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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A/T.A No. 274/02

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet... OKPg. 1to 2
2. Judgment/Order dtd. 7.1.2003Pg. 1to 2 210
3. Judgment & Order dtd.Received from H.C/Supreme Court
4. O.A.274/02Pg. 1to 29
5. E.P/M.P.Pg.to.
6. R.A/C.P.Pg.to.
7. W.S. R. No 1 of 4Pg. 1to 8
8. Rejoinder.Pg.to.
9. Reply.Pg.to.
10. Any other Papers.Pg.to.
11. Memo of Appearance.
12. Additional Affidavit.
13. Written Arguments.
14. Amendment Reply by Respondents.
15. Amendment Reply filed by the Applicant.
16. Counter Reply.

SECTION OFFICER (Judl.)

Kahli
29.11.17

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 274/2002
Misc Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicants. Sri K. Ponnaiiah

-Vs-

Respondant(s) U.O.P. Pong

Advocate for the Appellant(s) Mr. A. Ahmed

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

Notes of the Registry	Date	Order of the Tribunal
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27.8.02

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

The application is admitted. Call for the records.

Issue notice to show cause as to why interim order as prayed for shall not be granted. Returnable by four weeks.

Pendency of this application shall not be a bar on the Respondents in disposing the representation dated 3.1.2002 questioning the initiation of departmental proceedings.

List on 25.9.2002 for orders.

Member

Vice-Chairman

This application is in form but not in time
Co-ordination is filed (not filed) for
for recall/revoked
vide No. 674/45
Dated 19.8.02

By Registrar

26/8/02

Steps taken

26/8/02

3-9-2002

Notices prepared and sent to D Section for issuing of the same to the respondents through Regal. post. Vide D.No. 674

mb

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O.A.274 of 2002

Notices

25.9.02 List on 11.11.02 to enable the respondents to file written statement.

Member

Vice-Chairman

lm

11.11.02 On the prayer 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 the matter on 12.12.2002 for orders.

Member

Vice-Chairman

10.12.02

W/S submitted

mb

by the Respondent No. 1, 2, 3 and 4. 12.12.02

Written statement has been filed The case may now be listed for hearing on 7.1.2003. The applicant may file rejoinder, if any, within two weeks from today.

No rejoinder has been filed

Member

Vice-Chairman

mb

34

6.1.03.

7.1.2003

Present: Hon'ble Mr Justice V.S. Aggarwal, Chairman

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

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.

23/1/2003

Copy of the Judgment has been sent to the office for issuing the fine to the applicant as well as to the Addl. C.G.S.C. etc

Member

Chairman

nkm

4

O.A. / ~~XX~~. No. 274 . . . of 2002

DATE OF DECISION 7.1.2003.....

Shri K. PonniahAPPLICANT(S).

Mr. A. Ahmed ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

The Union of India and others RESPONDENT(S).

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

THE HON'BLE MR JUSTICE V.S. AGGARWAL, 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 Ho'ble Chairman

4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.274 of 2002

Date of decision: This the 7th day of January 2003

The Hon'ble Mr Justice V.S. Aggarwal, Chairman

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

Shri K. Ponniah,
Son of M. Karuppaiah,
Superintending Engineer (Civil),
Civil Construction Wing,
All India Radio,
Doordarshan Staff Quarter Complex,
VIP Road, P.O.- Hangrabari,
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,
Doordarshan Bhawan,
Copernicus Marg, Mandi House,
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,
Suchna Bhawan, 6th Floor,
C.G.O. Complex,
New Delhi.

.....Respondents

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

.....

6

O R D E R (ORAL)

V.S. AGGARWAL. J. (CHAIRMAN)

By virtue of the present application, Shri K. Ponniah, presently working as Superintending Engineer in the All India Radio, Civil Construction Wing, Guwahati seeks quashing of the Memo of Charge served on the applicant dated 22.8.2001.

2. The petition as such is being contested.

3. It becomes unnecessary for us to dwell into the merits of the matter. This is for the reason that Mr. A. Ahmed, learned counsel for the applicant, stated that as yet the Inquiry Officer has not been appointed and the departmental proceeding would be further delayed. The applicant is due for further promotion and because of this pending departmental action, the applicant's vital interest may be suffering. He prayed that direction may be issued for appointment of an Inquiry Officer and completion of the departmental enquiry at the earliest. To this, Mr A.K. Chaudhury, learned Addl. C.G.S.C. appearing on behalf of the respondents, has no objection.

4. Taking stock of the present scenario, the O.A. is disposed of with the direction:

- a) the respondents shall appoint the Inquiry Officer in case the further enquiry has to be held within two months from the date of receipt of a copy of the present order
- b) The Inquiry Officer shall be directed to complete the enquiry with the next six months and submit


the.....

As Ag

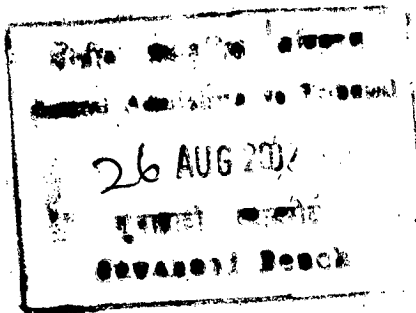
report to the Disciplinary Authority, subject to the condition that the applicant does not delay the proceeding.

5. With this the application is disposed of. No order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(V. S. AGGARWAL)
CHAIRMAN

nkm



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 274 OF 2002.

Sri K. Ponnaiyah - Applicant.
-Versus-
Union of India & Others
- Respondents.

