

100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 240/2003

Misc Petition No: _____/

Contempt Petition No: _____/

Review Application No: _____/

Applicants: - Shri J. C. Nath

Respondents: - U.O. I 2 078

Advocate for the Applicants: - Mr. B. Malakar

Mr. R. Das

C.G.S.C.

Notes of the Registry	Date	File	Order of the Tribunal
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1. This application is in form but not in time.	29.10.2003	Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman The Hon'ble Shri K.V. Prahadan, Member (A).	Heard Mr. B. Malakar, learned counsel for the applicant and also Mr. B.C. Pathak, learned Addl.C.G.S.C. for the respondents.
2. Contention is filed / not filed C.F. for Rs. 50/- deposited under IPO No. 701565			The O.A. has arisen and is directed against the order dated 7.10.2003 passed by the Telecom District Manager, Nagaon Telecom District imposing a penalty of reduction of pay by two stages with immediate effect. The applicant assailed the order in this O.A. as arbitrary and discriminatory.
3. Dated 23-10-03			Admittedly, the order of penalty is passed in terms of Rule 11 and against which an appeal lies as per Rule 23 of CCS (CCA) Rules.
4. <i>Abrej</i> By, Registered			In the circumstances, we are not inclined to entertain the O.A. and direct the applicant to prefer an appeal within two weeks from receipt of the order before
5. <i>Baruwa</i> 28/10/03			
6. Slip taken w/s Envelope			

Contd.

Contd.

29.10.2003 ~~the~~ the appellate authority. If the applicant prefers his appeal within the time specified, in that event, the appellate authority shall examine and consider the appeal as expeditiously as possible preferably within a period of two months from receipt of the appeal. It is further ordered that till disposal of the appeal by the appellate authority, the order of penalty dated 7.10.2003 shall remain suspended.

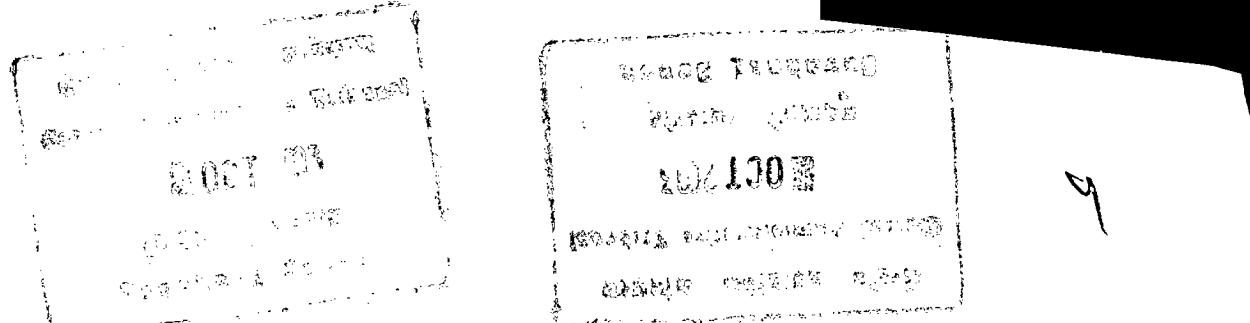
The application thus stands disposed of.

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


K. P. Balakrishnan
Member


Vice-Chairman

bb



240
O.A...../2003.

Jiban Ch. Nath

..... Applicant

/VS/

Union of India & Others

..... Respondents.

LIST OF DATES

27.07.98: The applicant was given a charge sheet alleging that he had altered the date of birth in the service Book of one Shri Kalaram Das, Line Inspector from 10.02.32 to 29.09.39 with a note "wrongly entered the date of birth of Sri Kalaram Das" putting his initial signature. The column 5 of the service book which was countersigned by then Engineering Supervisor, Telegraph, Tezpur on 10.03.62 was also altered as 29.09.39.

31.08.98: Sri A.B.Saran, OSD (DI) was appointed Enquiry officer.

14.05.01: Enquiry Officer submitted his reports but copy of the enquiry report was not furnished to the applicant.

30.01.02: The applicant was imposed penalty for withdrawal of his promotion for 3 years w.e.f. IO's order i.e. w.e.f. 14.05.2001.

10.02.02: The applicant assailed the order dtd. 30.01.02 before the Tribunal in OA.No. 147/2002. Respondents even though was served with notices, they preferred to remain silent and no WS was filed nor any records produced.

04.08.03: OA No.147/2002 was heard and vide order dtd. 4.8.2003 the Tribunal was pleased to set aside the order dtd. 30.01.2002 with a direction to furnish a copy of enquiry report to the applicant. It was further directed that on receipt of the enquiry report the applicant will file representation which will be considered by the respondent authority.

08.09.03: Enquiry Report dtd. 14.5.2001 was furnished to the applicant.

11.09.03: Applicant submitted representation stating that he did not alter any existing date of birth. He had entered wrongly in column 6 of the service book of the date of birth of one Sri Kala Miya as 29.09.39 which was later on corrected with his own initial with the permission of the head of the office.

07.10.03: There was no effective consideration of his representation and the respondent No.2 vide order dtd. 7.10.03 inflicted punishment of reduction of pay by 2 stages from Rs. 9,100.00 to Rs.8,700.00 for 2(two) years and the reduction will have the effect of postponing his future increment of pay.

Ratul Das.

ADVOCATE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

GUWAHATI BENCH : GUWAHATI

OCT 2003

ORIGINAL APPLICATION NO. 240/2003

Sri Jibon Chandra Nath Applicant

- Vs -

Union of India & Ors Respondents

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Filed by :

Ratul Das.

ADVOCATE

Filed by -
Jibon Ch. Nath - Applicant
Through - Ratul Das
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

An application u/s 19 of the CAT Act, 1985.

Date of filing :

Registration No. :

Signature

REGISTRAR

Sri Jiban Chandra Nath
Section Supervisor,
Office of the Sub-Divisional
Engineer (EXT) Nagaon,
Bharat Sanchar Nigam Limited.

..... Applicant.

- VERSUS -

1. Union of India - Represented
by the Chief General Manager,
Bharat Sanchar Nigam Ltd.
S.R. Bora Lane,
Ulubari, Guwahati.
2. The Telecom District Maager,
agaon Telecom District, Nagaon.
3. The Sub-Divisional Engineer (HRD),
Office of the TDM, Nagaon, Assam.

..... Respondents.

1. PARTICULARS OF THE APPLICANT :

(i) Name	:	Sri Jiban Chandra Nath.
(ii) Father's Name	:	
(iii) Designation and :		Section Supervisor,
		Office of the Sub-
		Divisional Engineer(EXT)
		Nagaon, Bharat Sanchar
		Nigam Ltd. Nagaon, Assam.

(iv) Particulars for service : As at (iii) above.
of Notice.

2.

PARTICULARS OF THE RESPONDENTS:

(i) Name & designation : 1. Union of India,
of the Respondents. Represented by the
Chief General Manager,
Bharat Sanchar Nigam
Limited, S.R.Bora Lane,
Ulubari, Guwahati.

2. Telecom District Manager,
Nagaon Telecom District,
Nagaon.

3. Sub-Divisional Engineer
(HRD), Office of the
TDM, Nagaon, Assam.

(ii) Office address : As above.
of the
Respondents.

(iii) Address for : As above.
service of
Notice.

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

Order contained in Memo No.X-7/TDM/NGG/CON/2003-2004/20 dated 7.10.2003 issued by the Telecom District Manager, Nagaon Telecom District reducing the pay of the applicant by two (2) stages from Rs.9100/- to Rs.8700/- for a period of two years with immediate effect.

4. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the application is within the jurisdiction of this Tribunal.

5. LIMITATION :

That the applicant further declares that the application is within the limitation under section 21 of the Central Administrative Tribunal Act, 1985.

6. FACTS OF THE CASE :

(i) That the applicant is working as Section Supervisor in the Office of the Sub-Divisional Officer (EXT) Nagaon, BSNL. He was appointed as T.S. Clerk the Telegraph Division, Guwahati on bifarcation of the Guwahati Telegraph Division, he was transferred to Tezpur Division in 1977 where from he has been posted to Nagaon Telecom District..

