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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

INDEX

O.A/T.A No. 237/03
R.A/C.P No.
E.P/M.A No.

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 237/03

Misc Petition No: /

Contempt Petition No: /

Review Application No: /

Applecants:- D.K. Rabidas

Respondants:- U.O.I Ors

Advocate for the Applecants:- M. Chanda, G.N. Chakraborty, S. Chandhy

Advocate for the Respondants:- case.

Notes of the Registry	Date	Order of the Tribunal
This application is in order but not in time. Petition is filed / not filed C F for Rs. 50/- deposited vide IPO/BD No 96 702994 Dated 20.10.03 Dy. Registrar	29.10.2003	Heard Mr.M.Chanda, learned counsel for the applicant. The application is admitted, call for the record. List the case for orders on 4.12.2003. KV Prahladan Member Vice-Chairman bb
Steps taken alongwith envelops.	26.12.2003	Present: Hon'ble Mr Justice B. Panigrahi, Vice-Chairman Hon'ble Mr K.V. Prahaladan, Administrative Member. Since the matter has been already admitted for hearing on 29.10.2003 and there was no direction to file written statement, we hereby call upon the respondents to file written statement within six weeks. Rejoinder, if any, to be filed within
No court fee stamp in vakalatnama when removed from group. 24/10/03 for signature. Removed. 28/10/03		
Pl. comply order dated 29/10/03 29/10/03		

N

O.A.No.237/2003

Order & Notice, Sent to D/Section for issuing to respondent No. 1 to 4.

Clerk 10/11/03. D/No 2261 to 2264 Dt. 11/11/03.

26.12.2003

two weeks thereafter with a copy to be served upon the respondents.

Since it is a case where minor penalty is imposed, it is, therefore, proper to be heard by a learned Single Judge. Let the matter appear on 12.1.2004 for hearing.

Member Vice-Chairman

nkm

10.2.04

WS Submitted by the Respondents.

1.4.2004 Present: Hon'ble Shri Kuldip Singh, Judicial Member

Hon'ble Shri K.V. Prahladan, Administrative Member.

Learned counsel for the parties are present. Learned counsel for the applicant submits that he has received the copy of the written statement just now and wants some time to file rejoinder. Time allowed. List it for orders on 23.4.04.

Member(A) Member(J)

nkm

9.6.04

Rejoinder Submitted by the applicant.

23.4.2004 List before the next Division Bench.

Member (A)

mb

15.6.2004 Heard learned counsel for the parties. Hearing concluded. Judgment reserved.

Member (A) Member (J)

O.A.237/2003

18.6.2004 Present: The Hon'ble Smti.Bharati Roy
Member (J).

The Hon'ble Shri K.V.Prahladan
Member (A).

Judgment pronounced in open Court, kept in separate sheets.

The application is allowed in terms of the order. No costs.

Member (A) Member (J)

bb

20.8.04

Copy of the Judgment has been sent to the Office for issuing the same to the applicant by post and to the Ld. C.G.S.C. by hand.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXX~~.No. 237 of 2003

DATE OF DECISION 18-06-04

Shri Dilip Kumar Rabidas
.....APPLICANT(S).

Mr M. Chanda, Mr G.N. Chakraborty and
Mr S. Chaudhury
.....ADVOCATE FOR THE APPLICANT(S).

-VERSUS-

The Union of India and others
.....RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.
.....ADVOCATE FOR THE RESPONDENT(S).

THE HON'BLE MRS BHARATI RAY, JUDICIAL MEMBER

THE HON'BLE SHRI K.V. PRAHLADAN, 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 Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.237 of 2003

Date of decision: This the 18th day of June 2004

The Hon'ble Smt Bharati Ray, Judicial Member

The Hon'ble Shri K.V. Prahladan, Administrative Member

Shri Dilip Kumar Rabidas
S/o Late Jarua Rabidas,
Working as Junior Superintendent (Stores),
Office of the Government Medical Stores Depot,
P.O. Gopinath Nagar, Guwahati. .....Applicant
By Advocates Mr M. Chanda, Mr G.N. Chakraborty
and Mr S. Chaudhury.

- versus -

1. The Union of India, represented by the Secretary,
   Government of India,
   Ministry of Health and Family Welfare,
   New Delhi.
2. The Director General of Health Services,
   Niman Bhawan, New Delhi.
3. The Assistant Director General (MS),
   Government Medical Stores Depot,
   Gopinath Nagar, Guwahati.
4. The Joint Director,
   Central Government Health Scheme &
   In-charge Government Medical Stores Depot,
   Guwahati (Disciplinary Authority),
   Gopinath Nagar, Guwahati. .....Respondents

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

.....

O R D E R (ORAL)

BHARATI RAY, JUDICIAL MEMBER

This application has been filed seeking the following reliefs:

i) To set aside the memorandum of charge sheet dated 12.05.1997, impugned order of panalty dated 12.12.2002 and the impugned appellate order dated 22.08.2003.

ii) To direct the Appellate Authority to condone the delay in preferring the appeal and further to direct the Appellate Authority to pass reasoned order on merit of the appeal.

iii) To direct the respondents to promote the applicant to the post of Senior Superintendent (Stores) at least from the date of promotion of his immediate juniors with all consequential benefits.

iv. Costs of the application

v. Any other relief(s) to which the applicant is entitled to.

2. The undisputed facts of the case are that:

While the applicant was working as Junior Superintendent, Government Medical Stores Depot, Guwahati, a surprise check of stock of medicines was conducted by the Central Bureau of Investigation (CBI for short) authority on 11.7.1996 and the following discrepancies were found:

> "a) Shortage of 53,770 nos. of Tab. Pyrimethamine Sulphadoxine Combination (250mg) vlued Rs.51,081.50 in NMEP Section.
>
> b) As per declaration in Bincard No.67204, the stock of tablet Pyrimethamine Sulphadoxine Combination 250 mg, should be 18,83,570 nos. But in physical stock verification the same was found only 18,29,000 nos. and thus there was a shortage of 53,770 nos tab. under the possession of Shri B.K. Rabidas."

However, on the next day, i.e. on 12.7.1996 the untraced quantity of medicine was traced out and reported by the applicant to the Head Office and was also reported to the CBI, Guwahati on the very day. But, 460 nos. of tablets of Pyrimethamine Sulphadoxine combination (250mg) could not be traced out, the cost of which is Rs.437/-. The Assistant Director General (MS), Government Medical Stores Depot, Guwahati vide Memorandum bearing letter No.ADMN/164/DKR/92 dated 12.5.1997 proposed to hold an enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The charges levelled against the applicant is as under:

> "While Shri Dilip Kr. Rabidas was posted and functioning was junior Supdt. in National Malaria Eradication Programme of Government Medical Store Depot, Guwahati during 1996 failed to maintain absolute integrity and devotion to duty for which

53,770 nos. of tab. Pyri methamine Sulphadoxine combination (250mg) valued at Rs.51,081.50 were found short which ought to have been in his possession during a joint surprise check conducted on 11.7.96 in National Malaria Eradication Programme Store Section and thereby by the above acts, he contravened the provision of Rule 3(1)(2) of CCS (Conduct) Rules, 1964."

3. After receipt of the aforesaid charge memo dated 12.5.1997 the applicant submitted a detailed reply on 21.5.1997 denying the allegations contained in the article of charge and further showed the detailed position of medicines as on 11.7.1996. However, it was admittedly mentioned by the applicant that there were altogether 18,83,570 nos. of tablets available in the stock as on 11.7.1996 and on physical verification 18,83,110 nos. of tablets were found in good condition and 460 nos. of tablets, value of which was Rs.437/- was detected to be short which could not be found in the stock. It is also explained by the applicant in the reply to the charge memo that during the relevant period maximum quantity of UIP/CSSM(KTTS) stores were received, but due to insufficient accommodation in the Depot all medicines were kept in a scattered way and even in the corridor of the complex. The applicant prayed before the authority to consider the above facts sympathetically. The applicant in his reply has also assured that in future he would take more care for proper maintanance of the stock. Thereafter, an enquiry was conducted by Dr H.K. Sonowal, CMO, CGHS Dispensary No.3, Guwahati and the enquiry report submitted by him was sent to the applicant by the Disciplinary Authority alongwith the O.M. dated 3.12.2002, which is annexed as Annexure-III to the O.A. The Disciplinary Authority vide its memo dated 3.12.2002 informed the applicant to make a representation against the enquiry report, if any, within fifteen days of the receipt of the

said memo, failing which it would be presumed that the applicant had no representation to make and orders would be passed against him. Accordingly the applicant sent his reply to the said memo on 9.12.2002, wherein he requested the authority to make recovery from his salary for adjustment of the shortage quantity of medicine found inthe stock. The said reply is enclosed as Annexure-IV tothe O.A. The Joint Director, CGHS- respondent 4, thereafter issued the impugned order dated 12.12.2002 in the name of the President, whereby a penalty of reduction of pay by one stage was imposed on the applicant for a period of one year with effect from 1.1.2003 with the stipulation that during that period the applicant would not be eligible to earn increment and on expiry of the period the reduction will not have the effect of postponing his future increment of pay. A copy of the said order is enclosed as Annexure-V. Although the order was issued in the name of the President and there was no opportunity given to the applicant and there was nothing mentioned to prefer any appeal, the applicant preferred an appeal on 10.6.2003 to the Directror General of Health Services, which was, however, rejected by the Director General, Health Services, on the ground that the appeal was made after a lapse of six months and without satisfactory reasons for the delay in preferring the appeal, the appeal was rejected, Annexure-VII.

4. Being aggrieved by the charge memo dated 12.5.1997 and the order of penalty dated 12.12.2002 and the order of the Director General dated 22.8.2003 the applicant has approached this Tribunal seeking the reliefs stated above.

