

50/100
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. B24/2005

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SECTION OFFICER (JUDI.)

FORM NO. @
 (See Rule 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH.

ORDER SHEET

Orginal Application No. 324/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) A. K. Singh

Respondent(s) U.O.T. Tons

Advocate for the Applicants B.P. Borah, B.K. Talukdar
D. Borah

Advocate for the Respondent(s) M.U. Ahmed ✓ CGSC
Rly St. Counsel

Notes of the Registry Date

3.1.06.

Order of the Tribunal

Heard Mr. B.P. Berah learned counsel for the applicant and Mr. M.U. Ahmed learned Addl. C.G.S.C. appearing for the Respondents.

Application is admitted. Issue a notice on the Respondents.

Post the matter on 21.2.06. Written statement if any, in the meantime.

MFJ
 Member

W.A.
 Vice-Chairman

Mr. M.U. Ahmed, learned Addl. C.G.S.C. submits that he would like to have six weeks more time to file written statement. Let it be done. Post on 5.4.2006.

Vice-Chairman

Steps taken without
 envelops.

1m
 21.2.06

bb

Notice & order sent to
 D/section for issuing
 to resp. Nos. 1, 2 & 3 by
 regd. A/D post.

6/1/06. D/No = 107 to 109
 D/ = 23/1/06.

05.04.2006 Learned counsel for the respondents submits that he would like to have some more time to file reply statement.

Post on 23.05.2006.

Notice duly

Served on
resp. no-3.

3/2/06

Vice-Chairman

20-2-06

bb

23.5.2006

Reply statement has been filed but could not be served upon the applicant. Mr.M.U.Ahmed, learned Addl.C. G.S.C. was absent with notice but was represented.

It is directed that copy of

the reply statement will be served on the applicant within two days and the applicant is at liberty to file rejoinder, if any, within three weeks.

post on 15.6.2006.

4-4-06

No. W.L.S has been
filed.

bb

15.6.2006

It is submitted that rejoinder has been filed by the applicant. Registry is directed to receive if it is otherwise in order.

post on 11.7.2006.

Vice-Chairman

W.L.S has been
filed.

bb

22.5.06

Pl. compls order dated
23.5.06.

24.5.06

25/5/06

Order 25/5/06 Notrejoinder has
duly served been filed.
on 25/5/06

25/5/06

O.A 324/05

Notes of the Registry	Date	Order of the Tribunal
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11.07.2006 Learned counsel for the parties

submitted that since pleadings are complete, the matter may be posted for hearing.

Let the matter be posted before the next Division Bench for hearing.

Sai.

10.7.06

Vice-Chairman

*Pleadings
concluded.*

mb

31.7.06

Heard counsel for the parties.

Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

O.A. is allowed in terms of the order. No order as to costs.

G
Member

Vice-Chairman

18.8.06

Copy of the judgment has been collected by the L/Adv for the applicant and a copy of the same handed over to the A.D.O. C.G.S.C. for its record.

pg

*18/8/06
A.D.O. C.G.S.C.*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

324 of 2005

O.A. No.

31.07.2006

DATE OF DECISION

Sri Awadesh Kumar Singh Applicant/s

Sri B.P. Bora, Sr. Advocate
Sri ~~SK~~ Talukdar Advocate for the
Applicant/s.

- Versus -

Union of India & Others Respondent/s

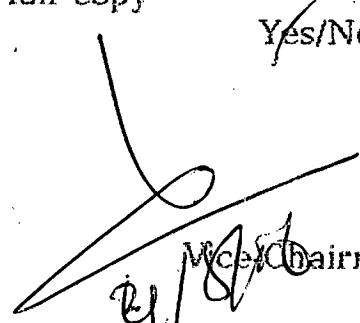
Sri M.U.Ahmed, Addl.C.G.S.C Advocate for the
Respondents

CORAM

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

HON'BLE MR GAUTAM RAY, 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 ? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment ? Yes/No


Vice-Chairman

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application Nos. 324 of 2005.

Date of Order: This, the 31st July, 2006.

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

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

Shri Awadesh Kumar Singh,
S/o late Shri Jaimangal Singh
Sub Post Master,
Tuensang Mukhya Dak Dhar,
Nagaland State

... Applicant

By Advocate Shri B.P. Bora, Sr. Advocate
Shri B.K. Talukdar, Advocate

- Versus -

1. Union of India,
represented by the Secretary to the Govt. of India,
Ministry of Communication,
New Delhi.
2. The Post Master General,
North East Circle,
Shillong -793001.
3. The Director of Postal Services,
Nagaland, Kohima- 797 001. Respondents

By Shri M.U. Ahmed, Addl.C.G.S.C

ORDER

K.V.SACHIDANANDAN (V.C)

The applicant who is an employee of the department of Post working as Sub Post Master in Nagaland during the period from 22.12.01 to 5.2.04 he was the statutory appointing authority and during the said period when a Messenger of the post office was unauthorisedly absenting from duty he has made a provisional appointment to ~~on~~ the post. The disciplinary authority charged the applicant on the ground that provisional appointment against the post was a irregular. The

disciplinary proceeding was initiated under Rule 16 of the CCS (CCA) Rules 1965 for imposing a minor penalty on the applicant. On culmination of the proceeding a major penalty was imposed by reducing his pay by four stages vide Annexure A/1 order. Appeal was preferred and the appellate authority imposed a penalty i.e. reduction of pay by two stages. It is averred in the O.A that major penalty has to be imposed only after following the procedure laid down under Rule 14 of the CCS (CCA) Rules. The grounds as alleged that a major penalty has been imposed upon the applicant through a minor penalty proceeding, which is not only improper under the rules but also against the natural justice. Aggrieved by the order the applicant filed this application seeking for the following reliefs.

- i) Issue such order(s)/direction(s) to declare and treat the punishment order issued by the Disciplinary Authority dated 28.3.2005 (Annexure-A/1) and the appellate order containing the reduced major penalty issued by the Appellate authority dated 18th August 2005 (Annexure-A/2) as Null and Void on the ground that a major penalty has been issued upon the applicant through a minor penalty proceedings,
- ii) Issue such other order(s)/directions, as the Hon'ble Tribunal may deem proper, to quash and set aside the appellate order dated 18th August 2005 (Annexure-A/2) read with punishment order dated 28.3.2005 (Annexure-A/1), in the light of the G.I. Deptt. of Personnel & Training Notification dated 23rd August 2004 under F.No.11012/5/2003-Estt.(A) (i.e. Annexure-A/7).



2. The respondents have filed a detailed written statement contending that as per DG Posts letter dated 14.12.1987 it was clarified that provisional appointment of GDS which are expected to continue for a long period should be made by requisitioning the names from the employment exchange by giving wide publicity and therefore the appointment was made without observing the prescribed procedure. The charge sheet under Rule 16 was issued against the applicant which was finalized on 18.3.05 by awarding a punishment of reduction of pay by four stages for a period of 3 years. However, the appellate authority after considering the entire issue the punishment was reduced into 2 stages for a period of 3 years without cumulative effect and finally the Postmaster General, N.E.Circle, Shillong had revised the order to one stage from Rs.6650 to Rs. 6500/- in the scale of pay of Rs.5000-150-8000/- for a period of 3 years without cumulative effect vide order dated 17.2.06 and therefore the history of the case will prove that finally minor penalty was awarded to the applicant and punishment was not cumulative in effect. The contention that a major penalty was imposed on the applicant is base less. Since the review authority has already reduced the punishment there is nothing for the applicant to agitate before this Tribunal. The O.A has no merit.

3. The applicant has filed a rejoinder reiterating the contention of the O.A and further submitted that the reduced penalty has also come under the major penalty and the respondents cannot save their illegalities whereby major punishment was inflicted on the applicant while initiating proceedings under rule 16, which is meant for minor punishment.

4. Heard Mr B.P.Bora, learned counsel for the applicant and Mr M.U.Ahmed, learned Addl.C.G.S.C for the respondents. Learned counsel



for the applicant has submitted that as per the CCS (CCA) Rules the schedule attached to the major penalty and minor penalty headlines, the punishment awarded by the disciplinary authority is major whereas the proceeding that was initiated a minor. This is per se illegal and should be set aside. The counsel for the respondents on the other hand submitted that the revisional authority has reduced the punishment to reduction of one stage which is only a minor penalty. Illegality if any has been already rectified, therefore the applicant cannot have any grievance.

5. We have given due consideration to the arguments advanced by the learned counsel and perused the materials on record. Admittedly the imputation of charges are as under :

"While functioning as Sub-Postmaster (HSG-II) of Mokakchund MDG from 22.12.2001 to 5.2.2004, the said Shri A.K.Singh was found responsible for making irregular appointment against the post of GDSTM, Mokakchung.

2. Miss Repatula, D/O Smt. Imnasashi Jamir of Salengtem Ward, Mokokchung was provisionally appointed as GDSTM vide his letter No. B-2/Repatula/03 dated 01.03.2003 on the plea that the incumbent GDSTM was absconding since 28.01.2003 and a disciplinary proceeding was pending against him."

The charges issued and proceedings initiated were against the minor penalty procedure. The respondents case is also that the disciplinary authority has initiated proceeding under Rule 16 of the CCS (CCA) Rules under minor penalty proceeding and the impugned order of the disciplinary authority imposing a punishment of 4 stages is a punishment that could have been imposed only on a major penalty offences. The distinction between issuance of notice under the major and minor penalty is that considering the gravity of the charges minor penalty can be issued under Rule 16 and major penalty can be issued under rule 14 of the CCS (CCA) Rules. There is a vast difference between the major and minor penalty procedure. Admittedly the disciplinary authority and appellate authority imposed a major penalty under the



proceeding of a minor penalty. Therefore the applicant is prejudiced and he was not given any opportunity to defend his case as if it is a major penalty. It is a well settled position of law in such circumstances that initiating minor penalty procedure and imposing major penalty is illegal, which cannot stand on its leg. Hon'ble Supreme Court in a case reported in AIR 1990 SC 1923 in the case of D.V.Kapoor Vs. Union of India and others declared that "when statute/Rule provide anything to be done in a particular manner, it has to be done in that procedure only and no other manner is to be adopted." The contention of the respondents that the reviewing authority has passed a minor penalty on the applicant and therefore the applicant cannot have a grievance, this contention cannot be accepted because the reviewing authority is also imposed that penalty on the basis of the same charges that has been conducted under rule 16 of the CCS (CCA) Rules. Though the review order had reduced the punishment, there is no indication or finding that reduction is made since awarding a higher punishment is illegal. It was a coincidence that the reduction of punishment happened to be a minor one. Had the procedure been under Rule 14 of CCS (CCA) rules the applicant would have taken a serious defence and stronger evidence, which opportunity was denied to him which is prejudicial and against natural justice.

6. As far as the Courts/Tribunals are concerned they are not sitting as appellate authority whereas the scope of judicial review is restricted to the fact to look into the aspect whether the procedure that has been attended in such matters has been duly complied with and it is beyond illegality and irregularity. In the circumstances we have no hesitation in setting aside order of the disciplinary authority and appellate authority and also revisional authority as they are not in comply with law. We set aside these orders but we make it clear that the respondents are at



liberty to proceed against the applicant if they so desire as per the procedure laid down by law.

The Original Application is allowed and we direct the respondents to grant all consequential benefit flowing out of this order. In the circumstances no order as to cost.



