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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Office not page 1

SECTION OFFICER (Judl.)

Subhita
06.11.17

FORM NO. 4.
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 234/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s): Mirulal Acharyya

Respondent(s): U.O.L. Govt.

Advocate for the Applicant(s): - M. Chanda, S. Naik, S. Das Chaudhury

Advocate for the Respondent(s): - CASC

Notes of the Registry	Date	Order of the Tribunal
	7.9.2005	Present: Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

This application is in relation to the application No. 234/05 filed on 29.8.2005. The amount of Rs. 10/- is deposited via P. B. No. 206158682. Dated 29.8.2005.

Heard Mr. M. Chanda, learned counsel for the applicant and Mr. G. Baishya, learned Sr. C.G.S.C. for the respondents.

Issue notice to the respondents.
Post on 22.11.2005.

Shri
Dy. Registrar

Par

Steps not taken

E. Baishya
Vice-Chairman

P-30, 31, 66 and 69 not visible

6.9.05

On behalf of Mr. G. Baishya, learned Sr. C.G.S.C. Ms. U. Das seeks for time to file written statement. Post on 22.12.2005.

Steps taken

On 20/9/05.

E. Baishya
Vice-Chairman

Notice & order sent to D/Section for issuing to resp. Nos. 1 to 5 by regd. A/D post.

Par
20/9. D/Mo = 1433 to 1437.
Dt 22/9/05.

Mr. M. Chanda, learned counsel for the applicant is present. Mr. G. Baishya, learned Sr. Central Government standing counsel seeks for further time to file written statement. Post on 25.1.2006. Written statement, if any, in the meantime.

E. Baishya
Vice-Chairman

① Service report awaited.

25.12.05

25.12.05 Present: Hon'ble Mr. K. V. Sachidanandan
Vice-Chairman

Heard learned counsel for the parties.

Application is admitted. Issue notice on the respondents.

When the matter came up for hearing Mr. G. Baishya, learned Sr. C.G.S.C. prays for four weeks time to file written statement.

Post the matter on 16.3.06.

① Service Report are still awaited.

② No. W.L.S has been filed.

25.12.05

1m

Vice-Chairman

16.3.06

Mr. G. Baishya, learned Sr. C.G.S.C. for the Respondents submits that written statement is ready, but the signing officer is on leave and he prays for short adjournment to file written statement.

Post on 16.3.06.

24.1.06
No. W.L.S has been filed.

24.1.06

1m

Vice-Chairman

28-2-06
No. W.L.S has been filed.

28-2-06

16.3.2006

Reply statement has been filed by the respondents. Mr. M. Chanda, learned counsel for the applicant wanted time to file rejoinder.

Post on 05.04.2006.

15.3.06
No. W.L.S filed so far

17.3.06

mb

W.L.S filed by the respondents.

17.3.06

6.4.06

Learned counsel for the applicant wanted to file rejoinder.

Post on 9.5.06 for order.

5-4-06

pg

No Rejoinder has been filed.

Vice-Chairman

No Rejoinder has been filed.

8.5.06

9.5.06

The counsel for the applicant wanted to have some time for filing rejoinder. Post on 25.5.06 for order.

24-5-06

No rejoinder has been filed.

Vice-Chairman

pg

24.5.06

28-6-06

No rejoinder has been filed.

DSG

25.05.2006

When the matter came up for hearing learned counsel for the applicant submitted that he has received copy of the written statement and he would like have some time to file rejoinder.

Let the case be posted on 29.6.06.

31-7-06

No rejoinder has been filed.

DSG

29.6.2006

Learned counsel for the applicant submits that applicant has no rejoinder to file and submits that the pleadings are complete and the matter may be posted for hearing.

Post for hearing before the next Division Bench.

Vice-Chairman

mb

bb

01.08.2006

Post tomorrow, i.e. 02.08.2006.

Member

Vice-Chairman

mb

7.8.2006

Post the matter before the next Division Bench.

SG
Member (A)

U
Vice-Chairman

bb

*Forwarded to
G.A. 234/2005
F.S. 07
Member
of S.P.*

PUC

→ Letter No. N/1 dated 9.5.07 received from Sri Hiralal Acharyee, applicant in OA 234 of 2005

The PUC may kindly be seen.

By the above letter the applicant in OA 234/05 has intimated this Registry that he has not yet received the copy of the Judgment and Order dated 1.3.07. But it is seen from the record (in pages no's of the order sheets) that Shri S. Nath, the L/Advocate for the applicant has collected the copy of the Judgment on behalf of the applicant on 8.5.07 and same has been received by Mr. G. Baishya, Sr. C.G.S.C. on 7.5.07 for the Respondent.

A } So, perhaps we have nothing to take further necessary action for communicating the above mentioned copy of the Judgment to the applicant as requested.

Submitted for favour & kind perusal and orders.

MS/5
3/5/05

50(3) N.S.C.
30/5/07

Y
20/5/07
Hon'ble VC

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 234 of 2005

DATE OF DECISION : 01.03.2007

Shri Hira Lal Acharjee

..... Applicant/s

Shri M. Chanda

..... Advocate for the
Applicant/s.

- Versus -

U.O.I & Others

..... Respondent/s

Mr. G. Baishya, Sr.C.G.S.C.

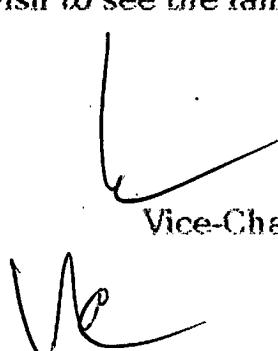
..... Advocate for the
Respondents

CORAM

HON'BLE MR K.V. SACHIDANANDAN, VICE-CHAIRMAN

HON'BLE MRS CHITRA CHOPRA, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment ?	Yes/No
2. Whether to be referred to the Reporter or not ?	Yes/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench & Other Benches ?	Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment ?	Yes/No


Vice-Chairman/Admin. Member

X

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.234 of 2005.

Date of Order: This the 1st day of March 2007.

THE HON'BLE SHRI K.V.SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MRS CHITRA CHOPRA, ADMINISTRATIVE MEMBER

Shri Hira Lal Acharjee
Son of Late Manindra Chandra Acharjee,
Working as Postman,
Tura Head Office,
Tura, Meghalaya. Applicant

By Advocate Shri M.Chanda

- Versus -

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

2. The Chief Postmaster General,
N.E.Circle, Shillong,
Meghalaya-793001.

3. The Director of Postal Service(HQ)
Office of the Chief Post Master General,
N.E.Circle, Shillong,
Meghalaya-793001.

4. Senior Superintendent of Post Offices,
Meghalaya Division,
Shillong-793001.

5. The Member (Personnel)
Postal Service Board,
Government of India,
New Delhi. Respondents

By Shri G.Baishya, Sr.C.G.S.C



ORDER (ORAL)SACHIDANANDAN K.V (V.C)

The applicant was subjected to a disciplinary proceeding and as per enquiry a penalty of removal was imposed vide Annexure-5 order dated 30.6.2000. He had preferred an appeal before the appellate authority and the appellate authority had modified the order of removal and passed Annexure-VIII order dated 27.10.2000. The operative portion of the order is quoted below :

“.....I find that all the charges as mentioned in the charge sheet stand proved and the appellant deserves punishment for violation of rules as mentioned in the charge sheet. However, taking the medical certificate dated 31.12.99 into consideration and taking a lenient view, I shri Lalhluana, Director Postal Services (IIQ), Shillong do hereby reduce the punishment of Shri Hiralal Acharjee of removal from service with immediate effect to reduction to the lower grade of Postman cadre until he is found fit by the competent medical authority to be restored in the higher grade of Postal Assistant. This disposes the appeal of Shri Hiralal Acharjee.”

Subsequently, as per that direction he was subjected to a Medical Examination as evident from Annexure-2 order dated 3.6.03 of the written statement. While so a corrigendum dated 6.12.2000 cancelling the appellate order was issued by the appellate authority substituting the words ‘Competent Medical Authority’ to “Competent Authority” and thereafter another corrigendum was issued by the office dated 11.8.04 cancelling the earlier corrigendum dated 6.12.00. It is submitted that on the basis of the medical report he was restored as Postman in spite of Postal Assistant if it is given to the discretion of the competent authority



he was never restored to the said post. Aggrieved by the those actions of the respondents he has filed this O.A.

2. The respondents have filed a detail written statement contending that the appeal preferred by the applicant and the consequence arose after filing the representation and appeal and mostly dealt with records of the case and the respondents do not admit anything which is not borne out of the records. The words Competent Medical Authority appeared in the 8th line of para 4 of the order dated 27.10.2000 may be read as "Competent Authority". The revised wordings "Competent Authority" instead of Competent Medical Authority" stands. The applicant has suppressed many material facts and the O.A has no merit. When the applicant approached this Tribunal by O.A.293/2001 this Tribunal directed to consider the revision petition which was disposed of accordingly in the name of President of India dated 29.2.03. The applicant was found to be suffering from Schizophrenia and he was fit to perform his duty as a Postman so he ought not to be promoted to the higher grade.

3. We have heard Mr M.Chanda, learned counsel for the applicant and Mr G.Baishya, learned Sr.C.G.S.C for the respondents. Learned counsel appearing for the parties has taken us to the various pleadings, materials and evidence of the case. Counsel for the applicant would strongly argued that respondents are diluting for implementation of the orders of the appellate authority and they have no legal right to issue corrigendums and therefore the applicant may be restored to the post of Postal Assistant with retrospective effect. He has also cited the decision of

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Commissioner of Police, Bombay vs. Gordhandas Bhanji, AIR (39)

1952 SC 16, wherein the Hon'ble Supreme Court, to canvas the position of a "public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do." Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Counsel for the respondents on the other hand submitted that the order was passed in the name of President of India and it cannot be touched. Revisional authority has applied his mind and therefore the applicant has no case.

4. We have given our due consideration to the arguments, pleadings, materials and evidence advanced by the learned counsel for the parties. We find that it is an admitted fact that the applicant was suffering from Schizophrenia and he was under treatment of a psychiatrist. This fact is accepted by the respondents and on going through the appellate order this also reflected and finally the appellate authority came to the conclusion in all fairness, considered this aspect and specifically directed the punishment of the applicant Shri Hiralal Acharjee from removal of service to reduction to the lower grade of Postman cadre until he is found fit by the competent medical authority to be restored in the higher grade of Postal Assistant. This disposes the appeal of Shri Hiralal



Acharjee. Subsequently a certificate was issued by the Medical Board which is re-produced below :

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"We the Members of the Medical Board sat at Civil Hospital, Shillong on 21.5.2003. The Board was assisted by the Assistant Psychiatrist. On examination the prescription and past history of symptoms and behaviour of Shri Hiralal Acharjee he was found to be suffering from "Schizophrenia". At present he is non psychotic and fit for the usual/same job he is performing. The case need to be reviewed after six months with confidential reports for his performance from his employer."

Strange enough subsequently corrigendums one after another was issued changing/cancelling the word of competent medical authority to competent authority and as per last corrigendum it is stated that the competent authority should evaluate the position of the applicant. No reason whatsoever has been given in the corrigendum why such a conclusion has arrived by the authority. With due respect to the authority as per our view the medical authority is an expert body who is competent to evaluate the position of the applicant and the administrative authority may not be able to assess the same which may be subjected to evaluate with some laboratory test etc and come to the conclusion whether he is fit or not and therefore we hold that the medical authority is the competent authority as stated in the original appellate order and the same should stand. The contention of the respondents that the review/revisional order has attained finality. On going through the said order we find that the same has been issued by one 'Desk Officer' without due application of mind and to be set aside. We do so accordingly.

5. Learned counsel for the applicant has also taken us to the rule position as to the issuance of medical certificate and

L

submitted that rule 61 of the Manual prescribed that it should be by a competent medical authority. Considering the entire issue of this case and perusing the certificate issued on 21.5.03 declaring the applicant as Schizophrenia patient and fit for his job he is doing we are of the view that the decision taken and to be taken by a competent medical authority should stand but the certificate that has already been issued in 2003 which requires review after six months.

6. Considering the entire issue involved in the case we are of the view that the applicant should be subjected to a fresh Medical Board and the respondents shall send the applicant for Medical examination as expeditiously as possible in any case within one month time and on receipt of such medical report the respondents shall take appropriate action to comply with the order of the appellate authority and restore the applicant to the higher grade of Postal Assistant within a period of 3 months from the date of receipt of the medical report.

O.A is allowed and disposed of as above. In the circumstances no order as to costs.

Chitra Chopra
(CHITRA CHOPRA)

ADMINISTRATIVE MEMBER


(K.V.SACHIDANANDAN)
VICE CHAIRMAN

6 SEP 2005

গুৱাহাটী ব্যায়পোঁঠ

IN THE **CENTRAL ADMINISTRATIVE TRIBUNAL**

GUWAHATI BENCH: GUWAHATI

O.A. No. 234 /2005.

Shri Hiralal Acharjee

-Vs-

Union of India and Others.

DATES AND SYNOPSIS OF THE CASE IN THIS APPLICATION

01.10.1999- Applicant placed under suspension in contemplation of Disciplinary proceeding against him. (Annexure-I)

05.11.1999- Disciplinary proceeding drawn up with three numbers of charges. (Annexure-II)

20.04.2000- Applicant submitted representation pleading his unsoundness of mind, enclosing therewith relevant medical certificate. But formal enquiry conducted. (Annexure-III)

10.05.2000- Enquiry report conveyed to the applicant. (Annexure-IV).

30.06.2000- Order issued imposing the penalty of removal from service of the applicant with immediate effect. (Annexure-V).

04.08.2000- Applicant preferred appeal against the order of penalty of Director General of post offices.

10.08.2000- Memorandum of appeal returned to the applicant by Sr. Supdt. of post offices informing that the Director of Postal services (HQ), Shillong is the appropriate appellate authority. (Annexure-VI)

21.08.2000- Applicant preferred appeal before the Director of Postal Services (HQ). (Annexure-VII)

27.10.2000- Director of Postal services (HQ) issued order reducing the punishment of the applicant from "removal from service" to "reduction to the lower grade of Postman cadre until he is found fit by the competent medical authority to be restored to the higher grade of Postal Assistant". (Annexure-VIII)

H. Acharjee

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15.11.2000- Applicant submitted representation alongwith fitness certificate dated 10.03.2000, issued by the psychiatry department of GMCH, Guwahati. (Annexure-IX)

02.01.2001- Applicant was informed that he has since been reverted to the grade of Postman. (Annexure-X)

20.01.2001- Applicant made representation to the Chief Post master General, NEC, Shillong for review. (Annexure-XI)

21.03.2001 The said representation returned by the Sr. Supdt. of Post Offices with instructions that it could be sent to member (Personnel), department of Posts, New Delhi. (Annexure-XII)

2001- Applicant filed O.A. No. 293/2001 before this Hon'ble Tribunal.

25.02.2002- Hon'ble Tribunal directed the applicant to resubmit his review petition before the member (P) within 4 weeks time and further directed the authorities to consider the same and pass reasoned order.

01.04.2002 and 26.04.2002- Applicant submitted review applications as directed. (Annexure-XIV and XV).

19.05.2003- Applicant was directed to appear before the state standing medical board at Shillong for his examination.

21.05.2003- Applicant appeared before the medical board as directed. Medical board in its report dated 21.05.2003 declared the applicant fit and added that the case needs be review after six months.

29.10.2003- Review application dated 01.04.02 rejected by the Member (P). (Annexure-XIX).

27.07.2004- applicant submitted representation to the Director of Postal services (HQ) praying for his restoration to the higher post of Postal Assistant in terms of his appellate order dated 27.10.2000, in view of his medical fitness. (Annexure- XX)

11.08.2004- Director of Postal services issued corrigendum substituting the words "competent medical authority" by the words "competent authority" in his appellate order dated 27.10.2000 with malafide intention for depriving the applicant of his restoration to the higher post. (Annexure-XXI)

H. Acharya

20.08.2004- Applicant submitted representation to the Chief post master General, NE Circle agitating against the memo dated 11.08.2004 aforesaid and prayed for his restoration to the post of Postal Assistant. (Annexure-XXII)

20.09.2004- Applicant being frustrated preferred appeal before the Hon'ble President of India. (Annexure-XXIII).

10.02.2005 The said appeal rejected without taking consideration the relevant facts and the appellate order dated 27.10.2000. (Annexure-XXIV).

Hence this Original Application.

PRAYERS

1. That the respondents be directed to restore the applicant to the higher post of Postal Assistant in the terms of the appellate order dated 27.10.2000 with retrospective effect from 01.10.99 or from any other date deem fit and proper by the Hon'ble Tribunal without any break/or interruption of service.
2. That the Hon'ble Tribunal be pleased to declare the impugned order No. C-17015/53/2004-VP dated 10.02.2005 (Annexure-XXIV) and Corrigendum/memorandum dated 06.12.2000 (Annexure-XVII), dated 17.09.2003 (Annexure-XVIII) and dated 11.08.2004 (Annexure-XXI) as null and void and further be pleased to direct the respondents to restore the applicant to the higher post of Postal Assistant on the basis of medical Board's report dated 21.05.03 and the report of the Gauhati Medical College dated 10.03.2000.
3. That the respondents be directed to regularize the period of services of the applicant from 01.10.99 to 30.01.2001 during which he was placed under suspension, with all consequential benefits thereto.
4. Costs of the application.
5. Any other relief or relief's which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for

During pendency of this application, the applicant prayes for the following relief's:

1. That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar to the respondents for considering the representations of the applicant and to allow him to resume his duties in the higher post as prayed for, forthwith, pending disposal of this application.
2. That the applicant prays for expeditious disposal of this application.

6 SEP 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
GUWAHATI BENCH: GUWAHATI

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

Title of the case: O.A. No. 234 /2005

Shri Hira Lal Acharjee. : Applicant.

-Vs-

Union of India and Others. : Respondents.

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Filed By:

S. N. Deka
Advocate

Date: - 05/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 2005

Between:

Shri Hira Lal Acharjee.
Son of Late Manindra Chandra Acharjee.
Working as Postman,
Tura Head Office,
Tura, Meghalaya.

..... Applicant.

-AND-

1. The Union of India.
(Represented by the Secretary to the Govt. of India,
Ministry of Communications),
New Delhi.
2. The Chief Post Master General,
North East Circle,
Shillong-793001.
3. The Director of Postal Services, (HQ)
Office of the Chief Post Master General,
N.E. Circle, Shillong.
Meghalaya- 793001.
4. The Senior Superintendent of Post Offices,
Meghalaya Division,
Shillong-793001.
5. The Member (Personnel)
Postal Service Board,
Government of India,
New Delhi.

..... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of the Order against which this application is made:

2
H. Acharjee
Filed by me applicant
through
Sukanta Nahai
05/09/05
05/09/05

H. Acharjee

This application is made against the impugned order No. C-17015/53/2004-VP dated 10.02.2005 (Annexure- XXIV), whereby the appeal preferred by the applicant before the Hon'ble President of India has been rejected. The applicant preferred the said appeal against the orders of the Disciplinary authority, appellate authority and reviewing authority due to non-consideration of reinstatement/restoration to his original post of Sub-Postmaster even inspite of the directions passed by this Hon'ble Tribunal in its judgment and order dated 25.02.2002 in the O.A No. 293/2001.

2. **Jurisdiction of the Tribunal:**

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

3. **Limitation:**

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

4. **Facts of the case:**

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

4.2 That while serving as Sub-Postmaster at Ampati sub-post Office in the district of Tura in Meghalaya, the applicant was placed under suspension with immediate effect by the senior Superintendent of Post offices, Meghalaya Division vide his order No. B 2-430 dated 01.10.1999 on the ground that disciplinary proceeding was contemplated against him.

(Copy of order dated 01.10.1999 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-I).

H. Acharya

4.3 That thereafter, a formal departmental proceeding was drawn up against the applicant by the senior superintendent of Post Offices, Meghalaya Division, Shillong vide memorandum No. B 2-430 dated 05.11.1999 on the following charges; -

- (i) The applicant submitted records/complaints using departmental forms (Corr-22) directly to the (1) Secretary, Deptt. Of Post, (2) Member (personnel), postal board, (3) Communication minister, Govt. of India and (4) Chief Post master General, N.E.Circle, Shillong in violation of Rules 614 and 627 of postal manual Vol-II.
- (ii) The applicant refused to hand over the charge of SPM, Ampati to one Shri Lankeswar Barman as directed and did not attend the circle office on 8.7.99 for enquiry on his complaints, whereby he violated the provisions of Rule-3(i)(ii) of CCS Conduct Rules-1964.

(Copy of the memorandum dated 05.11.1999 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-II).

4.4 That on 20.04.2000 the applicant submitted a representation to the Senior Superintendent of Post Offices praying for revocation of his suspension order and also in the said representation he stated that he was a victim of circumstances, that he was suffering from mental discrepancies etc. He also appended to the said representation a copy of medical certificate dated 10.03.2000 issued by the department of Psychiatry, Gauhati Medical College Hospital, Guwahati.

(Copy of the representation dated 20.04.2000 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-III).

4.5 That his representation aforesaid failed to evoke any tangible result and an Inquiry officer, presenting Officer were appointed to hold enquiry into the charges against the applicant and after holding inquiry, the said inquiry officer, Shri S. Chakraborty submitted his report holding the applicant guilty of the charges. In his enquiry report, the inquiry officer

H. Acharyea

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categorically mentioned that the disciplinary authority could not produce any witness in support of the Articles I and II to ascertain the authenticity of the documentary evidences produced. But even thereafter the applicant was found guilty owing to his direct or indirect admission. A copy of the enquiry report was supplied to the applicant by the Senior Supdt. Of Post offices, Meghalaya division, Shillong vide his communication No. B2-430, dated 10.05.2000.

(Copy of communication-dated 10.05.2000 along with enquiry report is annexed hereto for perusal of Hon'ble Tribunal as Annexure-IV).

4.6 That pursuant to the enquiry report, the Senior Supdt. Of Post Offices, Meghalaya division, Shillong passed order on 30.06.2000 removing the applicant from service with immediate effect although no witness could be produced by him at the time of enquiry as recorded by the Inquiry officer as stated in the preceding para and as such the order was passed in an arbitrary and unjust manner to the serious disadvantage of the applicant leading to civil consequences.

(Copy of order of penalty dated 30.06.2000 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-V).

4.7 That being aggrieved, the applicant preferred an appeal on 04.08.2000 to the Director General of Post Offices against the order of penalty aforesaid but the said memo of appeal was returned by the senior superintendent of Post Offices, Meghalaya Division, Shillong vide his letter dated 10.08.2000 on the ground that his appeal was addressed to the appropriate appellate authority and further informing the applicant that in his case, the Appellate Authority in the Director of Postal Services (HQ), office of the CPMC, N.E. Circle, Shillong.

(Copy of letter dated 10.08.2000 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-VI).

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4.8 That on 21.08.2000, the applicant preferred an appeal to the Director of Postal Services against the order of punishment wherein he stated his conditions and rebutted the findings of the enquiry and the punishment thereof and prayed for quashing of the order of punishment and his reinstatement in service.

(Copy of appeal dated 21.08.2000 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-VII).

4.9 That the Director of Postal Services vides his memo No. Staff/109-16/2000 dated 27.10.2000 disposed the appeal reducing the punishment of the applicant from "removal from service" to "reduction to the lower grade of Postman cadre until he is found fit by the competent medical authority to be restored in the higher grade of Postal Assistant."

(Copy of memo dated 27.10.2000 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-VIII).

4.10 That thereafter, the applicant was examined by the Psychiatry Department of the Gauhati Medical College and was declared fit. The applicant then submitted a representation to the Director of Postal services on 15.11.2000, enclosing therewith an attested copy of the relevant fitness certificate dated 10.03.2000 issued by the Gauhati Medical College and in that representation the applicant prayed for allowing him to resume his duties as postal Assistant in terms of the order dated 27.10.2000 of the appellate authority and further to regularize his period of suspension from 01.10.99.

(Copy of representation dated 15.11.2000 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-IX).