5. Mr M. Chanda, learned counsel for the applicant, strenuously argued that when the Inquiry Officer in his

report did never held that the charges were partially proved and only suggested to make necessary correction in the Bin Card to avoid unnecessary misunderstanding, the Disciplinary Authority was not justified in saying that the Inquiry Officer in his findings has said that the charges had been partially proved. He further added that when it was categorically held by the Disciplinary Authority that only minor mistake had been committed, there was no reason to hold that the applicant is guilty of misconduct for the purpose of initiating disciplinary proceedings. Therefore, the Disciplinary Authority was not justified in imposing any penalty upon the applicant taking recourse to Rule 14 of the CCS (CCA) Rules, 1965. The learned counsel for the applicant further submitted that when there was no proposal made by the Inquiry Officer to impose any penalty in its report and when there was only a suggestion as mentioned above, the Disciplinary Authority without giving the applicant any opportunity to defend his case could not have imposed the penalty and that the order dated 12.12.2002 issued by the Disciplinary Authority is violative of the principles of natural justice. In this context, he has placed reliance on a judgment of the Supreme Court in the case of State Bank of India and others Vs. K.P. Narayanan Kutty, reported in (2003) 2 SCC 449, wherein it was held that it is the duty of the punishing authority when treating as fully proved the charges found by the enquiry ofifcer to be partly proved, to afford opportunity to the delinquent employee irrespective of whether or not some prejudice is shown to have been caused by denial of such opportunity. It is the contention of the learned counsel for the applicant that since in the present case the Inquiry Officer did not hold that the charges were

partially proved or proved and has not made any proposal to impose any punishment, the principles laid down by the Hon'ble Supreme Court in the above case applies on the case in hand and therefore the applicant is entitled to get the relief prayed for.

5.5. The learned counsel for the respondents submitted that although the applicant had the opportunity to prefer his appeal against the order passed by respondent 4, but he did not avail of the said opportunity by filing the appeal in time. In fact, the applicant preferred his appeal after the expiry of the time schedule and the same was rejected by the Director General of Health Services on the ground of delay. The learned counsel for the respondents, however, could not enlighten the position as to why the order dated 12.12.2002 was issued in the name of the President when the applicant, admittedly, is a Group 'C' officer. The learned counsel for the respondents could also not explain as to whether there was any scope of preferring appeal when the penalty order was issued in the name of the President.

6. Heard the learned counsel for the parties. We have gone through the pleadings and the materials placed before us. We have also gone through the case relied upon by the learned counsel for the applicant. A perusal of the enquiry report would show that no proposal had been madeby the Inquiry Officer to impose any penalty against the charged official, i.e. the applicant herein. It is seen from the findings of the Inquiry Officer that the quantity that could not be traced on the date of verification, i.e. 11.7.1996 could be traced out on the next day, i.e. on 12.7.1996, but only 460 nos. of tablets were not traced out which cost Rs.437/-, in which context the Inquiry Officer remarked that the 460 tablets which could not be traced out

was worth Rs.437/- only which itself in store accounting procedure is considered to be a very meagre amount, i.e. less than 0.9% of the traced quantity of medicine and finally the Inquiry Officer suggested to make necessary correction in the Bin Card to avoid unnecessary misunderstanding. It is also noticed that the respondent 4 in O.M. dated 3.12.2002 (Annexure-III) advised the applicant to make representation to the enquiry report without mentioning anything about any possibility of imposing any penalty to enable the applicant to defend his case accordingly which in our view violated the principles of natural justice. As already mentioned above the learned counsel for the respondents could not explain as to why the order was passed by respondent 4 in the name of the President and in case the order is of the President, where is the scope of preferring appeal? We find that the appeal preferred by the applicant was rejected by the Director General of Health Services on the ground of delay in submitting the appeal. We find force in the contention of the learned counsel for the applicant that when the order of penalty was issued by the Joint Director and the Director General is not the next higher authority, therefore, the Director General is not the competent authority to act asthe Appellate Authority and reject the appeal preferred by the applicant. Therefore, the order of the Director General of Health Services dated 22.8.2003 is not sustainable in the eye of law and is liable to be ~~rejected~~ quashed. It is also noticed that the Appellate Authority did not consider the crucial point that the Appellate Authority while rejecting the appeal on the ground of delay did not notice that the penalty order was issued in the name of the President and therefore there was no scope to

prefer any appeal and it was also not considered as to whether the order could be passed in the name of the President when the charged officer is not a gazetted officer. Therefore, the Appellate Authority did not apply its mind and has passed an order which is not sustainable in law.

7. The next question to be considered is whether the allegation constituted misconduct in the eye of law. A close reading of the article of charge, the findings of the Inquiry Officer and the order of the Disciplinary Authority would only show that the Inquiry Officer as well as the Disciplinary Authority noticed that a minor mistake has been committed by the applicant. The suggestion of the Inquiry Officer to the applicant to make necessary correction in the Bin Card by rectifying the mistake to avoid unnecessary misunderstanding would go on to show that at no point of time the Inquiry Officer as well as the Disciplinary Authority came to the conclusion to hold that there was any ill motive behind the action/inaction on the part of the applicant in committing the minor mistake which would constitute misconduct. In fact, nowhere in the charge memo or in the finding of the Inquiry Officer as well as in the order of the Disciplinary Authority, misconduct has been alleged, noticed and/or established. Therefore, we find considerable force in the contention of the learned counsel for the applicant that in view of the allegation made against the applicant in the charge memo read with the statement of imputation, the findings of the Inquiry Officer and the order of the Disciplinary Authority, it is very much clear that the applicant can be held to be guilty of negligence in keeping the medicines properly which

resulted in the loss of Rs.437/- which is again ~~considered~~, according to the Inquiry Officer a meagre amount, i.e. less than 0.9% of the traced quantity of medicines and also has been noticed by the Disciplinary Authority as minor mistake committed by the applicant. Therefore, there is no reason to say that the applicant was guilty of any misconduct for the purpose of initiating disciplinary proceeding. In this context the learned counsel for the applicant placed reliance on the judgment of the Hyderabad Bench of the Tribunal in G. Buddappa Vs. Union of India and others (O.A.No.198 of 2000) decided on 12.7.2001, wherein it was observed that mere negligence does not constitute misconduct and that no charge memo can be issued in absence of a misconduct. In this context we have also gone through the definition of misconduct in Stroud's judicial dictionary (1986 Fifth Edition) which is as under:

> "misconduct arising from ill motive, acts of negligence, errors of judgment, or innocent mistakes, do not constitute such misconduct."

The Central Administrative Tribunal, Hyderabad Bench, in the said judgment, referred by the applicant, has also considered the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. J. Ahmed, reported in 1979 SLJ 308 (SC) in which the Hon'ble Supreme Court observed, inter alia as under:

> "It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings."

8. In view of the above discussion and the contention of the learned counsel for the applicant mentioned above and the judgments discussed above, we are of the view that there is nothing in the charge memo or in the findings of the Inquiry Officer or in the order of the Disciplinary Authority to hold that the applicant was guilty of any misconduct. A loss of Rs.437/- that was due to the applicant's negligence would not constitute misconduct when there is no ulterior motive behind such failure on the part of the applicant in taking care of the medicines and keeping them in order in the store room. We, therefore, hold that since the applicant is not guilty of any misconduct, the respondents were not justified initiating the disciplinary by issuing the charge memo under letter dated 12.5.1997 and therefore the charge memo is liable to be set aside.

9. In view of the irregularities pointed out above, we hold that the charge memo dated 12.5.1997 and the orders dated 12.12.2002 and 22.8.2003 issued by respondent 4 and the Director General, Health Services, respectively are not sustainable in the eye of law. Accordingly, they are quashed and set aside.

10. In the result, the O.A. is allowed with no order as to costs.

(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER

(BHARATI RAY)
JUDICIAL MEMBER

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O. A. No. 237/2003

Sri Dilip Kumar Rabidas.

... Applicant

-Versus-

Union of India & Others

... Respondents

List of dates and synopsis of the case

Date	Synopsis of particulars in the application
11.07.1996	The CBI authority conducted a joint surprise check and verified the stock register as well as physical stock of the stores of the Govt. Medical store Depot, Guwahati and found a shortage of 53,770 nos of Pyrimethamine sulphadoxine valued Rs 51,081.50. The applicant was in charge of the stores and the materials were stored in different places of the campus, and as such the applicant could not locate the aforesaid medicines instantly due to his nervousness instantly due to hos nervousness at such a surprised check.
12.07.1996	The local authorities along with the applicant could locate 53,310 nos. of Pyramethamine Sulphadoxine valued Rs.50,644.50,therby the ultimate shortage being to the extent of 460 nos. only valued Rs 437.00.This was immediately brought to the notice of the higher authority

and the CBI by the local Head office on 12.07.1996 itself.

12.05.97 The Assistant Director General (MS), Govt. Medical Store Depot, Guwahati issued letter No. ADMN/164/DKR/92 proposing to hold an inquiry against CCS (CCA) Rules, 1965, alleging some anomalies in the stores. No statement of imputation or list of witnesses and documents relied upon were enclosed with the said Memorandum of charges.

21.5.97 Applicant submitted reply denying the charges. In the reply the applicant narrated the factual position in details and prayed for a sympathetic view in the case with the assurance that due care would be taken on the matter in future.

11.10.02 After a long silence, the authority vide memorandum dated 11.10.02 followed by another Memorandum dated 24.01.03 summoned the applicant to appear before the enquiry authority.

22.10.02 Enquiry was conducted by the Joint Director, CGHS and in-charge GMSD, Guwahati where the applicant participated. Enquiry was conducted without examining any documents/witnesses and as such the charges could not be established.

03.12.02 Copy of Enquiry Report was served upon the applicant giving him an opportunity to make representations, if any, within 10 days time.