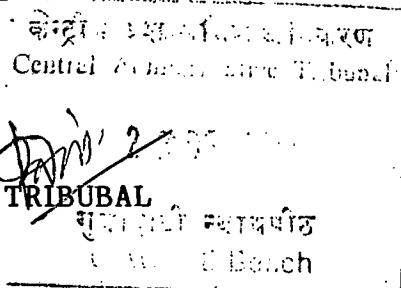
(GAUTAM RAY)
ADMINISTRATIVE MEMBER



(K.V.SACHIDANANDAN)
VICE CHAIRMAN

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3/11/06
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH



ORIGINAL APPLICATION No: 324 of 2005

Shri Awadesh Kumar Singh

..... Applicant

- Versus -

Union of India & Others

..... Respondent

SYNOPSIS

The applicant is an employee of the Department of Posts; and the applicant is presently working as Sub Post Master (Higher Selection Grade-II), at Tuensang Sub Post Office in Nagaland. The disciplinary authority of the applicant is 'Director Postal Services, Nagaland, Kohima [ie. Respondent No. 3] and the appellate authority is 'Post Master General, North East Region, Shillong'.

The applicant was working as Sub Post Master at Mokokchung Mukhya Dak Ghar during the period from 22.12.2001 to 05.02.2004; and the applicant was the statutory appointing authority as well as the disciplinary authority for the post of Gramin Dak Sevak Telegraph Messenger attached at Mokokchung Mukhya Dak Ghar. Since the incumbent Gramind Dak Sevak Telegraph Messenger of the post was absenting from duty for a prolonged period, the applicant decided to initiate disciplinary action against the absenting official; and also made a provisional appointment against the post for managing the day to day office work.

The Disciplinary Authority, viz The Director Postal Services, Nagaland [ie. Respondent No. 3] charged sheeted the applicant on certain baseless and fallacious grounds that the provisional appointment against the post by the applicant was irregular. The disciplinary proceedings were initiated under Rule-16 of CCS(CCA)Rules 1965 for imposing a minor ^{penalty} penalty on the applicant. However, the disciplinary ended with a major

penalty of reduction of pay four stages for a period of 3-years vide ANNEXURE-A/1. The applicant appealed against the arbitrary decision to the appellate authority. But, the appellate authority, without considering any fact, reduced the penalty to another major penalty vide ANNEXURE-A/2.

As per CCS(CCA)Rules 1965, a major penalty can be imposed upon a Govt servant only through a major penalty proceedings conducted under Rule-14 of CCS(CCA) Rules 1965.

But, in the applicant's case, a major penalty has been imposed on the applicant through a minor penalty, has been imposed on the applicant through a minor penalty proceedings which is not only improper under rules but totally against the principles of natural justice.

Hence, the applicant has filed this O.A. with the prayer that the 'major penalty' issued by the appellate authority vide ANNEXURE-A/2 and order of punishment issued by the disciplinary authority may be quashed and set-aside without any reservation on the ground that a major penalty cannot be imposed through a minor penalty proceedings.

B.K. Johnson

26-12-2015

Signature of the counsel for the applicant

APPENDIX
[FORM]
[See Rule 4]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

ORIGINAL APPLICATION No: 324 of 2005

Shri Awadesh Kumar Singh

...Applicant.

- Versus -

Union of India & Others

...Respondent.

I N D E X

Sl. No.	Description of documents relied upon	ANNEXURE	Page number
1	Application		01-14
2	Copy of Director Postal Services, Nagaland, Kohima Memo No. A-12/ Mokokchung/Repatula/03 dated 18.03.2005	ANNEXURE-A/1	15-16
3	Copy of Post Master General, N.E. Region, Shillong Memo No. Staff/109-8/ 2005 dated 18th Aug. 2005.	ANNEXURE-A/2	17-18
4	Copy of memo No. B-2/Repatula/03 dated 01.03.2003	ANNEXURE-A/3	19
5	Copy of SPM/Mokokchung MDG Memo No B-2/Staff/Bolin Bora/MKG/03 dated 23.04.2003	ANNEXURE-A/4	20-22
6	Copy of charge sheet Memo No. A-12/ Mokokchung/Reputula/03 dated 13.07.2004	ANNEXURE-A/5	23-24
7	Copy of applicant's appeal dated 22/04/2005	ANNEXURE-A/6	25-28
8	Copy of G.I. Dept of Per & Trg., Notification F.No. 11012/5/2003-Estt. (A) dated 23rd August 2004	ANNEXURE-A/7	29
9	Extract of D.G. Post's Letter No. 41-286/87-PE.II dated 14.12.1987	ANNEXURE-A/8	30

Date : 26.12.05

Signature of the applicant

Place Guwahati

For use in Tribunal's Office

Date of filing :

Or Date of Receipt by post :

Registration No. :

Signature
For Registrar

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION No 323 of 2005.

Shri Awadesh Kumar Singh, Aged 56-years
S/o Late Shri Jaimangal Singh,
Sub Post Master,
Tuensang Mukhya Dak Ghar,
Nagaland State.

..... Applicant.

- Versus -

1. Union of India, represented by the
Secretary, Communication, New Delhi
2. The Post Master General,
North East Region,
Shillong - 793 001.
3. The Director of Postal Services,
Nagaland, Kohima - 797 001.

..... Respondents.

IN THE MATTER OF:

Arbitrary imposition of 'major penalty' through a
'minor penalty proceedings' in violation of the
procedure laid down in Central Civil Services
(Classification, Control & Appeal) Rules 1965 by
the Respondent No.3 namely the Director of
Postal Services, Nagaland, Kohima;

- AND -

IN THE MATTER OF:

Non-application of mind by the Appellate
Authority as regards the imposition of 'Major
Penalty by the Disciplinary Authority through the
Minor Penalty Proceedings'; and Arbitrary
imposition of a reduced MAJOR PENALTY in the
appellate order dated 18th August 2005, by the

*Placed by
B. K. Talukdar, Advocate
26-12-2005*

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Respondent No.2 namely the Post Master General, N.E-Region, Shillong.

- AND -

IN THE MATTER OF:

Violation of 'Statutory Rules [ANNEXURE-A/6]' and 'Principles of Natural Justice' by the above Respondent No.3 and the Respondent No.2, in respect of imposition of 'Major Penalty' upon the applicant vide Memo No.A-12/Mokokchung/Repatula/03 dated 18.03.2005 [ANNEXURE-A/1] and Memo No.Staff/109-8/2005 dated 18th Aug 2005 [ANNEXURE-A/2] through the 'Minor Penalty disciplinary proceedings' initiated vide Memo No.A-12/Mokokchung/Repatula/03 dated 13.07.2004 [ANNEXURE-A/4].

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

The present application is made against the order of punishment issued vide Director Postal Services, Nagaland, Kohima Memo No.A-12/Mokokchung/Repatula/03 dated 18.03.2005 and the order of punishment contained in the Post Master General, N.E-Region, Shillong Memo No.Staff/ 109-8/2005 dated 18th Aug 2005.

- A copy of Director Postal Services, Nagaland, Kohima Memo No.A-12/Mokokchung/Repatula/03 dated 18.03.2005 is attached as ANNEXURE-A/1.

- AND -

- A Copy of Post Master General, N.E-Region, Shillong Memo No.Staff/109-8/2005 dated 18th Aug 2005 is attached as ANNEXURE-A/2.

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2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter in which the present application is filed and the applicant wants redressal is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION:

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

4. FACTS OF THE CASE:

- 4.1. The applicant is an approved Higher Selection Grade-II Postal Assistant [in short called as 'HSG-II P.A'] in the Department of Posts in Nagaland Postal Division. The cadre of 'HSG-II P.A' is a supervisory cadre; and the applicant is presently working as Sub Post Master in Tuensang Mukhya Dak Ghar in Nagaland State.
- 4.2. The applicant was working as Sub Post Master, Mokokchung Mukhya Dak Ghar [in short called as 'MDG'] during the period from 22.12.2001 to 05.02.2004; and during the said period, the applicant was the statutory appointing authority as well as the disciplinary authority for the cadre of Gramin Dak Sevak Telegram Messenger (in short called as 'GDSTM') sanctioned-in/attached-to Mokokchung MDG. Mokokchung MDG has a sanctioned post of one Gramin Dak Sevak Telegram Messenger in its sanctioned establishment strength.
- 4.3. That when the applicant was working as Sub Post Master at Mokokchung MDG, the incumbent of the afore-stated sanctioned post of Gramin Dak Sevak Telegram Messenger (GDSTM) namely Shri Bolin Bera, GDSTM / Mokokchung MDG was unauthorisedly absenting from duty since 28.01.2003; and the applicant being the statutory disciplinary authority decided to initiate disciplinary proceedings against the said Shri Bolin Bora, for his unauthorized absence, under the provisions of Gramin

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Dak Sevak (Conduct & Employment) Rule 2001 (Earlier called as 'Extra Departmental Agents(Conduct & Service)Rules 1964). In the meantime, the applicant was also duty bound to make alternative arrangement in the post, during the unauthorized absence of the incumbent GDSTM, to manage the work of the post. Therefore, the applicant made provisional appointment against the said post as because a regular appointment against the post can be made only if the service of the 'incumbent GDSTM' is terminated through a proper disciplinary proceedings in accordance with Gramin Dak Sevak (Conduct & Employment) Rules 2001. Accordingly, one Miss Repatula was provisionally appointed as GDSTM/Mokokchung MDG under a specific condition that the arrangement was likely to be terminated at any time without notice. The aforesaid condition was very clearly spelt out in the provisional appointment order issued to the said Miss Repatula vide Memo No.B-2/Repatula/03 dated 01.03.2003.

A copy of Memo No.B-2/Repatula/03 dated 01.03.2003 is attached as ANNEXURE-A/3.

4.4. That, the applicant, being the statutory disciplinary authority to the Gramin Dak Sevak Telegram Messenger/ Mokokchung MDG, thereafter, initiated disciplinary proceedings against the absenting incumbent GDSTM vide Memo No B-2/Staff/Bolin Bora/MKG/03 dt 23.04.2003. But, unfortunately, the disciplinary proceedings initiated vide the afore-mentioned memo dated 23.04.2003 could not be finalized due to administrative reasons.

Copy of SPM/Mokokchung MDG Memo No B-2/Staff/ Bolin Bora/MKG/03 dt 23.04.2003 is attached as ANNEXURE-A/4.

4.5. That, in the meantime, the Director Postal Services, Nagaland charge sheeted the applicant vide Memo No.A-

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12/Mokokchung/Reputula/03 dtd 13.07.2004 on the ground that the provisional appointment which was made by the applicant against the post of GDSTM/Mokokchung MDG vide memo dated 01.03.2003 (ANNEXURE-A/3) was irregular.

- Copy of charge sheet Memo No.A-12/ Mokokchung/ Reputula/03 dated 13.07.2004 is attached as ANNEXURE-A/5.

