

01/00

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

INDEX

O.A/T.A No...47/2002

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet O.A. 47/2002 Pg.....1.....to.....3.....
2. Judgment/Order dtd. 30/07/2002 Pg.....1.....to.....5..... Dismissed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....47/2002 Pg.....1.....to....19.....
5. E.P/M.P..... Pg.....to.....
6. R.A/C.P..... Pg.....to.....
7. W.S. submitted by the Respondents Pg.....1.....to.....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.)

FORM NO. 4

(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH,
GUWAHATI.

ORDER SHEET

Original No. 47/2002Misc. Petition No. /Contempt Petition No. /Review Application No. /

Applicant(s)

B. B. Mukharyce

Respondent(s)

K. O. T. Gons

Advocate for Applicant(s)

J. L. Sarkar, Mrs. S. DekaA. Chakraborty

Advocate for Respondent(s)

S. Case.

Notes of the Registry

Date

ORDER OF THE TRIBUNAL

This is application in form
C.F. for Rs. 50/- deposited

20.2.02

Heard Mr. J.L.Sarkar, learned counsel
for the applicant.Mode IP/1/2002/547/09
Dated 22.2.2002The application is admitted. Call for
the records.List on 18.3.2002 alongwith O.A. No.
37/2002 for order.Slehs & Envts not
served
Date 20/2/02K C Sharma
MemberVice-ChairmanSlehs & Envts later
Notice prepared and
sent to D.O.S for comm
the same by Regd A.O.
28/2/02

DINo 337 W 38

Dtd 4/3/02① Service report are
still awaited.K C Sharma
MemberVice-Chairman30
15.3.02

No. written statement
has been filed.

22.4.2002

List the case on 22.5.2002 enabling the respondents to file written statement alongwith O.A. 37/2002 & 56/2002

22.4.02

Vice-Chairman

mb

13.5.2002

W/S submitted
by the Respondent.

22.5.02

Written statement has been filed.

The case may now be listed for hearing on 21.6.2002. The applicant may file rejoinder, if any within three weeks from today.

14.5.02

Member

Vice-Chairman

mb

21.6.02

Prayer has been made by Mr. A. Chakrabarty, learned counsel for adjournment of the case appearing on behalf of Mr. J. L. Sarkar, learned counsel for the applicant who is out of station. Upon hearing Mr. Chakrabarty, and Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents the case is adjourned. List on 18.7.2002 for hearing.

14.6.02

Member

Vice-Chairman

mb

18.7.02

Heard Mr. J. L. Sarkar, learned counsel for the applicant & Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

Hearing concluded,

Judgment reserved,

18.7.02

A. K. Dey

18.7.02

Notes of the Registry Date Order of the Tribunal

3
3
O.A.47/2002

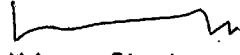
Notes of the Registry

Date

Order of the Tribunal

22.7.2002

Both the parties are ordered to produce the Telecom Memo No.9-1/91-SEA dated 25.3.1995. Let the matter be posted further for hearing on 30.7.2002.

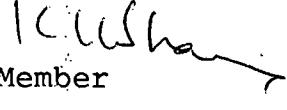

Vice-Chairman

bb

30.7.2002

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

The application is dismissed. No order as to costs.


Member


Vice-Chairman

bb

*Judgment order dated 30.7.02
communicated to the applicant
& the parties of the Council.*

*do
678*

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. /XXX. No. 47 of 2002....ex

DATE OF DECISION...30.7.2002.....

Sri Bidur Bhusan Mukherjee

APPLICANT(S)

Mr.J.L.Sarkar, Mrs.S.Deka &
Mr.A.Chakraborty

ADVOCATE FOR THE APPLICANT

VERSUS

Union of India & Others.

RESPONDENT(S)

Mr.A.Deb Roy, Sr.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.

L

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.47 of 2002.

Date of Order : This the 30th Day of July, 2002.

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

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

Sri Bidur Bhusan Mukherjee
Working as Sr.Accounts Officer in the
P & T Accounts and Finance Service Group-B,
TDM Office, Nagaon. Applicant.

By Advocates Mr.J.L.Sarkar, Mrs.S.Deka &
Mr.A.Chakraborty.

- Versus -

1. Union of India
Represented by the Secretary to the
Government of India
Ministry of Communication
Department of Telecommunications
New Delhi - 1.
2. The Chief General Manager
Assam Telecom Circle, Ulubari
Guwahati - 781 007. Respondents.

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

O R D E R

CHOWDHURY J.(v.c.)

This is an application under Section 19 of
Administrative Tribunals Act, 1985 assailing the
legality as well as continuance of the disciplinary
proceeding initiated against the applicant vide memo
dated 17.1.2002 in the basic facts.

1. The applicant first joined as Time Scale
Clerk w.e.f.19.5.1973 in the Department of Posts &
Telecommunications at Shillong. He was promoted in 1979
as Postal Accountant in the mail motor services, in 1980

as Junior Accounts Officer in District Manager, Telephones, Guwahati. Thereafter in 1988 the applicant was promoted as Deputy Accounts Officer presently designated as Assistant Accounts Officer, Group-B service. He was promoted as Accounts Officer (for short A.O.) w.e.f.24.4.1991 in the Indian P & T Accounts and Finance Service, Telecom Wing, Group-B on regular basis. While he was working as such by memo dated 17.1.2002 a disciplinary proceeding was initiated against him by the Chief General Manager in terms of Rule 14 of the CCS CCA 1965 for the alleged misconduct mentioned in Article - I of the said memorandum. The legitimacy of the aforementioned proceeding is under challenge in this application on the ground that the respondent authority, namely, the Chief General Manager is not empowered to initiate the proceeding. The proceeding was also assailed on the ground of delay in initiating the proceeding.

