50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

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SECTION OFFICER (Judl.)
Kalita
15/11/17

(RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

. . . .

ORDER SHEET

Original Application No. 45/03
Misc. Petition No. ...../
Contempt Petition No. ...../
Review Application No. ...../

Applicant (S) Diganta Kr. Boro

- Vs. -

Respondent (s) U.O.I & Ors

Advocate for the applicant (s) B.K. Sharma, S. Sarma, U.K. Nair

Advocate for the respondent (s) CGSC A.K. Choudhury Miss U. Das

Notes of the Registry	Date	Order of the Tribunal
Application is in form but not in time. Condonation Petition is filed / not filed C F for Rs. 50/- deposited vide IPO/BD 246605339 Dated 21.1.03 Dy. Registrar	20.3.2003	Heard Mr.S.Sarma, learned counsel for the applicant. The application is admitted, call for the records. List the case on 24.4.2003 for order. Vice-Chairman
Steps taken alongwith envelops. 17/3/03	bb 24.4.2003	Heard Mr. S. Sarma, learned counsel for the applicant and also Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents. Put up again on 26.5.2003 to enable the respondents to file written statement. Vice-Chairman
Notice prepared and sent to D/S for issuing the respondent No 1 to 4 by Regd. A/D. vide D/No 5006 503 dtd 24/3/03. 24/3	mb	
No written statement has been filed. 23.503.		

26.5.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra, Member (A).

No written statement has been filed.

23.6.03.

Put up again on 24.6.2003 to enable the respondents to file written statement.

Member Vice-Chairman

mb

24.6.2003 Put up again on 15.7.2003 to enable the respondents to file written statement on the prayer made by Mr. A. K. Choudhury, learned Addl. CG.S.C. for the respondents.

No written statement has been filed.

14.7.03

Vice-Chairman

mb

15.7.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. N.D. Dayal, Member (A).

No W/S has been filed.

8.8.03

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

List again on 5.8.2003 for written statement.

Member Vice-Chairman

No written statement has been filed.

mb

5.8.2003 Put up again on 3.9.2003 to enable the respondents to file written statement. Thsi order is passed on the prayer of Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents.

2.9.03.

Received copy of Judgment for Usha Das. Advocate 10/8/04

Member Vice-Chairma

mb

O.A. 45/2003.

Office Note	Date	Tribunal's Order
	3.9.2003	Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. K.V. Prahaladan, Administrative Member. No written statement so far filed by the respondents nor any steps taken. Put up again on 23.9.2003 for orders. Member Vice-Chairman
3.9.03 WS filed by the Respondent Nos. 1, 2 & 3. Regd.	mb	
	23.9.03	Adjourned to 14.11.03. B/O lm
	14.11.03	No Bench today. Adjourned to 28.11.03. B/O lm
10.5.04 Rejoinder filed by the applicant. Regd. The case is ready for hearing. 11.5.03	16.12.03	List on 28.1.2004 for hearing. Member
	pg	
	12.5.2004	Present : The Hon'ble Sri Mukesh Kumar Gupta, Judicial Member. The Hon'ble Sri K.V. Prahladan, Member (A). On the request made by the learned counsel for the respondents the case is adjourned. List before the next Division Bench. Member (A) Member (J)
	mb	

Office Note	Date	Tribunal's Order
	19.7.04	Hearing Concluded. Judgement reserved. By order.
20.8.04 Copy of the Judgment has been sent to the office for issuing the same to the applicant by speed post at his cost of the applicant. KS	22.7.2004 bb	Present: The Hon'ble Shri K.V.Sachidanandan, Member (J). The Hon'ble Shri K.V.Prahladan Member (A). Order pronounced in open Court, kept in separate sheets. O.A. is partly allowed in terms of the order. No costs. Member (A) Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~Rxx~~.No. 111 45/2003

DATE OF DECISION 22.7.2004.

Sri Diganta Kumar Bora .....APPLICANT(S).

Mr. S. Sarma, Ms. U. Das .....ADVOCATE FOR THE APPLICANT(S).

-VERSUS-

The Union of India & Ors. .....RESPONDENT(S)

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

THE HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Member (J).

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 45 of 2003.

Date of Order : This the 22nd day of July, 2004.

The Hon'ble Shri K.V.Sachidanandan, Judicial Member.

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

Sri Diganta Kumar Bora,
R/o Mananakuchi,
P.O. Kulhati,
Kamrup, Assam. . . . Applicant.

By Advocate Shri S.Sarma.

- Versus -

1. Union of India,
represented by the Secretary to the
Govt. of India,
Ministry of Communications,
New Delhi.

2. The Postmaster General,
N.E.Circle,
Shillong.

3. The Director of Postal Services,
Manipur, Imphal,
Pin-795001.

4. Sri George Ninah,
The then Director of Post Services,
Manipur, Imphal,
(Disciplinary Authority)
C/o PMG. . . . Respondents.

By Advocate Sri A.K.Choudhuri, Addl.C.G.S.C.

O R D E R

K.V.SACHIDANANDAN,JUDICIAL MEMBER

The applicant who was working as Sub Divisional Inspector of Post Offices, Imphal was charge sheeted for an irregular appointment with an ulterior motive and on the culmination of the enquiry a punishment of removal was ordered which was subsequently modified to reduction in the time scale of Rs.5500-175-9000/- for a period of five years. Aggrieved by the said impugned orders the applicant has filed this O.A. seeking the following reliefs.

i) To set aside and quash the impugned proceeding along with the impugned orders dated 11.4.02 and 17.1.03

contd..2

with a further direction to reinstate him as Sub Divisional Inspector(Posts), with all consequential service benefits.

ii) To set aside and quash the impugned suspension order dated 7.11.01 and to regularise the period of suspension and to pay him the arrears salary.

iii) To direct the respondents to consider the case of the applicant for promotion to the next higher grade, after exonerating him from the charges, and after setting aside the proceeding and the impugned orders.

2. The averments in the O.A and the pleadings made are on the ground that the process of selection of ED Stamp Vendor was in conformity with the Recruitment Rules which was misinterpreted by the said authorities, no reasonably opportunity was granted to the applicant for appointing a defence counsel to defend his case and the documents which has been sought to be produced has not been brought under record which is highly prejudiced in the interest of the applicant. Therefore, these impugned orders should be set aside.

3. The respondents have filed a detailed written statement containing that the applicant initiated recruitment process for filling up of the vacancy of ED Packer, Thoubal SO and out of the 3 candidates sponsored by the Employment Exchange one candidate was Class VIII qualified and others were Matriculates. As per the notification the qualification preferred was HSLC and not Class VIII and the selection which was made by the applicant was not justified in considering the marks acquired in the suitability test. Therefore, he committed a misconduct in selecting the wrong person. The applicant was given all opportunities available under the rules ibid within the purview of the rules. Two articles were charged against the applicant and proved. He

was initially ordered to be removed from service by the disciplinary authority but the appellate authority has reduced the same. Due consideration was also given to his representation. Therefore, the impugned orders cannot be challenged.

4. The applicant has filed a rejoinder containing that it was mandatory and compulsory as per the available instruction to select the aspiring candidates who possess the sufficient working knowledge in regional language, simple arithmatic and English. It is stated that the selection was made on the basis of Educational qualification. Therefore, he has conducted the selection in which a candidate with VIII standard acquired highest mark. The instruction of the Recruitment Rule is very clear that Matriculate qualification will have a preference when all other criteria is in equal footing. Here the Matriculate candidates could not secure highest marks and therefore they were not selected which cannot be faulted. The denial of opportunity for production of documents and non-sanctioning of defence assistant has affected the interest of the applicant which was irregular, unfair and against natural justice.

5. We have heard Sri S.Sarma, learned counsel appearing for the applicant and Shri A.K.Choudhuri, learned Addl.C.G.S.C for the respondents. The learned counsel has taken us through various pleadings, materials, evidence placed on record. The learned counsel for the applicant submitted that selection of ED Agent was conducted by the applicant as per rules. Nothing illegal or irregular procedure had been adopted and cited that such appointments have been earlier conducted by other officers which was not found fault with by the department.

For example he has cited the selection of L.Kumuda Singh against the post of EDDA, EDMC of Haoreibi BO dated 2.1.97. So also the appointment of Md Shaheed Alam against the post of EDDA, EDMC dated 26.2.97 and he has cited other examples also. The selection was made not on the basis of Matriculation pass but on the basis of suitability and the selection of Matriculate is not the criteria under the rule, preference could be given to Matriculate in such selection when all other candidates stand equal. Here obviously the person who has been selected has qualified in all other aspects with knowledge of regional language, simple arithmatic and English etc. Therefore, the Matriculate candidates could not be given preference to that of other candidate only on the basis that the other candidate has passed only VIII standard. The denial of an opportunity in engaging the defence assistant is a basic illegality in the procedure for which the applicant was found forfeit. The fact that the appellate authority has given a lesser punishment from that of removal will show that the enquiry report is absolutely incorrect.

6. The learned counsel for the respondents on the other hand submitted that the selection made by the applicant was biased and when the three names were recommended by the Employment Exchange the selecting authority who have short listed the candidates by excluding the VIII standard person when Matriculate candidates were available he could have rejected the VIII standard, which has not been done by the applicant and the action of the applicant was a misconduct. He selected a unsuitable candidate when suitable persons were available.

7. We have given due consideration to the materials and arguments made by both sides particularly given through the pleadings and evidence placed on record. Though an attempt

was made by the learned counsel for the applicant to take us through a detail evidence regarding the enquiry we discouraged that attempt since the legal position is that the scope of the judicial review is based only in the decision making process and not the merit of the decision. Since the Court is not an appellate Court while exercising the power of review. When the action is vitiated by arbitrariness, unfairness and unreasonableness then only the Courts are empowered to interfere in such matters. The Supreme Court in a decision in Tata Cellular vs. Union of India reported in 1994 (6) SCC 651, has made this position clear. Therefore, we were confined to our evaluation to find out whether there is any illegality, irregularity in the procedure against natural justice. For better elucidation the article of charges are re-produced herein below :

> "I. Shri D.K.Bora, while working as SDIPOs, 2nd Sub Dn, Imphal during the period from 3.4.99 to till date, committed serious irregularity in the recruitment of ED Packer, Thoubal BO and thereby violated Rule 3(1) (ii) and Rule 3(1) (iii) of CCS (Conduct) Rules 1964.
>
> II. Shri D.K.Bora, while working as SDIPOs, 2nd Sub-Dn., Imphal during the aforesaid period, appointed a single candidate namely Md. Azad Khan as ED Packer, Thoubal SO with retrospective effect from 2(Two) different dates by 2(Two) different orders, and thereby violated Rule 3(1) (i), Rule 3 (1) (ii) and 3(1) (iii) of CCS (Conduct) Rules 1964."

Both the charges are culminating out of selection in the Recruitment of ED Packer Thoubal SO and committed serious irregularities in such selection by passing two different orders and appointing the same candidate. The allegation was that he has not followed the instruction issued by the department in recruitment of ED Packer and he has recruited

a candidate, whose qualification was VIII standard only though there were Matriculate candidates. For further clarification the educational qualification prescribed for ED Agent, we may refer to Swamy's Compilation of Service Rules for Postal ED Staff (Eighth Edition) which is re-produced below :

"ED Delivery Agents ED Stamp Vendors and All other categories of EDAs.	VIII Standard.Preference may be given to the candidate with Matriculation qualifi-cations. No weightage should be given for any qualifica-tion higher than Matricula-tion. Should have sufficient working knowledge of the regional language and simple arithmatic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English."

The contention of the respondents is that a candidate with Matriculate qualification should get preference automatically over the candidate with VIII standard. Had it been so there need not be a qualification prescribing VIII standard as a basic qualification for the said selection. The working knowledge of regional language and simple arithmatic are also specified for such selection in order to enable the candidates to discharge their duties satisfactorily. In otherwise if all the three candidates who have been considered for selection came through Employment Exchange and the applicant has conducted a suitability test, wherein admittedly the VIII standard person scored more marks and the Matriculate did not reach with him. Therefore, he was selected.

8. Considering the arguments of both parties we find that there is no instruction mandating the selection by granting the same to Matriculates and 'only to Matriculates' if they are available in the list. No circular or rule

was able to be produced before us. The respondents counsel submitted that when Matriculates are available others will be rejected. It is also not brought to our notice of any rule or legal position to that effect that the selection authority could conduct a suitability test. In this context the contention of the applicant that he could find out a suitable person with working knowledge of regional language and that of simple arithmatic can only be found out through a test is justified. If the intention of the respondents is that if the Matriculate should be given preference and no suitability test could be conducted for such selection they could have made it very clear by amending circular, office orders. Therefore, we are of the view that from the available records the applicant could not be found fault in adopting such a selection process and therefore he cannot be found fault with. We cannot take any other interpretation in the absence of a circular or rule as to the fact that when all of them are equal either on the basis of interview or suitability test and the Matriculate candidates therefore be given preference. In this case Matriculate candidates did not qualify in the test as that of VIII standard candidate and therefore the process of selection cannot be said to be faulted. We are also fortified by a decision which is almost similar to the fact of the case, reported in 1996 (6) SCC 282 Secy. (Health) Deptt. of Health & F.W. And Another Vs. Dr. Anita Puri and Others, wherein the Supreme Court has declared that preferential qualification do not, as of right which entitles the candidate for selection. In the circumstances the finding of the enquiry officer and the appellate authority in this aspect is not in conformity with the legal position and therefore, we declare that it is not justified

Contd...8

and to be set aside. Another point whether the enquiry is faulted, it is found from the fact that the applicant/ delinquent employee has sought for a defence assistant which was rejected saying that nominated defence assistant has not obtained the permission of the competent authority in order to absent himself during the enquiry. The enquiry officer should realise that an enquiry officer is exercising a quasi judicial power. The rejection of the defence assistant in anticipation that the controlling authority would not permit the proposed defence assistant to be absent himself in order to assist the applicant is a pre conceived notion and therefore rejection in engaging a defence assistant is a fatal error committed by the enquiry officer and the proceeding is vitiated by adopting denial of opportunity and note compliance of natural justice. So also it is found that certain documents have been called for through discovery which were not attached with the charge sheet and denied by the enquiry officer on the ground that it is not disclosed in whose custody these documents were available. Non production of the documents affected the interest of the applicant adversely, with special reference to documents mentioned in item No.1 to 5 in the petition letter dated 1.2.2004.

9. Considering the above aspects, we are of the view that the enquiry officer had not properly appreciated the legal position and not complied with the procedure in granting reasonable opportunity and natural justice in this case and therefore, the enquiry report will not stand in its leg. So also even though the appellate authority has reduced the punishment we find none of these aspects were considered by appellate authority which should have done. Therefore, the appellate order also will not hold good. In the circumstances, we have no hesitation to set aside the impugned orders dated

Contd...9

11.4.2002 and 17.1.2003 and direct the respondents to reinstate the applicant forthwith, if not already done.

10. Considering the entire aspects, we set aside the impugned orders dated 11.4.2002 (order of removal), 17.1.2003 (Appellate order) and suspension thereof. The respondents are at liberty to initiate a de novo trial in appointing a fresh enquiry officer and proceed further in the matter, if they so wish and desire. However, the request for regularising the period of suspension and consequential promotion if any could be decided by the respondents in case no de novo proceedings are to be initiated within a period of 2(two) months from the date of receipt copy of this order. Otherwise it could be in the consequential result of the trial. In any case no ~~further~~ suspension is contemplated, any further.

With the above observations, the Original Application is partly allowed as above. In the circumstances no order as to costs.

(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER

(K.V.SACHIDANANDAN)
JUDICIAL MEMBER

pg

Central Administrative Tribunal
13 MAR 2003
Guwahati Bench

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 45 of 2002

BETWEEN

Shri .... Applicant.

AND

Union of India & ors..... Respondents.

I N D E X

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Filed by : Usha Das.

Regn.No.:

File :c:\WS\DIGANTAK

Date :

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Filed by the applicant Through Bishwa Das Advocate 10/3/03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA NO.....45...../03

Diganta Kumar Bora

.....Applicant

-VS-

Union of India & Ors.

.....Respondents

List of Dates

1.	9.11.01	The applicant was issued with a chargesheet.
2.	7.11.01	The Respondents appointed Inquiry Officer
3.	7.11.01	The Respondents appointed Presenting Officer.
4.	24.1.02	The applicant made a representation for Defence Asstt.
5.	30.1.02	The I/O rejected the prayer of the applicant for defence Asstt.
6.	1.2.02	The applicant prayed for production of Addl. documents
7.	4.2.02	The I/O rejected the prayer made by the applicant for inspection of Addl. Documents.
8.	4.3.02	The applicant submitted his written statement
9.	12.3.02	The I/o submitted the Inquiry Report.
10.	8.4.02	The applicant submitted his written statement of Defence against the Enquiry Report.
11.	11.4.02	The Disciplinary authorities order removing the applicant from his service.
12.	22.4.02	The applicant submitted his appeal against the order dated 11.4.02.
13.	3.1.03	The applicant submitted reminder to the said appeal dated 22.4.02.
14.	30.9.02	Appellate Authority provided him an opportunity of hearing.
15.	17.1.03	Impugned order passed by the appellate authority. Reduced.
16.	19.7.84	Notification upgrading the posts of Supdt/ Sr. Supdt. to DPS.

not competent authority

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Filed by the applicant through Alisha Das Advocate 10/3/03

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central Administrative Tribunal Act.1985)

O.A.No. 47 of 2002

BETWEEN

1. Sri Diganta Kumar Bora
R/o Mananakuchi,
P.O. Kulhati,
Kamrup, Assam.

..... Applicant.

- AND -

1. The Union of India.
Represented by Secretary to the
Govt. of India.
Ministry of Communication.
Dak Bhawan, New Delhi-1.

2. The Postmaster General
N.E.Circle,
Shillong,

3. The Director of Postal Services
Manipur, Imphal,
Pin-795001.

4. Sri George Ninah
The then Director of Post Services,
Manipur, Imphal,
(Disciplinary Authority)
C/o PMG.

..... Respondents.

PARTICULARS OF THE APPLICATION

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

This application is directed against which the departmental proceeding drawn against the applicant in pursuance to the chargesheet dated 9.10.01. This application is also directed against the impugned order bearing no.B-

2/D.K.Bora dated 11.4.02 issued by the Respondent No.4 and memo no. staff/109/11/2002 dated 17.1.03 issued by the respondent No.2 as a result of the foresaid impugned departmental proceeding.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant who was working as a Sub-Divisional Inspector of Post offices in the 2nd Sub-Division, Imphal, was charge sheeted by the Respondent No.4 basing on some irrelevant facts. The allegations pointed out in the chargesheet were categorically defended by the applicant with reasons facts and figures but in an undue haste with some ulterior motive the proceeding was concluded without affording the reasonable opportunity as contemplated under the Rules and by the impugned order dated 11.4.02 the applicant was removed from service. The pace shown by the Respondents in the enquiry stage however turned reverse in disposing of the appeal. However the appellate authority after a long disposed of the appeal by a non-speaking order

modifying the order penalty to reduction in Rank of Rs.5500/- in the time scale of pay Rs.5500-175-9000/- of IPO's for a period of 5 years, during which he will earn any increment etc. Situated thus, the applicant has come before the Hon'ble Tribunal seeking an appropriate relief against the purported departmental proceeding and the impugned order surfaced from such illegal proceeding.

This is the crux of the matter for which the instant application has been filed. The detail facts are highlighting below along with the enclosures.

4.2. That the applicants are citizens of India and as such they are entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.3. That the applicant at the relevant point of time was working as Sub-Divisional Inspector of Post Offices under the Respondents. The Sub-Divisional Inspector of Post Offices are the appointing authority of Extra Departmental Agents etc. and the applicant being the Sub-Divisional Inspectors of Post Offices recruited one ED Packer against the vacancy caused as a result of submission of resignation by one Sri M.Haokip E.D.Packer of Thoubal S.O. The respondents treating the said appointment to be an illegal one, decided to hold enquiry against the applicant. In fact the applicant taking into consideration the anticipated vacancy in the post of ED-Packer, in Thoubal S.O. submitted requisition to the Locals Employment Exchange for spousing 3(three) candidates for the said post in terms of the

guidelines prescribing the method of Recruitment of ED staff at Postal Department. The local Employment Exchange sponsored three (3) out of which two (2) were matriculate and one was a non-matriculate one. As per the Rule the method of recruitment "Educational Qualification" for ED Packer is prescribed as follows:-

2) EDUCATIONAL QUALIFICATION

ED Delivery Agents, ED Stamp vendors and all other categories of EDAs :- "VIII Standard". Preference may be given to the candidates with matriculation qualification. Weightage should be given for educational qualification higher than matriculations should have sufficient working knowledge of Regional language and simple arithmetic, so as to be able to discharge their duties satisfactorily. Categories such as ED messengers should also have enough working knowledge of English"

The applicant, to test the knowledge regarding simple arithmetic amongst these three candidates held a suitability test in which the non-matriculate candidate secured the highest mark. Basing on the said evaluation and other conditions the applicant appointed the non-matriculate candidate to the said post of ED packer. The Respondents however without taking into consideration the said Rules of recruitment and treating the said appointment as an illegal one issued a charge sheet bearing memo No. B-2/D.K.Bora dated 9.10.01.

A copy of the said charge sheet dated 9.10.01 is annexed herewith and marked as Annexure-1.

4.4. That the respondents after issuance of the said chargesheet decided to proceed against the applicant departmentally. The Respondents issued two different orders dated 7.11.01 one of by which one Sri N.C.Halder, Supdt. of Post Offices, Manipur, Imphal was appointed as Enquiry Officer and by the other one Sri L.Tiken Singh, SDIPOs, Ukhrul, Sub-Division, Manipur as Presenting Officer.

Copies of the said orders dated 7.11.01 are annexed as Annexure 2 & 3 respectively.

4.5. That the proceeding started and applicant participated in the same and during the course of the said proceeding the applicant through this letter dated 24.1.02 submitted a representation to the IO praying for allowing him to appoint one Sri Uttam Sengupta, ASPO's (HQ) office of Supdt. of Post Offices, Tinsukia Division, as his Defence Asstt. and the said and the said letter was issued by the IO on 3.1.2002. However, the IO, without taking into consideration the Rules guiding the field rejected the prayer the prayer for nomination of Defence Asstt. raising some technical issues.

Copies of the said orders dated 24.1.02 and 30.1.02 are annexed herewith and marked as Annexure-4 & 5 respectively.

4.6. That the applicant by the said Annexure-5 order dated 30.1.2002 was asked to submit the list of additional documents in connection with the aforesaid proceeding and accordingly the applicant through letter dated 1.2.02 submitted a list of documents to the IO praying for production of the same. However, the Respondents without taking into consideration the relevancy of the records rejected his prayer by an order dated 4.2.2002.

Copies of the said orders dated 1.2.2002 and 4.2.2002 are annexed herewith and marked as Annexure-6 & 7 respectively.

4.7. That the applicant states that the Respondents with an intention to harass him proceeded in the matter with an undue haste which will be revealed from the aforementioned orders. The applicant submitted his written brief on 4.3.2002 to the I.O. highlighting the factual position of the matter and the Rules guiding the field. The I.O. immediately on receipt of the said brief submitted the enquiry report vide letter bearing no.B-2/D.K.Bora dated 12.3.2002.

Copies of the said written brief dated 4.3.2002 and the enquiry report dated 12.3.2002 are annexed herewith and marked as Annexure-8 & 9 respectively.

4.8. That the applicant states that immediately after the issuance of the enquiry report submitted the written statement of Defence analysing the whole case with Rule

position. In the said representation the applicant highlighted the fact that the I.O. finding in the enquiry report are purvered and based on no evidence. Even the Rule quoted in the enquiry report are also not properly explained by the said authority.

A copy of the said written statement of Defence dated 8.4.2002 is annexed herewith and marked as Annexure-10.

4.9. That the Director of postal service, Manipur, acting as a disciplinary Authority without any jurisdiction passed the impugned order bearing no.B-2/D.K.Bora dated 11.4.2002 relying fully on the enquiry report and removed the applicant from his service. The said Disciplinary Authority however has failed to take into consideration the written statement of Defence and without discussing the same passed the said impugned order dated 11.4.2002. In fact, the Director of Postal Services, Manipur is not a competent authority to act as a disciplinary authority in the instant case. However, with an ulterior motive he passed the said impugned order with the sole purpose to remove the applicant from his service issued the impugned order.

A copy of the said impugned order dated 11.4.2002 is annexed herewith and marked as Annexure-11.

4.10. That the applicant being aggrieved by the said order of the Disciplinary Authority dated 11.4.2002 Øsubmitted an appeal before the appellate authority praying for setting aside of the said order dated 11.4.2002. After submission of the aforesaid appeal since there was no reply

from the appellate authority for a long time, the applicant submitted a reminder dated 3.1.2003 to the said appellate authority for early disposal of the matter.

Copies of the said appeal dated 22.4.2002 and the reminder dated 3.1.2003 are annexed herewith and marked as Annexure-12 and 13 respectively.

4.12. That the applicant states that the appellate authority before passing the appellate order issued an order bearing no.stuff/109-11/2002 dated 30.9.2002 by which he was given an opportunity of placing the fact personally through a perusal hearing on 10.10.2002. According, the applicant appeared for the said authority and apprised him about the factual aspect of the matter as well as the Rule guiding the field. However, the appellate authority without taking into consideration that aspect of the matter issued the impugned order dated 17.1.2003 by which the disciplinary authority's order dated 11.4.2002 (Annexure-11) has been modified to the extent of reduction to lower scale of Rs.5500/- (Which is the minimum) of the time Scale of Pay Rs.5500/- 175 -9000 of Inspect of Post Offices for a period of 5 years, during which period he would earn increments of pay and on expiry of which the reduction would not have the effect of postponing future increments of pay. It was further ordered by the said impugned order that the period from the date of removed of service to the time of reinstatement would not be treated as duty for any purpose including for pensionary benefits.

Copies of the said order dated 30.9.2002 of 17.1.2003 are annexed herewith and marked as Annexure-14 & 15 respectively.

4.13. That the applicant states that the Respondents have proceeded in the matter by way of issuing the Annexure-11 Charge sheet dated 9.1.2001 which is per se illegal as same has been issued interpreting the Rule regarding recruitment of EDAs wrongly. As per the said Rule although there is an indication that preference should be given to the matriculate candidate, in the said Rule there are other mandatory conditions which are to be judged during the process of selection. Those candidates is required to have sufficient working knowledge of Regional Language and simple arithmetic so as to discharge their duties satisfactorily. The candidate in question secured highest mark in the said test/ screening and he scored a mark over matriculate candidate leaving no scope for any such preference. The analysis placed by the Respondents in the article of Charge No.1 is baseless and as such the impugned charge sheet is not at all maintainable and same is liable to be set aside and quashed and thereby to declare the proceeding initiated against the applicant departmentally may be declared illegal and to quash the same along with the impugned orders passed pursuant to the said illegal proceeding.

4.14. That the applicant states that the Respondent No.4 to meet his personal graze? Over the applicant, initiated the aforesaid proceeding without any basis. In that context it will be pertinent to mention here that the Respondent

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No.4 to ensure his aforesaid action appointed one Sri N.C.Haldar Supdt. of Post Offices, Imphal an IO who is under his direct control. Needless to say here that the Rules guiding the field are very clear regarding the appointment of IO and it is observed in categorical term that in the matter of appointment of IO, the disciplinary authority is to take due care so that his immediate subordinate Officer should not get such assignment. This Rule position has been mentioned in clear term under Rule 5(i) (b) of P & T Manual, Vol-III. The aforesaid position of law relating to appointment of IO in P&T Manual has been further clarified by D.G., P & T letter bearing No. 6-8/74- DISC.1 dated 21/9/74 and by the said letter decision of the competent authority has been conveyed in a clear and categorical term that appointment of IO may be from the respective wing of Postal and Telecommunication wings to which the delinquents official belong, but from a different division preferable to a same station or nearby. In the instant case, said Sri. N.C.Haldar, Supdt. of Post Officer, Imphal being the subordinate official of the Disciplinary Authority (Respondents 4.) and was working directly under him in the same Division could not have been appointed as a IO in terms of the aforesaid mandatory provisions of the Rules. In fact, in the instant proceeding IO worked as a subordinate officer of the Disciplinary Authority and the Disciplinary Authority dictated the entire enquiry proceeding to ensure that the applicant did not get adequate means of defence as required under the law. The series of events and the pace adopted by the Respondents in the said proceeding itself indicative of the fact tat everything has been done in a pre-planned manner to entangle the applicant with some undue hardship.

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for instance, during the course of enquiry the Respondents on 30.1.02 issued an order/extract of the departmental enquiry vide order No.1 dated 30.1.2002 whereby applicant was allowed to indicate the name of the defence Asstt. and at around 14.40 hrs proceeding was closed for the day. On the same day the Respondents issued the Annexure-5 order rejecting his prayer for engagement of defence Asstt. As stated above the Respondents No.4 was in undue hurry in concluding the proceeding and the aforesaid Annexure-5 letter was communicated to him through his wife who is also an employee under the Respondents on the next date vide a letter dated 31.1.02. The entire episode would renewal the fact that the proceeding was initiated with an ulterior motive and with a malafide intention to harass the applicant.

A copy of the said letter dated 31.1.02 is annexed herewith and marked as Annexure-16.

4.15. That the applicant states that the aforementioned impugned proceeding was initiated by the Respondent No.4 with a malafide intention and in the said proceeding IO acted as per the dictation of the Respondent No.4. Entire proceeding was concluded and conducted behind the back of the applicant without affording him the minimum opportunity of defence. During the course of hearing applicant prayed for engagement of defence Asstt. and the Respondents rejected his prayer on the ground that the person indicated by the applicant not an employee of Imphal Division. There are various instructions issued by the Govt. of India in respect of engagement of Defence Asstt. from

another station wherein it is provided that the Charged Official may pray for engagement of Defence Asstt. Posted in another station and it is open for the IO to permit such assistance. However, the IO vide order dated 30.1.2002 (Annexure-5) rejected his such prayer only on the ground that the person pointed out by the applicant as Defence Asstt. is of different division. When the instruction of the Govt. of India in this regard is clear, there should not have been any difficulty to exceed his prayer and to allow such Defence Asstt. as prayed for. The aforesaid illegal deprivation in fact has caused a serious prejudice and the applicant lost his valuable right of defence to defend his case properly. On this score alone entire proceeding is liable to be set aside and quashed being violative of, the settled principles of natural justice.

4.16. That the applicant begs to state that he through his representation prayed for supply of additional documents to show the correctness of the stand taken by him in the proceeding. But the IO without taking into consideration to his such representation rejected the prayer made by him without giving any cogent reasons. The list submitted by the applicant contained the inspection Reports etc. from 1996-2000, along with the seasonings but without hearing him on the said issue, the IO rejected his such prayer. On the other hand those inspection reports mentioned by the applicant in his such representation found place in inquiry report. The applicant by such action had to defend his case without any additional document and same caused him serious prejudice.

4.17. That the applicant begs to state that the authority concerned during the course of enquiry have not taken into consideration the evidence adduced by the applicant and the findings arrived at by the IO in his report is based on no evidence and same is per versed. In fact the said proceeding was initiated on a wrong footing and at every stage the said authority acted as per the dictation of his higher authority without applying his independent mind. All throughout the said proceeding the Respondents have violated the settled proposition of Law and Rules guiding in total and as such the proceeding is not sustainable and liable to be set aside and quashed.

4.18. That the applicant begs to state that the Disciplinary Authority who imposed the penalty is not the Competent Authority to impose such penalty. So far as the applicant is concerned the Director postal Service (HQ) is the competent authority to be assigned as Disciplinary Authority. The Respondent No.3 at the relevant point of time was holding the post of Director Postal Service in Manipur Circle and he was under the direct control of DPS (HQ). Apart from that said Respondent No.3. D.P.S. Manipur is only a upgraded post of Sr. Supdt/ Supdt. of Post Offices of Nagaland, Manipur etc. were upgraded to the post of DPS along with their delegated powers of Sr. Supdt./Supdt. in respect of appointment, discipline and appeal. In the instant case the DPS (HQ) is the Disciplinary authority. In fact in case of any therefore, promotion posting in respect of sub Divisional Inspectors of Circle the DPS (HQ) used to issue such orders. The respondent NO.4 in the instant case even has not taken any such permission from DPS(HQ) nor the

DPS (HQ) has delegated any such power to the respondent No.4. Therefore, the proceeding initiated against the applicant is contrary to the Rules guiding the field and same is liable to be set aside and quashed.

A copy of the said notification is annexed herewith and marked as Annexure-17.

4.19 That the applicant begs to state that the Disciplinary authority while passing the impugned order dated 11.4.2002 has failed to apply his independent mind and in the said order there is no indication of any independent finding by the said authority on merit. Apart from that the Rules quoted in the said impugned order have not been discussed in depth and misread the same.

4.20. That the applicant begs to state that the appellate authority while passing the impugned order has failed to take into consideration the appeal preferred by the applicant and the Rules guiding the field. The said appellate authority only discussed the matter pointed out by the IO, but there has been no discussion regarding the appeal preferred by the applicant wherein he has quoted the Rule Position guiding the field. Apart from that the said authority also violated the Rules in respect of imposing penalty and thereby he imposed penalty which is not specified in the Rules and same has amounted to double jeopardy.

4.21 That the applicant begs to state that the Respondents have violated various Rules guiding the field in

proceeding against him departmentally. It is pertinent to mention here that taking into consideration the charges leveled against him in the chargesheet, it is clear that the appointment of one Mr. Azahar Khan as ED Paker is illegal but he still continuing in his said post. The Respondent No.4 with an intention to harass the applicant decided to proceed against him with malafide intention and since there was no material available against him, he took the matter of appointment of said ED Packer and on that basis he initiated the proceeding which is per-se illegal and not sustainable and therefore same is liable to be set aside and quashed.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the impugned orders dated 11.4.2002 and 17.1.03 as well as the proceeding initiated pursuant to the chargesheet dated 9.10.01 are illegal and same is liable to be set aside and quashed.

5.2. For that the Respondents while issuing the chargesheet have failed to take into consideration the Recruitment Rules of EDAs and same has resulted in issuance of the impugned orders and as such entire proceeding as well as the impugned orders are liable to be set aside and quashed.

5.3. For that the Respondents while proceeding departmentally against the applicant have violated various provisions contained in CCS(CCA) Rules, 1965 as well as the Rules contained in P&T Manual, Vol-3 and such entire proceeding along with the impugned orders are liable to be set aside and quashed.

5.4. For that the Respondent which proceeding departmentally against the applicant have violated the settled proposition of law relating to natural justice and in each stage he has been denied the reasonable opportunity of hearing and as such the entire proceeding is vitiated and the entire proceeding is liable to set aside and quashed.

5.5. For that the applicant being the appointing authority of the EDAs while discharging his official duties he appointed one Md. Azahar Khan as ED Packer and he declared other two candidates who appeared in the said selection as unqualified. The aforesaid action is a result of discharging the quasi judicial power by the applicant and same therefore cannot be treated as an illegal action. In the instant case entire proceeding was initiated in the premise of such aforesaid alleged illegalities, in fact, which can only be termed as error of judgment and as such no proceeding can be initiated for such action. On this score alone the proceeding initiated against the applicant is liable to be set aside and quashed.

5.6. For that proceeding initiated against the applicant suffers from various illegalities and malafide intention of the Respondent No.4. In the said proceeding although to make a show, the Respondents stated to hold an enquiry in fact the said enquiry was a farcical one wherein no evidence was taken into consideration and the applicant was denied the opportunity of electing/selecting Defence Assistance of his choice. The applicant also has not given any opportunity to place documentary evidence and his prayer for production of additional documents has been rejected

without any basis. Entire proceeding was finalised behind the back of the applicant and the Respondent No.3 who is not the competent authority issued the impugned order dated 11.4.02. Again the appellate authority without taking into consideration preferred by the applicant passed the impugned order dated 17.1.03 without there being any independent finding in the matter. In view of the above the entire proceeding is vitiated and same is liable to be set aside and quashed.

5.7. For that in any view of the matter the proceeding initiated against the applicant is liable to be set aside and quashed.

5.8. For that in any view of the matter the impugned action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

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

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this

application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application , writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash the impugned proceeding along with the impugned orders dated 11.4.02 and 17.1.03 with a further direction to reinstate him as sub-Divisional Inspector (Posts), with all consequential service benefits.

8.2. To set aside and quash the impugned suspension order dated 7.11.01 and to regularise the period of suspension and to pay him the arrears salary.

8.3. To direct the Respondents to consider the case of the applicant for promotion to the next higher grade, after exhorting him from the charges, and after setting aside the proceeding, and the impugned orders.

8.4. Cost of the application.

8.5. Any other relief/reliefs to which the applicant is

entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of this application the applicant prays for an interim order towards the Respondents to allow him to resume his duty as SDI (P) 2nd Sub-Division, Imphal by suspending the operation of the impugned order dated 11.4.02 & 17.1.03.

10. .....

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 7G 605339
2. Date : 21/1/03
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

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VERIFICATION

I, Sri Diganta Kr. Bora, S/o Late Moni Ram Bora aged about 50 years, at resident of Monakuchi, P.O.Kulhati, Dist. Kamrup, Assam, do hereby solemnly affirm and verify that the statements made in paragraphs 2,3,4.2,4.3,4.16,4.17,4.19 & 5 & 12..... are true to my knowledge and those made in paragraphs 1,4.1,4.3-4.12,4.14,4.18 are also true to my legal advice an d the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 8th day of March of 2003.

Signature.

Shri Diganta Kr. Bora

ANNEXURE -

Govt. of India
Department of Posts
Ministry of Communications

Memo No.B-2/D.K.Bora 09.10.01

1. The undersigned proposes to hold an inquiry against Shri D.K.Bora, SDIPOs/2nd sub-division, Imphal under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III and IV).

2. Shri D.K.Bora is directed to submit, within 10 days of the receipt of this memorandum, a written statement of his defence and also to state whether he desires to be heard in person.

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

4. Shri D.K.Bora is further informed that if he does not submit his written statement of defence on or before the date specified in Para-4 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rules-14 of the CCS(CCA) Rules, 1965, or

the orders/ directions issued in pursuance of the said rule, the inquiring authority may held the inquiry against him ex-parte.

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

6. The receipt of the Memorandum may be acknowledged.

(G.Ninan) 9.10
Director Postal Services,
Manipur State, Imphal-795 001.

To

Shri.D.K.Bora,
SDIPOs, 2nd Sub-Dn.,
Imphal - 795001.

Attested
Advocate

ANNEXURE - I

Statement of Articles of charges framed against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal.

Article - I

Shri.D.K.Bora, While working as SDIPOs, 2nd Sub-Dn., Imphal during the period from 03.04.99 to till-date, committed serious irregularity in the recruitment of ED-Packer, Thoubal SO and thereby violated Rule-3(1)(ii) and Rule-3(1)(ii) of CCS(Conduct) Rules,1964.

Article - II

Shri.D.K.Bora, while working as SDIPOs, 2nd Sub-Dn., Imphal during the aforementioned period, appointed a single candidate namely Md.Azad Khan as ED-Packer, Thoubal SO with retrospective effect from 2(Two) different dates by 2(Two) different orders, and thereby violated Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules,1964.

(G.Ninan)
Director Postal Services,
Manipur State, Imphal - 795 001.

Received
Advocate.

ANNEXURE-II

Statement of imputations of misconduct and/or misbehaviour in support of the article of charge framed against Shri D.K.Bora, SDIPOs/2nd Sub-division, Imphal.

Article-I

Shri.Mangkholet Haokip, the then ED-Packer, Thoubal SO, while on leave during the period from 01-08-1999 to 27-01-2000, offered to resign from the post of ED-Packer, Thoubal SO with effect from the date of expiry of leave (ie.28-01-2000) vide his letter addressed to the SDIPOs, 2nd Sub-Dn., Imphal and dated 27.11.99. Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal as competent authority accepted the resignation of the said Shri.Mangkholet Haokip with effect from 28-01-2000(F/N) vide Letter No.A-1/ED-Packer/Thoubal SO dated 05-02-2000. The said Shri.D.K.Bora, before accepting the resignation of the said Shri.Mangkholet Haokip, commenced the recruitment process for filling up the resultant vacancy likely to arise in the event of acceptance of resignation offered by the said Shri.M.Haokip and placed requisition before the District Employment Exchange, Thoubal for nomination of candidates vide Letter No.A-1/ED-Packer/Thoubal SO dated 29.12.99. Responding to the said requisition, the District Employment Exchange, Thoubal sponsored 3(Three) candidates vide V.O.NO/IOD/67/99(UM) dated 10.01.2000. Out of the 3(Three) candidates sponsored by Employment Exchange/Thoubal, one candidate namely Md.Azad Khan of Lilong Turel Ahanbi with E/E.Regn.No.Th/US/415/98 was a non-matriculate while the other 2(Two) candidates namely Miss. Mumtaz of Lilong Awang Leikai with E/E.Regn.No.Th/W/446/98 and Md.Abdur Razaque of Lilong Awang Leikai with E/E.Regn.No.Th/826/ 98 were matriculates.

As per D.G P&T Letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II (ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93, candidates with matriculation qualification have to be preferred over the candidates with educational qualification of VIII-Standard.

Attested
Advocate.

Annexure-II/Page-2

But, in the recruitment of ED-packer/Thoubal SO, Shri.D.K.Bora, SDIPOs/2nd Sub-Dn.,Imphal, instead of giving preference to 1(One) of the 2(Two) matriculates nominated and sponsored by the Employment Exchange, Thoubal preferred to recruit Md.Azad Khan of Lilong Turel Ahanbi with the educational qualification of VIII-Standard only.

Shri.D.K.Bora, as SDIPOs, 2nd Sub-Dn,Imphal is duty-bound to follow the instructions issued by the Department from time to time, among others in the matter of recruitment of ED-Agents, strictly without any deviation. But, by recruiting a candidate with the educational qualification of VIII-Standard for the post of ED-Packer, Thoubal SO when candidates with matriculation qualification were also available, the said Shri.D.K.Bora violated the departmental instructions contained in D.G. P&T and D.G.Posts letters cited above.

Rule-3(1)(ii) of CCS(Condcut) Rules,1964 requires a Govt. Servant to maintain devotion to duty while Rule-3(1)(iii) ibid requires the Govt. servant not to do anything which is unbecoming of a Govt. servant.

In the recruitment of ED-Packer/ Thoubal SO, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal not only failed to maintain devotion to duty by not following the instructions contained in D.G. P&T and D.G.Posts letters mentioned above but also committed grave irregularity amounting to an act unbecoming of a Govt. Servant by recruiting the said Md.Azad Khan who already lost his preference to other 2(Two) candidates nominated and sponsored by Employment Exchange/Thoubal. Thus, the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal violated Rule-3(1)(ii) and Rule-3(1)(iii) of CCS (Conduct)Rule,1964.

Attested
Advocate.

Annexure-II/Page-3

Article-II

As per D.G.P&T Letter No.43/66-Pen., dated 17.10.66 readwith Rule-3 of P&T Manual Vol.IV, pre-appointment formalities should precede the appointment of ED-Agents. Therefore, no EDA could be appointed with effect from a date prior to his recruitment/ selection, nor before completion of appointment formalities such as submission of declaration, descriptive particulars etc., including verification of character and antecedents of the candidate selected for appointment as ED-Agent.

Shri.D.K.Bora, while working as SDIPOs/2nd Sub-Dn., Imphal, during the period from 03.04.99 to till-date, completed the recruitment to the post of ED-Packer, Thoubal SO on 06-04-2000 by keeping a note dated 06-04-2000 regarding selection of one Md.Azad Khan for the said post, but provisionally appointed the said Md.Azad khan with effect from 01-03-2001 vide No.A-1/ED Packer/Thoubal SO dated 31-03-2000. Thus, the said Shri.D.K.Bora appointed Md.Azad Khan, S/o.Late.Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal SO with effect from a date prior to his recritment/selection to the post. After issuing provisional appointment to the said Md.Azad Khan, the said Shri.D.K.Bora completed the pre-appointment formalities including verification of character and antecedents, and issued order of appointment to the said Md.Azad Khan vide No.A-1/ED packer/Thoubal SO dated 26th April,2000 by which the said Shri.D.K.Bora appointed the said Md.Azad Khan as ED-Packer, Thoubal SO with effect from 01.02.2000. Thus, the said Shri.D.K.Bora, not only appointed the said Md.Azad Khan as ED-Packer, Thoubal SO with retrospective effect but also appointed the said Md.Azad Khan as ED-Packer, Thoubal SO with effect from 2(Two) different dates by 2(Two) different orders. Appointment of a single official with effect from 2(Two) different dates against a single post with the full knowledge of the appointing authority is a clear act of failure

Attested
Vpn
Advocate.

Annexure-II/Page-4

to maintain absolute integrity and non-following of instructions contained in D.G P&T Letter No.43-66/Pen., dated 17.10.66 is lack of devotion to duty. Similarly, appointment of an official with retrospective effect in the absence of warranting circumstances amounts to an act totally unbecoming of a Govt. Servant.

Therefore, it is imputed that the said Shri.D.K.Bora, by his act as narrated above, violated Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules, 1964.

(G.Ninan)
Director Postal Services,
Manipur State, Imphal - 795 001.

Attested
Advocate

ANNEXURE-III

List of documents by which the articles of charges framed against Shri D.K.Bora, SDIPOs, 2nd sub-division, Imphal are proposed to be sustained.

01. SDIPOs/2nd sub-division, Imphal letter A-1/Leave/ED-Staff Dtd. 30.07.99.
02. Resignation letter of Shri Mangkholet Haokip, the then ED-Packer, Thoubal SO dtd 27.11.99.
03. SDIPOs/2nd sub-division, Imphal letter No.A-1/ED-Packer/Thoubal S.O. Dtd 29.12.99.
04. SDIPOs/2nd sub-division, Imphal letter No.A-1/ED-Packer/Thobal S.O. dtd 05.02.00.
05. District Employment Exchange, Thoubal VO.NO/IOD/67/99(UM) dtd 10.01.00.
06. SDIPOs/2nd sub-division, Imphal letter No.A-1/ED Pakcer/Thoubal S.O. Dtd. 26.02.00.
07. SDIPOs/2nd sub-division, Imphal letter No.A-1/ED Pakcer/Thoubal S.O. Dtd. 31.03.00.
08. SDIPOs/2nd Sub-Dn., Imphal No.A-1/ED Packer/Thoubal SO dated 06-04-2K (Note of SDIPOs/2nd Sub-Dn., Imphal regarding the selection of Md.Azad Khan to the post of ED-Packer, Thoubal SO)
09. SDIPOs/2nd sub-division, Imphal letter No.A-1/ED Pakcer/Thoubal S.O. Dtd. 26.04.00.
10. Application for leave for 6(six) months w.e.f. 01.08.99 submitted by Shri Mangkholet Haokip, ED Packer, Thoubal S.O.
11. Provisional/transfer certificate with Sl.No.106 issued by the office of Chingkham Makha High School Dtd. 30.04.98 showing the Educational qualification and date of birth of Md. Azad Khan, S/O Late Abdul Jalil of Lilong Turel Ahanbi.

ANNEXURE-IV

List of witnesses by which the articles of charges framed against Shri D.K.Bora, SDIPOs/2nd sub-division, Imphal are proposed to be sustained.

As the statement of imputations is based on documentary evidences, no witness is proposed at this stage.

(G.Ninan) 9.10
Director Postal Services,
Manipur State, Imphal - 795 001.

Advocate.

ANNEXURE-A/4

RL No 534/68/11/01 U6

07/11/01

- 29 -

ANNEXURE – 2

NORTH EASTERN POSTAL CIRCLE :MANIPUR

ORDER RELATING TO THE APPOINTMENT OF PRESENTING OFFICER
[Rule 14(5)(c)]

Memo No. B-2/D.K.Bora 07 Nov '01

ORDER

Whereas an inquiry under Rule 14 of the Central Civil Services (Classification ,Control and Appeal) Rules, 1965 is being held against **Shri D.K.Bora ,SDIPOs-2nd Sub Dn,Imphal.**

And Whereas the undersigned considers that a Presenting Officer should be appointed to present on behalf of the undersigned the case in support of the articles of charge.

Now, Therefore, the undersigned in exercise of the powers conferred by Sub -Rule(5)(c) of Rule 14 of the said rules, hereby appoints **Shri L. Tiken Singh , SDIPOs-Ukhrul Sub-Dn, Ukhrul** as the presenting officer.

The above is in continuation with enquiry under Rule -14 vide even no. dtd. 09 Oct '01.

(G.Ninan)
Director Postal Services

Copy to :-

1. Shri L.Tiken Singh, SDIPOs-Ukhrul Sub Dn,Ukhrul-795 142 (Presenting Officer)
2. Shri D.K.Bora,SDIPOs-2nd Sub Dn,Imphal. (Accused)
3. Shri N.C.Halder, Supdt. of Post Offices, Manipur, Imphal-795 001 (Inquiry Officer)

Attested
Advocate.

ANNEXURE-A/3

-30-

NORTH EASTERN POSTAL CIRCLE :MANIPUR

ANNEXURE – 3

ORDER RELATING TO APPOINTMENT OF INQUIRING AUTHORITY
[Rule 14(2) of CCS(CCA) Rules 1965]

Memo No. B-2/D.K Bora 07 Nov '01

Whereas an inquiry under Rule 14 of the Central Civil Services (Classification ,Control and Appeal) Rules, 1965 is being held against **Shri D.K.Bora, SDIPOs-2nd Sub Dn, Imphal.**

And Whereas the undersigned considers that an Inquiry Authority should be appointed to inquire into the charges framed against the said **Shri D.K Bora, SDIPOs-2nd Sub Dn,Imphal.**

Now, Therefore, the undersigned in exercise of the powers conferred by Sub -Rule(2) of the said rule, hereby appoints **Shri N.C.Halder, Supdt. of Post Offices, Manipur ,Imphal** as the Inquiring Authority to inquire into the charges framed against the said **Shri D.K Bora, SDIPOS-2nd Sub Dn, Imphal.**

The above is in continuation with enquiry under Rule-14 vide even no. dtd. 09 Oct '01.

(G.Ninan)
Director Postal Services

Copy to:-

1. Shri N.C.Halder, Supdt. of Post Offices, Manipur, Imphal-795001 (Inquiry Officer).
2. Shri D.K.Bora, SDIPOs-2nd Sub-Dn ,Imphal-795 001 (Accused)
3. Shri L.Tiken Singh, SDIPOs- Ukhrul Sub-Dn. Ukhrul-795 142 (Presenting Officer)

Attested
Advocate.

ANNEXURE-4

To

Shri N. C. Halder
Inquiry Officer
And
The Supdt of P.Os
O/O the DPS, Manipur
Imphal 795001

Sub:- Nomination of Defence Assistant.

Sir,

I have the honour to inform you that shri Uttam Sengupta ASPO's (HQ) O/O the Superintendent of Post Offices Tinsukia Division, Tinsukia will work as my "defence Assistant" in the ongoing departmental inquiry under Rule-14 of the CCS(CCA) Rules 1965 against me.

Date
24/1/02

Yours faithfully
(Shri D.K. Bora)
SDI(P) 2nd Sub Div
Imphal 795001

Remind to-day on

30.1.2002.

30/1/02
Inquiry Officer
&
SPOs, Imphal

Received
on
Advocate.

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ANNEXURE-5

EXTRACT OF ORDER SHEET IN THE DEPARTMENTAL INQUIRY UNDER RULE-14 OF CCS (CCA) RULES, 1965 AGAINST SHRI.D.K.BORA, SDIPOs, 2ND SUB DIVISION, IMPHAL

ORDER No.02
Dtd.30.01.2002

This is to decide the application dated 24.01.02 submitted by the charged official, Shri.D.K.Bora, on taking the assistance of a government servant to present the case on his behalf.

2. In the hearing held to-day (ie.the 30th Jan 2002), the Charged official submitted an application dated 24.01.02 stating that Shri.Uttam Sengupta, ASPOs(HQ), O/o the Supdt.of Post Offices, Tinsukia Division, Tinsukia will work as his Defence Assistant in the ongoing departmental inquiry. But, the charged official neither has submitted the consent of the aforementioned Shri.Uttam Sengupta for acting as his Defence Assistant alongwith the declaration of the said official that he is not already having 3(Three) pending disciplinary cases on hand, nor has submitted any document to support that the nominated Defence Assistant has obtained the permission of his controlling authority to absent himself from office in order to assist the charged official during the enquiry. In the absence of the necessary information, the request of the charged official for taking the assistance of a government servant from a station other than the station of enquiry is not acceptable.

3. The Charged official was given the opportunity to attend the enquiry alongwith his defence assistant vide letter No.A-1/Inquiry/Rule-14/I/2001-02 dated 20.12.01, but he attended the enquiry alone on 02.01.2002 in which he prayed for time to nominate his defence assistant. Accordingly, the C.O was given 10(Ten) days time and the C.O was to nominate his defence assistant before 12.01.2002. The C.O failed to nominate his Defence Assistant or request for further extended time within the stipulated date. Now, on the day of enquiry, eighteen days after the expiry of the stipulated date, the C.O turned up with this application-dated 24.01.02. There is no explanation as to why the application dated 24.01.02 was not forwarded to the undersigned earlier. The charged official has failed to respond within the stipulated time.

Attested
Advocate.