- 4.6. That it is submitted for the kind information of the Hon'ble Tribunal that the Director Postal Services, Nagaland, Kohima [Respondent No.3] was also well aware that the provisional appointment made by the present applicant against the post of GDSTM/Mokokchung MDG vide memo dated 01.03.2003 (ANNEXURE-A/3) was well within the provisions of GDS-Service Rules and departmental instructions governing the provisional appointment of Gramin Dak Sevaks. But, the Director Postal Services, Nagaland took the arbitrary view and charge sheeted the applicant vide memo dated 13/07/2004 (ANNEXURE-A/5) on false allegations under the well-nourished malafide intention. The malafide intention of the Respondent No.2 is very much evident in the Punishment order issued vide memo dated 28/03/2005 (ANNEXURE-A/1), by which the Respondent No.2 has imposed a 'MAJOR PENALTY' on the applicant through a MINOR PENALTY PROCEEDINGS initiated vide memo dated 13/07/2004.
- 4.7. That, the applicant, soon after the receipt of the impugned punishment order dated 28/03/2005 (ANNEXURE-A/1) submitted a statutory appeal against the said punishment to the 'prescribed appellate authority' viz. The Post Master General, N.E.Circle, Shillong - 793 001 on 22/04/2005. Although the applicant very clearly submitted the facts and circumstances of the case, including the fact regarding the arbitrary and irregular imposition of 'MAJOR

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PENALTY' through 'MINOR PENALTY PROCEEDINGS' by the Respondent No.3, to the notice of the 'Appellate Authority' viz the Respondent No.2, the 'Appellate Authority [ie. Respondent No.2]' did not pay any heed to this vital issue raised in the appeal dated 22/04/2004 and imposed a reduced MAJOR PENALTY of 'reduction of pay by two stages for a period of three years without cumulative effect vide appellate order dated 18th Aug 2005 [ANNEXURE-A/2].

- A copy of applicant's appeal dated 22/04/2005 is attached as ANNEXURE-A/6.

- 4.8. That the applicant, therefore, has approached the Hon'ble Tribunal for justice through the present O.A.

5. GROUNDS FOR RELIEF(S) WITH LEGAL PROVISIONS:

- 5.1. That, under the provisions of CCS(CCA)Rules, 1965 [here-in-after called 'Rules'] a minor penalty can be imposed upon a Govt servant by following the procedure laid down in Rule-16 of the Rules and a major penalty has to be imposed only after following the procedure laid down in the Rule-14 of the Rules. Rule-11 of the CCS(CCA)Rules 1965 contain the 'minor' as well as the 'major' penalties which can be imposed on a Govt servant. As per Rule-11 (iii) (a) of CCS(CCA)Rules, 1965, the minor penalty which can be imposed upon a Govt servant reads as under:

"(iii) (a) : Reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding 3(Three) years without cumulative effect and not adversely affecting his pension.

- A Copy of G.I., Dept of Per & Trg., Notification F.No.11012/5/2003-Estt.(A) dated 23rd August 2004

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showing the minor penalty in Rule-11(iii-a) is attached as ANNEXURE-A/7.

But, the punishment awarded to the applicant vide memo dated 28/03/2005 (ANNEXURE-A/1) reads as under:

"It is therefore, ordered that the pay of Shri A K Singh, SPM, Tuensang MDG be reduced by 4 stages from Rs 6650 to 6050 in the time scale of pay of Rs.5000-150-8000 for the period of 3-years with effect from March 2005. It is further directed that Shri A K Singh will not earn increment of pay during the period of reduction, and that on expiry of this period, the reduction will not have the effects of postponing his future increments of pay."

- AND -

The appellate order dated 18th Aug 2005 reads as under:

"Therefore, I Shri Lalhuna reduce the punishment to reduction of pay in two stages for a period of three years without cumulative effect and this will not affect postponement of future increments.'

From the above, it is obvious that the applicant has been awarded the major penalty of 'reduction to a lower stage in the time-scale of pay by FOUR STAGES for a period of 3[Three] years' by the Disciplinary Authority, while the appellate authority without applying his mind to the fact that a MAJOR PENALTY has been imposed upon the applicant by the disciplinary authority through a MINOR PENALTY PROCEEDINGS has instead imposed a reduced MAJOR PENALTY of reduction of pay by TWO STAGES for a period of three years.

A.K

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The punishment order dated 28/03/2005 (ANNEXURE-A/1) and the appellate order dated 18th Aug 2005 [ANNEXURE-A/2] read-with the charge sheet memorandum dated 13/07/2004 (ANNEXURE-A/5), explicitly show that a major penalty has been imposed upon the applicant thorough the 'minor penalty proceedings' initiated under Rule-16 of CCS(CCA)Rules 1965. The statutory provisions of CCS(CCA)Rules 1965 clearly state that a major penalty can be imposed on a Govt servant only after following the procedure laid down in Rule-14 of the CCS(CCA)Rules 1965. It is, thus, apparent that the major penalty imposed upon the applicant by the disciplinary authority [Respondent No.3] vide ANNEXURE-A/1 and the reduced major Penalty imposed upon the applicant by the appellate authority are in violation of the statutory provisions laid down in CCS(CCA) Rules 1965. Therefore, the punishment order dated 28/03/2005 (ANNEXURE-A/1) as well as the appellate order dated 18th Aug 2005 [ANNEXURE-A/2] are voidable in the eyes of law, and as such the said orders are liable to be quashed and set aside for want of legal sanctity.

- 5.2. That the charge sheet memorandum dated 13/07/2004, issued by the Respondent No.3 was prima-facie ill-motivated as because the charge sheet memorandum not only contained extraneous materials but the disciplinary authority has not specified as to how the applicant was responsible for any alleged misconduct. Because, it is stated in the Para-5 of the charge sheet memorandum that-

"the traffic of receipt of telegrams has dwindled to an insignificant number and there is no justification of post of a GDSTM at the time of provisional appointment and moreover the number of posts of postmen found surplus during Est-3 review of

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Mokokchung MDG during 2002 was 6(six)." [Para-5 of the charge sheet memorandum].

While stating the above, the Respondent No.3 [disciplinary authority] was also duty bound to state the following the relevant facts in the 'statement of imputations' to show/substantiate that the applicant committed the misconduct:

- (i) When it was fully known to the Director Postal Services, Nagaland (Respondent No.2 himself) that the post of GDSTM, Mokokchung MDG was not justified as a result of Establishment Review carried out in the year 2002, then why the Director Postal Services, Nagaland did not abolish the post of GDSTM / Mokokchung MDG soon after the completion of Establishment review in the year 2002;
- (ii) Whether the Sub Post Master, Mokokchung MDG was the competent authority to abolish the post of GDSTM, Mokokchung MDG even if the said post is found to be surplus as a result of any establishment review which was conducted by the Director Postal Services, Nagaland;
- (iii) Whether the Establishment Review of GDSTM post has to be conducted every year by the Sub Post Master of a Post Office/ Mukhya Dak Ghar, when the departmental instructions prescribe that the work-load of all GDS-posts should be reviewed once in every three years; and

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(iv) Whether the onus/responsibility to abolish an unjustified post independently lies with the Post Master/Sub Post Master of a non-gazetted post office.

5.3. That the D.G Posts letter No.41-286/87-PE.II dated 14.12.1987 expressly provides that the provisional appointment should be made through employment exchange if it is expected that the provisional arrangement is likely to continue for a long period. In this instant case, the appellant did not expect that the provisional arrangement would continue for a long period. It is evident in the charge sheet memorandum dated 13/07/2004 (ANNEXURE-A/5) and in the final order dated 28/03/2005 (ANNEXURE-A/1), the disciplinary authority has not discussed anything, either in the charge sheet or in the final order, to show that the appellant should have expected that the provisional arrangement would continue for a long period. The appellate order dated 18th Aug 2005 (ANNEXURE-A/2) also does not speak anything to the effect that the applicant should have expected that the provisional appointment would have continued for a long period under any particular circumstance. Therefore, there is no rationality and fairness in the allegations set out by the Respondent No.2 in the charge sheet memorandum dated 13/07/2004 (ANNEXURE-A/5), as because the applicant, being the prescribed appointing authority for the GDSTM/ Mokokchung MDG, acted well within his statutory powers under the relevant provisions of Gramin Dak Sevak (Conduct & Employment) Rules 2001 read-with D.G Posts Letter No.41-286/87-PE.II dated 14.12.1987, while issuing the provisional appointment order dated 01.03.2003 (ANNEXURE-A/3). The charge sheet memorandum dated 13/07/2004 (ANNEXURE-A/5) was, therefore, not only baseless but totally misconceived. Hence, the charge sheet memorandum

[Signature]

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dated 13/07/2004 (ANNEXURE-A/5) itself is liable to be quashed in the interest of justice.

An Extract of D.G Posts Letter No.41-286/87-PE.II dated 14.12.1987 is attached as ANNEXURE-A/8.

6. DETAILS OF THE REMEDIES EXHAUSTED:

The statutory appeal dated 22/04/2005 [ANNEXURE-A/5] submitted by the applicant against the punishment order dated 28/03/2005 [ANNEXURE-A/1] has already been disposed of by the appellate authority vide order dated 18th Aug 2005 [ANNEXURE-A/2]. Thus, the applicant has already exhausted the statutory remedy available under the relevant service rules.

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

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEF(S) SOUGHT:

In view of the facts mentioned in Para-6 above, the applicant prays that the Hon'ble Tribunal be pleased to:

- (i) Issue such order(s)/direction(s) to declare and treat the punishment order issued by the Disciplinary Authority dated 28/03/2005 [ANNEXURE-A/1] and the appellate order containing the reduced major penalty issued by the Appellate Authority dated 18th



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Aug 2005 [ANNEXURE-A/2] as Null and Void on the ground that a MAJOR PENALTY has been issued upon the applicant through a MINOR PENALTY PROCEEDINGS;

- (ii) Issue such other order(s)/direction(s), as the Hon'ble Tribunal may deem proper, to quash and set aside the appellate order dated 18th Aug 2005 [ANNEXURE-A/2] read-with punishment order dated 28/03/2005 (ANNEXURE-A/1), in the light of G.I., Dept of Per & Trg Notification dated 23rd August 2004 under F.No.11012/5/2003-Estt.(A) [i.e. ANNEXURE-A/7];
- (iii) Award the cost of this application to the applicant; and
- (iv) Pass any other order(s)/direction(s) as the Hon'ble Tribunal may deem fit and proper, under the circumstances of the case, to render justice to the applicant.

9. INTERIM ORDER, IF ANY PRAYED FOR:

The applicant declares that the applicant has no interim prayer at this stage.

10. IN THE EVENT OF APPLICATION BEING SENT BY REGISTERED POST:

The applicant declares that the application is filed through his advocate.

Abdul

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**11. PARTICULARS OF BANK DRAFT / POSTAL ORDER
FILED IN RESPECT OF THE APPLICATION FEE:**

Indian Postal Order Number : 206157121
Office of Issue : Gauhati Night
Date of Issue : 6.8.2005
Office of Payment : Central Administrative Tribunal

12. LIST OF ENCLOSURES:

1. Application accompanied by Index in Appendix-A
2. ANNEXURE-A/1 to ANNEXURE-A/8.
3. Indian Postal Order for Rs.50/- for application fee.

Heard

VERIFICATION

I, Shri A K Singh, Son of Late Shri Joy Mangal Singh, aged about 56 years, presently working as Sub Post Master (HSG-II), Tuensang Sub Post Office, Nagaland do hereby verify that the contents of Paragraphs-1 to 5 above are true to my personal knowledge and belief while the contents of Paragraph-6 above is the prayer before the Hon'ble Tribunal; and that I have not suppressed any material facts.

Awadhesha Kumar Singh

Date : 26.12.05

Signature of the applicant.

Place: Guwahati

Filed by: -

Advocate

To

The Registrar,
Central Administrative Tribunal,
Guwahati Bench,
Rajgarh Road, Guwahati -781 005.

