assess the suitability of the Govt. servants

in respect of whom a charge sheet has been issued and the disciplinary / Court proceedings are pending and the assessment of the DPC will be kept in a sealed cover.

Para-4(x), Page-9

Annexure-H, Page-64.

- The DPC which recommended the cases of 127 Deputy Commissioner of Income Tax considered the case of the applicant and kept the assessment of the DPC in sealed cover.

Para-4(xi), Page-10

25.9.97 - Inquiry officer issued daily order sheet wherein inter alia it has been mentioned that the applicant telephonically informed him that he would not be present in person on that day and requested to consider his written submission already submitted by him.

Para-4(xii), Page-10

Annexure-I, Page-66.

22.10.97 - The Inquiry officer submitted Inquiry Report inter alia stating that it appears that nothing could be inferred that the applicant has malafide intention of defrauding the revenue or causing loss to the Govt. exchequer. Applicants action appears to be arising out of his desire to keep up the good image of the department in its dealing vis-a-vis the public.

Para-4(xiii), Page-10

Annexure-J, Page-67.

7.8.98 - The Director (VIL) of Govt. of India, Ministry of Finance, Deptt of Revenue, CBDT issued Memorandum wherein it is stated that the Disciplinary Authority is not in agreement with the Inquiry officer's Report.

Para-4(xv), Page-12

Annexure-K, Page-71.

There is absolutely no ground or material for disagreeing with the Inquiry Report ~~is withdrawn~~ and as such the disagreement of the Disciplinary Authority with the Inquiry Report is without any basis/foundation and the same is done only to deprive the applicant from getting his due promotion to the rank/cadre of commissioner of Income Tax along with his immediate juniors.

Para-4(xvi), Page-13

9.9.98 - Under secretary to the Govt. of India, Ministry of Finance, Deptt. of Revenue issued order No.126 of 1998 whereby 113 Additional Commissioner of Income Tax were promoted to officiate as Commissioner of Income Tax on regular basis. The 69 Additional Commissioner of Income Tax whose names appear from serial No.45 to 113 in the said order are junior to the applicant. Considering the seniority position, the name of the applicant should have been shown in between P.K. Deb Verman and L. Nampui whose names appear at serial no.44 and 45 respectively.

Para-4, (xvii), Page-13

Annexure-L, Page-72.

18.9.98 - Applicant submitted his comments inter alia stating that the main instructions in the matter regarding granting and delivery of refund vouchers to the assessee have been clearly mentioned in paragraph 16, Chapter-vxii of the office procedure section 13-6 issued by DIRSP, 1965 wherein in paragraph 16(4) it is stated that refund vouchers of over Rs. 5,000/- should be delivered personally, unless the assessee specially asks otherwise, and prayed for dropping all charges against him.

Para-4(xix), Page-14

Annexure-M, Page-75

26.10.99 - The Chief Commissioner of Income Tax (Bihar, Orissa and North Eastern Region) wrote a letter to the Member (P&V), CBDT regarding promotion of the applicant to the cadre of commissioner of Income Tax inter alia stating that due to personal interest taken by the applicant, expenditure of about Rs. 25 lakhs ~~xxxx~~ has been saved, hence he requested to give adhoc promotion to the applicant after expediting departmental proceeding from the date his junior L. Nampui became Commissioner.

Para-4(XX), Page-16

Annexure-N, Page-78.

24.9.97 - Appreciation letter from the Commissioner of Income Tax, Shillong to the applicant because of acquisition of land for the Deptt. at Duliajan for personal interest of applicant.

Para-4(XX), Page-16

Annexure-O, Page-81.

26.10.99 - The Chief Commissioner of Income Tax (Bihar, Orissa & NER) wrote a letter to the Director of Income Tax (Vigilance) reiterating the contents of his letter dated 26.10.99 written to the Member (P&V) CBDT.

Para-4(xxii), Page-17

Annexure-P, Page-82

29.4.2000 - Applicant submitted a representation before the Chairman, CBDT for expeditious disposal of his Departmental proceedings and for promotion to the Cadre of Commissioner of Income Tax.

Para-4(xxii), Page-18

1.5.2000 - Forwarding letter of the applicant whereby he forwarded the representation dated 29.4.2000 to the Commissioner of Income Tax, Shillong for forwarding the same to the higher authorities concerned with a request for early disposal and promotion to the post of Commissioner of Income Tax at the earliest.

Para-4(xxii), Page-18

Annexure-Q, Page-83.

12.7.2000 The Chief Commissioner of Income Tax, Guwahati forwarded the said representation dated 29.4.2000 to the Chairman, CBDT requesting him to consider the request of the applicant so that he could get his due promotion without further delay.

Para-4(xxii), Page-18

Annexure-R, Page-84

14.9.2001 - Order passed by Under ~~Second~~ Secretary to the Govt. of India Ministry of Finance, Deptt of Revenue, CBDT during the pending of this O.A. No.252/01 whereby penalty of 'Censure' is imposed on the applicant on the basis of the advice tendered by the UPSC vide letter dated 26.6.2001.

Para-4(xxii)a,Page-19
Annexure-5,Page-85.

26.6.2001 - Letter of the UPSC regarding disciplinary proceeding against the applicant ~~tending~~ tendering imposition of penalty of 'Censure'.

Para-4(xxii)a,Page-19
Annexure-T,Page -87

Inquiry officer considered all aspects of the matter and came to the findings that nothing could be informed that the applicant had malafide intention of defrauding the revenue or causing loss to the Govt. ~~exchequer~~ and hence exonerated him of all the charges vide his Inquiry Report dated 22.10.97 which is correct, just, legal and valid in all manners, but the authority disagreed with the Inquiry Report without any ground, material or basis/foundation. Now only after filing of the present application, the authority in a vindictive manner has passed the penalty order dated 14.9.01 by taking a tentative decision to hold the Article of charge against the applicant as proved, though in the Inquiry the charge was not established/ proved.

Farls w. maintain water.

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Show $\lim_{n \rightarrow \infty} \text{int}_n$

2 a Gov Sari

$\int_a^b f(x) dx = \lim_{n \rightarrow \infty} \sum_{i=1}^n f(x_i^*) \Delta x$

Also Ann G p 61 - 13.9.97 \rightarrow 2 pm

9.9.98 problem 3 requires Ann L p 72

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Ann H p 64 Gov Max 14.9.92 - not taught