4.11 That the applicant thereafter went to resume his duties and submitted joining report to the senior Supdt. Of Post offices, Meghalaya Division, Shillong but his joining report was not accepted and so he had to return back to his permanent residence in Tripura. Thereafter, by a

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communication No. B2-430 dated 02.01.2001, the Sr. Supdt. Of Post Offices informed the applicant that he has been reverted to the grade of postman.

(Copy of letter dated 02.01.2001 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-X).

4.12 That thereafter, the applicant made a representation to the Chief Post master General, N.E. Circle, Shillong on 20.01.2001 narrating all his grievances therein but the senior Supdt. Of Post offices returned the said representation vide letter No. B 2-430 dated 21.03.2001 with the instructions to the applicant that the said representation be sent to the Member (P), department of Posts, New Delhi.

(Copy of representation dated 20.01.2001 and letter dated 21.03.2001 are annexed hereto for perusal of Hon'ble Tribunal and marked as Annexure- XI and XII respectively).

4.13 That the applicant is from a very poor family and being out of employment for a long period from 01.10.99 (date on which he was placed under suspension), he had been in extreme financial distress and was not in a position to maintain his family. Situated thus, he had to join his duties eventually as Postman at Tura on 31.01.2001 under compelling circumstances although he submitted his objection in his representation dated 20.01.2001 aforesaid.

4.14 That having failed to get justice, the applicant approached this Hon'ble Tribunal through O.A. No. 293/2001. This Hon'ble Tribunal vide its judgment and order dated 25.02.2002 in O.A No. 293/2001 directed the applicant to re-submit the revision application dated 20.01.2001 before the member (Personnel), Postal service Board within four weeks time and further directed that the authority shall consider the revision justly and fairly and pass a reasoned order.

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(Copy of the judgment and order dated 25.02.2002 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XIII).

4.15 That thereafter, the applicant submitted his review application before the member (personnel), postal service Board, New Delhi on 01.04.2002 praying for quashing of the orders of penalty issued by the disciplinary authority and the appellate authority and further praying for his reinstatement as Branch Postmaster w.e.f the date he was placed under suspension. He also submitted another representation on 26.04.2002.

(Copy of representation dated 01.04.2002 and dated 26.04.2002 are annexed hereto for perusal of Hon'ble Tribunal as Annexures - XIV and XV respectively).

4.16 That vide letter No. B2-430 dated 19.05.2003, the Sr. Supdt. of post offices, Shillong directed the applicant to appear before the state standing medical board at shillong on 21.05.2003 for his medical examination. The medical board in its report dated 21.05.2003 stated that the applicant at present is not psychotic and is fit for the usual/same job he is performing and further stated that the case needs to be reviewed after six months, as evident from para 4 of the impugned order dated 10.02.2005 (annexed as Annexure-XXIV, hereinafter).

(Copy of the letter dated 19.05.2003 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XVI).

4.17 That the applicant most respectfully begs to submit that the medical board stated above is the "competent medical authority" and as such, on the basis of it's report dated 21.5.2003 as mentioned above, the applicant ought to have been restored to the higher grade of Postal Assistant forthwith in accordance with the directions passed by the appellate authority in his memo dated 27.10.2000 (Annexure-VIII). But the respondents neither promoted the applicant to the cadre of postal Assistant in terms of the said order dated 27.10.2000 cadre of postal

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assistant in terms of the said order dated 27.10.2000 nor sent the applicant for review as directed in the medical board's report dated 21.05.2003.

In the meantime, the respondents vide one corrigendum dated 06.12.2000 submitted the words "competent medical authority" contained in the memo dated 27.10.2000 by the words "competent authority". But the said corrigendum was again cancelled by the another memorandum dated 17.09.2003 which means that it is only the report of the "competent medical authority" as mentioned in the memo dated 27.10.2000 would prevail upon as the basis for restoration of the applicant to the higher post of postal assistant. As such, pursuant to the report dated 21.5.03 of the medical board which is the "competent medical authority", the applicant ought to have been restored to the higher post which the respondents did not do.

(Copy of corrigendum dated 6.12.2000 and memorandum dated 17.9.2003 are annexed hereto for perusal of Hon'ble Tribunal as Annexure-XVII and XVIII respectively).

4.18 That thereafter the applicant received one order No. C-18013/6/2003-VP dated 29.10.2003 issued by the Member (Personnel), Postal Services Board, New Delhi whereby the review application dated 01.04.2002 which was submitted by the applicant in compliance with the directions passed by this Hon'ble Tribunal in it's order dated 25.02.02 in O.A. No. 293/2001, was rejected and the Chief Post Master General, Assam Circle (Subsequently amended as Chief Post Master General, N.E. Circle by corrigendum dated 30.06.04) was directed to look into the matter of regularization of the suspension period etc.

(Copy of the order dated 29.10.2003 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XIX).

4.19 That thereafter the applicant submitted a representation dated 27.07.2004 to the Director of Postal services (HQ) drawing his kind attention to the

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appellate order issued by him vide No. Staff/109-16-2000 dated 27.10.2000 (Annexure-VIII) and prayed for allowing the applicant to join in the higher post of Postal assistant in terms of the appellate order dated 27.10.2000, and to regularize his service for the period from 01.10.99 to 30.01.2001 (i.e. from the date of his suspension till the date of his joining as postman) etc.

(Copy of representation dated 27.07.2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XX).

4.20 That subsequent to the submission of the representation aforesaid, the Director of Postal Services (HQ), instead of considering to prayer of the applicant, issued one memo No. Staff/110-1/2002 dated 11.08.2004 whereby the corrigendum issued on 17.09.2003 (Annexure-XVIII) was cancelled, thereby continuing with the dichotomy of the phrases "Competent medical Authority" and "Competent Authority" used by them earlier which clearly reflects their mind-set and ulterior motive.

(Copy of memo-dated 11.08.2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XXI).

4.21 That the applicant begs to state that the order dated 27.10.2000 issued by the Appellate Authority is a Public order. It is the settled position of law that Public order, once issued, cannot be altered subsequently to the disadvantage of the concerned person. As such issuance of subsequent corrigendum/memorandum by the said appellate authority altering a particular phrase in the appellate order dated 27.10.2000, to the disadvantage of the applicant only speaks about his malafide intention and ulterior motive and hence not sustainable in law. It is relevant to reiterate here that after issuing the appellate order dated 27.10.2000, the Appellate Authority issued subsequent corrigendum/memorandum dated 06.12.2000, 17.09.2003 and 11.08.2004 in succession whereby the phrase "Competent medical authority" written in the appellate order dated 27.10.2000 was finally changed to the phrase "Competent

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authority" which is illegal and unfair. As such the corrigendum/memorandum dated 06.12.2000, 17.09.2003 and 11.08.2004 are liable to be quashed.

4.22 That on receipt of the memo dated 11.08.2004 as stated above, it became abundantly clear that the Director of Postal Services (HQ) is not serious about the appellate order dated 27.10.2000 issued by him and he is not inclined to implement his own order so as to restore the applicant to the post of Postal Assistant, even though the competent medical authority declared the applicant to be fit. As such he had issued his memo dated 11.08.2004 with the only intention of frustrating the restoration of the applicant to the higher post of Postal Assistant which is malafide, arbitrary, unfair and against the principles of natural justice.

4.23 That situated thus, the applicant submitted a representation to the Chief Post master General, N.E. Circle on 20.08.2004 agitating against the memo dated 11.08.2004 aforesaid and praying for consideration of his case for restoration to the higher post of Postal Assistant.

(Copy of representation dated 20.08.2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XXII).

4.24 That finding no response, the applicant preferred a review petition on 20.09.2004 before the Hon'ble President of India narrating his entire case, whereby the applicant prayed for quashing of the records of punishment and the subsequent orders thereto and for his restoration to the post of Sub-postmaster, which he was holding prior to his suspension.

(Copy of petition-dated 20.09.2004 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XXIII).

4.25 That vide impugned order No. C-17015/53/2004-VP dated 10.02.2005, issued in the name of the President of India; the review petition dated 20.09.2004 preferred by the applicant has been rejected most mechanically

Hiralal Acharya

and without taking into consideration of the relevant facts whatsoever and the appellate order dated 27.10.2000.

(Copy of the impugned order dated 10.02.2005 is annexed hereto for perusal of Hon'ble Tribunal as Annexure-XXIV).

- 4.26 That the applicant most respectfully begs to state that reversion to a lower post as a major punishment is impermissible under CCS (CCA) Rules and Rule 11 of the CCS (CCA) Rules, 1965 prescribes the nature and quantum of punishments where there is no provision for reversion to a lower grade. As such the action of the respondents is arbitrary, illegal, malafide and void-ab-initio.
- 4.27 That it was clearly spelt out in the order dated 27.11.2000 (Annexure-VIII) issued by the appellate authority that the applicant would be restored to the higher post of postal Assistant soon he is found fit by the competent medical authority. The applicant was declared fit by the psychiatry department of the Gauhati medical college Hospital, Guwahati vide certificate-dated 10.03.2000. Thereafter, he was again declared as fit vide report dated 21.05.2003 by the medical board, constituted by the respondents themselves, although the board in its said report mentioned that the applicant needs to be reviewed after six months. But the respondents neither restored the applicant to his higher post in terms of the appellate order nor arranged for his review after six months as stated in the medical board's report, available with them, even inspite of his representations, which is malafide, arbitrary and illegal.
- 4.28 That the respondents issued corrigendum one after another, by changing the words "Competent medical authority" in the appellate order and finally making it "Competent Authority" with the malafide intention of twisting and distorting the meaning of their appellate order dated 27.10.2000. It is the settled position of law that public order once issued, cannot be subsequently changed by executive fiat to the disadvantage of

H. Acharya

the concerned employee, but the respondents resorted to such unfair practice in the instant case. The applicant rely on the judgment and order dated 23-11-1951. A copy of the judgment dated 23-11-1951 is annexed as Annexure-XXV

4.29 That the Chief Post Master General, Shillong, while disposing the review petition dated 01.04. 2002 of the applicant preferred before the Member (P), Postal Services board, observed as follows; -

"In my view there is no need to consider the petition as the order of the appellate authority implied that on being found medically sound the official would be restored to his original grade. In other words, this would be automatic and not subject to the decision of the reviewing authority....."

The above lines have been quoted by the respondents under Para 3 (Page 3) of the impugned order dated 10.02.2005 (Annexure-XXIV).

But the respondents have not been acting as stated above which is malafide, arbitrary, illegal and unfair labour practice.

4.30 That due to non-restoration of the applicant to the higher post of Postal Assistant in terms of the appellate order dated 27.10.2000, the applicant has been suffering great financial losses. As such, finding no other alternative, the applicant is now approaching this Hon'ble Tribunal for protection of his rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with, by directing the respondents to restore the applicant to the post of Postal Assistant with retrospective effect in terms of their order dated 27.10.2000 and to regularize his period of suspension from 01.10.99 to 30.01.2001 with all consequential monetary benefits etc.

4.31 That this application is made bonafide and for the ends of justice.

5. Grounds for relief with legal provisions

H. Acharye

- 5.1 For that the applicant is entitled to be restored to the higher post of Postal Assistant with retrospective effect in terms of the order dated 27.10.2000 issued by the Appellate Authority and as per the report of medical Board.
- 5.2 For that the standing medical board in its report dated 21.05.2003 has declared the applicant fit. The medical Board is the "Competent medical authority" and as such it's report qualifies the applicant for being restored to the higher post of Postal Assistant as per appellate order dated 27.10.2000.
- 5.3 For that the respondents even thereafter have not restored him to the higher post of Postal Assistant nor have arranged for his review after six months in terms of the Medical Board's report.
- 5.4 For that the applicant was declared fit even prior to that, way back on 10.03.2000 by the Psychiatry department of the Gauhati Medical College Hospital, which is also the "Competent medical authority".
- 5.5 For that the restoration of the applicant to his original grade was to be done automatically as stated hereinabove but the respondents did not do so even inspite of services of representations made by the applicant.
- 5.6 For that, rule 11 of the CCS (CCA) Rules, 1965, which prescribed the nature and quantum of punishments, has not provided for any punishment of reversion to a lower post.
- 5.7 For that the substitution of the words "competent medical Authority" in the appellate order dated 27.10.2000 by the words "competent authority" by issuing subsequent corringendum/memorandum is opposed to the settled position of law.
- 5.8 For that non-restoration of the applicant to the higher post by the respondents is arbitrary, malafide, unfair, illegal and violative of the principles of natural justice.

6. **Details of remedies exhausted**

That the applicant states that he has no other alternative and efficacious remedy than to file this application.

H. Acharjee

7. **Matters not previously filed or pending with any other court**

The applicant declares that save and except one O.A. No. 293/2001 filed earlier before this Hon'ble Tribunal, he has not previously filed any application, writ petition or suit before any court or any other authority or any other bench of the Tribunal regarding the subject matter of this application nor any such application, writ petition or suit is pending before any of them.

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

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

- 8.1 That the Hon'ble Tribunal be pleased to direct the respondents to restore the applicant to the higher post of Postal Assistant in the terms of the appellate order dated 27.10.2000 with retrospective effect from 01.10.99 or from any other date deem fit and proper by the Hon'ble Tribunal without any break/or interruption of service.
- 8.2 That the Hon'ble Tribunal be pleased to declare the impugned order No. C-17015/53/2004-VP dated 10.02.2005 (Annexure-XXIV) and Corrigendum/memorandum dated 06.12.2000 (Annexure-XVII), dated 17.09.2003 (Annexure-XVIII) and dated 11.08.2004 (Annexure-XXI) as null and void and further be pleased to direct the respondents to restore the applicant to the higher post of Postal Assistant on the basis of medical Board's report dated 21.05.03 and the report of the Gauhati Medical College dated 10.03.2000.

8.2 That the Hon'ble Tribunal further be pleased direct the respondents to regularize the period of services of the applicant from 01.10.99 to 30.01.2001 during which he was placed under suspension, with all consequential benefits thereto.

8.3 Costs of the application.

8.4 Any other relief or relief's which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for

During pendency of this application, the applicant prays for the following interim relief's:

9.1 That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar to the respondents for considering the representations of the applicant and to allow him to resume his duties in the higher post as prayed for, forthwith, pending disposal of this application.

9.2 That the applicant prays for expeditious disposal of this application.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O

(i) I.P.O. No	: 20 G 158682
(ii) Date of Issue	: 29.8.05
(iii) Issued from	: GPO, Guwahati
(iv) Payable at	: GPO, Guwahati

12. List of enclosures

As given in the index.

I. Acharya

VERIFICATION

I, Shri Hira Lal Acharjee, S/o- Late Manindra Chandra Acharjee, working as Postman, Tura Head Post Office, Tura, Meghalaya, do hereby verify that the statements made in paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 28th day of August, 2005



DEPARTMENT OF POST INDIA
O/O THE SR. SUPDT. OF POST OFFICES : MEGHALAYA DIVISION
SHILLONG - 793001.

ANNEXURE-I

No. B2-430.

Dtd at Shillong-1, the 1st Oct'99.

Whereas a disciplinary proceeding against
Shri. Hiralal Acharjee SPM Ampati S.O. is contemplated

Now, therefore, the undersigned in exercise
of powers conferred by Sub rule (1) of Rule 10 of the
Central Civil Services (Classification control and Appeal)
Rules, 1965, hereby places the said Shri. Hiralal Acharjee,
SPM Ampati S.O. under suspension, with immediate effect.

It is further ordered that during the period
that this order shall remain inforce the headquarters of
Shri. Hiralal Acharjee should be at Ampati and the said
Shri. Hiralal Acharjee shall not leave the headquarters
without obtaining the previous permission of the under-
signed.

Sd/-

Sr. Supdt. of Post Offices
Meghalaya Division
Shillong-793001

Copy to :-

1. Shri. Hiralal Acharjee SPM Ampati S.O.
2. The Postmaster Tura H.O.
3. P/F of Shri. Hiralal Acharjee.
4. Fraud Branch Divl. Office.
5. O/C / Spare.

Sd/-
Sr. Supdt. of Post Offices
Meghalaya Division
Shillong-793001

Attested
Advocate
31/8/05

ANNEXURE - II

UNPUNCTUATED COPY

MEMORANDUM NO. B2-430 dtd at Shillong
the 5-11-94

The President/Undersigned proposed to hold an inquiry against Shri. Hirakal Acharyee SPM Amp under (Rule 14) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The substance of the imputations of mis-conduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure/I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure/II). A list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure/III & IV).

2. Shri. Hirakal Acharyee is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

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

4. Shri. Hirakal Acharyee is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the C.C.S. (C.C.A) Rules, 1965 or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri. Hirakal Acharyee is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Govt. servant shall bring or attempt to bring any political or outsider influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Govt. 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. Hirakal Acharyee is aware of such a representation and that it has been made at his instance and action. Action will be taken against him for violation of Rule 20 of the C.C.S. (Conduct) Rules, 1964.

6. The receipt of this Memorandum may be acknowledged.

To
 A.R. Bhawuk
 Name & Designation of Competent authority.
 Sr. Supdt. Post. Officer
 Meghalaya Division
 Shillong-793001

Regd/AD Shri. Hirakal Acharyee
 SPM. Amp etc.
 (Under Suspension)

Charge sheet
 under Rule 14

Attested
 Jai
 Advocate
 31/8/05

Annexure-I

STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI. HIRALAL ACHARJEE, S.P.M. AMPATI NOW UNDER SUSPENSION.

ARTICLE-I Manual of Conduct Rules-1964 § 627
 That Shri. Hiralal Acharjee while functioning as SPM Ampati during the period from 25.7.98 to 1.10.99 submitted reports/complaints, using Deptl. forms (Corr-22) direct to (i) The Secretary, Department of Post on 3.2.99 (ii) to the member (personal) Postal Board on 20.2.99 (iii) to the Communication Minister, Govt. of India, New Delhi on 1.3.99 and (iv) to the Chief P.M.G., N.E. Circle, Shillong on 26.3.99 in violation of the conditions laid down in Rules 614 & 627 of Postal Manual Vol. II, 1964 in this.

That during the aforesaid period and while functioning in the aforesaid office, the said Shri. Hiralal Acharjee lodged complaints to the Secretary, Department of Post on 3.2.99, to the member (Personal) Postal Board on 20.2.99 and to the Communication Minister, Govt. of India on 1.3.99, against Shri. S. Samant, Chief P.M.G., N.E. Circle, Shillong with a view to demoralize and disgrace the character of Shri. S. Samant and one Smti. Rupa Bhattacharjee and the said complaints were found completely baseless on subsequent enquiry. Thus, Shri. Hiralal Acharjee is alleged to have violated the Provisions of Rule 3(1)(iii) of CCS (Conduct) Rules-1964.

ARTICLE-II Manual of Conduct Rules-1964 § 627

That during the aforesaid period and while functioning in the aforesaid office, the said Shri. HIRALAL Acharjee was directed to hand over the charge of SPM, Ampati to one Shri. Lankeshwar Barman, L.R. P/A Garobadha and to get himself relieved and to attend Circle Office, Shillong to appear before the DDG (Vig) on 8.7.99, in connection with enquiry on the complaints lodged by him. But the said Shri. Hiralal Acharjee refused to hand over the charge to Shri. Barman and did not attend the Circle Office, as directed. During the visit of DDG (Vig) to the Department of Posts, By his above action said Shri. Hiralal Acharjee is alleged to have failed to maintain devotion to duty and thus violated the provision of Rule 3(1)(ii) of CCS (Conduct) Rules-1964.

ANNEXURE-II
STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST SHRI. HIRALAL ACHARJEE, SPM, AMPATI, NOW UNDER SUSPENSION.

ARTICLE-I

That said Shri. Hiralal Acharjee while functioning as SPM Ampati during the period from 25.7.98 to 1.10.99 submitted reports and complaints using Deptl. forms (Corr-22) (i) to the Secretary, Department of Post on 3.2.99 (ii) to the member (Personal) Postal Board on 20.2.99 (iii) to the Communication Minister, Govt. of India, on 1.3.99 and (iv) to the Chief P.M.G., N.E. Circle, Shillong on 26.3.99. Said Shri. Hiralal Acharjee submitted all the said reports and complaints direct to higher authorities without using proper channel of provisions laid down in Rule 627.

in Rules-614 & 627 of Postal Manual Vol. II and thus he is considered to have violated the Provisions of Rule-3 (i), (iii) of CCS (Conduct) Rules-1964, also.

ARTICLE-II

That said Shri. Hiratal Acharjee while functioning as SPM, Ampati during the aforesaid period, lodged complaints to the Secretary, Deptt. of Posts on 3.2.99, to the member (Personal) Postal Board on 20.2.99 and to the communication Minister, Govt. of India, on 1.3.99 in which he alleged that " Shri. S. Samant, Chief P.M.G., N.E.Circle, Shillong and his men raped Miss. R. Bhattacharjee, Sorting Asstt. while she was on training at P.T.C. Darbhanga in December'96 and also after her posting at Agartala Stg. in 1997.

Shri. Acharjee also alleged that Mr. Samant converted her into Muslim by force against fundamental rights, etc. On enquiry, the complaints were found completely false and baseless. It also revealed that Miss. R. Bhattacharjee was selected for the post of Sorting Asstt. in RMS "G" Division and was under institutional training at P.T.C. Darbhanga from 23.12.96 to 7.3.97. On completion of the training she joined as Sorting Asstt. at Agartala RMS on 29.3.97 and worked there upto 7.9.98. On 28th February, 1998 she got married with one Shri. Tapan Ranjan Kalita working as P.A. Darbhanga Postal Division. Both the couple are Hindu and their marriage ceremony was celebrated/solemnised according to Hindu customs. After marriage Smti. Bhattacharjee was transferred under Rule-38 and joined at Tezpur RMS on 13.10.98. She is living there with her husband happily. Shri. S. Samant Chief P.M.G., N.E. Circle, Shillong joined as SPM, Shillong on 25.7.97 and he was nowhere in picture with Smti. Rupa Bhattacharjee. Moreover, Smti. Bhattacharjee presently working as S.A. Tezpur RMS stated in her statement dtd. 13.7.99, that she was never misbehaved by any officer/official either at Darbhanga or Agartala and she had no grievance against any Officer/official of Assam/N.E. Circle. It is also revealed that Shri. Hiratal Acharjee, Miss Rupa Bhattacharjee and Shri. Tapan Ranjan Kalita were on training at P.T.C. Darbhanga at the same time during the period from 23.12.96 to 7.3.97 and thus Smti. Bhattacharjee and Shri. Kalita were known to Shri. Hiratal Acharjee and therefore with some ill motive Shri. Acharjee lodged all those false complaints to demoralize and disgrace the character of Shri. S. Samant and Smti. R. Bhattacharjee. And by way of doing so he also assassinated the character and dignity of a high level Officer like Chief P.M.G., Shillong. Shri. H. Acharjee also deliberately avoided confrontation enquiry when he was asked to attend the enquiry on 8.7.99. By his above action, said Shri. Acharjee alleged to have violated the Provision of Rule-3 (i) (iii) of CCS (Conduct) Rules-1964.

ARTICLE-III

Said Shri. H. Acharjee while functioning in the aforesaid office and during the aforesaid period, was directed to hand over the charge of SPM, Ampati to Shri. Lankeshwar Barman, L.R. P/A Garobadha and to attend the circle Office, Shillong on 8.7.99. But said Shri. Acharjee refused to hand over the charge to Shri. L. Barman and wilfully avoided to attend Circle Office, Shillong, as directed. By his above action said Shri. Acharjee alleged to have failed to maintain devotion to duty and alleged to have violated the Provisions of Rule-3 (i)(ii) of CCS (Conduct) Rules 1964.