**DEPARTMENT OF POSTS : INDIA
OFFICE OF THE DIRECTOR POSTAL SERVICES
NAGALAND, KOHIMA. 797001.**

No.A-12/Mokokchung/Repatula/03

Dated at Kohima the 18.03.05

It was proposed to initiate action against Shri A.K. Singh, the then SPM (HSG-II) Mokokchung MDG, presently working as SPM(HSG-II)Tuensang MDG, under Rule 16 of CCS(CCA) Rules 1965 vide this office memo no. A-12/Mokokchung/Repatula/03 dtd. 13.07.04.

(2) The Charge Official (C.O) vide his defense statement dtd.06.08.04 has stated that he made the irregular appointment to the GDSTM, Mokokchung post due to the following reasons :-

(i) Shri B. Bora, the incumbent GDSTM was absconding since a long time and he had accepted money from many persons under false assurance of handing over his job of GDSTM to such persons, who in turn pressurised the Charge Official to appoint such persons against Shri Bora's post.

(ii) The Charge Official had presumed that Shri B.Bora will never come back on his post of GDSTM, Mokokchung as he was absconding for considerable period of time.

(iii) There was substantial traffic of telegrams from Mokokchung MDG and the post was filled up in the interest of service to tide over this work.

(3) The Charge Official gave appointment to Ms. Repatula without approaching the Employment Exchange or giving wide publicity and he made the provisional appointment on the basis of only one applicant namely Ms. Repatula being interested in that post which is in complete violation of departmental rules and regulations. The Charge Official has cited reasons which are totally extraneous to the facts of the case and cannot be accepted as valid reasons for making irregular appointment to the post of GDSTM, Mokokchung which was technically not vacant as the previous incumbent was not dismissed from service and he has a claim over the post till he is dismissed from service in accordance with rules. Further, any appointment in the government including provisional appointment has to be done by giving wide publicity and involving Employment Exchange for sponsoring of prospective the candidates. In the instant case, no advertisement whatsoever, was made for making the provisional appointment and the sole candidate who was interested in the job was given the provisional appointment in total disregard of departmental rules. As per GDS Conduct Rules, any appointment of GDS staff including that of provisional appointment has to be done by giving wide publicity and involving Employment Exchange for sponsoring candidates. The appointing authority can select a candidate only when at least 3 (three) candidates have applied for the posts either through Employment Exchange or directly to the appointing authority. In the instant case, no advertisement was given and decision was on the basis of only one person.

(4) Shri Singh has referred to his letter dtd. 14.02.03 vide which he has submitted the monthly statistics relating to telegrams received at Mokokchung MDG for delivery through GDSTM. As per this statistics, the average monthly telegram received for delivery from Mokokchung MDG comes to 112 per month which means that on average on a given day, telegrams received for delivery were 4 in number which is far too less to justify a post of GDSTM. Further, while doing the EST-3 review of postmen staff during 2002, 6 post of postmen were found surplus out of total sanctioned strength of 9 (Nine) postmen. The work relating to GDSTM could have been easily distributed amongst these Postmen and the number of telegram would not have even come to 1 per postman per day. But the Charge Official being the appointing authority did not take into account the above logical facts before making a provisional appointment to the post which shows that he was pre-determined and personally interested in giving provisional appointment to Ms. Repatula in flagrant violations of departmental rules and regulations on this issue.

(5) Therefore, I am of considered view that charges as contained in this office memo no. A-12/Mokokchung/Repatula/03 dtd. 13.07.04 stands fully proved against the Charge Official.

16/3/05

ORDER

It is therefore, ordered that the pay of Shri A.K. Singh, SPM, Tuensang MDG be reduced by 4 stages from Rs. 6650 to Rs. 6050 in the time scale of pay of Rs. 5000-150-8000 for the period of 3 yrs. w.e.f. March 2005. It is further directed that Shri A.K. Singh will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effects of postponing his future increments of pay.

Sd/-
(Rakesh Kumar)
Director of Postal Services
Nagaland, Kohima-797001.

Copy to:-

- 1) The Chief Postmaster General, N.E. Circle, Shillong-793001.
- 2) The Postmaster, Kohima H.O. for information and n/a.
- 3) The D.A.(P), Kolkata (Through the Postmaster, Kohima H.O.)
- 4) Shri A.K. Singh, SPM Tuensang MDG.
- 5) PF/CR of the official.
- 6) Punishment Register
- 7) O/C.

8/3/05
(Rakesh Kumar)
Director of Postal Services
Nagaland, Kohima-797001.

*After bid
B.K. Sankar Das, ADK*

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

No. Staff/109-8/2005

Dated at Shillong, the 18th August 2005

This is regarding the appeal dated 25-4-2005 preferred by Shri A.K.Singh, SPM, Tuensang MDG against the Order of D.P.S. Nagaland Division issued in Memo No.A-12/Mokokchung/Repatula/03 dated 18-3-2005, vide which the punishment of reduction by four stages from Rs.6650 to Rs.6050 in the time scale of pay of Rs. 5000-150-8000 for the period of three years w.e.f. March 2005. Further, he will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will not have the effects of postponing his future increments of pay.

2. The Chronology of events in the case in brief is as follows:-

- (i) The official was charged sheeted under Rule-16 of COS (CCA) Rule 1965 under letter No.A-12/Mokokchung/Repatula/03 dated 13-7-2004
- (ii) The Disciplinary authority issued the punishment referred to above on 18-3-2005.

The case in brief is that Shri A.K.Singh, SPM, Tuensang MDG, while functioning as SPM, Mokokchung MDG during the period from 22-12-2001 to 5-2-2004 made irregular appointment against the post of GDSBPM, Mokokchung MDG by provisionally appointing Miss Repatula under his Memo No.B-2/Repatula/03 dated 1-3-03, on the ground that the regular incumbent was absconding from 28-1-2003 and a disciplinary proceeding was pending against him. The appointment of Miss Repatula was done directly without sponsoring the names from the employment exchange or giving wide publicity which was against Departmental rules. Moreover, the provisional appointment letter issued on 1-3-2003 was not in prescribed format nor any specified period of engagement has been mentioned.

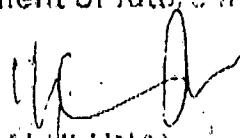
The traffic of receipt of telegrams also did not justify the post of GDSBPM at the time of provisional appointment and there was no urgency and need for provisional appointment against the said post.

For the above lapses, Shri A.K.Singh was charged sheeted under Rule-16 and disciplinary proceedings was finalized by the DPS, Kohima under his Memo No.A-12/Mokokchung/Repatula dated 18-3-2005.

3. I have gone through the case. The appellant could not prove his innocence. In fact, he admitted his mistake by just making provisional appointment of GDSBPM without following proper procedure. The Disciplinary authority, DPS, Kohima was very much within his power for imposing a rather heavy punishment

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under minor penalty. However, I wish to take a more lenient view on the ground that the appellant is a senior Government servant of HSG-II official who can also be expected to improve himself in future in the matter of discharging his duties and responsibilities under Departmental rules and regulation. Therefore, I Shri Lalhluna reduce the punishment to reduction of pay in two stages for a period of three years without cumulative effect and this will not affect postponement of future increments.


(LALHLUNA)
Postmaster General,
N.E.Region, Shillong.

Copy to:

1. Shri A.K.Singh, SPM, Tuensang MDG, Nagaland Division.
2. The Dy. Supdt. of POs, Nagaland Division, Kohima.
3. Office copy.

After bid
B.K. Subhedar
A. Deka

Annexure-A/3

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FROM THE STATE DEPARTMENT OF POSTS, INDIA

OFFICE OF THE

State Postmaster (MSO - M)

MURKOKCHUNG

Murkokchung - 733011

NO. - B2/Repatula/03 dated at 11/03/2003

Mrs. Repatula S/o Pranavasahi Tumlin of
Salangtem Ward Murkokchung is hereby promised
- all 4 appointed as ED telegram messenger with imme-
diate effect against S/o Bolen Peora who is absconding
- since 28-01-2002 last and disciplinary action agai-
- nst him is under process.

This arrangement is likely to be terminated
at any time without notice. (sd)

Murkokchung - 733011

Copied to: (1) The Postmaster Kohima H.O. for information
(2) Mrs. Repatula Salangtem Ward Murkokchung
for information

(A)

State Postmaster (MSO - M)

MURKOKCHUNG - 733011

Murkokchung - 733011

After
A. K. Jadhav,
A. K. Jadhav

Memo no: B2/staff/Bolin Bora/Rkg/03

Dated at Mokokchung 23/4/03

MEMORANDUM

The President/undersigned proposes to hold an enquiry against Shri Bolin Bora under Rule 8 of ED (Conduct & Service) Rules 1964. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputation 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 enclosed in Annexure III & IV.

1. Shri Bolin Bora is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desired to be heard in person.
2. He is informed that an enquiry 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.
3. Shri Bolin Bora 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 refuse to comply with the provision of Rule 8 of ED (Conduct and Service) Rules 1964 or the orders/direction issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him EX PARTE.
4. Attention of Shri Bolin Bora is invited to Rule 25 of ED (Conduct & Service) Rules 1964 under which no ED Officials shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matters dealt with these proceedings it will be presumed that Shri Bolin Bora is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 25 of ED (Service & Conduct) Rule 1964.
5. The receipt of the Memorandum may be acknowledged.

To,

Shri Bolin Bora (ED Messenger)
S/O Shri Padmadhar Bora,
Village-Kumarkhotwali Gaon
PO- Mokokchung, 788107 Jorhat Assam.

(A.K. SINGH) 23/4/03

Sub-Postmaster (HSG. M)
MUKHTA DAY GEAR
Mokokchung-788801

A. K. Singh
B. K. Tahir
B. K. Deka

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ANNEXURE + I

Statement of articles of charge framed against Shri Bolin Bora ED messenger Mokokchung MDG.

Article - I

That the said shri Bolin Bora while functioning as ED messenger during the period 01-07-1991 to 27-01-03 remained unauthorisedly absent from duty wef 28-01-03 without taking prior permission from the competent authority violating the provision of Rule 5 of ED(Service&Conduct)Rule 1964.

Article - II

That the said Shri Bolin Bora while functioning as ED messenger during the period 01-07-1991 to 27-01-03 failed to maintain absolute integrity and devotion to his duty violating the provision of Rule 17 of ED(Service &Conduct)Rule 1964.

Statement of imputation of misconduct or misbehaviour in support of the articles of charges framed against Shri Bolin Bora ED messenger.

Article - I

That the said Shri Bolin Bora while working as ED Messenger from 01-07-91 to 27-01-03 remained unauthorised absent from duty wef 28-01-03 without prior permission from the authority nor applying for leave. He was asked to vide letter no B8/Staff/Bolin Bora dtd.28.01.03 and 22.3.03 to explain the reasons as to why disciplinary action should not be initiated against him but the registered letter no 2622 dtd 28.1.03 & 3937 dtd.22.3.03 returned undelivered with remarks that the addressee is not available at his native village. Thus the said shri Bolin Bora violated the provision of Rule 5 of ED(Service& Conduct)Rule 1964.

Article - II

That the said Shri Bolin Bora while working as ED messenger from the period 1-7-91 to 27-01-03 remained absent from duty without prior permission from the authority wef 28-01-03 nor applying for leave thereby violated and failed to maintain absolute integrity and devotion to duty at all times violated the provision of Rule 17 of ED (Service& Conduct)rule 1964.

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ANNEXURE - III

List of documents by which the articles of charge framed against Shri Bolin Bora ED Messenger are proposed to be sustained.