4. The request of the C.O cannot be acceded to.

5. The next hearing is therefore fixed on 01.02.2002 (Friday) in the chamber of the undersigned in the office of the Director Postal Services, Manipur, Imphal at 1100 Hours.

6. The C.O is also given the opportunity to submit a list of witnesses to be examined on his behalf and submit his requirement for discovery and/or production of any document(s) which is/are in the possession of Government but not mentioned in the list of documents attached as Annexure-III to the charge sheet. The C.O, while submitting his requirement for discovery and/or production such document(s) as he may wish, should invariably indicate the relevance of the documents so required by him duly stating the particulars of authority in whose custody or possession the documents are kept. The C.O is expected to ensure that his requirements related to this paragraph are submitted before the undersigned in the hearing fixed on 01-02-2002(Friday).

7. Copies of order endorsed to all concerned.

(N.C. Halder) 30/1/02
INQUIRY OFFICER.
&
Supdt. of Post Offices,
Manipur Division:Imphal:795001.

No.A-1/Inquiry/Rule-14/1/2001-02 30 Jan 2002.

Copy to:

1. Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal (Charged Official) for information.
2. Shri.L.Tiken Singh, SDIPOs, Ukhrul Sub-Dn., Ukhrul (Presenting Officer) for information.
3. The Director Postal Services, Manipur, Imphal-795001 (Disciplinary Authority) for information.

Attested
Advocate.

DEPARTMENT OF POSTS:INDIA
OFFICE OF THE DIRECTOR POSTAL SERVICES : MANIPUR :IMPHAL-795001

Extract of Order Sheet in the Departmental Inquiry under Rule -14 of CCS(CCA) Rules, 1965 against Shri D.K.Bora, SDIPOs-2nd Sub Dn, Imphal.

ORDER NO. 1. dtd.30.01.2002.

The proceedings are taken up at 1100 hrs in my chamber in the office of the Director Postal Services, Manipur , Imphal on 30.01.2002 in presence of the Presenting Officer and Charged Official. The P.O. has been asked to produce the document listed by the Disciplinary authority in Annexure-III of the charge sheet dtd 09.10.01. The P.O. produced the documents in original along with their Xerox copies and the documents are brought into records as state exhibits duly marking as under:

Sl.No.	Particulars of documents	Exhibit Nos.
01.	A-1/Leave/ED-Staff dtd. 30.07.99	S-1
02.	Resignation letter of Shri Mangkholet Haokip, the then ED-Packer, Thoubal SO dtd.27.11.99.	S-2
03.	A-1/ED-Packer/Thoubal SO dtd.29.12.99	S-3
04.	A-1/Ed-Packer.Thoubal SO dtd.05.02.00	S-4
05.	District Employment Exchange, Thoubal Letter VO No.IOD/67/99(UM)dtd.10.01.00	S-5
06.	A-1/ED-Packer/Thoubal dtd.26.02.00	S-6
07.	A-1/ED-Packer/Thoubal SO dtd. 31.03.00	S-7
08.	A-1/ED-Packer/Thoubal SO dtd. 06.04.00	S-8
09.	A-1/Ed-Packer/Thoubal SO dtd.26.04.00	S-9
10.	Application for leave for 6 months w.e.f. 01.08.99 submitted by Shri Mangkholet Haokip, ED-Packer, Thoubal SO.	S-10
11.	Provisional/transfer certificate with Sl.No. 106 issued by the Office of the Chingkham Makha High School on 30.04.98 Showing the Educational qualification & date of birth of Md. Azad Khan, S/o (L) Abdul Jalil of Lilong Turel Ahanbi.	S-11

The Charged Official was asked to examine the original documents and he requested to supply the photocopies of the documents. The original documents have been produced in the

Attested
Advocate.

proceedings on 30.01.02 and examined by the Charged Official as desired and the attested copies of the listed documents have been supplied to the Charged Official on 30.01.02. The original documents were returned to the disciplinary authority through the Presenting Officer and the Xerox copies are taken by me for further proceedings of the case.

The Charged Official was asked in the preliminary hearing held on 02.01.02 to nominate the Defence Assistant within 10 days but he could not do so. However, he has submitted one application dtd.24.01.02 in the proceedings on 30.01.2002 nominating one Defence Assistant viz. Shri Uttam Sengupta , ASPOs(HQ), O/o the SPOs, Tinsukia Division, Tinsukia.

The proceedings are adjourned for today at 14.40 hrs. and the next date of regular hearing will be fixed in due course.

Extract of this Order is endorsed to the Presenting Officer and the Charged Official.

30-1-02
(L.Tiken Singh)
Presenting Officer
&
SDIPOs-Ukhrul Sub Dn

30/1/02
(D.K.Bora)
Charged Official

30/1/02
(N.C.Halder)
Inquiry Officer
&
Supdt.of Post Offices
Manipur:Imphal-795001

No. A-1/Inquiry/Rule-14/1/2001-02 Dtd. at Imphal the 30.01.02

Copy to:-

1. Shri L.Tiken Singh , Presenting Officer & SDIPOs-Ukhrul Sub Dn, Ukhrul -795 142.
2. Shri D.K.Bora (Charged Official) & SDIPOs-2nd Sub Dn , Imphal
3. The Director of Postal Services , Manipur , Imphal for kind information.
4. Spare.

Attested
Adv
Advocate.

ANNEXURE – 6

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To

The Inquiry officer
And
The Supdt of Post offices
O/O the SPOs Manipur
Imphal 795001

Sub:- Request for production of additional documents.

Ref:- Order ~~dated~~ No 2 dtd 30-1-02

Sir,

With due respect, it is to state that –

1. The departmental inquiry under Rule 14 of the CCS (CCA) Rules 1965 has been proceeded against me primarily for non selection of candidate to the post of ED Packer Mombal S.O with higher educational qualification in preferences to the candidate with basic minimum Educational qualification prescribed for such Posts of ED Agents.

Received similar copies containing 6 (six) Pages on 1.2.2002.

Attested 1/2/02

D/O & SPOs, Imphal

2. As I have to show that there was no malafide intention on my part in the selection and appointment of ED Packer Mombal S.O who possessed the

Contd-2

Attested
by
Advocate

minimum required educational qualification, the selection and appointment made in the following ED Posts in the ~~Dn~~ 2nd Sub division Imphal have to be considered in comparison with the ~~docum~~ documents produced against me.

(I) Selection and appointment of Shri L. Kumuda Singh against the post of EDDA @ EDMC of Haoreibi BO dtd 2-1-97.

(II) Selection and appointment of Md Shahood Alam against the post of EDDA @ EDMC of Phurindrei BO dtd 26-2-99.

(III) Selection and appointment of miss Wahida Begum against the post of EDMC Changamdabi BO. dtd 31-1-99.

(IV) Selection and appointment of Md Mustak Khan against the post of EDDA, Wangoi S.O., dtd 24-10-98.

(V) Selection and appointment of Shri S. Binoy Singh against the post of EDDA cum EDMC of Keirao Wangkhem BO dtd 25-3-99

3. The Sub division was inspected by the Inspecting Officer in the respective years of selection and appointments and the procedure

Contd-3

Advocate.

adopted in make selection and appointments have been held proper.

So, the selection and appointment made in a similar manner can not be stated as a selection and appointment with malafide intention. The selection and appointment of ED Packer Thoubal S.O cannot be termed as wrong or irregular when the procedure followed for years together was never objected nor found irregular.

Hence to prove my innocence that the selection and appointment to the post of ED Packer Thoubal S.O was bonafide, it is essential to examine the selection and appointments of ED Agents in respect of the posts mentioned in para 2 above.

Therefore the following files containing the under mentioned documents are to be included as additional documents for my defence.

① File no A1/PF/EDMC/Hao/Vol/bi
② V.O no 2/96(Mny) dtd 4th Dec'96 from District Employment Officer, Thoubal
③ A1/PF/EDMC/Hao/Vol/bi dtd at Imphal 9-12-96
④ Merit list of candidates in the recruitment of EDSA(C)

Contd-4

Advocate.

EDMC at Haoreibi EDBO under Litong S.O dtd 2-1-1997.

(d) Appt order in memo NO A1/Haoreibi/EDDA © EDMC dtd at Imphal 2-1-97.

(II) File NO A1/EDDA cum EDMC/changan dabi BO

(a) V-O NO ~~xxx~~ 1-C(US) 99 dtd Imphal the 15-1-99 from Employment Officer Imphal East

(b) NO A1/changandabi/EDDA©EDMC dtd 17-1-99.

(c) Marks secured by the candidates appeared in the interview for selection of an EDMC at changandabi BO dtd 31-1-99.

(d) Provisional certificate issued by the Head master the Azad Higher Secondary school in the name of Miss Wahida Begum D/o md Abdul Hasim of Yaithpok changandabi.

(e) Appt letter NO A1/EDMC/changandabi dtd 31-1-99.

(III) File NO A1/PF/EDDA cum EDMC/Phundrei ED BO.

(a) V-O NO 10D/20/99 (UM) dtd 20th Feb'99 from the district Employment officer Thoubal.

(b) memo NO A1/PF/EDDA/mc/Phundrei dtd at Imphal 22-2-99.

(c) Selection list of EDDA © EDMC Phundrei EDBO under Wangjing S.O dtd 26-2-99.

Contd-5

Advocate.

(d) Memo No A1/PF/EDSA © EDMC/Phundrei Bd/2nd dtd at Imphal the 26-2-99.

(e) Provisional/Leaving/Transfer certificate issued by the office of the Head master Sora High School - Sora in the name of Md Shahed Alam S/O MV Sahabuddin of Phundrei mayai Leikai

(iv) File No A1/[redacted]/Wangoi S-O/98-99

(a) V.O No E&S/US/60/98 dtd 28-7-98 from the Employment officer, Imphal.

(b) Memo No A1/PF/EDSA/Wangoi S.O. dtd 10-10-98.

(c) Merit list dtd 21-10-98.

(d) certificate issued by the Head master Bengoon High Madrassa, mayang Imphal Bengoon dtd 10-11-97 to Md mustak khan S/O MV yusuf Ali of Wangoi.

(e) Apptt letter No A1/PF/EDSA/Wangoi dtd at Imphal 21-10-98.

(v) File No A1/PF/EDSA © EDMC/K-Wangkhem.

(a) V-O No 21-E.(US)/99 dtd Imphal the 9th march 1999 from Employment officer, Imphal East.

(b) Memo No A1/PF/EDSA © EDMC/K-Wangkhem dtd 12-3-99.

Contd—6

Advocate.

(c) Transfer/provisional certificate issued by the Head master Langdum Junior High School dtd 6-3-99 in the name of Samandram Bindy Singh S/O S. Dto Singh of Charam Sandrok.

(d) Selection of EDDA @ Camcal-K-Wangkhem EDBO under Singjamei B.O. dtd 25-3-99.

(e) Appt. letter no A1/PF/EDDA @ EDMC/K-Wangkhem dtd at Imphal the 25th March 99.

(vi) Order book of the O/O SDI(P)/2nd Sub Dn, Imphal.

(a) Inspection Remarks on the working of the SDI/Pos 2nd Sub Dn, recorded by the Inspecting Officer for the year 1996, 1997, 1998, and 1999 and 2000.

4. The files are in the custody of SDI/Pos 2nd Sub Dn, Imphal. As the undersigned incidentally holds the charge of the O/O SDI/Pos 2nd Sub Dn, the files will be produced if allowed by the I.O.

5. Full co-operation will be given through out the entire process of the inquiry.

Dated 1/2/2002

Yours faithfully,
(Shri O.K. Bora)
Charged Official
and
SDI/Pos 2nd Sub Dn
Imphal

ANNEXURE-7

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE DIRECTOR POSTAL SERVICES
MANIPUR IMPHAL 795 001

DAILY ORDER SHEET IN THE DEPARTMENTAL ENQUIRY UNDER RULE-14 OF CCS (CCA) RULES, 1965 AGAINST SHRI D.K.BORA, SDIPOs 2nd SUB-DIVISION, IMPHAL.

ORDER No.4 dtd 04 Feb 02

The proceedings are taken up at 1100 hrs in my chamber in the office of the Director Postal Services, Manipur Imphal on 04 Feb 02 in presence of the Presenting Officer and Charged official.

2. The records listed in para 2 of order no. 3 dtd 01 Feb 02 have already been called for from SDIPOs 2nd sub-division, Imphal and produced before the undersigned for further necessary action in the enquiry. The admissibility of these records as additional documents for the defence of the CO is subject to explaining their relevancy with reference to the charges framed against the CO and documents produced by the disciplinary authority to sustain the charges against the CO. The charged official has already been given to understand that the admissibility of the documents would be examined in para-5 of order No.3 dtd 01 Feb 02. Now the CO is given the opportunity to explain the relevancy of the documents within the scope of his defence.

3. Availing the opportunity to explain the relevancy of the documents, the CO has submitted the following:

i. File No.A-1/PF/Haoreibi:
The district employment officer, Thoubal in his office memo no. VO no. 2/96(UM)/ dtd 04 Dec 96 forwarded to the then SDIPOs 2nd sub-division, one sheet sponsoring the names of three candidates for the post of EDDA/ EDMC in response to the requisition letter No.A-1/Haoreibi EDBO dtd 19 Nov 96 issued by the then SDIPOs 2nd sub-division, Imphal.

Out of the three candidates sponsored by the employment exchange, Thoubal candidates at Sl. No. 1, Shri L.Kumuda Singh of Haoreibi with Regn. No.US/3833/96 was a non matriculate while the other two candidates namely Shri L.Opendro Singh of Haoreibi with Regn No.3545/93 and L.Jibanmala devi of Haoreibi with Regn No.W/732/95 were matriculates (HSLC).

In receipt of the above list of candidates, all the three candidates were called for a written test vide the then SDI(P) 2nd letter No.A-1/PF/EDMC/Haoreibi dtd 09 Dec 96 and on the basis of a written test held on 02.01.97, Shri L.Kumuda Singh has been selected for appointment to the post of EDMC, Haoreibi BO. Vide merit list of candidate in respect of recruitment of EDDA(C)EDMC at Haoreibi EDBO under Lilong SO dtd 02.01.97. Accordingly the said Shri L.Kumuda Singh was appointed as EDDA(C)EDMC of Haoreibi EDBO vide the then SDI(P)2nd sub Divn Imphal Memo no.A-1/ Haoreibi/EDDA (C)EDMC Date 02.01.97. No Preference was given to any of the two Matriculate Candidates nominated and sponsored by the Employment Exchange Thoubal but Shri L Kumuda Singh with Educational Qualification of VIII Standard only was appointed. So the selection/ appointment was made on the basis of comparative test and not by giving preference to higher educational qualification.

The Selection and appointment of Md Azad Khan to the post of ED Packer, Thoubal S.O. was made in a similar manner.

ii. File no.A1/EdDA (C) EDMC/Changamdabi:
Again, Employment officer, Imphal East in his Memo No. VO No.1-C(us)/99 dtd 15.10.99 has forwarded a list nominating three candidates for the post of EDMC, Changamdabi BO under Yairipok SO in response to the then SDI(P) 2nd sub-division Imphal memo No.A-1/ Changamdabi BO dtd 10.12.98. Out of the three candidates sponsored by employment officer, the candidate at Sl.No.1 namely Shri Md.Abdul Khalique of Changamdabi with Regn No.1E/2703/98 was matriculate (HSLC), the second candidate namely Miss Wahida Begum with Regn No.1E/W/US/112/98 of Changamdabi was VIII standard and the third candidate namely Md.Azizur with Regn No.1E/994/98 of Changamdabi was a graduate in BA.

On receipt of the above list of three candidates, the then SDI(P) 2nd sub-division Imphal in his office letter No.A-1/Changamdabi/EDDA(c)EDMC dtd 17.01.99, has called all the three candidates for an interview which was conducted on 31.10.99. On the basis of the interview, Miss Wahida Begum with educational qualification of VIII standard has been selected as EDMC, Changamdabi EDBO and subsequently she was appointed to the said post of EDMC, Changamdabi BO under memo No.A-1/EDMC/Changamdabi dtd 31.10.99. No preference was given either to the candidate with HSLC qualification or graduation. Provisional certificate issued by the Headmaster, Azad Higher secondary school

dtd 26.09.98 in the name of Miss Wahida Begum D/O Md.Abdul Hasim of Yairipok, Changamdabi has been submitted by Miss Wahida Begum in support of her educational qualification. So the selection/ appointment was made on the basis of comparative test and not by giving preference to higher educational qualification.

Similar process was adopted in the selection and appointment of ED-packer, Thoubal SO.

iii. File No.A-1/PF/EDDA(c)EDMC/Phundrei EDBO:
Again, district employment officer, Thoubal in his memo No.VO No.10D/20/99(UM) dtd 20.02.99 has forwarded a list of three candidates for the post of EDDA(C)EDMC in response to the then SDI(P) 2nd sub-division, Imphal memo No.A-1/PF/Phundrei EDBO dtd 12.02.99. Out of the three candidates sponsored by the Asstt. Employment officer, Thoubal, the candidate at Sl.No.1 namely Md.Shaheed Alam with Regn No.TH/US/139/99 of Phundrei Mayai Leikai was VIII standard, the second candidate namely Md.Nazimuddin Khan with Regn No.TH/1637/94 of Phundrei Mayai Leikai was a PUC passed and third candidate namely Md.Abdul Hasan Shah with Regn No.TH/190/99 of Phundrei Makha Leikai was a matriculate (HSLC).

On receipt of the above list of candidates the then SDI(P) 2nd sub-division, Imphal in his office memo No.A-1/PF/EDDA(C)EDMC/Phundrei dtd 22.02.99 has called all the three candidates to appear in a written test/ interview on 26.02.99 at 1100 hrs. On the basis of the interview for selection of EDDA(C)EDMC, Phundrei EDBO held on 26.02.99, Md Shaheed Alam who possessed the educational qualification of VIII standard only was selected and appointed on 26.02.99 vide SDI(P) 2nd sub-division, Imphal memo No.A-1/PF/EDDA(C)EDMC/Phundrei BO/2nd dtd 26.02.99. No preference was given to the candidates either with PUC qualification or HSLC qualification. Provisional/ leaving/ transfer certificate issued by the Headmaster, Sora High School dtd 05.01.99 shows that Md.Shaheed Alam possessed VIII standard qualification. So the selection/ appointment was made on the basis of comparative test and not by giving preference to higher educational qualification.

Similar procedure was adopted in the selection and appointment of Md.Azad Khan as ED-packer, Thoubal SO.

iv. File No.A-1/Wangoi SO/98-99:
Again, Employment Officer, Imphal in his memo No.VO No.CG/US/60198 dtd 28.09.98 forwarded a list of three

Advocate.

candidates for the post of EDDA, Wangoi SO in response to the then SDI(P) 2nd sub-division, Imphal letter No.A1/PF/EDDA/Wangoi SO dtd 1..09.98. Out of the three candidates nominated by the Employment Exchange, Imphal West, the candidate appearing at Sl.No.1 namely, Md.Mustak Khan with Regn No.US/3458/97 of Wangoi possessed class VIII qualification, candidate at Sl.No.2 namely Md.Zakir Hussain with Regn No.914/92 possessed HSLC qualification and candidate at Sl.No.3 namely Md.Firoz Khan with Regn No.US/1172/91 of Wangoi possessed class VIII qualification.

On receipt of the above list of candidates, the then SDI 2nd sub-division, Imphal, vide in his memo no, A1/PF/EDDA/Wangoi SO dtd 10.10.98 has called the candidates to appear in an interview which was held on 24.10.98 at 1030 hrs to 1130 hrs and on the basis of the interview, Md.Mustak Khan with educational qualification of VIII standard was selected for the post of EDDA/Wangoi SO vide merit list dtd 24.10.98 prepared by the then SDI(P) 2nd sub-division, Imphal. A certificate issued by Headmaster Bengoon High Madrassa, Mayang Imphal Bengoon dtd 10.11.97 in the name of Md.Mustak Khan S/O Md.Yusf Ali of Wangoi is available on record shows that the candidate was having VIII standard qualification. No preference was given to the candidate with HSLC educational qualification. So the selection/ appointment was made on the basis of comparative test and not by giving preference to higher educational qualification. The selection and appointment of Md.Azad Khan as ED-packer, Thoubal SO was also made in the similar manner which was in existence in the sub-division prior to the selection and appointment made by me in favour of ED-packer, Thoubal SO.

v. File No.A1/PF/EDDA(C)EDMC/K.Wangkhem:
Again, Employment Officer, Imphal East in his memo No.21-C(US)/99 dtd 09.03.99 has forwarded a list of candidates sponsoring four candidates for the post of EDDA(C)EDMC, K.Wangkhem EDBO in response to the requisition of candidates made by the then SDI(P)2nd sub-division, Imphal in his office memo no. A1/PF/EDDA(C)EDMC/K.Wangkhem dtd 02.02.99. Out of the four candidates, the candidates at Sl.No. 1 to 3 namely Shri Sh.Naobi Singh with Regn No.1E/US/420/99 of K.Wangkhem, Shri N.Jotin Singh with Regn No.1E/US/925/98 of K.Wangkhem and Shri N.Tomcha Singh with Regn No.1E/US/426/99 of Wangkhem Awang Leikai are with educational qualification of VIII standard and candidate at Sl.No.4 namely Shri N.Tombi Singh with

Advocate.

regn No.IE/1013/9 of Wangkhem Awang Leikai is with educational qualification of matriculate.

On receipt of the above list of candidates the then SDI(P) 2nd sub-division, Imphal in his office letter No.A1/PF/EDDA(C)ELMC/K.Wangkhem dtd 12.03.99 called for certificates/ testimonials from the candidates and subsequently selected one Shri S.Binoy Singh with class VIII standard passed certificates (Whose name was never sponsored by the employment exchange nor called for the interview) and appointment order was issued vide the then SDI(P) 2nd sub-division, Imphal memo No.A1/PF/EDDA(C)ELMC/K.WangKhem dtd 25.03.99. No preference was given to Shri N.Tombi Singh, S/O (L) N.Ibotombi Singh of Wangkhem Awang Leikai who was a matriculate candidate. So the selection/ appointment was made on the basis of comparative test and not by giving preference to higher educational qualification.

The selection and appointment of ED-packer Thoubal SO was also made as per the existing procedure by holding suitability test.

vi. The inspection reports on the office of the 2nd sub-division Imphal inspected by the concerned inspecting officers from time to time preferably from 1996 onwards did not make any objection or held any of the above appointments as irregular or violative of any rules and procedures followed in respect of all the above mentioned appointment cases. Instead, it may be vividly seen in para-6 item (i) of IR dtd 30.11.98 that selection of candidates to the various ED-packer made on the basis of comparative merit list has been held regular as no objection was raised to the procedure prevailed in the sub-division. Similarly in para-9 of IR dtd 24.11.99, it is held that the appointment made in the sub-division during the 1999 were done with proper procedure. The particulars of appointment made during 1999 has already been discussed in item (ii), (iii) and (v)above. Even during inspection of the office of SDI(P) 2nd sub-division, Imphal on 08.12.00, the inspecting officer did not point out any irregularity in any of the appointments produced for inspection nor any irregularity has been communicated through the IR. The file containing the appointment of Md.Azad Khan was one among the files, as per the IR for 2000.

4. The presenting officer is given the opportunity to inspect the documents. The presenting officer after inspecting the documents submitted the following and objected to admit the documents as additional documents.

Attested
Advocate

i. As per para-5 of order No.3 dtd 01.02.02 the admissibility of the documents, whether to be considered relevant or not is to be decided by the inquiry officer.

ii. Recruitment of ED-Agents are to be based on departmental appointment ruling from time to time implemented by the department and not comparison to other appointment. So the relevancy given by the CO is not agreeable.

iii. The PO has given the following example. "One Shri X SPM, misappropriated the Govt money, which was not caught by the inspecting officer during the inspection and the misappropriation was not reflected in the IR. The SPM committed similar misappropriation in the same manner. However in the second occasion he was caught and charge sheeted. The SPM cannot defend on the ground that previous case of misappropriation or irregularity committed by him was not caught or not reflected in the earlier IR. The CO explains the relevancy of documents in a similar manner. Therefore the documents cannot be admitted as additional documents.

5. The relevancy of the records required by the CO as additional documents have been examined. The submissions of the charged official are not acceptable as because no wrong appointment can set a precedent for making subsequent appointments. Similarly series of wrong appointments over the years cannot set a procedure for making selection and appointment to a post so as to justify that the selection and appointment wrongly made earlier has not yet been punished or dealt with accordingly and as such the selection and appointment made in a similar manner cannot be viewed adversely. The charged official has been working in the cadre of inspector of post offices for more than 20 years and he has the knowledge and experience in the departmental rules and procedures. Non-following of rules and departmental instruction by his predecessors or any other authorities making selection and appointment to an ED post does not bestow immunity to the CO or any acts done by him. So, the CO cannot claim immunity on the basis of similar kinds of selections and appointments made earlier. The additional documents required by the CO merely show that the selections and appointments in some earlier cases were made without giving preference to the candidates having matriculation qualification and reasons for not preferring the candidates with matriculation qualification have to be explained by the respective appointing authorities. The charged official could not show that the records required by him either proves that there has been an established procedure approved by the department for

making selection and appointments of the agents away from the procedure laid down in the departmental instruction. Non-objection by the inspecting officers on any of the appointments also does not approve the wrong appointments or irregular appointments as non-detection of irregularity doens not approve the continuance of the irregularity. So, the records required by the official are rather required for showing that the selection and appointments made in those cases are similar to the selection and appointment made by the charged official for which the CO has been charge sheeted. The CO requires additional documents to show that he cannot be put under trial before similar cases of selection and appointments by his predecessors are not put under trial. As any earlier action cannot stand to conclude that the later action is proper, the CO's request for additional documents is not justifiable and therefore not granted.

6. Nature of each case has to be decided on the basis of its own merits and the CO should explain the reasons for his own actions. The decision regarding its nature whether right or wrong will be based on the CO's case, which is independent of other cases of selection and appointments. The following files received from the SDIPOs 2nd sub-division, Imphal are forwarded to the Director Postal Services Manipur Imphal to examine the selection and appointments and also further appropriate action. It is the disciplinary authority to decide, whether any prima-facie cases of irregularities exist in those selections and appointments.

i. File No.A1/PF/EDMC/Haoreibi
ii. File No.A1/EDDA(C)EDMC/Changamdabi
iii. File No.A1/PF/EDDA(C)EDMC/Phundrei
iv. File No.A1/Wangoi SO/98-99
v. File No.A1/PF/EDDA(C)EDMC/K.Wangkhem

7. The Director Postal Services-Manipur Imphal will after considering the requirements take appropriate action to ensure that the records pertaining to the custody of the documents belonging to SDIPOs 2nd sub-division Imphal are made available to the SDIPOs 2nd sub-division, Imphal. Information in this regard may be given to the undersigned as the records are collected by the undersigned for the purpose of enquiry.

8. As there is no witness to be examined on behalf of the disciplinary authority the presenting officer is hereby given the opportunity to produce the documentary evidence on behalf of the disciplinary authority. The documents have already been produced by the presenting officer on 30.01.02 and the same may be produced as evidence in the next hearing fixed tomorrow, the 5th Feb 02. The admissibility of the listed documents as documentary evidence is subject to their relevancy.

9. As no additional document has been admitted for the reasons recorded above supply of copies of documents, which were requisitioned by the CO for adding as additional documents either to the charged official or to the presenting officer is not necessary.

10. With the above orders, the case is adjourned to 05.02.02.

11. Extract copies of this order endorsed to all concerned.

(L.Tiken)
Presenting Officer
&
SDIPOs Ukhrul

(D.K.Bora) 4/2/02
Charged official
&
SDIPOs 2nd sub-Dn.

(N.C.Halder) 4/2/02
Inquiry officer
&
SPOs, Imphal.

No.A1/Inquiry/Rule-14/1/2001-02 dtd 04.02.01

Copy to:

01. The Director Postal Services, Manipur (Disciplinary authority) for information.
02. Shri D.K.Bora, Charged official and SDIPOs 2nd sub-division for information.
03. Shri L.Tiken Singh, Presenting officer and SDIPOs Ukhrul sub-division for information.
04. Spares.

Advocate

ANNEXURE-8

To

The Inquiry Officer,
&
The Supdt.of Post Offices,
Manipur, Imphal - 795001.

Sub: Written Brief of the Charged Official in the Departmental Inquiry under Rule-14 of CCS(CCA) Rules,1965 against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal.

Sir,

In reply to the written brief of the Presenting Officer submitted vide SDIPOs/Uhrul No.A-1/PO/Rule-14/II/ Corr dated 15.02.2002, the undersigned being Charged Official submits his written brief as under:

1. The charge sheet memorandum spells out that the undersigned violated:

(i). Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules,1964 by committing serious irregularities in the recruitment of ED-Packer at Thoubal S.O; and

(ii).Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct)Rules, 1964 by appointing a single candidate namely Md.Azad Khan as ED-Packer with retrospective effect from 2(Two) different dates by 2(Two) different orders.

2. The Prosecution, for substantiating the article of charges No.I, has submitted the copies of 11(Eleven) documents of which 10(Ten) relates to communications made in respect of the recruitment of ED-Packer, Thoubal SO including the documents in proof of the arising of vacancy in the post of ED-Packer, Thoubal SO and the remaining 1(One) is the copy of Educational qualification certificate submitted by the selected candidate namely Md.Azad Khan.

3. The undersigned as charged official has already explained in his defence dated 7.2.2002 that he did not commit any irregularity or act which may tantamount to misconduct for Imputation of any of the charges as violative under Rule-3(1)(i),(ii) & (iii) of CCS(Condcut) Rules,1964.

4. The Prosecution, for terming the defence of the undersigned as irrelevant and meaningless in Para-2.10 of the written brief of the P.O, has contented in Para-2.9(a) to 2.9(g) of the written brief of the P.O that:

(a). When the departmental instructions state that the minimum required educational qualificiation for the post of various ED-Agents other than EDSPMs and EDBPMs is VIII-Standard, the same departmental instructions also state that the candidates with matriculation qualification have to be given preference in the selection of various ED-Agents other than EDSPMs and EDBPMs.

(b). Departmental rules and instructions are to be strictly followed by all the Govt. servants. In this instant case, the D.G-P&T and D.G-Posts letters are containing the method of recruitment of ED-Agents and as such the Charge Official should strictly follow the departmental instructions while recruiting the ED-Agents. Powers to interpret the rules and clarify the departmental instructions are the vested with the Government and not with the Government Servants. Therefore, the statement of the Charged Official that the preference to the candidates with matriculation qualification is only the proposition/optional provision that is "optional" and "not mandatory" is only his opinion, which shows his own way of interpreting the departmental instructions.

(c). Candidates with matriculation qualification gets preference over the candidates with VIII-Standard qualification and no immunity of any kind is stated anywhere in the D.G. P&T and D.G-Posts instructions. The Charged Official, being a Govt. servant is duty bound to follow the D.G-P&T & D.G-Posts instructions while recruiting ED-Agents. Neither the condition to possess sufficient working knowledge of regional language and simple arithmetic nor the better performance of a candidate with VIII-Standard qualification in the suitability test conducted by the recruiting authority could take away the preference entitled to the candidates with matriculation qualification in the selection of ED-Agents.

(d). The charged official has not explained the basis of suitability test and basis for selection of the candidate securing higher marks in the suitability test to fill up the ED-Posts. The D.G-P&T and D.G-Posts letters governing the selection of ED-Agents also do not state anything that

Attd
Advocate

the candidate scoring high in the suitability test has to be selected.

(e). The D.G. P&T & D.G-Posts letters referred to in the charge sheet memorandum along-with other clarification available on the method of recruitment of ED-Agents printed below EDAs(Conduct & Service)Rules clearly contains the basis by which candidates with matriculation qualification have to be preferred over the candidates with Class-VIII qualification. The charged official, being a senior IPOs, cannot say that he is ignorant of the departmental instructions.

(f). The departmental instructions governing the recruitment of ED-Agents, do not authorize to exclude the candidate with Class-VIII qualification when candidates with matriculation qualification are available. But there is a provision, in the departmental instructions on the method of recruitment of ED-Agents, for giving preference to the candidates with matriculation qualification.

(g). When there are candidates with matriculation qualification for the post of ED-Packer, it is necessary in the part of the recruiting authority to give due preference to those candidates. Giving preference to the candidates with matriculation qualification does not mean outright rejection of candidates with Class-VIII and below-matriculation qualification.

5. The Prosecution has however miserably failed to prove that:

(i). The candidates with Class-VIII qualification should forego their eligibility for consideration for various ED-Posts other than EDSPMs & EDBPMs when the candidates with matriculation are available;

(ii). The recruiting authority has no option but to recruit the matriculate when candidates with matriculation qualification have applied for the post along-with candidates with Class-VIII qualification.

(iii). The performance of the candidate with Class-VIII qualification in the suitability test conducted by the recruiting authority has no say in the selection of the candidate to various ED-Posts and the candidates with

matriculation qualification gets automatic preference over the candidates with Class-VIII qualification.

(iv). The recruiting authority should not conduct a suitability test and the candidate performing well in the suitability test has no preference in the selection as because the selection is purely based on the preference criteria available to the matriculates over the candidates with Class-VIII qualification.

(v). The D.G. P&T instructions regarding method of recruitment of EDAs contain any clause that the candidates with Class-VIII qualification should not at all be considered for selection to various ED-Posts other than EDSPMs & EDBPMs when candidates with matriculation are available.

(vi). The preference to matriculates inter-alia takes away the benefits of reasonable opportunity to be given to the candidates with Class-VIII qualification when candidates with matriculation have also applied for the eligible ED-Posts along-with candidates with Class-VIII.

(vii). The preference to matriculates is automatic when both matriculates and Class-VIII qualified candidates compete for eligible ED-Posts and such automatic preference does not tantamount to disqualifying the candidates with Class-VIII qualification to compete for those eligible ED-Posts.

Therefore, the contention of the P.O from Para-2.9 (a) to Para-2.9 (g) in his written brief are not substantive and objective.

6. The evidences produced by the prosecution in Exhibit S-1 to S-11 did not spell anything as violative of any of the provisions contained under Rule-3 of the CCS(Conduct) Rules, 1964. Instead, by producing the above Exhibits, the prosecution has helped in proving the fact that one Md.Azad Khan has been appointed to the post of ED-Packer, Thoubal SO duly following the prescribed procedure, after the regular incumbent of the post, namely Shri.Mangkholet Haokip, vacated the post after proceeding on leave and then resigned.

7. The allegation of the prosecution was that the appointment of Md.Azad Khan as ED-Packer of Thoubal SO was

Advocate.

irregular because he has possessed the educational qualification of VIII-Standard only as per Exhibit No.S-5 where there were 2(Two) more candidates with matriculation qualifications namely (i) Miss. Mumtaz and (2) Md.Abdur Razaque and any one of these two matriculates candidates should have been preferred for selection and appointed to the post of ED-Packer, Thoubal S.O. And in support of the allegation, the prosecution has simply made references to some of the D.G P&T and DG(Posts letters but it has utterly failed to produce the copy of any of the instructions as evidences. The prosecution has made irrelevant explanation to prove the allegation without any basis or material evidences.

8. The method, by which the selection and appointment of the ED-Packer, Thoubal SO has been made, has not been held or proved to be irregular. The Exhibit S-6 produced by the prosecution is sufficient enough to show that all the candidates have been called for a test and the test was conducted on simple arithmetic as was envisaged for testing suitability/possession of knowledge on simple arithmetic. But the prosecution did not hold this as irregular. When the procedure adopted for selection of candidates to the post has not been held irregular, then how the person selected and appointed subsequently be held irregular.

9. The expression made by the prosecution, that one of the two matriculates should have been preferred over the candidates with the educational qualification of VIII-Standard, sounds no logic. The prosecution, by stating, "1(One) of the 2(Two) matriculate candidates should have been preferred" has failed to point out the established procedure if any, to select any one of the matriculate candidates available for the post. No one could be selected or rejected summarily for having of higher or lower educational qualification. Some basis has to be followed. The basis in practice for selection of ED-Agents to various categories of ED-Posts in Manipur was "holding of written test" primarily for testing the knowledge of the candidates in arithmetic. This procedure was never held irregular by any of the officers of the department who verified appointment cases of various ED-Posts from time to time. Even in the instant case, the prosecution did not say anything about the procedure adopted for the selection of candidates to the post of ED-Packer, Thoubal S.O. So, the selection and appointment of Md.Azad Khan made as per the result of the test held on 4.3.2000 could not be held

Attested

Advocate

irregular. And, this will not amount to non giving of preference to the matriculate candidates who did not get selection for poor performance over the candidate of Class VIII Standard.

10. Holding of suitability test could have been avoided, had there been only one matriculate candidate sponsored by the employment exchange and the other candidates with VIII standard qualification only. In that case selection of the lone candidate could have been automatic over the rest of the candidates. But, in the instant case, there were more than 1(One) matriculate candidates and thus it was not possible to make a summary selection of 1(One) of the 2(Two) candidates as stated by the prosecution. So, the holding of the test was compulsory and this was done.

11. As regards the allegation in article-II it is submitted that:

(i). In the defence of the undersigned dated 07.02.2002, it was already submitted that the different dates in the appointment orders in respect of the date of effect of appointment was an error due to over sight. The error due to over sight is an unintentional mistake occur in the course of discharge of duties which does not require an independent explanation as because the unintentional error is an accident which is not known to the person committed it as long the same is not pointed out by somebody or otherwise noticed during reconciliation. Therefore, the contention of the P.O in Para-3.5 of his written brief is not valid.

(ii). The candidate namely Md.Azad Khan who was later selected to the post of ED-Packer, Thoubal SO was actually working in that post right from 01.08.99, and his substitute appointment against the incumbent ED-Packer expired on 27.01.2000 when the leave applied by Shri.Mangkholet Haokip, ED-Packer, Thoubal SO expired on the said date. The candidate has actually been continuing as ED-Packer, Thoubal SO well before his regular selection by way of a temporary arrangement made to the post. Therefore, appointment with retrospective effect was necessitated by the circumstances for drawing the pay and allowances entitled to the candidate who was actually discharging his duties in the ED-Post. Hence, the provisional appointment had to be made with effect from 01.03.2000 and the regular appointment order was bearing

the date of effect as 01.02.2000 instead of 01.03.2000 due to over sight as explained in Para-11(i) above.

(iii). The undersigned is willing to rectify any error pointed out to him even by issuing a fresh appointment order by canceling the earlier one. But, in the instant case, the undersigned was not given any opportunity to rectify the erroneous appointment under the relevant provisions of rules.

(iv). As the unintentional mistake or error occur during the course of discharge of duties cannot be equated with an intentional or/and willful misconduct or misbehaviour, it is submitted that the prosecution has miserably failed to prove that the undersigned violated Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules, 1964 as alleged in article of charge No.II.

12. It is therefore submitted that both the charges framed against the undersigned as charged official are vague, vitiated and baseless.

13. The undersigned, therefore, requests that the case may be decided on merits on the basis of points submitted in the foregoing paragraphs.

Dated : 4-3-02
Place : Imphal.

Yours faithfully,

(D.K.Bora)
Charged Official,
&
SDIPOs, 2nd Sub-Dn.,
Imphal-795 001.

ANNEXURE - 9

Under Receipt
1 (One) Page Only

12/3/02

NORTH EASTERN POSTAL CIRCLE

Director Postal Services,
Manipur State, [illegible]2002.
Imphal - 795 001.

No.B-2/D.K.Bora

12 March 2002

Shri.D.K.Bora,
Sub-Divisional Inspector of Post Offices,
2nd Sub-Dn., Imphal - 795 001.

Sub: Departmental Inquiry under Rule-14 of CCS(CC&A)Rules, 1965 against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal.

1. A copy of the report of the Inquiry Officer received vide SPOs/Imphal No.A-1/Inquiry/Rule-14/1/2001-2002 dated 08.03.2002 containing 38(Thirty Eight) pages[ie.Page-1 to 38 of 39 pages], in respect of the departmental inquiry held against you, is forwarded herewith for facilitating you to submit your written representation or submission to the undersigned within fifteen days from the date of receipt.

2. If no written representation or submission is received from you within the stipulated time, action on the inquiry report will be carried on without any further notice.

3. Photostat copies of performance sheets placed at Page-48/C, 49/C, 50/C and 51/C in file Mark:A-1/ED-Packer/Thoubal S.O which has been mentioned in Para-3 of your defence stated 07.02.2002 having reference to Para-2(3) of Order No.7 dated 08 Feb 02 of the disciplinary proceedings and considered by the I.O for coming to the conclusion regarding the article of Charge-I, are also forwarded herewith. (48/C is not a performance sheet but the question set by you to test the suitability of candidates for the post of ED-Packer, Thoubal S.O)

(G.Ninan)
Director Postal Services,
Manipur, Imphal-795001.

D/A : As stated above.

Attested
Advocate

NORTH EASTERN POSTAL CIRCLE
Office of the Director Postal Services, Manipur State
Imphal -795 001.

No.A-1/Inquiry/Rule-14/1/2001-2002 Dated : 08.03.2002.

Sub: Inquiry report of the Departmental Inquiry under Rule-14 of CCS(CCA)Rules, 1965 against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn, Imphal.

Ref: DPS/Manipur Memo.No.B-2/D.K.Bora dated 07.11.2001 appointing the undersigned as Inquiry Officer.

Whereas the undersigned has been appointed as Inquiry Officer vide DPS/Manipur Memo. No. cited above to inquire into the charged framed against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal vide DPS/Manipur Memo.No.B-2/D.K.Bora dated 09.10.2001;

And whereas the undersigned has already completed the departmental inquiry against the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal duly observing all the formalities under Rule-14 of CCS(CCA)Rules, 1965;

Now, therefore, the undersigned submits his report as under for further necessary action by the Disciplinary authority.

INQUIRY REPORT

1. INTRODUCTORY:

1. Under the authority of Director Postal Services, Manipur Memo.No.B-2/D.K.Bora dated 07.11.2001 the undersigned started functioning as Inquiry Officer to inquire into the charges framed against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal vide Director Postal Services, Manipur Memo.No.B-2/D.K.Bora dated 09.10.2001. Shri.L.Tiken Singh, Sub-Divisional Inspector of Post Offices, Ukhrul Sub Division was appointed as Presenting Officer to present the case on behalf of the disciplinary authority vide DPS/Manipur Memo.No.B-2/D.K.Bora dated 07.11.2001. The preliminary hearing fixed on 15.12.2001 vide No.A-1/Inquiry/Rule-14/1/2001-2002 dated 05.12.2001 had to be adjourned to 22.12.2001 due to administrative reasons as because the undersigned had to proceed to Circle Office, Shillong for unavoidable office works. The hearing

fixed on 22.12.2001 was also postponed to 02.01.2002 as because the Charged Official informed vide his letter dated 15.12.2001 that he had to attend a departmental hearing as Presenting Officer on that date. As the request of the C.O was justified, the preliminary hearing was re-fixed on 02.01.2002 and thereafter, regular hearings were held on 30.01.2002, 01.02.2002, 04.02.2002, 05.02.2002, 06.02.2002 & 08.02.2002. As the hearings were completed on 08.02.2002, the Presenting Officer and the Charged Official were allowed to submit their written briefs vide Order No.07 dated 08.02.2002. The written brief of the Presenting Officer was received by the undersigned on 15.02.2002. The Charged official was given the opportunity to submit his written brief within 22.02.2002, but the Charged Official requested for more extended time vide his representation dated 22.02.2002. The representation of the charged official dated 22.02.2002 was received by the undersigned on 25.02.2002, and immediately the Charged Official was granted 7(Seven) days more time with effect from the date of expiry of earlier allowed time. The Charged Official submitted his written brief dated 04.03.2002 on 06.03.2002.

2. ARTICLES OF CHARGES :

2.1. Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal has been charge sheeted under Rule-14 of CCS(CCA)Rules,1965 vide DPS/Manipur Memo.No.B-2/D.K.Bora dated 09.10.2001. The charge sheet memorandum has 2(Two)article of charges. In both the charges, the Charged Official has been alleged to have violated the CCS(Conduct)Rules, 1964 and the particulars are as under:

2.2. In the article of charge-I, the C.O has been alleged to have violated Rule-3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964 as he failed to maintain devotion to duty by not following the instructions contained in D.G. P&T letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II (ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93 and committed grave irregularity amounting to an act unbecoming of a Govt. servant by recruiting one Md.Azad Khan, a candidate with VIII-Standard qualification, who lost his preference to other 2(Two) matriculate candidates nominated and sponsored by Employment Exchange, Thoubal in the recruitment of ED-Packer, Thoubal S.O.

2.3. In the article of charge-II, the C.O has been alleged to have violated Rule-3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964 as he appointed one Md.Azad Khan as ED-Packer, Thoubal S.O with retrospective effect prior to the date of the selection of Md.Azad Khan to the post of ED-Packer, Thoubal S.O and also appointed the said candidate with effect from 2(Two) different dates against a single post by 2(Two) different orders. It is also alleged in the article of Charge-II that the Charged Official failed to follow the instructions contained in D.G P&T Letter No.43-66/Pen dated 17.10.66 readwith Rule-3 of P&T Manual Vol.IV.

2.3. In support of the articles of charges, the disciplinary authority produced 11(Eleven) listed documents. The Presenting Officer submitted the Photostat copies of listed documents along-with the originals and after due verification the Photostat copies were taken for enquiry and the originals were returned to Disciplinary authority for safe custody. The Charged Official was also given due opportunity to compare and verify the Photostat copies of the documents with the originals, and was also supplied with copies of all the documents.

3. DETAILS OF HEARINGS AND OPPORTUNITIES TO THE CHARGED OFFICIAL :

3.1. The Charged Official was present through out the inquiry and attended all the hearings. The Charged Official was duly informed of his entitlement to have the facility of Defence Assistant in the notice of preliminary hearing dated 05.12.2001 forwarded vide No.A-1/ Inquiry/ Rule-14/1/2001-2002 as well as in the notice of even No. dated 10.12.2001 and 20.12.2001 subsequently issued for postponing the preliminary hearing to 02.01.2002. The preliminary hearing was held on 02.01.2002 in which the Charged Official denied the charges and when asked as to whether he would nominate any Defence Assistant, the charged official asked for more time to nominate the Defence Assistant. The charged official was accordingly granted 10(Ten) days time from 02.01.2002, but he did not nominate any Defence Assistant within the permitted time. In the subsequent hearing held on 30.01.2002 the Charged Official submitted one application dated 24.01.2002 for nominating one Defence Assistant viz.Shri.Uttam Sengupta, ASPOs(HQ), O/o the SPOs, Tinsukia Division, Tinsukia. The said application of the Charged Official was examined under

Attested
Advocate

the provisions of Rule-14 of CCS(CCA)Rules, 1965 and it was found that the request of the Charged Official to engage a Defence Assistant from a station other than the station of enquiry (the Station of enquiry is also the headquarters of the charged official) was not justified. Therefore, the request of the Charged Official was not acceded to and disposed of vide Order No.02 dated 30.01.2002. Thereafter, the C.O neither represented against the said decision of the undersigned to the disciplinary authority nor nominated any other government servant, posted in any office either at his headquarters or at the place where the inquiry is held, as his Defence Assistant to present the case on behalf of the charged official.

3.2. The C.O was present in all the hearing held on 02.01.2002, 30.01.2002, 01.02.2002, 04.02.2002, 05.02.2002, 06.02.2002 & 08.02.2002 and was given all the opportunities available under Rule-14 of CCS(CCA)Rules, 1965.

3.3. The C.O, in response to the opportunity for any additional documents and/or witnesses, submitted a list of documents, which he required for his defence. The list submitted by the C.O dated 01.02.2002 required some 5(Five) ED-recruitment files maintained in the 2nd Sub-Dn., Imphal and the Order book maintained at the office of the SDIPOs, 2nd Sub-Dn., Imphal containing the Inspection Remarks copies of earlier I.Rs for the year 1996, 1997, 1998, 1999 & 2000. In the hearing held on 01.02.2002, the C.O was asked to explain the relevancy of the documents, which he required for the purpose of his defence. In reply, the C.O stated that he followed the similar recruitment procedure adopted by the earlier SDIPOs in the recruitment of those 5(Five) ED-recruitment cases which he was referring to and requiring for his defence and in any of the I.Rs during the year 1996, 1997, 1998, 1999 & 2000 the recruitment procedure was never found wrong by the Inspecting Officers. The P.O objected the claim of the C.O on the ground that the C.O cannot claim any immunity from disciplinary action by taking the shelter of irregularities committed by the earlier SDIPOs or on earlier occasion by citing that the irregularity was not caught earlier and/or the person who committed the irregularity was not charge sheeted. The P.O, for supporting his argument submitted an example that: "one Shri.X, SPM misappropriated the Govt. money, which was not caught by the inspecting officer during the inspection, and the misappropriation was not reflected in the IR and the SPM committed similar misappropriation in the same

manner but in the second occasion he was caught and charge sheeted. The SPM cannot defend on the ground that previous case of misappropriation or irregularity committed by him was not caught or not reflected in the earlier IR." As the documents were required by the C.O only to show that similar irregularities were persisting in some other ED-recruitments done earlier in his sub-division and the inspecting officers did not make any objection to those irregularities, the documents were found irrelevant to the case as because non detection of irregularity and non-objection in earlier occasions do not give any immunity to the C.O that the C.O cannot be tried and dealt with for the irregularities he committed in the recruitment of ED-Packer, Thoubal S.O. Therefore, no additional document was allowed. There was no request by the C.O for any additional witness.

4. CASE OF THE DISCIPLINARY AUTHORITY :

4.1. Shri.L.Tiken Singh, Sub Divisional Inspector of Post Offices, Ukhrul functioned as Presenting Officer and presented the case on behalf of the disciplinary authority. In the hearing held on 30.01.2002, the Presenting Officer submitted the Photostat copies of listed documents along-with the originals and after due verification the Photostat copies were taken for enquiry and the originals were returned to Disciplinary authority for safe custody. The Charged Official was also given due opportunity to compare and verify the Photostat copies of the documents with the originals, and was also supplied with copies of all the documents. The documents(copies of documents) produced by the Presenting Officer were brought into record as State Exhibits as stated below:

Sl. No.	Description of documents	Exhibit Number
1.	A-1/Leave/ED-Staff dated 03.07.99	S-1
2.	Resignation letter of Shri.Mangkholet Haokip, the then ED-Packer, Thoubal SO dated 27.11.99.	S-2
3.	A-1/ED-Packer/Thoubal SO dated 29.12.99	S-3
4.	A-1/ED-Packer/Thoubal SO dated 05.02.00	S-4
5.	District Employment Exchange, Thoubal Letter VO.No.IOD/67/99(UM) dtd.10.01.00	S-5
6.	A-1/ED-Packer/Thoubal dtd 26.02.00	S-6
7.	A-1/ED-Packer/Thoubal SO dtd 31.03.00	S-7

8.	A-1/ED-Packer/Thoubal SO dtd 06.04.00	S-8
9.	A-1/ED-Packer/Thoubal SO dtd 26.04.00	S-9
10.	Application for leave for 6 months w.e.f. 01.08.99 submitted by Shri.Mangkholet Haokip, ED-Packer, Thoubal SO.	S-10
11.	Provisional/transfer certificate with Sl.No.106 issued by the Office of the Chingkham Makha High School on 30.04.98 showing the Educational qualification & date of birth of Md.Azad Khan, S/o (L) Abdul Jalil of Lilong Turel Ahanbi.	S-11

4.2. The Presenting Officer submitted his written brief vide SDIPOs/Ukhrul No.A-1/PO/Rule-14/II/Corr dated. 15.02.2002 and pleaded that both the charges framed against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal are proved beyond any doubt. The written brief of the Presenting Officer dated 15.02.2002 runs as under:

4.2.1. In the charge sheet memorandum, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal has been charged for violation of Rule-3(1)(ii), Rule-3(1)(iii) and Rule-3(1)(i),Rule-3(1)(ii) & Rule-3(1)(iii) respectively of CCS (Conduct) Rules, 1964 in 2(Two) articles of charge.

4.2.2. In the article of Charge-I, Shri.D.K.Bora, SDIPOs/2nd Sub-Dn., Imphal has been charged for violation of Rule-3(1) (ii) and Rule-3(1)(iii) of CCS(Conduct) Rules,1964 for the serious irregularities committed by him in the recruitment of ED-Packer, Thoubal S.O.

4.2.3. Statement of imputations of misconduct in support of the said article of charge given in the Article-I to Annexure-II clearly explains, "how the said Shri.D.K.Bora committed serious irregularities in the recruitment of ED-Packer, Thoubal S.O and how the said Shri.D.K.Bora violated Rule-3(1)(ii) & 3(1)(iii) of CCS(Condcut)Rules, 1964".