ANNEXURE - III

**LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGES FRAMED AGAINST
SHRI. HIRALAL ACHARJEE, SPM, AMPATI, NOW UNDER SUSPENSION ARE
PROPOSED TO BE SUSTAINED.**

1. Photo/copy of complaint of Shri. Hiratal Acharjee, SPM, Ampati dt. 3.2.99 addressed to The Secretary, Deptt. of Posts.
2. Photo-copy of complaint of Shri. Hiratal Acharjee, SPM, Ampati dt. 20.2.99, addressed to the Member (Personnel) Postal Board.
3. Photo-copy of complaint of Shri. Hiratal Acharjee, SPM, Ampati dt. 1.3.99 addressed to the Communication Minister, Govt. of India.
4. Photo-copy of report of Shri. Hiratal Acharjee, SPM, Ampati dt. 26.3.99 addressed to the Chief P.H.G., N.E. Circle, Shillong 1.
5. Photo-copy of written statement of Smti. Rupa Bhattacharjee, S.A. Tezpur RMS dtd. 13.7.99.
6. Inquiry report of Shri. I. Dewri, DDG (VIG.).
7. Telegram of Shri. Lankeshwar Barman, L.R. P.A. Garobadha coded 0 1000 A.L. Garobadha. 10.34
8. Written statement of Shri. Hiratal Acharjee, SPM, Ampati, dtd. 17.7.99.

ANNEXURE - IV

**LIST OF WITNESS BY WHOM THE ARTICLES OF CHARGE FRAMED AGAINST
SHRI. HIRALAL ACHARJEE, SPM, AMPATI (NOW UNDER SUSPENSION) PROPOSED
TO BE SUSTAINED.**

1. Shri. Lankeshwar Barman, L.R. P/A Garobadha.

To,

The Sr. Superintendent of Post Offices
Meghalaya Division, Shillong.

SUBJECT: PRAYER FOR WITHDRAWAL OR REVOCATION OF SUSPENSION ORDER.

Sir,

With due respect and humble submission I have the honour to inform you that I have been discharging my duties with utmost sincerity and devotion since the date of appointment i.e December 1990. Prior to unfortunate incident which occurred in my life due to mental imbalances, I have been discharging my duties with the full satisfaction of my superior. There was no complain or dissatisfaction of any officers or staffs irrespective of my service for last 8 years.

That perhaps due to ill luck or whatever I say, I became victim of my own fate or destiny which was beyond my control indeed, I feel sick owing to mental imbalance since March 1998 and took treatment from different Doctors. That during the said period inadvertently I did some wanted things which cost injury to my superiors which was actually unintentional for which now I am really shameful and repentant. My family members took sincere effort to treat me from Guwahati Medical College Hospital and now I am fit to resume my duty.

A copy of Medical Certificate dated 10/3/2000 issued by Department of Psychiatry, G.M.C Hospital is enclosed herewith as a matter of record and proof.

That though you have proceeded with departmental proceeding against me at this stage I humbly request you to withdraw all the charges levelled against me for which I am not liable as during those period I was extremely suffering from Nervous Disorder. Had I committed any offence during the said period, that might be out of mind.

That since I was placed under suspension I am facing great financial hardship and my family members are passing the days in half starvation. If I am terminated from service, I shall not only die without food or clothing but my family members also will be the victim of the same punishment for which they have no fault.

Further, I respectfully submit that if one chance is given to me to rectify myself, I promise, that I shall never do such wrong in my life.

Under the above circumstances I humbly pray for your kindness to condon my wrongs which was caused unconsciously and further I pray your honour to withdraw or revoke the suspension order exercising your inherent power and capacity.

And for this act of your greatness I shall be obliged to you.

Encloser :-

1. Medical certificate.

Yours Faithfully,

Hir. A. Acharjee

(Hiralal Acharjee, S.P.M.)

Under suspension, Ampati,

West Garo Hills,

Meghalaya.

Prayer for withdrawal
of Suspension Order

Attested
for
Advocate
31/8/05.

Sr. Supdt. of Post Offices
Meghalaya Division
Shillong - 793001.

NO. B2-430 dtg of shillong the 10-5-2000

To
Shri Hirshil Acharyea
St- SPM Impati S.O.
(now under suspension)

Encd/Ad

Sub:- Enquiry under Rule - 14 of CCS (CCA) Rules, 1965.

A copy of the report of the Inquiry Officer is enclosed. The Disciplinary Authority will take suitable action after considering the report. If you wish to make any representation or submission, you may do so, in writing to the Disciplinary Authority within 15 days of receipt of this letter.

Enclo-As stated.

Sd/- Illegible

Sr. Supdt. of Post Offices
Meghalaya Division
Shillong - 793001.

A/Hastad
Advocate
31/8/05
Report

28-24-
D-1
40

INQUIRY REPORT ON DEPARTMENTAL ENQUIRY UNDER
RULE 14 OF C.C.S. (C.C.A.) RULES, 1965 AGAINST SRI HIRALAL
ACHERJEE, EX-SPM, AMPATI S.O. UNDER TURA I.O.

I. I. Sri S. Chakraborty, offg. ASPOs (I.O), Shillong, was appointed as Inquiry Authority by the Sr. Supdt. of Pos, Meghalaya Division, Shillong, vide his letter No. B2-430 Dtd. 2-12-99, to inquire into the charges against Sri Hiralal Acherjee, Ex-SPM, Ampati, as framed vide SSPOs, Shillong, letter No. B2-430 Dtd. 5.11.99, under Rule 14 of C.C.S. (C.C.A.) Rules, 1965.

I have since completed the inquiry on the basis of the documentary and oral evidences produced before me and have prepared the Inquiry-report as follows :

B. THE CHARGE-SHEET.

**STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SRI
HIRALAL ACHERJEE, EX-SPM AMPATI, NOW UNDER SUSPENSION. :**

Article - 1.

That Sri Hiralal Acherjee while functioning as SPM Ampati during the period from 25.7.98, to 1.10.99, submitted reports/complaints, using Deptl. Formis (Coff. 22) direct to (i) The Secretary, Department of Posts, on 3.2.99 (ii) The Member, Personnel, Postal Board on 20.2.99. (iii) The Communication Minister, Govt. of India, New Delhi on 1.3.99 and (iv) The Chief P.M.G., N.E. Circle, Shillong on 26.3.99, in violation of the conditions laid down in Rules-614 & 627 of Postal Manual Vol-II.

Article - 2

That during the aforesaid period and while functioning in the aforesaid office the said Sri Hiralal Acherjee lodged complaints to the Secretary, Dptt. Of Post on 3.2.99, to the Member (Personnel), Postal board on 20.2.99 and to the Communication Minister, Govt. of India, on 1.3.99, against Sri S. Samant, Chief P.M.G., N.E. Circle, Shillong, with a view to demoralize and disgrace the character of Sri S. Samant and one, Smt. Rupa Bhattacharjee and the said complaints were found completely baseless on subsequent enquiry. Thus Sri Hiralal Acherjee is alleged to have violated the provisions of Rule-3(i)(iii) of C.C.S.(Conduct) Rules-1964.

Article - 3

That during the aforesaid period and while functioning in the aforesaid office the said Sri Hiralal Acherjee was directed to hand over the charge of the SPM, Ampati to one Sri Lankeshwar Barman I.R.P.A., Garobadha and to get himself relieved and to attend Circle Office, Shillong, to appear before the D.D.G.(Vig) on 8.7.99, in connection with enquiry into the complaints lodged by him. But the said Sri Hiralal Acherjee refused to hand over the charge to Sri Barman and did not attend the Circle office as directed. By his above action said Sri Hiralal Acherjee is alleged to have failed to maintain devotion to duty and thus violated the provisions of Rule-3(h)&(ii) of C.C.S.(Conduct) Rules-1964.

Contd..... 2.

**STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR
IN SUPPORT OF THE ARTICLES OF CHARGES FRAMED AGAINST SRI
HIRALAL ACHERJEE SPM, EX-AMPATI, UNDER SUSPENSION.**

Article-1.

That said Sri Hiralal Acherjee while functioning as SPM Ampati during the period from 25.7.98 to 1.10.99, submitted reports and complaints using Deptt. Forms (Corr-22) (i) to the Secretary, Deptt. of Posts, on 3.2.99; (ii) to the Member (Personnel) Postal Board on 20.2.99 (iii) to the Communication Minister, Govt. of India, on 1.3.99; and (iv) to the Chief P.M.G., N.E.Circle, Shillong on 26.3.99. Said Sri Hiralal Acherjee submitted all the reports and complaints direct to higher authorities without using proper channel of the provisions laid down in Rules-614 & 627 of Postal Manual Vol. II and thus violated the provisions of Rule-3(i)(iii) of C.C.S. (Conduct) Rules 1964, also.

Article-2.

That said Sri Hiralal Acherjee while functioning as SPM, Ampati during the aforesaid period lodged complaints to the Secretary, Deptt. of Posts, on 3.2.99, to the Member(Personnel) Postal Board, on 20. 2.99 and to the Communication Minister, Govt. of India, on 1.3.99, in which he alleged that "Sri S. Samant, Chief P.M.G., N.E. Circle, Shillong and his men raped Miss. Rupa Bhattacharjee, Sorting Asstt., while she was on training at P.T.C., Darbhanga in December,96 and also after her posting at Agartala Stg. In 1997. Sri Acherjee also alleged that Mr. Samant converted her into Muslim by force against fundamental rights etc.

On enquiry the complaints were found completely false and baseless. It also revealed that Miss. R. Bhattacharjee was selected for the post of Sorting Asstt, in RMS "S" Division and was in institutional training at P.T.C. Darbhanga from 23.12.96 to 7.3.97. On completion of the training she joined as Sorting Asstt. at Agartala RMS on 29.3.97, and worked there up to 7.9.98. On 28th February,1998, she got married with one Sri Tapan Ranjan Kalita working as Postal Asstt. at Darang Postal Division. Both of the couple are hindu and their marriage ceremony was celebrated/ solemnized according to hindu customs. After marriage Smt. Bhattacharjee was transferred under Rule-38 and joined at Tezpur RMS on 13.10.98. She is living there with her husband happily. Sri S. Samant, Chief P.M.G., N. E. Circle, Shillong, joined as PMG, Shillong, on 25.7.97 and he was nowhere in picture with Smt. Rupa Bhattacharjee. More over, Smt. Bhattacharjee presently working as S.A. Tezpur RMS, stated in her statement dtd. 13.7.99, that she was never misbehaved by any officer/official either at Darbhanga or Agartala and she had no grievance against any officer/official of Assam/N.E. Circle. It is also revealed that Shri Hiralal Acherjee, Miss Rupa Bhattacharjee and Shri Tapan Rn. Kalita were on training at P.T.C. Darbhanga at the same time during the period from 23.12.96 to 07.03.97 and thus Smti Bhattacharjee and Shri Kalita were known to Shri Hiralal Acherjee and therefore with some ill motive Shri Acherjee lodged all those

Contd....., 3/-

False complaints to demoralized and disgrace the character of Shri S. Samant and Smti R. Bhattacharjee. And by way of doing so he also assinated the character and dignity of a high level officer like Chief P.M.G, Shillong. Shri H. Acharjee also deliberately avoided confronted enquiry when he was asked to attend the enquiry on 08-07-99. By his above action, said Shri Acharjee alleged to have violated the Provision of Rule- 3 (1) (iii) of CCS (Conduct) Rules - 1964.

ARTICLE - III

Said Shri H. Acharjee while functioning in the aforesaid office and during the aforesaid period was directed to hand over the charge of SPM, Ampati to Shri Lankeshwar Barman, L.R. P.A Garobadha and to attend the circle office, Shillong on 08-07-99. But Shri Acharjee refused to hand over the charge to Shri L. Barman and willfully avoided to attend Circle office, Shillong, as directed. By his above action said Shri Acharjee alleged to had failed to maintain devotion to duty and alleged to have violated the Provisions of Rule - 3 (1) (ii) of CCS (Conduct) Rules 1964.

LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGES FRAMED AGAINST SHRI HIRALAL ACHARJEE, SPM, AMPATI, NOW UNDER SUSPENSION ARE PROPOSED TO BE SUSTAINED.

1. Photocopy of complaint of Shri Hirralal Acharjee, SPM, Ampati dt. 03-02-99 addressed to the Sectetary, deptt. of Posts.
2. Photocopy of complaint of Shri Hirralal Acharjee, SPM, Ampati dt. 20-02-99 addressed to the Member (Personal) Postal Board.
3. Photocopy of complaint of Shri Hirralal Acharjee, SPM, Ampati dt. 01-03-99 addressed to the Communication Minister, Govt. of India.
4. Photocopy of report of Shri Hirralal Acharjee, SPM, Ampati dt 26-03-99 addressed to the Chief P.M.G, N.E. Circle, Shillong.
5. Photocopy of written statement of Smti Rupa Bhattacharjee S.A. Tezpur RMS dtd. 13-07-99.
6. Inquiry report of Shri L. Dewri, DDG (VIG).
7. Telegram of Sri Lankeshwar Barman, L.R.P.A., Garobadha, coded 01000 A.I. Garobadha, 10.34.
8. Written statement of Sri Hirralal acherjee, SPM, Ampati, dtd. 17.7.99.

Contd..... 4/-

List of witness by whom the articles of charged framed against Shri Hiralal Acharjee, SPM, Ampati (now under suspension) proposed to be sustained.

1. Shri Lankeshwar Barman, L.R. P/A, Garobadha.

III. LIST OF EXHIBITED DOCUMENTS :-

Ex.p.-1. Photo-copy of complaint of Sri Hiralal Acharjee, SPM, Ampati, dtd.3.2.99
a/t. the Secretary, Deptt. of Posts.

Ex.p.-2. Photo-copy of complaint of Sri Hiralal Acharjee, SPM, Ampati, dtd.20.2.99
A/t the Member (personnel), postal Board.

Ex.p.-3. Photo copy of complaint of Sri. Hiralal Acharjee, SPM, Ampati Dtd 1-3-99
A/t the communication Minister, Govt of India

Ex.p.-4 Photo copy of report of Sri Hiralal Acharjee, SPM Ampati, Dtd 26-3-99 A/T
the C.P.M.G, N.E. Circle Shillong-1

Ex.p.-5 Photo copy of written statement of Smt. Rupa Bhattacharjee SA, Tezpur
RMS Dtd 13-7-99

Ex.p.-6 Inquiry report of Sri I.Dewri, DDG(VIG)

Ex.p.-7 Telegram of Sri. Lankeshwar Garman, IR Pa Garobadha coded 01000
A.1 Garobadha 10.34

Ex.p.-8 Written statement of Sri. Hiralal Acharjee, SPM Ampati, Dtd 17-7-99

Ex.p.-9 Medical certificate issued by Guwahati Medical College Hospital.

IV. LIST OF WITNESSES EXAMINED :-

SW-1. Sri. Lankeshwar Barman, L.R P/A Garobadha.

V. PARTICIPATION OF THE C.O. IN THE ENQUIRY :-

The hearing of the inquiry was held on 23-12-99, 28.1.2000, 18.2.2000, 7.3.2000
28.3.2000. The charged official attended and participated all the hearings. He opted for
his defence-assistant and selected Sri T. Kharkongor, APM Mails Shillong as his
defence-assistant vide his application Dtd.1-1-2000. He was permitted and he
attended all the subsequent hearings being accompanied with his Defence-assistant,
Sri T. Kharkongor.

VI. Case of Disciplinary authority :-

Article-I The PO on behalf of the Disciplinary authority reiterated the article of
charge as framed in the charge-sheet and in support of the article of charge he
produced the documentary evidences as exhibited under EXP-1,2,3 & 4. No witness
was there.

Article-II The PO on behalf of the Disciplinary authority presented the article of
charge in the same form as in the charge sheet. In support of the article of charge he
produced the documentary evidences as exhibited under EXP-1, 2,3,4,5,6, & 8. No
witness was there.

Article -III The PO reiterated the article of charge as in the charge sheet and
produced the documentary evidences as exhibited under Exp-7 & 8. The SW-1 was
also examined in connection with the article of charges.

Contd.....15.

VII. Case of the Charged official:

Article-1. The Charged Official stated in his defence statement dtd.24.11.99, that he had been mentally suffering since March '98 and as such what he did during the period he did not know. In support of his statement he submitted a Medical certificate as exhibited under EXD.1.

Article-2. The Charged Official admitted the charge on 23.12.99 and reiterated the fact as for article - 1, above.

Article-3. The Charged official reiterated the fact as he stated in his statement dtd. 17.7.99, that he could not attend Shillong to meet D.D.G.(Vig) on 8.7.99, due to disorder in his stomach. In support of his version he submitted the written statement dtd. 17.7.99, and two Medical Certificates dtd. 6.7.99 & 11.7.99. The statement and both the M.C's have been exhibited in EX.P.-8.

VIII. I have gone through the Charge sheet, Day to day proceedings, Exhibited documents, Defence statement, Déposition of the SW-1 recorded on 18.2.2000, Briefs of P.O. & C.O. and all other relevant records & circumstances, carefully, and inclined to furnish my observation, analysis and assessment as follows:-

OBSERVATION:

Article-1. The Charged Official indirectly admitted the article of Charge though he stated that he might have done so, due his "Mental illness" and he submitted a Medical Certificate in support of his version that he was suffering from "Nerves-Disorder". The Medical Certificate has been exhibited under EX.D.-1.

Article-2. The Charged official admitted the article of charges on 23.12.99, on the same plea as in case of article-1.

Article-3. The Charged Official indirectly admitted that he did not hand over the charge to his reliever, Sri Lankeshwar Barman, due to his inability to proceed towards Shillong for his stomach-problem. Sri Lankeshwar Barman, the SW-1, has stated in his deposition recorded on 18.2.2000, that he attended Ampati to relieve the C.O. on 9.7.99 at 0930 hrs.

ANALYSIS:

Article -1 & 2. Both the articles of charges are co-related and the charged official submitted same statement for both the articles of charges that he might have done so due to his mental illness. On interrogation, he stated that though he was on duty during that time, his mental illness did not affect his official duty in any way. It also revealed that Smt. Rupa Bhattacherjee was not related to Sri Achherjee. Under this circumstance it could not be understood on what intention the charged official did all those alleged action as human being can do nothing without any intention behind his/her action. As such the alleged action of the Charged official might be a consequence of his mental illness etc. ✓✓

Article -3. The charged official was directed to attend Shillong to meet D.D.G.(Vig) on 8.7.99. But his substitute, who was directed to relieve him and who was the witness to the case also (SW-1), attended Ampati to relieve him (C.O.) on 9.7.99 at 0930hrs., as the witness stated in his deposition recorded on 18.2.2000. As such, In spite of his stomach-problem of the C.O., as he stated, if he would proceed towards Shillong, immediately on his relief, on 9.7.99, from Ampati, he would be too late to meet D.D.G.(Vig) at Shillong, it would be at least 10.7.99. ✓✓

Contd.....6.

FINDINGS

Although, the Disciplinary Authority could not produce any witness in support of the articles I & II and to ascertain the authenticity of the documentary evidences produced, owing to direct or indirect admission of the charged official all the charges under Article-I, II & III are proved.

A folder containing the following in page No. 01 to 48, is enclosed.

- (a) Written statement of defence submitted by the charged official on 24.11.99.
- (b) Documentary evidences as exhibited under EX.P.-1 to EX.P.-8 & EX.D.-1.
- (c) Written briefs of the P.O. (No. A1-P.O./99 dtd. 28.3.99) and
- (d) Written briefs of the charged official. (No.A-1/DA/99 dtd. 12.4.2000.)

(S. Chakraborty)
Inquiry Authority.

No. INQ/ Rule 14/1/99. dtd. 9.5.2000.

Re: (1-2) the Sr. Supdt. of Pos. Meghalaya Bn. Shillong-1 (Disciplinary
ref. to his letter No. B 2-430 dt. 2.12.99. -Authority)

Inquiry Authority.

Attested
by
Advocate
31/8/05

Copy forwarded
as per report of 1.0

Annexure

DEPARTMENT OF POSTS
OFFICE OF THE SR. SUPDT. OF POST OFFICES :: MEGHALAYA DIVISION
SHILLONG - 793 001.

No. B2 - 430,

Dated Shillong, the 30/6/2000.

In this Office memo of even no. dtd. 5.11.99. it was proposed to take action against Sri. Hiralal Acharjee, Ex. SPM, Ampati under Rule-14 of CCS (CCA) Rules - 1965 and he was asked to submit his representation against the proposal if any within 10 days of receipt of the said letter.

The statement of imputation of misconduct and misbehaviour in support of the articles of charge framed against said Sri. Hiralal Acharjee was as follows :-

ARTICLE - I

That Sri. Hiralal Acharjee, while functioning as SPM Ampati during the period from 25.7.98, to 1.10.99, submitted reports/complaints, using Deptt. forms (Corr-22) direct to (i). The Secretary, Department of Post on 3.2.99 (ii) to the member (Personal) Postal Board on 20.2.99 (iii) to the Communication Minister, Govt. of India, New Delhi on 1.3.99 and (iv) to the Chief P.H.G., N.E. Circle, Shillong on 26.3.99., in violation of the conditions laid down in Rules-614 & 627 of Postal Manual Vol-II.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid Office the said Shri. Hiralal Acharjee lodged complaints to the Secretary, Department of Post on 3.2.99, to the member (Personal) Postal Board on 20.2.99. and to the Communication Minister, Govt. of India on 1.3.99, against Shri. S. Samant, Chief P.H.G., N.E. Circle, Shillong with a view to damage his and disgrace the character of Shri. S. Samant and one Shri. Rupa Bhattacharjee and the said complaints were found completely baseless on subsequent enquiry. Thus, Shri. Hiralal Acharjee is alleged to have violated the Provisions of Rule-3 (1)(iii) of CCS (Conduct) Rules-1964.

ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid Office the said Shri. Hiralal Acharjee was directed to hand over the charge of SPM, Ampati to one Shri. Lankeshwar Barman, L.R. P.A. Garbadia and to get himself relieved and to attend Circle Office, Shillong to appear before the DDG(Vig) on 6.7.99, in connection with enquiry on the complaints lodged by him. But the said Shri. Hiralal Acharjee refused to hand over the charge to Shri. Barman and did not attend the Circle Office, as directed.

By the above action said Shri. Hiralal Acharjee is alleged to have failed to maintain devotion to duty and thus violated the provision of Rule-3(3) (ii) of CCS (Conduct) Rules-1964.

...P/2

Attached
Mr.
Advocate
31/8/05

List of documents by which the articles of charges framed against said Shri. Hiralal Acharjee were proposed to be sustained.

1. Photo/Copy of complaint of Shri. Hiralal Acharjee, SBI, Amriti dt. 12.2.99, addressed to the Secretary, Deptt. of Posts.
2. Photo-copy of complaint of Shri. Hiralal Acharjee, SBI, Amriti dt. 20.2.99, addressed to the Member (Personal) Postal Board.
3. Photo-copy of complaint of Shri. Hiralal Acharjee, SBI, Amriti dt. 1.3.99 addressed to the Communication Minister, Govt. of India.
4. Photo-copy of report of Shri. Hiralal Acharjee, SBI, Amriti dt. 26.3.99 addressed to the Chief P.M.G., N.E. Circle, Shillong-L.
5. Photo-copy of written statement of Smti. Rupa Bhattacharjee, S.A., Tazpur RMS dt. 13.7.99.
6. Inquiry report of Shri. I. Dewri, DDS (VIG.).
7. Telegram of Shri. Janakishwar Banerjee, I.C.R., P.A., Garobadha coded o 1000 A.L. Garobadha 10.34.
8. written statement of Shri. Hiralal Acharjee, SBI, Amriti dt. 17.7.99.

List of witnesses by whom the articles of charge framed against said Shri. Hiralal Acharjee, were proposed to be sustained.

1. Shri. Janakishwar Banerjee, I.C.R., P.A., Garobadha.

In reply, said Shri. Hiralal Acharjee had submitted his representation vide his letter dt. 24.11.99 which was read as follows :-

I have received the above mentioned Memorandum on 15.11.99. And after going through the same I do hereby humbly submits as follows :-

1. That Sir, since March 1998 I have been suffering mental/physical illness under treatment still I am unwell. The medical certificates will be submitted by me if and when required by the authority.

2. That during the said period Smti. Rupa Bhattacharjee a close friend of mine once rang me and alleged against me Smti. S. Sundar about the fact. After that, what I have done during the said period I do not know. Had I been committed any offence during the said period, that was only due to my mental imbalances.

