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4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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2
SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 113 12003

Mise Petition No: _____ /

Contempt Petition No: _____ /

Applicants: - Aril Kumar Pandey

Respondants:- Viswanath Indiason

Advocate for the Applicants: - N. C. Barnah Mr. N.K. Barnah

Advocate for the Deaf and Hard of Hearing
Mr. M. J. Saikia

Advocate for the Respondents:- Mr. B. C. Parkar
c" Ad. CGSC

| Notes of the Registry | Date | Order of the Tribunal |
|---|-----------|--|
| This application is in form but not in time. Petition is filed / or filed C.P. or P.S. etc. deposited vide H.O/B.R. No 86-490763 Dated 29-5-03 | 29.5.2003 | Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. S.K. Hajra, Member (A). |
| Steps taken. | | Heard Mr. C. Baruah, learned counsel for the applicant and also Mr. B.G. Pathak, learned Addl. C.G.S.C. for the respondents. |
| Notice of hearing & Rent to let for my respondent No 1 to 4 to Regd. A.D. | | The application is admitted. Call for the records. |
| DINo. 1117 W 1120 Dtd 27/6/03 Tb. | mb | The respondents are directed to file written statement. Put up again on 30.6.2003 for orders. |
| 27/6/03 0 written statement is clear filed by the respondent. | | C. Member Vice-Chairman |

No. written statement
was been filed.

My
1.8.03.

30.6.2003 Put up again on 4.8.2003
to enable the respondents to file
written statement.

Vice-Chairman

mb

4.8.2003 Present : The Hon'ble Mr. Justice
D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. N.D. Dayal,
Administrative Member.

No. written statement
was been filed.

My
29.8.03.

On the prayer of Mr. B.C. Pathak,
learned Addl. C.G.S.C. for the respondents
further four weeks time is allowed
to the respondents to file written
statement.

List on 1.9.2003 for orders.

Member

Vice-Chairman

mb

1.9.2003 Present : The Hon'ble Mr. Justice D.N.
Chowdhury, Vice-Chairman.
The Hon'ble Mr. K.V. Prahaladan,
Administrative Member.

Respondents are yet to file
written statement. Further three weeks
time is allowed to the respondents to file
written statement.

List on 20.9.2003 for orders.

I.C.W. Chowdhury
Member

Vice-Chairman

mb

20.10.2003 On the prayer made by Mr. B.C. Pathak
learned Addl. C.G.S.C. four weeks time to
the respondents is allowed to file written
statement.

List on 6.11.2003 for written state-
ment.

Vice-Chairman

bb
6.11.03

No Bench today. Adjourned
6.8.12.03.

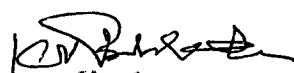
1876
1a.

23.12.2003 Present : The Hon'ble Mr. Justice B.
Panigrahi, Vice-Chairman.

The Hon'ble Mr. K.V. Prahla-
dan, Member (A).

Prayer has been made on behalf
of the Mr. B.C. Pathak, learned Addl.
C.G.S.C. for the Respondents to file
written statement. Let the written
statement be filed positively within
four weeks, failing which no written
statement will be accepted. Rejoinder,
if any, be filed within two weeks after
the service of copy of the written
statement.

Let the matter appear in the
next available Division Bench.


Member


Vice-Chairman

mb

27.2.2004 Present: Hon'ble Shri Shanker Raju,
Judicial Member

Hon'ble Shri K.V. Prahla-dan,
Administrative Member.

As the applicant himself wrote to
the respondents for withdrawal of
court case and also intimated this
fact to the lawyer, which is denied,
having regard to the request of the
applicant for withdrawal, the O.A. is
dismissed taking into account the
Memo dated 13.2.2004 filed by the
respondents as well as the letter
dated 5.2.2004 of the applicant for
withdrawal of the case.


Member (A)


Member (J)

nkm

8/2/04
Copy of the order
has been sent to
the office for issuing
the same to the applicant
as well as to the Mr.
B.C. Pathak, Addl.
C.G.S.C.

9/3/2004
Received copy
Bibhushan Pathak
9/3/2004

27th MAY 2013

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati GUWAHATI BENCH AT GUWAHATI.

(An application U/S 9 of the Administrative Tribunal Act, 1985)

O. A. No. 113 / 2003

File No. -
Sri Anil Kumar Pandey
Through: (N. S. Baruah)
27/5/03

Sri Anil Kumar Pandey. Applicant.

-Versus-

Union of India & others. Respondents.

SYNOPSIS OF THE CASE

Memo of application-Against the order dated 30-04-2002 imposing penalty on the applicant under Clause(V), Rules-11 of C C S(C C A) Rules, 1965.

Annexure- 1

Suspension order dated 19-09-95 by which the applicant was suspended from service on contemplation of disciplinary proceedings.

Annexure - 2

Show cause reply filed by the applicant on 23-05-96.

Annexure - 3

Order dated 15-07-96 by which inquiry proceedings and findings set aside by Disciplinary Authority.

Annexure - 4

C.A.T., Ahmedabad passed Judgment on 28-08-97 in O.A. No.230/97.

Annexure - 5

Suspension order revoked by order dated 09-06-98.

Annexure - 6

Memorandum dated 05-03-2002 informing the applicant that inquiry is to be held by SIB, Itanagar.

Annexure - 7

Order dated 13-03-2002 by which new Inquiry Officer was appointed.

Annexure - 8

Written Objection filed by the applicant on 14-03-02 against appointment of new Inquiry Officer.

Annexure - 9

Penalties imposed on the applicant vide order dated 30-04-03.

Annexure - 10

Parawise reply/representation by the applicant on 02-05-03.

MAY 2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH AT GUWAHATI.

O. A. No. 113 / 2003

Sri Anil Kumar Pandey. Applicant.

-Versus-

Union of India & others. Respondents.

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Anil Kumar Pandey
Anil Kr. Pandey
 Applicant.

Filed by:

Barua
 N.K. Barua,
 Advocate.

Contd..

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI.

Filed by -
Sri Anil Kumar Pandey - Appellant
Through M. A. Singh
(Advocate) Barua
Anil Kumar Pandey

An application under Section 9 of the Administrative
Tribunal Act, 1985.

Original Application No. 113 / 2003

Sri Anil Kumar Pandey.

S/O - Sri A.P. Pandey, at present working as
J.I.O.-II, SIB, Itanagar, residing near SIB
Complex, Barapani, Naharlagun, Dist. -
Papumpare, Arunachal Pradesh.

... Applicant.

-Versus-

1. The Union of India, represented by the
Director of Intelligence Bureau, Ministry of
Home Affairs, Government of India, North
Block, New Delhi.

2. Joint Director, SIB (MHA), Government of
India, SSB (WATS), Gohpur Tinali, near
Bomdila Hotel, Chimpur, District - Papumpare,
Itanagar, Arunachal Pradesh.

Contd..

3. Assistant Director, SIB (MHA), Government of India, SSB (WATS), Gohpur Tinali, near Bomdila Hotel, Chimpoo, District - Papumpare, Itanagar, Arunachal Pradesh.

4. Assistant Director / E, Disciplinary Authority, SIB, Itanagar.

... Respondents.

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

Order dated 30-04-2003 passed by the Assistant Director/E, Disciplinary Authority, SIB, Itanagar imposing penalties on the applicant under Clause (V), Rule-11 of CCS (CCA) Rules - 1965, after appointing a new Inquiry Officer and holding fresh inquiry.

2. JURISDICTION OF THE TRIBUNAL:-

The applicant declares that the subject matter of the order against which the relief is sought for is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION:-

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

Anil Kumar Pandey

4. FACTS OF THE CASE:-

- (i) That the applicant is a citizen of India and at present serving as J.I.O.-II, SIB, Itanagar and presently residing at Barapani, Naharlagun, Itanagar, District – Papumpare, Arunachal Pradesh.
- (ii) That while the applicant was serving as J.I.O.-II (W.T.), SIB, Ahmedabad, the applicant was placed under suspension vide order dated 19-09-95 on contemplation of disciplinary proceedings against him.

A copy of the suspension order dated 19-09-95 is annexed
as ANNEXURE – 1.

- (iii) That while the applicant was under suspension the applicant under Rule – 14 of CCS (CCA) Rules, was chargesheeted on 19-10-95 on the following charges as quoted below –

"That Shri Anil Kumar Pandey, J.I.O.-II/WT while functioning as J.I.O.-II/WT as SIB, Ahmedabad has with a view to further his personal and domestic ends indulged into gross misconduct by causing his brother Amit Pandey of Gorakpur to send a false message dated 05-09-95 purported to be faxed by IB Hqrs. (DD/VS) to the DGP, Home Secretary, Gujarat, Chief Secretary, Gujarat and others in which the said A.K. Pandey has branded his uncle Shri Madan Mohan Pandey as an ISI agent with a view to implicate him falsely. This misconduct on the part of Shri A.K. Pandey has badly tarnished the image of the Intelligence Bureau in the eyes of whom the aforesaid message had been addressed. By this act of gross misconduct, the said Shri A.K. Pandey, JIO-

II/WT has violated Rule-3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules – 1964".

(iv) That the applicant states that after the charges that was framed against the applicant, an Inquiry Officer was appointed on 21-11-95 to inquire into the charges leveled against the applicant and on completion of the inquiry, the Inquiry Report was submitted by the Inquiry Officer on 04-04-96, and a copy of the said Inquiry Report was served on the applicant vide Memorandum dated 12-04-96 and the applicant was asked to submit his written representation against the Inquiry Report.

(v) That, the applicant submitted his written representation to the C.I.O, SIB, Ahmedabad on 26-04-96 against the Inquiry Report submitted by the Inquiry Officer, stating therein that in view of the given facts it is clear that the Inquiry Officer could not prove any charge against him and as he had not committed any gross misconduct, requested to restore him in his service.

(vi) That thereafter the inquiry against the applicant was concluded and the Central Intelligence Officer, Ahmedabad vide Memo. No.6/EST (AHD)/94(9)/DE/1120 dated 13-05-96 had proposed to award penalty of dismissal from service to the applicant, and accordingly the applicant was directed to show cause within 10 (ten) days.

(vii) That against the proposed award of penalty, the applicant submitted his show cause reply before the C.I.O., Ahmedabad on 23-05-96 stating therein that from the facts and circumstances as mentioned in the show cause reply, the charges leveled against the applicant are

Anil Kumar Pandey

Anil Kumar Pandey

totally baseless and false, and that he has never violated the Rule 3(1)(ii) and Rule 3(1)(iii) of the C.C.S.(Conduct) Rules, 1964, and that he has not committed any gross misconduct leading to tarnishing the image of Intelligence Bureau in the eye of Gujarat State Police Authorities, and requested that the penalty of dismissal from service should not be imposed on him.

A copy of the show-cause reply dated 23-05-96 is annexed as ANNEXURE - 2.

(viii) That on receipt of the show cause reply dated 23-05-96 submitted by the applicant, the Central Intelligence Officer and Disciplinary Authority, Ahmedabad vide order under Memo No.6/Est(AHD)/96/DE/1495 dated 15-07-96 was pleased to set aside the proceedings and findings of the inquiry and ordered that a fresh inquiry be initiated against the applicant.

A copy of the order dated 15-07-96 is annexed as ANNEXURE - 3.

(ix) That in pursuance to the order dated 15-07-96 aforesaid, though the applicant objected to the initiation of fresh inquiry, fresh charges were framed against the applicant vide Memo No.6/Est(AHD)/94(9)/DE/75 dated 22-01-97 and a new Inquiry Officer was appointed on 25-03-97 to inquire into the said charges.

(x) That challenging the order dated 15-07-96 and Memo dated 22-01-97 the applicant moved an application before the Central

Administrative Tribunal, Ahmedabad Bench, Ahmedabad which was registered as O.A. No.230/97. In the said application before the C.A.T., Ahmedabad, the applicant took the grounds among others that the explanatory reply dated 26-04-96 submitted by the applicant before the Disciplinary Authority was not considered by the Disciplinary Authority and proposed to award penalty of dismissal from service, and that after considering the show cause reply filed by the applicant when the Disciplinary Authorities had issued the order dated 15-7-96 setting aside the proceeding and findings of the earlier inquiry but at the same time deciding to hold fresh inquiry against the applicant, the said action is ex-facie illegal, unjust and in contravention of Rule of 15, CCS (CCA) Rules, and that as per the provisions of Rule 15 of CCS (CCA) Rules, the Disciplinary Authority is required to state in the order of cancellation of earlier chargesheet reasons for cancellation of the earlier chargesheet, but as the order dated 15-07-96 do not speak/ denotes about cancellation of the earlier chargesheet by the respondents, it gives the impression that the show cause reply dated 23-05-96 is accepted by the Disciplinary Authority and the proceedings against the applicant has been dropped, and that *vide* the Memorandum dated 22-01-97 has been issued by the respondents for the very charge for which the applicant was earlier subjected to inquiry and that in view of the settled law the action of the respondents regarding institution of fresh inquiry against the applicant is ex-facie illegal, unjust and bad in the eye of law, and that as the Disciplinary Authority had disclosed his mind to impose penalty of dismissal from service against the applicant, the action of the Disciplinary Authority to hold/conduct fresh inquiry against the applicant is *prima-facie* malafide, biased, prejudicial and with an ulterior motive to harass the applicant.

Contd..

Amil Kumar Pandey

Amul Kumar Pandey

(xi) That accepting the contentions of the applicant the Hon'ble Central Administrative Tribunal, Ahmedabad Bench, vide Judgment dated 28-08-97 was pleased to quash the impugned order dated 15-07-96 and Memorandum dated 22-01-97 holding that the Disciplinary Authority had issued the impugned orders without application of mind as Rule 15 of the CCS (CCA) Rules 1965 provides for one inquiry and there is no provision under the Rules for completely setting aside the previous inquiry and ordering a de novo inquiry, and directed the Disciplinary Authority to take further action in accordance with the law keeping in view of the relevant rules and also the law laid down by the Courts/Tribunals in this regard.

A copy of the Judgment dated 28-08-97 passed by the C.A.T., Ahmedabad Bench in O.A. No.230/97 is annexed as ANNEXURE – 4.

(xii) That subsequently, the Central Intelligence Office, Subsidiary Intelligence Bureau, Ahmedabad vide order dated 09-06-98 revoked the order of suspension of the applicant with immediate effect.

A copy of the order dated 09-06-98 is annexed as ANNEXURE – 5.

(xiii) That in pursuance of the order dated 09-06-98, the applicant joined in his duties at SIB, Ahmedabad on 10-06-98 by submitting his joining report.

Anil Kumar Nandy

(xiv) That by transfer order dated 29-06-99, the applicant was transferred to Itanagar and accordingly the applicant joined in his duties as J.I.O.-II/WT, SIB, Itanagar on 15-07-99, and thereafter has been continuing to serve in that post at Itanagar till today.

(xv) That after about 3 years have elapsed since the applicant joined at Itanagar, the Assistant Director, Subsidiary Intelligence Bureau, Itanagar vide Memorandum dated 05-03-2002 informed the applicant that the inquiry against the applicant is now to be held by SIB, Itanagar and for that purpose Inquiry Officer and Presenting Officer is being appointed.