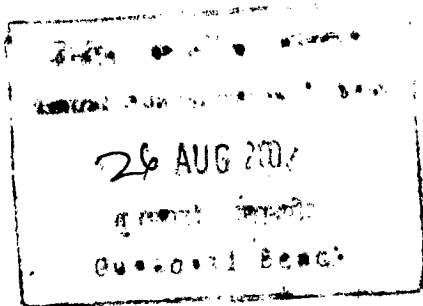
I N D E X

Sl.No.	Particulars	Page No.
1	Application	1 to 13
2.	Verification	14
3.	Annexure-A	15 to 24
4.	Annexure-B	25

Filed by

Advocate.

(Abul AHMED)



2

Filed by
K. Ponnaiyah
applicant
Shri
through
(Abir AHMED)
Advocate A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

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

ORIGINAL APPLICATION NO. 274 OF 2002.

B E T W E E N

Sri K. Ponnaiyah,
S/o M. Karuppaiah
Superintending Engineer (Civil)
Civil Construction Wing, All India
Radio,
Doordarshan Staff Quarter Complex,
VIP Road, P.O.-Hangrabari,
Guwahati -781036.

- Applicant.

-AND-

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,

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-110003.

- Respondents.

DETAILS OF THE APPLICATION:

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

The instant Original Application is
directed against the Office Memo No. C-
14015/3/2000-VIG(I). dated 22-08-2001 and also
letter NO. C-13013/16/2001-02/SW(V)-II/129 Dated
31-08-2001 issued by the Respondents and also
prayer for quashing impugned Memorandum of
charges brought against the applicant by the
Respondents after 9 years

2. JURISDICTION OF THE TRIBUNAL

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

3. LIMITATION

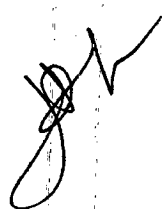
The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE

Facts of the case in brief are given below:

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

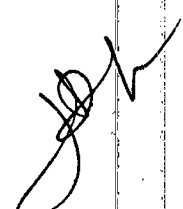
4.2] That your applicant is serving as Superintending Engineer (Civil), Civil Construction Wing, All India Radio, Guwahati. Since joining in this department he has been discharging his duties sincerely to the entire satisfaction to all concerned.



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. C-14015/3/2000-VIG(I) dated 22-08-2001 and also letter NO. C-13013/16/2001-02/SW(V)-II/129 Dated 31-08-2001 to the applicant by which your applicant was charged under Rule 14 of the Central Civil Service (Classification, Control & Appeal) Rules, 1965. In the said Article of Charges brought against the applicant during his posting from 23-03-1993 to 11-05-1994 as Superintending Surveyor of Works(C)-I, Civil Construction Wing, All India Radio, New Delhi. The above-mentioned Office Memorandum was received by the applicant on 19-09-2001. It is pertinent to mention here that the charges which are brought against the applicant are baseless and motivated. The applicant is not a competent authority to negotiate with the lowest tenderer. The Chief Engineer is the only competent authority to negotiate with the tenderers.

Annexure-A is the Photocopies of the Office Memo No. C-14015/3/2000-VIG(I) dt 22-08-2001 and also letter NO. C-13013/16/2001-02/SW(V)-II/129 Dt 31-08-2001.

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 nine years



13

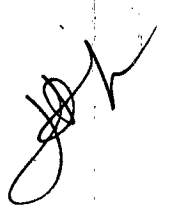
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during his posting as Superintending Surveyor of Works(C)-I, Civil Construction Wing, All India Radio, New Delhi in between 23-03-1993 to 11-05-1994. The above charges brought against him are totally baseless and mala fide. After receiving the Office Memorandum along with Article of Charges, the applicant filed a representation dated 03-01-2002 before the Authority by which he totally denied the charges leveled against him.

Annexure-B is the photocopy of representation submitted by the applicant on 03-01-2002.

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 8 to 9 years. There are deep conspiracy against the applicant by some interested persons who are trying to harass the applicant for their personal illegal gain.

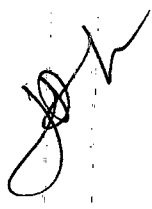
4.6 That your applicant begs to state that till today the Respondents did not initiate the proceeding inquiry against the applicant after receiving the said representation sent by the applicant on 03-01-2002. Even the preliminary hearing is not held till today. The applicant has also sent reminders to the Respondents but the Respondents did not take any step in this matter.



It seems that Respondents are trying to harass the applicant and also to deprive him from his due next promotion. As such, the applicant is compelled to approach this Hon'ble Tribunal for seeking justice in this matter.

4.7 The applicant begs to state that in many cases the Hon'ble Supreme Court of India and various Hon'ble Central Administrative Tribunals held that "inordinate delay in issuing charge memo would amount to bias and mala-fide the proceeding". In case of State of Madhya Pradesh Versus Bani Singh it was held by the Hon'ble Court "Where the Departmental Inquiry was initiated after nine years and there was no satisfactory explanation for the inordinate delay in issuing the charge memo and it would be unfair to permit the Departmental Inquiry to be proceed with at this stage."

4.81 That your applicant submits that the matters, which were charged against him, are very old matters of more than 9 years and things are out of his memory also it is not possible for the applicant to defend his case after so many years. There are every possibility of lost of evidence or documents which can prove the innocence of the applicant. The witnesses, who would be examined & cross-examined by the Inquiry Officer will not be able to give clear and perfect explanation of the case. It will be unfair and unjust for the



applicant at this belated stage if the Department proceed furthers in this matter.

