

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

1. original Application No. 121/2006
2. Misc Petition No.
- 3- Contempt Petition No.
4. Review Application No.

Applicant(S) Sri Simul Datta

Respondants U.O.T. & OPS.

Advocate for the Applicant(S).... Mr. M. Chanda  
Mr. S. Nath.....  
Mrs. U. Datta

Advocate for the Respondant(S).....  
C. G. S. C.

Notes of the Registry	Date	Order of the Tribunal
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This application in form  
is filed/C.F. No. 50/-  
deposit.....  
No. 266/1956/  
Dated 28.2.06

Dy. Registrar

*Steps not taken.*

31.5.2006

Present: The Hon'ble Shri K.V. Sachidananda-  
Vice-Chairman.

While working as Assistant Field Officer in the Telecommunication Cadre Department of Special Bureau, the applicant, on a dispute regarding directing him to perform the duties of Plumber, has made a representation to the higher authority, which according to the respondents, is not in tune with the Official Secrets Act. Therefore, charge sheet was issued against him. In the imputation of charges it is made clear that the applicant has acted in a manner unbecoming of a Government servant.

Mr. M. Chanda, learned counsel for the applicant submits that Enquiry Officer has found the applicant guilty in one charge and not guilty in another charge. Despite that fact the applicant has been censured which is under challenge.

Contd. P.

Contd.

31.5.2006

Mr. M. U. Ahmed, learned Addl. C.G.S.C. appearing on behalf of the respondents submits that notice should be issued to the respondents. Issue notice to the respondents.

Post the matter on 4.7.2006. In the meantime, Mr. Ahmed is directed to obtain instruction on the matter.

Vice-Chairman

Notice duly served  
on resp. nos- 1 to 8. bb

Class  
7/6/06.

04.07.2006

Heard Mr. M. Chanda, learned counsel for the applicant and Mr M.U. Ahmed, learned Addl. C.G.S.C. for the respondents.

The matter pertains to disciplinary proceedings. Considering the issue involved, the O.A. has to be admitted. Admit.

Post on 21.08.2006.

Vice-Chairman

mb

x28x8x8x

Mr. M. U. Ahmed learned counsel for

xlv

21.8.06

Learned counsel for the Respondents wants to file written statement and he prays for some more time. Time is granted. Post the matter on 21.9.06.

Vice-Chairman

lm

No W/S has been  
filed.

3.7.06

18.8.06.

No W/S has been  
filed.

30

20.9.06.

3  
M

21.9.2006

Mr.M.U.Ahmed, learned Addl.C.G.S  
C. seeks further time for filing reply  
statement. Let it be done.  
Post on 10.11.2006.

Vice-Chairman

bb

10.11.2006 Present: Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

Mr M.U. Ahmed, learned Addl.  
C.G.S.C. for the Respondents submitted  
that he has filed reply statement, which  
will be brought on record, if otherwise in  
order. Learned Counsel for the Applicant  
may file rejoinder, if any. Post on  
13.12.2006.

Vice-Chairman

/mb/

13.12.06.

Learned counsel for the applicant  
wanted time to file rejoinder. Let  
it be done. Post the matter on 8.1.07.

lm

Vice-Chairman

8.1.07.

Counsel for the applicant wanted to  
file rejoinder. Let it be done. Post  
the matter on 1.2.07.

Vice-Chairman

lm

15.2.07

Written statement filed and copy  
received by the counsel for the applicant.  
Counsel for the applicant prays for time to  
file rejoinder.

Post on 15.3.07 for order.

Vice-Chairman

pg

9-11-06

No wls has been  
filed.

ms

14.11.06

w/s filed by  
the Respondents.

ms.

No rejoinder has  
been filed.

ms  
12.12.06.

No rejoinder has  
been filed.

ms  
5.1.07

14.2.07

no rejoinder filed  
by.

ms.

No rejoinder has  
been filed.

ms  
15.3.07.

16.3.07.

Post the matter on 25.4.07. for filing rejoinder.



Member



Vice-Chairman

1m

25.4.2007.

Mr.M.Chanda, learned counsel for the Applicant submits that case may be fixed for hearing and Applicant shall file rejoinder, if any, by that time. Mr.M.U.Ahmed, learned Addl. C.G.S.C. is present.

Call the case for hearing before the next Division Bench.

- ① was filed by the respondents.  
② No rejoinder has been filed.

ms  
24.4.07

Rejoinder not  
filed.

ms  
08.05.08.

Rejoinder not  
filed.

ms  
14.08.2008.

[Signature]  
Member (A)

[Signature]  
Member (J)

/bb/



✓ OA/CP/RA/MI No. 127 / 2006


Order dated 25.3.2008

Call the matter for hearing  
on 9.5.08.


  
( M.R. MOHANTY )  
Vice-Chairman

09.05.2008

Call this matter on 03.06.2008.

  
(Khushiram)  
Member (A)


nkm

  
(M.R. Mohanty)  
Vice-Chairman

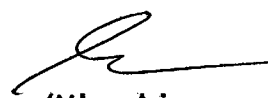
03.06.2008

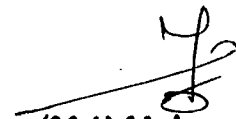
Call this matter on 16.06.2008 for hearing.

Rejoinder not filed.

  
13.6.08

lm

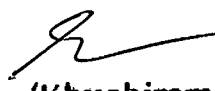
  
(Khushiram)  
Member(A)


  
(M.R. Mohanty)  
Vice-Chairman

16.06.2008

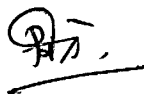
On the prayer of Mr. M.U. Ahmed,

learned Addl. Standing Counsel appearing for  
the Respondents, call this matter on  
18.08.2008

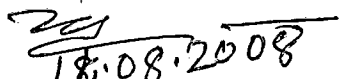
  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman


13.6.08  
Rejoinder submitted  
by the Applicant.



The case is ready  
for hearing. 18.08.2008

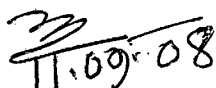
  
18.08.2008

On the prayer of Mr M. Chanda,  
learned Counsel appearing for the  
Applicant <sup>(made)</sup> in presence of Mr M.U. Ahmed,  
learned Addl. Standing Counsel for the  
Union of India), this case stands adjourned  
to 12.09.2008 for hearing.

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

The case is ready  
for hearing.

  
11.09.08

nkm

12.09.2008

On the prayer of Mr. M. Chanda, learned-counsel appearing for the Applicant (made in presence of Mr. M. U. Ahmed, learned Addl. Standing Counsel appearing for the Respondents) this case stands adjourned to be taken up on 06.11.2008 for hearing.

The case is ready for hearing.

(Khushiram)  
Member(A)

(M.R. Mohanty)  
Vice-Chairman

lm

700  
5.11.08

06.11.2008.

On the request of learned counsel appearing for both the parties, call this matter on 15th December, 2008 for hearing.

The case is ready for hearing.

(S.N. Shukla)  
Member(A)

(M.R. Mohanty)  
Vice-Chairman

lm

700  
12.12.08.

15.12.2008

Mrs U. Dutta, learned counsel appearing for the Applicant and Mr. M. U. Ahmed, learned Addl. Standing counsel appearing for the Respondents are present.

This, being a Divisional Bench matter, call this matter on 30.01.2009.

(S.N. Shukla)  
Member (A)

/lm/

28.10.09

On oversight- this case was not listed on 30.10.09.  
② This is a ready case for hearing.

lm

04.12/06

-7

04.11.2009

On the request of Shri M.Chanda, learned counsel for Applicant case is adjourned to 09.11.2009.

The case is ready for hearing.

22  
5.11.09.

/bb/

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

09.11.2009

Due to general strike call by ULFA, none appears for parties.

Adjourned to 16.11.2009

The case is ready for hearing.

22  
13.11.09

nkm

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

16.11.2009

Heard both sides in part. For remaining arguments list on 17.11.2009.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

nkm

17.11.2009

Heard learned counsel for the parties. Hearing concluded. Order reserved.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

/PB/

16.12.2009

Judgment pronounced in open court. For the reasons recorded separately O.A. stands dismissed. No costs.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

/PB/

31/12/09

Judgment/Final orders

dated 16/12/09 Prepared

and sent to the J/Section

for issuing all the Rescripts

by Post, and sent to the

Advocate for the both sides

vide No — 50 to 58

dated — 04-01-2010

✓

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 121 of 2006

Date of Decision : 16.12.2009

Sri Simul Datta

..... Applicant/s

Mr. M. Chanda, Mr. S. Nath & Mrs. U. Dutta

..... Advocate for the  
Applicant/s

- Versus -

U.O.I & Ors.

..... Respondents

Mr.M.U. Ahmed, Addl.C.G.S.C.

..... Advocate for the  
Respondents


**CORAM**

HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J).

HON'BLE SHRI MADAN KUMAR CHATURVEDI, MEMBER (A).

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 their Lordships wish to see the fair copy Of the Judgment ? Yes/No

**Judgment delivered by**

  
Member (J)/Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 121 of 2006

Date of Order: This, the 16<sup>th</sup> Day of December, 2009

HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J).

HON'BLE SHRI MADAN KUMAR CHATURVEDI, MEMBER (A).

Sri Simul Datta  
Son of Shri Dilip Kumar Datta  
Of 171, Mashunda (West), New Barrackpore  
North 24 Parganas, West Bengal  
Pin – 700131.  
Presently working in the capacity of  
Assistant Field Officer (Telecommunication cadre)  
At, Special Bureau, Agartala.

.....Applicant

By Advocate: Mr. M. Chanda, Mr. S. Nath & Mrs. U. Dutta.

-Versus-

1. Union of India  
Represented by the  
Secretary (R & AW)  
Cabinet Secretariat  
Government of India  
Room No. 7, Bikaner House (Annexe)  
Shahjahan Road, New Delhi – 110011.
2. Additional Secretary (Pers)  
Cabinet Secretariat  
Govt. of India  
Room No. 7, Bikaner House (Annexe)  
Shahjahan Road, New Delhi – 110011.
3. Joint Secretary (Pers)  
Cabinet Secretariat  
Govt. of India  
Room No. 7, Bikaner House (Annexe)  
Shahjahan Road, New Delhi – 110011.
4. Deputy Secretary (Pers. B)  
Cabinet Secretariat  
Govt. of India  
Room No. 7, Bikaner House (Annexe)  
Shahjahan Road, New Delhi – 110011.

5. Commissioner  
Special Bureau, Govt. of India  
48-A, Syed Amir Ali Avenue  
Kolkata – 700017.
6. Additional Commissioner  
Special Bureau, Govt. of India  
48-A, Syed Amir Ali Avenue  
Kolkata – 700017.
7. Deputy Commissioner  
Special Bureau, Govt. of India  
Khejur Bagan, Agartala – 799001.
8. Shri S.K. Tripathi  
Additional Secretary (Pers.)  
Cabinet Secretariat  
Room No. 7, Bikaner House (Annexe)  
Shahjahan Road, New Delhi – 110011.

.....Respondents

By Advocate: Mr. M.U. Ahmed, Addl. CGSC.

ORDER  
16.12.2009

HON'BLE MR. MUKESH KUMAR GUPTA, JUDICIAL MEMBER:

Sri Simul Datta, Assistant Field Officer (Telecommunication), Special Bureau, Govt. of India, B.K. House, T.P. Road, Agartala, Tripura, in this application filed under section 19 of the Administrative Tribunals Act, 1985 challenges validity of charge memorandum dated 2<sup>nd</sup> January, 1998 (Annexure – 14) as amended vide corrigendum dated 17<sup>th</sup> February, 1998, which led to passing of penalty of Censure vide order dated 2<sup>nd</sup> March, 2005, as upheld vide order dated 25.07.2005, 03.05.2006 by the Appellate as well as Revisional authorities respectively.

2. Admitted facts are that he was appointed as Assistant Field Officer (Telecommunication) in the year 1992. Vide order dated February,

1996, he was required to attend certain duties. Vide representation dated 7<sup>th</sup> February, 1996, addressed to the Deputy Commissioner, Hathikanda, he request for exemption from duties. Said request was rejected vide memorandum dated 8<sup>th</sup> February, 1996 and he was required to perform duty like other AFOs (Telecommunication) till a regular Pump Operator/Plumber is posted to said station. He made further representation dated 9<sup>th</sup> January, 1997 seeking exemption from said duties assigned to him, in reply thereto vide memorandum dated 17<sup>th</sup> March, 1997, he was warned that his attitude & refusal to carry out assigned duties will be viewed seriously. Commissioner further desired that suitable reflection of his act of misconduct be recorded in his ACR. He submitted a representation addressed to Respondent No. 1, on 12<sup>th</sup> May, 1997 reiterating his earlier request. Said representation was sent to Respondent No. 1 directly by post. Therefore Memorandum dated 14<sup>th</sup> July, 1997 (Annexure - 4) was issued intimating that the job assigned by controlling authority was well within his prerogative. Yet another representation was preferred on 17<sup>th</sup> July, 1997 on the same subject. Vide memorandum dated 16<sup>th</sup> June, 1997 (Annexure - 6) he was conveyed adverse remarks recorded in his ACR for the period 01.04.1997 to 31.03.1997 stating that he refused to perform assigned task. Another memorandum dated 14<sup>th</sup> July 1998 (Annexure - 7) was issued conveying adverse remarks record in his ACR from 01.04.1997 to 31.03.1998. Further Memorandum dated 29<sup>th</sup> June, 1999 (Annexure - 8) was issued conveying adverse remarks for the period 01.04.1998 to 31.03.1999.

3. His grievance is that vide memorandum dated 14<sup>th</sup> January, 1998 (Annexure - 9) as amended on 20.03.1998 (Annexure - 10) certain



period during January 1997 to December 1997 had been treated as "Dies-Non" alleging that he refused to perform the duties assigned. In total 15 days have been treated as 'Dies-Non'.

4. Vide memorandum dated 23 August, 1997 (Annexure - 13) Respondent No.1 sought his explanation why disciplinary action be not initiated against him for sending certain representation by post and not through proper channel. It was further stated that there his allegation has been assigned the job of Plumber was a misrepresentation of facts. He along with other AFOs (T) was also required to operate the Pump, that too, on rotation basis and, if any defect erupts in the pump set, to take sufficient care. Ultimately memorandum dated 2<sup>nd</sup> January, 1998 (Annexure - 14) was issued under Rule 14 of CCS (CCA) Rules 1965 alleging certain misconduct. The gravaman of said charge reads as under :

"That the said Shri Simul Dutta while functioning as AFO (Tele) at SB, Hathikanda during July, 1997 conspicuously mentioned the nature of his duties in the enclosure to his representation dated 17.07.1997 and sent it by post to the address of the Secretary, Cabinet Secretariat, through JS (Pers.), Hqrs. New Delhi. Disclosing information relating to the functioning of the organization in this manner being strictly prohibited, he contravened the Departmental Security Instructions, the official secrets Act and the Intelligence Organization (Restriction of Rights) Act, 1985. By this Act of omission and Commission on his part, Shri Simul Dutta, AFO (T), has acted in a manner unbecoming of a government servant, thereby contravening Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964."

(emphasized supplied)

5. As the aforesaid charge had been denied, an oral enquiry was held and the enquiry officer vide his report dated 23.07.2004

(Annexure – 29) found him guilty of charge framed against him under Rule 3 (iii) of CCS Conduct Rules 1964, read together with DSI, Official Secret Act, 1923 and Intelligence Organizations (Restrictions & Rights) Act, 1985. Said enquiry report was made available requiring him to furnish representation, if any, which opportunity had indeed been availed by him. Ultimately the disciplinary authority/Commissioner, Special Bureau, Kolkata, vide order dated 2<sup>nd</sup> March, 2005 (Annexure – 31) inflicted a penalty of "Censure". Appeal as well as revision petition preferred against the aforementioned penalty were rejected vide orders dated 25.07.2005 and 03.05.2006 (Annexure – 33 & Annexure – 36) respectively.

6. Sri M. Chanda, learned counsel appearing for applicant raised the following contentions:

- (a) Assigning the duty of Plumber/Plump Operator was not justified as he was not recruited either as Plumber or Pump Operator. He was recruited as Assistant Filed Officer. He cannot be compelled to perform any other job except the one related to Telecommunication Cadre.
- (b) His ACR for three consecutive years were spoiled. Disciplinary proceeding was initiated and he was prosecuted twice for the same lapse. Thus Respondents acted in colourable exercise of power strictly prohibited under the law. Respondents insistence to perform the job of Plumber/Plump Operator in itself shows non-judicious and vindictive attitude of the Respondents.

Though he had submitted his representation and denied the allegations, yet the column of integrity in his ACR was left blank. In other words his integrity was doubted. Vide communication dated 06.01.2000 (Annexure – 18) he was intimated that there was nothing adverse against his integrity for the period from 01.04.1997 to 31.03.1998, which stand is contrary to documents placed on record. Charge memorandum had

been issued by Sri S.K. Tripathi, acting as Disciplinary Authority and his statutory appeal was rejected by the said Official in the capacity of Appellate Authority. He had sent advance copy of his grievance's application dated 12<sup>th</sup> May, 1997 to the Hqs, New Delhi by registered post in accordance with the provisions enshrined in Para 16 of Chapter - 1 of the Standing Orders. Rule 3(i) (iii) of CCS (Conduct) Rules do not put restrictions to communicate and raised grievance of employees working in Official Secrets/Top Secret Organization as well as to make their correspondence through Departmental Post only, and therefore he had not communicated any misconduct.

7. The allegation are based on hypothesis and surmises. Not only his ACR was spoiled, he was even transferred, besides treating 15 days as 'Dies-Non'. Thus multiple penalties were imposed. He had never admitted his misconduct. There was no proper charge framed against him. No analysis of evidence was carried out by the inquiry officer. No assessment of evidence was made out by enquiry officer which is violative of Rule 14 (23) of the CCS (CCA) Rules 1965.

8. Learned counsel pointed out that Hon'ble Calcutta High Court by its order dated 19<sup>th</sup> September, 2000 in W.P.C.T. No. 206 of 1999 quashed and set aside the order dated 14.05.1999 passed by Central Administrative Tribunal, Calcutta Bench in O.A. No. 150 of 1999 whereby challenge to his transfer was rejected. In other words his transfer has been declared to be illegal and not justified. Similarly in W.P.C.T. 126 of 2007, vide order dated 04.08.2008, the Respondents were required to reconsider the issue relating to 15 days as 'Dies-Non' by passing a detailed and speaking order. Placing strong reliance on (2006) 4 SCC 713 Narinder

Mohan Arya Vs. United India Insurance Co. Ltd. and Ors., it was emphasized that weightage should be given by authorities in disciplinary proceedings, to inter parties decision of Civil Court based on same facts and same evidence.

9. It was held therein that the enquiry officer was entitled to draw his own inference and so long as the inference drawn by him was supported by some materials on record, a court of judicial review would not interfere therewith. He can not travel beyond the charge. Furthermore, suspicion or presumption can not take the place of proof even in domestic enquiry. Reliance was also placed on (2009) 2 SCC 570 Paras 21-22 Roop Singh Negi Vs. Punjab National Bank and Ors. wherein Narendra Mohan Arya Vs. United India Insurance Co. Ltd., M. V. Bijlani Vs. Union of India & Ors. (2006) 5 SCC 88 and Jasbir Singh Vs. Punjab & Sindh Bank (2007) 1 SCC 566 were reiterated.

10. Learned counsel emphasized that this Tribunal should apply its mind to the facts of the present O.A. with reference to the materials brought on record.

11. Further plea was raised that there had been abnormal delay in concluding the proceedings, initiated against him. Though charge memorandum was issued in the year 1998, but penalty order was passed only on 2<sup>nd</sup> March 2005. Thus seven years time was consumed for the proceedings, which was abnormal. In the above backdrop it was emphasized that the applicant is entitled to the relief, as prayed for.

12. By filing reply, the respondents have contested the claim stating that the system of confidential report has two principle objectives

namely to improve the performance of the subordinate in his present job as well as to assess his potentialities, provide him appropriate feed back and guideline for correcting and improving his performance. The charge memorandum was issued as he had committed security lapse and violated instructions contained in Para 16 (iii) of Chapter 1 of Standing Orders. Since applicant had filed Writ Petition before Hon'ble High Court, charge sheet dated 2<sup>nd</sup> January, 1998 was kept in abeyance and proceedings were started again only after its decision. The proceedings took some time to complete due to frequent charge/change of I.O & P.O. It was contended that present O.A. is hit by the principles of waiver, estoppel and acquiescence.

13. Mr. M.U. Ahmed, learned Addl. Standing Counsel appearing for Respondents contended that lenient view had been taken by the disciplinary authority while imposing the impugned punishment. "Censure" is a mildest penalty. Though enquiry officer proved the charge levelled against the applicant in not performing his duties and violating Rule 3 (iii) of the CCS (Conduct) Rules, yet authorities did not act with punitiveness, rather the penalty of censure was inflicted which in itself would reflect that the respondents acted judiciously. Learned counsel further contended that limited scope of judicial review in disciplinary proceedings, this Tribunal would not like to re-appreciate the evidence. There was overwhelming evidence brought on record to prove the applicant's guilty. Drawing our attention to enquiry report, the orders passed by disciplinary authority as well as orders of appellant and revisional authorities, it was pointed out that various contentions raised by him have been duly noticed and considered and appropriately dealt with. It was

contended that the enquiry was held strictly in accordance with the Rules and procedure laid down in CCS CCA Rules had been followed. The penalty imposed was just and warranted in the given facts and circumstances. The disciplinary authority took a lenient view for proven misconduct on his part, without could have invited a more severe penalty. The entire record had been taken into consideration and having felt that the penalty imposed required no modification, his appeal and revisions were rejected. In the above backdrop it was emphasized that there is no further scope of judicial interference by this Tribunal.

14. We have heard learned counsel for the parties, perused the pleadings and other materials placed on record very carefully.

15. At the outset we may note that the scope of judicial review in disciplinary proceeding has been summarized by Hon'ble Supreme Court in B.C. Chaturvedi Vs. Union of India JT 1995 (8) SC 65, wherein it was observed as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives

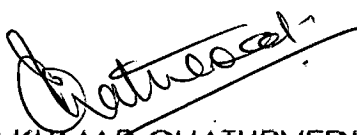
support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence."

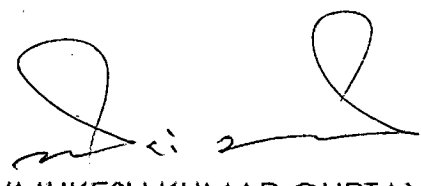
(emphasized supplied)

16. Perusal of enquiry report, reveals that vide Memorandum dated 15.04.1997, it was conveyed to him in specific that the task of operation of turbine pump had been given to all AFO(T)s on rotation basis. His explanation given in his defence was found to be incomplete and misrepresentation of facts. He not only acted in a contemptuous manner while replying to Hqs. Memorandum dated 23.08.1997 but continued to defy his acts during the enquiry. The matter was extremely petty and did not warrant Secretary's attention. He was found guilty of representing directly to the Secretary by enclosing copy of his representation dated 12.05.1997 which was forwarded through normal P&T channels (by registered AD), and therefore committed a breach of security and acted against Official Secret Act and the Provisions of Intelligence Organizations (Restrictions of Rights) Act, 1985. His representation dated 12.05.1997 conspicuously mentioned the exact nature of duties and names of personnel posted at Hathikanda which was a top secret information. He should have sent said communication under an insured cover. On examination of the orders passed by the disciplinary, appellate as well as revisional authorities, we observed that his various contentions have been duly noticed, considered and appropriately dealt with. In our considered view, it is not a case of no evidence, as projected rather there is overwhelming evidence placed on record to establish applicant's guilt and conduct. It is not a ratio of Narinder Mohan Arya, M.

V. Bijiani and Roop Singh Nagi (Sup) cited by applicant that the strict Rule of evidence are applicable in the disciplinary proceedings. What is applicable is the principle of preponderance of probability to prove the charges on the basis of materials placed on record. We may note that enough material to prove said action existed on the record. It is not a case where the applicant has denied submitting of representation dated 12<sup>th</sup> May 1997, rather he admitted in specific that he had sent the said representation by post, as an advanced copy addressed to the Secretary (R & AW) (Respondent No. 1). Furthermore, the relief prayed in the present case is neither relating to adverse communication or transfer order or treatment of certain period of dies-non. Therefore any action taken on said aspects have no bearing with the departmental action for certain proved misconduct.

17. In our considered view, the judgments relied upon by the applicant are totally distinguishable & inapplicable and the same do not assist him in any manner. Taking a cumulative view of the matter, we are of the opinion that the principles of natural justice were duly complied with, he had been afforded a reasonable opportunity of hearing and the penalty imposed is neither disproportionate nor shocking to the conscience of this Tribunal. Therefore finding no merits, O.A. is dismissed. No costs.

  
(MADAN KUMAR CHATURVEDI)  
MEMBER (A)

  
(MUKESH KUMAR GUPTA)  
MEMBER (J)

/PB/



24-PARGANAS(N)  
DISTRICT : 24-PARGANAS

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE.

W.P.C.T. No. 126 of 2007

IN THE MATTER OF:

An application under Article 226  
and 227 of the Constitution of India.

AND

IN THE MATTER OF:

Writ or Writs, Order or Orders,  
Director or Directors in the nature  
of Mandamus, and/or Certiorari  
and/or any other appropriate Writ  
or Writs applicable herein



16/9/08

AND

IN THE MATTER OF :

An order dated 01.09.2006 passed by the Hon'ble Justice B.V. Rao, Judicial Member and Hon'ble Mr. A.R.Basu, Administrative of the Hon'ble Central administrative Tribunal Calcutta Bench in O.A. No. 916 of 1999, thereby dismissing the Original Application without taking into account the facts of the case and matters on record.

AND

IN THE MATTER OF

SIMUL DATTA

Son of Sri Dilip Kumar Datta ,  
residing at Kalpara Villa, House No.  
171 Village Mashurda (West) P.O.  
New Barackpore, District: 24  
Parganas (North) <sup>413</sup> working as,

16/9/08

Assistant filed officer,  
Telecommunication at Special  
Buerau, Hatikanda, Nadia, presently  
working as Deputy Field  
Officer(Telecommunication), Special  
Buerau, Kolkata.

..... Petitioner.

**-Versus-**

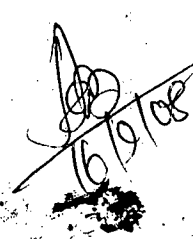
1. The Union of India Service  
through the Secretary,(R & AW)  
Cabinet Secretariat, Government of  
India, Room No.7, Bikaner House  
(Annexe), Shahijahan Road, New  
Delhi-110011
2. Additional Commissioner  
Special Bureau, Government of  
India, 48-A, Syed Amir Ali Avenue,  
Calcutta- 7000017
3. Deputy Commissioner (Tele)  
Special Bureau Government of India

16/9/08

Hathikanda, Mohanpur, Nadia, Pin-  
741246

4. Joint Secretary (Pers) Cabinet  
secretariat, Government of India  
Room No. 7, Bikaner House (Annex)  
Shahjahan Road, New Delhi-  
110011.

..... Respondents.

  
16/9/08

12  
A

214 04.8.08

W.P.C.T. 126 of 2007

Simul Datta

-vs-

Union of India &amp; Ors

Ms. Baisali Ghoshal

... For Petitioner

Mr. Somenath Bose

Mr. Shakeel Mohammad Akhter ... For Respondent

Shorn of all details, the grievance of the petitioner, before the learned Tribunal, was against the order of the respondents treating 15 days as 'Dies-Non' in his service and salary for the aforesaid period was not paid to him in view of departmental order in that respect.

No doubt, petitioner's right and also his service career has been affected by an order of this nature. The fact remains that such an order was passed, whatsoever, without giving any hearing to the petitioner. According to us, this point should have been noticed by the learned Tribunal.

Having heard learned Counsel for the parties, we, set aside the judgment and order of the learned Tribunal and we direct the respondent authorities to reconsider this matter on written representation, being made by the applicant, upon giving hearing to the applicant and passing a speaking order. This shall be done within a period of twelve weeks from the date of receipt of such representation, if made. If no representation is made within one month from the date of receipt of copy of this order, then the order of the learned Tribunal and the order passed earlier by the department will stand revived.

This application is disposed of. There will be no order as to costs.

76/19/08

Date

Office notes, reports, Orders or proceedings with signature

W.P.C.T. 126 of 2007

Urgent xerox certified copy, if applied for, be  
supplied to the parties on priority basis.

SDH K. J. Sengupta, J.  
(Kalyan Jyoti Sengupta, J.)

2 SDH P. Mandal, J.  
(Prasenjit Mandal, J.)

ac

16/9/08

7

To  
The Secretary ( R & A W )  
Cabinet Secretariat  
Government Of India  
Hqrs., New Delhi .

( Through Proper Channel )

**Ref : Order passed by the Hon'ble High Court Kolkata in the matter of  
W. P. C. T . 126 of 2007 on 04.08.2008 ; copy of which received on  
16.09.2008 , enclosed herewith .**

Sir ,

I , Simul Datta , presently working as Deputy Field Officer  
( Tele- Communication Cadre ) , at TP / WT Section , SB , Kolkata , respectfully  
submit before your lordship as hereunder for a kind perusal and sympathetic  
reconsideration , please :-

( 1 ) That vide the letter of appointment dated 22.09.1992 , I was recruited to the  
post of Assistant Field Officer , Tele Communication Cadre ( in short AFO(Tele) )  
to perform the Wireless-Telegraphy Radio-Telephony radio telecommunication  
operational jobs ( in short WT / RT jobs ) through Electronics Transmitter and  
Receiver - Equipments , as hereunder :-

( a ) Rule 39 of our organization - Research And Analysis Wing ( Recruitment ,  
Cadre and Service ) Rules , 1975 ( in short R & A W ( R C S ) Rules , 1975 ) -

" the nature of duties of the members of the Tele - Communication Cadre shall  
generally be to procure , operate and maintain electronic and telecommunication  
equipments required for the work of the organization and also to collect  
intelligence through electronic means . "

( b ) Paragraph 12 of Chapter III of the our organization's Departmental  
Standing Orders ( in short D S O ) -

Paragraph 12 .