A copy of the Memorandum dated 05-03-2002 is annexed as ANNEXURE - 6.

(xvi) That, the applicant states that after issue of Memo dated 05-03-2002, an order was passed by the Assistant Director, Subsidiary Intelligence Bureau, Itanagar on 13-03-2002 whereby in exercise of the powers conferred under Rule -14 (2) of the CCS (CCA) Rules, 1965 one Sri S. Nandy, Section Officer, Itanagar has been appointed as the Inquiry Authority to inquire into the charges framed against the applicant.

A copy of the order dated 13-03-2002 is annexed as ANNEXURE - 7.

(xvii) That in pursuance to the Memorandum dated 03-03-2002, the applicant filed his written objection to the Assistant Director, SIB,

Contd..

Itanagar on 14-03-2002 objecting against the appointment of a new Inquiry Officer and holding fresh inquiry and directing the applicant to re-appear before the inquiry once again, when the Disciplinary Authority has enough powers to consider the evidence itself and come to its own conclusion under Rule 9 of CCS (CCA) Rules. But the said objection was not considered by the authority.

A copy of the written objection dated 14-03-2002 is annexed as ANNEXURE - 8.

(xviii) That being aggrieved by the Memo. Dated 13-03-2002, the applicant again filed an application before the Central Administrative Tribunal, Ahmedabad being O.A. No.194/2002 wherein vide order dated 08-08-2002 the Hon'ble Central Administrative Tribunal, Ahmedabad disposed of the O.A. on the ground that C.A.T., Ahmedabad has no jurisdiction to adjudicate upon the matter since it is under the territorial jurisdiction of the C.A.T., Guwahati Bench.

(xix) That, the applicant states that in the meanwhile the new Inquiry Officer Sri S. Nandy, Section Officer, Itanagar has submitted his inquiry report dated 24-01-2003 stating among others that the hearing held on 02-01-96, 24-01-96, 20-02-96 and 27-02-96 and inquiry report submitted by Sri S.P. Mishra on 04-04-96 stand valid as these were not cancelled by C.A.T, Ahmedabad. The Assistant Director/E, Disciplinary Authority, SIB, Itanagar on the inquiry report of the new I.O., has come to a conclusion that the charged officer i.e., this applicant calls for severe punishment under CCS (CCA) Rules - 1965 as he is guilty of charges leveled against him, and vide order dated 30-04-03 has imposed

Anil Kumar Pandey

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penalties on the applicant under Clause (V) of Rule 11 of CCS (CCA) Rules – 1965 and has ordered that the pay of the applicant be reduced by three stages from Rs.3,625/- to Rs.3,370/- in the time scale of pay of Rs.3200-85-4900/- for a period of three years w.e.f. the date of issue of the order. It has also been further directed that the applicant will not earn increment of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increment of pay.

A copy of the order dated 30-04-2003 is annexed as
ANNEXURE – 9.

(xx) That, being aggrieved by the order dated 30-04-2003, the applicant has submitted a parawise reply before the Joint Director, SIB, Itanagar dated 02-05-03 stating the entire facts of the case and also has highlighted the Judgment of the Hon'ble C.A.T., Ahmedabad passed in O.A. No.230/97 dated 28-08-97 and also contended interalia among others that as the inquiry report dated 04-04-96 was earlier quashed by the Disciplinary Authority, the report dated 24-01-2003 by the new Inquiry Officer cannot base on the hearing held on 02-01-96, 24-01-96, 20-02-96 and 27-02-96. By the said parawise reply/representation dated 02-05-03 the applicant has requested the Joint Director, SIB, Itanagar to cancel/review the order dated 30-04-03, and the said representation/parawise reply is still pending disposal, and nothing has been done by the respondent authorities on the said representation.

A copy of the parawise reply/representation dated 02-05-03 is annexed as ANNEXURE – 10.

5. **RELEIF SOUGHT FOR:-**

In the facts and circumstances as mentioned above the applicant prays for the following relief :-

- I) The order dated 30-04-2003 issued by the Assistant Director/E, Disciplinary Authority, SIB, Itanagar imposing penalties on the applicant may be set aside and quashed.
- II) The conducting of fresh inquiry by a new Inquiry Officer at Itanagar may be declared as illegal.

6. **INTERIM RELIEF SOUGHT FOR:-**

Pending hearing and final disposal of the application the impugned order No.25/E/99 (B)-2902 dated 30-04-2003 may be stayed.

7. The above reliefs are sought for on the following among other:-

G R O U N D S

- A) For that the impugned order dated 30-04-2003 has been passed without application of mind and without following the due process of law and procedure laid down by the Rules. Therefore, the impugned order dated 30-04-2003 is illegal, discriminatory and bias and liable to be set aside and quashed.
- B) For that the inquiry report submitted by the Inquiry Officer on 04-04-96 on the hearing held on 02-01-96, 24-01-96, 20-02-96 and 27-

Anil Kumar Pandey

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02-96 and the proposed award of punishment to be imposed on applicant vide Memo dated 13-05-96 based on the aforesaid hearing and Inquiry Report having been set aside by the C.I.O. and Disciplinary Authority by order dated 15-07-96, the Disciplinary Authorities now cannot rely again on a Inquiry Report dated 24-01-2003 submitted by a new Inquiry Officer based on the hearing held on 02-01-96, 24-01-96, 20-02-96 and 27-02-96 and inquiry report submitted on 04-04-96. Therefore, the impugned order dated 30-04-2003 imposing penalty on the applicant is illegal, bad in law, perverse and liable to be set aside and quashed.

C) For that the proposition of law being that as there is no provisions in Rule 14 of the CCS (CCA) Rules, 1965 for completely setting aside previous inquiries on the ground that the report of the Inquiry Officer or Officers does not appeal to the Disciplinary Authority and the Disciplinary Authority has enough powers to reconsider the evidences itself and came to its own conclusion. But in the instant case of the applicant the Disciplinary Authority vide order dated 15-07-96 having completely set aside the proposed award of punishment to be imposed on the applicant vide order dated 13-05-96 and ordering fresh inquiry to be initiated against the applicant is itself illegal and in violation of the provisions of law and the whole procedure of inquiry and imposing penalty has been vitiated. Therefore, the impugned order dated 30-04-2003 passed by the Disciplinary Authority on the basis of inquiry report submitted by a new Inquiry Officer based on the hearing and inquiry report on which the ^{previous} order of proposed penalty dated 13-05-96 was passed is illegal, bad in law and liable to be set aside and quashed.

Anil Kumar Pandey

D) For that the proposed award of punishment to be imposed on the applicant vide order dated 13-05-96 having been set aside by the Disciplinary Authority vide order dated 15-07-96 on the ground that the Disciplinary Authority was convinced that the principle of Natural Justice has been violated in so far as the applicant is concerned and the interest of natural justice would best be served only if a fresh inquiry is instituted against the applicant goes to show that the inquiry was bad and as such the order dated 30-04-2003 passed by the Disciplinary Authority on the inquiry report of the new Inquiry Officer which has been based on the hearing held on 02-01-96, 24-01-96, 20-02-96 and 27-02-96 and inquiry report dated 04-04-96 and on the basis of which the proposed award of punishment dated 13-05-96 was passed is also bad in law. Therefore, the impugned order dated 30-04-2003 is liable to be set aside and quashed.

8. **REMEDIES EXHAUSTED-**

The applicant states that the applicant has availed all the legal remedies.

9. **MATTER NOT PENDING-**

The applicant states that the applicant has not filed any other applications, appeal or review in any other Court/Tribunal.

10. DETAILS OF I.P.O.

I.P.O. No. : 86 490763

Issuing Post Office : Head P.O, Panbazar, Guwahati

11. DETAILS OF ANNEXURES.

As per index attached herewith.

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

I, Sri Anil Kumar Pandey, son of Sri A.P. Pandey, aged about 38 years, occupation - government service, presently residing at Naharlagun, Arunachal Pradesh do hereby verify and say that the statements made in application are correct and true to my knowledge, belief and information.

Date: -

Anil Kumar Pandey

Place: -

APPLICANT

No. 6/Est (Ahd) /94(9)/DE/ 1441
Subsidiary Intelligence Bureau
Ahmedabad - 380 004.

AAS

Dated : 19/9/95

ORDER

WHEREAS a disciplinary proceeding against Shri A.K. Pandey, JIO.II(WT) is contemplated.

2. Now, therefore, the undersigned, in exercise of the powers conferred by sub-rule(1) of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, hereby places the said Shri A.K. Pandey, JIO.II(WT) under suspension with immediate effect.

3. It is further ordered that during the period that this order shall remain in force, the Headquarters of Shri A.K. Pandey, JIO.II(WT) should be Ahmedabad and the said Shri A.K. Pandey, JIO.II(WT) shall not leave the Headquarters without obtaining the previous permission of the undersigned.

Carne 19/9/95
(F.J. Araria)
Central Intelligence Officer

Copy to:-

✓ Shri A.K. Pandey, JIO.II(WT), SIB, Ahmedabad (through the ATU, SIB, Ahmedabad). Orders regarding subsistence allowance admissible to him during the period of his suspension will be issued separately.

certified to be
true copy
Barua
Advocate

T.C
60
2/11/95

Cables Ltd. (GTCL) located at Chhodri Farm, Sapera,
Ahmedabad. He has joined GTCL in the last week or

From:- A.K. PANDEY
JIO-II (WT)
Under Suspension
S.I.B. Ahmedabad
Resi. Address:-
Room No. 1681,
Block No. 71
Gujarat Housing Board
Meghaninagar
Ahmedabad 380016
(Gujarat)

Date : 23-05-1996

To,

The Honourable Mr. F.J. Aranha,
Central Intelligence Officer,
Subsidiary Intelligence Bureau,
31, Shahibaug,
Ahmedabad.

AKA
TP

Subject:- Humble reply of Memorandum No.
6/Est(Ahd)/94(9)/DE/1120
issued on dated 13-05-1996.

The Honourable Sir,

With reference of your memorandum No.6/Est(Ahd)/
94(9)/DE/1120 dated 13-05-1996 I file my reply as
under :-

- (1) That the Sri S.P.Mishra, Inquiry Officer, has not held the Inquiry according to the Central Civil Services (Conduct) Rules.
- (2) Looking to the report of Sri S.P.Mishra I.O. there is no *prima facie* case against me to impose penalty of dismissal from Service.
- (3) That the Mr. S.P.Mishra is solely relied upon the statement of my uncle Sri M.M.Pandey but he has not considered the statement of Mr. M.M.Pandey which is in my favour from the very beginning. My reply or my submission is not properly considered by the Inquiry officer as I stated that Sri M.M.Pandey is my youngest uncle presently employee in Gujarat Telephone Cables Ltd. (GTCL) located at Chharodi Farm, Sanand, Ahmedabad. He has joined GTCL in the last week of

*Certified to
be true copy
By
A. K. Pandey
Advocate*

April 1995. Being my uncle Mr. M.M.Pandey alongwith his wife stayed with my family as I have occupied one room accomodation so it was very difficult to board and lodge my uncle for a long time, I requested my uncle to shift to some other accomodation. Since it was not possible for me to manage two families in one room accomodation, this was not liked by Sri M.M.Pandey. As a matter of fact we have good relation to each other but some dispute Mr. M.M.Pandey with other family members so somebody has to charge and harass me to file false Fax-message. I am a Science Graduate student and it is my duty to respect my family members. Mr. M.M.Pandey is my respectable uncle so I have given an accomodation with me. Mr. M.M.Pandey's statement is not recorded by Inquiry Officer, if he has recorded the statement, truth must come out.

(4) That the one Tarun Barot an Inspector of Police (A.T.S.) Ahmedabad who has personally visited in our office as the inquiry held by Mr. Tarun Barot is not supported by any of the evidence as alleged allegation against me. The allegation against me is a cognizable offence and in cognizable offence Tarun Barot is duty bound to file a criminal complaint against me immediately. In the inquiry nothing has been found against me. Mr. Tarun Barot P.I. is not examined by the Inquiry Officer, if he has been examined by the I.O. then I can ask certain questions and I can also produce the report of Tarun Barot and I am able to prove my innocence by cross-examination of Mr. Tarun Barot.

(5) Sri Tarun Barot P.I. (A.T.S.) first met to Sri J.P.Purohit D.C.I.O. due to their past and personal association. Then after without any reason Mr. J.P. Purohit started the inquiry against me in the back drop my so-called alleged dispute with my uncle Sri M.M.Pandey.

(6) Sir, I frankly admit that like the officers - P.I., D.C.I.O., I.O. and others I too was in doubt that whether this could have been the work of my younger brother (As I was sure of myself that I had not done it or caused to have done by my brother or associates) and I was forced to believe out of imagination in the back ground of family dispute.

However upon inquiry with my family members, I was fully convinced that none of them, including my younger brother Amit Kumar Pandey was involved in it. And I have also produced a letter from my younger brother Mr. Amit Pandey before the Inquiry Officer.

(7) Upon the insistence of I.O. I got the letter of my brother Mr. Amit Pandey that he was not at all aware of the said Fax message. But the I.O. Sri S.P.Mishra has not appreciated the letter as an evidence in my favour.

(8) If the Inquiry Officer thinks that the evidence of my brother was so vital he could have summoned my brother here and would have gone there. I have prayed that my brother is busy for the preparation of his examination so I.O. grant the time after the examination over of my brother. So I can produce my brother

as my witness but I.O. has not granted time and on the contrary he has held that I have not produced any witness /evidence ... to absolve himself of the charges framed against me. Sir, according to well established dictum the onus or burden lies upon prosecution to prove the charges but here the I.O. is reversing the legal norms.

It is proved by me that I had not faxed the message nor suggested to my brother or anybody nor gave a draft of the said Fax message to be addressed to the D.G.P. Gujarat and others implicating my uncle Sri M.M.Pandey as an ISI agent, nor caused anybody to do so. Sir I stated that the I.O. is not appreciating the letter or my brother as an evidence in my support.

If I.O. has granted the time to produce my brother Amit Pandey then all the matter would be clear, not only this, I am prepare and ready to produce my brother today before you or any officer which is directed by you.

(9) Sir, Sri S.P.Mishra I.O. has properly considered that "I had taken a stand that Fax message might have been sent by a common enemy". Sir, I never stated like this. I had only requested that if the contents of the Fax message were in correct, it could have been the work of some enemy of Sri M.M.Pandey.

(10) That the Sri S.P.Mishra I.O. held that my brother Mr. Amit Pandey is responsible for the Fax drafted and gave the said message as Annexure IV in the memorandum No.6/Est(Ahd)/94(9)/DE/1639 dated 19-10-95 so for this aspect is concerned I have already

cleared the matter before the I.O. and I have submitted a letter written by my brother Mr. Amit Pandey on the contrary the I.O. consider that "I played smartly".

(11). That the on the basis of above facts you may kindly see Sir, that the I.O. is merely trying to turn "doubt" in the truth and proving me guilty but fact is this that the I.O. having failed to proving charges framed against me. I.O. has also cast doubt upon my ability in cross-examining the prosecution witness Sri J.P.Purohit, Sir I have tried on my level for the cross-examination. I am simply a J.I.O-II (WT) in your office, I am not law officer so kindly consider on that aspect regarding the cross-examination. It is very clear on the same line I have cross-examined to Sri J.P.Purohit but the I.O. has not properly appreciated the version developed by me, if you are persue all the papers for my inquiry it is crystal clear that the charges framed against me is not proved on the contrary by hook or crook.