4.9 That your applicant submits that it will be very difficult for him to recollect all the materials, documents and records for submission of reply against the charge Memo which was issued against the applicant after 8 years to 9 years and as such, it is fit case to interfere by the Hon'ble Tribunal by giving necessary direction to the Respondents for quashing the entire proceedings brought against him by the Memo of Charges dated 22-08-2001.

4.10 That your applicant submits the Respondents deliberately done serious injustice by giving mental trouble to the applicant by issuing Memo or charges against your applicant after 8 to 9 years.

4.11 That your applicant submits that the action of the Respondents are violative of the Principles of Natural Justice.

4.12 That your applicant is filed bona fide and for the interest of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1 For that, disciplinary action cannot be taken against a Government Servant at a belated stage. A belated exercise Prima

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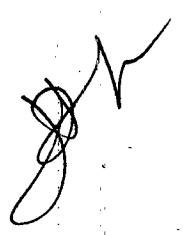
Facie causes prejudice to the Government Servant in defending his case.

5.2 For that, the Memorandum of Charges cannot be initiated against an Official after 8 to 9 years. Law is well settled that the Departmental enquiry cannot be initiated against a person after lapse of many years and as such Departmental Proceeding is required to be revoked or quashed.

5.3 For that, for last 8 to 9 years the Department has not initiated any inquiry in this matter it amounts to mala fide ~~and~~ on the part of the Respondents and accordingly judicious interference is called for this matter.

5.4 For that, it is very difficult for applicant to recollect all the relevant materials, documents and records after long 8 to 9 years for submission of reply in defence and as such, the impugned Departmental proceeding is liable to be set aside and quashed.

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



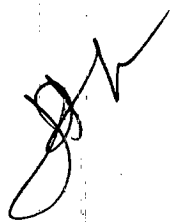
17

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

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

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

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



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

6. DETAILS OF REMEDIES EXHAUSTED:

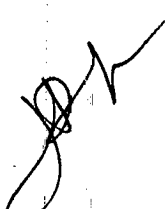
That there is no other alternative and efficacious remedy available to the applicants except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

That the applicant further declares that 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. C-14015/3/2000-VIG(I) dated 22-08-2001 and also letter NO. C-13013/16/2001-02/SW(V)-II/129 Dated 31-08-2001 issued by the Respondents are illegal, unconstitutional and non-warranted by the facts and circumstances of the case.

8.2 To grant such further order 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. C-14015/3/2000-VIG (I) dated 22-08-2001 and also letter NO.

C-13013/16/2001-02/SW(V)-II/129 Dtd 31-08-2001 till final disposal of this instant Original Application.

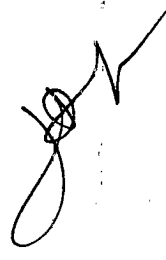
10] Application Is Filed Through Advocate.

11] Particulars of I.P.O.:

I.P.O. NO. 17F671745
Date Of Issue 19.8.2002
Issued from Guaranti S.P.O.
Payable at Guaranti

12] LIST OF ENCLOSURES:
As stated above.

- Verification.



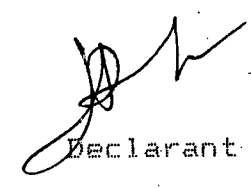
VERIFICATION

I, Sri K. Ponnai, S/o M. Karuppaiah
Superintending Engineer (Civil), Construction
Wing, All India Radio, Doordarshan Staff Quarter
Complex, VIP Road, P.O.-Hangrabari, Guwahati-36,
the applicant of the instant case, do hereby
solemnly verify that the statements made in
paragraphs 4.1, 4.2, 4.5 to 4.8 —

are true to my knowledge,
those made in paragraphs 4.3, 4.4 —

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 26th day of August 2002 at Guwahati.


Declarant

(K. PONNIAH)

C-14015/3/2001-Vig.(I)
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING

New Delhi, dated 22 AUG 2001

OFFICE MEMORANDUM

The President proposes to hold an inquiry against Shri K. Ponnaiah, Superintendent Engineer (Civil) Civil Construction Wing, All India Radio, Guwahati under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the article of charge is proposed to be sustained are also enclosed (Annexures-III & IV).

2. Shri K. Ponnaiah 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. Shri K. Ponnaiah is informed that an inquiry will be held only if the article of charge is not admitted. He should, therefore, specifically admit or deny the article of charge.

4. Shri K. Ponnaiah is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, or the orders/directions issued in pursuance of the said Rule, the Inquiring Authority may hold the inquiry against him ex-parte.

...contd/-

(एस० के० अरोड़ा)
 (S. K. ARORA)
 अवर सचिव (सूचना)
 Under Secretary (Information)
 सूचना एवं प्रसारण विभाग
 Min. of Information & Broadcasting
 भारत सरकार, नई दिल्ली
 Govt. of India, New Delhi

Admte

5. Attention of Shri K. Ponnaiah is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri K. Ponnaiah 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.

6. The receipt of the Office Memorandum may be acknowledged.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

UNDER SECRETARY TO THE GOVT. OF INDIA
TELE : 338 4597

✓ Shri K. Ponnaiah
Superintendent Engineer (Civil)
Civil Construction Wing
All India Radio
Guwahati

)
) (Through DG:AIR)
) (alongwith a copy of CVC's U.O. No. 000/I&B/018 dtd. 05 Dec., 2000)
)
(S. K. ARORA)
अवर सचिव (आर. ए. ए.)
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

Attest
A. K. Arora

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI K. PONNAIAH, THE THEN SSW (CIVIL)-I, CIVIL CONSTRUCTION WING, ALL INDIA RADIO, NEW DELHI (PRESENTLY SE (C), CCW, AIR, GUWAHATI).