Under the circumstances above I deny all the charges levelled against me under the said Memorandum and also pray your kindness to condon my wrong, if any, which was done unconsciously and I shall oblige, therefore for ever.

Shri. S. Chakraborty, Offg. ASP (HO), Shillong and Smti. A.B. Dutta, ASP, Tura were appointed as I.O. & P.O. respectively to enquire into the case vide this Office letter of even no. dt. 2.12.99, and 3.12.99, as per provisions laid down in Rule - 14 of 1963 (G.O.M.R.) Rule - 1965.

The I.O. has submitted his Inquiry report vide his letter no. JMO/Rule - 14/1/99, dt. 9.5.2000 which is read as follows :-

“I, Sri S. Chakraborty, offg. ASPOs (HQ), Shillong, was appointed as Inquiry Authority by the Sr. Supdt. of Pos, Meghalaya Division, Shillong, vide his letter No. B2-430 Dtd. 2-12-99, to inquire into the charges against Sri Hiralal Acherjee, Ex-SPM, Ampati, as framed vide SSPOs, Shillong, letter No. B2-430 Dtd. 5.11.99., under Rule 14 of C.C.S. (C.C.A.) Rules, 1965.

I have since completed the inquiry on the basis of the documentary and oral evidences produced before me and have prepared the Inquiry-report as follows:

II

THE CHARGE-SHEET

STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SRI HIRALAL ACHERJEE, EX-SPM AMPATI, NOW UNDER SUSPENSION.

Article - 1

That Sri Hiralal Acherjee while functioning as SPM Ampati during the period from 25.7.98. to 1.10.99, submitted reports/complaints, using Deptl. Form: (Corr.-22) direct to (i) The Secretary, Department of Posts, on 3. 2.99 (ii) The Member, Personnel, Postal Board on 20.2.99. (iii) The Communication Minister, Govt. of India, New Delhi on 1.3.99 and (iv) The Chief P.M.G., N.E. Circle, Shillong on 26.3.99, in violation of the conditions laid down in Rules-614 & 627 of Postal Manual Vol. II.

Article - 2

That during the aforesaid period and while functioning in the aforesaid office the said Sri Hiralal Acherjee lodged complaints to the Secretary, Dptt. Of Post on 3.2.99., to the Member (Personnel), Postal board on 20.2.99 and to the Communication Minister, Govt. of India, on 1.3.99. against Sri S. Samant, Chief P.M.G.N.E. Circle, Shillong, with a view to demoralize and disgrace the character of Sri S. Samant and one, Smt. Rupa Bhattacharjee and the said complaints were found completely baseless on subsequent enquiry. Thus Sri Hiralal Acherjee is alleged to have violated the provisions of Rule-3(i)(iii) of C.C.S.(Conduct) Rules-1964.

Article - 3

That during the aforesaid period and while functioning in the aforesaid office the said Sri Hiralal Acherjee was directed to hand over the charge of the SPM, Ampati to one Sri Lankeshwar Barman L.R.P.A., Garobadha and to get himself relieved and to attend Circle Office, Shillong, to appear before the D.D.G.(Vig) on 8.7.99, in connection with enquiry into the complaints lodged by him. But the said Sri Hiralal Acherjee refused to hand over the charge to Sri Barman and did not attend the Circle office as directed. By his above action said Sri Hiralal Acherjee is alleged to have failed to maintain devotion to duty and thus violated the provisions of Rule- 3(i)&(ii) of C.C.S.(Conduct) Rules-1964.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGES FRAMED AGAINST SRI HIRALAL ACHERJEE SPM, EX-AMPATI, UNDER SUSPENSION.

Article-1.

That said Sri Hiralal Acherjee while functioning as SPM Ampati during the period from 25.7.98 to 1.10.99., submitted reports and complaints using Deptl. Forms (Corr-22) (i) to the Secretary, Deptt. of Posts, on 3.2.99. (ii) to the Member (Personnel) Postal Board on 20.2.99 (iii) to the Communication Minister, Govt. of India, on 1.3.99. and (iv) to the Chief P.M.G., N.E.Circle, Shillong on 26.3.99. Said Sri Hiralal Acherjee submitted all the reports and complaints direct to higher authorities without using proper channel of the provisions laid down in Rules-614 & 627 of Postal Manual Vol. II and thus violated the provisions of Rule-3(i)(iii) of C.C.S. (Conduct) Rules 1964, also.

Article-II.

That said Sri Hiralal Acherjee while functioning as SPM, Ampati during the aforesaid period lodged complaints to the Secretary, Deptt. of Posts, on 3.2.99, to the Member(Personnel) Postal Board, on 20. 2.99 and to the Communication Minister, Govt. of India, on 1.3.99., in which he alleged that "Sri S. Samant, Chief P.M.G., N.E. Circle, Shillong and his men raped Miss. Rupa Bhattacherjee, Sorting Asstt., while she was on training at P.T.C., Darbhanga in December,96 and also after her posting at Agartala Stg. In 1997. Sri Acherjee also alleged that Mr. Samant converted her into Muslim by force against fundamental rights etc.

On enquiry the complaints were found completely false and baseless. It also revealed that Miss R. Bhattacherjee was selected for the post of Sorting Asstt. in RMS "S" Division and was in institutional training at P.T.C. Darbhanga from 23.12.96 to 7.3.97. On completion of the training she joined as Sorting Asstt. at Agartala RMS on 29.3.97, and worked there up to 7.9.98. On 28th February,1998, she got married with one Sri Tapan Ranjan Kalita working as Postal Asstt. at Darang Postal Division. Both of the couple are hindu and their marriage ceremony was celebrated/ solemnized according to hindu customs. After marriage Smt. Bhattacherjee was transferred under Rule-38 and joined at Tezpur RMS on 13.10.98. She is living there with her husband happily. Sri S. Samant, Chief P.M.G., N. E. Circle, Shillong, joined as PMG, Shillong, on 25.7.97 and he was nowhere in picture with Smt. Rupa Bhattacherjee. Moreover, Smt. Bhattacherjee presently working as S.A. Tezpur RMS, stated in her statement dtd. 13.7.99, that she was never misbehaved by any officer/official either at Darbhanga or Agartala and she had no grievance against any officer/official of Assam/N.E.Circle. It is also revealed that Shri Hiralal Acharjee, Miss Rupa Bhattacherjee and Shri Tapan Rn. Kalita were on training at P.T.C. Darbhanga at the same time during the period from 23-12-99 to 07-03-97 and thus Smti Bhattacherjee and Shri Kalita were known to Shri Hiralal Acharjee and therefore with some ill motive Shri Acharjee lodged all those false complaints to demoralized and disgrace the character of Shri S. Samant and Smti R. Bhattacherjee. And by way of doing so he also assinated the character and dignity of a high level officer like Chief P.M.G. Shillong. Shri H. Acharjee also deliberately avoided confronted enquiry when he was asked to attend the enquiry on 08-07-99. By his above action, said Shri Acharjee alleged to have violated the Provision of Rule- 3 (I) (iii) of CCS (Conduct) Rules - 1964.

ARTICLE - III

Said Shri H. Acharjee while functioning in the aforesaid office and during the aforesaid period, was directed to hand over the charge of SPM, Ampati to Shri Lankeshwar Barman, L.R. P/A Garobadha and to attend the circle office, Shillong on 08-07-99. But Shri Acharjee refused to hand over the charge to Shri L. Barman and willfully avoided to attend Circle office, Shillong, as directed. By his above action said Shri Acharjee alleged to had failed to maintain devotion to duty and alleged to have violated the Provisions of Rule - 3 (I) (ii) of CCS (Conduct) Rules 1964.

LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGES
FRAMED AGAINST SHRI HIRALAL ACHARJEE, SPM, AMPATI, NOW UNDER
SUSPENSION ARE PROPOSED TO BE SUSTAINED.

1. Photocopy of complaint of Shri Hiralal Acharjee, SPM, Ampati dt. 03-02-99 addressed to the Secretary, deptt. of Posts.

2. Photocopy of complaint of Shri Hiralal Acharjee, SPM, Ampati dt. 20-02-99 addressed to the Member (Personal) Postal Board.
3. Photocopy of complaint of Shri Hiralal Acharjee, SPM, Ampati dt. 01-03-99 addressed to the Communication Minister, Govt. of India.
4. Photocopy of report of Shri Hiralal Acharjee, SPM, Ampati dt 26-03-99 addressed to the hief P.M.G, N.E. Circle, Shillong-1.
5. Photocopy of written statement of Smti Rupa Bhattacharjee S.A. Tezpur RMS dtd. 13-07-99.
6. Inquiry report of Shri L Dewri, DDG (VIG).
7. Telegram of Sri Lankeshwar Barman, L R P.A., Garobadha, coded 01000 A.1: Garobadha. 10.34.
8. Written statement of Sri Hiralal acherjee, SPM, Ampati, dtd.17.7.99.

List of witness by whom the articles of charged framed against Shri Hiralal Acharjee, SPM, Ampati (now under suspension) proposed to be sustained.

1. Shri Lankeshwar Barman, L.R. P/A, Garobadha.

III LIST OF EXHIBITED DOCUMENTS :-

- Ex.p-1. Photo-copy of complaint of Sri Hiralal Acherjee, SPM, Ampati, dtd.3.2.99
a/t. the Secretary, Deptt. of Posts.
- Ex.p-2. Photo-copy of complaint of Sri Hiralal Acherjee, SPM, Ampati, dtd.29.2.99
A/t the Member (personnel), postal Board.
- Ex.p-3. Photo copy of complaint of Sri. Hiralal Acharjee, SPM, Ampati Dtd 1-3-99
A/t the communication Minister, Govt of India
- Ex.p-4 Photo copy of report of Sri Hiralal Acharjee, SPM Ampati, Dtd 26-3-99 , A/T the C.P.M.G, N.E. Circle Shillong-1
- Ex.p-5 Photo copy of written statement of Smt. Rupa Bhattacharjee SA, Tezpur
RMS Dtd 13-7-99
- Ex.p-6 Inquiry report of Sri L.Dewri ,DDG(VIG)
- Ex.p-7 Telegram of Sri. Lankeshwar Garman, LR Pa Garobadha coded 01000
A.1: Garobadha 10.34
- Ex.p-8 Written statement of Sri. Hiralal Acherjee, SPM Ampati ,Dtd 17-7-99
- Ex.p-9 Medical certificate issued by Guwahati Medical College Hospital.

IV LIST OF WITNESSES EXAMINED :-

- SW-1. Sri. Lankeshwar Barman, LR P/A Garobadha.

V PARTICIPATION OF THE C.O IN THE ENQUIRY :-

The hearing of the inquiry was held on 23-12-99, 28.1.2000, 18.2.2000, 7.3.2000 28.3.2000. The charged official attended and participated all the hearings. He opted for his defence-assistant and selected Sri T. Kharkonger , APM Mails Shillong as his defence-assistant vide his application Dtd.1-1-2000. He was permitted and he attended all the subsequent hearings being accompanied with his Defence-assistant Sri T. Kharkonger.

VI Case of Disciplinary authority :-

Article-I The PO on behalf of the Disciplinary authority reiterated the article of charge as framed in the charge-sheet and in support of the article of charge he produced the documentary evidences as exhibited under EXP-1,2,3 & 4. No witness was there.

Article-II The PO on behalf of the Disciplinary authority presented the article of charge in the same form as in the charge sheet. In support of the article of charge he produced the documentary evidences as exhibited under EXP-1 2,3,4,5,6, & 8. No witness was there.

Article-III The PO reiterated the article of charge as in the charge sheet and produced the documentary evidences as exhibited under Exp-7 & 8. The SW-1 was also examined in connection with the article of charges.

VII Case of the Charged official :-

Article-1. The Charged Official stated in his defence statement dtd.24.11.99, that he had been mentally suffering since March'98 and as such what he did during the period he did not know. In support of his statement he submitted a Medical certificate as exhibited under EXP.1.

Article-2. The Charged Official admitted the charge on 23.12.99 and reiterated the fact as for article - 1, above.

Article-3. The Charged official reiterated the fact as he stated in his statement dtd. 17.7.99, that he could not attend Shillong to meet D.D.G.(Vig) on 8.7.99, due to disorder in his stomach. In support of his version he submitted the written statement dtd. 17.7.99, and two Medical Certificates dtd. 6.7.99 & 11.7.99. The statement and both the M/Cs have been exhibited as EXP.1-8.

VIII I have gone through the Charge sheet, Day to day proceedings, Exhibited documents, Defence statement ,Deposition of the SW-1 recorded on 18.2.2000, Briefs of P.O. & C.O. and all other relevant records & circumstances, carefully, and inclined to furnish my observation, analysis and assessment as follows:-

OBSERVATION.

Article-1. The Charged Official indirectly admitted the article of Charge though he stated that he might have done so, due his "Mental illness" and he submitted a Medical Certificate in support of his version that he was suffering from "Nerves-Disorder". The Medical Certificate has been exhibited under EXP.D.-1.

Article-2. The Charged official admitted the article of charges on 23.12.99, on the same plea as in case of article-1.

Article-3. The Charged Official indirectly admitted that he did not hand over the charge to his reliever, Sri Lankeshwar Barman, due to his inability to proceed towards Shillong for his stomach-problem. Sri Lankeshwar Barman, the SW-1, has stated in his deposition recorded on 18.2.2000, that he attended Ampati to relieve the C.O. on 9.7.99 at 0930 hrs.

ANALYSIS

Article -1 & 2. Both the articles of charges are co-related and the charged official submitted same statement for both the articles of charges that he might have done so due to his mental illness. On interrogation he stated that though he was on duty during that time, his mental illness did not affect his official duty in any way. It also revealed that Smt. Rupa Bhattacharjee was not related to Sri Acherjee. Under this circumstance it could not be understood on what intention the charged official did all those alleged action as human being can do nothing without any intention behind his/her action. As such the alleged action of the Charged official might be a consequence of his mental illness etc.

Article -3. The charged official was directed to attend Shillong to meet D.D.G.(Vig) on 8.7.99. But his substitute, who was directed to relieve him and who was the witness to the case also (SW-1), attended Ampati to relieve him (C.O.) on 9.7.99 at 0930hrs., as the witness stated in his deposition recorded on 18.2.2000. As such, in spite of his stomach problem of the C.O., as he stated, if he would proceed towards Shillong, immediately on his relief, on 9.7.99, from Ampati, he would be too late to meet D.D.G.(Vig) at Shillong, it would be at least 10.7.99.

FINDINGS

Although, the Disciplinary Authority could not produce any witness in support of the articles I & II and to ascertain the authenticity of the documentary evidences produced, owing to direct or indirect admission of the charged official all the charges under Article-I, II & III are proved.

A folder containing the following in page No. 01 to 48, is enclosed.

- (a) Written statement of defence submitted by the charged official on 24.11.99.
- (b) Documentary evidences as exhibited under EX.P.-1 to EX.P.-8 & EX.D.-1.
- (c) Written briefs of the P.O.(No. A1-P.O./99 dtd.28.3.99) and
- (d) Written briefs of the charged official. (No.A-1/DA/99 dtd. 12.4.2000.)

I have gone through the memo, of charge and articles thereof, report of the I.O. carefully and found that the charges levelled against Shri Hiralal Acharjee are proved. Shri Acharjee was given an opportunity to make representation having supplied a copy of the I.O's reports, vide this office letter of even no. dtd.10-05-2000 within 15-days of receipt of the letter. The letter was delivered to Shri Hiralal Acharjee on 20-05-2000, but he failed to make any representation.

In this circumstance, I record my observations as follows :-

- (i) Against Article - I & II of charges Shri Acharjee admitted the charges but he stated that he did so ^{due} to his mental illness. That the official was suffering from mental ailments was never reported by the official and performed his official day to day works as a normal employee is expected to do. As such I am not inclined to accept the plea of Shri Acharjee that due to mental disorder or ailment he ^{had} ~~had~~ all the gross misconduct mentioned in the articles.
- (ii) Against Article -III, Shri Acharjee admitted that he did not hand over the charge to his reliever viz. Shri Lankeshwar Barman on the pretext that he was unable to move to Shillong to meet D.D.G (Vig.) as he was suffering from stomach problem. Whatever the reason, it is admitted that he refused to hand over the charge and get himself relieved as ordered by his superior authority.

The nature of misconduct played by Shri Hiralal Acharjee are so grave that it left no scope to take any lenient view in order to maintain the expected sense of discipline amongst the Govt. servants and as such I Shri A.R. Bhowmik, Sr. Supdt. of Post Offices, Meghalaya Division, Shillong hereby order that:

" Shri Hiralal Acharjee, Ex-SPM, Ampati (Now under suspension) is removed from service with immediate effect which shall not be a disqualification for future employment under the Govt.

Sol/

(A.R. Bhowmik)

Sr. Supdt. of Post Offices
Meghalaya Division, Shillong - 793001

Copy to :-

1. The Chief P.M.G. (Vig), Shillong - 1
2. The ASP (HQ), Shillong.
3. Shri Hiralal Acharjee, EX-SPM, Ampati.
4. Fraud Branch of Divisional Office.
5. G/C.

(A.R. Bhowmik)

Sr. Supdt. of Post Offices
Meghalaya Division, Shillong - 793001

Attested
Advocate
31/8/05

Per the order passed by P.A.
Order of removal of from
service

Received
07-11-7-2000

From:-

Sr. Supdt. of Post Offices
Meghalaya Division
Shillong - 793001

ANNEXURE - VI

DEPARTMENT OF POSTS, INDIA

No. B2-430.

Recd/Ans.

To,
Shri Hirakal Achorjee
P. O. Madhuben, Amtali
West Tripura.
Slg 1, the 10th Aug 2K

Subject :- Returning of Appeal

Your appeal dtd at Agartala the 04/08/2K, is returned here with, as the appeal has not been addressed to the appropriate Appalate Authority.

In the instant case the Appalate authority is DPS (HQ) Q/O the Chief Postmaster general North East Circle Shillong 1.

Enclo : As stated.

Mr. Supdt. of Post Offices
Meghalaya Division
Shillong - 793001.

Sd/- Illegible

Attested
Advocate
31/8/05

To
The Director of Postal Service,
Meghalaya Division,

Office of the Chief Post Master General,
North Eastern Circle, Shillong,
Meghalaya-793 001.

Sir,

Most respectfully, I beg to state that on 4th August, 2000 I sent an appeal as provided by Part-VII of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 from an order passed by the Senior Superintendent of Post Offices, Meghalaya Division, Shillong on 30-6-2000 removing me from service by way of punishment.

2. I have been advised to submit an additional appeal in order to supplement the appeal already filed by me.

3. The ingredient of the additional appeal is that according to the Memo of Proceeding there were as many as 8(eight) documents by which the Articles of charges against me were proposed to be sustained. It appears that during enquiry all these documents were exhibited against me, whereas only one witness, namely, Sri Lankeshwar Barman was examined as witness in support of the charges against me. The said Lankeshwar Barman was nobody to identify and get the documents exhibited. Therefore, there was a deliberate violation of the mandate of the Hon'ble Supreme Court reported in Town Area Committee, Jallabad versus Jagadish Prasad and others.

4. That since the very beginning my defence case was that I was suffering from mental depression of serious type for some period and I was under treatment. There is nothing in the enquiry report nor in the disciplinary order that aspect of the matter has not been taken into consideration.

contd... P-2.

Attested

Advocate -
31/8/05

Page No-2

at all and on this count alone the enquiry report and the consequent order of penalty are voidable and void ab initio and in the eye of law these are non est entity.

5. That I brought allegation, according to the Memo of Proceeding against Sri S. Ramant, Chief Post Master General, North Eastern Circle, Shillong and both the Inquiring Officer and the Disciplinary authority are subordinate to him. In the circumstances, the extent of care and caution which should have been taken by the authorities have not been taken at all and mere assertion has been taken as grounds for the order as impugned removing me from service by way of punishment.

6. That it is reiterated once again that the enquiry report and the disciplinary order are cryptic, virtually non-speaking and also lacking in reason. There is no iota of ingredient to say that I directly or indirectly admitted the charges. It is unknown to service jurisprudence to say that same admission has been made directly or indirectly as observed by the Inquiring Officer, whereas according to rule and the Memo of Proceeding, dated 3-11-1999 I was required to admit or deny the charges specifically and there is/was no specific admission of the purported charges against me.

7. On these counts and the grounds taken in the Memo of Appeal, the enquiry and the consequent order of punishment are liable to be quashed, set aside and reversed and I am to be reinstated in service with full benefits for the period I am/was out of office illegally and the period of suspension has to be treated as period spent on duty by me for all purposes and intents.

40-41-286

Page No-3

8. I pray accordingly.

Dated, Madhuban,
the 21st August 2000

Yours faithfully,

SD/-
(Hiralal Acharyee)
Ex. 9PM, Ampati,
Meghalaya.

(now residing at village-Kathaitali)
P.O. Madhuban, P.S. Amtali, Agartala,
Irinura West

R 875
21-8-00

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

Memo No. Staff/109-16/2000

Dated Shillong, the 27-10-2000

Shri Hiralal Acharjee, Ex-SPM, Ampati SO has submitted an appeal on 21-8-2000 against the punishment order issued by the Sr. Supdt. of P.Os, Meghalaya Division, Shillong under No. B2-430 dated 30-6-2000 imposing punishment of removal from service with immediate effect. While working as SPM Ampati, Shri Hiralal Acharjee committed certain misconducts for which he was proceeded against under rule 14 of the CCS(CCA) Rules, 1965 vide memo No. B2-430 dated 5-11-99. After the oral inquiry the I.O., submitted his report on 9-5-2000 concluding all the charges under article I, II, III as proved. Taking the inquiry report and the representation of the appellant into consideration, the Disciplinary authority awarded him the punishment of removal from service.

2. In the appeal dated 21-8-2000 Shri Hiralal Acharjee has mainly made the following points :

- (a) That he was suffering from temporary mental illness.
- (b) That the findings of the I.O., are without the application of judicious mind.
- (c) That the representation was not considered properly.
- (d) That the findings of the inquiry report are without evidence.
- (e) That the act of the appellant during the period from 12-5-98 to 31-12-99 was under the spell of a serious nervous illness as per the medical certificate issued by the Guwahati Medical College on 31-12-99 which was marked as Exhibit D-1 in the inquiry.

3. I have gone through the records of the case along with the appeal of Shri Hiralal Acharjee. With reference to the points raised in his appeal, the following observations are made.

- (a) The medical certificate issued by the Guwahati Medical College on 31-12-99 shows that the appellant was suffering from 'Nervous' disorder from 12-5-98 to 31-12-99.

*Abul Hasan
D.P. Secretary*

-43-

(b) The findings of the I.O., are supported by observations and analysis.

(c) The appellant was given opportunity to make representation at the proper stage but he failed to make any representation.

(d) List of documents by which the articles of charges framed against the appellant was supplied to the appellant along with the charge sheet.

(e) Same as (a) above.

4. In reference to the records of the case and the observations made above, I find that all the charges as mentioned in the charge sheet stand proved and the appellant deserves punishment for violation of rules as mentioned in the charge sheet. However, taking the medical certificate dated 31-12-99 into consideration and taking a lenient view, I Shri Lalhluna, Director Postal Services (HQ), Shillong do hereby reduce the punishment of Shri Hiralal Acharjee of removal from service with immediate effect to reduction to the lower grade of Postman cadre until he is found fit by the competent medical authority to be restored in the higher grade of Postal Assistant. This disposes the appeal of Shri Hiralal Acharjee.


(LALHLUNA)
Director of Postal Services (HQ)

To (By Registered post)

Shri Hiralal Acharjee,
Vill - Kathaltali,
P.O. - Maduban,
Via - Arundhutinagar.
Agartala, Tripura.

Copy to :-

1-2) The Sr. Supdt. of Post Offices, Meghalaya Division, Shillong.
3-4) Spare.

REGISTERED WITH A.D.

To
 The Director of Postal Services(HQ),
 Office of the Chief Postmaster General,
 M.S.Circle, Shillong-793 001.

Sir,

Most respectfully, I invoke your kind attention to the order vide Memo No. Staff/109-16/2000, dated 27-10-2000, whereby the order of punishment of my removal from service has been reduced to a punishment of reduction to the lower grade of Postmen cadre until I am found fit by the competent medical authority.