The I.O. has considered that I was involved in the Fax-matter, this is of one of the circumstances but as per the rules of inquiry is that the circumstantial chain must be completed without shadow of the doubt. So fas as my case is concern it is not proved by any of the evidence that the Fax is done by me or I have informed the DGP Gujarat and six other branches which is alleged in the said Fax matter. Therefore, my humble submission is that the order of the dismissal may be set-a-side.

(12). That the I.O. has doubt the criminare word used

: 6 : 21

in said Fax-matter is only used by me but I have replied that this word is not only known by me it is used by many people of our office and known by maximum persons of various branches of Police and others. So very common word, ultimately I.O. was agreed with me that this criminare word is very common word therefore he has not discussed in his inquiry report regarding the word criminare. So it is crystal clear that the charges levelled against me are false and baseless hence it is to be required set-a-side.

(13) That the Sir I joined my services on 14th June 1993 in this department my work was fully satisfied to all my officers. I have also received commendation certificate in the month of January 1993, I got three times continuously cash rewards in the month of February, March and April 1993 also. I got first rank in my batch for the successful completion of W.T. Training for our department (I.B.). From the very beginning my cadre is Science Graduate (English medium) my other qualification is also notable that I have the basic knowledge of Computer, various times I held PC to PC communication in our branch, I have the knowledge of various wireless sets operation, teleprinter working, xerox operation and typing also.

(14) In the period of my regular duty Sir, you can see the maximum T.P. works are done by me. One time C.C. three times cash reward and full satisfaction of my senior officers proves my honesty and devotion to duty. In my little service back-ground Sir, you can see my A.C.R., at any time I never impersonating a Senior Intelligence Bureau officer not tarnishing the

image of the Intelligence Bureau. The charge levelled against me are totally baseless and false therefore I never violated the Rule 3(1)(ii) and Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964. I have not committed any gross misconduct leading the tarnishing the image of Intelligence Bureau in the eyes of Gujarat State Police Authorities.

(15) I am the only earning member of my family, as my father is retired, mother is house hold lady, my wife and my two male children as well as my above family members are totally dependent on my service.

(16) That the taking the above and other grounds into consideration at the time of hearing and my humble request is that the penalty as mentioned should not be imposed upon me and to pass such and further orders as may be deemed just and proper in the circumstances of the case as in the interest of justice.

And for this act of kindness and justice I shall duty bound for ever pray.

Thanking you Sir.

A.I.O. forwarded original
C.I.O. 23/5/96

Yours faithfully,

A. Pandey 23/05/96
(A. K. PANDEY)
J. I. O. - II (WT)
Under Suspension
S. I. B. Ahmedabad.

Date: 23-05-1996.

T.C
CP
AK

No. 6/Est (Ahd)/96 (9) /DE/
Subsidiary Intelligence Bureau
Ahmedabad - 380 004.

495

A/A

Dated :

15/7/86

P

O R D E R

WHEREAS an Inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, was held against Shri A.K. Pandey, JIO-II (WT), Subsidiary Intelligence Bureau, Ahmedabad;

AND WHEREAS the said officer was asked to show cause as to why the penalty of dismissal from service should not be awarded to him on the basis of the findings of the inquiring authority;

AND WHEREAS the said Shri A.K. Pandey has submitted his reply to the Show Cause notice;

AND WHEREAS, after carefully considering the points raised by Shri A.K. Pandey, the undersigned is convinced that the interest of natural justice would best be served only if a fresh inquiry is instituted against him;

NOW, THEREFORE, the undersigned hereby set aside the proceedings and findings of the said inquiry and order that a fresh inquiry be initiated against Shri A.K. Pandey, JIO-II (WT).

Aranha 11/7/86
(F.J. ARANHA)
CENTRAL INTELLIGENCE OFFICER

AND

DISCIPLINARY AUTHORITY

To

✓ Shri A.K. Pandey, JIO-II (WT),
(under suspension),
Through: ATO, SIB, Ahmedabad.

T/

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certified to be
true copy
R. Gang
Advocate

10/13

24 - CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

AJ

O.A.NO. 230/97
T.A.NO.

DATE OF DECISION 28.08.97

Shri Anilkumar Pandey

Petitioner

Mr. M.S.Trivedi

Advocate for the Petitioner [s]

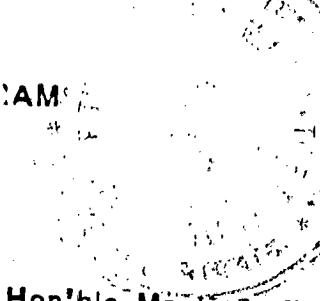
Versus

Union of India & Anr .

Respondent

Mr.Akil Kureshi

Advocate for the Respondent [s]



Hon'ble Mr. V.Radhakrishnan

• Member (A)

Hon'ble Mr. T.N.Bhat

• Member (J)

6a
Certified to be true
Bansal
Advocate

Shri Anilkumar Pandey,
J.I.O. (II), W.T. (Under respondent)
S.I.B., Ahmedabad.

(Advocate: Mr. M.S. Trivedi)

: Applicant

Versus

1. Union of India, through
Central Intelligence Officer,
Subsidiary Intelligence Bureau,
31, Shahibaug,
Ahmedabad.

: Respondents

(Advocate: Mr. Akil Kureshi)

JUDGMENT
O.A. 230/97

Date: 28.08.97

Per: Hon'ble Mr. V. Radhakrishnan : Member (A)

The applicant in this O.A. has approached this Tribunal with the following reliefs:-

- A) That the Hon'ble Tribunal be pleased to admit this application.
- B) That the Hon'ble Tribunal further be pleased to quash and set aside order dated 15.7.1996 issued by the respondents regarding instituting fresh inquiry against the applicant and further be pleased to quash and set aside memo dated 22.1.1997 issued by the respondents.
- C) That the Hon'ble Tribunal further be pleased to hold/declare that action of the respondents regarding not reviewing/revoking suspension of the applicant is illegal, unjust and unconstitutional and further be pleased to direct the respondents to revoke the suspension of the applicant and reinstate the applicant in service immediately.
- D) Any other and further relief that the Hon'ble Tribunal may deem fit and proper may be given to the applicant."

2. The short question to be decided in this case is as to whether the disciplinary authority can order a fresh inquiry against the applicant for the same charges.

3. In the reply, the respondents have stated that the disciplinary authority has decided to hold a fresh inquiry after going through the reply given by the applicant in his representation against the inquiry officer's report alleging that some witnesses were not examined by the Inquiry Officer. In order to give him fresh opportunity, the disciplinary authority issued a fresh charge memo on the same charge and after receiving the reply from the applicant, they appointed a fresh inquiry officer.

4. The question of holding a fresh inquiry and cancelling the earlier inquiry has been considered by the various Benches of the Tribunal and also the Principal Bench. In the case of K. Sharannappa vs. Union of India & Ors. in O.A. 329/96 dated 29.3.1996 decided by the Bangalore Bench of the C.A.T. it has been held that as per Rule 15(1) of CCS(CCA) Rules, 1965 the correct course for the disciplinary authority would be to record of his own finding if he disagreed with the Inquiry Officer or the disciplinary authority should have

remitted the case for further hearing including examination of any witnesses left out in the inquiry. In the case of Surjit Kumar Dubey vs. Union of India & Ors. in C.A. 247/PB/90 dated 7.2.1997 decided by Chandigarh Bench a similar view has been expressed that there is no provision under Rule 15 of the CCS (C.A.) Rules for completely setting aside the previous inquiry and then ordering a *denovo* inquiry. It has also observed that the proper course would be the disciplinary authority to remit the case to the inquiry officer for further proceedings. The Madras Bench of C.A.T. in S. Nagarajan vs. General Manager, Southern Railway Madras and Ors. (1988) 7 ATC 481 has held that where disciplinary authority requires further examination of certain aspects, it can only remit the case back to the Inquiry Officer, it cannot appoint another Inquiry Officer and hold fresh inquiry. The Hon'ble Supreme Court in the case of Kok-Neb vs. The Collector of Central Excise, Shillong IR 1971 SC 1447 observed that "It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the disciplinary authority may ask the Inquiry Officer to record further evidence. But there is no provision in

in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9". The recent case decided by this Bench on 7.8.97 in O.A.106/96 with M/208/97 has held denovo inquiry is not permissible.

Keeping in view of the above, we hold that the disciplinary authority while issuing the impugned order has not applied its mind and the order cannot be sustained. Accordingly, we quash the impugned order dated 15.7.1996 and 22.1.1997 (Annexures A-7 and A-8) issued by the respondents and direct the disciplinary authority to take further action in accordance with the law keeping in view of the relevant rules and also the law laid down by the Courts/Tribunals in this regard.

With the above directions, C.A. is allowed

and disposed of at the admission stage itself.

No order as to costs.

SD/-
(T.N.Bilat)
Member (J)

SD/-
(V.Radhakrishnan)
Member (A)

sd
aap

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ANNEXURE - 5

No. 6/EST(AHD)/94(9) 9/12
SUBSIDIARY INTELLIGENCE BUREAU
(MHA) Government of India
Ahmedabad - 380 004

Dated, the 9 June 1998

O_R_D_E_R

Whereas an order placing Shri A.K. Pandey, JTO-II(WT) under suspension was made by me on 19.9.1995.

Now, therefore, the undersigned, in exercise of the powers conferred by clause (c) of sub-rule (5) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby revokes the said order of suspension with immediate effect.

This order is being issued without prejudice to the disciplinary proceedings pending against the said Shri A.K. Pandey, JTO-II(WT).


(F.J. Aranha)
Central Intelligence Officer

Copy to Shri A.K. Pandey, JTO-II(WT), Block No. 24, Room No. 566, Meghannagar, Ahmedabad - 380 016. Orders as to how the period of his suspension is to be regularised would be issued on conclusion of the disciplinary proceedings pending against him.

Attested
Ravee
Advocate

27
13/2/02

IV

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Annexure - 6

No. 25/E/99(3) 1672
Subsidiary Intelligence Bureau,
(MHA), Govt. of India,

Itanagar, the

6 May 2002

MEMORANDUM

Please refer to the fresh charge Memo No. 6/Est(Ahd)/94(9)/DE/75 dated 22.1.97 issued by AD, Ahmedabad for conducting a de-novo enquiry which was challenged by you in OA No. 230/97 in CAT, Ahmedabad Bench. Disposing of the OA, the CAT had quashed the said order of the Disciplinary Authority and directed the respondent to continue with the original enquiry in case there have been lapses in conducting the same keeping in view the relevant rules.

And since in pursuance of the orders of the CAT on OA 230/97 Shri V. Sukumaran, S.O was appointed by the Disciplinary Authority to continue with the original enquiry from the stage of submission of the written statement of the defence by the delinquent Govt servant vide the order dated 14.10.98. However, the new Inquiry Officer could not hold any hearing of the case partly due to his pre-occupation with urgent Govt work and partly due to his ill health.

Hence, as desired by IB Hqrs that the enquiry is now to be held by SIB, Itanagar since Shri A.K. Pandey (DGS) has since been transferred to SIB, Itanagar from the jurisdiction of the previous Disciplinary Authority w.e.f. 29.6.99.

It has, therefore, been decided that action should be taken to complete the original disciplinary proceeding initiated against Shri A.K. Pandey, JIO-II/WT vide Ahmedabad Memo No. 6/Est(Ahd)/94(9)/DE/1639 dated 19.10.95. Inquiry Officer and Presenting Officer is being appointed for the purpose.

This is for his information.


D.P. Bauri
Assistant Director

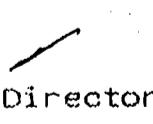
To

Shri A.K. Pandey, JIO-II/WT
SIB, Itanagar.

Copy to :

The Assistant Director/E, IB Hqrs, New Delhi with reference to his Memo No. 1/Vig/95(83)661 dated 27.2.2002.

W
7/3


Assistant Director

Received on 12/3/02
at 1200 noon

12/3

Attested
N. Bauri
Advocate

(29) 143/002
(13)

No. 25/E/99(3)-
Subsidiary Intelligence Bureau
(MHA), Govt. Of India
Itanagar.

- 31 -

Annexure - 5

Dated, the 13 MAR 2002

2003

O-R-D-F-R

WHEREAS, an inquiry under Rule-14 of the Central Civil Services (Classification, Control Appeal) Rules, 1965, is being held against Shri A.K.Pandey JIO-II/WT.

2. AND, WHEREAS, the undersigned considers that an Inquiry Authority should be appointed to inquire into the charges framed against Shri A.K.Pandey, JIO-II/WT.

3. NOW, THEREFORE, the undersigned, in exercise of the powers conferred by sub-rule(2) of the said rule, hereby appoints Shri S.Nandy, Section Officer Itanagar, as the Inquiring Authority to inquire into the charges framed against Shri A.K.Pandey, JIO-II/WT.

(R.D.Bauri)
Assistant Director

Copy to :- 1. Shri S.Nandy, Section Officer (G) who directed the SIB, Itanagar.
2. Shri A.K.Pandey, JIO-II/WT who was in charge of the SIB, Itanagar.

Assistant Director

Attested
Narayana
Advocate

Continued....2

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ANNEXURE - 8

To,

Shri D.D. Bauri,
Assistant Director,
Subsidiary Intelligence Bureau,
(MHA), Govt. of India,
Itanagar.

Dated:- 14-03-2002

(Through Proper Channel)

Sub:- In the context of O.A. No.230 dated 28-08-1997 C.A.T., Ahmedabad Bench, also notification regarding the process initiated at SIB, Itanagar.

Ref:- SIB, Itanagar Memorandum No.25/E/99(3) 1672 dated 5th March'2002.

Sir,

As I am in receipt of above mentioned Memorandum I would like to further state that the clear verdict of the Judgment of the Hon'ble C.A.T. (O.A./230) may please be deeply studied and must be complied accordingly honouring the good judgment of the C.A.T.

2. Further specifically added that the complete process of the case under the guidance of the learned Advocate for justice has been completed achieving a desired judgment which is well enough to conclude the proceeding at the level of SIB Hqrs., Itanagar itself in the line of decision of the C.A.T. without having any concern with the plaintiff of the case.

*Attested
D. D. Bauri
Advocate*

Contd..

3. As far as, I am concerned, I am not supposed to offer any statement or declaration in the absence of the legal advice of the Advocate as the case has already been decided by the C.A.T. The advice of public pleader of my case when contacted by me is as follows-

Quote "without the consent or advice of the Advocate no process is to be undertaken in future because it is a legal matter in which already the Hon'ble C.A.T. had given judgment" unquote.