ARTICLE

That the said Shri K. Ponnaiah while functioning as Superintending Surveyor of Works (C)-I, CCW, AIR, New Delhi during the period 21.10.93 to 01.01.94, made recommendation for acceptance of the tender to the Chief Engineer (C)-I in respect of work "Construction of 88 Nos. of Staff Quarters for AIR & TV, Ahmedabad" vide Agreement No.8/CE/CCW/AIR-93-94.

2. During his tenure as SSW (C)-I, Shri Ponnaiah had scrutinized tender submitted by the Agency and also participated during the negotiations of the tender. He had recommended for acceptance of the tender to the Chief Engineer (C)-I without properly evaluating the financial implication of the rate payable to the agency for items of brick work which resulted in huge loss of Rs.2.24 lakhs approximately to the Government.

3. By his above acts, Shri K. Ponnaiah failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant thereby contravening the provisions of Rule 3(1)(i), 3(1)(ii), and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

Sd/-

(एस० को० गरोडा)

(G. P. ARORA)

उत्तर मंत्री (संस्कृत)

Under Secy.

सुप्रमोद

Min. of Information

भारत सरकार, नई दिल्ली

Govt. of India, New Delhi

Admitted
Admitted

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR
IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST
SHRI K. PONNAIAH, THE THEN SSW (CIVIL)-I, CIVIL CONSTRUCTION
WING, ALL INDIA RADIO, NEW DELHI (PRESENTLY, SE(C), CCW,
AIR, GUWAHATI).

ARTICLE

That the said Shri K. Ponnaiah, while functioning as Superintending Surveyor of Works (Civil)-I, Civil Construction Wing, All India Radio, New Delhi during the period 21.10.93 to 01.01.94 recommended to Chief Engineer (Civil)-I, for acceptance of the tender of M/s. Pran S. Fultariya for Construction of 88 nos. of Staff Quarters for AIR & TV, Ahmedabad vide Agreement No. 8/CF/CCW/AIR-93-94.

2. The agency, M/s. Pran S. Fultariya, while submitting its tender had offered 2% rebate on the amount quoted for the items of brick work with the condition for providing class designation 50 bricks, instead of class designation 75, as envisaged in the tender. During negotiations on tender conditions, the agency, however, modified its earlier offer of rebate of 2% on the items of brick work to 5% on the condition for using class designation 35 bricks instead of class designation 75 envisaged in the tender and class designation 50 as per his earlier offer during submission of the tender. Since class designation 75 bricks were not available in the locality of the site, the specification for the brick was accepted the class designation 35 due to the abundant supply in the locality of the site. However, the rate decided, i.e., accepting the offer of 5% rebate on the quoted rates on the items of brick work with class designation 75 was not in order and interest of the Government. When the agency had already given its rates for the brick work items with class designation 75, the option left with the government was either to go ahead in accordance with the original tender conditions with higher specification or to decide the rate according to the clause 12 of the Agreement and from the basic rate quoted by the agency. Thus the department should have only accepted for the lower specification and got assurance from the agency that rates would be decided according to the terms and conditions of the agreement during the progress of work.

S. K. ARORA
(एस. के. अरोड़ा)

(S. K. ARORA)

सचिव सचिवालय (आ. वि. वि.)

Under Secretary (A. V. V.)

भूतल प्रशासन विभाग

Min. of Information

भारत सरकार, नई दिल्ली

Govt. of India, New Delhi

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3. The rate actually payable to the agency should have been worked out by deducting the difference in the rates of the two class designation brick items mentioned in the Delhi Schedule of Rates (DSR) 1989 of CPWD plus tender percentage, from the corresponding quoted rates of the agency for the same item with class designation 75 which is as follows :

I) Total amount quoted by the Agency for the item of brick work after allowing 2% rebate	-	Rs. 17,40,276.00
II) Actual amount payable to the Agency due to change in class designation of bricks based on the rates for the brick work items as per Clause 12 of the Agreement	-	Rs. 14,29,101.00
III) Difference of I & II	-	Rs. 3,11,175.00
IV) Amount of rebate of 5% offered by the Agency on the item of brick work on I above	-	Rs. 87,014.00
V) Excess amount paid to the Agency on the item of brick work (III - IV)	-	Rs. 2,24,161.00

4. Shri K. Ponnaiah SSW(C)-I failed to point out the improper analysis of the financial implication of the said condition during the scrutiny as well as during the negotiation and is responsible for extending undue advantage to the agency thereby violating the provisions of CPWD Manual and causing the government a loss of Rs.2.24 lakhs (approx.).

5. By his above acts, Shri K. Ponnaiah, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government Servant thereby contravening the provisions of Rule 3(1)(i), 3(1)(ii), and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

S. K. Arora
(एस.के. अरोरा)

(S. K. ARORA)

अवर सचिव (अतिरिक्त)

Under Secretary

भूखण्ड विभाग

Min. of Labour

भारत सरकार, नई दिल्ली

Govt. of India, New Delhi

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LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SHRI K. PONNAIAH, THE THEN SSW (CIVIL)-I, CIVIL CONSTRUCTION WING, ALL INDIA RADIO, NEW DELHI (PRESENTLY, SE(C), CCW, AIR, GUWAHATI) IS PROPOSED TO BE SUSTAINED.

1. Agreement No.8/CE/CCW/AIR/93-94
2. File No.11/62/86/SW-III/TendersTV
3. DSR-89 (Bricks Rates)
4. Calculation of Excess amount paid to Contractor

S. K. Narasimha
 (स. क. नारायण)
 (S. K. NARAYAN)
 Joint Secretary
 Min. of Information & Broadcasting
 भारत सरकार, नई दिल्ली
 Govt. of India, New Delhi

Annex 1
SS *1*
Annex 6

ANNEXURE-IV

LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGE FRAMED AGAINST SHRI K. PONNAIAH THE THEN SSW (CIVIL)-I, CCW, AIR, NEW DELHI (PRESENTLY SE(C), CCW, AIR GUWAHATI) IS PROPOSED TO BE SUSTAINED.

1. Shri Mahesh Chandra, the then CE(C)-I, CCW, AIR, N.Delhi.
2. Shri M.A. Qureshi, the then SE(C), CCW, AIR, Mumbai
3. Shri A.C. Mathur, the then SW(C) in SSW(C) Unit, CCW, N.Delhi
4. Shri S.K. Nagpal, the then Chief Estimator (C) in SSW(C)-I Unit
5. Shri S.C. Arora, the then EE(C), CCW, AIR, Rajkot.

S. K. Arora ***

(एस० के० अरोरा)

(S. K. ARORA)

अवर मजिस्ट्रेट (सि. ए. ए.)

जालंधर

भारत सरकार

Min. of Int. Aff.

भारत सरकार

Govt. of India, New Delhi

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Prasar Bharti
Broadcasting Corporation of India
DG-AIR-CCW
Vigilance Unit

5th floor Soochna bhaawan
CGO Complex, Lodhi Road,
New Delhi-110003.

No.C-13013/16/2001-02/SW(V)-II/129

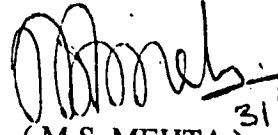
Dated: 31/8/01

Sh. K. Ponnaiah,
Superintending Engineer
CCW, All India Radio
Guwahati.

Subject:- Memorandum.

Undersigned is directed to forward the Ministry of I&B's office Memorandum No. 14015/3/2001-Vig.(i) dated 22.08.2001 for further action at your end.

Acknowledgement in token of receipt may please be sent to this office in duplicate in the enclosed proforma for onward transmission to Directorate.


(M.S. MEHTA)
Surveyor of Works Vig.II

Encl: as above.

Memorandum No. 14015/3/2001-Vig(i) dt. 22.8.01 alongwith
Annexure-I to IV and CVC's U.O. No. 000/I&B/018 dt. 05.12.2000.

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PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
OFFICE OF THE SUPERINTENDING ENGINEER(CIVIL)
CIVIL CONSTRUCTION WING: ALL INDIA RADIO
GUWAHATI CIRCLE

NO.AIR/CCW/SE-GH/Conf-2/2001/ 1043

To,
Shri M.S.Mehta,
Surveyor of Works(Vig.)-II,
Civil Construction Wing,
All India Radio,
Soochana Bhawan, 5th floor,
Lodhi Road, C.G.O. Complex,
New Delhi-110003.

Zoo Narengi Tiniali
1st Bye Lane(North)
P.O. Bāmunimaidan,
Guwahati-781021.

Dtd. 19th Sept.,2001

Subject : Memorandum

Reference Your letter No.C-13013/16/2001-02/SW(V)-II/129 dated 31-08-2001.

Enclosed please find herewith the acknowledgement in duplicate regarding Ministry of I&B's office memorandum No.C-14015/3/2001-Vig.(i) dated 22-08-2001 for taking further necessary action at your end.

(K.Ponniah)
Superintending Engineer(Civil)

KP/1

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10/9/01

Amal
Amal

ACKNOWLEDGEMENT

-24-

Received Ministry of I&B's office memorandum No. C-14015/3/2001-Vig.(i) dt.
22.08.01 alongwith all enclosures.

Station : GUWAHATI

Date: 19/09/01

(K. PONNIAH)
SEC, CCW
AIR, Guwahati

Attent
Jd
Advent

- 25 -

ANNEXURE-B

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NO.AIR/CCW/SE-GH/PF-KP/2001/

Doordarshan Staff Quarter Complex,
VIP Road, P.O. Hengrabari,
Guwahati - 781036

To,
The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi-110003.

Dtd.3rd January, 2002

(THROUGH CHIEF ENGINEER-I)

Subject : Your Office Memorandum dated 27-08-2001 regarding acceptance of tender for the work of construction of 88 nos. Staff Qtrs. for AIR & TV at Ahmedabad. (SH: 48 nos. for AIR (Type-A-8 nos., Type-B-14 nos., Type-C-16 nos., Type-D-8 nos., Type-E-2 nos.) including internal water supply and sanitary installation). 40 nos. for TV (Type-A-4 nos., Type-B-10 nos., Type-C-16 nos., Type-D-8 nos., Type-E-2nos.) including internal water supply and sanitary installation)..

Agreement No.8/CE/CCW/AIR/93-94.

Sir,

I totally deny the charges which are unfounded, not correct, not true and do not reflect true picture at all. The tender acceptance was strictly as per departmental procedure laid down..

As per the DG, CPWD letter No.DG(W)/Acctt./21 dated 19-05-1993 (See annexure -I) the Chief Engineer©-I only is competent to negotiate with the lowest tenderer. Participation of the undersigned in the negotiation is only as observer/helper at the request of Chief Engineer and not administratively or otherwise mandatory at all. Negotiation is only by the Chief Engineer who is fully competent and responsible. Statutorily as the mode vesting such statutory powers is in individuals only and not on collective basis. If the Chief Engineer so desired, he was at liberty not to write me at all even as observer during negotiations.