09.12.02 Applicant submitted representation fairly stating that since the shortage was only to the extent of 460 nos. of tables which could not be traced out, the cost of the same may be recovered from his salary and the case may be considered sympathetically.

12.12.02	Disciplinary authority issued letter No. Admn/164/DKM/6906 dated 12.12.02 imposing penalty upon the applicant by way of reduction of pay to the next lower stage for a period of one year with effect from 1.1.103 arbitrarily and without any notice or recording his disagreement with the inquiry report although nothing could be proved in the inquiry report.
10.06.03	Applicant preferred an appeal against the order of penalty to the Appellate Authority pointing out various infirmities in the inquiry and challenging the legality of the penalty and stated that he had deposited an amount of Rs. 437/- towards the cost of 460 nos. of untraced tablets in question and further prayed for condonation of delay in preferring the appeal since he was not aware of the provision for appeal in the instant case earlier nor it was mentioned in the order of penalty.
22.08.03	Appellate Authority rejected the appeal. Hence this O.A. before the Hon'ble Tribunal.

PRAYER

8.1 That the Hon'ble Tribunal be pleased to set aside the memorandum of charge sheet dated 12.05.1997(Annexure-I), impugned order of penalty dated 12.12.2002(Annexure-V) and the impugned appellate order dated 22.08.2003(Annexure-VII)

8.2 That the Appellate Authority be directed to condone the delay in preferring the appeal and further be pleased to direct the Appellate Authority to pass reasoned order on merit of the appeal.

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8.3 To direct the respondents to promote the applicant to the post of Senior Superintendent (Store) at least from the date of promotion of his immediate juniors with all consequential benefit.

8.4 Costs of the application.

8.5 Any other relief(s) to which the applicant is entitled to as the Hon'ble Tribunal may deem fit and proper.

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Filed by the applicant through advocate Sri G. N. Chakravarty on 22-10-2003.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No 237 /2003

Sri Dilip Kumar Rabidas : Applicant

- Versus -

Union of India & Others: Respondents.

INDEX

Filed by

Advocate

Date 22-10-2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 237 /2003

BETWEEN

Sri Dilip Kumar Rabidas
Son of Late Jarua Rabidas
Working as Junior Superintendent (Stores)
Office of the Govt. Medical Store Depot
P.O. Gopinath Nagar
Guwahati-781016

...Applicant

-AND-

1. The Union of India,
Represented by the Secretary,
Govt. of India,
Ministry of Health and Family Welfare
Nirman Bhawan,
New Delhi.

2. The Director General of Health Services,
Nirman Bhawan

Dilip Kr Rabidas.

New Delhi 110 011

3. The Assistant Director General (MS)
Government Medical Store Depot,
Gopinath Nagar,
Guwahati-781016

4. The Joint Director
Central Government Health Scheme &
In charge Government Medical Store Depot
Guwahati (Disciplinary Authority)
Gopinath Nagar, Guwahati-16.

.....Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned Memorandum of Charge sheet dated 12.5.1997, order of penalty dated 12.12.2002 and also against the impugned Appellate Order dated 22.8.03.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

Dilip Kr Rabidas.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That your applicant while working as Junior Superintendent, Government Medical Store Depot, Guwahati in the year 1997, a joint surprise check was conducted by the CBI authority and verified the stock register as well as physical verification of the Store materials on 11.7.1996. It is relevant to mention here that medicines purchased by the authority used to be stored in different places of the campus in a scattered manner as and when the supply of medicines is received. It is ought to be mentioned here that at the relevant time the applicant alone was entrusted with the charge of huge store materials. As such the applicant was faced with tremendous workload. However, on enquiry the CBI authority found there was a shortage of 53,770 no. of pyrimethamine sulphadoxine combination (250 mg) tablets valued at Rs. 51,081.50 which ought to have been in the possession of the applicant.

4.3 That it is stated that the medicines which are normally being supplied to the Depot are used to be stored in different places of the Depot in a scattered way due to non availability of sufficient space within

Dilip Kr Rabidas.

the Depot and the said fact is well known to the authorities. The applicant was posted in the Store Section of the Medical Store Depot on his promotion to the post of Asstt. Superintendent only in the year 1995 from the post of Pharmacist cum Clerk. Due to sudden and surprise check conducted by the CBI authority the applicant got nerversed while facing the CBI authority and he could not immediately locate all the aforesaid medicines at that moment. However, the CBI authority took note of the shortage of 53,770 no. of perimethamine Sulphadoxine (250 mg) tablets but other stores materials were found accurately as per the stock register. It is relevant to mention here that while the CBI conducted surprise check as stated above the local authorities were also present. However, on the very next day i.e. on 12.7.1996 the local authority along with the applicant could able to locate at least the 53,310 no. of Pyramethamine Sulphadoxine combination of 250 mg tablets, value of which is amounting to Rs.50,644.50. It is admitted that in fact there was a shortage of only 460 no. of Pyrimethamine Sulphadoxine combination tablets, as such value of which stood only Rs. 437.00 only as a result of shortage of aforesaid 460 tablets in the Store Section. This fact was immediately brought to the notice of the CBI Authority as well as before the higher authority by the local Head officer on that very day itself i.e. on 12.7.1996.

4.4 That most surprisingly, the Assistant Director General (MS), Govt. Medical Store Depot, Guwahati vide

Dilip Kr Rabidas.

Memorandum bearing letter No. ADMN/164/DKR/92 dated 12.5.1997 proposes to hold an enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965, in the article of charges labeled against him on the allegation that the applicant while working as Junior Superintendent (Store) in the Govt. Medical Store Depot, Guwahati during the year 1996 failed to maintain absolute integrity and devotion to duty for which 53,770 no. of perimethamine sulphadoxine combination (250 mg) tablets valued at Rs. 51,081.50 were found short which ought to have been in the possession of the applicant during the joint surprise check conducted on 11.7.1996 in National Malaria Eradication Programme, store Section (as per Annexure-I to the Article of Charge dated 12.5.1997)and thereby the applicant had contravened the provision of Rule 3 (1) (2) of CCS (CCA) Conduct Rules 1964.

It is further alleged that in the Article of charges contained at Annexure-II that the applicant had received 47,78,570 no. of perimethamine sulphadonine combination (250 mg) tablets on 19.6.1995 and posted in the Bincard and thereafter he had issued 28,45,000 nos. of aforesaid tablets through vouchers to different indenters. It is also alleged that a declaration of stock as on 11.7.1996 was obtained from the applicant and as per declaration and Bincard there should be 18,83,570 nos. of tablets in the stock but on physical verification it was found only 18,29,800 no. of tablets in the Store. As such, the acts of the applicant contravened the provisions of Rule 3 (1) (2) of CCS (Conduct) Rules, 1964.

Dilip Kr Rabidas.

A copy of the Extract of Memorandum of charge sheet dated 12.5.1997 is annexed as **Annexure-I.**

4.5 That it is submitted that in the Memorandum of Charge sheet there was no statement of imputation of misconduct alleged by the Disciplinary Authority. No list of witnesses or documents relied upon by the Disciplinary authority were enclosed in the said Memorandum of Charge Sheet dated 12.5.1997 as required under the Rule. Therefore it can rightly be said that the Memorandum of Charge Sheet was not issued as per the provisions laid down in the relevant CCS (CCA) Rules, 1965 and on that score alone the impugned proceeding is liable to be set aside and quashed.

4.6 That it is stated that the applicant however, after receipt of the aforesaid impugned Memorandum dated 12.5.1997 submitted a detail reply on 21.5.1997 denying the allegations contained in the article of charges and further shown the detail stock position of the aforesaid medicines as on 11.7.1996, wherein it was shown that there were total stock position of the aforesaid tablets ware 47,48,570, under various receipt vouchers and it is further stated that it was not correct there were 47,78,570 no. of tablets as shown at Annexure-II to the Article of Charge. It is further stated in the said reply that altogether 19,55,000 and 9,10,000 tablets of the perimethamine sulphadoxine combination (250 mg) tablets were issued from the Bincard no. 67304. Therefore total quantity of tablets was issued i.e. 28,65,000, as such he denied the allegation of 28,45,000 tablets were issued as shown at Annexure-II to the Memorandum of

Dilip Nr Robidas.

Charge Sheet. It is categorically submitted that there were altogether 18,83,570 no. of the aforesaid tablets were available in the stock as on 11.7.1996. However, on physical verification 18,83,110 no. of aforesaid tablets were found in good condition but only 460 nos. of the aforesaid tablet value of which is Rs. 437/- was detected as short, which could not find out in the stock. The applicant categorically denied the allegation of shortage of 53,770 tablets cost of which amounting to Rs. 51,081.50 as shown at the Annexure-I to the Memorandum of Charge Sheet. It is also submitted by the applicant in his reply dated 21.5.1997 that during the aforesaid relevant period maximum quantity UTP/CSSM (KTTS) stores were received but sufficient accommodation was not available in the Depot, as a result medicines were kept in scattered way due to shortage of space, even in the corridor of the complex. It is prayed before the authority by the applicant in the aforesaid circumstances to consider his case sympathetically and it was also assured by the applicant to the authority that in future more care would be taken for maintenance of stock.

A copy of the reply dated 21.5.1997 is annexed as **Annexure-II.**

4.7 That it is stated that after submission of his reply dated 21.05.1997 against the memorandum dated 12.05.1997 the matter was not proceeded any more and the applicant was under the impression that the proceeding might have been closed by the competent authority since no progress is made thereafter till November 2002.

Dilip Kr Rabidas.