TELECOMMUNICATION CADRE

Assistant Field Officers / Deputy Field Officers  
/ Field Officers and Assistant Technical  
Officers ( in short AFOs / DFOs / FOs &  
ATOs ) are expected to serve in their  
respective grades at a monitoring /  
telecommunication operational unit .

( 2 ) That while I was working as Assistant Field Officer ( Tele- Communication Cadre ) at SB , Hathikanda , vide the memorandum dated 08.02.1996 I was directed to perform the duties of the post of Plumber till a Plumber / Pump Operator is posted at SB , Hathikanda .

( 3 ) That in compliance with the direction of the Superior Officer as contained in the said office memorandum dated 08.02.96 , I was performing the said duties of the post of Plumber , at Pump House Station of SB, Hathikanda which is located at staff- family quarter complex area ( about 1 K. M. away from the office complex telecom monitoring / operational unit ) , in addition to the duties of my post of Assistant Field Officer ( Tele-Communication Cadre ) at the monitoring / telecommunication operational unit of SB , Hathikanda .

( 4 ) That as above I was to perform the said duties of the post of Plumber at the said Pump House Station at the staffs family quarter complex area in front of the staffs family members even in front of the family members of Group - D staff members and as such I became known to them as Plumber .

( 5 ) That it is submitted from serial No. 15 of the table of paragraph No. 122 of our organization - Research And Analysis Wing ( Recruitment , Cadre and Service ) Rules , 1975 that the post of Plumber belongs to Miscellaneous Cadre and as such the post of Plumber does not belong to the Tele-Communication Cadre in which my post of Assistant Field Officer belongs to .

( 6 ) That as above the post of a Plumber is under the Miscellaneous Cadre which is not at all at par with the cadre of my post Assistant Field Officer herein and absolutely different from each other , in regard to nature of jobs as well as the scale of pay , in as much as , the scale of pay of the Assistant Field Officer ( Tele Communication Cadre ) is in the Grade of S - 7 in Rs. 4000 - 100 - 6000/- and the scale of pay of the Plumber ( Miscellaneous Cadre ) is in the grade of S - 5 in Rs. 3050 - 75 - 3950 - 80 - 4590 /- in accordance with the CCS ( Pay ) Rules , 1986 .

( 7 ) That as above in compliance with the direction of the Superior Officer I was to perform the said duties of the post of Plumber / demotion duties and / or the duties of another cadre and /or the duties of below pay-grade at the said Pump House Station after attending the duties of Assistant Field Officer ( Tele-Communication Cadre ) at the monitoring / telecommunication operational unit .

( 8 ) That for operating High Voltage / wattage three phase Electric Pump Motor , I had / has no license and / or professional certificate and /or the certificates as stipulated by the authority of Government Of India in this regard , as enshrined in the Electrical Rules and Regulations as made for the purpose of taking life safety- precaution measure of human life so as to avoid untoward



incident / sudden accidental death due to lack of knowledge of working in above-mentioned high voltage / wattage electrical field .

( 9 ) That though I was performing the said Plumber duties as per the above-mentioned direction ( dated 08.02.96 ) of my Superior Officer , many times I verbally requested the then Assistant Commissioner ( Tele ) , Deputy Commissioner ( Tele ) , SB , Hathikanda and Deputy Commissioner ( Admin ) , SB , Kolkata respectively to exempt me from the said duties of the post of Plumber . Deputy Commissioner ( Admin ) , SB , Kolkata , verbally advised me to place my request in writing and accordingly from after ten months of the receipt of the direction dated 08.02.1996 , I started to submit my representation to next to next my Superior Officer , following the norms of our Departmental Standing Orders in this regard, seeking exemption from the said Plumber duties . But I was not exempted from the said duties of the post of Plumber ; instead of , in various ways numbers of vindictive actions / injustices and harassments were instituted against me and numbers of punishment orders on this or that as their own were issued against me , for which finally I was compelled to move O As before the Hon'ble Tribunal and as such I have been being fixed for spending large amount of money from my salary on regular basis for advocates, filing charges , etc. for last 11/12 years .

( 10 ) That while on the subject it needs to be mentioned that all my above-mentioned Superior Officers agreed ( verbally ) the point that the duties of the staff-member of below rank / another cadre like Plumber , Sweeper can not be allotted to the staff members of my post Assistant Field Officer of Tele-Communication Cadre .

( 11 ) That it is however and/or whatever , in compliance with the direction of the Superior Officer as above, after attending the duties of the post of Assistant Field Officer (Tele-Communication Cadre) at the monitoring / telecommunication operational unit , I was performing the said duties of the post of Plumber , among the staff family members , at the said Pump House Station of SB , Hathikanda , to supply water at staffs family quarters .

( 12 ) That during the pendency of the said OAs before the Hon'ble Tribunal , Kolkata , Shri Ananta Bhakat , a staff member of the post of Plumber , joined at SB , Hathikanda and since then I was exempted from the said duties of the post of Plumber .

( 13 ) That at present , at SB , Hathikanda , the said duties of Plumber are carried out by Shri Ananta Bhakat , Plumber and in absence of him and /or on his leave / off - duty - days , the said duties of Plumber are carried out by the staff members of the posts of Group-D .

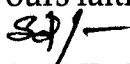
(14) That it is true that out of three years of my service from February 1996 to July 1998 on various 15 days ( not at a stretch , on different dates ) , after performing the said duties of my post Assistant Field Officer ( Tele-Communication Cadre ) at the Monitoring Unit of SB , Hathikanda to collect intelligence through electronic equipments , I became failed to attend at the said Pump House Station located at the staffs family quarter complex area ( about 1 K. M. away from the office complex telecom monitoring / operational unit ) to perform the said duties of the post of Plumber to supply water at SB , Hathikanda staffs family quarters .

(15) That vide the Minor Charge-Sheet dated 14.01.1998 under Government Of India's Instruction ( 6 ) of Rule 11 of CCS ( CCA ) Rules , 1965 , the aforesaid period of the 15 days of my service had been proposed to be treated as ' Dies - Non ' and finally issued the punishment order dated 03.12.1998 declaring the said 15 days as ' Dies - Non ' without break-in-service and deducted Rs. 2440/- from my salary and further on the same reason of being failed to perform the said duties of the post of Plumber , my Annual Confidential Reports ( in short ACRs) for three consecutive years from April 1996 to March 1999 were adversely marked and in various ways instituted numbers of vindictive actions / injustices and harassments and issued numbers of punishment orders on this or that against me .

(16) That on those said 15 days I was present full duty hours at the office and performed the duties of Assistant Field Officer (Tele-Communication Cadre) at the monitoring unit of the office complex area of SB , Hathikanda to collect intelligence through the electronic equipments .

(17) I , therefore , beseech upon Your Honour that the above-mentioned matter may kindly be sympathetically reconsidered and I may kindly be refunded the said amount of Rs. 2440/- which was deducted from my salary marking , as above , the said 15 days of my service as ' Dies-Non ' without break-in-service and I may kindly also be relieved from the aforesaid ACRs adverse reports and the office memorandums and orders which are affectively / adversely entered in my service records on the same cause as I failed to perform the said duties of the post of Plumber .

Enclo : Above-mentioned Order of the Hon'ble  
High Court , Kolkata .  
Date : 26.09.2008  
Place : TP/WT section ,  
SB , Kolkata .

Yours faithfully  
  
( SIMUL DATTA )  
Deputy Field Officer (Tele)  
ID NO. 03349- V .

IN THE HIGH COURT AT CALCUTTA

Appellate/Revisional Civil Jurisdiction

Present :

The Hon'ble Justice S. Satya Brata Sinha

and

The Hon'ble Justice Pratap Kumar Ray.

WCT. No. 206

of 1999.

Simul Datta

VS.

The Union of India & Ors.

For Appellant/Petitioner Mr. Bishan Chandra Ghoshal,  
Mrs. Baisali Ghoshal.

For Respondent, Opposite Party Mr. Priyabrata Mukherjee,  
Mr. Anil Kumar Gupta.

Heard on :

&

Judgement on: 19.9.2000.

Satya Brata Sinha, J:

This application is directed against the judgment and order dated 14.5.99 passed by the Central Administrative Tribunal, Calcutta Bench, in O.A. No. 150 of 1999 whereby and

...2

6.11.2000

whereunder the petitioner's application questioning the order of transfer was dismissed. The petitioner was appointed by the respondent in the post of Assistant Field Officer (AFO), Telecommunication Operational Tasks. According to the petitioner, he was asked to perform as Plumber/Pump Operator instead of working as Telecom Operational Tasks. He refused to do so and as such the impugned order of transfer was passed. The aforementioned order of transfer was questioned on various grounds, namely: (1) the same is contrary to the transfer policy laid down by the respondents as contained in annexure 'D' to the affidavit-in-reply which inter alia prohibits the transfer of low-paid employee unless the conditions laid down therein are satisfied.

(2) Several other employees who have been working for more than 5 years at the same place has not been transferred.

(3) The order of transfer is violative of Articles 14 and 16 of the Constitution of India as the same is penal in nature.

The contention of the respondent on the other hand is that the petitioner had been transferred as he had been working at Hathikanda for a period of 3 years.

Having regard to the order proposed to be passed by us it is not necessary to consider the fact of the matter in great details. Suffice it to point out that the learned Tribunal itself in its impugned order noticed:

"It has also been pointed out that the applicant has lifted photocopies of the classified documents vide Annexure- 'E' to the O.A. unauthorisedly. The Departmental security instruction forbade the employees

6.11.2011

(30)

of the Department to take up the photo copies of the classified documents to be used in this manner. He has thus committed a security breach which further establishes the propensity of contravening the security instructions. This point has not been taken seriously by the competent authority".

The aforementioned contention raised on behalf of the respondent herein clearly manifests that the foundation of the order of transfer was based upon the purported act of propensity of contravening the security on the part of the petitioner herein and thus the same was issued by way of or in lieu of punishment.

In this view of the matter, we are of the opinion that the order of transfer having been passed by way of punishment is wholly unsustainable and the order of transfer being penal in nature must be passed upon compliance of the principle of natural justice and not otherwise.

For the reason aforementioned, the impugned order passed by the learned Tribunal cannot be sustained which is set aside accordingly and the original application of the petitioner herein is allowed.

This order however shall not stand in the way of the respondent to pass an appropriate order in accordance with law.

It is stated by the learned counsel for the petitioner that the period of absence of the petitioner from 1.6.99 to 14.10.99 should be directed to be regularised in view of the stand taken by the respondent in his order dated 3.11.99 as contained in annexure 'J' to the affidavit-in-reply. If the observation to that effect has been made by the <sup>respondent</sup> himself in the aforementioned order, it is not necessary to issue an direction in this regard.

The application is allowed with the aforementioned observation.

Pratap Kumar Ray, J.

I Agree.

acc

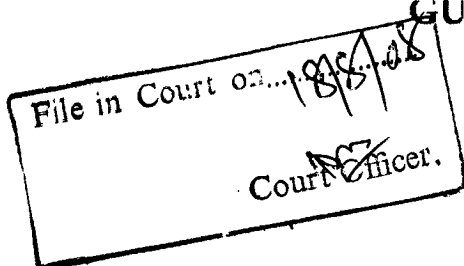
Pratap Kumar Ray (C)

6.11.2000

35

Filed by the applicant  
through u. Datta, Adv.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI



O.A. No. 121 /2006

Sri Simul Datta.

-Vs-

Union of India & Ors.

LIST OF DATES

- 22.09.1992- Applicant was appointed as Asstt. Field Officer in the Telecommunication cadre of respondent No. 3.
- 08.02.1996- Asstt. Commissioner (Tele) issued memorandum directing the applicant to perform the Pump house duty till a regular pump operator/plumber is posted to the station.  
(Annexure- 1, page- 44)
- 17.03.1997- In reply to the applicant's representation Respondent No. 5, ordered not to exempt the applicant from the Plumber duties.  
(Annexure- 2, page- 45)
- 12.05.1997- Applicant submitted representation Seeking exemption from the said Plumber Duties.  
(Annexure- 3, page- 46)
- 14.07.1997- Applicant was intimated that the job of Plumber/Pump Operator duty as assigned to him by his controlling officer is well within prerogative of his controlling officer. (Annexure- 4, page- 51)
- 17.07.1997- Applicant did not receive copy of the reply from the office of respondent No. 1, therefore he submitted the representation dated 12.05.97 again through posts. (Annexure- 5, page- 52)
- 16.06.1997/13.06.1997- Adverse remarks recorded in the ACR from the period 01.04.96 to 31.03.1997 communicated to the applicant.  
(Annexure- 6, page- 54)
- 23.08.1997- Respondent No.4 issued memorandum with reference to the representation dated 17.07.97 of the applicant addressed to the Secretary seeking exemption from performing plumber/pump operator duties. It is stated that had this representation of the applicant fallen into the hands of some unscrupulous elements, it would caused serious damage to the security of the department. As such applicant was directed to explain as to why disciplinary action should not be taken against him. (Annexure-13, page- 61)
- 10.09.1997- Applicant submitted his representation on 10.09.97 against the memorandum dated 23.08.97.
- 02.01.1998- Respondent No. 2, issued memorandum of charge-sheet under Rule 14 of CCS (CCA) Rules, 1965 stating that applicant sent a

representation dated 17.07.97 addressed to the Secretary, Cabinet Secretariat, New Delhi by post enclosing therewith a copy of his representation dated 12.05.97. It is alleged that by this act applicant has acted unbecoming of a government servant in direct contravention of Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964.

(Annexure- 14, page- 63)

It is stated that the proceeding has been initiated against the applicant under Rule 14 of CCS (CCA) Rules 1965 only on the "apprehension" that if the letter would have been mis-delivered to a wrong address, in that event there may be chances of leakage of the nature of duties of the applicant indicated in his representation dated 12.05.97 and which might have caused a breach of security of the department since the applicant is governed under the Official Secret Act and the Intelligence Organisation (Restriction of Rights Act 1985).

- 14.01.1998-** Additional Commissioner issued memorandum to the applicant alleging that he refused to perform the pump house duties allotted to him in addition to the regular operational duties on the days mentioned in the memorandum. As such it was proposed to treat those days as "dies-non". (Annexure- 9, page- 57)
- 30.03.1998-** Respondent No.3 appointed Sri A.V.K. Rao, Technical Officer (Tele) as Inquiry authority. (Annexure-15, page- 67)
- 14.07.1998-** Adverse remarks recorded in the ACR from the period 01.04.97 to 31.03.1998 communicated to the applicant. (Annexure- 7, page- 55)
- 14.07.1998-** Respondents intimated the applicant that for want of completion of disciplinary enquiry his integrity column in ACR had left blank and further communication in this regard would follow on culmination of the above-mentioned D.E proceedings. (Annexure- 16, page- 68)
- 15.07.1998-** Shri A. V. K. Rao, I.O directed the applicant to attend the preliminary hearing of the above-mentioned D.E. on 27.07.98.
- 23.07.1998-** Inquiry Officer intimated that the preliminary hearing on 27.07.98 stands postponed due to certain procedural inconvenience. (Annexure-17, page- 69)
- 06.01.2000-** Competent Authority, Hqrs., New Delhi intimated that there was nothing adverse against the applicant in ACR for the period 01.04.97 to 31.03.1998. (Annexure-18, page- 70)
- 19.09.2000-** The Hon'ble High Court, Kolkata in W.P.T.C. of No. 206/1999 pleased to set aside the punishment transfer order (to Tuensang, Nagaland, N.E. Region) of the applicant issued by the respondent No. 3 as the applicant refused to do the duties of Plumber/Pump Operator instead of working as Telecom Operational Tasks. (Annexure- 19, page- 71)

- 14.05.2001- Applicant joined at Agartala on transfer from Hatikanda, West Bengal.
- 11.06.2001- Disciplinary Authority appointed Shri G.S. Banerjee as Presenting Officer and thereby re-opened the D.E. (on the Charge-sheet dated 02.01.1998). (Annexure- 20, page- 74)
- 26.04.2002- Applicant attended the hearing of the above-mentioned reopened D.E on 26.04.2002. (Annexure- 21, page- 75)
- 14.08.2002- Applicant attended the hearing. (Annexure- 22, page- 76)
- 07.11.2002- I.O directed the P.O to supply some documents to the applicant.
- 04.11.2003- Shri T.N. Prasad was appointed as changed I.O.
- 30.12.2003- I.O was again changed and Shri Y.V. Dayal was appointed as I.O.
- 15.05.2004- The hearing of the above-mentioned reopened D.E was held on 15.05.2004 but on that day the applicant could not attend due to illness of his wife. (Annexure- 23, page- 77)
- 12.06.2004- Applicant attended the hearing of the inquiry proceeding. (Annexure- 24, page- 79)
- 18.06.2004- Inquiry officer, communicated the memorandum dated 18.06.2004 admitting that the applicant did not commit any civil or criminal offence and the respondents organizations official daks are sent through the department of Post and so on. (Annexure- 25, page- 82)
- 05.07.2004- Applicant attended the hearing. (Annexure- 26, page-86)
- 08.07.2004- Presenting Officer submitted brief dated 08.07.2004 alleging that the charges are proved. (Annexure- 27, page- 90)
- 21.07.2004- Applicant submitted his representation on 21.07.2004 against the P.O's brief. (Annexure- 28, page- 93)
- 23.07.2004- Inquiry Officer submitted I.O's report without considering the grounds raised by the applicant in his written brief found the applicant guilty on the basis of "apprehension" and concluded that he could be absolved of charges framed against him under Rule 3 (i) of CCS Conduct Rules, 1964. He, however, is found guilty of charges framed against him under Rule 3 (iii) of the said rules. (Annexure- 29, page- 107)

It is stated that the gist of Official Secrets Act-1923, Intelligence Organisation (Restriction of Rights) Act 1985 and the respondents' Departmental Security Instructions is as hereunder: -

"The Central Civil Service (Conduct) Rules prohibit a government servant from communicating, without authority, to anyone."



The Official Secrets Act 1923, Intelligence Organizations (Restriction of Rights) Act 1985 and the respondents' Departmental Security Instructions do not restrict the officials of the respondents' department to communicate his/her grievance representation to the Superior officers of the respondents' department.

The I.O failed to appreciate the Official Secrets Act-1923, Intelligence Organisation (Restriction of Rights) Act 1985 and the respondents' Departmental Security Instructions in proper perspective and most arbitrarily held the applicant guilty of charges framed against him under Rule 3 (iii) of the CCS Conduct Rules, 1964.

- 14.10.2004- Applicant received I.O's report dated 23.07.2004.
- 29.10.2004- Applicant submitted his representation against the I.O's report to the respondent No.5. (Annexure- 30, page- 111)
- 02.03.2005- Respondents imposed penalty of Censure upon the applicant. (Annexure- 31, page- 121)
- 18.04.2005- Applicant submitted his appeal before the Appellate authority. (Annexure- 32, page- 123)
- 25.07.2005- Appellate Authority rejected the appeal of the applicant. (Annexure- 33, page- 130)
- 23.11.2005- Applicant submitted his representation dated 23.11.05 addressed to the respondent No. 1 - Reviewing Authority. (Annexure- 34, page- 133)
- 20.03.2006- Applicant submitted representation to the respondent No. 1, for grant of 1<sup>st</sup> ACP w.c.f. 12.10.04 instead of 25.08.05. (Annexure- 35, page- 137)
- 03.05.2006- Revisional authority without application of mind has confirmed the order of penalty dated 02.03.05 by the order dated 03.05.06. (Annexure- 36, page- 138)

Applicant in support of his contention relies upon the following decisions:

1. Judgment and order dated 05.01.2006 passed by the CAT, Principal Bench, New Delhi in the case of Sohanbir and Others -Vs- Govt. of NCT of Delhi and others. Reported in (2006) 2 ATJ 106.
2. Judgment and order dated 15.12.1999 in the case of Sh. Budh Singh -Vs- Delhi Vidyut and Another (Delhi High Court). Reported in (2000) 3 SLJ 224.

# CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

G. A. R. 6

[See Rule 22 (1)]

RECEIPT

39

No. 1962

Date. 30/5/2006

Received from Simul Dutta with

Letter No. OA 121/06 dated 20 20

the sum of Rupees Fifteen only

In cash/by IPO on account of Service ch. for excess receipt  
by bank draft

..... in payment of .....

Signature

Rs. 15/-

Algo  
Cashier

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

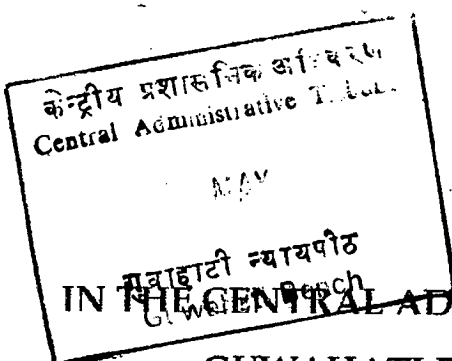
ORIGINAL APPEAL NO. \_\_\_\_\_

*Sri Semul Datta*

1. a) Name of the Applicant:-
- b) Respondants:- Union of India & Ors
- c) No. of Applicant(S) :- *One*
2. Is the application in the proper form:- Yes/~~No~~.
3. Whether name & description and address of the all papers been furnished in cause title :- Yes/~~No~~.
4. Has the application been duly signed and verified :- Yes/~~No~~.
5. Have the Copies duly signed :- Yes/~~No~~.
6. Have sufficient number of copies of the application been filed:-Yes/~~No~~.
7. Whether all the annexure parties are impleaded :-Yes/~~No~~.
8. Whether English translation of documents in the Language : Yes/~~No~~.
9. Is the application in time :- Yes/~~No~~.
10. Has the Vakalatnama/Memo of appearance/Authorisation is filed:-Yes/~~No~~.
11. Is the application by IFO/BD/For Rs: 5/- *IP.O. No 266, 319561*  
*27.2.2006*
12. Has the application is maintainable :- Yes/~~No~~.
13. Has the Impugned order original duly attested been filed : Yes/~~No~~.
14. Has the legible copies of the annexures duly attested filed:-Yes/~~No~~.
15. Has the Index of documents been filed all available:- Yes/~~No~~.
16. Has the required number of enveloped bearing full address of the respondents been filed:- Yes/~~No~~.
17. Has the declaration as required by item 17 of the form:- Yes/~~No~~.
18. Whether the relief sought for arises out of the single :- Yes/~~No~~.
19. Whether the interim relief is prayed for :- Yes/~~No~~.
20. In case of condonation of delay is filed is it supported :-Yes/~~No~~.
21. Whether this Case can be heard by ~~Single Bench~~/Division Bench:
22. Any other point:- *Yes*
23. Result of the Scrutiny with initial of the Scrutiny clerk the application is in order:-

*[Signature]*  
SECTION OFFICER(J)

*[Signature]*  
DEPUTY REGISTRAR



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

O.A. No. 121 /2006

Sri Simul Datta.

-Vs-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 22.09.1992- Respondent No. 3 appointed the applicant as Assistant Field Officer in the Telecommunication cadre of the respondents department to perform the job of Telecommunication duties.
- 08.02.1996- The respondents concerned directed the applicant to perform the duties of Plumber till a Plumber/ Pump Operator is posted at SB, Hathikanda. (Annexure- 1)
- 17.03.1997- Respondent No. 2, ordered not to exempt the applicant from the said Plumber duties and the applicant's attitude and refusal to carry out the said Plumber duties would be seriously viewed. (Annexure- 2)
- 12.05.1997- Seeking exemption from the said Plumber Duties, the applicant submitted his representation addressed to the respondent No. 1 on 12.05.97. (Annexure- 3)
- 14.07.1997- The respondents concerned intimated the applicant that the job of Plumber/Pump Operator duty, as assigned to the applicant - AFO (T), by his controlling officer is well within his prerogative and no further representation on this will yield any reply. (Annexure- 4)
- 17.07.1997- Applicant sent advance copy of the aforesaid grievance representation (12.05.97) through the department of Post (to) the respondents organization Hqrs., New Delhi on 17.07.97. (Annexure- 5)
- 23.08.1997- Respondent No.4 issued Show Cause Notice. (Annexure-13)
- 10.09.1997- Applicant submitted his representation on 10.09.97 against the above show cause notice (23.08.97).
- 02.01.1998- Respondent No. 2, issued a major charge-sheet against the applicant under Rule 14 of CCS(CCA) Rules, 1965 framing the article of charge with allegation of contravention of Rule 3(i) (iii) of CCS (Conduct) Rules, 1964 (i.e. the charge of integrity in doubt/acted in unbecoming way of a government servant) on an imagination only. (Annexure- 14)

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- 17.02.1998- Communicated Corrigendum dated 17.02.98 in respect of the correction of the above charge sheet (02.01.98).
- 30.03.1998- Respondent No.3 proposed Departmental Enquiry (herein after D.E.) on the above charge sheet (02.01.98) vide the Office Order dated 30.03.98.  
(Annexure-15)
- 14.07.1998- The respondents concerned intimated the applicant that for want of completion of above-mentioned D.E. his integrity column had left blank and further communication in this regard would follow on culmination of the above-mentioned D.E proceedings.  
(Annexure- 16)
- 15.07.1998- Shri A. V. K. Rao, the then Inquiry Officer directed the applicant to attend the preliminary hearing of the above-mentioned D.E. on 27.07.98.
- 27.07.1998- Inquiry Officer intimates that the preliminary hearing of the above-mentioned D.E. on 27.07.98 stands postponed due to certain procedural inconvenience.  
(Annexure-17).
- 06.01.2000- Competent Authority, Hqrs., New Delhi intimated that there was nothing adverse against the applicant for the said period i.e. during the period in which the said charge-sheet dated 02.01.1998 was initiated against the applicant.  
(Annexure-18)
- 19.09.2000- The Hon'ble High Court, Kolkata passed, on 19.09.2000, the Judgement in the matter of W.P.T.C. of No. 206/1999 and cancelled the punishment transfer order (to Tuensang, Nagaland, North East Region) which was ordered by the respondent No.3 as the applicant refused to do the duties of Plumber/Pump Operator instead of working as Telecom Operational Tasks.  
(Annexure- 19)
- 14.05.2001- Respondent No. 3 ordered to proceed on transfer from Hathikanda to Agartala and accordingly the applicant joined at Agartala on 14.05.2001.
- 11.06.2001- Disciplinary Authority, re-proposed D.E. (on the same Charge- sheet dated 02.01.1998) and as such the closed matter of said D.E. was reopened; vide the office order dated 11.06.2001.  
(Annexure- 20)
- 26.04.2002- The applicant attended the hearing of the above-mentioned reopened D.E on 26.04.2002.  
(Annexure- 21)
- 14.08.2002- Applicant attended the hearing of the above-mentioned reopened D.E on 14.08.2002.  
(Annexure- 22)
- 15.05.2004- The hearing of the above-mentioned reopened D.E was held on 15.05.2004 but on that day the applicant could not attend due to illness of his wife.  
(Annexure- 23)
- 12.06.2004- Applicant attended the hearing of the above-mentioned reopened D.E on 12.06.2004.  
(Annexure- 24).

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- 18.06.2004- Inquiry officer, communicated the memorandum dated 18.06.2004 admitting that the applicant did not commit any civil or criminal offence and the respondents organizations official daks are sent through the department of Post and so on. (Annexure- 25)
- 05.07.2004- Applicant attended the hearing of the above-mentioned reopened D.E. on 05.07.2004. (Annexure- 26)
- 08.07.2004- The Presenting Officer submitted brief dated 08.07.2004 alleging that the applicant has undoubtedly acted in a manner which is unbecoming of a government servant. (Annexure- 27)
- 21.07.2004- The applicant submitted his representation on 21.07.2004 as his defence against the above. (Annexure- 28)
- 23.07.2004- Inquiry Officer in his Enquiry Report dated 23.07.04 has found the applicant guilty of charges of unbecoming of a Government servant under Rule 3(iii) of CCS Rules, 1964. (Annexure- 29)
- 29.10.2004- Applicant submitted his representation on 29.10.2004 to the respondent No.5. (Annexure- 30)
- 02.03.2005- Respondents imposed penalty on the applicant. (Annexure- 31)
- 18.04.2005- Applicant submitted his appeal before the respondent No. 2. (Annexure- 32)
- 25.07.2005- Appellate Authority rejected the appeal of the applicant through the office order dated 25.07.2005. (Annexure- 33)
- 23.11.2005- Applicant submitted his representation dated 23.11.05 addressed to the respondent No. 1 - Reviewing Authority. (Annexure- 34)
- 20.03.2006- Applicant submits his representation, addressed to the respondent No. 1, on 20.03.2006. (Annexure- 35)
- 03.05.2006- Revisional authority without application of mind has confirmed the order of penalty dated 02.03.05 by the order bearing letter No. 40/41/91-Pers. 13. Vol.IV-5052 dated 03.05.06. (Annexure- 36)

### PRAYERS

#### Relief (S) sought for:

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned charge sheet bearing memorandum No. 65/3/97-CAL (PERS.)-112 dated 02.01.1998 (Annexure-14), followed by corrigendum No. 65/3/97-CAL (PERS.)- dated 17.02.98, impugned Penalty Order of No. 65/3/97-Kol (Pers.)-2855 dated 02.03.2005 (herein

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Annexure- 31), the impugned Office Order of No. 40/41/91-Pers.13-Vol. IV -10333 dated 25.07.2005 (herein Annexure- 33) by which rejected the appeal dated 18.04.2005 (herein Annexure- 32) of the applicant and the impugned revisional authority's order bearing letter No. 40/41/91-Pers. 13. Vol.IV-5052 dated 03.05.06 (Annexure- 36).

2. Cost of the application;
3. And to pass such further or other Order or Orders and/or Direction or Directions as to this Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

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

1. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this original application shall not be a bar to the respondents for providing the relief as prayed for.
-

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

12/11/06

गुवाहाटी न्यायपीठ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

Title of the case : O. A. No. 121 /2006

SIMUL DATTA. : Applicant

-VS-

UNION OF INDIA & ORS. : Respondents.

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Filed by:

Date:

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

ORIGINAL APPLICATION NO. 121 / 2006.