No loss at all as stated in the charges as stated as Rs.2.24 lakhs has been incurred. The basis for the calculation is totally imaginary, not founded at on any contractual, legal administrative or acceptable basis or reasoning. The quoted tender percentage is about 21.80% whereas the market rate justification (which is the only prescribed basis for acceptance of tender as per market rate) is 51.91% above the

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estimated cost (by considering market rates of 50 class bricks). The details of amounts are as follows :-

1. Estimated Cost Rs.1,40,12,656.00
2. Lowest Tendered amount & percentage Rs. 1,70,67,735.00 i.e. 21.80% above the Estimated cost.
3. Justified Tender amount & percentage Rs.2,11,85,734/- i.e. 51.19% above Estimated Cost put to tender.
4. Modified estimated cost Rs.1,39,87,867.00
5. Accepted tendered amount Rs.1,69,78,181.00
6. Accepted tender percentage 21.38% above modified estimated cost.

(Incidentally the justified amount for the lowest tender using 35 class bricks works out to Rs.2,11,55,846.00 as against the corresponding modified estimated cost of Rs.1,39,87,867/-)

From the above it can be seen and clear that the accepted tender percentage is much below the justified rate/amount and percentage but the department was helpless and had to accept the lowest tenderer even though the tender percentage was much below the justified rates.

Delhi Plinth Area Rates are used as a basis in all parts of India right from Jammu Kashmir down south Kanyakumari for the preparation of Preliminary estimates. These estimates are updated with corresponding cost index which are revised once a year by the Chief Engineer by collecting market rates of standard items, labour etc. adopting standard procedure laid down for this purpose. The detailed estimate is invariably prepared using the DSR applicable at any point of time. Revision of this is not done every year by CPWD due to practical difficulties experienced by them. (The DSR pertaining to this work is DSR 1989). The departmental instructions are that the tenders are to be processed based on the local market rates (for 90% of value of items) and not based on Delhi Schedule of Rates + Cost index.. For example, the rate of stone work at Delhi may be higher than the rate of stone work either in Karnataka or Andhra Pradesh. Similarly, the cost of timber may be higher when compared with the cost of wood work in Madhya Pradesh or Assam. Likewise, the cost of bricks at Delhi and Kolkata may be cheaper. These differences in rates of all the materials are accounted for by adopting market rates at the place of the work.

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while accepting the tender. The question of adopting C.I. & therefore does not arise & also contrary to instructions.

In this case, the tenders was processed based on the market rates supplied by the field unit and according to them, the difference between 50 class bricks and 35 class bricks per thousand numbers is only Rs.25.00; that means per cum of brick work, the cost difference between 50 class and 35 class bricks is about Rs.13. Whereas negotiation had been conducted by the Chief Engineer for 3% which amounts to about 18 rupees in plinth and 19 rupees in brick work in floor 5 to 6 levels. Thus negotiation was conducted by the Chief Engineer to more than the required extent than indicated by field unit. Thus, efforts was made to safe guard the interests of the Govt. fully.

Reference is invited to CPWD Manual Vol.II Section 20 Para 20.18.2 which indicates the procedure for negotiations, when market rate justification is higher than the lowest tender. In this case as already stated in the previous para, the quoted tender percentage is much below the market rate justification and there was no need for financial negotiation at all since the justification was well within the one percent variation between the quoted rate and the market rate. However, negotiation was to be conducted, since because Mr. Pran S. Fultariya in his letter accompanying the tender dated 8-09-1993 stipulated two conditions which are as under :-

1. "If department will allow us to use 50 kg. strength bricks instead of 75 kg strength as mentioned in the tender, we will offer 2% rebate on sub head-IV Brick work only. Since it is very difficult to get 75 kg strength of bricks in the market.
2. If the department will allow us to draw mobilization advance @ 10% of the estimates cost put to tender against production of Bank Guarantee, we will offer 0.5 % rebate and we will also pay interest 12% for 15 months since we will complete the work within 15 months against the time period of 22 months mentioned in the tender."

Further their letter states "we hope before finalisation of the tenders, we will be given chance for negotiation to clarify our position with respect to above alternate offers."

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And moreover, one of the tenderer M/s. Backbone Construction Company vide their letter has stated that only 35 class bricks is available in the market and as such we quote our rates only for 35 class bricks.

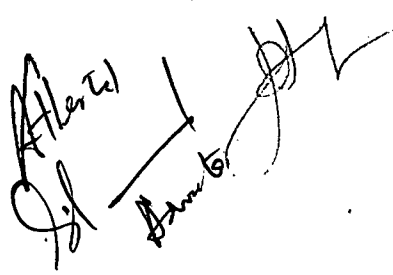
The EEC and SE(Civil) also recommended that the locally best available, bricks at Ahmedabad had crushing strength of below 50 kg. Therefore, SSW's office recommended the class of bricks as 35 for negotiations. Whereas the lowest tenderer might have been under the impression that the bricks available was of 50 class, even though in the true sense, the strength was 40-45 kg/cm sq. as stated by the EEC. Therefore, considering the market rate of 35 class bricks at RS 725 per thousand number instead of 750/1000 nos. of 50 class as submitted by the EE(C), negotiation was proposed for the available class of bricks. Negotiations were inevitable in this case to clarify and stipulate the type of bricks to be used. Since the problem of non-availability of 50 class bricks were made known before tender acceptance, correct contract had to be drawn only by way of negotiation.