2. That I was being treated at Guwahati Medical College Hospital and on 10-3-2000 the said Medical College Hospital has issued a certificate after examination holding me fit to resume duties.

3. I am appending hereto a photo copy of the said medical fitness certificate duly attested for your kind information and necessary action.

4. That having regard to the such circumstances and according to your kind order under reference I am now eligible to join service as Postal Assistant.

5. That in this connection, I beg to point out that your kind order is silent about the pay and allowances and other service benefits during the interim period of my ~~removal~~ removal from service, dated 30-6-2000 till to-day and also till resumption of duties by me and also regularization of my service during that period.

6. That be that as it may, I most fervently request to allow me to resume duties as Postal Assistant in view of the medical certificate issued by the Guwahati Medical College Hospital, dated on 10-3-2000.

contd... P-2.

Attested
 Advocate
 31/8/05

7. I also pray to kindly regularise my services for period from 1-10-1999 (date of order of my suspension) till I am allowed to resume duties and also to pass order allowing me all benefits of service during the afore-said period including pay and allowances.

8. And for this act of kindness, I shall remain grateful.

Yours faithfully,

Hiralal Acharye

(Hiralal Acharye)
Village- Kathaltali, P.O. Madhuban,
Via-Arundhutinegar, Agartala,
Tripura West.

Registered with A.D.

Copy to :-

The Senior Superintendent of Postal Services,
Meghalayn Division, Shillong. This refers to your
kind order No.B2-430, dated 30-6-2000 imposing the
penalty of removal from service on me.

Hiralal Acharye
(Hiralal Acharye)

11256
15/11/00

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ANNEXURE-X

DEPARTMENT OF POST INDIA
O/C THE SR. SUPDT. OF POST OFFICES : MEHALAYA DIVISION
SHILLONG - 793001

No. B2-430.

Dtd at Shillong-1, the 02-01-01.

In pursuance of the Director of Postal Services
(HQ) O/C the Chief Postmaster General N. R. Circle memo No.
Staff/109-16/2000 dtd 27-10-2000 and subsequent corrigendum
vide memo No. Staff/109-16/2000 dtd 6-12-2000, Shri. Hirakal
Acharjee Ex-SIM Ampati S.O. is reverted to the lower grade
of Postman cadre in the scale of Rs. 3050-75-3950-80-4590/-
and is allotted to the unit of the Postmaster Tura H.O.

sd/- Illegible

Sr. Supdt. of Post Offices
Meghalaya Division
Shillong-793001

Copy to :-

1. The Chief Postmaster General (Staff) N.R. Circle
Shillong N.R.C. CO's memo cited above.
2. The Postmaster Tura HO for information and
necessary action.
3. Shri. Hirakal Acharjee vill- Kathaltali P.O-
Maghuban Via- Arundhutinagar, Agartala, West
Tripura.
4. P/T of the official.
- 5-6. O/C. Spore.

sd/- Illegible

Sr. Supdt. of Post Offices
Meghalaya Division
Shillong-793001

Attested
J.W.
Advocate -
31/8/05

Registered with A.D.

To

The Chief Post Master General,
N.E. Circle, Shillong,
Meghalaya.

Respected Sir.

Under compelling circumstances I am making this representation for favour of kind consideration and favourable orders :-

1. That because of certain allegation against me, which are completely untrue, an order was passed on 30.06.2000 by the Senior Superintendent of Post Offices, Meghalaya Division removing me from service of Sub- Post Master with immediate effect.
2. That from that order of punishment an appeal was preferred by me on 21.08.2000 to the Director of Postal Services (Headquarter), Office of the Chief Post Master General, N.E. Circle, Shillong and by order dated 27.10.2000 the Director of Postal Services quashed the order of my removal from service and I was directed to be re-instated provided I was found fit by Competent Medical authority.
3. That I was examined by the Medical Officer of the Guwahati Medical College and they issued Certificate after examining me that I was fit to resume duties.
4. That accordingly with the Medical Certificate I went to the Sr. Superintendent of Post Offices, /3. Meghalaya Division with a request to kindly post me

Attested
Advocate
31/8/05
Contd...P/2.

but he did not accept my joining report and intimated that the order would be communicated at my residence at Agartala.

5. That there-after an order has been sent to me by the Senior Superintendent of Post Offices, Meghalaya Division under No. B2-430 dated 02.01.2001 intimating that I have been reverted to the lower grade of Postman cadre and that is said to be in pursuance of the Director of Postal Services Memo dated 06.12.2000. One copy each of the 2(two) concerned orders dated 27.10.2000 and 2.1.2001 are appended hereto as Annexures.

6. That I am advised to submit that this subsequent order, even if any, dated 06.12.2000 is not a valid order and is not sustainable in law because under the Central Civil Services (Classification, control and Appeals) Rules, 1965 once the appellate order is passed the appellate authority becomes functus officio and such appellate authority can not change the appellate order which has been passed, communicated and received by the delinquent government servant. This is exactly what is happening in my case.

7. That since I am out of job for a pretty long time/period and since my families extremely suffering due to financial crunch in these hard days of crisis and high prices, I will be joining in the lower post of Postman subject to my reservation and

49-18-
10/10/01
6

Page No. 3.

subject to my right to get the re-instatement with all benefits of service including pay and allowances as Sub-Post Master during the period I was out of office, not legally.

I shall be grateful if your kindself see to it and pass orders so that justice is done to me.

Enclo: As stated above.

Yours faithfully,

Dated, Agartala,
The 20th, Jan, 2001.

Hiralal Acharyya
(Hiralal Acharyya)
Vill. Kathal Tali,
P.O. Madhuban,
P. S. Amtali, Agartala,
West Tripura.

373
20/1/2001

8
RECORDED - 100

ANNEXURE - XII

Dr. Subit of Post Office
Meghalaya Division
Shillong - 793001.

No. 12-420 dtg at Shillong the 21-1-2001.

To
Shri Mirjal Amorjee
Aviation Wing
CMG NB

The petition dtg 20-1-2001 received under
CMG NB circled letter No. staff/100-16/2000 dtg 14-1-
2001 is sent b/w (in original) for reconstitution
correctly addressing it to Member (P) Deptt of Posts,
Dak Bhawan, H. Mkt.

Enclosed Ad stated.

Enclosed - Illegible

Dr. Subit, of Post Office
Meghalaya Division
Shillong - 793001.

Attached
by
Advocate
31/8/05

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 293 of 2001.

Date of Order : This the 25th Day of February, 2002.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

Sri Hiralal Acharjee,
Postman,
Tura Head Post Office,
Tura, Meghalaya.

... Applicant

By Advocate Sri M.Shanda.

- Versus -

1. Union of India,
through the Secretary to the
Government of India,
Ministry of Communications,
New Delhi.
2. The Director of Postal Services (HQ)
Office of the Chief Postmaster General,
N.E.Circle, Shillong.
3. The Senior Superintendent of Post Offices,
Meghalaya Division,
Shillong-793001.

... Respondents.

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

ORDER

CHOWDHURY J. (V.C)

The applicant was earlier working as Sub Postmaster at Ampati Sub Post Office. He was imposed punishment of removal of service vide order dated 30.6.2000 passed by the Senior Superintendent of Post Offices, Meghalaya Division, Shillong after holding a departmental enquiry. The applicant preferred an appeal before the Director of Postal Services, Shillong against the order of removal. The appeal was finally disposed of by the Director of Postal Services reducing the punishment of removal from service to reduction to the lower grade of postman until he was found fit by the competent medical authority to be restored in the higher grade.

Attested
Advocate
31/1/05

contd..2

The applicant preferred a revision before the Chief Postmaster General, N.E.Circle, Shillong on 20.1.2001. The revision petition was returned to the applicant for resubmission it to the Member(P), Department of Posts, Dak Bhawan, New Delhi vide memo dated 21.3.2001. Hence this application.

2. The respondents submitted its written statement and contested the case. When the matter came up for hearing it was pointed out at the Bar that there is a provision for revision and review under Rule 29 of the CCS(CCA) Rules. Sub-clause (iii) of Clause I of the said rule provides that revision lies before the Member (Personnel), Postal Service Board. Mr. M.Chanda, learned counsel for the applicant submitted that for fitness of things it would be appropriate if the matter is dealt with by the authority by sympathetically taking into consideration the state of mind of the applicant at the relevant time and the sufference of

the applicant he has undergone. Mr. A.Deb Roy, learned Sr.

C.I.G.S.C. has no objection if the applicant is allowed to pursue the matter further before the revisional authority.

Considering all the aspects of the matter we dispose of the application directing the applicant to re-submit the revision application dated 20.1.2001 before the Member (Personnel), Postal Service Board within four weeks from the date of receipt of the order. If such application is made the authority shall consider the revision justly and fairly and pass a reasoned order.

3. Mr. Chanda, learned counsel for the applicant submitted that the competent authority while passing the impugned order did not take decision pertaining to suspension after reinstatement of the applicant in service.

53

69

Since the matter will now go back to the revisional authority the revisional authority shall take all these issues and pass a reasoned order accordingly. The applicant may also raise all the issues before the revisional authority and the revisional authority shall consider all the issues raised by the applicant.

The application is accordingly stands disposed of. No order as to costs.

Sd/ VICE CHAIRMAN
Sd/ MEMBER (A)

Certified to be true COPY

SD 6/3/02
Private Secretary
Central Administrative Tribunal
Guwahati Bench, Guwahati.

To

-54- ~~55~~ - ANNEXURE- XIV

The Member(Personnel),

Postal Service Board,

Government of India,

NEW DELHI.

(THROUGH PROPER CHANNEL).

Respected Sir,

Most respectfully I beg to state that by an Order of the Senior Superintendent of Post Offices, Meghalaya Division, Shillong, I was placed under suspension on 1-10-1999 followed by a proceeding dated 5-11-1999. Thereafter, of an enquiry was held and by Order dated 30-06-2000 issued by the said Senior Superintendent of Post Offices, I was removed from service. On 21-8-2000,

Minal Acharya I have preferred an Appeal to the Director of Postal Services, Meghalaya Division, and the Appellate Authority by an Order, dated 27-10-2000 quashed the Order of removal with immediate effect reducing me to the lower Grade of Postman, when I was substantively appointed as Sub Postmaster. In the Appellate Order, the Appellate Authority, directed that I should be reduced to the lower Grade of Postman until I am found fit by the Competent Medical Authority and if it is so found, my position to be restored in the higher Grade of Postal Assistant. It is also inserted in the said Appellate Authority that the

Attested
R. N.
Advocate
31/8/05

Contd....p/2.

Gauhati Medical College issued a Certificate on 31-12-1999 that after 31-12-1999 I was medically fit.

2. That, therefore, this Order was modified by an Order dated 6-12-2000, which is impermissible in law under the Rules and so the Petitioner made a representation to the Director of Postal Services on 15-11-2000, but that did not work and Senior Superintendent of Postal Services, Meghalaya Division, Shillong practically in access of his power directed me to be reverted to the Lower post of Postman Cadre in certain scale of pay.

Hinalal Achye

Against that Order I made further representation on 10-1-2001 to the Chief Postmaster General, N.E. Circle, Shillong, but that was also without any result. So, I filed an application before the Id. Central Administrative Tribunal, Gauhati Bench on 1-8-2001, which was admitted by the said Id. Tribunal on 6-8-2001. Thence, thereafter, the matter came up before the learned Tribunal on 25-2-2002 and on that date an Order have been passed by the Learned Tribunal disposing of my application before the said learned Tribunal.

Contd... p/3.

That, in the said Order disposing of the application, it has been observed by the learned Tribunal that under Order Rule 29 of the Central Civil Service (Classification, Control & Appeal) Rules, 1965, I should approach the Reviewing / Revisional Authority in the matter. It has also been directed that the Reviewing / Revisional Authority shall sympathetically consider my case taking into consideration of my state of mind at the relevant time and my sufference that I had to undergo.

The learned Senior Government Standing Counsel also consented to such disposal.

That according to the Hon'ble Apex Court, the existence of a remedy like revision and review a matter before the learned Tribunal or the Hon'ble High Court cannot be disposed of under such direction, but since the learned Counsel appearing for me also consented the said consensus order I am making this representation as provided by Rule 29 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 for your consideration and necessary action.

5. That while the Director of Postal Services accepted my Appeal, quashed order of punishment, also directed my reinstatement to the post which I was occupying provided I was found medically fit, there was no scope for the said learned Director to modify the order because the Appellate Authority became ~~function~~ ^{functus officio}. That apart, it appears from record that the Appellate Authority acted not independently but at the instance of the Senior Superintendent of Postal Services, Meghalaya Division, Shillong.

6. Be that as it may I am making this representation as desired by the learned Tribunal. To consider my case sympathetically after taking into consideration my mental position at the material time, my sufferings and also the fact I was found medically fit and as per Order of the Appellate authority I should have been re-instated of my Sub Postmaster along with all benefit of service like including of pay and allowances for the period I was out of office illegally.

Contd.. p/5.

7. I am appending hereto one copy each of my writ petition and order of the learned Tribunal dated 25.2.2002 in original application dated 29.3.2001 for kind perusal as ANNEXURE A & B. My writ petition and the Order of the learned Tribunal disclosed the grounds taken by me for challenging the order of punishment and also subsequent action of the respondents.

(Hilal Arhyaz)

8. That as would be seen the learned Tribunal directed me to re-submit my petition dated 20-01-2001 addressed to the Chief Postmaster General, copy of which is Annexure-K to the application to the learned Tribunal at page 46 to 49. Since the aforesaid application is available with the application to the learned Tribunal I am not sending it separately, which may, however be taken into consideration as per the direction of the learned Tribunal incorporated in the Order dated 25-02-2002.

9. Since I have been suffering for a long period my application deserves to be considered and decided from very early.

Contd....p/6.

I, therefore, most fervently request to kindly look into the matter sympathetically and quash the order of punishment imposed by the Senior Superintendent of Postal Services, Meghalaya Division, Shillong and subsequent purported modified order passed by the Director of Postal Services, Shillong and to allow me to of benefits of service since the Order of suspension dated 1-10-1999 (Annexure-A to my application to the learned Tribunal) and to allow me the period from 1-10-1999 till today and thereafter all benefits of Service Branch Postmaster including pay and allowances as such ;

And for this act of kindness I shall remain ever grateful ;

Date:- 1/4/2002

Place :-

Yours faithfully,
Hir Lal Acharyee
(Hir Lal Acharyee), New postman
Tura Head Post Office, P.O.Tura,
Meghalaya.

Attested
Mr.
Advocate
31/8/05

To
The Member (Personal),
Postal Service Board,
Govt. of India,
NEW DELHI.

(Through Proper Channel)

Ref :- My representation dtd. 1-4-2002.

Respected Sir,

Most respectfully and humbly, I beg to draw Your kind attention to my above cited representation addressed to you on 1-4-2002 by Regd. post with A/D.

In this connection, I beg to state that the date 31-12-99 as appearing in the last two lines of para -I of my said representation is type mistake which will be 10-3-2000 in place of 31-12-99.

Hiralal Acharya
Besides, " I was out of office illegally " as appearing in the last time of para -6 of my representation dtd. 1-4-2002 is also mistake which will be " I was kept out of Office illegally ".

Apart this, the word " Branch Post Master " as appearing in the 12th line of para -9 (Last para) of my said representation is also bonafide type mistake which will be " Sub-Post Master " in place of Branch Post Master.

It is therefore, most humbly prayed that date 31-12-99 as appearing in the last two lines of para -I of my representation may kindly be read as 10-3-2000.

(ii): The line " I was out of office illegally " as appearing in the last line of para - 6 of my representation may kindly be read as " I was kept out of Office Illegally ".

Contd. P/ 2.

Attested
for
Advocate -
31/8/05

- : 2 : -

(iii). The word " Branch Post Master " as appearing in the 12th line of para -9 (last para) of my said representation may kindly be read as " Sub-post Master.

And for this act of kindness, I shall remain ever grateful.

Yours faithfully,

Hiralal Acharyee

(HIRAL LAL ACHARJEE),

NOW POSTMAN.

Tura Head Post Office,
P.C. Tura, Meghalaya.

Dated, Agartala,
The 26th April, 2002.

Place :- Agartala.

Advance copy submitted to the Member (Personal)
Postal service Board, Govt. of India, New Delhi for
favour of kind information.

UT 9454 RL 26/4/02
UT 9455 RL 26/4/02

DEPARTMENT OF POSTS
O/O THE SR. SUPDT OF POST OFFICES : MEGHALAYA DIVISION
SHILLONG -793001.

NO: B2-430

Dated at Shillong the 19th May 2003.

To,

✓ Shri Hiralal Acharjee
Postman Tura H.O.

You are hereby directed by the Director of Health Services (MI) Meghalaya, Shillong to appear before the State Standing Medical Board on 21-5-03 at Shillong Civil Hospital at 10.00 AM and to bring all the connected papers relating to your treatment like Prescription / Test reports/ X.Ray report and Medical Certificates without, which no medical Examination could be conducted.

Sr. Supdt of Post Offices
Meghalaya Division
Shillong-793001.

Copy to:-

1. The Postmaster Tura H.O for information.

Sdt
Sr. Supdt of Post Offices
Meghalaya Division
Shillong-793001.

Attested
Advocate
31/8/05

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

Memo No. Staff/109-16/2000

Dated Shillong, the 6-12-2000

CORRIGENDUM

The words "Competent Medical Authority" appearing in the 8th line of para-4 of this office memo of even number dated 27-10-2000 may be read as "Competent Authority".

Sdy -

(LALHLUNA)
Director of Postal Services(HQ)

Copy to :-

leg

- 1) Shri Hiralal Acharjee, Vill-Kathaltali, P.O. Maduban, via Arundhutinagar, Agartala, Tripura.
- 2) The Sr. Supdt. of Post Offices, Shillong.
- 3) O/C.

Ch. L.
Director of Postal Services,
N.E. Circle, Shillong.

Attached
Adv. cal
31/8/05

64 - 63 -

ANNEXURE-XVII

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

Memo No.STAFF/110-1/2002

Dated at Shillong the 17-9-2003.

The corrigendum issued vide this office Memo No.STAFF/109-16/2000 dated 6-12-2000 is hereby cancelled.

Sd/-
(LALHLUNA)

Director of Postal Services (Hq)

Copy to:

egd ✓

1. Shri Hiralal Acharjee, Postman, Tura HO, PO-Tura, Meghalaya.
2. The Sr. Supdt of Post Offices, Shillong.
3. O/C.

Director of Postal Services (Hq)
N.E.Circle, Shillong.

Attested
by
Advocate
31/8/05

Cancelled
by Order XXI

No. C-18013/6/2003-VP
 Government of India
 Ministry of Communications & IT
 Department of Posts

Dak Bhawan,
 Sansad Marg,
 New Delhi - 110 001.

Dated : 29.10.2003

ORDER

Shri Hiralal Acharjee, Postman, Meghalaya Division has submitted a revision petition dated 01.04.2002 addressed to the Member (Personnel), Postal Services Board in pursuance of the order dated 25.02.2002 of the Hon'ble Central Administrative Tribunal, Guwahati Bench against the modified penalty of reduction to the lower grade of Postman until he is found fit by the competent authority which was imposed by the Director Postal Services, North-East Circle, Shillong on 27.10.2000 being the appellate authority. Initially the disciplinary authority vide their order dated 30.06.2000 had imposed the penalty of dismissal from service.

2. Disciplinary action under Rule 14 of the CCS (CCA) Rules, 1965 was taken against the petitioner on following charges,

"Article-I :

That Sri Hiralal Acharjee while functioning as the SPM Armpati during the period from 25.7.98 to 1.10.99 submitted reports/complaints using Deptt. Forms (Corr.-22) addressed direct to (i) The Secretary, Department of Posts, on 3.2.99 (ii) The Member, Personnel, Postal Board on 20.2.99. (iii) The Communication Minister, Govt. of India, New Delhi on 1.3.99 and (iv) The Chief P.M.G., N.E. Circle, Shillong on 26.3.99 in violation of the conditions laid down in Rules-614 & 627 of Postal Manual Vol.-II.

Article - II :

That during the aforesaid period and while functioning in the aforesaid office, the said Sri Hiralal Acharjee lodged complaints to the Secretary, Deptt. of Post on 3.2.99, Member (Personnel), Postal Board on 20.2.99 and to the Communication Minister, Govt. of India on 1.3.99 against Sri S. Samant and one Smt. Rupa Bhattacharjee and the said complaints were found completely baseless on subsequent enquiry. Thus Sri Hiralal Acharjee was alleged to had violated the provisions of Rule-3 (i)(iii) of C.C.S. (Conduct) Rules-1964.

Contd....2/-

Attest
 Adv. No. -
 Advocate -
 31/8/05

Renu Srin
 Mohan

Article - III :

That during the aforesaid period and while functioning in the aforesaid office, the said Sri Hiralal Acharjee was directed to hand over the charge of the SPM, Ampati to one Sri Lankeshwar Barman, L.R.P.A., Garobadha and to get himself relieved and to attend Circle Office, Shillong to appear before the D.D.G. (Vig) on 8.7.99 in connection with enquiry into the complaints lodged by him. But the said Sri Hiralal Acharjee refused to hand over the charge to Sri Barman and did not attend the Circle office as directed. By his above action said Sri Hiralal Acharjee was alleged to had failed to maintain devotion to duty and thus violated the provisions of Rule-3 (i) & (ii) of C.C.S. (Conduct) Rules, 1964."

3. Statutory inquiry as prescribed under Rule 14 of the CCS (CCA) Rules, 1965 was conducted and the petitioner was allowed due opportunity to defend. The inquiry officer held the charges as proved. On completion of the disciplinary proceedings, the SSPOs, Shillong passed order dated 30.06.2000 dismissing Sri Acharjee from service. On appeal, the Director Postal Services, Shillong after taking into consideration the medical certificate submitted by the petitioner modified the penalty to reduction to the lower grade of Postman until he was found fit by the competent medical authority to be restored to the higher grade of Postal Assistant. The appellate authority thereafter further issued a corrigendum vide memo dated 06.12.2000 substituting the words "Competent Medical Authority" to "Competent Authority".

4. In the revision petition besides narrating the case in detail, further submissions as under have been made,

- I) The order issued by the appellate authority was subsequently modified by order dated 06.12.2000 which was not permissible under the Rules.
- II) The petitioner had filed an O.A. before the Central Administrative Tribunal, Guwahati Bench who vide their order dated 25.02.2002 had directed the petitioner to submit his petition to the revisional authority. It was further directed that the revisional authority should take into consideration the mental condition of the petitioner at the relevant time.
- III) It has been reiterated that the appellate authority had no power to modify his own order as the said authority had become functus-officio. He was alleged to had acted at the instance of the SSPOs, Meghalaya Division.
- IV) The petitioner was found medically fit by the medical authorities and he should have been reinstated to the post of Sub-Postmaster along with all consequential benefits.

The petitioner has further pleaded for sympathetic consideration of petition and to quash the imposed penalty.

5. The petition has been considered carefully along with the relevant records of the case. The charges levelled against the petitioner are grave in nature. He had indulged in misconduct by making wild and unsubstantiated allegations involving moral turpitude against the then Chief Postmaster General and the female official. This was deliberately done to defame the Chief Postmaster General. The CCS (Conduct) Rules does not permit any govt. servant to indulge in such misconduct's because enough safeguards and redressal of grievance if any, have been provided under the service Rules. On realising the seriousness of his wilful action in making unfounded allegations against the CPMG and other official, he submitted a medical certificate stating that he was mentally unsound during the period. This was no doubt an afterthought, still considering the medical opinion, the appellate authority decided to modify the penalty and reinstated him in service.