4. However as revealed, some of the silent points, which are purely of serious nature in regard to legality and in the light of judgment of the C.A.T are validated as under -

a) In spite of the clear verdict of the judgment of the C.A.T. approximately three years elapsed, no considerate and concrete decision has been taken by the department causing a major financial loss to me and badly affected my further service career.

b) A Government staff already faced the Inquiry before the Inquiry Officer at Ahmedabad and submitted statements to the Inquiry Officer and Inquiry Officer accepted in his report that there is no any direct or independent substantial evidence of forgery on the part of applicant in the case which leads or establish the charges leveled against me was false. So reappearing before Inquiries once again not permissible as per law.

c) The Madras Bench of C.A.T. (1998 7 ATC 481 has held that where Disciplinary Authority requires further examination of certain aspects, it can only remit the case back to the I.O., it cannot appoint another I.O. and hold fresh inquiry. The Disciplinary Authority has enough powers to consider the evidence itself and come to its own conclusion under Rules (CCS).

d) The complete charges and findings of the inquiries were challenged in C.A.T., Ahmedabad in turn the Tribunal already quashed the proceedings and order of fresh inquiry and now on what ground re-conducting the same proceedings are not understood.

e) All of a sudden, it has been intimated that an Inquiry is being conducted at SIB, Itanagar with naming he I.O. and the Presenting Officer in my case without validating reasons and legal proceeding conditions and merits of the case, as per CCS Rules existing even in I.B. and per legal rules of the Tribunal or as per direction of the Hon'ble Court's judgment felt to be decided hurriedly.

f) My personal representation in the light of the judgment of the C.A.T. had already been submitted to the Assistant Director/E SIB, Itanagar for further communication to JD/E, I.B., Hqrs., New Delhi on 30-06-2000 to which no reply or action for the solution of the case is yet received proving to be a clear cut case of "Justice delayed means Justice denied".

g) May I know that who would be held responsible for such unwarranted delay in disposal of my case which let my life to a very deplorable state - proved to be a fit case required to be challenged in the Hon'ble Court?

I shall be highly thankful to you for an early reply bestowing justice to me.

Thanking you,

Yours faithfully,
Sd/- Illegible.
(A.K. PANDEY)
JIO-II/WT
SIB, ITANAGAR.

36 Annexure -9
No.25/E/99(3)- 29/02
Subsidiary Intelligence Bureau,
Ministry of Home Affairs
Govt. of India,
Itanagar.

Dated, 30 APR 2003

ORDER

Whereas Shri Anil Kumar Pandey, JIO-II/WT while posted at SIB, Ahmedabad was issued memo No.6/Estt(AHD)/94(9)/DE/1639 dated 19/10/95 by the Competent Authority under Rule-14 of CCS (CCA) Rules 1965 on the following charges :-

" That Shri Anil Kumar Pandey, JIO-II/WT while functioning as JIO-II/WT at SIB, Ahmedabad has with a view to further his personal and domestic ends indulged into gross misconduct by causing his brother Amit Pandey of Gorakhpur to send a false message dated 5/9/95 purported to be faxed by IB Hqrs. (DD/VS) to the DGP, Home Secretary, Gujarat, Chief Secretary. Gujarat and others in which the said A.K. Pandey has branded his uncle Shri Madan Mohan Pandey as an ISI agent with a view to implicate him falsely. This misconduct on the part of Shri A.K.Pandey has badly tarnished the image of the Intelligence Bureau in the eyes of Gujarat State Authorities to whom the aforesaid message had been addressed. By this act of gross misconduct, the said Shri A.K.Pandey, JIO-II/WT has violated Rule-3(1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules-1964 ".

2. Whereas following the procedure laid down in CCS (CCA) Rules inquiry against Shri A.K.Pandey was concluded and CIO, SIB, Ahmedabad proposed to award the punishment of dismissal from service vide memo No.6/Estt (AHD)/96(9)/DE/1120 dated 13/5/96. Against this proposal Shri Pandey represented on 23-5-96. Thereafter, CIO vide his order No.6/Estt(AHD)/96(9)/DE/1495 dated 15/7/96 set aside the proceeding and findings and ordered a fresh inquiry. Accordingly fresh chargesheet was drawn vide memo No.6/Estt (AHD)/94/DE/75 dated 22/1/97.

3. Whereas on being approached by Shri Pandey, CAT, Ahmedabad found it fit to strike down order dated 15/7/96 and memo dated 22/1/97 vide OA No.230/97 and directed the disciplinary authority to take further action in accordance with law keeping in view the relevant rules and rules laid down by Court/Tribunals.

4. Whereas after transfer of Shri A.K.Pandey, JIO-II/WT from SIB, Ahmedabad to SIB, Itanagar where he reported for duty on 15/7/99 a new inquiry officer (Shri S. Nandy, SO) was appointed (as per rule) vide memo No.25/E/99(3)-1857 dated 13/3/2002. Again Shri Pandey approached CAT, Ahmedabad vide No.194/2002 which issued direction " Not to proceed with the inquiry till the next date against the applicant ". This stay order was quashed by the CAT, Ahmedabad dated 8-8-2002 saying that the Tribunal (CAT, Ahmedabad) has no jurisdiction to adjudicate upon the matter since it is under the territorial

Contd.....2

Attested
Narang
Advocate

jurisdiction of the Guwahati Bench, (CAT). The new Inquiry Officer, Shri S. Nandy, SO in his inquiry report dated 24/1/2003 stated that the hearing held on 2/1/96, 24/1/96, 20/2/96 and 27/2/96 and enquiry report submitted by Shri S.P. Mishra on 4/4/96 stand valid as these were not cancelled by CAT, Ahmedabad.

5. Whereas on going through the inquiry report dated 4/4/96 Disciplinary Authority SIB, Ahmedabad proposed to dismiss Shri Pandey from service and Shri Pandey was asked to submit representation against the proposal of dismissal. Accordingly Shri Pandey submitted his representation dated 23/5/96 mentioning the reasons why he should not be dismissed from service..

6. Whereas I have carefully gone through the chargesheet, defence statement dated 3/11/95 hearing on different dates, inquiry report submitted on 4/4/96 and 24/1/2003 and representation of Shri A.K. Pandey dated 23/5/96 against the proposal of dismissal from service and arrived at following conclusion :-

(i) Whereas the inquiry proceeding held on 2/1/96, 24/1/96, 20/2/96 and 27/2/96 to inquire into the charges levelled against Shri A.K. Pandey in which Shri S.P. Mishra, Inquiry Officer, Shri H.S. Prasad, Presenting Officer and Shri Pandey were present.

During the enquiry, Shri J. P. Purohit, DCIO/CIFU, SIB, Ahmedabad, who was presented as prosecution witness affirmed that Shri A.K. Pandey had admitted to have drafted and gave the said message to his brother Amit Pandey. He first denied to have given any drafted message to his brother Amit Kumar Pandey to be sent to the DGP, Gujarat and others to implicate his uncle Shri Madan Mohan Pandey as an ISI agent and that his brother Amit Kr. Pandey would have sent the said message on his own accord. Later on he denied this also. Shri Pandey had also taken stand that that message might have been sent by a common enemy of both (Shri A.K. Pandey and Sh. Madan Mohan Pandey) to make them fight. To substantiate this argument he did not present any witness/evidence nor could name any such person.

First he admitted the charges in the preliminary enquiry done by Shri J. P. Purohit, DCIO-CIFU, SIB, Ahmedabad and later on to avoid departmental action, he tried to confuse the Inquiring Authority by contradicting his earlier statement. He did not produce any witness/evidence, even his younger brother Amit Kr. Pandey, whose statement would have been vital in this connection to absolve himself of the charges levelled against him.

(ii) While comparing the different statement, representation, and hearing it has been found that in his representation dated 26/4/96 he stated that he nor his brother had sent the said fax message. Whereas in his defence statement dated 3/11/95 he stated that his brother, Shri Amit Kr. Pandey could have sent the said fax message under some misconceived motions or heat of the moment and he was sorry for that. So, his representation is incorrect.

(iii) Whereas as per the report of Shri J.P.Purohit, DCIO-FU,SIB, Ahmedabad that Shri Madan Mohan Pandey alongwith his wife stayed in the house of Shri A.K.Pandey. Since it was a one room accommodation. Anil Kr. Pandey was finding it difficult to board and lodge his uncle Shri M.M.Pandey for a long period. He asked his uncle M.M.Pandey to shift to some other place forthat reason. This was not liked by M.M.Pandey and the relation with family members strained. Shri M.M.Pandey left the home but with a acrimonious note this incident entailed. Amit Kr. Pandey, who was staying at Gorakhpur, U.P. wanted to avenge the insult perpetrated by his uncle M.M.Pandey. Shri A.K.Pandey who was emotionally disturbed suggested his brother and gave a draft message, purported to have been originated by the DD/VS, IB, New Delhi and addressed to the DGP, Gujrat and others implicating his uncle M.M.Pandey as an ISI agent. Shri A.K.Pandey in his representation dated 26/4/96 denied this statement. But in the hearing held on 24/1/96 Shri Pandey was asked whether he would like to say about the above mentioned fact and he was also asked to cross-examine Shri J.P.Purohit. Shri Pandey remained mum. Later hearing held on 20/2/96 Shri Pandey said that the message might have been done by some enemical person. Then he was asked to tell the name of such person to whom the D.A. might summon to find out the truth. But he could not tell the name of such person. In the last hearing held on 27/2/96 he also said that he had no proof to prove him innocent.

(iv) Whereas he stated in his representation that his financial condition, his brother's studies etc. could not permit him to produce his brother as witness of the fact to prove his innocence. And also stated that if the Inquiry Officer thought that the statement of his brother was so vital he (The Inquiry Officer) should summon his brother. During hearing it was stresed by the Inquiry officer to present his brother to prove his innocence which he could not do. But it was his responsibility to prove him innocent.

7. Whereas the circumstantial evidence clearly shows that the message was either sent by the delinquent himself or was caused to be sent by his close associate, who might be his younger brother on his suggestion to the above referred authorities to falsely implicate his uncle in the name of Criminare, New Delhi, DD/VIP Security. The wording of the message is such and originating authority and addresses have been named in such a manner that this can be drafted by a person belonging to this organisation, who knows about the style of functioning and in this circumstances, it appears only the delinquent would have such motive to misutilise his official knowledge (since he has the experience of sending messages by nature of his working in WT Br.). Also the message was faxed in such a manner that no tell tail mark was left on the body of the message indicating the place from where it was sent and the instrument by which it was sent. This can be manipulated by a person who knows the functioning/handling of the fax instrument properly.

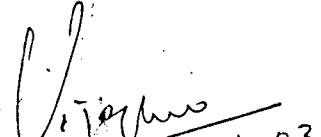
8. Whereas there is no direct evidence of his sending the fax message. But the circumstances clearly indicate that the said message was sent by the delinquent (i.e. Shri A.K. Pandey)

or was caused to be sent by his associate (which is equally gross misconduct telling upon his integrity) which tantamounts to indulging in gross misconduct and tarnishing the image of the department in the eyes of the State Govt. and Police officials and also indulging in severe breach of security and trust reposed in him.

9. Whereas, after the careful examination of the relevant records related to this case the undersigned has come to the conclusion that the action of the charged officer calls for severe punishment under CCS (CCA) Rules -1965 as Shri Anil Kr. Pandey, JIO-II/WT is guilty of the charges levelled against him.

The undersigned, therefore, imposes penalties on Shri A.K.Pandey, JIO-II/WT under clause (V) of Rule 11 of CCS (CCA) Rules-1965 and order that THE PAY OF SHRI A.K.PANDEY, JIO-II/WT BE REDUCED BY THREE STAGES FROM Rs.3625/- to Rs.3370/- IN TIME SCALE OF PAY OF Rs. 3200-85-4900/- FOR A PERIOD OF THREE YEARS WITH EFFECT FROM THE DATE OF ISSUE OF THE ORDER.

It is further directed that HE WILL NOT EARN INCREMENT OF PAY DURING THE PERIOD OF REDUCTION AND THAT ON EXPIRY OF THIS PERIOD THE REDUCTION WILL HAVE THE EFFECT OF POSTPONING HIS FUTURE INCREMENT OF PAY.


30.4.03
(Vijay Kumar)
Assistant Director/E
Disciplinary Authority
SIB, Itanagar.

To
Shri A.K.Pandey, JIO-II/WT,
SIB, Itanagar.

Copy to :-

1. The Assistant Director/E/ACR/G/EP, IB Hqrs., New Delhi.
2. The Joint Director, SIB, Ahmedabad.
3. The Section Officer/A, SIB, Itanagar (2 cps.)
4. The ACR CELL/SB Cell, SIB, Itanagar.
5. The PF of Shri A.K. Pandey, JIO-II/WT.

Assistant Director/E
Disciplinary Authority
SIB, Itanagar.

From : Anil Kumar Pandey
JIO-II/WT
PIS No. 10765A
Subsidiary Intelligence Bureau
Itanagar

Annexure - 10

To,
The Joint Director
Subsidiary Intelligence Bureau
Itanagar

Ref. : Office Order No.25/E/99(3)-2902 dt.d. 30-04-02

sub: Request to cancel/review the above ref. no. 11

Honorable sir

With beseechingly and giving highest regard to you
Sir, I most humbly and respectfully beg to say as under
for your kind consideration and haste action please -

1. That I was placed under suspension vide SIB, Ahmedabad Office Order no.6/Est(Ad) /94/DE/1441 dtd. 19.09.1995 and a Disciplinary Proceedings against me was contemplated by the same date.

2. That a charge sheet was issued to me by office order
No. 6/Est(Ah) /94(9)/DE/1639 dtd. 19.10.95.

3. That an inquiry was conducted by the Disciplinary Authority against me and the same was concluded by the office order No.6/Est(Ahd)/94(9)/DE/1120 dt'd. 13.05.96 and by the same order I was asled to explain and to submit reply that why the penalty should not be imposed on you.

4. That I submitted my reply on 23.05.96 and confess that there is no any direct or independent substantial evidence in the case and which was admitted by the inquiry officer in his report which leads or establish the charges levelled against me was false and proposed penalty do not justify and proper.

6. That the action of Disciplinary authority to conduct fresh inquiry for the same charges was illegal and unjust not only that Disciplinary Authority has disclosed his mind to impose penalty where as there was requirement to be revoke my continued suspension.

cont'd....?

Attested
James C. Adcock

7. That therefore I filed a case in Central Administrative Tribunal, Ahmedabad (CAT, AHD) and challenged the action of Disciplinary Authority in O.A. 1230/97 dt. 28.08.97.

8. CAT, AHD given the judgement on 28.8.97 to quash the order of fresh inquiry and the same charge sheet and directed D.A. to take further action in accordance with the law keeping in view of relevant rules and also law laid down by Courts/Tribunals in this regard.

9. That vide order No. 6/Est(Ahd)/94(9)/DE/1177 dt. 30.10.97 D.A. ordered that I should be continued under suspension until my trustworthiness is established beyond reasonable doubt.

10. That to get justice I challenged the said order in CAT AHD in O.A/286/96 and CAT, AHD given a judgement with direction to respondent to consider the question of continued suspension of the applicant afresh and pass a speaking order thereon within a period of one month.

11. That vide order No. 6/Est(Ahd)/94(9)/DE/1177 dt. 30.10.97 to not revoking the suspension I again filed a case in CAT, AHD no. O.A/612/97 to revoke the suspension.