4.2.4. From Exhibit No.S-1 it may be seen that Shri.Mangkholet Haokip, the then ED-Packer, Thoubal SO was granted leave during the period from 01.08.1999 to 27.01.2000 on receipt of his leave application vide Exhibit No.S-10. From Exhibit No.S-2 it may be seen that the said Shri.Mangkholet Haokip offered to resign from the post of ED-Packer, Thoubal SO after the expiry of leave. Immediately on receipt of the letter of resignation from Shri.Mangkholet Haokip, the then ED-Packer, Thoubal SO, Shri.D.K. Bora as

SDIPOs, 2nd Sub-Dn started the recruitment process for filling up the post by placing requisition before the District Employment Officer, Thoubal vide Exhibit No.S-3. After the receipt of nomination of candidates from the Employment Exchange, Thoubal vide Exhibit No.S-5, the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn as appointing authority competent to accept the resignation of the earlier ED-Packer, Thoubal accepted the resignation of the said Shri.Mangkholet Haokip vide Exhibit No.S-4. As per Exhibit No.S-5, the District Employment Exchange, Thoubal nominated 3(Three) candidates namely Md.Azad Khan of Lilong Turel Ahanbi with the educational qualification of Class-VIII, Miss.Mumtaz of Lilong Awang Leikai with the educational qualification of H.S.L.C (High School Leaving Certificate) and Md.Abdur Razaque of Lilong Awang Leikai with the educational qualification of P.U (Pre-University). After that Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal has called all the 3(Three) candidates to appear in a written test held at his office on 04-03-2K at 1400 Hrs vide Exhibit No.S-6. But, for the reason best known to him (the Charged Official) alone, the said Shri.D.K.Bora provisionally appointed Md.Azad Khan of Lilong Turel Ahanbi, whose name appears at Sl.No.1 of the list of candidates nominated by the District Employment Exchange, Thoubal, as ED-Packer, Thoubal SO vide Exhibit No.S-7. As per Exhibit No.S-8 written on 06.04.2K, the said Shri.D.K.Bora as SDIPOs, 2nd Sub-Dn., Imphal and appointing authority who recruited ED-Packer for Thoubal SO made a note that among the 3(Three) candidates appeared in the suitability test conducted by him, Md.Azad Khan had topped in the test and hence the said Md.Azad Khan was selected for the post of ED-Packer, Thoubal SO. Both from the employment exchange nomination list (Exhibit No.S-5) and from the provisional/transfer certificate with Sl.No.106 issued by the office of Chingkham Makha High school dated 30.04.98 showing the Educational qualification and date of birth of Md.Azad Khan, S/o.Late Abdul Jalil of Lilong Turel Ahanbi (Exhibit No.S-11) it may be confirmed that Md.Azad Khan, ie. the candidate selected by the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal for the post of ED-Packer, Thoubal SO was having the educational qualification of VIII-Standard only. The Exhibit No.S-5, i.e., the list of candidates nominated and sponsored by the District Employment Exchange, Thoubal vide VO.NO/IOD/67/99(UM) dated 10.01.'00, clearly shows that there were 2(Two) other candidates, namely Miss.Mumtaz of Lilong Awang Leikai with E/E.Regn.No.Th/W/446/98 and Md.Abdur Razaque of Lilong Awang Leikai with E/E.Regn.No.

Th/826/98, who were matriculates. With the issue of regular appointment order as shown in Exhibit No.S-9 to the Irregularly recruited candidate Md.Azad Khan, the said Shri.D.K. Bora has completed the recruitment process of the ED-Packer, Thoubal S.O.

4.2.5. As per the consolidated instructions issued from time to time, vide D.G P&T Letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II (ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93, governing the appointment and other service conditions of ED-Agents printed as Instruction No.(1) below EDAs(Conduct & Service)Rules,1964, preference has to be given to the candidates with Matriculation qualification in the selection of all other categories of EDAs except ED-SPMs and ED-BPMs.

4.2.6. In this instant case, it may be seen that Md.Azad Khan who had been possessing the educational of VIII-Standard only was selected to the post of ED-packer, Thoubal SO without giving any preference to the matriculate candidates nominated and sponsored by the District Employment Exchange, Thoubal. So, the said Shri.D.K.Bora, who as SDIPOs, 2nd Sub-Dn, Imphal was duty bound to observe the instructions scrupulously while making selection of ED-Agents, miserably failed and the documentary evidences produced in the inquiry are sufficient enough to prove that the said Shri.D.K.Bora, by recruiting a candidate with the educational qualification of VIII-Standard only for the post of ED-Packer/Thoubal SO when the candidates with matriculation qualification were also available, violated the departmental instructions contained in D.G-P& T and D.G-Posts letters cited above.

4.2.7. As a Govt. servant, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal is required to maintain devotion to duty and do nothing, which is unbecoming of a Govt. Servant. In this instant case it may be seen that the said Shri.D.K.Bora had failed to follow the instructions contained in D.G. P&T and D.G.Posts letters mentioned above and recruited a candidate of VIII-Standard qualification who had lost his preference to other 2(Two)candidates with matriculation qualification. Therefore, there is no doubt that the said Shri.D.K.Bora violated Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules,1964 by his above acts.

4.2.8. In his defence, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal, i.e., the charged Official in the instant case, has stated that:

(a). The minimum required education qualification for the post of various ED-Agents other than the post of EDSPM and EDBPM is VIII-Standard only;

(b). Preference to the candidates with matriculation qualification is only the proposition/optional provision which has no compulsory implementation;

(c). Candidates with Matriculation qualification do not get any automatic immunity to become suitable to hold the ED-Posts as because the D.G. P&T letters also further add that the candidates should have sufficient working knowledge of regional language and simple arithmetic so as to discharge their duties satisfactorily.

(d). The selection of ED-Packer, Thoubal SO was made by holding a test on simple arithmetic and the candidate with Class-VIII qualification secured more marks in the said test than the candidates possessing matriculation qualification and as such non selection of candidates with matriculation qualification does not amount to non giving of preference over candidate with VIII-Standard qualification.

(e). The opinion of the disciplinary authority, to give preference to one of the 2(Two) matriculates available for the selection, does not bear any logic as because the disciplinary authority has not mentioned anything about the basis by which the selection of 1(One) of the 2(Two) matriculate candidates should have been done.

(f). The disciplinary authority also has not mentioned as to how the candidates possessing Class-VIII qualification has to be excluded without giving any opportunity when candidates with matriculation qualification are available.

(g). There is no departmental instruction for out-rightly rejecting the candidates with VIII-Standard and below matriculation qualification when candidates with matriculation qualification are sponsored by the Employment Exchanges.

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4.2.9. By stating the above, the Charged Official has justified the selection of a candidate with Class-VIII qualification to the post of ED-Packer, Thoubal S.O.

4.2.10. From the defence of the Charged Official it may be seen that the Charged Official could not justify his position and in the absence of any other alternative he has submitted all irrelevant things to confuse the case. Because,

(a). When the departmental instructions state that the minimum required educational qualificiation for the post of various ED-Agents other than EDSPMs and EDBPMs is VIII-Standard, the same departmental instructions also state that the candidates with matriculation qualification have to be given preference in the selection of various ED-Agents other than EDSPMs and EDBPMs.

(b). Departmental rules and instructions are to be strictly followed by all the Govt. servants. In this instant case, the D.G-P&T and D.G-Posts letters are containing the method of recruitment of ED-Agents and as such the Charge Official should strictly follow the departmental instructions while recruiting the ED-Agents. Powers to interpret the rules and clarify the departmental instructions are vested with the Government and not with the Government Servants. Therefore, the statement of the Charged Official that the preference to the candidates with matriculation qualification is only the proposition/optional provision that is "optional" and "not mandatory" is only his opinion, which shows his own way of interpreting the departmental instructions.

(c). Candidates with matriculation qualification gets preference over the candidates with VIII-Standard qualification and no immunity of any kind is stated anywhere in the D.G. P&T and D.G-Posts instructions. The Charged Official, being a Govt. servant is duty bound to follow the D.G-P&T & D.G-Posts instructions while recruiting ED-Agents. Neither the condition to possess sufficient working knowledge of regional language and simple arithmetic nor the better performance of a candidate with VIII-Standard qualification in the suitability test conducted by the recruiting authority could take away the preference entitled to the candidates with matriculation qualification in the selection of ED-Agents.

(d). The charged official has not explained the basis of suitability test and basis for selection of the candidate securing higher marks in the suitability test to fill up the ED-Posts. The D.G-P&T and D.G-Posts letters governing the selection of ED-Agents also do not state anything that the candidate scoring high in the suitability test has to be selected.

(e). The D.G. P&T & D.G-Posts letters referred to in the charge sheet memorandum along-with other clarification available on the method of recruitment of ED-Agents printed below EDAs(Conduct & Service)Rules clearly contains the basis by which candidates with matriculation qualification have to be preferred over the candidates with Class-VIII qualification. The charged official, being a senior IPOs, cannot say that he is ignorant of the departmental instructions.

(f). The departmental instructions governing the recruitment of ED-Agents do not authorize to exclude the candidate with Class-VIII qualification when candidates with matriculation qualification are available. But there is a provision, in the departmental instructions on the method of recruitment of ED-Agents, for giving preference to the candidates with matriculation qualification.

(g). When there are candidates with matriculation qualification for the post of ED-Packer, it is necessary in the part of the recruiting authority to give due preference to those candidates. Giving preference to the candidates with matriculation qualification does not mean outright rejection of candidates with Class-VIII and below-matriculation qualification.

4.2.11. Therefore, the defence of the Charged Official is not only irrelevant but also totally meaningless.

4.2.12. In the article of Charge-II, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal has been charged for violation of Rule-3(1)(i), Rule-3(1)(ii) & Rule-3(1)(iii) of CCS (Conduct)Rules,1964 because of appointment of a single candidate namely Md.Azad Khan as ED-Packer, Thoubal S.O with retrospective effect from 2(Two) different dates by 2(Two) different orders.

4.2.13. It may be seen from Exhibit No.S-3 that the said Shri.D.K.Bora started the process of recruitment of ED-

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Packer, Thoubal S.O on 29.12.99 by addressing the District Employment Officer, Thoubal and the District Employment Officer, Thoubal sponsored 3(Three) candidates for the post vide Exhibit No.S-4. After that, as per Exhibit No.S-6, the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal called all the 3(Three)candidates nominated and sponsored by the District Employment Officer, Thoubal to appear in a written test held at his office on 04.03.2K. As per Exhibit No.S-8, i.e., SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED Packer/Thoubal S.O dated 06.04.2K; one Md.Azad Khan who topped in the test held on 04.03.2K was selected for the post of ED-Packer at Thoubal S.O. As per the noting of the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal on Exhibit No.S-8, "Md.Azad Khan is selected and his appointment is being issued after obtaining the Police Verification report". But, Exhibit No.S-7 and Exhibit No.S-9 shows that Md.Azad Khan, the candidate selected for the post of ED-Packer, Thoubal S.O was provisionally appointed for a period of 3(Three) months with effect from 01.03.2000 vide SDIPOs, 2nd Sub Dn., Imphal No.A-1/ED-Packer/Thoubal SO dated 31.03.2000 and the same candidate has been regularly appointed as ED-Packer, Thoubal S.O with effect from 01.02.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED-Packer/Thoubal S.O dated 26th April 2000. Both the orders shown in Exhibit No.S-7 & S-9 have been issued by the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal.

4.2.14. As per D.G-P&T Letter No.43/66-Pen dated 17.10.66 read-with Rule-3 of P&T Man.Vol.IV, pre-appointment formalities should be completed before the candidates selected for appointment to ED-Posts are appointed as ED-Agents. But, in the appointment of Md.Azad Khan S/o.Late. Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal S.O, it may be seen that:

(i). As per Exhibit No.S-6, the Charged Official, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal, conducted the suitability test for selection of ED-Packer, Thoubal S.O on 04.03.2000. But, as per Exhibit No.S-7, Md.Azad Khan was provisionally appointed as ED-Packer, Thoubal S.O with effect from 01.03.2000.

(ii). As per Exhibit No.S-8, the selection of ED-Packer, Thoubal SO was made on the basis of marks secured in the suitability test conducted on 04.03.2000 and the selection was finalized only on 06.04.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED-Packer/Thoubal SO dated 06.04.2K. But, as

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per Exhibit No.S-7 & S-9, the candidate whose selection was completed only on 06.04.2000 was appointed provisionally with effect from 01.03.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED-Packer/Thoubal SO dated 31.03.2000 and was appointed regularly with effect from 01.02.2000 with effect from 01.02.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED Packer/Thoubal S.O dated 26th April 2000. Thus, Md.Azad Khan, S/o. Late Md.Abdul Jalil of Lilong Turel Ahanbi who was selected for the post of ED-Packer, Thoubal S.O on 06.04.2K, was appointed to the post of ED-Packer, Thoubal S.O with effect from 2(Two) different dates prior to his selection vide 2(Two) difference orders.

4.2.15. In his defence, the Charged Official has stated that there is nothing like issuing of two appointment letters as because the appointment letter No.A-1/ED Packer/Thoubal S.O dated 31.03.2000 was a letter of provisional appointment issued with effect from 01.03.00 and not from 01.03.01, but while issuing the regular appointment the date of joining of the official was taken to be 01.02.00 due to oversight.

4.2.16. The Charged Official himself has admitted that he issued the provisional appointment with effect from 01.03.2000. The date of provisional appointment appearing as "01.03.2001" in the 6th line of second paragraph of Article-II in Annexure-3/Page-3 is only a typing mistake which needs to be read as "01.03.2000". The I.O is requested to allow the correction of the typing mistake and the C.O may kindly be communicated that the date of provisional appointment may be read as "01.03.2000" instead of "01.03.2001" as explained above.

4.2.17. The defence of the Charged Official that 2(Two) different dates of appointment was due to oversight is not agreeable as because the Charged Official has not explained as to how the oversight took place.

4.2.18. Further, the appointment of Md.Azad Khan, S/o.Late. Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal SO has been made with effect from a date prior to his selection. Even if, the date of appointment is taken as 01.03.'00 as stated by the Charged Official, the Charged Official has not explained as to how the appointment was made with effect from a date prior to the selection of the candidate.

4.2.19. The Charged Official conducted the selection test only on 04.03.2K and the selection of ED-Packer, Thoubal SO was finalized only on 06.04.2K. But, the Charged Official, provisionally appointed the candidate namely Md.Azad Khan, who was declared selected to the post of ED-Packer, Thoubal SO on 06.40.2K with effect from 01.03.2000 by a provisional appointment order dated 31.03.2000 and again with effect from 01.02.2000 by a regular appointment order dated 26th April 2000.

4.2.20. There is no provision in the departmental rules that anybody could be appointed with effect from a date prior to selection. Therefore, the Charged Official not only failed to maintain absolute integrity and devotion to duty by appointing Md.Azad Khan. S/o.Late.Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal S.O with effect from a date prior to the selection of the said candidate, but also acted in a manner which is highly unbecoming of a Govt. servant. So, violation of Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) are proved beyond any doubt. Issuing provisional appointment with effect from 01.03.2000 and regular appointment with effect from 01.02.2000 by the Charged Official were the further acts which exposed him to have once again violated Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct)Rules,1964. Violation of D.G-P&T instructions in Letter No.43/66-Pen dated 17.10.66 read-with Rule-3 of P&T Man.Vol.IV by the said Shri.D.K. Bora, SDIPOs, 2nd Sub-Dn., Imphal is also therefore proved beyond any doubt.

5. CASE OF THE CHARGED OFFICIAL:

5.1. The Charged official was present throughout the enquiry. The C.O was given the opportunity to take the assistant of a Govt. servant posted in any office either at his headquarters or at the place where the inquiry is held to present the case on his behalf and for the said purpose he also got time from 05.12.2001 to 30.01.2002. But the C.O did not nominate any Defence Assistant at Imphal which is his headquarters as well as the place of inquiry. In the hearing held on 30.01.2002, the C.O submitted an application dated 24.01.2002 for nominating one Shri.Uttam Sengupta, ASPOs(HQ), O/o the SPOs, Tinsukia Division, Tinsukia. The application of the charged official dated 24.01.2002 for nominating a Defence Assistant from a station other than his headquarter and place of inquiry was

not justified as no circumstances whatsoever existed to allow him to take the assistance of any other Govt. servant posted at any other station as because:

(i). The consent of Shri.Uttam Sengupta, ASPOs(HQ), O/o the SPOs, Tinsukia Division, Tinsukia, stating that the said official was willing to assistant the C.O as Defence Assistant, was not submitted by the C.O along-with his application dated 24.01.2002, and without which it is not possible to conclude whether the said Shri.Uttam Sengupta will act as the Defence Assistant of the Charged Official;

(ii). The declaration of Shri.Uttam Sengupta, ASPOs(HQ), O/o the SPOs, Tinsukia Division, Tinsukia, stating that the said official was not having three pending disciplinary cases on hand, was also not submitted by the C.O along-with his application dated 24.01.2002 and without which it can not be decided as to whether the said Shri.Uttam Sengupta was eligible to act as Defence Assistant to the Charged Official in the present case; and

(iii). The Charged Official did not submit any reason or circumstance to justify his necessity to take the assistance of a Govt. servant from a station other than his headquarters and the place of inquiry.

So, the request of the Charged Official was found unacceptable as the application of the Charged Official dated 24.01.2002 and submitted on 30.01.2002 was lacking the necessary information. The charged official was also not responding to the opportunity given to him for nominating a defence assistant during the period from 05.12.2001 and submitted his application dated 24.01.2002 only on 30.01.2002. Accordingly, the request of the Charged Official was not acceded to.

5.2. The C.O, thereafter, neither represented against the said decision of the undersigned to the disciplinary authority nor nominated any other government servant, posted in any office either at his headquarters or at the place where the inquiry is held, as his Defence Assistant to present the case on his behalf.

5.3. The C.O did not examine himself as Witness in the case.

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5.4. In the hearing held on 05.02.2002, the C.O was asked to submit his defence on 06.02.2002. However, the C.O requested for additional time on 06.02.2002 and was allowed to submit his defence on the hearing held on 08.02.2002. Accordingly, the C.O submitted his defence dated 07.02.2002 on 08.02.2002 in which he stated that:

(a). The minimum required education qualification for the post of various ED-Agents other than the post of EDSPM and EDBPM is VIII-Standard only;

(b). Preference to the candidates with matriculation qualification is only the proposition/optional provision which has no compulsory implementation;

(c). Candidates with Matriculation qualification do not get any automatic immunity to become suitable to hold the ED-Posts as because the D.G. P&T letters also further add that the candidates should have sufficient working knowledge of regional language and simple arithmetic so as to discharge their duties satisfactorily.

(d). The selection of ED-Packer, Thoubal SO was made by holding a test on simple arithmetic and the candidate with Class-VIII qualification secured more marks in the said test than the candidates possessing matriculation qualification and as such non selection of candidates with matriculation qualification does not amount to non giving of preference over candidate with VIII-Standard qualification.

(e). The opinion of the disciplinary authority, to give preference to one of the 2(Two) matriculates available for the selection, does not bear any logic as because the disciplinary authority has not mentioned anything about the basis by which the selection of 1(One) of the 2(Two) matriculate candidates should have been done.

(f). The disciplinary authority also has not mentioned as to how the candidates possessing Class-VIII qualification has to be excluded without giving any opportunity when candidates with matriculation qualification are available.

(g). There is no departmental instruction for out-rightly rejecting the candidates with VIII-Standard and below matriculation qualification when candidates with

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matriculation qualification are sponsored by the Employment Exchanges.

5.5. On receipt of the written brief of the Presenting Officer dated 15.02.2002, the Charged Official submitted his written brief dated 04.03.2002 on 06.03.2002. The Charged Official was initially given time upto 22.02.2002 for submission of his written brief, but the same was extended by another 7(Seven) days on the request of the Charged Official. The Charged Official however submitted his written brief only on 06.03.2002 after the expiry of the permitted time. The written brief of the Charged Official dated 04.03.2002 runs as under:

"In reply to the written brief of the Presenting Officer submitted vide SDIPOs/Uhrul No.A-1/PO/Rule-14/II/Corr dated 15.02.2002, the undersigned being Charged Official submits his written brief as under:

1. The charge sheet memorandum spells out that the undersigned violated:

(i). Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules,1964 by committing serious irregularities in the recruitment of ED-Packer at Thoubal S.O; and

(ii).Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct)Rules, 1964 by appointing a single candidate namely Md.Azad Khan as ED-Packer with retrospective effect from 2(Two) different dates by 2(Two) different orders.

2. The Prosecution, for substantiating the article of charges No.I, has submitted the copies of 11(Eleven) documents of which 10(Ten) relates to communications made in respect of the recruitment of ED-Packer, Thoubal SO including the documents in proof of the arising of vacancy in the post of ED-Packer, Thoubal SO and the remaining 1(One) is the copy of Educational qualification certificate submitted by the selected candidate namely Md.Azad Khan.

3. The undersigned as charged official has already explained in his defence dated 7.2.2002 that he did not commit any irregularity or act which may tantamount to misconduct for Imputation of any of the charges as violative under Rule-3(1)(i),(ii) & (iii) of CCS(Condcut) Rules,1964.

4. The Prosecution, for terming the defence of the undersigned as irrelevant and meaningless in Para-2.10 of the written brief of the P.O, has contented in Para-2.9(a) to 2.9(g) of the written brief of the P.O that:

(a). When the departmental instructions state that the minimum required educational qualification for the post of various ED-Agents other than EDSPMs and EDBPMs is VIII-Standard, the same departmental instructions also state that the candidates with matriculation qualification have to be given preference in the selection of various ED-Agents other than EDSPMs and EDBPMs.

(b). Departmental rules and instructions are to be strictly followed by all the Govt. servants. In this instant case, the D.G-P&T and D.G-Posts letters are containing the method of recruitment of ED-Agents and as such the Charge Official should strictly follow the departmental instructions while recruiting the ED-Agents. Powers to interpret the rules and clarify the departmental instructions are vested with the Government and not with the Government Servants. Therefore, the statement of the Charged Official that the preference to the candidates with matriculation qualification is only the proposition/ optional provision that is "optional" and "not mandatory" is only his opinion,which shows his own way of interpreting the departmental instructions.

(c). Candidates with matriculation qualification gets preference over the candidates with VIII-Standard qualification and no immunity of any kind is stated anywhere in the D.G. P&T and D.G-Posts instructions. The Charged Official, being a Govt. servant is duty bound to follow the D.G-P&T & D.G-Posts instructions while recruiting ED-Agents. Neither the condition to possess sufficient working knowledge of regional language and simple arithmetic nor the better performance of a candidate with VIII&Standard qualification in the suitability test conducted by the recruiting authority could take away the preference entitled to the candidates with matriculation qualification in the selection of ED-Agents.

(d). The charged official has not explained the basis of suitability test and basis for selection of the candidate securing higher marks in the suitability test to fill up the ED-Posts. The D.G-P&T and D.G-Posts letters governing the selection of ED-Agents also do not state anything that

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the candidate scoring high in the suitability test has to be selected.

(e). The D.G. P&T & D.G-Posts letters referred to in the charge sheet memorandum along-with other clarification available on the method of recruitment of ED-Agents printed below EDAs(Conduct & Service)Rules clearly contains the basis by which candidates with matriculation qualification have to be preferred over the candidates with Class-VIII qualification. The charged official, being a senior IPOs, cannot say that he is ignorant of the departmental instructions.

(f). The departmental instructions governing the recruitment of ED-Agents do not authorize to exclude the candidate with Class-VIII qualification when candidates with matriculation qualification are available. But there is a provision, in the departmental instructions on the method of recruitment of ED-Agents, for giving preference to the candidates with matriculation qualification.

(g). When there are candidates with matriculation qualification for the post of ED-Packer, it is necessary in the part of the recruiting authority to give due preference to those candidates. Giving preference to the candidates with matriculation qualification does not mean outright rejection of candidates with Class-VIII and below-matriculation qualification.

5. The Prosecution has however miserably failed to prove that:

(i). The candidates with Class-VIII qualification should forego their eligibility for consideration for various ED-Posts other than EDSPMs & EDBPMs when the candidates with matriculation are available;

(ii). The recruiting authority has no option but to recruit the matriculate when candidates with matriculation qualification have applied for the post along-with candidates with Class-VIII qualification.

(iii). The performance of the candidate with Class-VIII qualification in the suitability test conducted by the recruiting authority has no say in the selection of the candidate to various ED-Posts and the candidates with

matriculation qualification gets automatic preference over the candidates with Class-VIII qualification.

(iv). The recruiting authority should not conduct a suitability test and the candidate performing well in the suitability test has no preference in the selection as because the selection is purely based on the preference criteria available to the matriculates over the candidates with Class-VIII qualification.

(v). The D.G. P&T instructions regarding method of recruitment of EDAs contain any clause that the candidates with Class-VIII qualification should not at all be considered for selection to various ED-Posts other than EDSPMs & EDBPMs when candidates with matriculation are available.

(vi). The preference to matriculates inter-alia takes away the benefits of reasonable opportunity to be given to the candidates with Class-VIII qualification when candidates with matriculation have also applied for the eligible ED-Posts along-with candidates with Class-VIII.

(vii). The preference to matriculates is automatic when both matriculates and Class-VIII qualified candidates compete for eligible ED-Posts and such automatic preference does not tantamount to disqualifying the candidates with Class-VIII qualification to compete for those eligible ED-Posts.

Therefore, the contention of the P.O from Para-2.9 (a) to Para-2.9 (g) in his written brief are not substantive and objective.

6. The evidences produced by the prosecution in Exhibit S-1 to S-11 did not spell anything as violative of any of the provisions contained under Rule-3 of the CCS(Conduct) Rules, 1964. Instead, by producing the above Exhibits, the prosecution has helped in proving the fact that one Md.Azad Khan has been appointed to the post of ED-Packer, Thoubal SO duly following the prescribed procedure, after the regular incumbent of the post, namely Shri.Mangkholet Haokip, vacated the post after proceeding on leave and then resigned.

7. The allegation of the prosecution was that the appointment of Md.Azad Khan as ED-Packer of Thoubal SO was

irregular because he has possessed the educational qualification of VIII-Standard only as per Exhibit No.S-5 where there were 2(Two) more candidates with matriculation qualifications namely (i) Miss. Mumtaz and (2) Md.Abdur Razaque and any one of these two matriculates candidates should have been preferred for selection and appointed to the post of ED-Packer, Thoubal S.O. And in support of the allegation, the prosecution has simply made references to some of the D.G P&T and DG(Posts) letters but it has utterly failed to produce the copy of any of the instructions as evidences. The prosecution has made irrelevant explanation to prove the allegation without any basis or material evidences.

8. The method, by which the selection and appointment of the ED-Packer, Thoubal SO has been made, has not been held or proved to be irregular. The Exhibit S-6 produced by the prosecution is sufficient enough to show that all the candidates have been called for a test and the test was conducted on simple arithmetic as was envisaged for testing suitability/possession of knowledge on simple arithmetic. But the prosecution did not hold this as irregular. When the procedure adopted for selection of candidates to the post has not been held irregular, then how the person selected and appointed subsequently be held irregular.

9. The expression made by the prosecution, that one of the two matriculates should have been preferred over the candidates with the educational qualification of VIII-Standard, sounds no logic. The prosecution, by stating, "1(One) of the 2(Two) matriculate candidates should have been preferred" has failed to point out the established procedure if any, to select any one of the matriculate candidates available for the post. No one could be selected or rejected summarily for having of higher or lower educational qualification. Some basis has to be followed. The basis in practice for selection of ED-Agents to various categories of ED-Posts in Manipur was "holding of written test" primarily for testing the knowledge of the candidates in arithmetic. This procedure was never held irregular by any of the officers of the department who verified appointment cases of various ED-Posts from time to time. Even in the instant case, the prosecution did not say anything about the procedure adopted for the selection of candidates to the post of ED-Packer, Thoubal S.O. So, the selection and appointment of Md.Azad Khan made as per the result of the test held on 4.3.2000 could not be held

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irregular. And, this will not amount to non giving of preference to the matriculate candidates who did not get selection for poor performance over the candidate of Class VIII Standard.

10. Holding of suitability test could have been avoided, had there been only one matriculate candidate sponsored by the employment exchange and the other candidates with VIII standard qualification only. In that case selection of the lone candidate could have been automatic over the rest of the candidates. But, in the instant case, there were more than 1(One) matriculate candidates and thus it was not possible to make a summary selection of 1(One) of the 2(Two) candidates as stated by the prosecution. So, the holding of the test was compulsory and this was done.

11. As regards the allegation in article-II it is submitted that:

(i). In the defence of the undersigned dated 07.02.2002, it was already submitted that the different dates in the appointment orders in respect of the date of effect of appointment was an error due to over sight. The error due to over sight is an unintentional mistake occur in the course of discharge of duties which does not require an independent explanation as because the unintentional error is an accident which is not known to the person committed it as long the same is not pointed out by somebody or otherwise noticed during reconciliation. Therefore, the contention of the P.O in Para-3.5 of his written brief is not valid.

(ii). The candidate namely Md.Azad Khan who was later selected to the post of ED-Packer, Thoubal SO was actually working in that post right from 01.08.99, and his substitute appointment against the incumbent ED-Packer expired on 27.01.2000 when the leave applied by Shri.Mangkholet Haokip, ED-Packer, Thoubal SO expired on the said date. The candidate has actually been continuing as ED-Packer, Thoubal SO well before his regular selection by way of a temporary arrangement made to the post. Therefore, appointment with retrospective effect was necessitated by the circumstances for drawing the pay and allowances entitled to the candidate who was actually discharging his duties in the ED-Post. Hence, the provisional appointment had to be made with effect from 01.03.2000 and the regular appointment order was bearing

the date of effect as 01.02.2000 instead of 01.03.2000 due to over sight as explained in Para-11(i) above.

(iii). The undersigned is willing to rectify any error pointed out to him even by issuing a fresh appointment order by canceling the earlier one. But, in the instant case, the undersigned was not given any opportunity to rectify the erroneous appointment under the relevant provisions of rules.

(iv). As the unintentional mistake or error occur during the course of discharge of duties cannot be equated with an intentional or/and willful misconduct or misbehaviour, it is submitted that the prosecution has miserably failed to prove that the undersigned violated Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules, 1964 as alleged in article of charge No.II.

12. It is therefore submitted that both the charges framed against the undersigned as charged official are vague, vitiated and baseless.

13. The undersigned, therefore, requests that the case may be decided on merits on the basis of points submitted in the foregoing paragraphs."

6. ANALYSIS AND ASSESSMENT OF EVIDENCES:

6.1. As already stated in Para-2.1, there are 2(Two) articles of charge against the C.O.

6.2. In the article of charge-I, the C.O has been alleged to have violated Rule-3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964 as he failed to maintain devotion to duty by not following the instructions contained in D.G. P&T letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II (ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93 and committed grave irregularity amounting to an act unbecoming of a Govt. servant by recruiting one Md.Azad Khan, a candidate with VIII-Standard qualification, who lost his preference to other 2(Two) matriculate candidates nominated and sponsored by Employment Exchange, Thoubal in the recruitment of ED-Packer, Thoubal S.O.

6.3. To sustain the charge, it is essential to prove that the C.O failed to follow the instructions contained in D.G. P&T letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II (ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93, and committed grave irregularity amounting to an act unbecoming of a Govt. servant by recruiting one Md.Azad Khan, a candidate with VIII-Standard qualification, who lost his preference to other 2(Two) matriculate candidates nominated and sponsored by Employment Exchange, Thoubal in the recruitment of ED-Packer, Thoubal S.O in violation of Rule-3(1)(ii) & Rule-3(1)(iii) of CCS(Conduct) Rules,1964.

6.4. The P.O, in his written brief dated 15.02.2002, has submitted the following and pleaded that the C.O violated Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules, 1964 as alleged in article of Charge-I:

6.4.1. When the departmental instructions state that the minimum required educational qualification for the post of various ED-Agents other than EDSPMs and EDBPMs is VIII-Standard, the same departmental instructions also state that the candidates with matriculation qualification have to be given preference in the selection of various ED-Agents other than EDSPMs and EDBPMs.

6.4.2. Departmental rules and instructions are to be strictly followed by all the Govt. servants. In this instant case, the D.G-P&T and D.G-Posts letters are containing the method of recruitment of ED-Agents and as such the Charge Official should strictly follow the departmental instructions while recruiting the ED-Agents. Powers to interpret the rules and clarify the departmental instructions are the vested with the Government and not with the Government Servants. Therefore, the statement of the Charged Official that the preference to the candidates with matriculation qualification is only the proposition/optional provision that is "optional" and "not mandatory" is only his opinion,which shows his own way of interpreting the departmental instructions.

6.4.3. Candidates with matriculation qualification gets preference over the candidates with VIII-Standard qualification and no immunity of any kind is stated anywhere in the D.G. P&T and D.G-Posts instructions. The

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Charged Official, being a Govt. servant is duty bound to follow the D.G-P&T & D.G-Posts instructions while recruiting ED-Agents. Neither the condition to possess sufficient working knowledge of regional language and simple arithmetic nor the better performance of a candidate with VIII-Standard qualification in the suitability test conducted by the recruiting authority could take away the preference entitled to the candidates with matriculation qualification in the selection of ED-Agents.

6.4.4. The charged official has not explained the basis of suitability test and basis for selection of the candidate securing higher marks in the suitability test to fill up the ED-Posts. The D.G-P&T and D.G-Posts letters governing the selection of ED-Agents also do not state anything that the candidate scoring high in the suitability test has to be selected.

6.4.5. The D.G. P&T & D.G-Posts letters referred to in the charge sheet memorandum along-with other clarification available on the method of recruitment of ED-Agents printed below EDAs(Conduct & Service)Rules clearly contains the basis by which candidates with matriculation qualification have to be preferred over the candidates with Class-VIII qualification. The charged official, being a senior IPOs, cannot say that he is ignorant of the departmental instructions.

6.4.6. The departmental instructions governing the recruitment of ED-Agents do not authorize to exclude the candidate with Class-VIII qualification when candidates with matriculation qualification are available. But there is a provision, in the departmental instructions on the method of recruitment of ED-Agents, for giving preference to the candidates with matriculation qualification.

6.4.7. When there are candidates with matriculation qualifi-cation for the post of ED-Packer, it is necessary in the part of the recruiting authority to give due preference to those candidates. Giving preference to the candidates with matriculation qualification does not mean outright rejec-tion of candidates with Class-VIII and below-matriculation qualification.

6.4.8. From Exhibit No.S-1 it may be seen that Shri.Mang-kholet Haokip, the then ED-Packer, Thoubal SO was granted leave during the period from 01.08.1999 to 27.01.2000 on

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receipt of his leave application vide Exhibit No.S-10. From Exhibit No.S-2 it may be seen that the said Shri.Mangkholet Haokip offered to resign from the post of ED-Packer, Thoubal SO after the expiry of leave. Immediately on receipt of the letter of resignation from Shri.Mangkholet Haokip, the then ED-Packer, Thoubal SO, Shri.D.K. Bora as SDIPOs, 2nd Sub-Dn started the recruitment process for filling up the post by placing requisition before the District Employment Officer, Thoubal vide Exhibit No.S-3. After the receipt of nomination of candidates from the Employment Exchange, Thoubal vide Exhibit No.S-5, the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn as appointing authority competent to accept the resignation of the earlier ED-Packer, Thoubal accepted the resignation of the said Shri.Mangkholet Haokip vide Exhibit No.S-4. As per Exhibit No.S-5, the District Employment Exchange, Thoubal nominated 3(Three) candidates namely Md.Azad Khan of Lilong Turel Ahanbi with the educational qualification of Class-VIII, Miss.Mumtaz of Lilong Awang Leikai with the educational qualification of H.S.L.C (High School Leaving Certificate) and Md.Abdur Razaque of Lilong Awang Leikai with the educational qualification of P.U (Pre-University). After that Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal has called all the 3(Three) candidates to appear in a written test held at his office on 04-03-2K at 1400 Hrs vide Exhibit No.S-6. But, for the reason best known to him (the Charged Official) alone, the said Shri.D.K.Bora provisionally appointed Md.Azad Khan of Lilong Turel Ahanbi, whose name appears at Sl.No.1 of the list of candidates nominated by the District Employment Exchange, Thoubal, as ED-Packer, Thoubal SO vide Exhibit No.S-7. As per Exhibit No.S-8 written on 06.04.2K, the said Shri.D.K.Bora as SDIPOs, 2nd Sub-Dn., Imphal and appointing authority who recruited ED-Packer for Thoubal SO made a note that among the 3(Three) candidates appeared in the suitability test conducted by him, Md.Azad Khan had topped in the test and hence the said Md.Azad Khan was selected for the post of ED-Packer, Thoubal SO. Both from the employment exchange nomination list (Exhibit No.S-5) and from the provisional/transfer certificate with Sl.No.106 issued by the office of Chingkham Makha High school dated 30.04.98 showing the Educational qualification and date of birth of Md.Azad Khan, S/o.Late Abdul Jalil of Lilong Turel Ahanbi (Exhibit No.S-11) it may be confirmed that Md.Azad Khan, ie. the candidate selected by the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal for the post of ED-Packer, Thoubal SO was having the educational qualification of VIII-Standard only.

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The Exhibit No:S-5, i.e., the list of candidates nominated and sponsored by the District Employment Exchange, Thoubal vide VO.NO/IOD/67/99(UM) dated 10.01.'00, clearly shows that there were 2(Two) other candidates, namely Miss.Mumtaz of Lilong Awang Leikai with E/E.Regn.No.Th/W/446/98 and Md.Abdur Razaque of Lilong Awang Leikai with E/E.Regn.No. Th/826/98, who were matriculates. With the issue of regular appointment order as shown in Exhibit No.S-9 to the irregularly recruited candidate Md.Azad Khan, the said Shri.D.K. Bora has completed the recruitment process of the ED-Packer, Thoubal S.O.

6.4.9. As per the consolidated instructions issued from time to time, vide D.G P&T Letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II (ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93, governing the appointment and other service conditions of ED-Agents printed as Instruction No.(1) below EDAs(Conduct & Service)Rules,1964, preference has to be given to the candidates with Matriculation qualification in the selection of all other categories of EDAs except ED-SPMs and ED-BPMs.

6.4.10. In this instant case, it may be seen that Md.Azad Khan who had been possessing the educational of VIII-Standard only was selected to the post of ED-packer, Thoubal SO without giving any preference to the matriculate candidates nominated and sponsored by the District Employment Exchange, Thoubal. So, the said Shri.D.K.Bora, who as SDIPOs, 2nd Sub-Dn, Imphal was duty bound to observe the instructions scrupulously while making selection of ED-Agents, miserably failed and the documentary evidences produced in the inquiry are sufficient enough to prove that the said Shri.D.K.Bora, by recruiting a candidate with the educational qualification of VIII-Standard only for the post of ED-Packer/Thoubal SO when the candidates with matriculation qualification were also available, violated the departmental instructions contained in D.G-P& T and D.G-Posts letters cited above.

6.4.11. As a Govt. servant, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal is required to maintain devotion to duty and do nothing, which is unbecoming of a Govt. Servant. In this instant case it may be seen that the said Shri.D.K.Bora had failed to follow the instructions contained in D.G. P&T and D.G.Posts letters mentioned above and recruited a candidate of VIII-Standard qualification

who had lost his preference to other 2(Two)candidates with matriculation qualification. Therefore, there is no doubt that the said Shri.D.K.Bora violated Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules,1964 by his above acts.

6.5.1. The C.O in his defence has submitted that the Prosecution has miserably failed to prove that:

(i). The candidates with Class-VIII qualification should forego their eligibility for consideration for various ED-Posts other than EDSPMs & EDBPMs when the candidates with matriculation are available;

(ii). The recruiting authority has no option but to recruit the matriculate when candidates with matriculation qualification have applied for the post along-with candidates with Class-VIII qualification.

(iii). The performance of the candidate with Class-VIII qualification in the suitability test conducted by the recruiting authority has no say in the selection of the candidate to various ED-Posts and the candidates with matriculation qualification gets automatic preference over the candidates with Class-VIII qualification.

(iv). The recruiting authority should not conduct a suitability test and the candidate performing well in the suitability test has no preference in the selection as because the selection is purely based on the preference criteria available to the matriculates over the candidates with Class-VIII qualification.

(v). The D.G. P&T instructions regarding method of recruitment of EDAs contain any clause that the candidates with Class-VIII qualification should not at all be considered for selection to various ED-Posts other than EDSPMs & EDBPMs when candidates with matriculation are available.

(vi). The preference to matriculates inter-alia takes away the benefits of reasonable opportunity to be given to the candidates with Class-VIII qualification when candidates with matriculation have also applied for the eligible ED-Posts along-with candidates with Class-VIII.

(vii). The preference to matriculates is automatic when both matriculates and Class-VIII qualified candidates compete for eligible ED-Posts and such automatic preference does not tantamount to disqualifying the candidates with Class-VIII qualification to compete for those eligible ED-Posts.

Therefore, the contention of the P.O from Para-2.9 (a) to Para-2.9 (g) in his written brief are not substantive and objective.

6.5.2. The evidences produced by the prosecution in Exhibit S-1 to S-11 did not spell anything as violative of any of the provisions contained under Rule-3 of the CCS(Conduct) Rules, 1964. Instead, by producing the above Exhibits, the prosecution has helped in proving the fact that one Md.Azad Khan has been appointed to the post of ED-Packer, Thoubal SO duly following the prescribed procedure, after the regular incumbent of the post, namely Shri.Mangkholet Haokip, vacated the post after proceeding on leave and then resigned.

6.5.3. The allegation of the prosecution was that the appointment of Md.Azad Khan as ED-Packer of Thoubal SO was irregular because he has possessed the educational qualification of VIII-Standard only as per Exhibit No.S-5 where there were 2(Two) more candidates with matriculation qualifications namely (1) Miss. Mumtaz and (2) Md.Abdur Razaque and any one of these two matriculates candidates should have been preferred for selection and appointed to the post of ED-Packer, Thoubal S.O. And in support of the allegation, the prosecution has simply made references to some of the D.G P&T and DG(Posts letters but it has utterly failed to produce the copy of any of the instructions as evidences. The prosecution has made irrelevant explanation to prove the allegation without any basis or material evidences.

6.5.4. The method, by which the selection and appointment of the ED-Packer, Thoubal SO has been made, has not been held or proved to be irregular. The Exhibit S-6 produced by the prosecution is sufficient enough to show that all the candidates have been called for a test and the test was conducted on simple arithmetic as was envisaged for testing suitability/possession of knowledge on simple arithmetic. But the prosecution did not hold this as irregular. When the procedure adopted for selection of candidates to the

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post has not been held irregular, then how the person selected and appointed subsequently be held irregular.

6.5.5. The expression made by the prosecution, that one of the two matriculates should have been preferred over the candidates with the educational qualification of VIII-Standard, sounds no logic. The prosecution, by stating, "1(One) of the 2(Two) matriculate candidates should have been preferred" has failed to point out the established procedure if any, to select any one of the matriculate candidates available for the post. No one could be selected or rejected summarily for having of higher or lower educational qualification. Some basis has to be followed. The basis in practice for selection of ED-Agents to various categories of ED-Posts in Manipur was "holding of written test" primarily for testing the knowledge of the candidates in arithmetic. This procedure was never held irregular by any of the officers of the department who verified appointment cases of various ED-Posts from time to time. Even in the instant case, the prosecution did not say anything about the procedure adopted for the selection of candidates to the post of ED-Packer, Thoubal S.O. So, the selection and appointment of Md.Azad Khan made as per the result of the test held on 4.3.2000 could not be held irregular. And, this will not amount to non giving of preference to the matriculate candidates who did not get selection for poor performance over the candidate of Class VIII Standard.

6.5.6. Holding of suitability test could have been avoided, had there been only one matriculate candidate sponsored by the employment exchange and the other candidates with VIII standard qualification only. In that case selection of the lone candidate could have been automatic over the rest of the candidates. But, in the instant case, there were more than 1(One) matriculate candidates and thus it was not possible to make a summary selection of 1(One) of the 2(Two) candidates as stated by the prosecution. So, the holding of the test was compulsory and this was done.

6.6.1. D.G. P&T letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II (ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93 printed as Instruction No.(1) below Method of Recruitment in Section-IV of the EDAs(C &S)Rules,1964 of "Swamy's Compilation of Service Rules for Postal ED-Staff

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(Seventh Edition-1999) clearly shows that the minimum educational qualification required for consideration of candidates for ED-Posts in the following categories is VIII-Standard.

(i). ED-Delivery Agents
(ii). ED-Stamp Vendors
(iii). All other categories of EDAs (other than ED-Sub Postmasters & ED-Branch Postmasters)

The above departmental instructions, inter-alia, clearly state that preference may be given to the candidates with Matriculaton qualifications. Therefore, preference to matriculation qualification is not an optional criteria at the discretion of the recruiting authorities.

6.6.2. The above departmental instructions also state that the candidate selected for the above categories of ED-Posts should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactory. This does not mean that the candidate scoring high, in the suitability test or whatsoever test conducted to assess the suitability of the candidates competing for the post, should be selected for the post. The C.O, while stating his defence vide his representation dated 07.02.2002, submitted that he assessed the suitability of all the candidates sponsored by the Employment Exchange, Thoubal for the post of ED-Packer, Thoubal SO by conducting a suitability test on 04.03.00 and the selection was made on the basis of performance of the candidates. The C.O, in his defence, has further stated that the candidates with matriculation qualification secured less marks in the test in comparison to the candidate with VIII-Standard qualification and the performance sheets of the candidates placed at Page Sl.No.48/C, 49/C, 50/C & 51/C in File No.A-1/ED-Packer/ Thoubal S.O under the custody of the disciplinary authority will speak about their knowledge in arithmetic for which the test has been held on 04.03.00. The C.O's defence is recorded in Order No.07 dated 08.02.2002. As it is essential to examine the performance sheets relied upon by the C.O for the selection of ED-Packer for arriving at any conclusion regarding the article of charge-I, the performance sheets have been called for from the disciplinary authority and examined with the following results:

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(i). Md.Azad Khan - VIII-Std qualified candidate has secured 40 out of 40 in the test conducted by the C.O on 04.03.2000; and
(ii).Miss. Mumtaz - Matriculate candidate has secured 23 out of 40 marks in the test conducted by the C.O on 04.03.2000; while
(iii).Md.Abdur Razaque(Rajaque)- Matriculate candidate has secured 19 out of 40 marks in the test conducted by the C.O on 04.03.2000.

6.6.3. After examining the above performance sheets as required by the C.O in his defence dated 07.02.2002, the undersigned could come to the conclusion that:

1. The percentages of marks secured by the above candidates in the suitability test conducted by the C.O as SDIPOs, 2nd Sub-Dn., Imphal on 04.03.2000 are:

   (i). Md.Azad Khan - 100 %
   (ii). Miss. Mumtaz - 57.5 %
   (iii). Md.Abdur Razaque- 47.5 %

2. All the 3(Three) candidates have secured more than 45% marks in the suitability test conducted by the C.O as SDIPOs, 2nd Sub-Dn., Imphal on 04.03.2000 and as such all the 3(Three) candidates are eligible for selection to the post of ED-Packer, Thoubal S.O as because all the 3(Three) candidates have been possessing sufficient working knowledge in simple arithmetic.

3. As all the 3(Three) candidates secured more than 45% marks in the suitability test conducted by the C.O and as all the 3(Three) candidates became eligible for selection to the post, the C.O must have given preference to 1(One) of the 2(Two) matriculates in the selection. Therefore, either Miss. Mumtaz or Md.Abdur Razaque depending upon their suitability (who secured the qualifying standard in the suitability test) should have been preferred over Md.Azad Khan who was only a Class-VIII standard qualified.

6.6.4. The departmental instructions regarding selection of ED-Agents clearly spell out that preference may be given to the candidates with Matriculation candidates. No more

detail instruction is necessary, and when the matriculation candidates competing with VIII-standard qualified candidates are also found eligible for consideration in the selection, the matriculates automatically get preference over the VIII-standard candidates and when there is more than one matriculate then the most suitable amongst the matriculates in such cases should be selected for the appointment. But in this instant case, the selection of ED-Pakcer, Thoubal SO has been made by the C.O without following the above principle and as such violation of Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Condcut)Rules, 1964 by the C.O as alleged in the article of charge-I is attracted.

6.6.5. The documentary proof submitted by the prosecution from Exhibit No.S-1 to S-11 is sufficient enough to hold the charges as proved.

6.6.6. The C.O's contention in the written brief dated 04.03.2002 that the copies of rulings/departmental instructions are not produced as documentary evidences in the departmental inquiry is not sustainable as because rulings and departmental instructions are essentials to be known and followed by the employees of the department, which cannot be included as documentary evidences. The principle "Ignorance of law is no excuse" should be followed in this case.

7.1. In the article of Charge-II, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal has been charged for violation of Rule-3(1)(i), Rule-3(1)(ii) & Rule-3(1)(iii) of CCS (Conduct)Rules,1964 because of appointment of a single candidate namely Md.Azad Khan as ED-Packer, Thoubal S.O with retrospective effect from 2(Two) different dates by 2(Two) different orders.

7.2. To substantiate the charge, it is essential to prove that:

7.2.1. Md.Azad Khan was appointed as ED-Packer, Thoubal S.O with retrospective effect.

7.2.2. The said retrospective appointment was made with effect from 2(Two) different dates by 2(Two) different orders.

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7.3. The P.O, in his written brief dated 15.02.2002, has submitted that:

7.3.1. It may be seen from Exhibit No.S-3 that the said Shri.D.K.Bora started the process of recruitment of ED-Packer, Thoubal S.O on 29.12.99 by addressing the District Employment Officer, Thoubal and the District Employment Officer, Thoubal sponsored 3(Three) candidates for the post vide Exhibit No.S-4. After that, as per Exhibit No.S-6, the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal called all the 3(Three)candidates nominated and sponsored by the District Employment Officer, Thoubal to appear in a written test held at his office on 04.03.2K. As per Exhibit No.S-8, i.e., SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED Packer/Thoubal S.O dated 06.04.2K; one Md.Azad Khan who topped in the test held on 04.03.2K was selected for the post of ED-Packer at Thoubal S.O. As per the noting of the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal on Exhibit No.S-8, "Md.Azad Khan is selected and his appointment is being issued after obtaining the Police Verification report". But, Exhibit No.S-7 and Exhibit No.S-9 shows that Md.Azad Khan, the candidate selected for the post of ED-Packer, Thoubal S.O was provisionally appointed for a period of 3(Three) months with effect from 01.03.2000 vide SDIPOs, 2nd Sub Dn., Imphal No.A-1/ED-Packer/Thoubal SO dated 31.03.2000 and the same candidate has been regularly appointed as ED-Packer, Thoubal S.O with effect from 01.02.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED-Packer/Thoubal S.O dated 26th April 2000. Both the orders shown in Exhibit No.S-7 & S-9 have been issued by the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal.

7.3.2. As per D.G-P&T Letter No.43/66-Pen dated 17.10.66 read-with Rule-3 of P&T Man.Vol.IV, pre-appointment formalities should be completed before the candidates selected for appointment to ED-Posts are appointed as ED-Agents. But, in the appointment of Md.Azad Khan S/o.Late. Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal S.O, it may be seen that:

(i). As per Exhibit No.S-6, the Charged Official, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal, conducted the suitability test for selection of ED-Packer, Thoubal S.O on 04.03.2000. But, as per Exhibit No.S-7, Md.Azad Khan was provisionally appointed as ED-Packer, Thoubal S.O with effect from 01.03.2000.

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(ii). As per Exhibit No.S-8, the selection of ED-Packer, Thoubal SO was made on the basis of marks secured in the suitability test conducted on 04.03.2000 and the selection was finalized only on 06.04.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED-Packer/Thoubal SO dated 06.04.2K. But, as per Exhibit No.S-7 & S-9, the candidate whose selection was completed only on 06.04.2000 was appointed provisionally with effect from 01.03.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED-Packer/Thoubal SO dated 31.03.2000 and was appointed regularly with effect from 01.02.2000 with effect from 01.02.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED Packer/Thoubal S.O dated 26th April 2000. Thus, Md.Azad Khan, S/o. Late Md.Abdul Jalil of Lilong Turel Ahanbi who was selected for the post of ED-Packer, Thoubal S.O on 06.04.2K, was appointed to the post of ED-Packer, Thoubal S.O with effect from 2(Two) different dates prior to his selection vide 2(Two) difference orders.

7.3.3. In his defence, the Charged Official has stated that there is nothing like issuing of two appointment letters as because the appointment letter No.A-1/ED Packer/Thoubal S.O dated 31.03.2000 was a letter of provisional appointment issued with effect from 01.03.00 and not from 01.03.01, but while issuing the regular appointment the date of joining of the official was taken to be 01.02.00 due to oversight.

7.3.4. The Charged Official himself has admitted that he issued the provisional appointment with effect from 01.03.2000. The date of provisional appointment appearing as "01.03.2001" in the 6th line of second paragraph of Article-II in Annexure-3/Page-3 is only a typing mistake which needs to be read as "01.03.2000". The I.O is requested to allow the correction of the typing mistake and the C.O may kindly be communicated that the date of provisional appointment may be read as "01.03.2000" instead of "01.03.2001" as explained above.

7.3.5. The defence of the Charged Official that 2(Two) different dates of appointment was due to oversight is not agreeable as because the Charged Official has not explained as to how the oversight took place.

7.3.6. Further, the appointment of Md.Azad Khan, S/o.Late. Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal SO has been made with effect from a date prior to his selection. Even if, the date of appointment

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is taken as 01.03.'00 as stated by the Charged Official, the Charged Official has not explained as to how the appointment was made with effect from a date prior to the selection of the candidate.

7.3.7. The Charged Official conducted the selection test only on 04.03.2K and the selection of ED-Packer, Thoubal SO was finalized only on 06.04.2K. But, the Charged Official, provisionally appointed the candidate namely Md.Azad Khan, who was declared selected to the post of ED-Packer, Thoubal SO on 06.40.2K with effect from 01.03.2000 by a provisional appointment order dated 31.03.2000 and again with effect from 01.02.2000 by a regular appointment order dated 26th April 2000.