1. Letter no B2/ED/Bolin Bora/Mkg/03 dtd. 28-01-03
2. " " B2/ED/Bolin Bora/Mkg/03 dtd. 22-03-03
3. Registered letter no 2622 dtd 28-01-03
4. " " no 3937 dtd. 22-03-03

ANNEXURE - IV

List of witnesses by whom the articles framed against Shri Bolin Bora ED messenger are proposed to be sustained.

1. Shri Prakash Sonar PA Mokokchung MDC

A. K. B.
B. K. J. D.
D. K.

**DEPARTMENT OF POSTS : INDIA
OFFICE OF THE DIRECTOR OF POSTAL SERVICES
NAGALAND : KOHIMA-797 001**

No. A-12/Mokokchung/Repatula/03

Dated at Kohima the 13-07-2004

MEMORANDUM

1. Shri A.K.Singh the then SPM (HSG-II), Mokokchung MDG (Now SPM (HSG-II), Tuensang MDG) is hereby informed that it is proposed to take action against him under Rule 16 of CCS (CCA) Rule 1965. A statement of the imputation of misconduct or misbehaviour on which action is proposed to be taken as mentioned above is enclosed.
 2. Shri A.K.Singh is hereby given opportunity to make such representation as he may wish to make against the proposal.
 3. If Shri A.K.Singh fails to submit his representation within 10 days of the receipt of this memorandum, it will be presumed that he has no representation to make and order will be liable to be passed against him ex parte.
 4. The receipt of this memorandum should be acknowledged by Shri A.K.Singh the then SPM (HSG-II), Mokokchung MDG (Now SPM (HSG-II), Tuensang MDG)

(Rakesh Kumar)
Director of Postal Services
Nagaland : Kohima-797 001

Registered with A/D

To

**Shri A.K.Singh,
Sub-Postmaster (HSG-II),
Tuensang MDG-798 612**

A. H. Shultz
B. K. Shultz
J. G. Shultz

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**IMPUTATION OF MISCONDUCT AND MISBEHAVIOUR FRAMED AGAINST
SHRI A.K.SINGH, THE THEN SPM (HSG-II), MOKOKCHUNG MDG,
(NOW SPM (HSG-II), TUENSANG MDG)**

While functioning as Sub-Postmaster (HSG-II), of Mokokchung MDG from 22-12-2001 to 05-02-2004, the said Shri A.K.Singh was found responsible for making irregular appointment against the post of GDSTM, Mokokchung.

2. Miss Repatula, D/O Smt. Imnasashi Jamir of Salengtem Ward, Mokokchung was provisionally appointed as GDSTM vide his letter No. B-2/Repatula/03 dated 01-03-2003 on the plea that the incumbent GDSTM was absconding since 28-01-2003 and a disciplinary proceeding was pending against him.

3. As per DGP & T letter No. 43-4/77/Pen. dated 18-05-1979 and circular No. 19-34/99-ED & Trg dated 30-12-1999, the provisional appointments should as far as possible, should be avoided and should be made only for specific periods. Further, as per DG Posts, letter No. 41-286/87-PE-II dated 14-12-1987, it was clarified that provisional appointment of GDSDA which are expected to continue for a long period should be made by requisitioning the names from employment exchange and by giving wide publicity to important public institutions. The detailed instruction are contained in DG P & T, letter No. 45-22/71-SPB-I/Pen. dated 04-09-1982 and DG Posts, letter No. 19-4/97-ED & Trg. dated 19-08-1998.

4. But, it is seen that Shri A.K.Singh, appointed Miss Repatula against the post of GDSTM, Mokokchung MDG, directly without approaching the employment exchange or even giving wide publicity. The provisional appointment letter issued vide his letter No. B-2/Repatula/03 dated 01-03-2003 has not been issued in the prescribed format nor ^{any} specific period of engagement as GDSTM has been mentioned in the said appointment letter.

5. Further, the traffic of receipt of telegrams has dwindled to an insignificant number and there is no justification of post of a GDSTM at the time of provisional appointment and moreover the number of posts of postmen found surplus during ~~last~~-3 review of Mokokchung MDG during 2002 was 6 (Six). Therefore, there was no urgency and need for provisional appointment against the post of GDSTM.

6. Thus, the said Shri A.K.Singh by his above acts has violated Rule-15, Rule-16-A of GDS (Conduct & Employment) Rules, 2001 and instructions contained in D.GPosts letter No.41-286/87-PE-II dated 14-12-1972. By his above omissions, he has also violated the provisions of Rule 3 (i), (ii) and (iii) of CCS (Conduct) Rules, 1967.

A. K. Talukdar
B. K. Talukdar
A. K. Talukdar

To
The Post Master General,
North Eastern Circle,
Shillong - 793 001.

Through
The Director Postal Services,
Nagaland, Kohima - 797 001.

Subject: - Appeal under the provisions of CCA(CCA)Rules 1965 – Case of
Shri A K Singh, SPM, Tuensang MDG (Nagaland).

Respected Sir,

1. The appellant most respectfully submits that the present appeal is directed against the order of punishment issued vide Director Postal Services, Nagaland, Kohima Memo No.A-12/Mokokchung/Repatula/03 dated 18.03.2005.

- A copy of Director Postal Services, Nagaland, Kohima Memo No.A-12/Mokokchung/Repatula/03 dated 18.03.2005 is attached as ANNEXURE-A/1.

2. The appellant received the punishment order on 28.03.2005 and hence the appeal is submitted within the time-limit prescribed in CCS(CCA)Rules 1965.

3. The appellant submits the following facts for your kind consideration that:

- (i) The appellant was working as Post Master, Mokokchung MDG during the period from 22.12.2001 to 05.02.2004; and during the said period, the appellant was the appointing authority as well as the disciplinary authority for the Gramin Dak Sevak/Telegram Messenger(GDSIM) at Mokokchung MDG.
- (ii) One Shri Bolin Bora who was working as GDSIM / Mokokchung MDG was unauthorisedly absenting from duty since 28.01.2003; and the appellant as disciplinary authority decided to initiate disciplinary proceedings against the said Shri Bolin Bora under the provisions of GDS(C&E)Rule 2001 [Earlier EDAs(C&S)Rules 1964].
- (iii) The appellant also decided to manage the work of GDSIM / Mokokchung MDG during the absence of the afore-said incumbent GDSIM by making provisional appointment against the post 'purely under unapproved capacity' in departmental interest as because a regular appointment against the post can be made only if the service of the incumbent GDSIM is terminated as a result of disciplinary proceedings. Thus, one Miss. Repatula was provisionally appointed as GDSIM / Mokokchung MDG under a specific condition that the

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arrangement was likely to be terminated at any time without notice. The aforesaid condition was clearly spelt out in the provisional appointment order issued vide Memo No.B-2/Reputula/03 dated 01.03.2003.

It is submitted for your kind information that as per D.G Posts letter No.41-286/87-PE.II dated 14.12.1987, only those provisional appointments of GDSSs, which are expected to continue for a long period, should be made through Employment Exchange. But, in this instant case, the appellant decided to complete the disciplinary proceedings against the incumbent GDSTM, who was unauthorisedly absenting from duty since 28.01.2003, expeditiously without any delay; and hence, the appellant did not expect that the provisional appointment would continue for a long period. Thus, the provisional appointment was made without going through the Employment Exchange strictly in accordance with the requirements set out in the departmental instructions.

- Copy of Memo No.B-2/Reputula/03 dated 01.03.2003 is attached as ANNEXURE-A/2.

(iv) The appellant, thereafter, as disciplinary authority to the Gramin Dak Sevak Telegram Messenger/ Mokokchung S.O, initiated disciplinary proceedings against Shri Bolin Bora, the incumbent GDSTM who was unauthorisedly absenting from duty vide SPM/Mokokchung MDG Memo No B-2/Staff/Bolin Bora/MKG/03 dated 23.04.2003. But, unfortunately, the disciplinary proceedings against the defaulting GDSTM could not be finalized due to administrative reasons.

- Copy of SPM/Mokokchung MDG Memo No B-2/Staff/Bolin Bora/MKG/03 dt 23.04.2003 is attached as ANNEXURE-A/3.

(v) In the meantime, the Director Postal Services, Nagaland found the appointment of the provisionally appointed GDSTM as irregular and charged sheeted the appellant vide Memo No.A-12/Mokokchung/Reputula/03 dated 13.07.2004. Despite knowing the fact that the provisional appointment was well within the GDS-Service Rules and departmental instructions governing provisional appointments of GDSSs, the Director Postal Services took an arbitrary view and penalized the appellant with a MAJOR PENALTY after issuing a Rule-16 charge sheet for MINOR PENALTY PROCEEDINGS.

- Copy of charge sheet Memo No A-12/ Mokokchung/ Reputula/03 dated 13.07.2004 is attached as ANNEXURE-A/4.
- Copy of DPS/Nagaland Punishment order Memo No A-12/ Mokokchung/Reputula/03 dated 18.03.05 has already been attached as ANNEXURE-A/1.

4. The appellant therefore submits this appeal on the following grounds:

(i) That, the Rule-11 (iii) (a) of CCS(CCA)Rules, 1965 which specifies a minor penalty which can be imposed under the provisions of Rule-16 ibid, reads as under:

Rule-11(iii) (a) : Reduction to a lower stage in the time-scale of pay for a period not exceeding 3(Three) years without cumulative effect and not adversely affecting his pension.

The punishment awarded to the appellant reads as under:

It is therefore, ordered that the pay of Shri A K Singh, SPM, Tuensang MDG be reduced by 4 stages from Rs 6650 to 6050 in the time scale of pay of Rs.5000-150-8000 for the period of 3-years with effect from March 2005. It is further directed that Shri A.K. Singh will not earn increment of pay during the period of reduction, and that on expiry of this period, the reduction will not have the effects of postponing his future increments of pay.

Thus, it is evident that the disciplinary authority, by ordering that the appellant will not earn increment of pay during the period of reduction, has made the punishment of reduction to a lower stage with cumulative effect. Therefore, the punishment is arbitrary, unlawful and totally against the provisions of CCS(CCA)Rules 1965.

(ii) That the charge sheet memorandum issued by the DPS/Nagaland itself was prima-facie ill-motivated as because the charge sheet memorandum contained extraneous materials such as, "the traffic of receipt of telegrams has dwindled to an insignificant number and there is no justification of post of a GDSTM at the time of provisional appointment and moreover the number of posts of postmen found surplus during Est-3 review of Mokokchung MDG during 2002 was 6(six)." [Para-5 of the charge sheet memorandum]. Here, the DPS/Nagaland [disciplinary authority] did not explain as to why the post of GDSTM, Mokokchung MDG was not abolished as a result of Establishment Review carried out in the year 2002, when it was fully known to the DPS/Nagaland that the post was not justified. The DPS/Nagaland [disciplinary authority] also did not explain as to whether the Establishment Review of GDSTM post has to be conducted every year by the SPM of the office, when the departmental instructions prescribe that the work-load of GDSTM post should be reviewed once in three years. The DPS/Nagaland [disciplinary authority] also did not explain as to whether the onus for abolishing the unjustified post independently lies with the Post Master of a non-gazetted post office. The DPS/Nagaland [disciplinary authority] also has not explained as to why the post of GDSTM, Mokokchung MDG was not abolished soon after the completion of Establishment review in the year 2002.