2. The respondents submitted its written statement contesting the claim of the applicant. Mr.J.L.Sarkar, learned counsel for the applicant firstly contended that the applicant was appointed on promotion as Accounts Officer in the P & T Accounts and Finance service, Telecom Wing Group-B by the Telecom Commission. As per Part-II of the Schedule to the Central Civil Services Classification Control and Appeal Rules, 1965 (for short CCS CCA Rules) the authorise competent to impose penalties is rested upon the Member,

Telecommunications Commission. The impugned proceeding, since initiated by other than the Member, is therefore, unsustainable in law. The learned counsel for the applicant also submitted that the alleged misconduct took place in 1992 and the impugned proceeding was initiated only on 2002 that too at the instance of the Vigilance Department. The learned counsel contended that on the ground of delay alone the impugned proceeding is not sustainable in law. In support of his contention he referred to the decision of the Hon'ble Supreme Court in The State of Madhya Pradesh -vs- Bani Singh and another reported in AIR 1990 SC 1308. Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents, on the other hand, contended that on the ground of delay a proceeding cannot be said to be vitiated, it all depend on the Sr.C.G.S.C. circumstances of the case. The learned L appearing for the respondents submitted that the protection, no doubt is extended to Civil Servant, so that he is not dismissed or removed by authority subordinate to which he was appointed. Before entering the merit of the case it would be appropriate to refer to the following relevant provisions of the CCS CCA Rules :-

"Rule 2 (a) Appointing Authority.

Rule 11 provides for imposition of penalty.

The Disciplinary Authorities is prescribed in Rule 12.

The authority to institute disciplinary proceedings is indicated in Rule 13(1) (2).

The procedure for imposing major penalties is prescribed in Rule 14."

3. We have heard Mr.J.L.Sarkar, learned counsel for the applicant and also Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents at length. On conjoint reading of the rules we did not find any rule to indicate that it is only the Member, Telecommunications Commission is the person authorised to initiate the proceeding. The statutory rules, more particularly, Rule 13 militate against the contention raised by Mr.J.L.Sarkar. Rule 13 of the CCS CCA Rules entrusted the authority to initiate the proceeding. Sub-rule (2) of the said Rule authorise the disciplinary authority to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 to institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of the Rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties. A action of initiation of disciplinary proceeding is quite distinct from conducting an enquiry. Article 311 does not impose any condition of requiring the authority empowered to impose the penalty of removal etc to conduct the enquiry proceeding itself. The only right guaranteed to Civil servant is that he should not be removed by an authority subordinate to which he was appointed.

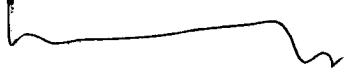
4. In view of the statutory provisions and in the light of the decisions rendered by the Hon'ble Supreme Court in State of Madhya Pradesh and Others -vs-

Shardul Singh reported in 1970(1) SCC 108 and in Inspector General of Police and Another -vs- Thavasiappan reported in 1996 (2) SCC 145, we find it difficult to accept the contention of Mr.J.L.Sarkar, learned counsel for the applicant to hold that the impugned proceeding is without jurisdiction. As regards the other contention of Mr.Sarkar to the effect that the proceeding is required to be invalidated on the ^{instant} ground of delay alone, we found that in the 1 case the respondents authority explained the delay and stated that the delay was caused due to an enquiry conducted by the Vigilance Department. On the facts and circumstances of the case the said delay cannot be said to be fatal. We, however, refrain from making further comment on the matter, since the disciplinary proceeding is yet to be concluded. If the applicant is prejudiced of the delay, it would be open to him to point out those facts before the disciplinary authority.

On consideration of all aspects of the matter, we do not find any merit in the application. Accordingly, the application stands dismissed. There shall, however, be no order as to costs.

We, however, feel that the authority should take all steps for early disposal of the proceeding providing all the opportunities to the applicant to defend his case as per law.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH :::: GUWAHATI

Title of the case

• O. A. No. 8

47

/2002

Sri Bidur Bhushan Mukherjee

Applicant

Union of India & ors.

Respondents

INDEX

| Sl. No. | Annexure | Particulars of Documents | Page No. |
|---------|----------|---|----------|
| 1. | - | Application | 1 - 9 |
| 2. | - | Verification | 10 |
| 3. | A | Copy of Order dated 24.04.1991 | 11-13 |
| 4. | B | Copy of Charge sheet dated 17.1.2002 | 14-19 |

Filed by

(Anupam Chakraborty) 11/3/2016

Advocate

WS
12/2/02

13

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. No. 47 /2002

BETWEEN

Sri Bidur Bhushan Mukherjee

Working as Sr. Accounts Officer in the

P & T Accounts and Finance Service

Group- B, TDM Office, Nagaon.

.....Applicant

AND

1. Union of India represented by the
Secretary to the Govt. of India,
Ministry of Communication,
Department of Telecommunications,
New Delhi - 1.

2. The Chief General Manager,
Assam Telecom Circle, Ulubari,
Guwahati- 781 007.

.....Respondents

Details of the Application :

1. Particulars of the order against which the application is made :

The application is made against the Charge-sheet number Vig/Assam/Disc.XIII/19 dated 17.1.2002 issued by the

Filed by the applicant
Chakraborty
1/2/2002
Sri Bidur Bhushan Mukherjee

14
Bishnu Bhanu Mukherjee

Chief General Manager, Assam Telecom Circle, Guwahati, who is not competent under CCS CCA Rules 1965, the Member, Telecommunications Commission is the competent authority under the said Rules. The charges also relate to a period about 10 years back.