44  
filed by the applicant  
through: S. N. K.  
S. N. K.  
19.05.06

BETWEEN:

1) SIMUL DATTA

Son of Shri Dilip Kumar Datta,  
Of 171, Mashunda (West), New Barrackpore,  
North 24 Parganas, West Bengal, Pin - 700131,  
Presently working in the capacity of Assistant  
Field Officer (Telecommunication cadre), at  
Special Bureau, Agartala.

.....Applicant.

-VERSUS-

1. Union of India

Represented by the  
Secretary (R& AW)  
Cabinet Secretariat  
Government of India  
Room No. 7, Bikaner House (Annexe)  
Shahjahan Road, New Delhi -110011.

2. Additional Secretary (Pers)

Cabinet Secretariat  
Govt. of India  
Room No. 7, Bikaner House (Annexe)  
Shahjahan Road, New Delhi -110011.

3. Joint Secretary (Pers)

Cabinet Secretariat  
Govt. of India  
Room No. 7, Bikaner House (Annexe)  
Shahjahan Road, New Delhi -110011.

4. Deputy Secretary (Pers. B)

Cabinet Secretariat  
Govt. of India  
Room No. 7, Bikaner House (Annexe)

Simul Datta

Shahjahan Road, New Delhi -110011.

5. Commissioner  
Special Bureau, Govt. of India  
48-A, Syed Amir Ali Avenue, Kolkata - 700017.
6. Additional Commissioner,  
Special Bureau, Govt. of India  
48-A, Syed Amir Ali Avenue, Kolkata - 700017.
7. Deputy Commissioner  
Special Bureau, Govt. of India  
Khejur Bagan, Agartala - 799001.
8. Shri S.K. Tripathi,  
Additional Secretary (Pers.)  
Cabinet Secretariat.  
Govt. of India,  
Room No. 7, Bikaner House (Annexe)  
Shahjahan Road, New Delhi -110011.

.....Respondents.

#### DETAILS OF APPLICATION

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

The applicant begs to move this application before this Hon'ble Tribunal against the following memorandums and which were issued against the applicant on the same cause that the applicant lodged his grievance against the said Plumber duties and out of 3 years of his service at SB, Hathikanda (i.e. February '96 to July '98) the applicant could not perform the said Plumber duties in addition to his telecommunication duties only on 15 days which were treated by the respondent No.6 as Dies-Non -

- 1) Memorandum of No. 1/100/96/HK-648 dated 08.02.1996 (herein Annexure-1) through which the respondents concerned directed the applicant to perform the duties of Plumber till a Plumber/Pump Operator is posted at SB, Hathikanda.
- 2) Memorandum of No.1/100/96/HK-1094 dated 17.03.1997 (herein Annexure-2) through which it was informed to the applicant that Shri S. K. Tripathi, the then

*Simul Datta*

respondent No. 5, presently holding the post of respondent No. 2, ordered not to exempt the applicant from the said Plumber duties and not only that, further the respondent Shri S.K. Tripathi threatened that the applicant's attitude and refusal to carry out the said Plumber duties would be seriously viewed, suitable departmental proceedings would be initiated if the lapses on the part of the applicant persists and Shri S. K. Tripathi further desired that suitable reflection in the applicant's ACR would be made;

- 3) Memorandum of No.1/100/96/HK - 3192 dated 14.07.97 (herein Annexure-4) vide which the respondents concerned intimated to the applicant that job of Plumber/Pump Operator duty, as assigned to the applicant - AFO (T), by his controlling officer is well within his prerogative and no further representation on this will yield any reply;
- 4) Vide memorandum No. 4/41/97-CCR 805 dated 16/13.06.1997 adverse remark entered into the annual confidential report of the applicant from the period of 01.04.1996 to 31.03.1997 on the alleged ground of refusal to perform assigned task of plumber duties in terms of Deputy Commissioners memorandum No. 1/100/96/HK-1099 dated 17.03.1997.
- 5) Again adverse entry recorded in the annual confidential report of the applicant for the period from 01.04.1997 to 31.03.1998 reflecting adverse remarks on account of alleged refusal of plumber duties which is communicated through memorandum bearing letter No. 4/20/98CCR-1350 dated 14.07.1998 in terms of the direction contained in the memorandum bearing letter No. 1/100/96/HK-1094 dated 17.03.1997.
- 6) Further adverse entry recorded in the annual confidential report for the period from 01.04.1998 to 31.03.1999 through memorandum issued under letter No. 4/23/99-CCR-1094 dated 29.06.1999 in the light of the instruction contained in the memorandum dated 17.03.1997 for alleged refusal performing plumber duties for 15 (fifteen) days within a span of 3 years i.e. from February '96 to July '98.

*Sirind Datta*

- 7) Vide memorandum issued under letter No. 21/11/96/CAL (Pers)-665 dated 14.01.1998, whereby, it has been proposed to treat 15 (fifteen) days as "Dies-non" as per Govt. of India's instruction contained in sub-rule (6) of rule 11 of CCS (CCA) rules 1965 and further directed to submit written statement if any within 10 (ten) days, however the days mentioned in the memorandum dated 14.01.1998 has been rectified subsequently through corrigendum issued under letter No. 21/11/96/CAL (Pers)-5744 dated 20.05.1998 on the alleged ground of refusal for performing plumber duties.
- 8) Vide order bearing No. 21/11/96-CAL (Pers) 10022-27 dated 27.08.1998 whereby, it has been ordered to treat fifteen days as Dies-non for all purposes i.e. increment, leave and pension in respect of the applicant in terms of the Controller and Auditor General's U.O No. 1947-A/438-58 dated 12.09.1958 and also in terms of the Govt. of India's decision No. 1 below rule 27 of CCS pension rules 1972, treated the following period as Dies-non does not for all purposes. However, the said order was further rectified by way of corrigendum vide letter dated 01.12.1998.
- 9) Show-Cause Notice being Memorandum of No. 40/41/91-Pers.15-Vol-II - 9497 dated 23.08.97 (herein Annexure- 13) issued on this or that, without legitimate valid ground, by the respondent No. 4, against the applicant, in reply to the advance copy of the applicant's grievance representation dated 12.05.1997 (herein Annexure- 3) sent on 17.07.97, seeking exemption from the said Plumber duties;
- 10) Major Charge-Sheet being memorandum of No. 65/3/97-CAL (PERS.)-112 dated 02.01.1998 (herein Annexure- 14) followed by the Corrigendum of No. 65/3/97-CAL (PERS)- dated 17.02.1998 under Rule 14 of CCS (CCA) Rules, 1965 framed by Shri S. K. Tripathi, the then respondent No. 5, the article of charge with allegation of contravention of Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964 (i.e. the charge of integrity in doubt/acted in unbecoming way of a government servant) on the following imagination which was annexed with the above-mentioned charge-sheet (02.01.98) as the statement of imputation of misconduct :-

*Simul Datta*

" If the grievance representation of the applicant dated 17.07.97 would fall into the hands of some unscrupulous elements during the postal transit, it would cause serious damage to the security of the department and also would cause embarrassment to the government";

- 11) Office Order of No. 65/3/97-CAL (PERS) - 4051 dated 30.03.98 (herein Annexure- 15) by which the respondent No. 3 ordered to hold Departmental Enquiry (hereinafter D.E.) against the applicant to enquire in to the matter of the above-mentioned charge-sheet;
- 12) Office Order of No. 65/3/97-CAL (PERS.)- 7918 dated 11.06.2001 (herein Annexure-20) by which the then respondent No. 5 again ordered to hold Departmental Enquiry (hereinafter D.E.) on the said same Major charge-sheet (02.01.1998) although a certificate (dated 06.01.2000) (herein Annexure- 18) was already issued by the respondents Competent Authority, Hqrs., New Delhi with reference to the memorandum dated 14.07.1998 (herein Annexure- 16) on culmination of the D.E. Proceedings on the said Major charge-sheet (02.01.1998) and in the said certificate (dated 06.01.2000) it is intimated that there is nothing adverse against his integrity for the period from 01.04.97 to 31.03.98 ;
- 13) Presenting Officer's Brief dated 08.07.2004 (herein Annexure- 27) wherein in Para 3 & 5, the presenting Officer states that the applicant's contention that he was asked to do Plumber's duty, is misconceived and misrepresentation of the facts; by repeatedly misrepresenting the facts the applicant has undoubtedly acted in a manner which is unbecoming of a government servant.
- 14) Enquiry Report dated 23.07.2004 (herein Annexure- 29), without taking in consideration the evidence of the above-mentioned memorandums dated 08.02.96 & 14.07.97 (herein Annexure- 1 & 4), wherein the Inquiry Officer has found the applicant guilty of charges of unbecoming of a Government servant under Rule 3(iii) of CCS Rules, 1964, as stated in the Para 3 & 5 of his brief 08.07.2004 by the Presenting Officer and in the light of the memorandum dated

*Simul Datta*

06.01.2000 (herein Annexure- 18) the Inquiry absolved the applicant -Charged Officer from the charge of Integrity under Rule 3 (i) of CCS Rules, 1964 .

15) Penalty Order being Office Order of No. 65/3/97-Kol (Pers.)-2855 dated 02.03.2005 (herein Annexure- 31) the respondent No. 5 has, at length, after 7/8 years, after due date of ACP on 12.10.2004, imposed upon the applicant punishment in the matter of above-mentioned reopened D.F. in the major charge-sheet dated 02.01.1998, the matter of which, already declared by the respondents competent authority culminated vide the certificate dated 06.01.2000 (herein Annexure- 18) issued with reference to the memorandum dated 14.07.98 (herein Annexure- 16);

16) Memorandum of No. 40/41/91-Pers.13-Vol. IV- 10333 dated 25.07.2005 (herein Annexure- 33) vide which Shri S. K. Tripathi, who as the then respondent No. 5 & Disciplinary Authority, issued the major charge sheet (02.01.98) and who, presently working as respondent No. 2, as Appellate Authority rejected the appeal dated 18.04.2005 of the applicant (herein Annexure- 32) against the impugned Major charge-sheet/Departmental Enquiry/Punishment order.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. LIMITATION:

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

4. FACTS OF THE CASE:

4.1 That the applicant is a Citizen of India and holds a Civil post within the meaning of Articles 311 of the Constitution of India. Applicant is working as Assistant Field Officer (in short AFO) in the office of the Deputy Commissioner (Tele) Special Bureau, Govt. of India, B.K. House, T.P. Road, Agartala, Tripura.

Simul Datta

- 4.2 That the applicant states that the applicant was appointed by the respondent No. 3 to the rank of Assistant Field Officer in the Telecommunication Cadre of the respondents organization to perform the jobs of Tele-Communication duties, vide the office order dated 22.09.1992.
- 4.3 That the applicant states that while the applicant was working at Special Bureau, Hathikanda, Nadia, West Bengal (hereinafter SB, Hathikanda), the respondents concerned directed the applicant to perform the duties of Plumber vide their memorandum dated 08.02.1996 (Annexure-1) till a Plumber/ Pump Operator is posted at SB, Hathikanda and the applicant was performing the said Plumber duties only to comply the direction of his superior officer.
- 4.4 That the applicant states that regarding nature of duties of the members of the Telecommunication Cadre of the respondents organization, the extract of Rule 39 of R & AW (R C S) Rules, 1975, (Copy No. 086/Chapter-V/Page-23) is as hereunder: -
- " The nature of duties of the members of the Telecommunication Cadre shall generally be to procure, operate and maintain electronic and telecommunication equipment required for the work of the Organization and also to collect intelligence through electronic means."
- 4.5 That the applicant states that the applicant was submitting his grievance applications, seeking exemption from the said Plumber Duties, addressed to the next to next superior officers respectively.
- 4.6 That the applicant states that in reply to the representation of the applicant regarding seeking exemption from the said Plumber Duties, through the memorandum dated 17.03.97 (Annexure-2) it was informed to the applicant that Shri S. K. Tripathi, the then respondent No. 5, presently holding the post of respondent No.2, ordered not to exempt the applicant from the said Plumber duties and not only that, further the respondent Shri S.K. Tripathi threatened that the applicant's attitude and refusal to carry out the said Plumber duties

*Simul Datta*



would be seriously viewed, suitable departmental proceedings would be initiated if the lapses on the part of the applicant persists and Shri S. K. Tripathi further desired that suitable reflection in the applicant's ACR would be made.

- 4.7 That the applicant states that seeking exemption from the said Plumber Duties, the applicant finally submitted through proper channel his representation addressed to the respondent No. 1 on 12.05.97 (Annexure- 3).
- 4.8 That the applicant states that vide the memorandum dated 14.07.97 (Annexure- 4), it was intimated to the applicant that the job of Plumber/Pump Operator duty, as assigned to the applicant - AFO (T), by his controlling officer is well within his prerogative and no further representation on this will yield any reply.
- 4.9 That the applicant states that reply from the office of the respondent No.1 being not received and since long the applicant being not exempted from the said Plumber duties, in accordance with the provisions of sending advance copy as contained in the Standing Orders of the respondents department, the applicant sent advance copy of the aforesaid grievance representation (12.05.97) through the department of Post to the respondents organization Hqrs., New Delhi on 17.07.97.

Copy of the representation dated 17.07.97 is enclosed herewith as Annexure- 5.

- 4.10 That your applicant further beg to say that in terms of the order of Deputy Commissioner (Tele) contended in the memorandum bearing letter No. 1/100/96/HK-1094 dated 17.03.1997 adverse remarks has been recorded in the Annual confidential report of the applicant for the period from 01.04.1996 to 31.03.1997 on the ground of alleged refusal to perform plumber duties by the applicant.

Copy of the adverse remark communicated through memorandum dated 16.06.1997/13.06.1997 is enclosed as Annexure- 6.

- 4.11 That vide memorandum issued under letter No. 4/20/98-CCR-1350 dated 14.07.1998 again recorded adverse entry in the ACR of the applicant for the

*Simul Datta*

period from 01.04.1997 to 31.03.1998 in the same alleged ground of refusal to perform plumber duties and in the aforesaid memorandum the integrity column has been left blank on the ground for want of completion of disciplinary proceeding which was already initiated and it is also stated that further communication in this regard will follow on culmination of disciplinary inquiry proceeding.

Copy of the memorandum dated 14.07.1998 is enclosed as Annexure- 7.

- 4.12 That your applicant further begs to say that adverse entry again recorded in the annual confidential report of the applicant with the period from 01.04.1998 to 31.03.1999 only on the alleged ground of refusal to perform Plumber duties. All these adverse entry in the ACR has been recorded in terms of the direction contained in the memorandum-dated 17.03.1997 issued by the Deputy Commissioner (Tele) on the alleged ground of refusal to perform Plumber duties.

Copy of the memorandum bearing No. 4/23/99-CCR-1094 dated 29.06.1999 is enclosed as Annexure- 8.

- 4.13 Vide memorandum issued under letter No. 21/11/96/CAL (Pers)-665 dated 14.01.1998, whereby it has been proposed to treat 15 (fifteen) days as "Dies-non" as per Govt. of India's instruction contained in Sub-rule (6) of rule 11 of CCS (CCA) rules 1965 and further directed to submit written statement if any within 10 (ten) days, however the days mention in the memorandum dated 14.01.1998 has been rectified subsequently through corrigendum issued under letter No. 21/11/96/CAL (Pers)-5744 dated 20.05.1998 on the alleged ground of refusal for performing plumber duties.

Copy of the memorandum dated 14.01.1998, corrigendum dated 20.05.98, order dated 27.08.98 and corrigendum dated 01.12.98 are enclosed as Annexure- 9, 10, 11 and 12 respectively.

- 4.14 That the applicant states that in reply to the above-mentioned advance copy of the representation dated 12.05.97 regarding seeking exemption from the said Plumber duties (sent on 17.07.97), the respondent No.4 issued Show Cause Notice being memorandum dated 23.08.97 (Annexure- 13).

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In Para 1 of the above-mentioned show-cause notice, the applicant was directed to explain as to why disciplinary action should not be taken against the applicant for breach of Departmental Security Instructions, Official Secret Act and the Intelligence Organization (Restriction of Rights) Act, 1985.

In Para 2 of the above-mentioned show-cause notice, the applicant was again directed to explain as to why disciplinary action should not be taken against the applicant for breach of Para 16(iii) of Chapter I of Departmental Standing Orders which warranting sending even an advance copy to the Secretary, bypassing all his superior officers in chain by not routing the original representation through them.

In Para 3 of the above-mentioned show-cause notice, the applicant was informed that his claim that he had been assigned the job of Plumber is a misrepresentation of facts.

- 4.15 That the applicant states that categorically controverting allegations/contentions as made in the above show cause notice (23.08.97), the applicant submitted his representation on 10.09.97.
- 4.16 That the applicant states that after receipt of the representation dated 10.09.97 of the applicant, the respondents concerned dropped the allegations (i.e. allegation of violation of para 16(iii) of Departmental Standing Orders and allegation of the claim of the applicant that job of Plumber assigned to the applicant being misrepresentation of facts) as drawn in the Para 2 and Para 3 of the above-mentioned show cause notice.
- 4.17 That the applicant states that with reference to the above-mentioned show cause notice, Shri S. K. Tripathi, the then respondent No.5, presently holding the post of respondent No. 2, issued a major charge-sheet against the applicant under Rule 14 of CCS (CCA) Rules, 1965 framing the article of charge with allegation of contravention of Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964 (i.e. the charge of integrity in doubt/acted in unbecoming way of a government servant) on the following imagination which was annexed with the above-mentioned charge-sheet (02.01.98) (Annexure- 14) as the statement of imputation of misconduct:-

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"If the grievance representation of the applicant dated 17.07.97 would fall into the hands of some unscrupulous elements during the postal transit, it would cause serious damage to the security of the department and also would cause embarrassment to the government".

- 4.18 That the applicant states that corrigendum in respect of the correction of the above charge sheet (02.01.98) is communicated on 17.02.98.
- 4.19 That the applicant states that the respondent No.3 proposed Departmental Enquiry (hereinafter D.E.) on the above charge sheet (02.01.98) vide the Office Order dated 30.03.98 (Annexure- 15).
- 4.20 That the applicant states that vide the memorandum dated 14.07.98 (Annexure- 16) the respondents concerned intimated the applicant that for want of completion of above-mentioned D.E. his integrity column had left blank and further communication in this regard would follow on culmination of D.E proceedings on the charge-sheet (02.01.1998) and further wherein communicated the extract of the adverse report as entered in the ACR of the applicant for 1997 - 1998.
- 4.21 That the applicant states that vide the memorandum dated 15.07.98, Shri A. V. K. Rao, the then Inquiry Officer directed the applicant to attend the preliminary hearing of the above-mentioned D.E. on 27.07.98 .
- 4.22 That the applicant states that vide the memorandum dated 23.07.98 (Annexure- 17), served upon the applicant on 27.07.98, Shri A.V.K. Rao, Technical Officer (Telecom cadre) the then Inquiry Officer intimates that the preliminary hearing of the above-mentioned D.E. on 27.07.98 stands postponed due to certain procedural inconvenience.
- 4.23 That the applicant states that against other vindictive actions of the respondents, an application of OA No. 916/99 was filed in place of OA No. 1483/97 and the

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OA 916/ 99 was admitted before the Hon'ble Tribunal, Kolkata Bench, on 19.08.99 which is till remaining pending.

- 4.24 That the applicant states that with reference to the aforesaid memorandum dated 14.07.98 (herein Annexure 16), a memorandum dated 06.01.2000 (Annexure- 18) was communicated to the applicant, on culmination of D.E proceedings in the matter of the charge-sheet (02.01.1998), with intimation that integrity of the applicant has been certified by the Competent Authority, Hqrs., New Delhi that there was nothing adverse against the applicant for the said period i.e. during the period in which the said charge-sheet dated 02.01.1998 was initiated against the applicant.
- 4.25 That the applicant states that the Hon'ble High Court, Kolkata passed, on 19.09.2000, the Judgment (Annexure- 19) in the matter of W.P.T.C. of No. 206 / 1999 and cancelled the punishment transfer order (to Tuensang, Nagaland, North East Region) which was ordered by the respondent No.3 as the applicant refused to do the duties of Plumber/Pump Operator instead of working as Telecom Operational Tasks.
- 4.26 That the applicant states that the respondent No. 3 ordered to proceed on transfer from Hathikanda to Agartala and accordingly the applicant joined at Agartala on 14.05.2001. Subsequently, it is again proved that the applicant was transferred to Agartala by the respondents intending to punish the applicant.
- 4.27 That the applicant states that the then respondent No. 5, as Disciplinary Authority, re-proposed D.E. (on the same Charge- sheet dated 02.01.1998) and as such the closed matter of said D.E. was reopened; vide the Office Order dated 11.06.2001. (Annexure- 20).
- 4.28 That the applicant states that through the memorandum dated 02.07.2001 informed the applicant that Shri Rana Banerji, the then respondent No. 5, directed the applicant to co-operate with the DE so that it can be completed expeditiously and not necessarily in a manner prejudicial to the applicant.

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- 4.29 That the applicant states that as per the direction of Shri S. K. Chakraborti, Assistant Commissioner (Telecom cadre) the then Inquiry Officer, the applicant attended the preliminary hearing of the above-mentioned reopened D.E on 17.09.2001.
- 4.30 That the applicant states that further as per the direction of Shri S. K. Chakraborti, the then Inquiry Officer, the applicant attended the hearings of the above-mentioned reopened D.E on 02.04.2002 and on 26.04.2002; copy of the Daily Order Sheet is annexed hereto and marked with Annexure - 21.
- 4.31 That the applicant states that as per the direction of Shri A. Ananthanarayanan Assistant Commissioner (Telecom cadre) the then Inquiry Officer, the applicant attended the hearing of the above-mentioned reopened D.E on 14.08.2002; Copy of the Daily Order Sheet is annexed hereto and marked with Annexure - 22.
- 4.32 That the applicant states that Shri A. Ananthanarayanan, the then Inquiry Officer directed the then Presenting Officer - Shri G. S. Banerjee to supply the following copies to the applicant, vide the memorandum dated 07.11.2002: -
- 1) First Information Report
  - 2) List Of Witness
  - 3) Charter of the duties of AFO (T)
  - 4) Statement of witness
- 4.33 That the applicant states that the applicant submitted his representation on 04.09.2003 stating therein about his mental position how he has been being forced to die and wherein the applicant further asked the respondents authority whether the matter of the above-mentioned reopened D.E. will be concluded after his death.
- 4.34 That the applicant states that the then Disciplinary Authority appointed Shri T. N. Prasad, Assistant Commissioner (Tele) as Inquiry Officer of the case in place of Shri A. Ananthanarayanan; vide the memorandum dated 04.11.2003.

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- 4.35 That the applicant states that the then Disciplinary Authority appointed Shri Y. V. Dayal, Deputy Commissioner as Inquiry Officer (GD cadre) in place of Shri T. N. Prasad (Telecom cadre); vide the memorandum dated 30.12.2003.
- 4.36 That the applicant states that as per the direction of Shri Y. V. Dayal, Deputy Commissioner (GD cadre), the then Inquiry Officer, the hearing of the above-mentioned reopened D.E was held on 15.05.2004 but on that day the applicant could not attend due to illness of his wife; copy of the Daily Order Sheet is annexed hereto and marked with Annexure - 23.
- 4.37 That the applicant states that as per the direction of Shri Y. V. Dayal, Deputy Commissioner (GD cadre), the then Inquiry Officer, the applicant attended the hearing of the above-mentioned reopened D.E on 12.06.2004; copy of the Daily Order Sheet is annexed hereto and marked with Annexure - 24.
- 4.38 That the applicant states that the Inquiry officer communicated the memorandum dated 18.06.2004 (Annexure- 25) wherein he admits that the applicant did not commit any civil or criminal offence and the respondents organizations official daks are sent through the department of Post and so on.

Further it is noted that during the course of hearing on 12.06.2004 (refer last conversation of the IO in the Daily Order Sheet dated 12.06.2004) IO directed the PO for framing a reply to CO's representation dated 12.06.2004.

But it is surprised to note that on behalf of the PO, the reply being the memorandum dated 18.06.2004 was made and communicated to the applicant by the IO himself.

From the following numbered Para of the said reply dated 18.06.2004, it is noted hereunder and which have been admitted by the IO: -

3. (a) That the applicant did not commit any civil or criminal offence,
3. (b) That the charges was not framed on the basis of statements of witness
3. (c) (e) That without the statements of witness/evidences framed the charge,

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- 3 (j) That the applicant's representation dated 17.07.97 was not misdelivered and not fallen into the hands of unscrupulous elements,
- 3(m) That all those serving in the respondents department know that the official dak can be sent through Department of Post.

Further, it is noted that during the course of hearing on 12.06.2004 (vide page 3 of the Daily Order Sheet dated 12.06.2004), the PO also agreed that the representation of the applicant was within the organization and not to an outsider and further PO asked the applicant (i.e. CO) that there was no need to send an advance of the grievance representation to the highest authority in the department, especially so when it was only a petty issue relating to the duties allotted to the applicant.

- 4.39 That the applicant states that as per the direction of Shri Y. V. Dayal, Deputy Commissioner (GD cadre), the then Inquiry Officer, the applicant attended the hearing of the above-mentioned reopened D.E on 05.07.2004; copy of the Daily Order Sheet is annexed hereto and marked with Annexure - 26.
- 4.40 That the applicant states that the Presenting Officer submitted his brief on 08.07.2004 (Annexure- 27) whereof in Para 5 the presenting Officer states that the applicant's contention that he was asked to do Plumber's duty, is misconceived and misrepresentation of the facts; by repeatedly misrepresenting the facts the applicant has undoubtedly acted in a manner which is unbecoming of a government servant.
- 4.41 That the applicant submitted his representation on 21.07.2004 (Annexure- 28) categorically controverting contentions/allegations as made in the above brief and enclosed therewith the copy of the memorandums dated 08.02.96 & 14.07.97 (herein Annexure- 1 & 3) which evince that his controlling officer would assign the applicant the said Plumber/Pump Operator duty.
- 4.42 That the applicant states that the Inquiry Officer submits the Enquiry Report dated 23.07.2004 (herein Annexure- 29), without taking into consideration of the fact of the above-mentioned memorandums dated 08.02.96 & 14.07.97 (herein

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Annexure- 1 & 4) which evince that the applicant was assigned Plumber / Pump Operator duty and without taking in consideration of the points submitted by the applicant through his brief dated 21.07.04 (herein Annexure- 28), the Inquiry Officer states in Para 3 of the Enquiry Report that the Inquiry Officer has agreed with the Para 3 & 5 of the Presenting Officer's brief and found the applicant guilty of charges framed under Rule 3(iii) of CCS Rules, 1964.

4.43 That the applicant states that in the said Enquiry Report dated 23.07.2004, the Inquiry Officer has absolved the applicant from the charge of allegation of contravention of Rule 3(i) of CCS (Conduct) Rules, 1964 (i.e. maintain absolute integrity) but the IO has declared the applicant guilty for contravention of Rule 3(iii) of CCS (Conduct) Rules, 1964 (i.e. unbecoming way of government servant); though the fact remains that one article of charge was framed against the applicant in the charge sheet (02.01.1998) and in the case Rule 3 (i) & 3(iii) of CCS (Conduct) Rules, 1964 are co-related and not separate.

4.44 That the applicant states that the gist of Official Secrets Act-1923, Intelligence Organisation (Restriction of Rights) Act 1985 and the respondents' Departmental Security Instructions is as hereunder: -

" The Central Civil Service (Conduct) Rules Prohibit a government servant from communicating, without authority, to anyone."

4.45 That the applicant states that Official Secrets Act 1923, Intelligence Organizations (Restriction of Rights) Act 1985 and the respondents' Departmental Security Instructions do not restrict the officials of the respondents' department to communicate his/her grievance representation to the Superior officers of the respondents' department.

4.46 That the applicant states that Rule 3 (i) (iii) of CCS (Conduct) Rules 1964 also do not restrict the officials of the respondents' department to communicate his/her grievance application to his/her superior officers of the respondents' department.

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- 4.47 That the applicant states that the extract of the Para 16 (iii) of the respondents' Departmental Standing Orders (Copy No. 206/Chapter One/Page04) is as hereunder: -

"Having exhausted the first two stages and if the official is still not satisfied with the result, he is allowed a final chance to represent to the Additional Secretary/Secretary. However, in his final representation he should clearly state his case."

- 4.48 That the applicant states that regarding sending of advance copy to respondents department, Hqrs., New Delhi, the extract of the provision of the Para 16(iv) of the respondents' Departmental Standing Orders is as hereunder: -

" During none of the above three stages is there any necessity for the applicant to send an advance copy of his representation endorse to the Director (Pers.)/Joint Secretary (Pers), Hqrs., New Delhi. Similarly, when the final representation is made and if action is required on the contents within 7 days and advance copy may be sent to the Additional Secretary/Secretary".

- 4.49 That the applicant states that all those serving in the respondents' department also know that all the correspondences/official daks even relating to official secret/top-secret - operational sensitive matters are sent at the out posts/Hqrs. of the respondents organization through the Department of Post and subsequently which has been admitted by the Inquiry Officer - Shri Y. V. Dayal, the then respondent No. 6 also.

- 4.50 That the applicant states that the above-mentioned grievance representation sent by the Department of Post Government Of India on 17.07.97 was not misdelivered and did not fall into the hands of some unscrupulous elements and subsequently which has been admitted by the Inquiry Officer - Shri Y. V. Dayal, the then respondent No. 6 also.

- 4.51 That the applicant states that the grievance representation (in Service matter)

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dated 12.05.97, later advance copy of which sent by the applicant through the department of post by registered post on 17.07.97, was within the organisation and not to an outsider and subsequently which has been admitted by the Presenting Officer - Shri M. K. Saha also who was presenting the case on behalf of the then respondent No. 4 & the Disciplinary Authority.