4.8 That it is stated that the authority vide office memorandum No. HKS/2002-03/Inquiry/5287-90 dated 11.10.02 & No. Admn/164/DKR/9616 dtd.24.01.03 applicant was summoned before the inquiry authority on a fixed date and time and the applicant accordingly participated in the said inquiry conducted on 22.10.2002 by the Joint Director, CGHS and in charge GMSD, Guwahati, the inquiry authority. It is relevant to mention here that no documents or witnesses were examined in the inquiry, in fact the authority conducted the inquiry with out based on relevant documents/records. It is categorically submitted the article of charges, which is leveled against the applicant through memorandum dated 12.05.1997, could not be established in the inquiry proceeding. It is ought to be mentioned here that the basic charge brought against the applicant that he has failed to maintain absolute integrity and devotion to duty for which 53,770 nos. of tablets Pyrimethamine Sulphadoxine combination (250mg) valued at Rs.51, 081.50 were found short which ought to have been in his possession during a joint surprise check conducted on 11.07.1996 in National Malaria Eradication Programme store section and thereby the above acts, he contravened the provision of Rule 3(1)(2) of CCS (Conduct) Rules, 1964.But in the inquiry the said charges could not be proved which would be evident from the records of the inquiry proceedings. As stated earlier in fact there was a shortage of 460 tablets out of total stock of 18,83,570 tablets, and that shortage also might have resulted because of damage due to insufficient space within the

Dilip Kr. Robidas.

complex of the GMSD. However fact remains that there was a shortage of 460 tablets, valued at rupees 437.00 only (cost of Rs1.90 per tablet). Therefore it can rightly be said that the charges brought against the applicant could not be established in the inquiry proceeding.

4.9 That it is stated that on 3rd December 2002 the respondents issued the office memorandum dated 3rd December, 2002 vide letter bearing No.Admn/164/DKR/6668, whereby a copy of the inquiry report was served upon the applicant providing an opportunity to make such representation as the applicant may wish to make against the report of inquiry within 10 days.

A copy of the memorandum dated 3.12.2002 along with Extractof the inquiry report is enclosed as **Annexure-III.**

4.10 That it is stated that in the said inquiry report the inquiry officer in his findings finally concluded as follows :

In view of the above factual position which revealed and reflected in the Inquiry Report it appears that there was a shortage of only 460 tablets which in fact could not be traced out and the cost of which amounts to Rs. 437/- only. In inquiry officer in his considered opinion fairly submitted/observed that shortage of tablets only to the extent of 0.9% of the traced out quality of medicine. It is further stated by the Inquiry Officer in his findings that he has examined all the relevant original documents, Bin Cards etc. have been examined by the Inquiry Officer.

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It is to be noted that the Inquiry Officer in his findings also admitted the fact that the untraced tablets have been traced out on the very next day immediately after the CBI inquiry and the said fact was communicated by the local Head of office to the CBI authority as well as to the Headquarter officer. Therefore it can rightly be said that the untraced tablets were very meager in number that is only 460 in numbers, whereas charge brought against the applicant for shortage of 53,770 numbers of parymathamine tablet. As such, the charge brought against the applicant cannot be sustained in the eye of law.

The inquiry officer further suggested after detailed consideration of the matter as follows :

> "SUGGESTION:- Bin Card No. should have 67304 instead of 67204 was to rectified by the concerned officer/Authority (before taken into account in future) to avoid unnecessary misunderstanding."

In view of the above categorical findings and suggestion of the Inquiry Officer the applicant very fairly submitted his reply on 09.12.2002, wherein the applicant stated that since there was a shortage of 460 numbers of tablets of Pyrimethamine Sulphadoxine combination (250mg) which could not traced out ultimately. The applicant fairly stated that the cost of the said 460 tablets may be recovered from his salary by way of adjustment for shortage quantity in the stock and further stated that since the omission or commission which took place for the first time, therefore the case of the applicant may be considered sympathetically.

Dilip Kr Rabidas.

Copy of the reply dated 9.12.2002 is annexed **Annexure -IV.**

4.11 That most surprisingly the Disciplinary authority after receipt of the Inquiry Report as well as the reply of the applicant, imposed penalty upon the applicant by way of reduction of pay to the next lower stage for a period of 1 year w.e.f. 1.1.2003 with the stipulation that during this period the applicant will not earn his increment and on expiry of the period the reduction will not have the effect of postponing his future increments of pay. The said order of penalty was imposed vide letter bearing No. Admn/164/DKM/6906 dated 12.12.2002.

In the order of penalty the Disciplinary Authority stated that on careful consideration of the report of Inquiry Officer, the representation of the applicant and other records of the case the Disciplinary Authority has agreed with the findings of the Inquiry Officer and observed that the charges held against the applicant has been partially proved in one hand but on the other hand the Disciplinary Authority came to the conclusion as follows :

"Only minor mistake has been noticed".

A mere perusal of the penalty order dated 12.12.2002 it appears that the Inquiry Officer in his inquiry report never held that the charges were partially proved which would be evident from the findings of the Inquiring Authority. Moreover, the Inquiry Authority finally suggested to make necessary correct entry in the Bin Card by rectifying the mistake to avoid unnecessary

Dilip Kr Robidas.

misunderstanding. Therefore, it can rightly be said that the alleged charges could not be established against the applicant. Hence, the decision of the authority and the impugned order dated 12.12.2002 that the charges have been partially proved is contrary to the records of the proceedings. Rather, it is categorically held by the Disciplinary Authority that only minor mistake has been noticed, therefore, the very findings/decision of the Disciplinary Authority cannot be construed as ''misconduct'' with reference to the relevant provision of the Rule 3 (1) (2) of CCS (Conduct) Rules, 1964. As such, the Disciplinary Authority is not entitled to impose any penalty upon the applicant taking recourse to the Rule 14 of the CCS (CCA) Rules, 1965.

It is submitted that for a minor mistake the Disciplinary Authority cannot impose penalty upon a Government servant that too taking shelter under Rule 14 of the CCS (CCA) Rules, 1965. It is categorically submitted that the word ''mistake'' and ''misconduct'' are altogether two different concept, and for a minor mistake which is unintentional or not deliberate, the authority cannot impose penalty in a proceeding initiated under Rule 14 of the CCS (CCA) Rules, 1965 and on that score alone the impugned order of penalty dated 12.12.2002 is liable to be set aside and quashed. Moreover the order of penalty is void ab inito.

A copy of the penalty order dated 12.12.2002 is annexed as **Annexure-V.**

4.12 That it is stated that in the order of penalty issued under letter dated 12.12.2002 there was no

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indication or mention that the applicant has liberty to prefer an appeal against the order of penalty. It is obligatory on the part of the Disciplinary Authority to make mention in the order of penalty that there is a provision of appeal, against the order of penalty under CCS (CCA) Rule 1965. The applicant had no knowledge about the provision of such appeal, could not prefer the appeal within the specific time limit against the impugned order of penalty order dated 12.12.2002 immediately after receipt of the penalty order.

4.13 hat your applicant subsequently came to learn that there is a provision, to prefer an appeal but in the meanwhile period of time limit of appeal is over. However the applicant on 10.06.2003 preferred an appeal to Director General of Health Services/Appellate Authority and raised certain grounds in the said appeal. It is contended by the applicant that charges brought against the applicant through memorandum dated 12.05.1997 could not be established/proved in the inquiry proceeding. It is further stated by the applicant in the aforesaid appeal that the decision of the Disciplinary Authority is contrary to findings of inquiry officer as well as contrary to the records of the inquiry proceeding. It appears from the order of penalty that the Disciplinary Authority also came to the conclusion that only minor mistake has been noticed, as such the said acts or omission or commission cannot fall within the purview of misconduct and the said act of the applicant cannot attract initiation of a proceeding under Rule 14 of the CCS (CCA) Rules 1965 on the plea that the applicant has

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contravened the provision of Rule 3(1)(2) of CCS (Conduct) Rules, 1964.

The applicant also made a mention in the said appeal that he had deposited an amount of Rs 437/- towards the cost 460 nos. of untraced tablets in question. Moreover, the applicant prayed for condonation of delay if any in preferring the appeal against the order of penalty.

A copy of the appeal dated 10.06.2003 is enclosed as **Annexure-VI.**

4.14 That it is stated that it is a settled position of law that if there is any pecuniary loss is caused, at the instance of government employee the same be may recovered from the employee concerned on inquiry but it never attracts initiation of a Disciplinary proceeding under Rule 14 of CCS (CCA) Rules, 1965.More so when both the inquiry officer and Disciplinary Authority held that the omission or act in maintenance of the stock involves some irregulatory or a minor mistake is noticed. Therefore imposition of penalty under CCS (CCA) Rules, 1965, in violation of the findings of the inquiry officer cannot be sustained in the eye of law, that too without recording any disgrument.

4.15 That it is stated that the Appellate Authority in a most arbitrary manner and without application of mind and without scrutiny of the records of the proceedings as required under the relevant provision of CCS (CCA) Rules, 1965 rejected the appeal of the applicant on the sole ground that the appeal is time barred. It is stated that the applicant in his appeal

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dated 10.06.2003 categorically submitted that there was no indication in the order of penalty that the applicant has the liberty to prefer an appeal against the order of penalty as well as there was no indication of time limit for preferring the appeal, therefore rejection of the appeal on the sole ground of limitation is highly arbitrary and illegal, more so in view of the fact that the order of imposition of penalty is contrary to the findings of the inquiry officer as well as inquiry proceeding. The order of penalty is void ab initio and the same cannot cannot be cured or allowed to be continued merely on technical ground of limitation on preferring the appeal. Therefore the impugned orders of penalty as well as the impugned appellate orders are liable to be set aside and quashed.