7.3.8. There is no provision in the departmental rules that anybody could be appointed with effect from a date prior to selection. Therefore, the Charged Official not only failed to maintain absolute integrity and devotion to duty by appointing Md.Azad Khan. S/o.Late.Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal S.O with effect from a date prior to the selection of the said candidate, but also acted in a manner which is highly unbecoming of a Govt. servant. So, violation of Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) are proved beyond any doubt. Issuing provisional appointment with effect from 01.03.2000 and regular appointment with effect from 01.02.2000 by the Charged Official were the further acts which exposed him to have once again violated Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct)Rules,1964. Violation of D.G-P&T instructions in Letter No.43/66-Pen dated 17.10.66 read-with Rule-3 of P&T Man.Vol.IV by the said Shri.D.K. Bora, SDIPOs, 2nd Sub-Dn., Imphal is also therefore proved beyond any doubt.

7.4. The Charged Official in his defence has submitted that:

(i). In the defence of the undersigned dated 07.02.2002, it was already submitted that the different dates in the appointment orders in respect of the date of effect of appointment was an error due to over sight. The error due to over sight is an unintentional mistake occur in the course of discharge of duties which does not require an independent explanation as because the unintentional error is an accident which is not known to the person

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committed it as long the same is not pointed out by somebody or otherwise noticed during reconciliation. Therefore, the contention of the P.O in Para-3.5 of his written brief is not valid.

(ii). The candidate namely Md.Azad Khan who was later selected to the post of ED-Packer, Thoubal SO was actually working in that post right from 01.08.99, and his substitute appointment against the incumbent ED-Packer expired on 27.01.2000 when the leave applied by Shri.Mangkholet Haokip, ED-Packer, Thoubal SO expired on the said date. The candidate has actually been continuing as ED-Packer, Thoubal SO well before his regular selection by way of a temporary arrangement made to the post. Therefore, appointment with retrospective effect was necessitated by the circumstances for drawing the pay and allowances entitled to the candidate who was actually discharging his duties in the ED-Post. Hence, the provisional appointment had to be made with effect from 01.03.2000 and the regular appointment order was bearing the date of effect as 01.02.2000 instead of 01.03.2000 due to over sight as explained in Para-11(i) above.

(iii). The undersigned is willing to rectify any error pointed out to him even by issuing a fresh appointment order by canceling the earlier one. But, in the instant case, the undersigned was not given any opportunity to rectify the erroneous appointment under the relevant provisions of rules.

(iv). As the unintentional mistake or error occur during the course of discharge of duties cannot be equated with an intentional or/and willful misconduct or misbehaviour, it is submitted that the prosecution has miserably failed to prove that the undersigned violated Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules, 1964 as alleged in article of charge No.II.

7.5. Examination of documents Exhibit No.S-6, S-7, S-8 & S-9 clearly show that one Md.Azad Khan along-with 2(Two) other candidates was called to appear in the written test to be held at the office of the SDIPOs, 2nd Sub-Dn., Imphal on 04.03.2000(vide Exhibit No.S-6), the result of selection was concluded on 06.04.2000 (vide Exhibit No.S-8), Md.Azad Khan the candidate who appeared in the selection test on 04.03.2000 was appointed provisionally with effect from

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01.03.2000 (Vide Exhibit No.S-7) and Md.Azad Khan who was finally declared selected for the post of ED-Packer, Thoubal SO on 06.04.2000 was regularly appointed with effect from 01.02.2000 (Vide Exhibit No.S-9). So, retrospective appointment as well as retrospective appointment with effect from 2(Two) different dates by 2(Two) different orders in case of Md.Azad Khan as ED-Packer, Thoubal SO are proved beyond any doubt from Exhibit No.S-6, S-7, S-8 & S-9. The C.O's plea mentioned in Para-7.4 above has no justification as because there may be an unintentional error in respect of date of appointment only if the appointment is made after the selection. In this instant case, both the provisional as well as regular appointments, showing 2(Two) different date of effects have been made prior to the selection of the candidate. The candidate's suitability has been tested on 04.03.2000 and its result was declared only on 06.04.2000. Therefore, plea of the C.O that the mistake/error was unintentional exceeds the proposition of reasonableness and belief. Therefore, violation of Rule-3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964 and non-following of instructions contained in D.G.P&T Letter No.43-66/Pen., dated 17.10.66 readwith Rule-3 of P&T Manual Vol.IV as alleged in the article of charge-II have been proved beyond any doubt.

7. FINDINGS:

ARTICLE-I : The charge is proved beyond doubt.

ARTICLE-II: The charge is proved beyond doubt.

Dated : 8th March 2002.

(N.C.Halder) 8/3/02
INQUIRY OFFICER.
&
Supdt. of Post Offices,
Manipur:Imphal:795001.

Accepted
Khan
Ad. Vocate

9C -- 48/c

Test on the suitability of candidates for the post of ED Packers & Trunbal S.O.

(All questions are Compulsory and carry Marks as indicated) Time -- 60 Minutes

1. Add the following

(a) 3965 (b) 9521 (c) 6105 (d) 7285
5362 5712 5610 9578
6523 2519 1065 8295

(e) 8469
6843
9386

(2) Substract the following

(a) 8496 -- 6715 (b) 5129 -- 3585
(c) 4764 -- 3965 (d) 9631 -- 6876
(e) 7893 -- 6155

(3) Multiply the following

(i) 478 x 290 (ii) 6432 x 4906

(4) (i) The cost of one dozen of eggs is Rs 30.00. What will be the cost of 105 eggs?

(ii) The bus fare of one passenger from Jumbal to Guwahati is Rs 365.00. What will be the fare for 9 persons?

(5) Name 10 (ten) important ports of India.

Attested
[illegible]

(N.C. [illegible])
Supdt. of Post Offices
[illegible]

97 - 49/c

49/e-114

(a) 3265 + 362 + 6523 = 15150 ✓

(b) 9521 + 5912 + 2519 = 16942 ✗

(c) 6105 + 5610 + 1065 = 12770 ✗

(d) 7285 + 9578 + 8295 = 25158 ✗

(e) 8469 + 6843 + 9380 = 24688 ✗

4

(a) 8196 − 6918 = 1578 ✓

(b) 5129 − 3585 = 1544 ✗

(c) 4784 − 3965 = 829 ✗

(d) 7634 − 6876 = 2759 ✓

4

(i) 472 × 290 = 136880 ✓

(ii) 64.32 × 4906 = 305653912 ✗

5

Sol^n

$$\frac{30 \times 105}{12} = \frac{505}{2} = 212.50 \text{ p} \times$$

(1) Assam, (2) Mizoram (3) Meerut ✓
(4) Bhopal (5) Calcutta (6) Mumbai ✓
(7) Haryana (8) Bangalore (9) Delhi
(10) Punjab. 6

Total = 4+4+5+6 = 19

Above is the total marks, only

Abdus Kajal
1/7/2002

(N.C. HALDER)
Supdt. of Post Offices
Manipur Dvn, Imphal-795001

3255
5362
6523
15150 Ans:

(b) 9521
5912
2519
17952 Ans

(c) 6105
5610
1065
12780 Ans

(d) 2285
9578
8295
25058 Ans

8469
6843
9386
24698 Ans

(a) 8496 — 6948 = 1558 Ans:

(b) 5129 — 3585 = 1544 Ans:

(c) 4784 — 3965 = 819 Ans:

(d) 9635 — 6876 = 2759 Ans:

(e) 7893 — 6488 = 1415 Ans:

(f) 478 × 290 = 138620 Ans:

478
290
4302
956
138620

6132
4906
36792
0000
55188
24528
30079992

(g) MANIPUR, GAUHATI, SHILONG, AIZAWL, BOMBAY, NAGALAND, ASSAM, TRIPURA, MIZORUT, LUCKNOW.

(N.C. HALDER)

Attested
Advocate

Q.1 (a) 3265 + 5362 + 6523 = 15150

(b) 9521 + 5912 + 2519 = 17952

(c) 6105 + 5610 + 1065 = 12780

(d) 7285 + 9578 + 8295 = 25158

(e) 8467 + 6893 + 9386 = 24746

Q.2 (a) 8496 − 6948 = 1548

(b) 5129 − 3585 = 1544

(c) 4784 − 3965 = 819

(d) 9635 − 6876 = 2759

(e) 7893 − 6488 = 1405

(f) 2478 × 290 = 718620
956
386260

(g) 6432 × 4906 = 38592
5788380
25728
31555392

Q.3 IMPHAL · KOHIMA · GUWAHATI
CHILONG · NEW DELHI · MUMBAI
CALCUTTA · BANGALORE
LUCKNOW · BHOPAL

10 + 10 + 10 + 10 = 40
forty only

4/3/24
Sub-Divisional Inspector
of ...
2nd Sub-Division

ANNEXURE-16

To

The Director Postal Services,
Manipur, Imphal - 795 001.

Sub: Written statement of defence submitted against the Report of the Inquiry Officer in the Departmental Inquiry under Rule-14 of CCS(CC&A)Rules, 1965 against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal.

Ref: Your No.B-2/D.K.Bora dated 12.03.2002.

Sir,

While expressing his strong disagreement on the findings of the Inquiry Officer in respect of both the articles of charges, Charged Official also submits the following points for favour of your kind consideration.

(Points in respect of Article-I)

1. The Inquiry Officer, while analyzing the whole case, had called for the performance sheets of all the 3(Three) candidates who had appeared in the suitability test held on 04-03-2K for selection of candidates to the post of ED-Packer, Thoubal SO. The I.O, then examined the performance sheets of all the 3(Three) candidates and came to the conclusion that:-

   (a). The percentage of marks secured by the candidates in the suitability test conducted by the C.O as SDIPOs, 2nd Sub-Dn., Imphal on 04-03-2000 are:

   (i).. Md.Azad Khan - 100 %
   (ii). Miss. Mumtaz - 57.5 %
   (iii). Md.Abdur Razaque - 47.5 %

   (b). All the 3(Three) candidates have secured more than 45% marks in the suitability test conducted by the C.O as SDIPOs, 2nd Sub-Dn., Imphal on 04.03.2000 and as such all the 3(Three) candidates are eligible for selection to the post of ED-Packer, Thoubal SO as because all the 3(Three) candidates have been possessing sufficient working

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knowledge in simple arithmetic.

(C). As all the 3(Three) candidates secured more than 45% marks in the suitability test conducted by the C.O and as all the 3(Three) candidates became eligible for selection to the post, the C.O must have given preference to 1(One) of the 2(Two) matriculates in the selection. Therefore, either Miss. Mumtaz or Md.Abdur Razaque depending upon their suitability (who secured the qualifying standard in the suitability test) should have been preferred over Md.Azad Khan who was only a Class-VIII standard qualified.

Thus, the I.O held the appointment of Md.Azad Khan as ED-Packer, Thoubal SO as irregular and violative of the Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct)Rules, 1964.

2. The views expressed by the I.O and the decisions passed thereof are not at all agreeable because:-

(a). The material called for by the I.O after the closure of the proceedings of the case is not at all warranted. If in the opinion of the I.O, it was essential to call for the said documents it should have been called for in course of the hearing of the case and exhibited them as additional documents on behalf of the prosecution, if so desired. But calling them in the stage of preparation of I.Os report by filling up the lacuna on behalf of the prosecution is undesirable and not inconsistent with the procedure laid down in Rule-14 of the CCS(CCA)Rules,1965.

(b). The documents called for by the I.O did not have any bearing on the facts of the case as they did not appear either in the article of charge or the statement of allegations or in the evidence adduced at the inquiry. Thus it was quite improper on the part of the I.O to import the said documents to come to a conclusion in favour of the prosecution.

(c). The I.O was needed to give definite findings on the articles of charge individually. But this was not done. No weightage has been given to the C.Os version of the

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case but summarily concluded his findings on the version of the prosecution and held the charges proved.

(d). The assessment made by the I.O on the performance sheets of the candidates and holding of the article of charge-I as "Proved beyond doubt" was totally wrong and incorrect. Because,

(i). The test was conducted for 50-marks and not for 40-marks as stated by the I.O.

(ii). The marks 50 comprised two parts ie. 40 marks for mathematics and 10 marks for general knowledge.

(iii).(a). Md.Azad Khan - VIII qualified candidate has secured 30-marks out of 40 in mathematics and thus the percentage of marks secured by Md.Azad Khan was 75% and not 100% as stated by the I.O.

(b). Miss.Mumtaz - Matriculate candidate has secured 19 marks out of 40 in mathematics and thus the percentage of marks secured by Miss.Mumtaz was 47.5%.

(c). Md.Abdur Razaque - Matriculate candidate has secured 13-marks out of 40 in Mathematics and thus the percentage of marks secured by Md.Abdur Razaque was 32.5%.

Therefore, the analysis made by the I.O on the performance sheets of the candidates at para-6.6.2 & 6.6.3 of his report is contradictory to the facts discussed in item-(i) to (iii) above, and thus the findings of the I.O was not correct and acceptable.

3.(i). Holding of suitability test to adjudge the candidate's sufficient working knowledge in regional language and simple arithmetic so as to be able to discharge their duties was within the purview of the existing instructions. However, the test was not conducted for regional language. Because, the regional language of Manipur is Manipuri language and all the candidates being local candidates from Manipur, the necessity for holding a test for possessing knowledge about Manipuri language was felt not necessary. So, the

Advocate.

test was conducted to examine the sufficient working knowledge in arithmetic. Accordingly, in the test held on 04-03-2K, the performances of the candidates were found as under:-

(i). Md.Azad Khan - Secured 30 marks out of 40 marks.
(ii). Miss.Mumtaz - Secured 19 marks out of 40 marks.
(iii).Md.Abdur Razaque -Secured 13 marks out of 40 marks.

Finally, from the result of the test shown above, Md.Azad Khan who secured the highest marks has been declared selected and appointed to the post of ED-Packer, Thoubal SO.

(ii). The Disciplinary authority did not take the above ingredients into account while framing the charge in article-I of the charge sheet memorandum nor the prosecution held it irregular during the hearing of the case held on 02.01.2002, 30.01.2002, 01.02.2002, 04.02.2002, 05.02.2002, 06.02.2002 and 08.02.2002. Both the Disciplinary authority and the P.O have been giving undue stress over the matter of "giving preference" to the matriculate candidates just to hold the undersigned guilty of the proposed charge in Article-I without any base and findings of the actual facts.

(iii). The findings recorded by the I.O has suffered from impartiality. The I.O just to hold the charge "Proved" resorted to a self style device and assessed his findings wrongly in item(i) of Para-6.6.2 and items 1,2 & 3 of Para-6.3.

4. The I.O based his findings stating that all the three candidates have secured more than 45% marks in the suitability test conducted by the C.O and thus all the candidates became eligible for selection to the post. The C.O must have given preference to 1(One) of the 2(Two) matriculates in the selection. The I.O's contention is not at all acceptable.

5. The test was not a classroom test for promotion of students from one class to the next higher class on the basis of securing qualifying marks. It was a test for selection of candidates for recruitment to the post of one ED-Packer. There is no provision to enroll any of the candidates to the post who secured qualifying marks. Securing of qualifying marks does not automatically justify a candidate for selection to the

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Advocate.

Govt. service. The test was held to select the most suitable candidate amongst all the candidates and whosoever topped in the test has been selected. Even if the I.O has been the appointing authority in the instant case, there is not an iota of doubt that the I.O would not have done the same thing as was done by the C.O. The I.O should not have twisted the fact to the favour of the prosecution and held the charge "Proved". No law of the land will agree with such arbitrary decision.

(Points in respect of Article - II)

6. While analyzing the fact about issuances of two appointment letters from two different dates with retrospective effect, the I.O vested his decision on the arguments made by the prosecution only. He did not go in detail to the gravity of the charge and utterly failed to consider the sanctity of the C.O. The C.O had time and again explained the circumstance leading to the issuance of the two appointment letters with retrospective effect, the reason for disagreement with the C.Os version of the facts has not been elaborately discussed by the I.O while arriving at his decision to hold the charge "Proved beyond doubt" but he had concluded so merely on the pleadings of the P.O and to suit the whims and fancy of the Disciplinary Authority.

7. Letter No.A-1/ED-Packer/Thoubal SO dated 31.03.2K was a provisional appointment order with effect from 01.03.2K and this was essential to issue for drawal of pay and allowances of the official who has been working in the post by that relevant point of time. In the instant case the person working in the post happened to be Md.Azad Khan. It was already made clear during hearing of the case that Md.Azad Khan has been working in the post right from 01.08.99 when the regular incumbent of the post namely Shri.Mangkholet Haokip proceeded on leave appointing Md.Azad Khan as his substitute. The leave applied by Shri.Mangkholet Haokip expired on 27.10.2000 and thus Md.Azad Khan ceased to be a leave substitute with effect from 28.01.2000. But it was ordered to utilize the services of the official as ED-Packer Thoubal SO to manage the works of the office primarily to streamline the exchange of the Speed Post mails with SPC, Imphal daily. Thus, Md.Azad Khan continued to work in the post of ED-Packer, Thoubal SO

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without any break since 01.08.99. But, when it was reported to the undersigned that Postmaster, Imphal did not draw his duty pay and allowances for the month of March'2K for want of a specific order, the provisional appointment was issued on 31.03.2K giving effect from 01.03.2K to enable the official to draw the duty pay and allowances. Thus the C.O feels that there has not been any such serious irregularity which may tantamount to violative of Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules, 1964. Subsequently, the said Md.Azad Khan has been found to be the most suitable candidate amongst all the 3(Three) candidates as per the suitability test held on 04.03.2K and accordingly regular appointment order was issued on 26.04.2K after observing all the formalities in true spirit (Exhibit S-9). If the appointed person in the instant case would have been a different person other than Md.Azad Khan, and if the said appointment was made with effect from any date prior to the selection, then the allegation giving retrospective effect could have been made easily substantive. But the situation is wholly different in the instant case. In the instant case, the official has been continuously working in the post since 01.08.99. At the time of issuance of the regular appointment order, the official was continuing to work in the post as per the provisional order in exhibit S-7. Thus, keeping the above factor in view it was considered that the date of effect of the appointment was made from 01.03.2K. But due to oversight, which is a human error, the date was mentioned as 01.02.2K instead of 01.03.2K and this fact was already explained before the Inquiry Officer during the hearing of the case. The error was unintentional that occurred in the course of discharge of duties which does not require an independent explanation as because the unintentional error is an accident which is not known to the person committed it as long the same is not pointed out by somebody or otherwise noticed during reconciliation. Had the official been not continuing in the post since 01.03.2K, question of giving appointment with effect from 01.03.2K would not have arisen at all. Thus, the findings of the I.O holding the charge "Proved beyond doubt" are not agreeable.

8. The evidences produced by the prosecution in exhibit S-1 to S-11 did not spell anything as violative of any of the provisions contained under Rule-3 of the CCS(Condcut) Rules,1964. Instead by producing the above

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Advocate.

exhibits, the prosecution has helped in proving the fact that one Md.Azad Khan has been appointed to the post of ED-Packer Thoubal SO duly following the prescribed procedure, after the regular incumbent of the post namely Shri.Mangkholet Haokip vacated the post after proceeding on leave and then resigned. The prosecution has utterly failed to produce copy of any of the D.G. P&T and D.G(Posts) letters as exhibits which were alleged to have been violated by the C.O but the I.O during analysis of the case at Para-6.6.6 has stated that copies of rulings/ departmental instructions are essentials to be known and followed by the employees of the department and those could not be included as documentary evidences. The I.O further added that "Ignorance of Law is no excuse" should be followed in this case which inter-alia means that the C.O was ignorant of the rulings/instructions and does not have anything to say.

9. Rulings and instructions are not pre-existed materials of the Govt. These are introduced from time to time to cope with the changing working situations and to improve the work structure. The instructions are issued even to modify the existing instructions when the later is found to have no bearing with the changing atmosphere. That means instructions and ruling which are not enacted as law keep changing and not a static thing. And, this is the reason that when any instruction or ruling is introduced by the govt. there is strict instruction to circulate the instruction widely for information and guidance of all concerned. Hence, the instructions referred by the prosecution in framing the article of charges against the C.O should have been included as documentary evidences to prove that the copies of instructions which have been held to be violated by the C.O has actually been received by the prosecution and circulated in time. But the prosecution has utterly failed to do so. Even the I.O during hearing of the case did not feel it necessary to retrieve the rulings/ instructions to show that those were actually circulated amongst the staff concerned. By stating about their availability in a book form published by Swamy Publishers during 1999, the I.O went back to prove the charges "beyond doubt" with rulings and instructions introduced during 1981 to 1993.

10. It may be seen that the charges framed against the C.O was proposed to be sustained on documentary evidences

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Advocate

and there has not been any witness in the case. But from the explanation made in the foregoing paragraph, it is crystal clear that the prosecution has utterly failed to produce a single document to prove that the C.O has actually violated any of the provisions contained in Rule-3 of the CCS(Conduct)Rules, 1964. Therefore, the question of holding the C.O guilty of any of the articles of charges does not arise.

11. The decision passed by the I.O is just subjective and not based on any material evidences. The C.O may, therefore, kindly be exonerated of the charges.

Yours faithfully,

Dated at Imphal
the 08-04-02

(D.K.Bora)
SDIPOs, 2nd Sub-Dn.,
Imphal - 795 001.

8/04/02

DIRECTOR POSTAL SERVICES
MANIPUR DIVN.
-8 APR 2002
IMPHAL-795001

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Advocate.

ANNEXURE - 11

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NORTH EASTERN POSTAL CIRCLE

Director Postal Services,
Manipur State.
Imphal - 795 001.

No.B-2/D.K.Bora.

Dated, 11 April 2002.

ORDER

1. Disciplinary proceedings were initiated under Rule -14 of CCS(CCA)Rules, 1965 against Shri D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal. The Charge sheet has been issued vide memo of even number dated 09.10.2001 and with 2(Two) distinct articles of charges. In brief, the charges are as under:

(i). The charged official failed to maintain devotion to duty by not following the instructions contained in D.G. P&T letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II(ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93 and committed grave irregularity amounting to an act unbecoming of a Govt. servant by recruiting one Md.Azad Khan, a candidate with VIII-Standard qualification, who lost his preference to other 2(Two) matriculate candidates nominated and sponsored by Employment Exchange, Thoubal in the recruitment of ED-Packer, Thoubal S.O. So, the C.O has been alleged to have violated Rule-3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964 in the article of charge-I; and

(ii). The charged official appointed one Md.Azad Khan as ED-Packer, Thoubal S.O with retrospective effect prior to the date of the selection of Md.Azad Khan to the post of ED-Packer, Thoubal S.O and also appointed the said candidate with effect from 2(Two) different dates against a single post by 2(Two) different orders and failed to follow the instructions contained in D.G P&T Letter No.43-66/Pen dated 17.10.66 readwith Rule-3 of P&T Manual Vol.IV. So, the C.O has been alleged to have violated Rule-3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS(Conduct) Rules, 1964 in the article of Charge-II.

2. The charged official has acknowledged the service of the charge sheet memorandum on 09.10.2001, but has not

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submitted any written statement of defence nor has communicated anything, to disciplinary authority, to state whether he desired to be heard in person.

3. Finding no response from the charged official, after the service of charge sheet memorandum, within the stipulated time, action under Rule-14(5)(b) & Rule-14(5)(c) of CCS(CCA)Rules, 1965 was undertaken. Shri.N.C.Halder, Supdt.of Post Offices, Manipur, Imphal and Shri.L.Tiken Singh, SDIPOs, Ukhrul Sub-Division, Ukhrul were appointed as Inquiry Officer and Presenting Officer respectively vide letter of even number dated 07.11.2001.

4. The inquiry has been held with due compliance to the relevant provisions of Rule-14 of CCS(CCA)Rules,1965 and the Inquiry Officer submitted the report of the Inquiry vide No.A-1/Inquiry/Rule-14/1/2001-2002.

5. The Inquiry Officer, in his report, has held both the charges, framed against the charged official, as proved beyond any doubt. After studying the report of the Inquiry Officer in detail, the report was forwarded and served to the charged official on 12.03.2002 vide letter No.B-2/ D.K.Bora dated 12.03.2002, duly affording him an opportunity to submit any representation or written statement of defence which he might have wished to make against the I.O's report within 15(Fifteen) days time.

6. Although the C.O did not submit any representation or written statement of defence within the stipulated time, a written statement of derence dated 08 Apr 02 was received from the C.O on 08 Apr 02.

7. In his written statement of defence, the charged official has submitted that:-

(i). The I.O's decision to call for the performance sheets of all the 3(three) candidates after the closure of the proceedings of the case was unwarranted, and the I.O, if at all opined that these documents were essential in the inquiry, ought to have called for them in course of the hearing and the documents should have been exhibited as additional documents on behalf of the prosecution.

(ii). Calling the performance sheets of the candidates by the I.O at the stage of preparation of I.O's report

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tantamount to filling up the lacuna on behalf of the prosecution and his action was inconsistent with the procedure laid down in Rule-14 of the CCS(CCA)Rules, 1965.

(iii). The documents called for by the I.O had no bearing in the case as they neither appear in the article of charge and in the statement of allegation, nor relate to any evidence adduced in the inquiry. Therefore, it was quite improper in the part of the I.O to import the said documents to come to the conclusion in favour of the prosecution.

(iv). The I.O has not given any definite findings on the charges individually and the case has been concluded with summary findings on the basis of the version of the prosecution without giving any weightage to C.Os version of the case.

(v). The I.O has made wrong and incorrect assessment of performance sheets as because:

(a). The test was conducted for 50-marks and not for 40-marks as stated by the I.O.

(b). The marks 50 comprised two parts ie. 40 marks for mathematics and 10 marks for general knowledge.

(c). (i). Md.Azad Khan - VIII qualified candidate has secured 30-marks out of 40 in mathematics and thus the percentage of marks secured by Md.Azad Khan was 75% and not 100% as stated by the I.O.

(ii). Miss.Mumtaz - Matriculate candidate has secured 19 marks out of 40 in mathematics and thus the percentage of marks secured by Miss.Mumtaz was 47.5%.

(iii). Md.Abdur Razaque - Matriculate candidate has secured 13-marks out of 40 in Mathematics and thus the percentage of marks secured by Md.Abdur Razaque was 32.5%.

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Therefore, the I.O's findings drawn on the basis of above assessment on the article of charge-I is totally wrong and incorrect.

(vi). The suitability test was conducted within the purview of existing instructions and the final selection of candidate for appointment of ED-Packer, Thoubal SO was made on the basis of marks secured in the suitability test. Md.Azad Khan, who scored highest marks in the suitability test, was selected and appointed as ED-Packer, Thoubal SO.

(vii). The disciplinary authority did not take into account the suitability test and the marks scored by the candidates in the suitability test while framing article of charge-I of the charge sheet memorandum.

(viii). The prosecution, during the course of inquiry, did not plead the holding of suitability test as irregular and both the P.O & the disciplinary authority have been giving undue stress over the matter of "giving preference" to the matriculate candidates, only to hold the charged official as guilty of article of charge-I, without any base and facts.

(ix). Impartiality has not been maintained by the I.O to arrive at the findings as the I.O has just held the charge as proved by resorting to a self styled device in Para-6.6.2 & Para-6.6.3 of I.O's report.

(x). The I.O's findings on the observation that 1(One) of the 2(Two) matriculates must have been given preference in the selection basing that all the 3(Three) candidates secured 45% marks are eligible for selection to the post is not acceptable, as because all the 3(Three) candidates have not secured 45% marks in the suitability test.

(xi). The suitability test conducted for recruitment to the ED-Post should not be equated with a class room test in which all the candidates securing qualifying marks are promoted to next class as because there is no provision for selection of candidates on the basis of qualifying marks, and mere securing of qualifying marks in the suitability test by any candidate does not automatically justify a candidate for the selection to a Govt. service.

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(xii). The test was conducted only to select the most suitable candidate and the candidate who topped in the test was thus selected.

(xiii). The I.O, who also would have done the same thing if placed under the similar situations of the C.O, has twisted the facts in favour of the prosecution to hold the charge as proved. Therefore, the decision of the I.O is arbitrary and unacceptable to the law of the land.

(xiv). The I.O, did not consider the gravity of the charge and has not considered the sanctity of the C.O to come to the conclusion on the article of charge-II as because neither the circumstances leading to the issue of 2(Two) appointment letters with retrospective effect by the C.O nor the reasoning of the I.O for his disagreement with C.O's version has been explained in the findings of charge in the I.O's report.

(xv). The C.O's version of facts have not been elaborately discussed by the I.O and the decision of the I.O to hold the charge-II as proved has been made merely on the basis of P.O's pleadings to suit the whims and fancy of the disciplinary authority.

(xvi). The provisional appointment with effect from 01.03.2000 vide No.A-1/ED-Packer/Thoubal SO dated 31.03.2000 was essential to draw the pay and allowances during the period from 01.03.2000 to 31.03.2000 as because Md.Azad Khan, who was selected for the appointment of ED-packer, Thoubal SO, was actually working in the post right from 01.08.99 as substitute to the regular incumbent on leave with effect from 01.08.99 to 27.01.2000, and the services of said Md.Azad Khan were continuing to be utilized with effect from 28.01.2000 for managing the work of the post. The Postmaster, Imphal HO did not draw the pay and allowances of the said Md.Azad Khan for the month of March/2000 due to want of specific order and considering the fact that the said Md.Azad Khan, who was finally selected to the post of ED-Packer/ Thoubal SO, had been working in the post with effect from 01.03.2000, provisional appointment giving effect from 01.03.2000 was issued on 31.03.2000. Therefore, no irregularity tantamount to violation of Rule-3(1)(ii) and Rule-

3(1)(iii) of CCS(Conduct)Rules, 1965 was committed by the above act.

(xvii). Regular appointment was issued on 26.04.2000 after observing all the formalities in true spirit, and the regular appointment order was bearing the date of effect of appointment as 01.02.2000 instead of 01.03.2000 due to over-sight.

(xviii). The date of appointment mentioned as 01.02.2000 instead of 01.03.2000 was a human error due to over-sight which was accidental and unintentional. The accidental and unintentional error, which has already been explained to the I.O during the course of the hearing should not be construed otherwise because the unintentional error is an accident which is not known to the person committed it as long the same is not pointed out by somebody-else or otherwise noticed during reconciliation.

(xix). The evidences (Exhibits S-1 to S-11) produced by the prosecution have instead of proving anything about the violation of Rule-3 of CCS(Conduct)Rules, 1964 by the C.O rather proved the fact that the selection and appointment of Md.Azad Khan to the post of ED-Packer, Thoubal SO has been made duly following the prescribed procedure.

(xx). The prosecution, while failed to include and produce the D.G. P&T and D.G(Posts) letters as exhibits in the case has wrongly quoted the C.O of having taken the excuse of Ignorance of departmental rulings and instructions as because:

(a). Rulings and instructions, which are introduced from time to time to cope-with the changing working situation and to improve the work structure, are not the pre-existed materials of the government;

(b). Instructions are issued even to modify the existing instructions when the existing instructions are found to have no bearing to the changing atmosphere;

(c). Instructions & rulings which are not enacted as

law keep changing and not a static thing, and for this specific reason the letters containing instructions invariably bear the clause that the instructions may be widely circulated for the information and guidance of all concerned. Therefore, instructions referred to in the article of charges should have been included as documentary evidences and the prosecution should have proved the receipt of those instructions by the C.O before holding him liable for their violation.

(d). The I.O has failed to show that the instructions have been actually circulated amongst the staff concerned and on the basis of mere availability of the instructions in a book form published by Swamy Publishers in 1999, the I.O has held the charges as proved beyond any doubt, while the rulings and instructions have been introduced during 1981 to 1993.

(xxi). The charges against the C.O are based on documentary evidences and his discussions listed above clearly show that there is no documentary proof to hold the charges as proved.

8. The Charged official, at the close of his representation/ written statement of defence has submitted that he may be exonerated of the charges leveled against him as the prosecution utterly failed to produce a single document to prove that the C.O has actually violated any of the provisions contained in Rule-3 of the CCS(Conduct)Rules, 1964 and the decision of the I.O to hold him guilty is just subjective and not based on any material evidences.

9. Detailed and minute analysis of the case and total re-appreciation of the I.O's report as well as re-assessment of evidences with reference to C.O's representation/ written statement of defence dated clarifies the following facts that:

(i). The performance sheets of the candidates have been consulted by the I.O for drawing the conclusion in respect of article of Charge-I on a specific requirement

from the C.O in Para-3 of his defence dated 07.02.2002 having reference in Para-2(3) of Order No.07 dated 08.02.2002. Therefore, the C.O, who himself demanded the consultation of performance sheets of the candidates at the penultimate stage of the inquiry on the last date of hearing on 08.02.2002 cannot complain any prejudice.

(ii). When the C.O himself has required the I.O to consult the performance sheets of the candidates at the penultimate stage, his contention, " Calling the performance sheets of the candidates by the I.O at the stage of preparation of I.O's report tantamount to filling up the lacuna on behalf of the prosecution and his action was inconsistent with the procedure laid down in Rule-14 of the CCS(CCA)Rules, 1965", has no locus-standi.

(iii).(a). The I.O had called for the candidates performance sheets as the C.O has specifically mentioned in Para-3 of his defence dated 07.02.2002 that the performance sheets placed at Page Sl.No.48/C, 49/C, 50/C and 51/C in file No.A-1/ED Packer/Thoubal SO under the custody of the disciplinary authority will speak about their knowledge in arithmetic for which the test has been held on 04.03.00. If the documents had no bearing in the case, then why the C.O stated that the candidates with matriculation qualification secured less marks in the test in comparison to the candidate with VIII-standard qualification and the performance sheets of the candidates placed at Page Sl.No.48/C, 49/C, 50/C & 51/C in File No.A-1/ED-Packer/ Thoubal SO under the custody of the disciplinary authority will speak about their knowledge in arithmetic for which the test has been held on 04.03.00. Therefore, there is nothing wrong or improper in the part of I.O to call for a document, which the C.O himself has required to be consulted.

(b). Further, the documents, which were consulted on a specific mention by the C.O is not a prosecution document. Therefore, nothing was imported to fill up the lacuna or to come to a conclusion in favour of the prosecution.

(c). The Rule-14(15) of CCS(CCA)Rules,1965 provides the Inquiry authority to allow the Govt. servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the

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interest of justice. But in this case, it is noticed that these documents were not required by the C.O for production as new evidences and why the C.O did not require them as new evidences on his behalf is not the prosecution's concern. At the same time, it will be improper to compel the C.O to the seek production of documents, which he required to be consulted, as new evidences in his behalf. So, the Inquiry Officer, after considering the specific submission of the charged official that the performance sheets of the candidates in File mark: A-1/ ED Packer/ Thoubal SO available in the custody of the disciplinary authority will speak about the knowledge in arithmetic for which the test has been held on 04.03.00, has opined that the consultation of performance sheets was necessary in the interest of justice. Therefore, the C.O cannot report to be aggrieved of a decision of the I.O, which was taken in pursuance of his own submissions.

(iv). The Para-5 [Para-5.4 & Para-5.5] of I.O's report invariably contains C.O's defence in respect of article of charge-I as well as article of charge-II. The I.O has also elaborately discussed the various points and issues raised by the C.O in his analysis, especially Para-6.5.1 to 6.6.6 and Para-7.4 & 7.5. The I.O's conclusion has been based on the comparative analysis of submissions made by the P.O and the C.O, with due consideration to the evidences on record with reference to relevant the existing rulings and instructions. Therefore, the accusation of the C.O, "the I.O has not given any definite findings on the charges individually and the case has been concluded with summary findings on the basis of the version of the prosecution without giving any weightage to C.Os version of the case" is totally baseless and vague.

(v).(a). It is true that the I.O has made an inherent error by making an incorrect assessment of percentage of marks secured by the candidates in the suitability test as the total marks awarded to the test was 50 while the I.O has taken the full marks as 40 instead of 50. But the error in evolving the percentage of marks secured by the candidates has not vitiated the findings as because:

(i). Md.Azad Khan, who has secured 40 out

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50 marks has secured 80% marks in aggregate and 30 out of 40 marks with 75% in arithmetic.

(ii). Miss.Mumtaz, who has secured 23 out of 50 marks has secured 46% marks in aggregate and 19 out of 40 marks with 47.5% marks in arithmetic.

Therefore, Miss.Mumtaz, who was a matriculate had been possessing sufficient working knowledge in simple arithmetic as envisaged in D.G P&T and D.G(Posts) instructions and being a matriculate she qualifies preference over the class-VIII candidate. So, Miss.Mumtaz should have been the natural choice to the post of ED-Packer, Thoubal SO unless otherwise unsuitable. The C.O's contention that the highest scoring candidate gets selection does not merit as because the departmental instructions regulating the selection to ED-Posts clearly says that the candidate for certain ED-Posts should possess sufficient working knowledge in simple arithmetic and regional language for the smooth discharge of duties. "Sufficient" knowledge means that the threshold, is to be crossed, ie/required level. The C.O's contention to have selected on the basis of highest score will compromise the basics of departmental instructions. Such an interpretation will leave no choice to the department but to select a candidate who secured 10% or 15% marks in the so-called suitability test conducted if that 10% or 15% marks becomes the highest.

(b). The error in the calculation of percentage of marks by the I.O in fact resulted in a wrong assessment, but certainly not a wrong or incorrect conclusion. Because, Miss.Mumtaz, the matriculate candidate who secured 47.5% marks in simple arithmetic as per the correct assessment/ evaluation cannot be said to have been not possessing sufficient working knowledge in simple arithmetic. The post of ED-Packer, which has the functions of closing of mail bags, handling mail bags and giving assistance in the post office where required certainly does not require a superior arithmetic performance to the extent of C.O's contention. If a matriculate candidate possesses working knowledge of simple arithmetic and regional language sufficient enough for smooth discharge of duties, then that

matriculate candidate certainly needs to be awarded the due preference, over VIII-Standard candidates, envisaged in departmental instructions. "**Preference** may be given to the candidates with matriculation qualifications." Therefore, the C.O's contention in para-2(d) of his written statement of defence dated 08 Apr 02 that the findings of the I.O was not correct and acceptable is not tenable.

(vi). The departmental instructions are very clear that the candidate to be selected to the post of EDDAs, EDSVs and all other categories of EDAs "should have **sufficient working knowledge** of the regional language and simple arithmetic so as to able to discharge their duties satisfactorily". The departmental instructions are also very clear that "**preference** may be given to the candidates with Matriculation qualification". Therefore, the C.O's contention, that the suitability test was conducted within the purview of existing instructions and final selection was made on the basis of marks secured in the suitability test, are not convincing. There is no material to show that, Miss. Mumtaz - a matriculate candidate (who by virtue of her educational qualification came within the preferential category), who secured 46% marks in aggregate and 47.5% marks in arithmetic in the suitability test conducted by the C.O, was otherwise not suitable for the post, or these standards of 40% marks in aggregate and 47.5% marks in arithmetic are not adequate to fulfill the requirement for sufficient working knowledge. When the qualifying standards in LGO-Examination is 40% in each paper, Inspector of Post Offices Examination is 40% in each paper and 45% in aggregate, and PSS-Group-B Examination is 45% in each paper and 50% in aggregate, there is no justification to conclude that a matriculate candidate who has secured 47.5% marks in arithmetic and 46% marks in aggregate is not suitable to hold an ED-Post with the functions of closing of mail bags and may have the attached works of clearance of letter Boxes, carrying of mails etc. Therefore, by the known standards, Miss.Mumtaz - the matriculate candidate who contested for the post of ED-Packer, Thenbal Alongwith Md.Azad Khan - a VIII-Standard candidate who got selected, was certainly entitled to the preference criteria envisaged in the departmental instructions. So, the C.O's contention that the selection was made within the purview of existing [illegible]

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(vii). Departmental instructions certainly require that the candidate to be selected for certain category of ED-Posts including ED-Packers should possess sufficient working knowledge of simple arithmetic and regional language. This requirement is subject to the limitation that the selected candidates will be able to discharge their duties satisfactorily. So, scoring of high marks in the so-called suitability test cannot be the criteria when a matriculate candidate, who has also secured the standard adequate enough to hold as possessing sufficient working knowledge, belonging to preference educational criteria enjoined in the departmental instructions is available. Therefore, the C.O's contention that the disciplinary authority did not take into account the suitability test and the marks scored by the candidates in the suitability test while framing article of charge-I is not correct. In fact, only on the prima-facie case that the C.O did not follow the existing departmental instructions regarding the recruitment of ED-Agents in the recruitment of ED-Packer Thoubal S.O, the charge sheet was framed.

(viii). The charged official has been tried for his omission to follow the departmental instructions issued vide D.G P&T and D.G(Posts) letters from time to time in the recruitment of ED-Packer, Thoubal SO. As the C.O has not been tried for commission of anything in addition to the departmental instructions, the prosecution need not plead the holding of suitability test as irregular as because there is no charge against the C.O that he irregularly conducted suitability test. Preference to matriculates is envisaged in departmental instructions, but the C.O did not give any preference to matriculate candidate who had possessed sufficient working knowledge in simple arithmetic in the recruitment of ED-Packer, Thoubal SO. Therefore, the C.O's contention, "the prosecution, during the course of inquiry, did not plead the holding of suitability test as irregular and both the P.O & the disciplinary authority have been giving undue stress over the matter of "giving preference" to the matriculate candidates, only to hold the charged official as guilty of article of charge-I, without any base and facts", has no merit.

(ix). The I.O's findings are based on facts and materials evidences. The I.O has made an error while

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calculating the percentage of marks secured by the candidates in the suitability test conducted by the C.O on 04.03.2000, but the error has not vitiated his findings as because the correct calculation still shows that Miss.Mumtaz, the matriculate candidate who contested for the post of ED-packer, Thoubal SO was not given due preference in the recruitment. The I.O's observation is wrong only to the extent that he has held both the matriculates as eligible for selection on the basis of incorrect calculation of percentage of marks, but when it is found now that only one of the two matriculates was actually eligible for consideration then there is no doubt that the preference due to the eligible matriculate was not awarded in the recruitment. Therefore, the error in the calculation of percentage of marks made by the I.O has not vitiated the findings. So, the C.O's pleas that impartiality has not been maintained by the I.O to arrive at the findings as the I.O has just held the charge as proved by resorting to a self styled device in Para-6.6.2 & Para-6.6.3 of I.O's report and the I.O's findings on the observation that 1(One) of the 2(Two) matriculates must have been given preference in the selection basing that all the 3(Three) candidates secured 45% marks are eligible for selection to the post is not acceptable, as because all the 3(Three) candidates have not secured 45% marks in the suitability test, are not maintainable.

(x).(a). The C.O's contention, "The test was not a classroom test for promotion of students from one class to the next higher class on the basis of securing qualifying marks. It was not a test for selection of candidates for recruitment to the post of one ED-Packer. There is no provision to enroll any of the candidates to the post who secured qualifying marks. Securing of qualifying marks does not automatically justify a candidate for selection to the Govt. service. The test was held to select the most suitable candidate amongst all the candidates and whosoever topped in the test has been selected. Even if the I.O has been the appointing authority in the instant case, there is not an iota of doubt that the I.O would not have done the same thing as was done by the C.O. The I.O should not have twisted the fact to the favour of the prosecution and held the charge "Proved". No law of the land will agree with such arbitrary decision", is also not tenable for the reasons already explained in para-9(v) above.

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(b). If we take it for a sake that the I.O had been the appointing authority in the instant case and had done the same thing as was done by the C.O, then the I.O would also have been liable for disciplinary action for violating departmental instructions as of the C.O. Law has not prescribed any separate treatment for persons similarly situated. Therefore, the C.O need not conjecture as nothing arbitrary has been found in this case.

(xi). Departmental instructions require that the candidates with matriculation qualification have to be given preference in the recruitment of certain category of ED-Agents when they are found possessing sufficient working knowledge in simple arithmetic and regional language." The C.O was duty bound to follow the departmental instructions instead of substituting his own opinions and the C.O has no power to select a VIII-Standard candidate on the pretext that the VIII-Standard candidate secured high marks in the so-called suitability test as because a matriculate candidate with sufficient working knowledge in simple arithmetic and regional language was available in the selection process.

(xii). The I.O has gone by the records and material evidences and drawn his conclusion in a logical way. Therefore, the C.O's allegation that the I.O twisted the facts in favour of the prosecution is not supported by facts and figures and as such not sustainable.

(xiii). The I.O has considered all the points raised by the C.O in his defence dated 07.02.2002 and in his written brief dated 04.03.2002. Therefore, the C.O's allegation that the I.O while arriving at the decision to hold the charge as proved beyond doubt did not consider the C.O's version of the case in respect of both the articles of charge is not correct. The findings of the I.O are found based on facts and material evidences on record.

(xiv). The C.O's contention that issue of provisional appointment order with retrospective effect was warranted by circumstances for the drawal of pay and allowances of the incumbent who was already working in the post prior to his selection is not acceptable as

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because there is a procedure for drawal of pay and allowances of unapproved/ outsider candidates engaged in sanctioned establishments. Therefore, the C.O's plea that he has not committed any irregularity tantamount to violation of Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules, 1964 because of the issuance of appointment order with retrospective effect is, therefore, not acceptable. As per C.O's own version, "Md.Azad Khan continued to work in the post of ED-Packer, Thoubal SO without any break since 01.08.99" [Para-7 of written statement of defence dated 08 Apr 02]. The records show that the leave of the earlier incumbent to the post namely Shri.Mangkholet Haokip expired on 27.01.2000 and the resignation of the said Shri.Haokip has also been found accepted on expiry of his leave. If there is a procedure existing for drawing the pay and allowances of Md.Azad Khan, who was engaged as unapproved/outsider candidate against the post of ED-Packer/Thoubal SO, during the period from 28.01.2000 to 29.02.2002, then the same procedure has to be applied for drawing the pay and allowances of the said incumbent for drawing the allowances for the period from 01.03.2000 to 31.03.2000. The C.O, therefore, has submitted fabricated excuses with a designed motive to cover up the serious irregularities committed by him by appointing a candidate with effect from a date prior to his recruitment, without explaining the facts regarding the drawal of allowances to the said Md.Azad Khan for the period from 28.01.2000 to 29.02.2000.

(xv). The C.O, while pleading that he did the recruitment of ED-Packer/Thoubal SO in accordance with the existing departmental instructions, cannot simultaneously plead that the prosecution should prove that the copies of instructions which have been held to be violated by the C.O have actually been received by him. If it has to be proved in any court of law that the government gazette notifications publishing and amending laws of the nation are reached to the accused before holding the accused guilty of the offence, then the contention of the C.O qualifies for meritorious consideration. The C.O has been working as Sub Divisional Inspector of Post Offices for 2(Two) decades and has been making recruitment to the ED-Posts for which the appointing authority is the Sub Divisional Inspector of Post Offices. The C.O, at no point of time has complained of non-receipt of any departmental

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instructions regarding the method of recruitment of ED-Agents. If the C.O had not received the departmental instructions increasing the minimum educational qualification for all categories of ED-Agents in 1993, then he would have been continuing to recruit the EDAs with the pre-existing minimum educational requirement of under VIII-Standard qualification. The C.O's letter to the District Employment Officer, Thoubal issued vide SDIPOs/2nd Sub-Dn., Imphal No.A-1/ED-Packer/ Thoubal SO dated 29.12.99 available on records as Exhibit No.S-3 clearly contains the minimum educational qualification as Class-VIII with due mention that HSLC or equivalent may be preferred. Therefore, the C.O's plea is unsubstantial, misleading and contradictory.

(xvi). The C.O is working in a post with vested administrative powers as disciplinary authority to certain categories of EDAs and Postman & Group-D officials of the department. So, he may be fully aware that the rulings and instructions do not form the part of prosecution documents. Violation of rules and departmental instructions is the core issue in disciplinary proceedings. The violation of rules and instructions have to be proved by independent and/or corroborating evidences. Rulings and instructions never stand as evidences themselves.

10. I have gone through the I.Os analysis and assessment of evidences and am fully satisfied that the evidences on record [Exhibit S-1 to S-11] are quite sufficient to hold the charges against the C.O as proved. The error in the calculation of percentage of marks by the I.O and his observations on that basis has not vitiated the findings of the departmental inquiry as explained in paras above. Therefore, I fully agree with the findings of the I.O in respect of both the charges except for his observation regarding the suitability of both matriculation candidates and my own observation on the matter has already been adduced in para-9(v) above. So, there is no doubt that the C.O is guilty of both the charges.

10.1. The charged official is the senior most Inspector Post Offices in Manipur and has been recruiting EDAs for nearly 2(Two) decades. Therefore, the irregularities committed by him have to be dealt with due seriousness as the officials with considerable

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experience are not supposed to commit irregularities on such basic matters. The D.G.P&T Letter No.43-43/81-Pen., dated 25.04.1981 clearly requires that action should be taken against officials responsible for not following relevant instructions in respect of ED-appointments. The C.O, after working for 2(Two) decades in the cadre of Inspector of Post Offices, if pleads ignorant about the rulings and instructions regarding recruitment of ED-Agents then he is not fit to be retained in the cadre. But in this instant case, the C.O has not pleaded ignorance of rules and instructions for the commission of irregularities in the appointment of ED-Packer, Thoubal SO. The C.O has rather tried to cover up his faults by one or other lame excuses. This attitude of the C.O has strongly reflected his malign and malafide intension. The C.O, as Inspector of Post Offices in a position of administrative authority is required to ensure that subordinate officials under his supervisory control maintain absolute integrity and devotion to duty. But sadly enough, he himself has acted in a manner unbecoming of a Govt. servant without maintaining absolute integrity and devotion to duty. Gravity of offence is determined on the basis of circumstances of each case as because in every offence the person commits the offence is placed under different circumstances. Here is the case where the person committed the offence was never placed under any discriminating circumstances which compelled him to commit such serious irregularities, justifies that the extreme penalty has to be inflicted upon him.

10.2. The Charged Official, after having been caught for his willful omissions, has not shown any repentance nor has come forward with any sincerity reposing faith that he would not do such serious irregularities in future. The C.O has rather justified, the serious irregularities committed by him, by trying to misinterpret the rules to his favour. So, he deserves a very severe exemplary penalty to serve an example that the offenders should not dare to pretend to be innocents. To require the prosecution to prove that the condition that preference may be given to candidates with matriculation qualification has been communicated to him while simultaneously citing these very conditions himself in his communication to the employment exchange while requesting for nomination of candidates confirms that the CO has no qualms on committing perjury. The

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punishment awarded on a grave delinquent, as of the C.O., should also have an exemplary, reformatory impact on similarly placed potential delinquents. I am, however, inclined to take a lenient view but with caution that the degree of lenience shown in this case does not annul the very purpose of penalty. So, for good and sufficient reasons and under warranting circumstances fully explained in the foregoing paragraphs a lighter penalty than the one actually deserving is issued.

11. I, Shri. G. Hinan, Director Postal Services, Manipur, Imphal do hereby order that Shri.D.K.Bora, SPMPOs, 2nd Subsfw., Imphal be removed from service.

G.Hinan 11.4.02

(G.Hinan)
Director Postal Services,
Manipur, Imphal-795001.

Copy to:

1. Shri.D.K.Bora, SPMPOs, 2nd Sub-Dn., Imphal
2. Supdt of Post Offices, Manipur to secure all office records from the removed official immediately.
3. Postmaster, Imphal HO
4. The C.R-Folder of the official.
5. The P.F of the official.
6. Vigilance Statement.
7. Spare

Attested
Advocate.

ANNEXURE - 12

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To

The Postmaster General,
North Eastern Circle,
Shillong - 793 001.

Through: The Director Postal Services, Manipur, Imphal.
(Through Proper Channel).

Sub: A humble appeal against the arbitrary order of removal from service issued vide DPS/Imphal Memo.No.B-2/D.K.Bora dated 11.04.2002 - case of Shri.D.K.Bora, Sub Divisional Inspector of Post Offices, 2nd Sub-Dn., Imphal.

Respected Sir,

1. The appellant is your humble sub-ordinate who has been working as Sub-Divisional Inspector of Post Offices in the 2nd Sub-Dn., Imphal till he was arbitrarily removed from service by a whimsical order of penalty issued vide DPS/ Imphal Memo.No.B-2/D.K.Bora dated 11.04.2002.

A copy of Punishment order issued vide DPS/Imphal Memo.No.B-2/D.K.Bora dated 11.04.2002 is enclosed as ANNEXURE-A/1.

2. The appellant has been charge sheeted by the Director Postal Services, Manipur, Imphal under Rule-14 of CCS(CCA)Rules, 1965 vide DPS/Imphal Memo.No.B-2/D.K.Bora dated 09.10.2001 on flimsy grounds with malafide intention and ulterior motive to harm and destroy the service career of the appellant as because both the charges framed against the appellant were not only frivolous but also baseless and vague.

A copy of charge sheet memorandum issued vide DPS/Imphal Memo.No.B-2/D.K.Bora dated 09.10.2001 is enclosed as ANNEXURE-A/2.

3. The appellant faced the departmental inquiry as a humble government servant and co-operated through-out the inquiry despite several odds and denial of principles of reasonable opportunity and natural justice.

4. The Disciplinary Authority viz.DPS/Imphal appointed Shri.H.C.Halder, Supdt.of Post Offices, Imphal and Shri.L.Tiken Singh, Sub Divisional Inspector of Post Offices, Ukhrul as Inquiry Officer and Presenting Officer respectively with the vested interests as because these 2(Two) officers being directly subordinate to the Disciplinary Authority would be placed in a compelling position to conduct the inquiry in the way as desired by the Disciplinary Authority and submit the Inquiry Report with the findings as desired by the Disciplinary Authority.