6. The petitioner has asserted that the appellate authority had revised its order which was not permissible under Rules. Another important aspect of this matter is that the then DDG (Vigilance) was directed to make inquiries into allegations made by the petitioner. Hence the petitioner was directed to handover the charge of the SPM Ampati SO to other official so that he could be present during inquiry in the office of the CPMG, Shillong where the DDG (Vig.) had gone on 08.07.1999. The petitioner not only refused to handover the charge but did not face the inquiry conducted by the DDG (Vig.) on lame excuse of illness. It was reported by the DDG (Vig.) after conclusion of the inquiry that the petitioner had wilfully and deliberately attempted to malign the then Chief Postmaster General Shri S. Samant and one female official with ulterior motives. Such acts of moral turpitude which are mischievously tainted with malafide intention to defame a senior officer and female official, cannot be allowed to go without stern action otherwise it would set a bad precedent. The appellate authority while modifying the penalty failed to appreciate this aspect of the matter.

7. The contention of the petitioner that the appellate authority was not competent to modify its order by issuing a corrigendum has been carefully considered. The penalty of dismissal from service was imposed by the disciplinary authority which on appeal has been modified and reduced to "reduction to the lower grade of Postman until the petitioner was found fit by the competent medical authority, to be restored to the higher grade of Postal Assistant". This appellate order was passed on 27.10.2000. Soon thereafter it was found by the appellate authority that there was error in his order in mentioning 'competent medical authority' in place of competent authority. He had therefore issued a corrigendum dated 06.12.2000 stating that the words 'competent medical authority' appearing in the 8th line of Para 4 of order dated 27.10.2000 be read as 'competent authority'. This cannot be said to be a modification in the order when as per the Rules it is the prescribed competent authority which is empowered to take appropriate decision for restoration to a higher grade after fulfilment of the conditions laid down in the appellate order dated 27.10.2000 and not the competent medical authority.

68 - 57
34

The petitioner has wrongly interpreted and contended that it was a modification of order by the Appellate Authority. The Appellate Authority was competent to issue the desired corrigendum otherwise its order would have been inoperative because 'competent medical authority' has no where in the CCS (CCA) Rules, 1965 been delegated the powers of the upgradation after expiry of the penalty ordered by the appellate authority. Therefore contention of the petitioner is rejected.

8. So far as the regularisation of the suspension period and the period from date of dismissal till reinstatement in service consequent upon implementation of the order of the appellate authority is concerned, the Chief Postmaster General, Assam Circle is directed to look into the matter and get it decided in accordance with existing Rules and Instructions of the Government of India.

In exercise of powers conferred on me under Rule 29 of the CCS (CCA) Rules, 1965, I hereby order accordingly.

R. S. Nataraja Murti
(R. S. Nataraja Murti)
Member (Personnel)
Postal Services Board.

→ Shri Hiralal Acharyee
Postman,
Meghalaya Division.

(Through the Chief Postmaster General, North-East Circle, Shillong – 793 001)

*Attested
M. N. Acharyee
Advocate
31/8/05*

To,
The Director of Postal Services(I&I)
Meghalaya Division, Shillong.

Through : Sr. Supdt of P.O'S Meghalaya Division.

Sir,

Most respectfully, I invoke your kind attention to the order vide Memo No. Staff/109-16-2000, dated 27-10-2000, whereby the order of punishment of my removal from service has been reduced to a punishment of reduction to the lower grade of postman cadre until I am found fit by the competent medical authority.

2. That I was being treated at Guwahati Medical College Hospital and on 10-3-2000 the said Medical College Hospital has issued a certificate after examination holding me fit to resume duties.

3. That having regard to the such circumstances and according to your kind order under reference I am now eligible to join service as postal Assistant.

4. That in this connection, I do to point out that Sr. Supdt of P.O'S Meghalaya Division is silent about my restoration of Higher grade of postal Assistant. So postmaster Tura H.P.O. do not allow me to join servies as postal Assistant. Postman are familar with all the men of all areas. He engaged other postman to work as stamp vander where subsequently I was appointed as sub-postmaster. He diverted me to one postman beat area to another. In state of restoration my original post try again to remove me of my service by putting in un known areas.

5. That be that as it may, I most fervently request to allow me to resume duties as postal Assistant in view of the medical certificate issued by the Guwahati Medical Collage Hospital, dated 10-03-2000.

6; I also pray to kindly regularise my services for period from 1-10-1999(date of order of my suspension) till I am allowed to resume duties and also to pass order allowing me all benefits of service during the afore-said period including pay and allowances.

And for this act of kindness, I shall remain grateful.

Date: 27/07/2004.

Yours faithfully,
Chiratul Shaha
(H. A.G.M.C. below postman
Tura Post Office,
Meghalaya.

Attested

Advocate
31/8/05

-70- 69-

ANNEXURE-XXI

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E. CIRCLE: SHILLONG-793 001.

Memo No. Staff/110-1/2002

Dated at Shillong, the 11th August 2004

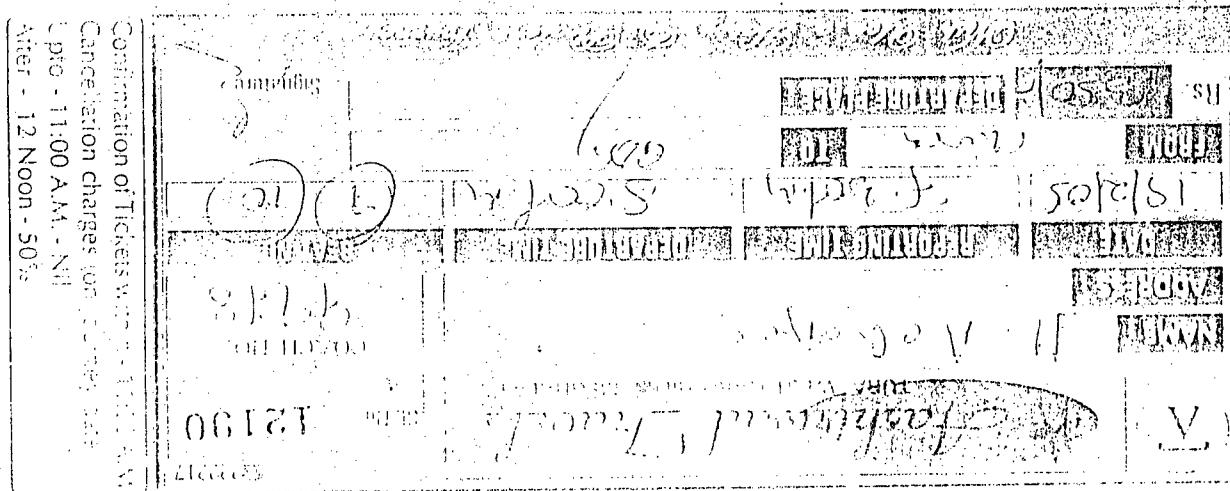
The Corrigendum issued vide this office Memo of even No. dtd. 17-9-03 is
hereby cancelled

(ABHINAV WALIA)
Director Postal Services (HQ)

Copy to:-

- 1) Sri Hiralal Acharjee, Postman, Tura HO, PO-Tura, Meghalaya.
- 2) The SSPOs, Shillong.
- 3) Office Copy.

Director Postal Services (HQ)
N. E. Circle, Shillong.



To,

The Chief Postmaster, General,
North-East Circle,
Shillong.

Through Sr. Supdt. of Po's.

Respected Sir,

Most respectfully I beg to state that appellate authority directed that I should be reduced to the lower grade of postman until I am found fit by the competent medical authority. If so found, my position to be restored in the higher grade of postal Assistant learned Director did not consider my Medical fitness certificate and issued an corrigendum dated 6-12-2000 substituting the wards competent Medical Authority to competent authority. In appropriate cases the employed may be sent for medical examination for adjudging his fitness C.C.S(Medical Examination)Rules 1957 it is a violation of rule 61 Vol.III I was occupy provided I was found medically fit.

2) For that, learned Director of postal services has cancelled the corrigendum by order dated 17-9-2003, so my position should be restored to higher grade of postal Assistant. But Sr. Supdt. of po's not done accordingly, on the other hand he order me to undergo postman training order No.B1/ Training D.L.C. Dated 11-12-2003.

3) For that, being unable to made the Sr. Supdt. of Po's to carry out the order i.e. order vide memo No. Staff/109/2000 Dated 27-10-2000 etc. Director of postal services so cancelled the order of dated 17-9-2003 by on order issued on 11-8-2004 just after eleventh month of issued and received by me there is no scope for the said learned Director to modify or cancelled any order, order once passed authority became functio officio.

I, therefore, most fervently request to kindly look into the matter sympathetically and quash the order of dated 11-8-2004. And for this act of kindness I shall remain grateful.

Yours,

Yours faithfully,
Hiralal Acharjee
(HIRALAL ACHARJEE) Now Postman.

Dated :- 20/08/2004.

Tura Head Post Office,
Meghalaya.

Place :- Tura.

Attested

Advocate
31/8/05

TURA HO /794001

FLAB A/ 794001

Counter No:1, OP-Code:14

To: HONBLE PRESIDENT, NEW DELHI

NEW DELHI, PIN:110001

Before of the Appellate Authority
(The President, Govt. of India)
New Delhi.

WT:20grams,
RS:25.00, 29/09/2004, 15:31

Appeal under Rule 23 of the Central Civil Service C.C.A.

Rules 1965. Memo No. Staff/110-1/2002 dated 11-8-2004

by Director of Postal Services. (HQ) Meghalaya, Division-Shillong-1
against this order whch condition of service in appellate order
of the appellant, Sri. Hiralal Acharjee, .

Appellant

Shri. Hiralal Acharjee
New Postman, Tura H.P.O.

Meghalaya.

Memorandum of Appeal.

The appellant most respectfully states as under :-

That Sir, by an order of Sn. Supdt of po's Meghalaya
Division, Shillong Memo No. B-2-430 dated 30-6-2000 I was
removed from service. I made an appeal to the Director General
of post New Delhi which was returned to me by Sn. Supdt of pos
vide his communication dated 10-6-2000 where in the applicant
was intimated that the Director of postal service Meghalaya
Division was the Appellate Authority. There is no provision in the
C.C.S. (C.C.A) rules, 1965, for the with holding of appeal in the
by the authority made the order appealed against at any stage
this is exactly what is happened in my case. I have received no
respond of that appeal I have made to Direct General of post.
New Delhi.

That Sir, on appeal appellate authority vide memo No.
staff/109-16/2000 dated 27-10-2000 quashed the order, removal
and reduced it directing I would be reduced to lower grade
of postman, I am found fit by the competent medical authority
to be restored to the higher grade of postal Asst. Appellate
authority issued a corrigendum memo No. staff 109-16/2000
dated 6-12-2000 substituting the words competent medical authority
to "competent authority". which was beyond the jurisdiction of the
appellate authority. After passing the appellate order the
appellate authroity become functions officio rules ccs(cca)1965
So appellate authority by order vide memo No. staff 110-1-2002
dated 17-9-2003 cancelled it. By another order dated 11-8-2004
memo No. staff 110-1-2002 appellate authority has cancelled the
order of dated 17-9-2003. which denies the condition of appellate
order therefore it is a deliberate violation of rules 61 of Vol
III ccs (medical examination)1957, i.e. In appropriate cases the
employee may be sent for Medical examination for adjudging his
fitness.

Over and above it is stated that, previously the appellate
authority and revisionary authority did not see that procedure
complied by disciplinary authority has resulted any violation of
any of the provision of the constitution of India, in this

Contd....2-

Attested

Advocate
31/8/05

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connection it is pertinent to point out that according to memo of proceeding I brought allegation against ones conversion of ones religion by ones subordinate against ones will which was not denied by her in her statement. Any where it stated that allaged official has given his statement denying the allegation brought by me both the appellate authroty and the disiciplenary are subordi-nate to him.

On this counts and grounds taken in the memo of appeal, order memo no staff/110-1/2002 of Director of postal service Meghalaya Division Shillong , dated 11-8-2004 and revisionary order of member (Personal) postal service board vide order no C 18013/6/2003 v.P. dated 29-10-2003 inclding punishment order are liable to be quashed and I am to be reinstated in the service with full benefits for the period I was kept out of office Meghalaya and the period of suspension to fill to day* to treated as period spent on duty as sub postmaster by me for all purposes and intents. I pray accordingly.

Yours faithfully,

Hiralal Acharya
(HIRALAL ACHARJEE)

Now Postman, Tura
Meghalaya, Division.

Dated 29/09/2004.

TURA HO (794001)
RLAD A 7470
Counter No:1,OP-Code:14
To:HONBLE PRESIDENT,NEW DELHI
NEW DELHI, PIN:110001



Wt:20grams,
PS:25.00, , 29/09/2004 , 15:31

No. C-17015/53/2004-VP

Government of India
Ministry of Communications & IT
Department of PostsDak Bhawan, Sansad Marg,
New Delhi-110001

Dated : 10.02.2005

ORDER

The O/o Chief Postmaster General, North East Circle has forwarded a review petition dated 20.09.2000 preferred by Shri Hiralal Acharjee, Postman, Tura IPO, Meghalaya addressed to the President of India against the appellate order issued by DPS (HQ), Shillong vide memo dated 27.10.2000, partially modified vide memo dated 06.12.2000.

2. Disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated against the petitioner by the Senior Superintendent of Post Offices, Shillong vide memo dated 05.11.1999 on the following articles of charges :-

Article-I

Shri Hiralal Acharjee while functioning as SPM, Ampati during the period from 25.07.1998 to 01.10.1998 submitted reports/complaints, using departmental forms (Corr-22) direct to (i) The Secretary, Department of Posts on 03.02.1999 (ii) to the Member (Personnel) Postal Board on 02.02.1999 (iii) to the Communication Minister, Government of India, New Delhi on 01.03.1999 and (iv) to the Chief PMG, N.E. Circle, Shillong on 26.03.1999, in violation of the conditions laid down in Rules 614 & 627 of Postal Manual Volume-II.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Hiralal Acharjee lodged complaints to the Secretary, Department of Posts on 03.02.1999, to the Member (Personnel), Postal Board on 20.02.1998 and to the Communication Minister, Government of India on 01.03.1999, against Shri S. Samant, Chief PMG, N.E. Circle, Shillong with a view to demoralise and disgrace the character of Shri S. Samant and one Smt. Rupa Bhattacharjee and the said complaints were found completely baseless on subsequent enquiry. Thus, Shri Hiralal Acharjee is alleged to have violated the provisions of Rule-3 (1)(iii) of CCS (Conduct) Rules, 1964.

Attached
for
Advocate
31/2/05

Article-III

That during the aforesaid period and while functioning in the aforesaid office the said Shri Hiralal Acharjee was directed to handover the charge of SPM, Ampati to one Shri Lankeswar Barman, LR P/A Garobadhi and to get himself relieved and to attend Circle office, Shillong to appear before the DDG (Vig) on 08.07.1999 in connection with enquiry on the complaints lodged by him. But the said Shri Hiralal Acharjee refused to handover the charge to Shri Barman and did not attend the Circle office, as directed.

3. The facts of the case are that while functioning as SPM, Ampati SO, the petitioner made one direct communication to the O/o CPMG, North East Circle regarding official matters on 26.03.1999 with a copy to the SSPOs, Shillong and for that unauthorised communication he was warned vide letter dated 12.05.1999. Inspite of this, he submitted various communications to the O/o CPMG and DG (Posts) as mentioned in the articles of charges. Consequently, enquiry was conducted by DDG (Vigilance), Postal Directorate, New Delhi on the complaint made by Shri Hiralal Acharjee. Accordingly, Shri Hiralal Acharjee was directed to hand over the charge of SPM, Ampati SO to Shri Lankeswar Barman to attend O/o Chief PMG, Shillong to meet DDG (Vigilance) on 08.07.1999 for the purpose of enquiry. The petitioner refused to handover the charge to the reliever and did not face the enquiry on the ground of his stomach problem. The DDG (Vigilance) submitted the report that on the basis of the facts available, the complaint appears to be totally baseless and mischievous with a view to malign a very serious officer and also to spoil/tarnish the image/family relation of a female departmental official. He recommended a stern and exemplary action against the official for filing such a mischievous, baseless and irresponsible complaint. Accordingly, the petitioner was placed under suspension vide memo dated 01.10.1999. On conclusion of the Rule 14 proceedings against the petitioner, he was removed from service vide SSPOs, Shillong memo dated 30.06.2000. The petitioner submitted an appeal against the punishment order which was decided by the appellate authority i.e. DPS (HQ), Shillong vide memo dated 27.10.2000 wherein taking a lenient view over the medical certificate dated 31.12.1999 submitted by the petitioner, the punishment from 'removal from service' was reduced to the punishment of 'reduction to the lower grade of Postman cadre until he is found fit by the competent medical authority to be restored in the higher grade of Postal Assistant'. Subsequently, the words 'competent medical authority' in the appellate order dated 27.10.2000 were modified as 'competent authority' vide DPS (HQ), Shillong corrigendum dated 06.12.2000. Accordingly, the petitioner was allotted to the unit of Postmaster, Tura and he joined as Postman on 31.01.2001 at Tura HO.

The petitioner filed a revision petition dated 20.01.2001 addressed to the CPMG, North East Circle, which was returned to him with an advice to address it to Member (P). Thereafter, the petitioner filed an application in CAT, Guwahati bench which was disposed of by the Hon'ble Tribunal on 25.02.2002 with the directions to the applicant to resubmit his application dated 20.01.2001 to the revisionary authority for consideration. The petitioner preferred a revision petition dated 01.04.2002 to Member (P), which was disposed of by the CPMG, Shillong as under :-

'In my view there is no need to consider the petition as the order of the appellate authority implied that on being found medically sound the official would be restored to his original grade. In other words, this would be automatic and not subject to the decision of the reviewing authority.'

However, as stated in the note of AD (S) above, it appears that modification of the order of the appellate by the same authority was not in order. Therefore, it needs to be cancelled. In that case for restoration of the official to his original grade, opinion of the medical authority would be required.'

4. Accordingly, the report of the medical board dated 21.05.2003 was obtained which stated that the official at present is not psychotic and is fit for the usual/same job he is performing. However, the case needs to be reviewed after six months.

5. As per the observations of the Chief PMG, North East Circle, corrigendum dated 06.12.2000 was cancelled vide memo dated 17.09.2003.

6. Thereafter, the revision petition dated 01.04.2002 of Shri Hiralal Acharjee was considered and decided by Member (P) vide order dated 29.10.2003 and corrigendum dated 30.06.2004.

7. The petitioner has submitted a review petition under Rule 29-A ibid addressed to the President of India. In the petition he has made the following relevant submissions :-

(i) The appeal made by him to the Director General of Posts, New Delhi against the punishment order of removal from service dated 30.06.2000 was returned to him stating that DPS, Meghalaya Division was the appellate authority. There is no provision in CCS (CCA) Rules, 1965 for withholding of an appeal by the authority who made the order appealed against at any stage.

21/5/03

(ii) The appellate authority issued a corrigendum dated 06.12.2000 substituting the words 'competent medical authority' to 'competent authority', which was beyond the jurisdiction of the appellate authority. So the corrigendum dated 06.12.2000 was cancelled vide memo dated 17.09.2003. By another order dated 11.08.2004, the appellate authority cancelled the memo dated 17.09.2003, which denies the condition of appellate order. Therefore, it is a deliberate violation of Rule 61 of Volume III of 'CCS (Medical Examination), 1957. That means, in appropriate cases the employee may be sent for medical examination for adjudging his fitness.

(iii) He was kept out of office illegally. He has prayed to be reinstated in service with full benefits for the period including the period of suspension treating it as period spent on duty as Sub Postmaster.

8. Rule 29 A of the CCS (CCA) Rules, 1965 provides that the President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice.

9. The petition has been considered carefully alongwith the available records of the case. As per para 2 of Government of India's instructions under Rule 24 of CCS (CCA) Rules, 1965, the appellate authority in respect of an official is to be determined with reference to the authority which imposed the penalty appealed against. In petitioner's case, DPS (HQ), Shillong being the competent appellate authority rightly considered and decided his appeal.

The corrigendum dated 06.12.2000 was modified vide memo dated 17.09.2003, was in turn cancelled vide memo dated 11.08.2004. Hence the original order of modification dated 06.12.2000 carrying the words 'competent authority' stands. Therefore, there is no question of violation of Rule 61 of Volume III of CCS (Medical Examination), 1957. As regards regularisation of the period of suspension and about the period from the date of removal from service till reinstatement in service, necessary directions have been issued vide revisionary order dated 29.10.2003 to the SSPOs, Shillong, consequent upon implementation of the order of appellate authority in accordance with existing rules and instructions of the Government of India.

10. The petitioner has not adduced any new material or evidence, which have the effect of changing the nature of the case as provided in Rule 29-A *ibid*, justifying review of the impugned punishment order by the President. The other arguments now adduced by the petitioner have been duly considered by the disciplinary, appellate and revisionary authorities. In view of the above stated facts, there is no merit in the petition and it does not call for any review by the President.

11. In view of the above state facts, there is no merit in the petition of Shri Hiralal Acharjee, and therefore, the President, in exercise of the powers conferred by Rule 29-A of the CCS (CCA) Rules, 1965, hereby rejects the same.

BY ORDER AND IN THE NAME OF THE PRESIDENT

Manohar

(Sushma Chauhan)
Desk Officer (Vigilance Petition)

✓ Shri Hiralal Acharjee
Postman,
Tura HPO
Meghalaya

(Through the Chief Postmaster General, N.E. Circle, Shillong-793 001)

Attested
Mr.
Advocate
31/8/05

President ?

2

2

16 Supreme Court
months and a fine of Rs. 15,000 and in default six months' rigorous imprisonment. Under the Railways Act he was fined in the sum of Rs. 1,000 and in default he was ordered to undergo one month's imprisonment.

In case No. 1785-P of 1950, under Ss. 7 and 8, Essential Supplies (Temporary Powers) Act, he was awarded a sentence of one day's imprisonment and a fine of Rs. 10,000 and in default rigorous imprisonment for six months. Under the Railways Act he was fined in the sum of Rs. 300 and in default he was ordered to undergo one month's imprisonment. In the result in respect of these 115 barrels of oil, a cumulative fine of Rs. 42,300 was imposed on the appellant besides the sentence of imprisonment. The learned Presidency Magistrate, while imposing the sentence observed as follows :

"Such black market transaction when detected must be crushed, else the common man has no escape from the plague".

On appeal the convictions and sentences were maintained except that the fine imposed on accused 5 was remitted. The High Court held that having regard to the manner in which the offence was committed and the purpose for which kerosene was attempted to be sent outside the State of Bombay which obviously was to sell it in the black market the sentences passed could not be regarded as excessive.

(3) The determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down, it being a matter of discretion which is to be guided by a variety of considerations, but the Court has always to bear in mind the necessity of proportion between an offence and the penalty. In imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused persons as to the character and magnitude of the offence, and where substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases. It seems to us that due regard has not been paid to these considerations in these cases and the zeal to crush the evil of black-marketing and free the common man from this plague has perturbed the judicial mind in the determination of the measure of punishment.

(4) The appellant was acting in these transactions on behalf of accused 1 and other principals in the capacity of a member of a commission agency firm. It was asserted before us that its commission in this deal was half a per cent. on the sale price. There is no evidence on the record about the accused's pecuniary condition. His learned counsel emphatically asserted at the Bar that it was impossible for him to pay even a fraction of this heavy fine. The profit made on the sale of oil in the black market would in the ordinary course of business dealings go to the principals but its extent is not known nor found on the record. Accused 1 who was to profit by getting kerosene oil by this device has been acquitted and is not

before us. The other persons on whose behalf the oil was purchased were not brought to trial. In these circumstances there is no material on the record justifying the imposition of such heavy fines on the appellant and these seem to us to be quite disproportionate to the offences.

(5) It is no doubt true that the offence of black-marketing is very generally prevalent in this country at the present moment and when it is brought home against a person, no leniency in the matter of sentence should be shown and a certain amount of severity may be very appropriate and even called for. In our opinion, however, when a quite substantial sentence of imprisonment was awarded to the appellant, a person belonging to the commission agency class, imposition of unduly heavy fines which may have been justified to some extent in the case of the principals, was not called for in his case. It is not the practice of this Court to interfere by special leave in the matter of punishment imposed for crimes committed, except in exceptional cases where the sentences are unduly harsh and do not really advance the ends of justice.