- (iii) That the D.G Posts letter No.41-286/87-PE.II dated 14.12.1987 expressly provides that the provisional appointment should be made through employment exchange if it is expected that the provisional arrangement is likely to continue for a long period. In this justifiable case, the appellant did not expect that the provisional arrangement would continue for a long period. The disciplinary authority has not discussed anything either in the charge sheet or in the final order as to why and how the appellant should have expected that the provisional arrangement would continue for a long period. Thus, the charge sheet memorandum as well as the final order lacks fairness and rationality.
5. The appellant also further submits that the appellant is also preparing a detailed report containing various GDS appointments done by various authorities in Nagaland Postal Division including the Director Postal Services, Nagaland which were made in violation of departmental instructions and are continuing for more than 3 to 10 years. If disciplinary action is found necessary, then action against those appointing authorities may be initiated instead of victimizing the appellant who just made the provisional appointment for a shorter period less than 3(Three) years as because only those provisional appointees who work for more than 3(Three) years are entitled for alternative employment under departmental instructions. The appellant is collecting relevant documents in connection with the said report, which may be submitted to your good office within a very short period.

PRAYER

6. The appellant, in the meantime, prays that the order of punishment issued vide DPS/Nagaland Memo No.A-12/ Mokokchung/Repataula/03 dated 18.03.05 [ANNEXURE-A/1] may be quashed and set-aside in the interest of justice.

*An ad h.ekh. Kumar S. Singh
02-04-05*
(A K Singh)
Sub Post Master,
Tumong MDC
(Nagaland).

Copy to:

1. The Director Postal Services, Nagaland, Kohima - 797 001. The appeal addressed to the Post Master General, N.E.Circle, Shillong is forwarded herewith for further necessary action under Rule-26 of CCS(CCA)Rules 1965.
2. Advance copy to the Post Master General, N.E.Circle, Shillong - 793 001.

*(A K Singh)
Sub Post Master,
Tumong MDC*

*A. H. Singh
B. K. Jadhav
A. G. B.*

Annexure - A-7
29/4/2004

(TO BE PUBLISHED IN PART-II, SECTION 3, SUB-SECTION (I) OF THE
GAZETTE OF INDIA)

Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

New Delhi, Dated the 23rd August, 2004

Notification

G.S.R..... In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Classification, Control and Appeal) Rules, 1965, namely :-

1. (1) These rules may be called the Central Civil Services (Classification, Control and Appeal) Amendment Rules, 2004.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Central Civil Services (Classification, Control and Appeal) Rules, 1965, in rule 11, for Item (III a), the following shall be substituted, namely :

"(III a) reduction to lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension".

P. Mohan
(Smt. Pratibha Mohan)
Director

(F.No. 11012/5/2003-Estt. (A))

Foot note - The principal rules were published vide notification number 7/2/63-Estt. (A), dated 20th November, 1965 and subsequently amended by number, -

- S.O. 1149 dated the 13th April, 1966
- S.O. 1596 dated the 4th June, 1966
- S.O. 2007 dated the 9th July, 1966
- S.O. 2648 dated the 2nd September, 1966
- S.O. 2854 dated the 1st October, 1966

A. Mohan
P.K. Jelubhoy
P.V. Dube

CLARIFICATION.—It has now been decided that provisional appointment of EDAs which are expected to continue for a long period should be made in the light of instructions contained in Letter No. 45-22/71-SPB.I/Pen., dated 4-9-1982 (Sl. No. 16). However, it should be made clear to the Employment Exchange and the selected candidate that his appointment is purely on provisional basis and liable to be terminated whatever the length of the service may be, in case it is ordered to reinstate the regular incumbent, and the appointment letter may be issued in the respective forms as prescribed in the above instruction.

[D.G., Posts, Letter No. 41-286/87-PE-II, dated the 14th December, 1987.]

(16) Recruitment of ED Agents through Employment Exchange.—The question of recruitment of ED Agents through Employment Exchange has been under consideration of the Government for some time past.

2. It has now been decided that the employment of ED Agents should be made through Employment Exchanges. For this purpose, the concerned recruiting authority should send a requisition to the local Employment Exchange, having jurisdiction over the area, requesting nomination of suitable candidates for the post, having the prescribed qualifications, within a period of 30 days from the date of sending requisition to the Employment Exchange for nomination of candidates, to the concerned authority. While placing requisition on the Employment Exchange, the competent recruiting authority should make a special mention of the following points:—

- (a) Persons seeking employment as ED Sub-Postmasters/Branch PMs must be permanent residents of the village where the Post Office is located or proposed to be located. The applicants must have adequate means of income from an independent source of livelihood and they should also be able to offer suitable accommodation for the purpose of functioning of the PO.
- (b) Persons seeking employment to other categories of ED Agents should satisfy the condition of residence as specified in Instruction (1) above.

3. The competent recruiting authority should while sending the requisition to the Employment Exchange, indicate the names of the villages or cities from which the candidates are required to be nominated.

4. The other terms and conditions, as in force from time to time such as educational qualification and security deposit, etc., should be indicated in the requisition being placed on the Employment Exchange by the competent recruiting authority.

[D.G., P. & T. Letter No. 45-22/71-SPB. I/Pen., dated the 4th September, 1982.]

A. H. Patel
D. R. Patel
A. H. Patel

24 APRIL

-31-

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.
GUWAHATI BENCH

filed by

M. V. Ahmed,
Addl. C.G.S.
24/4/06

IN THE MATTER OF:

O.A.No. 324/2005

Sri Awadesh Kumar Singh

..... Applicant

- Versus -

Union of India & Others.

..... Respondents

- AND -

IN THE MATTER OF:

Written statement submitted by the

Respondents No. 1 to 3.

WRITTEN STATEMENT

The humble answering respondents

submit their written statements as

follows :

1.(a) That I am the Director of Postal Service

Nagaland Kohima

and Respondents No. 3 in the case. I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in the written statement, the contentions and statements made in the application may be deemed to

have been denied. I am competent and authorized to file the statement on behalf of all the respondents.

- (b) The application is filed unjust and unsustainable both on facts and in law.
- (c) That the application is bad for non joinder of necessary parties and misjoinder of unnecessary parties.
- (d) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.
- (e) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

2. BRIEF FACTS OF THE CASE OF THE APPLICANT/PETITIONER

which may be treated as the integral part of this written statement and an answer to the allegation made in the original application filed by the applicant.

A. The applicant Shri A.K.Singh while functioning as Sub-Postmaster, Mokakchung MDG, during the period from 22.12.2001 to 05.02.2004 made irregular appointment against the post of GDSTM, Mokokchung MDG without observing the prescribed procedure. He provisionally appointed Miss Repatula under his memo No.B-2/Repatula/03 dated 1.3.2003 on the ground that the regular incumbent was absconding from 28.1.2003 and a disciplinary proceeding was pending against him. As per DG P&T letter No. 43-4/77/Pen dated 18.5.1979 and circular No. 19-34/99-RD & Trg

Rule 16 of 1971

dated 30.12.1999, the provisional appointment should as far as possible be avoided and should be made only for specified period. As per DG Posts letter No.41-286/87-PE-II dated 14.12.1987, it was clarified that provisional appointment of GDS which are expected to continue for a long period should be made by requisitioning the names from the employment exchange and by giving wide publicity. The detailed instructions are also contained in DG P & T letter No.45-22/71-SPB-1/Pen dated 4.9.1982 and letter No.19-4/97-ED & Trg dated 19.08.1998 for guidance of the appointing authority.

B. The appellant appointed Miss Repatula against the post of GDSTM, Mokokchung MDG directly without sponsoring the names from the employment exchange or giving wide publicity. Moreover, the provisional appointment letter issued on 1.3.2003 was not in prescribed format as per rule nor any specified period of engagement was mentioned.

C. The traffic of receipt of telegrams also did not justify continuance of the post of GDSTM at the time of provisional appointment and there was no urgency and need for provisional appointment against the said post.

D. Charge sheet under Rule 16 was issued against the appellant under DPS, Kohima, memo No.A-12/Mokokchung/Repatula dated 13.7.2004 and the disciplinary proceeding was finalized by the DPS, Kohima under memo No. A-12/Mokokchung/Repatula dated 18.3.2005 by awarding punishment of reduction of pay of the appellant by 4 (four) stages from Rs.6,650 to 6050 in the time scale of pay of Rs.5000-150-8000/- for a period of three years w.e.f. March 2005 with further direction that the appellant

could not earn increment of pay during the period of reduction of pay and that on expiry of this period, the reduction will not have the effect of postponing his future increment of pay.

The aforesaid Memo dated 18.3.05 is annexed herewith and marked as Annexure R-1, which is self explanatory.

E. In connection with the above, the appellant Shri A.K. Singh has submitted an appeal dated 25.4.2005 to the Postmaster General, North East Circle, Shillong, the appellate authority. The appellate authority after examining the case had vide his Office Memo No. Staff/109-8/2005 dated 18.8.2005 reduced the punishment to reduction of pay in two stages for a period of three years without cumulative effect which will not have the effect of postponement of his future increments.

The Memo dated 18.8.05 is annexed herewith and marked as Annexure R-2, which is self explanatory.

F. As empowered vide Notification No. C-11.11/1/2001-VP dated 23.5.01 and in exercise of power conferred under Rule 29 of C.CS (CCA) Rules, 1965, the Chief Postmaster General, N.E.Circle, Shillong has revised the order, on own motion and awarded the revised penalty of 'Reduction of pay by one stage from Rs.6650 to Rs.6500/- in the scale of pay of Rs.5000-150-8000/- for a period of 3 years without cumulative effect vide C.O/Shillong letter No. Vig-16/15/85/Ch-II dated 17.2.2006.

3. That with regard to the statements made in paragraphs 1 to 4.2, 4.4 and 6 to 12 of the application, the answering respondents do not admit

anything, except those are in record and the applicant is put to strictest proof thereof.

4. That with regard to the statements made in paragraphs 4.3 and 4.5 of the application, the answering respondents beg to submit that the provisional appointment was made without observing the rules/guidelines on the matter as mentioned in para 2 hereinabove.

5. That with regard to the statements made in paragraphs 4.6 of the application, the answering respondents beg to submit that the charge sheet was issued for not observing rules/guidelines for provisional appointment as mentioned in the brief history of the case and minor penalty was awarded to the appellant and the punishment has not cumulative effect.

6. That with regard to the statements made in paragraphs 4.7 of the application, the answering respondents beg to submit that the appellate authority after examining the case had vide his Office Memo No. Staff/109-8/2005 dated 18.8.2005 reduced the punishment to reduction of pay in two stages for a period of three years without cumulative effect which will not have the effect of postponement of his future increments. Further, under Rule 29 of CCS (CCA) Rules 1965 the case was revised by the CPMG, N.E. Circle, Shillong and passed revised order awarding the penalty of "Reduction of pay by one stage from Rs.6650 to Rs.6500/- for a period of 3 years without cumulative effect, vide No. Vig-16/15/85/Ch-II dated 17.2.06.

The aforesaid order dated 17.2.06 is annexed herewith and marked as Annexure R-3.

7. That with regard to the statements made in paragraphs 5.1, 5.2 and 5.3 of the application, the answering respondents beg to submit that the applicant was charge sheeted under Rule 16 of the CCS (CCA) Rules 1965 and was awarded a minor penalty under Rule 11 (iii) (a) of the said Rules. The punishment awarded to the applicant by the disciplinary authority and the appellate authority is within the ambit of the above cited provision and therefore, the contention of the applicant that a major penalty has been imposed is baseless. The order of penalty has since been revised as mentioned in para 6 above. The applicant was charge sheeted and punishment order was issued for not observing rules/guidelines for provisional appointment as mentioned in the brief history of the case.