Copies of I.O & P.O appointment orders issued vide DPS/Imphal Memo.No.B-2/D.K.Bora dated 07.11.2001 have been enclosed as ANNEXURE-A/3 & ANNEXURE-A/4.

5. The Inquiry was conducted in the way absolutely desired by the Disciplinary Authority. The appellant was not allowed to engage a defence assistance of his choice and his request for production of certain additional documents for his defence was also turned down by the Inquiry Officer in a most arbitrary manner without any application of mind. The I.O and P.O acted in connivance with each other and a lengthy, motivated Inquiry Report containing the self-styled drawn conclusion of the I.O was forwarded to the appellant vide DPS/Imphal Memo.No.B-2/ D.K.Bora dated 12.03.2002.

A copy of the report of the I.O is enclosed as ANNEXURE-A/5.

6. The appellant, being aggrieved of the ill motive and biasness of the report of the I.O, submitted his written statement of defence dated 08.04.2002 for the consideration of the disciplinary authority.

A copy of written statement of defence dated 08.04.2002 is enclosed as ANNEXURE-A/6.

7. But, the Disciplinary Authority, who was predetermined to make the appellant a scape-goat for his no fault, did not address any of the genuine issues raised by the appellant in his written statement of defence dated 08.04.2002 and passed the arbitrary, illegal and whimsical order of penalty vide DPS/Imphal Memo.No.B-2/D.K.Bora dated 11.04.2002.

8. Now, therefore, the humble appellant submits his appeal on the following grounds that:

1. The charges were framed against the appellant on mere flimsy grounds and under conjecture and surmise. The disciplinary authority miserably failed to show the charges have been proved on the basis of documentary evidences on record. Both the I.O as well as the Disciplinary Authority have imported new evidences to hold the charges proved against the appellant with an ulterior motive to penalize the appellant for his no faults;

2. The Charges framed against the appellant are vague, unreasonable and have no legs to stand. While framing the charges, the Disciplinary Authority has utterly failed to apply his mind to the nature and gravity of cases necessitating disciplinary action for imposing any of the major penalties. The Govt. of India instruction-(3) under Rule-14 of CCS(CCA)Rules, 1965 has categorically listed the types of offences to be proceeded for imposing major penalties as under:

   1. Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law. e.g.,-

      (a). Possession of disproportionate assets;
      (b). Obtaining or attempting to obtain illegal gratification;
      (c). Misappropriation of Government property, money or stores;
      (d). Obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

   2. Falsification of Government records.

   3. Gross irregularity or negligence in the discharge of official duties with a dishonest motive.

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4. Misuse of official position or power for personal gain.

5. Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

6. False claims on the Government - like T.A-claims, reimbursement claims, etc.

But a comparative analysis of the charges framed by the Disciplinary Authority with the types of cases listed by the Govt.of India in the above list will vividly disclosed that the appellant had done nothing of the sort for which he may be proceeded for imposing any of the major penalties. Hence the charge framed by the Disciplinary Authority against the appellant are vague, unreasonable and have no legs to stand. Therefore, the punishment awarded to the appellant is totally violative of the existing law of the land.

3. The nature of charges framed against the appellant and subsequent awarding of the punishment of "Removal" from service are devoid of justice and fair-play. The irregularity alleged to have been committed by the appellant was reportedly noticed by the Disciplinary Authority while he conducted the annual inspection of the office of the appellant on 08-12-2K and the inspection report was released on 30-03-01. But nowhere in the inspection report prepared and released by the Director Postal Services, Manipur, Imphal, who is the Disciplinary Authority, on 30-03-01 (ie. nearly after 4(Four) months) there has been any mention of the alleged irregularities. In fact there has not been any irregularity on the part of the appellant in the recruitment procedure adopted in respect of appointment of 5(Five) ED-Agents whose files have been thoroughly checked by the Disciplinary Authority on 08-12-2K in presence of the appellant and commented nothing adverse against any of the said 5(Five) appointments of ED-Agents. But nearly after 18(Eighteen) months from the date of appointment and 10(Ten) months from the date of inspection of the office of the appellant, the

Disciplinary Authority in a very vindictive and arbitrary manner twisted the appointment procedure to suit his whims and fancy and abruptly charge sheeted the appellant under Rule-14 of CCS(CCA)Rules,1965 and ultimately "Removed" from service. Therefore, the action of the Disciplinary Authority is devoid of justice and fair-play.

4. While conducting the annual inspection of any office by any Inspecting/Visiting Officer, it is obligatory on the part of the concerned Inspecting/Visiting Officer to record every such omissions/lapses/ irregularities that are noticed by him and to communicate the facts to the concerned office or official for information/rectification. But in the instant case, which of course not mentioned in the charge sheet, but still forms an integral part of the whole episode, the Director Postal Services, Manipur, Imphal, who is also the Disciplinary Authority, while inspecting the office of the appellant on 08-12-2K did not record anything and communicated to the appellant for rectification as required. But after 10(Ten) months, in a very unreasonable and vindictive manner, the appellant has been charged to face disciplinary action under Rule-14 and ultimately got "Removed" from service. Therefore, the reasonable opportunity and natural justice has been flatly denied to the appellant.

5. The I.O while recording his findings willfully distanced away from the very essence of the charge in article-I and he did so just to satisfy the whims and fancy of the Disciplinary Authority who passed an advance signal to throw the appellant out of service before commencement of the oral inquiry into the charges framed against the appellant. The essence of the charge framed by the Disciplinary Authority reads as under:

" As per D.G. P&T Letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II (ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93, candidates with matriculation qualification have to be preferred over the candidates with educational qualification of VIII-Standard only."

The essence of the charge in Article-I comes to an end stating that "In the recruitment of ED-Packer/ Thoubal SO, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal not only failed to maintain devotion to duty by not following the instructions contained in D.G P&T and D.G.Posts letters mentioned above but also committed grave irregularity amounting to an act unbecoming of a Govt. servant by recruiting the said Md.Azad Khan who already lost his preference to other 2(Two) candidates nominated and sponsored by Employment Exchange/Thoubal. Thus, the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal violated Rule-3(1)(iii) of CCS(Conduct)Rules, 1964." That means in the opinion of the Disciplinary Authority the appointment of any 1(One) of the 2(Two) matriculates repeat any 1(One) of the 2(Two) matriculates nominated and sponsored by the Employment Exchange, Thoubal should have been preferred summarily as the candidate namely Md.Azad Khan has already lost his preference to other 2(Two) candidates as the former was having the educational qualification of Class-VIII standard only. Beyond this, the Disciplinary Authority did not say anything more in the charge sheet under Article-I thereby binding the I.O to inquire into the above aspects only, and the I.O was required to base his findings suggestively and conclusively on the above factors. But this was not done because the I.O did not find any documentary or oral evidences to justify the allegation to the choice of the Disciplinary Authority. But, as stated earlier, the main job of the I.O was to satisfy the whims and fancy of the Disciplinary Authority at any cost. So, the I.O after closure of the case, with an ulterior motive to hold the appellant guilty of the charge, called the performance sheets of the candidates in the test held by the appellant on 04-03-2K, assessed his findings wrongly in item(i) of Para-6.6.2 and items 1,2 & 3 of Para-6.6.3 and concluded his findings for Article-I with the wordings as "The charge is proved beyond doubt."

6. The Disciplinary Authority has also distanced away from the main theme of the charge in Article-I and based his findings arbitrarily on the same line as was done by the I.O. As per the charges in Article-

I, it was crystal clear that both the candidates with matriculation qualification were declared suitable by the Disciplinary Authority when he stated that instead of giving preference to any 1(One) of the 2(Two) matriculates nominated and sponsored by the Employment Exchange, Thoubal preferred to recruit Md.Azad Khan of Lilong Turel Ahanbi with educational qualification of VIII Standard only. But after the receipt of the I.O's report the Disciplinary Authority has totally reversed his stand, sided with the I.O's unjustified and unreasonable points of findings, modified the irregular assessment of the I.O, made only 1(One) out of the 2(Two) matriculate candidates to be suitable for the post and ultimately held the appellant guilty of the charges in Article-I and removed the appellant from service. Thus, the whole action of the Disciplinary Authority appeared to be biased, motivated and devoid of the principle of natural justice enshrined in Article-311(2) of the constitution of India.

7. The appellant is still under the clouds of doubt as to how the I.O and the Disciplinary Authority has unequivocally decided in their reports that no preference has been given to the candidates with matriculation qualification envisaged under the D.G P&T and D.G(Posts) instructions referred in the article of charge. Everyone will agree that the minimum required qualification for the alleged post of ED-Packer, Thoubal SO is the VIII-Standard. While nominating and sponsoring the candidates, the District Employment Officer has mentioned the names of 3(Three) candidates out of which 1(One) was having educational qualification of VIII standard and the other 2(Two) candidates were having matriculation qualification. As per the general condition, the post was meant basically for candidates with class VIII-Standard and thus candidates with educational qualification higher to VIII-Standard are liable for rejection. But since there was provision to give preference to candidates with matriculation qualification, the appellant did not reject the candidature of any of the 2(Two) matriculates nominated and sponsored by the District Employment Exchange, Thoubal. Rather, the appellant

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has gracefully considered the candidature of both the matriculate candidates and given them preference to compete in the suitability test with the candidate with VIII-Standard qualification. The appellant feels that giving of preference in the matter of educational qualification is a distinct element to that of selection of candidates on the basis of test. Had the selection of candidates to the post was required to be made in preference to the educational qualification, then selection of the candidates with matriculate qualification would have been automatic and for that reason, the candidates with VIII standard qualification would have nothing to say or react against the selection of the matriculate candidates. But the process of selection has not been restricted for selection of candidates with educational qualification alone. A requirement for possessing of sufficient working knowledge of the regional language and simple arithmetic has been made compulsory for efficient discharge of duties by the selected candidates. But the D.G P&T and D.G(Posts) instructions governing the method of selection of candidates to the various ED-Posts except EDSPMs and EDBPMs did not spell out any parameter to adjudge the above requirements. Evidently, the choice is left with the concerned appointing authority. Accordingly, the appellant held the suitability test on 04-03-2K and on the result of the test, the candidate who scored the highest marks has been selected irrespective of their possessing the higher or lower educational qualifications. If on such a test, the candidates with superior educational qualification displayed poor performances than the candidates with low but minimum required educational qualification, there is no logic to hold the concerned appointing authority guilty of non-giving preference to the candidates with superior qualification. In the instant case, the appellant had already preferred the candidature of both the matriculate candidates and allowed them to display their knowledge in arithmetic for which the test has been conducted on 04-03-2K including the candidate with VIII-Standard qualification. So, the question of giving a second preference over their performances on the test is totally unreasonable and unsuggestive. Both the I.O and the Disciplinary Authority has agreed with the above

procedure but evaluated their findings distinctly with their own interpretations not covered by the scope of the test for which it was held. The I.O has found both the matriculates fit for the job, while the Disciplinary Authority found only 1(One) of the 2(Two) matriculates, namely Miss. Mumtaz, fit for the job, holding the I.O's assessment as an inherent error. The Disciplinary Authority then abruptly went back over the matter of giving preference to Miss.Mumtaz in the final selection to the said post. Such analysis of the Disciplinary Authority for holding the appellant guilty of non-giving of preference by hook or by crook is unwarranted and dangerous. It is not understood how the Disciplinary authority has expected from the appellant to give a second preference over the matter of selection of candidates to the said post. As pointed out earlier, the appellant has already preferred the candidatures of both the matriculate candidates and allowed them to contest for the post with the candidate with VIII standard qualification. Had there been no such preferential criteria, then the appellant would have rejected their names from the list of candidates supplied by the District Employment Exchange, Thoubal for their possessing higher qualification than that of the required standard and would not have allowed them to contest in the suitability test held on 04-03-2K. So the findings recorded by the Disciplinary Authority are based on ulterior motive to hold the appellant guilty by hook or by crook.

6. The appellant had made it clear during submission of his written statement of defence that the test was not a class room test for promotion of students from one class to the next higher class on the basis of securing qualifying marks. It was a test for selection of candidates for recruitment to the post of one ED-Packer. There is no provision to enroll any of the candidates to the post who secured qualifying marks. Securing of qualifying marks does not automatically justify a candidate for selection to the Govt. service. The test was held to select the most suitable candidates amongst all the candidates and whosoever topped in the test has been selected. But the disciplinary authority who was

pre-occupied with some ulterior motives to harm the appellant resorted to his own way of thinking without proper application of his mind when he stated that:

"When the qualifying standards in LGO-Examination is 40% in each paper, Inspector of Post Offices Examination is 40% in each paper and 45% in aggregate, and PSS-Group-B Examination is 45% in each paper and 50% in aggregate, there is no justification to conclude that a matriculate candidate who has secured 47.5% marks in arithmetic and 46% marks in aggregate is not suitable to hold an ED-Post with the functions of closing of mail bags and may have the attached works of clearance of Letter Boxes, carrying of mails etc."

But the learned disciplinary authority has miserably failed to go ahead with his further assessment for making final selection of the so called qualified candidates to the post for which candidates contested. A candidate in IPO Exam may secured 70% marks in each paper (forget about securing qualifying marks of 40% in each paper) but still he may not be declared selected to the post, provided this 70% marks fall short of the number of candidates required to be selected for the said post. Similar is the case with LGO-Exam or PSS Group-B Exam. Securing of qualifying marks does not automatically justify a candidate to the post for which he contested if a better choice is available than the qualifying standard. The Disciplinary Authority should not have taken recourse to evaluate the facts halfway and then twisted the other half to suit his ill-motive to hold the appellant guilty at any cost. Such action is totally bad in the eyes of law.

9. The selection of ED-Packer, Thoubal SO was made on the basis of existing departmental instructions and the matriculate candidates who have contested along-with a lone VIII-Standard candidate secured less marks in the suitability test conducted to assess the working knowledge of all the 3(Three) candidates sponsored by the Employment Exchange. The existing D.G P&T and D.G.(Posts) letters clearly state that

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the candidate selected for the post of ED-Stamp Vendor, ED-Delivery Agent and all other categories of EDAs (Except EDSPMs & EDBPMs) should possess sufficient working knowledge in the regional language and simple arithmetic. It is only to comply the departmental instructions that only a candidate who has possessed sufficient working knowledge in simple arithmetic and regional language is selected to the post of ED-Packer/ Thoubal SO, suitability test was conducted and the candidate who secured high marks in the suitability test was finally selected to the post. Hence, the selection of ED-Packer, Thoubal SO was made on the basis of existing departmental instructions. Therefore, there is no logic in the findings of the I.O and stand of the Disciplinary authority that the selection of ED-Packer/Thoubal SO was made in violation of departmental instructions. As there is no violation of departmental instructions, there is no violation of Rule-3(1)(ii) & Rule-3(1)(iii) of CCS(Conduct) Rules, 1964. Therefore, the appellant has been penalized for no faults, which is highly against the law of the land.

10. Rule-14(8) of CCS(CCA)Rules, 1965 clearly state that the charged government servant may be allowed to engage another government servant from any other station other than the Head quarters of the charged government servant and the place of inquiry. Under this specific provision, the appellant submitted a representation dated 24.01.2007 to the Inquiry Officer on 30.01.2007 to allow him to take the assistance of Shri.Uttam Sengupta, ASPOs(HQ), O/o the Supdt. of Post Offices, Sibsagar Division, Sibsagar as his Defence Assistant in the case. But the appellant was not allowed to take the assistance of the aforementioned Shri.Uttam Sengupta to present his case. Therefore, the appellant was denied reasonable opportunity to defend his case and as such the principle of natural justice has been violated;

11. The report and findings of the Inquiry Officer were drawn without considering the C.O's version of the case and the disciplinary authority while issuing

the final order also simply rejected the specific complaint of the appellant in this regard. Both the I.O's report as well as the final order of the Disciplinary Authority has been drawn on the basis of prosecution case without considering the appellant's version of the case. Therefore, arbitrariness and injustice have dominated the whole proceedings to issue an illegal penalty on the appellant;

12. Only with the view to hold the charges as proved, the Inquiry Officer called for the performance sheets of all the 3(Three) candidates who appeared in the suitability test held on 04-03-2K for selection of candidates to the post of ED-Packer, Thoubal SO and analysed the performance sheets with the following observations that:

(a). The percentage of marks secured by the candidates in the suitability test conducted by the C.O as SDIPOs, 2nd Sub-Dn., Imphal on 04-03-2000 are:

(i).	Md.Azad Khan	-	100 %
(ii).	Miss. Mumtaz	-	57.5 %
(iii).	Md.Abdur Razaque	-	47.5 %

(b). All the 3(Three) candidates have secured more than 45% marks in the suitability test conducted by the C.O as SDIPOs, 2nd Sub-Dn., Imphal on 04.03.2000 and as such all the 3(Three) candidates are eligible for selection to the post of ED-Packer, Thoubal SO as because all the 3(Three) candidates have been possessing sufficient working knowledge in simple arithmetic.

(C). As all the 3(Three) candidates secured more than 45% marks in the suitability test conducted by the C.O and as all the 3(Three) candidates became eligible for selection to the post, the C.O must have given preference to 1(One) of the 2(Two) matriculates in the selection. Therefore, either Miss. Mumtaz or Md.Abdur Razaque depending upon their suitability (who secured the qualifying

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standard in the suitability test) should have been preferred over Md.Azad Khan who was only a Class-VIII standard qualified.

But, the observations of the I.O were wrong as because:

(i). The test was conducted for 50-marks and not for 40-marks as stated by the I.O.

(ii).(a). Md.Azad Khan - VIII qualified candidate has secured 30-marks out of 40 in mathematics and thus the percentage of marks secured by Md.Azad Khan was 75% and not 100% as stated by the I.O.

(b). Miss.Mumtaz - Matriculate candidate has secured 19 marks out of 40 in mathematics and thus the percentage of marks secured by Miss.Mumtaz was 47.5% and not 57.5% as stated by the I.O.

(c). Md.Abdur Razaque - Matriculate candidate has secured 13-marks out of 40 in Mathematics and thus the percentage of marks secured by Md.Abdur Razaque was 32.5% and not 47.5% as stated by the I.O.

Therefore, the findings of the I.O in respect of article of charge-I were also wrong. The Disciplinary Authority, who predetermined to penalize the appellant, also arbitrarily held the charge as proved in a vindictive way and no heed whatsoever was paid to the statement of the appellant that the selection was made within the purview of existing instructions. Therefore, the manner in which the appellant was held guilty of article of charge-I was not only arbitrary but totally illegal and vindictive;

13. The utterances of the Disciplinary Authority in Para(x)(b) of the order found very bold and the appellant is highly satisfied with the boldness expressed by the Disciplinary Authority when he stated that:

"If we take it for a sake that the I.O had been the

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appointing authority in the instant case and had done the same thing as was done by the C.O, then the I.O would also have been liable for disciplinary action for violating departmental instructions as of the C.O. Law has not prescribed any separate treatment for persons similarly situated."

But, alas! His boldness is shown in paper only but not in action. Because, the I.O has forwarded to the Disciplinary Authority as many as 5(Five) similar cases as of the appellant vide para-6 of Page-7 of Order No.4 dated 04.02.02 for taking appropriate action. But sadly enough, the Disciplinary Authority did not do anything rather refrained himself to take up any action in respect of the above 5(Five) appointment cases made on the similar procedure as of the appellant for which the appellant has been tiled and ultimately removed from service. This action of the Disciplinary Authority has alone clearly established about the discriminatory and vindictive attitude towards the appellant. Thus, the charges leveled against the appellant in Article-I is totally baseless, motivated and vindictive in nature and deserved to be set aside.

14. The Inquiry Officer called for the performance sheets of the candidates for drawing conclusion in respect of article of charge-I. But, these performance sheets were not included in the list of documents produced by the prosecution. The Disciplinary Authority turned down the plea of the appellant regarding the illegal inclusion of these performance sheets for drawing the conclusion of the case by stating that the appellant demanded the same. It was true that the appellant mentioned about the performance sheets to prove his innocence that the selection to the post of ED-Packer/ Thoubal SO was made on the basis of marks secured by the candidates in the suitability test conducted on 04.03.2K. But, the appellant never requested the Inquiry Officer to include them as additional evidences in the case. Therefore, both the I.O as well as the Disciplinary Authority acted in caprice and surmise to hold the charges proved against the appellant by hook or crook. Hence, the punishment

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awarded on the basis of such subjective-ness is not acceptable to the law of the land;

15. It was already submitted before the Inquiry Officer as well as the Disciplinary Authority that the issuance of appointment letter with retrospective effect was necessary to draw the pay and allowances of Md.Azad Khan who has been working as ED-Packer, Thoubal SO with effect from 01.08.1999 without any break and was working in the post after the resignation of the earlier incumbent was accepted with effect from 28.01.2000. But neither the Inquiry Officer nor the Disciplinary Authority has gone in detail to the gravity of the charge and utterly failed to consider the sanctity of the appellant. The appellant had time and again explained the circumstances leading to the issuance of the two appointment letters with retrospective effect, but both the I.O as well as the Disciplinary Authority did not consider the sanctity of the appellant and finalized the disciplinary proceedings at the whims and fancy of the Disciplinary Authority. Therefore, the appellant did not commit any irregularity by issuing an appointment order with retrospective effect to an incumbent who had been serving in the post with effect from the date from which the appointment order was issued. Had the person to whom the appointment was issued with retrospective effect was not serving in the post with effect from the date from which the appointment was made, and then there was an irregularity in the part of the appellant. But in this case, one Md.Azad Khan was serving as ED-Packer/Thoubal SO right from 01.08.1999 to 27.01.2000 against a leave vacancy and with effect from 28.01.2000 against a clear vacancy. The same Md.Azad Khan was selected to the post of ED-Packer as per the result of the suitability test conducted on 04.03.2000 and his appointment to the post was issued with effect from 01.03.2000. Therefore, the appellant was just penalized for doing his duties as appointing authority to the post of ED-Packer/Thoubal SO, which is not only capricious but also arbitrary and illegal. Hence, the punishment awarded to the appellant is wholly unjust and violative of the law of the land;

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16. None of the exhibits produced as prosecution evidences from Exhibit S-1 to S-11 did anything prove anything except that the selection to the post of ED-Packer, Thoubal SO was made duly following the prescribed procedure laid down in the departmental rules and instructions. The Disciplinary Authority, instead of appreciating the appellant for making the recruitment of ED-Packer/Thoubal SO by strictly following the selection procedure envisaged in the existing departmental instructions and for selecting the candidate who secured high marks in the suitability test conducted for assessing the working knowledge of the candidates in simple arithmetic, alleged irregularity in the selection on a single word that "Preference" is not given to the matriculation candidates. The disciplinary authority, while stating that preference has to be given to the matriculation candidate, did not explain as to how the VIII-Standard candidate who secured high marks in the suitability test will be excluded from the selection process. Therefore, the decision of the disciplinary authority that one of the matriculates has to be preferred over the VIII-Standard candidate and awarding a punishment to the appellant on subjective considerations are not only whimsical but also totally illogical and against the principles of established law;

17. The appellant was never placed under suspension so as to justify that the appellant committed an offance, which justifies one of the extreme penalties of Compulsory Retirement, Removal from Service and Dismissal from service. Hence, without being placed under suspension, the appellant has been awarded a penalty of removal from service. Therefore, the penalty awarded by the Disciplinary authority not only shows that the punishment is not justifiable but also shows that the Disciplinary authority has acted in a most arbitrary manner to suit his whims and caprice.

18. The appellant's case to recruit Md.Azad Khan as ED-Packer, Thoubal SO on the basis of marks secured in the suitability test conducted on 04.03.2000 was not only correct but fully within the purview of

departmental instructions contained in D.G P&T and D.G(Posts) instructions issued from time to time as because:

(a). The minimum required education qualification for the post of various ED-Agents other than the post of EDSPM and EDBPM is VIII-Standard only;

(b). Preference to the candidates with matriculation qualification is only subject to their possessing sufficient working knowledge in simple arithmetic and regional language and a matriculate candidate can not be appointed to an ED-Post only on the basis of possessing matriculation qualification and as such the preference criteria stated in the departmental instructions has no compulsory implementation;

(c). Candidates with Matriculation qualification do not get any automatic immunity to become suitable to hold the ED-Posts as because the D.G. P&T letters also further add that the candidates should have sufficient working knowledge of regional language and simple arithmetic so as to discharge their duties satisfactorily;

(d). The selection of ED-Packer, Thoubal SO was made by holding a test on simple arithmetic and the candidate with Class-VIII qualification secured more marks in the said test than the candidates possessing matriculation qualification and as such non selection of candidates with matriculation qualification does not amount to non giving of preference over candidate with VIII-Standard qualification.

(e). The opinion of the disciplinary authority, to give preference to one of the 2(Two) matriculates available for the selection, does not bear any logic as because disciplinary authority has not mentioned anything about the basis by which the selection of 1(One) of the 2(Two) matriculate candidates should have been done.

(f). The disciplinary authority [illegible]

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mentioned as to how the candidates possessing Class-VIII qualification has to be excluded without giving any opportunity when candidates with matriculation qualification are available.

(g). There is no departmental instruction for outrightly rejecting the candidates with VIII-Standard and below matriculation qualification when candidates with matriculation qualification are sponsored by the Employment Exchanges.

Therefore, there is no justification even to charge sheet the applicant for recruiting a class-VIII qualified candidate to the post of ED-Packer, Thoubal SO who had secured high marks in the suitability test conducted for the recruitment to the post. The matriculate candidates could not do well in the suitability test and could not score higher than a Class-VIII qualified candidate. So, for the fault that the matriculate candidate did not possess sufficient working knowledge in simple arithmetic compared to the Class-VIII candidate, the appellant has been punished. Therefore, the punishment is arbitrary, illegal and ultra-virus in the eyes of the law.

11. As per decision taken in M.H.A File No.7/29/61-Estt(A) and D.G P&T Memo.No.6/64/64-Disc dated 27.01.65, neither a complainant nor a witness can function as disciplinary authority in a case in which the disciplinary authority himself is a complainant or witness. In this instant case, it may be seen that the Director Postal Services, Manipur, Imphal reportedly detected the irregularity in the appointment of ED-Packer, Thoubal SO while inspecting the office of the Sub-Divisional Inspector of Post Offices, 2nd Sub-Division for the year 2000 on 08-12-2K and it was the Director Postal Services, Manipur, Imphal himself who has the complaint of certain irregularities in the appointment ED-Packer, Thoubal SO. Therefore, the Director Postal Services, Manipur, Imphal is both the complainant as well as the witness in the case as because there was no complaint from anybody regarding the selection and appointment of Md.Azad Khan, a Class-VIII standard qualified candidate, as ED-Packer/Thoubal SO. But the Director

Advocate

Postal Services, Manipur, Imphal who is the complainant as well as witness in the case irregularly functioned as disciplinary authority and decided the case to suit his whims and caprices. Therefore, the order of punishment passed by the Director Postal Services, Manipur, Imphal is not sustainable in the eyes of the law.

20. The same disciplinary authority who charge sheeted the appellant on the charges of irregularities in the appointment of ED-Packer, Thoubal SO inspected the office of the SDIPOs, 2nd Sub-Dn., Imphal in the year 2000. The inspection remarks of the Director Postal Services, Manipur, Imphal on the office of the SDIPOs, 2nd Sub-Division, Imphal did not contain any remark regarding any irregularities in the appointments checked during the inspection. Therefore, the charge sheet against the appellant itself is an after-thought of the Director Postal Services, Manipur, Imphal with a cooked conspiracy to trap the appellant for his no faults. Hence, the order of punishment issued by the Disciplinary Authority is not only violative of the principles of natural justice but also against the apex law of the land.

21. As per D.G.P&T Letter No.6/19/72-Disc.I dated 29.11.1972, punishment should commensurate with the gravity of offence. In this instant case, selection to the Post of ED-Packer/ Thoubal SO has been made by duly following the existing instructions regarding the recruitment of EDAs and an appointment order was issued with retrospective effect to an incumbent who has been actually working in the post with retrospective effect. But, the charge sheet was made on flimsy grounds and the punishment has been issued under caprice and surmise. There was no offence committed at all, not to speak about the gravity of offence. Therefore, the punishment itself is not justifiable and totally bad in the eyes of law.

22. The allegation in Article-II of the charge sheet memorandum is that the appellant had appointed a

single person in a single post with retrospective effect with 2(Two) different appointment letters. The appellant had time and again explained the warranting situations about both the appointment letters. But neither the I.O., nor the Disciplinary Authority has accepted the clarification made by the appellant. They remained adamant with their own ways of thinking and with malafide intention held the appellant guilty of the charge. The appointment letter dated 31-3-2K was a letter of provisional appointment which was necessitated for drawal of pay and allowances of the official working in the post by that relevant period. Afterwards the regular appointment order has been issued on 26-04-2K after completion of all the required pre-appointment formalities including verification of character and antecedents of the selected candidate. The person appointed finally was the same person who has been working in the same post right from 01-08-99 on a stop-gap arrangement. There was a clerical mistake, which is a common human error, in giving the date of effect of the regular appointment order. However, this variation of dates did not incur any loss or otherwise effect the interest of the department. It also did not afford any undue advantage to the appointed person. Therefore, the decision of the disciplinary authority to hold it as a grave offence without differentiating the provisional appointment and regular appointment, and issuing a punishment of a very heavy proportion for a minor clerical error is not only inconsistent with the principles of natural justice but also arbitrary and illegal in the eyes of law.

23. It is really funny to observe that both the I.O., as well as the Disciplinary Authority while holding all the charges "proved beyond doubt" has utterly failed to make any discussion or to cite any single evidence or instance and to name any witness by which they have got establishment the lack of integrity on the part of the appellant as alleged in the Articles II of the memo of charges. It would be thus quite clear that the I.O., and the Disciplinary Authority held the lack in integrity just summarily and subjectively so as to penalize the appellant at any cost. Thus the order from removal of the appellant from service is wholly irregular, illegal and unjustified and hence liable to be quashed.

24. The appellant has been serving in this department for more than 28 (Twenty Eight) years. The appellant was appointed as Postal Clerk in the year 1973 with effect from 16-07-73 and was promoted to the cadre of Inspector of Post Offices in the year 1981 in which the appellant has been serving with effect from 19-05-1981. But the considerable length of service rendered in the department is not taken into account by the Disciplinary Authority while issuing the punishment order of removal from service. Therefore, the punishment order is liable to be set aside to meet the ends of justice.

PRAYER

Now, therefore, the humble appellant, on the basis of above grounds, most fervently prays that:

1. The order of punishment of removal from service issued vide DPS/Imphal Memo.No.B-2/D.K.Bora dated 11.04.2002 may be set aside and treated as null and void; and

2. The period from the date of removal from the date of reinstatement may be treated as duty for all purposes with all consequential benefits.

Yours faithfully,

Dated at Imphal
the 22/04/02.

22/04/02

(D.K.Bora)
SDIPOs, 2nd Sub-Dn.,
(Since Removed)
Imphal-795001.

An Advance Copy to:

1. The Postmaster General, North Eastern Circle, Shillong-793 001 for information and necessary action.

Sd/-

(D.K.Bora)
SDIPOs, 2nd Sub-Dn.,
(Since Removed)
Imphal-795001.

ANNEXURE — 13

To

Shri P. Selvam
Postmaster General
North Eastern Circle
Shillong 793001

Sub:- Humble prayer for early disposal of appeal dated 22-04-02 preferred against the arbitrary order of removal from service issued vide DPS Imphal Memo No B-2/ D.K Bora dated 11-04-02

Respected Sir,

With folded hands and bentdown knees, I, the undersigned beg to submit this humble reminder in continuation to my appeal dated 22-04-02. In this connection kindly recall my contact with your goodness during your august visit to Imphal (Manipur)on dated 12-05-02,09-07-02, 22-09-02 and 24-11-02 when I fervently requested your goodness to extend your generous hands for speedy disposal of the appeal judiciously.

Besides ,I was also called for a personal hearing on dated 10-10-02 in your good chamber at Shillong vide Memo No Staff /109-11/2002 dated 30 September 2002 and I have presented the facts before your goodness on that day also.

But all my heart rending requests and tearful prayers made with your goodness on each of the above occassions have gone in vain as the fate of my appeal still lying undecided at your kind disposal though your goodness had finally assured me on 24-11-02 to dispose the case by the ist week of Dec'02.

Sir , I have already suffered a lot both mentally and morally for my no fault . I have no words to express my grief and sorrows that crept in my life during the last 8(eight) months. I am now a broken man and facing serious financial hardships. Every morning I expected some good news from your good office but I could not get anything even after expiry of more than 255 (two hundred fifty five)days.

Hence , I feel it duty bound to request your goodness to kindly look into the matter and pass an early order on the fate of the long pending appeal.

your's faithfully

Dated .03.01.03

(Shri D.K. Bora)
SDI(P)2nd Sub-Dn
Imphal (since removed)

DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL:: N.E. CIRCLE::
SHILLONG-793001

No. Staff/109-11/2002 30 September, 2001

To Shri D.K. Bora
Formerly SDIPOs, 22nd Sub-Division
Imphal

(Through DPS Imphal)

Sub: Your appeal dated 22.4.02

While considering the appeal, the appellate authority, Postmaster General, North East Region, Shillong has decided to give you an opportunity to present the facts before him through a personal hearing on 10.10.2002. Please be present at the chamber of the Postmaster General, North Eastern Region, Shillong 793001 on 10 October, 2002 at 1130 hrs, for the above purpose.

For Postmaster General
N.E. Region, Shillong

Copy to Shri R.K.B. Singh, DPS Manipur, Imphal 795001 for information and necessary action.

For Postmaster General
N.E. Region, Shillong

150 ANNEXURE 150

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DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL:: N.E. CIRCLE::
SHILLONG 793001

Memo No.Staff/109/11/2002 17 January 2003

Read the following

a) DPS Manipur order no.B-2/D.K. Bora dated 11.4.2002
b) Memo of even no. dated 9:10.01
c) Appeal no. nil dated 22.4.02 submitted by Shri D.K. Bora, previously SDI(P0 Imphal 2nd Sub-Division.

Vide his memo under reference (a) above, DPS Manipur Division imposed the punishment of removal from service on Shri D.K. Bora working as SDI(P) 2nd Sub-Division, after following the due process of law under Rule 14 of CCS(CCA) Rules, 1965, for the charges that Shri D.K. Bora

i) committed serious irregularity in the appointment of ED Packer, Thoubal SO and
ii) issued two different appointment letters to Md. Azhar Khan as ED Packer Thoubal, SO with retrospective effect.

Aggrieved with the punishment order by DPS Manipur, Shri D.K. Bora has filed an appeal dated 22.4.02.

In his appeal referred to above, Shri D.K. Bora has submitted that he had been charge sheeted without any basis and had been punished by the Disciplinary Authority in a vindictive manner, that he has conducted the selection process for appointment of ED Packer Thoubal SO correctly and had selected a candidate who is qualified to hold the post as per Directorate instructions, that he had followed the procedure as in other sub-divisions and that the fact of the ED Packer selected by him is continuing in his job, went to prove that the selection was correct. After stating the above, the appellant prayed that the punishment order issued by the DPS Imphal might be cancelled and himself reinstated in service treating the period between removal and reinstatement as duty.

The appellant was given an opportunity to present his case personally before the Appellate Authority. During the personal hearing on 10.10.02, the appellant submitted that the inquiry officer should have been nominated from a division other than Manipur and that appointment made by him for the post of ED Packer Thoubal SO had not been cancelled showing that the selection made by the appellant was not incorrect.

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I have given careful consideration to all the submissions made by the appellant. Procedure laid down by the DG Posts for selection and appointment of ED Agents (Gramin Dak Sevaks at present) involves selection of individuals having educational qualification of 8th standard for the post of Ed packer. DG Instructions also lay down that preferences should be given to matriculation qualified candidates. There is no specific selection process like written test, interviews, etc. laid down for the above selection. In the instant case the appellant, while making selection for the post of ED Packer Thoubal SO, has considered three candidates sponsored by the Employment Exchange concerned, conducted written test in arithmetic and language and had finally selected the 8th standard qualified candidate. This decision of the appellant in selecting a 8th standard qualified candidate even when matriculation qualified candidates are available who are to be given preference for appointment as ED Agents) after following the procedure of written test which is not laid down in rules, is prima facie, incorrect and irregular. Selection process should be based on objective criteria, one of which can be the marks obtained in the basis/preferential educational qualifications of the candidates. In the absence of any specific guidelines from the department, marks secured could have been taken as the criterion by the appellant for selection of the EDA, instead of devising his own method of selection by conducting a written test where he himself was the examiner and evaluator, which is patently incorrect. The interpretation of the appellant that he had given preference to the two matric-qualified candidates by including them in the process of selection is highly incorrect since when matriculate qualified candidates are available they should be preferred in selection to the other candidates having minimum qualifications and selection should have been confined to the matric qualified candidates only. It is very clear from the above discussion that the selection process adopted by the appellant was incorrect and irregular and had been held rightly so by the Disciplinary Authority; as a result, the charge against the appellant for making this irregular selection also holds good and stands proved as held by the Disciplinary Authority in his punishment order.

Regarding charge 2, it is evident that appointment orders were issued with ante-dating on two occasions which the appellant justifies by saying that the same candidate had been working in the same post on provisional basis also and hence he had been given the appointment orders with ante-dating. In the case of provisionally appointed candidates a provisional appointment order should have been issued immediately after provisional selection ensuring that the provisionally appointed candidate gets his allowance and the drawing and disbursing officer could carry out his duties of drawing the allowances of the correct individual. As and when regular selection had been made, regular appointment order should have been issued to take immediate affect without linking the provisional appointment orders. This being the position as per rules, the appellant had followed incorrect procedure in issuing appointment orders with ante-dates.

Akum Wahan
Advocate.

On the whole I find that punishment order has been issued for proven charges. A careful perusal of the service documents of the appellant revealed that he has served for 20 years in the cadre of inspector and I feel that he needs consideration on this basis regarding the quantum of punishment. Accordingly, I T. Panneer Selvam, Postmaster General, North Eastern Region, Shillong, and Appellate Authority order that

ORDER

The punishment of removal from service ordered by DPS Manipur, Imphal in his memo no. B-2/D.K Bora dated 11.4.02 be modified to that of reduction to the lower stage of Rs.5500/- (which is the minimum) of the Time Scale of pay of Rs.5500-175-9000 of Inspector of POs, for a period of five years, during which period he will earn increments of pay and on expiry of which the reduction will not have the effect of postponing future increments of pay. It is further ordered that the period from the date of removal of service to the time of reinstatement will not be treated as duty for any purpose, including for pensionary benefits.

(T. Panneer Selvam)
Postmaster General
N.E. Region, Shillong
&
Appellate Authority

Copy to:

1. Shri D.K. Bora, formerly SDI(P), 2nd Sub Division, Manipur Division (through DPS Imphal).
2. DPS Manipur Division, Imphal 795001
3. Postmaster Imphal HO
4. Appeal File
5. CR of the Official
6. Spare

(T. Panneer Selvam)
Postmaster General
N.E. Region, Shillong
&
Appellate Authority

Attested
Advocate

ANNEXURE-16

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NORTH EASTERN POSTAL CIRCLE

Director, Postal Services
Manipur - State
Imphal 795 001

No. A-1/Inquiry/Rule-14//1/2001-02

31 Jan '02

To

Smt. Shantibala Devi
(Wife of Shri D.K.Bora)
PA , Imphal HO

Kindly find herewith one letter bearing no. A-1/Enquiry/Rule-14/1/2001-02 dtd.30.01.02 addressed to Shri D.K Bora, SDIPOs-2nd Sub Dn, Imphal. The said letter may kindly be handed over to Shri D.K.Bora, SDI as the letter could not deliver through special messenger due to non-availability of Shri D.K.Bora in his residence.

Encl:- One

(N.C.Halder) 31/1/02
Supdt. of Post Offices

ANNEXURE-17

Government of India
Ministry of Communications
P&T Board

To be published in Section 3(ii) of Part II of the Gazette.

New Delhi-110001
Dated: 19-7-1984.

NOTIFICATION

S.O. ..... In exercise of the powers conferred by Sub-rule (2) of Rule 9, Clause (b) of Sub-rule (2) of Rule 12 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, the President hereby orders that the powers of appointment, discipline and appeal which have been delegated to the Senior Superintendent/Superintendent of Post Offices in the notification of the Government of India in the Ministry of Communications (Posts and Telegraphs) No. 380 820 dated the 28th February, 1957 as amended from time to time, will be exercised by the Directors of Postal Services in the NE Circle for the States of Nagaland, Manipur and Tripura and Union Territories of Arunachal Pradesh and Mizoram, as the earlier Posts of the Senior Superintendent/Superintendent of Post Offices in these Divisions have been upgraded.

(K.K. Arora)
Asstt. Director General(VIG.B)

(No. 12/7/82-Vig.III)

To

The Government of India Press,
Ring Road, New Delhi.

General Administrative Tribunal
SEP 2003
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH::GUWAHATI

In the matter of ;-
O.A. No.45 of 2003
Diganta Kumar Bora .. Applicant
-Versus-
Union of India & others
.... Respondents

Written statements for and on behalf of Respondents Nos.1, 2, & 3.

I, R.K.B. Singh, Director Postal Services, Manipur, Imphal, do hereby solemnly affirm and say as follows :-

1. That I am the Director Postal Services, Manipur, Imphal-795001 and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statements may be deemed to have been denied. I authorised to file the written statements on behalf of all the respondents.

2. That the respondents beg to place the Brief History of the case :-

(i) That the applicant while working as SDIPOs 2nd Sub-Division Imphal, during the period from 3-4-99 to 9-10-2001 a vacancy arose for the post of ED packer of Thoubal S.O. due to resignation of Sri Mangkholet Haokip w.e.f. 28-1-2000, who was working as ED packer of Thoubal Sub post Office.

(ii) The applicant initiated the recruitment process for filling up the said vacancy of ED packer of Thoubal S.O. by notifying the vacancy to the District Employment Exchange Thoubal. In response, the Employment Officer Thoubal nominated and sponsored 3(three) candidates for consideration for filling up the vacancy. Out of the 3(three) candidates

Contd..p/2-

sponsored by the Employment Exchange Thoubal 2(two) candidates were matriculates and one candidate was class-VIII qualified.

(iii) That as per D.G.P & T instructions vide Nos D.G.P&T letter No.43-84/80-Pen dtd.30-1-81 and corrigendum dtd.29-3-1981, DG posts letter No.41-301/87-PE-11(ED&Trg) dtd. 6th June, 1998 and No.17-366/91-ED& Trg. dtd.12th March, 1993 printed as instructions (i)under method of recruitment in section IV of service Rules for Postal ED staff, preference may be given to the candidates with Matriculation qualification i/r/8 recruitment to the post of ED packer.

In the notification No.A1/ED Packer/Thoubal SO dated 29-12-99 issued by the applicant to the District Employment Officer, Thoubal, the Educational Qualification is noted as Class-VIII (HSLC or equivalent may be preferred). The Departmental Rule says preference may be given to the candidates with Matriculate qualifications. The applicant has taken it literally to mean that the preference to be given is discretionary. This Office has taken the view that preference 'shall' be given to the candidates with matriculate qualifications. Therefore,the applicant ought to have given preference to the matriculate candidates sponsored by the Employment Exchange Thoubal and recruit one of the Matriculate candidates to the post of E.D. packer Thoubal S.O. But instead ofdoing so,the applicant conducted a suitability test to all the three candidates sponsored by the Employment Exchange and selected the candidate with class-VIII qualification to fill up the post of ED packer to Thoubal SO on the basis of a marks secured in the suitability test.

In the said notification, the applicant has also given the condition of Residence as being that the candidate should be the permanent resident to Thoubal PO. This is also not correct. As per ~~xxxxx~~ Dte. L No.17-104/93 -ED & Trg. dated 6-12-93, it has been clarified that while making selection for appointment to ED posts, permanent residence in the delivery jurisdiction of the ED post Office need not be insisted upon as a pre-condition of appointment. However, it should be laid down as a precondition of appointment, that, any candidate who is selected, must before appointment to the post, take up his residence in the delivery jurisdiction of the ED post office. The notification by the applicant also does not mention that the candidate should have

Contd..p/3-

sufficient knowledge of the regional language and simple arithmetic so as to discharge their duties satisfactorily. The applicant took tests of the candidates and selected the candidate with class-VIII pass without giving preference to the candidates with HSLC qualification, which was adversely noticed by this office.

As per, records, the applicant appointed the selected candidate with retrospective effect i.e. w.e.f. 1-3-2000 vide SDIPOs 2nd Sub-Division Imphal memo No.A-1/ED packer/Thoubal SO dtd.31-3-2000 and again appointed the said candidate with retrospective effect ie, wef 1-3-2000 vide SDIPOs 2nd Sub-Division, Imphal memo No.A-1/ED Packer/Thoubal SO dtd.26-4-2000. Thus, the applicant also committed grave irregularity in the appointment of the candidate whose selection itself was prima-facie irregular.

Therefore, the applicant was charge sheeted under Rule-14 of the CCS(CC&A) Rules 1965 for the gross irregularity committed by him in the recruitment and appointment of ED Packer of Thoubal S.O.

Shri N.C. Halder, the then Deputy Superintendent, of Post, Imphal was appointed as Inquiry Officer and Sri L. Tiken Singh SDIPOs Ukhrul Sub-Division, Ukhrul was appointed as Presenting Officer vide DPS Manipur, Imphal Memo No.B-2/DK Bora dtd.7-11-2001. The Inquiry was held in accordance with the provisions of CCS(CC&A) Rules, 1965. The applicant was given all opportunities available to charged Officials nnder the rules ibid within the purview of Rules.

After completion of the inquiry, the I/O submitted his report vide letter No.A1/Inquiry/Rule-14/1/2001-2002, dtd.8-3-2002. In the Inquiry Officer's report, both the articles of charges framed against the applicant were found proved. A copy of the I.O's report was supplied to the said applicant(charged Official)vide DPS Manipur, Imphal letter No.B2/DK Bora dtd.12-3-2002.

The applicant submitted his representation dtd.8-4-2002 against the I.O's report on 8-4-2002.

After careful consideration of the records of the case wrt the charge sheet, memorandum, representation of the charged official applicant and gravity of the offence a self-speaking final order was passed by the Disciplinary Authority viz, Director Postal Services, Manipur, Imphal vide Memo No.B-2/DK Bora dtd.

Contd..p/4-

11-4-2002. In the said final order the applicant was punished with the penalty of removal ffom service, and ~~the~~ the applicant was removed from service with effect from 16-4-2002 (A/N).

The applicant appealed against the order of the punishment issued by the Disciplinary Authority to the Postmaster-General North Eastern Circle, Shillong who was the appellate Authority vide his appeal dtd.22-4-2002. The Appellate Authority viz, the Postmaster-General, N.E. Circle, Shillong after considering the appeal and duly providing the appellant an opportunity of personal hearing on 10-10-2002, disposed of the appeal with a modified and ~~xxxxxx punishxxxx~~ as a reduced punishment ~~of~~ reduction to lower time scale of pay in the scale of 5500-175-9000 for a period of 5 years. The appellate Authority also ordered that the period from the date of removal up to the date of reinstatement would not be treated as duty for any purpose including for pensionary benefits. Persuant to the Appellate Authorities orders, the applicant rejoined service with effect from 29-1-2003 (F/N).

3. That the Respondents have no comments to the statements made in paragraphs 2,3,6,7,10,11 & 12 of the application.

4. That with regard to the statements made in paragraph 1 of the application, the respondents beg to state that the ~~a~~ final order on the Departmental proceedings initiated vide charge sheet dtd.9-10-2001 was passed vide DPS Manipur, Imphal No.B-2/DK Bora dtd.11-4-2002 and the appeal preferred by the applicant was disposed of vide PMG Shillong memo No.Staff/109/11/2002,dtd.17-1-03.

5. That with regard to the statements made in paragraph 4.1 of the application, the respondents beg to state that the applicant was proceeded against under Rule-14 of the CCS(CC&A) Rules, 1965 for the gross irregularities committed by him in the recruitment and appointment of ED packer at Thoubal Sub Post office as may be seen from the charge sheet memorandum issued vide DPS Manipur, Imphal No.B-2/DK Bora dtd.9-10-01 enclosed by the applicant as Annexure-A-1 to the O/A and both the disciplinary authority as well as the appellate authority passed speaking orders as may be seen from the final order on the disciplinary proceedings passed by DPS Manipur, Imphal vide Memo No.B-2/DK Bora dtd.11.4.02 enclosed by the applicant as ANNEXURE-A-1 to the O/A and the Appellate order vide PMG Shillong memo No.Staff/109/11/2002,dtd.17-01-2003 enclosed by the applicant as Annexure-A-15 to the O/A. The applicant was punished for the gross irregularities committed by his after duly following the procedures laid down in the Departmental Rules as well as CCS(CC&A) Rules, 1965.

Contd..p/5-

(A copy of the Rule-14 of the CCS(CC&A) Rules,1965 enclosed as Annexure-R-1).

6. That the respondents have no comments to the statements made in paragraph 4.2 of the application.

7. That with regard to the statements made in paragraph 4.3 of the application,the respondents beg to state that as per the Departmental instructions with the regard to the method of recruitment of Extra Departmental, preference may be given to the candidates with matriculation qualification. In the notification No.A1/ED Packer/Thoubal SO dated 29-12-99 issued by the applicant to the District Employment Officer, Thoubal, the Educational Qualification is noted as Class-VIII (HSLC or equivalent may be preferred). As already admitted by the applicant in para-4.3 of the O/A, 2(two) out of 3(three) candidates sponsored by the Employment Exchange were matriculates. The Departmental rule says preference may be given to the candidates with Matriculate qualifications. The applicant has taken it literally to mean that the preference to be given is discretionary. This office has taken the view that preference shall be given to the candidates with matriculate qualifications. Therefore, the applicant ought to have given preference to the matriculate candidates sponsored by the Employment Exchange Thoubal and recruit one of the Matriculate candidates to the post of E.D. packer Thoubal S.O. But instead of doing so, the applicant conducted a suitability test to all the three candidates sponsored by the Employment Exchange and selected the candidate with class-VIII qualification to fill up the post of ED packer of Thoubal SO on the basis of marks secured in the suitability test. The notification by the applicant also does not mention that the candidate should have sufficient knowledge of the regional language and simple arithmetic so as to discharge their duties satisfactorily. The applicant took tests of the candidates and selected the candidate with class-VIII pass without giving preference to the candidates with HSLC qualification. The disciplinary authority has discussed this aspect at length in the final order (page 11 & 12/18)wherein it has been stated that the Departmental instructions are very clear that the candidates to be selected to the post of EDDAs/EDSVs and all categories of EDAs should have sufficient working knowledge of the regional language and simple arithmetic so as to able to discharge their duties satisfactorily". The Departmental instructions are also very clear that "preference may be given to the candidates with matriculation qualifications". Therefore, the C.O.s contention that the suitabilit

Contd..p/6-

test was conducted within the purview of existing instructions and final selection was made on the basis of marks secured in the suitability test is not convincing. There is no material to show that, Miss Mumtaz - a matriculate candidate (who by virtue of her educational qualification came within the preferential category) who secured 46% marks in aggregate and 47.5% marks in arithmetic in the suitability test conducted by the CO was otherwise not suitable for the post, or these marks are not adequate to fulfil the requirement for sufficient working knowledge. The scoring of high marks in the so-called suitability test cannot be the criteria when a matriculate candidate who has also secured the standard adequate enough to hold as possessing sufficient working knowledge, belonging to the preference educational criteria enjoined in the departmental instructions is available.

The Appellate Authority has also held that the decision of the appellant in selecting a 8th standard qualified candidate even when matriculation qualified candidates are available (who are to be given preference for appointment as ED Agents) after following the procedure of written test which is not laid down in rules is prima facie incorrect and irregular. Selection process should be based on objective criteria, one of which can be marks obtained on the basis/preferential educational qualifications of the candidates. In the absence of any specific guidelines from the department, marks secured could have been taken as the criteria by the appellant for selection of the EDA, instead of devising his own method of selection by conducting a written test where he himself was the examiner and evaluator, which is patently incorrect.

Therefore finding the procedure adopted by the applicant as irregular in the recruitment of ED Packer at Thoubal Sub Post office and also after satisfying that the irregularities noticed in the recruitment and appointment of ED packer at Thoubal Sub post office by the applicant showed the existence of a prima facie case, the applicant was charge sheeted under Rule-14 of the CC(CC&A) rules,1965. A copy of the memorandum of charges has been submitted, by the applicant, as Annexure-A/1 to the O/A.

8. That with regard to the statements made in paragraph 4.4 of the application,the respondents beg to state that the inquiry officer and the presenting officer were appointed under the provisions of Rule-14(5) of the CCS(CC&A)Rules,1965.

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9. That with regard to the statements made in paragraph 4.5 of the application, the respondents beg to state that the Inquiry Officer had given the applicant sufficient time for nomination of defence assistant, if any, to assist him in the inquiry, but the applicant did not nominate his defence assistant within the time granted him for the purpose. The applicants representation dtd. 24-1-02 praying for allowing him to appoint one Sri Uttam Sengupta ASPOs Hqrs. O/O the Superintendent Post Offices, Tinsukia Division was submitted by him to the Inquiry Officer only on 30-1-2002. The applicant also did not submitted the written consent of the defence assistant nominated by him so as to satisfy the Inquiry Officer that the Govt. servant nominated by the applicant was willing to function as defence assistant to the applicant. Thus, the applicant did not satisfy the inquiry officer the reason for his delay in the submission of his representation dtd.24-1-2002 on 30-1-2002 and also did not satisfy the inquiry officer that the Govt. servant nominated by him was willing to act as his defence assistant. Further rule 14(8)(a) of the CCS(CC&A) Rules 1965 specifically provides that :- "The Govt. servant may take the assistance of any other Govt. servant posted in any office either at his Headquarters or at the place where the inquiry is held to present the case on his behalf". And the GI Deptt. of Per & Trg. O.M. No.11012/3/86-EST(A) dtd.29-4-86 provides that :- it is open to the inquiry authority to permit the appointment of a defence assistant from any other station having regard to the circumstances of each case. Therefore after considering the circumstances of the case in the light of above provisions of the Departmental Rules and Govt. instructions, the inquiry officer decided to continue the inquiry. The reasons have been clearly explained and recorded in writing by the inquiry officer in the order dated 30-1-2002 enclosed by the applicant as Annexure-A-5 to the O/A.

It is further added that as per G.I. Deptt. of Per & Trg. O.M. No.11012/3/86-EST(A)Dtd.29-4-1986 the applicant is entitled to make a representation to the Disciplinary Authority if the inquiry authority rejects a request for permission to take a defence assistant from a place other than the headquarters of the charged Government servant or the place of the inquiry. But the applicant did not prefer any representation against the order of the inquiry authority dtd.30-1-2002(Annexure-A/5) to the Disciplinary Authority. Therefore the submission of the applicant in para 4.5 of the O.A. is false.

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A copy of the GI Deptt. of Per & Trg. O.M. No.11012/3/86-EST(A) dtd.29-4-86 printed as Govt. of India instruction below Rule-14 of the CCS(CC&A) Rules 1965 is enclosed as Annexure-R/2.

10. That with regard to the statements made in paragraph 4.6 of the application, the respondents beg to state that the request of the applicant fof discovery and production of additional documents was dealt with in accordance with Rule-14(11) and Rule-14(12) of the CCS(CCA) Rules, 1965. Some of the documents, which were requisitioned by the applicant, were found irrelevant to the case by the Inquiry Authority. Therefore, only such documents, which were not relevant to the case, were refused, duly recording the reasons in writing, by the Inquiry Officer vide order dtd. 4-2-2002 enclosed by the applicant as Annexure-A-7 to the O/A.

11. That with regard to the statements made in paragraph 4.7 of the application, the respondents beg to state that the Departmental proceedings against the applicant was proceeded in accordance with the relevant provisions of Rule-14 of CCS (CC&A) Rules, 1965. The applicant submitted his written brief dated 4-3-2002 after the receipt of the copy of written brief submitted by the presenting officer dated 15-2-2002. The Inquiry Officer prepared his inquiry report in accordance with Rule-14(23) of CCS(CC&A) Rules, 1965 and submitted the same vide letter No.A-1/Inquiry/Rules-14/1/2001-02 dtd.8-8-2002. The I.O's report is self-speaking and well reasoned as may be seen in the enclosed Annexure-A/9 submitted by the applicant with the O/A.

A copy of the written brief of the presenting officer dated 15-2-2002 is enclosed as Annexure-R/3.

12. That with regard to the statements made in paragraph 4.8 of the application, the respondents beg to state that the copy of I.O's report was forwarded to the applicant for giving him an opportunity to represent against the I.O's report vide letter No.B-2/DK Bora dtd.12-3-02. The applicant after availing an extension of time limit for submission of his representation against the I.O's report, submitted his representation dated 8-4-02. The I.O's report(Annexure-R/4) is self-speaking and well-reasoned.

A copy of DPS Manipur letter No.B-2/DK Bora dated 12-3-02 is enclosed as ANNEXURE-R/4.

13. That with regard to the statements made in paragraph 4.9 of the application, the respondents beg to state that the Disciplinary Authority Viz, Director Postal Services, Manipur,

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Imphal in exercise of powers conferred under Rule-15 of CCS(CCA) Rules,1965 and revised schedule of appointing/disciplinary/ appellate authorities of the Department of Posts circulated vide G.I. Department of Posts letter No.12/6/89-Vig-III dated 27-8-1990, after carefully considering the relevant records of the case including the submissions made by the applicant in his representation dated 8-4-2002, passed the final order vide No. B-2/DK Bora dated 11-4-2002. The applicant was awarded the penalty of REMOVAL from service in the final order dated 11-4-2002 for just and sufficient reasons as explained in the final order dated 11-4-2002 enclosed by the applicant as ANNEXURE-A/11 to the O.A.

A copy of Rule-15 of CCS(CCA) Rules,1965 is enclosed as Annexure-R/5.

A copy of G.I. Deptt. of Posts letter No.12/6/89-Vig-III, dated 27-8-1990 is enclosed as Annexure-R/6(page 9 of the schedule may kindly be referred to).

14. That with regard to the statements made in paragraph 4.10 & 4.12 of the application,the respondents beg to state that the appeal submitted by the applicant dated 22-4-2002 was decided by the appellate authority after taking into consideration all the points raised by the applicant in his appeal dated 22-4-2002 and after providing him an opportunity of personal hearing on 10-10-2002. In appeal, the appellate authority took a lenient view and the punishment awarded by the disciplinary authority was modified and reduced vide P.M.G/Shillong Memo No.Staff/109-11/2002, dated 17-01-2003.

15. That with regard to the statements made in paragraph 4.13 of the application, the respondents beg to state that the applicant was charge sheeted under Rule-14 of CCS(CCA) Rules,1965 for good and sufficient reasons on the basis of existence of a prima-facie case in respect of the gross irregularity committed by him in the recruitment and appointment of ED packer at Thoubal Post Office. The irregularities committed by the applicant have been explained in the memorandum of charges dated 09-10-2001 and the I.O's report dated 8-3-2002 (ANNEXURE-A/9) and in the order of the Disciplinary Authority dated 11-4-2002.

16. That with regard to the statements made in paragraph 4.14 of the application, the respondents beg to state that the appointment of Inquiry Officer was made in accordance with Rule-14 of

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CCS(CCA) Rules,1965 read with the relevant provisions of P & T Manual Volume-III. As per Rule-5(i)(b) of P & T M Manual Volume-III, the Inquiry should not be entrusted to an office directly subordinate to an officer who has already expressed an opinion on the allegations especially where such opinion is adverse to the accused. In this instant case, the Disciplinary Authority had not ever expressed any opinion on the allegations set out in the charge sheet memorandum. Further, Rule-14(2) of CCS(CCA) Rules,1965 clearly states that the Disciplinary Authority may itself inquire into the case or appoint an authority to inquire into the truth. Therefore, there was no bar for appointment of a subordinate officer, as I.O. Further the applicant never alleged any bias on the part of the I.O.during the course of inquiry. Therefore, the applicant's contention in para-4.14 of the O.A. is meaningless.

17. That with regard to the statements made in paragraph 4.15 and 4.16 of the application,the respondents beg to state that the facts, with regard to the contention therein, have already been explained by the Respondents in para-8 & 9 above. It is submitted that the Inquiry Officer had given the applicant sufficient time for nomination of defence assistant, if any, to assist him in the inquiry, but the applicant did not nominate his defence assistant within the time granted him for the purpose. The applicant's representation dtd.24-1-02 praying for allowing him to appoint one Sri Uttam Sengupta ASPOs Headquarter, O/O the Superintenden t Post Offices, Tinsukia division was submitted by him to the Inquiry Officer only on 30-1-2002. The applicant also did not submit the written consent of the defence assistant nominated by him so as to satisfy the Inquiry Officer that the Govt. servant nominated by the applicant was willing to function as defence assistant to the applicant. Thus, the applicant did not satisfy the inquiry Officer the reason for his delay in the submission of his representation dtd.24-1-02 on 30-1-2002 and also did not satisfy the inquiry officer that the Govt. servant nominated by him was willing to act as his defence assistant. Therefore after considering the circumstances of the case in the light of above provisions of the Departmental Rules and Govt. instructions, the inquiry Officer decided to continue the inquiry. The reasons have been clearly explained and recorded in writing by the inquiry officer in the order dated 30-1-2002

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enclosed by the applicant as ANNEXURE-A-5 by the applicant.

It is further added that as per G.I. Deptt. Of Per & Trg. O.M.No.11012/3/86-EST(A) dtd.29-4-1986 the applicant is entitled to make a representation to the Disciplinary Authority if the inquiring authority rejects a request for permission to take a defence assistant from a place other than the headquarters of the charged Government servant or the place of the inquiry. But the applicant did not prefer any representation against the order of the inquiry authority dtd.30-1-2002(Annexure-A/5) to the Disciplinary Authority.

The request of the applicant for discovery and production of additional documents was dealt with in accordance with Rule-14 (II) and Rule-14(12) of the CCS(CCA) Rules,1965. Some of the documents, which were requisitioned by the applicant, were found irrelevant to the case by the Inquiry Authority. Therefore, only such documents, which were not relevant to the case, were refused duly recording the reasons in writing, by the Inquiry Officer vide order dtd.4-2-2002 enclosed by the applicant as Annexure-A-7 to the O/A.

18. That with regard to the statements made in paragraph 4.17 of the application,the respondents beg to state that the I.O's report is self-speaking and well reasoned as may be seen from ANNEXURE-A/9. Therefore, the applicant's contebion in para-4.17 of the O.A. is not only false but intended to mislead the Hon'ble Tribunal.

19. That with regard to the statements made in paragraph 4.18 of the application,the respondents beg to state that the Disciplinary Authority for the Inspector of Post Offices cadre officials, to which the applicant belongs, is the Director Postal Services as may been seen from ANNEXURE-R-6 (page-9 of the schedule may kindly be referred to). Both the Director Postal Services(H.Q) and the Director Postal Services,Manipur, Imphal are of same rank and cadre i.e. Director Postal Services. The Annexure-A/17 submitted by the applicant is the notification issued by the Govt. of India to include the Director Postal Services, Manipur, Nagaland, Tripura and the Union territories of Mizoram and Arunachal Pradesh to act as Disciplinary Authority in respect of the posts/cadres for whom the Sr. Supdt. of Post Offices/Supdt. of Post Offices of the respective Divisions were earlier functioning as Disciplinary Authorities, but there were no original Disciplinary Authorities in

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these Divisions after the upgradation of these divisions as headed by the Director Postal Services. This notification did not take away the original powers vested with the Director Postal Services such as appointing authorities and disciplinary authorities to the other posts for which the Director Postal Services were the original Appointing and Disciplinary Authorities.

20. That with regard to the statements made in paragraph 4.19 of the application, the respondents beg to state that the order of Disciplinary Authority is self speaking, well reasoned and self contained as may been seen from the Annexure-A/11 submitted by the applicant with the O.A.

21. That with regard to the statements made in paragraph 4.20 of the application, the respondents beg to state that the order of the appellate authority is also self-speaking, well reasoned and self-contained as may be seen from the ANNEXURE-A-15 submitted by the applicant with the O.A.

22. That with regard to the statements made in paragraph 4.21 of the application, the respondents beg to state that the termination of services of irregularly appointed candidate to the post of E.D. Packer, Thoubal Sub Post Office has to be done in accordance with the relevant provisions of the rule for the reason that the appointment was made by the Inspector Post Offices, 2nd Sub Division, Imphal who is the competent appointing authority. This is entirely a different case and process. The applicant was punished for the irregularity committed by him. Action for termination of the services of irregularly appointed Md. Azad Khan as E.D. Packer, Thoubal S.O. is a different case altogether.

23. That with regard to the statements made in paragraph 5.1 to 5.3 of the application, the respondents beg to state that the applicant was charge sheeted vide memo dated 9-10-2001 for good and sufficient reasons and the order of the Disciplinary Authority vide memo dated 11-4-2002 and the order of the appellate authority vide memo dated 17-1-2003 were issued after following the due procedures prescribed in the rules and duly and taking into consideration of the points raised by the applicant in the respective stages.

24. That with regard to the statements made in paragraph 5.4 of the application, the respondents beg to state that the principles of natural justice were upheld in each stage

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of disciplinary proceedings against the applicant and the appellate order was also passed with due application of mind after affording the applicant of an opportunity of personal hearing on 10-10-2002.

25. That with regard to the statements made in paragraph 5.5 of the application, the respondents beg to state that the applicant was proceeded under departmental rules for the gross irregularity committed by him in the recruitment and appointment of E.D.Packer at Thoubal Sub Post Office, and was punished for the proved irregularities after a thorough departmental inquiry under Rule-14 of CCS(CCA) Rules, 1965. Powers and functions of appointing authority are not quasi-judicial.

26. That with regard to the statements made in paragraph 5.6 of the application, the respondents beg to state that lists of documentary evidences on the basis of which the articles of charges were drawn against the applicant have been duly shown in ANNEXURE-III of charge sheet memorandum enclosed by the applicant as ANNEXURE-A/1 to the O.A. The I.O's report, the order of the disciplinary authority and the order of the appellate authority are based on evidences on record as may be seen from the respective ANNEXURES. Therefore, the contention of the applicant is meaningless.

27. That with regard to the statements made in paragraph 5.7 and 5.8 of the application, the respondents beg to state that the applicant was proceeded against under departmental rules for the gross irregularity committed by him in the recruitment and appointment of E.D. Packer at Thoubal Sub Post Office. The departmental proceedings were held duly observing the formalities laid down in the Rule-14 of CCS(CCA) Rules, 1965. The punishment order as well as the appellate order was passed with due compliance to the requirements of departmental rules and the principles of natural justice.

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

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(14)

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

I, R.K. B. Singh, presently working as Director Postal Services, Manipur, Imphal being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 1 of the application are true to my knowledge and belief, those made in paragraphs 2 - 27 being matter of record are true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

AND I sign this verification on this the 25 th day of July, 2003

DEPONENT

निदेशक डाकसेवा मणिपुर, इम्फाल
Director Postal Services,
Manipur, Imphal-795001.

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Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

EXPLANATION.—Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up—

(*i*) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(*ii*) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain—

(*a*) a statement of all relevant facts including any admission or confession made by the Government servant;

(*b*) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person.

(5) (*a*) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15.

(*b*) If no written statement of defence is submitted by the Government servant the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose.

(*c*) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding any inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority—

(*i*) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(*ii*) a copy of the written statement of the defence, if any, submitted by the Government servant;

(*iii*) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

(*iv*) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(*v*) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of [1][receipt by the inquiring authority] of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by notice in writing, specify, in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

[2](8) (*a*) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.

[3]NOTE.—The Government servant shall not take the assistance of any other Government servant who has [4][three] pending disciplinary cases on hand in which he has to give assistance.

1. Substituted *vide* G.I., Dept. of Per. & Trg., Notification No. 11012/8/94-Estt. (A), dated the 2nd January, 1996.

2. Substituted *vide* G.I., M.H.A., D.P. & A.R., Notification No. 11012/1/82-Estt. (A), dated the 2nd June, 1983.

3. Inserted *vide* G.I., C.S. (Dept. of Per.), Notification No. 7/4/69-Estt. (A), dated the 24th November, 1976.

4. Substituted *vide* G.I., Dept. of Per. & Trg., Notification No. 11012/6/92-Estt. (A), dated the 4th June, 1992.

penalties in respect of a grade shall not impose any of these penalties on an official of that grade if he was actually appointed to that grade by an authority who is higher in rank or grade than the former authority.

For example, an official who was appointed by an officer of the Junior Time-scale of the Indian Postal Service, Group 'A', while holding charge of a Division cannot be punished with any of the major penalties by an officer of the PSS Group 'B', though holding charge of the same Division. Any such orders passed by a lower authority are void and liable to be set aside. When these punishment orders are declared void by the Court or are set aside by the appellate authority or by the President due to violation of constitutional/statutory provision, Government have to incur unnecessary expenditure in the shape of arrears of pay and allowances. It is therefore, desirable that before any action is initiated under the CCS (CCA) Rules, with a view to imposing any of the major penalties on an official, it should first be verified by the present disciplinary authority whether or not he is lower in rank than the officer who actually appointed the official. In case the appointing authority is of higher rank than the present disciplinary authority, the fact should be reported to the Department/Ministry concerned for issue of President's orders nominating another officer to act as the disciplinary authority in that particular case. While reporting the matter to Government a specific recommendation as to the officer who may be nominated to act as the disciplinary authority should be made.

These instructions may kindly be circulated to all disciplinary authorities for strict observance to ensure that punishment orders are passed only by the competent authorities.

[D.G., P. & T., Memo No. 44/6/59-Disc., dated the 7th August, 1959.]

(*ii*) *When the competent authority is unable to function as the disciplinary authority.*—In a case where the prescribed appointing or disciplinary authority is unable to function as the disciplinary authority in respect of an official, on account of his being personally concerned with the charges or being a material witness in support of the charges, the proper course for that authority is to refer such a case to Government in the normal manner for nomination of an *ad hoc* disciplinary authority by a Presidential Order under the provisions of Rule 12 (2) of CCS (CCA) Rules, 1965.

[D.G., P. & T., Memo. No. 6/64/64-Disc., dated the 27th January, 1965.]

Where the officer who is the prescribed disciplinary authority is/will be the complainant and/or the witness in a disciplinary proceeding, another officer should be specified as disciplinary authority by a special order of the President under Rule 14 (2) of the CCS (CCA) Rules, 1957 [corresponding to Rule 12 (2) of 1965 Rules].

[Decision taken in G.I., M.H.A., File No. 7/29/61-Ests. (A).]

(5) No bar for authority who conducted preliminary enquiry functioning as Disciplinary Authority.—The authority who conducts the preliminary enquiry into a case of misconduct, etc., of a Government servant will not be debarred from functioning as a disciplinary authority in the same

case, provided it has not openly given out its findings about the guilt of the accused official.

[Para. 50. P & T. Manual, Vol. III.]

(6) Powers of prescribed punishing authority.—A penalty can be imposed only by the prescribed punishing authority, and an appellate authority or any other authority higher than the appropriate punishing authority cannot exercise any concurrent original disciplinary jurisdiction. In no circumstances should an authority higher than the punishing authority issue any direction in regard to the penalty to be imposed. Neither should a punishing authority obtain the guidance or comment of any superior authority in this respect. Nothing in this rule shall affect the authority of the President to impose any of the penalties on any Government servant.

[Para. 45 of P. & T. Manual, Vol. III.]

13. Authority to institute proceedings

(1) The President or any other authority empowered by him by general or special order may—

(*a*) institute disciplinary proceedings against any Government servant;

(*b*) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in Clauses (*i*) to (*iv*) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in Clauses (*v*) to (*ix*) of Rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

PART VI

PROCEDURE FOR IMPOSING PENALTIES

14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in Clauses (*v*) to (*ix*) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the

(*b*) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence—

(*i*) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(*ii*) submit a list of witnesses to be examined on his behalf;

NOTE.—If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(*iii*) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

NOTE.—The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies

1. Inserted, *vide* G.I., M.H.A. (Dept. of Per.) Notification No. 11012/21/77-Estt. (A), dated the 14th November, 1977.

thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

NOTE.—New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry *ex parte*.

(21) (*a*) Where a disciplinary authority competent to impose any of the penalties specified in Clauses (*i*) to (*iv*) of Rule 11 [but not competent to impose any of the penalties specified in Clauses (*v*) to (*ix*) of Rule 11], has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in Clauses (*v*) to (*ix*) of Rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(*b*) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiry authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23) (*i*) After the conclusion of the inquiry, a report shall be prepared and it shall contain—

(*a*) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(*b*) the defence of the Government servant in respect of each article of charge;

(*c*) an assessment of the evidence in respect of each article of charge;

(*d*) the findings on each article of charge and reasons therefor.

EXPLANATION.—If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(*ii*) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include—

(*a*) the report prepared by it under Clause (*i*);

(*b*) the written statement of defence, if any, submitted by the Government servant;

(*c*) the oral and documentary evidence produced in the course of the inquiry;

(*d*) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

GOVERNMENT OF INDIA'S INSTRUCTIONS

DEPARTMENTAL PROCEEDINGS AND PROSECUTION

(1) Prosecution should precede departmental action.—The following procedure should normally be adopted in cases of alleged criminal misconduct of Government servant.

2. As soon as sufficient evidence is available for the purpose in the course of investigation in cases of misconduct, whether such investigation is conducted departmentally or through the Police (including the Special Police Establishment), action should be taken forthwith. It has been decided that prosecution should be the general rule in all those cases which are found fit to be sent to Court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In such cases, departmental action should not precede prosecution. In other cases involving less serious offences or involving malpractices of a departmental nature, departmental action only should be taken and the question of prosecution should generally not arise. Whenever, however, there is unresolved difference of opinion between the Central Bureau of Investigation and the Administrative Authority concerned as to whether prosecution in Court or departmental action should be resorted to in the first instance, the matter should be referred to the Central Vigilance Commission for advice.

3. Before initiating criminal proceedings advice on evidence should be obtained from Government Counsel, and in more important cases from the Attorney-General or the Solicitor-General. Where the conduct of an officer discloses a grave offence of a criminal nature, criminal prosecution should be the rule and not the exception. Where competent authority is satisfied that there is no criminal case which can be reasonably sustained against such officer, criminal prosecution should not, of course, be resorted to; but prosecution should not be avoided merely on the ground that the case might lead to an acquittal.

[G.I., M.H.A., O.M. No. F. 39/30/54-Ests., dated the 7th June, 1955 and No. 39/8/64-Ests. (A), dated the 4th September, 1964.]

(2) Types of cases to be classified under Instruction (1).—According to the revised instructions prosecution should be the general rule in all those cases which are found fit to be sent to Court after investigation and in which the offences are bribery, corruption or other criminal misconduct involving loss of substantial funds. In other cases involving less serious offences or malpractices of a departmental nature, departmental action only is to be taken and the question of prosecution should not generally arise. A number of references have, however, been received in the Directorate seeking clarification on certain points arising out of the revised instructions of the MHA. The following clarifications are, therefore, issued for guidance:—

(i) It has been decided that so far as the P & T Department is concerned, a case involving "loss of substantial public funds" referred to in the Instruction would be a case in which the loss exceeds (1) Rs. 5,000 in so far as departmental employees are concerned, and (2) the amount of security deposit in the case of extra-departmental employees. However, in respect of extra-departmental employees, even in cases involving loss not exceeding the amount of security deposits the discretion to waive prosecution shall be exercised only if the loss has been made good and there are extenuating circumstances like length of service to justify the exercise of the discretion. Cases involving extra-departmental employees shall invariably be reported to Police, if the loss exceeds the amount of security deposit furnished by them.

As the extra-departmental employees are not full-time Central Government employees, their cases, when a prosecution seems possible and desirable, should be reported to the local Police. However, if the loss involved is considerable, i.e., more than Rs. 5,000 and the case is of importance, the matter may be reported to the CBI immediately the offence is detected to facilitate successful investigation.

In all cases which are considered fit for prosecution according to the criteria laid down in the preceding sub-paragraph, a report should be lodged with the Police as soon as the case comes to notice and departmental enquiry should not be held simultaneously with the Police enquiries except to the extent permitted by the Police. The question of taking departmental action in such cases would arise after either completion of Police enquiries or after the processes of prosecution in a Court of Law have been completed. If, however, it is desired to conduct departmental enquiries simultaneously with Police enquiries or to take departmental action wherever feasible before the case is taken up for prosecution by the Police, the matter should be decided after consultation with the Police authorities.

(ii) With regard to a case in which the loss to Government is (1) Rs. 5,000 or less in the case of departmental employees and (2) equal to the amount of security deposit or less in the case of an extra-departmental employee, departmental action only may be taken and the question of prosecution should not generally arise. In these cases, action to finalize departmental action should be taken without delay in the first instance and thereafter the advisability of reporting the case to the Police for purposes of prosecution if still thought necessary, may be considered. There will, however, be no objection to information being lodged immediately with the Police as soon as the preliminary departmental enquiries have been completed where the nature of the case or the other circumstances, e.g., cases of theft and highway robbery, attacks on

For this purpose the reviewing authority would normally be the appellate authority.

[D.G., P. & T., Letter No. 7/28/72-Disc. I, dated the 19th March, 1973.]

Obviously any representation against the appointment of Inquiring Officer on grounds of bias should be made as soon as the inquiring authority has been appointed, but not after the proceedings have commenced and reached an advanced stage. No hard and fast rules can, however, be laid down and each case will have to be examined on merits on the facts and circumstances brought out by the concerned Government servant alleging bias on the part of inquiring authority. As the rules stand at present, it is not possible to deny to the Government servant the right to ask for review of any orders issued under CCS (CCA) Rules, 1965, at any time.

[D.G., P. & T., Letter No. 6/28/72-Disc. I, dated the 2nd August, 1973.]

DEFENCE ASSISTANT

(17) Intimation to be given to the Controlling Authority of the Government servant assisting the accused.—Rule 14 (8) provides that the Government servant against whom disciplinary proceedings have been initiated may take the assistance of any other Government servant to present the case on his behalf. While no permission is needed by the official who is charge-sheeted to secure the assistance of any other Government servant, it is necessary for the latter to obtain the permission of his Controlling Authority to absent himself from office in order to assist the accused Government servant during the enquiry. It would avoid delay in granting such permission, if the Inquiry Officers take the initiative in the matter of informing the Controlling Authority in this regard. It is, therefore, suggested that as soon as the accused Government servant informs the Inquiry Officer of the name and other particulars of the Government servant who has been chosen by him to assist in the presentation of his case, the Inquiry Officer should intimate this fact to the Controlling Authority of the Government servant concerned. Further, the date and time of the hearing should be intimated to the said Controlling Authority sufficiently in advance adding that if, for any compelling reason, it is not practicable to relieve the Government servant concerned on the due date or dates to attend the enquiry, the Inquiry Officer, the accused official and the Government servant chosen for assisting the accused official may be advised well in time.

[Letter No. 61/3/67-C, dated the 8th January, 1968, from the Central Vigilance Commission, New Delhi to the Chief Vigilance Officers of the Ministries/Departments, etc.]

The rules do not vest any discretion in the disciplinary authority in regard to the nomination of a Government servant to present the case of the delinquent official. However, if for any compelling reasons it is not practicable for the Controlling Authority of the assisting Government servant to relieve him without undue delay or without serious detriment to the public interest to present the case of the delinquent official, he should inform the Inquiry Officer about it with reasons, for being communicated to the

accused official, and the Government servant nominated to assist the accused well in time. In that case the accused official could choose any other Government servant to assist him in the presentation of his case before the Inquiry Officer.

It has been held by the Ministries of Law and Home Affairs that refusal by superior officer to grant permission to nominated Government servant on reasonable grounds would not amount to denying the right of representation under CCS (CCA) Rules, as it would be open to the delinquent official to nominate another Government servant.

[D.G., P. & T., Letter No. 6/4/66-Disc., dated the 6th August, 1966 and Letter No. 10/1/68-Disc., dated the 23rd July, 1969.]

The correct position is that no permission is needed by the accused Government servant to secure the assistance of any other Government servant. The latter also is not required to take the permission for assisting the accused Government servant. It will, however, be necessary for him to obtain the permission of his Controlling Authority to absent himself from office in order to assist the accused Government servant during the enquiry.

[D.G., P. & T.'s Letter No. 153/3/78-Disc. II, dated the 17th October, 1978.]

(18) Engaging Defence Assistant posted in another station.—Sub-rule (8) of Rule 14 provides that a Government servant may take the assistance of any other Government servant posted at any other station on being permitted by the Inquiry Authority to do so. It does not totally prohibit having a Defence Assistant from any station other than the headquarters of the charged Government servant or the place of inquiry. It is open to the Inquiring Authority to permit the appointment of a Defence Assistant from any other station, having regard to the circumstances of each case. However, at present, there is no provision for appeal against the decision of the Inquiring Authority in the matter, should it decide to refuse permission.

2. It has been decided, that a Government servant should be allowed to make a representation to the Disciplinary Authority if the Inquiring Authority rejects a request for permission to take a Defence Assistant from a place other than the headquarters of the charged Government servant or the place of inquiry. Accordingly, in all cases where the Inquiring Authority rejects the request of the charged Government servant for engaging a defence assistant, from any station other than the headquarters of such Government servant or the place where the inquiry is conducted, it should record its reasons in writing and communicate the same to the charged Government servant to enable him to make a representation against the order, if he so desires, to the Disciplinary Authority. On receipt of the representation from the charged Government servant, the Disciplinary Authority, after applying its mind to all the relevant facts and circumstances of the case, shall pass a well-reasoned order either upholding the orders passed by the Inquiring Authority or acceding to the request made by the charged employees. Since such an order of the disciplinary authority will be

in the nature of a step-in-aid of the inquiry, no appeal shall lie against that order.

[G.I., Dept. of Per. & Trg., O.M. No. 11012/3/86-Estt. (A), dated the 29th April, 1986.]

(19) Government servant under suspension eligible to function as defence Counsel.—A question has been raised whether under the provisions of Rule 14 (8) of the CCS (CCA) Rules, 1965, a Government servant under suspension, is eligible to function as defence Counsel, if his services are required by an accused official. The reply to the question is that merely because an official is under suspension does not mean that he has ceased to be a Government servant, and as such, an official under suspension has full right to work as defence assistant. The question was recently examined by the Kerala High Court and it was opined that there is no rule that a person under suspension is not entitled to assist another Government servant in the enquiry proceedings.

2. The above ruling may be kept in view while deciding similar cases.

[D.G., P. & T.'s Letter No. 201/15/75-Disc. II, dated the 3rd July, 1975.]

(20) Conditions for engaging retired Government servants as defence assistants.—Reference is invited to O.M. No. 11012/18/90-Estt. (A), dated the 13th February, 1991 (*not printed*) and to say that the matter regarding restrictions on accused Government servants for engaging retired Government employees to present their case in departmental disciplinary proceedings has been reviewed in the light of the demand of the Staff Side in the National Council of JCM for putting a ceiling on the number of cases a retired Government servant can take up as a defence assistant and in supersession of earlier orders on the subject, it has been decided in terms of Rule 14 (8) (*b*) of CCS (CCA) Rules, 1965, that assistance of retired Government servants may be taken subject to the following conditions:—

(*i*) The retired Government servant concerned should have retired from service under the Central Government.

(*ii*) If the retired Government servant is also a legal practitioner the restrictions on engaging a legal practitioner by a delinquent Government servant to present the case on his behalf, contained in Rule 14 (8) of the CCS (CCA) Rules, 1965, would apply.

(*iii*) The retired Government servant concerned should not have in any manner, been associated with the case at investigation stage or otherwise in his official capacity.

(*iv*) The retired Government servant concerned should not act as defence assistant in more than five cases at a time. The retired Government servant should satisfy the Inquiring Officer that he does not have more than five cases at hand including the case in question.

[G.I., Dept. of Per. & Trg., O.M. No. 11012/5/92-Estt. (A), dated the 22nd May, 1992.]

(21) Permission to engage a legal practitioner for the defence.—Rule 14 (8) (*a*) of the CCS (CCA) Rules, 1965, provides, *inter alia*, that a delinquent Government servant against whom disciplinary proceedings have been instituted as for imposition of a major penalty may not engage a legal practitioner to present the case on his behalf before the Inquiring Authority, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority, having regard to the circumstances of the case, so permits. It is clarified that, when on behalf of the Disciplinary Authority, the case is being presented by a Prosecuting Officer of the Central Bureau of Investigation or a Government Law Officer (such as Legal Adviser, Junior Legal Adviser), there are evidently good and sufficient circumstances for the Disciplinary Authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the Court as arbitrary and prejudicial to the defence of the delinquent Government servant.

[G.I, M.H.A., D.P. & A.R., O.M. No. 11012/7/83-Estt. (A), dated the 23rd July, 1984.]

(22) Assistance of legal practitioner to be decided on merits of each case.—The assistance of a legal practitioner should not be refused to the officer concerned if the Presenting Officer is a legal practitioner. The rule, however, vests discretion in the Disciplinary Authority to permit assistance of a legal practitioner having regard to the circumstances, that such assistance is justified. No orders exist laying down guidelines to the Disciplinary Authority as to in what circumstances such justification may be said to exist. The matter has been carefully considered and after taking into account the judgments delivered by some High Courts on this point it has been decided that the Disciplinary Authority should bear, in each case, such circumstances in mind, as the status of the Presenting Officer, his experience in this type of job and the volume and nature of documentary evidence produced in the case before taking a decision as to whether or not the services of a legal practitioner should be made available to the officer concerned. It is reiterated that the discretion of the Disciplinary Authority is vast and it should exercise such discretion in the most impartial manner on the merits of each case and be guided solely by the criterion whether the denial of assistance of a legal practitioner is likely to be construed as denial of reasonable opportunity to the officer concerned to defend himself.

[D.G., P. & T., Letter No. 6/8/72-Disc. I, dated the 29th August, 1972.]

INSPECTION OF DOCUMENTS

(23) Supply of copies of documents and affording access to official records to the delinquent official.—1. The question often arises whether a particular document or set of documents asked for by a Government servant involved in a departmental enquiry should be made available to him or not; and pending the decision on the question, the submission of the written statement by the Government servant concerned is delayed, in some cases

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Annexure R-3

Written Brief of the Presenting Officer in the departmental inquiry under Rule-14 of CCS (CC&A) Rules, 1965 against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal.

Submitted to : The Inquiry Officer.

&

The Supdt. of Post Officces,
Manipur, Imphal - 795 001.

Complying the directions contained in Order No.7 dated 08.02.2002 issued from I.Os file No.A-1/Inquiry/Rule-14/1/2001-02, the written brief of the Presenting Officer is submitted as under:

1. In the charge sheet memorandum, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal has been charged for violation of Rule-3(1)(ii), Rule-3(1)(iii) and Rule-3(1)(i),Rule-3(1)(ii) & Rule-3(1)(iii) respectively of CCS (Conduct) Rules, 1964 in 2(Two) articles of charge.

2.1. In the article of Charge-I, Shri.D.K.Bora, SDIPOs/2nd Sub-Dn., Imphal has been charged for violation of Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules,1964 for the serious irregularities committed by him in the recruitment of ED-Packer, Thoubal S.O.

2.2. Statement of imputations of misconduct in support of the said article of charge given in the Article-I to Annexure-II clearly explains, "how the said Shri.D.K.Bora committed serious irregularities in the recruitment of ED-Packer, Thoubal S.O and how the said Shri.D.K.Bora violated Rule-3(1)(ii) & 3(1)(iii) of CCS(Condcut)Rules, 1964".

2.3. From Exhibit No.S-1 it may be seen that Shri.Mangkholet Haokip, the then ED-Packer, Thoubal SO was granted leave during the period from 01.08.1999 to 27.01.2000 on receipt of his leave application vide Exhibit No.S-10. From Exhibit No.S-2 it may be seen that the said Shri.Mangkholet Haokip offered to resign from the post of Eb-Packer, Thoubal SO after the expiry of leave. Immediately on receipt of the letter of resignation from Shri.Mangkholet Haokip, the then ED-Packer, Thoubal SO, Shri.D.K. Bora as SDIPOs, 2nd Sub-Dn started the recruitment process for filling up the post by placing requisition before the District Employment Officer, Thoubal vide Exhibit No.S-3.

After the receipt of nomination of candidates from the Employment Exchange, Thoubal vide Exhibit No.S-5, the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn as appointing authority competent to accept the resignation of the earlier ED-Packer, Thoubal accepted the resignation of the said Shri.Mangkholet Haokip vide Exhibit No.S-4. As per Exhibit No.S-5, the District Employment Exchange, Thoubal nominated 3(Three) candidates namely Md.Azad Khan of Lilong Turel Ahanbi with the educational qualification of Class-VIII, Miss.Mumtaz of Lilong Awang Leikai with the educational qualification of H.S.L.C (High School Leaving Certificate) and Md.Abdur Razaque of Lilong Awang Leikai with the educational qualification of P.U (Pre-University). After that Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal has called all the 3(Three) candidates to appear in a written test held at his office on 04-03-2K at 1400 Hrs vide Exhibit No.S-6. But, for the reason best known to him (the Charged official) alone, the said Shri.D.K.Bora provisionally appointed Md.Azad Khan of Lilong Turel Ahanbi, whose name appears at Sl.No.1 of the list of candidates nominated by the District Employment Exchange, Thoubal, as ED-Packer, Thoubal SO vide Exhibit No.S-7. As per Exhibit No.S-8 written on 06.04.2K, the said Shri.D.K.Bora as SDIPOs, 2nd Sub-Dn., Imphal and appointing authority who recruited ED-Packer for Thoubal SO made a note that among the 3(Three) candidates appeared in the suitability test conducted by him, Md.Azad Khan had topped in the test and hence the said Md.Azad Khan was selected for the post of ED-Packer, Thoubal SO. Both from the employment exchange nomination list (Exhibit No.S-5) and from the provisional/transfer certificate with Sl.No.106 issued by the office of Chingkham Makha High school dated 30.04.98 showing the Educational qualification and date of birth of Md.Azad Khan, S/o.Late Abdul Jalil of Lilong Turel Ahanbi (Exhibit No.S-11) it may be confirmed that Md.Azad Khan, ie. the candidate selected by the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal for the post of ED-Packer, Thoubal SO was having the educational qualification of VIII-Standard only. The Exhibit No.S-5, i.e., the list of candidates nominated and sponsored by the District Employment Exchange, Thoubal vide VO.NO/IOD/67/99(UM) dated 10.01.'00, clearly shows that there were 2(Two) other candidates, namely Miss.Mumtaz of Lilong Awang Leikai with E/E.Regn.No.Th/W/446/98 and Md.Abdur Razaque of Lilong Awang Leikai with E/E.Regn.No. Th/320/98, who were matriculates. With the issue of regular appointment order as shown in Exhibit No.S-9 to the irregularly recruited candidate Md.Azad Khan, the said Shri.D.K.

Bora has completed the recruitment process of the ED-Packer, Thoubal S.O.

2.4. As per the consolidated instructions issued from time to time, vide D.G. P&T Letter No.43-84/80-Pen dated 30.01.81 and corrigendum dated 29.03.81, D.G.Posts Letter No.41-301/87-PE-II (ED & Trg) dated 06.06.1988 and No.17-366/91-ED & Trg dated 12.03.93, governing the appointment and other service conditions of ED-Agents printed as Instruction No.(1) below EDAs(Condcut & Service)Rules,1964, preference has to be given to the candidates with Matriculation qualification in the selection of all other categories of EDAs except ED-SPMs and ED-BPMs.

2.5. In this instant case, it may be seen that Md.Azad Khan who had been possessing the educational of VIII-Standard only was selected to the post of ED-packer, Thoubal SO without giving any preference to the matriculate candidates nominated and sponsored by the District Employment Exchange, Thoubal. So, the said Shri.D.K.Bora, who as SDIPOs, 2nd Sub-Dn, Imphal was duty bound to observe the instructions scrupulously while making selection of ED-Agents, miserably failed and the documentary evidences produced in the inquiry are sufficient enough to prove that the said Shri.D.K.Bora, by recruiting a candidate with the educational qualification of VIII-Standard only for the post of ED-Packer/Thoubal SO when the candidates with matriculation qualification were also available, violated the departmental instructions contained in D.G-P& T and D.G-Posts letters cited above.

2.6. As a Govt. servant, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal is required to maintain devotion to duty and do nothing, which is unbecoming of a Govt: Servant. In this instant case it may be seen that the said Shri.D.K.Bora had failed to follow the instructions contained in D.G. P&T and D.G.Posts letters mentioned above and recruited a candidate of VIII-Standard qualification who had lost his preference to other 2(Two)candidates with matriculation qualification. Therefore, there is no doubt that the said Shri.D.K.Bora violated Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct) Rules,1964 by his above acts.

2.7. In his defence, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal, i.e., the charged Official in the instant case, has stated that:

(a). The minimum required education qualification for the post of various ED-Agents other than the post of EDSPM and EDBPM is VIII-Standard only;

(b). Preference to the candidates with matriculation qualification is only the proposition/optional provision which has no compulsory implementation;

(c). Candidates with Matriculation qualification do not get any automatic immunity to become suitable to hold the ED-Posts as because the D.G. P&T letters also further add that the candidates should have sufficient working knowledge of regional language and simple arithmetic so as to discharge their duties satisfactorily.

(d). The selection of ED-Packer, Thoubal SO was made by holding a test on simple arithmetic and the candidate with Class-VIII qualification secured more marks in the said test than the candidates possessing matriculation qualification and as such non selection of candidates with matriculation qualification does not amount to non giving of preference over candidate with VIII-Standard qualification.

(e). The opinion of the disciplinary authority, to give preference to one of the 2(Two) matriculates available for the selection, does not bear any logic as because the disciplinary authority has not mentioned anything about the basis by which the selection of 1(One) of the 2(Two) matriculate candidates should have been done.

(f). The disciplinary authority also has not mentioned as to how the candidates possessing Class-VIII qualification has to be excluded without giving any opportunity when candidates with matriculation qualification are available.

(g). There is no departmental instruction for out-rightly rejecting the candidates with VIII-Standard and below matriculation qualification when candidates with matriculation qualification are sponsored by the Employment Exchanges.

2.8. By stating the above, the Charged Official has justified the selection of a candidate with Class-VIII qualification to the post of ED-Packer, Thoubal S.O.

the selection of ED-Agents also do not state anything that the candidate scoring high in the suitability test has to be selected.

(e). The D.G. P&T & D.G-Posts letters referred to in the charge sheet memorandum along-with other clarification available on the method of recruitment of ED-Agents printed below EDAs(Conduct & Service)Rules clearly contains the basis by which candidates with matriculation qualification have to be preferred over the candidates with Class-VIII qualification. The charged official, being a senior IPOs, cannot say that he is ignorant of the departmental instructions.

(f). The departmental instructions governing the recruitment of ED-Agents do not authorize to exclude the candidate with Class-VIII qualification when candidates with matriculation qualification are available. But there is a provision, in the departmental instructions on the method of recruitment of ED-Agents, for giving preference to the candidates with matriculation qualification.

(g). When there are candidates with matriculation qualification for the post of ED-Packer, it is necessary in the part of the recruiting authority to give due preference to those candidates. Giving preference to the candidates with matriculation qualification does not mean outright rejection of candidates with Class-VIII and below-matriculation qualification.

2.10. Therefore, the defence of the Charged Official is not only irrelevant but also totally meaningless.

3. In the article of Charge-II, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal has been charged for violation of Rule-3(1)(i), Rule-3(1)(ii) & Rule-3(1)(iii) of CCS (Conduct)Rules,1964 because of appointment of a single candidate namely Md.Azad Khan as ED-Packer, Thoubal S.O with retrospective effect from 2(Two) different dates by 2(Two) different orders.

3.1. It may be seen from Exhibit No.S-3 that the said Shri.D.K.Bora started the process of recruitment of ED-Packer, Thoubal S.O on 29.12.99 by addressing the District Employment Officer, Thoubal and the District Employment Officer, Thoubal sponsored 3(Three) candidates for the post vide Exhibit No.S-4. After that, as per Exhibit No.S-6,

2.9. From the defence of the Charged Official it may be seen that the Charged Official could not justify his position and in the absence of any other alternative he has submitted all irrelevant things to confuse the case. Because,

(a). When the departmental instructions state that the minimum required educational qualificiation for the post of various ED-Agents other than EDSPMs and EDBPMs is VIII-Standard, the same departmental instructions also state that the candidates with matriculation qualification have to be given preference in the selection of various ED-Agents other than EDSPMs and EDBPMs.

(b). Departmental rules and instructions are to be strictly followed by all the Govt. servants. In this instant case, the D.G-P&T and D.G-Posts letters are containing the method of recruitment of ED-Agents and as such the Charge Official should strictly follow the departmental instructions while recruiting the ED-Agents. Powers to interpret the rules and clarify the departmental instructions are the vested with the Government and not with the Government Servants. Therefore, the statement of the Charged Official that the preference to the candidates with matriculation qualification is only the proposition/optional provision that is "optional" and "not mandatory" is only his opinion, which shows his own way of interpreting the departmental instructions.

(c). Candidates with matriculation qualification gets preference over the candidates with VIII-Standard qualification and no immunity of any kind is stated anywhere in the D.G. P&T and D.G-Posts instructions. The Charged Official, being a Govt. servant is duty bound to follow the D.G-P&T & D.G-Posts instructions while recruiting ED-Agents. Neither the condition to possess sufficient working knowledge of regional language and simple arithmetic, nor the better performance of a candidate with VIII-Standard qualification in the suitability test conducted by the recruiting authority could take away the preference entitled to the candidates with matriculation qualification in the selection of ED-Agents.

(d). The charged official has not explained the basis of suitability test and basis for selection of the candidate securing higher marks in the suitability test to fill up the ED-Posts.. The D.G-P&T and D.G-Posts letters governing

appointed regularly with effect from 01.02.2000 with effect from 01.02.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED Packer/Thoubal S.O dated 26th April 2000. Thus, Md.Azad Khan, S/o. Late Md.Abdul Jalil of Lilong Turel Ahanbi who was selected for the post of ED-Packer, Thoubal S.O on 06.04.2K, was appointed to the post of ED-Packer, Thoubal S.O with effect from 2(Two) different dates prior to his selection vide 2(Two) difference orders.

3.3. In his defence, the Charged Official has stated that there is nothing like issuing of two appointment letters as because the appointment letter No.A-1/ED Packer/Thoubal S.O dated 31.03.2000 was a letter of provisional appointment issued with effect from 01.03.00 and not from 01.03.01, but while issuing the regular appointment the date of joining of the official was taken to be 01.02.00 due to oversight.

3.4. The Charged Official himself has admitted that he issued the provisional appointment with effect from 01.03.2000. The date of provisional appointment appearing as "01.03.2001" in the 6th line of second paragraph of Article-II in Annexure-3/Page-3 is only a typing mistake which needs to be read as "01.03.2000". The I.O is requested to allow the correction of the typing mistake and the C.O may kindly be communicated that the date of provisional appointment may be read as "01.03.2000" instead of "01.03.2001" as explained above.

3.5. The defence of the Charged Official that 2(Two) different dates of appointment was due to oversight is not agreeable as because the Charged Official has not explained as to how the oversight took place.

3.6. Further, the appointment of Md.Azad Khan, S/o.Late. Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal SO has been made with effect from a date prior to his selection. Even if, the date of appointment is taken as 01.03.'00 as stated by the Charged Official, the Charged Official has not explained as to how the appointment was made with effect from a date prior to the selection of the candidate.

3.7. The Charged Official conducted the selection test only on 04.03.2K and the selection of ED-Packer, Thoubal SO was finalized only on 06.04.2K. But, the Charged Official, provisionally appointed the candidate namely Md.Azad Khan, who was declared selected to the post of ED-Packer, Thoubal

the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal called all the 3(Three)candidates nominated and sponsored by the District Employment Officer, Thoubal to appear in a written test held at his office on 04.03.2K. As per Exhibit No.S-8, i.e., SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED Packer/Thoubal S.O dated 06.04.2K; one Md.Azad Khan who topped in the test held on 04.03.2K was selected for the post of ED-Packer at Thoubal S.O. As per the noting of the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal on Exhibit No.S-8, "Md.Azad Khan is selected and his appointment is being issued after obtaining the Police Verification report". But, Exhibit No.S-7 and Exhibit No.S-9 shows that Md.Azad Khan, the candidate selected for the post of ED-Packer, Thoubal S.O was provisionally appointed for a period of 3(Three) months with effect from 01.03.2000 vide SDIPOs, 2nd Sub Dn., Imphal No.A-1/ED-Packer/Thoubal SO dated 31.03.2000 and the same candidate has been regularly appointed as ED-Packer, Thoubal S.O with effect from 01.02.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED-Packer/Thoubal S.O dated 26th April 2000. Both the orders shown in Exhibit No.S-7 & S-9 have been issued by the said Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal.

3.2. As per D.G-P&T Letter No.43/66-Pen dated 17.10.66 read-with Rule-3 of P&T Man.Vol.IV, pre-appointment formalities should be completed before the candidates selected for appointment to ED-Posts are appointed as ED-Agents. But, in the appointment of Md.Azad Khan S/o.Late. Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal S.O, it may be seen that:

(i). As per Exhibit No.S-6, the Charged Official, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal, conducted the suitability test for selection of ED-Packer, Thoubal S.O on 04.03.2000. But, as per Exhibit No.S-7, Md.Azad Khan was provisionally appointed as ED-Packer, Thoubal S.O with effect from 01.03.2000.

(ii). As per Exhibit No.S-8, the selection of ED-Packer, Thoubal SO was made on the basis of marks secured in the suitability test conducted on 04.03.2000 and the selection was finalized only on 06.04.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED-Packer/Thoubal SO dated 06.04.2K. But, as per Exhibit No.S-7 & S-9, the candidate whose selection was completed only on 06.04.2000 was appointed provisionally with effect from 01.03.2000 vide SDIPOs, 2nd Sub-Dn., Imphal No.A-1/ED-Packer/Thoubal SO dated 31.03.2000 and was

SO on 06.40.2K with effect from 01.03.2000 by a provisional appointment order dated 31.03.2000 and again with effect from 01.02.2000 by a regular appointment order dated 26th April 2000.

3.8. There is no provision in the departmental rules that anybody could be appointed with effect from a date prior to selection. Therefore, the Charged Official not only failed to maintain absolute integrity and devotion to duty by appointing Md.Azad Khan. S/o.Late.Md.Abdul Jalil of Lilong Turel Ahanbi as ED-Packer, Thoubal S.O with effect from a date prior to the selection of the said candidate, but also acted in a manner which is highly unbecoming of a Govt. servant. So, violation of Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) are proved beyond any doubt. Issuing provisional appointment with effect from 01.03.2000 and regular appointment with effect from 01.02.2000 by the Charged Official were the further acts which exposed him to have once again violated Rule-3(1)(i), Rule-3(1)(ii) and Rule-3(1)(iii) of CCS(Conduct)Rules,1964. Violation of D.G-P&T instructions in Letter No.43/66-Pen dated 17.10.66 read-with Rule-3 of P&T Man.Vol.IV by the said Shri.D.K. Bora, SDIPOs, 2nd Sub-Dn., Imphal is also therefore proved beyond any doubt.

4. It is, therefore, submitted that both the charges framed against the Charged Official, Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal are proved beyond any doubt.

15/2/02

(L.Tiken Singh)
PRESENTING OFFICER.
&
Sub Divisional Inspector of Post Offices,
Ukhrul Sub-Dn., Ukhrul-795 142.

No.A-1/PO/Rule-14/II/Corr. 15 February 2002.

Copy to:

1. Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal-795 001 for information w.r.to Order No.7 dated 08.02.2002 from I.O's file No.A-1/Inquiry/Rule-14/1/2001-02.
2. The Director Postal Services, Manipur, Imphal-795001 for information.

Annexure R-4

R-4

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ANNEXURE - 9

Under Receipt
1 (One) Page Only

NORTH EASTERN POSTAL CIRCLE
Director Postal Services,
Manipur State,
Imphal - 795 001.

12 March 2002.

No.B-2/D.K.Bora

Shri.D.K.Bora,
Sub-Divisional Inspector of Post Offices,
2nd Sub-Dn., Imphal - 795 001.

Sub: Departmental Inquiry under Rule-14 of CCS(CC&A)Rules, 1965 against Shri.D.K.Bora, SDIPOs, 2nd Sub-Dn., Imphal.

1. A copy of the report of the Inquiry Officer received vide SPOs/Imphal No.A-1/Inquiry/Rule-14/1/2001-2002 dated 08.03.2002 containing 38(Thirty Eight) pages[ie.Page-1 to 38 of 39 pages], in respect of the departmental inquiry held against you, is forwarded herewith for facilitating you to submit your written representation or submission to the undersigned within fifteen days from the date of receipt.

2. If no written representation or submission is received from you within the stipulated time, action on the inquiry report will be carried on without any further notice.

3. Photostat copies of performance sheets placed at Page-48/C, 49/C, 50/C and 51/C in file Mark:A-1/ED-Packer/Thoubal S.O which has been mentioned in Para-3 of your defence stated 07.02.2002 having reference to Para-2(3) of Order No.7 dated 08 Feb 02 of the disciplinary proceedings and considered by the I.O for coming to the conclusion regarding the article of Charge-I are also forwarded herewith. (48/C is not a performance sheet but the question set by you to test the suitability of candidates for the post of ED-Packer, Thoubal S.O)

(G.Ninan)
Director Postal Services,
Manipur, Imphal-795001.

D/A : As stated above.

Annexure R 5

proceedings on account of non-payment of subsistence allowance, the e quiry conducted against him, *ex parte*, could be construed as denial of re sonable opportunity of defending himself. It may, therefore, once again impressed upon all authorities concerned that after a Government servant placed under suspension, prompt steps should be taken to ensure that imm diate action is taken under FR 53, for payment of subsistence allowance an the Government servant concerned receives payment of subsistence allow ance without delay and regularly subject to the fulfilment of the conditio laid down in FR 53. In cases where recourse to *ex parte* proceedings be comes necessary, it should be checked up and confirmed that the Govern ment servant's inability to attend the enquiry is not because of non-paymen of subsistence allowance.

[G.I., Dept. of Per. & Trg., No. 11012/17/85-Estt. (A), dated the 28th October, 1985.

15. Action on the inquiry report

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

[1][(1-A) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(1-B) The disciplinary authority shall consider the representation, if any, submitted by the Government servant before proceeding further in the manner specified in sub-rules (2) to (4).]

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (*i*) to (*iv*) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission the record of the inquiry shall be forwarded by the

1. Sub-rules (1-A) and (1-B) inserted *vide* G.I., Dept. of Per. & Trg., Notification No. 11012/4/94-Estt. (A), dated the 3rd May, 1995, published as GSR 276 in the Gazette of India, dated the 29th July, 1995.

disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant .

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (*v*) to (*ix*) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.

GOVERNMENT OF INDIA'S INSTRUCTIONS

(1) Self-contained, speaking and reasoned order to be passed and to issue over signature of prescribed disciplinary/appellate/reviewing authority.—As is well known and settled by Courts, disciplinary proceedings, against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by such authorities should have the attribute of a judicial order. The Supreme Court, in the case of *Mahavir Prasad* v. *State of UP* (AIR 1970 SC 1302) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

2. However, instances have come to the notice of this Department where the final orders passed by the competent disciplinary/appellate authorities do not contain the reasons on the basis whereof the decisions communicated by that order were reached. Since such orders may not conform to legal requirements, they may be liable to be held invalid, if challenged in a Court of Law. It is, therefore, impressed upon all concerned that the authorities exercising disciplinary powers should issue self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements.

3. Instances have also come to notice where, though the decisions in disciplinary/appellate cases were taken by the competent disciplinary/

1. G.I., M.H.A., (D.P. & A.R.), Notification No. 11012/2/77-Ests. (A), dated the 16th August, 1978, published as S.O. No. 2465 in the Gazette of India, dated the 2nd September, 1978.

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
10 MAY 2004
गुवाहाटी न्यायपीठ
Guwahati Bench

Filed by the applicant Through Alisha Das Advocate 10/5/04

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

OA NO.45/03

Diganta Kumar Bora

.....Applicant

-VS-

Union of India & Ors.

.....Respondents

REJOINDER FILED BY THE APPLICANT AGAINST THE WRITTEN STATEMENT FILED BY THE RESPONDENTS

1. That the applicant has gone through the Written Statement submitted by the Respondent No.2 and 3. Save and except the statements which are not specifically admitted herein below, rest of the statements are treated to be total denial, and the statements which are not borne on records are also denied and the Respondents are put to the strictest proof thereof.

2. That with regard to the statement made in para 1 of the written statement more specifically in para 2 (iii) the applicant while reiterating and reaffirming the statement made in the OA begs to state that the basic minimum required educational qualification for recruitment of ED packer and other ED Agents except the EDBPM is Class VIII standard only. However a choice within bracket after the word class VIII saying that "HSLC or equivalent may be preferred" is found added. Then again it continues with the main provision which says that the candidate "Should have sufficient working knowledge of the regional language and simple arithmetic so as to discharge their duties

satisfactorily." The views expressed by the Respondent No.3 that the "Preference" "Shall" be given to the candidate with matriculation qualification is not at all agreeable as because the working knowledge in regional language and simple arithmetic is a must as per the basic provision prescribed in the said instruction. Thus the opinion of the Respondent No.3 that any one of the two matriculate candidates sponsored by the Employment Exchange should have been appointed to the post of ED packer of Thoubal SO is not at all tenable. For efficient and satisfactory discharge of one's duty as ED packer, it is made compulsory, as per the available instruction, on the part of the aspiring candidate to possess the sufficient working knowledge in regional language and simple arithmetic. No where in the instructions available in the method of recruitment of ED Agents it is said that the selection of candidate to the post of ED packer should be automatically based on the basis of educational qualification. But as the Respondent No.3 was vindictive and bearing a sense of taking revenge on the applicant, he resorted to frame the charge sheet under Rule-14 of the CCS(CCA) Rules, 1965 on some frivolous, baseless grounds and ultimately removed the applicant from service. Thus the action proposed by the Respondent No.3under Rule-14 of the CCS(CC&A) Rules, 1965 and the final order of removal passed there on was wholly biased, motivated, vindictive and un-warranted.

The Views expressed repeatedly by the respondent that "One" of the "Two" matriculates sponsored by the Employment Exchange, Thoubal should have been "Preferred" and appointed to the post of ED packer, Thoubal SO sounds no logic. it is

well known to the respondent that the candidates to any category of post or services are required to fulfill certain basic requirements to become eligible for the post or services and then to face the selection process in force, before he or she is finally declared selected to the concern post or service. No body could ever be selected or rejected on the basis of possession of higher or lower educational qualification provided the criteria of minimum required educational qualification is fulfilled. In the case of ED packer of Thoubal SO, the Employment Exchange has sponsored the names of three candidates out of which(1)Md. Azad Khan was class VIII standard, (2) Miss Mumtaz was HSLC passed and (3)Md Abdur Razaque was PU passed. Thus the educational qualifications possessed by the three candidates as sponsored by the Employment Exchange were different to each other and not uniform. The department did not say anything as to the basis by which selection of ED Agents to the ED posts other than the EDBPM has to be made. In case of selection of EDBPM, the department has specifically stated that such selection should be made on the basis of marks secured in the HSLC or Equivalent Examination passed from any recognized Board, But no such instruction or provision is available in respect of selection/appointment of ED posts, namely ED packer, EDDA, EDMC, ED Messenger, ED stamp Vendor etc. The department also did not say anywhere in the EDA (Conduct and Service) Rules, 1964 that the appointment of candidates to the post of ED packer or other ED Agents should be made summarily on the basis of possessing of matriculation qualification. However, the department had made it crystal clear that every candidate whosoever is selected to the post of ED packer or other ED posts should

have sufficient working knowledge of regional language and simple arithmetic. But the parameter by which the sufficient working knowledge of regional language and simple arithmetic has to be worked out, has not been pointed out by the department. So, the appointing authorities to the post of ED packer and all such ED posts were required to invoke some basis to evaluate the sufficient working knowledge of the candidate in regional language and simple arithmetic.

In Manipur Postal Division, the basis adopted by all the appointing authorities for selection of candidates to the Various ED posts is "Holding of test in simple arithmetic." The candidate who secured the highest marks is being selected to the post irrespective of the candidate (s) possessing, higher or lower educational qualification. This procedure is more than 30 years old and there has not been any objection ever raised by any of the higher authorities in course of their inspection of appointment cases during annual inspection of the office of the appointing authorities. In such a situation where the appointment made by the other Inspectors are never held irregular or raised any objection, then how the appointment of the ED packer of Thoubal SO which was identical to hundreds of appointments made by other Inspectors, could be held irregular to be charged under Rule 14 of CCS(CC&A) Rules, 1965 and ultimately punished with the removal from service. Thus it is quite unreasonable, vindictive, biased and motivated. This was done and made possible as the respondent No.3 in his capacity of DPS Manipur Division Imphal was conspiring to spoil the services of the applicant to suit his personal whims and fancy right from his joining in the division on 30.10.2000.

The circumstances for issue of provisional appointment letter and reason for subsequent issue of regular appointment letter covering the provisional period of services rendered by the official was clearly rectified in course of regular hearing as well as to the Respondent No.3 and the Appellate Authority. If it was so serious to render an official for removal from service, why similar action is not initiated against the Respondent No.3 who had issued series of similar appointment letters, Vide Enclosures in C-1, C-2, C-3, C-4 & C-5.

There has not been any such evidence on record that the applicant has ever violated any such Rules or Provisions of Rules which may tantamount to misconduct for framing charges under Rule 14 of CCS(CC&A) Rules, and eventually held liable for the punishment of removal from service. Even if in the opinion of the Respondent No.3, there has been certain irregularities in the appointment of the ED packer, Thoubal SO, the nature of the irregularity assessed by the Respondent No.3 is so pretty that it does not cover the scope to frame a charge sheet under Rule 14 of the CCS(CC&A) Rules 1965. It has already been stated in the original application that the Govt. of India's Instruction-(3) under Rule 14 of CCS(CC&A) Rules, 1965 has categorically listed as Annexure the types of cases which merit for imposing any of the major penalties.

1. Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g,-

a) possession of disproportionate assets;

b) obtaining or attempting to obtain illegal gratification;

c) misappropriation of Government property;

d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

2. Falsification of Government records.

3. Gross irregularity or negligence in the discharge of official duties with a dishonest motive.

4. Misuse of official position or power for personal gain.

5. Discloser of secret or confidential information even though it does not fall strictly within the scope of Official Secrets Act.

6. False claims on the Government- like T.A. claims, reimbursement claims, etc.

But a comparative analysis of the allegation raised by the Respondent No.3 in the Charge Sheet memorandum with the types of offences listed by the Govt. of India in the above list would vividly disclosed that the applicant had done nothing of the sort for which he could be proceeded under Rule 14 of the CCS(CC&A) Rules, 1965 and then got removed from service. Thus the charge sheet memorandum framed by the respondent No.3 and his final order dated 11.04.2002 for removal of the applicant from service was totally vindictive, unjustified, unreasonable and motivated.

Both the I.O Shri N.C.Halder, Dy. Superintendent of post offices and the P.O. Shri L.Ticken Singh, Sub Divisional Inspector of Post Offices Ukhrul Sub

Division, Ukhrul has been appointed by the Respondent No.3 with vested interests as those two officials being directly subordinate to the Respondent No.3 would be placed in a compelling position to conduct the inquiry to the whims and fancy of the Respondent No.3. The inquiry was conducted absolutely in the way as desired by the Respondent No.3 and the so called inquiry report of the I.O was prepared with the aid of the Respondent No.3. The I.O. Shri N.C. Halder does not know the ABC of type writing or use of computer. The whole length of inquiry report comprising of 39 pages was practically drafted by the concerned disciplinary authority to his own choice and in his own computer in convenience with the I.O. and the I.O. was simply made to sign the report. Thus it would be crystal clear that the I.O. was appointed only for the names sake who had practically got no voice but to act as per the dictates of the disciplinary authority. Thus the appointment of the I.O. Shri N.C. Halder who was directly subordinate to the disciplinary authority was irregularly done with vested interest of the disciplinary authority.

In rule 14 (12) of CCS(CC&A) Rules 1965, it is clearly stated that the appointment of Inquiry Officer be made from respective wings of Postal and Telecommunication Wings to which the delinquent official belongs but from a different division, preferably at the same station or nearby, (D.G.P&T Letter No.6-8/74-Disc.1, dated the 21st September, 1974). But this procedure was not adopted by the disciplinary authority because he was very much aware of the fact that if the

I.O. is appointed from other station, he will have no control over the said I.O. and the inquiry report will not be up to his whims and fancy. That is why the disciplinary authority has appointed Shri N.C. Halder as the I.O. as Shri Halder could be made to dance as per the tune played by the disciplinary authority. And exactly this had happened when Shri N.C. Halder acted to the choice of the disciplinary authority to help removing the applicant from service by submitting baseless, irrelevant, unreasonable and motivated inquiry report to the disciplinary authority. The findings of the inquiry report was already refuted at length in the original application filed before the Hon'ble CAT.

Rule 14(9) of the CCS(CC&A) Rules 1965 clearly states that the charged Government servant may be allowed to engage another Government Servant as defence assistant from any other station than the head quarter of the charged Government servant and the place of inquiry. But the request of the applicant to engage Shri Uttam Sengupta ASPOs (HQ) O/O the Superintendent of Post Offices, Sibsagar Division, Sibsagar as his defence assistant in representation dated 24.1.2002 has been rejected in such a manner and time that the applicant had no other option except to participate in the inquiry single-handedly without any assistance from any defence assistant.

The representation of the applicant for appointment of his defence assistant was initially not rejected by the I.O. in course of the hearing of the

case on 30.1.2002. The hearing for the day was already concluded and the order sheet was signed by the I.O., the P.O. and the C.O. (Applicant) and the copies were handed over to all concerned. But after the departure of the P.O. and the C.O. the I.O. in connivance with the Respondent No.3 in a very undemocratic and illegal manner released another order on the same date in absence of the P.O. and the C.O. rejecting the prayer of the applicant for appointment of Shri Uttam Sengupta as defence assistant and fixed up the next hearing on 1.2.02 hastily as per the wish of the Respondent No.3 to victimize the applicant any how. The copy of the 2nd order dated 30.1.02.

The order No.B-2.DK Bora dated 11.4.02 passed by the Respondent No.3 was whimsical, illegal and devoid of principle of natural justice. The detail facts and circumstances of the case was elaborately pointed out by the applicant in the original application submitted to the Hon'ble CAT.

In fact the Respondent No.3 has no right and authority to issue order of Removal, Dismissal or Compulsory retirement of any official in the cadre of Inspector of Post Offices. Because the Respondent No.3 was simply vested with the right and authority as applicable to the head of any Postal Division irrespective of the fact whether the Postal Division is headed by the Senior Superintendent of Post Offices or the Superintendent of Post Offices or the Director Postal Services. Thus the grade, post or services for

which the head of the Division is authorized to function as the Appointing Authority, he could issue order of Removal, Dismissal or Compulsory retirement of official to that grade, post or services only and not to others. The Right and Functions of the Divisional Head is restricted to the affairs within his own Division, say, appointment, transfer, posting, promotion etc. the Divisional Head is the appointing authority of Group "D" and Group "C" staff up to the cadre of Postal Assistant for the Division irrespective of the fact whether the Division is headed by a Superintendent, Sr. Superintendent or Director Postal Services. The cadre of Inspector belongs to Circle level, and their appointment, transfer, posting, promotion etc. are all vested with the authority at Circle level. The Director Postal Services stationed at Circle head quarter is the authority to deal the matters of appointment, discipline, transfer, posting, promotion etc. in respect of the cadre of Inspector of Post Offices as delegated by the Govt. The Post of the Director Postal Services stationed at Circle Head Quarter is a pre existed post ever since the creation of the Postal Circle. But the post of Director of Postal Services in the NE Circle for the states of Nagaland, Manipur and Tripura and Union Territories of Arunachal Pradesh and Mizoram are newly upgraded post from the earlier post of Supdt. and Sr. Supdt. of Post Offices. Accordingly under the notification no:12/7/32-Vig.III dated 17.7.1984, the Director of Postal Services in respect of the above states/Union Territories have been vested with the powers of appointment, discipline and appeal in respect

of those posts, grade and services which have earlier been exercised by the Supdt/ Sr/ Supdt. of Post Offices in the respective states/Union Territories.

It is also a well known fact that in a single station there cannot be two or more appointing authorities for appointment of a single set of officials. In respect of the cadre of Inspector of Post offices, director Postal Services stationed at the head quarter of the circle is the appropriate appointing authority. In the instant case NE Circle as a whole is a station for the cadre of Inspector of Post Offices and Director Postal Services (HQ) in the office of the Chief Postmaster General, Shillong is the authority vested with the power of appointment to this cadre. If as argued by the disciplinary authority, all the Directors of Postal Services posted in Manipur, Nagaland, Tripura and in the Union Territories of Arunachal Pradesh and Mizoram are equated with the powers and functions of the Director Postal Services stationed in the Head Quarter, there will be series of appointing authorities in respect of the cadre of Inspector of Post Offices which is practically not desirable or applicable under the provision of any rules and orders issued by the Government from time to time. Again if the argument put forward by the disciplinary authority in the matter of appointment, posting, transfer and promotion etc. in respect of the post of Inspector of Post Offices is for a while taken to be equal to the powers and functions of the Director Postal Services (HQ), then how the Directors of Postal Services stationed at Manipur,

Nagaland, Tripura etc. are again delegated to exercise the powers and functions in lieu of Supdt./Sr. Supdt of Post Offices as per the notification cited above. The argument of the disciplinary authority is therefore irrelevant and in no way his jurisdiction for exercising his power and function could be extended beyond the division for which he is posted for.

But it was unfortunate that the Appellate Authority having known the above facts in its true spirit, had deliberately sided with the disciplinary authority while disposing the appeal preferred by the applicant and held the action of the disciplinary authority to be correct. So the decision passed by the Appellate Authority is totally devoid of proper application of mind and robust common sense. It was just a summary decision passed under surmise and conjecture parallel to that of the order of the disciplinary authority except the fact that the former reinstated the applicant in service against to that of the order of removal issued by the letter i.e. the disciplinary authority.

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a summary decision passed under surmise and conjecture parallel to that of the order of the disciplinary authority except the fact that the former reinstated the applicant in service against to that of the order of removal issued by the latter i.e. the disciplinary authority.

But ironically the argument made both by the disciplinary authority and Appellate Authority for holding the applicant guilty of the charges are contradictory to each other. Both the disciplinary authority and Appellate Authority have miserably failed to prove with evidence in records that the applicant have ever violated any specific rules or provision of rules or acted in any manner which could be tantamount to misconduct for a trial under Rule 14 of the CCS(CCA) Rules 1965. Where there is no misconduct or commission of an offence, there could never be an action under Rule 14 of the CCS(CCA) Rules 1965, leave alone the quantum of punishment to be awarded for. But this could be made possible if the disciplinary authority and Appellate Authority joined hands together to act in camouflage with firm determination to hold someone guilty of committing no fault. And exactly this had happened in the case of the applicant who had been held guilty of committing no fault or violating any rules or provision of rules both by the disciplinary authority and Appellate Authority by importing the baseless, biased and motivated facts to their aids.

A careful study and through analysis of the orders passed by both the disciplinary authority and Appellate Authority will vividly disclose of the facts that:

a) The disciplinary authority initially voiced with conviction that any one of the two matriculate candidates sponsored by the employment exchange Thoubal should have been selected for appointment as ED-Packer Thoubal instead of selecting the candidate with educational qualification of Class VIII standard which inter alia means that the nomination of candidates with educational qualification of Class VIII standard, though fulfill the required minimum standard of educational qualification of Class VIII standard, though fulfill the required minimum standard of educational qualification for the post, has to be summarily rejected without bringing such candidate within the purview of selection procedure as there were matriculate candidates. If due to availability of matriculate candidates in the list of candidates sponsored by the employment exchange, candidature of Class VIII qualified candidate has to be discarded from the list, as voiced by the disciplinary authority, then the selection procedure/method has to be restricted to the matriculate candidates only. If this be the position and if the Class VIII qualified candidate has to be discarded from the list of candidates, the whole list of candidates will render null and void. Because for selection of candidates to any ED post there must not be less than three effective candidates as per the instructions contained in DG Post No.19-4/97-ED & TRG, dated the 19th August, 1998. it is further stated in the above instruction that all

candidates sponsored by the employment exchange or other wise should be taken into consideration. If the effective number of candidates is less than three, then the vacancy will have to be renotified to the employment exchange for extracting more candidates. In the present case if the candidature of Class VIII qualified candidates has to be discarded and made automatically ineffective for the post due to presence of matriculate candidates there would be only two candidates to be considered in the selection procedure which is not at all desirable under the provisions of instructions as the element of competitiveness could never be made effective between two candidates. There must be at least three candidates to make the selection effective by applying the tools of selection procedure in the true spirit. Therefore the list containing only two matriculate candidates would have automatically declared null and void and fresh notification about the vacancy should have been issued. The disciplinary authority as a prudent person would have suggested to re-notify the vacancy but he did not suggest for such recourse instead he had limited the selection procedure between the two matriculates with mala-fide intention to victimise the applicant anyhow.

Even the Appellate Authority utterly failed to take cognisance of the simple truth but mutely sided with the disciplinary authority to make the applicant a scrape goat.

B) It is amusing that the Respondent No.3

finding no other alternative to suggest for selection of ED packer and similar other ED Post, had finally accepted the selection procedure adopted by the applicant in the selection of ED-Packer Thoubal SO but dishonestly refused to agree with the selection of Md. Azad Khan who secured the highest marks in the test held for the purpose of selection. Instead the Respondent No.3 with a vested interest and in a very dictatorial and self-styled manner recorded his decision that Miss Mumtaz who secured only 47.5% of marks out of 40 should have been considered and appointed as ED-Packer Thoubal as she was a matriculate as Against Md. Azad Khan who secured 75% f marks out of 40 as he was only Class VIII standard. The test was held to select the candidate under the specific guidelines of instructions issued by the Department which stated that the candidate to be selected for the post of ED-Packer or such similar Post should have possessed sufficient working knowledge in regional language and simple arithmetic irrespective of the fact of possessing a higher or lower educational qualification. If in the test held for the selection of ED-Packer Thoubal, a matriculate candidate could not secure higher marks than that of a candidate of Class VIII standard, it is not the fault of the appointing authority and in no way he can be held responsible for selecting any candidate securing highest marks in comparison to the remaining candidates. It was not a class room test for promotion of a student for the next higher class simply on the basis of securing pass marks. It was the test held for appointment of candidate in the Government service and who so ever secured the highest

marks or not. The applicant is under the clouds of darkness as to how it could be made possible to reject a candidate with highest marks in favour of a candidate securing less marks in the selection test. Is such an element for selection of candidate with the lowest marks ever made applicable in the history of selection of candidate on the basis of test or interview? Is there any provision available for rejecting a candidate with the highest marks due to possession of lower educational qualification? Probably no such method or system is in existence in any department or organization. So the action of the disciplinary authority in holding the applicant guilty of selecting the highest marks securing candidate is not only illegal and violative of principle of natural justice but also devoid of application of proper justice and fair play.

But unfortunately the Appellate Authority had also upheld the action of the disciplinary authority and justified the order of removal of the applicant from service. But he appeared to have shown benevolence to reinstate the applicant in service while modifying the order of removal to that of reduction to lower time scale of pay in the scale of Rs.5500-175-9000 for a period of 5(5) years with further direction that the period from the date of removal up to the date of reinstatement would not be treated as duty for any purpose including for pensionery benefits. As a model employer, one should always act with highest probity and candor. But the nature of reduced version of punishment is not only too grievous and heavy but also totally unreasonable, unjust and illegal. If the commission

of a pretty irregularity as per the decision of the disciplinary authority and Appellate Authority could be commensurate with the punishment of such an altitude, how the counterparts of the applicant who are also making appointments with the manner and procedure exactly identical to that of the applicant have been left behind from the purview of initiating disciplinary action. The applicant craved to know whether:-

i) Rule and provisions applicable for committing similar irregularities by different persons at different times are equally applicable to all such officials or not.

ii) The quantum of punishment for committing similar irregularities by different officials at different times should be inflicted equally to all or not.

iii) The application of rules and provisions for committing similar irregularities should vary from person to person to person or not.

iv) The application of rules for committing similar irregularities by different officials is at the discretion of disciplinary/Appellate Authority.

v) The rules and provisions for committing similar irregularities by different persons should be made applicable on the basis of east, creed and colour.

These issues are left before the Hon'ble CAT. However the applicant honestly believed that all are equal in the eyes of law. And there should not be an element of

differential attitude with the law exercising authorities while dealing similar cases of irregularities committed by different individuals at different times. But in the case of the applicant, gross injustice and vindictiveness has been displayed both by the disciplinary authority and Appellate Authority. The applicant during hearing of the case brought into the notice of the IO five cases of appointments which were made exactly on the similar footing as was done by the applicant in respect of the appointment of Md Azad Khan as ED-Packer Thoubal SO. While the action of the applicant in a single instance of appointment was termed to be serious enough to justify removal of service, the disciplinary authority and Appellate Authority even after repeatedly informed about the existing norms and procedure adopted by all the Inspectors in their respective jurisdictions citing examples of as many as five appointment cases, no action has ever been initiated against any of the Inspectors. Apparently the action of the disciplinary authority and Appellate Authority was devoid of justice and fair play.

The particulars of appointment cases in respect of appointments made by other Inspectors pointed out to the I.O. during inquiry on 04.2.2002 are as under:-

(i) File No.-A-1/PF/EDMC/Haoreibi containing 37 pages

(ii) File No.A-1/PF/EDDA cum EDMC/Changamdabi BO containing 27 pages.

(III) File No.-A/PF/EDDA cum EDMC/Phundrei bo containing 21 pages.

(iv) File No.A-1/Wangoi SO/98-99 ie No-A-1/PF/EDDA/Wangoi SO containing 19 pages.

(v) File No.A-1/PF/EDDA/cum EDMC/K.Wangkhem containing

34 page.

The IO started the inquiry on Ø2.Ø1.2ØØ2 and concluded on ØØ.Ø2.2ØØ2 by denying the applicant from availing the opportunity of selecting the defence assistant, disallowed to produce the additional documents and fixed regular hearing in such a manner and situation so that the applicant cannot get any scope to face the inquiry with sound mind and free will.

The PO was compelled to submit brief on 15.2.2ØØ2 and the applicant submitted his brief on 6.3.2ØØ2. The IO submitted his inquiry report on 8.3.Ø2 containing thirty nine pages (which was normally not possible on his part to draft a report manually of such length and then got it typed through another person as the IO has no knowledge of typing or computer with full of errors and mistakes to substantiate the allegations against the applicant.

The IO's report was hurriedly sent to the applicant through special messenger in the evening of (not during office hour) 12.3.2ØØ2. The applicant submitted his defence against the IO's report on 8.4.Ø2 and the final order of removal of the applicant from service was issued on 11.4.Ø2. From these events it could be crystal clear that the entire process has been carried out in haste so as to victimize the applicant by hook or by crook.

The applicant preferred the appeal to the PMG, NE Circle Shillong on 22.4.2ØØ2 and the PMG as Appellate Authority disposed the appeal on 17.1.2ØØ3 i.e. after a lapse of more than eight months of time which is another

indication for intentional harassment and denial of justice to the applicant.

The reduced version of the punishment awarded by the PMG as Appellate Authority in Memo No.Staff/109/II/2002 dated 17.1.03 is itself defective in nature and amounts to multiple jeopardy. The basic pay of the applicant has been summarily ordered to be fixed at Rs.5500/- as against Rs.7250/- drawn by the applicant at the time of removal from service on 11.4.02. Thus thee was a lost of Rs.1750/- in the shape of basic pay itself leave alone the other accrual benefits like DA, SCA, HRA, TA etc. Besides this loss was ordered to be effective for five years Further the period from the date of removal to the date of reinstatement in service was ordered not to be treated as duty for any purpose including pensionery benefits. It is thus apparent that the Appellate Authority while deciding the fate of the appeal has utterly failed to consider the nature of the case in its true spirit but decided whimsically to protect and satisfy the vested interest of the disciplinary authority i.e Respondent No.-3.

The Appellate Authority did not at all taken into account the facts enjoined in the defective and erroneous IO's report which were pointed out by the applicant in his defence statement dated 8.4.02 but subjectively issued the order without proper application of mind. The removal order was issued by an authority who was practically not competent to do so as narrated earlier. This fact was also pin pointed by the applicant on 10.10.02 to the Appellate Authority on the light of order contained in the Government of India

Notification No:12/32-Vig.III dtd 17.7.84. The applicant also did not commit any such offence like bribery, corruption or other misconduct involving any substantial loss to the Department. There was also no discussion either in the inquiry report submitted by the IO, punishment order issued by the disciplinary authority or in the order of the Appellate Authority about lack of integrity on the part of the applicant. In the order of the Appellate Authority it is stated that "in absence of any specific guide lines from the Department in selection of ED-Packer and similar other posts, the applicant was required to select the candidate on marks secured in the basis/preferential educational qualification of the candidates". It is thus best known to the Appellate Authority that:-

1. There is no guide lines issued by the Department at any point of time to the method of selection of ED-Packer and similar other ED posts.

2. But the Appellate Authority intentionally and deliberately remained silent about the fact that there is strict instruction that "every such ED-Agents viz ED-Packer and similar other ED-Agents should possess sufficient working knowledge in regional language and simple arithmetic" which inter alia means that matriculate candidate cannot summarily be selected to the post applied for purely on the basis of possessing matriculation qualification. He/she is required to possess the sufficient working knowledge in regional language and simple arithmetic and this was must and obligatory as per the existing instruction. While suggesting his views for selection of candidate on the basis of marks in the basic/preferential educational

qualification, it is not understood as to how the learned Appellate Authority has concluded that the candidate with preferential educational qualification would only possess the sufficient working knowledge in the regional language and simple arithmetic.

Besides it is the views of an Appellate Authority expressed in course of a decision taken in a particular case but the views expressed by him could in no way take the place of rule/instruction to be applied as a whole within the entire country. If at all he is empowered to enact such rules and instructions, it was his bounded duty to introduce the same before hand and bring to the notice of all concerned for correct implementation. But this was not done instead twisted his views subjectively to hold the applicant guilty in the selection of ED-Packer Thoubal who has been selected by the applicant on the basis of highest marks as per the test held in simple arithmetic. If at all the views of the Appellate Authority was needed to apply, as a prudent and rational person, the Appellate Authority should have given an opportunity to the applicant to cancel the appointment made by the applicant and to make fresh selection to the post of ED-Packer Thoubal as is being done by him in respect of several appointments made by the disciplinary authority ie Respondent No.3.

3. While the Appellate Authority found the action of the disciplinary authority justified for removal of the applicant from service but subsequently reinstated the applicant considering only the length of service of the

applicant, it is not understood how the Appellate Authority has allowed all the other Inspectors to continue in service, who have been making appointments covering the same irregular method/procedure and instances of which were already brought to his notice by the applicant. Such differential and step motherly attitude towards any particular official from an officer in the cadre of PMG is very dangerous and unconstitutional.

4. The disciplinary authority did not disagree with the method of holding test in the simple arithmetic. But he whimsically and arbitrarily disagreed with the selection of candidate securing highest marks but sided with malafide intention for selection of candidate with lowest marks and removed the applicant from service on that footing. But the Appellate Authority held the applicant guilty for holding the test itself and for non-adopting the selection procedure on the basis of marks secured in the basis/preferential educational qualification by the candidates. Thus the views expressed both by the disciplinary authority and the Appellate Authority are contradictory to each other. Now the applicant is under the bushel of smoke as to what procedure should have actually been adopted while making selection of the candidate to the post of ED-Packer Thoubal. When the views expressed by two different authorities are totally opposite to each other, what choice is left to the people of lower rung working under such authority. As such both the orders issued by the disciplinary authority and the Appellate

Authority lack of proper justice, equally and impartiality and hence liable to be dismissed.

3. That with regard to the statement made in para 3, 4 & 5 of the Written Statement the applicant while reiterating and reaffirming the statement made in the OA begs to state that the contention of the respondents regarding the misconduct is totally mis conceived. In terms of Sub-Rule-23 of Rule 3(c) of CCS (Conduct) Rules, 1964 under any circumstances the action on the part of the respondents cannot be treated to be a misconduct. The crux of the issue can at best be treated as a misjudgment since the applicant was performing his quasi-judicial function.

4. That with regard to the statement made in para 6, of the written statement the applicant offers no comment on it.

5. That with regard to the statement made in para 7 of the Written Statement while reiterating and reaffirming the statement made above as well as in the OA the applicant begs to state that the procedure and method in the selection of ED Packer Thoubal was identical and similar to the procedure and method adopted by all the Appointing Authorities irrespective of the fact whether he is an Inspector or a Director of Postal Services and this procedure is more than three decades old. None of the reviewing authority have ever held the existing procedure to be wrong or incorrect. Even as on the date same procedure is being followed particularly in Manipur Division. While there has not been any specific instruction from the appropriate authority as to the method of selection of candidates to the

post of Ed Packer and similar other posts or any instruction issued to rectify the irregularity if any from the reviewing authority, it is ironical and unfortunate that only the applicant has been singled out and trapped for his no fault and victimized at the whims and fancy of the higher authority while all others left Scot free and sanguine.

6. That with regard to the statement made in para 8 of the written statement while reiterating and reaffirming the statement made above as well as in the OA the applicant begs to state that the appointment of IO and PO has been done in total violation of existing Rules and procedure as prescribed in the Rule 14 of CCS (CCA) Rule, 1965.

7. That with regard to the statement made in para 9 of the written statement the applicant while denying the contention made therein begs to state that the contention of the disciplinary authorities baseless and motivated. The request of the applicant for appointing his defence assistant from a station other than the Head Quarter or the place where the inquiry was held, has been rejected only in a closed door discussion of IO with the disciplinary authority after the closure of hearing on 30.1.2002. The IO who was a beck and call of the disciplinary authority was compelled to issue a second order on 30.1.2002 in absence of the CO and PO as per the wish and direction of the disciplinary authority to reject the request of the applicant for appointment of his defence assistant and forwarded the copy to the applicant through his wife on 31.1.2002 , fixing the hearing on 1.2.02. In such a position how could the applicant expect to act otherwise other than

to attend the hearing as fixed for by the I.O. at the direction of the disciplinary authority. Even when the applicant raised the issue of appointing defence assistant obtaining all the relevant information from the appointed defence assistant within a week, the I.O. flatly refused stating that once the case for appointing defence assistant is rejected on 30.1.2002, there will be no further consideration in the matter. So the argument of respondent No.3 is not at all acceptable.

B. That with regard to the statement made in para 10 of the written statement the applicant while denying the contentions made therein begs to state that the documents which were relevant and advantageous to the applicant were all rejected or not produced during hearing of the case to suit the whims and fancy of the disciplinary authority.

9. That with regard to the statement made in para 11 of the written statement the applicant while reiterating and reaffirming the statement made above as well as in the OA begs to state that the brief and defence statement submitted by the applicant on 6.3.2002 and 8.4.2002 respectively refuting the charges with material facts and evidences were not at all taken into due consideration by the disciplinary authority or by the Appellate Authority while deciding case of the applicant. Both the disciplinary authority and the Appellate Authority has decided the case subjectively without paying due regards to the principle of natural justice and concept of constitutional rights.

10. That with regard to the statement made in para 12 of the written statement the applicant while denying the contentions made therein begs to state that forwarding of inquiry report to the applicant is appeared to be meaningless as because the irregularities, omissions and mistakes which were pointed out by the applicant in his defence dated 8.4.2002 was totally overlooked and the decision was passed basing on the irregular, illegal and erroneous findings of the IO by twisting the facts to the choice of the disciplinary authority. The disciplinary authority is bound to act as per the findings recorded by the IO and if at all the IO's report is found to be erroneous, irregular and illegal it was needed the disciplinary authority to conduct a fresh inquiry but he cannot himself correct the irregularities of the IO recorded in the Inquiry report which were detected/pointed out by the applicant in his defence dated 8.4.02. The disciplinary authority held the irregularities committed by the IO as an inherent mistake but the irregularities on the part of the applicant has been treated so grievously that the applicant was liable for removal from service. it is not understood why no action has been taken against the IO for submitting false, incorrect and irregular inquiry report if at all the disciplinary authority was not biased, vindictive and arbitrary.

11. That with regard to the statement made in para of the written statement the applicant while denying the contentions made therein begs to state that the jurisdiction of the divisional head in the capacity of DPS/Sr. Supdt./Supdt. of Post Offices are equal in respect of

appointment, discipline an appeal. The notification restricting the rights and powers of a DPS stationed in a division to the extent of the rights and powers of Sr. Supdt./Supdt. of Post Offices is sufficient enough in this score where the DPS cannot function as the appointing authority to the cadre of Inspector of Post Offices. Thorough analysis was already made in the previous paras.

12. That with regard to the statement made in para 14 of the written statement the applicant while denying the contentions made therein begs to state that action of the Appellate Authority in finalising the case was already commented in the earlier paras. However it is mention worthy that:-

(a) Passing of two orders on 30.1.02, one in presence of both the P.O. and the C.O. while the other lonely by the I.O. in absence of both the P.O. and the C.O. fixing the next hearing instantly on 1.02.02 whimsically has prejudiced the whole proceeding. Had the I.O. been impartial and open minded he would not have acted like an instrument in the hand of the Respondent No.3. So no more explanation is needed to conclude that the entire proceedings have been drawn to the whims and fancy of the Respondent No.3.

(b) A person who is a Witness Complainant cannot function as a Disciplinary Authority.

In the instant case there is no complainant what so ever from any angle against the applicant. It is Respondent No.3 who in course of his inspection of the

office of the applicant on 8.12.2001 when he noticed certain irregularities while reviewing the appointment cases of 5 ED officials for the year 2001. But he did not put anything in the inquiry report released on 30.3.2002 or communicated anything to the applicant for rectification of irregularities if any. But after a lapse of more than 10 (ten) months, he charge sheeted the applicant with the allegation of certain irregularities in the appointment of ED packer of Thoubal S.O. and eventually removed the applicant from service.

Apparently the charges against the applicant has been levelled by the Respondent No.3. on the issues raised by himself. It is the Respondent No.3. who raised the complainant that there was certain irregularities in the appointment of ED packer appointed by the applicant in his capacity as SDI(P) 2nd Sub Division, Imphal. Hence the Respondent No.3 because the complainant and material witness to the main theme of the case. A complainant or a witness can never function as a disciplinary authority as per the Govt. of India's order 4(ii) below Rule 12 of CCS(CCA) Rules, 1965 Vide Decision taken in G.I., M.H.A. File No.7/29/61- Ests. (A) and D.G. P&T Memo No.6/64/64-Dis. Dated 27.01.1965.

But as the Respondent No.3 was pre-occupied with ulterior motive to harm and destroy the service carrier and the future life of the applicant, he like a dictator violated all the norms and principles of law of the Land, acted himself as the disciplinary authority and punished the applicant with the severest of the severe

punishments for committing no offence. The assertion of the Respondent No.3 that the proceedings were drawn concluded within the purview of Rules is not only false and misguiding but also arbitrary illegal and ultra-virus in the eyes of the law.

Similarly, the failure of the Appellate Authority to accept the simple truth pointed out by the applicant and to act as per the spirit of law is a glaring example that he joined hands unhesitantly with the Respondent No.3 to hold the applicant guilty as per the tune of the Respondent No.3.

(c) The whole length of inquiry report of the I.O. and the final order of the Respondent No.3 was written over the word "preference" and the applicant has been held guilty for non-giving of preference to the candidate to the satisfaction of the IO and the Respondent No.3. The applicant selected the ED-Packer Thoubal on the basis of the highest marks secured in the arithmetic test held for the purpose and this procedure was not challenged either by the IO or the Respondent No.3. But in a later course both of them disagreed with the selected made by the applicant on the plea that one of the two matriculates should have been preferred even though the matriculate candidates secured less marks than the Class VIII passed candidate. The applicant strongly believed that the "preference" to the matriculate was subject to possession of sufficient working knowledge in the regional language and in simple arithmetic as cited under the instruction for

appointment of ED-Packer and similar other posts. The marks secured by the matriculates were not only insufficient in comparison to their personal qualification but also far less to the candidate of Class VIII standard. So there was no point for rejecting the candidate with 75% of marks in favour of candidate who could not secure even 50% of marks. Thus the views and interpretation of the IO and the Respondent No.3 about giving preference sounds like "the king is never wrong" and so held the applicant guilty for no reasonable and sufficient ground.

It may be mentioned that the categories for which preference are to be awarded are clearly enjoined in the Govt. of India's Instruction No.6 below the Method of Recruitment, Section-iv of EDA (Conduct and Service) Rules 1964 which do not cover the instant case. So the argument of the Respondent No.3 is not tenable. Besides the literal meaning of the word "May" and "Shall" as is universally accepted is not similar. The word "May" means and expression of a proposal, a permission or a wish without any strong assertion or command. But the word "Shall" has far more significant and deeper meaning to that of "May". It also means an expression of a proposal or permission or wish but with strong assertion or command. So when it is said that preference "may be" given to Matriculate is a different term to that preference "shall be" given to the Matriculate where the former is dimply a proposal without firmness or conviction but the latter is the proposal with firmness and conviction. The later one is bound to be

resulted with action but the former one may not result with positive action. Another example when it is said that it may rain, means there may not be any rain. But when it is said that it shall rain, falling of rain is certain. So the conclusion of the I.O. and Respondent No.3 about making the preference compulsory in the instant case is not acceptable within the purview of existing instruction.

(d) The vindictiveness and ulterior motives displayed by the disciplinary authority against the applicant could be well established from the facts when he resorted to issue the removal order putting a back date in hand written on 11.4.2002 before he fled away from Manipur on 12.4.02. His cruelty, dishonest behaviour, grievous insult, destructive attitude towards the staff of lower rung are all well displayed when he resorted to remove an official at the verge of his next promotion with 29 years of unblemished record of service for the reason that a candidate who is never known to the Department has not been preferred for selection as ED packer. The nefarious activities, dictatorial attitude, vindictive nature and arbitrary treatment of Respondent No.3 as well as of the IO could be distinctly seen from the perusal of the enclosed documents if the Hon'ble CAT finds them relevant in deciding the fate of the applicant vide enclosure A-1, A-2, A-3, A-4, A-5 and A-6.

13. That with regard to the statement made in para 15 of the written statement the applicant begs to state that

the charge sheet was framed with ulterior motive to take revenge on the applicant for his no fault. There was no material evidence or records that the applicant as ever committed any such offence to justify framing of Charge Sheet Under Rule 14 of CCS(CCA) Rules 1965. Types of cases which merits action under Rule 14 of CCS(CCA) Rules 1965 are already discussed. the statement of Respondent No.3 is not at all correct and true. It was framed on the personal interest of Respondent No.3 who was the complainant and witness to the so called irregularities.

14. That with regard to the statement made in para 16 of the written statement the applicant begs to state that IO's appointment was made in total violation of the Govt. of India's instruction contained in DG P&T Letter No. 6-8/74-Disc-1 dated 21.9.1974. Holding of inquiry on 2.1.2002, 30.1.2002, 1.2.2002, 4.2.2002, 5.2.2002, 6.2.2002 and 8.2.2002 (final hearing), submission of brief by the PO on 15.2.2002 and submission of inquiry report on 6.3.2002 were all done at the instance of the disciplinary authority who was dominating and surveilling the enquiry proceedings daily by calling the IO to his chamber in between the day's proceeding. So the Respondent No.3 cannot claim that there was no biasness and vested interest in the appointment of the IO and PO who were directly subordinate to him.

15. That with regard to the statement made in para 17 of the written statement the applicant begs to state that the applicant was not provided with reasonable opportunity to search for his defence assistant after his request was rejected on 30.1.2002. The contention of the Respondent No.3

is not tenable as because when the Respondent No.3 was himself biased and vindictive, there was no point in making a representation against an order issued by himself with signature of the IO.

None of the records as were relevant and advantageous to the applicant have been produced as both the IO and the Respondent No.3 were preoccupied with the sense of culminating revenge on the applicant by hook or by crook. The action of the Respondent No.3 was wholly unfair, injustice and illegal from the concept of law and principle of natural justice enshrined in the Constitution of India.

16. That with regard to the statement made in para 18 of the written statement the applicant begs to state that Io's report was prepared subjectively with all incorrect, false and motivated facts to satisfy the whims and fancy of the Respondent No.3.

17. That with regard to the statement made in para 19 of the written statement the applicant begs to state that detailed facts about having no jurisdiction of the Respondent No.3 to function as appointing authority are already furnished above. The assertion of the Respondent No.3 is baseless, vogue, and misleading.

18. That with regard to the statement made in para 20 of the written statement the applicant begs to state that the order passed by the Respondent No.3 is illegal, unlawful and violative of prevailing law of the land.

19. That with regard to the statement made in para 21 of the written statement the applicant begs to state that the order of the Appellate Authority was a massacre of established law and natural justice enshrined in the Constitution of India. No prudent and rational person would have done the way the Appellate Authority did in disposing the appeal. His action was neither reasonable nor it was passed with proper application of mind and high probity.

20. That with regard to the statement made in para 22 of the written statement the applicant begs to state that the appointment made by the applicant was held to be irregular and so he was removed from service. But the appointment order issued by the applicant was remained in force and the person so appointed still continuing in the service. The applicant could not understand the logic how an appointing authority could be removed summarily by holding the appointment as "irregular" and simultaneously allowing the appointed person to continue in service. If there was an irregularity in the appointment of ED-Packer Thoubal it was needed to cancel the appointment order by the reviewing authority or the Appellate Authority as has been done in respect of appointment of BPM of Nungei EDBO, vide order No.Staff/118-14/2003(13) dated 3.4.03 and BPM of Lambui BO vide No.Staff.118-14/2003(14) dated 20.5.03 where in the appointment made by Respondent No.3 were held irregular and so the appointment orders issued by the Respondent No.3 has been canceled by the Appellate Authority but no action has been taken against Respondent No.3 vide enclosure B-1 & B-2.

But in the case of the applicant when he was virtually correct in the appointment of the ED Packer Thoubal but was held to be irregular by the Respondent No.3 as well as by the Appellate Authority (PMG), their courses of action was totally different to that of the action taken in respect of the above two appointment cases. No opportunity was given to the applicant to rectify the irregularities if any nor the appointment order was canceled. It is thus obvious that the action of Respondent No.3 and the Appellate Authority suffered from the flaw of equality, impartiality and rationality.

21. That with regard to the statement made in para 23 of the written statement the applicant begs to state that not acceptable from the concept of impartiality, equality and veracity of law and the principle of natural justice.

22. That with regard to the statement made in para 24 of the written statement the applicant begs to state that mere offering of personal hearing does not envisage the protection of natural justice when the facts enumerated during such hearing are deliberately ignored and twisted to hood wink the law and justice to suit one's personal interest. The appellate Authority has failed, rather avoided to apply proper application of mind and fairness in passing his order on 17.1.2003. He acted subjectively under whims and caprice which is very dangerous and ultra-virus in the eyes of law.

23. That with regard to the statement made in para 25 of the written statement the applicant begs to state that

the charges against the applicant were not only frivolous but also baseless, vogue and motivated. The provisions contained in the instruction about giving preference has been misinterpreted the applicant at any cost. The powers and functions of the appointing authority is quasi judicial as has been held in the recent CAT verdict and as such the action of both the disciplinary authority and the Appellate Authority suffered from the flaw of prevailing law of the land.

24. That with regard to the statement made in para 26 of the written statement the applicant begs to state that the prosecution could not produce any single evidence to sustain the allegation against the applicant. The whole proceeding was concluded summarily and the punishment was imposed subjectively in total disregards to the rules of law and principle of natural justice.

25. That with regard to the statement made in para 27 of the written statement the applicant begs to state that Mere repition of two plus two never make it five. It would always be four only. So the repeated pleadings and arguments of Respondent No.3 to hold the applicant guilty are all irrelevant, incorrect and false. The allegation was based with all biased, baseless and motivated facts.

26. That with regard to the statement made in para 28 of the written statement the applicant begs to state that the punishment order imposed by the Respondent No.3 as well as the Appellate Authority are liable to be quashed and treated as null and void with further direction to the

Respondent No.3 to regularised the entire period of absence of the applicant (due to removal from service), as duty with all the consequential benefits including the cost of the application.

The applicant craves leave of the Hon'ble Tribunal for a direction towards the respondents for production of all the records of the case at the time of hearing of the case.

27. That in view of the above facts and circumstances stated above the application deserves to be allowed with cost.

VERIFICATION

I, Sri Diganta Kr. Bora, S/o Late Moni Ram Bora aged about 50 years, at resident of Monakuchi, P.O.Kulhati, Dist. Kamrup, Assam, do hereby solemnly affirm and verify that the statements made in paragraphs ..... 1, 27 ..... are true to my knowledge and those made in paragraphs .... 2 - 26 ..... are also true to my legal advice an d the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 4TH day of May of 2004.

Shri Diganta Kr. Bora

Signature.

Annexure-C-I

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Department of Post:India.
Office of the Director Postal Services:Manipur:Imphal.
795001.
******

241

LETTER OF ALLOTMENT

Memo No. [illegible]

Dated at Imphal the, 20/10/99

Shri. M. Dinachandra Singh

appointed as EDBPM of [illegible] is hereby
he/she shall be paid such allowances as admissible from time
to time. CRF 27/3/99 do [illegible]

2. Shri/Smti. M. Dinachandra Singh
should clearly understand that his/her employment as EDBPM
shall be in the nature of a contract liable to be terminated
by him/her or the undersigned by notifying the other, in
writing, and that he/she shall also be governed by the posts
and Telegraphs Extra Departmental Agents(Conduct and Service)
Rules, 1964, as amended from time to time.

3. If these conditions are acceptable to him/her, he/she should communicate his/her acceptance in the proforma reproduced below.

(LALHLUNA)
Director Postal Services
Manipur Division, Imphal-795001.

Copy forwarded to:-

1. The Postmaster Imphal H.O. He will please intimate early whether the security bond of the EDA has since been received, the police report, declaration, descriptive particulars and landed property list of the EDA are sent herewith. The EDA is a Field Master/Teacher of School and as such the question of having landed property is not obligatory, the receipt of which may please be acknowledged.

2. The Inspector of Post offices [illegible] sub-Divn,

3. The S.P.M. [illegible]

4. The E.D.

(LALHLUNA)
Director Postal Services
Manipur Division, Imphal-795001.

Attested
[illegible]
Advocate

DEPARTMENT OF POST: INDIA

LETTER OF PROVISIONAL APPOINTMENT

Memo No. A/Pf/Jiang Tarelam Dated at Imphal, the 6/10/97

Whereas the post of Extra Departmental Jiang Tarelam B.O has become vacant/has been newly created and it is not possible to make regular appointment to the said post immediately the SPOs/IP has decided to make provisional appointment to the said post for a period of 6 months from 28/3/97 to 27/9/97 or till regular appointment is made whichever is earlier.

Shri/Smt. N. Dingkhanlen Singh is offered with provisional appointment. He/She should already understand that the provesional appointment will be terminated when regular appointments to be made and he/she shall have no right to claim for appointment to any post.

The SPOs/IP also reserves the right to terminate the provisional appointment at any time before the period mentioned in para-1 above without assigning any reasons.

Shri/Smt. N. Dingkhanlen Singh will be governed by the Extra Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other rules and orders applicable to Extra Departmental Agents.

In case the above conditions are acceptable to Shri/Smt. N. Dingkhanlen Singh he/she should sign the duplicate copy of this memo and return the same to the undersigned.

(LALHLUNA)
Director Postal Services
Manipur Division, Imphal-795001

Copy to:-

1. Shri/Smt. He/She should sign the duplicate copy of the memo enclosed and return the same to this office immediately.
2. The Postmaster, Imphal HO for information and n/a.
3. The SDIPOs/ 2nd S.D.I.P.O. / Jiribam
4. The SPM/ Nambol

(LALHLUNA)
Director Postal Services
Manipur Division, Imphal-795001.

Attested
Advocate

Ann-C-2

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Department of Post:India.
Office of the Director Postal Services:Manipur:Imphal.
795001.
******

LETTER OF APPOINTMENT

Memo No. A/cc/Sajam Salai Dated at Imphal the, 4/11/99

Shri. K. Radhakishor Sgh is hereby appointed as EDBPM of I EDBPM/ Sajam Salai on provisional basis. He/She shall be paid such allowances as admissible from time to time. as per 1/4/99 to onwards.

2. Shri/Smt. K. Radhakishor Sgh should clearly understand that his/her employment as EDBPM shall be in the nature of a contract liable to be terminated by him/her or the undersigned by notifying the other, in writing, and that he/she shall also be governed by the Posts and Telegraphs Extra Departmental Agents(Conduct and Service) Rules, 1964, as amended from time to time.

3. If these conditions are acceptable to him/her, he/she should communicate his/her acceptance in the profoma reproduced below.

Sd/-
(LALHLUNA)
Director Postal Services
Manipur Division, Imphal-795001.

Copy forwarded to:-

1. The Postmaster Imphal H.O. He will please intimate early whether the security bond of the EDA has since been received, the police report, declaration, descriptive particulars and landed property list of the EDA are sent herewith. The EDA is a Head Master/Teacher of School and as such the question of having landed property is not obligatory. The receipt of which may please be acknowledged.

2. The Inspector of Post Offices 2nd R.O./Imphal Sub-Divn,

3. The S.P.M. Sajam

4. The E.D.

(LALHLUNA)
Director Postal Services
Manipur Division, Imphal-795001.

Attested
Noor
Advocate

226

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DEPARTMENT OF POST: INDIA.

LETTER OF PROVISIONAL APPOINTMENT

Memo No. A1/PF/Sapam Salai Dated at Imphal, the 12/8/99

Whereas the post of Extra Departmental Sapam Salai BO has become vacant/has been newly created and it is not possible to make regular appointment to the said post immediately the DRS/IP has decided to make provisional appointment to the said post for a period of 6(six)month from 1/4/99 or till regular appointment is made whichever is shorter.

Shri/Smt. L. Radhakishwar Singh is offered with provisional appointment. He/She should clearly understand that the provesional appointment will be terminated when regular appointment to be made and he/she shall have no right to claim for appointment to any post.

The DRS/IP also reserves the right to terminate the provisional appointment at any time before the period mentioned in para-1 above without assigning any reasons.

Shri/Smt. L. Radhakishwar Singh will be governed by the Extra Departmental Agents(Conduct and Service) Rules,1964, as amended from time to time and all other rules and orders applicable to Extra Departmental Agents.

In case the above conditions are acceptable to Shri/Smt. L. Radhakishwar Singh he/she should sign the duplicate copy of this memo and return the same to the undersigned.

Sd/

(LALHLUNA)
Director Postal Services
Manipur Division, Imphal-795001.

Copy to:-

1. Shri/Smt.
He/She should sign the duplicate copy of the memo enclosed and return the same to this office immediately.
2. The Postmaster, Imphal HO for information and n/a.
3. The SDIPOs/2nd S.D.I-Dn./Imphal
4- The SPM/Wangkhei

(LALHLUNA)
Director Postal Services
Manipur Division, Imphal-795001.