4.16 hat it is stated that due to imposition of penalty the applicant is denied promotion to the cadre of Senior Superintendent (Store) although he has attained required eligibility of 7 years regular service in the cadre of Junior Superintendent as per Recruitment Rule. The DPC for consideration of promotion to the cadre of Senior Superintendent held on 25.04.2003 and recommended the names of his juniors namely; Sri Adit Deka, Smti K. Rahaman and Sri A. K.Acherjee who were promoted vide order dated 28.04.2003 but the case of the applicant was not recommended due to imposition of arbitrary penalty order dated 12.12.2002 in total violation of the relevant provision of CCS (Conduct) Rules, 1964 as well as in violation of provision of the CCS (CCA) Rules, 1965, as

Dilip Kr Rabidas.

such the applicant acquired a valuable right for grant of promotion in the post of Senior Superintendent (Store) at least from the date of promotion of his juniors with all consequential benifit.

4.17 That your applicant preferred an appeal against the impugned order of penalty dated 12.12.2002 but the said appeal was rejected simply on a technical ground of limitation in a most arbitrary manner without looking in to the records of the proceedings by the Appellate Authority as required under the relevant Rules.

In the facts and circumstances stated above the applicant has no other alternative but to approach this Hon'ble Tribunal for redressel of his grievances.

A copy of the impugned Appellate Order dated 22.08.2003 is enclosed as **Annexure-VII.**

4.18 That it is stated that no notice was issued by the Disciplinary Authority before imposition of penalty vide order dated 12.12.2002 and also did not recorded any disagreement with the findings of the inquiry officer as because inquiry officer no where it is held that the chrges have been proved against the applicant. The Appellate Authority also did not take into consideration the above infirmities of the inquiry proceedings and on that score alone the impugned order of penalty as well as the impugned Appellate order are liable to be set aside and quashed.

Dilip Nr Rabidas.

4.19 That it is a fit case for the Hon'ble Tribunal to interfere with to protect the right and interest of the applicant.

4.20 That this application is made bonafide and for the cause of justice.

5. <u>Grounds for relief(s) with legal provisions.</u>

5.1 For that, the order of penalty dated12.12.2002 has been issued in total violation of the relevant provisions laid down in the CCS (Conduct) Rules, 1964 as well as CCS (CCA) Rules, 1965.

5.2 For that, the charges alleged/brought against the applicant through memorandum dated 12.05.1997 could not be established or proved as per inquiry report submitted by the Inquiry Officer, which would also be evident from the records of the inquiry proceedings.

5.3 For that, the Disciplinary Authority himself held on perusal of the inquiry report that ''only a minor mistake has been noticed'' as such the said act or omission on the part of the applicant does not fall within the definition of misconduct and also does not warrant, initiation of a proceeding under Rule 14 of CCS (CCA) Rules 1965, on the plea that there is violation of provisions of Rule 3(1)(2) of CCS (Conduct) Rules, 1964.

5.4 For that, no documents or witnesses were examined in the inquiry proceeding held on 12.10.2002, moreover the

Dilip Nr Rabidas.

findings recorded by the inquiry officer in his inquiry report is self contradictory and ultimately suggested that to avoid unnecessary misunderstanding the necessary rectification should be made in the Bin Card by the concerned officer authority.

5.5 For that, the inquiry report never held that the applicant is guilty of misconduct, therefore, imposition of penalty without recording disagreement with the inquiry report cannot be sustained in the eye of law and on that score alone the impugned order of penalty dated 12.12.2002 is liable to be set aside and quashed.

5.6 For that, the conclusion drawn by the Disciplinary Authority on the basis of the inquiry report, does not support violation of relevant provision of the Conduct Rule as alleged in the memorandum of charge sheet dated 12.05.1997 or commission of any act of misconduct for initiation of a proceeding under Rule 14 of CCS (CCA) Rules, 1965 or violation of any provision of the CCS (Conduct) Rule, 1964.

5.7 For that, it is a settled position of law that if there is any pecuniary loss caused to the government exchequer due to any omission or commission by the government employee, at best the same may be recovered from the concerned government employee after a detailed inquiry if the concerned government employee is found responsible for such loss.

Dilip Mr Rabidas.

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5.8 For that, the impugned appellate order rejecting the appeal of the applicant is cryptic, non speaking order in violation of the statutory provisions of the relevant Rules, that to without ay discussion of evidence as required under the Rule and the Appellate Authority also deliberately ignored the explanation given by the applicant for condonation of delay .

5.9 For that, recovery of an amount of Rs 437/- towards the cost 460 tablets has already been affected from the salary of the applicant, thereafter imposition of further penalty in violation of the CCS (CCA) Rules 1965 and Conduct Rules, 1964 cannot be sustained in the eye of law.

5.10 For that, juniors of the applicant has been promoted to the cadre of Senior Superintendent insupersession of the claim of the applicant due to imposition of arbitrary penalty order dated 12.12.2002.

6. <u>Details of remedies exhausted.</u>

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. <u>Matters not previously filed or pending with any other Court.</u>

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the

Dilip Kr Rabidas.

Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. **Relief(s) sought for:**

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the Hon'ble Tribunal be plsead to set aside the memorandum of charge sheet dated 12.05.1997(Annexure-I), impugned order of penalty dated 12.12.2002(Annexure-V) and the impugned appellate order dated 22.08.2003(Annexure-VII)

8.2 That the Appellate Authority be directed to condone the delay in preferring the appeal and further be pleased to direct the Appellate Authority to pass reasoned order on merit of the appeal.

8.3 To direct the respondents to promote the applicant to the post of Senior Superintendent (Store) at least from the date of promotion of his immediate juniors with all consequential benefit.

8.4 Costs of the application.

Dilip Kr Rabidas.

8.5 Any other relief(s) to which the applicant is entitled to as the Hon'ble Tribunal may deem fit and proper.

9. **Interim order prayed for.**

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

9.1 That the Hon'ble Tribunal be pleased to declare that pendency of this application shall not be a bar to consider the relief prayed for.

9.2 To direct the respondent to pass a speaking order by the Appellate Authority on the appeal preferred by the applicant on merit condoning the delay in submission of the appeal.

10. .....

This application is filed through Advocates.

11. **Particulars of the I.P.O.**

i) I. P. O. No. : 9G 702994.

ii) Date of Issue : 20.10.03.

iii) Issued from : G.P.O. Guwahati.

iv) Payable at : GPO. Guwahati

12. **List of enclosures.**

As given in the index.

Dilip Kr Rabidas.

VERIFICATION

I, Shri Dilip Kumar Rabidas,S/o Late Jarua Rabidas, aged about 39 years, working as Junior Superintendent(Store) at Govt.Medical Store Depot, Gopinath Nagar, Guwahati-16, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 22nd day of ~~September~~ October, 2003.

Dilip Kr Rabidas.

Annexure-I

Ministry of Health & Family Welfare,
Directorate Genl.of Health Services,
GOVERNMENT MEDICAL STORE DEPOT,
P.O.Gopinath Nagar, A.K.Azad Road,
Guwahati -781016, ASSAM.

No.: Admn/164/DKR/ 92

12 MAY 1997

FORM 6
Standard from of charge sheet under Rule 14 of the C.C.S.(C.C.A.) Rules,1965 (Major Penalty charge sheet)

GOVERNMENT OF INDIA
MEMORANDUM

The Undersigned proposes to hold an inquiry against Shri Dilip Kr.Rabidas under Rule 14 of the Central Civil Services(Classification,Control and Appeal)Rule 1965.The substance of the imputation of misconduct or mis-behaviour 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 misbeaviour in support of each article of charge is enclosed(Annexure II).A list of documents by which, and a list of witnesses by whom, the articles of chatge are proposed to be sustained are also enclosed(Annexure III and IV).

2.Shri Dilip Kr.Rabidas is directed to submit within 10 days of the receipt of this Memorandum/completion of inspection of listed documents, a written statement of his defence and also to state whether he desires to be heard in person.

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

4.Shri Dilip Kr.Rabidas 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 and 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.

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

contd..2.

Attested
Advocate
on 22/10/03

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6. Photocopies of the documents listed in Annexure III to this Memorandum are enclosed Shri Dilip Kr.Rabidas is directed to inspect the listed documents within 15 days of receipt of this Memorandum.

7. The receipt of this Memorandum may be acknowledged.

(By order and in the name of the President)

Signature Asstt. Director General (MS)
Govt. Medical Store Depot
Guwahati - 16

Name and designation of Competent Authority.

(The Officer in the appropriate Ministry/Department authorised under Article 77(2) of the Constitution to authenticate orders on behalf of the President or the disciplinary authority, as the case may be).

To

Shri Dilip Kr.Rabidas
Jr.Supdt.,Govt.M.S.Depot, Ghy-16.

Where the President is the discipliary authority.

(ANNEXURE I)

Statement of articles of charge framed against Shri Dilip Kr. Rabidas, Jr.Supdt.(Sts) (name and designation of the Government servant)

Article I

That the said Shri Dilip Kr.Rabidas while functioning as Jr.Supdt.(Sts) in NMEP.Sec. during the period 1996

Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Dilip Kr. Rabidas

Article III

That during the aforesaid period and while functioning in the aforesaid office the said Shri Dilip Kr.Rabidas

(ANNEXURE II)

Statement of imputations of mis-conduct or mis-behaviour in support of the articles of charge framed against Shri Dilip Kr.Rabidas Jr.Supdt.(Sts)
(name and designation of the Government servant)

Article I

Article II

Article III

LIST OF DOCUMENTS (ANNEXURE III

LIST OF WITNESSES ANNEXURE IV

~~ANNEXURE I.~~

GOVT. MEDICAL STORE DEPOT, GUWAHATI.

Article of charge against Sri Dilip Kr.Rabidas, Junior Supdt., Govt. Medical Store Depot, Guwahati.

While Sri Dilip Kr.Rabidas was posted and functioning as junior Supdt. in National Malaria Eradication Programme of Govt. Medical Store Depot, Guwahati during 1996 failed to maintain absolute integrity and devotion to duty for which 53,770 nos.of tab.Pyri methamine Sulphadonine combination (250mg) valued at Rs.51,081.50 were found short which ought to have been in his possession during a joint surprise check conducted on 11.7.96 in National Malaria Eradication Programme Store Section and thereby by the above acts, he contravened the provision of Rule 3(1)(2) of CCS(Conduct) Rules, 1964

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~~ANNEXURE II~~

GOVT. MEDICAL STORE DEPOT, GUWAHATI.

Article of charge against Sri Dilip Kr.Rabidas, Junior Supdt.,Govt. Medical Store Depot, Guwahati.

Shri Dilip Kr.Rabidas was posted and functioning as Junior Supdt.in National Malaria Eradication Programme Store Section of Govt. Medical Store Depot,Guwahati during the year 1996.

It is alleged that Sri D.K.Rabidas had received 47,78,570 nos.tabs.Pyri methamine-sulphadonine combination(250mg) on 19.6.95 vide Receipt Vouchers No.1 for 6/95,No.2 for 6/95 and No.3 for 6/95 all dtd. 19.6.95 and posted in the Bincard No.66753 and ther after he issued 28,45,000 nos.tabs.through MSD-74 issued vouchers to different indentors.

It is alleged that on 11.7.96 a joint surprise check was conducted in the said NMEP store section. A declaration of stoc as on 11.7.96 was obtained from Sri D.K.Rabidas and as per declaration and bincard No.67204 the stock of tab.Pyrimethamine Sulpadonine combination(250mg) should 18,83,570 nos. But in physical stock verification only 18,29,800 nos. tabe.were found and was incorporated in Memorandum dtd.11.7.96 and there was a shortage of 53,770 nos.tabs.un the possession of Sri D.K.Rabidas.

Thereby, by the above acts Sri D.K-Rabidas contravened the provision of Rule 3(1)(2) of CCS(Conduct) Rules, 1964.

Annexure- II

Reply to memo no. Adm 92 dt. 12.5

The Asstt. Director General(PS),
Govt. Medical Store Depot,
Gopinath Nagar,
Guwahati-781016.

Dated:- 21.5.97.

Sir,

In reply to your chargesheet Memorandum No. Adm/164/DKR/92 dt. 12.5.97 I am submitting my explanation against the article of chargesheet given in Annexure- I & II.

As per Bincard total receipt was 47,43,570 Nos. Tabs Pyrimethamine-Sulphadoxine combination (250mg) as on 19.6.95 which were received under mentioned Receipt vouchers Nos. :-

1.	NMEP 1 for 6/95	45,36,750 Tabs.
2.	NMEP 2 for 6/95	56,580 "
3.	NMEP 3 for 6/95	1,55,240 "
		47,48,570 Tabs.

But not 47,78,570 Nos. Tabs.as shown in Annexure-II of the above referred charge sheet.

Further stated that 19,55,000 Nos. Tabs. was issued from the Bincard No. 66753 through MSD-74 under the following Issue Vouchers Nos:-

1.	NMEP 2 for 6/95	1.00 Lakhs.
2.	NMEP 3 for 6/95	2.00 "
3.	NMEP 4 for 6/95	2.00 "
4.	NMEP 5 for 6/95	1.50 "
5.	NMEP 6 for 6/95	3.00 "
6.	NMEP 7 for 6/95	1.00 "
7.	NMEP 1 for 10/95	1.00 "
8.	NMEP 2 for 11/95	2.00 "
9.	NMEP 4 for 11/95	2.00 "
10.	NMEP 1 for 12/95	1.00 "
11.	NMEP 1 for 2/96	3.00 "
12.	NMEP 8 for 3/96	5,000 Tabs.
		19,55,000 Tabs and 9,10,000 Nos.

Tabs. were issued from the Bincard No. 67304 through MSD-74 the under mentioned Issue vouchers Nos :-

1.	NMEP 2 for 5/96	6.00 Lakhs.
2.	NMEP 1 for 7/96	3.00 "
3.	NMEP 2 for 7/96	10,000 Tabs.
		9, 10,000 Tabs.

In view of the above total quantity was issued 28,65,000 Nos. Tabs. But not issued 28,45,000 Nos. Tabs. as shown in Annexure-II of the above referred charge sheet.

Bincard No. 67204 as mentioned in the enclosed Annexure-II of the above referred charge sheet, appears incorrect. Actually Bincard Numbered was 67304. The stock balance of Tabs. Pyrimethamine- sulphadoxine combination (250 mg) was 18,83,570 Nos. Tabs. as on 11.7.96.

Attested
Advocate
on 22/10/03

..... Contd .....

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According to the physical checking the total quantity of stock 18,83,110 Nos. Tabs. were found in good condition and these quant ties were also supplied subsequently against the undermentioned I vouchers Nos. :-

1.	NMEP 1 for 8/96	1.00 Lakhs.
2.	NMEP 7 for 8/96	2.00 "
3.	NMEP 8 for 9/96	2.00 "
4.	NMEP 9 for 9/96	5,99,110 Tabs.
5.	NMEP 10 for 9/96	3.84 Lakhs.
6.	NMEP 11 for 9/96	3.00 "
7.	NMEP 12 for 9/96	1.00 "
		18,83,110 Tabs.

Finally after issuance of 18,83,110 Nos. Tabs. out of t stock of 18,83,570 Nos. Tabs. i.e. only 460 Nos. Tabs. Pyrimetham Sulphadoxine combination (250 mg), valued Rs. 437.00 (Rs. 1.9D 2 Tabs. (Rupees one & paise ninety) was detected as short whic could not findout . But not 53, 770 Nos. Tabs. which valued Rs. 51,081.50 as shown in the Annexure-I of the above referred ch sheet.

I beg to state that during that period maximun quantity UIP/CSSM(KITS) stores were received for which sufficient accommod was not available in the depot as a result stores are being kept wherever space was available even in the corridor.

As a result proper attention could not be paid to the stocks which were could not be kept properly for want of sufficient spac to maintain existing stock for which finally care could not be ta and this was happened due to tremendous pressure of work not due my negligencey.

Under the circumstance my case may kindly be considered sympathetically for the first time and I may kindly be excu In future more care will be taken for maintanance of the stock.

Yours faithfully,

Dilip Kr. Rabidas.
21.8.97.

(D. K. RABIDAS)
Jr. Superintendent,
NMEP Store Section,
G.M.S.D. Guwahati-16.

Annexure - III

Gram : MEDSTORE
FAX No. : 0361-45214
Telex No. : 235/2234 GMSD IN
P.B. No. : 84

GOVERNMENT OF INDIA
Ministry of Health & Family Welfare
Directorate General of Health Services

Phone : 45214

Government Medical Store Depot

A. K. AZAD ROAD, GOPINATH NAGAR, GUWAHATI-781016

No. Admn/164/DKR/ 6668

03 DEC 2002

OFFICE MEMORANDUM

Shri Dilip Kumar Rabidas, Jr.Supdt.(St.), GMSD, Guwahati was informed of the proposal to hold an inquiry against him for committing irregularities in handling the stock of medicines under Rule 14 of CCS (CCA) Rules,1965 vide office Memorandum No.HKS/2002-03/Inquiry/5287-90 dt. 11.10.02 & No. Admn/164/DKR/9616 dt. 24.01.02.

The inquiry was conducted by Dr. H.K.Sonowal, CMO, CGHS Dispensary No.3, Ghy. (Inquiry Officer) and submitted his findings vide his report dt. 1/27.11.02. A copy of the same is enclosed.

Shri D.K.Rabidas is hereby informed that he is hereby given an opportunity to make such representation as he may wish to make against the report of Inquiry within 15 days of the receipt of this Memorandum failing which it will be presumed that he has no representation to make and orders will be liable to be passed against him.

Receipt of the Memorandum should be acknowledged.

Encl.:- 2 (two)

Jt.Director,CGHS & Incharge
GMSD.,Guwahati.
(Disciplinary Authority)

Shri D.K.Rabidas
Jr. Supdt.(St.),
GMSD, Guwahati.

Received on dt. 4.12.02

Attested
Advocate
on 22/10/03

GOVT. OF INDIA
O/O the Central Govt. Health Scheme,
Guwahati - 9

REPORT OF INQUIRY

Introductory:-

An inquiry was held on the charges instituted vide Memo No. Admn/164/DKR/92 dt.12.05.1997 against Shri Dilip Kr. Rabidas, Jr. Supdt.(St.), CMSD,Guwahati. In this connection a reference is also invited to the office Memo No. HKS/2002-03/Inquiry/5287-90 dt.11.10.02 & Order No. Admn/164/DKR/9616 dt. 24.01.02 appointing the undersigned as Inquiry officer. The Inquiry was held on 22.10.02 in presence of the presenting officer Shri B. Das, Inspector, C.B.I., ACB, Ghy.

The charges:-

It is alleged that on 11.07.96 a surprise check of stock of medicine was conducted and the following discrepancies were found:-

a) Shortage of 53,770 nos. of Tab. Pyrimethamine Sulphadoxine Combination (250mg.) valued Rs. 51,081.50 in MMP Section.

b) As per declaration in Bincard No. 67204 (67304), the stock of tablet Pyrimethamine Sulphadoxine Combination 250mg. should be 18,83,570 nos. But in physical stock verification the same was found only 18,29,800 nos. and thus there was a shortage of 53,770 nos tab. under the possession of Shri D.K. Rabidas.

Contd. .. Page/2

GOVT.OF INDIA
O/o. the Central Govt.Health Scheme,Guwahati.

FINDINGS :- On the day of verification by the C.B.I., ACB,Guwahati he accepted the findings without raising any point of doubt about the actual shortage of medicines.

Subsequently when the discrepancy was found out between the actual stock on ground and his acceptance in receipt voucher he could not found out any explanation during the time of verification.

When it was pointed out to him that there may be some discrepancy, it was not raised at that time the stocking space was limited and there might be some stores lying unaccounted for in stocks.

Subsequently he found out the explanation for the shortage stating that he could not arrange materials in order and that accounted for the shortage and not taken in account in the Bin-Card.

Stores were issued subsequently to the date of the verification meaning thereby that there were no actual shortage which he could not produce at the time of verification. Even if this argument is accepted but he can not be out of doubt that he was involved in the irregularities. Otherwise he should have right from the begining pointed out to the authority that the godown space were limited and he found it difficulties in proper maintenance of the stores. However the next day on 12.7.96 the untraced quantity of the medicines in question is traced out and reported by charged letter to Head of Office and the same is also reported to C.B.I., ACB, Guwahati on the very day. Still 450 Tab. are not traced out which costed Rs.437/- only; which itself in store accounting may be considered to be very meagre amount i.e. less than 0.9% of the traced quantity of medicines. At the time of inquiry all the original documents like Bin-card etc. have been examined.

SUGGESTION :- Bin Card No. should have 67304 instead of 67[illegible] which was to rectified by the concerned Officer/Authority (before taken into account in future) to avoid unnecessary misunderstanding.

Annexure- IV

Reply against Ref. No. Admn/164/... 6668 dt. 3.12.

To,

The Joint Director, CGHS &
I/C- Govt. Medical Store Depot,
Guwahati - 781 016.

Ref:- Office Memo No. Admn/164/DKR/6668
dt. 3rd December, 2002.

Sir,

I have the honour to state that since finally 460 nos. of Tab. Pyrimethamine Sulphadoxine Combination (250mg) could not be trace out. The cost of the untraced quantity may kindly be recovered from my salary for adjustment of shortage quantity found in stock.

I shall be highly oblige if my case is considered sympathetically for the first time and I may kindly be excused.

Yours faithfully,

Date: 09.12.02

Dilip Kr Rabidas 9.12.02

(D.K. RABIDAS)
Jr. Supdt.(Stores)
GMSD., Guwahati(S/N Sec.)

भारत सरकार
1271
9/12/02

Attested
Advocate
on 22/10/03

Annexure-V

FAX No. 0361-45214
Telex No. 235 2234 GMSD-IN
Phone No. 84

Ministry of Health & Family Welfare
Directorate General of Health Services

Government Medical Store Depot

A. K. AZAD ROAD, GOPINATH NAGAR, GUWAHATI-781016

No. Admn/164/DKH/ 6906

12 DEC 2002

O R D E R

WHEREAS Shri Dilip Kr. Habidas, Jr. Supdt. (Stores) GMSD, Guwahati was informed of the proposal to hold an inquiry against him for committing irregularities in handling the stock of medicines under Rule 14 of CCS (CCA) Rules, 1965 vide this depot office Memorandum No. [illegible] 2002-03/Inquiry/9227-30 dt. 11.10.02 & No. Admn/164/DKH/ 9646 dt. 24.10.02 along with which a statement showing (i) article of charges (ii) imputation of misconduct in support of the charges (iii) a list of documents by which the article of charge were proposed to be sustained were also forwarded to him.

AND WHEREAS an inquiry in the case was conducted by Dr. H.K. Sonowal, C.M.O., CGHS Dispensary No. 2, Guwahati-9 who was appointed to inquire into the article of charge vide this depot order No. Admn/164/DKH/9610 dt. [illegible].02. The inquiring Authority submitted his findings vide report dt. 1/27.11.02. A copy of which was furnished to Shri Dilip Kr. Habidas vide depot O.M. No. Admn/164/DKH/6060 dt. 3.12.02.

AND WHEREAS on careful consideration of the report of the Inquiring Authority, the representation of Shri Dilip Kr. Habidas and other records of the case, the disciplinary Authority has agreed with the findings of Inquiring Authority and observed that the charges held against Shri Dilip Kr. Habidas has been partially proved. Only minor mistake has been noticed.

NOW THEREFORE, the undersigned after considering all facts and circumstances of the case, findings of the Inquiring Authority has come to the conclusion that the ends of justice would be met if penalty of reduction of pay by one stage is imposed for a period of one year w.e.f. 1.1.2003 with the stipulation that during this period he will not earn increment and on expiry of the period the reduction will not have the effect of postponing his future increments of pay and orders accordingly.

(By Order and in the name of the President)

(DR. B. SAIKIA)
Joint Director
CGHS & Incharge GMSD,
Guwahati.

Shri Dilip Kr. Habidas,
Jr. Supdt. (Stores)
Govt. Medical Store Depot,
Guwahati-16.

Contd...2

Attested
Advocate
on 22/10/03

Ministry of Health & Family Welfare
Directorate General of Health Services
MSVP Unit
CGHS Dispensary
Nirman Bhawan
New Delhi-110011
Tel: 301-1404

: 2 :

Copy to :-

1. The Director General of Health Services, (M.S.U.), West Block No.1, Wing No.6, R.K.Puram, New Delhi-110000.
2. The Director (A&V), D.G.H.S., Nirman Bhawan, New Delhi-110011, with reference to the Dte. U.O. letter No. U.15013/1/96-AV dt. 8.2.01.
3. The Supdt. of Police, CBI, ACB, Sundarpur, Guwahati-781005, w.r.t. to their letter No.HDA/2/22(A)/96-SHG/3110 dt. 22.8.02 & No.HDA/2/15/(A)/97-SHG/6193 dt. 20.9.02.
4. The Pay & Accounts Officer, Min. of Health & F.W., 15/1, Chowringhee Square, Kolkata-69.
5. The Accounts Officer, GMSU, Guwahati.
6-7. Estt. Bill(A/c. sec.), -do-
8. A.A.O. -do-
9. Copy for personal file of Shri D.K.Habidas.
10-11. Copy for Service Book & file No.Admn/1139/96-97.

(DR. B. SAIKIA)
Joint Director
CGHS & Incharge GMSU,
Guwahati.

Annexure - VI

To
The Appellate Authority
Director General of Health Services.
Ministry of Health & Family Welfare,
~~Directorate General of Health Services,~~
New Delhi. — 11

(Through Joint Director, CGHS and in charge GMSD, Guwahati)

Sub: **An Appeal against the order of Penalty dated 12.12.2002**

Respected Sir,

I like to draw your kind attention on the subject cited above and further beg to state that a memorandum of charge sheet was issued against me under Rule 14 of CCA(CCS) Rules, 1965 vide letter dated 12.5.97 on the following alleged ground :

p ho

While Sri Dilip Kr. Rabidas was posted and functioning as Junior Supdt. in National Malaria Eradication Programme of Govt. Medical Store Depot, Guwahati during 1996 failed to maintain absolute integrity and devotion to duty for which 53,770 nos. of tab. Pyrimethamine Sulphadoxine combination (250 mg) valued at Rs. 51,081.50 were found short which ought to have been in his possession during a joint surprise check conducted on 11.7.96 in National Malaria Eradication Programme Store Section and thereby by the above acts, he contravened the provision of Rule 3 (1) (2) of CCS (Conduct) Rules, 1964.

I denied the aforesaid allegation vide reply dated 21.5.1997. Subsequently an enquiry proceeding was initiated and accordingly an enquiry proceeding held on 22.10.2002 in the Government Medical Store depot premises, Guwahati. It may be mentioned here that Preliminary hearing was fixed on 15.7.2002 but due to absence of the Presenting Officer hearing could not be held. Be it stated that I have participated with the enquiry proceeding in all stages and also extended my best cooperation with the Enquiry Officer.

Attested
Advocate
on 22/10/03

That the enquiry report was served upon me by the Disciplinary Authority vide O.M. dated 3.12.2002 and on receipt of the same I have carefully gone through and it is understood from the enquiry report that the charges labeled against me vide Memorandum dated 12.5.1997 could not be proved. It is categorically held by the inquiry officer in his inquiry report that there is a shortage of only 460 tablets and the cost of which is Rs. 437 only. Whereas allegation is brought against me for shortage of stock of tablet pyrimethanine Sulphadoxine combination 250 mg totaling 53,770 nos. of tablet out of 18,83,570 nos. of tablet and there is no finding of the inquiry officer to the effect that the charge labeled against me is established and the very charge which labeled against me vide Memorandum dated 12.5.97 does not tally with the findings of the inquiry officer. On receipt of the inquiry report I have submitted a representation-dated 9.12.2002 where I have very fairly requested the Disciplinary Authority since the 460 nos. of tablet could not be traced out, the cost of the same may be recovered from my salary, thereby it does not mean that the charges brought against me is established. In this connection it may be stated that due to non availability of sufficient space in the store of GMSD, Guwahati the store materials also used to be kept in other places within the premises of the Government Medical Store Depot and this practice is continuing in the GMSD, Guwahati from a very long time but due to surprise visit of the C.B.I. authority I could not recollect that the tablets in question were kept in other places of the Government Medical Store Depot. But on the following day when the CBI enquiry conducted other stocks were found in the Govt. Medical Store Depot premises and the same was immediately reported to the CBI authority as well as to the Headquarter office. However, a shortage of 460 tablets is found which could not be traced out. Therefore, imposition of penalty by the Disciplinary Authority by reduction of pay by one stage for a period of 1 year w.e.f. 1.1.2003 with the stipulation that during this period the undersigned will not be eligible to earn increment and on expiry of period the reduction will not have the effect of postponing my future increment of pay and orders accordingly. The very decision of the Disciplinary Authority is contrary to the findings of the inquiry officer as reflected in the inquiry report and the same is also contrary to the records of the inquiry

proceedings as well as the specific charge which brought against me vide Memorandum dated 12.5.1997. It is submitted that when charge is not established; the imposition of penalty is contrary to the relevant provisions of CCS (CCA) Rules, 1965.

The Disciplinary Authority while imposing the order of penalty also observed as follows :

"Only minor mistake has been noticed"

It is quite clear from the above observation of the Disciplinary Authority that there was no violation of the conduct Rule as alleged in the Memorandum of the charges but it is a minor mistake. As such the findings of the inquiry officer as well as observation of the Disciplinary Authority so far conduct of the undersigned is concerned does not at all fall within the definition of misconduct and on that score alone the order of penalty is liable to be set aside and quashed. More so, in view of the fact that the findings of the inquiry officer as well as the finding of the Disciplinary Authority could not establish the charge vide Memorandum dated 12.5.1997. Therefore the order of penalty is liable to be set aside and quashed. It is submitted that although order was passed on 12.12.2002 but no indication was given in the order of penalty regarding preference of appeal and no time limit is specified to prefer any appeal, as such the undersigned did not prefer any appeal. However, subsequently I have come to learn from a reliable source that an appeal can be preferred against the order of penalty before the Appellate Authority. Hence the present Appeal.

I further beg to request Your Honour to kindly condone the delay if any on my part in preferring the instant appeal and your good self will further be pleased to examine the matter in detail calling upon the records of the proceeding initiated against me vide memorandum dated 12.5.1997 and on perusal of the same and also on consideration of the ground raised by me in the instant appeal be pleased to set aside the order of penalty dated 12.12.2002 and thereby exonerate me from the charges labeled

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against me. It is relevant to mention here that I have already deposited the amount of Rs. 437/- towards the costs of 460 nos.-untraced tablet in question.

A copy of the order of penalty passed by the Disciplinary Authority dated 12.12.2002 is enclosed for your ready reference.

An early action in this regard is highly desired.

Yours faithfully,

Date : 10.06.2003.

Dilip Kr. Rabidas.

(Dilip Kumar Rabidas)
Junior Superintendent (Stores)
Govt. Medical Store depot,
Guwahati-781016

Annexure - VII

By Regd AD

No. C. 16013/4/2003-AV
DIRECTORATE GENERAL OF HEALTH SERVICES
(AV SECTION)

Nirman Bhavan, New Delhi,
Dated the 22.8.03

ORDER

Whereas the penalty of reduction of pay by one stage for a period of one year without cumulative effect was imposed on Sh D.K.Rabidas, Junior Superintendent, Govt. Medical Store Depot vide Order No.Admn. 164/DKR/6906 dated 12.12.2002 by the Disciplinary Authority.

And Whereas vide his appeal dated 10.6.2003 Sh D.K.Rabidas, Junior Superintendent has made an appeal to the undersigned requesting for setting aside the penalty order dated 12.12.2002.

And whereas the undersigned has observed that the appeal has been made after a lapse of six months without any satisfactory reasons for the delayed submission of the appeal. The appeal is therefore time barred.

Hence the appeal is rejected being time barred.

(DR S.P.AGARWAL)
DIRECTOR GENERAL OF HEALTH SERVICES

Sh D.K.Rabidas,
Junior Superintendent,
Govt. Medical Store Depot,
Guwahati

(41)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI.

O.A. NO. 237 OF 2003

Shri D.K. Rabidas.

..... Applicant

- Vs -

Union of India & Ors.

..... Respondents.

In the Matter of :

Written Statement submitted by the respondents.

The humble respondents beg to submit the para-wise written statement as follows :

1. That with regard to paras 1, 2, 3, 4.1, 4.2, and 4.3 of the application, the respondents beg to offer no Comments.

2. That with regard to the statement made in para 4.4, of the application, the respondents beg to state that it is submitted that the enquiry against the applicant was proposed as per recommendation of C.B.I., A.C.B., Guwahati vide their letter No. 2/22(A)/96-SHG/5591 dated 9.9.96 received through DGHS, A.V. Section, Nirman Bhavan, New Delhi vide letter No. C.15013/1/96-AV dated 28.11.96 (copies enclosed). Hence the allegation is denied.

Copy of letter dated 28.11.96 is annexed herewith and marked as Annexure - R-1.

3. That with regard to the statement made in para 4.5, of the application the respondents beg to state that the applicant is not correct and hence denied.

4. That with regard to paras 4.6, 4.7, 4.8, 4.9 and 4.10, of the application, the respondents beg to offer no comments.

5. That with regard to the statement made in para 4.11, of the application, the respondents beg to state that it is submitted that the penalty of reduction of pay by one stage for a period of one year w.e.f. 1.1.2003 was imposed on Shri D.K.Rabidas as per recommendation of C.B.I. as well as findings of the Inquiry Officer vide their report dated 1/27.11.02.

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

7. That with regard to the statement made in paras 4.13 & 4.15, of the application, the respondents beg to state that -

1. There was no indication in the penalty order that the charged officer is at liberty to file an appeal against penalty and that the charged officer had no knowledge about any provision of appeal.

2. He has further mentioned that the Appelate Authority without applying its mind has rejected his appeal solely on the ground of its being time bared.

It is pertinent to state here that there is no provision under the CCA(CC&A) Rules to indicate in the penalty Order about filing of an appeal. Ignorance of Rules by a Govt. servant after rendering considerable service is not a satisfactory reason for not preferring an appeal within the stipulated period.

8. That with regard to paras 4.14, 4.16 and 4.17, of the application, the respondents beg to offer no comments.

9. That with regard to the statement made in para 4.18, of the application, the respondents beg to state that the applicant is not correct and hence denied as Shri D.K.Rabidas was informed by the Govt. Medical Store Depot, Guwahati vide O.M.No. AIMN/164/DKR/6668 dated 3.12.02 providing a copy of enquiry report and also given him an opportunity to make representation if any against the report of enquiry within 15 days of receipt of the Office Memorandum.

10. That with regard to paras 4.19, 4.20, 5.1 to 5.10, 6, 7, 8, 8.5, 8.6, 8.7, 8.8, 8.9, 9, 9.1, 9.2 & 10, of the application, the respondents beg to offer no comments.

Verification .....

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

I, DR. J N. BHATTACHARYYA

, being authorised

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

And I sign this verification on this 09 th day of January, 2004.

09/01/04

Director CSIRS and
Ex Govt. M. S, Depot, Guwahati.

Declarant.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

19 JUN 2004

गुवाहाटी न्यायपीठ
Guwahati Bench

Filed by the Applicant
through Sanjit Choudhury
Advocate
on 9.6.2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No. 237 /2003

Sri Dilip Kumar Rabidas

.... Applicant.

-vs-

Union of India & Ors.

.... Respondents.

-AND-

In the matter of :

Rejoinder submitted by the applicant in reply to the written statement submitted by the respondents.

The applicant above named most humbly and respectfully state as under: -

1. That your applicant categorically denies the statements made in paragraphs 2 of the Written Statement and begs to submit that the enquiry against the applicant was proposed to be held under Rule 14 of CCS (CCA) Rules, 1965 which is evident from the Memorandum of Charge sheet issued by the respondents under No. ADMN/164/DKR/92 dated 12.05.1997, which has been annexed as Annexure-I with the Original Application. The Article of Charge attached to the Memorandum contained that the proposed enquiry was to be held

since the applicant contravened the provision of Rule 3(1) (2) of CCS (CCA) Conduct Rules, 1964.

2. That with regard to para 3 of the written statement, the applicant begs to reiterate that in the Memorandum of Charge sheet there was no statement of imputation of misconduct alleged by the Disciplinary Authority. No list of witnesses or documents relied upon by the Disciplinary Authority were enclosed with the Memorandum of Charge Sheet dated 12.05.1997.

3. That the applicant categorically denies the statements made in para 5 of the written statement and begs to submit that the penalty was imposed on the applicant without any relevance to the findings of the enquiry officer. The enquiry officer nowhere mentioned in his enquiry report that the alleged charges against the applicant were proved. The Disciplinary Authority stated in the order of penalty that charges have been partially proved and again in the same breath the Disciplinary Authority has also stated that ''only minor mistake has been noticed'' which is contrary to the records and the findings of the enquiry cfficer. But surprisingly while the Disciplinary Authority theoretically relied on the enquiry report for imposing penalty on the applicant but factually drew his own imaginary conclusions as stated above without going through the findings of the enquiry officer and imposed the penalty. Further the word ''mistake'' and ''misconduct'' are not same in law and the Disciplinary

Authority cannot impose penalty on the ground of ''misconduct'' under Rule 14 of the CCS (CCA) Rules, 1965 where it has been admitted by the Disciplinary Authority himself that the case pertains to a ''minor mistake'' only which is inadvertent and bonafide and cannot be construed as ''misconduct''.

4. That the applicant categorically denies the statements made in para 7 of the written statement and begs to submit that the Appellant Authority has rejected the appeal of the applicant without any discussion to the grounds pleaded by the applicant merely on an untenable technical ground rather than applying mind in the merit of the appeal. While rejecting the appeal, the appellate authority failed to appreciate that the very order of penalty was void-ab-initio since the same was contrary to records and facts.

5. That the applicant categorically denies the statements made in para 9 of the written statement and begs to submit that when the Disciplinary Authority acted against the findings of the Enquiry Officer and imposed the penalty, it was mandatory under law that the Disciplinary Authority ought to have served notice upon the applicant prior to issuing the instant order of penalty. But this was not done by the Disciplinary Authority as required under law. As such no reasonable opportunity was provided to the applicant.

6. That in the facts and circumstances of the case stated above, the applicant is entitled to the relief's prayed for and the Original Application deserves to be allowed with cost.

VERIFICATION

I, Shri Dilip Kumar Rabidas, S/o Late Jarua Rabidas, aged about 39 years, working as Junior Superintendent (Store) at Govt. Medical Store Depot, Gopinath Nagar, Guwahati-16, Assam, do hereby verify that the statements made in Paragraph 1 to 6 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the day of June, 2004.

Dilip Kr Rabidas.