- 4.52 It is evident that it could/can not be termed as breach of the said Official Secrets Acts, Intelligence Organisation (Restriction of Rights) Act 1985 and the respondents' Departmental Security Instructions and far it could/can not be termed that in any manner the applicant ever violated/violates Rule 3 (i) (iii) of CCS (Conduct) Rules 1964 (i.e. an employee should maintain absolute Integrity/should behave in the becoming way in government service).
- 4.53 That the applicant states that against the aforesaid Enquiry Report (23.07.2004), served upon the applicant on 14.10.2004, the applicant submitted his representation on 29.10.2004 (Annexure- 30) to the respondent No.5.
- 4.54 That the applicant states that the then respondent No. 5 - Shri P.K. Sharma imposed penalty on the applicant vide the order dated 02.03.2005 (Annexure- 31).
- 4.55 That the applicant states that against, the said punishment order dated 02.03.2005, the applicant submitted his appeal before the respondent No. 2 Appellate Authority through his representation-dated 18.04.2005 (Annexure- 32).
- 4.56 That the applicant states that after issuance of the above-mentioned penalty (02.03.05) communicated the office order dated 08.06.05 by which intimates service of the applicant has been confirmed from 01.01.1998 instead of from 01.10.1995; in this regard, the applicant submitted his representation on 20.07.2005.
- 4.57 That the applicant states that the then respondent No.5 - Shri S. K. Tripathi, who issued the impugned charge-sheet (02.01.98), the same Shri S. K. Tripathi, presently holding the post of respondent No. 2, as Appellate Authority, rejected

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the appeal of the applicant through the office order dated 25.07.2005 (Annexure-33).

- 4.58 That the applicant states that against the above decision (25.07.05) of the appellate authority regarding the penalty order (charge sheet 02.01.98), the applicant submitted his representation dated 23.11.05 addressed to the respondent No. 1 - Reviewing Authority (Annexure- 34) which is still remaining un-replied.
- 4.59 That the applicant states that through the memorandum dated 29.07.05, it is intimated that the applicant is eligible for grant of ACP w.e.f.12.10.2004; however, as a DE was contemplated against him vide charge sheet dated 02.01.98, his eligibility for grant of ACP was kept in sealed cover but for outcome of the DE. But, after imposing of the penalty on DE, through the memorandum dated 06.10.05 it is intimated that the ACP has been granted w.e.f.25.08.05 instead of from 12.10.2004; in this regard the applicant submits his representation addressed to the respondent No. 1, on 20.03.2006 (Annexure- 35) which is still remaining un-replied.
- 4.60 That the applicant states that the respondent No. 6 sanctioned Dual HRA, @ 5% of the HRA of the applicant's last place of posting, Hathikanda, for the dependent relatives of the applicant residing at his home town Kolkata, from 20.09.2001 in spite of the applicant was entitled for the said dual HRA from 14.05.2001 on which he joined at the North East region, Agartala and further the applicant was entitled for the said dual HRA @ 30% of the HRA of the last place of posting, Hathikanda but the respondent No.6 has not yet sanctioned the said Dual HRA @ 30% of the HRA of the last place of posting, Hathikanda; in this regard the representations of the applicant dated 24.02.2003 and 18.07.2005 are still remaining un-replied .
- 4.61 That the applicant states that the respondents did not exempt the applicant from the said Plumber duties but instituted numbers of insidious vindictive actions against the applicant on the same cause and since thereafter that the applicant

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lodged his grievance against the said Plumber duties and out of 3 years of his service at SB, Hathikanda (i.e. February '96 to July '98) the applicant could not perform the said Plumber duties in addition to his telecommunication duties only on 15 days which were treated by the respondent No.6 as Dies-Non ; some of them are as hereunder :-

- 1) Issued Minor Charge sheet and punished the applicant under Rule 11 of CCS (CCA) Rules, 1965 and deducted Rs. 2440/- from the salary of the applicant;
- 2) Issued Major Charge sheet under Rule 14 of CCS (CCA) Rules, 1965 and proposed Departmental Enquiry against the applicant and later , punished the applicant ;
- 3) Entered adverse report in ACR of the applicant for 96-97;
- 4) Entered adverse report in ACR of the applicant for 97-98;
- 5) Entered adverse report in ACR of the applicant for 98-99;
- 6) Applied for one day E/L on 07.03.93 (vide E/L application dated 03.03.97) but initially it was granted as own, initially as EOL without medical certificate (i.e. Break-in-service) and subsequently as 1 day Half Pay Leave without leave salary and deducted Rs. 157/- from the salary of June'1998;
- 7) Put the applicant in a great financial loss of Rs. 20,000/- to Rs. 25,000/-, in the way of open discrimination, not giving him the Cash Compensatory Off (C/Off) financial benefits at the end of the calendar year, during that 3 years of his service at Hathikanda;
- 8) Transferred to Tuensang in the way of Punishment (Hon'ble High Court passed the order in the matter of W.P.T.C. 206/1999 and this punishment transfer order was cancelled);
- 9) Further, transfer him to Agartala and subsequently it is evidently proved that the applicant was transferred to Agartala to punish him;
- 10) Yet, do not sanction Dual HRA @ 30 % of the HRA of the applicant's last place of posting, Hathukanda, from 14.05.2001 on which he joined at the North East

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region, Agartala for the applicant as he is entitled for; but sanctioned the said Dual HRA @ 5% from 20.09.2001; in this regard the representations of the applicant dated 24.02.2003 and 18.07.2005 are still remaining un-replied;

- 11) Yet, do not confirm his service from 01.10.95 (confirmed from 01.01.98); in this regard the representation of the applicant dated 20.07.2005 is still remaining un-replied;
- 12) Yet, do not grant him ACP from 12.10.2004 (Granted ACP from 25.08.2005); in this regard the representations of the applicant dated 20.03.2006 is still remaining un-replied;
- 13) Even after completion of 4 years of service at North-East Region, the applicant was not transferred on the reason due to the said Departmental Enquiry;
- 14) The mental agony of the applicant was so lengthening and was so deteriorated by the respondents that were forcing the applicant to die.

4.62. That your applicant further begs to say that in view of submission of representations seeking exemption from plumber duties the following penalties and action has been taken against the applicant on the pretext of non-performing of plumber duties on 15 different dates, within a span of 3 (three) years tenure and also on the alleged ground for submission of advance copy of the representation dated 12.05.97 and 17.07.97.

- (1) The applicant was warned vide memorandum dated 17.03.1997 (Annexure- 2) and also directed for suitable reflection of such acts of misconduct in the ACR of the applicant on the alleged ground of refusal of plumber duties.
- (2) Adverse entry recorded in the ACR of the applicant for the period from 01.04.1996 to 31.03.1997 vide memorandum dated 16.06.1997 (Annexure-6) in terms of the order contained in the memorandum dated 17.03.1997.
- (3) Again adverse entry recorded in the ACR of the applicant for the period from 01.04.97 to 31.03.97 through memorandum dated 14.07.1998 (Annexure-7) in the light of the order dated 17.0.97 on the alleged ground of refusal of plumber duties.

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- (4) Adverse remarks again recorded in the ACR from the period of 01.04.1998 to 31.03.1999 through memorandum dated 29.06.99 (Annexure-8) on account of refusal of plumber duties and the adverse entry is made in terms of direction contained in the memorandum dated 17.03.1997.
- (5) That the Additional Commissioner vide memorandum bearing letter No. 21.11.96/CA 1/(PERS)-668 dated 14.01.98 proposed to treat altogether 15 different days as "Dies-non" as per Govt. of India's instruction (6) of Rule 11 of CCS (CCA) Rules 1965. However, 10 days time was granted to the applicant for submission of any written statement in his defence and also stated whether he desires to be heard in person. However, the applicant submitted a detailed reply assigning the reasons but the same was not considered favourably.
- (6) Vide Corrigendum bearing letter No. 21.11.96/CAL/(PERS)-5744 dated 20.02.98 whereby certain dates have been rectified.
- (7) Vide order bearing letter No. 21.11.96/Cal/(Pers.)-10022-27 dated 27.08.98 whereby 15 days have been treated as "Dies-non" for all purposes i.e. increment, leave and pension in respect of the applicant on the ground of alleged refusal of plumber duties, however, subsequently a corrigendum has been issued on 01.12.98 only for the purpose of correction of the rules.
- (8) That a major charge sheet under Rule 14 of the CCS (CCA) Rules 1965 have been initiated i.e. the instant proceeding vide memorandum dated 02.01.1998 (Annexure-14) on the same alleged ground with slightly on a different pretext, wherein it has been alleged that the applicant had made a mention the exact nature of his duties in his representation dated 12.05.97 particularly in para 6 of the said representation along with his another representation dated 17.07.97. It has been alleged in the Article of Charge had this representation would have fallen into the hands of some unscrupulous elements during the postal transit; it would have caused serious damage to the security of the department and also would have caused embarrassment to the government. It is further alleged disclosing information relating to the functioning of this organisation in this manner is strictly prohibited in accordance with the departmental security

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instructions, the Official Secrets Act and the intelligence organisation (Restriction of Rights) Acts 1985. It is further also stated that when this breach of security was brought to the notice of the applicant and the explanation was called for through memorandum bearing No. 40/41/91-Pers.15-Vol.II-9497 dated 23.08.1997. It is alleged that the applicant has acted in a very contemptuous manner flatly denying the charges through his letter dated 10.09.1997 without explaining this act of gross misconduct on the part of the applicant and as such the applicant has displayed a gross lack of responsibility and thereby acted in a manner unbecoming of a Govt. servant in direct contravention of Rule 3 (1) (iii) of CCS (Conduct) Rules 1964.

On a mere reading of the article of charge it appears that the disciplinary proceeding has been initiated against the applicant only because the applicant has denied the charges in his show cause reply letter dated 10.09.97. It is quite clear from the article of charge that his representation dated 12.05.97 and 17.07.97 addressed to the Cabinet Secretary, New Delhi has been rightly delivered to the correct address but surprisingly the proceeding has been initiated against the applicant under Rule 14 of CCS (CCA) Rules 1965 only on the "apprehension" that if the letter would have been mis-delivered to a wrong address, in that event there may be changes of leakage of the nature of duties of the applicant indicated in his representation dated 12.05.97 and which might have caused a breach of security of the department since the applicant is governed under the Official Secret Act and the Intelligence Organisation (Restriction of Rights Act 1985), since disclosing information relating to the functioning of the organisation in this manner is strictly prohibited with the departmental security instructions. In this connection it may be stated that the disciplinary proceeding has been initiated against the applicant in a very deliberate manner with an ulterior motive and as such the action of the respondents is vitiated with malafide as because the entire article of charge has been initiated on "apprehension" only and as such the very initiation of the disciplinary proceeding is not maintainable

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in the eye of law and on that score alone the major penalty proceeding initiated vide memorandum of charge sheet dated 02.01.98 (Annexure-14) is liable to be set aside and quashed.

4.63 That your applicant further begs to say that he has rightly addressed his representation dated 12.05.97 as well as 17.07.97, which were addressed to the Cabinet Secretary, New Delhi, and the representation have been rightly delivered by the Postal by the Postal department to the correct addressee as such initiation of a disciplinary proceeding under Rule 14 of CCS (CCA) Rules 1965 only on the "apprehension" or on the pretext that the said representation could have been delivered to a wrong address and in that event the same "would have caused serious damage to the security of the department". Therefore, it appears that the decision of the initiation of a disciplinary proceeding under the Rule 14 of CCS (CCA) Rules 1965 is actuated by a malafide intention and the disciplinary authority have initiated the proceeding in colourable exercise of his power and it further appears that the same has been done at the dictation of the higher authority. In other words it can rightly be said that the disciplinary authority has misused his power by issuing the memo of charge sheet dated 02.01.98, which is not maintainable at all in the eye of law. Moreover, there is no bar or restriction imposed in the department of Special Bureau for sending representation or even a confidential letter through the department of Post, through registered Post as such question of initiation of a disciplinary proceeding under Rule 14 of the CCS (CCA) Rule 1965 is highly arbitrary, unfair and illegal.

It is ought to be mentioned here that the same disciplinary authority also made an attempt to transfer the applicant from SB Hathikanda to Tuensang as a measure of punishment. However, the said transfer and posting order which was passed mainly on the alleged ground of non-performance of plumber duties was set aside and quashed by the Division Bench of the Hon'ble Calcutta High Court vide judgment and order dated 19.09.2000 passed in W.P.C.T No. 206/99, while setting aside the judgment of the learned CAT Calcutta Bench as well as the impugned order of transfer, it has been specifically observed by the Division

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of the Hon'ble High Court, that the transfer order has been issued as a measure of penalty and the said order of transfer is penal in nature and the Hon'ble Court was pleased to allow the Original Application before the learned CAT Calcutta Bench. Therefore, it is quite clear that the entire action of the respondent right from recording the adverse entry in the ACR imposition of minor penalty deduction of salary, initiation of the instant proceedings through memo dated 02.01.98 in fact on the alleged ground of non-performance of plumber duties. Therefore, it appears that the series of penalties and harassment is caused to the applicant in a very planned manner more particularly by the disciplinary authority in connivance with a section of higher authorities and that score alone the entire proceeding including the order of penalty dated 02.03.2005 as well as the impugned appellate order dated 25.07.05 and the impugned order passed by the revisional authority, vide impugned order bearing letter No. 40/41/91-Pers. 13-Vol. IV-5052 dated 03.05.2006 are liable to be set aside and quashed with exemplary cost.

Copy of the impugned order passed by the Revisional authority on 03.05.06 is enclosed herewith and marked as Annexure- 36.

- 4.64 That your applicant further begs to say that on a mere reading of the memorandum bearing letter No. 116/2/2001-AGR (Estt.)-483 dated 18.06.2004 issued by Deputy Commissioner (Inquiry Officer) wherein it has been specifically admitted that the alleged charges have not been framed on the basis of statements of witness rather they are framed on the basis of act and misconduct of the applicant in performing his official duties and the respondent authority miserably failed to disclose any authentic source for framing the charges labeled against the applicant, as such it is a case of no evidence and the authorities had totally failed how they have reached to the conclusion that the applicant did not perform plumber duties in 15 specified days during the span of 3 years as indicted in the order of "Dies-non". On a mere reading of the inquiry proceeding, more particularly the daily order sheet of the date of hearing which held on 15.05.04, 12.06.04 and also on 05.07.04, it would be evident that none of the listed documents were examined in the inquiry

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proceeding by any documentary evidence. Moreover, in the instant proceeding the respondents has totally failed to establish the charge with the help of any witnesses, it is ought to be mentioned here that there was no witness produced for and on behalf of the disciplinary authority. Moreover, basic charge labeled against the applicant that he has disclosed information relating to the functioning of the organisation in the manner which is strictly prohibited and thereby the applicant has contravened the departmental security instructions, the Official Secret Act and the Intelligence Organisation (Restriction of Rights Act 1985) and it is also alleged that such act of omission and commission on the part of the applicant is unbecoming of a Govt. Servant, thereby contravening Rule 3 (1) (iii) of CCS (Conduct) Rule 1964. But in the inquiry proceeding this charge was not at all established, moreover furnishing description of his nature of duties in the representation addressed to the departmental Secretary cannot be treated as an unauthorised communication while seeking exemption from plumber duties. It would further be evident from the quarry made by the presenting officer on the date of hearing held on 15.05.04.

The relevant portion of the daily order sheet dated 15.05.04 is quoted below:

"P.O- We do not have the copy of his representation dated 17.07.97. However his representation dated 12.5.97 addressed to the Secretary which he sent as enclosure to his representation dated 17.7.97 is available. In that itself he has given names of officers working in our Department, strength of the officials, the duties etc. which all can be produced as evidence against the CO for breaching the Official Secret Act. It can be proved beyond doubt that he seen his representation 17.7.97 to Secretary, Cabinet Secretariat, New Delhi by post. If his representation had fallen into the hands of some unscrupulous elements during the postal transit, it would have caused embarrassment to the Govt. It is, therefore, proved beyond doubt that Shri Simul Dutta, CO acted in contemptuous manner and can be punished for his act of gross mis-conduct on his part.

Therefore, it has been established by the respondents themselves that on

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an apprehension the proceeding has been initiated against the applicant alleging violation of Official Secret Act. But it is not the case of the respondents that the letter has been delivered to a wrong address or representation of the applicant sent to a wrong addressee other than Secretary of the Cabinet Secretariat, New Delhi, on the other hand it has been fairly admitted by the disciplinary authority and the inquiry officer that representation was properly addressed and sent to the Secretary, Cabinet Secretariat, New Delhi. Therefore, initiation of a disciplinary proceeding on the basis of an apprehension or on assumption is not sustainable in the eye of law on that score alone the memorandum of charge sheet dated 02.01.98, order of penalty imposed on the applicant vide order bearing letter No. 65/3/97-KOL (Pers)-2855 dated 02.03.05 whereby penalty of "Censure" has been imposed and the appellate order bearing letter No. 40/41/91-Pers. 13-VOL. IV- 10333 dated 25.07.05 as well as the impugned order of the revisional authority confirming the order of penalty dated 02.03.05 by the order bearing letter No. 40/41/91-Pers. 13. Vol.IV-5052 dated 03.05.06 are liable to be set aside and quashed.

- 4.65 That your applicant further begs to say that on a mere reading of the written brief of the presenting officer, inquiry report of the I.O dated 23.07.04, it appears that the charge labeled against the applicant held to have been proved without a single evidence but only on the basis of an "apprehension". The inquiry officer failed to record or discuss a single evidence against the applicant in the entire proceeding, moreover, there is no analysis of evidence shown in the inquiry report except certain general discussion on the issue. Moreover, presenting officer did not take any troubles to examine any listed documents in any of the hearing days and as such failed to establish the charges brought against the applicant. Moreover, the inquiry officer in his inquiry report dealt with submission of advance copy of representation by the applicant directly to the Secretary. But the article of charge framed against the applicant is confined only to the allegation of disclosing information relating to the functioning of the organisation by the applicant in contravention of the departmental security instruction, the Official Secret Act, and the Intelligence Organisation (Restriction

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applicant. Moreover, the inquiry officer in his inquiry report dealt with submission of advance copy of representation by the applicant directly to the Secretary. But the article of charge framed against the applicant is confined only to the allegation of disclosing information relating to the functioning of the organisation by the applicant in contravention of the departmental security instruction, the Official Secret Act, and the Intelligence Organisation (Restriction of Rights Act 1985) as such there is no scope on the part of the inquiry officer to deal with the submission of the advance copy of representation when the article of charge is something else and on that score alone the inquiry report is not sustainable in the eye of law. In para 4 of the inquiry report the I.O specifically stated that the applicant has committed the mistake of sending the representation dated 12.05.97 simply by a registered A/D cover and further opined that the letter should have gone under an insured cover even if it was meant for the officers within the organisation. Therefore, finding of the inquiry officer is not based on the basis of article of charge as such report of the I.O failed to discuss anything on the article of charge. The disciplinary authority while imposing the order of penalty on the applicant also failed to discuss the evidence as required under the relevant provision of the CCS (CCA) Rules 1965 and also failed to notice that none of the listed documents were examined which was relied on by the disciplinary authority and on that score alone the impugned order of penalty of "Censure" of the applicant is not sustainable in the eye of law.

It is further submitted that neither the appellate authority nor the revisional authority looked into the inquiry proceeding and also failed to notice that not a single listed documents were examined in the inquiry proceeding. Moreover, none of the ground raised by the applicant was dealt with in the impugned appellate order dated 25.07.05 as well as in the impugned order dated 03.05.06 issued by the revisional authority also not a single evidence has been discussed in any stage of the proceeding and the grounds raised by the applicant in his representation against the inquiry report and also in his appeal dated 18.04.05 as well as ground assigned by the applicant in his revision petition dated 23.11.05 has been dealt by the authority in a very arbitrary

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manner and failed to revert any of the point raised by the applicant in the manner it is required to be done. As such the memo of charge sheet dated 02.01.98, impugned order of penalty dated 02.03.05 and appellate order dated 25.07.05 and impugned order dated 03.05.06 passed by the revisional authority are liable to be set aside and quashed.

- 4.66 That the applicant states that higher authorities, like Shri S. K. Tripathi, presently holding the post of respondent No. 2 (Additional Secretary), being against the applicant, most of the controlling officers many times on this or that have instituted numbers of injustice and harassments with the applicant and further even a new recruited colleague, whose service is of 1 or 2 years, never cares to behave properly with the applicant who has been working as a government servant for 14 / 15 years.
- 4.67 That the applicant states that higher authorities being against the applicant, the applicant's colleagues and their family members are afraid of to mingle with the applicant and his family members as because of that the respondents authorities will be furious/vindictive on them (applicant's colleagues) and as such not only the applicant, his family members have also been punished and one roomed, at the departmental quarter complex, Agartala.
- 4.68 That the applicant states that the colleagues and their family members who like to meet the applicant and his family members, meet in back of the knowledge of the respondents authorities.
- 4.69 That the applicant states that a senior doctor of the government hospital, Agartala, after thorough clinical check up, reported that wife of the applicant was suffering from the disease of Hypertension (an incurable disease).
- 4.70 That the applicant states that the mental agony of the applicant was so lengthening and was so deteriorated by the respondents that was forcing the applicant to die.

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- 4.71 That the applicant states that Shri R. Ravi Kumar, AFO (T), while was working at SB, Hathikanda, was also assigned the said Plumber duties and when he submitted his grievance representation against the said Plumber duties, in reply, the then respondent No.4 - the same Shri S.K. Tripathi, threatened Shri Ravi Kumar aggressively that the mental position of the Ravi Kumar so deteriorated. Later, it is heard that after joining at Pondichery from Hathikanda on transfer, Shri Ravi Kumar committed suicide.
- 4.72 That the applicant states that before his death, Shri Ravi Kumar sent the original copy of the memorandum dated 17.10.95 to the applicant regarding the above-mentioned threatening of Shri S. K. Tripathi, the then Commissioner, SB, Kolkata (presently holding the post of respondent No. 2).
- 4.73 That the applicant states that the respondents did repeat and repeat on this or that such and such insidious vindictive actions against the applicant those badly injured the reputation of the applicant among his colleagues and their family members and the respondents repeatedly on this or that instituted mental tortures upon this applicant.
- 4.74 That the applicant states that yet, the respondents have not stopped their vindictive actions against the applicant; the applicant and his family members consisting of ailing wife and one infant baby staying with him at Agartala and his dependent relatives consisting of aged ailing father- mother, unmarried sister residing at Kolkata wholly and entirely depend upon the applicant and the applicant is now at what to do condition.
- 4.75 That this application is made bonafide and for the cause of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

- 5.1 For that, issuance of the memorandum of No. 1/100/96/HK-648 dated 08.02.1996 (herein Annexure- 1) through which the respondents concerned directed the applicant to perform the duties of Plumber till a Plumber/Pump Operator is posted at SB, Hathikand, is not tenable in the eye of law as because of that the applicant was recruited not as Plumber and not in Miscellaneous

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Cadre; the applicant was recruited as Assistant Field Officer in the Telecommunication Cadre of the respondents organization, to perform the jobs of Telecommunication duties.

- 5.2 For that, issuance of the memorandum of No.1/100/96/HK-1094 dated 17.03.1997 (herein Annexure- 2) through which it was informed to the applicant that Shri S. K. Tripathi, the then respondent No. 5, presently holding the post of respondent No. 2, ordered not to exempt the applicant from the said Plumber duties and not only that, further the respondent Shri S.K. Tripathi threatened that the applicant's attitude and refusal to carry out the said Plumber duties would be seriously viewed, suitable departmental proceedings would be initiated if the lapses on the part of the applicant persists and Shri S. K. Tripathi further desired that suitable reflection in the applicant's ACR would be made; clearly shows non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.
- 5.3 For that, memorandum of No.1/100/96/HK-3192 dated 14.07.97 (herein Annexure- 4) vide which the respondents concerned intimated to the applicant that job of Plumber/Pump Operator duty, as assigned to the applicant - AFO (T), by his controlling officer is well within his prerogative and no further representation on this will yield any reply; clearly shows non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.
- 5.4 For that, Show-Cause Notice being Memorandum of No. 40/41/91-Pers.15-Vol-II - 9497 dated 23.08.97 (herein Annexure- 13) issued on this or that, without legitimate valid ground, by the respondent No. 4, against the applicant, in reply to the advance copy of the applicant's grievance representation dated 12.05.1997 (herein Annexure- 3) sent on 17.07.97, seeking exemption from the said Plumber duties; clearly shows non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.

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5.5 For that, Major Charge-Sheet being memorandum of No. 65/3/97-CAL (PERS.)- 112 dated 02.01.1998 (herein Annexure- 14) followed by the Corrigendum of No. 65/3/97-CAL (PERS)- dated 17.02.1998 under Rule 14 of CCS (CCA) Rules, 1965 framed by Shri S. K. Tripathi, the then respondent No. 5, the article of charge with allegation of contravention of Rule 3(i) (iii) of CCS (Conduct) Rules, 1964 (i.e. the charge of integrity in doubt/acted in unbecoming way of a government servant) on the following imagination which was annexed with the above-mentioned charge-sheet (02.01.98) as the statement of imputation of misconduct :-

" If the grievance representation of the applicant dated 17.07.97 would fall into the hands of some unscrupulous elements during the postal transit, it would cause serious damage to the security of the department and also would cause embarrassment to the government";

5.6 For that, Office Order of No. 65/3/97 -CAL (PERS) - 4051 dated 30.03.98 (herein Annexure-15) by which the respondent No. 3 ordered to hold Departmental Enquiry (hereinafter D.E.) against the applicant to enquire in to the matter of the above-mentioned charge-sheet; clearly shows non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.

5.7 For that, Office Order of No. 65/3/97-CAL (PERS.)- 7918 dated 11.06.2001 (herein Annexure- 20) by which the then respondent No.5 again ordered to hold Departmental Enquiry (hereinafter D.E.) on the said same Major charge-sheet (02.01.1998) although a certificate (dated 06.01.2000) (herein Annexure-18) was already issued by the respondents Competent Authority, Hqrs., New Delhi with reference to the memorandum dated 14.07.1998 (herein Annexure- 16) on culmination of the D.E. Proceedings on the said Major charge-sheet (02.01.1998) and in the said certificate (dated 06.01.2000) it is intimated that there is nothing adverse against his integrity for the period from 01.04.97 to 31.03.98; clearly shows non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly

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forbidden by law.

- 5.8 For that, Presenting Officer's Brief dated 08.07.2004 (herein Annexure- 27) wherein in Para 3 & 5, the presenting Officer states that the applicant's contention that he was asked to do Plumber's duty, is misconceived and misrepresentation of the facts; by repeatedly misrepresenting the facts the applicant has undoubtedly acted in a manner which is unbecoming of a government servant; is not tenable in the eye of law and in fact as because of that it is evident from the above-mentioned memorandums dated 08.02.96 & 14.07.97 (herein Annexure 1 & 4) issued by the respondents concerned that the applicant was assigned the said Plumber / Pump Operator duties and further it needs to be mentioned that during the pendency of the OA before the Hon'ble Tribunal, Kolkata, Shri Ananta Bhakat was posted to that SB, Hathikanda and after his joining at Hathikanda on 02.07.98, the applicant was exempted from the said Plumber/Pump Operator duties .
- 5.9 For that, Enquiry Report dated 23.07.2004 (herein Annexure- 29) in Para 3 of which, without taking in consideration of the evidence of the above-mentioned memorandums dated 08.02.96 & 14.07.97 (herein Annexure 1 & 4) that the applicant was assigned Plumber / Pump Operator duty and without taking in consideration of the points submitted by the applicant through his brief dated 21.07.04 (herein Annexure 28), the Inquiry Officer states that the Inquiry Officer has agreed with the Para 3 & 5 of the Presenting Officer's brief and found the applicant guilty of charges of unbecoming of a government servant under Rule 3(iii) of CCS Rules ; is not tenable in the eye of law and in facts.
- 5.10 For that, Penalty Order being Office Order of No. 65/3/97-Kol (Pers.) -2855 dated 02.03.2005 (herein Annexure- 31) the respondent No. 5 has, at length, after 7/8 years, after due date of ACP on 12.10.2004, imposed upon the applicant punishment in the matter of above-mentioned reopened D.E. in the major charge-sheet dated 02.01.1998, the matter of which, already declared by the respondents competent authority culminated vide the certificate dated 06.01.2000 (herein Annexure- 18) issued with reference to the memorandum

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dated 14.07.98 (herein Annexure- 16); clearly shows, non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.

5.11 For that, Memorandum of No. 40/41/91-Pers.13-Vol. IV- 10333 dated 25.07.2005 (herein Annexure- 33) vide which Shri S. K. Tripathi, who as the then respondent No. 5 & Disciplinary Authority, issued the major charge sheet (02.01.98) and who, presently working as respondent No. 2, as Appellate Authority rejected the appeal dated 18.04.2005 of the applicant (herein Annexure- 32) against the impugned Major charge-sheet/Departmental Enquiry/Punishment order; clearly shows non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.

5.12 For that, the applicant sent the advance copy of his grievance application dated 12.05.1997, to the Hqrs., New Delhi by registered post on 17.07.97, in accordance with the provisions of sending advance copy of grievance representation as enshrined in Para 16 of Chapter - 1 of the Standing Orders of the respondents department.

5.13 For that, the gist of Official Secrets Act-1923, Intelligence Organisation (Restriction of Rights) Act 1985 and the respondents' Departmental Security Instructions is as hereunder: -

"The Central Civil Service (Conduct) Rules Prohibit a government servant from communicating, without authority, to anyone."

5.14 For that, Official Secrets Act 1923, Intelligence Organizations (Restriction of Rights) Act 1985 and the respondents' Departmental Security Instructions do not restrict the officials of the respondents' department to communicate his/her grievance representation to the Superior officers of the respondents' department.

5.15 For that, Rule 3 (i) (iii) of CCS (Conduct) Rules 1964 also do not restrict the

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officials of the respondents' department to communicate his/her grievance application to his/her superior officers of the respondents' department.

- 5.16 For that, the extract of the Para 16 (iii) of the respondents' Departmental Standing Orders (Copy No. 206/Chapter One/Page04) enshrines as hereunder: -

"Having exhausted the first two stages and if the official is still not satisfied with the result, he is allowed a final chance to represent to the Additional Secretary/Secretary.

However, in his final representation he should clearly state his case"

- 5.17 For that, regarding sending of advance copy to respondents department, Hqrs., New Delhi, the extract of the provision of the Para 16 (iv) of the respondents' Departmental Standing Orders enshrines as hereunder: -

" During none of the above three stages is there any necessity for the applicant to send an advance copy of his representation endorse to the Director (Pers.) /Joint Secretary (Pers), Hqrs., New Delhi.

Similarly, when the final representation is made and if action is required on the contents within 7 days and advance copy may be sent to the Additional Secretary/Secretary".