Attested
Advocate

Ann-C-3 227

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DEPARTMENT OF POSTS, INDIA.
OFFICE OF THE DIRECTOR POSTAL SERVICES: MANIPUR: IMPHAL: 795001.
******

26

LETTER OF APPOINTMENT

Memo. No. Allpt/Salungphem Dated at Imphal, the 11/8/96

Shri K. Subhaschandra Singh is hereby appointed as EDBPM of Salungphem BO. He/She shall be paid such allowances as admissible from time to time 2SEP 24/11/95 Honorands.

(2). Shri/Smt. K. Subhaschandra Singh should clearly understand that his/her employment as E.D.B.P.M. shall be in the nature of a contract liable to be terminated by him/her or the undersigned by notifying the other, in writing, and that he/she shall also be governed by the Posts and Telegraphs Extra-Departmental Agents(Conduct and Services) Rules, 1964, as amended from time to time.

(3). If these conditions are acceptable to him/her, he/she should communicate his/her acceptance in the proforma reproduced below.

Sd/-
Superintendent of Post Offices
Manipur Division, Imphal-795001.

Copy forwarded to :-

(1). The Postmaster, Imphal H.O. for information.
(2). The Inspector of Post Offices / Post Regd.
(3). The SPM Wangjing
(4). The ED/A

Sd/-
Superintendent of Post Offices
Manipur Division, Imphal-795001.

Attested
Advocate

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DEPARTMENT OF POST, INDIA.

LETTER OF PROVISIONAL APPOINTMENT

Memo No. A1/PF/Sakkagphaam Dated at Imphal, the 29/11/85

Whereas the post of Extra Departmental [illegible] has become vacant/has been newly created and it is [illegible] to make regular appointment to the said post immediately the [illegible] has decided to make provisional appointment to the said post for a period of [illegible] from [illegible] or till regular appointment is made which ever is shorter.

Shri/Smt. K. Sakkagphaam Singh is offered with the provisional appointment. He/She should clearly understand that the provosional appo tment will be terminated when regular appointment to be made and he/she shall have no right to claim for apppo intment to any post.

The [illegible] also reserves the right to terminate the provisional appointment at any time before the period mentioned in para-1 above without assigning any reasons.

Sri/Smt. K. Sakkagphaam Singh will be governed by the Extra Departmenttal Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other rules and orders applicable to Extra Departmental Agents.

In case the above conditions are acceptable to Shri/ Smt. K. Sakkagphaam Singh he/she should sign the duplicate copy of this memo and return the same tp the undersigned,

[illegible]
Superintendent of Post Offices
Manipur Division, Imphal 795001

Copy to :-

1. Sri/Smt. [illegible] He/She should sign the duplicate copy of the memo enclosed and return the same to this office immediately.
2. The Postmaster, Imphal H.O. for information and necessary action.
3. The SDIPOs [illegible]
4. The SIM/Manglay

[illegible]
Superintendent of Post Offices
Manipur Division, Imphal

Attested
Under
Advocate

Ann A-4 229

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DEPARTMENT OF POST, INDIA.
OFFICE OF THE DIRECTOR POSTAL SERVICES: MANIPUR: IMPHAL:
795001.
****

Memo No. Mlpr/Leave Rule Dated at Imphal, the 28/12/95

Sri Sarl. M.S. Kemmila is hereby appointed as EDBPM of [illegible] He/She shall be paid such allowances as admissible from time to time Ex-Gratia Payment.

(2) Shri/Smt M.S. Kemmila should clearly understand that his/her employment as E.D.B.P.M. shall be in the nature of a contract liable to be terminated by him/her or the undersigned by notifying the other, in writing, and that he/she shall also be governed by the Posts and Telegraph Extra-Departmental Agents (Conduct and Services) Rules, 1964, as amended from time to time.

(3) If these conditions are acceptable to him/her, he/she should communicate his/her acceptance in the proforma reproduced below.

Sd/-
Superintendent of Post Offices
Manipur Division, Imphal-795001.

Copy forwarded to :-

(1) The Postmaster, Imphal H.O. for information.
(2) The Inspector of Post offices,
(3) The SPM
(4) The EDA

Sd/-
Superintendent of Post Offices
Manipur Division, Imphal-795001.

Attested
Advocate

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Director Postal Services
Manipur, Imphal-795001
DEPARTMENT OF POSTS, INDIA.

LETTER OF PROVISIONAL APPOINTMENT

Memo No. A/PP/Kamkakpi Dated at Imphal, the 5/9/95

Whereas the post of Extra Departmental GDS/Kamkakpi has become vacant/has been newly created and it is not possible to make regular appointment to the said post immediately the

has decided to make provisional appointment to the said post for a period of 6 (six) months from 1/9/95 or till regular appointment is made whichever is shorter.

Shri/Smt. M.S. Lemmila is offered with the provisional appointment. He/She should clearly understand that the provosional appo tment will be terminated when regular appointment to be made and he/she shall have no right to claim for appo intment to any post.

The SSPOs/IP also reserves the right to terminate the provisional appointment at any time before the period mentioned in para-1 above without assigning any reasons.

Sri/Smt. M.S. Lemmila will be governed by the Extra Departmenttal Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other rules and orders applicable to Extra Departmental Agents.

In case the above conditions are acceptable to Smt/ Smt. M.S. Lemmila he/she should sign the duplicate copy of this memo and return the same tp the undersigned,

Superintendent of Post Offices
Manipur Division, Imphal-795001.

Copy to :-

1. Sri/Smt. He/She should sign the duplicate copy of the memo enclosed and return the same to this office immediately.
2. The Postmaster, Imphal H.O. for information and necessary action.
3. The SDIPOs/ Imphal Sub Div/Imphal
4. The SPM/ Kakpi

Superintendent of Post Offices
Manipur Division, Imphal-795001.

Attested
Advocate

Ann C-5 231/249

DEPARTMENT OF POSTS, INDIA.
OFFICE OF THE DIRECTOR POSTAL SERVICES: MANIPUR: IMPHAL:
795001.
******

LETTER OF APPOINTMENT

Memo. No. A/Apt/Khangabok Dated at Imphal, the 9/5/95

Shri Ahokhom Biren Singh is hereby appointed as EDBPM of Khangabok EDSO. He/She shall be paid such allowances as admissible from time to time w.e.f. 1/12/94 to onwards

(2). Shri/Smt. A. Biren Singh should clearly understand that his/her employment as E.D.B.P.M. shall be in the nature of a contract liable to be terminated by him/her or the undersigned by notifying the other, in writing, and that he/she shall also be governed by the Posts and Telegraphs Extra-Departmental Agents(Conduct and Services) Rules, 1964, as amended from time to time.

(3). If these conditions are acceptable to him/her, he/she should communicate his/her acceptance in the proforma reproduced below.

Superintendent of Post Offices
Manipur Division, Imphal-795001

Copy forwarded to :-

(1). The Postmaster, Imphal H.O. for information.
(2). The Inspector of Post Offices / Sub Div / Imphal
(3). The SPM Kakching SO
(4). The EDA

Superintendent of Post Offices
Manipur Division, Imphal-795001

Attested
Advocate

Office of the Supdt. of Posts
Director Postal Services
Manipur, Imphal-795001
DEPARTMENT OF POSTS.

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LETTER OF PROVISIONAL APPOINTMENT

Memo No. RLPF/Khangabok Dated at Imphal, the 7/2/95

Whereas the post of Extra Departmental BPM/Khangabok has become vacant/has been newly created and it is not possible to make regular appointment to the said post immediately the SPOs/IP has decided to make provisional appointment to the said post for a period of 6(Six) months from 1/12/94 or till regular appointment is made whichever is shorter.

Shri/Smt. H. Biren Singh is offered with the provisional appointment. He/she should clearly understand that the provisional appointment will be terminated when regular appointment to be made and he/she shall have no right to claim for appointment to any post.

The SPOs/IP also reserves the right to terminate the provisional appointment at any time before the period mentioned in para-1 above without assigning any reasons

Sri/Smt. H. Biren Singh will be governed by the Extra Departmental Agents(Conduct and Services) Rules, 1964, as amended from time to time and all other rules and orders applicable to Extra Departmental Agents.

In case the above conditions are acceptable to Shri/ Smt. H. Biren Singh he/she should sign the duplicate copy of this memo and return the same to the undersigned.

Superintendent of Post Offices
Manipur Division, Imphal-795001

Copy to :-

(1). Shri/Smt. H. Biren Singh He/She should sign the duplicate copy of the memo enclosed and return the same to this office immediately.

(2). The Postmaster, Imphal H.O. for information and n/action.

(3). The SDIPOs/ 2nd Sub-Div Imphal

(4). The SPM/ Khangabok.

Superintendent of Post Offices
Manipur Division, Imphal-795001

Attested
Advocate

Ann — B-I 233

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL N. E. CIRCLE::
SHILLONG-793 001.

No.Staff/118-14/2003(13) Dated at Shillong, the 3rd April' 2003.

To,

Shri H. Birachandra Singh,
BPM, Nungei B.O.
Manipur.

(Through Director of Postal Services, Manipur Division, Imphal)

Sub:- Compliant against irregularity in selection of H. Birachandra Singh, as BPM Nungei B.O. under Lilong S.O.- Regarding.

Ref:- Your representation dtd. 3rd February' 2003 in reply to Circle Office, Shillong letter No. Vig-1/9/02/03.

I have been directed to communicate the orders of the Postmaster General, N. E. Circle, Shillong on the above noted subject verbatim.

"I have gone through the case in its entirity, carefully. The selection of Shri H. Birachandra Singh as BPM, Nungei has been done by the appointing authority, DPS, Manipur Division, on the basis of written test and interview, conducted by Appointing authority himself, without the involvement of any other officer/official. This procedure of a subjective written test followed by interview is not laid down in the rules relevant to recruitment of EDAs, now GDS. Without devising new methods of finding out merit DPS Manipur could and should have used the simple method of assessing merit through the marks scored by the candidates in the Matriculation Exam.

In view of the above the selection of Sri Birachandra Singh as BPM Nungei is irregular. Following the principles of natural justice, Sri Birachandra Singh was given an opportunity to explain his point of view, in the form of a notice to show cause why his appointment should not be cancelled. In his reply to the notice, received on 6-2-03, Sri Birachandra Singh, after explaining the history of his selection, stated that" the show cause notice was unfortunate and irrepairable loss on his part as a Govt employee and that the allegations against him were false and concocted and further requested that the notice be withdrawn and he be allowed to continue as BPM.

After careful scrutiny of the reply to the show cause notice and considering all the facts of the case it is seen that Sri Birachandra Singh doesnot have any strong reason as per his representation dt.03 Feb. 2003, to be allowed to continue as BPM Nungei, as per the appointment order issued by DPS Manipur Division which is found to be irregular and in violation of recruitment rules and procedures laid down by Director General Posts.

Accordingly this irregular appointment of Sri Birachandra Singh, as BPM Nungei is cancelled with immediate effect, in accordance with DG Posts letter 19-23/97-ED & Trg. Dtd. 13-11-97".

(B. R. Halder)
Asstt. Director (Staff)
For Chief Postmaster General,
N. E. Circle, Shillong.

Attested
Was
Advocate

Copy to:-

1. Sri R. K. B. Singh, DPS, Manipur Division, Imphal.

I have been directed to request you to deliver the enclosed order to Sri I. Birachandra Singh, under receipt and relieve him from his duty immediately und intimation to this office.

The candidate at the rank no. 1 of the merit chart, Md. Abdul Jabbar I appointed provisionally with immediate effect.

For Chief Postmaster General,
N. E. Circle, Shillong.

Attested
Advocate

-53-G/81-VI Ann-B-2

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DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL, N. E. CIRCLE
SHILLONG 793 001.

03 JUN 2003

No Staff/118-14/2002(III) Dated at Shillong, the 29th May' 2003

To,

Shri K. S. Tamreising,
Lambui, Ukhrul District,
Manipur.
(Through Director of Postal Services, Manipur Divison, Imphal).

Subj:- Alleged irregularity in selection of Shri K. S. Tamreising, as GDS BPM Lambui B.O.

Ref:- Your representation dated 5-5-2003 in reply to Circle Office, Shillong, Show Cause Notice, letter even No. dated 25-4-2003.

I have been directed to communicate the orders of the Postmaster General, N. E. Circle, Shillong on the above noted subject verbatim.

" I have considered all the aspects of the case very carefully. The selection of Shri K. S. Tamreising as GDS BPM Lambui B.O. has been done by the appointing authority, DPS Manipur Division on the basis of an interview, the records of which are not available in the file. The procedure of holding an interview for selection of GDS BPM is not laid down in the recruitment rules applicable to Gramin Dak Sevaks. The simple method of selection of GDS BPM based on merit i.e. highest marks in the matric/HSLC examination should have been followed and the 'interview' conducted only for verification of the genuineness of the documents relating to eligibility conditions satisfied by the eligible applicants. In the present case scrutiny of records reveals that the provisionally appointed candidate Shri K. S. Tamreising has secured only 36.11% in HSLC while Shri K. S. Maya has secured the highest percentage of mrks 53.67% among all the four candidates who have appeared for the interview. In view of the above facts, the selection of Shri K. S. Tamreising as GDS BPM Lambui B.O. is evidently irregular.

Following the principles of natural justice, Shri K. S. Tamreising was given an opportunity, to explain his point of view, in the form of a show cause Notice as to why his provisional appointment should not be cancelled. In his reply to the notice, received on 7-5-03, Shri K. S. Tamreising stated that Shri K. S. Maya had never appeared in HSLC exam/equivalent examination of any Board and that the documents like mark sheets submitted by Shri K. S. Maya are fake documents and might have been submitted after interview. The candidature of Shri K. S. Maya was sponsored by the District Employment Exchange, Ukhrul and the list of candidates gives the qualification of Shri K. S. Maya as HSLC. During the interview conducted on 10-10-02, the original documents have been verified by the DPS, Manipur who has not made any adverse remarks on his office file. This being the case, there, is no ground to consider the submissions of Shri K. S. Tamreising as correct and true.

After careful scrutiny of the reply to the show cause notice, as well as the facts of the case, it is clear that Shri K. S. Tamreising has been appointed in an irregular manner and he does not have a legitimate claim to Gohdhinue as GDS BPM Lambui B.O.

Attested
Nag
Advocate

...nal basis. Accordingly this irregular appointment of Shri K. S. Tamreising as ...mburi B.O. is cancelled with immediate effect in accordance with Director General letter No.19-23/97-ED & Trg. Dated 13-11-97."

(B. R. Halder)
Asstt. Director (Staff)
For Chief Postmaster General,
N. E. Circle, Shillong.

Copy to:-

1. Shri R. K. B. Singh, DPS, Manipur Division, Imphal. I have been directed to request you to deliver the enclosed order to Shri K. S. Tamreising, under receipt and relieve him from his duty immediately under intimation to this office. The candidate Shri K. S. Maya be appointed provisionally till regular selection is finalized.

For Chief Postmaster General,
N. E. Circle, Shillong.

Attested
Ubas
Advocate

FOR - RAMANI
CIRCLE SECY - 55 - 220148, 222239
Ann A-I

ঘঁন মল্লমিরে মাপোঙ্গন মসমাল্লেঙ্গরা মৃদ্মিয়ম, মাল-৪, মণিপুর

ALL INDIA POSTAL EMPLOYEES UNION

P - III

(Affiliated to National Federation of Postal Employees, New Delhi)

MANIPUR DIVISIONAL BRANCH

Imphal -795 001

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Shri Kh. Ibobi Singh

❑ Vice-President
Shri A. Dalim Singh
Smt. G. Athena Kabui

❑ Divisional Secy.
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Shri L. Raikumar Singh

❑ Treasurer
Shri. Y. Sanjoy Singh

❑ Asstt. Treasurer
Md. Irsadullah

❑ Asstt. Secretary
Shri K. Shanta Singh
Smt. Tunokham Kamei

❑ Organising Secy.
Md. Salauddin
Shri. O. Apokin
Shri Ng. Arunkumar Singh
Smt. Ksh Bimola Devi
Md. Kalam

❑ Auditor
Smt. S. Memo Devi

❑ Asstt. Auditor
Smt. A. Hemabati Devi.

Ref. No. ..... Date .....

MINUTES OF MEETING

An emergent General Meeting of Class III and Class IV of All India Postal Employees Union, Manipur Branch was held today on 02-06-2001 under the Chairmanship of President Kh. Ibobi Singh to discuss the following agendas :

1. Excessive harassment of lower grade sub-ordinate staff by Mr. G. Ninan, Director Postal Services, Manipur, Imphal
2. Corruption and unbecoming behaviour of Shri, N.C. Halder, Deputy Supdt. of Post Offices, Manipur Division, Imphal.

During meeting at 1st the following matters were discussed elaborately and resolution passed one by-one.

Under most congenial atmosphere, the staff of Manipur Postal Division, bring forth the following facts to your kind notice for immediate necessary action

1. Right from the very first day of assumption of duty, Shri. G. Ninan, Director Postal Services, Imphal started to expose high-handedness, excessiveness and dictatorial pattern of treatment with general staff including lady staff of Manipur Division. His general behaviour was found like that of a master and personal servant. His manner of talking and general behaviour was found beyond tolerance.

2. Anyhow, in the midst of misbehaviour, rough and inhuman treatment, the staff maintained almost patience and used to manage day to day work peacefully in order to avoid a strained relation with administration and DPS, Imphal. But, Shri. G. Ninan, after getting his personal security from the Govt. of Manipur, by creating own security problems for him in the name of insurgency, he completely started looking down the general staff as well as general public who are day to day customer of the post office. In the midst of his misbehaviour and inhuman treatment, he started personal attack on the staff one by one by taking the law in his own hands by abusing his official power.

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Attested
Advocate

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অল ইণ্ডিয়া পোস্টাল এম্প্লয়িজ ইউনিয়ন, ক্লাস-৩, মণিপুর

ALL INDIA POSTAL EMPLOYEES UNION

P - III

(Affiliated to National Federation of Postal Employees, New Delhi)

MANIPUR DIVISIONAL BRANCH

Imphal -795 001

❑ President
Shri Kh. Ibobi Singh

❑ Vice-President
Shri A. Dalim Singh
Smt. G. Athena Kabui

❑ Divisional Secy.
Shri H. Gojendro Singh

❑ Joint Secretary
Shri L. Raikumar Singh

❑ Treasurer
Shri. Y. Sanjoy Singh

❑ Asstt. Treasurer
Md. Irsadullah

❑ Asstt. Secretary
Shri K. Shanta Singh
Smt. Tomakham Kamei

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Md. Kalam

❑ Auditor
Smt. S. Mema Devi

❑ Asstt. Auditor
Smt. A. Hemabati Devi.

Ref. No. ..... - 2 - Date .....

3. Recently, he harassed Comrade. Kh. Jibon Singh P.A., Imphal HO intentionally in the following manner. Com. Kh. Jibon Singh is staying in one of the Type-II quarters behind Imphal Head Post Office and he is maintaining a Maruti car for his family use. Com. Jibon Singh used to keep and park the said Maruti car at the western end/ corner of the abandoned dismantled temporary shed behind Imphal H.O. Shri. G. Ninan, DPS, Imphal has been already targeting Com. Jibon Singh repeatedly under personal grudge and Com. Jibon Singh was harassed and humiliated in all possible ways every now and then. On 31-05-2001, when Com. Jibon Singh went to market in the morning, Shri. G. Ninan, DPS, Imphal personally brought the condemned vehicle, Departmental Maruti Van No. MNG-194, with the help of his I.B. Care taker and parked on the place used by Com. Jibon Singh for parking the maruti car. By parking the condemned departmental van on the parking place used by Com. Jibon Singh, Com. Jibon Singh was denied the facility of parking the maruti car used by him. The parking place used by Com. Jibon Singh at the western end of abondoned dismantled temporary shed was not a closed garage, but completely open in all sides including the C.G.I. sheets removed from half of the top portion. Com. Jibon Singh was using the said place for parking the car because the same was nearer to his quarter and there is no other place in the colony where a car can be parked. Therefore, there was no reason except harassing Com. Jibon Singh in the matter.

The Postal I.B. has got its own garage. Besides, there are four garages in the back side of old H.P.O. building having sufficient security. But, without keeping the departmental van in those garages, the D.P.S. intentionally and purposefully kept the departmental van on the same place where Com. Jibon Singh was parking his maruti car. This clearly exposes that the DPS has done this with intention to pick up personal quarrel and causing harassment to Com. Jibon Singh. Now, the general staff has become much painful to see such objectionable behaviour in the part of DPS and has unanimously decided to bring the matter to the notice of higher authorities including Hon'ble Minister of Communication for immediate removal of Shri. G. Ninan, DPS from Manipur Division

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Attested
Advocate

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ALL INDIA POSTAL EMPLOYEES UNION

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(Affiliated to National Federation of Postal Employees, New Delhi)

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Smt. S. Memo Devi

❑ Asstt. Auditor
Smt. A. Hemabati Devi.

Ref. No ..... - 3 - Date .....

4. Again, the members of the union are shocked to know that on 31-05-2001 evening at about 5.20 p.m. when Com. Jibon Singh was going out for marketing in the car, the DPS came from the opposite direction alongwith his gunmen and shouted at Com. Jibon Singh and forced him to get down from the car. It is a matter of great resentment that Mr. Ninan, DPS alongwith his gunmen stood before Com. Jibon 's car from 5.20 p.m. to 7.30 p.m. and when he became tired of standing, he got a chair and sat on it, and he forcefully detained Com. Jibon Singh for more than 2 (two) hours and did not allow him for marketing purpose.. While detaining Com. Jibon Singh, the DPS was shouting and challenging with various unparliamentary words inviting unprecedented incident. But the silence in the part of Com. Jibon Singh avoided any untoward incident on that day. This is really a case of unlawful act in such un-becoming manner which DPS being the head of division should not act . Now, strong resentment has raised with the number of staff and they have unanimously decided to oust Mr. Ninan from Manipur to bring normalcy and decency in the Postal Family.

5. Again, a case has come up in which Mr. Ninan is personally putting his hands in the administration of Postmaster, Imphal and forcefully getting the arrangement order issued by him implemented including inner transfer of staff within Imphal Head Post Office. The Postmaster although is a HSG-I, he is at the verge of retirement. The Postmaster is also being abused almost every day in front of general public and staff, by Mr. Ninan, DPS. On 01-06-2001, Mr. Ninan, DPS intentionally and purposefully issued an order to Postmaster Imphal HO to issue inner transfer of some of the staff including Comrades Kh. Jibon Singh and B. Lokeshwor Singh who is a H.S.G.-II official. Without any consideration of his holding of HSG-II post, Mr. Ninan asked Postmaster Imphal to put him on the duty of counter booking clerk of Parcels. This type of dictatorial design is found increasing day by day and now the general staff are in very embarrassing condition to work peacefully. In such atmosphere, now the general staff unanimously decided that higher authorities may be requested to depute a senior officer for spot inquiry and arrange immediate removal of Mr. Ninan from Manipur.

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Attested
Advocate

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অল ইণ্ডিয়া পোস্টাল এমপ্লয়িজ ইউনিয়ন, গ্রুপ-গ, বিভাগীয়

ALL INDIA POSTAL EMPLOYEES UNION

P - III

(Affiliated to National Federation of Postal Employees, New Delhi)

MANIPUR DIVISIONAL BRANCH

Imphal -795 001

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Smt. G. Athena Kabui

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Shri N. Gojendra Singh

❑ Joint Secretary
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Md. Kalam

❑ Auditor
Smt. S. Mema Devi

❑ Asstt. Auditor
Smt. A. Hemabati Devi

Ref. No. ..... *Date* .....

6. Cases of misuse of I.B., irregular continuous stayal in I.B. without occupying DPS-quarter, non-payment of charges for using I.B.-facility and other mal-practices have also come to light and the members have decided to bring these cases separately to the notice of higher authorities for bringing fairness in the administration.

7. It is also unanimously decided to go on pen down strike with immediate effect until justice is restored, and cordial atmosphere prevail and entire episode is inquired with immediate removal of Mr.. Ninan from Manipur.

8. Serious cases of corruption and bribery has come to the notice of the union against Shri. N.C. Halder, Dy. Supdt. of Post Offices, Imphal including calling of women in his quarter. Several innocent staff including ED-Staff have become victim and now it is strongly condemned that Shri. N C. Halder being Dy. Supdt. of Post Offices in the administration should not behave in such unwarranted nature. The general staff in a very strong words protest his any further continuation in Manipur and it is unanimously decided to request the Chief PMG for immediate removal of Shri. N.C. Halder from Manipur to avoid any unpleasant situation.

On the conclusion of the meeting held at 5 p.m. on 01-06-2001, in the Post Office compound, the general staff authorises Shri. Kh. Ibobi Singh, President of Class - III Union and Shri. N. Gogendra Singh, Divisional Secretary of Class- III Union to furnish the copy is of this resolution to all higher authorities including Hon'ble Minister of Communication, immediately.

Yours sincerely,
Sd/-
(Kh. Ibobi Singh)
President,
AIPEU, P-III,
Manipur Division Branch,
Imphal - 795 001

Copy of Resolution forwarded to

1. Shri. Ram Vilas Paswan, Hon'ble Minister of Communication, Govt. of India, New Delhi - 110001 for information. It is re-

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Attested
Advocate

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ALL INDIA POSTAL EMPLOYEES UNION

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Md. Kalam

❑ Auditor
Smt. S. Memo Devi

❑ Asstt. Auditor
Smt. A. Hemabati Devi.

Ref. No. ..... - 5 - Date .....

quested that Shri. G. Ninan, DPS, Imphal may be transferred out from Manipur without any further delay and a detailed enquiry may be ordered against the administrative excesses committed by the above officer. Similarly, enquiry against corruption and bribery by Shri. N.C. Halder, Dy. Supdt. of Post Offices, Imphal may also be ordered. The Chief PMG, N.E. Circle, Shillong may also be kindly directed to remove Shri. N.C. Halder from Manipur.

2. Shri. B.N. Som, Director General (Posts), Dak Bhawan, It is requested that Shri. G. Ninan, DPS, Imphal may be transferred out from Manipur without any further delay and a detailed enquiry may be ordered against the administrative excesses committed by the above officer. Similarly, enquiry against corruption and bribery by Shri. N.C. Halder, Dy. Supdt. of Post Offices, Imphal may also be ordered. The Chief PMG, N.E. Circle, Shillong may also be kindly directed to remove Shri. N.C. Halder from Manipur for kind information and necessary action.

3. Shri. V. Chitale, Chief Postmaster General, N.E. Circle Shillong - 793001 for information. It is requested that a senior officer may immediately be deputed to Imphal for enquiring the high-handedness and excessive behaviour of Mr. G. Ninan, and a working environment may be brought in Manipur where general staff can discharge their duties peacefully. As first priority, Shri. N.C. Halder may be removed from Manipur. Necessary report for removal of Shri. G. Ninan from Manipur may also be forwarded to D.G. (Posts) and it may be ensured that Shri. G. Ninan is transferred out from Manipur without any delay. The Pen down strike by the general staff of Manipur Division will continue till their demands are fulfilled and justice is restored.

(N. Gojendra Singh)
Divisional Secretary,
AIPEU, P-III
Manipur Division Branch,
Imphal - 795 001

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Advocate

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অল ইণ্ডিয়া পোস্টাল এমপ্লয়িজ ইউনিয়ন, গ্রুপ—খ, মণিপুর

ALL INDIA POSTAL EMPLOYEES UNION

P - III

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(Affiliated to National Federation of Postal Employees, New Delhi)

MANIPUR DIVISIONAL BRANCH

Imphal -795 001

❑ President
Shri Kh. Ibobi Singh

❑ Vice-President
Shri A. Dalim Singh
Smt. G. Athena Kabui

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Shri N. Gojendro Singh

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Shri. Ng. Arunkumar Singh
Smt. Ksh Bimola Devi
Md. Kalam

❑ Auditor
Smt. S. Memo Devi

❑ Asstt. Auditor
Smt. A. Hemabati Devi.

Ref. No. A-1/Pen Down Strike Date 06th June, 2001.

To

1. The Chief Editor,
   Imphal Free Press,
   English News paper,
   Imphal.

2. The Chief Editor,
   The Sangei Express,
   English News Paper,& Manipuri News Paper,
   Imphal.

Sub:- Postal Strike in Manipur due to dictatorial pattern of administration done by the Director Postal Services, Shri.G.Ninan and mass corruption cases against Shri.N.C.Halder, Dy.Supdt.of Post Offices, Imphal.

Sirs,

The General staff as well as the Union representatives are very much shocked and at the same time surprised to see the publication Dtd.6th June in your esteemed newspaper inwhich the Director Postal Services has refuted the charges of the mass general staff working in Manipur Postal division. It is really surprising as how the officer of DPS-Cadre can furnish such false and misleading information to the Press for general knowledge to the public of Manipur.

In fact before publication, he has never ~~x~~ invited either any staff nor any union members for negotiation and coming to the compromise formula. His remarks that transfer from one table to another inside the office has nothing with his dictatorial pattern of administration. The Perpectual fact behind the issue is general principle and rules of the department. The Director Postal Services in no circumstances can interfere directly in the administration of Postmaster, Imphal forcing him to issue certain inner arrangement in disguise to meet his personal grudge. Secondly, a very senior staff who has been working as a Group Officer ie.Asstt.Postmaster can not be ordered to work at counter where the rule has allottel the work to the clerical staff.

Regarding the allegation of taking payment of SDA forcefully by the staff of Manipur, it is really not only

Attested
Advocate

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ঔল ইণ্ডিয়া পোস্টাল এম্প্লয়জ য়ুনিয়ন, মণিপুর ডিভিজন

ALL INDIA POSTAL EMPLOYEES UNION

P - III

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Smt. A. Hemobati Devi.

Ref. No: ..... Date .....

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the staff of Manipur but even the staff of Assam including Guwahati where the Chief Postmaster General sit have drawn the amount. Hence, the charging and blaming only the staff of Manipur in this issue clearly exposes the ill-motive of the Director concerned who has no love for the staff working in Manipur.

By his assuming duty in Manipur, he is the only officer who sought for the Govt.of Manipur for providing security including his personal gunman. As soon as ~~exact~~ this security was provided to him, he banned entry of any public of whatever category they belong inside post office. During office hour even the parents including wife can not see us under any circumstances and neither we can go out to see them and enquire for what emergency they come to see us. Is it not beyond the tolerance? Can each and every citizen of Manipur can be termed as extremist? And our parents and relatives can be suspected in that angle? Perhaps, such treatment does not persist anywhere in India forwhich the general staff are very much aggrieved.

The manner of talking and day to day behaviour is always found in such a commanding tone which even a master never behaves with his personal slaves. If we site an example, really it creates resentment. This is an incident when Mr.Ninan, DPS personally brought a unserviceable Maruti Van and kept at the same place where our one Comrade.Kh.Jibon Singh was keeping his car for a long time. No prior information for such whimsical and intentional action was done prior hand. In the evening of the same date, when Comrade Shri.Kh.Jibon Singh was going to market on his car to purchase medicine for his wife, Mr.Ninan came from the opposite side alongwith his gunman and shouted at Mr.Jibon Singh and forced him to get down from the car. Thereafter, he detained the car as well as Comrade Kh.Jibon Singh for ~~X~~ Two and Half hour on the way by standing in front of the car, and challenging him for physical fighting. Is it the duty of a Director to behave with his sub-ordinate after office hours? Is it not too much excessiveness in his part? Several instances are there when he has forced the sub-ordinate staff to prepare income-tax return as per his choice and open S.B.Accounts by forcing the staff against the rules of the department. Such unbecoming treatment has become day to day routine and how the general staff are very much humiliated to work under such unwarranted environment under the regime of Shri.G.Ninan, and now we heartfully request the Hon'ble Press of Manipur as well as

Attested
Advocate

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অল ইন্ডিয়া পোস্টাল এমপ্লয়িজ ইউনিয়ন, গ্রুপ-গ, মণিপুর ডিভিসনাল ব্রাঞ্চ

ALL INDIA POSTAL EMPLOYEES UNION

P - III

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Shri. Kg. Arunkumar Singh
Smt. Ksh Bimola Devi
Md. Kalam

❑ Auditor
Smt. S. Mema Devi

❑ Asstt. Auditor
Smt. A. Hemabati Devi.

Ref. No. ..... -(3)- Date .....

the general public to bear with us for some time so that not only the Postal staff even the general public may get some right to say about their redressal.

The Director's remark made in Sangai Express to the effect, " Firmly stating with conviction ''rules require stern action', he maintained that the people or himself should not be concerned about the relation between the DPS and its employees", clearly exposes his attitude on the general staff. It is really unfortunate and how a conducive atmosphere can be established when DPS does not fell necessity of contacting the members of staff and totally neglecting good relation with employees.

No action whatsoever has been initiated by Shri.Ninan DPS,Imphal against numerous corruption cases against Shri.N.C.Halder, Dy.Supdt.of Post Offices, Imphal which directly exposes that whatever suppressive measures are taken by Shri.Ninan is always with the connaivance of Shri.N.C.Halder, and his removal from Manipur is urgently needed for fairness in administration.

Yours sincerely,

(Kh. Ibobi Singh)
President, AIP&U (P - III)
Manipur Divn Branch, Imphal-795001.

(N.Gojendra Singh)
Divisional Secretary,AIP&U(P-III)
Manipur Divn Branch,Imphal-795001.

Copy to:-

1. The Chief Editor, _____ Imphal for information.
2. Shri.V.Chitale, Chief Postmaster General, N.E.Circle Shillong-793001 for information and taking immediate action for solution of the crisis created by the DPS,Imphal.

(N.Gojendra Singh)
Divisional Secretary,AIP&U(P-III)
Manipur Divn Branch,Imphal-795001.

Attested
Advocate

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ALL INDIA POSTAL EMPLOYEES UNION: CLASS-III AND CLASS IV & POSTMAN

Manipur Divisional Branch:Imphal 795001

To

1. The Director General (Posts),
Department of Posts,
Dak Bhawan, Sansad Marg,
NEW DELHI - 110001.

2. The Chief Postmaster General,
North Eastern Circle,
SHILLONG - 793001.

Subject :- VINDICTIVE ATTITUDE AND INTENTIONAL HARASSMENTS OF SHRI.G.NINAN, DIRECTOR OF POSTAL SERVICES, MANIPUR, IMPHAL.

- AND -

REQUEST FOR IMMEDIATE TRANSFER OF SHRI. G.NINAN DPS/IMPHAL FROM MANIPUR.

Respected Sirs,

After seeing the vindictive attitude and intentional harassments of Shri G.Ninan, Director of Postal Services, Manipur, Imphal, an emergency meeting of the Staff Members of Class-III & Class-IV & Postman Unions was held on 16-02-2001. In the meeting it was unanimously resolved to take up the matter with the higher authorities for immediate necessary action. All the staff Members unanimously authorised the divisional secretaries and presidents of the Staff Unions to represent the matter to the concerned authorities. Therefore, on behalf of the Staff Members of Manipur Postal Division, the undersigned staff representatives submit the following facts to your kind notice and immediate necessary action.

1. Shri G.Ninan, joined as Director of Postal Service, in Manipur on 30-10-2000. Right from his joining it is observed that the Officer is non-cooperative, vindictive, arbitrary and intentionally harmful and his such approach is specifically developed with a clear-cut motive to earn the displeasure of the Staff of Manipur Postal Division so that by inviting complaints he can get transfer out from Manipur where the Officer is being posted against his personal wishes.

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Attested
Advocate

2. Right from the date of his joining as Director Shri.G.Ninan, is throwing his personal anger and unwarranted excessive provocation on the innocent Class - III and Class-IV employees of Manipur Postal Division.No day is left when the Officer did not shout and scold at his personal staff.

3. Since,Shri.G. Ninan joined as DPS/Manipur, the developmental activities in Manipur Postal Division have come to complete stand-still. Except a proposal for installation of separate Electric Transformer for uninterrupted power supply to M.P.O. Complex, nothing has been done on developmental front. Even the proposal for installation of separate electric transformer was made because of his personal necessities. Because, the Officer is having internet connection in his computer and always passing his time with computer games etc., without doing any Office work.

4. Inspite of the fact that more than 10(Ten) justified proposals for opening of PSSKs are pending at Divisional Office, Orders for opening of PSSKs are not issued despite repeated instructions to achieve the target of 30(Thirty) PSSKs within this financial Year.

5. Fund for infrastructural development and supply of furnitures to EDSOs amounting to Rs. 4.5 lacs is still lying unutilised despite repeated instructions from Circle Office. The Officer,Shri.G.Ninan, DPS/Imphal is of the intention to surrender the fund and not to undertake any developmental activities in Manipur.

6. No proposal for upgradation of any EDSO to DSO is submitted in this financial Year in respect of Manipur Division.

7. During the over-a-month long fuel crisis in the State of Manipur in January/2001 & February/2001, the Office did not at all bother to get fuel supply either from the Govt. of Manipur or from other Govt. Agencies. Rather the Officer was throwing his angry provocations on the subordinate Staff only because the Staff of mail section

Attested
Adv.
Advocate

section verbally represented for immediate intervention of the DPS.

8. When nothing is being done actually to improve the mail services in Manipur, the officer is harassing the staff of Mail Section and Speed Post Section in the name of Mail Monitoring. But the grievances of APM(Mails) and Manager (SPC) are never heard and rather the DPS was unwilling to hear the personal grievances of the staff. At times, supervisory staff are insulted on personal remarks. One P.A. in Imphal H.O has been exclusively deployed for personal reporting to DPS regarding the daily Mail receipts and despatches when, in fact, the information required by the DPS may be had from the APM(Mails) without any additional deployment of staff. Therefore, deployment of a P.A. exclusively for the purpose of mail monitoring is specifically done with an intention to create shortage of staff for other works, and also keep a sub-ordinate for throwing all blames on mail monitoring. The P.A.(Mail Monitoring) is another mostly ill-treated sub-ordinate staff.

9. Since his joining, Shri.G. Ninan, DPS/Imphal has not inspected any offices. He once paid a name-sake visit to Mantripukhri S.O in November/2000 when he went to Leimakhong Army HQ for renewing his own Ex-Serviceman Card i.e. only to justify the usage of Official Vehicle for the journey for personal use. Similarly, after receiving the information regarding Chief PMG's visit to Imphal, he paid another name-sake visits to all town S.Os within 2(Two)hrs. in one day in January/2001 only for the purpose of knowing their location so that he may accompany the Chief PMG in the event of Chief PMG's intention to visit Town SOs. Therefore, the officer wants to enjoy the offices, perks and all other facilities without any work.

10. Shri.G.Ninan, DPS/Imphal did not at all visit the Postal Staff Quarters, even once, till-date. He is neither bothered about the staff welfare, nor staff security. When there is no security arrangement in the Postal Staff Quarters where the life of more than a dozen Postal employees are at stake, the Officer is very much busy for his own security.

Contd../-

Attested
as an
Advocate

11. The so-called security risk to the officer is partly self-created and mostly a false exposure and false propaganda. Whatever the small security risk supposed to be faced by him itself is his own self-creation. He himself created security problem for himself by his own arbitrary and high- handed way of misbehaviour and ill-treatment of not only the Postal employees but also the general public of the Manipur State. A photocopy of press clipping published in " Imphal Free Press " local daily on 21.02.2001 is enclosed for ready reference which is self-explanatory (ANNEXURE - VIII).

It is essential to mention here that whatever a public of Manipur has written in the local News-paper against Shri.G. Ninan, IPS/Imphal is cent percent true, and in fact, Shri.G. Ninan, IPS/ Imphal treats the Postal employees too in the same manner. The behaviour of the Officer is just that of an autocratic monarch and he treats the postal staff as bonded labourers.

12. It is already well known to the Chief PMG/Shillong that Shri.G.Ninan, IPS/Imphal had issued verbal instructions to the staff and Dy. SPOs of his office, not to respond to the telephonic instructions of Circle office. The same kind of instruction are prevailing every time and staff are put under great stress and dilemma as and when they receive any telephonic message from Circle office. As the Chief PMG/Shillong has already experienced the taste of the queer administration of Shri.G.Ninan, IPS /Imphal, the union, humbly request the Chief PMG/Shillong to high-light his experience to Postal Directorate so that this type of officers who create administrative impediments by staying inside the administration are treated properly and appropriately.

13. While the Union expresses its strong resentment over the attitude of the Officer, it takes strong view against the intentional harassments being meted -out by Shri.G.Ninan IPS/Imphal on its staff Members. Now, it is strongly feared that the Officer, on return from leave, may resort to retaliatory actions against the staff members who are key witnesses to his arbitrary action.

Contd...5/-

Attested
Advocate

Therefore, the Union while strongly condemn the anti-staff attitude of Shri.G.Himan, IPS/Imphal, it would like to urge the Postal Directorate to transfer the said Officer to the place of his choice so that he will not harass the innocent staff with ulterior motive.

16. The Union also submits that the staff of Manipur Postal Division are no more ready to tolerate the intentional harassments and Vindictive attitude of Shri.G.Himan, IPS/Imphal. So, immediately transfer of the said Officer may kindly be effected without any loss of time. Because, any delay in the matter may lead to unwanted congenial atmosphere which may disrupts the working and functioning of Postal Services in the State of Manipur.

Your kind immediate intervention and quick action is highly solicited.

Yours sincerely,

(R.K.Mahendrana)
Divisional Secretary(P-IV),
AIPEU,Class-IV & Postman
Manipur Division,
IMPHAL - 795001.

(H.Gojendra Singh)
Divisional Secretary,(P-III)
AIPEU,Class-III,Manipur Division,
IMPHAL - 795001.

(L.Megha Singh)
President,
AIPEU,Class-IV & Postman,
Manipur Division,
IMPHAL - 795001.

(Kh.Ibobi Singh)
President,
AIPEU,Class-III,Manipur Division,
IMPHAL- 795001

Copy to :-

1. The Circle Secretary,AIPEU,Class-III Union,Shillong-793001 for information. He is requested to take up the matter at Circle level as well as with the Secretary General,AIPEU/NFPE, New Delhi.
2. The President,AIPEU, Class-III Union,Shillong-793001 for information & similar necessary action.
3. The Circle Secretary,AIPEU,Class-IV & Postman,Shillong-793001
4. The President,AIPEU,Class-IV & Postman,(N.E. Circle) Shillong- 793001 for information & similar necessary action.
5. Secretary-General,AIPEU,Class -III, N.F.P.E, New Delhi-1 for information. He will please take up the matter at Director level.
6. Secretary-General,AIPEU(Class-IV & Postman), N.F.P.E., New Delhi-1 for information & similar necessary action.

Attested
Laisram
Advocate

remaining traditional always. There always comes a time when they also begin to want to own motorcars and colour televisions.

Readers' Forum

Letters to the Editor

Post Office is a Public Office

Sir,

I am a sufferer and a member of the public. I feel it my foremost duty to awake the general public against the excessive and anti-public attitude of the postal regime governed by G Ninan, director postal services and N C Haldar superintendent of post offices, Manipur division. Their suppressive type of administration amounts to treating the entire public of Manipur as second class citizen, with no discrimination even for the press. Bonafide citizen including advocates, educationists, politicians and the entire public have by an order been forbidden to enter inside Imphal Head Post Office as well as in the office of director, postal services. No opportunity is being given to any member of the public of Manipur to make their grievances regarding services known to the the authorities of the postal department and every citizen is now treated as extremist by these two officers.

These two officers have completely forgotten that post office is a public office and public has got every right to meet their grievances with their personal presence and in no case this common right can forcibly be stopped by the above officers. It has also come to light that the director of postal services has taken round the clock protection from the Manipur Rifles jawan's in his quarter and CRPF personnel at the office with strict warning not to allow any one including police officers to meet him.

It is therefore requested to kindly enquire into the above matter through your own agencies and make necessary publication so that the facts can be made known to all the citizens of Manipur as well as the highest officers of the postal department and the government of India. Such undesirable officers who have no confidence and faith on the public of Manipur must be thrown out from the soil of Manipur. These two officers must learn how to behave with the general public for their postal department runs. The people of Manipur cannot be treated as second class citizen as they think.

Thanking you.

Yours sincerely,
Th Yaima Singh
Kwakeithel Konjeng Leikai,
Imphal, Manipur.

THOUGHT FOR THE DAY

When the press is the echo of sages and reformers, it works well; when it is the echo of turbulent cynics, it merely feeds political excitement.

Attested
Advocate

Ann-A-5 251

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The Hon'ble,
Minister of Communication
Govt. of India, New Delhi 110001

Sub :-Complaint against vindictive attitude, intentional harassment and chaotic Behavior of Shri G. Ninan Director Postal Services, Manipur, Imphal.

AND

Humble prayer for immediate removal of said Shri G. Ninan from Manipur

Hon'ble Sir,

With utmost sincerity and due regards I. firstly as a citizen of India and then as Govt. Servant, on behalf of the Postal employees of Manipur Postal Division fervently beg your kind permission to lay down the following heart rendering facts for your kind notice and to take prompt remedial action for issuance of immediate transfer order of Shri G. Ninan Director Postal Services Manipur Imphal from Manipur in order to protect the dignity of service and right to survival of the poor postal employes of Manipur Postal Division in particular and to safeguard the interest of public service as a whole.

1. REIGN OF TERROR AND DICTATORSHIP

Ever since his joining duty as Director Postal Services in Manipur Postal Division on 30-10-2000 Shri G. Ninan has in a very vindictive and whimsical manner started creating a state of terror and anguish amidst the staffs by putting them under the jaws of harassment and humiliation for their having no fault. To high light few instances, it is to be added that :-

a). He suspects all the employees as well as the people of Manipur as extremist and treats every one cruelly like that of a police officer treats to an extremist.

b). He takes the staff as jungly (Wild animal) and treats as 2nd class citizen in day to day working life by using vituperative and unparliamentory languages.

c). He shifted the subordinate staffs as his whims and fancy from one place to another every now and then without considering the welfare of the staff and norms of the Department.

d). He resorted to harass the staff even after office hours by detaining and blocking them by road side demanding physical challenge from the staff without any rhymes and reasons.

e). He does not permit any one whether a staff or member of the public to enter in his chamber to ventilate any problem or grievance relating to postal services. Instead he used to drive them out of the office premises by lashing out rains of abuses and threat.

2. MISUSE OF POWER

Since his joining, the said Shri G. Ninan flately refused to implement the developmental schemes earmarked and allotted by the Department from time to time in the plea that there is nothing to be developed in Manipur even though Manipur is very backward and undeveloped State. For instances,

a). The fund of Rs 4.5 lakhs allotted for supply of infrastructure to the rural post offices in Manipur has been abruptly withdrawn vide letter no. 2001-2002

Attested
Ldes
Advocate

b). The allotment for opening of 10 new Branch Post Offices and up gradation of one EDBO into DSO in rural areas of Manipur, made by Govt. Of India in the annual developmental plan 2001-2002 has been deliberately kept in shelve by Shri G. Ninan, as he cannot tolerate any sign of improvement in the state and deadly against to offer any job opportunities to the youth of Manipur

c). Despite availability of full furnished by-post quarter, Shri G. Ninan, in a despotic manner has been staying in the VIP suit of departmental IB for his personal comforts and luxury in one hand and allowed the other ordinary suits to his personal security guards without paying any rent what so ever since October 2000. In the result the departmental Officers visiting Manipur on official duty has been forced to face unnecessary inconveniences.

d). Like an autocrat Shri G. Ninan wants everybody to succumb to him and so he seized all the powers and rights from the Postmaster Imphal HO reducing him to the stage of a rubber stamp and completely shattered peace and healthy atmosphere of the office. The staff management within Imphal HO required to be done by the Postmaster is being done by Shri G. Ninan at his personal whims and fancy so as to harass the staff in the way he wish. The staff is now in panic and terror stricken in the hands of Shri G. Ninan.

3.NON VISIT TO POST OFFICES

Shri G. Ninan by virtue of his service is duty bound to visit the post Offices from time to time not only to see the functioning of the post offices but also the welfare of the staff. But since his joining he had never ever visited any post office in Manipur. Even the quota of annual inspection allotted to him during 2000 and 2001 has not been inspected by him but he hood winked and misguided the Chief Postmaster General, Shillong by giving false and bogus information about his completion of inspection work periodically. While Shri G. Ninan restricted his movement between quarter to office chamber (which is hardly 50 Meters) by creating artificial and false security risk, his sole purpose to attend the office is to abuse, harass and humiliate the staff in one way or other, or to pass his time by keeping himself busy in WEB SITE with office PC.

4. MASSACRE OF DIGNITY OF SERVICE AND RIGHT OF SURVIVAL

Ever since his joining, Shri G. Ninan is found to have harboured a sense of hatred towards the staff and he took every one as is personal enemy for the reasons best known to him. His coarse and harsh behavior, ridiculous tone, slang languages, challenging attitude and vindictive action already created a hell of administration. While he personally resorted to go on leave on every alternative month, he summarily disapproved and rejected the leave of subordinate staffs and treated the period of leave as 'Dies Non' or charged the staffs with disciplinary proceedings by manipulating the facts to his choice. There are already a dozen of staff who are charge sheeted on flimsy ground and Shri G. Ninan vowed openly to throw those out of service. Now the situation become so worst that nobody can open his mouth or utter a word for self morality and respect. Everybody remains in dark even about his/her share of duty by the next morning till telephonic order reaches to the table of Postmaster Imphal HO. Thus a state of total massacre of dignity of service and right to survival is imminent in the hands of Shri G. Ninan.

5. NON FILLING OF VACANT BRANCH POSTMASTER POSTS

About 100 posts of Branch Postmasters which fell vacant under various circumstances (like death, retirement, promotion of existing incumbent etc) since 2000 onwards has been kept abruptly unfilled as Shri G. Ninan is dead against to offer job opportunity to the youths of Manipur. In spite of series of pressure from various angle to fill the vacant posts urgently, Shri G. Ninan cutting jokes in a cryptical manner 'what do the people of Manipur think of me' remain unmoved and the post kept vacant till date.

Attested
Khan
Advocate

6. RISE IN CORRUPTION

By exercising dictatorial administration and spreading large scale fear psychosis and terror in the minds of the staff, Shri G. Ninan directly passes a green signal to his Deputy Shri N.C. Halder and one Inspector Shri R. Kumar to resort enmass corruption. These two officers under the shadow of Shri G .Ninan adopted the worst ever corrupt pratices in Manipur and share the corrupt earnings with Shri G.Ninan .This is how Shri G.Ninan need not have to touch even a single pie from his pay bill in meeting his expenditure in daily life and making frequent pleasure trips to his home town in kerala but deposit the whole monthly pay and allowances onblock in his savings account .Unless Shri G.Ninan is removed immmediately from Manipur , it will be to late to protect the democratic rights of the staff and the good image of the Department

(7) WILLFUL PUBLIC HARASSMENT

The Department is a public utility Department .But after arrival of Shri G. Ninan in Manipur ,he has been betraying the people of manipur from getting the services in its true terms and spirits. He treats every one as extremist and 2nd class citizen and never permits any visitor to approach him even for genuine cause .Instead, he jeopardizes the public interest by interferring directly in the functioning of post offices unnecessarily .Recently he issued an irregular order whereby he forbiddon the Post Master Imphal H O from supplying fund to the distant Sub Post Offices . As a result , public liabilities , like money order payment , SB withdrawals in terms of lacs of rupees are held up in most of the post offices within the State . This is a distinct and deliberate public harassment caused to the people of manipur due to ill motive and vindictive attitude towards the people as a whole .

In protest against all the nefarious activities high lighted above and demanding transfer of Shri G. Ninan , from Manipur , the Postal Employees in Manipur Postal Division. Imphal had already launched a Pen Down strike from 02 / 06 / 01 to 06 /06 /01 . But no positive response has been made by the Authorities of the Department . Copy of letters addresses to the Authorities of the Department . Press clipping covering the event of strikes ,public anger exposed through Press are all enclosed as Annexure "A to E".

Considering the facts and events discussed above and keeping the gravity of the situation on merit , we the poor Postal Employees earnestly pray your Highness to take prompt remedial action for transferring Shri .G Ninan immediately from Manipur in order to save the staff from the peril of harassment , vindictive action and dictatorial rule exercised by Shri G .Ninan

Sincerely yours

(Shri N .Gojendra Singh)
Secretary AIPEU ,P-III
Manipur Branch ,Imphal

Copy to

1) The Director General (Posts)
Department of Post
Dak Bhavan Sansad Marg
New Delhi 110001
for information in continuation to our letter dated 14/3/01

2) The Chief PostMaster General
North - Eastern Circle Shillong 793001
for Information.

Sincerely yours

(Shri N .Gojendra Singh)
Secretary AIPEU ,P-III
Manipur Branch ,Imphal

Dated/Imphal
The 30th, Nov.2001

Attested
Advocate

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R.K. DORENDRA SINGH
LEADER
BJP LEGISLATURE PARTY, MANIPUR

FORMER CHIEF MINISTER &
MEMBER (RAJYA SABHA),

Camp:Manipur Bhavan
New Delhi
Date 27-12-2001

Dear Shri Pramod Mahajanji,

The All India Postal Employees Union P-III Manipur Branch, Imphal is submitting a representation to you for removal of Shri G.Ninan, Director, Postal Services, Manipur as he has not been able to carry on with the postal employees in Manipur. For a smooth functioning of the postal services and its development his transfer has become a necessity. I shall be thankful if you would kindly look into the matter and replace Shri G.Ninan by another Director.

With regards,

Yours Sincerely,

(R.K.DORENDRA SINGH)

Shri Pramod Mahajan
Union Minister for Communications
Sanchar Bhavan
New Delhi.

Attested
Advocate