8. That the humble respondents beg to submit that the application is devoid of merit and as such the same is liable to be dismissed.

9. That the written statement is made bona fide and for the ends of justice & equity.

Under the above circumstances, Your

Lordship would be pleased to dismiss the
Original Application filed by the applicant
with cost and/or to pass other/s order/s as
Your Lordship may deem fit and proper.

- AND -

For this act of kindness your
Petitioner/Respondent shall ever pray.

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VERIFICATION

I, I. Pangernungsang,

Director of Postal Service, Nagaland, India do hereby solemnly affirm and verify that the statements made hereinabove are true to my knowledge, belief and information and nothing is being suppressed.

I sign this verification on this 24/11 day of Am 2006 at

Chandek.

Signature

(अई. पांगरनुंगसांग)

(I. Pangernungsang)

निदेशक डाक सेवा

Director of Postal Services

नागालैण्ड कोहिमा - 797 001

Nagaland, Kohima - 797 001

**DEPARTMENT OF POSTS : INDIA
OFFICE OF THE DIRECTOR POSTAL SERVICES
NAGALAND, KOHIMA. 797001.**

No.A-12/Mokokchung/Repatula/03

Dated at Kohima the 18.03.05

It was proposed to initiate action against Shri A.K. Singh, the then SPM (HSG-II) Mokokchung MDG, presently working as SPM(HSG-II)Tuensang MDG, under Rule 16 of CCS(CCA) Rules 1965 vide this office memo no. A-12/Mokokchung/Repatula/03 dtd. 13.07.04.

(2) The Charge Official (C.O) vide his defense statement dtd.06.08.04 has stated that he made the irregular appointment to the GDSTM, Mokokchung post due to the following reasons :-

(i) Shri B. Bora, the incumbent GDSTM was absconding since a long time and he had accepted money from many persons under false assurance of handing over his job of GDSTM to such persons, who in turn pressurised the Charge Official to appoint such persons against Shri Bora's post.

(ii) The Charge Official had presumed that Shri B.Bora will never come back on his post of GDSTM, Mokokchung as he was absconding for considerable period of time.

(iii) There was substantial traffic of telegrams from Mokokchung MDG and the post was filled up in the interest of service to tide over this work.

(3) The Charge Official gave appointment to Ms. Repatula without approaching the Employment Exchange or giving wide publicity and he made the provisional appointment on the basis of only one applicant namely Ms. Repatula being interested in that post which is in complete violation of departmental rules and regulations. The Charge Official has cited reasons which are totally extraneous to the facts of the case and cannot be accepted as valid reasons for making irregular appointment to the post of GDSTM, Mokokchung which was technically not vacant as the previous incumbent was not dismissed from service and he has a claim over the post till he is dismissed from service in accordance with rules. Further, any appointment in the government including provisional appointment has to be done by giving wide publicity and involving Employment Exchange for sponsoring of prospective the candidates. In the instant case, no advertisement whatsoever, was made for making the provisional appointment and the sole candidate who was interested in the job was given the provisional appointment in total disregard of departmental rules. As per GDS Conduct Rules, any appointment of GDS staff including that of provisional appointment has to be done by giving wide publicity and involving Employment Exchange for sponsoring candidates. The appointing authority can select a candidate only when at least 3 (three) candidates have applied for the posts either through Employment Exchange or directly to the appointing authority. In the instant case, no advertisement was given and decision was on the basis of only one person.

(4) Shri Singh has referred to his letter dtd. 14.02.03 vide which he has submitted the monthly statistics relating to telegrams received at Mokokchung MDG for delivery through GDSTM. As per this statistics, the average monthly telegram received for delivery from Mokokchung MDG comes to 112 per month which means that on average on a given day, telegrams received for delivery were 4 in number which is far too less to justify a post of GDSTM. Further, while doing the EST-3 review of postmen staff during 2002, 6 post of postmen were found surplus out of total sanctioned strength of 9 (Nine) postmen. The work relating to GDSTM could have been easily distributed amongst these Postmen and the number of telegram would not have even come to 1 per postman per day. But the Charge Official being the appointing authority did not take into account the above logical facts before making a provisional appointment to the post which shows that he was pre-determined and personally interested in giving provisional appointment to Ms. Repatula in flagrant violations of departmental rules and regulations on this issue.

(5) Therefore, I am of considered view that charges as contained in this office memo no. A-12/Mokokchung/Repatula/03 dtd. 13.07.04 stands fully proved against the Charge Official.

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ORDER

It is therefore, ordered that the pay of Shri A.K. Singh, SPM, Tuensang MDG be reduced by 4 stages from Rs. 6650 to Rs. 6050 in the time scale of pay of Rs. 5000-150-8000 for the period of 3 yrs. w.e.f. March 2005. It is further directed that Shri A.K. Singh will not earn increment of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effects of postponing his future increments of pay.

Sd/-
(Rakesh Kumar)
Director of Postal Services
Nagaland, Kohima-797001.

Copy to:-

- 1) The Chief Postmaster General, N.E. Circle, Shillong-793001.
- 2) The Postmaster, Kohima H.O. for information and n/a.
- 3) The DA(P), Kolkata (Through the Postmaster, Kohima H.O.)
- 4) Shri A.K. Singh, SPM Tuensang MDG.
- 5) PF/CR of the official.
- 6) Punishment Register
- 7) O/C.

17/3/05
(Rakesh Kumar)
Director of Postal Services
Nagaland, Kohima-797001.

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No. Staff/109-8/2005

Dated at Shillong, the 18th August 2005

This is regarding the appeal dated 25-4-2005 preferred by Shri A.K.Singh, SPM, Tuensang MDG against the order of D.P.S. Nagaland Division issued in Memo No.A-12/Mokokchung/Repatula/03 dated 18-3-2005, vide which the punishment of reduction by four stages from Rs.6650 to Rs.6050 in the time scale of pay of Rs. 5000-150-8000 for the period of three years w.e.f. March 2005. Further, he will not earn increment of pay during the period of reduction and that on expiry of this period, the reduction will not have the effects of postponing his future increments of pay.

2. The Chronology of events in the case in brief is as follows:-

- (i) The official was charged sheeted under Rule-16 of CCS (CCA) Rule 19G5 under letter No.A-12/Mokokchung/Repatula/03 dated 13-7-2004
- (ii) The Disciplinary authority issued the punishment referred to above on 18-3-2005.

The case in brief is that Shri A.K.Singh, SPM, Tuensang MDG, while functioning as SPM, Mokokchung MDG during the period from 22-12-2001 to 5-2-2004 made irregular appointment against the post of GDSBPM, Mokokchung MDG by provisionally appointing Miss Repatula under his Memo No.B-2/Repatula/03 dated 1-3-03, on the ground that the regular incumbent was absconding from 20-1-2003 and a disciplinary proceeding was pending against him. The appointment of Miss Repatula was done directly without sponsoring the names from the employment exchange or giving wide publicity which was against Departmental rules. Moreover, the provisional appointment letter issued on 1-3-2003 was not in prescribed format nor any specified period of engagement has been mentioned.

The traffic of receipt of telegrams also did not justify the post of GDSBPM at the time of provisional appointment and there was no urgency and need for provisional appointment against the said post.

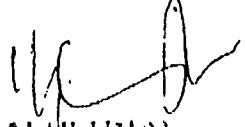
For the above lapses, Shri A.K.Singh was charged sheeted under Rule-16 and disciplinary proceedings was finalized by the DPS, Kohima under his Memo No.A-12/Mokokchung/Repatula dated 18-3-2005.

3. I have gone through the case. The appellant could not prove his innocence. In fact, he admitted his mistake by just making provisional appointment of GDSBPM without following proper procedure. The Disciplinary authority, DPS, Kohima was very much within his power for imposing a rather heavy punishment

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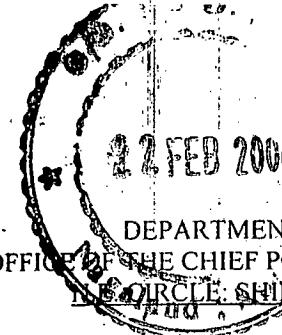
51 11 18 59

under minor penalty. However, I wish to take a more lenient view on the ground that the appellant is a senior Government servant of HSG-II official who can also be expected to improve himself in future in the matter of discharging his duties and responsibilities under Departmental rules and regulation. Therefore, I Shri Lalhluna reduce the punishment to reduction of pay in two stages for a period of three years without cumulative effect and this will not affect postponement of future increments.


(LALHLUNA)
Postmaster General,
N.E.Region, Shillong.

~~Copy to:~~

1. Shri A.K.Singh, SPM, Tuensang MDG, Nagaland Division.
2. The Dy. Supdt. of POs, Nagaland Division, Kohima.
3. Office copy.



No. Vig-16/15/85/Ch.-II,

Dtd. at Shillong-1, the 17th February, 2006.

1. This is regarding revision of Appellate order of the Postmaster General, N.E. Region, Shillong, vide his letter No. Staff/109-8/2005 dtd. 18.8.2005, against Sri A.K. Singh, SPM, Tuensang, Nagaland, in exercise of power conferred under Rule 29 of C.C.S. (C.C.A.) Rules, 1965.

2. Disciplinary Action, under Rule 16 ibid, was initiated against Sri A.K. Singh, the then SPM, Mokokchung, by the DPS, Nagaland Division, Kohima, the Disciplinary Authority, vide his Memo. No. A-12/Mokokchung/Repatula/03 dtd. 13.7.04.

3. The briefs of the Charges, against the official, was as follows:

That Sri A.K. Singh, while working as SPM, Mokokchung, during the period from 22.12.2001 to 06.02.04, made irregular appointment against the post of GDSTM, Mokokchung MDG, appointing Miss Repatula vide his memo. No.G-2/Repatula/03 dtd. 01.3.03. Said Sri A.K. Singh appointed Miss Repatula provisionally, without giving wide publicity and without notice to the local Employment Exchange as prescribed in the Rules for Recruitment of GDS. The provisional Appointment was not in prescribed format and the period of the engagement was not also specified therein. The traffic of receipt of Telegram did not justify the post for provisional appointment on urgency.

4. Said Sri A.K. Singh, vide his Defence Statement dtd. 06.8.04, stated that he made the provisional appointment on compelling circumstances due to absconding of Sri B.Bora, the original incumbent of the post of GDSTM, Mokokchung. He thought that Sri Bora will + never come back and He made the provisional Appointment in the interest of service.

5. The DPS, Kohima, the Disciplinary Authority, on conclusion of the proceedings awarded the penalty of reduction of 4 stages from Rs. 6650/- to 6050/- in the pay scale of Rs. 5000-150-8000 for a period of 3 years, without postponing future increment on expiry of that period, vide letter No. A-12/Mokokchung/Repatula/03, dtd. 18.3.05.

6. Being aggrieved, said Sri A.K. Singh preferred an Appeal dtd. 25.4.2005, to the Postmaster General, N.E. Region, Shillong, the Appellate Authority. The Appellate Authority considered the Appeal and passed Appellate Order vide letter No. Staff/109-8/2005 dtd. 18.8.2005, reducing the quantum of penalty to reduction of pay by two stages for a period of three years without cumulative effect and without postponement of future increments.