- 5.18 For that, all those serving in the respondents department also know that even official secret/top-secret - operational sensitive matter relating correspondences are sent in the respondents organization through the Department of Post.

- 5.19 For that, the applicant sent the above-mentioned grievance representation through the Department of Post Government Of India on 17.07.97 and that was not misdelivered and was not fallen into the hands of some unscrupulous elements.

- 5.20 For that, the grievance representation (in Service matter) dated 12.05.97, later advance copy of which as sent by the applicant through the department of post by registered post on 17.07.97, was within the organization and not to an outsider.

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- 5.21 For that, it is evident that the grievance representation (in Service matter) dated 12.05.97, later advance copy of which was sent by the applicant through the department of post by registered post on 17.07.97, could/can not be termed in any manner that held on the part of the applicant any breach of the said Official Secrets Acts, Intelligence Organization (Restriction of Rights) Act 1985 and the respondents' Departmental Security Instructions and far it could /can not be termed that in any manner the applicant ever violated/violates Rule 3 (i) (iii) of CCS (Conduct) Rules 1964 (i.e. an employee should maintain absolute Integrity/should behave in the becoming way in government service).
- 5.22 For that, with reference to the said memorandum dated 14.07.98, a memorandum dated 06.01.2000 was communicated to the applicant with intimation that integrity of the applicant has been certified by the Competent Authority, Hqrs., New Delhi that there was nothing adverse against the applicant for the said period i.e. during the period in which the said charge-sheet dated 02.01.1998 (wherein leveled the article of charge with allegation of contravention of Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964 i.e. charge of integrity/ unbecoming way of a government servant) was initiated against the applicant.
- 5.23 For that, it is evident that issuance of the certificate dated 06.01.2000 by the Competent Authority, Hqrs., New Delhi declared the culmination of the D.E. Proceedings on the said Major Charge-sheet dated 02.01.1998.
- 5.24 For that, it is evident that the Inquiry Officer also has admitted as hereunder: -
- (i) That the applicant did not commit any civil or criminal offence,
  - (ii) That the charges were not framed on the basis of statements of witness
  - (iii) That the charge was without the statements of witness/evidences,
  - (iv) That the applicant's representation dated 17.07.97 was not misdelivered and not fallen into the hands of unscrupulous elements,
  - (v) That all those serving in the respondents department know that the official dak can be sent through Department of Post.

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- 5.25 For that, further, it is evident that during the course of hearing on 12.06.2004 (vide page 3 of the Daily Order Sheet dated 12.06.2004), the PO also agreed that the representation of the applicant was within the organization and not to an outsider.
- 5.26 For that, the IO - Shri Y. V. Dayal, the then respondent No. 6, in the Enquiry Report on 23.07.04, also has admitted that the memorandum dated 06.01.2000, issued by the Competent Authority, Hqrs., New Delhi, should be honoured.
- 5.27 For that, it is evidently true from the memorandums dated 08.02.96 and 14.07.97 (herein Annexure- 1 and 4) that the applicant was assigned Plumber/Pump Operator Duty and as such the applicant did not misrepresent in any manner and at any point of time,
- 5.28 For that, when there was nothing happened on the part of the applicant as alleged against him in the statement of imputation of misconduct of the charge sheet (02.01.98), thereby, question of unbecoming could/can not stay in any manner against the applicant.
- 5.29 For that, from the observations of the Competent Authority, Hqrs., New Delhi, vide the memorandum dated 06.01.2000 and the reports of the Inquiry Authority it is evident that the integrity of the applicant was intact in this case so question of unbecoming got no manner of application.
- 5.30 For that, the then respondent No. 4 - Shri P.K.Sharma as imposed penalty on the applicant vide the order dated 02.03.2005, is not tenable in the eye of Law and clearly shows non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.
- 5.31 For that, the respondents concerned intentionally reopened the closed matter of the DE and further delayed and punished the applicant and re-closed the said DE after the due date of the applicant's ACP (12.10.2004) and as such, despite.

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the applicant was eligible for grant of ACP w.e.f.12.10.2004 (vide the memorandum dated 29.07.05) the benefit of the first financial up-gradation under ACP scheme was not granted to the applicant (vide the memorandum dated 06.10.2005, from the due date on 12.10.2004 even after successful completion of 12 years of regular service at the same post and such type of acts and activities of the respondents clearly show non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.

- 5.32 For that, service of the applicant as Assistant Field Officer was confirmed from 01.01.1998 instead of 01.10.1995 vide the office order dated 08.06.2005, against which applicant submitted his representation on 20.07.2005 which is still remaining un-replied and such type of acts and activities of the respondents clearly show non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.
- 5.33 For that, even after completion of his tenure at this far North-East Region, Agartala, showing the cause that D.E (charge sheet 02.01.1998) is pending against him, the applicant was not transferred from this North-East Region; such type of acts and activities of the respondents clearly show non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.
- 5.34 For that, against the said punishment order dated 02.03.2005, the applicant submitted his appeal before the Appellate Authority vide his representation dated 18.04.2005 but the then respondent No. 5 - Shri S. K. Tripathi, who issued the impugned charge-sheet (02.01.98), the same Shri S. K. Tripathi, presently holding the post of respondent No. 2, as Appellate Authority, rejected the appeal of the applicant dated 18.04.2005 vide the office order dated 25.07.2005; such type of acts and activities of the respondents clearly show non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.

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- 5.35 For that, on this or that pretext, rejection of the grievance representations and the appeals of the applicant against the vindictive memorandums/orders of the respondents cannot and could not justify the action of the statutory functionaries and/or authorities discharging quasi-judicial duties and functions.
- 5.36 For that, authorities concerned did not consider the entire aspect of the matter in its correct perspective while passing the said impugned memorandums and office orders and further mental agony of the applicant was so lengthening and was so deteriorated by the respondents that was forcing the applicant to die and as such the acts and activities of the respondents clearly show non-judicious and vindictive attitude of the respondents towards the applicant inasmuch as colourable exercise of power which are strictly forbidden by law.
- 5.37 For that, no authority acting bonafide, on good faith and on consideration of the relevant facts to the exclusion of irrelevant ones, can or could do the said impugned memorandums/office orders and reject the representations, as in the instant case, save and except on consideration of some extraneous facts and factors.
- 5.38 For that, when statute requires something to be done in a certain manner the same has to be done in that manner alone and any other mode of performance and/or deviation thereof is strictly forbidden by law.
- 5.39 For that, the acts and activities on the part of the statutory authorities are in gross violation of the principles of natural and procedural justices as also the principles enshrined under Articles 14, 16, 23 and 300A of the Constitution of India as well as also the respondents - government servants- themselves are in gross violation of the general principles of the CCS (Conduct) Rules, 1964.
- 5.40 For that, the impugned memorandums/Office Orders, against which the applicant files this application, badly scratch stigma in the service career of the applicant and injure reputation of the applicant among his colleagues and their family members and further which badly affects the applicant's personal and family life and which not only the applicant, also punished and one roomed

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his family members, at the departmental quarter complex, Agartala .

- 5.41 For that, reason is a sine-qua-non for passing the quasi judicial order which is very much absent in the instant case.
- 5.42 For that the article of charge framed against the applicant is not based on any evidence or record but the charge is framed only on the basis of apprehension. As such, article of charge contained in Memorandum dated 02.01.1998 is not sustainable in the eye of law and as such liable to be set and quashed.
- 5.43 For that disciplinary proceeding cannot be initiated against any Govt. employee under Rule 14 of the CCS (CCA) Rule, 1965 only on the basis of apprehension and as such Memorandum of charge sheet dated 02.01.1998 is liable to be set aside and quashed.
- 5.44 For that it has been alleged in the article of charge that the applicant has disclosed information relating to the functioning of the organisation to the Secretary, Cabinet Secretariat, New Delhi, in contravention of the Departmental security instructions and the Official Secrets Act, the Intelligence Organisation (Restriction of Rights Act, 1985) whereas Secretary is the head of the Deptt. as such, any communication to the Secretary cannot be held as unauthorised communication whereas the Inquiry Officer in his enquiry report did not give any findings at all but held the applicant is found guilty of charges framed against him without discussing a single evidence in the inquiry report. As such, order of penalty is imposed without any evidence and on that score the impugned order of penalty dated 2.3.2005 is liable to be set aside and quashed.
- 5.45 For that the disciplinary authority did not discuss any evidence but followed the inquiry report dated 23.7.2004 most mechanically without discussing any evidence as required under the rule and the disciplinary authority also failed to look into the aspect that none of the listed document were examined in the inquiry proceeding which were relied upon by the disciplinary authority.
- 5.46 For that both the appellate authority and the reviewing authority while passing

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the order, miserably failed to consider the grounds raised by the applicant in his appeal dated 18.4.2005 and his review petition dated 23.11.2005 and the authority also failed to look into the aspect whether the procedure laid down in the CCS (CCA) Rules, 1965 has been complied with or not and whether findings of the disciplinary authority were warranted by the evidence on record. In the instant case findings of the disciplinary authority are not warranted by the evidence on record and reviewing authority also followed the inquiry report and the penalty order of the disciplinary authority and the order of the appellate authority without application of mind, as such, the order of penalty dated 02.03.2005, the impugned appellate order dated 25.7.2005 and the order of the reviewing authority dated 03.5.2006 are liable to set aside and quashed.

5.47 For that on the alleged charge series of penalties have already been imposed upon the applicant on different pretext and as such the impugned order is liable to be set aside and quashed.

5.48 For that the revisional authority without application of mind has confirmed the order of penalty dated 02.03.05 by the order bearing letter No. 40/41/91-Pers. 13. Vol.IV-5052 dated 03.05.06, therefore the order of revisional authority dated 03.05.06 is liable to be set aside and quashed.

6. **DETAILS OF REMEDIES EXHAUSTED:**

The applicant declares that he had availed of all the remedies available to him under the relevant service rules.

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

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal seeking relief from the impugned memorandums/office orders against which the applicant files this application nor any such application, Writ Petition or Suit is pending before any of them.

8. **RELIEF (S) SOUGHT FOR:**

*Simul Datta*

Under the facts and circumstances stated above, the applicants humbly prays that Your Lordships be pleased to admit this application, call for the records of the case including Duty Rosters of the entire period in question of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned charge sheet bearing memorandum No. 65/3/97-CAL (PERS.)-112 dated 02.01.1998 (Annexure- 14), followed by corrigendum No. 65/3/97-CAL (PERS.)- dated 17.02.98, impugned Penalty Order of No. 65/3/97-Kol (Pers.)-2855 dated 02.03.2005 (herein Annexure- 31), the impugned Office Order of No. 40/41/91-Pers.13-Vol. IV -10333 dated 25.07.2005 (herein Annexure- 33) by which rejected the appeal dated 18.04.2005 (herein Annexure- 32) of the applicant and the impugned revisional authority's order bearing letter No. 40/41/91-Pers. 13. Vol.IV-5052 dated 03.05.06 (Annexure- 36).

8.2 Cost of the application;

8.3 And to pass such further or other Order or Orders and/or Direction or Directions as to this Hon'ble Tribunal may deem fit and proper.

#### 9. Interim order prayed for.

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

9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this original application shall not be a bar to the respondents for providing the relief as prayed for.

10. ....  
This application is filed through Advocates.

#### 11. Particulars of the I.P.O.

i)	I. P. O. No.	: 269319561.
ii)	Date of Issue	: 28.2.06.
(iii)	Issued from	: G.P.O, Guntur.
G.S. (iv)	Payable at	: G.P.O, Guntur.

12. List of Enclosures:  
As given in the Index.

*Simul Datta*

VERIFICATION

I, Simul Datta, son of Shri Dilip Kumar Datta, age 39 years, working as Assistant Field Officer (Telecommunication Cadre), presently in the office of Deputy Commissioner (Tele), Special Bureau, Agartala, resident of 171, Mashunda (West), New Barrackpore, North 24 Parganas, West Bengal Pin- 700131, do hereby verify that the contents of Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on the 26<sup>th</sup> day of April 2006.

*Simul Datta*

Annexure-1

SECRET

No.1/100/96/HK-  
Special Bureau  
Govt. of India  
Hathikanda.

648

Dated, the :- 8/2/96

MEMORANDUM

This has the reference to your application dated 7.2.96 addressed to Deputy Commissioner, Hathikanda requesting for exemption from Pump duty inspite of asking by the undersigned that you will be assigned pump house duty from the next week as pump house duty is being performed by all AFOs(Tele).

2. It is reiterated for your information that you should perform pump duty like other AFOs(Tele) till a regular pump operator/Plumber is posted to this station.

3. This issues with the approval of DC(Tele).

*T.N. Bhattacharya* 8/2/96

( T.N. BHATTACHARYA )  
ASSISTANT COMMISSIONER(TELE)

Shri Simul Dutta, AFO(T),  
SB, Hathikanda.

*Attested*  
*Shri Simul Dutta*  
*Advocate*

SECRET

NO. 1/100/96/HK-1099  
SPECIAL BUREAU  
GOVT. OF INDIA  
HATHIKANDA.

DATED, THE : 17  $\frac{3}{97}$

MEMORANDUM

Reference your representation dated 9.1.97 regarding duties assigned to you.

Commissioner has ordered that no exemption from duty should be made. You are warned that your attitude and refusal to carry out assigned duties will be seriously viewed. Suitable departmental proceedings would be initiated if the lapses on your part persist. Commissioner further desires that suitable reflection of your acts of misconduct should be made in your ACR.

For compliance.

*Chidh*  
17.03.97  
( C. SRIDHAR )  
DEPUTY COMMISSIONER (TELE)

Shri Simul Dutta, AFO(T),  
SB, Hathikanda.

*Attested  
Dutta  
Advocate*

(5)

AP

To  
The Secretary,  
Govt. of India,  
Cabinet Secretariat,  
NEW DELHI.

(Through Proper Channel)

Sub:- As an AFO(Tele) my earnest prayer as the rank and  
job status of Assistant Field Officer (Tele Communication)  
being here degraded preponderantly since approximately  
last 6 or 7 years.

Respected Sir,

Reference Memorandum No. 4C/41/91/Pers.15-4440  
dated New Delhi, the 15.04.97 served upon me on 22.04.97  
in response to my representation (Addressed to Joint  
Secretary (Pers) dated 09.01.97 subjects regarding my  
earnest prayer of seeking exemption from PLUMBER/PUMP  
OPERATOR Staff duty.

2. With due respect and humble submission at the  
out-set I beg most respectfully to state that I am not  
being exempted from PLUMBER/PUMP OPERATOR ranking Staff  
duties.

In this context, I would like to state that during  
my present tenure (w.e.f. 15th January, 1996) at this  
Station, it is noticed that Shri R. Balaji AFO (Tele),  
Shri A. K. Jain, AFO (Tele) and Shri A. K. Chakraborty ,  
AFO (Tele) were exempted from this PLUMBER/PUMP OPERATOR  
ranking Staff duties.

Contd.....P/2

3. At present only Six AFOs (Tele) are here assigned to carryout this PLUMBER/PUMP OPERATOR Staff duties. So far I know personally that the AFOs<sup>As per AFO</sup> (Tele) are defective<sup>^</sup> not pleased to do PLUMBER/PUMP OPERATOR ranking staff duties; AFOs (Tele) have been here being compelled by tyrannous overaweing, to serve this PLUMBER/PUMP OPERATOR Staff duties at the SB, Hathikanda Staffs family Quarter complex boundary area in front of large number of other lower ranking staff members, staffs' family members, SSB Constable Guard Staffs since approximately last 6 or 7 years. In this regard, representations of Shri P.K. Sarkar, Shri S. K. Doloi, Shri R. Ravi Kumar and my representations refer .

Further, I would like to state that here the present position of the number of staff members below my rank and pay scale is as follow :

- (a) UDC/LDC/SFA (GD)/FA (GD) - 10 (Ten)
- (b) SFA (MT) - 03 (Three)
- (c) Group - D Staff Members - 09 (Nine)

Caretaker Shri J.B.S. Bhakuni and 08 Gr-D Staff Members live here at the SB, Hathikanda Staff's family quarter Complex area.

In this context, I would like to commemorate that at my earlier posting at SB, Patiala, PLUMBER/PUMP OPERATOR Staff duties would be served by the Group - D Staff members.



- : 3 : -

4. Like Shri P. K. Sarkar, Shri S. K. Doloi, Shri R. Ravi Kumar and all other AFO (Tele) I also feel de profundis that the oppressive assignment of PLUMBER/PUMP OPERATOR ranking Staff duties to Assistant Field Officer (Tele) ranking Staff in front of large numbers of other lower ranking staff members, subjects to a matter of open degradation; Rank and job status of Assistant Field Officer Telecommunication Staffs have been here intently being relegated, humiliated, neglected, despised, insulted and so on. It afflicts me so effectively that I am suffering from such an agony that affects on my normal life and works.

5. Further, I beg to state that a Govt. of India servant should not be expected to serve his/her below ranking staff's office duties in presence of large number of other lower ranking staff members. As per rule and regime, a Govt. of India servant should be expected to serve the office duties in public interest as per his/her ranking job status only.

6. Besides all the above points at the conclusion I may please have permission to submit the following few lines, Sir \_\_\_\_\_

I beg most respectfully to state that I have been here being assigned since February, 1996 to serve the following duties :

- : 4 : -

- (a) ASSISTANT FIELD OFFICER TELECOMMUNICATION  
ranking Staff duties \_\_\_\_\_ to intercept  
the information of the allotted target  
countries.
- (b) PLUMBER/PUMP OPERATOR ranking staff duties  
\_\_\_\_\_ to supply water to the SB, Hathikanda  
Office building Complex, SSB Staff Quarters  
and SB, Hathikanda Staffs' family Quarters.

In this context, I would like to attract your  
kind consideration on this Prima-facie that I am being  
paid Salary only for the ASSISTANT FIELD OFFICER TELE-  
COMMUNICATION ranking staff duties and more-over,  
the PLUMBER/PUMP OPERATOR ranking staff duties are also  
not concordantly to the job status of Assistant Field  
Officer Telecommunication Trade, RANK & PAY SCALE;  
i.e. below ranking Staff duties.

I, therefore, beseech upon your goodself that I  
may please be assigned only Assistant Field Officer  
ranking Staff duties or as the office sine qua non,  
only same ranking & Pay Scale staff duties ; kindly  
exempt me from the aforesaid additional DEGRADED duties  
with immediate effect please, Sir.

For that act of kindness this Appellant  
will always remain grateful to your goodself, Sir.

Praying your kind heart, Sir,

Yours faithfully,

*Simul*  
12-05-97

(SIMUL DATTA )

Date: 12.05.1997.

Place: SB, Hathikenda  
M.DIA.

RANK : ASSISTANT FIELD OFFICER  
(TELECOMMUNICATION)

ID NO: 03349-V

- Encl: 1. Memorandum No. 40/41/91/Pers. 15-4440  
dated New Delhi the 15.04.1997.
2. Memorandum No. 21/161/94-CAL(Estt) - 17416  
dated 17.10.95.

*Detected  
Datta  
Advocate*

SECRET

Amended 4

NO. 1/100/96/IR- 3172-  
SPECIAL BUREAU  
GOVT. OF INDIA  
HATHIKANDA.

(7)

DATED, TIME :- 14/7/97

MEMORANDUM

With reference to his applications dated 11.4.97 and 12.5.97, addressed to Dy. Commissioner(Tele), SB, Hathikanda and Secretary, Cabinet Secretariat, New Delhi respectively, seeking exemption from Plumber/Pump Operator staff duty at SB, Hathikanda, Under Secretary(Pers.VI), Cab. Sectt., New Delhi vide memo dated 5.7.97 intimated that the job for Plumber/Pump Operator duty, as assigned to Shri Simul Dutta, AFO(T) by his controlling officer is well within his prerogative and no further representation on this subject will yield any reply. In this connection, the Hqs., memo No. 4741/91-Pers.15-4440 dated 15.4.97 may also please be referred to.

2. This issued with the approval of Deputy Commissioner(Tele), SB, Hathikanda.

*[Signature]*  
14/7/97  
SECTION OFFICER

Shri Simul Dutta, AFO(T),  
Thro' ASC(Ops),  
SB, Hathikanda.

14.7.97

Attested  
*[Signature]*  
Advocate

To  
The Honourable Secretary,  
Government of India,  
Cabinet Secretariat  
NEW DELHI

Through

The Respected Joint Secretary (Pers),  
Government of India,  
Cabinet Secretariat,  
Room No. 7, Bikaner House (Annexe)  
Shahajahan Road,  
NEW DELHI

Sub: My prayer seeking exemption from PLUMBER/PUMP  
OPERATOR Staff duties which are beyond the scope  
and purview of the status of the post of my rank  
& Pay Scale (i.e. Rank - Assistant Field Officer  
Telecommunication, Pay Scale - Rs. 1320 to 2040/-)  
and/or schedule of work to the post.

Ref: My representation dated 12.05.97 & Office  
Memorandum (No.1/100/96/HK-3192) dated 14.07.97  
served upon me on 15.07.97.

Respected Sir,

With due respect and humble submission I beg to  
state that I submitted my representation under reference  
through proper channel in anticipation that Your Excellency  
would consider my prayer thereof. Though I am performing the  
Plumber/Pump Operator Staff duties in addition but still it  
is not clear whether my Controlling Officer is well within  
his prerogative to assign to me the duties which are not  
attached to the scope and purview of the post of my rank  
and pay scale and/or whether the PLUMBER/PUMP OPERATOR  
Staff duties are assigned to me as per Ministry's Orders.  
Moreover, it is distressing that the office memorandum  
under reference has deprived me on the subject in question  
to get the sympathetic consideration of your Excellency,  
Sir.

In this conclusion, therefore, I have no other  
alternative than propound my prayer through Joint Secretary  
(Pers), New Delhi to your good office, in anticipation,  
Your Excellency, Sir.

Preying your kind heart, Your Excellency, Sir.

Yours faithfully,

*Simul*

17-07-97

(SIMUL DATTA)

Rank - Assistant Field Officer  
(Telecommunication)

I.D. No. 03349-V

Date: 17-07-97

Place: Special Bureau,  
HATHIKANDA.

97

Enclosures : - Copy of

- 1) My representation dat. 12.05.97  
and the enclosures therewith.
- 2) The Office Memorandum (No. 1/100/96/HK-3192)  
dt. 14.07.97.
- 3) My representation dated 11.04.97.

\*\*\*\*\*

*Attested*  
*Signature*  
*Admission*

\*\*\*\*\*  
The following is a copy of the representation dated 12.05.97 and the enclosures therewith, as submitted to the Director of the Department of Social Welfare, Hong Kong, for his consideration.

I am a Chinese male, aged 45 years, born on 12.05.1952 at [illegible] in [illegible] District, Hong Kong. I am currently unemployed and have been so since [illegible]. I have a [illegible] degree from [illegible] University, Hong Kong, and have worked for [illegible] years in the [illegible] industry. I am seeking assistance in finding employment and financial support.

I am enclosing herewith a copy of my representation dated 11.04.97 and the Office Memorandum (No. 1/100/96/HK-3192) dated 14.07.97 for your reference.

No. 4/41/97-CCR  
Govt. of India  
Cabinet Sectt.

CONFIDENTIAL

Room No. 7,  
Bikaner House (Annexe)  
Shahajahan Road,  
New Delhi, the 14/6

## MEMORANDUM

The substance of the Annual Confidential Report for the period from 1/4/96 to 31/3/97 on you is as under:-

"Your personality and bearing, intelligence, quality of expression, knowledge of radio telegraphy and technical knowledge, knowledge of communication procedure, ability to search the cover links, ability for analysis/collation and sense of personal/operational security is Good. Your initiative and drive, work attitude, dependability, discipline and loyalty, team spirit and relations with others are Average. Your capacity to cope with stress is Below Average. Moreover, you refuse to perform assigned task as per duty roster despite being present in the office. After you were issued memos. You performed the task till completion of your extended period. Thereafter, you refused to perform assigned task and being warned orally and in writing several times. You were always found it difficult to draw the line between personal and organisation's interest/aims and fell short of minimum required standard behaviour thereby setting a bad example for others similarly placed officials."

2. It is hoped that you will take these remarks in the right spirit. If you have any representation to make against these remarks, it should be made in duplicate within four weeks from the date of the receipt of this memorandum by you.

3. Please retain one copy of the memorandum and return the other copy to the undersigned with your dated signatures thereon in token of your having received the original.

4. While returning the memorandum, it may also be indicated whether you are representing against the remarks or not.

14/6/97  
UNDER SECRETARY (ADMN.II)

Shri Simul Datta, AFO(T)  
C/o Asc(Tele), Satex Hathikanda

11/3  
Attested  
Datta Advocate

No. 4/20/98-CCR -1350  
Govt. of India  
Cabinet Sectt.

CONFIDENTIAL

Room No. 7,  
Bikaner House (Annexe)  
Shahajahan Road,  
New Delhi, the 14/7

MEMORANDUM

The substance of the Annual Confidential Report for the period from 1/4/97 to 31/3/98 on you is as under:-

"Your personality and bearing, intelligence and quality of expression are good. Your initiative and drive, capacity to cope with stress, work attitude, dependability, discipline and loyalty, team spirit and relations with others are average. Your attitude has become a matter of concern. You find it difficult to draw the line between personal interest and office requirements. Adamance dominates over your behaviour. It is difficult to persuade you on official requirements resulting in unnecessary correspondence. You are conscious about your rank and job status and have a tendency to speak about others. You would have been capable of doing assigned duties satisfactorily but for your divergent attention to avoidable matters, you could not be placed in proper place. You violated order setting thereby bad example for others. You are stubborn, lack understanding and have a habit of repeatedly flouting verbal and written orders of your superiors thereby acted in a manner which was detrimental to overall discipline of the status. You were more interested to submit repeated representations on unreasonable ground rather than to put your best efforts in the allotted operational tasks which led to the unnecessary wastage of men and material of the Establishment/Operations. You are highly indisciplined and quarrelsome officer. You are further informed that for want of completion of D.E., ~~any~~ integrity column has been left blank and further communication in this regard will follow on culmination of D.E. proceedings."

2. It is hoped that you will take these remarks in the right spirit. If you have any representation to make against these remarks, it should be made in duplicate within four weeks from the date of the receipt of this memorandum by you.

3. Please retain one copy of the memorandum and return the other copy to the undersigned with your dated signatures thereon in token of your having received the original.

4. While returning the memorandum, it may also be indicated whether you are representing against the remarks or not.

*Attested  
Mulla  
Advocate*

*[Signature]*

Shri Simal Datta,

AEQ(T)

H/o AcC(Tele) SR Hathikanda

UNDER SECRETARY-ADMIN. (T)



CONFIDENTIAL

No.4/23/99-CCR-1094  
Govt. of India  
Cabinet Sectt.

Room No.7,  
Bikaner House(Annexe)  
Shahajahan Road,  
New Delhi, the 29-6-99

MEMORANDUM

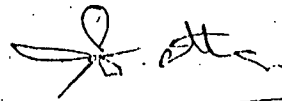
The substance of the Annual Confidential Report for the period from 1/4/98 to 31/3/99 on you is as under :-

"Your personality and bearing, intelligence, initiative and drive, capacity to cope with stress, work attitude, dependability, discipline and loyalty, team spirit and relations with others, quality of expression are good. However you tried to maintain and keep personal interests subordinate to organisation's interest and conformed to acceptable standards of behaviour. Possesses occasional self oriented behaviour. Needs instructions."

2. It is hoped that you will take these remarks in the right spirit. If you have any representation to make against these remarks, it should be made in duplicate within four weeks from the date of the receipt of this memorandum by you.

3. Please retain one copy of the memorandum and return the other copy to the undersigned with your dated signatures thereon in token of your having received the original.

4. While returning the memorandum, it may also be indicated whether you are representing against the remarks or not.



UNDER SECRETARY (ADMN.III)

Shri Simul Dutta,  
AFQ(T), ID No.3349-V,  
Thro' Asst. Commr. (Tele), SB Tuensang

Attended  
p. Dutta  
Advocate

Annexure-9

44-101  
11

F-1

SECRET

NO. 21/11/96/CAL(PERS)-- C. E. S  
SPECIAL BUREAU  
GOVT. OF INDIA  
CALCUTTA-17.

DATED, THE : /4-/98

MEMORANDUM

Shri Simul Dutta, AFO(T) who was allotted the Pump House duties in addition to the regular operational duties at par with other AFOs(T) on rotation basis, refused to perform the duties assigned by his supervisory officer on the following days and hence has displayed gross insubordination and disobedience.

i) 16.11.97	vi) 11.12.97	xi) 05.02.97
ii) 20.11.97	vii) 24.12.97	xii) 21.02.97
iii) 22.11.97	viii) 03.01.97	xiii) 04.03.97
iv) 23.11.97	ix) 16.01.97	xiv) 26.03.97
v) 09.12.97	x) 21.01.97	xv) 07.04.97

2. This attitude of Shri Dutta is subversive of general discipline of the office for which the undersigned proposes to treat the abovementioned days as "dies-non" as per the Govt. of India's Instruction (6) of Rule 11 of CCS(CCA) Rules, 1965.

3. Shri Simul Dutta, AFO(T) is therefore directed to submit within 10 days of the receipt of this memorandum a written statement in his defence and also to state whether he desires to be heard in person.

4. The receipt of the Memorandum may be acknowledged.

Attested  
Dutta  
Advocate

( H. K. SINGH )  
ADDITIONAL COMMISSIONER.

To  
Shri Simul Dutta, AFO(T)  
thru DC, SD, Hathikanda.

Annexure - 10

D5,

102

F-3

SECRET

NO.21/11/96/CAL(PERS)- 5747  
SPECIAL BUREAU  
GOVT. OF INDIA  
CALCUTTA-17.

DATED, THE 20/12/98

CORRIGENDUM

In partial modification of our Memo of even No. dated 14.1.98, regarding the purpose to treat 15 occasions as 'dies-non' due to Shri Simul Dutta's AFO(T) refusal to perform duties assigned by his supervisory officer, the dates from serial No. (i) to (vii) may be read as following :-

- i) 16.11.96
- ii) 20.11.96
- iii) 22.11.96
- iv) 23.11.96
- v) 09.12.96
- vi) 11.12.96
- vii) 24.12.96

( N.K. SINGH )  
ADDITIONAL COMMISSIONER.