12. That after getting the direction from CAT, AHD D.A. issued an order No. 6/Est(Ahd)/94(9)/DE/912 dt. 9.6.98 that the hereby revokes the said order of suspension of dt. 19.9.95 with immediate effect and ordered as to how the period of suspension is to be regularised would be issued on conclusion of Disciplinary Proceedings pending against me.

13. That in this regard judgement of O.A/828/93 filed by me in CAT, AHD may also please see (Para 11) that the period of suspension as duty or otherwise could be taken by the D.A. only after the conclusion of the inquiry pending again st me.

14. That I was transferred from SIB, Ahmedabad to SIB, Itanagar, on the same time I approached the CAT, AHD vide O.A/253/99 with request that since an inquiry is pending against me, my transfer is not justified in the same time the learned counsel for the respondent stated the "in the case if applicant joined the new place of posting the inquiry will be continued at the new place of posting and will be completed as expeditiously as possible.

15. That I joined in this set-up at SIB, Itanagar on 15.7.1999 and till 12.03.2003 the inquiry proceeding against me was still pending and respondents were not shown any interest in completing the enquiry proceedings.

16. That on 13.3.02 I got office order No. 25/E/99(3)-1857 dt. 13.03.02 from Shri D. D. Bauri AD/E of SIB, Itanagar that he appointed to Shri S. Nandy, SC/G as a inquiry officer and a presenting officer was also appointed to inquire into charges framed against me and I was also informed vide office memo No. 25/E/99(3)-1672 dt. 5.3.02 about to be completed the original disciplinary proceedings initiated against me vide AHD Memo No. 6/Est(Ahd)/94(9)/DE/1639 dt. 19.10.95.

Contd....

Cables

Ahd

17. That I met to Shri Surinder Singh, Joint Director of SIB, Itanagar with request to shew the judgement of CAT, AHD of OA/230/97 which clearly says that (Para 4) "where disciplinary authority requires further examination of certain aspects, it can only remit the case back to the same inquiry officer, it can not appoint another inquiry officer and hold fresh inquiry" but he was not agree with me therefore I approached again CAT, AHD vide OA/194/2002 and CAT issued direction with status quo that "Not to proceed with the inquiry till the next date against me" and stay was quashed by CAT, AHD on 8.8.02 due to CAT, AHD has no jurisdiction to adjudicate upon the matter since it is under the territorial jurisdiction of CAT Guwahati.

18. That due to serious heart problem I was under the treatment and not in position to approach CAT Guwahati but verbally I met to AD/E Shri Vijay Kumar and he given assurance to me that he will close the case with lenient decision earliest and on 01.05.2003 I received the order No.25/E/99 (3)-2902 dtd. 30.04.03 that he reduced my pay by three stage from 3625/- to 3370/- and stopped further three increments this is totally unjustification with me, he tried to ruin my service carrier by passing this order which is not accordance with the Rules.

In this regards following facts may kindly be looked into for proper justification and relief to staff who requests for special attention -

(1) As regards statements of order No.25/E/99(3)-2902 dtd. 30.04.03 para 1 related to the facts of the case I do not deserve any remarks.

(2) With respect to the contents of para 2 of the said order I would like to mention here that please see the order No.6/Est(Ahd)/96(9)/DE/1495 dtd. 15.07.96 CIO, SIB, Ahmedabad convinced with my representation and agreed that Inquiry Officer Shri S. P. Mishra had committed some very grave Procedural laesses in conducting the inquiry therefore Disciplinary Authority set aside the whole proceedings along with the findings of the inquiry officer.

(3) As regards to the contents of para 3 of referred order it is fact.

(4) With respects to the contents of para 4 the same is not totally true, Shri S. Nandy SD/G appointed as a new I.O. to inquire into and one Presenting officer was also appointed, Shri Nandy has not invited to me to prove my position as a innocent nor invited to Shri M.L. Pandey, Shri Tarun Berot PSI from ATS of Gujarat Police. The examination of above witness was so vital and important before the come up on the conclusion, he self prepared a report on the grounds of the report of defective inquiry submitted by Shri S. P. Mishra dtd. 4.4.96 which was quashed by Disciplinary Authority. It is a matter of wonder that Shri S. Nandy has not done his job accordance to the rule it shows that the report submitted by Shri Nandy is conspiracy against me and violating the norms of natural justice.

(5) With regards to the contents of para 6, I totally disagree that if the inquiry report submitted on 4.4.96 was quashed by the D.A. then this report may not be basis of the consideration of Assistant Director/E.

Contd....

With respect to the contents of para 7 I am totally disagree with the lines "whereas the circumstantial evidence clearly shows that the message was either sent by delinquent or was caused to be sent by his assistant" this sentence is itself doubtful, also the whole contents of para 7 does not proves that charges levelled against me are correct. I never accepted before the Shri J. P. Purshit. It is duty of the inquiry officer to prove the charges levelled against me. It may be the person who knows the functioning/handling of the Fax instruments properly but when the Fax message was received in police office I was on duty at IT office of the SIB, Ahmedabad, this is enough to ref. that the message was not sent by me. And nobody can be punished in the shadow of doubt.

(7) That Shri Vijay Kumar, Assistant Director/E and Disciplinary Authority has not carefully examined the relevant records related to the case, he has not given me an opportunity to prove me innocent nor asked me about the written statement before the imposition of major criminal penalties, how he calls for sever punishment and how he came up on the conclusion that I am guilty of charges levelled against me, he ruin my service carrier by passing the order which is not according to the rules.

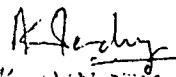
Sir, the main question which is still pending that how the suspension order is to be regularise, the Disciplinary Authority skiped out with the question which is mainly relate to my due increments, leaves, benefits of the bonus along with all consequential benefits and claims of intervening period's.

Sir, I am a 11th paid employee, suffering from CAD : CAS-II (Serious Heart problem) with essential Hyper tension with High P.P. (150/100), my wife is also patient of Tuberculosis and is under treatment and my two minor sons are totally depends on my service. I suffered a Jet since 2 years continuously with inexpressible mental agony, untold hardships, inexecutable social stigma, unmeasurable miseries mentally, physically and financially, my family members too have been made to suffer as a natural consequence.

In view of the facts stated above your kind office, generous nature is very humbly and earnestly requested to consider my problems sympathetically and the order No. 25/E/99 (3)-2902 dt. 30.04.03 may kindly be reviewed/cancelled on the basis of natural justice, I shall be very greatful for your hasty action bestowing justice and the art of magnanimity by your loving hands.

Thanking you Sir,

Yours faithfully


(A. K. Patel)
J.I.C.I.I./77

Date : 21/5/2003
Place : SPP, Itona, Jr

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Central Admin. Tribunal, Guwahati

20 NOV 2003

Advocate 23/10/03

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH: AT GUWAHATI**

O.A. No. 113/2003

Anil Kumar Pandey

... Applicant

-VS-

Union of India & Others

... Respondents

(WRITTEN STATEMENTS FILED BY THE RESPONDENT No. 1 to 4)

The written statements filed by the above-mentioned respondents are as follows :

1. That the copies of the above noted O.A. No. 113/2003 (hereinafter referred to as the "application") have been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the answering respondents (1 to 4) being common and similar, the written statements may to be treated as common to all of them.
2. That the statements made in the application which are not specifically admitted by the respondents are hereby denied. The respondents crave the leave of this Hon'ble Tribunal to allow them to rely upon and produce any such records which may be required at the time of hearing of the case.
3. That before traversing the various paragraphs made in this application the respondents gives a brief resume of the facts of the case as under :
 - a) Shri A.K. Pandey while functioning as JIO-II/WT at SIB, Ahmedabad indulged in gross misconduct by causing his brother Shri Amit Pandey of Gorakhpur to send a false message dated: 5.9.95 purported to be faxed by IB Headquarters (DD/VS) to the DGP, Home Secretary - Gujarat, Chief Secretary - Gujarat and others in which Shri A.K. Pandey branded his uncle Shri Madan Mohan Pandey as an ISI Agent

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Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

with a view to implicating him falsely. This misconduct on the part of Shri A.K. Pandey badly tarnished the image of the IB in the eyes of the Gujarat State Authorities to whom the aforesaid message had been addressed. By this act of gross misconduct, Shri A.K. Pandey, the applicant violated the provisions of Rule 3(i), (ii), (iii) of the CCS (Conduct) Rules, 1964. Departmental action was initiated against the said applicant and he was put under suspension on 19.9.95 and an enquiry was ordered.

b) The Enquiry Report was submitted by the IO on 4.4.96 and a copy of the same was forwarded to the applicant on 13.5.96 asking him to show cause as to why the penalty of dismissal from service should not be imposed on him. In his reply to the show cause notice, the applicant claimed that the Enquiry was not conducted in accordance with the Rules. When the Disciplinary Authority examined the proceeding of the Enquiry, it became apparent to him that the IO had indeed committed some lapses vitiating the proceeding in the eye of law. Accordingly, the Disciplinary Authority set aside the Enquiry vide order dated: 15.7.96 and a fresh charge sheet was issued and a de novo enquiry was ordered vide order dated: 22.1.97. However, the de novo enquiry could not be held as the applicant challenged the Disciplinary Authority for ordering a de novo enquiry by filling the O.A. No. 230/97 in the CAT, Ahmedabad Bench. The Hon'ble CAT, Ahmedabad Bench disposed of the said O.A. No. 230/97 and by setting aside and quashing the order of the Disciplinary Authority dated: 15.7.96 and 22.1.97 directed the respondents to continue with the original enquiry in case there had been lapses in conducting the same keeping in view the relevant Rules. The new Enquiry Officer could not hold any hearing of the case partly due to his pre-occupation with urgent Government work and partly due to his ill health.

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c) In the mean time, the applicant also filed two other applications in the CAT, Ahmedabad Bench. The Hon'ble CAT, Ahmedabad Bench has disposed of all these applications.

The applicant vide O.A. No. 286/97 dated: 12.5.97 and O.A. No. 612/97 dated: 14.10.97 challenged his continued suspension. The Hon'ble CAT Ahmedabad Bench disposed of the said applications on 19.3.98 and directed the respondents to review the order of suspension and to go into the question whether the applicant can be accommodated in a non-sensitive position where his re-instatement will not affect the enquiry proceeding or will not have any adverse impact on the organization itself. Accordingly, the order of suspension of the applicant was revoked w.e.f. 9.6.98. The applicant filed another O.A. vide No. 7/98 in the aforesaid Hon'ble Bench seeking a direction for enhancement of his subsistence allowance to 90% and to grant him revised scale of pay pursuant to the recommendation of the 5th Pay Commission. The Hon'ble Ahmedabad Bench disposed of the said application on 6.7.98 and directed the respondent to issue a speaking order with regard to enhancement of percentage of subsistence allowance from the date of receipt of the order .By the said order, the Hon'ble Tribunal held that the question of coming over to the revised scale of pay during the period of suspension can be taken up only after the final order on the Disciplinary Proceeding is issued. In pursuance of the said order the Disciplinary Authority issued an order on 20.10.98 stating therein that the applicant was already granted subsistence allowance from the date of his suspension till his resumption of duties from 19.9.95 to 8.6.98 at the rate as per Rules. By the said order it was also made clear that there was no scope for enhancing the subsistence allowance any further under

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the Rules. The applicant filed another O.A. No. 828/98 thereby challenging the speaking order dated: 20.10.98 for enhancement of subsistence allowance at a higher rate. The Hon'ble Tribunal disposed of the said application on 23.6.2000 and held that as the Disciplinary Authority has remitted the enquiry to the new IO and the same is not yet concluded, the decision to treat the period of suspension as on duty or otherwise could be taken by the Disciplinary Authority only after the conclusion of the enquiry.

d) The applicant filed another application vide O.A. No. 253/98 challenging his transfer to SIB, Itanagar. The Hon'ble Tribunal dismissed the said application on the ground that the order of transfer has been issued by the IB Head Quarter on administrative grounds. The applicant joined in SIB, Itanagar on 15.7.99 on transfer from SIB, Ahmedabad and the case pertaining to disciplinary enquiry of the applicant was forwarded by SIB, Ahmedabad which was received by SIB, Itanagar on 12.12.2000. The SIB, Itanagar vide their TPM NO. 5697 dated: 26.3.2001 addressed to AD/E, IB Headquarter, New Delhi expressed their inability to conduct the case properly due to lack of experienced person with regard to disciplinary enquiry and also for the complicity of the matter. Therefore, the SIB, Itanagar requested the IB Head Quarter to transfer the applicant to the IB Head Quarter. The IB Head Quarter vide its Memo dated: 20.4.2001 expressed its inability to transfer the applicant to the Headquarter and directed that the disciplinary enquiry be finalized by the AD, SIB, Itanagar. Consequently, the AD, SIB, Itanagar issued three communications dated: 5.3.2002 and 13.3.2002 for taking action to complete the original disciplinary proceeding initiated against the applicant. By the said order one Shri S. Nandi, SO and one Shri S.D. Choudhury, Assistant was appointed as IO and PO respectively. At this stage, the applicant has

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filed the O.A. No. 194/2002 in the CAT, Ahmedabad Bench challenging the three communications issued by the AD/SIB, Itanagar for continuing the disciplinary enquiry against him at Itanagar. The Hon'ble Tribunal rejected the said application and held that it had no jurisdiction to adjudicate upon the matter. After that the enquiry was completed by the new IO and the enquiry report dated: 24.1.2003 was submitted to the Disciplinary Authority. On the basis of the Enquiry Report and other related documents, the Disciplinary Authority has imposed the penalty vide order No. 25/E/99(3)-2902 dated: 30.4.2003.

e) The penalty has been awarded as per the rules laid down in CCS/CCA Rules, 1965. After comparing the different statements, representations and hearing the matter, it has been found that the applicant was guilty of the charges framed against him. So, the order of penalty No. 25/E/99(3)-2902 dated: 30.4.2003 is correct and valid.

The Enquiry Report dated: 4.4.96 alongwith the order - sheets of hearing / records dated: 2.1.96, 24.1.96, 20.2.96, 27.2.96 are annexed hereto as **Annexure R1, R2, R3 & R4** respectively.

f) The Hon'ble Tribunal, Ahmedabad Bench in O.A. No. 230/97 dated: 28.8.97 held that there is no provision under Rule 15 of the CCS/CCA Rules for completely setting aside the previous enquiry and ordering a de novo enquiry. It was also held that when Disciplinary Authority required further examination of certain aspects, it can only remit the case back to the IO and it cannot appoint another Enquiry Officer to hold fresh enquiry. Accordingly, the said Hon'ble Tribunal quashed the impugned order dated: 15.7.96 and 22.1.97 and directed the Disciplinary Authority to take further action in accordance with law keeping in view the relevant rules and also the law laid down by the Courts/ Tribunals. So the Enquiry Report dated: 4.4.96 stands. Therefore, the impugned order dated: 30.4.2003 imposing penalty on the applicant is legal and

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valid and does not suffer from any infirmity.

g) The Hon'ble CAT, Ahmedabad Bench in its order dated: 8.8.2002 in O.A. No. 194/2002 held that the disciplinary enquiry pending against the applicant will be continued at the new place of posting since the applicant was transferred from Ahmedabad to Itanagar and he was relieved on 29.6.99. The applicant joined SIB, Itanagar on 15.7.99. It was also held that if necessary, a new IO would be appointed to continue the enquiry in the new place of posting. Therefore the impugned order dated: 30.4.2003 passed by the Disciplinary Authority on the basis of the said Enquiry Report submitted by the new IO is as per rule and is a legally valid one. In compliance with the order of the Hon'ble Tribunal as stated hereinabove, the disciplinary proceeding was held and the order of punishment was passed vide order No. 25/E/99(3)-2902 dated: 30.4.2003.