Tender acceptance as per procedure in CPWD Manual, Vol.II Para 20.10.1 which stipulates it as based on market rate justification. SSW's office scrupulously adopted this procedure. Negotiation was required for correcting of technical specifications and not necessarily under financial angle. Govt. was not losing in any manner as tender was much lower than that of justified rates which is based on market rates. However, in the process of technical correction negotiation, financial negotiation become inevitable.

Prior to acceptance of contract and contract formation, clause-12 will not be attracted legally at all. Any changes in contract formation should be taken care of in negotiation only. Clause-12 will enter into the picture only if problem is not foreseen till the progress of work. Hence loss calculation in charge sheet based on clause-12/DSR difference is imaginary and not real and will not arise legally. The charge sheet is therefore not warranted and not justified..

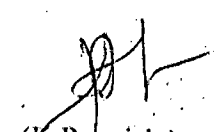
Prior to contract formation, only a request can be made to the contractor for reduction since the tender was already much low; he offered 5% reduction for 35 class bricks instead of 2% reduction for 50 class bricks. Further we made him withdraw the mobilization advance condition altogether.

Clause 12 will be operative only after the acceptance of tender and signing of contract.


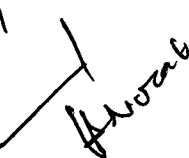
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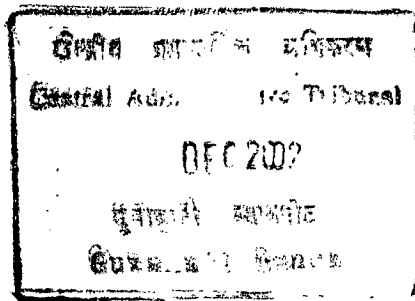
Therefore, it is submitted that the charges framed under Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of Central Civil Services(Conduct) Rules, 1964 is baseless and unfound, not correct, not true and not warranted and same may be withdrawn.

Yours faithfully,


(K. Ponniah)
Superintending Engineer(Civil)

KP/7

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

Union of India & Ors - Respondent
through:-
Arup Kumar Choudhury
10.12.02

In the matter of :

O.A. No. 274 of 2002

K. Ponnaiah

- Vs -

..... Applicant

Union of India & Ors.

..... Respondents.

Written statements for and on behalf of Respondents

Nos. 1, 2 3 and 4.

I, *H. Thangluia*, Station Director, All India Radio, Guwahati-781003, do hereby solemnly affirm and say as follows :

1. That I am the Station Director, All India Radio, Guwahati and as such acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement, the other contentions and statements may be deemed to have been denied and the applicants should be put to strict proof of whatever they claim to the contrary. I am authorised and competent to file this written statement on behalf of all the respondents.

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2. That the respondents beg to state that the statements made in paragraph 1 of the application are matters of record.
3. That the respondents have no comments to the statements ~~ma~~ made in paragraphs 2, 3, 4.1 and 4.2 of the application.
4. That with regard to the statements made in paragraphs 4.3 and 4.4 of the application the respondents beg to state that as regards the contention made by the applicant regarding issue of charge sheet to him at a belated stage, it is stated that in July, 1996, Central Vigilance Commission forwarded a copy of complaint regarding irregularities committed by the applicant, the then Superintending Surveyour of Works (SSW)-1, Civil Construction Wing, All India Radio, New Delhi during negotiations for finalizing the acceptance of lowest tender for the construction of 88 nos. of Staff Quarters for AIR & TV at Ahmedabad. The complaint was then forwarded to DG: AIR, who got a Preliminary Enquiry (PE) conducted into the matter. The PE report dated 31.3.1998 was submitted to DG: AIR which was examined in DG: AIR and CCW and it was found out that some irregularities during negotiation of the tender of the above project had been occurred during the charge of the applicant as the then SSW-1, CCW, AIR, New Delhi. The allegations were prima-facie established against the applicant and four other officers of CCW, AIR. The said PE report was forwarded by DG: AIR to the Ministry of I & B on 23.6.98. During examination of the PE report in the Ministry of I & B, it has been observed that during the Enquiry, explanations of various officers indicated in the PE report, including

-3-

the applicant, were not called for. While calling for his explanation, the applicant had sought certain copies of documents for furnishing his reply. He submitted his reply on 21.1.99. After examining the PE report in the light of all relevant documents, the case was forwarded to Central Vigilance Commission in July, 2000 for their advice. In view of the seriousness of the charges, CVC, vide their advice dated 05.12.2000, recommended for initiation of major penalty proceedings against all the six officers of CCW, including the applicant. The advice of CVC, alongwith all relevant documents, in original, were forwarded to DG:AIR on 14.12.2000 for preparation of draft charge sheets in respect of all the officers in accordance with CVC's advice. DG:AIR forwarded draft charge-sheets in respect of these officers on 23.4.2001. During preparation of charge-sheets, it has been observed that one of the officers, indicated by CVC, Shri Manesh Chandra, the then Chief Engineer has since retired from service in April, 1998, CCW, AIR were asked by the Ministry of I & B , on 25.6.2001, to forward the latest bio-data and place of posting of other four officers including the applicant, which were received in the Ministry on 25.7.2001. The case was then re-examined in the Ministry of I&B and submitted for approval of disciplinary authority. After getting the approval of the disciplinary authority, the charge-sheet was issued to the applicant on 22.8.2001.