To  
Shri Simul Dutta, AFO(T),  
thro' DC, SB, Hathikanda.

21.05.98

Annexure - 11

D6,

4493  
20.9.98

F-5  
SECRET

GOVT. OF INDIA  
CALCUTTA-17.

DATED, THE : 27-8-98

ORDER

Sanction of the competent authority is hereby conveyed in accordance with the Comptroller and Auditor-General's U.O. NO.1947-A/438-58, dated the 12th September, 1958, in Government of India's Ministry of Finance, File No.11(52), E-V/58 as incorporated under Govt. of India's decision No.1 below Rule 27 of CCS(Pension) Rules 1972 to treat the following periods as 'Dies-non' for all purposes viz. increment, leave and pension in respect of Shri Simul Dutta, AFO(T) (ID.NO.03349-V), posted at Sr. Nathikanda :

i)	16.11.96	ix)	16.01.97
ii)	20.11.96	x)	21.01.97
iii)	22.11.96	xi)	05.02.97
iv)	23.11.96	xii)	21.02.97
v)	09.12.96	xiii)	04.03.97
vi)	11.12.96	xiv)	26.03.97
vii)	24.12.96	xv)	07.04.97
viii)	03.01.97		

( GAUTAM ROY )  
DEPUTY COMMISSIONER (GENL.)

To  
Shri Simul Dutta, AFO(T)  
thru 'D', Sr. Nathikanda.

31.8.98

- 49-104  
Annexure-12

SECRET

CORRIGENDUM

Reference order No.21/11/96-Cal(Pers)-10022-27  
dated 27.8.98 regarding periods treated as "Dies non" in  
respect of Shri Simul Dutta, AFO(T) (ID.NO. 03349-V).

The following substitution may be made in  
line 2 to 4 of para-1 of the order under reference :-

FOR

" Comptroller & Auditor-General's  
U.O.No. 1947-A/438-58 dated the  
12th September, 1958 in Govt. of  
India's Ministry of Finance File  
No. 11(52), E-V/58 as incorporated  
under Govt. of India's decision  
No.1 below Rule 27 of CCS(Pension)  
Rules 1972"

SUBSTITUTE

" Govt. of India decision No. 6  
below Rule 11 of CCS(CCA) Rules".

( G.UTAM ROY )  
DEPUTY COMMISSIONER(NMN)

To,  
Shri Simul Dutta, AFO(T)  
through Deputy Commissioner  
SB, Hathikanda.

NO.21/11/96-CAL(PERS)-13194  
Special Bureau  
Govt. of India  
Calcutta.

Dated:- 1-12-98

Copy to:-

- 1) Section Officer(DDO), SB Calcutta, alongwith DOCS copy.
- 2) Director of Accounts, Cabinet Secretariat(SB), New Delhi.
- 3) Service Book seat, SB, Calcutta.
- 4) Under Secretary(Personal), Hqs. New Delhi.
- 5) Under Secretary(TD), Hqs. New Delhi.
- 6) Increment seat, SB Calcutta.

*Attended  
Dutta  
Advocate*

SECRET

No. 40/41/91-Pers. 15-Vol. II-9497  
Government of India  
Cabinet Secretariat

Room No. 7,  
Bikaner House (Annexe),  
Shahjahan Road,  
New Delhi, the

Memorandum

With reference to his representation dated 17.7.97 addressed to Secretary, seeking exemption from performing Plumber/Pump Operator duties, Shri Simul Dutta, AFO(T) is informed that as per the Departmental Security Instructions, the Official Secrets Act and the Intelligence Organisation (Restriction of Rights) Act 1985 strictly prohibit the members of this department from disclosing any information relating to the functioning, structure, personnel or organisational affairs in any manner which may jeopardise its security. Shri Simul Dutta, AFO(T) is found to have mentioned the nature of his duties vide para 6(a) of his representation sent by him by post, not through proper channel. Had this representation of his fallen into the hands of some unscrupulous elements, it would have caused serious damage to the security of this department. By this act of his, he has committed a serious security lapse. He is, therefore, directed to explain as to why disciplinary action should not be taken against him for this breach of Departmental Security Instructions, Official Secret Act and the Intelligence Organisation (Restriction of Rights) Act 1985. His explanation should reach the undersigned within 10 days of the receipt of this memo, failing which it will be presumed that he has no explanation to offer and action as per rules will be taken against him.

2. Apart from committing the aforesaid security breach, he has also violated the instructions contained in para 16(iv) of chapter I of Standing Orders. While his case does not satisfy the conditionalities warranting sending even an advance copy to the Secretary, he has sent it bypassing all his superior officers in chain by not routing the original representation through them. He is, therefore, directed to explain as to why disciplinary action should not be taken against him for this breach of standing orders on his part. His explanation on this issue should also reach the undersigned within 10 days of the receipt of this memo positively failing which it will be presumed that he has no explanation to offer and action as per rules will be taken against him.

contd....P/2....

Attested  
Signature  
Advocate

3. As regards his alleged grievance against assigning the duties of Plumber/Pump Operator, he is informed that his claim that he has been assigned the job of Plumber is a misrepresentation of facts. He, alongwith other AFOs(T), is required only to operate the pump, that too, on rotation basis and, if any defect erupts in the pump set, it is taken care of by some FO(T) in the workshop or by a private mechanic. In the light of the facts and circumstances, the decision communicated to him vide Hqrs. memo of even no. dated 15/4/97 stands.

This issues with the approval of J.S.(Pers).

*S.K. Mehrotra*  
( S.K.MEHROTRA )  
DY. SECRETARY (PERS.B)

Shri Simul Dutta, AFO(T)  
thro' DC(Tele), SB, Hathikanda.

*Through Asc(govt)*  
*Roy*  
*28/8/97*

*CB*  
*28.08.97*

*Affected*  
*Dutta*  
*Advocate*

99

CC/8/98

SECRET

F

10x

NO. 65/3/97-CAL(PERS.)- 112

Special Bureau  
Govt. of India  
Calcutta.

Dated, the 2-1-98

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri Simul Dutta, AFO(T) under Rule 3(1)(iii) of CCS(Conduct) Rules, 1964. The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charges(Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed(Annexure-II). A list of documents by which the articles of charge is proposed to be sustained is also enclosed(Annexure-III).

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

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

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

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

6. The receipt of the Memorandum may be acknowledged.

*Attested  
Sd/-  
Advocate*

*Tripathi*  
( S.K. TRIPATHI )  
COMMISSIONER  
DISCIPLINARY AUTHORITY

To  
Shri Simul Dutta, AFO(T)  
thru DC, SB, Hathikanda.  
6.1.98  
6.1.98



STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF  
ARTICLE OF CHARGE FRAMED AGAINST SHRI SIMUL DUTTA, AFO (TEL

Shri Simul Dutta, while posted at SB, Hathikanda sent a representation dated 17.7.97 to the address of Secretary, Cabinet Secretariat, New Delhi through JSEPERS. Hqrs., New Delhi by post enclosing therewith a copy of his representation dated 12.5.97. In para 6(a) of the aforesaid enclosure, he conspicuously mentioned the exact nature of his duties. Had this representation of his fallen into the hands of some unscrupulous elements during the postal transit, it would have caused serious damage to the security of the department and also would have also caused embarrassment to the Government. Disclosure of information relating to the functioning of this organisation in this manner is strictly prohibited in accordance with the Departmental Security Instructions, the Official Secrets Act and the Intelligence Organisations (Restriction of Rights) Act, 1985. Shri Dutta wittingly committed this lapse in that he was well aware of the DSI, Official Secrets ACT, 1923 and the Intelligence Organisations (Restriction of Rights) Acts 1985 and was also aware of the consequences of violation thereof. But when this breach of security was brought to his notice and his explanation was called for through Memo No. 40/41/91-Pers. 15-Vol. II-9497 dated 23.8.97, he acted in a very contemptuous manner flatly denying the charges through his letter dated 10.9.97 without explaining this act of gross misconduct on his part.

2. By the aforesaid act of omission and commission on his part, Shri Simul Dutta has displayed a gross lack of responsibility thereby acting in a manner unbecoming of a government servant in direct contravention of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Charge on  
Simul Dutta?  
21 - Serial forward

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**ARTICLE OF CHARGE FRAMED AGAINST SHRI  
SIMUL DUTTA, AFO(TELE) OF SB HATHIKANDA**

1. Representation of Shri Simul Dutta dated 12.5.97  
alongwith impugned ARTICLE enclosed.

That the said Shri Simul Dutta while functioning as AFO(Tele) at SB, Hathikanda during July, 1997 conspicuously mentioned the nature of his duties in the enclosure to his representation dated 17.7.97 and sent it by post to the address of the Secretary, Cabinet Secretariat, through JS(Pers.), Hqrs., New Delhi. Disclosing information relating to the functioning of the organisation in this manner being strictly prohibited, he contravened the Departmental Security Instructions, the official secrets Act and the Intelligence Organisation (Restriction of Rights) Act, 1985. By this act of omission and commission on his part, Shri Simul Dutta, AFO(T), has acted in a manner unbecoming of a government servant, thereby contravening Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

LIST OF DOCUMENTS

1. Representation of Shri Simul Dutta dated 12.5.97 alongwith impugned enclosures.
2. TPM NO.21/11/96/CAL(PERS.)-11391 dated 28.7.97.
3. Memo No.40/41/91-Pers.15-Vol.II-9497-98, dated 23.8.97.
4. Letter of Shri Simul Dutta, AFO(Tele), dated 10.9.97 addressed to DS(PERS.)
5. Certificate dated 20.10.92 given by Shri Simul Dutta, AFO(Tele), that he has read and understood the official secrets Act, 1923, Intelligence Organisations (Restrictions of Rights) Act., 1985 and Departmental Security Instructions of this Department.
6. Any other documents relevant to the case.

*Attested  
Dutta  
Advocate*

Annexure-15 *G*

SECRET

No. 65/3/97- CAL (PERS) - 4051  
Government of India  
Cabinet Secretariat

Room No. 7, Bikaner House (Annexe),  
Shahjahan Road, New Delhi, the

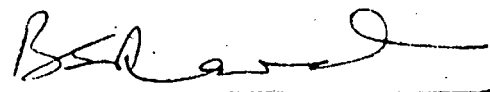
30-3-78

O R D E R

Whereas an enquiry under Rule 14 of the Central Civil Services (classification, control and Appeal) Rules, 1965, 18 being held against Shri Simul Dutta, AFO(T).

2. AND WHEREAS the undersigned considers that Inquiry Authority should be appointed to enquire into the charges framed against Shri Simul Dutta, AFO(T).

3. NOW, THEREFORE, the undersigned, in exercise of the powers conferred by Sub-rule (2) of the said rule hereby appoints Shri A.V.K. Rao, Technical Officer(Tele) as Inquiry Authority to inquire into the charges framed against the said Shri Simul Dutta, AFO(T).



( B. G. RAWAL )  
JOINT SECRETARY(PERS)

DISCIPLINARY AUTHORITY

✓ 1. Shri Simul Dutta,  
thru Deputy Commissioner,  
Special Bureau  
Govt. of India  
Hathikanda.

2. Shri A.V.K. Rao, Technical Officer(Tele),  
SB, Hathikanda.

*Attested  
Simul Dutta  
Advocate*

No. 4/20/98-CCR -1350  
Govt. of India  
Cabinet Sectt.

CONFIDENTIAL

Room No. 7,  
Bikaner House (Annexe)  
Shahajahan Road,  
New Delhi, the 14/7

MEMORANDUM

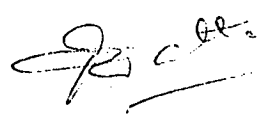
The substance of the Annual Confidential Report for the period from 1/4/97 to 31/3/98 on you is as under:-

"Your personality and bearing, intelligence and quality of expression are good. Your initiative and drive, capacity to cope with stress, work attitude, dependability, discipline and loyalty, team spirit and relations with others are average. Your attitude has become a matter of concern. You find it difficult to draw the line between personal interest and office requirements. Adamence dominates over your behaviour. It is difficult to persuade you on official requirements resulting in unnecessary correspondence. You are conscious about your rank and job status and have a tendency to speak about others. You would have been capable of doing assigned duties satisfactorily but for your divergent attention to avoidable matters, you could not be placed in proper place. You violated order setting thereby bad example for others. You are stubborn, lack understanding and have a habit of repeatedly flouting verbal and written orders of your superiors thereby acted in a manner which was detrimental to overall discipline of the status. You were more interested to submit repeated representations on unreasonable ground rather than to put your best efforts in the allotted operational tasks which led to the unnecessary wastage of men and material of the Establishment/Operations. You are highly indisciplined and quarrelsome officer. You are further informed that for want of completion of D.E., ~~any~~ integrity column has been left blank and further communication in this regard will follow on culmination of D.E. proceedings."

2. It is hoped that you will take these remarks in the right spirit. If you have any representation to make against these remarks, it should be made in duplicate within four weeks from the date of the receipt of this memorandum by you.

3. Please retain one copy of the memorandum and return the other copy to the undersigned with your dated signatures thereon in token of your having received the original.

4. While returning the memorandum, it may also be indicated whether you are representing against the remarks or not.



(UNDER SECRETARY-ADMIN. III)

Shri Simul Datta,  
AFO(T)  
Thro' AsC(Tele) SB Hathikanda

*Accepted  
Datta  
Advocate*

Annexure-17

13 1

CONFIDENTIAL

5/60/98/HK-212  
Special Bureau  
Government of India  
Hathikanda  
=====

Dated, the :-

MEMORANDUM  
=====

Subject :- Departmental enquiry under Rule 14 of the Central Civil Services (Classification, Control and Service) Rules, 1965 against Shri Simul Datta, AFO (T).

Due to certain procedural inconvenience, the preliminary hearing of above the case hereby stands postponed. The new date of the hearing will be communicated in due course. This is for your information and necessary action.

*G. V. K. Rao*  
(A.V.K. RAO) 23/07/98  
TECHNICAL OFFICER  
INQUIRY OFFICER

1) Shri Arindam Mukherjee, Assistant Commissioner, SB, Calcutta, the Presenting Officer.

✓ Shri Simul Datta, AFO(T), SB, Hathikanda, the Charged Official.

*Attested  
by  
Advocate*

~~#~~ Gr 11/11/00  
1798 Asc (gr) 11/11/00  
~~Pill~~ 11/11/00  
CSB  
11.01.2000

Arrested  
Mulla  
Advocate

Form No. J. (2)

IN THE HIGH COURT AT CALCUTTA

Appellate/Revisional Civil Jurisdiction

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Present :

The Hon'ble Justice S. S. Bhatia

and

The Hon'ble Justice Pratap Kumar Ray.

W.P.C.T. No. 206

of 1999.

Simul Datta

The Union of India & Ors.

For Appellant/Petitioner Mr. Bishan Chandra Ghoshal,  
Mrs. Baisali Ghoshal.

For Respondent, Opposite Party Mr. Priyabrata Mukherjee,  
Mr. Anil Kumar Gupta.

Heard on :

Judgement on: 19.9.2000.

Satya Brata Sinha, J:

This application is directed against the judgment and order dated 14.5.99 passed by the Central Administrative Tribunal, Calcutta Bench, in O.A. No. 130 of 1999 whereby and

...2

*Attestd  
Sat  
Advocate*

*6.11.2000*



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whereunder the petitioner's application questioning the order of transfer was dismissed. The petitioner was appointed by the respondent in the post of Assistant Field Officer (AFO), Telecommunication Operational Tasks. According to the petitioner, he was asked to perform as Plumber/Pump Operator instead of working as Telecom Operational Tasks. He refused to do so and as such the impugned order of transfer was passed. The aforementioned order of transfer was questioned on various grounds, namely: (1) the same is contrary to the transfer policy laid down by the respondents as contained in annexure 'D' to the affidavit-in-reply which inter alia prohibits the transfer of low-paid employee unless the conditions laid down therein are satisfied.

(2) Several other employees who have been working for more than 5 years at the same place has not been transferred.

(3) The order of transfer is violative of Articles 14 and 16 of the Constitution of India as the same is penal in nature.

The contention of the respondent on the other hand is that the petitioner had been transferred as he had been working at Hathikanda for a period of 3 years.

Having regard to the order proposed to be passed by us it is not necessary to consider the fact of the matter in great details. Suffice it to point out that the learned Tribunal itself in its impugned order noticed:

"It has also been pointed out that the applicant has lifted photocopies of the classified documents vide Annexure- 'E' to the O.A. unauthorisedly. The Departmental security instruction barred the employees

11/11/2011

(30)

of the Department to take up the photocopies of the classified documents to be used in this manner. He has thus committed a security breach which further establishes the propensity of contravening the security instructions. This point has not been taken serious note by the competent authority".

The aforementioned contention raised on behalf of the respondent herein clearly manifests that the foundation of the order of transfer was based upon the purported act of propensity of contravening the security on the part of the petitioner herein and thus the same was issued by way of or in lieu of punishment.

In this view of the matter, we are of the opinion that the order of transfer having been passed by way of punishment is wholly unsustainable and the order of transfer being penal in nature must be passed upon compliance of the principle of natural justice and not otherwise.

For the reason aforementioned, the impugned order passed by the learned Tribunal cannot be sustained which is set aside accordingly and the original application of the petitioner herein is allowed.

This order however shall not stand in the way of the respondent to pass an appropriate order in accordance with law.

It is stated by the learned counsel for the petitioner that the period of absence of the petitioner from 1.6.99 to 14.10.99 should be directed to be regularised in view of the stand taken by the respondent in his order dated 3.11.99 as contained in annexure 'J' to the affidavit-in-reply. If the observation to that effect has been made by the respondent himself in the aforementioned order, it is not necessary to issue an direction in this regard.

The application is allowed with the aforementioned observation.

Pratap Kumar Ray, J.

I Pres.

Attested  
Advocate

6.11.2010

Annexure-20

CONFIDENTIAL

NO.65/3/97\_CAI(PERS.) - 7212  
SPECIAL BUREAU  
GOVERNMENT OF INDIA  
KOLKATA

By No. 145/528  
13/6

DATED THE 11/6/01

## ORDER

WHEREAS an enquiry under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, is being held against Shri Simul Dutta, AFO(T).

AND WHEREAS the undersigned considers that a presenting officer should be appointed to present on behalf of the undersigned the case in support of the articles of charges.

NOW THEREFORE, the undersigned in exercise of the powers conferred by sub-rule (5) (c) of Rule 14 of the said Rules, hereby appoints Shri G.S. Banerjee, Assistant Commissioner, SB Agartala as Presenting Officer.

*R. Banerji*  
( R. Banerji )  
Commissioner

&  
Disciplinary Authority

- Attested  
Dutta  
Advocate*
1. Shri Simul Dutta, AFO(T)  
Thro' DC, SB Agartala.
  2. Shri G.S. Banerjee,  
Assistant Commissioner, SB Agartala.
  3. Shri S.K. Chakraborty,  
Assistant Commissioner (T), SB Agartala.

Annexure - 21

# DAILY ORDER SHEET

<u>Sl. no.</u>	<u>Date of hearing</u>	<u>Present in the hearing</u>	<u>Summary of proceedings</u>	<u>Sl. of IO/PO</u>	<u>Sl. of the charged officer</u>
1.	17.9.2001		Pre elimination hearing. Mr. Chakraborty, Rao and the charges framed agreed. In	Mr. Chakraborty 9/17/9/01	PO Datta 17/9/01
2	24.9.2002		Submitted an application to Mr. Chakraborty for application to	9/10 24/9/02	PO Datta 22/10/02

F/c - Mr. Leavitt

26/4/2002

St. Paul  
Goulded a  
apple-education  
fence at the  
Clergy's farm  
agreed to them

Six Lakes  
I/O 2-11-02  
Embark  
-9. 22/6/02

26/04/02

✓ Attached  
Plaster  
Achromatic

Annexure - 22  
A

(33)

DAILY ORDER SHEET

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Sl. No.	Date of hearing	Present at the hearing	Summary of proceedings	Sig. of IO/PO	Sig. of C.O.
4	14/8/02	<p>PP D. P. ANANTHANARAYAN I/O</p> <p>S. S. BARNERJEE P/O</p> <p>SIMUL DATT C/O</p>	<p>Recd. in letter from C/O asking for various documents as listed in the letter (P-6)</p> <p>Examination of these documents will be charge of 11. Room for not any survey the documents will be noted</p>	<p>14/8/02</p> <p>14/8</p> <p>Pt.</p>	<p>14/08/02</p>

Attended  
Mulla  
Anwarul

CONFIDENTIAL

DAILY ORDER SHEET

Date of hearing: 15.5.04

Present in the hearing:

Shri Y.V. Dayal, DC, SB, Agartala - IO  
Shri M.K. Saha, ASC, SB, Agartala - PO

Summary of proceedings:

P.O.: I am reading out Statement of Imputation of misconduct along with Article of charge framed against Shri Simul Dutta, AFO(T), C.O.

✓ IO: Can Shri Simul Dutta deny having sent his written representation dated 17.7.97 directly to Secretary (R) through Registered post.

PO: He can not because the said representation is available with disciplinary authority.

IO: Can the charged official deny having written things in the said representation which are considered as strictly prohibited and hence the C.O. breached the Departmental Security Instructions, the Official Secret Act and the Intelligence Organisation (Restrictions of Rights Act 1985).

✓ PO: The CO can not deny this because his representation dated 17.7.97 can be produced as an exhibit in the case.

IO: Can you produce the C.O's representation dated 17.7.97 written and sent to the Secretary, Cabinet Secretariat directly by post.

PO: ✓ We do not have the copy of his representation dated 17.7.97. However his representation dated 12.5.97 addressed to the Secretary which he sent as enclosure to his representation dated 17.7.97 is available. In that itself he has given names of officers working in our Department, strength of the officials, the duties etc. which all can be produced as evidence against the CO for breaching the Official Secret Act. It

Attested  
for  
Advocate  
15/5/04  
(Y.V. DAYAL)  
IO

15/5/04  
(M.K. SAHA)  
P.O.

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can be proved beyond doubt that he sent his representation 17.7.97 to Secretary, Cabinet Secretariat, New Delhi by post. If his representation had fallen into the hands of some unscrupulous elements during the postal transit, it would have caused embarrassment to the Govt. It is, therefore, proved beyond doubt that Shri Simul Dutta, CO acted in contemptuous manner and can be punished for this act of gross mis-conduct on his part.

IO: Let us give him a chance to appear and defend before me during the hearing fixed on 12.6.04 (Saturday) at 1100 hrs.

*Y.V. Dayal*  
15/5/04  
(Y.V. DAYAL)  
Inquiry Officer

*M.K. Saha*  
15/5/04  
(M.K. SAHA)  
Presenting Officer

*Alleged  
Dutta  
Advocate*

CONFIDENTIAL

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DAILY ORDER SHEET

Date of hearing : 12/06/2004

Present in the hearing:

Shri Y.V. Dayal, DC, SB, Agartala – IO  
Shri M.K. Saha, ASC, SB, Agartala – PO  
Shri Simul Datta, AFO(T), MS, Agartala – CO

Summary of proceedings:

IO: Do you understood the charges made against you?

CO: I don't understand the charges.

IO: PO may kindly explain the charges levelled against the CO.

PO: The charges levelled against the CO are read herewith.

IO: Have you now understood the charges levelled against you?

CO: I have understood the charges but I deny and dispute the correctness of the statements and/or allegations and/or contentions as made there in the charge-sheet dated 02/01/98 save and except what are matters of records of the case. I may kindly be supplied the copies as mentioned in my representation dated 12/06/04, submitted during the course of inquiry to the respected Inquiry Officer so that the said copies can be examined, re-examined and cross-examined during the course of inquiry and I may kindly be given an opportunity to prepare my defence and submit a written brief in an effective manner.

IO: PO is requested to go through the representation of the CO dated 12/06/04 and let me have position of the documents asked for and if they can be made available to the CO.

*Advocate*  
*Y.V. Dayal*  
12/6  
I.O.

*M.K. Saha*  
12/6/04  
(M.K. SAHA)  
P.O.

*Simul Datta*  
12.06.2004  
(SIMUL DATTA)



(39)

PO : I shall require sometime to study the representation and whatever documents can be made available shall be given to the CO as soon as possible before the next hearing.

IO : Why you could not inform us about your inability to attend the hearing on 15/05/04?

CO : I have already explained through my representation dated 28/05/04, submitted through the Deputy Commissioner(Tele), MS Agartala and again I hereby state that I was unable to attend my office duties from 11/05/04 as I was to look after my ailing wife and new born baby. Since nobody other than me is to look after them here at Agartala and the intimation was made to the office of Deputy Commissioner(Tele), MS, Agartala through my representation 12/05/04 which was forwarded to your honour along with my representation dated 28/05/04. Further a medical certificate in respect of my wife being sick from 10/05/04 (evening) was enclosed therewith the representation dated 28/05/04.

IO : The representation made to DC(T) dated 12/05/04 is a typed one. Where did you type the representation and if you had time to type it why you could not give me a ring to inform me that you would not be able to attend the hearing on 15/05/04. Moreover, the representation does not make any request to DC(T) to inform me that you would not be able to attend the hearing on 15/05/04.

CO : Actually it was not known to me before that I would be unable to attend the hearing on 15/05/04 and it was not known to me that respected Deputy Commissioner (Tele), MS, Agartala did not inform the respected Inquiry Officer, Deputy Commissioner, SB, Agartala about my circumstances that I would not be able to do my office duties from 11/05/04 due to sickness of my wife and further I was not in a position to ring up the respected Inquiry Officer. However, I regret for it.

PO : You never requested DC(T) to inform.

*(Y.N. Dey)*  
12/6/04  
I.O.

*(M.K. Saha)*  
12/6/04  
P.O.

*(Simul Datta)*  
12.06.2004  
C.O.

CO : I was not in a position to do so because of the condition of my wife.

IO : Although the excuse given by the CO appears flimsy yet because of his family circumstances I accept it. CO is directed not to repeat this kind of mistake in future

CO : I agree.

IO : Do you want to say anything in your defence in the case?

CO : I may kindly be allowed to submit a written statement of my defence in an effective manner, after receipt of the said copies as mentioned in the representation dated 12/06/04.

IO : The hearing for the day is concluded herewith with direction to PO for framing a reply to CO's representation dated 12/06/04. Next date of hearing will be intimated in due course.

*Y. V. Dayal*  
12/6/04  
( Y. V. DAYAL )  
Inquiry Officer

*M. K. Saha*  
12/6/04  
( M. K. SAHA )  
Presenting Officer

*Simul Datta*  
12/06/2004  
(SIMUL DATTA)  
Charge Officer

*Attended  
Dutta  
Advocate*

CONFIDENTIAL

No. 116/2/2001-AGR(Estt)-483

Govt. of India

Special Bureau

Agartala, the : 18/06/04

MEMORANDUM

Sub: Departmental Enquiry under Rule 14 of the Central Civil Service (Classification, Control and Service) Rules, 1965 against Shri Simul Dutta, AFO(T).

Please refer to your representation dated 12/06/04 requesting for a number of documents to prepare your defence in the case mentioned above.

2. As mentioned by you in para-2 in your representation regarding your Defence Assistant Shri Jaharlal Sengupta, you have already been informed by our letter No.6/1/99-AGR(Tele)-281 dated 06/02/02 that "you are permitted to take the help of Shri Jaharlal Sengupta as Defence Assistant but no repeat no expenditure, whatever may come in this way, will be borne by this office".

3. We find that the documents you have asked for in your representation dated 12/06/04, were asked by you before also and a reply to that effect was given to you vide our memo. No.6/5/2001-AGR(Tele)-113 dated 19/08/02 in which it was clearly mentioned that some of the documents you have asked for again were not available with us and hence cannot be provided. Still para-wise comments on the documents you have asked for, are appended below :-

Paras	Comments
(a) First information report on the basis of which the article of charge framed against me	You have not committed a civil or criminal offense for which an FIR is required. However, you have already been provided with the statement of imputation of misconduct in support of article of charge framed against you. The statement also gives the reasons for framing the charges against you and setting up of a Departmental Enquiry.
(b) List of witness on the basis of which the article of charge framed against me	The charges have not been framed on the basis of statements of witnesses. Rather they are framed on the basis of your act and misconduct in performing your official duties. The statement of imputation and misconduct in support of article of charge framed against you adequately gives the basis on which the article of charge was framed against you.

*Asst. Secy.*  
*Mr. Advocate*

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(c) Statements of witness on the basis of which the article of charge framed against me	Not applicable, in view of the reply given under sub-para-(b) above.
(d) Copy of the representation dated 17/07/97 on the basis of which the article of charge framed against me	Copy enclosed.
(e) The statements/evidences recorded so far on the basis of which the article of charge framed against me	As mentioned under sub-para-(b) above, the article of charge framed against you are on the basis of your act and misconduct. No statement is required to be recorded for framing this charge.
(f) Charter of the duties as attached to the post of AFO(T) which is required to explain the necessity of submission of my grievance applications dated 12/05/97 and 17/07/97 respectively addressed to our Hqs., New Delhi seeking exemption from the said plumber duties as would be assigned to me	Para-3 of memo. No.40/41/91-Pers.15-Vol-II dated 23/08/97 should suffice.
(g) Charter of the duties as attached to the post of plumber (Misc. Cadre) which is required to explain the necessity of submission of my grievance applications dated 12/05/97 and 17/07/97 respectively addressed to our Hqs., New Delhi seeking exemption from the said plumber duties as would be assigned to me	Not applicable as it is no way connected with the case.
(h) Copy of the standing orders - book of our department - Cabinet Secretariat which is required to substantiate the fact that the above mentioned grievance applications as submitted by me addressed to our Hqs., New Delhi goes nothing wrong on my part as per our Departmental Standing Orders also.	Photocopy of circular no. No.10/4/95-Pers.5-2210 dated 25/08/95 regarding avoidance of endorsing advance copies of representation to senior officers viz. Secretary/Special Secretary or to outside authorities was given to you on 19/08/02 in the presence of the then Inquiry Officer, Shri A. Ananthanarayanan (Memo. No.6/5/2001-AGR(Tele)-111 dated 19/08/02 refers)
(i) Research & Analysis Wing (Recruitment, Cadre & Service) Rules - book which is required to substantiate the fact that the above mentioned grievance applications as	The extracts of the rule book have already been provided (Memo. No. 6/5/2001-AGR(Tele)-111 dated 19/08/02 refers).

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submitted by me addressed to our Hqrs., New Delhi - goes nothing wrong on my part as per our R&AW (R C & S) Rules also	
(j) Certificate of the Department of Posts (that my representation dated 17/07/97 was misdelivered and fallen into the hands of unscrupulous elements) on the basis of which the article of charge framed against me	This charge has never been levelled against you.
(k) Our departmental standing orders regarding the provisions which allow to send advance copy of grievance applications to our Hqrs., New Delhi which are required to substantiate the fact that the above mentioned grievance applications as submitted by me addressed to our Hqrs., New Delhi goes nothing wrong on my part as per the said Departmental Standing Orders also	This has already been replied under sub-para-(h) above and vide para-2 of Memo. No.40/41/91-Pers.15-Vol.II dated 23/08/97 of Deputy Secretary(Pers.B). Our Departmental Standing Orders may also be perused at the Office of the DC, SB, Agartala.
(l) Our Departmental Standing Orders regarding the provisions which give a final chance to submit grievance applications addressed to Secretary, our Hqrs., New Delhi stating therein clearly all the points of the grievance which are required to substantiate the fact that the above mentioned grievance applications as submitted by me addressed to our Hqrs., New Delhi goes nothing wrong on my part as per the said Departmental Standing Orders also	Before jumping to the conclusion that the letter addressed by you to the Secretary was in a bid to take a final chance to submit grievance, you may provide copies of your earlier applications in which you had projected your grievances to the lower authorities than Secretary. Our Departmental Standing Orders may also be perused at the Office of the DC, SB, Agartala.
(m) Our Departmental Standing Orders regarding the provisions which allow even our departmental classified documents to despatch from Special Bureaux to our Hqrs., New Delhi and vice-versa through the Department of Posts which are required to prepare my defence in an effective manner	The request is irrelevant and unjustified as all those serving in this department know that the official dak can be sent through Department of Post.
(n) Copy of the rules of Postal Manual Vol-VI (Part-III) regarding the responsibility of Department of	A copy of Postal Manual may be procured personally. We do not keep Postal Manual with us.

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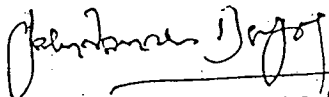
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ists, Government of India for correct delivery of registered letters which are required to prepare my defence in an effective manner.	
(o) Statements of Rule 3(i) & 3(iii) of CCS (Conduct) Rules, 1964 which are required to prepare my defence in an effective manner.	CCS (Conduct) Rules should be known to a government servant. In case of any doubt, you may obtain the required publication from the open market or may peruse the book on the Conduct Rules at SB, Agartala.
(p) Written briefs of the Presenting Officer along with the above mentioned copies on the basis of which the article of charge framed against me with the allegations of contravention of Rule 3(i) & 3(iii) of CCS (Conduct) Rules, 1964.	The demand is not found justified.

4. As far as Para-4 of your representation is concerned, you may prepare a written defence but it is the prerogative of Inquiry Officer to allow the Presenting Officer to ask questions from the Charged Officer which are duly recorded in the Daily Order Sheet. However, your written statement of defence shall be given due consideration at the time of hearing.

5. The request made by you in para-5 of your representation has been noted.

Encl. 08 sheet.

  
( Y. V. DAYAL ) 18/6  
DEPUTY COMMISSIONER  
INQUIRY OFFICER

Shri Simul Datta,  
AFO(T),  
MS, Agartala.

Attested  
Datta  
Advocate

DAILY ORDER SHEET

Date of hearing : 05/07/2004

Present in the hearing:

Shri Y.V. Dayal, DC, SB, Agartala - IO  
Shri M. K. Saha, ASC, SB, Agartala - PO  
Shri Simul Datta, AFO(T), MS, Agartala - CO

Summary of proceedings:

PO: Have you received our reply to your representation dated 12/06/2004?

CO: Yes, Sir, I have received it.

PO: Are you satisfied with the replies given?

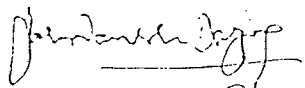
CO: Sir, I dispute the article of charge as made in the chargesheet dated 02/01/98 with the allegations on the contravention of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. The charges were levelled against me under Rule 3(i) [i.e. maintain absolute integrity] and 3(iii) [i.e. do nothing which is unbecoming of a government servant] of CCS Conduct Rules, 1964. Subsequently, I am in receipt of a memo. No.4/20/98-CCR-1350 dated 14/07/98 whereby I was informed, "for want of completion of DE integrity column has been left blank and further communication in this regard will follow on culmination of DE proceedings". And accordingly with reference to the memorandum dated 14/07/98, I received another memo. No.4/20/98-CCR-20 dated 06/01/2000 which states, "Shri Simul Datta, AFO(T) is hereby informed that his integrity has been certified by the competent authority and there is nothing adverse against his integrity for the period mentioned above". (Copy of both the memos. enclosed as Exhibit-1 and Exhibit-2).

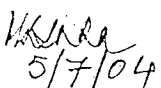
PO: Do you want to contest our reply given to you in response to your representation dated 12/06/2004?

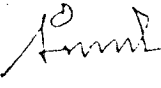
CO: My reply to your memo. dated 18/06/04, is submitted herewith (enclosed as Exhibit-3). The date of my reply is 05/07/2004.

PO: Vide Para No.35 of your reply I would like to ask you a few questions.

CO: I have no objection.

  
( Y. V. DAYAL ) S/7  
Inquiry Officer

  
5/7/04  
( M. K. SAHA )  
Presenting Officer

  
05-07-2004  
(SIMUL DATTA)  
Charged Officer

  
Advocate

: 2 :

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PO : Do you understand how the secret/top secret communications are sent through postal department, as per rules?

CO : Through registered AD. If top secret, by insured post (it would be in double cover). The envelopes should be properly sealed.

PO : How did you post your representation?

CO : Through registered AD.

PO : Do you have the receipt or acknowledgement due, for the said letter to prove that you sent it through registered AD.

CO : So far I remember, I sent it through registered AD. I have misplaced it.

PO : Did you seal the cover/covers?

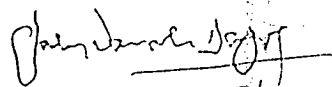
CO : Yes, I sealed it properly.

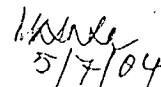
PO : Why did you not send your representation through proper channel?


CO : My representation dated 12/05/97 was sent through proper channel. Subsequently, when I was informed that my representation was not forwarded to the Secretary and my request was not understood and conceded by my next superior officers, I was forced to send an advance copy of the representation dated 12/05/97 through Department of Post on 17/07/97, as per our Departmental Standing Orders. It may also be pointed out that I had made my first request to exempt me from plumber duty in the month of February, 1996 but all my requests, verbal and written, were ignored and not given any heed to. It may also be pointed out that subsequently a plumber was employed for carrying out these duties against which I was representing for more than 16/17 months.

PO : Why did you disclose information relating to the functioning, structure, personnel or organisational affairs in your representation dated 12/05/97?

CO : In my representation dated 12/05/97, I did not refer to any secret duties, the officials were involved in. I have also not disclosed the structure of the organisation or its real functioning in my representation. Besides I was representing within the organisation and not to an outsider who should not be a privy to this information.

  
( Y. V. DAYAL ) 5/7  
Inquiry Officer

  
5/7/04  
( M. K. SAHA )  
Presenting Officer

  
05.07.2004  
(SIMUL DATTA)  
Charged Officer



: 3 :

PO : Still you cannot deny having mentioned the names and some duties which your colleagues were doing .

CO : As mentioned above, my representation was within the organisation and not to an outsider. Hence it cannot be called as a breach of Official Secret Act.

PO : True. But if this letter had fallen into wrong hands it could have embarrassed the government.

CO : The allegation is on imaginary grounds only. The letter was sent properly as per the departmental rules, through registered AD.

✓ PO : Do you think that there was any need for you to send an advance copy of your representation to the highest authority in the department, especially so when it was only a petty issue relating to the duties allotted to you?

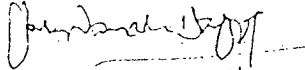
CO : Initially, the grievance against the said plumber duties representation dated 12/05/97, addressed to Secretary, was submitted through proper channel. Subsequently, when I was informed that my representation was not forwarded to the Secretary and my request was not understood and conceded by my next superior officers, I was forced to send an advance copy of the representation dated 12/05/97 through Department of Post on 17/07/97, as per our Departmental Standing Orders.

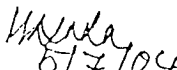
PO : Can you produce copies of your representation made to lower authorities than Secretary?

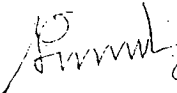
CO : Yes, the copies are submitted herewith (enclosed as Exhibit-4).

PO : Do you think that by sending a direct representation to the Secretary, you have not acted against the Departmental Security Instructions, the Official Secret Act and Intelligence Organisations (Restrictions of Rights) Act, 1985.

CO : The Official Secret Act – 1985 and Intelligence Organisations (Restrictions of Rights) Act – 1985 and our Departmental Security Instructions do not restrict the officials of our department to submit his/her grievance application to his/her superior officers on various service matters. My reply, in this connection, may also be seen vide Para-22 & 23 of my application dated 05/07/04 to the Inquiry Officer.

  
( Y. V. DAYAL )  
Inquiry Officer

  
( M. K. SAHA )  
Presenting Officer

 05-07-2004  
(SIMUL DATTA)  
Charged Officer

(46)

CONFIDENTIAL

: 4 :

IO : I find that you have been extremely defiant of your actions and have absolutely no regret for your confrontational attitude for your actions wittingly or unwittingly committed by you since 1997. Would you like to explain the circumstances under which you acted in this fashion.

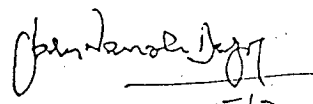
CO : It is true that I submitted my grievance against the said plumber duties before my superior officers through my representations as per Departmental Rules in the way of becoming of a govt. servant. Further I had no other intention and/or I have had no such type of attitude. I am always ready to regret for my wrong doings, if any, on my part at any point of time.

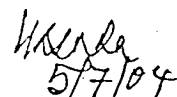
IO : I think, the evidence in the case is complete with this hearing or if PO or CO have anything more to submit, we may have another hearing.


PO : I have presented the case and do not have anything to add.

CO : I have also nothing more to say in addition to what has been stated by me in this or previous hearings.

IO : PO may submit his case on the findings within two weeks from the receipt of Daily Sheet Order. A copy of the same may be sent to CO also to give him a last chance in his defence.

  
(Y. V. DAYAL) 5/7  
Inquiry Officer

  
5/7/04  
(M. K. SAHA)  
Presenting Officer

  
05.07.2004  
(SIMUL DATTA)  
Charged Officer

*Attested  
Plumber  
Advocate*

No. 116/3/2004-AGR(Estt)- 3146 dated 08/07/2004

Sub : Departmental Enquiry under Rule 14 of the Central Civil Service (Classification, Control and Service) Rules, 1965 against Shri Simul Datta, AFO(T).

Kindly refer to your Memo. No:116/2/2001-AGR(Estt)-513 dated 06/07/04 directing me to submit brief on the findings in the case as emerged out of hearings which took place on 15/05/04, 12/06/04 and 05/07/04.

2. Shri Simul Datta, CO while refusing to carry out assigned duties and subsequently representing directly to Secretary(R) through JS(Pers), has been charged under Section 3(i) (iii) of CCS Conduct Rules, 1964. Shri Simul Datta while posted at SB, Hathikanda sent a representation dated 17/07/97 to the address of Secretary, Cabinet Secretariat, New Delhi, through JS(Pers), Hqrs., New Delhi by post enclosing therewith a copy of representation dated 12/05/97. In para-6(a) of the aforesaid enclosure, he conspicuously mentioned the exact nature of his duties. Had this representation of his, fallen into the hands of some unscrupulous elements during the postal transit it would have caused serious damage to security of the department and also would have caused embarrassment to the government. Disclosing information relating to the functioning of this organisation in this manner is strictly prohibited in accordance with the Departmental Security Instructions, the Official Secret Acts and Intelligence Organisations (Restriction of Rights) Act, 1985. Shri Datta wittingly committed this lapse in that he was well aware of DSI, Official Secret Act, 1923 and Intelligence Organisations (Restriction of Rights) Act, 1985 and was also aware of the consequences of violation thereof. When this breach of security was brought to his notice and his explanation was called for through Memo. No.40/41/91-Pers.15-Vol. II-9497 dated 23/11/97, he acted in contemptuous manner and flatly denied the charges through his letter dated 10/09/97 without giving reasons for this act of gross misconduct on his part.

3. During proceedings in the case, Shri Datta has been extremely defiant and continues to deny the charges levelled against him under rule 3(i) (iii) of CCS Conduct Rules, 1964.

Contd...p.2

*Attested  
Shri Advocate*

CONFIDENTIAL

: 2 :

4. Shri Datta, CO has, moreover, given an argument that he has already been cleared of Rule 3(i) which primarily pertains to the integrity of an official. The argument is based on a Memo. No.4/20/98-CCR-20 dated 06/01/2000 which he received from SO(CCR) Cell, Hqrs., New Delhi absolving him of the charge on his integrity. It may, however, be stated that it has nothing to do with the DE against Shri Datta and his presumption that he has been absolved of the charge, has not been expunged by the Disciplinary Authority, as far as I know.

✓ 5. The charges levelled against him under Rule 3(iii) which binds an official to do nothing which is unbecoming of a government servant, Shri Datta defies himself by saying that he was asked to carry out plumber's job which according to him was not within the Charter of Duties assigned to AFO(T). Shri Datta was just assigned to switch on or off the water pump that to on rotational duties. His contention that he was asked to do plumber's duty is, therefore, misconceived and misrepresentation of the facts. By repeatedly misrepresenting the facts he has undoubtedly acted in a manner which is unbecoming of a government servant. Moreover, writing directly to Secretary(R), Cabinet Secretariat, New Delhi through JS(Pers) for redressal of such a petty grievance Shri Datta has further defied the departmental instructions contained in Memo. No.10/4/95-Pers.5-2210 dated 25/08/95 regarding avoidance of endorsing advance copies of representation to senior offices viz. Secretary/Special Secretary.

6. It is also proved beyond doubt that Shri Datta, CO while sending his representation directly to Secretary through JS(Pers) using normal P & T channels, again committed a breach of security and thus acted against the Official Secret Acts and the Intelligence Organisations (Restriction of Rights) Acts, 1985. Since in his representation dated 12/05/97, a copy of which was enclosed with his representation sent to Secretary(R), Cabinet Secretariat, New Delhi, he in Para-6(a) of said enclosure conspicuously mentioned the exact nature of his duties, he should have posted this letter not

Contd...p.3

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: 3 :

through registered AD but through an insured cover. The information in his representation dated 12/05/97 obviously contained confidential/top secret information and if this letter had fallen into wrong hands it definitely could have caused embarrassment to the government. The departmental instructions on the subject have been shown to him on 05/07/2004. His contention that he has not disclosed the real functioning of the organisation, therefore, is baseless and unfounded as may be seen from the letter itself where vide Para-6(a) he mentions exact duties allotted to the officials in his rank. Besides, he has also given names of the officials posted at MS, Hathikanda at that particular time.

7. Allegations levelled against Shri Simul Datta, CO are therefore proved beyond doubt.

Submitted, Sir,

( M. K. SAHA )  
PRESENTING OFFICER

Shri Y. V. Dayal,  
Deputy Commissioner,  
Inquiry Officer.

Copy to :

- ✓ 1. Shri Simul Datta, Charged Officer – with request to forward his written reply in defence to Inquiry Officer at your earliest.

*Attested  
for Datta  
Advocate*

*Udela*  
8/7/04  
PRESENTING OFFICER

Annexure - 28

To  
The Respected  
Shri Y. V. Daval  
Inquiry Officer  
Deputy Commissioner  
Special Bureau  
Government of India  
Khejurbagan, Agartala .  
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Sub :- Departmental Enquiry on the Chargesheet being  
Memorandum Dated 02.01.1996 .  
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Ref :- The brief of No.116/3/2004-AGR(Estt)-3146  
Dated 08.07.2004.  
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Sir,

My respectful submissions are as hereunder :-

1. That I have gone through the brief underreference(dated 08.07.2004) and have noted the contents and purports thereof.
2. That before dealing with the allegations made therein parawise, I state hereunder the facts for a kind perusal and sympathetic consideration of Your Honour, please :-
  - (a) I joined in Telecommunication Cadre of this Organisation as Assistant Field Officer on 12.10.1992 and I shall complete 12 years of my service in this Organisation as Assistant Field officer (Telecommunication) on 11.10.2004 .
  - (b) I joined (on transfer) at SB. Hathikanda on 15.01.1996.
  - (c) While I was working at SB. Hathikanda . vide the memorandum dated 06.02.1996 (here Annexure-A) I was directed to perform the job of Plumber and I was performing the said Plumber Duties accordingly.
  - (d) I was appointed to the rank of Assistant Field Officer, Telecommunication Cadre to perform wireless Telegraphy Tele-Communication Jobs.
  - (e) Regarding nature of duties of the members of the Telecommunication Cadre, the extract of Rule 39 of our Research and Analysis wing (Recruitment, Cadre and Service Rules, 1975, (Coop No. 066 /Chapter-V / Page-23 ) is as hereunder :-

" The nature of duties of the members of the Telecommunication Cadre shall generally be to procure, operate and maintain electronic and telecommunication equipment required for the work of the Organisation and also to collect intelligence through electronic means.

Contd.....P/2.

*Shri Y. V. Daval*  
*Advocate*

(5)

- P/2 -

(f) From serial no. 15 of the table of para no. 122 of R & AW(RCS) Rules, 1975 (Copy No. 086/Chapter-XIV/Page-62) also, it is evidently clear that the post of Plumber belongs to Miscellaneous Cadre.

(g) It is crystal clear that the said Plumber duty is outside the status and/or schedule of work attached to the post of Assistant Field Officer of Telecommunication Cadre and the job of Plumber, as assigned to me, is beyond the ambit and scope in terms of the letter of my appointment also.

(h) It is true that against the said Plumber duties, I was submitting my grievance representations next to next higher Superior Officers of our Department, as per our Departmental Rules, in the way of becoming of a government servant.

(i) Even after 16/17 months my grievance was not redressed and I was not exempted from the said Plumber duties.

(j) After 16/17 months (i.e. from February '96) I submitted a final grievance representation addressed to the Secretary of our Department through proper channel on 12.05.1997 as per para 15 (iii) of our Departmental Standing Orders (Copy No. 206/Chapter One/Page 04).

Contd.....P.3

(52)

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- P/3 -

- (k) The extract of the above-mentioned para 16 (iii) of our Departmental Standing Orders (Copy No.206/Chapter One/ Page 04) is as hereunder :-

" Having exhausted the first two stages and if the official is still not satisfied with the result, he is allowed a final chance to represent to the Additional Secretary / Secretary . However, in his final representation he should clearly state his case."

- (l) When I had come to learn that my representation dated 12.05.1997 was not forwarded to the Secretary and even after 18/19 months I was not exempted from the said Plumber duties, then I had no other option to send an advance copy of my grievence representation dated 12.05.1997 to our Hqrs., New Delhi, as per Para 16(iv) of Our Departmental Standing Orders (Copy No.206/Chapter One/Page 04), so that my grievance could be redressed without further delay.

- (m) The advance copy of my representation dated 12.05.1997 sent by registered AD on 17. 07.1997 was duly recieved by our Hqrs., New Delhi.

- (n) Regarding sending of advance copy to our Hqrs., New Delhi, the extract of the provision of above-mentioned para 16(iv) of our Departmental Standing Orders is as hereunder:-

" During none of the above three stages is there any necessity for the applicant to send an advance copy of his representation endorse to the Director(Pers.)/Joint Secretary (Pers), Hqrs., New Delhi.

Similarly, when the final representation is made and if action is required on the contents within 7 days and advance copy may be sent to the Additional Secretary / Secretary."

Contd., P-4.



- P/4 -

- (c) The gist of Official Secrets Act-1923, Intelligence Organisation (Restriction of Rights) Act 1985 and our Departmental Security Instructions is as hereunder :-

" The Central Civil Service(Conduct)Rules Prohibit a government servant from communicating, without authority, to anyone."

- (p) Official Secrets Act 1923, Intelligence Organisations (Restriction of Rights) Act 1985 and our Departmental Security Instructions do not restrict the official of our department to communicate his/her grievance representation to the Superior officers of our department.

- (q) The extract of the Para 35 (b) of our Departmental Security Instructions (Copy No.233/Page No.22) which is as hereunder:-

" Top secret papers should invariably be sent by insured post and secret and confidential papers by registered post, acknowledgement due."

- (r) Rule 3 (i) (iii) of CCS(Conduct)Rules 1964 also do not restrict the officials of our department to communicate his grievance application to his superior officers of our department.

- (s) The extract of Rule 3(i) of CCS(Conduct) Rules 1964 is as hereunder :-

" Maintain absolute Integrity."

- (t) The extract of Rule 3(iii) of CCS (Conduct) Rule, 1964 is as hereunder :-

" Do nothing which is unbecoming of a Government servant."

- (u) It is regretted to state that despite the above facts and circumstances, even after 18/19 months, the Superior Officers did not exempt me from the said Plumber duties but issued against me numbers of memorandums/orders adversely (including the chargesheet being memorandum dated 02.01.1986).

Contd.....P/5.

- P/5 -

(v) Regarding disposal of the grievance representation, the extract of para 18 of our Departmental Standing Orders (Copy No. 206/ Chapter one/Page 06) is as hereunder :-

" Representations received from officials should be examined expeditiously by the immediate Supervisory officers and then Personal Branches / Commissioner's office and the result should be communicated without delay.

When the representation is made to the immediate Superior Officer or the Head of the Office, it should not take more than 10 days for the disposal of such representation.

When the representation is made to the Director (Pers)/ Commissioner, these should be disposed of within a month positively.

When the final representation is made to the Additional Secretary/ Secretary, that should be disposed of within a month positively."

(w) Against the said adverse memorandums/orders, an application was moved before the Hon'ble Tribunal, Kolkata bench.

(x) During the pendency of the said application before the Hon'ble Tribunal Shri Ananta Bhakat was appointed to the rank of Plumber.

(y) Shri Bhakat, as a Plumber, joined at SB, Hathikanda in the month of July, 1988 and since then I was exempted from the said Plumber Duties and it is again crystal clear that the job of Plumber, as assigned to me, is outside the status and/or schedule of work attached to the post of Assistant Field Officer of Telecommunication Cadre.

(z) It is crystal clear that the chargesheet dated 02.01.1986 was framed against me without the following documents :-

- (i) First Information Report
- (ii) List of witness
- (iii) Statement of witness
- (iv) Statements/evidences recorded so far.

Contd.....P-6.

- P/6 -

(aa) It is also crystal clear that relying upon the following imagination only, the chargesheet dated 02.01.1998/the Department Enquiry was proposed against me :-

" If the representation dated 17.07.1997 would be fallen into the hands of some unscrupulous elements during the postal transit, it would have caused serious damage to the security of the department and would have also caused embarrassment to the Government."

(bb) Vide the memorandum dated 14.07.1998 (here Annexure 'B') I was informed as hereunder :-

"B"

" For want of completion of Departmental Enquiry, Integrity column of Simul Datta had left blank and further communication in this regard will follow on culmination of Departmental Enquiry Proceedings."

(cc) The matter of the Chargesheet dated 02.01.1998 is subjudice, before the Hon'ble Tribunal, Kolkata Bench, within the application being OA 916 which was admitted before the Hon'ble Tribunal on 19.08.1999.

(dd) During the pendency of OA 916 before the Hon'ble Tribunal, the memorandum dated 06.01.2000 was Communicated to me with reference to the above-mentioned memorandum dated 14.07.1998.

(ee) The memorandum dated 06.01.2000 (here Annexure 'C') communicated to me, by the Competent Authority, Our Hqs., New Delhi, was in accordance with the memorandum dated 14.07.1998 on culmination of the said D.E.

(ff) From the memorandum dated 06.01.2000, it is evidently clear that no D.E. is pending against me because the memorandum dated 06.01.2000 was communicated to me on completion of the D.E. (refer to memorandum dated 14.07.98).

(gg) In the year 2001 I appeared in the written examinations of Direct recruitment to the post of JFO (GD) and Assistant and I remained at SB. Hathikanda up to 01.05.2001.

Contd.....P/7.

- P/7 -

- (hh) I joined , on transfer, (from Hathikanda) at Agartala on 14.05.2001.
- (ii) Subsequently, it is shocked and surprised that through the office orders dated 11.06.2001, Commissioner, SB, Kolkata repropoed the Departmental Enquiry on the same chargesheet dated 02.01.1998.
- (jj) Further through the memorandum dated 02.07.2001, I have been informed that Commissioner, SB, Kolkata directed me to co-operate with the Departmental Enquiry so that it can be completed expeditiously and not necessarily in a manner prejudicial to me.
- (kk) And I have to appear the hearings of the D.E. (on the same chargesheet dated 02.01.98) on 17.09.2001, 02.04.2002, 26.04.2002, 14.08.2002, 12.06.2004 and 05.07.2004, at here, Agartala.
- (ll) I have been compelled to appear the hearings of the said D.E. at Agartala without my Defence Assistant --- "Shri Jahar Lal Sengupta."
- (mm) During the course of the hearings of the said D.E. I have been puzzled with numbers of hair-splitting irrelevant questions.
- (nn) At perplexed --- what to do --- condition, without the help of Defence Assistant, I have to reply to those irrelevant questions and as such during the course of the hearings of the D.E. I have remained under mental pressure.
- (oo) During the course of the hearings of the D.E. also, it has been crystal clear that the chargesheet dated 02.01.98 was framed against me without following documents :-

- (i) First Information Report
- (ii) List of witness
- (iii) Statement of witness
- (iv) Statements/evidences recorded so far.

Contd.....P/8.

- P/8 -

(po) During the course of the hearings of the D.E. also, it has been crystal clear that relying upon the following imagination only, the chargesheet dated 02.01.98/ the D.E has been proposed and repropose against me :-

" If the representation dated 17.07.1997 would be fallen into the hands of some unscrupulous elements during the postal transit, it would have caused serious damage to the security of the department and would have also caused embarrasment to the Government."

(qq) Vide the memorandum dated 18.06.2004, it evinces that in this case I have not committed any civil or criminal offence.

(rr) It also evinces that the article of charge was framed against me in the chargesheet dated 02.01.98 with a support of the statement of imputation of misconduct only.

(ss) The statement of imputation of misconduct, as annexed with the chargesheet, is as hereunder :-

" If the representation dated 17.07.1997 would be fallen into the hands of some unscrupulous elements during the postal transit, it would have caused serious damage to the security of the department and would have also caused embarrasment to the Government."

(tt) Vide the memorandum dated 18.06.2004, it also evinces that the article of charge has been framed against me without the statements of witness.

(uu) Vide the memorandum dated 18.06.2004, it also evinces that no statement /evidence is available in record for framing this Article of charge against me.

(vv) Vide the memorandum dated 18.06.2004, it also evinces that my representation dated 17.07.97 was not misdelivered and not fallen into the hands of unscrupulous elements.

Contd.....P/9.

- P/9 -

(ww) Vide the memorandum dated 18.06.2004. Your Honour has stated that all those serving in this department know that the official dak can be sent through Department of Post.

(xx) During the course of hearing on 05.07.2004 the Presenting Officer has been allowed to ask me total eleven questions on your above statement (as mentioned herein para 2. (ww)).

(yy) Through Para No. 35 of my brief dated 05.07.2004. I submitted as follows which was submitted by Your Honour through the memorandum dated 18.06.2004:-

"The official dak can be sent through  
Department of Post."

(zz) And the Presenting Officer has understood each and every paragraphs of my brief dated 05.07.2004.

(aaa) During the course of hearing on 05.07.2004 the Presenting Officer has agreed that it is true that my grievance representation was within the organisation and not to an outsider and Official Secrets Acts were not violated in this course.

(bbb) During the course of hearing on 05.07.2004 the Presenting Officer has also conceded that my representation sent through department of post on 17.07.97, had not fallen into wrong hands.

(ccc) During the course of hearing on 05.07.2004, the Presenting Officer has stated that it was only a petty issue relating to the duties allotted to me.

(ddd) And during the hearing on 05.07.2004, the Presenting Officer has understood each and every paragraphs of my brief dated 05.07.2004.

(eee) And the Presenting Officer states that he has presented the case and do not have anything to add.

(fff) And the hearing on 05.07.2004 was concluded by Your Honour.

Contd.....P/10.

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- (ggg) Vide the memorandum dated 06.07.2004. Your Honour directed the Presenting officer to submit his case on the findings within two weeks from the receipt of Daily Sheet Order and also therein directed the Presenting Officer to give me the copy of the same, as to give me a last chance in my defence.
- (hhh) And accordingly the Presenting Officer served upon me the brief (dated 08.07.2004) underreference, with his findings on the hearings held on 15.05.04, 12.06.04 and 05.07.04.
- (iii) In the said brief dated 08.07.200, numbers of extraneous factors / new issues have been again added.
- (jjj) I repeat and reiterate that I was appointed to the rank of Assistant Field Officer of Telecommunication Cadre.
- (kkk) While I was working at SB, Hathikanda, I was directed to perform the job of Plumber and against the said Plumber Duties, as would be assigned to me. I submitted my grievance representations as per extant Rules/Orders of our Department.
- (lll) The Presenting Officer states that my grievance was a petty issue relating to the duties allotted to me.
- (mmm) Even after 16/19 months my grievance was not redressed.
- (nnn) Against the said Plumber Duties, I was compelled to write to the Secretary of our Department as per our Departmental Rules, after 16/17 months.
- (ooo) I was not exempted from the said Plumber Duties.
- (ppp) For submission of my grievance, as stated hereinbefore, numbers of memorandums / orders (including the charge-sheet dated 02.01.1998) were issued against me adversely.
- (qqq) Besides the aforesaid adverse reports and actions, the Superior Officers have unitedly instituted numbers of injustices, discriminations and harassments upon me.