The copy of the said order dated: 8.8.2002 and the order of punishment dated: 30.4.2003 are annexed hereto as **Annexure R5 & R6** respectively.

4. That with regard to the statements made in **para 1** of the application, the answering respondents state that there is no cause of action justifying the filing of the present application. Hence, the application is liable to be dismissed with cost.
5. That the answering respondents have no comments to offer to the statements made in **para 2** of the application.
6. That with regard to the statements made in **para 3** of the application, the answering respondents state that the present application has been made without exhausting the alternative remedy/ avenue available to the applicant. The applicant has a statutory right to prefer an appeal against the order of punishment and he might have approach this Hon'ble Tribunal only after six (6) months from the date of filing of such appeal.

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But the applicant has filed this application before the expiry of the said statutory period and therefore the application is liable to be dismissed under the provisions of Section 20 read with Section 21 of the Central Administrative Tribunal Act, 1985.

7. That with regard to the statements made in **para 4(i) to 4(xix)** of the application, the answering respondents state that those statements are matter of records. Hence, nothing is admitted which are not supported by such records. The respondents also reiterate the foregoing statements made in the written statements.
8. That with regard to the statements made in **para 4(xx)** of the application, the answering respondents respectfully submit that there is no illegality or any infirmity in passing the impugned order of punishment on 30.4.2003 by the Disciplinary Authority. The matter as a whole is explicit on record and the proceedings were drawn in accordance with the law the directions given by the Hon'ble Tribunal in the matter. As such, the application is liable to be dismissed with cost.
9. That with regard to the statements made in **para 5.1, 5.2 & 6** of the application, the answering respondents state that under the facts and circumstances of the case and the provisions of law, the applicant is not entitled to any relief whatsoever as prayed for in the application and therefore the application is liable to be dismissed with cost being devoid of any merit.
10. That with regard to the statements made in **para 7(A) to 7(D)** of the application, the answering respondents state that the grounds shown by the applicant to support his contentions are not legally valid grounds and therefore the same are not tenable in law. There is nothing to show

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on record or on pleadings that the impugned order of punishment dated: 30.4.2003 is illegal, discriminatory or biased. As such, the application is liable to be dismissed by holding it to be baseless.

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11. That with regard to the statements made in para 8 & 9 of the application, the answering respondents state that the applicant himself has admitted that he has filed a para-wise reply/representation on 2.5.2003 which is still pending for disposal at the end of the respondents. The applicant is well versed that the disciplinary proceeding has been drawn against him under the provisions of CCS(CCA), Rules, 1965 and there are provisions for preferring an appeal under Rule 23 of the said Rules. But the applicant has not preferred any appeal under those provisions, but filed some para-wise reply. Therefore, the statements made in these paragraphs are self-contradictory and misleading ones and as such the same cannot sustain in law. Moreover, the application has been filed before expiry of the period of six (6) months time from 2.5.2003 which is otherwise prohibited by the provisions of Section 20 read with Section 21 of the Central Administrative Tribunal Act, 1985. As the law in this regard is very clear and specific, the application is liable to be dismissed with cost on this legal ground alone.
12. That in any view of the matter the present application is not maintainable in law and the same is liable to be dismissed with cost.

In the premises aforesaid, it is therefore prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall be pleased to dismiss the application with cost.


Assistant Director
Subsidiary Intelligence Bureau
(MHA) GOVT. OF INDIA
ITANAGAR

Verification

SA

I, Shri J.S. Rawat, at present working as Assistant Director, SIB, Itanagar being Competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para 1, 2, 4 to 11 and 12 are true to my knowledge and belief, those made in para — 3 — being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 23th day of October, 2003
at Itanagar.


DEPONENT
Assistant Director
Subsidiary Intelligence Bureau
(MHA) GOVT. OF INDIA
ITANAGAR

No.1/DE(A.K.Pandey)/96/ S 26
Subsidiary Intelligence Bureau
Ahmedabad - 4

Dated: 4th April, 1996.

MEMORANDUM

Kindly refer to your memo No.6/Est(Ahd)/91(13)/DE/1789 dated 21.11.95 appointing the undersigned as the Inquiring Authority to inquire into the charges levelled against Shri A.K.Pandey, J10-11/WT for committing gross mis-conduct (as given in SIB Ahmedabad memo No.6/Est(Ahd)/91(13)/DE/1639 dated 19.10.95).

The Inquiry Report regarding same is enclosed in duplicate with necessary annexures for needful at your end.

The Inquiry proceedings in triplicate is also enclosed.

Encl 10/4/96
(S. P. Misra)
Inquiring Authority

Handwritten signature of S.P. Misra
The Central Intelligence Officer,
SIB, Ahmedabad.

Handwritten signature of Deepak
Encl: As above.

CONFIDENTIAL

INQUIRY REPORT REGARDING CHARGES LEVELLED AGAINST SHRI A.K.PANDEY.
 JIO-II (WT) FOR D.E. VIDE SIB AHMEDABAD MEMO NO. 6/EST(AHD)/91(13)DE/
 1639 DATED 19.10.1995.

WHEREAS the undersigned was appointed Inquiring Authority, (vide SIB Ahmedabad memo No.6/Est(Ahd)/91(13)/DE/1781 dated 21.11.95) (Annexure-A) to inquire into the charges levelled against Shri A.K.Pandey, JIO-II/WT for committing gross mis-conduct and tarnishing the image of Intelligence Bureau in the eyes of Gujarat State authorities by sending a fax message in the name of DD/VS, IB Hqrs. addressed to the DGP, Gujarat, Home Secretary, Gujarat, Chief Secretary etc. of Gujarat implicating/branding his uncle Shri Madan Mohan Pandey as an ISI agent with a view to take some personal revenge (vide SIB Ahmedabad memo No.6/Est(Ahd)/91(13)/DE/1639 dated 19.10.95) (Annexure-B),

The inquiry was completed in four sessions, in which one witness from prosecution side, Shri J.P.Purohit, DCIO and two documents - one supplied by the Inquiring Instituting Authority and other by the delinquent (i.e. Shri A.K.Pandey) were examined. It was charged that Shri Anil Kumar Pandey while functioning as JIO-II/WT at SIB Ahmedabad had, with a view to further his personal and domestic ends, indulged in gross mis-conduct by causing his brother Amit Pandey of Gorakhpur to send a false message dated 5.9.95 purported to have been faxed by IB Hqrs., DD/VS, to the DGP Gujarat, Home Secretary Gujarat, Chief Secretary Gujarat and others in which the said Anil Kumar Pandey had branded his uncle Shri Madan Mohan Pandey as an ISI agent with a view to implicate him falsely. This mis-conduct on the part of Shri A.K.Pandey had badly tarnished the image of the Intelligence Bureau in the eyes of the Gujarat State Authorities to whom the aforesaid message had been addressed. He had thus indulged in gross mis-conduct inviting action under rule 3(1)(ii) of Central Civil Services, Rule 1954.

In his reply to the charges, the delinquent i.e. Shri A.K.Pandey had denied the charges, necessitating this inquiry (Annexure-III).

It was learnt during inquiry that one Inspector of Gujarat Police, Shri Tarun Barot, belonging to the ATS, Ahmedabad had come to our office on 14.9.95 around 1600 hrs. to pick up Shri A.K.Pandey, Pandey working with Gujarat Telephone Cables Ltd., Sanand was picked up by the ATS, as he was branded in a faxed message, purported to have been originated by the Criminare New Delhi (DD/VIP security) on 5.9.95 and addressed to the DGP Gujarat (SN Sinha), Additional DIG, CID/Int (PK Bansal), CP Ahmedabad (MM Mehta), DIG ATS Ahmedabad Gujarat, DCP Ahmedabad Gujarat, MD GTCL Ahmedabad, Chief Secretary, Gujarat, asking to arrest Madan Mohan Pandey, son of late RC Pandey, resident of village Kotepur, Pipra, near Barahaj Bazar, Deoria (UP) presently working in Gujarat Telephone Cables Ltd., Sanand, Dist. Ahmedabad,

Gujarat, for working with ISI and was involved in proposed bomb blast in Sabarmati Jail on the occasion of 15th August, 1995 allegedly planned by ISI Pak (Annexure IV). During the interrogation by the Police, Madan Mohan Pandey had revealed that he was falsely implicated and this implication would have been made by his brother's son Shri Anil Kumar Pandey working with SIB Ahmedabad to take revenge for strained family relations. Since Inspector Tarun Barot had met Shri J.P. Purohit, DCIO-CIFU, the latter informed JD and CIO of SIB Ahmedabad about this development, who in turn was asked by JD and CIO to make an inquiry in this regard. The inquiry report submitted by Shri J.P. Purohit, DCIO in this regard revealed that Madan Mohan Pandey alongwith his wife had stayed at the house of Anil Kumar Pandey, who had been staying with his family in one room accommodation. Due to the scarcity of space, Shri Anil Kumar Pandey had asked Shri Madan Pandey to make separate arrangements. This led to further straining of their relations and the matter was brought to the notice of family members of Shri A.K. Pandey including his father and younger brother, staying at Gorakhpur. Shri A.K. Pandey had admitted that he suggested his younger brother, Amit Kumar Pandey and gave a faxed message to be addressed to the authorities mentioned above to implicate Madan Mohan Pandey, which was actually done by Anil Kumar Pandey (Annexure V).

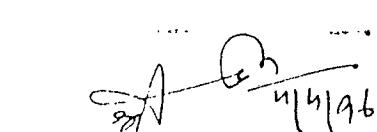
During the inquiry, Shri J.P. Purohit, DCIO-CIFU, who was presented as prosecution witness affirmed that Shri Anil Kumar Pandey had admitted to have drafted and gave the said message (Annexure IV) to his brother Amit Kumar Pandey. The delinquent (Anil Kumar Pandey) played smart during the inquiry. He first denied to have given any draft message to his brother Amit Kumar Pandey to be sent to the above mentioned authorities to implicate Shri Madan Mohan Pandey as an ISI agent and that his brother Amit Kumar Pandey would have sent the said message on his own accord. Later on, he denied this also and told that his brother did not sent any message and this could be learnt from a letter sent by his brother Amit Kumar Pandey to delinquent (Anil Kumar Pandey) (Annexure-VI). Now there was nothing to prove that this letter was actually written by Amit Kumar Pandey, the younger brother of delinquent (i.e. Anil Kumar Pandey). Also the delinquent had taken stand that this message (Annexure-IV) might have been sent by a common enemy of both Shri Anil Kumar Pandey (delinquent) and Madan Mohan Pandey to make them fight. To substantiate this argument he did not present any witness/evidence nor could name any such person. He further took the stand that if he had enemical/strained relation with his uncle Shri Madan Mohan Pandey, he would not have allowed him (Madan Mohan Pandey) to stay in his house. Hence there was no question of his taking revenge with Madan Mohan Pandey. It is obvious that first to avoid the arrest/detention by A.T.S. Gujarat and get sympathy of departmental authorities, the delinquent admitted the charge in the preliminary inquiry done by Shri J.P. Purohit, DCIO-CIFU, and later on to avoid departmental action, he tried to confuse the Inquiring Authority by contradicting his earlier statement. He did not produce any witness/evidence, even his younger brother Amit Kumar Pandey, whose statement would have been vital in this connection, to absolve himself of the charges levelled against him. Further he could not cross-examine properly the prosecution

13 : 3 :

witness Shri J.P.Purohit despite more than one opportunity given to him, to prove that Shri J.P.Purohit's report was false or fabricated.

The circumstantial evidence clearly shows that the message was either sent by the delinquent himself or was caused to be sent by his close associate, who might be his younger brother on his suggestion to the above referred authorities to falsely implicate his uncle on the name of Criminare New Delhi, DD/VIP security. The wording of the message is such and originating authority and addresses have been named in such a manner that this can be drafted by a person belonging to this organisation, who knows about the style of functioning and in this circumstance, it appears that only the delinquent would have such motive to mis-utilise his official knowledge (since he is involved in sending such messages while working in WT branch). Also the message is faxed in such a manner that no tell tail mark is left on the body of the message indicating the place from where it was sent and the instrument by which it was sent. This can be manipulated by a person, who knows the functioning/handling of the fax instrument properly. And this also substantiates the doubt that this act of sending the message was done by the delinquent, or was done on his expert-like advise.

As happens in such circumstances there is no direct evidence of this forgery. But the circumstances clearly lead to prove beyond reasonable doubt that the said message was sent by the delinquent (i.e: A.K.Pandey) or was caused to be sent by his some associate (which is equally gross mis-conduct questioning his integrity) falsely, leading to indulging in gross mis-conduct and tarnishing the image of the department in the eyes of the State government and Police officials and also indulging in severe breach of security and trust reposed in him.



(S. P. Misra)
Inquiring Authority

CONFIDENTIAL

14

INQUIRY PROCEEDINGS IN THE CHARGES LEVLED AGAINST
SHRI A.K.PANDEY, J10-11 (WT).

WHEREAS the undersigned was appointed Enquiring Officer to enquire into the charges levelled against Shri A.K. Pandey, J10-11(WT) (under suspension) (henceforth to be called as Delinquent) inviting action under rule 3(1) and 3(III) of Central Services conduct Rule, 1965,

The first sitting to enquire into the charges levelled against Shri A. K. Pandey, J10-11 (WT) (under suspension) as referred above commenced on 2.1.1996 at 1100 hrs. at 31, Shahibag, SIB Office, Ahmedabad in which Shri H. S. Prasad, DCIO(CR), Presenting Officer (henceforth to be called as Presenting Officer) and Shri A.K. Pandey were present.

At the outset, the Presenting Officer read over the charges levelled against delinquent.

Enquiring Officer:

Do you admit the charges levelled by the Presenting Officer?

Delinquent:

No

Hence the proceedings were conducted further.

Presenting Officer:

The charges levelled against the delinquent are correct and I can produce evidence to prove the same.

Enquiring Officer:

What is your evidences?

Presenting Officer:

I have the copy of enquiry report submitted by Shri J. P. Purohit, DCIO. Also, I will produce Shri J.P.Purohit, DCIO to depose in this matter. Alongwith this I have the copies of the fax message sent by the delinquent in the name of DD(VIP Security) and addressed to DGP, Gujarat with copies to Addl. DCP CID/Int., P.K.Bansal, C.P. Ahmedabad, MM. Mehta, DCP(ATS) Ahmedabad, Gujarat, DCP Ahmedabad, Gujarat and MD, CTCL, Ahmedabad, C.S. Gujarat.

Enquiring Officer:

Mr. Pandey, what evidences/witnesses you would like to produce to contradict the charges levelled against you?

Delinquent:

W. K. Pandey
I will tell it in due course

CONFIDENTIAL

: 2 :

Enquiring Officer:

Presenting Officer may like to produce his witness/evidence in the next sitting, as the prosecution witness Shri J.P. Purushit was not summoned at this occasion.

It was decided that the next sitting of enquiry will be held on 24.1.96 at 31, Shahibag, SIB Office, Ahmedabad at 1100 hrs.

S. P. Misra
(S. P. Misra)
Enquiring Authority

Read over to:

1) Shri AK Pandey, J10-II (WT)
and signed by him.

Shri AK Pandey
24.1.96

2) Shri HS Prasad, Presenting Officer Witnessed
and signed by him.

CONFIDENTIAL

INQUIRY PROCEEDING IN THE CHARGES IMPELLED AGAINST SHRI
A.K.PANDEY, J10-11 (WT)

As fixed the second sitting to enquire into the charges impled against Shri A.K.Pandey, J10-11/MT (under suspension) commenced on 24.1.96 at 1630 hrs. at 31, Shahibag, S1B Office, Ahmedabad, in which Shri H.S.Prasad, DCIO/CR, Presenting Officer, Shri A.K.Pandey (Delinquent) and Shri J.P.Purohit, DCIO/CI-FU (prosecution witness) were present.

At the outset, the Enquiring Officer asked the Presenting Officer to present the case further.

Presenting Officer:

To prove the charges impled against Shri A.K.Pandey, I would like to present Shri J.P.Purohit, DCIO as witness, since he had enquired into the matter when it was known that Shri A.K.Pandey had sent a fax message to various authorities (as referred earlier) and had submitted enquiring report into the matter, the copy of which is with the present Enquiring Officer.

Enquiring Officer:

Well Mr.Purohit, what you would like to say to depose in the matter?

J.P.Purohit (Prosecution witness)

I would like to depose before the Enquiring Officer Shri S.P.Misra, Shri H.S.Prasad, Presenting Officer and Shri A.K.Pandey (Delinquent) as under:

"That I had submitted a written report to Shri F.J.Aronha, CIO and Shri K.P.Jain, JD on 15.9.95. I endorse the above mentioned written report, when the matter was brought to my notice by Shri Tarun Barot, Inspector, ATS, Ahmedabad on 14.9.95. I have nothing more to add to what I had reported in my report dated 15.9.95. The copy of the report is already with the Enquiring Officer and the Presenting Officer.

Enquiring Officer:

Mr.Purohit, is it a fact that the delinquent admitted before you that he had drafted a message addressed to the authorities mentioned above and meant to be originated from DD/VIP Security and handed over the same to his younger brother Amit Pandey staying at Bank Colony, Lakhpur (UP) to take vengeance from his uncle Madan Mohan Pandey on a family dispute.

Prosecution witness: YesEnquiring Officer:

Well, Mr.Pandey, now Mr.J.P.Purohit says that you had admitted before him to have drafted the above message and handed over the same to your younger brother to originate the message and send the same to the addresses.

: 2 :

which are on the body of message?

Delinquent:

No sir, I did not draft.

Enquiring Officer:

But in the Enquiring Report, it is clearly mentioned that you had admitted the same? Will you cross-examine the witness?

Delinquent:

Before cross-examining the witness, I would like to state a few facts:

"It is a fact that Madan Mohan Pandey is my uncle and had stayed together during the period mentioned in the Enquiry Report of Shri J.P. Purohit. As the accommodation was not sufficient to accommodate the two families in the same quarter, I had asked my uncle Shri Madan Mohan Pandey to make separate arrangement. This fact might have touched him. But at the same time we did not have any quarrel."

Enquiring Officer:

We are interested to know whether there is a family dispute which may not be directly related with you?

Delinquent:

It is a fact that there is a family dispute with my father not directly related with me.

On the further deposition of Presenting Officer, the delinquent told that it appears that Madan Mohan Pandey would have been instrumental in sending the referred message to concern authorities to implicate me into trouble.

Presenting Officer:

How is it possible that Madan Mohan Pandey will sent such a message in which he will himself implicate as an ISI agent and charge himself to have an intention to blast the Sabarmati Jali?

Delinquent:

It is possible that there may be some other enemy of Madan Mohan Pandey who would have sent such message.

The fact is that in the morning of 9.9.95 Shri Ram Janan Pandey (brother-in-Law (SALA) of Madan Mohan Pandey approached me at my home and also at office with 4 persons to get released Madan Mohan Pandey from the custody of police. This however I denied. This would have offended him and no implicated me by fudging the said message.

: 3 :

Enquiring Officer:

It is contradictory. The messages referred to was sent to authorities prior to his arrest.

Delinquent

That is alright. We would have suggested to Police Officers the sending of this message by me after my refused to get him released.

Presenting Officer:

But then who would have sent the referred message.

Delinquent:

Anybody who had enemity with me.

Enquiring Officer:

Who is your such enemy?

Delinquent:

There are many enemies.

Enquiring Officer:

Name out the suspected one.

Delinquent:

Kept mum.

Enquiring Officer:

Can you produce Ram Janam Pandey to confirm your above statement?

Delinquent:

I will not be able to produce him for the same.

Presenting Officer:

Then your statement is wrong.

Presenting Officer:

In the Enquiry Report of Shri J.P.Purohit, it is clearly stated that you had admitted that your younger brother Amit Pandey staying with father at Bank Colony, Gorakhpur (UP) wanted to revenge an insult perpetrated by his and your uncle Madan Mohan Pandey on you (Delinquent) and your (Delinquent's) father and with that intention he consulted you (delinquent) who gave a draft of the message to be addressed to the D.I.C. Gularat and others implicating his uncle Madan Mohan Pandey as an ISI agent.

Enquiring Officer:

Ques 21) Mr. Pandey, what you would like to say about this portion of evidence?

: 4 :

Delinquent:

I had not stated to the Enquiring Officer the fact of Amit Pandey's consultation with me for sending a message to the concerned authorities. However to clarify it further, I have sent a letter to my brother and when the letter is received in this regard, I will produce the same within a week.

Enquiring Officer:

The only letter will not suffice the matter, because we do not know the hand-writing and other things, hence you should produce your brother in person to prove the facts.

Presenting Officer:

The evidence produced by me is sufficient to prove the charges labelled against the accused, now if he wants to contradict the same, let him produce his own witness and evidence.

Enquiring Officer:

Will you (Delinquent) like to cross-examine Mr. Purohit on his ? Delinquent remained mum.

It was decided that the next sitting would be held on 20.2.96, in which the delinquent would like to produce evident to prove his statements.


(S. P. Misra)
Enquiring Officer

Read over to:

- 1) Shri AK Pandey, J10-11(WT)
and signed by them.
- 2) Shri US Prasad, Presenting Officer
and signed by them.
- 3) Shri JP Purohit, Prosecution Witness
and signed by them.

INQUIRY PROCEEDING IN THE CHARGES LEVELLED AGAINST
SIR A.K.PANDEY, J10-11/WT

As fixed the third sitting to enquire into the charges levelled against Shri A.K.Pandey, J10-11/WT (under suspension) commenced on 20.2.96 at 1520 hrs. at 31, Shahibag, SIB Office, Ahmedabad, in which Shri H.S.Prasad, DC10/CR, Presenting Officer, Shri A.K.Pandey (Delinquent) and Shri J.P.Purohit, DC10/CI-FU (prosecution witness) were present.

At the outset, the Enquiring Officer asked the Presenting Officer to present the case further.

The delinquent was asked in previous proceeding to present any witness/evidence to defend himself. He had told to present a letter from his brother Shri Amit Kumar Pandey which, he anticipated would absolve charges labelled against him. On demand of Enquiring Officer he presented that letter.

The letter dated 25.1.96 pertaining to have been written by Amit Kumar Pandey, brother of delinquent and purposed to have been sent from Gorakhpur on 29.1.96 to Shri Anil Kumar Pandey at his local address of Ahmedabad was admitted as an exhibit (1). In the letter the writer had categorically denied to have sent any message against Madan Mohan Pandey to DGP Gujarat, or anybody else.

Presenting Officer:

The very authenticity of the letter is doubtful, as we do not have any specimen of the writing of Shri Amit Kumar Pandey, brother of the delinquent, hence it does not appear to be admissible.

Enquiring Officer:

It appears from the letter that Amit Kumar Pandey had not sent any message against Shri Madan Mohan Pandey, his uncle to DGP. This leads to circumstantial corroboration that the message might have been originated by the delinquent as only a man knowing the working of the department would be able to sent such technical and typical type of message.

Delinquent:

I have not sent any such message.

Presenting Officer:

Then the circumstances lead to conclude that it would have been sent by delinquent only.

Delinquent:

The fact is that I did not originate the message and that might have been done by some enemical person.

Enquiring Officer:

1. You name such any enemical person to whom we may summon and find out the truth.

: 2 :

Delinquent:

I am not in position to tell such name who would have done such type of work, fabricating charges against my uncle and causing my involvement in that.

Enquiring Officer:

Will you would like to interrogate the prosecution witness, Mr. J.P.Purohit in connection with his report submitter earlier to the concerned authorities about the sending of the alleged message.

Delinquent:

I would like to ask from the prosecution witness, Shri J.P.Purohit only one question i.e. whether Shri Tarun Barot, PSI, ATS came to office to enquire about me, whether he had a file in his hand?

Prosecution witness No.1:

Yes, he had a file in which he had carried a fax message in question. He had shown the same message to me.

Delinquent:

I will not ask any further question. But I will say that the first portion of the enquiry which relates to the coming and staying my uncle is correct. But the other portion of report is not correct. The Enquiring Officer would have come to this conclusion by reading the file of Mr. Barot.

Delinquent:

I did not give any statement to the effect that I or my brother would have sent such message nor I drafted such message.

Enquiring Officer:

How you can substantiate the statement of your. You have not cross-examined a prosecution witness strictly on this point. Moreover, why the Enquiring Officer i.e. prosecution witness No.1, Mr. Purohit will write against you?

Delinquent:

I do not know. His mind might have been influenced otherwise.

Enquiring Officer:

Why is this otherwise?

Delinquent:

Left man.

25/2

26/2

26/2

Left man.

CONFIDENTIAL

: 3 :

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Presenting Officer:

Then the statement of the prosecution witness stands correct and the charges labelled against the accused is proved now beyond reasonable doubt from my side.

Enquiring Officer:

Have you anything to say in your defence.

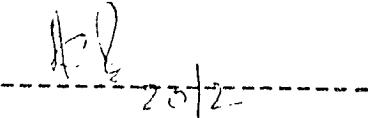
Defendant:

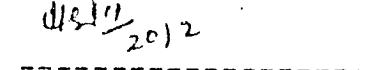
I may be given a further chance to prove my innocence.

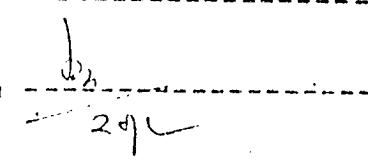
It was decided that the next sitting would be held on 27.2.96 at the same place and time.


(S. P. Misra)
Enquiring Authority

Read Over to:

1) Shri AK Pandey, J10-11(WT)
and signed by them. 

2) Shri HS Prasad, Presenting
Officer and signed by them. 

3) Shri JP Purohit, Prosecution
Witness and signed by them. 

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INQUIRY PROCEEDING IN THE CHARGES LEVELLED AGAINST SHRI A.K. PANDEY, J10-11/WT.

As fixed the fourth sitting to enquire into the charges levelled against Shri A.K.Pandey, J10-11/WT (under suspension) commenced on 27.2.90 at 1130 hrs. at 31, Shahibag, SIB Office, Ahmedabad in which Shri HS Prasad, DCIO/CR, Presenting Officer and Shri AK Pandey (Delinquent) were present:

Enquiring Officer:

Mr. Pandey, what else you want to depose in connection with this enquiry?

Delinquent:

I am to say that the charges levelled against me are baseless and false. I am innocent.

Enquiring Officer

In no way you have appeared to prove the same.

Delinquent:

I do not have any proof to prove my innocence. I was present in office and was on duty. My home is quite away from this place, hence I do not know anything about the incident.

The proceedings were concluded.


(S. P. Misra)
Enquiring Authority

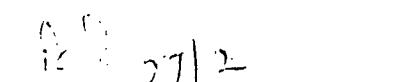
Read over to:

1) Shri AK Pandey, J10-11/WT
and signed by them.

--

2) Shri HS Prasad, Presenting
Officer and signed by them.

--


27/2


27/3

CONFIDENTIAL

FROM :

FAX NO. :

24

23

Sep. 02 2002 04:22PM P2

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ANNEXURE R5 M
ANNEXURE : R5

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Date of Decision : 08.03.2002

DA/194/2002

Shri A.K.Pandey : Petitioner (s)

Mr. M. S. Trivedi : Advocate for the applicant(s)

Versus

Union of India & Ors. : Respondents

Mrs. P. J. Davawala : Advocate for the respondents

GORAM:

HON'BLE MR. G.C. SRIVASTVA : MEMBER (A)

HON'BLE MRS. MEERA CHHIBBER : MEMBER (J)

FROM :

FAX NO. :

Sep. 02 2002 04:23PM P3

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-2-

Shri A.K.Pandey,
Working as JTO II, WT
SIB, Itanagar.

Advocate: Mr. M.S.Trivedi

: Applicant

Versus

1. Union of India, through:
The Director of Intelligence Bureau
Office of IB, MHA,
Government of India,
New Delhi.

2. Central Intelligence Officer,
Office of Subsidiary Intelligence
Bureau (MHA), 31
Shahibaug, Ahmedabad.

3. Assistant Director,
Office of SIB (MHA),
Government of India,
Itanagar.

: Respondents

Advocate: Mrs. P.J.Davawala

JUDGMENT
OA/194/2002

Date: 7-8-2002

Hon'ble Mr. G.C.Srivastava

: Member (A)

The applicant who is working as JTO II under the respondents has challenged their action of keeping the inquiry pending against him and withholding his dues from 19.9.95 to 9.6.1998 and has prayed for the following reliefs:-

"(A) This Hon'ble Tribunal may be pleased to allow this petition.

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(B) This Hon'ble Tribunal may further be pleased to quash and set aside action of the respondents not to take decision to drop/close enquiry against the applicant.

(C) This Hon'ble Tribunal may further be pleased to quash and set aside order dated 5.3.2002 and order dated 13.3.2002 issued by the respondents, regarding change of disciplinary authority and appointment of new E.O. by the respondents."

2. According to the applicant while working as JTO II a charge-sheet was issued to him on 19.10.1998, he was placed under suspension w.e.f. 19.9.95 and continued under suspension upto 9.6.98. Thereafter enquiry was conducted and report of the Inquiry Officer(I.O.) was supplied to him vide letter dated 12.4.96. He submitted his reply dated 26.4.96. The Disciplinary Authority (D.A.) took a tentative decision to impose penalty of removal from service and issued a show cause notice dated 13.5.96 to him. He submitted a detailed reply dated 23.5.96 to the respondents. The D.A. thereupon issued a letter dated 15.7.96 ordering fresh inquiry. A fresh charge-sheet was also issued to the applicant vide Memo dated 22.1.97. This was challenged by the applicant before this Tribunal in OA/230/97. The Tribunal vide order dated 28.8.97 quashed and set aside the order dated 15.7.96 for fresh inquiry as also Memo dated 22.1.97 and directed the D.A. to take further action in accordance with law (Annexure A-1). Mr.V.Sukumaran, S.O. was appointed as I.O in place of S.P.Mishra DCIO vide order dated 14.10.98 (Annexure A-2). However, no steps were taken by the respondents to take expeditious decision and the applicant was transferred from Ahmedabad to Itanagar in 1997. The respondents have now issued vide Memo dated 5.3.2002 stating that now the inquiry

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is to be held by SIB Itanagar and order dated 13.3.2002 regarding appointment of Shri S.Nandy S.O., Itanagar as I.O (Annexure A-4). Aggrieved by these two orders, the applicant has filed this OA.