2. Jurisdiction:

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

3. Limitations:

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

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the constitution of India.

4.2 That the applicant initially joined as Time Scale Clerk w.e.f. 19.5.1973 in the Department of Post & Telecommunications at Shillong. He was promoted in 1979 as Postal Accountant in the mail motor service, in 1980 as Junior Accounts Officer in District Manager, Telephones, Guwahati and in 1988 as Deputy Accounts Officer (now designated as Assistant Accounts Officer, Group-B service). He was officiating as Accounts Officer in Indian P&T Accounts and Finance Service Group 'B' w.e.f. October, 1990 on temporary and adhoc basis. He was thereafter promoted as Accounts Officer (for short AO) w.e.f. 24.4.1991 in the

5
Bijan Bhawan, New Delhi

Indian P & T Accounts and Finance service, Telecom Wing, Group - B on regular basis. It is stated that the appointment/promotion to the post of AO in the P & T Accounts and Finance service, Telecom Wing, Group-B (Gazetted) is made by the Telecom Commission. The applicant's promotion, transfer and posting order in the cadre of AO in the P & T Accounts and Finance Service Group 'B' was issued by Memo No. STES - 6/38 dated 24.4.1991 in pursuance to Telecom Commission Memo No. 9-1/91-SEA dated 25.3.1991. The name of the applicant appears against serial number 2 of the said order dated 24.4.1991. In 1992 a Senior Accountant and a JAO was posted under him.

Copy of the Order dated 24.04.1991

is enclosed as Annexure - A.

4.3 That Part-II of The Schedule to the Central Civil Services Classification Control and Appeal Rules, 1965 (for short CCS CCA Rules) prescribes the authority competent to impose penalties and penalties which it may impose (with reference to item numbers in Rule 11). Serial Number 10 column-2 of the said part-II of the schedule deals with the Indian Post and Telegraph's Accounts and Finance Service, Telecom Wing, Group-B. Column-4 mentions the authorities competent to impose penalties with reference to Rule 11. Column-5 mentions the item numbers of Rule 11. Under the column-4 of the serial number 10 of the said schedule, Member, Telecommunications Commission is the authority competent to impose penalties under Rule 11, and items of Rule 11 are 'ALL' in column-5. The column-4 further mentions Advisor (Human resources Development), department of Telecommunications; Head of Circle; Head of Telephone

District; General Manager Telecommunications Stores; General Manager Projects; General Manager Telecommunications Factories are authorities for penalties (i) to (iv), as mentioned in column-5 of the schedule.

4.4 That as per Rule 11 of the CCS CCA Rules penalties (i) to (iv) are minor penalties. Therefore the authorities empowered in Rule 10 for imposing penalties (i) to (iv) are not competent to impose major penalties. Such major penalties are enumerated in (v) to (xi) of the Rule 11. The Member, Telecommunications Commission is the competent authority under the said schedule to impose 'All' penalties and as such he is the competent authority to impose major penalties listed in Rule 11.

4.5 That it is stated that Part-III of the schedule deals with the central civil services Group-C. Serial number 2 of the Part-III in column-2 deals with Post and Telegraph's Accounts Service; Senior and Junior Accountants. In column-4 competent authority to impose penalties under Rule 11 is Member, Post and Telegraph's Board, for 'All' penalties as per column-5. For items (i) to (iv) of Rule 11 (i.e. minor penalties) other authorities are competent.

4.6 That from the said schedule it is clear that the authorities for the accounts service have been prescribed specifically as competent authorities for imposing penalties and for the Accounts Officer Group-B service the general Manager or other authorities mentioned in the schedule empowered to impose penalties for item(i) to (iv) of Rule 11 are not competent to impose major penalties. Even for

(X)

Group-C service Member, Post and Telegraph Board is the only competent authority to impose major penalties.

4.7 That the Rule 14 of the CCS CCA Rules prescribes the procedure for major penalties. Under Rule 2(g) Disciplinary Authority means the authority competent under the Rules to impose any of the penalties in Rule 11. The Member, Telecommunications Commission is the competent authority under serial number 10 of the Part-II of the schedule to impose major penalty on the applicant and no other authority is competent to impose such(major) penalty. The Member, Telecommunications Commission is, therefore, the Disciplinary Authority in respect of imposition of major penalty on the applicant, and chief general manager is not the Disciplinary Authority for imposition of major penalty. The memorandum of charge-sheet for punishment under Rule 14, therefore, can be issued only by the Member, Telecommunications Commission on the applicant.

4.8 That a memorandum of charge-sheet number Vig/Assam/Disc.XIII/19 dated 17.1.2002 has been issued to the applicant under Rule 14 of the CCS CCA Rules 1965 under the signature of the Chief General Manager, Assam Telecom Circle, Guwahati-7. It is stated that Chief General Manager is not competent authority under the rules to issue the said charge-sheet to the applicant.

Copy of the memorandum of charge sheet dated 17.1.2002 with encloser is enclosed as Annexure-B.

4.9 That the allegations of charges relate to the period 1992 in the matter of pre-checking of bills and giving pay orders for supply of materials. The authorities for the long years could not do anything in the matter of alleged irregularities in the pre-checking of the bills. To cover up the matters of alleged irregularities the charge sheet has been issued to the applicant. The charge sheet is liable to be set aside for allegations during the period of about 10 years back.

4.10 That the Chief General Manager, Assam Telecom Circle, Guwahati instead of communicating the alleged irregularities to the higher authorities viz., Telecommunications Commission purported to settle up the matters at his administrative level and preferred to issue the charge sheet under his own authority, though he is not the competent authority under the CCS CCA Rules 1965.

4.11 That the applicant states that the allegations have been brought against him after a lapse of about 10 years. The applicant is at present working as Senior AO in the P & T Accounts and Finance Service, Telecom Wing, Group-B service and even then the charge sheet has been issued by the Chief General Manager, who is not competent to issue the same. The Charge sheet is liable to be set aside and quashed.

4.12 That the applicant is in no way responsible for the allegations and to give an eye-wash in the matter of the alleged irregularities in the supply and payment of the

materials by the executive side the applicant who is in accounts service have been sought to be implicated by the imputations irregularly by-passing the Telecom Commission, Member of which Commission is the only competent authority to initiate a charge sheet against the applicant.

4.13 That the applicant received the said charge sheet dated 17.1.2002 on 4.2.2002 and by an application dated 5.2.2002 has prayed for 30 days for defending his case. In the said application he has stated that the matters relate to 1992 and he failed to remember anything about it.

5. Grounds for reliefs with legal provisions:

5.1 For that the charge sheet has been issued by the Chief General manager, Assam Telecom Circle who is not competent to issue the same under CCS CCA Rules 1965.

5.2 For that the allegations in the charge sheet relate to 1992 as is evident from the Articles of charges and the statement of imputations. The charge sheet after a delay of about 10 years is liable to be set aside and quashed.

5.3 For that it is very difficult for the applicant to defend the charges after lapse of 10 years and it is not reasonably practicable to defend the same.

5.4 For that the charge sheet has been issued arbitrarily and is a denial of reasonable opportunity by lapse of long years and as such violative of Article 14,16 and 311 of the Constitution of India.

5.5 For that in any view of the matter the issuance of the Charge Sheet is illegal, without any authority, and is liable to be set aside and quashed.

6. Details of remedies exhausted:

There is no remedy under any rule and this Hon'ble Tribunal is the only forum for redressal of the grievance.

7. Matters not previously filed or pending before any other Court:

The applicant declares that he has not filed any other case in any tribunal, Court or any other forum against the impugned order.

8. Reliefs sought for :

Under the facts and circumstances of the case, the applicant prays for the following reliefs :

8.1 The Charge sheet number Vig/Assam/Disc.XIII/19 dated 17.1.2002 issued by the Chief General Manager, Assam Telecom Circle be set aside and quashed.

8.2 Any other relief/reliefs the Hon'ble tribunal may deem fit and proper.

8.3 Cost of the case.

The above reliefs are prayed for on the grounds stated in para 5 above.

9. Interim relief prayed for :

During the pendency of this application the applicant prays for the following relief:

9.1 The proceedings in the charge sheet number Vig/Assam/Disc.XIII/19 dated 17.1.2002 be stayed/suspended.

The above relief is prayed for on the grounds stated in para 5 above.

10. This application has been filed through Advocate.

11. Particulars of Postal Order :

| | |
|-------------------|----------------|
| i) I.P.O. No. | 74 547109 |
| ii) Date of issue | 12/2/2002 |
| iii) Issued from | H.P.O. Gauhati |
| iv) Payable at | |

12. Particulars of Enclosures :

As stated in the index.

Verification.....

Rishabh Bhattacharya

Verification

I, Bidur Bhusan Mukherjee, Son of Late Binoy Bhusan Mukherjee, resident of Fauidari Patty, Nagaon, aged about 52 years do hereby verify that the statements made in para 1,4,6 and 7 are true my personal knowledge and those made in para 2,3 and 5 are true to my legal advice and the rests are my humble submission. I have not suppressed any material facts.

And I, sign this verification on this 10th day of February, 2002 at Guwahati.

Bidur Bhusan Mukherjee

— 11 —

INDIAN TELECOMMUNICATIONS DEPARTMENT
OFFICE OF THE CHIEF GENERAL MANAGER, ASSAM TELECOM. CIRCLE,
GUWAHATI - 781007

Memo No. STES - 6/30.

Dated at Guwahati, the 24-4-1991.

In pursuance to Telecm. Commission Memo No. 9-1/91-SEA dated 25.3.1991, Chief General Manager, Assam Telecom. Circle is pleased to issue the following orders of promotion, transfer and posting in the cadre of Accounts officer.

Promotions

Following Ass'tt. Accounts Officers are hereby promoted to officiate on a regular basis in the grade of A.O. in the P&T Accounts and Finance Service Group 'B' until further orders and posted as follows:-

| <u>Name of AAO</u> | <u>Posting on promotion as A.O.</u> |
|---------------------|--|
| 1. H.C.Chakraborty. | A.O.(IC), Circle Office vice Shri Subramaniachery transferred. |
| 2. B.B.Mukherjee | A.O.(Cash) O/O TDE Nowrang (vacant) |

Transfer

Following A.O. of P&T ASF Service Group 'B' are transferred from the Assam Telecom. Circle and posted in the Circle noted against their names.

| <u>SL No.</u> | <u>Name of Officer</u> | <u>Circle to which transferred</u> |
|---------------|---|--|
| 1. | S/ Shri O.B.Rao A.O. O/o TDM, G Guwahati. | A.O. O/o TDE Karimgar. A.P. Telecom Circle. |
| 2. | Shri P.Perumal. A.O. O/o AMT Dibrugarh. | A.O. 1/c O/o CGM, Tamil Nadu Telecom Circle. |
| 3. | Shri A.Subramaniachary A.O.(IC), Guwahati. | A.O. O/o Director Mtce, Madras, G.M.H, Madras. |
| 4. | Shri R.B. Rathinavelli. A.O.(Cash) O/o TDE Silchar. | A.O.(SPB) O/o TDM Cuddalore. Tamil Nadu Circle. |

Posting on transfer from other circle

On being transferred and allotted to this circle, the following Accounts Officers are hereby posted as indicated against their names.

| <u>Name</u> | <u>Posting in this circle</u> |
|---|--|
| 1. Shri R.Ganeshkaran. Tamil Nadu Circle. | A.O.(Cash) O/o TDE Dibrugarh Vacant. |
| 2. | ----- |
| 3. Shri K.Ramachandran. Madras Telephones. | A.O.(TRA) O/o TDM, Guwahati vice Shri O.B.Rao transferred |

cont'd....2

*Abhisek
Chakraborty
11/2/91*

.... 2

Name

4. Shri Y.V.S.Naranimha
Rao, A.P.Telcom, circle. 74
posting in the circle
A.O. (SPB) Circle Office, Guwahati
Vacant

5. Shri A.Kesabadas.
A.P. Telecom Circle. A.O. (SPB) O/O TDM, Guwahati..
Vacant.

6. Md. A.Ghouse
Madras Telephones. A.O. O/O AMT Dibrugarh.
vice P.Perumal transferred.

7. Shri V.Magaiah
A.P. Telecom. Circle A.O. (SPB) O/O TDE Jorhat.
Vacant.

8. Shri G.Krishnamurthy
A.P.Telcom Circle. A.O. (SPB) O/O TDE Dibrugarh.
Vacant.

All adhoc Officiating promotion against the vacant posts of A.O. come to an end on the date of joining of the regular incumbents.

Charge report may be submitted to all concerned.

Sd/-

(M.A.NASEER)
Dy. General Manager (A)

Copy to:-

1)

Director General, Telecom, Sanchay Bhavan, New Delhi.

2)

CGM, A.P.Telcom Circle, Hyderabad. He is requested to release the officers at SL 4,5,7 & 8 and direct them to report to the concerned controlling authority.

3)

CGM, Tamil Nadu Telecom. Circle, Madras. He is requested to kindly release the officers at SL 1 & 6 and intimate the place of posting in respect of officers at SL 2 & 4.

4)

CGM, Madras Telephones, Madras. He is requested to release Shri K.Ram Chandran and Md. A.Ghouse with instruction to report to the concerned controlling authority.

5)

G.M.M, Madras with a request to intimate the place of posting of Shri A.Subramaniamchery, A.O.

6)

CGM, N.E.Telcom.Circle, Shillong. He is requested to refer to this office Memo of even No..dated 7.3.91 and release Shri D.C.Roy to take up his new assignment.

7)

CGM, N.E.Task Force, Shillong . He is requested to refer our letter of even No. dated 7.3.91 and arrange to release Shri S.B.Das,A.A.O. with direction to report to TDE, Bongaigaon.

cont'd....3

8-9-10) T.D.M.Guwhati, A.M.T. Dibrugarh | FOR Information
Guwhati.

11-16) TDE Dangaiigaon | Jorhat | nowgong | and necessary
Tezpur | Dibrugarh | Silchar | action. please.

17-28) P/F of the officers.

29) Shri B.B.Mukherjee, A.O. O/O TDE. Nowgong.

30) Shri H.C.Chakraborty, A.O. (SPB) O/O CGMT Guwahati.

31) A.O. (A&P) Circle Office, Guwahati.

32-36) Spare.

M.C.Fatar

25.4.91

(M.C.FATAR)
for Chief General Manager Telecom.
Guwahati.

Bharat Sanchar Nigam Ltd.
(A Govt. of India Enterprise)
O/O The Chief General Manager
Assam Telecom Circle, Guwahati-07.
No. Vig/Assam/Disc.XIII/19

Dated, 17-1-2002.

MEMORANDUM

- 1) Shri Bidur Bhushan Mukherjee formerly Accounts officer in the O/O TDE Nagaon and now Sr. Accounts officer O/O TDM Nagaon is hereby informed that it is proposed to hold an inquiry against him under Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III and IV).
- 2) Shri B.B.Mukherjee is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.
- 3) He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each articles of charge.
- 4) Shri B.B.Mukherjee 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 CCS(CCA) Rules, 1965, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him exparte.
- 5) Attention of Sri B.B.Mukherjee is invited to Rule 20 of the Central Civil Services(Conduct) Rules, 1964 under which no Govt. Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Sri B.B.Mukherjee is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules 1964.
- 6) The receipt of the memorandum may be acknowledged.

To

Sri B.B.Mukherjee,
Sr. Accounts officer
O/O TDM/Nagaon

(G.S. Grover)
Chief General Manager
Assam Telecom Circle, Guwahati-07.

Officed
Dated 17/1/2002

Signature

ANNEXURE - I

ARTICLE OF CHARGE FRAMED AGAINST SHRI BIDUR BHUSHAN MUKHERJEE, FORMERLY ACCOUNTS OFFICER IN THE O/O TDE NAGAON AND NOW SR.ACCTS OFFICER O/O TDM NAGAON.

That the said Shri Bidur Bhushan Mukherjee while functioning as Accounts Officer, in the office of the TDE, Nagaon during 1992 committed gross misconduct, in as much as he gave pay orders in bill Nos. 271 dtd. 1-4-92, 433 dtd. 15-7-92, 434 dtd. 15-7-92, 435 dtd. 15-7-92, each amounts Rs. 1,90,723/- of Ms. B. R. Electricals, New Delhi for supply of PVC insulated twin galvanised steel dropwire, despite the fact that the supply was made by the firm without proper delivery challans, and receipt certificates on the bills were not properly certified without putting any date and without mentioning page no. of the stock register by the concerned authority, further the Purchasing Officer was not empowered to purchase the said items and also failed to observe codal formalities of purchases laid down in the department which are required under various rules/circulars of the department resulting an illegal payments of the amounting to Rs. 7,62,892/- made to the firm.

Thus Shri Bidur Bhushan Mukherjee, due to his aforesaid acts failed to maintain absolute integrity and devotion to duty and thereby contravened the Rules of 3(1)(i) & (ii) of CCS(Conduct) Rules 1964.

1, 90, 723

made
Pay orders in Rica.
Rs
1. a. 733

No 271 died 1.9.92
433 died 13.7.92
434 " " 13.7.92
435 " " 13.7.92

CHIEF GENERAL MANAGER,
ASSAM TELECOM CIRCLE,
GUWAHATI.

11 4.92

With ~~post~~ delivery Challans

Receipt 6014

Bill's not certain

1975-77

ANNEXURE -II

STATEMENT OF IMPUTATION IN SUPPORT OF ALLEGATION MADE
AGAINST SHRI BIDUR BHUSHAN MUKHERJEE FORMERLY ACCOUNTS
OFFICER IN THE O/O TDE, NAGAON AND NOW SR ACCOUNTS OFFICER,
O/O THE TDM NAGAON:

The said Shri Bidur Bhushan Mukherjee was functioning as Accounts Officer in the office of the TDE, Nagaon during 1992. His main duties and functions are :-

- 1) Compilation of accounts correctly in the division in accordance with the prescribed rules.
- 2) To applying preliminary check to initial accounts, vouchers etc. and pre-check of claims.
- 3) To render general assistance and advise to the DE in all matters relating to accounts and budget estimates or to operation of a financial rules.

He was responsible for thorough examination of any purchase proposal to ensure that whether procedures laid down by the deptt. and the terms and conditions for making purchases of stores have been fulfilled/adhered to strictly.

In case, purchase proposal does not fulfilled the prescribed procedures, terms and conditions, he must record in writing the reasons and return it to the authority concerns for remedial actions.

While he has given pay orders of bills, he would have to see the following points :

- i) Whether fund is available under the relevant head;
- ii) Whether purchase are made against the sanctioned estimates;
- iii) Whether purchase is within the financial limit of purchasing officer;
- iv) Whether purchase procedures has duly observed by the purchasing officer;
- v) Whether bill is prepared as per terms and conditions laid down in the purchase order;
- vi) Whether bill is properly certified by the concerned authority regarding quantity, quality and entry of Stock Register;

M/s B.R.Electricals supplied PVC Insulated Twin Galvanised Steel Dropwire and submitted 4 (Four) nos. of bills as follows :

| <u>Sl.No.</u> | <u>Bill No. and date</u> | <u>Amount</u> | <u>Quantity</u> | <u>Rate.</u> |
|---------------|--------------------------|----------------|-----------------|-----------------------------|
| 1. | 271 dtd. 1-4-92 | Rs. 1,90,723/- | 25 Km | @ Rs. 6,999/- per Km+ taxes |
| 2. | 433 dtd. 15-7-92 | Rs. 1,90,723/- | -Do- | -Do- |
| 3. | 434 dtd. 15-7-92 | Rs. 1,90,723/- | -Do- | -Do- |
| 4. | 435 dtd. 15-7-92 | Rs. 1,90,723/- | -Do- | -Do- |

While Shri Bidur Bhushan Mukherjee was given pay orders of the aforesaid bills, he failed to check the following deficiencies in these bills.

- 1) The item PVC insulated twin galvanised steel dropwire was neither stock item nor regular item of DoT and said item was not as per TECs specification of DoT. There was also no de-centralisation of order from DoT for procurement of stock item during 1992.
- 2) Non availability certificate has not obtained from CTSD, Guwahati before purchase of said item.
- 3) No estimate was prepared and sanctioned before purchase of said item.
- 4) Purchase were made without calling tender and without observing codal formalities for purchase of stock item in case of emergency.
- 5) None of the bills were accompanied with proper delivery challan in triplicate which is required as per clause of purchase orders.
- 6) Purchasing Officer has no power to purchase the said materials without approval of DoT and during purchase of said items financial limit of purchasing officer were exceeded in each case.
- 7) The consignees received the materials after due date of delivery and certified the bills without mentioning date of receipt and page no. of stock register.

Thus he failed to point out deficiencies as mentioned above before the competent authority for remedial action and given pay orders of the aforesaid bill of M/s B.R.Electricals.

Thus by the above acts of commission and omission of Shri Bidur Bhushan Mukherjee failed to maintain absolute integrity and devotion to duty and thereby contravened the provisions of Rule- 3(1) (i) & (ii) of CCS(Conduct) Rules'1964.

ANNEXURE -III

LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGE FRAMED
AGAINST SHRI BIDUR BHUSHAN MUKHERJEE FORMERLY ACCOUNTS
OFFICER IN THE O/O TDE, NAGAON AND NOW SR ACCOUNTS OFFICER
(SBP) O/O TDM NAGAON ARE PROPOSED TO BE SUSTAINED.

- 1) File No. Eng. S-41/DTDR/92-93 regarding ; PVC coated wire (allotement), O/O Area Director Telecom , Dibrugarh (Relevant pages N/s-5, N/s-6, N/s-7, N/s-8, N/s-10, N/s-13, N/s-14, N/s-18 and page 42 to 58, 59 to 98, 59 to 243, 251 to 260.
- 2) Bill No. 271 dtd. 1-4-92 of M/s B.R.Electricals.
- 3) Bill No. 433 dtd. 15-7-92 of M/s B.R.Electricals.
- 4) Bill No. 434 dtd. 15-7-92 of M/s B.R.Electricals.
- 5) Bill No. 435 dtd. 15-7-92 of M/s B.R.Electricals.
- 6) Counterfoil of cheque book (Two nos) of O/O TDM Nagaon.
- 7) Cheque issued Register w.e.f. 23-02-91 to 7-4-94 of O/O TDM Nagaon.
- 8) Authority letter dtd. 2-3-92.
- 9) Letter No. E-48/99-2000/23 dtd. 10-12-99 alongwith bill and challan.
- 10) One bunch of papers containing bills challan of M/s B.R.Electricals, New delhi of o/o SDOT Nagaon.
- 11) Stock and Issue Register of o/o the SDOT Nagaon.
- 12) Letter No. 9-102.97-Vig.I dtd. 28-6-99 issued by Sh. K.Nagarajan, Asstt. Director General (Vig).
- 13) Letter No. W-266/INS/G.I Wire/98-99/Misc/38 dtd. 27-5-99 alongwith enclosures issued by Sh. S.C.Ray, Asstt. G.M. (S-II) for CGMT's Calcutta-3.
- 14) Letter No. 9-5/98-Vig-I dtd. 13-4-99 issued by shri R.Krishnamurthy, Director (VRIT) New Delhi alongwith enclosures.
- 15) One estimate file JRT/L&W/DE-00044/92-93 O/o TDE Nagaon.
- 16) Letter No. PLSP/2-52/99-2000/2 dtd. 23-3-2000.
- 17) Postal Telegraph Financial Hand Book, Vol-I (Genl)
- 18) General Financial Rules.
- 19) Post and Telegraph financial Hand Book Vol-III.
- 20) Post and Telegraph Manual Vol-X

ANNEXURE-IV

LIST OF WITNESS BY WHOM THE ARTICLES OF CHARGE FRAMED
AGAINST SHRI BIDUR BHUSHAN MUKHERJEE FORMERLY AO IN THE
O/O TDE NAGAON AND NOW SR ACCOUNTS OFFICER (SBP) O/O TDM
NAGAON ARE PROPOSED TO BE SUSTAINED.

- 1) Shri Haran Chandra chakraborty, S/O Lt. G.C.Chakraborty, Sr. Accounts Officer, O/O the CGMT Assam Circle, Guwahati-07.
- 2) Shri Dipak Gupta, S/o Lt. R.K.Gupta, Accounts Officer O/O the TDM Nagaon.
- 3) Shri Dambaru Baruah, S/O Bhadreswar Baruah, Accounts Officer, O/O TDM Jorhat.
- 4) Shri Naba Kumar Das, S/o Lt. Moheswar DAs, Chief Accounts Officer, O/O CGMT Kamrup , Guwahati.
- 5) Shri Jyotirmoi Roy, ToA (Telecom Officer Assistant) S/O Lt. G.Roy, O/O TDM Dibrugarh.
- 6) Shri Subrata Sarkar, S/o Lt.K.J.Sarkar, Telecom Office Assistant O/O TDM Dibrugarh.
- 7) Shri K.Nagarajan, Asstt.director General(Vig), Department of Telecommunication West Block -1, Wing -2 Ground Floor, R.K.Puram, New Delhi- 110066.
- 8) Shri Ashim Abbas, Director (T & C) DoT Sanchar Bhawan, Ashoka Road, New Dehi.
- 9) Shri Ardhendu Sekhar Deb, S/o Lt. A.K. Deb, SDE(Stores) O/O CTSD, Guwahati
- 10) Shri M.Sharma, Inspector, CBI ACB Ghy and IO of the case.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWALIA TI BENCH :: GUWAHATI:-

Filed by

32
9/5/02
(A. DEB ROY)
Sr. C. C. S. C.
A. T. Guwahati Bench

O.A. No. 47 of 2002

Shri B.B. Mukherjee, A.O.

-vs-

Union of India & Ors.

- And -

In the Matter of ::

Written statement submitted by the
Respondents.

The Respondents beg to submit written statements
as follows.

1. That through the memo, the applicant was informed
of the specified charges formed against him and the
documentary evidences/witness by which the charges are
proposed to be established. The applicant was also
instructed to submit the written statement of defence
within 10 days.

The applicant has been afforded the opportunity to
present his defence but he has failed to submit his
written statement of defence within the prescribed time.
He has not attempted the remedy available to him
Departmentally and filed the present OA. The OA is
immatured as he has not exhausted the departmentally
remedy.

contd....P/2

2. That with regard to para-2 of OA, the Respondents beg to offer no comments.

3. That with regard to para - 3 of OA, the Respondents beg to state that the fact has stated in para - 1 above the OA is immatured as he has not exhausted the opportunity available to him departmentally within the provision of CCS(CCA) Rules.

4. That with regard to paras- 4.1 & 4.2 of OA , the respondents beg to offer no comments.

5. That with regard to para - 4.3 of O.A., the Respondents beg to state that As per CCS(CCA) Rules 13(2) " A disciplinary authority competent under this rule to impose any of the penalties in clauses (i) to (iv) of Rule - 11 may institute disciplinary proceedings against any Government Servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule-11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties".

Since the CGMF is a competent authority to impose any of the penalties specified in clause (i) to (iv), also the competent authority to initiate disciplinary proceeding against the said B.B.Mukherjee.

A copy of Rule - 13 is annexed as R 1.

6. That with regard to para - 4.4 of O.A. , the Respondents beg to state that no panalty either major or minor has been awarded to the applicant by any authority. Disciplinary proceedings against Shri B.B. Mukherjee is instituted by the order dated 17.01.2002 only thereafer the same will be dealt with the Departmental Rules.

7. That with regard to para - 4.5 of O.A. , the Respondents beg to state that no penalty either major or minor has been awarded to the applicant by any authority. Disciplinary proceedings against Shri B.B. Mukherjee is instituted by the order-dated 17.01.2002 only thereafter the same will be dealt with the Departmental Rules.

8. That with regard to para - 4.6 of O.A., the Respondents beg to state that as reiterated in foregoing paras the Chief General Manager is the prescribed competent authority for imposing one of the minor penalties for good and sufficient reason. The CGMT is competent authority to institute the disciplinary proceedings, the disciplinary proceedings against BB Mukherjee has been instituted by the order - dated 17.01.2002.

9. That with regard to para -4.7th of O.A., the Respondents beg to state that for imposing one of the major penalties as defined in Rule-11 of UCS(CCA) Rules, the procedure prescribed in Rule - 14 laid as a precondition.

According to Rule - 14(2), whenever a Disciplinary Authority is of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour against a Govt. Servant the disciplinary authority may itself enquire into it or appoint an inquiry authority into the truth thereof.

Rules 14(3) & 14(4) laid down that the disciplinary authority shall draw or cause to draw up the charge sheet in the prescribed therein and deliver the same to the charged Govt. Servant.

As regards the authority to institute the proceedings it is made clear in rule - 13 of CCS(CCA) Rules that an authority competent to impose any of the penalties specified in clause (i) to (iv) of Rule - 11 may institute disciplinary proceedings for imposition of any of the penalties specified in clause (v) to (ix) of Rule - 11 notwithstanding that such disciplinary authority is not competent under these Rules to impose any of the later penalties.

It is abundantly clear that the disciplinary authority, who is competent to impose one of the minor penalties, is also competent to institute disciplinary proceedings for imposing one of the major penalties.

As stated in para - 4.3 to 4.6 above and also admitted by the applicant, the CGMT is the prescribed competent authority for imposing one of the penalties specified in clause (i) to (ix) of Rule - 11. That being so, the said authority is also competent to institute proceedings for imposition of one of the penalties mentioned in clause (v) to (ix) of Rule - 11.

In view of the above position of law the CGMT is well within his competence to issue the impugned memorandum of charges against the applicant.

10. That with regard to para - 4.8 of O.A., the respondents beg to state that as explained in foregoing paras particularly in para - 4.7 the CGMT is competent under the expressed provisions of Rule 13 to institute the proceedings for imposition of major penalty by issuance of charge sheet to the applicant.

11. That with regard to para - 4.9. of O.A., the respondents beg to state that the the subject matter of the charge relate to irregular payment against doubtful supply of non - standard stored item in violation of departmental norms governing the purchase of Telecom Stores.

The CBI made through enquiry into the purchase of non standard equipment from dubious manufacturers loose ends of the case are spread over different parts of India and the premier Investigating Agency Took its own time to complete the investigation. The process is a time consuming one and considering the volume of paper works at different ends, the time taken for the completion of the investigation is not unjustified.

After the completion of preliminary investigation the departmental authority examined the report in consultation with CVC and come to the conclusion that these are grounds for regular departmental enquiry against the suspected Govt. Servant to inquiry into the Truth. Accordingly the Proceedings have been drawn by issuing the charge sheet.

12. That with regard to para - 4.10 of O.A., the respondents beg to state that the enquiry report has been examined at the highest level of the Department. The matter was also referred to CVC for their advice. In fact it is on the advice of the CVC that the highest decision making authority of the department decided that there is valid ground to proceed against the applicant departmentally for the prima facie charge amounting to grave misconduct.

13. That with regard to para 4.11 of O.A., the respondents beg to state that the charges are framed on the basis of documentary evidences available with the department. The passage of time since the period of occurrence will not in any way prejudice the case against the applicant.

The charge sheet has been issued after due application of mind and careful examination of the CBI Enquiry Report based of documentary evidences. The proceedings have been initiated by competent authority in the prescribed manner under a well defined set of rules. The same may be allowed to take the lawful course & for logical conclusion.

14. That with regard to para - 4.12 of O.A., the respondents beg to state that the applicant is free to present his case and defend himself against the charges before the Departmental inquiry Authority. The charges will stand or fall on the basis of records produced before the I.O. in charge of enquiry. It is beyond the scope to prejudge the guilt of innocence of the applicant.

38

15. That with regard to para - 4.13 of O.A, the respondents beg to state that the applicant was specifically directed to submit the written statement of the defence within 10 days from the date of receipt of the impugned charge sheet dated 17.01.2002. The applicant has failed to comply with the direction within the specified time limit. He has made request for 30 days time for submission of his written statement and therefore approached the Hon'ble Tribunal by filing the O.A. The same is premature as liable to be dismissed.

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

VERIFICATION.

I, shri Shankar Chandra Das presently working as Asstt Director Telecom(Legal) be duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para 1, 3, 6 to 15 are true to my knowledge and belief, these made in para 5 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal, I have not suppressed any material facts.

And I sign this verification on this 6th day of May 2002 at Guwahati.

Shankar Chandra Das
Declarant: शंकर चन्द्र दास (विधि)
Assistant Director, Telecom (Legal)
कार्यालय, माल्य दास, एसटीएल, इसाम टेलिकॉम,
Office of the Chief General Manager, Telecom
Assam दरसार परमाणुन, गुवाहाटी-7
Assam Telecom Circle, Guwahati