

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 185 2002

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants. Jadoma Kalita

-Vs-

Respondant(s) CCOI & ONS.

Advocate for the Applicant(s) Mr A-Dasgupta, Mr S. Chakraborty.

Advocate for the Respondant(s) Addl. C.G.S.C. A.K. Choudhury

Notes of the Registry

Date

Order of the Tribunal

18.5.02

Heard Mr.S.Chakraborty learned counsel for the applicant and also Mr.A.K.Choudhury, learned Addl.C.G.S.C. for the Respondents.

Application is admitted. Call for records. Issue notice on the respondents. Returnable by 4 weeks. List on 19.7.02 for orders.

Member

Vice-Chairman

lm

19.7.02

List on 21.8.2002 to enable the Respondents to file written statement.

Member

Vice-Chairman

mb

submitted two copies
for respondents.

NS
17/6/02

19-6-2002

Notices prepared and sent
to D. Section for issuing
of the same to the
respondents through Regd.
post with A.D.

24
19.6.02

Vide D.Nb- 1782 to 1785

Dtd — 19-6-02.

By
19.6.02.

① Service report
were still awaited,

21.8.02

No written statement so far filed.
List on 18.9.02 to enable the respondent
to file written statement.

IC Ushara
Member

[Signature]
Vice-Chairman

By
18.9.02.

18.9.02

Mr. A.K Choudhury, learned Addl.
C.G.S.C. prays for time to file written
statement. In the meantime, the pendency
of this application shall not preclude
the respondents to dispose of the
appeal said to be preferred by the
applicant on 31.1.2002.

List on 6.11.02 for orders.

No written statement
has been filed.

By
24.8.02

No written statement
has been filed.

lm

[Signature]
Vice-Chairman

By
17.9.02.

6.11.02

List again on 5.12.2002 to enable
the respondents to file written statement.

No. wks has been
filed.

By
5.11.02.

IC Ushara
Member

[Signature]
Vice-Chairman

mb

5.12.02

At the request of Mr. A.K. Choudhury,
learned Addl. C.G.S.C. for the respondents
further four weeks time is allowed to the
respondents to file written statement.

List on 7.1.2003 for orders.

No. wks has been
filed.

By
4.12.02.

mb

7.1.03

Further time is being prayed to file
written statement. Four weeks time is
allowed as prayed.

List on 5.2.03 for order.

No. written statement
has been filed.

By
6.1.03.

No. wks has been
filed.

By
4.2.03.

IC Ushara
Member

[Signature]
Chairman

5.2.2003

The case is pending from July, 2002. Time was granted to the respondents for filing written statement. No written statement is forthcoming from the respondents. Mr. A.K. Choudhury, learned Addl. C.G.S.C. appearing on behalf of the respondents again prayed for time for filing written statement. Further four weeks time is allowed to the respondents for filing written statement as a last chance. List the matter on 5.3.2003 for fixing the date of hearing.

No. written statement
has been filed,

20
18.3.03. mb

Sum
Member

[Signature]
Vice-Chairman

5.3.2003. Court did not sit
today. The case is
adjourned to 20/3/2003.

19/3
H

21.3.03

WS submitted

No. the Respondent Nos.
1, 2, 3 & 4.

[Signature]

No. rejoinder has
been filed.

20
2.5.03.

20.3.2003

Written statement has been filed.
The case may now be listed for hearing on
5.5.2003. The applicant may file rejoinder,
if any within two weeks from today.

[Signature]
Vice-Chairman

bb

5.5.03

Put up again on 8.5.03 to enable
Mr A.K. Choudhury, learned Addl. C.G.S.C
to place the records.

SL
Member

[Signature]
Vice-Chairman

pg

8.5.03

Hearing concluded. Judgement
reserved.

By order.

20.5.2003

Copy of the Judgment
has been sent to the
D/Sec. for issuing
the same to the applicant
as well as to the
ADD. C.G.S.C. for the receipt.

12.5.2003

Judgment delivered in open
Court, kept in separate sheets. The
application is allowed in terms of
the order. No order as to costs.

mb


Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / ~~xxx~~ No.185.of 2002~~xx~~

DATE OF DECISION 12.5.2003.....

... .. Smt. Padma Kalita. APPLICANT(S).

. . Mr. A. Dasgupta & S. Chakraborty. ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

. . Union of India & Others. RESPONDENT(S).
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

. . Mr. A. K. Chaudhuri, Addl. C. G. S. C. ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE MR S. BISWAS, 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 ?

- VERSUS -

Judgment delivered by Ho'ble Administrative Member.

... ..
... ..
... ..

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.185 of 2002.

Date of Order : This the 12th Day of May, 2003.

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

THE HON'BLE MR S. BISWAS, ADMINISTRATIVE MEMBER.

Smt.Padma Kalita
Wife of Sri Paresh Chandra Kalita
Resident of Vill:- Kalitakuchi (Satgaon)
P.O:- Udayanbihar, Guwahati
Dist:- Kamrup, Assam. . . . Applicant.

By Advocates Mr.A.Dasgupta & Mr.S.Chakraborty.

- Versus -

1. Union of India
Represented by the Secretary to the
Govt. of India, Ministry of Defence
South Block, R.K.Puram (Defence Headquarters)
New Delhi.
2. Officer-in-Charge Records
Army Ordnance Corps Record Office
Post Box No.3, Trimulgherry Post
Secunderabad - 500 015.
3. Director General of Ordnance Services
Master General of Ordnance Branch
Army Headquarters, DHQ
New Delhi - 110 011.
4. Commandant
222 ABOD
C/O. 99 APO.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C.

O R D E R

S.BISWAS, MEMBER(ADMN)

1. In this O.A. the applicant has sought for the following reliefs under section 19 of the Administrative Tribunal Act, 1985:-

1) to set aside the impugned punishment order dated 21.12.2001 imposed on the applicant in a major penalty disciplinary proceeding and consequent reinstatement etc.

2. The applicant was appointed as an L.D.C. under respondent authorities w.e.f.24.8.1981. While as an LDC in the Document Section of Estt. Branch of 222 ABOD during his

posting there in 1986-96, she was specifically charged with maintaining the documents of the Industrial personnel of No.4 sub-depost. In 1997 a Court of enquiry was held against her, in a joint inquiry, and she alongwith one Shri H.R.Sorata OCC(Admn) and OS Shri D.K.Kalita were accused of altering dates of birth entry in the official documents of 43 civilian employees.

3. This was followed by a formal major penalty charge sheet dated 31.12.1998 and the applicant was charged with "tampering Govt. records voluntarily by altering the dates of birth of certain Industrial personnel in their respective Service Book ignoring laid down Govt. orders on the subject" - leading to misconduct and failure to maintain absolute integrity.

4. A formal inquiry was instituted and on consideration of the same, the Enquiry Officer submitted the report on 7.7.2001 and found the allegation of altering the recorded date of birth of one Industrial worker PKR G.Yesudharan from November, 29, 1939 to 25th October, 1942 under her initial and counter signature of Major C.P.Balakrishnan. The act was admitted by the applicant but sought to be justified as per the Enquiry Officer as a necessary correction of clerical error committed in recording of proper date of birth - which was statedly found at variance with the medical certificate found on record. This gave the particular mazdoor an age advantage which was otherwise not admissible - as per rules 1983. The disciplinary authority followed up the enquiry report by calling for representation against the report, which was repoded by the applicant (C.O.) by a detailed 17 pages representation dated 25.7.2001 stating detailed reasons why the report and the proposed action was not acceptable. The disciplinary authority assessed the reply alongwith the charges and the enquiry report and imposed a major penalty of compulsory retirement to the applicant by the impugned

S. B. ins

order dated 21.12.2001. The applicant has filed an appeal against it to the Director General of Ordnance Service on 31.1.2002 but before the disposal of the appeal this O.A. has been filed.

5. We have heard Mr.A.Dasgupta, learned appearing for the applicant and also Mr.A.K.Chaudhuri, learned Addl. C.G.S.C. for the respondents and gone through the records produced by the respondents carefully. It is a fact that this O.A. is premature in a way as a statutory appeal is pending and therefore liable to be dismissed at this stage, but certain gross infirmities in facts and law points have been brought to our notice during the hearing of O.A. We would like to go into these points briefly before disposing of the application.

6. This inquiry and disciplinary proceedings are under CCS(CCA) Rules. An Enquiry Officer was accordingly appointed after issue of the impugned charge sheet dated 31.12.1998. The applicant has alleged that before the civil inquiry could be initiated or even started against the applicant, who is a civil employee should strictly be governed by the CCS(CCA) Rules. In this case the Army authorities had already instituted a Court of Enquiry early in 1997. A reference to this fact is available in the Court of Enquiry proceeding files of Ordnance Services authorities (Records). The enquiry Court comprised 3 senior Army officials headed by Lt. Col. V. Khawthring, who held in their report the applicant alongwith two others as guilty. We may have nothing as such to object in such a preliminary fact finding inquiry which is necessary before taking adverse note against anyone. The Army authorities should have their prima facie ground to proceed. But what the disciplinary authorities omitted to take note of despite a categorical objection was raised in this behalf that the statutory enquiry was ordered to be conducted by an officer of the rank of a Capt. two stages junior to the authority who headed the enquiry board for preliminary

S. B. i

Contd./4

findings. As rightly alleged such a formal preliminary findings by a higher graded officer is bound to prejudice the Enquiry Officer who may not overcome the mental pressure to abide by the findings of the preliminary report. Hence only a Lt. Col. could be appropriately appointed as the Enquiry Officer in this case. This procedural lacunae in our view is invalidating in nature.

7. The applicant never denied the basic charge of correction of date of birth of a mazdoor. She consistently maintained that the rectification was part of her assigned job before the up-to-date records of mazdoors who completed 25 years, could be completed and sent to LAD by the Enquiry Officer holding her guilty of the added point that the alteration was to the advantage of the mazdoor, placed nothing in the report to show that such complicity on her was indeed there. Over and above the simple admission of the correction she made right through. Nothing more than what she admitted has been brought on record in the inquiry which can be taken cognisance of as a culpable factor warranting deterrent punishment. The impugned order unsettles her economically and displaces her altogether from the bread-earning job to be depended only on pension.

8. These points have been brought to our notice quite justifiably because, 3 other persons including Major C.P.Balakrishnan who admittedly countersigned the entry was let off with a note of mere displeasure. Shri P.K.Kalita, here immediate boss was also let off with small deduction in pay as perusal of 3.9.2001 order of Col. officiating M.G.A.O.C. would show.

9. In the impugned punishment order the disciplinary authority has observed that (d) a medical certificate is attached in which his age was 22 which was published. If this be a fact, it does not find mention in the inquiry report. This is a crucial point. In our consideration the Enquiry Officer ought to have commented on the existence of the medical certificate and whether the


S. An


pleas on which such correction was effected was bona fide or not. No mention was made by Enquiry Officer. Suddenly the disciplinary authority has found the age as 22 as per medical certificate all from the blue - unless we will have to presume that this also is a clerical error in the order requiring similar correction. The medical certificate has not be exhibited also - if this was so or even otherwise. On perusal of the records we find that the basic documents such as the School certificate also is not available - but none is held responsible. If that is not there, medical certificate should have been talked about in the report.

10. In view of the forgoing, we set aside the impugned punishment order dated 21.12.2001 with further direction to reinstate the applicant to the post and place from where she proceeded on compulsory retirement. She will be paid the salary arrears for the period she was forced to retire. We, however, give the respondent authorities the liberty to re-investigate into the charges in the light of our observations and initiate the proceedings afresh if at all considered necessary.

Subject to the observations made above, the application is allowed.

There shall, however, be no order as to costs.


(S.BISWAS)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

GUWAHATI

O.A. NO. 185/2002

Smt. Padma Kalita

... Applicant

- Versus -

Union of India & ors.

... Respondents

I N D E X

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Filed by :-

Suman Chakraborty
Advocate.

Smt Padma Kalita

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

GUWAHATI

O.A. No. 185/2002

PARTICULARS OF THE APPLICANT :

Smt. Padma Kalita

wife of Sri Paresh Chandra Kalita

resident of Vill- Kalitakuchi (Satgaon)

P.O. Udayanbihar, Guwahati, Dist. Kamrup, Assam.

PARTICULARS OF THE RESPONDENTS :

i). Union of India

represented by the Secretary to the

Govt. of India, Ministry of Defence

South Block, R.K. Puram (Defence Headquarters)

New Delhi- 11 .

ii). Officer-in-charge Records

Army Ordnance Corps Record Office

Post Box No. 3, Trimulgherry Post

Secunderabad- 500015

iii). Director General of Ordnance Services

Master General of Ordnance Branch

Army Headquarters, DHQ, P.O. New Delhi-110011.

iv). Commandant

222 ABOD

C/O. 99 APO .

Contd..2

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Filed by
Suman Chakraborty
Advocate.
Smt Padma Kalita

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Smt Padma Kalita

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

An order dtd. 21.12.2001 passed by the
Officer-in-charge Records. Army Ordnance Corps
Record Office vide order No. C/6963525/LDC/Discp/
Civ/145/CA-6 whereby a penalty of Compulsory
retirement was imposed on the applicant with
effect from the date of the order .

2. JURISDICTION OF THE TRIBUNAL :

This application is ~~written~~ the
Jurisdiction of this Hon'ble Tribunal .

3. LIMITATION :

This application is ~~written~~ the
period of limitation .

4. FACTS OF THE CASE :

i). That the applicant was appointed in 222 ABOD
w.e.f. 24th August 1981 as LDC. In the year 1989 she was
posted to Civil Establishment Section of 222 ABOD wherein she
served in the Cash section till 1994 . Thereafter in the year
1995 she was transferred to document section where she was
maintaining the documents of Industrial personnels of No. 4
Sub Depot of 222 ABOD. She served there till 1996. Thereafter
she was transferred to another section .

Contd....3

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Smt Padma Kalita

ii). That in the year 1997 a Court of inquiry was constituted with one Lt. Col. V. Khawthring as presiding Officer and Capt. H.K. Naidu, Sub Mangal Sain and AAO SF Hague as member to investigate the Circumstances under which the date of birth recorded in the service Books of some individuals were altered/amended at a belated stage by the Depot. Thereafter in 1998 the Court of inquiry gave its finding that the following persons were to be blamed for the alteration in date of birth of 43 Civilian employees.

a). OCC (Adm) Sri HR Sorate

b). No. 6954013 OS Sri DK Kalita

c). No. 6963525 LDC Smt. Padma Kalita

The applicant ~~graves~~ leave of this Hon'ble Tribunal to produce the report of the Court of inquiry at the time of hearing, if so required .

iii). That pursuant to finding of the Court of inquiry the applicant was served with a charge sheet issued by the respondent No. 2 vide No. 6963525/LDC/Discp/49/CA-6 dtd. 31.12.98 enclosing the Article of Charges which reads as follows -

Article of Charge I

That the said Smt. Padma Kalita while functioning as LDC in Estt. Branch (Documents section) of 222 ABOD during the period from 1989 to 1996 committed an act, of

1989-96

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Smt Padma Kalita

- 4 -

tampering of Government records voluntarily by altering the dates of birth of certain Industrial personnel in their respective service Book by ignoring the laid down Government orders on the subject. Thus the act Smt. Padma Kalita Committed an act of "Gross Misconduct" .

Article of Charge II .

That the said Smt. Padma Kalita while functioning as LDC in aforesaid office during the aforesaid period by her above said act . Failed to maintain absolute integrity Thus the said Smt. Padma Kalita Committed an act of "Lack of Integrity" .

The charge sheet also contained the names of witnesses by whom the charges were proposed to be established and it contained the names of Sri H.R. Sorate and Sri D.K. Kalita as witnesses, who were also blamed by the Court of inquiry for alteration of date of birth of 43 civilian employees. The charge sheet so served upon the applicant was ~~vague~~ and the charge were not specific .

A copy of the charge sheet dtd

31.12.98 along with the annexures is annexed

hereto and marked as Annexure- 1 .

iv). That the applicant received the charge sheet on 20.1.99 and submitted her reply on/ ^{29.1.99} denying the charges levelled against her . It was, inter alia, stated that she

Contd...5

made only one alteration under due instructions of the their personnel officer Maj. C.P. Balakrishnan . It was further stated that a similar charge sheet was issued to Sri D.K. Kalita wherein she was made a witness and Sri D.K. Kalita was listed as witness against her which violated Rule 24 of Central Civil Service (classification, control and appeal) Rules 1965 .

A copy of the reply to the charge sheet sent by the applicant on 29.1.99 is annexed hereto and as Annexure- 2 .

v). That the disciplinary authority was not satisfied with the reply of the applicant and a departmental enquiry was held to go into the charges levelled against her. One Capt. N.S. Negi was appointed a inquiry officer to conduct the inquiry and one Mr. M. Bhattacharjee was appointed as the presenting officer. In the enquiry the applicant was defended by one Mr. K.K. Mukherjee who was her defence assistant. At the begining of the enquiry the defence assistant vide letter dtd. 14.8.99 to the respondent No. 2 raised objection with regard to the appointment of inquiry officer on the ground that the court of inquiry which preceeded the departmental enquiry was conducted by an officer in the rank of Lt. Col. who recorded a finding against the delinquent

Contd....6

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Smt Padma Kalita

and hence the enquiry officer being an officer in the rank of Captain would not go against his superior officer and give a different finding. However the disciplinary authority did not consider this aspect and rejected the objection so raised .

A copy of the letter dtd 14.8.99
is annexed hereto ~~and~~ as Annexure- 3 .

vi). That the enquiry officer conducted the enquiry in gross violation of rules and procedure established by law . The enquiry commenced with the recording of statements of the applicant and answers of different questions put to the applicant by the enquiry officer which is contrary to the established procedure that the prosecution would adduce evidence to substantiate the charges levelled against the delinquent. The enquiry officer acted as presenting officer and led the evidence of the prosecution by putting questions by covering facts which were not stated/mentioned in the examination in-chief. The enquiry officer was bias and put questions to all the witnesses examined in the enquiry on behalf of the prosecution . After examination of prosecution witnesses the inquiry was closed and the applicant was not given any opportunity to adduce evidence in her support . In the enquiry no documents were exhibited to substantiate the

Contd....7

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Smt Padma Kalita

the charges levelled against the applicant . The enquiry Officer concluded the enquiry in total violation of the principles of natural justice and gave his finding holding the applicant guilty of the charges levelled against her and submitted his report to the Respondent No. 2 .

vii). That applicant states that though the charge sheet contained the charge of rectification of date of birth of 43 Industrial personnels, but the enquiry was confined to the rectification of date of birth of one packer G. Yesodhara A T. No. 1086 and the evidence of all witnesses were confined in this respect. No attempt was made to establish the charge of rectification of date of birth of other personnels as alleged . Even from the evidence it was not established that the applicant was guilty of any misconduct as the witness No. 1 Major C.P. Balakrishnan who was the personnel officer that time categorically admitted that the rectification was a Clerical error rectification of which was duly initialled by him on being satisfied that the age of the concerned employee at the time of appointment was endorsed and authenticated by the then personal officer with his signature and seal based on a medical certificate issued at the time of appointment . The applicant craves leave of this Hon'ble Tribunal to produce the Minutes of enquiry proceeding at the time of hearing .

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Smt Padma Kalita

viii). That pursuant to the report submitted by the enquiry officer, the respondent No. 2, vide Memo No. 6963525/LDC/Discp/Civ/42/CA-6 dtd 19.2.2001 informed the applicant that he agreed with the findings of the enquiry officer and proposed a Major penalty of compulsory retirement from service. The applicant was asked to submit representation against the proposed punishment within 15 days from the date of the memorandum .

A copy of the memorandum dtd. 19.12.01 is annexed hereto and marked as Annexure-4 .

ix). That the applicant on receipt of the aforesaid memorandum submitted a representation before respondent No. 2 on 26.3.01 . It was pointed out that though she was entitled to a copy of the enquiry report, but the same was not furnished to her violating the provision of CCS (CCA) Rules 1985. It was also pointed out that the enquiry officer conducted the enquiry in a most unfair manner and the charge levelled against her was not established as the rectification was rectification of clerical error with due supervision of superior authority .

A copy of the representation dtd 26.3.01 is annexed hereto as Annexure- 5.

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Smt Padma Kalita

x). That on receipt of the aforesaid representation the applicant was served with a copy of the enquiry report and she was given 15 days time to submit a fresh representation. The Administrative officer vide letter No. 1509/015/Civ/197/EST/ADM dtd. 7.7.01 forwarded the copy of the enquiry report to the applicant.

A copy of the letter dtd. 7.7.01 along with the enquiry report is annexed as Annexure- 6 .

xi). That on receipt of the enquiry report the applicant submitted another representation on 25.7.01 before the respondent No. 2. But the representation was not considered and the applicant was imposed with a Major penalty of compulsory retirement from service vide order dtd. 21.12.01 passed by the respondent No. 2 vide order No.C/6963525/LDC/Discp/Civ/145/CA-6

Copies of the representation dtd. 25.7.01 and the order dtd. 21.12.01 are annexed hereto as Annexure- 7 & 8 respectively .

xii). That being aggrieved by the aforesaid order passed by the respondent No. 2 the applicant on 31.1.02 preferred an Appeal before the respondent No. 3 under the provisions of Central Civil Service (Classification Control and

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Smt Padma Kalita

Appeal) Rules 1965, Thereafter on 26.2.02 she again wrote a letter to respondent No. 3 to expedite the matter, but unfortunately nothing has been done till date and she is not aware of the fate of the appeal so preferred .

A copy of the appeal preferred by the applicant on 31.1.02 is annexed hereto as Annexure- 9 .

5. GROUND WITH LEGAL PROVISIONS :-

Being highly aggrieved by the order of compulsory retirement from service the applicant beg to prefer this application on the following amongst other grounds .

A). That the enquiry conducted by the enquiry officer was totally in violation of the principles of natural justice . The enquiry officer acted as presenting officer and examined the witnesses by putting questions and led them to cover facts not stated in Chief . The action of the enquiry officer caused prejudice to the applicant and the enquiry by any means cannot be termed as fair enquiry and as such the impugned order is liable to be set aside and quashed .

B). That the enquiry officer was bias and conducted the enquiry to uphold the findings of the Court of enquiry which preceeded the departmental enquiry conducted by an officer higher in rank to the enquiry officer. The enquiry officer didn't

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Smt Padma Kaula

want to differ with his superior officer and for which he examined the witnesses and put leading question to establish the charge . The enquiry so conducted is totally violative of the principles of natural justice and ~~liable~~ liable to be set-aside and quashed .

C). That the enquiry officer did not provide any opportunity to the applicant to adduce evidence in her support and concluded the enquiry on completion of recording evidences of the prosecution witnesses . Thus the applicant was deprived of her valuable right to defend herself by adducing evidence in her defence . The applicant ~~thus~~ was not provided with adequate opportunity to defend herself and hence the enquiry cannot be termed as fair enquiry . Thus the impugned order is liable to be set asides and quashed .

D). That the finding of the enquiry officer is perverse and not based on the materials available on record . The prosecution witness No. 1 categorically admitted that the rectification of date of birth of the packer. G. Yesodharan was a correction of clerical error which was done with his due approval based on ~~xxxxx~~ available materials on record. The enquiry officer ignored this aspect and came to a finding contrary to the evidence on record. The action of the enquiry officer suffers from non application of mind and as such the impugned order is liable to set aside and quashed .

Contd....12

Smt Padma K

Smt Fadim

E). That the Court of inquiry had recorded findings against the prosecution witness No. 2 Sri H.R. Sorate who was also held responsible for the alleged incident of rectification of date of birth of employees . But the enquiry officer examined him as witness against the delinquent . Thus the enquiry is an eye wash to victimise the applicant for the misdeeds of other persons. It is also apparent that the period during which the alleged rectification of date of birth of 43 employees took place is a long period ranging from 1989 to 1996 and the applicant was posted in that section in 1995 . Thus the applicant was victimised and the impugned order is liable to be quashed .

F). That the charge sheet served upon the applicant was a vague charge sheet. It is established proposition a law that a charge sheet must be specific and clear, but in the instant case the charges/charge sheet were vague and that too for a period when the applicant was not in that section . Even the charge sheet did not contain the names and numbers of person whose date of birth were rectified . Thus the impugned action which commenced with the issuance of such vague charge sheet is liable to be quashed .

Contd.....13

(G). That no records were exhibited in the enquiry as apparent ~~from~~ the records of enquiry proceeding and as such finding of the enquiry officer that the charges against the applicant had been established is not only illegal but perverse . The impugned order suffers from non application of mind and liable to be set aside and quashed .

6. DETAILS OF THE REMEDY EXHAUSTED :-

The applicant preferred an appeal before the respondent No. 3 on 31.1.02 but till date nothing has been done and no order allowing or rejecting the appeal has been passed .

7. MATTERS NOT PENDING BEFORE ANY COURT/TRIBUNAL :-

The applicant declares that no application has been filed before any court or Tribunal for adjudication of this case .

8. RELIEF SOUGHT :-

The applicant, therefore, prays that this Hon'ble Tribunal may be pleased to -

i). To set aside and quash the impugned order dtd 21.12.01 [Annexure - 8_7] passed by respondent No. 2 imposing a Major penalty of compulsory retirement on the applicant .

ii). Reinstate the applicant in service along with full back wages .

Contd.... 14

iii). To pass any further or other order/orders as this Hon'ble Tribunal may deem fit and proper .

9. INTERIM RELIEF :-

No interim relief is prayed for .

10. PARTICULARS OF I.P.O :-

I.P.O No. 7G 577457 Date. 14.6.02

TO whom payable : Registrar CAT

Payable at which office : G.P.O Guwahati

11. DOCUMENTS :

Particulars of the documents are indicated in the index of this application .

Smt Padma

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

I, Smt. Padma Kalita wife of Sri Pareesh Chandra Kalita
aged about 40 years, resident of Village Kalitakuchi (Satgaon)
P.O. Udayanbihar, Dist. Kamrup, Guwahati, Assam do hereby
verify that the statements made in paragraphs 4 [i, ii, iv,
vi, vii, ix] are true to my knowledge and that
made in paragraphs 4 [iii, v, viii, x, xi, xii] are
true to my informations derived from the records .

I Sign this verification on this the 26th day of May, 2002
at Guwahati .

Smt Padma Kalita

ANNEXURE :- 1

STANDARD FORM OF CHARGE SHEET (RULE 14 OF CCS (CC&A) RULES 1965)

Tele : 862251/2100

Sena Ayudh Capps Abhilekh

Karyalaya

Army Ordnance Corps Records

Post Box No.3, Trimulgherry Post,

Secunderabad- 500 015

No. 6963525/LDC/Discp/49/CA-6

31 Dec 98

MEMORANDUM

1. The undersigned proposes to held an inquiry against No. 6963525 Bank LDC Name Padma Kalita under Rule 14 of the Central Civil Services (Classification Central) and Appeal Rules 1965. The substance of the imputations of misconduct of 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 of misbehaviour in support of each article of charge is enclosed (Annex II). A list of documents by which and a list of witnesses by whom, the Articles of Charges are proposed to be sustained are also enclosed (Annexure-III & IV) .
2. Smti. Padma Kalita 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 .

Contd...2

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S. Chakraborty
Advocate

3. He is informed that an Inquiry will be held only in respect of those article of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge .
4. Smt Padma Kalita is further informed that if he does not submit his written statement of defence on or before the date specified in para 3 2~~ax~~ 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 CCS (CC&A) Rules 1965, or the orders/direction issued in pursuance of the said rule, inquiring authority may held the inquiry against him ex-parte .
5. Attention of Smt. Padma Kalita is invited to rule 20 of the Central Civil Services (Conduct) Rules 1964 under which no Govt. servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government . If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Smt. Padma Kalita 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 Central Civil services (Conduct) Rules 1964 .

Contd...3

6. The receipt of this Memorandum may be acknowledged .

Sd/- Illegible

(RK Gupta)

COLONEL

Offg Officer-In-Charge

Records

No.6963525 LDC

Smt. Padma Kalita

Unit 222 ABOD, C/O. 99 APO

(Through the Commandant 222 ABOD)

ANNEXURE- I

Statement of Article of Charge framed against Smt Padma Kalita, LDC (Name and designation of the Government Servant).

ARTICLE OF CHARGE -I

GROSS MISCONDUCT

(TAMPERING/FALSIFICATION OF OFFICIAL/GOVT RECORDS/DOCUMENTS)

That the said Smt Padma Kalita while functioning as LDC in Estt Branch (Documents Section) of 222 ABOD during the period from 1989 to 1996 committed an act of tampering of Government records voluntarily by altering the dates of birth of certain Industrial personnel in their respective service Book by ignoring the laid down Government orders on the subject. Thus the said Smt Padma Kalita Committed an Act of "Gross Misconduct".

ARTICLE OF CHARGE -III

LACK OF INTEGRITY

That the said Smt Padma Kalita while functioning as LDC in aforesaid office during the aforesaid period by her above said act failed to maintain absolute integrity. Thus the said smt. Padma Kalita committed an Act of "LACK OF INTEGRITY".

ARTICLE OF CHARGE-III

- Nil -

Annexure - II

Statement of imputations of misconduct or misbehavior in support of the Article of charge framed against Smt Padma Kalita, LDC (Name and designation of the Government Servant)

ARTICLE OF CHARGE-I

GROSS MISCONDUCT

(TAMPERING/FALSIFICATION OF OFFICIAL/GOVT RECORDS/DOCUMENTS)

In that the said Smt Padma Kalita while performing the duties of LDC in Estt Branch (Documents Section) of 222 ABOD during the period from 1989 to 1996 committed an act of tampering of Govt records by altering in the date of birth of certain Industrial personnel in their respective service Book in a most casual manner with utter disregard to the laid down Govt. orders on the subject thereby benefitting and increasing their service period . Thus the said Smt Padma Kalita committed an act of "Gross Misconduct".

Smt. Padma Kalita by her above act exhibited conduct unbecoming of a Government servant in violation of Rule 3 of CCS (Conduct) Rules 1964 .

ARTICLE OF CHARGE-II

LACK OF INTEGRITY

In that the said Smt. ~~Padma~~ Padma Kalita while functioning as LDC in aforesaid office during the aforesaid period by her above said act failed to maintain absolute integrity Thus the said Smt. Padma Kalita committed an Act of "Lack of Integrity".

Smt. Padma Kalita by her above act exhibited conduct unbecoming of Government servant in violation of Rule 3 of CCS (Conduct Rule s 1964 .

ARTICLE OF CHARGE-III

ANNEXURE-III

List of documents by which the articles of charge framed against Smt Padma Kalita, LDC (Name and designation of the Government servant) are proposed to be sustained :-

- (a) List of documents in which dates of birth altered is attached as per Appendix-'A'
- (b) Article 51 of CSR
- (c) AI 80/51 and 2239/53
- (d) CPRO 76/80
- (e) Army Headquarters letter No. 26076/Policy/OS-3C(i) dated 16 Jul 83 .

Annexure-IV

List of witnesses by whom the article of charge framed against Smt. Padma Kalita, LDC (Name and designation of the Government Servant) are ~~proposed~~ Proposed to be sustained :-

- 1. Col AK Vyas
- 2. Maj CP Balakrishnan
- 3. OOC (A) Shri ^{H.R. Sorale}
- 4. O/Supt Shri D.K. Kaula
- 5. Nb/Sub/now Sub) GS Gaur
- 6. UDC Shri LC Liana
- 7. UDC Shri Ramen Deka

Sd/- Illegible

(RK Gupta)

Colonel

Offg officer-In-Charge

Records

Station : Secunderabad-15

Date : 31 Dec 98

-dd-

ANNEXURE :- 2

To,

The Officer-In-Charge

AOC Records

Secunderabad- 500 015

(Through Proper Channel)

DISCIPLINE (CIVILIAN)

1. Kindly refer AOC Records Memo No. 6963525/LDC/Discp/49/CA-6 dated 31 Dec 98 received on dated 20 Jan 99 .
2. In reference with the above refer memo , I the undersigned beg to furnish the following for your kind consideration and ~~xx~~ favourable action please .

That sir in regard to the alleged charges I am here to submit that I have already stated my defence in the ~~provision~~ previous Court of Inquiry, However I would like to maintained the same , that is the alternation/amendment which was carried out by me was done under the instruction of then personnel officer Maj CP Balakrishan. I was mere Clerk to carry out the instruction of higher authority. As such how the blame have been levelled on me is not understood.

- 3 . Moreover, the above memo under reference is contradictory to the provision laid down in the Central Civil service (Classification, Control and Appeal rules) 1965 for ~~xx~~ the reasons :-

Contd...2

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S. Chakraborty

Advocate

(a) The said memorandum under reference have been signed by temporary incumbent of the post, who is not competent to do so. In this regard your attention is drawn to Govt India Memo No. F.7/14/61(A) East dated 24th Jan 1963 .

(b) It is revealed that for the same offence alleged as committed by me, a charge sheet have been framed and issued to OS Mr. DK Kalita and in the said charge sheet my name has been listed as a witness, on the otherhand the said OS Mr. DK Kalita have been listed as a witness against me . This is clear violation of existing rules as laid down in rule 24 of CCS(CCA) 1965 .

4. Therefore through my this representation I would like to state that the said memo is liable to be quashed out and not maintainable under the existing rules .

Further I deny the charge brought against me vide above refer me .

Therefore keeping in view of the fact narrated above I request your goodself to drop the charges brought against me as the same is not maintainable in view of law .

Thanking you,

Dated 29 Jan 99

Yours faithfully
Sd/- Illegible
Smt. Padma Kalita
P/No. 6963525 LDC
Un it222 ABOD,C/O.99APO

CONFIDENTIAL

To,

The Officer-in-charge

Army Ordnance Corps Records

Post Box No. 3, Trimulgherry Post

Secunderabad- 500 015

In the matter of :-

Disciplinary proceedings under Rule 14 of CCs (CC&A) Rules, 1965 against No. 6963525 LDC Smt Padma Kalita - Inquiry thereof .

Reference Memorandum bearing No. 6963525/LDC/Discp/49/CA-6 dated 31 Dec 98.

Dear Sir.

1. I have been appointed as Defence Assistant in the instant proceedings by No. 6963525 LDC Smt. Padma Kalita of 222 ABOD, C/O 99 APO to defende and or to persue or to do any or all the acts that may be necessary from time to time for defending this proceedings on behalf of Smt. Padma Kalita .
2. That the instant proceedings under Rule 14 of CCs (CC&A) Rules, 1965 have been instituted against Smt. Padma Kalita for alleged violation of the provisons of Rule 3 of CCs (Conduct Rules, 1964 .
3. That in order to substantiate the charges levell- ed, an inquiry has been ordered according to the provisions

Conted...2

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S. Chakraborty

Advocate

of CCs (CC&A) Rules, 1985 and an authority for enquiring into the allegations has also been appointed as well as a presenting officer .

4. That I have carefully perused and examined each and every available papers and records in this proceedings as well as selection/ appointment of inquiry ~~the~~ Authority (i.e. Capt N S Negi) and of the view that right ~~from~~ the initiation of this purported proceedings ~~arise~~ against Smt Padma Kalita till-to-date by the department, the entire proceedings have been shrouded in the veil of Army act by the various Army officers from time to time by grossly violating the principles of natural justice and ~~civil~~ civil rules and as such the entire proceedings is not only ill-conceived/ultra vires but also the same is liable to be held void ab-initio, I, therefore, put forward the following reasons amongst others in support of my asser~~time~~ which is in addition to the denial of the allegations already made by my client Smt. Padma Kalita :-

- (a) It is a fundamental principle of natural justice ~~that~~ of the inquiry officer selected to make an enquiry should be a person with an open mind and he/she should not be under influence overtly/ covertly from any superior authority while

Contd....3

making his/her own decisions/conclusions. In the instant case, Smt. Padma Kalita, a civilian defence employees, was found guilty of alleged misconduct by a Court of Inquiry appointed under the Army Act.

VVK

The Lt. Col who was presiding officer of the said Court of inquiry and the area commander who ordered the court of Inquiry were ranked above the ~~Capt~~ N S Negi who is to conduct the departmental inquiry. They had recorded their opinion that Smt. Padma Kalita was guilty. The evidence collected by the Court of inquiry formed the basis of the charge framed in the disciplinary proceedings. When the higher authority like Lt. Col had already held that Smt. Padma ~~Kalita~~ Kalita was guilty of the accusation it would not be reasonable to imagine that there will be no likelihood of bias against Smt. Padma Kalita in the mind of inquiry officer who is to hold the departmental inquiry. The captain being a junior officer cannot, therefore, go against the opinion of guilty expressed by his superiors in the army, notwithstanding the ~~xx~~ evidence adduced before him. Kindly note that such an implicit ~~opinion~~ action has already been held ~~void~~ void by the decision reported in the case of Union of India-

Contd...4

Vrs Srinath (1978 2 Karn, LJ66. It is thus Crystal clear that disciplinary authority has appointed inquiry authority whimsically and without application of mind .

- (b) On further verification of Court of inquiry proceedings it is seen that Smt. Padma Kalita has been blamed regarding alleged making amendment of date of birth and surprisingly, the officer-in-charge who was major in rank has authenticated the amendment by putting his signature has been exonerated in the said biased C of I proceedings under Army Act by the Army officers in the Army hierarchy. It may also kindly be noted that Smt. Padma Kalita is governed by civil rules and not by under Army Act and, therefore, any court/Commission/Committee constituted under army Act has no locus standi to try or recommend anything regarding civilian government servant under the said Act . In accordance with various judicial pronouncements it has been repeatedly asserted that a Court of Inquiry proceedings under Army Act cannot be the basis of forming any charges against civilian Government servants where deposition of all other witnesses have been obtained behind the back of the delinquent officer.

Contd...5

4. In the ~~pre~~ premises aforesaid, it is respectfully prayed that your goodself will be pleased to take account the above mentioned most vital points and dismiss the purported disciplinary proceedings being devold of any merits .

5. And for this act of kindness the delinquent officer as in duty bound shall ever pray .

6. Thanking you and with regards .

Yours faithfully

Station : Shillong

Sd/- Illegible

Dated 14 Aug 99

MES 228575

(K K MUKHERJEE)

Copy to :-

1. Capt. N S Negi -
Inquiry Officer

With reference to his letter bearing No 50387/Dis/Civ/D 2 dated 07 Aug 99 . It is requested that further inquiry in the instant case may pleased be kept in abeyance till final decision received from disciplinary authority in view of my above submissions .

2. Presenting
officer

X
X for information
X

3. Smt. Padma Kalita

ANNEXURE :- 4

Tele : 7882 343

REGISTERED

Sena Ayudh Corps Abhilekh Karya-
laya
Army Ordnance Corps Record Office
Post Box No. 3
Trimulgherry post
Secunderbad- 500 015

6963525/IDC/DiscoP/Civ/12/CA-6

19 Feb 2001

MEMORANDUM

1. WHEREAS, No. 6963525 LDC smt Padma Kalita of 222 ABOD wa
s served with a charge sheet under Rule 14 of COS (CC&A)
Rule 1965 ~~vide~~ vide this office memorandum bearing No.
6963525/LDC/DiscoP/49/CA-6 dated 31 Dec 98 for an offences
"Gross Misconduct and Lack of Integrity".
2. AND WHEREAS, pursuant to order bearing No. 6954013/CS/
DiscoP/95/CA-6 dated 21 May 99, Capt NS Negi, Inquiry Officer
has submitted his report relating to the charge levelled
against the ~~xxx~~ individual and the same has been 'Proved'.
- 3, AND WHEREAS, the undersigned after having carefully
examined the inquiry report and relevant records, agrees
with findings of Inquiry officer and holds the said Smt.
Padma Kalita guilty of the charge levelled against her .
4. AND WHEREAS, the undersigned has provisionally come to
the conclusion that the said Smt. Padma Kalita is guilty of
the charges levelled against her, which warrants imposi-
tion of major penalty and accordingly proposes the penalty

1942
194
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Contd....2

S. Chakraborty
Advocate

of "Compulsory Retirement from Service" .

5. Now, THEREFORE, the undersigned in exercise of the powers conferred under Rule 15 of CCS (CC &A) Rule 1965 and in terms of Government of India's instruction No. (7) under said rule No. 6963525 LDC Smt Padma Kalita is hereby given an opportunity of making representation on the penalty proposed above . Any representation, which she may wish to make on the proposed penalty will be considered by the undersigned. Such representation, if any, should be made in writing and submitted through the Commandant 222 ABOD, so as to reach the undersigned not later than 15 days from the date of receipt of this Memorandum .

6. The receipt of this memorandum should be acknowledged.

Sd/- Illegible

(MS Moorjani)

Brig

Officer-in-charge Records

No 6963525 LDC

Smt. Padma Kalita

222 ABOD

(Through the Commandant, 222 ABOD)

ANNEXURE :- 5

To.

The Officer-in-charge

Army Ordinance Corps Record Office

Post Box No. 3

Trimulgherry Post

Secunderabad- 500 015 .

(THROUGH PROPER CHANNEL)

Sub :- Submission of reply against the Memorandum dated 19.2.2001 proposing imposition of penalty of Compulsory retirement from service .

Ref :- Memorandum issued under letter No. ~~6996~~ 6963525/ LDC/Discp/Civ/42/CA-6 dated 19.2.2001 .

Respected sir,

I like to draw your kind attention on the subject cited above and further begs to state that I have duly received the aforesaid memorandum dated 19.2.2001 only on 14.3.2001 and I have carefully gone through the same and understood the contents thereof .

That Sir, in my reply dated 29.1.1999 against the Memorandum of charge sheet No. 6963525/LDC/Discp/49/CA-6 dated 31.12.1998 I categorically denied the charges brought against me by the aforementioned memorandum. It is stated that the charges which are brought has no factual or basis or foundation . As such no proceeding under Rule 14

Contd...2

Certified to be true Copy

S. Chandra Sekhri
Advocate

of the CCS (CCA) Rules 1965 is warranted in the facts and circumstance under which charge sheet has been issued against the undersigned .

That it is stated that the charges brought against me is bogus, false and the same is baseless and I still maintain that the manner in which the amendment/rectification was carried out in the service Book of Sri G. Yeshudharan and still maintain the same stand that the amendment/rectification which was carried out in the service Records in the case of Sri G. Yeshodharan Packer, Ticket No. 1086 is absolutely correct and the same had been one in terms of existing rules holding the field for correction of date of birth for central government civilian employees issued by the government of India from time to time, in the event of any clerical error on the basis of documents available in the service of the individual concerned .

That Sir, the case of G. Yeshudharan Packer, is pertaining to the amendment of an obvious clerical error that crept in recording the date of birth . It is further submitted that Sri Yesudharan entered into service in the month of October, 1962. In the first page of the service book of Sri Yesudharan there was an entry of date of birth

Contd...3

as 23.11.1939 without any documentary evidence and also without having any age proof certificate/School certificate but a medical certificate was attached in the service book sheet to the effect that the age of Sri Yesudharan is twenty years on 25.10.1962 and to that effect the D.O. part II order bearing No. 33/62 was published and attached in the service Book and the age of twenty years of Sri Yesudharan as on 25.10.1962 was also authenticated in the said book by the then personnel officer at the time of entry into service . Therefore amendment which was made with the approval of Major C.P. Balakrishnan, the then Personnel officer had been rightly carried out by way of amendment in the service Book of Sri Yesudharan . A mere reading of the statement of Sri C.P. Balakrishnan submitted on 7.3.2000 , which was deposited in the inquiry proceeding held on 7.3.2000 in pursuance of memorandum of charge sheet dated 31.12.1998 makes it crystal clear that the amendment of a bonafide obvious clerical mistake in recording date of birth of Shri G. Yesudharan is carried out by way of amendment. The relevant portion of the statement of Major C.P. Balakrishnan referred to ~~above~~ above is reproduced below :

Contd...4

- 4 -

"3. In the circumstances explained above one of the dealing clk LDC Mrs. Padma Kalita brought service records file of T. No. 1086 PKR G. Yesuharan for my initial on the rectification of a wrong entry of his birth. On my queries with dealing clk about such a rectification she told me that the service records of the individual had to be fwd to LAO for verification as the LAO does audit the same in the cases of all civilians who have completed more than 25 years of service. Hence the dealing clk had verified the file thoroughly and that time it was found that there is a clerical error in the date of birth of the indl entered in the volume I (first page of service Records Card) and the same is not calculated according to the age mentioned in the individuals medical Examination certificate at the time of his appointment in October 1962. Dealing clk showed me the medical certificate of Oct 1962 and it was clearly mentioned that individual age is indeed 20 years on 25th Oct 1962 that is the day of his medical examination at the time of his appointment. Accordingly the individual's DOB on calculating backwards (As it has

Contd....5

- 5 -

been done in the cases of all individuals appointed during that period) should have been 25 Oct 1942 . In addition when I went through the reverse side of the first page of the service records of the individual there was an endorsement of then pers offer in 1962 which read as "appointed as a labourer with effect from 25 Oct 1962, age on appointment 20 yrs". Along with the ~~for~~ reference of DO part II No. 33/62. This endorsement was authenticated and signed by then pers. Officer with his seal in 1962 . Having perused the above and hearing from the dealing clk I initiated the rectification of an existing clerical error .

4. Later in Feb 1997 when a Unit Court of Inquiry was ordered, I also came to know that T. No. 1086 pkr G. Yesudharan case was not an isolated one and several precedence of such cases of ~~rectificatory~~ actions were carried out earlier also . One of the such cases which relates to T.No. 309 Shri Phulena Singh, some kind of rectification of the DOB was carried out and it was also initialed by then pers offer Maj SC Srivastava, SM.

Contd....6

5. Finally I would like to state due to the pre occupation by holding charge of four offices and carrying out justice to all the appointments, like any officer in my situation, I was dependent to a great extent on my dealing staff at all levels. Moreover in pers office all the dealing staff deal with a particular table and subject for years continuously and they were well aware of prevailing procedures .

QUESTIONS BY THE INQUIRY OFFICER :

Q. Did you pass the order to dealing clk to change, the DOB of T. No. 1086 PKR G. Yesudharan in his service documents ?

Ans. No and this case was done amongst of many files either put up to me or brought to me by the dealing staff .

Q. Did you enquired from the dealing clk regarding the existing procedure for changing the DOB of a Govt. servant in his service documents ?

Ans. I would like to clarify that as told by the dealing clk that instant case is only a rectification of a wrong clerical entry which probably might have occurred while the documents were prepared during the time of recruitment of the individual . And hence for such

contd....7

a rectificatory action need not to be connected with the procedure meant for the change of date of birth.

Q. When dealing clk brought the service documents of T.NO. 1086 PKR G. Yeshudharan to you for your initial on the changed DOB on the first page of service records did she informed you that at the time of enrolment on 25 Oct. 1962 PKR G. Yeshudharan was 9th Class pass ?

Ans. No.

Q. On the medical certificate of PKR. G. Yeshudharan his name was written after cutting the name of an individual which was there initially . Did you enquire about ~~him~~ this from dealing clk ?

Ans. I do not recollect this aspect as I just scanned through whatever I was shown by the dealing clk .

Q. Did you ask OS D.K. Kalita of document section for the procedure of change the DOB of a Govt. servant ?

Ans. When the dealing clk brought the service record of the individual for my initial, she mentioned that she had discussed with the OS D.K. Kalita regarding such a rectification of a Clerical error .

Q. Don't you think that such an important issued of changing of DOB should have been put up to you through proper channel under a noting sheet ?

Contd...8

Ans. As it was only rectification of an existing error there was no any requirement to make a noting sheet.

Moreover, the documents was to be sent to LAO for verification and audit and it is their responsibility to raise any observation .

Q. Did dealing clk informed you that for changing DOB a part II order is required--to be published for the change carried out by her in the service documents of T/No. 1086 PKR G. Yeshudharan ?

And. No.

QUESTIONS BY THE DEFENCE ASSTT. ON BEHALF ACCUSED LDC

PADMA KALITA .

Q. Did Padma Kalita has tampered the DOB of T. No. 1086 PKR G. Yeshudahran on the first page of his service documents ?

Ans . As a dealing Clk in that situation based on the a available supporting documents she has rectified a clerical error probably occurred some where during the recruitment in 1962 .

Q. In document section any perodical trg. Given to staff to acquaint themselves with latest order on staff matters

Conted...9

Ans. As my tenure of pers offr is only from mid Dec. 1995 I can't comment on this aspect. However being an ord offr of know that refresher course are being conducted in CMM Jabalpur .

Q. Whether Est. Br, Is purchasing or subscribing updated rules/regulations published on behalf of G I by so ~~xxx~~ many publications ?

Ans. Only thing I am aware that in all the department/ branches receive amendments/changes in Rules/regulation through official channel only .

The cross examination of PW-1 computed" .

It is quite ~~fxs~~ clear from above statement of the then Major C&P. Balakrishnan, Personnel Officer of the Establishment section that a rectification of an obvious clerical error in recording date of birth is amended that too with the approval of the then personnel officer. Therefore article of charges of tampering of Govt. records by altering the date of birth of certain Industrial personnel in their respective service book in a most casual manner with utter disregard to the laid down Govt. orders on the Subject and thereby benefiting and increasing their services period and thus committed an act of gross misconduct is totally baseless without having any factual basis . As

Contd..10

such charges are liable to be dropped against the undersigned in view of the factual ^{position} stated above. It is further stated that in the Article of charge it is alleged that the undersigned has tampered Govt. records of certain Industrial Personnel whereas no such documentary evidence could be made available by the personnel Officer except the case of Sri G. Yeshudharan. It is admitted during the inquiry proceeding by Shri H.R. Sohorate that similar amendment had been carried out in the service records of other industrial personnel but could not able to produce any evidence regarding amendment of date of birth of any other Industrial personnel except the case G. Yeshudharan. Therefore the Memorandum of charge sheet itself has been framed contravention of the relevant CCS(CCA) Rules 1965 as because the charges are not specific, distinct and categorical and on that score alone the entire proceeding is liable to be dropped. It is further alleged that the amendment had been carried out in violation of the Govt. rules but unfortunately the rule/instruction issued by the Govt. of Indis from time to time regarding correction of date of birth has not been carefully considered in the instant case of the undersigned but under a total misconception the amendment carried out in the service records

Contd...11

of Sri G. Yeshudharan has been treated as tampering of Govt. documents. The amendment which is carried out with the approval of the then personal officer is perfectly done in terms of the rule and law laid down regarding rectification of date of birth. The entire charge has been framed under a total misconception that the undersigned has altered the date of birth of Sri G. Yeshudharan by tampering the Govt. record whereas the amendment which was carried out with the approval of the then personnel officer, Sri C.P. Balakrishnan is a case of mere rectification of a date of birth .

It is stated that the case of Sri Yeshudharan is a case of rectification of mistake as because no age certificate was attached in the first page of the service book where date of birth was written as 23.11.1939, on the other hand in the same service book a medical certificate was attached where age was certified by a medical officer at the time of recruitment as 20 years as on 25.10.1962. It was further authenticated by the then personnel officer with his initial in the service book at the time of joining of Sri Yeshudharan and the said date of birth as per medical certificate was recorded in the service Book confirming the same by publishing a D.O.

Contd.....12

Part II order No. 33/62 . The said discrepancy came to my notice when service was supposed to be sent for audit on completion of 25 years of service as required under the rule . In this circumstances the undersigned with the advise and approval of the then personnel officer carried out the amendment on good faith with a bonafide belief that a clerical error of date of birth is liable to be rectified as per rule and law .

Now coming to the question of Government instruction/ rule and I would like to draw your kind attention that the alteration of date of birth is permissible as per instructions contained in the copy of Army Headquarter letter No. 26076/policy/OS-2C(J) dated 16.7.1983 . In terms of Rule 2(b) and (c) such clerical mistake as stated above can be rectified at any point of time and the five years clause is not applicable for rectification of such clerical mistake . However the limit of five years clause is applicable when there is a case of alteration of date of birth, but the case of G. Yeshudharan is the case of rectification of bonafide clerical mistake .

As such the very initiation of Memorandum of Charge sheet under Rule 14 of the CCS (CCA) Rules 1965 that too to a dealing assistant when the same was done/carried out

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on obtaining approval placing the entire documents/facts before the then personal officer Sri C.P. Balakrishnan which is evident from his statement recorded in the inquiry proceeding held on 7.3.2000 .

In the facts and circumstances the department proceeding initiated against me is liable to be dropped exonerating me from the charges framed under Memorandum dated ~~31.12.1998~~ 31.12.1998 and the question of imposition of penalty after recording statement of Shri C.P. Balakrishnan and other witnesses does not arise .

It is further stated that the undersigned is entitled to a enquiry report of the departmental proceeding initiated under Rule 14 of the CCS(CCA) Rules, 1965 vide memorandum dated 31.12.1998 but unfortunately no inquiry report was served to me till date. It is a mandatory requirement to serve a copy of the inquiry report so that the charged official can defend his/her case . But this reasonable opportunity has been denied to me with a deliberate intention to impose penalty in total violation of the relevant Rules of CCS (CCA) Rules 1965 . It is relevant to point out here that the entire proceeding has been initiated in total violation of rule. While enquiry was conducted, the inquiry officer played a role of presenting officer by putting question one

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after another to me in connection with the proceeding which is not permitted under the rule and it is contrary to pay the role of presenting officer by the inquiry officer despite the fact that the presenting officer was very much present physically in the inquiry. On that score ~~xxx~~ alone the impugned memorandum dated 31.12.1998 is liable to be dropped .

It is further submitted that amendment/rectification which was carried out in the case of G. Yeshudharan, in a series of similar nature rectification of date of birth have been carried out. The undersigned on a good faith following the earlier instances and also following the existing rule and that too with the approval of the then personnel officer did the amendment/rectification of the date of birth of Sri G. Yeshudharan therefore it cannot be treated as an act of misconduct and also the same cannot be termed as tampering of Government record. As such the entire proceeding is liable to be dropped which is initiated in total violation of rule and also without having any factual ~~xxx~~ basis and I categorically submit that I still maintain the stand that the amendment/rectification which was done in the case of Sri G. Yeshudharan is perfectly in term of the rule and law . As such question-

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of committing any act of misconduct or rampering of Government record in violation of conduct rules does not arise and the proceedings is deserves to be dropped by exonerating the undersigned from the charges .

It is also relevant to mention here that Sri H.R. Sohorate who was one the witnesses in the instant disciplinary proceeding also carried out similar amendment/rectification in the case of Sri T.No. 409 Mitra Bahadur vide his proposal in the note sheet dated 05 Jul 97 . Therefore the charge sheet served on the applicant under rule 14 of the CCS(CCA) Rules 1965 is unwarranted and therefore the entire proceeding is liable to be dropped .

It is lastely submitted that in the similar facts and circumstances the question of rectification of a clerical mistake of date of birth came up before various Benches of the Hon'ble Central Administrative Tribunal, High Courts, and Supreme Court . In all the cases, it is held that obvious clerical mistake or bonafide mistake can be rectified at any point of time . However, it is a settled position of law that alteration of date of birth cannot be made at the fag end of service career whereas the case of Sri G. Yeshudharan is a case of rectification to a clerical mistake which was carried out on a good faith that too

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with the approval of the competent authority i.e. the personnel officer therefore departmental proceeding initiated against the undersigned under Rule 14 of the CCS(CCA) Rule is unwarranted in the facts and circumstances stated above .

In view of the facts and circumstances stated above the question of penalty of compulsory retirement in pursuance of the memorandum of charge sheet dated 31.12.1998 is unwarranted and therefore entire proceeding is liable to be dropped by exonerating me from the charge leveled against me . Therefore you are requested to drop the charge as referred to above .

For this act of kindness the undersigned shall remain ever grateful .

Yours faithfully

Sd/- Illegible

26/3/2001

(PADMA KALITA)

T/6963525

LDC

O/O 222 ABOD

C/O. 99 APO .

ANNEXURE :- 6

CONFIDENTIAL

1509/DIS/CIV/197/EST-ADM

07 Jul 2001

ADMINISTRATIVE BRANCH

FORWARDING OF INQUIRY REPORT

1. As instructed by AOC Records, typed copies of joint proceedings of the oral inquiry report in respect of P. No. 6964013 O/Supdt Shri DK Kalita and P. No. 6963525 LDC Smt. Padma Kalita is forwarded herewith. Please submit your fresh representation on the oral inquiry report within fifteen days from the date of issue of the letter for our further action.

Sd/- Illegible

(RK Bhatia)

Lt. Col

Administrative Officer

Encl (As above)

P. No. 6963525 LDC

- Smt. Padma Kalita

Ex-Branch.

Certified to be true Copy

S. Chakraborty
Advocate

ASSESSMENT :

1. The proceeding of the inquiry was started on 06 Aug 1999. The Charges framed against charged official-I No. 6954013 OS DK Kalita and charged Official-II No. 6963525 LDC Smt. Padma Kalita were read over to them . Both had refused to accept the charges framed against them and decided to defend these charges.
2. The charged official I 05 DK Kalita did not appoint any defence assistant to defend the charges framed against him and decided to defend the charges himself . However, charged official II Smt. Padma Kalita had nominated No. MES-228575 LDC KK Mukherjee of CWE office, Shillong as her defence assistant to defend the charges framed against her.
3. On 14 Aug 99, through her defence assistant, charged official-II ODC Padma Kalita had objected the appointment of Inquiry officer under COI decision No. 15, Rule 14 of CCS (CCA) Rules, 1965 and approached AOC Records through a representation dated 14 Aug 1999 to change the inquiry officer. AOC Record vide their letter No. 6963525/LDC/DISCP/60/CA-6 dated 16 sep 99 had turned down the said representation and advised charged official-II Smt. Padma Kalita, LDC to attend the oral inquiry. There are total 43 cases in which

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the date of birth of industrial personnel of 222 ABOD was altered/changed in their service Books. The list of the individual in whose service Books the date of birth was altered/tampered is attached as Appx 'A'. Out of these 43 cases there are 18 cases where the dates of birth have been increased and 18 cases where the date of birth have been decreased and in remaining 7 cases there is over writing in Date of birth of Industrial personnel in their service Books .

4. It has been observed that the date of birth of above 43 Industrial personnel were altered/tempered between 1993-1 996 to benefit the individual by increasing their service period. In this belated stage it is difficult to find out and pin point the blame for changing the date of birth in the service documents. However, during the oral inquiry while examining the documents and cross examine the charged officials and prosecution witnesses, it has come into notice that there was not proper supervision by the OS and personnel officer on the clerks dealing with the personnel documents of IPs and WIPs of the depot . Charged official-I Shri DK Kalita had accepted his failure in checking this irregularity in the document section . The first case of such nature came to his notice only in year 1996, in March 96 where the

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date of birth of T. No. 1086 G. Yeshadharan was altered from 23 Nov 39 to 25 Oct 1942 (Appx B) to benefit the individual and then only he had informed the case to his superior official, i.e. personnel officer (Civ) Shri HR Sorate. Till then charged official was not aware that there are other 42 cases where the date of birth have been altered/tempered in their service Book. When the complete documents of IPs of the depot were checked then only these cases were revealed .

5. The charged official-II had accepted that she had altered the date of birth in Service documents. of T. No. 1086 Pkr. G. Yeshodharan, when she had noticed that the date of birth written on the first page of service Book and date of birth as per the medical certificate held in the service records of the individual is not matching . Her pretext that she thought that it is a clerical error hence she had altered the date of birth from 23 Nov 1939 to 25 Oct, 1942 . She didn't follow any laid down procedure in this regard and obtained the signature of personnel officer Maj CP Balakrishnam by informing him that there was a clerical error which has been rectified. If there was a clerical error then why it has not come into notice when the individual was promoted to pkr from Mazdoor and his service documents were then checked thoroughly .

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6. The charged official II Mrs. Padma Kalita, LDC was working in Document section since year 1989 and her claim that she was not aware of the laid down rules regarding the exchanging the date of birth of a Govt. servant is ~~surpr~~ surprising. When other dealing clerks of document section of Civ Estt were aware of the existing such rules then it is surprising that the charged official-II Smt. Padma Kalita was unaware of these rules .

7. Charged official-II Smt. Padma Kalita had changed the date of birth in service Book of T. No. 1086 pkr. G. Yeshodharan in a casual manner without informing his OS Shri DK Kalita and obtained the signature on the altered date of birth from Major CP Balakrishnan by informing that there was a clerical error which has been rectified itself prove that the intention of charged official in this case were not justified. UDC LC Liana, who was working with the charges official in ~~same~~ document section, categorically mentioned during the cross examination of prosecution witness that he had informed Mrs. Padma Kalita not to change the date of birth in the service documents of T. No. 1086 pkr. C. Yeshodharan as it is against the laid down regulations. However, charged official ignored his advice and had changed the DOB.

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8. Charged official pretext that the date of birth written on 1st page of service document off. No. 1086 pkr C. Yeshodharan and date of birth decided by the medical Board or ~~Medical~~ medical Officer at the time of enrolment on 25 Oct, 1962, is misleading. After checking the service documents of IPs enrolled during 1962, it has come to the notice that at that time maximum ~~max~~ doors enrolled into service were illiterate and were not able to produce any documents to prove their age, hence their age was decided by a medical board at the time of enrolment. However, the individual who were educated upto class VI, VII, VIII and IX and were having the ~~xx~~ school certificate, their date of birth was taken as per their education certificate.

9. T. No. 1086 pkr G. Yeshodharan whose date of birth was changed from 29 Nov 1939 to 25 Oct 1942 in the service Book by charged official-II smt. Padma Kalita, was ninth class pass at the time of enrolment on 25 Oct 1962 and his date of birth was the same which was there in his education certificate. The individual was promoted to pkr. and that time his date of birth was checked and was same as at the time of enrolment i.e., 29 Nov 1939. However, sometime in 1995-96 his education certificate was removed from his service documents and to benefit the individual charged

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official II Smt. Padma Kalita had altered the date of birth on the pretext that as per the medical certificate individual was 20 yrs. old on 25 Oct 1962 (at the time ~~enrolment~~ enrolment) .

10. During the cross examination of the following prosecution witnesses it has come to notice that charged official II Smt. Padma Kalita had intentionally ignored the laid down rules on the subject and had altered the date of birth without informing her superior .

The following prosecution witnesses were cross examined .

- (a) Major CP Balakrishnan
- (b) OCC(A) (NOW CDO) HR Sorate
- (c) UDC LC Liana
- (d) UDC Raman Deka

At the time of cross examine prosecution witness-II OOC HR Sorate it has been informed that Smt. Padma Kalita had earlier also charge sheeted for altering the DD Part-II of the Industrial personnel and was punished for that. It also show that charged official takes least care about the laid down rules .

FINDINGS

11. In view of the assessment, I am reached to the conclusion that charged official-I No. 6954013 OS DK Kalita, who was holding the charge of office supdt of Document section in

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civ Estt since June 1993 has failed to supervise his subordinate clerical staff in document section, which had ^{led} ~~leads~~ to alteration/amendment of date of birth in the service Books of 43 industrial personnel of 222 ABOD. He had also failed to implement the laid down rules for changing the date of birth in service Records of a Govt. servant and did not bring anomalies committed by his sub-ordinates in the service documents of 43 IPs into the notice of his superior officers at appropriate time - Charged official I No. 6954013 OS DK Kalita is found guilty of Articles of Charge-I and charge-II framed against him .

12. The charged official-I^I No. 6963525 LDC Smt. Padma Kalita had carried out the amendment in date of birth of T. No. 1086 pkr. G. Yeshodharan in his service book to benefit the individual by decreasing his age to enhance the tenure in service, she had not informed her superior regarding the amendment done by her in the date of birth of T.No. 1086 pkr G. Yeshodharan and had ~~has~~ totally ignored the laid down govt, orders on the subject and had failed to maintain absolute integrity. I found her guilty of Article of Charge-I and ~~charge~~ charge II framed against her .

I recommend that disciplinary action against the above charged officials shall be taken for the act committed by them .

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C E R T I F I C A T E

Certified that I have acquainted myself with the provisions of Rule 14 of CCS(CCA) Rules, 1965 and same have been complied with in conducting oral inquiry in the aforesaid disciplinary case .

21 April 2000

Sd/- NS Negi

(Capt NS Negi)

Inquiry officer.

To.
The Office-In-Charge,
Army Ordnance Corps Record Office
Post Box No. 3
Trimulgherry Post
Secunderabad- 500015

(THROUGH PROPER CHANNEL)

Sub :- Submission of reply against the letter bearing No.
1509/DIS/CIV/197/EST-ADM dated 7.7.2001 .

Respected Sir,

In continuation of my reply submitted earlier on 26.3.2001 against the Memorandum dated 19.2.2001 it is further submitted that now vide letter dated 7.7.2001, it is stated that as instructed by AOC records, typed copies of Joint proceedings of the oral inquiry report in respect of undersigned is forwarded and also asked me to submit a fresh representation of the oral inquiry report within 15 (fifteen) days from the date of issue of the letter for further action.

That the undersigned carefully gone through the assessment and findings of the inquiry officers, so far assessment is made by the inquiry officer is contrary to the evidence recorded in the inquiry proceeding, it is an admitted position that the undersigned has rectified the date

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Certified to be true Copy

S. Chamaraboina
Advocate

of birth only in respect of T.N.O. 1086 Packer, Shri G. Yeshudharan and it is further categorically submitted that in the inquiry proceeding also I have voluntarily admitted that the necessary correction of date of birth is made often due consultation with Shri D.K. Kalita, R. O.S. and also after necessary instruction as ~~exit~~ well as approval from the than personnel officer, Major C.P. Balakrishnan and Sri Balakrishnan approved the said correction after perusal of necessary service record in respect of Shri Yeshudharan and I further beg to state that necessary correction of date of birth is made on consideration of apparent error in the service records, therefore, I still maintained the stand that the correction has been done as per the existing rule for change of date of birth and there is no malafide or illintention of the part of the undersigned so far the alteration of date of birth of Shri G. Yeshudharan is concerned. Denial of any consultation made by the undersigned with Shri D.K. Kalita is nothing but, Shri Kalita now taking advantage of the situation. In the circumstances stated above, the assessment of the inquiry officer is contrary to the evidence recorded in the inquiry proceeding it is relevant to mention here that the initiation of a departmental proceeding in respect of the undersigned while ignoring the role of Major C.P. Balakrishnan, the than personnel officer, in the instant

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case it reflect that the attitude of the disciplinary authority is vindictive and partial .

It is categorically denied that the undersigned has corrected any other date of birth, in the ~~xxxx~~ service record except Shri G. Yeshudharan .

That the findings of the enquiry officer, so far charged official it is concerned, is totally contrary to the evidence recorded in the inquiry proceeding, it would be evident from the record that the rectification of date of birth is carried out by me, with the approval of the personnel officer, Major C.P. Balakrishnan, who had duly signed the amendment as such, findings of the inquiry officer is contrary to records, and the ~~xxx~~ amendment/correction is made, following the established procedure of law, as such the findings and assessment is liable to be set aside and quashed.

That Sir, in my reply dated 29.1.1999 against the Memorandum of charge sheet no. 6963525/LDC/Discp/49/CA-6 dated 31.12.1998 I categorically denied the charge brought against me by the aforementioned Memorandum. It is stated that the charges which are brought has no factual basis or foundation. As such no proceeding under Rule 14 of the CCS (CCA) Rules 1965 is warranted in the facts and circumstance under which charge sheet has been issued against the undersigned .

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That it is stated that the charges brought against me is bogus, false and the same is baseless and I still maintain that the manner in which the amendment/rectification was carried out in the Service Book of Sri G. Yeshudharan and still maintain the same stand that the amendment/rectification which was carried out in the service Records in the case of Sri G. Yeshudharan Packer, Ticket No. 1086 is absolutely correct and the same had been one in terms of existing rules holding the ~~fixed~~ field for correction of date of birth for central government civilian employees issued by the government of India from time to time, in the event of any & Clerical error on the basis of documents available in the service of the individual concerned.

That, Sir, the case of G. Yeshudharan, Packer, is ~~nanx~~ pertaining to the amendment of an obvious clerical error that crept in recording the date of birth . It is further submitted that Sri Yesodharan entered into service in the month of October, 1962, In the first page of the service book of Sri Yesudharan there was an entry of date of birth as 23.11.1939 without any documentary evidence and also without having any age proof certificate/School certificate, but a medical cerificate was attached in the service book sheet to the effect that the age of Sri Yesudharan is twenty

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years on 25.10.1962 and to that effect the D.O. part II order bearing No. 33/62 was published and attached in the service Book and the age of twenty years of Sri Yesudharan as on 25.10.1962 was also authenticated in the said service book by the then personnel officer at the time of entry into service. Therefore amendment which was made with the approval of Major C.P. Balakrishnan, the then personnel officer had been rightly carried out by way of amendment in the service Book of Sri Yesudharan. A mere reading of the statement of Sri C.P. Balakrishnan submitted on 7.3.2000, which was deposited in the inquiry preceeding held on 7.3.2000 in pursuance of memorandum of charge sheet dated 31.12.1998 makes it crystal clear that the amendment of a bonafide obvious clerical mistake in recording date of birth of Shri G. Yesudharan is carried out by way of amendment. The relevant portion of the statement of Major C.P. Balakrishnan referred to above is reproduced below :

"3. In the circumstances explained above one of the ~~Mxx~~ dealing clk. LDC Mrs Padma Kalita brought service records file of T. No. 1086 PKR G. Yesudharan for my initial on the rectification of a wrong entry of his date of birth. On my queries with dealing clk about such a rectification she told me that the service records of the individual had to be fwd to LAO for

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verification as the LAO does admit the same in the cases of all civilians who have completed more than 25 years of service. Hence the dealing clk had verified the file thoroughly and that time it was found that there is a clerical error in the date of birth of the indl entered in the volume I (first page of service Records Card) and the same is not calculated according to the age mentioned in the individuals medical examination certificate at the time of his appointment in October 1962. Dealing clk showed me the medical certificate of Oct 1962 and it was clearly mentioned that individual age is indeed 20 years on 25th Oct 1962 that is the day of his medical examination at the time of his appointment. Accordingly the individual's DOB or ~~since~~ calculating backwards (As it has been done in the cases of all individuals appointed during that period) should have been 25 Oct 1942. In addition when I went through the reverse side of the first page of the service records of the individual there was an endorsement of then pers offr in 1962 which read as "Appointed as a labourer with effect from 25 Oct 1962, age on appointment 20 Yrs". Along with the reference of DO Part II No. 33/62. This endorsement was authenticated

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and signed by then pers. officer with his seal in 1962
Having perused the above and hearing from the dealing
Clk I initiated the rectification of an existing
Clerical error .

4. Later in Feb 1997 when a Unit Court of inquiry was ordered, I also came to know that T. No. 1086 Pkr G. Yesudharan case was not an isolated one and several precedence of such cases of certificatory actions were carried out earlier also. One of the such cases which relates to T. No. 309 Shri Phulena Singh, some kind of rectification of the DOB was carried out and it was also initiated by then pers officer Man SC Srivastava, a SM.

5. Finally I would like to state due to the pre occupation by holding the charge of four offices and carrying out justice to all the appointments, like any officer in my situation, I was dependent to a great extent on my dealing staff at all levels . Moreover in pers office all the dealing staff deal with a particular table and subject for years continuously and they were well aware of prevailing procedures .

QUESTIONS BY THE INQUIRY OFFICER,

Q. Did you passed the order to dealing clk to change, the DOB of T. No. 1086 PKR G. Yesudharan in his service documents ?

Contd...8

Ans. No. and this case was done amongst of many files either put up to me or brought to me by the dealing staff.

Q. Did you enquired from the dealing clk regarding the existing procedure for changing the DOB of a Govt. servant in his service documents ?

Ans. I would like to clarify that as told by the dealing clk that instant case is only a rectification of a wrong clerical entry which probably might have occurred while the documents were prepared during the time of recruitment of the individual. And hence for such a certificatory action need no to be connected with the ~~proceedure~~ procedure meant for the change of date of birth .

Q. When dealing clk brought the service documents of T.No. 1086 PKR G. Yeshudhanan to you for your initial on the changed DOB on the first page of service records did you she informed you that at the time of enrolment on 25 Oct. 1962 PKR G Yeshudharan was 9th Class pass ?

Ans. No.

Q. On the medical certificate of PKR G Yeshudharan his name was written after cutting the name of an individual which was there initially. Did you enquire about this from dealing Clk ?

Ans. I do not recollect this aspect as I just scanned through whatever I was shown by the dealing clk .

Q. Did you ask OS D.K. Kalita of document section for the procedure of change the DOB of a Govt. servant?

Ans. When the dealing clk brought the service record of the individual for my initial, she mentioned that she had discussed with the OS D.K. Kalita regarding such a rectification of a clerical error .

Q. Don't you ~~may~~ think that such an important issued of changing of DOB should have been put up to you through proper channel under a noting sheet ?

Ans. As it was only rectification of an existing error there was no any requirement to make a noting sheet Moreover the documents was to be sent to LAO for ~~ver~~ verification and audit and it is their responsibility to raise any observation .

Q. Did dealing clk informed you that for changing DOB a Part II order is required to be published for the change carried out by her in the service documents of T. No. 1086 PKR G. Yeshudharan ?

Ans . No.

Contd...10

QUESTIONS BY THE DEFENCE ASSTT. ON BEHALF OF ACCUSED

LDC PADMA KALITA.

Q. Did Padma Kalita has tempered the DOB of T. No. 1086 PKR G. Yeshudahran on the first page of his service documents ?

Ans. As a dealing clk in that situation based on the available supporting documents she has rectified a clerical error probably occurred some where during the recruitment in 1962 .

Q. In document section any periodical trg. Given to staff to acquaint themselves with latest orders on staff matters .

Ans. As my tenure of pers offr is only from mid Oct to Mid Dec. 1965 I can't comment on this aspect . However being an ord offr of know that refresher course are being conducted in CMM Jabalpur .

Q. Whether Est. Br. is purchasing or subscribing updated rules/regulations published on behalf of G. of I by so ~~an~~ many publications ?

Ans. Only thing I am aware that in all the department/branches receive amendments/changes in Rules/regulation through official channel only .

The cross examination of PW-1 computed."

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It is quite clear from above statement of the then Major C.P. Balakrishnam, Personnel officer of the Establishment Section that a rectification of an obvious clerical error in recording date of birth is amended that too with the approval of the then personnel officer. Therefore article of charges of tampering of Govt. records by altering the date of birth of certain Industrial personnel in their respective service book in a most casual manner with utter disregard to the laid down Govt. orders on the subject and thereby benefiting and increasing their services period and thus committed an act of gross misconduct ^{is} to ~~be~~ totally baseless without having any factual basis. As such charges are liable to be dropped against the undersigned in view of the factual position stated above. It is further stated that in the Article of charge it is alleged that the undersigned has ~~tampered~~ tempered Govt. records of certain Industrial personnel whereas no such documentary evidence could be made available by the personnel officer except the case of Sri G. Yeshudharan. It is admitted during the inquiry proceeding by Sri H.R. Sahorate that similar amendment had been carried out in the service records of other Industrial personnel but could not able to produce any evidence regarding amendment of date of birth of any other Industrial personnel except the case of G. Yeshudharan

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It is admitted during the inquiry proceeding by Sri H.R. Sohorate that similar amendment had been carried out in the service records of other Industrial personnel but could not able to produce any evidence regarding amendment of date of birth of any other Industrial personnel except the case of G. Yeshudharan. Therefore the Memorandum of charge sheet itself has been framed in contravention of the relevant CCS(CCA) Rules 1965 as because the charges are not specific, distinct and categorical and on that score alone the entire proceeding is liable to be dropped. It is further alleged that the amendment had been carried out in violation of the Govt. rules but unfortunately the rule/instruction issued by the Govt. of India from time to time regarding correction of date of birth has not been carefully considered in the instant case of the undersigned but under a total misconception the amendment carried out in the service records of Sri G. Yeshudharan has been treated as tampering of Govt. documents. The amendment which is carried out with the approval of the then personal officer is perfectly done in terms of the rule and law laid down regarding rectification of date of birth . The entire charge has been framed under a total misconception that the undersigned has altered the date of birth of Sri G. Yeshudharan by tampering the Govt. record

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whereas the amendment which was carried out with the approval of the then personnel officer, Sri C.P. Balakrishnan is a case of mere rectification of a date of birth .

It is stated that the case of Sri Yeshudharan is a case of rectification of mistake as because no age certificate was attached in the first page of the service book where date of birth was written as 23.11.1939, on the other hand in the same service book a medical certificate was attached where age was certified by a medical officer at the time of recruitment as 20 years as on 25.10.1960. It was further authenticated by the then personnel officer with his initial in the service book at the time of joining of Sri Yeshudharan and the said date of birth as per medical certificate was recorded in the service Book confirming the same by publishing a D.O. part II order No. 33/62 . The said discrepancy came to my notice when service was supposed to be sent for audit on completion of 25 years of service as required under the rule . In this circumstances the undersigned with the advise and approval of the then personnel officer carried out the amendment on good faith with a bonafide belief that a clerical error of date of birth is liable to be rectified as per rule and law .

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Now coming to the question of Government instruction/ rule and I would like to draw your kind attention that the alteration of date of birth is permissible as per instructions contained in the copy of Army Headquarter letter No. 26076/Policy/OS-2C(J) dated 16.7.1983 . In terms of Rule 2(b) and (c) such clerical mistake as stated above can be rectified at any point of time and the five years clause is not applicable for rectification of such clerical mistake. However the limit of five years clause is applicable when there is a case of alteration of date of birth, but the case of G. Yeshudharan is the case of rectification of bona fide clerical mistake . As such the very initiation of memorandum of charge sheet under Rule 14 of the COS(CCA) Rules 1965 that too to a dealing assistant when the same was done/carried out on obtaining approval placing the entire documents/facts before the then personal officer Sri C.P. Balakrishnan which is evident from his statement recorded in the inquiry proceeding held on 7.3.2000 .

In the facts and circumstances the departmental proceeding initiated against me is liable to be dropped exonerating me from the ~~same~~ charges framed under Memorandum dated 31.12.1998 and the question of imposition of penalty after recording statement of Sri C.P. Balakrishnan and other witnesses does not arise .

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It is further stated that the undersigned is entitled to an enquiry report of the departmental proceeding initiated under Rule 14 of the CCS (CCA) Rules, 1965 vide Memorandum dated 31.12.1998. It is relevant to point out here that the entire proceeding has been initiated in total violation of rule. While enquiry was conducted, the inquiry officer played a role of presenting officer by putting question one after another to me in connection with the proceeding which is not permitted under the rule and it is contrary to play the role of presenting officer by the inquiry officer despite the fact that the presenting officer was very much present physically in the inquiry. On that score alone the impugned memorandum dated ~~31.12.1998~~ 31.12.1998 is liable to be dropped.

It is further submitted that amendment/rectification which was carried out in the case of G. Yeshudharan, in a series of similar nature rectification of date of birth have been carried out. The undersigned on a good faith following the earlier instances and also following the existing rules and that too with the approval of the then personnel officer did the amendment/rectification of the date of birth of Sri G. Yeshudharan therefore it cannot be treated as an act of misconduct and also the same cannot

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be termed as tampering of Government record . As such the entire proceeding is liable to be dropped which is initiated in total violation of rule and also without/having any factual basis and I categorically submit that I still maintain the ~~stand~~ stand that the amendment/rectification which was done in the case of Sri G. Yeshudharan is perfectly in term of the rule and law . As such question of committing any act of misconduct or tampering of Government record in violation of conduct rules does not arise and the proceeding is deserves to be dropped by exonerating the undersigned from the charges .

It is also relevant to mention here that Sri H.R. Sohorate who was one the witnesses in the instant disciplinary proceeding also carried out similar amendment/redtification in the case of T. No. 409 , Sri Mitra Bahadur vide his proposal in the note sheet dated 5.7.1997 . Therefore the charge sheet served on the applicant under rule 14 of the CCS(CCA)Rules 1965 is unwarranted and therefore the entire proceeding is liable to be dropped .

It is lastly submitted that in the similar facts and circumstances the question of rectification of a clerical mistake of date of birth came up before various Benches of the Hon'ble Central Administrative Tribunal, High Courts

and Supreme Court. In all the cases, it is held that obvious clerical mistake or bonafide mistake can be rectified at any point of time. However, it is a settled position of law that alteration of date of birth cannot be made at the fag end of service career whereas the case of Sri G.

Yeshudharan is a case of rectification to a clerical mistake which was carried out on a good faith that too with the approval of the competent authority i.e. the then personnel officer therefor departmental proceeding initiated against the undersigned under Rule 14 of the CCS(CCA) Rules is unwarranted in the facts and circumstances stated above.

In view of the facts and circumstances stated above the question of penalty of compulsory retirement in pursuance of the memorandum of ~~charge~~ charge sheet dated 3.12.1988 is unwarranted and therefore entire proceeding is liable to be dropped by exonerating me from the charge leveled against me. Therefore you are requested to drop the charge as referred to above.

For this act of kindness the undersigned shall remain ever grateful.

Date 25/7/2001

Yours faithfully

Sd/- Padma Kalita

T/6963525, LDC

O/O 222 ABOD

C/O. 99 APO

Tele : 7862343

REGISTERED

Sena Ayudh corps Abhilekh Karyalaya

Army Ordnance Corps Record Office

Post Box No. 3

Trimulgherry Post

Secunderabad 500 015

C/6963525/LDC/Discop/Civ/145/CA-6

21 Dec 2001

O R D E R

1. WHEREAS. No. 6963525 LDC Smt. Padma Kalita of 222 ABOD was charge sheeted under Rule of CCS (CCA) Rule 1965 vide this office memorandum bearing No. 6963525/LDC/Discop/49/CA-6 dated 31 Dec 98 for an offence Gross misconduct and lack of integrity .
2. AND WHEREAS, pursuant to order bearing No. 6954013/Discop/95/CA-6 dated 21 May 99, Capt (now Major) NS Negi. Inquiry officer has submitted his inquiry report relating to the charges levelled against the delinquent official and the same have been proved .
3. AND WHEREAS, the undersigned after having carefully examined the inquiry report and relevant records, agreed with the findings of inquiry officer and holds Smt. Padma Kalita guilty of the charges levelled against her .
4. AND WHEREAS, the undersigned has provisionally come to conclusion that the said smt. Padma Kalita is guilty of the charges ~~levelled~~ levelled against her, which warrants

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S. Chauraboli
Advocate

imposition of Major panalty of Compulsory Retirement from service. As such, a Memorandum bearing No.6963525/LDC/ Discop/Civ/CA.6 dated 19 Feb 2001 has been served on Smt. Padma Kalita alongwith a copy of inquiry report and she was given an opportunity for submission of her representation if any, if she wished to do so in writing to the disciplinary authority .

5. AND WHEREAS, the said Smt. Padma Kalita has submitted her representation dated 25 Jul 2001 against the oral inquiry report and the proposed panalty and raised several points for consideration .

6. AND WHEREAS, the undersigned after having carefully considered/examined the individual's representation, inquiry report and relevant records finds the factual position on the main points as under :-

(a) The contention of the delinquent official that the assessment and findings of inquiry officer are contrary to the evidence on record, she has voluntarily admitted that she had rectified the date of birth of E.NO. 1086 packer Shri G. Yeshudharan, which is a correction with the approval of the then personnel officer is not agreed/not tenable as the inquiry officer has given his assessment and

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findings based on the evidence on record, when there exists no provision for change/amendment the question of making rectification does not arise . But, she made an amendment to the date of birth of said Shri Yeshudharan only with the malafide intention . So the question of taking approval also does not arise .

(b) The contention of the ~~delinquent~~ delinquent official that she has denied all the charges levelled against her in her reply/defence statement dated 29 Jan 1999 is agreed but , it is clearly mentioned in para 3 of charge sheet No. 6963525/LDC/Discp/49/CA-6 dated 31 Dec 1998 that the oral inquiry will be held in respect of those articles of charge which are not admitted, for which oral inquiry is mandatory So the question of no foundation to the charges is baseless Moreover, she was also blamed in staff Court of Inquiry .

(c) The contention of the delinquent official that the amendment so made in the service book of Shri Yeshudharan was an obvious clerical error in recording the date of birth of the said individual is not accepted/not tebable as the rule position explained in para (a) above is relevant .

(d) The contention of the delinquent official that Shri Yeshudharan entered into service in the month of

Oct 1962 . At that time his date of birth was entered as 23 Nov 1939 without any documentary proof, but a Medical certificate was attached in which his age was shown as 22 years on 25 Oct 1962 and DO pt II No. 33/62 was published, entry was made to this effect in his service book . On Completion of 25 years of service and while forwarding service book for verification, the wrong calculation regarding date of birth was noticed by her and since it was a clerical mistake, thus the same was corrected/amended is not acceptable/tenable, as per the declaration submitted by the Govt Employees once date of birth is recorded is final and no amendment/alteration is to be made/accepted. In case any such amendment is to be made that is to be done within five years by following laid down procedure for which she failed to do so . Some how, she managed and got the amendment made by her and signed by the officer concerned . This fact has been revealed from deposition of the then personnel officer and office Supdt Shri DK Kalita. Moreover, the delinquent official herself admitted that she has rectified/amended the clerical mistake on the other side she is saying that charge regarding amendment of date of birth is false, bogus and baseless, as such, her own statements contradict with each other. Hence not tenable .

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(e) The contention of the delinquent official that as per the statement of Major CP Balakrishnan. Personnel Officer that the rectification of an obvious clerical error in regarding date of birth is amended that too with the approval of the then personnel officer. Hence, the charges are baseless are in contravention of CCS (CC & A) Rule 1965 is not tenable as it is also very clear from the statement given by the Major CP Balakrishnan, the then personnel officer was pre-occupied by holding charge of four offices and he was dependent on the dealing staff, who are dealing with a particular subject table and well aware of prevailing procedures, by good faith he has initiated the rectification of clerical error on her hear sayings only.

(f) The contention of the delinquent official that as per Army HO letter No. 26076/Policy/OS-8C(J) dated 16 Jul 1983 in terms of para 2(b) & (c) Clerical ~~mistake~~ mistake can be rectified at any time and five years clause is not applicable in this case, as the bonafide clerical mistake can be rectified at any point of time and the five years clause is not applicable for rectification of such clerical mistake is not tenable/accepted as once date of birth recorded in the documents is final for which all the Govt.

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employees rendering a certificate to this effect that they will not claim for any change of date of birth. In this case Shri Yeshudharan has also not approached the Administrative Authorities with any valid reasons/proof for such amendment. Eventhough it is a rectification/amendment of Clerical error she should have processed the case to Higher authorities for obtaining necessary sanction . She herself cannot evade the laid down rule position on the subject matter .

(g) The contention of the delinquent official that the inquiry officer has put ~~any~~ many questions and played the role of presenting Officer, ~~even~~ eventhough the presenting Officer was physically present during the course of ~~an~~ Oral inquiry is not acceptable/not tenable as the inquiry officer can question/examine & Cross examine both the presenting Officer as well as the delinquent Official. In case, the Inquiry officer has made any ~~ix~~ inquiry bias then the delinquent official has every right to request/move an application to the Disciplinary Authority/Appellate to stay the inquiry proceedings and for change of inquiry officer only the grounds of bias, but in this case the question of bias has not at all arisen. As such, her argument has no locus standi, ~~at~~ there being no ~~xxx~~ violation of any rule position during the inquiry proceedings .

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(h) The contention of the delinquent official that Shri HR Sohorate is one of the witness in the instant disciplinary proceeding has also carried out similar amendment/rectification in the case of T.No. 409 Shri Bahadur Mitra, therefore the charge served on the delinquent official is unwarranted and the entire proceeding is liable to be dropped is not tenable/ not accepted, as the said officer has been promoted to the Rank of OOC, separate disciplinary action is contemplated by Army Headquarters. But by pointing out some other officer, she cannot escape herself from the charges framed against her .

(i) The contention of the ~~ix~~ delinquent official that in the judgment of various Hon'ble Central Administrative Tribunals, High Courts and Supreme Court the bonafide obvious clerical mistake can be rectified at any point of time. However, it is a settled position of law that alteration of date of birth cannot be made at the fag end of service carrer . Whereas, the case of Shri G. Yeshudharan is a case of rectification of clerical mistake which was carried out on good faith that too with the approval of competent authority i.e. the then personnel officer is not tenable as the judgements so passed are applicable for such particular cases only . Moreover, in this case Shri Yeshudharan has not approached any court for change of date of birth .

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(k) The delinquent official has repeated the same points at various para graphs, as such no cognigence has been taken ,

7. NOW THEREFORE, the undersigned being the Disciplinary Authority in exercise of powers conferred vide Rule No. 15 of CCS (CCA) Rule 1965 hereby imposes the penalty of compulsory retirement from service on No. 6963525 LDC Smt. Padma Kalita wef the date this order is served on the said Smt Padma Kalita. The Disciplinary ~~Auth~~ Authority further directs that the said Smt. Padma Kalita is eligible for all pension, ary and allied benefits as admissible on the date of her compulsory retirement .

Sd/- Illegible

(AK Jyoti)

Brig

Officer-in-charge Records

No. 6963525 LDC

Smt Padma Kalita

222 ABOD. C/O 99 APO

(Through Commandant 222 ABOD)

ANNEXURE :- 9

The Director General of Ordnance Service
Master General of Ord Branch .

Army Headquarters

DHQ. P.O. New Delhi - 110011

Subject :- DISCIPLINE CIV. (NIP)

APPEAL UNDER CCS (CCA. RULES 1965) AGAINST THE
ORDER OF ACC RECORDS MEMO NO. 6963525/LDC/
DISCP/CIV/145/CA-6 DATED : 21ST DECEMBER 2001.

Sir,

1. I most respectfully the undersigned beg to submit the ~~fix~~ following for your kind consideration and favourable action please .
2. That Sir, I have been appointed as LDC in 222 ABOD in the year 1981, Since then I have been discharging my duty in various capacity with full ~~at~~ satisfaction of my superior officers . Sir, during the year of 1989 to 1996 I was posted in Civil establishment (Document Section) . I was assigned with the task of various kind of updating the service book of Industrial person of 222 ABOD. During this period I have put up my all efforts to discharge my duties . Sir, suddenly I have been served with series of charges in 1998 vide AOC records Memo No. 6963525/LDC/ Discp/49/CA-6 dated 31st Dec. 1998 (Photo copy Attached). In which the following charges have been brought against

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S. Chakraborty
Advocate

me " that the said Smt. Padma Kalita while functioning as LDC in Estt. Branch (Documents Section) of 222 ABOD during period from 1989 to 1996 committed an act of tampering of government records voluntarily by altering the date of birth of certain Industrial Personnel in their respective service book by ignoring the laid down government orders on the subject. Thus the said Smt. Padma Kalita Committed an act of Gross misconduct." Accordingly I have submitted my representation denying the charges brought against me. There after departmental Court of inquiry was held appointing Capt NS Negi of 222 ABOD as inquiry officer and assistant M. Bhattacharjee of 222 ABOD as presenting Officer. After series of sitting the court of inquiry come to an end by submitting the findings by the inquiry officer holding me guilty for the charges framed against me . Accordingly the AOC record office forwarded a memo bearing No. 6963525/LDC/Discp/CIV/42/CA-6 dated 19 Feb. 2001 , (photocopy Attached) in which the AOC record office proposed to imposed the penalty of "Compulsory retirement from service" and asked me to represent if I had anything . I on my part submitted my representation vide my application dated 26 th March 2001. After receiving my representation the AOC records office has not agreed with the plea

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submitted through my application dated 26 March 2001 and finally imposed the proposed penalty of "Compulsory Retirement ~~xxx~~ from service" on me vide AOC records letter No. 69635525/CIV/Discp/145/CA-6 dated 21st December 2001. (Photocopy Attached) .

3. In this context I would like to furnish the following regarding the alleged allegation brought on me . That Sir, during the posting of my tenure in civ. Estt. (Document Section) I was carried out various kind of entries in the service book of Industrial person . In that one Shri G. Yesodharan Pkr. T. No. 1086, the service book has get two kinds of entries in regards date of ~~birth~~ birth of the individuals . In the first page of the service Book of G. Yesodharan the entry of date of birth recorded as 23rd Nov. 1939 which had no supporting documents, In the same service Book another medical certificate was attached recording the age of Shri G. Yesodharan as 20 years on 25th Oct. 1962 and to that effect DO Pt. II order bearing No. 33/62 was published and entried. The same was authenticated by then personnel officer with his office seal . This point has put me in doubt regarding the correctness of the date of birth of the said Shri G. Yesodheren Pkr.

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T.No. 1086. The ~~matter~~ was discussed with then office incharge O/S.D.K. Kalita in details . In which office incharge O/S.D.K. Kalita advised me to consult the case with then personnel officer Major C.P. Balakrishnan. Accordingly I took the said service book to Major C.P. Balakrishnan the then personnel officer, Major C.P. Balakrishnan then personnel officer checked the service book thoroughly and offered ~~in~~ this opinion that this kind of entries may be happen erroneously, therefore rectification can be carried out . As advice by then personnel officer Major C.P. Balakrishnan I rectified the error in front of him and get his signature on the same . After rectification of the error the service book was forwarded to local audit office for their audit, accordingly the same was returned duly audited without any observation .

4. Now Sir, the manner and circumstances under which the court of inquiry was concluded and the punishment is awarded has no base for the following reason .

As I have submitted through my representation dated 29 Jan. 1999 I have point out that the departmental proceeding was jointly conducted against O/S D.K. Kalita and myself . In which my name has been listed as a

- 5 -

witness against O/S D.K. Kalita and O/ S.D.K. Kalita as witness against me . This resulting clear violation of subrule 24 of CCS (CCA) rules 1965 .

II. In my charge sheet Memo No. 6963525/LDC/Discp/49/CA-6 Dated 31 st Dec. 1998 in the list of witnesses the following name have been enlisted .

- a). Col. A.K. Vyas .
- b). Maj. C.P. Balakrishnan
- c). OCC Shri H.R. Sorate .
- d). O/S D.K. Kalita
- e). Nb/Sub. (now Subedar) G.S. Gour.
- f). UDC L.C. Liana
- g). UDC Ramen Deka

But in process of Court of inquiry Col. A.K. Vyas, Nb/Sub. G.S. Gour ^{/not} have/been produced for examination

Sir, the statement of these two witnesses is very vital in my defence .

III. Sir, the charges which have been framed against me is a under "That the said Smt. Padma Kalita while functioning as LDC in estt. Brance (Document Section) of 222 ABOD during the period from 1989 to 1996 committed an act of tampering of Govt. records voluntarily by altering the date of birth of certain Industrial

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personnel in their respective service book by ignoring the laid down Govt. orders on the subject . Thus the said Smt. Padma Kalita committed an act of gross misconduct". In this context I would like to state the inquiry was conducted for only single person that is G. Yesodharan Pkr. T. No. 1086. Whereas the charges clearly stated the word "their". Naturally number of service documents are there in 222 ABOD in which variation of date of birth of Industrial person are contained . The inquiry officer deliberately ignore these points .

IV. Sir, the inquiry officer as per laid down procedure in CCS (CCA-Rules 1965) cannot functioned as a prosecutor who try to same how proof the charges framed against the accused individuals. If so, the inquiry officer ceases to be fair and allegation of bias can be brought. In my case the inquiry officer himself examined the witness and other related evidence by himself , which amounting the violation of existing rules .

V. As per the laid down procedure the deposition of proceeding of oral inquiry should be done after receiving the brief of presenting Officer and accused person . In this instant case the inquiry officer have deposited the

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proceeding of oral inquiry consisting 52 pages in original
vide inquiry Officer Letter No. 50387/Discp./Civ. dated
24th April, 2000 (photocopy attached) to personnel offi-
cer copy to undersigned in which I was directed to submit
my defence brief direct to personnel Officer. This act of
inquiry is amounting gross violation of existing rules .

VI. In this instant Court of inquiry the inquiry officer
has crossed the limitation restricted for an inquiry
officer by recommending disciplinary action against the
undersigned in his findings of the Court of inquiry. The
inquiry officer should be limited only within the finding
of Court of inquiry . This act of inquiry officer not only
violate the existing rules but also proved bias as the
certificate as per the provision of rules 14 CCS (CCA rules
1965) which was rendered in the closed of inquiry .

5. a). Moreover from the statement of Major C.P. Balakrish-
shnan then personnel officer as recorded that the allega-
tion which was brought against me as I have intentionally
tempered the official documents without the consult of my
superior is baseless . The relevent person of statement
of Major C.P. Balakrishnan referred to above is reproduced
below

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"3. In the circumstances explain above one of the dealing Clerk LDC Mrs. Padma Kalita brought service record file of T. No. 1086 Pkr, G. Yesodharan for my initial on the rectification of a wrong entry of his date of birth . On my queries with dealing clerk about such a rectification she told me that the service record of the individual had to be forwarded to LAO for varification as the LAO does audit the same in the case of all civillians who have completed more than 25 years of service. Hence the dealing clerk had varified the file throughly and that time it was found that there is a clerical error in the date of birth of the individual entered in the Vol. I (First page of service records Card) and the same is not calculated according to the age mentioned in the individual's Medical examination certificate at the time of his appointment in Oct. 1962 . Dealing clerk showed me the Medical certificate of Oct. 1962 and it was clearly mentioned that the individual age is indeed 20 years on 25th Oct. 1962 that is the day of his medical examination at the time of his appointment . Accordintly the individuals date of birth on calculatiang backwards (as it has been done in the cases of all individuals appointed during that period) should have been 25th Oct. 1942. In addition when

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I went through the reverse side of the first page of service records of the individual there was an endorsement of then personnel officer in 1962 which read as "Appointed as a labourer with effect from 25th Oct. 1962 , age on appointment 20 years" . Alongwith the reference of DO. Part II No. 33/62. This enforcement was authenticated and signed by then personnel officer with seal in 1962. having perused the above and hearing from the dealing clerk I initialed the rectification of an existing clerical error" .

b). Sir, your kind attention is also drawn to certain fact which will revealed the partial act of then administration by ~~sign~~ single out me in this case . The following instance will give you a clear picture of the fact . That Sir, as I have mentioned the No. of service books of industrial personnel of 222 ABOD having the variation of date of birth . Among them the date of birth T. No. 409 Maz. Mitra Bhadur, T. No. 986 Maz. Paresh Nath was also carried out the rectification of date of birth by then dealing clerk and forwarded to ~~xxx~~ local audit office for their audit varification . But the LAO returned the case vide their Memo No. LA/VI/27/pensioner-IVP/403

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dated 25 June, 1997 and LA/VI/27/pensioner-IVP/404 dated 25 June, 1997 (photocopy attached) stating that the rectification had not been authenticated . In this then personal officer OOC H.R. ~~and~~ Sorate and office Incharge OS D.K. Kalita who are vital witnesses of my case certified through a noting sheet dated 5 July, 1997 (photocopy attached) stated that the rectification was genuine . This above fact have proved partial attitude of then administration towards me .

6. It is lastly submitted that in the similar fact and circumstances question of rectification of clerical mistake of date of birth came out of various benches of honourable CAT, High Court and Supreme Court . In all case, it is held that obvious clerical mistake or bonafied mistake can be rectified at any point of time . Hence the proceedings initiated against the undersigned under rule 14 of CCS (CCA rules 1965) is unwarranted in the facts and circumstances stated above .

In view of above the fact and circumstances stated above in regard entire case be examined and pass an order which your honour deem fit and proper . For this act of kindness the undersigned remain ever grateful .

Date : 31 Jan 2002 .

Your's faithfully
Sd/- Illegible

(Smt. Padma Kalita)
No. 6983525 LDC

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- 11 -

Copy to :-

1. AOC Record Office- For info and necessary action please

Post Box No. 3

Trimulgherry Post

Secunderabad- 500 015 .

2. Commandant - - do -

222 ABOD

c/o. 99 APO .

2. That with regard to the statement made in paragraph 1 of the application the answering respondents beg to state that AOC (R) vide memorandum No 6963525/LDC/Discp/49/CA-6 dated 31 Dec 1998 charge sheeted the applicant for her unauthorised tampering of date of birth of industrial personnel of 222 ABCD. It may be pertinent to mention here that two different Court inquiry proceedings were held/conducted under the supervision of two officers and the applicant was held responsible for unauthorised tampering of Govt. records. The applicant was charged for the said offence based on the findings of oral inquiry reports in the two separate proceedings headed by two officers and based on the available authentic records held by the office of the respondent no 4. The disciplinary authority (AOC Records) after having examined/considered the findings of the oral inquiry report and relevant records held the petitioner "Guilty" of charges levelled against her and accordingly imposed major penalty of "compulsory retirement from service" under Rule 14 of CCS (CC&A) Rules, 1965 vide order No 6963525/LDC/Discp/Civ/145/CA-6 dated 21 Dec 2001.

~~Copies of the inquiry conducted by the above said~~

~~two officers are annexed herewith and marked as~~

~~Annexures 2 and 3 respectively~~

3. That with regard to the statements made in paragraph 2 and 3 of the application the answering respondents have no comments to offer.
4. That with regard to the statements made in paragraphs 4 (i) and 4 (ii) of the application being matters of record

of the case the answering respondents does not anything contrary or inconsistent from what appears from the record.

5. That with regard to the statements made in paragraphs 4(iii) and 4(iv) of the application the answering respondents beg to state that charge sheet bearing no. 6963525/LDC/Discp/49/CA-6 dated 31 Dec 98 was correctly issued incorporating the charges framed against her. The disciplinary authority ie. AOC (R) through letter No 6963525/LDC/Discp/53/CA-6 dated 19 Apr 99 (photo copy attached) in reply to the applicants letter dated 29 Jan 99, affirmed the correctness in issuing the charge sheet to the delinquent official. It is reiterated that Smt Padma Kalita was charge sheeted for alteration of date of birth of pkr Shri G yeskalan of this depot totally ignoring the laid down procedure. The applicant's written reply to the charge sheet denying the charges framed against her is baseless, and motivated and have no merit.

6. That with regard to the statements made in paragraph 4 (v) of the application the answering respondents beg to state that the disciplinary authority had directed to conduct oral inquiry being aggrieved/dissatisfied with the statement given by the applicant in her disciplinary case. The defence Assistant of the delinquent official raised irrelevant objection with regard to the appointment of Inquiry Officer, but the same was rejected by AOC (R) vide letter No 6963525/LDC/Discp/60/CA-6 dated 16 Sep 99 (photocopy attached herewith).

7. That with regard to the statements made in paragraph 4(vi) of the application the answering respondents beg to state that the allegation made on the respondent is false, baseless and devoid of merit and hence denied. It may be mentioned that inquiry was held correctly as per the procedure incorporated in the the CCS (CC&A) Rules, 1965.

8. That with regard to the statements made in paragraph 4 (vii) of the application the answering respondents beg to state that the allegations made against the respondent ~~is~~ false, baseless, malicious, unwarranted and devoid of merit and hence not admitted. It may be mentioned that oral inquiry was conducted to inquire into the circumstances under which the existing entries recorded in the service does more so in the date of birth of as many as 43 Industrial Personnel, of 222 ABOD was altered and not in respect of packer G Yesodharan alone as alleged in the para. Based on the findings of the departmental and oral inquiry proceedings, Cdr HQ 51 Sub Area vide direction dated 10 Mar 99 (Photocopy attached) held guilty of three civilian personnel including two combatant persons in connection with the alteration/ amendment of date of birth of as many as 43 (forty three) Industrial Personnel of 222 ABOD. In this connection it would be pertinent to mention that the statement made by Major CP Balakrishnan during the oral inquiry proceedings is devoid of merit since the Officer was held guilty by Cdr 51 Sub Area vide his direction dated 10 Mar 99 and subsequently, HQ Eastern Command, vide order dated 26 May 2001, had awarded punishment of "Displeasure" to the ibid Officer". Letter No 321483/HRS/OS-8C dated 03 Sep 2001 of HQ Eastern Command is relevant (Photo copy attached).

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9. That the statements made in paragraphs 4 (viii) of the application being matters of record of the case the answering respondents does not admit anything contrary to or inconsistent from what appears from the record.

10. That the statement made in paragraph 4 (ix) of the application is totally false, fabricated and devoid of any truth. The joint inquiry report in respect of the applicant and one Shri BK Kalita was furnished to the applicant vide letter No 1509/DIS/Civ/197/Est-Adm dated 07 Jul 2001 (photo copy attached). It may be reiterated that oral inquiry was conducted by the Inquiry Officer in a fair manner/as per CCS (CC&A) Rules 1965 and the charges levelled against her had been established based on the available authentic record. The alteration made by the applicant in the date of birth of Pkr G Yeshodharan is attached herewith for the perusal of Hon'ble Tribunal.

11. That the statements made in paragraphs 4 (x), (xi) (xii), 5 (a) & 5 (b) of the application being matter of record the answering respondents does not admit anything contrary to or inconsistent from what appears from the record.

12. That with regard to the statements made in paragraph 5(c) the answering respondents beg to state that the Inquiry Officer had provided the applicant full opportunity to defend her case. The applicant was permitted to engage a defence assistant to assist her and every opportunity are provided to the applicant to adduce evidence in her favour.

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The contention made of the applicant regarding cancellation of AOC (R) order dated 21.12.2001 is unjust and improper, therefore the same is denied.

13. That with regard to the statements made in paragraph 5(d) of the application the answering respondents beg to state that the statements made by prosecution witness Major CP Balakrishnan during the course of the inquiry has no merit since he also has been found to be guilty and has been accorded the punishment of 'displeasure', by the Eastern Command Headquarters. The allegation of the application of the application of mind against the Inquiry Officer and the request for cancellation of AOC (R) order is unjust and improper and hence denied.

14. That with regard to the statement made in paragraph 5(e) of the application the answering respondents beg to state that the statements made by the then OOC (A) presently CSO (A) Shri H.R. Serate does not deserve any consideration as because he also has been found guilty of the offence of tampering of official records in the departmental inquiry.

15. That with regard to the statements made in paragraphs 5(f) and 5 (g) of the application the answering respondents beg to state that the allegations made therein are totally false, baseless and is contrary to the material on record.

16. That with regard to the statements made in paragraph 6 and 7 of the application being matters of record of the case the answering respondents does not admit anything contrary to or inconsistent from what appears from the record.

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17. That with regard to the prayers made in paragraph 8 of the application the answering respondents beg to state that the applicant was awarded punishment of compulsory retirement from service by AOC (R) based on the findings of the two separate inquiry proceedings headed by two responsible Army Officers and on the available authentic records, Smt Padma Kalita had amended the date of birth of Ex-T.No 1086 Pkr Shri G Yeshodharan without informing the higher authorities including the then Commandant of 222 ABOD in violation of Article 51 of CSR (Photo copy attached). It is an established fact that for alteration of date of birth after appointment it is a mandatory requirement to consult with the higher headquarters. The applicant had suppressed the existing orders with a malafide intention and obtained the signature of Major CP Balakrishanan, the then Pers Officer (Civ) of 222 ABOD. In this connection it would be pertinent to mention that Major CP Balakrishanan was also awarded the penalty of 'displeasure' by the Eastern Command for signing on the amendment done by the applicant.

18. That as such rules the facts and circumstances stated that above it is respectfully stated that there is no merit in the instant application and the same is liable to be dismissed with cost.

Verification

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

I Col M. Rajgopal

, presently

as Commandant, 222 ABOD, C/O 99 APO, being authorised do hereby

solemnly affirm and declare that the statements made in paragraphs

1 - 11

being matters of record are true to my information derived

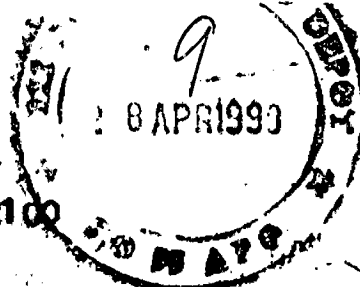
therefrom and those made in the rest are humble submission

before the Hon'ble Tribunal.

And I sign this verification on this 18 th day of

Jan. 2003.

Madan Mohan Rajgopal
Deponent. M Rajgopal
Colonel
Commandant



REGISTERED

Tele : 7882100

Sena Ayudh Corps Abhilekh Karyalaya
Army Ordnance Corps Record Office
Post Box No - 3
Trimulgherry Post
Secunderabad - 500 015

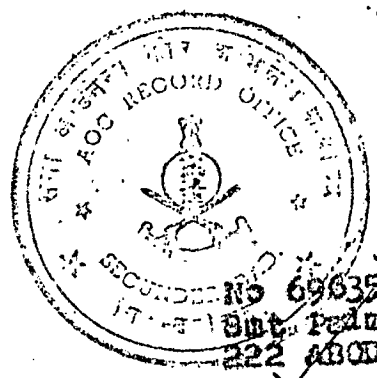
No 6963525/LDC/Discp/53/CA-6

19 Apr 99

NO 222

MEMORANDUM

1. No 6963525 LDC Smt Padma Kalita of 222 ABOD was served with a charge sheet under Rule 14 of CCS (CC & A) Rules 1965, vide this office Memorandum bearing No 6963525/LDC/Discp/49/CA-6 dated 31 Dec 98 for an offence "Gross Misconduct and Lack of Integrity".
2. AND WHEREAS, the said Smt Padma Kalita has submitted an application dated 29 Jan 99 raising objection on signing of charge sheet by the Offg Disciplinary Authority.
3. AND WHEREAS, the undersigned being the Disciplinary Authority after having carefully considered the said application finds that correct procedure for issue of charge sheet against the delinquent official has been followed in terms of Govt of India's Instruction No (2) under Rule 12 of CCS (CC & A) Rules 1965 and Army Headquarters letter No B/12004/OS-8C(1) dated 27 Jul 83. As such, the Memorandum in question is valid. Moreover, the charges levelled against the said individual have been denied by her without any evidence. Thus, it is mandatory to conduct an oral inquiry to investigate the charges levelled against her.
4. NOW, THEREFORE, the undersigned hereby advise the said Smt Padma Kalita to submit her defence statement within 15 days from the date of receipt of this Memorandum and to defend her case during the course of oral inquiry which will be ordered separately.
5. The receipt of this Memorandum be acknowledged.



No 6963525 LDC
Smt. Padma Kalita
222 ABOD

[Signature]
(SS Dhaka)
Brig
Officer-in-Charge Record

(Through the Commandant 222 ABOD)

2

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113
101
RESTRICTED/REGISTERED

N O O

Copy to :-

✓ The Commandant
222 ABOD
C/O 99 AFO

(2 Copies)

- For info with reference to your letter
No 1509/DIS/6954013 & 6963525/27/Est
dated 13 Feb 99. Original copy of this
Memorandum may please be served on the
individual and dated acknowledgement be
obtained.

RESTRICTED

Attchulot
M. Chandra
M. Chandra
Commandant

222 ADV
24 SEP 1999
DEPT
C/O. 99-APD
Tele 7882100

REGISTERED

Sena Ayudh Corps Abhilekh Karyalaya
Army Ordnance Corps Record Office
Post Box No - 3
Trimulgherry Post
Secunderabad - 500 015

No 6963525/LDC/Discp/49/CA-6 16 Sep 99

No 6963525 LDC
Smt Padma Kalita
222 ABOD
C/O 99 APO

(Through the Commandant 222 ABOD)

DISCIPLINARY PROCEEDINGS UNDER RULE 14 OF
CCS (CCA) RULES 1965 AGAINST NO 6963525
LDC SMT PADMA KALITA CONDUCTING OF ORAL
INQUIRY

1. Refer to :-

- (a) This Office Memorandum bearing No 6963525/LDC/Discp/49/CA-6 dated 31 Dec 98.
- (b) Your statement dated 12 May 99.
- (c) Inquiry Order bearing No 6954013/LDC/Discp/94/CA-6 dated 21 May 99 and
- (d) Representation dated 14 Aug 99 from Shri KK Nuthier, Defence Assistant addressed to OIC AOC Records and copy endorsed to all concerned.

2. The representation submitted by your Defence Assistant cited at para 1 (d) above has been examined and following observations are made on the representation :-

- (i) That the Defence Assistant has raised extra ordinary and irrelevant points by over looking the contents of paras 1 to 4 of Memorandum bearing No 6963525/LDC/Discp/49/CA-6 dated 31 Dec 98, the article of charges and list of documents. The court of inquiry proceedings and findings were not at all mentioned in the list of documents of the charge sheet by which charges are to be sustained. He has commented on the preliminary inquiry report which is not one of the documents to sustain the charges.
- (ii) As no cognizance of preliminary inquiry is being taken, there is no bar in appointing any officer (junior in rank) as Inquiring Authority. As per Govt of India's Instructions No (11) the Inquiry Officer should be senior in rank than the charged official against whom inquiry is to be held/conducted. Therefore, no extraneous consideration will influence the inquiry.


(iii) The disciplinary action proposed to be taken against the said Sgt Padma Kalita is within the rules governing civilian central Govt employees.

(iv) The Defence Assistant has over stepped his jurisdiction by advising the Inquiry Officer to stop proceedings of the oral inquiry.

(v) The delinquent official/Defence Assistant seem to have been adopting dilatory tactics by submitting representations instead of attending oral inquiry and to defend the case.

3. In view of above, you are hereby advised to attend the oral inquiry alongwith your Defence Assistant and defend the case to prove your innocence and for early finalisation of Disciplinary proceedings.

4. Please acknowledge receipt.


(Sd Dhaka)
Brig
Officer-in-Charge

Copy to :-

The Commandant
222 ABOD
G/O 99 APO

- for information please.

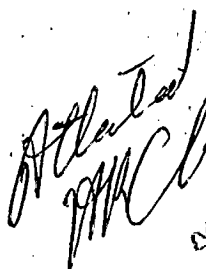
Inquiry Officer

- for information with reference Defence Assistant Representation 14 Aug 99. Necessary oral inquiry be conducted giving reasonable opportunity to the delinquent official to defend her case.

Presenting Officer

- for information please.

Defence Assistant


Presenting Officer
Defence Assistant

13 Annexure III 30(2)

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DIRECTIONS/RECOMMENDATIONS OF CDR 51 SUB AREA ON THE COURT OF INQUIRY PROCEEDINGS INVESTIGATING INTO THE CIRCUMSTANCES UNDER WHICH THE EXISTING ENTRIES OF DATE OF BIRTH RECORDED IN THE SERVICE DOCU AT THE TIME OF INITIAL APPOINTMENT OF VARIOUS CIVILIAN INDLS OF 222 ABOD HAVE BEEN ALTERED/AMENDED AT A BELATED STAGE

1. I partially agree with the Opinion of the Court.
2. IC-38477Y Maj CP Balakrishnan the then Pers Offr of 222 ABOD is to be blamed for improperly authenticating the alteration made in date of birth recorded in the service record of T.No 1086 Pkr G Yesodharan of 222 ABOD.
3. JC-212296A Sub Clk GD GS Gaur of 222 ABOD is to be blamed for improperly authenticating the alteration made in date of birth recorded in the service record of Pkr BK Thakur of 222 ABOD.
4. No 6963525 LDC Smt Padma Kalita of 222 ABOD is to be blamed for negligence and dereliction of duty on her part by making alteration in the date of birth recorded in the service record of T.No G Yesodharan of 222 ABOD in contravention to the condition laid down vide Army HQ letter No 26076/Policy/OS-8C(I) dt 16 Jul 83.
5. No 6954013 OS Shri DK Kalita of 222 ABOD is to be blamed for failure on his part to exercise proper supervision on his Clerical Staff dealing with the service records of the civilian employees of 222 ABOD resulting in delay in bringing such cases of alteration in date of birth of civilian workers to the notice of the superior offr.
6. OOC (Adm) HR Sorate, Pers Offr of 222 ABOD is to be blamed for failure to notice such cases of alteration in date of birth of civilian workers despite holding the appt of Pers Offr for a long duration during 94, 95, 96 and 97 and bring the same to the knowledge of the Comdt in time.
7. I therefore recommend that adm action be taken against the following :-
 - (a) IC-38477Y Maj CP Balakrishnan.
 - (b) JC-212296A Sub Clk GD GS Gaur.
8. I further direct that the discp action be taken against the following civilian pers :-
 - (a) OOC (Adm) Shri HR Sorate.
 - (b) No 6954013 OS Shri DK Kalita.
 - (c) No 6963525 LDC Smt Padma Kalita.

Station : C/O 99 APO

Dated : 10 Mar 99

(VB Patil)
Brig
Cdr

Attended
AMC
[Signature]

14

ARMED

U.S. DEPT. OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
SEP 20 2001
GPO. ED. APO

Headquarters
Eastern Command
Fort William
Calcutta-700 021

03 Sep 2001-44

Dte General Of Ord Services (DG-SD)
Master General of Ordnance Branch
Army Headquarters
DHQ PO: New Delhi-110 011

1. Refer Army HQ L/No A/28042/Discp/HRS/OS-8D dt 23 Jul 2001.

2. In this regard it is submitted that the action taken on the directions/recommendations of C of I proceedings in respect of the following is enumerated against each :-

- (a) Maj CP Balakrishnan - Awarded "Displeasure" by BOC-in-C East Comd on 26 May 2001.
- (b) Sub Clk BD
GS Gaur - Info with regard to adm taken is yet to be received from HQ 101 Area.
- (c) O/Supdt Shri
DK Kalita - Punishment order recd from AOC Records by the depot with a penalty of reduction of Pay by one stage from Rs.7075 to Rs.6700 in the time scale of Rs.3000-170-9000 for a period of one year with cumulative effect and the same is under implementation.
- (d) LDC Smt
Padma Kalita - Indl has been asked to go on compulsory retirement by AOC(R) vide L/No 6963525/LDC/Discp/Clv/72/CA-6 dt 19 Feb 2001.

3. Regarding the disciplinary case/action against: COC(A) (non CSO) Shri HR Sorate, it is submitted that the case is held with Army HQ for further disposal.

4. The query being raised on staff C of I by HQP at this belated stage is not understood as disciplinary action against all other accused has already been completed and can not be revoked by opening of C of I.

3/1 The case be concluded at the earliest.

Copy to :

~~222~~ ABND
C/O 99 APO

- for Inf wrt
dated 23 Aug

Letter No 1309/DIS/CIV/211/Enb

Col
Offg HIG AOC

CONFIDENTIAL

1509/DIS/CIV/194/EST-ADM

15 June

07 Jul 2001

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ADMINISTRATIVE BRANCH
FORWARDING OF INQUIRY REPORT

1. As instructed by AOC Records, typed copies of joint proceedings of the oral inquiry report in respect of P No. 6954013 O/Supdt Shri DK Kalita and P No. 6963525 LDC Smt. Padma Kalita is forwarded herewith. Please submit your fresh representation on the oral inquiry report within fifteen days from the date of issue of the letter for our further action.

(RK Bhatia)
Lt Col

Administrative officer

Enclo(As above)

P No. 6963525 LDC
Smt. Padma Kalita
Ex-Branch

Altered
[Signature]

Joint Control Com
Standing Committee

LB
12

107

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Vol-1/6

SERVICE CARD—CIVILIAN PERSONNEL.

(To be maintained in all record offices.)

for: Sub: as below
of H. S. D. O. - 2
enquiry: as below

20/2/01

20-1-83



Character verified on 11-5-83

Category: Labourer

Father's Name: Shri. K. Gobind

Date of birth: 25-10-1942

Date of promotions/appointments: 25th OCT 1962

Army/Personal No. T/N 1364

Name: MESHOYARAN

EZHVA Hindu

Terms of engagement: as long as required

Professional qualifications: (including Army courses)

Standard passed from

English High School, Karunagapally

Identification marks: A mole below right thumb

Permanent home address: Chinnar, Karunagapally

Dist: Azhikode, KERALA

Nr. Azhikode

Changes in the home address will be communicated to the Record Office immediately on occurrence.

STATEMENT OF SERVICE.

Date	Nature of Casualty	No. and date of Part II Order	Signature of officer certifying correctness of entries
	Appointed as a Lab. wing		
25-10-62	Age		
	on appointment 20 years	38/62	
	ML 7-12-62	DOI 39/62	
	ML 3-1-63	DOI 5/63	
	ML 1-2-63	DOI 10/63	
	ML 7-3-63	DOI 16/63	
	ML 17-4-63	DOI 23/63	
	Service verified through		
	check roll up to 31-3-63	DOI 23/63	
	ML 8-6-63	DOI 26/63	
	MLFD 7-8-63	DOI 27/63	
	MLFD 24-10-63	DOI 68/63	

For Commandant

14-1-64