7. As empowered vide Notification No. C-11.11/1/2001-VP dtd. 23.5.01, as revising authority and in exercise of power conferred under Rule 29 of C.C.S. (C.C.A.) Rules, 1965, I have gone through the records of the whole Disciplinary Proceedings on own motion and found that the Appellate order of the Postmaster General, N.E. Region, Shillong, as issued vide letter No. Staff/109-8/2005 dtd. 18.8.2005, is required to be revised. As such I incline to pass the following order of Revision:

ORDER

I, Sri S. K. Das, Chief Postmaster General, N.E. Circle, Shillong, do hereby order that Sri A. K. Singh, the then SPM, Mokokchung and subsequently SPM, Tuensang, Nagaland Division, is awarded the penalty of 'Reduction of Pay by one stage from 6650/- to 6500/- in the scale of Rs. 5000-150-8000, for a period of 3 years, with out cumulative effect.'

(S.K. Das)

Chief Postmaster General,
N.E. Circle, Shillong-793 001 &
Revising Authority.

Copy forwarded to:

- 1) The DPS, Kohima, for information & necessary action.
- 2) The Asstt. Postmaster General (Staff), O/O the CPM, Shillong.
- 3) The Asstt. Postmaster General (Vig), O/O the CPM, Shillong
- 4) Sri A.K. Singh, SPM, Tuensang, Nagaland.
- 5) The Postmaster, Kohima H.O. For info. & info.
- 6) C/R file of Sri A.K. Singh, through the DPS, Kohima.

Asstt. Postmaster General (Vig)
O/o the Chief Postmaster General
N.E. Circle, Shillong- 793001

15 JUNE 2006

गुवाहाटी न्यायालय
Guwahati Bench

Filed by the Applicant
Sri Awadesh Kumar Singh
Through
Tijoli Rani Bora
Advocate
15.6.06

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH AT GUWAHATI

Original Application. No. 324/2005

Sri Awadesh Kumar Singh

---Applicant

Versus

Union of India & ors

---Respondents

-AND-

IN THE MATTER OF:

A rejoinder to the written statement filed by the respondent Nos. 1, 2 & 3;

REJOINDER

The humble applicant above-named submits his Rejoinder as follows:

1. That a copy of the written statement to the aforesaid Original Application has been served on my appointed counsel and after going through the same, I have understood the contents thereof and I am submitting my Rejoinder to the aforesaid written statement herein below:

2. That save and except whatever is specifically admitted in the Rejoinder, the contentions and statements made in the Rejoinder may be deemed to have been denied by the applicant.
3. That the statements made in paragraphs 1(a) to 1(e) of the written statement are not admitted by the applicant. However, he further states that his application has been filed bonafide against the illegalities committed by the respondents to the applicant.
4. That with reference to the statements made in paragraph 2(A) of the written statement, the applicant reiterates and reaffirms his earlier statements made in paragraphs 4.1 to 4.4. of the Original application and further states that the allegations made in this paragraph are not correct and the applicant had properly explained the same in the said paragraphs.
5. That with reference to the statements made in paragraph 2(B) of the written statement, the applicant states that Miss Repatula was provisionally appointed as GDSTM/Mokokchung MDG under a

specific condition that the arrangement was likely to be terminated at any time without notice. The aforesaid condition was very clearly spelt out in the provisional appointment order issued to the said Miss Repatula vide Memo No. B-2/Repatulla/03 dated 1.3.2003(Annexure-A/3 to the Original application. Further regarding the allegation that the provisional appointment letter issued on 1.3.2004 was not in prescribed format as per rule nor any specified period of engagement was mentioned, the applicant states that the said allegations were not raised in the charge sheet and therefore the respondents are not entitled to raise the same at such a belated stage.

6. That with reference to the statements made in paragraph 2(C) of the written statement, the applicant reiterates and reaffirms his earlier statements made in paragraphs 4.3 to 4.4 of the Original application and further states that there being necessity urgency for appointment in the post of GDSTM and the applicant being the appointing authority as well as the disciplinary authority, the appointment was made in the vacant post and for which the respondent-authorities constituted a disciplinary

authority against the applicant and therefore the respondents can not raise the same at this stage again after punishing the applicant for the purported illegalities which is under challenge before the Hon'ble Tribunal.

7. That with reference to the statements made in paragraph 2(D) of the written statement, the applicant reiterates and reaffirms his earlier statements made in paragraphs 4.6 and 4.7 of the Original application and further states that the respondent-authority namely the Director of Postal Services, Kohima acted without jurisdiction in imposing major punishment on the applicant in a proceeding for minor penalties as provided under Rule of the Classification Control and Appeal Rules 1965 by awarding reduction of pay by four stages from Rs. 6650-6050/- PM in the time scale of pay of Rs. 5000-150-8000/- for a period of three years w.e.f. March 2005 with further direction that the applicant could not earn increment of pay during the period of reduction of pay and that on expiry of this period, as apparent from the Annexure-R-I to the written statement, wherein it has been specifically mentioned about the Rule 16 of the aforesaid Rules

and that it was proposed to initiate action against the applicant vide office Memo No. A-12/Mokokchung/Repatula/03 dated 13.7.2004.

8. That with reference to the statements made in paragraph 2(E) of the written statement, the applicant states that it is a fact that he has filed an appeal before the appellate authority against the order passed by the respondent No. 3 reducing the pay by four stages and the appellate authority after examining the case had vide his Office Memo No. Staff/109-8/2005 dated 18.8.2005 reduced the punishment to reduction of in two stages for a period of three years without cumulative effect. However, the applicant states that reduced penalty also comes under the major penalty and therefore the respondents can not save their illegalities whereby major punishment was inflicted on the applicant while initiating proceedings under Rule 16 of the Rules which is meant for minor punishment.

It may be mentioned herein that in the order of the appellate authority at Annexure-R/2 to the written statement, it has been stated that the applicant could not prove his innocence. In fact, he admitted his mistake by just making

provisional appointment of GDSBPM without following the proper procedure. The disciplinary authority was very much within his power of imposing a rather heavy punishment under minor penalty. However, taking a more lenient view on the ground that the applicant is a senior government servant who can also be expected to improve himself in future in the matter of discharging his duties and responsibilities under departmental rules and regulation, the appellate authority reduced the punishment to reduction of pay in two stages for a period of 3 years without cumulative effect. The reason given by the appellate authority was also not tenable in view of the fact that no major penalty could be imposed under a proceeding for minor punishment and therefore, the appellate authority have acted illegally and unauthorizedly, and, thus, the impugned order is bad in law and liable to be set aside.

9. That with reference to the statements made in paragraph 2(F) of the written statement, the applicant states that Rule 29 of the Rules empowered the reviewing authority to review the order and thereby the reviewing authority revised penalty of reduction of pay by one stage from Rs. 6650/- to Rs. 6500/- in

the scale of pay of 'Rs. 5000-150-8000/- for a period of 3 years without cumulative effect order dated 17.2.2006 (Annexure-R/3 to the written statement). In this connection, the applicant states that such action of the reviewing authority was done only when the punishment of both the disciplinary authority and the appellate authority was challenged. Therefore, the contention made by the respondents that the punishment has been reduced and no prejudice has been caused to the applicant, is not at all correct and tenable.

10. That with reference to the statements made in paragraph 3 of the written statement, the applicant, while reiterating his earlier statements made in paragraphs 1 to 4.2, 4.4 and 6 to 12 of the Original application, states that the said averments are correct and therefore tenable and sustainable in law.

11. That with reference to the statements made in paragraph 4 of the written statement, the applicant, while reiterating his earlier statements made in paragraphs 4.3 and 4.5 of the Original application, states that the allegations made therein are not correct and tenable in view of the fact that the applicant was

working as SPM at Mokokchung MDG and he was competent appointing authority and disciplinary authority and therefore decided to initiate disciplinary proceedings against one Shri Bolin Bora, ^{W.M.} for his ^{un}authorized absence. Therefore, in view of difficulties in running the day to day affairs in the office, on being empowered to appoint, the applicant appointed Miss Repatula provisionally as GDSTM/Mokokchung MDG under the provision of Gramin Dak Sevak (Conduct & Employment Rules) 2001 (earlier called as 'Extra Departmental Agents (Conduct & Service) Rules 1964. As such, the applicant states that the allegation against him, that he has committed illegalities in appointing Miss Repatula for which he was charge sheeted vide Memo No. A-12/Mokokchung/Repatula/03 dated 13.7.2004 (Annexure-A/5), is not tenable in law.

12. That with reference to the statements made in paragraph 5 of the written statement, the applicant states that he does not dispute the fact in issuing the charge sheet against him under the charges for not observing rules/guidelines in appointing Miss Repatula, as aforesaid. However, the applicant does not admit that minor penalty was imposed on him and the

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punishment has not cumulative effect, in as much as punishment of reduction of pay by four/two/one stage is also treated as major punishment and therefore major punishment can not be imposed for ~~a major~~ ^{a charge under minor} ~~is~~

penalty. Hence, the statements made in this paragraph by the respondents are not tenable and sustainable in law.

13. That with reference to the statements made in paragraph 6 of the written statement, the applicant, while reiterating the earlier statements made in paragraphs 4.7 of the Original application, states that the appellate authority after examining the case had vide his Office Memo No. Staff/109-8/2005 dated 18.8.2005 reduced the punishment to reduction of in two stages for a period of three years without cumulative effect.

In this connection, it may be states that reduction of pay, being reduced by the appellate authority as well as by the reviewing authority, does not in any way, change the character of punishment imposed on the applicant which is a major penalty and which can not be imposed in a departmental proceeding initiated under Rule 18 of the Rules which is meant for imposing minor punishment.

14. That with reference to the statements made in paragraph 7 of the written statement, the applicant, while reiterating the earlier statements made in paragraphs 5.1, 5.2 and 5.3 of the Original application, states and submits that the applicant was charge sheeted under Rule 16 of the Rules and was awarded major penalties under Rule 11 of the Rules and not under Rule 11(iii)(a) of the Rules as claimed by the respondents. Further, the punishment awarded to the applicant by the respondent is not ambit of the above cited provisions of Rules in as much as while awarding the punishment the authorities namely the disciplinary authority, appellate authority and the reviewing authority have violated the provisions of the Rules, in as much as no major punishment can be imposed while the proceedings is initiated under Rule 16 of the Rules in a minor penalty and therefore, the impugned actions of the respondents are not tenable and liable to be set aside and quashed.

15. That the statements made in paragraph 8 of the written statement are stoutly denied by the applicant. However, the applicant states that the application was not devoid of merit and as such the

same is not liable to be dismissed as claimed by the respondents.

16. That the statements made in paragraph 9 of the written statement are not correct in as much as the application was filed against the illegalities committed by the respondents while imposing punishment on the applicant under Rule 16 of the Rules.

17. That the applicant states and submits respectfully that the impugned actions on the part of the respondents have caused immense hardship and irreparable loss to him in as much the reduction in pay is always tallying affect on the employee and therefore the Hon'ble Tribunal may be gracious enough to allow the application and set aside the impugned punishment imposed on the applicant as the same has been imposed without following the provisions of the Rules and, thus, in view of this aspect of the matter, the application may be allowed by setting aside and impugned punishment.

-----Verification

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

I, Shri Awadesh Kr. Singh, son of Late Joy Mangal Singh, presently working as Sub Post Master (HSG-II), Tuensang Sub Post office, Nagaland, aged about 57 years, do hereby verify that the contents of paragraph 1 to 6, 8 to 13, 15, 16, 17 are true to my personal knowledge and belief, those made in Paragraphs 5, 7, 14 being matters of record are true to my information derived there from and the rest are my humble submissions made before this Hon'ble Tribunal that I have not suppressed any material facts.

Awadesh Kumar Singh

Signature of the petitioner

Date: