

01/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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30.6.03

O.A/T.A No. 26/0002

R.A/C.P No. 35/02

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SECTION OFFICER (Judl.)

Sankar
21/11/07

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal :: Guwahati Bench
Guwahati

ORDER SHEET

APPLICATION NO. 26/2002

Applicant(s) Sri M. Ch. Guite

Respondent(s) U.O.I. & Ors.

Advocate for Applicant(s) Mr. A. Ahmed

Advocate for Respondent(s) C.A.S.C. A.K. Chaudhury

Notes of the Registry	Date	Order of the Tribunal
<p>This is application in form C. F. for Rs. 50/- deposited vide IP/OL No. <u>55.0.0.89</u> Dated <u>28.1.02</u> <u>1/c Dy. Registrar</u> <u>8/01/02</u> <u>mb</u></p>	<p>29.1.02</p>	<p>Heard Mr. A. Ahmed, learned counsel for the applicant.</p> <p>List again on 14.2.2002 for admission.</p> <p><u>1/c Ushar</u> Member</p> <p><u>[Signature]</u> Vice-Chairman</p>
<p>Notice preferred and sent to D/S for wing the Respondent No W-1 to 5 by Regd. A/D. <u>18/2</u> <u>D/No 631 W-634</u> <u>Dtd 25/2/02</u></p>	<p>14.2.2002</p> <p><u>bb</u></p>	<p>Issue notice to show cause as to why this application shall not be admitted, returnable by three weeks.</p> <p>Mr. A.K. Chaudhury, learned Addl. C.G.S.C. accepts notice on beha- lf of the respondents.</p> <p>List the case for admission on 7.3.2002. Attempts will be made to dispose of the matter at the admission stage.</p> <p><u>1/c Ushar</u> Member</p> <p><u>[Signature]</u> Vice-Chairman</p>

No show cause has been filed.

20
20.3.02.

7.3.02 Respondents are yet to file show cause. The matter shall be taken for admission on 21.3.2002. Endeavour shall be made to dispose of the same at the admission stage. Respondents are directed to produce the connected records indicating steps taken for completion of proceeding.

K. C. Whang
Member

[Signature]
Vice-Chairman

mb

21.3.2002

Heard counsel for the parties. Judgment delivered in Open Court, kept in separate sheets.

The application is allowed in terms of the order at the admission stage. No order as to costs.

K. C. Whang
Member

[Signature]
Vice-Chairman

*Recd copy.
K. C. Whang
Addl C. J. SC
27/3/02*

17.4.2002

Copy of the Judgment has been sent to the D/Sec for security the same to the applicant by post.

bb

KS

4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 26 of 2002.

Date of Decision. 21.3.2002..

----- Sri M.Chinsuan Guite -----

-----Petitioner(S)

----- By Mr. A. Ahmed. -----

----- Advocate for the
Petitioner(s)

-Versus-

----- Union of India & Others. -----

----- Respondent(s)

----- By 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 K.K.SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Vice-Chairman.

NC

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.26 of 2002.

Date of Order : This the 21st Day of March, 2002.

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

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

Sri M.Chinsuan Guite
S/o Late M.Kaizathang Guite
Assistant Surveyor of Works
(Civil), Civil Construction Wing
All India Radio
Guwahati Division
Tarun Nagar, Bye Lane No.1
Guwahati - 781 005.

. . . Applicant.

By Advocate Mr.Adil Ahmed.

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Ministry of Information and
Broadcasting, New Delhi.
2. The Chief Executive Officer
Prasar Bharati
Broadcasting Corporation of India
Doordarshan Bhawan
Copernicus Marg, Mandi House
New Delhi-1.
3. The Director General
Prasar Bharati
(Broadcasting Corporation of India)
Civil Construction Wing
All India Radio
Government of India
New Delhi-1.
4. The Chief Engineer-I Civil
Construction Wing, All India Radio
Suchna Bhawan, 6th Floor
C.G.O. Complex
New Delhi - 110 003.

5. The Superintending Engineer
Civil Construction Wing
All India Radio
Doordarshan Staff Colony
V.I.P. Road, Hengrabari
Guwahati - 36.

. . . Respondents.

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

O R D E R

CHOWDHURY J.(V.C.) :

The disciplinary proceeding was earlier initiated against the applicant vide memo dated 19.6.2000 for the alleged misconduct that took place in 1988-90. The legitimacy and continuance of the departmental proceeding after a long lapse of time was assailed before this Bench in O.A.273 of 2000. By order dated 16.5.2001 the Bench directed the respondents to complete the proceeding with utmost expedition within the time frame given. Pursuance to the order the applicant submitted his written statement on 4.6.2001 questioning the continuance of the proceeding as well as the merit of the charges. Despite the said direction since the respondents did not complete the departmental proceeding within the time prescribed the applicant now moved this Bench by way of this application assailing the continuance of the departmental proceeding as illegal and unlawful.

2. Admittedly, more than nine months passed since the filing of the written statement. By order dated 16.5.2001 we provided opportunity to the respondents to complete the departmental proceeding within the time prescribed. There is no justification

Contd..3

in not completing the departmental proceeding within the time prescribed. The respondents seemingly acted with torpidity. No dereliction is discernible on the part of the respondents in not completing the departmental proceeding despite opportunity given.


3. Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents defending the respondents, however, submitted that by order dated 18.3.2002 an Enquiry Officer was appointed so also the Presenting Officer. Mere appointment of Enquiry Officer is itself not sufficient compliance of the statutory duty imposed on the authority. It was argued by Mr.Adil Ahmed, learned counsel for the applicant in the pretext of the alleged proceeding the respondents did not consider the case of the applicant for further promotion and for the laches on the parts of the respondents the applicant is suffering in his career progression. The departmental proceeding cannot be used as a vehicle of operation.


4. Considering all the aspects of the matter we direct the respondents to consider the case of the applicant for promotion to the post of Executive Engineer from the rank of Assistant Engineer by convening a DPC without taking note of the charges. If the DPC recommends the case of the applicant, in that case, the authority shall take necessary steps for his promotion on adhoc basis. The respondents are ordered to complete

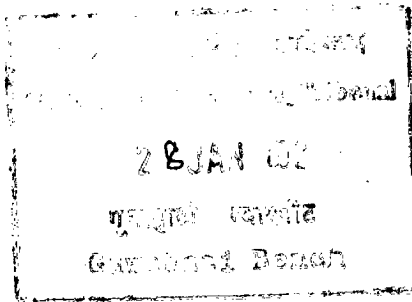
the proceeding within four months from the receipt of the order by providing a fair and reasonable opportunity to the applicant to defend his case as per law. It would be open to the applicant to take all the legal issues before the authority that he had raised before this Tribunal and the respondents shall take note of the same. The applicant is also ordered to render co-operation in conclusion of the proceeding. In the event the disciplinary proceeding is not concluded within the time schedule prescribed above the disciplinary proceeding shall stand dropped against the applicant.

The application accordingly stands allowed to the extent indicated above at the admission stage.

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


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 26 OF 2002.

Sri M. Chinsuan Guite

- Applicant.

-Versus-

Union of India & Others

- Respondents.

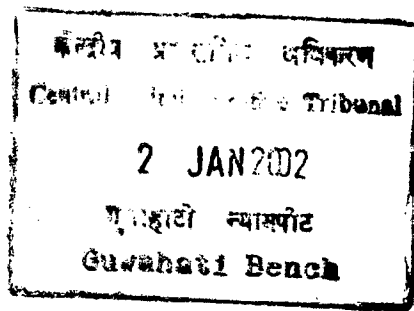
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Filed by

Advocate.

(Adic Ahmed)



Filed by
Shri M. Chinsuan Guite
Through *[Signature]* applicant
(Adv. AHM/20) B
Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

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

ORIGINAL APPLICATION NO. 26 OF 2002.

B E T W E E N

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

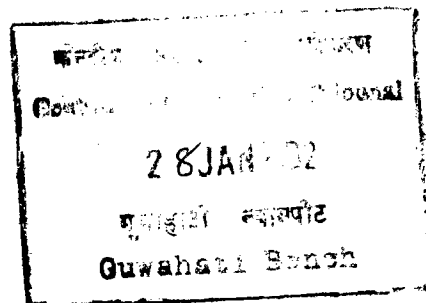
- Applicant.

-AND-

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

[Handwritten mark]

- 2 -



Copernicus Marg, Mandi House,
New Delhi-1.

- 3] The Director General,
Prasar Bharati (Broadcasting
Corporation of India, Civil
Construction Wing, All India Radio,
Government of India, New Delhi-1.
- 4] The Chief Engineer-I Civil
Construction Wing, All India Radio
Suchna Bhawan, 6th Floor,
C.B.O. Complex,
New Delhi-110003.
- 5] The Superintending Engineer,
Civil Construction Wing,
All India Radio,
Doordarshan Staff Colony,
V.I.P. Road, Hengrabari,
Guwahati-36.

- Respondents.

DETAILS OF THE APPLICATION:

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

The instant application is directed
against the Office Memo No. 7/55/95-Vig. New
Delhi, dated 09-06-2000 and also Letter No. C-
13013/41/94-SW(V)-1/Vo.II/214 dated 19-06-2000 at

Annexure-A) initiated by the Respondents after 12 years and with a prayer for quashing the said impugned Memorandum as per judgment and order dated 16th May, 2001 passed in O.A. No. 273 of 2000 by the Hon'ble Tribunal directing the Respondents to complete the inquiry process within 6(six) months from the date of receipt of the written statements of the applicant.

2. JURISDICTION OF THE TRIBUNAL

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

3. LIMITATION

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

4. FACTS OF THE CASE

Facts of the case in brief are given below:

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

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- 4 -

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

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

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Annexure-A is the photocopies of Office Memorandum Memo No. 7/55/95-Vig New Delhi dated 09-06-2000 and also Letter No. C-13013/41/94-SW(V)-I/Vol. II/217 dated 19-06-2000 at Annexure-A) issued by the Office of the Respondents.

4.4 That your applicant begs to state that the Article of Charges which were brought against him at a belated stage, i.e., after 10 to 12 years during his posting as Assistant Engineer (Civil) at Churachandpur, Manipur in between 23-03-1988 to 11-05-1990. The above charges brought against him are totally baseless and mala fide. Immediately after receiving the Article of Charges the applicant filed a representation before the Authority by which he totally denied the charges leveled against him. It may be stated here, that before serving the Article of charges on the applicant the Respondents never served copy of proposal to conduct inquiry against the applicant nor any notice was served to him to give him opportunity to defend his case.

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

4.5 That the applicant begs to state that the Article of charges which was brought against the applicant the Respondents have not explained the inordinate delay for issuing the above

Article of Charges after 10 to 12 years. There are deep conspiracy against the applicant by some interested persons who are trying to harass the applicant for their personal illegal gain.

4.6 The applicant begs to state that being aggrieved by Impugned office Memorandum your applicant filed an original application No. 273 of 2000 before this Hon'ble Tribunal. The Hon'ble Tribunal admitted this Original application on 20-09-2000 and also stayed the impugned Office Memorandum dated 09-06-2000 and 19-06-2000. The above said case was finally heard by the Hon'ble Tribunal on 16-05-2001. The Hon'ble Tribunal in its Judgment and order directed the applicant to submit his written statement within one month from the date of receive of the said order. The ~~applicant~~ ^{Respondents} on receipt of such written statement may take an appropriate decision in the matter and complete the inquiry as early as possible preferably within six months from the date of receipt of the written statement of the applicant.

Annexure-C is the photocopy of order dated 20-09-2000 passed in O A No. 273 of 2000 by this Hon'ble Tribunal.

Annexure-D is the photocopy of Judgment and order dated 16-05-2001 passed in OA No. 273 of 2000.

[Handwritten signature]

4.7 That your applicant begs to state that as per Hon'ble Tribunal's Judgment and order passed in OA No. 273 of 2000 your applicant submitted his written statement on 06-06-2001 within one month from the date of judgment.

Annexure-E is the photocopy written statement submitted by the applicant on 06-06-2000.

4.8 That your applicant begs to state that now more than 6(six) months has already been passed but the Respondents did not appoint any inquiry officer or completed the departmental inquiry against the applicant. It appears from this that the Respondents are deliberately harassing the applicant in initiating Departmental proceeding against the applicant after 12 years. Moreover, the Hon'ble Tribunal in its clear-cut order directed the Respondents to complete the entire proceeding within six months from the receipt of the written statement by the applicant.

4.9 That your applicant begs to state that he is the Senior Most Assistant Engineer (Civil) and his promotion is also held up due to these departmental proceedings. Your applicant's promotion to the post of Executive Engineer is due from 2000 but due to this he could not get his due promotion in time. It is worth to mention that the Respondent No. 3 vide his letter No. A -



13015/12/99-CW-1 dated 14-01-2002 has asked concerned official to submit ACR of the applicant for the period of 1999-2000 and 2000-2001.

Annexure-F is the photocopy of letter No. A-13015/12/99-CW-1 dated 14-01-2002.

4.10 That your applicant submits that the action of the Respondents is mala fide, illegal, arbitrary and whimsical and also with a motive behind. As such, the applicant is compelled again to approach this Hon'ble Tribunal for seeking justice.

4.11 That your applicant submits it is a fit case to interfere by the Hon'ble Tribunal by giving necessary directions to the Respondents for quashing the entire proceedings brought against him by the Memo of Charges dated 19-06-2000.

4.12 That your applicant submits that the Respondents have resorted the colourable exercise of power to deprive the applicant. The action of the Respondents is arbitrary and whimsical.

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

4.14 That this application is made bona fide and for the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1 For that, on the reasons and facts which are narrated above, the action of the respondents, is prima facie illegal and without jurisdiction.

5.2 For that in spite of clear cut direction by this Hon'ble Tribunal to complete the entire proceeding within six months the Respondents deliberately with a motive behind did not proceed the matter. Hence, the Departmental proceeding against the applicant should be quashed and liable to be set aside.

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

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

AMS

Departmental Proceeding is required to be revoke or quashed.

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

5.6 For that, it is very difficult for applicant to recollect all the relevant matters, documents and records after long 10 to 12 years for submission of reply in defence and as such, the impugned Departmental proceeding is liable to be set aside and quashed.

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

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

5.9 For that in any case the Hon'ble Supreme Court of India and Hon'ble Central Administrative Tribunal held that

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inordinate unexplained delay initiating proceeding vitiates enquiry.

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

5.11 For that, in any view of the matter the action of the respondents are not sustainable and hence the same is liable to be set aside and quashed.

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

6. DETAILS OF REMEDIES EXHAUSTED:

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

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

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

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the applicants most respectfully prayed that your Lordship may be pleased to admit this petition, records may be called for and after hearing the parties on the cause or causes that may be show and on perusal of the records grant the following relief to the applicant.

- 8.1 To direct the respondents to pass order declaring the Memo No. 7/55/95-Vig New Delhi, dated 09-06-2000 and also Letter No. C-13013/41/94-SW(V)-I/Vol.II/214 dated 19-06-2000 at Annexure-A) issued by the Respondents are illegal, unconstitutional and non-warranted by the facts and circumstances of the case.

8.2 To grant such further or other relief or reliefs to which the applicant may be entitled having regard to the facts, and circumstances of the case.

8.3 . Grant the Cost of this application to the applicant.

9 . INTERIM ORDER PRAYED FOR :

Pending disposal of the Original Application the applicant most respectfully prays for an interim order directing the Respondents not to proceed further with the Departmental Proceeding vide Office Memo No. 7/55/95-Vig New Delhi, dated 09-06-2000 and also Letter No. C-13013/41/94-SW(V)-I/Vol. II/214 dated 19-06-2000 at Annexure-A) till final disposal of this instant Original Application.

10] Application Is Filed Through Advocate.

11] Particulars of I.P.O.:

I.P.O. NO. 76550089

Date Of Issue 28.1.2002

Issued from Guwahati C.P.O.

Payable at Guwahati

12] LIST OF ENCLOSURES:

As stated above.

- Verification.

VERIFICATION

I, Sri M. Chinsuan Guite, S/o late M. Kaizathang Guite, Assistant Surveyor of Works, (Civil), Civil Construction Wing, All India Radio, Guwahati Division, Tarun Nagar, Bye Lane No.1, Guwahati-781005, the applicant of the instant case do hereby solemnly verify that the statements made in paragraphs 4.1, 4.2, 4.5, 4.8

_____ are true to my knowledge, those made in paragraphs 4.3, 4.4, 4.6, 4.7,

4.9 are being matters of records are true to information derived therefrom which I believe to be true and those made in paragraph 5 are true to my legal advice and rest are my humble submissions before this Hon'ble Tribunal I have not suppressed any material facts.

And I sign this verification today on this the 28th day of January 2002 at Guwahati.

M. Chinsuan Guite.

Declarant

- 15 -

ANNEXURE - A

CONFIDENTIAL
Speed Post

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

2nd floor, PTI Building
New Delhi.

No. C-13013/41/94-SW(V)-I/Vol.II/114

Dt 19.6.2000.

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

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

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

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

(Signature)
- (MR.K.NAIR)
SURVEYOR OF WORKS
VIG.-I

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

Copy to:

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

(Signature)
27/6/2000

/

SURVEYOR OF WORKS
VIG.-I

(Signature)
(Signature)

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

No: 7/55.95-Vig.

New Delhi, dated the 7.6.2000

M E M O R A N D U M

The undersigned is directed to inform you that Mr. M.C. Guite, Assistant Engineer, CEA, has been charged under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1945. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures-III and IV).

2. Shri Guite is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge which are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri Guite is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fail to refer to comply with the provisions of Rule 14 of the CCS(CCA) Rules, 1945, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him in person.

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

...Contd...2/-

Attested
Sd/-
Authorized

6. The receipt of the Board shall be acknowledged.

Rajeeva
2/6/2000

(RAJEEVA RATNA SHAH)
Additional Secy. to the Govt. of India
& Disciplinary Authority

Shri M.C. Guite,
Assistant Engineer (C),
CCW, All India Radio,
GUWAHATI.

2
3
4
5

(Through Secy. (IV), CCW,
AIR, New Delhi).

Attchd
JSS - 1
Adurota

ANNEXURE - II

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

ARTICLE - 1

That the said Shri M.C. Guite while working as Assistant Engineer (C), CCW, AIR, Churachandpur during the period 23.03.88 to 11.08.90 had supervised and executed the work of C/O 10 BU Transmitter and Office Building 1/c & Non. staff quarters for T.V. Centre, under agreement no. EE/SLD/42/89-90 in the capacity of Assistant Engineer (C). He was duty bound to execute and supervise the work by maintaining quality as per CPWD specifications and to check the measurements of the item executed as per terms of the agreement and Bill of Materials.

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

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


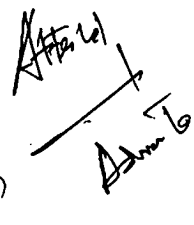
....Contd..2/-

Atul
Advocate

ANNEXURE - IV

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

1. Shri Monshi Lal, Retired Senior Engineer (C)-II, CCW, AIR.
2. Shri S.K. Das, Retired Senior Engineer (C), CCW, AIR, Guwahati, presently working as Deputy Executive Engineer (C), CCW, AIR, Guwahati.
3. Shri A.K. Khan, Retired Senior Engineer (C), CCW, AIR, Calcutta.
4. Shri R.K. Singh, Retired Senior Engineer (C), CCW, AIR, Hyderabad.
5. Shri A.K. Chatterjee, Retired Senior Engineer (C), CCW, AIR, Calcutta.
6. Shri N. Sozilian, Retired Assistant Engineer (C), CCW, AIR, presently working in the Office of Joint Forest Services, Ministry of Environment & Forests.
7. Shri Prayaga Sharma, Junior Engineer (C), CCW, AIR, Chandigarh.
8. Shri Kadar Mandal, Junior Engineer (C), CCW, AIR, Guwahati.
9. Shri M.C. Das, Junior Engineer (C), CCW, AIR, Guwahati.
10. Shri Debajit Bar, Junior Engineer (C), CCW, AIR, Guwahati.

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

Dated 28-06-2000

Sub: Memorandum No. 7/55/95-Vig. Dated 9-6-2000 of 1995. AIR on the subject of construction of 10 KW TV Transmitter and office building i.e. 8 Nos. staff quarters for TV centre at Churachandpur.

Sir,

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

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

Yours faithfully,

28/06/2000
(A.L.C. Guite)
Assistant Surveyor of Works(Civil)
CCW, AIR Guwahati Division

Attache
Aswanta

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI


ORDER SHEET O.A.
APPLICATION NO. 273/2000 OF 199

Applicant(s) Sri M.Chinsuan Guite

Respondent(s) Union of India & Ors.

Advocate for Applicant(s) Mr A.Ahmed

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

Notes of the Registry	Date	Order of the Tribunal
 <p>TRUE COPY 20/9/2000</p>	20.9.00	<p>Present : The Hon'ble Mr Justice D.N. Choudhury, Vice-Chairman.</p> <p>Application is admitted. Issue notice on the respondents.</p> <p>List on 14.11.2000 for written statement and further orders.</p> <p>Heard Mr A.Ahmed, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents on the interim prayer. Issue notice to show cause as to why the interim order as prayed for shall not be granted. Returnable by 14.11.2000. In the mean time further proceeding in the departmental case initiated vide Memo No. 7/55/95-Vig New Delhi, dated 9.6.2000 and also letter No.C-13013/41/94-SW(V) I/Vol.II/214 dated 19.6.2000 at Ann... A shall remain suspended until 14.11.00</p>

Section Officer (J)
आनुमान अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
इष्टीतः प्रशासक न्याय अधिकारी
Guwahati Bench, Guwahati-8
गुवाहाटी न्यायिक, गुवाहाटी-8

SO/VICE CHAIRMAN

Attended
20/9/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ANNEXURE - D

Original Application No.273 of 2000

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

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

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

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

.....Applicant

By Advocate Mr A. Ahmed.

- versus -



1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Information and Broadcasting,
New Delhi.

2. The Chief Executive Officer,
Prasar Bharati,
Broadcasting Corporation of India,
New Delhi.

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

4. The Chief Engineer-I,
Civil Construction Wing,
All India Radio,
New Delhi.

5. The Superintending Engineer,
Civil Construction Wing,
All India Radio,
Guwahati.

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

.....Respondents

6.6.2001 WSS

Handwritten signature and initials:
A. Ahmed
Advocate

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

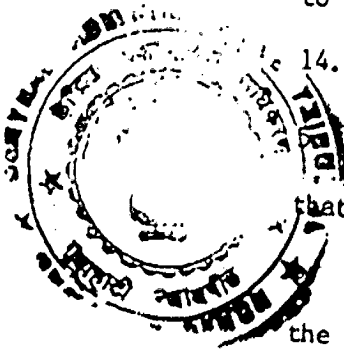
2. The respondents submitted their written statement and outlined the reasons for the delay in initiating the disciplinary proceeding.

3. Mr A. Ahmed, learned counsel for the applicant, submitted that the applicant was at the relevant time serving as an Assistant Engineer immediately after joining the department in 1983 and the alleged lapses mentioned in the charges pertained to the year 1988-90. Mr Ahmed submitted that the construction was done long back and whatever alleged lapses for not complying with the specifications were known to the authority. After a long lapse of time it is hardly expected of the applicant to recall the relevant facts or the documents on the basis of which the alleged action was taken by the respondents. The learned counsel for the applicant, in support of his argument, referred to a host of decisions, more particularly the decision of the Supreme

Atk E1
Q.2
Advent

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

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



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

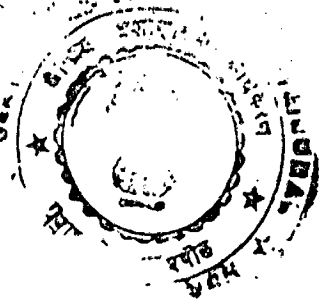
(Signature)
(Signature)

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

7. The interim order dated 20.9.2000 stands vacated.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)



Certified to be true Copy

प्रमाणित प्रतिलिपि

[Signature]
25/5/2011

Section Officer (J)

आनुमान अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench, Guwahati

গুৱাহাটী বেঞ্চ, গুৱাহাটী

[Signature]
29/5/2011

[Signature]
29/5/2011

- 29 -

Annexure - 84E

CONFIDENTIAL/REGD. POST WITH A.D.

PRASAR BHARATI
BROADCASTING CORPORATION OF INDIA
OFFICE OF THE EXECUTIVE ENGINEER (C)
CCW, ALL INDIA RADIO
GUWAHATI DIVISION

No. CWG AIR/ST/Conf.(1)/2001 1261-62

TARUN NAGAR,
BYE LANE NO. 1
GUWAHATI - 5

Dt. 06.6.2001

To,
Shri M.R.K. Nair
Surveyor of Works (C) Vig.-I
Civil Construction Wing,
All India Radio,
5th Floor, Soochna Bhavan,
Lodhi Road,
NEW DELHI - 110003

Subject : Forwarding of sealed envelop No. MCG/Vig./4/2001 dt. 4.6.2001 of
Sh. M.C. Guite, ASW(C), Guwahati Division

Sir,

Please find enclosed herewith the above sealed envelop of Sh. M.C. Guite,
ASW© of this office for your further necessary action.

Yours faithfully,

.s.d.

Executive Engineer (C)
CCW, AIR, Guwahati Division

Enclosed : Sealed envelop - 1(one) No.

✓ Copy to : Sh. M.C. Guite, ASW©, CCW, AIR, Guwahati Division for information.

Annexure - 84E
Executive Engineer (C)
06/06

Adm. Secy
+
Adm. Secy

To,
Shri M.R.K. Nair
Surveyor of Works (C) Vig.-I
Civil Construction Wing,
All India Radio,
5th Floor, Soochna Bhavan,
Lodhi Road,
NEW DELHI - 110003

Subject : Construction of 10 KW T.V. Transmitter and office building including
8 Nos. staff quarters for T.V. Centre at Churachandpur.

Reference : Memorandum No. 7/55/95.Vig. dt. 9.6.2000

Sir,

Please find enclosed herewith my written statement of defence against the above memorandum for necessary action at your end. Please acknowledge receipt of the same.

Enclosed :

- (1) Defence statement No.
MCG/Vig./4/2001 dt.4.6.2001(3 Pages)
- (2) Copy of O.A. No. 273 of 2000
Dt. 16.5.2001

Yours faithfully,

(M.C. GUTE)
Assistant Surveyor of Works(C)
CCW, AIR, Guwahati Division

[Handwritten signatures and initials]

No. MCG/VIG/4/2001

Date : 4.6.2001

To,
Sh. Rajeeva Ratna Shah,
Additional Secretary to the Govt. of India
& Disciplinary Authority

Subject : C/O 10 KW Transmitter and office building including 8 Nos. staff quarters
for T.V. Centre at Churachandpur.

Reference : (a) Memorandum No. 7/55/95.Vig. dt. 9.6.2000
(b) My earlier statements dt. 28.6.2000, 9.7.2000 and 24.7.2000
(c) O.A. No. 273 of 2000 dt. 16.5.2001 of CAT, Guwahati Bench.

Sir,

With reference to the above I am submitting my comprehensive written statement
of defence as follows. That

1. I was in charge of Churachandpur T.V. works in the beginning only, looking after from Imphal S/D headquarter and was relieved of duty when major portion of the T.V. transmitter building work was constructed.
2. The 1st and 4 R/A bills consist mainly of T.V.staff quarters works. The 4th R/A bill was prepared when I was holding the additional charge of the O/O A.E.(C), AIR, Churachandpur in addition to my normal duty as A.E.(C), AIR, Imphal Sub Division.
3. Regarding cracked/damaged tie beams mentioned in the above memorandum Article-I, it may be mentioned that the work site was very steep slope and very congested and there was no proper place for stacking of excavated earth. Also due to construction of 100 M. steel tower foundation by the side nearby and existence of a public road just nearby the boundary on the lower side, there was very limited space to stack the excavated earth on the upper side of the slope. This has been mentioned by Sh. S.K. Das S.E.(C), A.I.R., Guwahati vide his letter No. AIR/CCW/SE-GH/W-43/90/6909-14 dt. 29.10.90. In such an extremely difficult situation, it was possible that sliding of loose excavated earth had taken place and over burden the newly casted tie beams before they attained the required strength. This fact has been mentioned in the report of B.I.T. Mesra, Ranchi. In such cases of defects noticed there is provision in the agreement which stipulates that the agency/contractor should rectify the defects or the same could be done by the department at the risk and cost of the contractor. In the suggestions and recommendations of B.I.T. Mesra report, it is mentioned that the brace beams are designed by steel beam theory to take up reversal of stresses and the concrete strength is not taken into account anyway. So these members can be left as they are with minor repairs for honey combing etc.
4. The allegation that sufficient overlapping to the reinforcement as per I.S.-456 design code were not been found provided and it was the main cause of cracks at the junctions of beams and columns is denied. Documentary evidence to the above charge may be produced. Sufficient overlapping wherever required is provided at the junctions of beams and columns.

Attended
Adm 16

5. In the 3rd para of the Article -I of Annexure-II of the charge framed against the undersigned it is mentioned that no tests had been conducted for the concrete at the defective portions as per cube tests register maintained at site. It is clear that the test results recorded in the cube test register which passed the 7 days test results are for other members of the project and not T.V. transmitter building. On what basis is it concluded that the cube test register is cooked up when no non destructive tests have been conducted on the said members at all. The charge is totally baseless and is denied.
6. It is denied that the undersigned has check measured the items amounting to Rs. 3,58,523/- without proper check on the quality of items executed at site. Check measure done by undersigned for the portion alleged to be defective is about Rs. 44,000/- only.
7. It is denied that the expenditure on remedial/modification work termed as infructuous expenditure is Rs.2,06,355/-. The fact may be elaborated as below. In the transmitter block portion the ground floor slab had been casted on stilt after visit of B.I.T. Mesra by concerned staff (self not in charge of the works during the time). After the visit of Sh. Lt. Col. D.S. Manchanda, CE-II at site on 12.10.95, a decision was taken to demolish the ground floor slab (stilt slab) already casted alongwith columns and beams upto proposed ground floor level. Refer CE-II letter No. 7.6.88/SSW.III/2019 dt. 30.10.95. it may be mentioned here that no payment has been made for the casting of the stilt slab though measured and bills submitted in the 10th R/A bill. (Self not in charge of the work during the time of construction and preparation of bills.) now there is a complete change in the provision of scope of work as a result of this changed decision in the method of construction of the T.V. transmitter building from the original plan. Vide the above decision demolishing of the stilt slab, columns, beams etc. was carried out amounting to Rs. 13,859/- only. The figure for the cost of remedial/modification works shown above (i.e. Rs.2,06,355/-) includes the cost of casting the roof slab of the transmitter building and not recasting the ground floor stilt slab. Hence the cost of R.C.C. work in suspended floors shown as Rs.90,031.55 (vide Sl.No. 1 of B-Redoing cost of letter No. EE/SLC/CHU-TV/works/032/878-79/1544-45 dt. 7.10.97) of Annexure-III Sl.No. 7 of list of documents) can not be considered as redoing cost of defective work. Besides this, the expenditure involved in casting of R.C.C. Columns, beams, lintel etc. above the demolished stilt slab can not be termed as redoing cost of defective works. Actual measurements in M.B. needs to be verified and actual remedial/modification cost of work has to be reascertained.
8. The annexures 'B', 'C' and 'D' of Sl.No. 7 in the list of documents of Annexure-III of article of charge framed which were not supplied during handing over of the rest of the documents to the undersigned may be supplied at an early date for reference and record please.

Sir, in addition to above, I would like to mention the following facts also. The office portion of T.V. has already been completed long back after doing some minor repairs and is in use now. No structural failures have been noticed at all. BIT, Mesra, Ranch have not recommended for demolishing of any structure. Instead they recommended strengthening of the columns by conducting light surface chipping to remove loose materials and guniting work of cement water with fine sand to be carried out. However, demolishing of T.V. transmitter portion had been ordered by the department in their own decision.

Handwritten signature and initials:
A. H. Patel
S. D.
D. S. Manchanda

Sir, I may also be allowed to mention here that Churachandpur where local radio station with staff quarters and 10 KW T.V. transmitter alongwith staff quarters are co-sited have been set up in a remote and difficult terrain. Local disturbances such as insurgency, extortion, killing, ethnic clashes were/are common features. Under such difficult circumstances also, the A.I.R./T.V. projects were taken up by the field staff and most of the projects have been completed satisfactorily. During the period, the undersigned was looking after from Imphal sub-division HQ, all the scattered works at HPT/AIR site, Mayang, Imphal (25 Km from HQ), studio site, palace compound (3 Km), DDK works at Porompat (7 KM), VLPT (TV) works at Tamenglang (145 KM), Senapati (65 Km) and Chandel (65 Km) districts, the last three being in remote and interior districts of Manipur in addition to Churachandpur work (66 km). In fact, I was doing my best to achieve all the target dates for completing and handing over of DDK Admn. Block and staf quarters 50 KW SW Xtr. building, VLPT (TV) centers in Manipursince all these are time bound projects. But instead of getting appreciation for the above achievements, I have been chargesheeted in a rare case such as C/O 10 KW T.V. transmitter and office building i/c 8 Nos. staff quarters for T.V. centre at CCP. The case in question wouldhave been solved by the concerned authority at the initial stage itself had enough interest and constructive approach been taken at the appropriate time. The agency/contractor could have been asked to make all the necessary repair works at the instant when the alleged defects were noticed. But the matter was blown out of proportion and made a big issue. Department has got a quality control (Q.C.) team at Delhi for inspection of works in the department. But in the above case no Q.C. team has visited Churachandpur site to ascertain the actual defects. Also the vigilance unit at Delhi should have visited Churachandpur and Guwahti offices where many records are available to ascertain the facts. But sitting in Delhi they have issued a chargesheet even without bothering to issue any show-cause notice. In fact, instead of panalising the contractor, all the supervisory staff have been issued charge sheets. No order/action has been taken so far for recovery from the contractor eventhough security deposit and bills are lying with the department. The reason for approaching BIT, Meesra, Ranch for conducting investigation into the alleged defects of construction by the concerned authority when there are other engineering colleages (Assam) nearby the site is not known extra expenditure in TA/DA of officials of BIT, Mesra, Ranchi have been incurred by concerned authority of the department on this account.

Sir, considering all the above mentioned statements of facts and grievances of mine it is requested to hve a sympathetic consideration and review the office memo no. 7/55/95.Vig. dt. 9.6.2000 issued to me and drop the charge sheet at an earliest possible date. I have already been made a victim by issue of the above charge sheet barring me to get even adhoc promotion when my batch mates have already been given the same.

Yours faithfully,

(M.C. GUITE)
Assistant Engineer (C)
CCW, All India Radio,
Guwahati Division.

Handwritten signature and initials

17/01/2002
Time: 12.15

34 -

ANNEXURE - F 43
MOST URGENT

Prasar Bharati
Broadcasting Corporation of India
Directorate General: All India Radio
(Civil construction Wing)

6th Floor Sanchina Bhavan,
CGO Complex, New Delhi
Date 14.01.2002

No.A-13015/12/99-CW-1

Subject:- ACRs in required in connection with the convening of DPC in the grade of EE(C/E) in CCW.

The ACRs in respect of the following AE(C/E)s are urgently required in connection with convening of DPC for promotion of EE(E/C):-

S.No.	Name & Design.	Period
1.	M.C.Guite, AE(C)	1999-2000 & 2000-2001
2.	Anvhuman Dey, AE(F)	98-99 to 2000-2001
3.	Abhok Kumar, AE(E)	98-99 to 2000-2001
4.	V.R.Vijyan, AE(E)	98-99 to 2000-2001
5.	I.P.Mishra, AE(E)	2000-2001
6.	K.K.Singh, AE(E)	99-2000 to 2000-2001
7.	K.K.Barr, AE(E)	97-98 to 2000-2001

2. The requisite ACRs may be furnished in top priority, to enable us to forward the same to the Ministry

GNT
for n-a
20
17/1/02

4.6.06P

6-9

Am
(A.J.S. Upad)

Engineer Officer-I to CE-I

Copy to :-

1. All SE(C/E)s CCW. AIR.

Attal
Q
Adhik