(6) For the reasons given above we think that it would meet the ends of justice if the fines imposed on the appellant by the Magistrate and upheld by the High Court are reduced in all cases as below :

In case No. 1783-P of 1950, the sentence of fine is reduced to Rs. 1,000 from Rs. 15,000, and in default he will undergo imprisonment for a period of one month.

In case No. 1784-P of 1950 also the fine is reduced to Rs. 1,000 from Rs. 15,000 and in default, he will undergo imprisonment for one month.

Similarly, in case No. 1785-P of 1950 the sentence of fine is reduced to Rs. 1,000 and in default he will undergo imprisonment for a month.

(7) The fines in all the cases under the Indian Railways Act are reduced to one cumulative fine of Rs. 1,000, instead of a fine of Rs. 1,500 and in default he will undergo imprisonment for a month. In all other respects the appeals fail and are dismissed.

Sentence reduced.

[C. N. 5.]

* A. I. R. (39) 1952 Supreme Court 16
(From : Bombay)*

23.11.1951

FAZL ALI, MAHAJAN AND BOSE JJ.
Commissioner of Police, Bombay—Appellant
v. Gordhandas Bhanji—Respondent

Civil Appeal No. 93 of 1951.

¶(a) Specific Relief Act (1877), S. 45—Scope—Order against person holding public office—'Any law' if confined to statute law—Permission to construct cinema in Greater Bombay granted by Commissioner of Police—Permission cancelled by State Government—Commissioner of Police acting as transmitting agent—Order under S. 45 directing

*See Appeal No. 16 of 1949, D-6-9-1949 (Rom).

Commissioner to withdraw cancellation or to grant permission if can be passed—City of Bombay Police Act (1902), S. 22—Rules for Licensing and Controlling Theatres and other Places of Public Amusement in Bombay City (1914), R. 250—Scope of Power to cancel permission once granted whether in State Government.

The jurisdiction conferred by that S. 45 is very special in kind, and is strictly limited in extent though the ambit of the powers exercisable within those limits is wide. Among the limitations imposed are the following. First, the order can only direct some specific act to be done or some specific act to be forbear. It is not possible therefore to give a mere declaratory relief as under S. 42. Next, because of the proviso, the order can only be made if the doing or the forbearing is clearly imminent upon the authority concerned under any law for the time being in force. And thirdly, there must be no other specific and adequate legal remedies available to the applicant.

(v) The words 'any law' in S. 45 were wide enough to embrace all kinds of law and were not confined to statute law. There was no reason why statutory duties should be placed any different plane from other duties enjoined by any other kind of law, especially as some statutory duties are slight or trivial when compared to certain other kinds of duties which are not referable to a statutory provision.

(vi) The respondent had no other adequate remedy in this case. The dangerous course of ignoring the official order of cancellation at one's peril was not the kind of adequate and specific relief contemplated by S. 45. Nor could the relief of injunction be considered adequate to meet the exigencies of the case. [Paras 31, 32]

Anno. Specific Relief Act, S. 45, N. 1, 8.

[Para 22]

(b) Administrative law—Public orders—Construction—Deed, construction—Interpretation of Statutes, public orders.

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

[Para 9]

(c) Administrative law—Duty of public authorities.

Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.

[Para 10]

(d) Specific Relief Act (1877), S. 46—Demand and denial of justice.

The demand and denial which S. 46 requires are matters of substance and not of form.

An evasion or shelving of a demand for justice is sufficient to operate as a denial within the meaning of S. 46.

[Para 34]

Anno. Specific Relief Act, S. 46, N. 1.

Shri C. K. Daphatary, Solicitor-General for India (Shri G. N. Joshi, Advocate with him), instructed by Sri P. A. Mehta, Agent—for Appellant.

Shri N. C. Chatterjee, Senior Advocate (Shri R. M. Hajarnavis, Advocate, with him) instructed by Shri Rajinder Narain, Agent—for Respondent.

[Para 34]

Cases referred to—

(Arranged in order of Courts, and in the Courts chronologically. List of foreign cases referred to comes after the Indian Cases).

(23) 50 Ind. App. 227: (A.I.R. (10) 1923 P. C. 138).

[Pr. 82]

(1880) 5 A. C. 214: (4 L. J. Q. B. 677).

[Pr. 27]

Rose J.—The question here is whether an order should issue under S. 46, Specific Relief Act, against the appellant, who is the Commissioner of Police, Bombay.

[2]

The respondent, Gordhandas Bhanji, wanted to build a cinema house on a plot of land at Andheri in the year 1945. At that date Andheri did not form a part of Bombay and under the rules then in force it was necessary to obtain permission from the District Magistrate of that area in the form of a No Objection Certificate. Accordingly, the respondent made the necessary

[Paras 25, 36]

(v) The discretion vested in the Commissioner of Police under Rule 250 had been conferred upon him for public reasons involving the convenience, safety, morality and welfare of the public at large. An enabling power of this kind conferred for public reasons and for the public

[Paras 25, 36]

1352 S. C. 3 & 4

Application on 19th September 1945. Permission was refused on 30th September 1945 on the ground that the public of the locality objected and also because there was already one cinema theatre at Andheri and so it was not necessary to have another "for the present."

[5] On 1st October 1945, Andheri became a part of Greater Bombay and the jurisdiction to grant or refuse a license was transferred to the Commissioner of Police, Bombay. The respondent accordingly put in a second application on 21st November 1945 and addressed it to the Commissioner of Police. After some correspondence this was also turned down on 19th March 1946 "owing to public opposition." Nothing daunted, the respondent applied again on 1st April 1946 and asked for a "reopening" of his case. One of the grounds given was that

"The Government of Bombay are giving very careful attention and affording all reasonable facilities to develop the Greater Bombay into a model one. A modern cinema, therefore, of the type I propose to build is indispensable."

In view of that, "not unnaturally, the Commissioner of Police appears to have consulted the Government of Bombay, for he wrote to the respondent on 25th April 1946 saying that — "the whole question of considering and approving sites for cinemas is under the consideration of the Government of Bombay," and he promised that "when a decision is arrived at, your application will be examined."

[4] It seems that somewhere about this time, a Cinema Advisory Committee was constituted by Government. We have not been enlightened about the scope and extent of its powers but it is evident from its nomenclature that its functions were purely advisory. Five members of this Committee appear to have inspected the site on 12th May 1947 and after prolonged discussion they reached the conclusion that "in view of the location of four schools near by the site, this site is unsuitable for the purpose required and therefore it should be rejected." A note was drawn up to that effect and the matter was ordered to be placed on the agenda of the next meeting of the Committee "for final decision."

[5] This final decision has not been placed on record but the Commissioner of Police tells us in his affidavit that within a month the Committee advised that the application should be granted. Accordingly, the Commissioner accorded the necessary permission by his letter dated 14/16th July 1947. There is no reference here to the recommendations of the Advisory Committee and though they may have weighed, and rightly, with the Commissioner there is nothing on the face of the letter to indicate that the decision was not that of the Commissioner himself given in *bona fide* exercise of the discretion vested in him.

[6] We refer to this because the Commissioner has stated in his affidavit that

"I was fully satisfied that the petitioner's application should be refused but that it was only at the instance of the Cinema Advisory Committee that I granted the said permission on 14th July 1947."

That, however, would not affect the validity of his order. There is no suggestion that his will was overborne or that there was dishonesty or fraud in what he did. In the absence of that, he was entitled to take into consideration the advice thus tendered to him by a public body set up for this express purpose, and he was entitled in the *bona fide* exercise of his discretion to accept that advice and act upon it even though he would have acted differently if this important factor had not been present to his mind when he reached a decision. The sanction accorded on 16th July 1947 was therefore a good and valid sanction.

[7] This sanction occasioned representations to Government presumably by the "public" who were opposing the scheme. Anyway, the Commissioner wrote to the respondent on 18/20th September 1947 and directed him "not to proceed with the construction of the cinema pending Government orders." Shortly after, on 27/30th September 1947, the Commissioner sent the respondent the following communication :

"I am directed by Government to inform you that the permission to erect a cinema at the above site granted to you under this office letter dated 16th July 1947 is hereby cancelled."

[8] It will be necessary at this stage to determine whether this was a cancellation by the Commissioner on his own authority acting in the exercise of some power which was either vested in him or of which he *bona fide* believed himself to be possessed, or whether he merely acted as a post office in forwarding orders issued by some other authority. We have no hesitation in reaching the conclusion that this is not an order of cancellation by the Commissioner but merely intimation by him of an order passed and made by another authority, namely the Government of Bombay.

[9] An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

[10] Turning now to the language used we are clear that by no stretch of imagination can this be construed to be an order which in effect says — "I, so and so, by virtue of the authority vested in me, do hereby order and direct this and that." If the Commissioner of Police had the power to

cancel the license already granted and was the proper authority to make the order, it was incumbent on him to say so in express and direct terms. Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.

[11] But if there is ambiguity or doubt in the language used here a glance at the surrounding circumstances will dispel it. What was the position at the time? Permission was first refused and then granted, then suspended and the respondent was told to await, not the Commissioner's orders but those of Government. Then comes the letter in question which conveys those orders. So also there is the conduct of the Commissioner not long after. The respondent's solicitors placed the same construction on the order of 30th September as we do and asked the Commissioner how Government could interfere with a permission granted by him. They said on 18-11-1947 :

"Our client has been advised that the authority to grant permission is in you acting in consultation with the Advisory Board. It is difficult to understand how the Government can interfere with the permission granted by you."

The Commissioner's reply dated 8/4/1947 was : "I write to inform you that permission granted to your client was cancelled under the orders of the Government who may be approached"

[12] We are clear that this round-about language would not have been used if the order of cancellation had been that of the Commissioner. We do not mean to suggest that it would have been improper for him to take into consideration the views and wishes of Government provided he did not surrender his own judgment and provided he made the order, but we hold on the material before us that the order of cancellation came from Government and that the Commissioner acted only as a transmitting agent.

[13] It is next necessary to determine whether the Government of Bombay had the power to cancel a license once issued. That depends on a consideration of the Rules. They are framed under s. 22 (1) (f), (g) and (h) of the City of Bombay Police Act, 1902. They regulate the "licensing, controlling, keeping and regulation" of places of public amusement in the City of Bombay. Rule 8 applies to any person desirous of "erecting" a cinema building.

[14] There is, in our opinion, a distinction of principle between the erection and use of buildings for purely private and residential purposes and those intended to be used as places of public amusement. Considerations arise regarding the latter which would not be applicable to the former, among them the right to withdraw or modify a license once issued. Ordinarily, a man can do what he likes with his property subject of course to specific laws regulating his use of it.

therefore in the case of a private residence he would in a general way have a right to build if he complies with all the rules and regulations and restrictions which may be imposed by law, and if permission is withheld when all the conditions are fulfilled he would normally have a right to demand that the necessary permission be given. But that sort of consideration does not apply to a place intended to be used for public performances. There, questions affecting the safety, convenience, morality and welfare of the public must be given overriding precedence and it is usual in these cases, on grounds of public concern, to vest some public authority with a discretion to grant or refuse such licenses and to modify or cancel ones already granted. It is necessary to bear this distinction in mind when construing the present Rules. Therefore, when R. 8 speaks of 'erecting' such premises, it must be borne in mind that the Rule is not a mere building rule affecting the erection of a building in the abstract but applies to a building intended to be used for a particular purpose and the license applied for is not merely for permission to build but also to use the structure, when erected, for a particular purpose affecting the public at large and the residents of the locality in particular.

[15] Rule 8 falls under Part II which is headed: "Preliminaries to obtaining license for premises." These preliminaries include : (a) the making of an application in writing to the Commissioner of Police, and (b) the giving of certain notice as a preliminary to the application. This notice has to be in the form prescribed in Schedule A and has to be maintained on a certain board "until the application has been dealt with by the Commissioner" and the Rule prescribes that : "no application shall be considered before the expiration of one fortnight after the receipt by the Commissioner of a copy of the notice etc." Schedule A shows that the object of the notice is to enable the Commissioner to receive objections to the proposed erection. The rest of the Rules in Part II specify the matters which the application shall contain and the documents which must accompany it including plans and specifications of the proposed building.

[16] Part III prescribes various structural details with which the building must conform. They include fire resisting material for the roof, stage staircases and dressing rooms of a certain type, seating arrangements, corridors, exits and so forth. This part of the Rules would apply to a building already in existence but not yet licensed for public performance as well as to one which is yet to be erected. Part IV relates to the "Use of cinematograph Apparatus and other optical lanterns." The rules prescribed there are mainly for purposes of health and safety. Parts V and VI do not concern us. They prescribe special rules for Circuses and for exhibitions of Boxing and Wrestling. Then comes Part VII which is material

For present purposes. It is headed "Licenses." Rule 237 prescribes that:

"The person being the owner, tenant or occupier of such premises and the person who proposes to give any public performance, entertainment or exhibition on such premises shall each take out a license under these rules."

Then follows a sub heading "Licenses for Premises" and under that come Rr. 258 to 257. Rule 238 prescribes that:

"No such premises shall be opened, or kept open for use as a place of public amusement unless the person being the owner, tenant or occupier thereof shall have obtained from the Commissioner the necessary license."

Rule 248 invests the Commissioner with "absolute discretion in refusing any license etc. . . . if such place appears to him likely to cause obstruction, inconvenience, annoyance, risk, danger or damage to residents or passers-by in the vicinity of such premises."

Then follows R. 250 which is crucial here. It says: "The Commissioner shall have power in his absolute discretion at any time to cancel or suspend any license granted under these Rules" After R. 257 comes a second sub-heading entitled "Performance License" and Rr. 258 to 263 set out the requirements relating to the holding of performances as distinct from the requirements relating to the building or premises in or on which they are to be held. The rest of the rules do not concern us.

[17] It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a license for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that under R. 250 he has been vested with the absolute discretion at any time to cancel or suspend any license which has been granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it.

[18] It was argued that R. 250 did not apply to licenses to erect buildings but only referred to other matters such as their maintenance and the kind of performances to be given in them. We are unable to agree.

[19] The preamble to the Rules states that the Rules are for the "licensing, controlling, keeping and regulation" of places of public amusement in the City of Bombay. Part II which deals with the erection of cinema houses nowhere authorises the issue of a license but it does indicate that a license is necessary. For instance, the heading states that the Rules which follow in Part II are only the "preliminaries to obtaining license for premises" and R. 21 sets out that "before a license is granted . . . for such premises" certain certificates must be produced. All of which indicates that a license is necessary. But the only provision for the actual issue of the license is in Part VII and Rr. 237 and 238 in that part require the owner, tenant or occupier of premises intended to be used for a cinema house for public amusement

to take out a license as well as for the person who proposes to give a public performance on such premises. In our opinion, R. 250 does not authorise the cancellation of a license already issued but the only person who can effect the cancellation is the Commissioner of Police."

[20] It was contended that this would work great hardship in some cases and that if money had already been expended on the building an estoppel at least would arise. No question of estoppel has been raised here, so that is not a question we need consider nor need we answer the converse question whether an estoppel would hold good in the face of a law enacted for the public good on grounds of public policy; also whether there can be an estoppel when a person builds knowing the risk he runs of cancellation at any time under R. 250.

[21] The next question is whether an order in the nature of a *mandamus* can issue under S. 45, Specific Relief Act. It is necessary to emphasise that the present case does not fall either under Art. 82 (2) or Art. 226 (1) of the Constitution. We are confined here to S. 45, Specific Relief Act.

[22] The jurisdiction conferred by that section is very special in kind and is strictly limited in extent though the ambit of the powers exercisable within those limits is wide. Among the limitations imposed are the following: First, the order can only direct some specific act to be done or some specific act to be forborne. It is not possible therefore to give a mere declaratory relief as under S. 42. Next, because of the proviso, the order can only be made if the doing or the forbearing is clearly incumbent upon the authority concerned under any law for the time being in force. And thirdly, there must be no other specific and adequate legal remedies available to the applicant.

[23] Now applying these rules to the present case, the applicant must show what specific act he wants to be done or to be forborne. That can only be gathered from the petition. The reliefs specifically sought there are (1) an order directing the Commissioner to withdraw the cancellation and/or (2) directing him to grant permission for the erection of a cinema.

[24] Taking the second first, it is evident from the rules that there is no specific law which requires the Commissioner to grant a license on the fulfilment by the petitioner of certain conditions. He is vested with a discretion to grant or to refuse a license and all that the law requires is that he should exercise that discretion in good faith. But that he has done. In the exercise of that discretion he granted a license and that license still holds good because, on the view we have taken, there has been no valid order of cancellation. Accordingly, this relief cannot be granted.

[25] Turning next to the first relief, that cannot be granted in the form in which it is sought because the rules vest the Commissioner with an absolute discretion to cancel at any time a license

once granted. There is no specific law which compels him to forbear from cancelling a license once granted—in fact that would be an impossibility, still less is there any law which compels him to withdraw a cancellation already effected; that would fetter the absolute discretion vested in him by R. 250. Therefore, this relief cannot be granted in the way it is asked for. But we are of opinion that we are free to grant the respondent a modification of that relief in a different form. It is to be observed that the petitioner did ask that he be granted "such further and other relief as the nature and circumstances of the case may require."

[26] We have held that the Commissioner did not in fact exercise his discretion in this case and did not cancel the license he granted. He merely forwarded to the respondent an order of cancellation which another authority had purported to pass. It is evident from these facts that the Commissioner had before him objections which called for the exercise of the discretion regarding cancellation specifically vested in him by R. 250. He was therefore bound to exercise it and bring to bear on the matter his own independent and unfettered judgment and decide for himself whether to cancel the license or reject the objections. That duty he can now be ordered to perform under S. 45.

[27] It was objected as to this that there is no specific law which compels him to exercise the discretion. Rule 250 merely vests a discretion in him but does not require him to exercise it. That is easily met by the observations of Earl Cairns L. C. in the House of Lords in *Julius v. Lord Bishop of Oxford*, (1880) 5 A. C. 214, observations which have our full and respectful concurrence:

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

[28] The discretion vested in the Commissioner of Police under R. 250 has been conferred upon him for public reasons involving the convenience, safety, morality and welfare of the public at large. An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor it be evaded, performance of it can be compelled under S. 45.

[29] It was then objected that performance cannot be compelled for another reason. Section 45, it was said, is limited to duties which must be performed or forborne "under any law for the time being in force," and it was argued that this means statute law. There is authority for this point of view, but we see no reason for limiting

the clear words of the section or for reading into it matter which is not there. The provision is a beneficent one to compel the performance of public duties by public officers. It is intended to open up a swift and summary remedy to the subject against, on the one hand, certain kinds of abuse or excesses on the part of public officers or, on the other, of laziness, incompetence, inertia or inaction on their part. We can see no reason why statutory duties should be placed on any different plane from other duties enjoined by any other kind of law, especially as some statutory duties are slight or trivial when compared to certain other kinds of duties which are not referable to a statutory provision. In our opinion, the words "any law" are wide enough to embrace all kinds of law and we so hold.

[30] The only other point we need consider is whether "the applicant has no other specific and adequate legal remedy." It was contended on behalf of the appellant that the respondent could have ignored the so called order of cancellation if he considered it was of no effect; alternatively, he had the specific legal remedy of suing for an injunction which could have accorded him adequate relief.

[31] In our opinion, the first is neither a specific nor an adequate legal remedy. Here is an order purporting to emanate from the State Government itself served on the respondent by a responsible public officer. Whether the order is his order or an order of the State Government it is obviously one which *prima facie* compels obedience as a matter of prudence and precaution. It may in the end prove to be ineffective, as has happened in this case, but it would be wrong to expect a person on whom it is served to ignore it at his peril however much he may be legally entitled to do so. Also, the very fact that this order was served on him, especially when it followed on the Commissioner's letter of 19/20-9-1947, indicated that objections of a serious nature which it was the Commissioner's duty to consider had been raised.

The respondent had a right to expect the Commissioner to make up his mind and reach a decision, otherwise it left him in a state of uncertainty. If he commenced to build, the Commissioner would have a right to take action under R. 250 and tell him to stop, and at best that would involve the respondent in a long and expensive litigation which he might or might not win. We are clear that he had a right to be told definitely by the proper legal authority exactly what he might or might not do so that he could adjust his affairs. We are clear that the dangerous course of ignoring an official order at one's peril is not the kind of adequate and specific legal remedy contemplated by S. 45.

[32] Next, as regards the relief of injunction. We do not say that that would not be a proper and adequate remedy in certain cases. Each case

Just necessarily depend on its own facts and we have no intention of laying down any hard and fast rule. But we do not think that that would be adequate to meet the exigencies of the present case. In the first place, a suit, if lodged, would require notice under S. 80, Civil P. C. as it would be a suit against a public officer in his official capacity, and that would at once import delay; so would the long drawn out procedure of civil litigation with its concomitant appeals. In a commercial undertaking of the kind we have here inordinate delay might well spell ruin to the project. Large sums of money have necessarily to be tied up so long as the matter remains in abeyance, the prices of land and materials are constantly rising and there is in the vicinity a rival theatre which is all the while acquiring reputation and goodwill, two undefinable but important considerations in commercial undertakings. It is therefore desirable that questions of the kind we have here should be decided as soon as may be. It may be that any one of those considerations taken separately might not be enough to fulfil this requirement of S. 43, but considered cumulatively we are of opinion that the applicant has no other adequate remedy in this case. In any event, there are many cases of a similar nature in which S. 46 has been applied without objection despite the fact that an injunction could have been sought. We need only cite a decision of the Judicial Committee of the Privy Council, *Alcock, Ashdown & Co. v. Chief Revenue Authority, Bombay*, 60 Ind. App. 227 where Lord Phillimore says at p. 233:

"To argue that if the Legislature says that a public officer, even a revenue officer, shall do a thing, and he without cause or justification refuses to do that thing, yet the Specific Relief Act would not be applicable, and there would be no power in the Court to compel him to give relief to the subject, is to state a proposition to which their Lordships must refuse assent."

Their Lordships then issued an order under S. 45.

[38] Lastly, it was urged that the petition is incompetent because the provisions of S. 46, Specific Relief Act have not been complied with, namely, the petitioner has not shown that he made a demand for justice and that it was denied.

[34] The demand and denial which S. 46 requires are matters of substance and not of form. In our opinion, there was a substantial demand here and it is clear that there was a denial. Soon after the order of cancellation was intimated to the petitioner, he instructed his solicitors to write to the Commissioner and enquire why the permission granted had been so arbitrarily cancelled. This was on 18.11.1947. The reply dated 3/4.12.1947 was that the cancellation was under the orders of Government and that they should be approached in the matter. Government was approached. The petitioner's solicitors wrote to the Home Minister on 8.12.1947 and said:

"Our client has not been informed of any reasons which led the Government to direct the cancellation of the permission. Our client was really entitled to be heard

in the matter... Our client desires to present his case before you and he shall feel obliged if you give him an interview...."

The Secretary to the Home Department replied on 13.1.1948 that the Commissioner was directed to cancel the permission in view of numerous protests which Government received. This was replied to on 16.2.1948 and the petitioner's solicitors said: "Our client feels that he has not been treated fairly and that justice has been denied to him." The only reply to this was: "I am directed to inform you that Government does not wish to add anything to the reply already given to you." The correspondence read as a whole contains a clear demand for justice and a denial. It is true the actual demand was not made to the Commissioner nor was the denial by him but he clearly washed his hands of the matter by his letter of 8.12.1947 and referred the petitioner to Government under whose orders he said he was acting. The demand made to Government and the denial by them were therefore in substance a demand made to the Commissioner and a denial by him.

[35] In any event, an evasion or shelving of a demand for justice is sufficient to operate as a denial within the meaning of S. 46. In England the refusal need not be in so many words. All that is necessary is to show that the party complained of has distinctly determined not to do what is demanded (See 9 Halsbury's Laws of England, Halsbury's edition, p. 772). And in the United States of America a demand is not required "where it is manifest it would be but an idle ceremony" (See Ferris on Extraordinary Legal Remedies, p. 281). The law in India is not different except that there must be a demand and a denial in substance though neither need be made in so many words. The requirements of S. 46 were therefore fulfilled.