(ii) That while the applicant was working in the office of the Telecom District Engineer, Tezpur he filled in Column No.6 of Service Book relating to one Sri Kalaram Das, Line Inspector which was blank. The insertion was the date of birth of Sri Kalaram Das and it was 29.09.39. The reason was that inside the Service Book of Sri Kalaram Das, service roll of one Sri Kalamia was found and accordingly the insertion was made by the applicant due to inadvertance;

(iii) That after the insertion aforesaid, the said Kalaram Das appeared in the Office and while confronting him the date of birth as inserted, he disowned the same saying that his date of birth was 10.2.32;

(iv) That the above fact was brought to the notice of the Section Head who advised the applicant to re-write the column and accordingly the Column No. 6 was re-written by the applicant putting his initial according to the own admission of Sri Kalaram Das which was 10.2.32. This took place in 1988 while the applicant was working at Tezpur and was assigned with the duty of writing service book.

(v) That thereafter the Telecom District Manager, Nagaon, Telecom District issued a charge sheet under Memo No. X-3/TDM/NGG/CON/98-99/1, dated 27.7.98 and the following article of charges were framed against the applicant :

ARTICLE-I

The date of birth of Sri Kalaram Das, Line Inspector was recorded as 10.2.32 in the Service Book at Column No.6 which was altered as 29.9.39 with a note stating that 'wrongly entered the date of birth of Sri Kalaram Das' allegedly by Sri Jiban Chandra Nath who altered the record under his initial signature. The record in the service roll at Column 5 which was countersigned by the then Engineering Supervisor, Telegraph, Tezpur on 10.3.62 was also altered as 29.9.39. Sri Jiban Chandra Nath agreed that it is his initial signature and handwriting.

The statement given by Sri Kalaram Das, Line Inspector reveals that he never approached anybody nor submitted any application for change of his date of birth and he also expressed his inability to submit the original school certificate in support of his date of birth. He produced a horoscope in support of his date of birth which was prepared in 1982. Further, the date of birth mentioned in the attestation form on 16.11.72 as 11.1.38.

It is evident from above that there was no request from the official concerned for change of date of birth. The date of birth was altered by Sri Jiban Chandra Nath without authority, consulting higher authorities, observing any formalities as laid down in Note-6 below FR. 56, allegedly with dishonest motive clearly for his personal gain and misused this official position and failed to discharge his duties and by his act he violated Rule 3(l)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-2

Sri Jiban Chandra Nath, SS, Office of the SDO Phones, Nagaon gave a statement to the Investigating officer that the case of change of date of birth of Sri Kalaram Das, Line Inspector was processed through the Personal File of Sri Kalaram Das and with the consent of his superior the alteration was affected.

Further he stated that on the basis of the application received from Sri Kalaram Das with all relevant supporting documents such as school certificate etc. The entry was made by Sri Jiban Chandra Nath as directed by the then LSC Clerk and the Senior Accountant in the said personal file whereas Sri Kalaram Das, LI denied that he had requested for the same and even he expressed his inability to produce school certificate in support of his date of birth. The personal file of Sri Kalaram Das does not contain any documents and it is found that the case was not processed in that file. It is alleged that Sri Jiban Chandra Nath gave a false statement misleading to the Administration and in this manner the provision of Rule 3(i)(ii) and (iii) of CCS (Conduct) Rules, 1964 has been violated.

A copy of the memorandum is annexed herewith and marked as Annexure-I.

(vi) That on receiving the said charge sheet and the articles of charges the applicant denied the same and stated that the Column '6' was filled by the applicant on the basis of the service roll of one Kalamia found inside the service book of Kalaram Das where Column '6'

was kept blank. Sri Kalaram Das also submitted an application for such correction. The applicant stated that it was a wrong entry and not a correction of date of birth already entered in the Service Book. The service particulars of the employee will also be available in the Circle Gradation List. Therefore, there was nothing for issuing the charge sheet;

A copy of the statement is annexed herewith and marked Annexure-II.

(vii) That after the charge sheet was issued, Sri M.R. Choudhury, Accounts Officer was appointed as Presenting Officer in place of Sri D. Gupta who had been transferred vide Memo No. M-7/TDM/NGG/CON/98-99/10, dated 22.6.2000. Sri A.B. Saran, O.S.D. (DI) Eastern Region, Bihar Circle, Patna was appointed Enquiry Officer vide Memo No. X-7/TDM/NGG/CON/98-99/3, dated 31.8.98. The applicant engaged Sri Golap Chandra Sharma, SSS/GMT Kamrup as his defence Assistant;

(viii) That during the enquiry Sri S. Subramaniam, the then AO in the Office of TDM, Tezpur, Sri DN Bhuyan, the then SS TDM, Tezpur, Sri Kalaram Das, Line Inspector and Sri L. Boro, Vigilance Officer, CGM were cited as Prosecution witnesses. The applicant besides himself also wanted to examine Sri DN Bhuyan, the then Section Supervisor in the Office of

the TDM, Tezpur, but because of his illness he could not depose before the Investigating Officer. However, he had sent a signed statement to the Enquiry Officer.

(ix) That the prosecution witnesses nowhere stated that the applicant had made any correction in the Service Book of Sri Kalaran Das. The prosecution sought to establish that there was no other employee named Kalamiya and as such there was no question of using the service roll of Sri Kalamiya against the blank column in the service book of Sri Kalaran Das;

(x) That the applicant's further plea was that the correction made was with the permission of the then DET, Tezpur and the then Section Supervisor, Sri DN Bhuyan. The applicant had put up the case in the Service Book, correction files;

(xi) That the applicant states that in the course of enquiry Sri DN Bhuyan, the then HSC in the Office of the DET, Tezpur submitted a signed statement before the Enquiry Officer who had vouchafed that the correction in the Service Book was made as per office procedure with the knowledge of the office and the head of the administration. Sri Bhuyan had therefore requested to find out the concerned file where the case for correction of Service Book was put up, but interestingly there was no attempt on the part of the prosecution to find out the relevant case records.

A copy of statement of Sri DN Bhuyan is annexed hereto and marked as Annexure-III.

(xii) That the applicant begs to state that the defence had further suggested that since both the applicant and Sri Bhuyan had been transferred from Tezpur division it was not possible on their part to trace out the records. The defence asked the Vigilance Officer whether he had varified those records, the Vigilance Officer stated that he did not find anything at Tezpur Office. Both the Vigilance Officer and the Presenting Officer overlooked the matter. Sri Kalaram Das has, in the meantime, retired on the basis of his actual date of birth. Here, it is stated that employees service books are checked up every year by the employees who retires within a period of 5 years. The service book of Sri Kalaram Das was not checked by the Audit. The intention of the applicant was clear as he had put his signature after making the correction. Therefore, there was no case for prosecution to allege that the correction in the Service Book wa made malafide by the applicant with evil motive;

(xiii) That at the close of enquiry the Investigating Officer submitted his report to the disciplinary authority, but the finding arrived at by the Investigating Officer at the conclusion of the enquiry was not known to the applicant as no copy of the enquiry report was furnished to the applicant. However, acting on

the report of the Enquiry Officer, the disciplinary authority vide office order contained in Memo No. X-7/TDM/NGG/CON/2001/16, dated 30.1.2002 imposed punishment on the applicant which is quoted below :-

"..... the undersigned carefully considering the records in details submitted by Sri Jiban Chandra Nath, SS and all other effects and circumstances relevant to the case and considering the circumstances in totality and on the objective assessment of the entire case, hold the allegations established against Sri Jiban Chandra Nath, SS contained in Memo No. X-3/TDM/NGG/CON/98-99/1, dated 27.7.98. The undersigned, in exercising the Rule 11(ii) of CCS (CCA) rules, 1965 hereby imposed the penalty on him for withdrawal of his promotion for 3 years with effect from I.O.'s order i.e. with effect from 14.5.2001".

A copy of the said order is annexed herewith and marked on Annexure-IV.

(xiv) That the appellant begs to state that he has completed 28 years of service and promotion under biennial cadre review was due to him on 24.7.98. The promotion has been held up since then i.e. till today the promotion of the applicant has been held up for more than 3½ years. This with-holding of the promotion by the disciplinary authority is without reason and now on the face of the order imposing punishment, the promotion of the applicant

will be withheld for a period of 3 years with effect from 14.5.2001 and if the order is implemented against the applicant his promotion would be held up for over 6½ years. In that view of the matter, the order dated 31.1.2002 is liable to be set aside;

(xv) That the applicant humbly submits that although the order dated 31.1.2002 is nicely worded but in reality it is otherwise. There is no documents worth evidence that the applicant was guilty of the allegation brought against him in the article of charges. Sri S. Subramaniam, the then AO in DET Office, Tezpur although was cited as prosecution witness, he could not be examined as he was transferred. Another state witness, Sri Kalaram Das was examined who said nothing against the applicant. The PW2 Sri L. Boro, who simply proved the handwriting of the applicant who endorsed the correction with his own hand. Therefore, it is stated that the finding of the Enquiry Officer, if any, was perverse to the evidence on records and, as such, the impugned order is required to be set aside.

(xvi) That with the above contention, the applicant assailed the order dt. 30.1.02 passed by the Respondent No.2 before the Hon'ble Tribunal in OA 147/2002. In this application notices were issued to all the Respondents and numbers of times were allowed to file written statements and to produce records. But no written statements was filed. No records produced. The

Hon'ble Tribunal was pleased to hear the matter and vide order dt. 4.8.2003 was pleased set aside the order dt. 30.1.2002 and allowed the application with observation made therein.

A copy of the Tribunal's order is annexed herewith and marked Annexure-V.

(xvii) That the Respondent No.2. on receipt of the copy of the order passed by the Tribunal furnished to the applicant a copy of the Inquiry report dt. 14.5.01 on 8.9.03 as per direction of the Tribunal, wherein it has been held that the applicant was guilty of both the charges levelled against him.

A copy of the inquiry report is annexed hereto and marked Annexure-VI.

(xviii) That the applicant thereafter filed a representation on 11.09.2003 before the Respondent No.2 reiterating his earlier contention that he never altered any existing date of birth. He simply filled up the vacant Column '6' as the Service Book of Kalaran Das which however was again penned through putting his signature. Therefore, there was nothing intentional and as such the proceedings may kindly be dropped.

A copy of the representation is annexed hereto and marked Annexure-VII.

(xix) That after filing of the representation, the Respondent No.2 vide office Order No. X-7/TDM/NGG/CON/2003-2004/20, dt. 07.10.2003 wherein it has been held that the applicant had not brought any fresh evidence or any logical argument rather has confirmed the charges mentioning that he had altered the entries with his own hand. The Respondent No.2 further analysed the enquiry report and has come to the conclusion that the applicant deserved punishment and accordingly has inflicted punishment of reduction of pay by two stages from Rs. 9,100/- to Rs. 8,700/- for two years and that the reduction will have the effect of postponing the future increments of pay.

A copy of the order is annexed hereto and marked Annexure-VIII.

(xx) That the applicant begs to state that the earlier order dt. 30.1.2002 imposed punishment for withdrawal of promotion for three years w.e.f. 14.5.2001 i.e. from the date the I.O submitted his report. This order, although has been set aside by the Tribunal vide order dt. 04.08.2003 has already been given effect to the applicant who deserved BCR promotion on 24.7.98 has been held up till to-day. The earlier order dt. 31.1.2002 also had fixed the 14.5.01 for giving effect to the order. Now again, reduction of pay will also be given effect from 14.5.01. This will double jeopardy which is against the constitution and the law.

(xxi) That there is total non-application of mind in passing the impugned order and there is violation of principle of natural justice. The applicant has not been given any notice after accepting the IO's report.

(xxii) That the applicant humbly submits that the Respondent authorities have made out case for nothing. It is a simple case of correcting one's own wrong and thereby none has gained or lost anything. Further, it was not detected by any one. Sri Kala Ram Das had superannuated according to his actual date of birth i.e. 10.2.32.

(xxiii) That the impugned order has been passed in utter disrespect to the order passed by the Hon'ble Tribunal. It is in a sense, violation of court's order. No reference has been made to the order passed by the Tribunal while passing the impugned order. The order, therefore, is liable to be quashed.

7. RELIEF SOUGHT FOR :

Under the circumstances, the applicant prays that --

- i) The order in Memo No. X-7/TDM/NGG/CON/ 2003-2004/20, dt. 7.10.2003 imposing penalty on the applicant be set aside and/ or quashed.
- ii) The applicant be given his promotion due with effect from 24.7.98 with all consequential benefits thereon.

8. REMEDIES EXHAUSTED :

The applicant declares that he has availed the remedies available.

9. LEGAL GROUNDS :

The applicant was given punishment after submission of the enquiry report to the disciplinary authority. Copy of the inquiry report was however not furnished to the applicant which prejudiced him from making effective representation. This order was however set aside by the Hon'ble Tribunal vide order dt. 04.08.2003.

The enquiry report submitted on 14.5.2001 was however furnished to the applicant on 08.09.2003 as per Tribunal's directive. The applicant although submitted his representation on 11.09.2003, there was no effective consideration of the same by the disciplinary authority rather the disciplinary authority echoed the same thing and analyse the evidence recorded by the enquiry officer and came to the finding that the applicant was guilty of the charges. The disciplinary authority failed to arrive at an independent finding on his own in view of trivial nature of the charges.

10. INTERIM ORDER :

It is respectfully prayed that pending disposal of the application the order dt. 7.10.2003 in Memo No.X-7/TDM/NGG/CON/2003-2004/20 may be stayed.

11. MATTER PENDING IN ANY OTHER COURT :

No.

12. MATTER NOTPENDING IN ANY COURT :

The applicant further declares that the subject matter of this application is not pending before any other Court or Tribunal.

13. PARITCVLARS OF THE IPO :

i) Number of IPC : 96 701565

ii) Name of issuing:

Post Office.

iii) Post Office :

where payable.

14. ANNEXURES :

i) Memo No. X-7/TDM/NGG/CON/98-99/3, dtd.

31.8.98.

ii) Statement of the applicant..

iii) Statements of DN Bhuyan.

iv) Order dt. 30.01.2002.

v) Tribunal orde dt. 04.08.2003.

vi) Enquiry report.

vii) Representation.

viii) Order dt. 7.10.2003.

Contd.....P/19

VERIFICATION

I, Sri Jiben Chandra Nath, the applicant
above-named, do hereby verify that the statements made
in paragraphs (i, ii, iii, iv, vi, vii, viii, ix, x, xii, xiv, xv, xvii, xx)
are true to my knowledge and those made in paragraphs (v,
(xi, xiii, xvi, xvii, xix)
being matters of records are true to my information
derived therefrom which I believe to be true.

Jiben Chandra Nath
SIGNATURE

ANNEXURE - I

-20-

CONFIDENTIAL/REGD. (M)

Standard form of charge-sheet for major penalties [Rule 14 of CCS (CCA) Rules]

No. X-3/TDM/NGG/CON/98-99/1

Government of India

Ministry of Communications.

Dated, At Nagaon, the 27th July 1998

MEMORANDUM

1. The President/undersigned proposes to hold an inquiry against Shri. Jiban Chandra Nath, S/S, 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 witnesses by whom, the articles of charge are proposed to be sustained are also enclosed(Annexure III and IV).
2. Shri. Jiban Chandra Nath 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 article of charge.
4. Shri. Jiban Chandra Nath, S/S 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 inquiry authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS(CCA) 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. Jiban Chandra Nath is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri. Jiban Chandra Nath 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) Rule, 1964.
6. Receipt of the Memorandum may be acknowledged.

*By order and in the name of the President.

SD Rajhans
27-07-98
(S Rajhans)

TELECOM DISTRICT MANAGER
NAGAON TELECOM DISTRICT

To

Shri. Jiban Chandra Nath, SS(O)
SDO(Phones)/Nagaon

True Copy
Ratul Das
Advocate

Annexure -II

**Statement of imputation of misconduct or misbehaviour
In support of the articles of charge framed against Shri. Jiban Chandra Nath,
the then LA Asstt./TZ, now S/S, o/o the SDO(P)/Nagaon**

Article - I

The date birth of Shri. Kala Ram Das, LI was recorded as 10-02-32 in the Service Book at Col.8 which was altered as 29-09-39 with a note stating that "wrongly entered the date of birth of Shri. Kala Ram Das" allegedly by Shri. Jiban Chandra Nath who altered the record under his initial signature. The record in the Service Roll at Col.5 which was countersigned by the then Engineering Supervisor, Telegraphs, Tezpur on 16-03-62 was also altered as 29-09-39. Shri. Jiban Chandra Nath agreed that it is his initial signature and handwriting.

The statement given by Shri. Kala Ram Das, LI, reveals that he never approached anybody nor submitted any application for change of his date of birth and he also express his inability to submit the original School Certificate in support of his date of birth. He produced a horoscope in support of his date of birth which was prepared in 1982. Further, the date of birth mentioned in the attestation form submitted on 16-11-72 as 11-01-38.

It is evident from above that there was no request from the official concerned for change of date of birth. The date of birth was altered by Shri. Jiban Chandra Nath without authority, consulting higher authorities, observing any formalities as laid down in note-6 below FR-56, allegedly with a dishonest motive clearly for his personal gain and misused his official position and failed to discharged his duties and by this act he violated Rule-3 (1) (i) (ii) & (iii) of CCS (Conduct Rules), 1964.

Article - II

That Shri. Jiban Chandra Nath, S/S, o/o the SDO(Phones)/Nagaon gave a statement to the investigating officer that the case of change of date of birth of Shri. Kala Ram Das, LI, was processed through the personal file of Shri. Kala Ram Das and with the consent of his Superiors the alteration was effected.

Further, he stated that on the basis of the application received from Shri. Kala Ram Das with all relevant supporting documents such as School Certificate etc. The entry was made by Shri. Jiban Chandra Nath as directed by the then L.S.G Clerk and the Sr. Accountant in the said personal file whereas Shri. Kala Ram Das, LI, denied that he had requested for the same and even he expressed his inability to produce school certificate in support of his date of birth. The personal file of Shri. Kala Ram Das does not contain any documents and it is found that the case was not processed in that file. It is alleged that Shri. Jiban Chandra Nath gave a false statement misleading to the administration and in this manner the provision of Rule-3 (1) (i) (ii) & (iii) of CCS (Conduct Rules), 1964 has been violated.

Kala Ram Das
DOB - 10-2-32
Conveyed as 29-9-39
Signature of L.S.G & ES
Attestation form
on 16-11-72 - His
DOB 11-1-38
Conveyed as 29-9-39 (16-3-62)
Submitted by
A. B.

9X

ANNEXURE - PT

No. OGD(PT) 100/98

Venue O/O TCM HOD

Dt. : 12.12.2000

Question by I.O. under OGD (CJA) Rule-14(18)

Question : Please brief to the enquiry, if any, the circumstances appearing against you in the evidences during the course of recording the deposition of prosecution witnesses that has not been brought to the notice of the Inquiry as yet and you prefer to explain in your defence

Answer :

As a practice of the section and as per instruction of the Head of Section (H.O) on scrutiny of the service books of the officials it is found that the column of date of birth in the first page of service book of Sri Kala Ram Das was vacant though other columns of the service book were filled up and signed by the official and by the field officer (the then R.S.P) and to fill up the said column by mistake the date of birth of Sri Kala Niya whose service roll was available with the service book of Sri Kala Ram Das I made wrong entry in the first page of service book of Sri Kala Ram Das regarding date of birth (which was come to the notice later on) on personal inspection by Shri Kala Ram Das when it came to his notice is that his date of birth was wrongly entered and he demanded for immediate correction. On personal approach by Sri Kala Ram Das, the Section Head Sri U.P. Bhuyan the then L.S.U checked up the service book of Sri Kala Ram Das and the Service Roll of Sri Kala Niya agreed for wrong entry and asked Sri Kala

True copy

Ratul Das

Advocate.

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Ram Das was for production of his necessary age proof documents which were not available in the office. Generally service book is fill up as per the records of service roll on production of his age proof documents. By Sri Kala Ram of the Section head (Sri D.N. Bhuyan) personally checked up and after necessary permission from the head of division through the concerned service book correspondence file, the sect on head instructed me to put the correct date of birth in the first page service book of Sri Kala Ram Das willing the past previous date of birth putting my initial and giving the mark "wrongly entered the date of birth of Sri Kala Nily" and then I handed over the service book to the Section head for further necessary action which was in practice. It was done as a wrong entry and not corrected the date of birth previously written by some other person and the service particularly may be available in circle gradation list.

SD/- A.B- SHARAN
Inquiring Authority

SD/- Jibon Ch. Nath
12.12.2K

ANNEXURE - III

Annexure - V

8.12.2000.

To
The Enquiry Officer
Rule-14 Case of CCA(CCS) in respect of
Shri J C Nath, the then D/A of Staff
Section, O/O the DCP, Tezpur.

Sir,

It is come to know that a case of entry in service
Roll of one Sri Kala Ram Das, Line Staff of Tezpur
Division being brought up occurred about 15 years back
where in I am made as witness.

That sir, my wife is suffering from cancer who
was under treatment at Bombay and Gauhati besides, I am
a diabetic patient. My mind is not in a position to
recollect the circumstances happened long 15 years back.

That sir, to recapitulate, there was a case of
wrong entry that was brought to the notice by one Mr.
Kala Ram Das along with Sri Durga Das, an Assistant
and made a scene in the office.

The matter by allowing him to proof the date of
birth when date of birth entered in the service book.
There was another line staff whose name appears to
be Sri Kala Mia which have been put up together after
taking to the notice of the then DCP/TZ.

That sir, the victim might have brought the proof
of his date of birth who put up in file as procedure to
the higher authority for alteration. That Sir, unless
the establishment's file for making correspondence
regarding such matter along with personal file of
Sri Kala Mia as well as of Sri Kala Ram Das is available
it cannot be ascertained at present.

True copy.

Ratul Das
Advocate.

2.

It is therefore, requested that the concerned file may be searched along with the service roll of both the official line staff namely Sri Kala Ram Das and Sri Kala Mia along with the establishment file to get the true fact. Regarding non availability of file, it is to inform you that how the file left like, this is not understood as this file goes to the JOP and DST as procedure.

Further it is requested that no further communication be made with him through E.O. except telephonic information in future. The present address is given for information.

Sincerely Yours

Debnath Bhuyan
HSC/O/O the DST/TZ
(now retired)

Add :

Sri Debnath Bhuyan
C/O Sri Ripunjary Bhuyan
Hatigarch Hill Side,
Bye lane No. 2 (E)
P.O. Samunimaidan,
Guwahati-21.

P/C

भारत संचार निगम लिमिटेड
BHARAT SANCHAR NIGAM LIMITED
 (भारत सरकार का उपकरण)
 (A GOVT. OF INDIA ENTERPRISE)
 दूरसंचार निला प्रबंधक कार्यालय
 OFFICE OF THE TELECOM DISTRICT MANAGER
 नगौंव - 782 001 (ASSAM)
 NAGAON - 782 001 (ASSAM)

No: X-7/TDM/NGG/CON/2001/16

Dated at Nagaon, the 30TH Jan'2002

OFFICE ORDER

Whereas, a chargesheet was issued against Sri. Jiban Chandra Nath, S/S, O/o SDE(Ext)/Nagaon vide TDM/Nagaon memo No. X-3/TDM/NGG/CON/98-99/1 dated 27th July'1998 under disciplinary proceedings of Rule 14, CCS(CCA) 1965, and an Inquiry Officer was appointed for departmental inquiry into the case vide letter No. X-7/TDM/NGG/CON/ 98-99/3 dated 31-08-1998. In the time of inquiry Sri. Jiban Chandra Nath also admitted in his written statement dated 12-12-2000 that while he was functioning as D/A, O/o the TDM/Tezpur, he had changed the date of birth of Sri. Kalaram Das, L.I as 29-09-39 instead of 10-02-1932 without prior permission of competent authority.

After completion of departmental inquiry and inspection of all the relevant document, the I.O submitted his final report establishing the well-known provisions of Rule-3(I) (i) (ii) & (iii) of CCS (Conduct) Rule, 1964 against Sri. Jiban Chandra Nath, SS and charges levelled against him under Article - I & II of Annexure-I & II to the chargesheet stand 'Proved'.

The undersigned carefully considering the records in details submitted by Sri. Jiban Chandra Nath, SS and all other affects and circumstances relevant to the case and considering the circumstances in totality and on the objective assessment of entire case, hold the allegation established against Sri. Jiban Chandra Nath, SS, as contained in memorandum No. X-3/TDM/NGG/CON/98-99/1 dated 27-07-1998. The undersigned, in exercising the Rule 11 (ii) of CCS(CCA) Rule, 1965, hereby impose the penalty on him for withdrawal of his promotion for 3(three) years w.e.f I.O's order i.e. w.e.f 14-05-2001.

- Sd -

(PANKAJ DAS)

TELECOM DISTRICT MANAGER
 NAGAON TELECOM DISTRICT

Copy to :-

- ✓ 1. Sri. Jiban Chandra Nath, SS, O/o the SDE(Ext)/Nagaon.
- 2. The SDE(Ext)/Nagaon
- 3. The SDE(HRD)O/o the TDM/Nagaon
- 4. The AO(Cash)/Nagaon
- 5. Sri. L. Boro, VO, O/o the CGMT/Guwhati-7 along with a copy of I.O's order.

(PANKAJ DAS)

TELECOM DISTRICT MANAGER
 NAGAON TELECOM DISTRICT

True copy

Ratul Das.

Advocate.

Original Application No. 147 of 2002.

Date of Order : This the 4th Day of August, 2003.

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

THE HON'BLE MR N.D.DAYAL, ADMINISTRATIVE MEMBER.

Sri Jiban Chandra Nath
 Section Supervisor
 Office of the Sub-Divisional
 Engineer (EXT) Nagaon
 Bharat Sanchar Nigam Limited. Applicant.

By Advocates Mr.B.Malakar & Mr.R.Das.

- Versus -

1. Union of India
 Represented by the Chief General Manager
 Bharat Sanchar Nigam Limited
 S.S.Bora Lane
 Ulubari, Guwahati.

2. The Telecom District Manager
 Nagaon Telecom District
 Nagaon.

3. The Sub-Divisional Engineer(HRD)
 Office of the TDM, Nagaon
 Assam.

. . . . Respondents.

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

ORDERCHOWDHURY, J.(V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is directed and has arisen against the order dated 30.1.2002 passed by the Telecom District Manager, Nagaon Telecom District withholding his promotion for three years w.e.f.14.5. 001. Admittedly, the impugned punishment was imposed on the applicant in aid of CCA(CCA) Rules, 1964.

1. Mr.B.Malakar, learned counsel appearing on behalf of the applicant, inter-alia contended that the impugned order imposing punishment on the applicant is obviously contrary to the principles of natural justice and fairplay authority in action. Mr.Malakar submitted that the disciplinary/acted upon the findings reached by the Enquiry Officer ^{but} the applicant was kept in dark as to the contents of the Enquiry

Contd./2

True copy.
 Ratul Das
 Advocate

Report submitted by the Enquiry Officer and passed the impugned order without furnishing him copy of the Enquiry Report and thereby disabling the applicant to submit his representation ^{against} ~~of~~ the findings of the Enquiry Officer. The applicant in this application raised this issue at Para 6 (xii) and there is no rebuttal of the said statement from the respondents. The impugned order dated 30.1.2002 by which the penalty was imposed also did not indicate that the copy of the Enquiry Report was furnished to the applicant enabling him to submit representation against the report of the Enquiry Officer. The requirement of furnishing copy of the report of the Enquiry Officer is not only required to fulfill ^{requirement of the principles} ~~of~~ natural justice but the same is also part of statutory requirement embodied in Sub-rule 1(a) and 1(b) of Rule 15 of the Rules. The findings imposing the aforementioned penalty on the applicant ^{alone} ~~on that ground~~ is liable to be set aside.

2. For all the reasons stated above and on hearing Mr. A. Deb Roy, learned Sr.C.G.S.C. the impugned order bearing No.X-7/TDM/NGG/CON/2001/16 dated 30.1.2002 imposing the punishment on the applicant of withholding promotion for three years is set aside and quashed. This however, will not preclude the authority to take remedial measure by providing a copy of the Enquiry Report to the applicant and thereafter pass appropriate order as per law. If the authority desires to do so, it may do so within two months from the receipt of the copy of this order. In that event, the respondents authority shall furnish a copy of the Enquiry Report to the applicant within the specified period enabling him to submit representation. If the copy of the Enquiry Report is submitted within the aforesaid period, the applicant shall file representation to the Enquiry Report to the concerned authority within three weeks from receipt of the Enquiry Report and the disciplinary authority shall take all steps

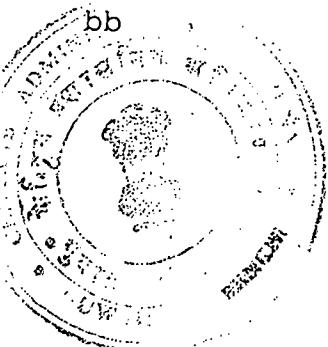
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to conclude the proceeding within one month, from the date of receipt of the representation from the applicant. We felt for giving this direction on the score that the applicant is on the verge of retirement and that the issue of his promotion is also tied up.

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

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

Sd/ VICE CHAIRMAN
Sd/ MEMBER (A)



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22/5/03

Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

11/8

Bharat Sanchar Nigam Limited
 (A Government of India enterprise)
 Office of the Chief General Manager Telecom
 Bihar Circle, Patna-800 001.

No. OSD(PT)/100/98.

Dated: 14.05.2001

INQUIRY REPORT

PRESENT

: SRI A.B. SHARAN
 OFFICER ON SPECIAL DUTY
 (DEPTT. INQUIRY), E. REGION
 C.T.O.O BUILDING, 3rd FLOOR,
 PATNA.

PRESENTING OFFICER

: SRI M.R. CHOUDHURY
 SR. ACCOUNTS OFFICER
 O/O TDM, NAGAON

DEFENCE ASSISTANT

: SRI GOLAP CHANDRA SARKA
 SR. SECTION SUPERVISOR
 O/o GMTD, GUWAHATI.

Disciplinary proceedings under Rule-16 of CCS(CCA), Rules 1965 against Sri Jiban Chandra Nath, S.S O/o SDO Phones, Nagaon.

1. The aforesaid suspected Public Servant Sri Jiban Chandra Nath, SS O/o SDO Phones, Nagaon (hereinafter referred to as SPS) was chargesheeted vide Memo No. X-3/TDM/NGG/CON/98-99/1 dated-27.07.98 issued by Telecom Distt. Manager Nagaon Telecom District (hereinafter referred to as the disciplinary authority). The undersigned was appointed as Inquiring Authority by disciplinary authority vide Memo No. X-7/TDM/NGG/CON/98-99/3 dated-31.08.1998 to inquire into the charges framed against the SPS. Simultaneously Sri D. Gupta, Accounts Officer(cash), under TDM, Nagaon & subsequently Sri M.R. Chaudhary Sr. Accounts Officer O/o TDM, Nagaon vide Memo No. X-7/TDM/NGG/CON/98-99/10, dated-22.06.2000 was appointed as Presenting Officer (hereinafter referred to as P.O) to present the case in support of charges before the inquiring authority on behalf of disciplinary authority. The SPS took assistance of Sri Golap Chandra Sharma, Sr. SS office of the General Manager Telecom Distt. Guwahati.

Contd....P/02

True Copy

Ratul Das

Advocate

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After the issue of the chargesheet and before conducting preliminary hearing, the disciplinary authority issued one corrigendum addressed to SPS copy to undersigned & P.O instructing to read the name KALAMIYA in place of KALARAM DAS interred in Annexure-I to the chargesheet which was recided.)*

Before conducting regular hearing, the disciplinary authority issued and served to the SPS, copy to the undersigned and P.O one ADDENDUM containing list of witnesses i.e Annexure-IV to the chargesheet which was taken on record.

2. The sitting started with its preliminary hearing on 06.07.99 when the SPS categorically denied the charges levelled against him and preferred personal hearing in the case. In consequence the P.O was directed to proceed with the presentation of the case against the SPS, and to begin with the P.O was asked to get examined and inspected by the SPS all the documentary evidences as enumerated in Annexure-III to the memorandum of the chargesheet

3. Simultaneously the SPS was directed to submit a list of additional document if any, required by him for preparing his defence. He was further directed to submit a list of defence witnesses if any which he wanted to produce and examine in support of his defence case. The SPS furnished for the discovery of four defence documents out of which Sl. No. 01 was the part of listed documents which was already given access to SPS. Sl. No. 02 : - Discovery of service book of one Sri Kala Miya for which the TDM/Tezpur in his Memo dated-26.10.1998 (S.Ext. 09) clearly stated that " No official in the name of Sri Kala Miya ever worked in that division"- so question for its discovery does not arise due to its non existance. Sl. 03 : No such document was reportedly available in the relevant file and for Sl. 04, S.L.C of Kala Ram Das was reportedly lost which come before the inquiry in the deposition of Sri Kala Ram Das (sw.01).

On completion of the pre-hearing formalities, the regular hearing started & held on 11.12.2000, 12.12.2000 when the P.O adduced the following documents as enlisted in Annexure-III

to the chargesheet which were taken on record as S.Exts as under:-

1. S.Ext. 01. Service Roll of Sri Kala Ram Das LI (Retd.)
2. S.Ext. 02. Attestation form of Sri Kala Ram Das, LI (Retd).
3. S.Ext. 03. Service Book (first page) of Sri Kala Ram Das, LI (Retired).
4. S.Ext. 04. Xerox copy of Medical certificate in proof of DoB of Sri Kala Ram Das, LI (Retd).
5. S.Ext. 05. Xerox copy of Horoscope of Sri Kala Ram Das LI, prepared on 07.06.82.
6. S.Ext. 06. Statement of Sri Jiban Chandra Nath dated-22.08.97
7. S.Ext. 07. Sample application dated-20.08.97 bearing initial of the SPS.
8. S.Ext. 08. Statement of Sri Kala Ram Das dated-20.08.97.
9. S.Ext. 09. TDM/Tz Memo No. 1006/Dis/KID/15 dated-26.10.98 in response to discovery of the service book of Sri KALA MIYA as defence documents duly requisitioned by the SPS & allowed by I.O.
10. S.Ext. 10. 2nd copy of attestation form of Sri Kala Ram Das LI (Retd).
11. S.Ext. 11. Note sheet (xerox copy) bearing initial of Sri Jiban Chandra Nath duly seized by V.O during investigation of the case.
12. S.Ext. 12. Xerox copy of Note-6 below FR-56.

Also in course of regular hearing the P.O produced the following ~~stater~~ witnesses in support of charges who were examined in-chief by P.O & cross examined on behalf of SPS conclusively. These are as under:

1. SW. 01. Sri Kala Ram Das LI (Retd).
2. SW. 02. Sri L. Boro, V.O Circle office Guwahaty (investigating officer of the case).

About the production of other two SW.05, the P.O put forth its plea that the where-about of SW. 03 the then Accounts Officer (cash) & now retired from Madras Telephones could not be traced and as such the summon copy could not be served to him and the

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therefore dropped by P.O. Regarding Sri D.M. Bhuyan (SW.04) who could not turn up before the inquiry to tender his evidence was consented to be dropped.

On conclusion of the prosecution case, the defence filed statement of defence under CCS(CCA), Rules-14(16 with a copy endorsed to P.O. The SPS in his statement pleaded not guilty of any of the charges levelled against him.

The SPS did not prefer to requisition for any defence witness to be examined on its behalf nor for any defence documents. Thus the defence case also closed.

As the SPS was not examined as a defence witness, he was questioned by I.O. under Rule-14(18) which was recorded, a copy of which was endorsed to the P.O.

At the end of the oral hearing, both the parties were directed to submit their respective briefs within stipulated time. The prosecution brief of the P.O dated-30.01.2001 was received on 07.02.2001 whereas the defence brief of the SPS dated-12.02.2001 was received on 22.02.2001.

Thus all the documentary evidences adduced and submissions made were thoroughly examined. At the same time both the parties (i.e. prosecution and the defence) were afforded full and reasonable opportunity which they availed to the best of their satisfaction and at the same time there was absolutely no complaint in this regard from the either side.

The following article of charge was framed against the SPS as contained below:-

ARTICLE-I.

" That the said Sri Jiban Chandra Nath, SS, o/o the SDO Phones, Nagaon, while functioning in the office of the TDE, Tezput altered the entry against column 06 i.e date of birth in the service book of Sri Kalaram Das, LI, as 29.09.39 from 10.02.1932 with a remark that " wrongly entered the date of birth of Sri Kalaram Das" and in the service Roll without authority and thus failed to observe the provision as laid down below

Note-06 of FR-56, misused official position with a dishonest motive in discharge of his official duties and thereby acted in a manner in contravention of Rule-3(1) (i) (ii), & (iii) of CCS (conduct Rules), 1964.

ARTICLE-II.

" That the said Sri Jibon Chandra Nath, while functioning as S/S Office of the SDO Phone s, Nagaon gave a statement to the investigation through his personal file and with the consent of his supervisors the entry of date of birth in the service was altered which is false and misleading to the administration & thereby acted in a manner in contravention of Rule-3(1) (i) (ii) & (iii) of CCS (conduct) Rules , 1964".

DISCUSSION.

The charges state that the SPS altered the date of birth in the service book (column 06) of Sri Kalaram Das, LI, Tezpur without any authority resulting an illegal and unjustified extension of service of Sri Kalaram Das LI and thus misused official position with dishonest motive in discharge of his official duty. In article-II of the alleged charge it was stated that the SPS during investigation gave a false and misleading statement that the date of birth in the service book of Sri Kalaram Das LI was altered by him with the consent of the superiors.

The P.O during regular hearing produced and examined as many as two state witnesses out of four as enlisted in Annexure-IV to the chargesheet and the rest two were dropped.

S.Ext. 01 is the original copy of the service roll of Sri Kalaram Das, LI Tezpur (Retd). In the service roll at Sl. No. 05 there appears some correction in the date of birth which admittedly bears the initial of the SPS on the corrected date of birth from 10.02.1932 to 29.09.1939. The same correction in DOB appears in the 1st page of the service book at (S.Ext.03) at Sl. 05 which also admittedly bears the initial of the SPS only near the correction. Further on minute observation it appears mentioned at column No. 06 of service book, "wrongly

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entered the date of birth of Sri Kalamiya".

S.Ext. 02. is the original copy of attestation form of Sri Kala Ram Das. At Sl. No. 10, the overwritings in dates are clearly visible in column date of entering and date of leaving without any covering signature on the corrections. Under Sl. No. 07 the DoB was entered as 11-01-1938.

S.Ext. 04 is the unconfirmed unsigned attested copy of Dr. R.K. Deka Medical and Health Officer Charali PHC, Charali, who had furnished a certificate without any valid evidence that Sri Kala Ram Das was born on 29th September 1939 as per his birth horoscope

S.Ext. 05 is the xerox copy of the unauthenticated horoscope of Sri Kala Ram Das which was prepared on 07.06.82.

S.Ext. 06 is the statement of the SPS in which he has very clearly admitted that he had corrected the date of birth in the first page of the service book of Sri Kala Ram Das. Further in the last para of this statement ^{he} clarified in reply to V.O's question that correction of date of birth was done by him in the first page of service book and put his signature on the instruction of the then LSG clerk.

S.Ext. 07. is a handwriting a sample draft prepared by the SPS bearing his initial at the bottom right.

S.Ext. 08 is the statement dated-20.08.97 of Sri Kalaram Das LI Tezpur at the relevant period, in which he has stated that the attestation form was filled up by some body else, the horoscope prepared in 1982 was the only document available to him in support of his date of birth. He claimed that he never approached any body for the correction of his DoB in his service book. He further added that it was surprising to him that there is some overwriting/correction in his service book in respect to his age.

S.Ext. 09 is a valuable relevant information furnished by the TDM Tezpur stating that "No official in the name of Sri 'Kala Mian' ever worked in that division". Further he clarified that the overwriting in the date of entering and leaving of

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school ~~appeared~~ only in one copy of attestation form where as the second copy (S.Ext. 10) is without any overwriting. (S.Ext. 2)

S.Ext. 10 is the second attestation form of Sri Kala Ram Das where in there appears no overwriting in date of entry and date of leaving the school at Sl. 10. Under Sl. 07 of this attestation form the DoB was entered on 11.01.38.

S.Ext. 11 is the xerox copy of the note sheet of one file bearing initials of the SPS which was dealt by him.

^{is the note 6 below FP-56 which says that}
S.Ext. 12. The date on which a Government servant attains the age of fifty eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth register. The date of birth so declared by the Government servant & accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller & Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if-

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) It is clearly established that a genuine bona fide mistake has occurred; and
- (c) The date of birth so altered would not make him ineligible to appear in any school or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.

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SW. 01 Sri Kala Ram Das in reply to chief question No. 01 & 02 deposed that the first date entered in respect to DoB in the service Roll (S.Ext. 01) as 10.02.1932 and after correction it was entered as 29.09.1939 bearing initial of Sri Jiban Chandra Nath (SPS). In 1st page of service Book (S.Ext. 03) the corrected DoB was written in word as well as in figure also separately written in bracket "Wrongly entered the date of birth of Sri Kala Miya". He confirmed that it also bore the initial of the SPS for the correction made. In reply to P.O's No. 04 he deposed that the SPS intimated him that his certificates in respect to his DoB, School certificate etc were lost and he was asked by the SPS to produce the same in support of his DoB. In reply he told that he was not possessing any certificates in support of his DoB but he was having only the recently prepared horoscope as the original one was lost. The same was consented to be produced alongwith one Doctor's certificate in support of DoB which he deposited. After that he never approached for the DoB. In reply to P.O's question No. 06 he confirmed the 1st para of S.Ext. 09 and added that he did not know any official in the name of Sri Kala Miya ever worked during his time nor heard. During cross examination on perusal of S.Ext. 01 & S.Ext. 03 he confirmed that the pre-corrected DoB as 10.02.1932 was entered by Sri J.C. Nath, SPS. In reply to cross question No. 08 he told that he never furnished any application for making any correction in his DoB.

SW. 02 Sri L. Baro the investigating officer of the case deposed that during investigation no supporting documents in the personal file of Sri Kala Ram Das was found in respect of his request for change in his DoB. Further on perusal of S.Ext. 03, 1st page of service book of Sri Kala Ram Das and that of entries made at Sl. 06, it was found that no official named Sri Kala Miya was found working in Tezpur SSA. The SPS in his statement admitted that the corrections in DoB were made by him only. He added that the handwriting available on the correction of DoB, on S.Ext. 01 & 03, are of Sri J.C. Nath (SPS) which are undisputed. He further added that Sri Kala Ram Das has shown three DoBs as 10.02.32, 11.01.38, & 29.09.39 in differt service

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records but for them no authentic relevant documents were found during the investigation. The P.O in his presenting brief has clearly claimed that both the charges levelled against the SPS stand proved.

The defence in his defence brief has highlighted that in the chargesheet the designation of SPS shown was incorrect but before the conduction of inquiry or during the inquiry he never raised this issue. However his incorrect designation if any, is in no way going to effect the proceedings & its outcome. He has stated that the SPS was duty bound to correct the DoB in the service book. This contention of defence is not at all based on any statutory ruling or fact. Actually Note-06 of FR-56 (S.Ext. 12) clearly gives the proper guidelines before processing the change in DoB of any official. In the instant case no such guidelines were observed by the SPS. Further the defence admitted on behalf of SPS that due to mistake, the DoB of Sri 'Kala Miya' was entered in the service Roll/service book of Kala Ram Das by the SPS. The defence tried unsuccessfully to give this change in DoB as Clerical error. But he never produced any supporting evidence on the basis of which he reportedly committed such common mistake in the name of Sri Kala Miya as told. On the contrary, the TDM Tezpur vide his Memo under S.Ext. 09 as well as in his deposition of Sri Kala Ram Das (SW.01) confirmed that no official in the name of Sri Kala Miya ever worked in that division nor heard during that time. During cross examination, the defence could not refute this issue. It is an undisputed rather admitted fact that Sri J.C. Nath (SPS) has corrected the date of Birth of Sri Kala Ram Das on service Roll & Service book without observing proper procedure. In reply to I.Os question under Rule-14(18) and also in his defence brief he has taken a plea that he had corrected the DoB of Sri Kala Ram Das on the service Roll & on service Book with the permission of head of the section but for ^{this} he did not produce any evidence direct ^{or} supporting. Obviously it is not true. Actually as per the statutory rule, once the DoB recorded, it can not be altered except in the case of clerical error. In the instant case the claimed ^{of} clerical error on the part of the SPS could not be established

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by the defence nor the existance of Sri Kala Miya as an official in that division could be evidenced. As per the Rule only the head of the Departments are authorised to exercise the power of making any alteration in DoB in the case of non-Gazetted Government Servants under there control & non else.

Normally the request of a Government Servant within five years of his entry to the department may be entertained for alteration of DoB which could be supported by satisfactory documentary evidence (such as matriculation or equavalant certificate or a duly attested extract of birth register or baptismal certificate in original) together with a satisfactory explanation of the circumstances in which the wrong date came to be entered. In the instant case no such valid documents were called for from the official for considering the alteration in DoB, nor the consent of the competent authority was ever obtained by the SPS before making such alteration/correction in the DoB of Sri Kala Ram Das in the service Roll & in the service Book. Surprisingly as per the deposition of SW.02, no supporting documents in the personal file of Sri Kala Ram Das (SW.01) was found during investigation in respect of his request for change in his DoB. Also Sri Kala Ram Das, (SW.01) in his deposition confirmed this point that he never furnished any application for making any correction in his DoB. The defence did not produce any evidence in support of his contention that Sri Kala Ram Das objected regarding his DoB in his service book which reportedly caused initiation of calling for the available supporting documents from Sri Das before making such correction in DoB by the SPS. It is not understood how the corrections in DoB was processed and made by the SPS with out finding any request in the file for the same. Probably it might had occurred after noticing 10.02.1932 as DoB interred in the service Roll as well as in the service book of Sri Das where as 10.01.1938 as DoB noticed in the attestation form where as 29.09.1939 was the DoB interred by the SPS after correction. This DoB appears interred only in the zerox copy of unconfirmed, unsigned M.Os certificate (S.Ext. 04) as well as in the newly prepared horoscope (S.Ext. 05) which has no base for giving them any cognizance. Moreover

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the SPS had admittedly made the corrections reportedly in the investigation of Sri D.N. Bhuyan the then sectional head who had no power to exercise for ordering the SPS for making such corrections in DoB causing undue extention in service of Sri Hala Ram Das before superanuation. However for the correction made only the initial of of the SPS is appearing and non-else. Also Sri Bhuyan was not produced to be examined either as state witness or defence witness to confirm the plea of the SPS. Thus this contention of the SPS has no leg to stand. It supports the charge levelled against the SPS under Article-II of the chargesheet.

I need hardly mention that in departmental proceedings, it is not the direct or indirect evidence which counts but it is the preponderance of probability which matters. Here in this case, the circumstantial evidences have emerged at the inquiry evidently goes against the SPS and accordingly I hold rather strongly, that the charges of violating the well defined provisions of Rule-3(1) (i) (ii) & (iii) of the CCS(conduct) Rule-1964 against the SPS is ESTABLISHED. In other words the charges levelled under Article-I & II ^{of} Annexure-I & IT in the chargesheet stand PROVED.


(A.B. SHARAN)
INQUIRING AUTHORITY

To

The Telecom District Manager
Nagaon.

Dated at Nagaon the 11.09.2003.

Sub : Representation.

Ref. : Enquiry report furnished to me on 09.09.2003 pursuant to CAT/Guwahati Bench, order dtd. 04.08.2003 and your letter No. X-7/TDEM/NGG/CON/2003-04/18, dtd. 08.09.2003.

Respected Sir,

With due respect and humble submission, with reference to above, this representation is made against the finding of the Enquiry Officer holding me guilty of the charges framed against me in the matter of filling up by vacant colum of the service book of Sri Kala Ram Das, Line Staff. In this connection, while submitting my W/S, I narrated the circumstances leading to the filling of Column '6' and I admitted that the Column '6' of Sri Kala Ram Das's service book was filled by me in my own hand (which was my allotted work) which was again corrected considering as clerical mistake with the knowledge and permission of the then Head Clerk and though the relevant file has not been found during the inquiry to satisfy whether the statement was correct.

It has been stated the principle of weighing evidence in departmental proceeding by the Enquiry Officer, it is stated that there is no case for the prosecution I, bring the SPS, I had explained the circumstances leaving no doubt for the prosecution about the case.