5. That with regard to the statements made in para 4.5 of the application the respondents beg to state that the impugned O.M. No. C-14015/3/2001-Vig. dated 22.8.2001 has been issued to the applicant, the then Superintending Surveyour of Works (Civil)-1,

Civil Construction Wing, AIR, New Delhi initiating major penalty proceedings against him with the approval of the Disciplinary Authority, i.e., the President after following the procedure prescribed under the CCS (CC&A) Rules, 1965 and after due consultation with the Central Vigilance Commission, as described hereinabove. It is wrong to say that in there is any inordinate delay in issuance of the charge-sheet under reference. The alleged irregularities was committed by the applicant on 28.12.93 and the charge-sheet has been issued to him on 22.8.2001, i.e. about after 7 years 8 months. It is reiterated that the time taken in issuance of the charge-sheet under reference has already been explained hereinabove and in the circumstances it is a case of procedural delay only and not due to the imaginary cause of deep conspiracy against the applicant.

6. That with regard to the statements made in para 4.6 of the application the respondents beg to state that in the impugned Memorandum dated 22.8.2001, the applicant was directed to submit his written statement of defence within 10 days of the receipt of the said Memorandum and also to state whether he desired to be heard in person. The applicant received the said Memorandum on 19.9.2001, however, he submitted his written statement of defence only on 3.1.2002, i.e., after more than 3 months, which was received in this Ministry from DG:AIR on 1.3.2002. While the written statement of defence submitted by the applicant was examined in the Ministry of

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I&B alongwith the written statements of defence submitted by other co-accused, it has been observed that these officers have raised certain points, which require the comments of CCW/DG:AIR. Thereafter, DG:AIR were asked by Ministry of I&B on 25.7.2002 to submit the comments on the above statement of defence submitted by these officers. After getting the comments from DG:AIR as stated above, the matter will be further processed in accordance with relevant Rules under CCS(CC&A) Rules, 1965. It is further submitted that the disciplinary proceedings against the applicant has been initiated after following proper procedure, scrutiny and based on prima facie charges established against him. The allegation of harassment and depriving him of the promotion is imaginary, baseless and totally unfounded.

7. That with regard to para 4.7 of the application the respondents beg to offer no comments.

8. That with regard to the statements made in paras 4.8 and 4.9 of the application the respondents beg to state that the disciplinary proceedings against the applicant has been initiated after proper scrutiny and when it was prima facie established that some irregularities had been committed, the impugned charged sheet was issued against him with the approval of the disciplinary authority, i.e., the President after following the procedure prescribed under the CCS (CC&A) Rules, 1965 and after due consultation with the Central Vigilance Commission. The basic idea behind institution of disciplinary proceedings and proposal to hold enquiry under Rule 14 of CCS (CC&A) Rules, 1965 is to afford the applicant every opportunity to defend himself by way

of inspection of listed additional documents, cross-examination of prosecution witnesses, production of defence witness, submission of brief on the brief presented by Presenting Officer after the inquiry proceedings are over, etc. The applicant will get all these opportunity to present and defend himself during the course of inquiry.

9. That with regard to the statements made in para 4.10 of the application the respondents beg to state that as already stated hereinabove, the charges are based on investigation and recommendation by CVC, the submission of the applicant in this para is baseless, imaginary and without any substance.

10. That with regard to the statements made in para 4.11 of the application the respondents beg to state that the disciplinary proceedings has been initiated based on prima facie charge established against the applicant and on the advice of CVC, as per CCS(CC&A) Rules, 1965 and provision of the said rules and also the Principles of Natural Justice are being/will be followed scrupulously.

11. That with regard to para 4.12 of the application the respondents beg to offer no comments.

12. That with regard to the statements made in para 5, of the application the respondents beg to state that it is submitted that the applicant has filed the instant application with a motive to escape the departmental proceedings initiated against him referred to in the impugned charge-sheet. As has been submitted above, the charge sheet has been issued by the competent

-7-

authority keeping in view the seriousness of the matter after conducting the preliminary enquiry and after receiving the advice of the CVC and the delay is explained as hereinabove and in the facts and circumstances it is not relevant when the actual misconduct has been committed. The various citations referred to in the O.A. are not relevant in facts and circumstances of the case. The applicant will get every opportunity to defend himself as permissible under relevant Rules.

13. That with regard to the statements made in para 6, of the application the respondents beg to state that in view of the above, the O.A. filed by the applicant is nothing but misuse of process of law to avoid and escape the departmental proceedings initiated in accordance with the relevant rules and instructions by the competent authority and therefore the same is not maintainable and may be dismissed as premature and the disciplinary proceedings initiated against the applicant by the impugned Memorandum dated 22.8.2001 may be allowed to reach its logical conclusion.

14. That with regard to para 7 of the application the respondents beg to offer no comments.

15. That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

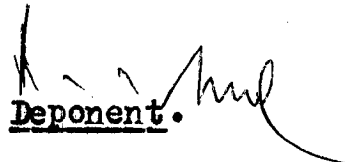
verification.....

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

I, *H. Thangluia* presently working
as Station Director, All India Radio, Guwahati being duly
authorised and competent to sign this verification do, hereby,
solemnly affirm and state that the statements made in para-
graphs of the application
are true to my knowledge and belief, those made in paragraphs
being matter of record are true to my information
derived therefrom and those made in the rest are humble submission
before the Hon'ble Tribunal. I have not suppressed any material
facts.

And I sign this verification on this the th day
of December, 2002, at Guwahati.


Deponent.

Station Director
All India Radio, Guwahati