[36] The result is that in substance the appeal fails though it will be necessary to effect a modification of the High Court's order. The High Court directed the Commissioner of Police to "withdraw the order of cancellation passed by him." We have held that he did not make the order and that even if he did, a direction of that sort would not lie because of the discretion vested in him by R. 250. The following will accordingly be substituted for what the High Court has ordered:

"The Commissioner of Police is directed to consider the requests made to him for cancellation of the license sanctioned by his letter dated 14/16.7.1947 and, after weighing all the different aspects of the matter, and after bringing to bear his own unfettered judgment on the subject, himself to issue a definite and unequivocal order either cancelling or refusing to cancel the said license in the exercise of the absolute discretion vested in him by R. 250 of the Rules for Licensing and Controlling Theatres and other places of Public Amusement in Bombay City, 1944."

[37] As the appeal fails except for the slight modification indicated above, the appellant will pay the respondent's costs.

F.B.B.

Order accordingly.

A. I. R. (39) 1952 Supreme Court 23 (C. N. 6.)
(From: Patna.)*

26th November 1951

PATANJALI SASTRI O. J.; B. K. MUKHERJEE,
S. R. DAS AND VIVIAN BOSE JJ.

Ram Kumar Das — Appellant v. Jagdish Chandra Deo, Dhabal Deb and another — Respondents.

Civil Appeal No. 114 of 1950.

(a) T. P. Act (1882), S. 106—Applicability to leases implied by law.

The rule of construction embodied in S. 106, T. P. Act, applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. [Para 18]

Anno. T. P. Act, S. 106, N. 12.

(b) T. P. Act (1882), S. 106 — 'Contract to the contrary' should be valid.

The contract to the contrary, as contemplated by S. 106, T. P. Act, need not be an express contract; it may be implied, but it certainly should be a valid contract. If it is no contract in law, the section will be operative and regulate the duration of the lease. [Para 18]

Anno. T. P. Act, S. 106, N. 2.

(c) T. P. Act (1882), S. 106 — Lease of land for building purposes for ten years fixing yearly rent — Lease inoperative under law — Acceptance of yearly rent — Tenancy from month to month arises by implication of law.

The defendant executed a registered kabuliyat dated 6.12.1924 in favour of the Receiver who was in charge of the plaintiff's estate by which he purported to take a settlement of land, in suit for building purposes for a period of 10 years at an annual rent. The first payment of annual rent was made on 8.3.1925 and the second payment was made on 16.3.1926. Since then no further payments were made. The kabuliyat not being an operative document under S. 107, T. P. Act, the question was whether the tenancy created by implication of law was a monthly tenancy under S. 106, T. P. Act.

Held that the tenancy created by implication of law in favour of the defendant should be held to be from month to month since its inception in 1924. The tenancy not being for manufacturing or agricultural purposes it could be regarded as a tenancy from month to month under S. 106, unless there was a contract to the contrary. The stipulation as to payment of annual rent would no doubt raise a presumption that the tenancy was from year to year but being contained in an inoperative document could not come in the way of raising a presumption under S. 106. A lease for one year certain could not be inferred from the payment of annual rent because to do so would be to substitute a new agreement for the parties which they never intended to do: 11 Cal. W. N. 1124 & A. I. R. (3) 1916 Cal. 258. Approved. [Para 13, 16]

Anno. T. P. Act, S. 106, N. 2, 12, 15.

Shri M. C. Setalvad, Attorney-General for India (Shri Nand Lall Untwala, Advocate, with him); instructed by R. C. Prasad, Agent — for Appellant; B. C. De, Senior Advocate, (Shri Jayaram Chark, Advocate, with him); instructed by Shri S. P. Varma, Agent — for Respondents.

Cases referred to —

(Arranged in order of Courts, and in the Courts chronologically. List of foreign cases referred to comes after the Indian Cases).

(1) 11 Cal. W. N. 1124.

[Pr. 18, 16]

(13) 20 Ind. Cas. 715 (Cal.).

[Pr. 14]

(13) 17 Cal. L. J. 167 : (18 Ind. Cas. 644).

[Pr. 14]

*See Appeal No. 2064 of 1946, D/ 5 11 1948 (Pat.).

(17) 44 Cal. 403 : (A. L. R. (3) 1916 Cal. 358). [Pr. 16]
(SS) A. I. R. (20) 1938 Pat. 485 : (14 Ind. Cas. 761). [Pr. 14]

B. K. Mukherjee J.—This appeal is on behalf of the defendant and it arises out of a suit commenced by the plaintiff respondent, in the Court of the Subordinate Judge at Chaibassa, for recovery of possession of the land described in schedule to the plaint, on the allegation that the defendant was a monthly tenant in respect of the same, and that the tenancy was determined by a notice to quit. The suit was decreed by the trial Court and the decision was affirmed, on appeal, by the District Judge, Purulia, and on Second Appeal, by a Division Bench of the High Court of Patna. The defendant has now come up to this Court on the strength of a certificate granted under section 110, Civil P. C.

[2] Mr. Setalvad, appearing on behalf of the defendant appellant, stated to us at the outset that he would not dispute the validity or sufficiency of the notice to quit served upon his client, if on the facts of this case he is held to be a monthly tenant under the plaintiff in respect of the premises in suit. His contention, in substance, is that the defendant was, at no point of time, a monthly tenant under the plaintiff or his predecessor. There might have been, according to the learned Counsel, two tenancies for one year each for two successive periods, but on the expiry of the second yearly lease, which happened on 7th December, 1926, the defendant ceased to be a tenant and no fresh tenancy was created by 'holding over', as is contemplated by s. 116, T. P. Act. As there was no 'holding over', there could not be any question of a monthly tenancy being brought into existence under the provision of s. 116, T. P. Act, and the present suit of the plaintiff having been admittedly brought more than 12 years after the determination of the second yearly lease, is barred by limitation under Art. 138, Limitation Act. The whole controversy in this appeal thus centres round the point as to whether the defendant was in fact a monthly tenant under the plaintiff at the date when the notice to quit was served upon him. To appreciate the respective contentions that have been put forward upon this point by the learned Counsel on both sides, it will be necessary to narrate briefly the material facts in their chronological order.

[3] The property in suit is a plot of land, measuring 4 bighas 12 gunas, and is comprised in old Survey plot No. 573 of village Jugsalai in the district of Singhbhum. The entire village forms part of the Dhalbhum estate, of which the plaintiff is admittedly the present proprietor. One Charen Bhumi was the "Prodhan" of village Jugsalai from some time before 1918 and on 24.7.1918 the father of the defendant, by a registered Patta, took lease of about 31 bighas of land appertaining to Survey plot No. 673 from this Prodhan for purposes of cultivation. It is not

SRI 1 (MARCH)

गुवाहाटी स्थानक
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI

filed by - 99

the respondents

through Cofin & Co

15.3.06 S.C.G.C.S.C

D.A. NO. 234 OF 2005

Sri Hiralal Acharyee

Applicant

-vs-

Union of India & Ors., Respondents

The written statement on behalf of
the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regard to the statements made in paragraph 1 of the instant application the respondents beg to state that in compliance to the order of the Hon'ble CAT, Guwahati dtd. 25.2.2002, in DA No. 293/2001, the Revision petition dtd. 01.4.2002 of the applicant was disposed of by member (Personal) Postal Service Board, New Delhi, vide letter No. C-18013/6/2003-VP dtd. 29.10.2003.

2. That with regard to the statements made in paragraph 2 of the application the respondents beg to state that the instant case is not maintainable against the Presidential Order which was lastly issued on the matter, on 10.2.05 upholding the order of the reviewing

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Sampath Bhattacharya
SRI Sudip S. S.
The Secretary
Ministry of Posts
Government of India

Postmaster
Divisional
Officer
Sampath Bhattacharya
SRI Sudip S. S.
The Secretary
Ministry of Posts
Government of India

[2]

authority. Further, the matter was once decided by the Hon'ble Tribunal vide judgment dtd. 25.2.02 in OA No. 293/01 and the same was complied with by the Department, as such, the present application is not maintainable.

3. That with regard to the statements made in paragraph 3 of the application the respondents beg to state that the application is barred by limitation as the matter was once decided by the Hon'ble Tribunal vide judgment dtd. 25.2.2002 in OA No. 293/2001 and the same was complied with by the Department.

4. That with regard to the statements made in paragraph 4.1 to 4.8 of the instant application the respondents beg to state that all the statements made in para 4.1 to 4.8 of the instant application are mere recitation of the facts mentioned in para No. 4(a) to 4(h) of the OA No. 293/2001, which was once decided by the Hon'ble Tribunal vide judgment dtd. 25.2.2002. Further the respondents beg to state that in those paragraphs 4.1 to 4.8 the applicant stated about the representations and appeals preferred by him and the consequences arose after filing the representations and appeals and mostly dealt with the records of the case and the respondents do not admit anything which is not borne out of the records.

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5. That with regard to the statements made in paragraph 4.9 of the application the respondents beg to state that the Director, Postal Services (HQ), D/O the CPMG, NE Circle, Shillong, the Appellate Authority, vide his memo No. Staff/109-16/2000 dtd. 27.10.2000, disposed the Appeal of the applicant with the Order of reduction to the lower grade of Postman cadre until he is found fit by the competent authority to be restored in the higher grade of Postal Assistant. A corrigendum to the order dtd. 27.10.2000 was issued by the same Appellate Authority vide Memo of even No. dtd. 06.12.2000, that "the words" "Competent Medical Authority" appearing in the 8th line of para 4 of this office memo of even number dtd. 27.10.2000 may be read as "Competent Authority". The Corrigendum was cancelled by the same Appellate Authority vide Memo of even No. dtd. 17.9.2003. The order dtd. 17.9.2003, about cancellation of the corrigendum dtd. 6.12.2000, was again cancelled by the Appellate Authority (Director, Postal Services (HQ), D/D the CPMG, N.E. Circle, Shillong vide memo No. Staff/110-1/2002 dtd. 11.8.2004 thus the Original Corrigendum dtd. 6.12.2000 and the revised wordings "Competent Authority" instead of "Competent Medical Authority" Stands. The Applicant has suppressed the material evidence and factual position of the case in this para and as such the OA is liable to be dismissed.

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A copy of the order dtd. Staff/110-1/2002 dtd. 11.8.2004 is annexed herewith and marked as Annexure - 1.

6. That with regard to the statements made in paragraph 4.10 of the application the respondents beg to state that the applicant completely suppressed the facts of the subsequent orders dtd. 6.12.2000, 17.9.2003, 11.8.2004 and moreover the Presidential Order dtd. 10.2.2005 and as such the OA is liable to be rejected.

7. That with regard to the statements made in paragraph 4.11 of the instant application the respondents beg to state that the Senior Supdt. of Post Offices, Meghalaya Postal Division, Shillong issued the order dtd. 02.01.2001 in pursuance of the order of the Appellate Authority vide order dtd. 27.10.2000 and 6.12.2000.

8. That in respect of the statements made in paragraph 4.12 of the instant application the respondents beg to state that since the petition of the applicant dtd. 20.01.01 was wrongly addressed to the Chief Postmaster General, N.E. Circle, Shillong, while the same was to be addressed to the Member(P), Department of Posts, Dak Bhawan, New Delhi, the petition was returned

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Comptroller
Bhattacharya
Supply of Post
Services
Dak Bhawan
New Delhi
N.E. Circle
Shillong
Meghalaya
Postal Division
Supply of Post
Services

to the Applicant with suitable instruction vide letter dtd. 21.3.2001.

9. That with regard to the statements made in paragraph 4.13 of the application the respondents beg to state that during the period of his suspension, the Applicant was paid with admissible monthly subsistence allowances and on conclusion of the Disciplinary proceedings upto Appeal Stage, the Applicant was ordered to join as Postman as per order of the Appellate Authority. He was not put virtually out of employment at any time, as the period from his removal to reinstatement was also treated as deemed to have been under suspension. —

10. That with regard to the statements made in paragraph 4.14 of the application the respondents beg to state that the order of the Hon'ble CAT, Guwahati dtd: 25.2.2002 in OA 293/2001 was fully complied with. The petition of the Applicant was considered by the Member (Personal), Postal Services Board, New Delhi vide order dtd. 29.10.2003.

11. That in respect of the statements made in paragraph 4.15 of the instant application the respondents beg to state that the review applications of the applicant were forwarded to the member (Personal), Postal Services Board, New Delhi to whom they were addressed and the application dtd. 01.04.02 was consi-

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Devarapahna Bhāskarachārye
त्रिशूल वाले श्री.

dered and rejected by the Member (Personnel), Postal Services Board, New Delhi vide order dtd. 29.10.2003.

12. That with regard to the statements made in paragraph 4.16 of the instant application the respondents beg to state that the applicant was directed to appear before the State Standing Medical Board on 21.5.2003, vide Senior Supdt. of Post Offices, Meghalaya Division, Shillong vide his letter No. B2-430 dtd. 19.5.03 for Medical Examination. The Medical Board in its report dtd. 21.5.2003, clearly stated that "On examination the prescription and past history of Symptoms and behaviour of Sri Hiralal Acharjee he was found to be suffering from "Schizophrenia". He was fit to perform the job what he was doing at that time i.e. Duty of a Postman. So he was not ought to be promoted to the higher grade.

The copy of the Medical Board Report is annexed herewith and marked as Annexure - 2.

13. That with regard to the statements made in paragraph 4.17 of the instant application the respondents beg to state that the order of the Appellate Authority was subsequently modified and the words "Competent Medical Authority" were replaced by "Competent Authority" by the Appellate Authority (Director Postal Services (HQ), O/O the CPMG, NE Circle, Shillong) vide memo No. Staff/110-1/2002 dtd. 11.8.04.

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Shillong Division
Senior Superintendent of Posts
Sri Hiralal Acharjee
By
B. Bhattacharjee

14. That with regard to the statements made in paragraph 4.18 of the application the respondents beg to state that the Member (Personnel) Postal Services Board, New Delhi vide his order dtd. 29.10.2003 rejected the contention of the review application and upheld that the issue of the corrigendum replacing the words "Competent Medical Authority" by "Competent Authority" was in order.

15. That in respect of the statements made in paragraph 4.19 of the instant application the respondents beg to state that the applicant submitted the representation for regularisation of the period of his suspension, which was under consideration of the competent authority. It is denied that the applicant is entitled to any higher post as stated in the representation.

16. That in respect of the statements made in paragraph 4.20 of the instant application the respondents beg to state that the appellate authority issued the order dtd. 11.08.04 by which the order dtd. 17.9.2003 was cancelled and thus the revised wordings "Competent Authority" stands.

17. That with regard to the statements made in paragraph 4.21 of the instant application the respondents beg to state that replacement of the particular word "Medical" by subsequent orders by the same authori-

Subrata Bhattacharya
Suptt. of Posts
Dhaka

ty was in order since "Medical Authority" is not in any way competent to do anything in respect of a Central Civil Servant within the purview of CCS (CCA) Rules, 1965. It was clearly mentioned in the order of the Member (Personnel) Postal Services Board, New Delhi, dated 29.10.03.

18. That with regard to the statements made in paragraph 4.22 of the instant application the respondents beg to state that the appellate order dtd. 27.10.2000 was subsequently attended by the appellate authority, partially and accordingly the applicant was continuing as Postman. Otherwise the applicant would be out of Service as ordered by the disciplinary Authority.

19. That in respect of the statements made in paragraph 4.23 of the instant application the respondents beg to state that the representation of the applicant dtd. 20.8.2004 was under consideration.

20. That with regard to the statements made in paragraph 4.24 and 4.25 of the instant application the respondents beg to state that the Review petition preferred by the Applicant before the Hon'ble President of India was disposed of vide order No.C-17015/53/2004 VF dated 10.2.2005 and the President rejected the petition of the Applicant. The case was primarily disposed by the

Contd...P/-

Shri Sanjiv Bhattacharya
Superintendant
Post & Telegraph
Division
Mysore

Disciplinary Authority, secondly considered by the Appellate Authority, thirdly reviewed by the Reviewing Authority and finally decided by the President of India. By this time, it was once decided by the Hon'ble CAT/Guwahati also in OA No. 293/2001 and passed order on 25.2.2002 which was fully complied with.

21. That in respect of the statements made in paragraph 4.26 of the instant application the respondents beg to state that "Reduction to a lower grade" is a Major penalty as per Rule 11(vi) of CCS(CDA) Rules, 1965.

22. That with regard to the statements made in paragraph 4.27 of the instant application the respondents beg to state that as per statement of the applicant if any Medical Certificate was issued by the Guwahati Medical College, Guwahati dtd. 10.3.2000, it was prior to the appellate order dtd. 27.10.2000. Further the Medical Board vide Medical Certificate dtd. 21.5.03 declared the Applicant Medically fit for the job what he was performing presently.

23. That in respect of the statements made in paragraph 4.28 of the instant application the respondents beg to state that the subsequent orders of modification was issued not in disadvantage of the officials, but in order to make Appellate Order dtd. 27.10.2000, operative since the Medical Authority has nothing to do

Contd...P/-

Guwahati
Medical Board
Medical Certificate
dated 21.5.03
for the job
what he was
performing
prior to the
appellate order
dated 27.10.2000.

in respect of a Central Civil Servant within the purview of CCS (CCA) Rules, 1965.

24. That with regard to the statements made in paragraph 4.29 of the instant application the respondents beg to state that these statements are the findings of the CPNG. He added that for restoration of the Official to his original grade, opinion of the Medical authority would be required. It does not mean that order of the "Competent Authority" of the Department will not be required for restoration of the official to his original grade.

25. That with regard to the statements made in paragraph 4.30 of the instant application the respondents beg to state that since the matter was once decided by the Hon'ble Tribunal vide judgment dtd. 25.2.2002 in OA No. 293/2001 and the same was complied with by the Department, it is needless to interfere once again by the Hon'ble CAT.

26. That with regard to the statements made in paragraph 4.31 of the application the answering respondents have no comment.

27. That in respect of the statements made in paragraph 5 of the application the respondents beg to state that the grounds set forth in the application are

Contd...P/-

not good grounds for filing the instant application hence the same is liable to be dismissed.

28. That with regard to the statements made in paragraph 6 of the application the answering respondents have no comment.

29. That in respect of the statement made in paragraph 7 of the application the respondents beg to state that those statements are within the personal knowledge of the applicant hence the answering Respondents have no comment.

30. That with regard to the statements made, in paragraph 8 of the application the respondents beg to state that under the foregoing no other relief is admissible to the applicant. The Appellate Authority has already granted him a major relief that he was reinstated in the Govt. Service, being reduced to the lower grade, while he was removed by the Disciplinary Authority on the gravity of the offence he committed.

31. That with regard to the statements made in paragraph 9 of the application the respondents beg to state that the applicant is not entitled to any interim relief as prayed for.

Samprativa Bhattacharyee
गोपनीय श. सम्प्रवित्त
Dr. Subit of Post 1
मेयर अधिकारी
Meghalaya Division
सिलग-८२३००१
मेयर-८२३००१

Samprativa Bhattacharyee
गोपनीय श. सम्प्रवित्त
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Meghalaya Division
सिलग-८२३००१
मेयर-८२३००१

VERIFICATION

I, Smt. Sampatika Bhattacharjee D/O late Ashoke Prasad Sharma aged about 54 years, R/O Rilboong, Shillong, East Khasi Hills District Meghalaya..... and competent Officer of the answering respondents, do hereby verify that the statement made in paras 1 to 4, 6 to 11, 13 to 31..... are true to my knowledge and those made in paras 5 and 12 being matters of record are true to my information derived therefrom which I believe to be true and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 28th day of Feb
2006.

Sampatika Bhattacharjee
Signature

सिपाही एक दाक घासीडग
Sr. Supdt. of Posts
मेघालय भूमि
Meghalaya Division
शिलांग-८८३००१
मोबाइल-७८६८००१

12 - 70 - *Annexure*

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL N.E. CIRCLE: SHILLONG-793 001.

Memo No. Staff/110-1/2002

Dated at Shillong, the 11th August 2004.

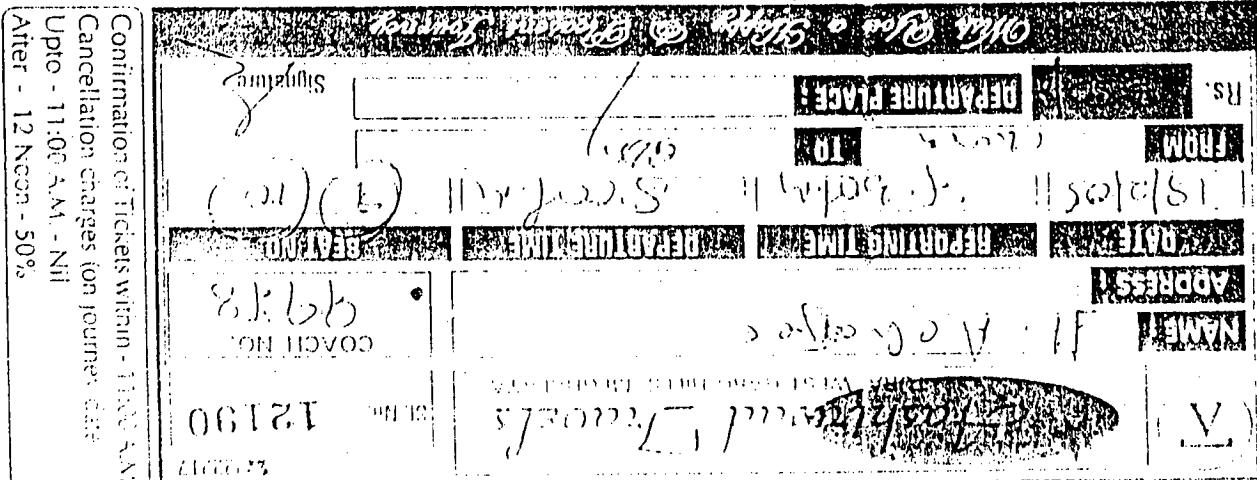
The Corrigendum issued vide this office Memo of even No. dtd.17-9-03 is hereby cancelled.

Copy
(ABHINAV WALIA)
Director Postal Services (HQ)

Copy to:-

- 1) Sri Hiralal Acharjee, Postman, Tura HO, PO-Tura, Meghalaya.
- 2) The SSPOs, Shillong.
- 3) Office Copy.

Copy
Director Postal Services (HQ)
N. E. Circle, Shillong.



Confirmation of tickets within - 11:00 A.M.
Cancellation charges for journeys upto - 11:00 A.M. - Nil
After - 12 Noon - 50%

~~CONFIDENTIAL~~

OFFICE OF THE DIRECTOR OF HEALTH SERVICES (MI) MEGHALAYA
S H I L L O N G

NO.HSM/MB/Genl/1/2003/ 7982

Dy. Shillong, the 3.6.03

From:

The Director of Health Services (MI),
Meghalaya, Shillong.

To,

✓ The Sr. Supdt. of Post Office,
Meghalaya Division
Shillong - 793 001

Sub : Medical Report in respect of Shri. Hiralal Acharjee

Ref : This Dli. letter No. HSM/MB/GENL/1/2003/6718, dt. 8.5.03

Sir,

With reference to the subject quoted above,
I have the honour to send herewith the Medical Report of
Shri. Hiralal Acharjee
for favour of information and necessary action.

Yours faithfully,


Dy. Shillong
Director of Health Services (MI),
Meghalaya, Shillong.

certified to be
true copy
Rosi
Advocate

MEDICAL BOARD REPORT

We the Members of the Medical Board sat at Civil Hospital, Shillong on 21.5.2003. The Board was assisted by the Assistant Psychiatrist. On examination the prescription and past history of symptoms and behaviour of Shri. Hiralal Acharjee he was found to be suffering from "Schizophrenia".

and

At present he is non psychotic/fit for the usual/same job he is performing. The case needs to be reviewed after six months with confidential reports for his performances from his employer.


President,

State Standing Medical Board
Meghalaya, Shillong.


Member,

State Standing Medical Board
Meghalaya, Shillong


Member,

State Standing Medical Board
Meghalaya, Shillong

.....
Certified to be
true copy
Roshni
Advocate