3. The respondents have contested the OA mainly on the ground of jurisdiction and have filed detailed reply.

4. We have heard Mr. M.S.Trivedi and Mrs. P.J.Davawala , the learned counsel for the applicant and the respondents respectively and have carefully examined the pleadings and the documents placed on records. With the consent of both the parties, we are disposing of the OA at the admission stage itself.

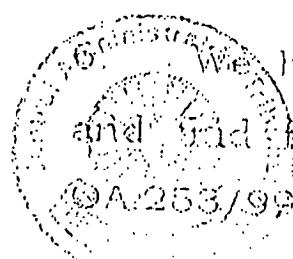
5. Mrs.P.J.Davawala has raised preliminary objections about the maintainability of the OA before this Tribunal. According to her the applicant was transferred from SIB Ahmedabad to SIB Itanagar in March 1999 and was relieved from SIB Ahmedabad on 29.6.99. He joined SIB Itanagar on 15.7.99 and therefore, by virtue of his posting under SIB Itanagar, he is a resident of Arunachal Pradesh. The territorial jurisdiction of SIB Ahmedabad is confined to the State of Gujarat while that of SIB Itanagar is limited to the State of Arunachal Pradesh. According to her once a Government servant is transferred from one SIB to another SIB all his service matters automatically get transferred to the new place

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of posting and the previous office cannot exercise any jurisdiction over the transferred employee. Therefore, consequent upon the posting the disciplinary proceedings against him have been transferred to SBI Itanagar on Ahmedabad on 20.3.99. The cause of action in the present case arose from three orders issued by the present DA under SIB Itanagar which is under the territorial jurisdiction of the Guwahati Bench of the Hon'ble Tribunal and therefore, the Ahmedabad Bench of the Hon'ble Tribunal has no jurisdiction to adjudicate the OA in the light of the observations of the Principal Bench, New Delhi in OA.2027/96 (Mohd. Asif Feroz Khan v. Chairman, Railway Board and Others). Replying to the objections of Mrs. P.J. Davawla, Mr. M.S. Trivedi for the applicant has argued that though the impugned orders have been issued by the SIB, Itanagar the cause of action pertains to much earlier period and basically centres round the issue of the fresh charge-sheet to the applicant which was set aside by the Hon'ble Tribunal vide OA/286/97. According to Mr. Trivedi, the applicant's grievance is that despite the issue of directions by the Tribunal after setting aside the fresh charge-sheet to proceed in accordance with law the respondents have failed to expeditiously complete the proceedings and take final action in the matter and in the meanwhile the applicant has got transferred to Itanagar.



We have examined the rival contentions in this regard and find from the record that while disposing of the first OA/253/99 the Tribunal had noted the submission of the

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counsel for the respondents that pending inquiry against the applicant will be continued at the new place of posting and if necessary, a new Inquiry Officer will be appointed to continue inquiry in the new place of his posting. The reason for appointing new inquiry officer has been explained by the respondents and the same has also been upheld by the Tribunal in his earlier OA/828/98. Moreover, we find that the applicant has himself obtained interim relief in the present OA to the effect that the respondents shall not proceed with the inquiry till the next date against the applicant. In view of the stay operating against the conduct of inquiry the respondents cannot proceed with the inquiry. The main relief asked for by the applicant in the present OA is to quash and set aside the orders dated 5.3.2002 and 13.3.2002 issued by the respondents. The order dated 5.3.2002 is an order issued by Assistant Director, Office of the Subsidiary Intelligence Bureau (MHA), Govt. of India, Itanagar and the other order dated 13.3.2002 is also issued by the same officer of Itanagar. The two impugned orders have evidently been issued by the officers posted at Itanagar and therefore, the argument of Mrs. Davawala that this Tribunal does not have jurisdiction to adjudicate upon this matter is fully acceptable. Since the impugned orders have been issued by the Assistant Director, SIB, Itanagar which is under the territorial jurisdiction of the Guwahati Bench, we are of the considered view that this Tribunal does not have any jurisdiction to adjudicate upon this matter.

No.25/E/99(3)-
Subsidiary Intelligence Bureau,
Ministry of Home Affairs
Govt. of India,
Itanagar.

Dated, 3rd APR 2003

ORDER

Whereas Shri Anil Kumar Pandey, JIO-II/WT while posted at SIB, Ahmedabad was issued memo No.6/Estt(AHD)/94(9)/DE/1639 dated 19/10/95 by the Competent Authority under Rule-14 of CCS (CCA) Rules 1965 on the following charges :-

" That Shri Anil Kumar Pandey, JIO-II/WT while functioning as JIO-II/WT at SIB, Ahmedabad has with a view to further his personal and domestic ends indulged into gross misconduct by causing his brother Amit Pandey of Gorakhpur to send a false message dated 5/9/95 purported to be faxed by IB Hqrs. (DD/VS) to the DGP, Home Secretary, Gujarat, Chief Secretary, Gujarat and others in which the said A.K. Pandey has branded his uncle Shri Madan Mohan Pandey as an ISI agent with a view to implicate him falsely. This misconduct on the part of Shri A.K.Pandey has badly tarnished the image of the Intelligence Bureau in the eyes of Gujarat State Authorities to whom the aforesaid message had been addressed. By this act of gross misconduct, the said Shri A.K.Pandey, JIO-II/WT has violated Rule-3(1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules-1964".

2. Whereas following the procedure laid down in CCS (CCA) Rules inquiry against Shri A.K.Pandey was concluded and CIO, SIB, Ahmedabad proposed to award the punishment of dismissal from service vide memo No.6/Estt (AHD)/96(9)/DE/1120 dated 13/5/96. Against this proposal Shri Pandey represented on 23-5-96. Thereafter, CIO vide his order No.6/Estt(AHD)/96(9)/DE/1495 dated 15/7/96 set aside the proceeding and findings and ordered a fresh inquiry. Accordingly fresh chargesheet was drawn vide memo No.6/Estt (AHD)/94/DE/75 dated 22/1/97.

3. Whereas on being approached by Shri Pandey, CAT, Ahmedabad found it fit to strike down order dated 15/7/96 and memo dated 22/1/97 vide OA No.230/97 and directed the disciplinary authority to take further action in accordance with law keeping in view the relevant rules and rules laid down by Court/Tribunals.

4. Whereas after transfer of Shri A.K.Pandey, JIO-II/WT from SIB, Ahmedabad to SIB, Itanagar where he reported for duty on 15/7/99 a new inquiry officer (Shri S. Nandy, SO) was appointed (as per rule) vide memo No.25/E/99(3)-1857 dated 13/3/2002. Again Shri Pandey approached CAT, Ahmedabad vide No.194/2002 which issued direction " Not to proceed with the inquiry till the next date against the applicant ". This stay order was quashed by the CAT, Ahmedabad dated 8-8-2002 saying that the Tribunal (CAT, Ahmedabad) has no jurisdiction to adjudicate upon the matter since it is under the territorial

(iii) Whereas as per the report of Shri J.P.Purohit, DCIO-FU,SIB, Ahmedabad that Shri Madan Mohan Pandey alongwith his wife stayed in the house of Shri A.K.Pandey. Since it was a one room accommodation. Anil Kr. Pandey was finding it difficult to board and lodge his uncle Shri M.M.Pandey for a long period. He asked his uncle M.M.Pandey to shift to some other place forthat reason. This was not liked by M.M.Pandey and the relation with family members strained. Shri M.M.Pandey left the home but with a acrimonious note this incident entailed. Amit Kr. Pandey, who was staying at Gorakhpur, U.P. wanted to ayenge the insult perpetrated by his uncle M.M.Pandey. Shri A.K.Pandey who was emotionally disturbed suggested his brother and gave a draft message, purported to have been originated by the DD/VS, IB, New Delhi and addressed to the DGP, Gujrat and others implicating his uncle M.M.Pandey as an ISI agent. Shri A.K.Pandey in his representation dated 26/4/96 denied this statement. But in the hearing held on 24/1/96 Shri Pandey was asked whether he would like to say about the above mentioned fact and he was also asked to cross-examine Shri J.P.Purohit. Shri Pandey remained mum. Later hearing held on 20/2/96 Shri Pandey said that the message might have been done by some enemical person. Then he was asked to tell the name of such person to whom the D.A. might summon to find out the truth. But he could not tell the name of such person. In the last hearing held on 27/2/96 he also said that he had no proof to prove him innocent.

(iv) Whereas he stated in his representation that his financial condition, his brother's studies etc. could not permit him to produce his brother as witness of the fact to prove his innocence. And also stated that if the Inquiry Officer thought that the statement of his brother was so vital he (The Inquiry Officer) should summon his brother. During hearing it was stresed by the Inquiry officer to present his brother to prove his innocence which he could not do. But it was his responsibility to prove him innocent.

7. Whereas the circumstantial evidence clearly shows that the message was either sent by the delinquent himself or was caused to be sent by his close associate, who might be his younger brother on his suggestion to the above referred authorities to falsely implicate his uncle in the name of Criminare, New Delhi, DD/VIP Security. The wording of the mesage is such and originating authority and addresses have been named in such a manner that this can be drafted by a person belonging to this organisation, who knows about the style of functioning and in this circumstances, it appears only the delinquent would have such motive to misutilise his official knowledge (since he has the experience of sending messages by nature of his working in WT Br.). Also the message was faxed in such a manner that no tell tail mark was left on the body of the message indicating the place from where it was sent and the instrument by which it was sent. This can be manipulated by a person who knows the functioning/handling of the fax instrument properly.

8. Whereas there is no direct evidence of his sending the fax message. But the circumstances clearly indicate that the said message was sent by the delinquent (i.e. Shri A.K. Pandey)

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Jurisdiction of the Guwahati Bench, (CAT). The new Inquiry Officer, Shri S. Nandy, SO in his inquiry report dated 24-1-2003 stated that the hearing held on 2/1/96, 24/1/96, 20/2/96 and 27/2/96 and enquiry report submitted by Shri S.P. Mishra on 4/4/96 stand valid as these were not cancelled by CAT, Ahmedabad.

5. Whereas on going through the inquiry report dated 4/4/96 Disciplinary Authority SIB, Ahmedabad proposed to dismiss Shri Pandey from service and Shri Pandey was asked to submit representation against the proposal of dismissal. Accordingly Shri Pandey submitted his representation dated 23/5/96 mentioning the reasons why he should not be dismissed from service..

6. Whereas I have carefully gone through the chargesheet, defence statement dated 3/11/95 hearing on different dates, inquiry report submitted on 4/4/96 and 24/1/2003 and representation of Shri A.K. Pandey dated 23/5/96 against the proposal of dismissal from service and arrived at following conclusion :-

(i) Whereas the inquiry proceeding held on 2/1/96, 24/1/96, 20/2/96 and 27/2/96 to inquire into the charges levelled against Shri A.K. Pandey in which Shri S.P. Mishra, Inquiry Officer, Shri H.S. Prasad, Presenting Officer and Shri Pandey were present.

During the enquiry, Shri J. P. Purohit, DCIO/CIFU, SIB, Ahmedabad, who was presented as prosecution witness affirmed that Shri A.K. Pandey had admitted to have drafted and gave the said message to his brother Amit Pandey. He first denied to have given any drafted message to his brother Amit Kumar Pandey to be sent to the DGP, Gujarat and others to implicate his uncle Shri Madan Mohan Pandey as an ISI agent and that his brother Amit Kr. Pandey would have sent the said message on his own accord. Later on he denied this also. Shri Pandey had also taken stand that that message might have been sent by a common enemy of both (Shri A.K. Pandey and Sh. Madan Mohan Pandey) to make them fight. To substantiate this argument he did not present any witness/evidence nor could name any such person.

First he admitted the charges in the preliminary enquiry done by Shri J. P. Purohit, DCIO-CIFU, SIB, Ahmedabad and later on to avoid departmental action, he tried to confuse the Inquiring Authority by contradicting his earlier statement. He did not produce any witness/evidence, even his younger brother Amit Kr. Pandey, whose statement would have been vital in this connection to absolve himself of the charges levelled against him.

(ii) While comparing the different statement, representation, and hearing it has been found that in his representation dated 26/4/96 he stated that he nor his brother had sent the said fax message. Whereas in his defence statement dated 3/11/95 he stated that his brother, Shri Amit Kr. Pandey could have sent the said fax message under some misconceived motions or heat of the moment and he was sorry for that. So, his representation is incorrect.

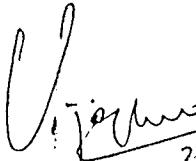
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or was caused to be sent by his associate (which is equally gross misconduct telling upon his integrity) which tantamounts to indulging in gross misconduct and tarnishing the image of the department in the eyes of the State Govt. and Police officials and also indulging in severe breach of security and trust reposed in him.

9. Whereas, after the careful examination of the relevant records related to this case the undersigned has come to the conclusion that the action of the charged officer calls for severe punishment under CCS (CCA) Rules -1965 as Shri Anil Kr. Pandey, JIO-II/WT is guilty of the charges levelled against him.

The undersigned, therefore, imposes penalties on Shri A.K.Pandey, JIO-II/WT under clause (V) of Rule 11 of CCS (CCA) Rules-1965 and order that THE PAY OF SHRI A.K.PANDEY, JIO-II/WT BE REDUCED BY THREE STAGES FROM Rs.3625/- to Rs.3370/- IN TIME SCALE OF PAY OF Rs. 3200-85-4900/- FOR A PERIOD OF THREE YEARS WITH EFFECT FROM THE DATE OF ISSUE OF THE ORDER.

It is further directed that HE WILL NOT EARN INCREMENT OF PAY DURING THE PERIOD OF REDUCTION AND THAT ON EXPIRY OF THIS PERIOD THE REDUCTION WILL HAVE THE EFFECT OF POSTPONING HIS FUTURE INCREMENT OF PAY.


30.4.03

(Vijay Kumar)
Assistant Director/E
Disciplinary Authority
SIB, Itanagar.

To
Shri A.K.Pandey, JIO-II/WT,
SIB, Itanagar.

Copy to :-

1. The Assistant Director/E/ACR/G/EP, IB Hqrs., New Delhi.
2. The Joint Director, SIB, Ahmedabad.
3. The Section Officer/A, SIB, Itanagar (2 cps.)
4. The ACR CELL/SB Cell, SIB, Itanagar.
5. The PF of Shri A.K. Pandey, JIO-II/WT.

Assistant Director/E
Disciplinary Authority
SIB, Itanagar.