There is not direct or indirect evidence which suggest that I failed to maintain absolute integrity at any point of time. Even it is not probable to come to such a conclusion. Apart from discarding the written statement of the then Head Clerk, no attempt was made to secure presence of Sri Subramaniam, the then Accounts Officer who could dependently throw some light in this respect.

Regarding Sri Kala Miya, the Enquiry Officer obtained a reference from TDM, Tezpur wherein it was stated that there was no such employee named Kala Miya just after

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Ratul Das
Advocate

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bifurcation, many records were misplaced. Guwahati Division was bifurcated and shifted to Bongaigaon where from Tezpur division was opened. The Enquiry Officer did not endeavours to ascertain whether Sri Kala Miya by name was an employee in the earstwhile Guwahati Division. Therefore, the conclusion arrived at by the Enquiry Officer was neither reasonable nor fair.

Sir, after serving more than 30 years in the department, such a punishment for no fault of mine is really patheic, when I had nothing evil motive behind this.

Sir, BCR promotion was due to me w.e.f. 24.7.98 and withheld order is dated 14.5.01. It is continuing till to-day meanin thereby that BCR promotion has been denied to me for over 5 years.

Sir, my date of supernnuation is fast approsing and therefore, request that the authority would be pleased to be consider the matter and dropped the charges against me. The BCR promotion may kindly be ordered retrospectively w.e.f. 24.7.98 with all benefits. This is my earnest request before the authority.

Yours faithfully,

(Jibon Chandra Nath)
S/S O/O SDE (Extn.)
Nagaon.

Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
Office of the Telecom District Manager
Nagaon Telecom District

No: X-7/TDM/NGG/CON/2003-2004/20 Dated at Nagaon, the 7th October 2003

OFFICE ORDER

Whereas, a disciplinary proceedings under Rule - 14 of CCS(CCA) Rule, 1965 was initiated against Sri. Jiban Chandra Nath, SS(O), O/o the SDE(Ext)/Nagaon vide this office Memorandum No. X-3/TDM/NGG/CON/98-99/01 dated 27-07-1998. The following article of charges were framed and served to the official vide aforesaid memorandum and the same was acknowledged by him.

Article - I : That the said Sri. Jiban Chandra Nath, S/S while functioning in the office of the TDE/Tezpur altered the entry against Col. 6, i.e date of birth in the Service Book of Sri. Kalaran Das, LI, as 29-09-39 from 10-02-1932 with a remark that "wrongly entered the date of birth of Sri. Kala Miya". The record in the Service Roll at Col.5 which was countersigned by the then Engineering Supervisor, Telegraphs, Tezpur on 16-03-1962 was also altered as 29-09-39 with his initial without prior permission from competent authority and thus failed to observe the provision as laid down note-6 of FR-56, misused official position with a dishonest motive in discharging his official duties and thereby acted in a manner in contravention of Rule - 3(1) (i), (ii) & (iii) of CCS(Conduct)Rules, 1964.

Article - II : That said Sri. Jiban Chandra Nath, while functioning as S/S, in the office of SDOP/Nagaon gave a statement to the investigating officer that the case of change of date of birth of Sri. Kalaran Das, L.I was processed through the 'Personal File' of Sri. Kalaran Das and with the consent of his Superiors the alteration was effected, which is false and misleading to the Administration and thereby acted in a manner in contravention of Rule -3(1) (i),(ii) & (iii) of CCS(Conduct) Rules, 1964

On denial of the charges by Sri. Jiban Chandra Nath, SS(O), Sri. A. B. Saran, OSD(DI)ER, Patna was appointed as Inquiry Officer vide No. X-7/TDM.NGG/CON/98-99/3 dated 31-08-1998 and Sri. D. Gupta, AO(Cash)/Nagaon was appointed as Presenting Officer vide No. X-7/TDM.NGG/CON/98-99/4 dated 31-03-1998. On transfer of Sri. D. Gupta, AO from Nagaon SSA, Sri. M. R. Choudhury, A.O(Cash)/Nagaon was appointed as P.O vide No. X-7/TDM.NGG/CON/98-99/10 dated 22-06-2000. The Inquiry Officer has since submitted his report considering the depositions of the state WITNESSES on the points of Article of charges.

The argument advanced by the Presenting Officer, and that with the Defence Assistant of SPS. The inquiry officer in his Inquiry Report has concluded that the basis of evidences, both documentary and oral records, both the article of charges leveled against Sri. Jiban Chandra Nath, SS have been proved.

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Ratul Das
Advocate

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The SPS was supplied with a copy of Inquiry Report vide this office letter No. X-7/TDM/NGG/CON/2003-2004/18 dated 18-09-2003 and he has submitted his written representation in reply to the I.R which has not brought forth any fresh evidence or logical argument in his own favour, rather he has confirmed the charges of the articles in his own hand himself, as in his representation he has mentioned that he had altered the entries himself with his own initial.

The disciplinary authority has agreed with the I.O's report on the following points :-

Article – I (Regarding change of DOB of Sri. Kalaram Das, both in Service Book & Service Roll) : Sri. J.C. Nath while functioning in the office TDE/Tezpur altered the entry against Column No 6 i.e date of birth in Servie Book of Sri. Kalaram Das, LI as 29-09-39 from 10-02-1932 & in Col.5 of Service Roll also altered as 29-09-39 with his initial without any authority. In the inquiry report all the documentary evidences adduced and submissions made are thoroughly examined and found that the SPS was given reasonable opportunity to avail to the best of his satisfaction and there was absolutely no complaint in this regard from his side, but he failed to prove that the alteration were made as per official procedure. And therefore, the disciplinary authority agreed with the I.O's report that the said article of charge was found to have been proved against Sri. Jiban Chandra Nath.

Article – II (Regarding false statement) : Sri. J. C. Nath while functioning in the office of SDE(P)/Nagaon gave a statement that he had altered the date of birth in the service book with the consent of his superiors through the P/F of Sri. Kalaram Das. During the course of inquiry it is found that corrections made in both Service Book & Service Roll, the initials of the SPS is appearing and non-else. The SPS was given full opportunity to defend himself, but failed to proved the statement given in this regard. Thus the SPS giving false statement mislead the Administration, and therefore, the disciplinary authority agreed with the I.O's report that the said article of charge was found to have been proved against Sri. Jiban Chandra Nath.

And whereas, the inquiry report submitted by the I.O, the relation between imputations, evidences & conclusions are reasonably and clearly indicated. The conclusions of the inquiry report are logical and free of any bias. The inquiry officer has observed the principle of natural justice. During the inquiry proceedings both of the article of charges leveled against the SPS have been established & proved, and as such Sri. J. C. Nath has been found guilty of violating the provisions of Rule 3(1) (i), (ii) & (iii) of CCS(Conduct) Rule,1964. It has been established & proved that Sri. J. C. Nath did not maintain absolute integrity, devotion to duty & was found to be unbecoming of Government servant which is violation of the Rule 3 (1) (i), (ii) & (iii) of CCS(Conduct) Rules, 1964.

And whereas, the misconduct of Sri. J. C. Nath attracts the provisions of the CCS(CCA) Rules, 1965 for awarding him a major penalty. The undersigned also considered that Sri. J. C. Nath is at the verge of retirement, and as such a lenient view would be taken.

Now therefore, I, Sri. J. L. Gautam, Telecom District Manager, Nagaon in exercise of the powers conferred upon me by Rule 11 of CCS (CCA) Rules, 1965, hereby order that the pay of Sri. Jiban Chandra Nath, S/S, O/o the SDE(Ext)/Nagaon is reduced by 2 (two) stages from Rs. 9,100/- to Rs.8,700/- for a period of 2 (two) years with immediate effect. It is further directed that Sri. Jiban Chandra Nath, S/S will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay.

This is in super-session to the earlier order No. X-7/TDM/NGG/CON/2001/16 dated 30-01-2002.

SG
(J. L. Gautam)
Telecom District Manager
Nagaon Telecom District

Copy to:

✓ 1. Sri. Jiban Chandra Nath, S/S(O), O/o the SDE(External)/Nagaon

✓
(J. L. Gautam)
Telecom District Manager/
Nagaon Telecom District
7/10/03