Contd.....P/11.

(60)

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(rrr) At this stage it has forced me to feel that when a subordinate staffmember seeks redressal of his grievance, the Superior Officers of our Department become annoyed and unitedly take action against him and stop his ~~grievance~~ ~~on~~ grievance by harassing the subordinate staff in various ways and levelling against him different types of allegations .

(sss) Further it has forced me to feel that grievance of a subordinate staffmember is, if once, denied by the immediate Superior Officer, next to next higher Officers also deny the grievance on the same line of the immediate Superior Officer respectively.

3. It is regretted to state that during the course of the hearing of the D.E., I have been interrogated with numbers of irrelevant questions and unnecessary hair-splitting arguments about the letter of the rule or instruction without confining to find the truthness of the matter that the certificate being memorandum dated 06.01.2000, issued by the Competent Authority of Our Hqs., New Delhi, was communicated to me in accordance with the memorandum dated 14.07.1998, on culmination of the D.E. and thereafter no D.E. is pending against me on the chargesheet dated 02.01.1998.
4. With reference to the para 1 of the said brief (dated 08.07.2004 ) it is stated that the statement made in para 1 of the brief dated 08.07.2004 is correct to the extent that vide the memorandum dated 06.07.2004, Your Honour directed the Presenting officer to submit his case on the finding within two weeks and to serve a copy of the same upon me.
5. With reference to the Para-2.3 and 4 of the said brief (dated 08.07.2004), I deny and dispute the correctness of the statements and / or allegations and/or contentions made therein save and except what are matters of records of the case. I repeat and reiterate that the memorandum dated 06.01.2000 was communicated to me by the Competent Authority of our department in accordance with the memorandum dated 14.07.98 and thereafter no D.E is pending against me on the chargesheet dated 02.01.98. and the fact of the memorandum dated 06.01.2000 can not be denied because this is evidently true. Further I repeat and reiterate that the article of charge, as framed against me in the chargesheet dated 02.01.1998 and further proposal of the DE. on the same chargesheet, are not tenable in the facts <sup>and</sup> circumstances and also not tenable in the eye of Law.

Contd.....P/12.



(6)

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6. With reference to the Para 5 of the said brief (dated 08.07.2004) I deny and dispute the correctness of the statements and/or allegations and/or contentions made therein save and except what are matters of records of the case. It is evidently true that vide the memorandum dated 08.02.96 (here Annexure-" A" ) I was directed to perform the Plumber duties. Further, as a proof, in support to the correctness of my statement that I was assigned the Plumber Duties, a copy of the memorandum dated 14.07.97 is annexed hereto and marked with letter 'D'.

"D" I repeat and reiterate that Sri Bhakat, Plumber joined at SB, Hathikanda in the month of July, 1998 and since then I was exempted from the said Plumber Duties.

Further I repeat and reiterate that against the said Plumber Duties, I submitted my grievance as per our Departmental Rules in the way of becoming of a government servant.

7. With reference to the Para 6 of the said brief (dated 08.07.2004) I deny and dispute the correctness of the statements and/or allegations and/or contentions made therein save and except what are matters of records of the case. From the facts and circumstances, it is crystal clear that my grievance was against the said Plumber Duties. Vide the Memorandum dated 06.07.2004, the Presenting Officer states that it was only a petty issue relating to the duties allotted to me. But vide the said brief (dated 08.07.2004) the Presenting Officer states that it was an issue of Top Secret. I repeat and reiterate that my final representation dated 12.05.1997 was addressed to the Secretary of our Department as per Para 16(iii) of our Departmental Standing Orders (Copy No. 206/Chapter One / Page 04) which states that in his final representation (i.e. representation addressed to the Secretary / Additional Secretary) he should clearly states his case. Further I repeat and reiterate that through my representation dated 12.05.1997 I submitted my grievance only. As on the principles of Natural Justice, a grievance representation of an official can not be classified as Top Secret. Further I repeat and reiterate that as per our Departmental Rules I submitted my grievance only against the said Plumber Duties before the Superior Officers of our Department in the way of becoming of a government servant and further I had no other intention.

Conto.....P/13.

6. With reference to the Para 7 of the said brief (dated 08.07.2004) I deny and dispute the correctness of the statements and /or allegations and/ or contentions made therein save and except what are matters of records of the case. I repeat and reiterate that the memorandum dated 06.01.2000 was communicated to me by the Competent Authority of our department in accordance with the memorandum dated 14.07.98 and thereafter no D.E is pending against me on the chargesheet dated 02.01.98 and the fact of the memorandum dated 06.01.2000 can not be denied because this is evidently true. Further I repeat and reiterate that the article of charge, as framed against me in the chargesheet dated 02.01.98 and further proposal of the DE, on the same chargesheet are not tenable in the facts and circumstances and also not tenable in the eye of Law.
7. Further I beg to submit following few lines for a kind perusal and sympathetic consideration of Your Honour, please:-
- (a) Vide the memorandum dated 30.06.2002, I was informed that my application, for the post of PROTOCOL ASSISTANT on deputation to the Deptt. of Science & Technology, could not be forwarded to the Deptt. of Science & Technology, New Delhi for want of completion of the D.E.
  - (b) It is also regretted to state that the results of Direct Recruitment, to the post of DFO (GD) (ROLL NO. 15343 ) (appeared on 22.10.2000, at Kolkata) and to the post of ASSISTANT (ROLL NO. 13072 ) (appeared on 21.01.2001, at Kolkata), are still remaining undisclosed to me. In this regard, my representation dated 07.11.2002 also is still remaining unreplyed.
  - (c) I always discharge the duties and functions of my duty, sincerely, efficiently and honestly to the best interest of our Department / Organisation.
  - (d) For performance of the duties outside the normal sphere of duties to the entire satisfaction of the Superior Officers, during my tenure at SB, Hathnikanda, Additional Commissioner (Tele); SB, Hathnikanda gave me cash rewards, vide the Office Order No.32/2001/HR.

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- (e) Further for performance of the duties outside the normal sphere of duties to the entire satisfaction of the Superior Officers, during my tenure at MS. Agartala, Deputy Commissioner, SB, Agartala and Additional Commissioner, SB, Kolkata, gave me cash rewards vide the Office Order No. 32/2001 of SB, Agartala and the Office Order No. 01/2003/SB/KOLKATA respectively.
- (f) It is my misfortune that some Superior Officers instituted numbers of injustice upon me. Though I always try my best to forget its by hard working, fully devoting myself to the office works diligently and sincerely, but my mental agony has been lengthened at such a stage that my health and mental state have so deteriorated that I have lost not only my sleep and appetite but also peace of my new married life and I am being unable to take care of my new born baby (of six months) properly.
- (g) In the premises, I beg to state that Justice delayed and/or neglected is also injustice. I, therefore, pray an expeditious decision and a Natural Justice of Your Honour.
- (h) The results of my candidature, as stated above, for the post of DFO(GD) and for the post of ASSISTANT, may kindly be disclosed to me.
10. My respectful submission always remains before Your Honour / all the Superior Officers that I am always ready to regret, if I do, any wrong, at any point of time.
11. Pray a kind heart and sympathetic consideration Your Magnanimity and let me have a peaceful life, please.

Enclo : Annexure -A,B,C,D.  
Date : 21.07.2004  
Place : Khejuroagan,  
Agartala.

Yours faithfully

*Simul*

(SIMUL DATTA)

AFOCT

ID NO. 33349-V.

*Attested  
Datta  
Advocate*

ENQUIRY REPORT

As per the statement of imputation of misconduct, Shri Simul Dutta was charged under Rule 3(i)(iii) of CCS Conduct Rules 1964, the statement accused him of sending representation dated 17/07/97 to the address of Secretary, Cabinet Secretariat, New Delhi through JS(Pers), Hqrs., New Delhi by post enclosing therewith a copy of a representation dated 12/05/97. In para-6(a) of the aforesaid enclosure he conspicuously mentioned, exact nature of his duties. Had this representation of his fallen to the hands of some unscrupulous elements during the postal transit, it would have caused serious damage to the security of the department and also would have caused embarrassment to the government. By doing so, Shri Simul Dutta wittingly committed this laps in contravention of DSI, Official Secret Act, 1923 and Intelligence Organisations (Restrictions and Rights) Act, 1985. When this laps was brought to his notice he acted in contemptuous manner, flatly denying the charges through his letter dated 10/09/97 without explaining this act of gross misconduct on his part. Copies of the statement of imputation of misconduct in support of article of charge framed against Shri Simul Dutta, AFO(T) and the article of charge framed against the official are enclosed.

Charges under Rule 3(i) :-

2. As far as the charge about his integrity is concerned, Shri Simul Dutta could be absolved of this in the light of Memo. No.4/20/98-CCR dated 06/01/2000 whereby he was informed that his integrity had been certified by the competent authority and there was nothing adverse against his integrity for the period 01/04/97 to 31/03/98. I do not agree with the PO's contention vide Para-4 of his brief dated 08/07/04 that the charge could not be expunged unless the Disciplinary Authority did so. Once a decision of the department has been conveyed, it should be honoured and finding excuses to reframe the charge on one pretext or the other, might not set a correct precedent.

Contd...p.2.

Attested  
by  
Advocate

CONFIDENTIAL

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Charges under Rule 3(iii) :-

3. Under the said rule, a government servant is required to do nothing which is unbecoming of a government servant. I found Shri Simul Dutta guilty under this charge and agree with Para-3 & 5 of PO's brief dated 08/07/04. Shri Simul Dutta was asked by DC(T), SB, Hathikanda to just perform the duty of switching on/off the water pump. He, however, misrepresented and made an issue out of it, claiming that he was put on plumber/pump operator duties. In this connection Memo. No.40/41/91-Pers.15-Vol.II-9497 dated 23/08/97 of DS(Pers.B) may be referred to whereby Shri Simul Dutta was clearly informed that he was not doing or assigned the plumber duties rather he was just asked to operate the pump, that too on rotation basis and if any difficulty erupted it was to be taken care of by some FO(T) in the workshop or by a private mechanic. He was also informed of this vide Memo. No.40/41/91-Pers.15 dated 15/04/97. Shri Simul Dutta, however, paid no heed to the said memos. and continued to misrepresent the facts which certainly is unbecoming of a government servant.

4. Shri Simul Dutta has also been found guilty of the charge that he represented directly to the Secretary by enclosing copy of his representation dated 12/05/97 which was forwarded through normal P&T channels (by registered AD). I agree with Para-6 of the PO's brief dated 08/07/04 that by using normal P&T channel Shri Simul Dutta committed a breach of security and acted against Official Secret Act and Intelligence Organisations (Restrictions & rights) Act, 1985. His representation dated 12/05/97 conspicuously mentioned the exact nature of duties and names of personnel posted at Hathikanda. Since it contains top secret information, Shri Dutta committed the mistake of sending it simply by a registered AD cover. This letter should have gone under an insured cover even if it was meant for the officers within the organisation.

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CONFIDENTIAL

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5. Shri Dutta is also found guilty of representing directly to the Secretary on a matter which did not satisfy the conditionalities warranting sending of an advance copy to the Secretary and therefore acted against Rule 19 of the Standing Orders (Representation regarding service matters). Shri Dutta not only acted in a contemptuous manner while replying to Hqrs. Memo. No.40/41/91-Pers.15-Vol.II-9497 dated 23/08/97 but continued to defy his acts during the enquiry. His brief dated 21/07/04 holds testimony to that. Unfortunately this young AFO has absolutely no regret of his deeds which were no doubt committed wittingly. His defence, that the plumber duty was outside the status and/or schedule attached to the post of Assistant Field Officer, Telecommunication Cadre, is not accepted because he was never assigned plumber duty. Similarly his defence vide Para-2(I) that he sent an advance copy of his grievance to Secretary after exhausting first two stages, is also not acceptable as the matter was extremely petty and did not warrant Secretary's attention.

6. Vide Para-2(ff), Shri Simul Dutta has contended that since his integrity was certified vide Hqrs. Memo. No.4/20/98-CCR dated 06/01/2000, no DE was pending against him. Vide Hqrs. Memo. dated 14/07/98 he was informed that the integrity column was left blank and further communication in this regard would follow on communication of DE proceedings. Shri Dutta is technically correct in his statement. However, he forgets to mention as to when the DE initiated against him vide chargesheet dated 02/01/98, was completed and when was it communicated to him. Drawing conclusions on the basis of a letter received from SO(CCR) Cell, is not accepted by the undersigned.

7. Vide Para-6 of his defence note dated 21/07/04 Shri Dutta has produced Memo. No.1/100/96-HK-3192 dated 14/07/97 where it is mentioned that duty of plumber/pump operator assigned to Shri Simul Dutta was well within the prerogative of DC(T), Hathikanda. However, Shri Dutta who was also given a reply to his representation dated 10/09/97, DS(Pers) vide his Memo. No.40/41/91-Pers.15 dated

*Implying that he was indeed asked to do plumber duty.*

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CONFIDENTIAL

: 4 :

15/04/97 clearly mentioned that the task of operation of turbine pump had been given to all the AFO(T)s on rotation basis. The Memo. also mentioned that Shri Dutta had no locus standi to make an issue of the matter. His explanation given in his defence, therefore, is incomplete and again is misrepresentation of facts.

8. Under Para-9 of his defence Shri Dutta has raised some issues which are irrelevant to the charges framed against him and hence have not been considered.

### CONCLUSION :-

9. Shri Simul Dutta, AFO(T) and CO could be absolved of charges framed against him under Rule 3(i) of CCS Conduct Rules, 1964. He, however, is found guilty of charges framed against him under Rule 3(iii) of the said rules read together with DSI, Official Secret Act, 1923 and Intelligence Organisations (Restriction and Rights) Act,

1985.

*Y. V. Dayal*  
( Y. V. DAYAL )  
DEPUTY COMMISSIONER  
INQUIRY OFFICER

23/7/2004

*Attested  
Dutta  
Advocate*

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To  
The Commissioner  
&  
Disciplinary Authority  
Special Bureau, Government Of India , Kolkata.

Ref : Memorandum dated 06.10.04 wherewith enclosed the Enquiry Report, made by Shri Y. V. Dayal, Inquiry Officer on 23.07.04 ( i/r/o the Chargesheet dated 02.01.1998) , served upon me on 14.10.2004.

Sir,

My respectful submissions before Your Honour are as follows: -

1. With reference to Para 1 of the Enquiry Report dated 23.07.2004 I beg to state that the Chargesheet being memorandum dated 02.01.1998 , framing therein the article of charge with allegation of contravention of Rule 3(I)(III) of CCS(Conduct) Rules, 1964 was issued and subsequently under Rule 14 of CCS(CCA) Rules, 1965 Departmental Enquiry was proposed against me on the following imagination which was annexed with the said Impugned Chargesheet (02.01.1998) as the Statement Of Imputation Of Misconduct :-

" If my grievance representation dated 17.07.97 (against the said Plumber Duties as assigned to me) would fall into the hands of some unscrupulous elements during the postal transit , it would cause serious damage to the security of the department and also would cause embarrasment to the Government".

In this context I beg to state that vide the memorandum dated 18.06.2004 [para 3(j)] the Inquiry Officer (Shri Y. V. Dayal) has also admitted that my grievance representation dated 17.07.97 was not misdelivered and did not fall into the hands of some unscrupulous elements.

Further vide the memorandum dated 18.06.2004[ para3(m)] the Inquiry Officer (Shri Y. V. Dayal) has also admitted that all those serving in this department know that the official dak can be sent through the Department of Post.

Further vide the memorandum dated 18.06.2004[para 3(a),(b),(c),(e) &(f) also it is evidently clear that the Chargesheet dated 02.01.98 was made against me without the following documents:-

- i) First Information Report, ii) List of Witness. iii) Statement of Witness . etc.

in the premise. vide the memorandum dated 18.06.2004 [para3(a)] the Inquiry Officer (Shri Y. V. Dayal) has also admitted that I have not Committed any civil or criminal offence in this case.

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Attested  
for  
Advocate



2. With reference to para 2 of the Enquiry Report dated 23.07.2004, I beg to state that vide the memorandum dated 14.07.98 I was informed that for want of completion of the above-mentioned Departmental Enquiry, my Integrity column had been left blank and further communication in this regard would follow on culmination of the said Departmental Enquiry proceedings.

Vide the memorandum dated 15.07.98, the then Inquiry Officer Shri A. V. K. Rao, Technical Officer(Tele) directed me to attend the Preliminary Hearing of the Departmental Enquiry and accordingly with my Defence Assistant - Shri Jaharlal Sengupta - I appeared before the Inquiry Officer at SB, Hathikanda on 27.07.98 but on that day on 27.07.98, the Inquiry Officer served upon me the memorandum dated 23.07.98 wherein it has been intimated that due to certain procedural inconvenience, the preliminary hearing of the said Departmental Enquiry thereby stands postponed and the new date of the hearing will be communicated in due course.

I remained at SB, Hathikanda(Nadia, West Bengal) upto 01.05.2001. Meanwhile, with reference to the memorandum dated 14.07.98 the Section Officer (CCR Cell), Hqrs., New Delhi issued the memorandum dated 06.01.2000 wherein it has been intimated that Shri Simul Datta, AFO(T) is hereby informed that his Integrity has been certified by the Competent Authority and there is nothing adverse against his Integrity for the period from 01/4/97 to 31/3/98.

Subsequently, I was transferred from SB, Hathikanda and accordingly I joined at Agartala on 14.05.2001.

It is regretted to state that vide the memorandum dated 11.06.2001 Commissioner, SB, Kolkata reopened the matter of Departmental Enquiry on the same Chargesheet dated 02.01.1998.

Further, vide the memorandum dated 02.07.2001, Commissioner, SB, Kolkata directed me to co-operate with the Departmental Enquiry so that it could be completed expeditiously and not necessarily in a manner prejudicial to me.

And during this posting at Agartala I was forced to attend the hearings of the D. E. without my Defence Assistant - Shri Jaharlal Sengupta - on 17.09.2001, 02.04.2002, 26.04.2002, 24.08.2002, 12.06.2004 and 05.07.2004.

In this context further I beg to state that the certificate being memorandum dated 06.01.2000 was communicated to me with reference to the memorandum dated 14.07.98 on culmination of the above-mentioned Departmental Enquiry Proceedings.

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Issuance of the above-mentioned certificate (dated 06.01.2000) implies that the Competent Authority, Hqrs., New Delhi has declared the Departmental Enquiry Proceeding on the above-mentioned Chargesheet (02.01.98) completed and as such the charge of 3(i)(iii), as levelled against me therein, has already been absolved by the Competent Authority, Hqrs., New Delhi.

Vide the para 2 of this Enquiry Report (23/07/04) the respected Inquiry Officer (Shri Y. V. Dayal) also has admitted that the certificate of the Competent Authority, Hqrs., New Delhi being memorandum dated 06/01/2000 should be honoured.

3. With reference to para 3 of the Enquiry Report dated 23.07.2004 I beg to state that the contention/allegation made therein is out of context of the Statement Of Imputation Of Misconduct as made in the Chargesheet (02.01.1998).

However, in this context I beg to state that I have neither suppressed nor misrepresented any fact. It is evidently true and factually correct that during my tenure at SB, Hathikanda I was assigned Plumber Duties and subsequently for which a staffmember of Plumber was posted at SB, Hathikanda and I was exempted from the said Plumber Duties.

It is evidently true that vide the memorandum dated 08.02.96 I was directed to perform the Plumber duties. Further, as a proof, in support to the correctness of my statement that I was assigned the Plumber Duties, the memorandum dated 14.07.97 may kindly be referred.

Further vide para 7 of the Enquiry Report dated 23.07.2004 also, it is crystal clear that the Inquiry Officer (Shri Y. V. Dayal) has also noted the point of the memorandum dated 14.07.97 that duty of Plumber/Pump Operator was assigned to Shri Simul Datta by the Deputy Commissioner(Tele), SB, Hathikanda.

I was appointed to the rank of Assistant Field Officer, Telecommunication Cadre to perform Wireless Telegraphy Tele-Communication Jobs.

Regarding nature of duties of the members of the Telecommunication Cadre, the extract of Rule 39 of our Research and Analysis Wing (Recruitment, Cadre and Service) Rules, 1975, (Copy No. 086 /Chapter-V / Page-23 ) is as hereunder:-

" The nature of duties of the members of the Telecommunication Cadre shall generally be to procure, operate and maintain electronic and telecommunication equipment required for the work of the Organisation and also to collect intelligence through electronic means."

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From serial no.15 of the table of para no.122 of R & AW (RCS) Rules,1975 (Copy No.086/Chapter-XIV/Page-62) also, it is evidently clear that the post of Plumber belongs to Miscellaneous Cadre.

In this context further I beg to state that Sri Bhakat, Plumber joined at SB, Hathikanda in the month of July, 1998 and since then I was exempted from the said Plumber Duties.

It is crystal clear that the said Plumber duty is outside the status and/or schedule of work attached to the post of Assistant Field Officer of Telecommunication Cadre and the job of Plumber, as assigned to me, is beyond the ambit and scope in terms of the letter of my appointment also.

As per para 16 of our Departmental Standing Orders (copy No. 206/ Chapter One) I submitted my grievance against the said Plumber Duties through my representations before my Superior Officers and finally our Secretary, Hqrs., New Delhi, seeking therein exemption from the said Plumber Duties only and in this course further I had no other intention.

It was also not known to me that the Superior Officers would be annoyed with my above-mentioned grievance representations and as such a chargesheet under Rule 14 of CCS(CCA) Rules could be issued against me on the above-mentioned imagination and on the name of Departmental Enquiry Proceedings my mental agony would have to be lengthening for about 7/8 years and my mental peace would be disturbed.

4. With reference to para 4 of the Enquiry Report dated 23.07.04 to state that the contention/allegation made therein is out of context of the Statement Of Imputation Of Misconduct as made in the Chargesheet (02.01.1998).

Further in this context I beg to state that through my representation dated 17.07.97 I submitted my grievance against the said plumber duties only.

Vide the Daily Order Sheet dated 05.07.2004 (Page 3) Shri M. K. Saha, the Presenting Officer also has admitted that the matter was only a petty issue relating to the duties allotted to me.

In the light of Natural Justice a grievance representation (in a service matter) of a subordinate staffmember addressed to the Superior Officers of his department can not be construed / classified as Top Secret matter.

As per the definition of Top Secret also, my grievance representation does not contain any Top Secret information.

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As per para 22(b) of Chapter- 4 (page-16) of Departmental Security Instructions 1989 as enshrined in our Cabinet Secretariat (Research & Analysis Wing) Copy No.233, the definition of the 'TOP SECRET' is hereunder :-

" 'Top Secret' grading is reserved for papers containing information of such a vital nature that for reasons of national security it must not be disclosed to any one for whom it is not essential to have knowledge of it, for the proper performance of his duty. Such papers include references to current or future military operations; intended movements or disposition of armed forces, shaping of secret methods of war, matters of high International and Internal political policy, ciphers and reports derived from secret sources of intelligence. The distribution of papers having 'Top Secret' classification must be restricted to the minimum numbers of persons concerned, and in such cases it is safer to err on the side of security."

The gist of Official Secrets Act-1923, Intelligence Organisation (Restriction of Rights) Act 1985 and our Departmental Security Instructions is as hereunder :-

" The Central Civil Service(Conduct)Rules Prohibit a government servant from communicating, without authority, to anyone."

Official Secrets Act 1923, Intelligence Organisations (Restriction of Rights) Act 1985 and our Departmental Security Instructions do not restrict the official of our department to communicate his/her grievance representation to the Superior officers of our department.

Rule 3 (I) (iii) of CCS(Conduct)Rules 1964 also do not restrict the officials of our department to communicate his grievance application to his superior officers of our department.

Vide the Dally Ordersheet dated 05.07.2004 (page 03) served upon me on 06.07.04, Shri M. K. Saha, the Presenting Officer has also admitted as true that my representation, as mentioned above, was within the organisation and not to an outsider and hence it can not be called as a breach of Official Secret Act.

5. With reference to para 5 of the Enquiry Report dated 23.07.2004 I beg to state that the contention/allegation made therein is out of context of the Statement Of Imputation Of Misconduct as made in the Chargesheet (02.01.1998).

However, in this context at the outset I repeat and reiterate that my respectful submission always remains before Your Honour / all the Superior Officers that I am always ready to regret, if I do, any wrong, at any point of time.

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- P/6 -

Further I beg to state that after receipt of my categorical representation dated 10.08.97, in reply to the Showcause Notice (Memorandum dated 23.08.1997), the Disciplinary Authority dropped [In the above-mentioned chargesheet (02.01.98)] the matter of the allegation of violation of the instructions contained in the para 16(iii) of Chapter-I of Departmental Standing Orders, as levelled against me in the Showcause Notice (23.08.97).

And subsequently, the Chargesheet (02.01.1998) /Departmental Enquiry was proposed against me on the following imagination :-

" If my grievance representation dated 17.07.97 (against the said Plumber Duties as assigned to me) would fall into the hands of some unscrupulous elements during the postal transit, it would cause serious damage to the security of the department and also would cause embarrassment to the Government".

The extract of the above-mentioned para 16 (iii) of our Departmental Standing Orders (Copy No.206/Chapter One/ Page 04) is as hereunder :-

" Having exhausted the first two stages of para 16(i) and para 16(ii) and if the official is still not satisfied with the result, he is allowed a final chance to represent to the Additional Secretary / Secretary.

However, in his final representation he should clearly state his case."

Regarding sending of advance copy to our Hqrs., New Delhi, the extract of the provision of above-mentioned para 16(iv) of our Departmental Standing Orders is as hereunder:-

" During none of the above three stages of para 16(i), para 16(ii) and para 16(iii), is there any necessity for the applicant to send an advance of his representation endorse to the Director(Pers.)/Joint Secretary( Pers), Hqrs., New Delhi.

Similarly, when the final representation is made and if action is required on the contents within 7 days, advance copy may be sent to the Additional Secretary / Secretary."

In this context I beg to state that the statement of 2(i) of my brief dated 21.07.04 is evidently true and factually correct in the facts and circumstances.

5. With reference to para 6 of the Enquiry Report dated 23.07.2004 I beg to state that the contention/allegation made therein is out of context of the Statement Of Imputation Of Misconduct as made in the Chargesheet (02.01.1998).

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However, I beg to state that vide the memorandum dated 15.07.98, the then Inquiry Officer Shri A. V. K. Rao, Technical Officer(Tele) directed me to attend the Preliminary Hearing of the Departmental Enquiry and accordingly with my Defence Assistant - Shri Jaharlal Sengupta - I appeared before the Inquiry Officer at SB, Hathikanda on 27.07.98 but on that day on 27.07.98, the Inquiry Officer served upon me the memorandum dated 23.07.98 wherein it has been intimated that due to certain procedural inconvenience, the preliminary hearing of the said Departmental Enquiry thereby stands postponed and the new date of the hearing will be communicated in due course.

I remained at SB, Hathikanda(Nadia, West Bengal) upto 01.05.2001. Meanwhile, with reference to the memorandum dated 14.07.98 the Competent Authority, Hqrs., New Delhi issued the aforesaid certificate(memorandum dated 06.01.2000).

In this context further I beg to state that the certificate (memorandum dated 06.01.2000) was communicated to me with reference to the memorandum dated 14.07.98 on culmination of the above-mentioned Departmental Enquiry Proceedings.

Issuance of the above-mentioned certificate(dated 06.01.2000) implies that the Competent Authority, Hqrs., New Delhi has declared the Departmental Enquiry Proceeding on the above-mentioned Chargesheet (02.01.98) completed and as such the charge of 3(i)(iii), as levelled against me therein, has already been absolved by the Competent Authority, Hqrs., New Delhi.

One article of charge was levelled against me in the chargesheet (02.01.98) with allegation of contravention of Rule 3(i)(iii) of CCS(Conduct) Rules, 1964 on the following Statement Of Imputation Of Misconduct /Imagination and in this case Rule 3(i) and (iii) are co-related and not separate :-

" If my grievance representation dated 17.07.97(against the said Plumber Duties as assigned to me) would fall into the hands of some unscrupulous elements during the postal transit, it would cause serious damage to the security of the department and also would cause embarrassment to the Government".

Further, the Competent Authority, Hqrs., New Delhi and the Inquiry Officer (Shri Y. V. Dayal) respectively are also pleased to find that there is nothing happened on my part as alleged against me in the Statement of Imputation Of Misconduct of the said Chargesheet dated 02.01.1998 that any question/adverse can remain against my integrity in this case. And when there is nothing happened on my part as alleged against me in the Statement Of Imputation Of Misconduct of the said Chargesheet dated 02.01.1998, accordingly question of unbecoming can not remain against me in this case.

Contd.....P/8

- P/8 -

Vide the para 2 of this Enquiry Report (23/07/04) the respected Inquiry Officer (Shri Y. V. Dayal) also has admitted that the certificate of the Competent Authority, Hqrs., New Delhi being memorandum dated 06/01/2000 should be honoured.

In this context I beg to state that the statement of para 2(ff) of my brief dated 21.07.04 is evidently true and factually correct in the facts and circumstances.

7. With reference to para 7 of the Enquiry Report dated 23.07.2004 I beg to state that the contention/allegation made therein is out of context of the Statement Of Imputation Of Misconduct as made in the Chargesheet (02.01.1998).

However, in this context I beg to state that I have neither suppressed nor misrepresented any fact. It is evidently true and factually correct that during my tenure at SB, Hathikanda I was assigned Plumber Duties and subsequently for which a staff member of Plumber was posted at SB. Hathikanda and I was exempted from the said Plumber Duties.

It is evidently true that vide the memorandum dated 08.02.96 I was directed to perform the Plumber duties. Further, as a proof, in support to the correctness of my statement that I was assigned the Plumber Duties, the memorandum dated 14.07.97 may kindly be referred.

Further vide para 7 of the Enquiry Report dated 23.07.2004 also, it is crystal clear that the Inquiry Officer (Shri Y. V. Dayal) has also noted the point of the memorandum dated 14.07.97 that duty of Plumber/Pump Operator was assigned to Shri Simul Datta by the Deputy Commissioner (Tele), SB, Hathikanda.

I was appointed to the rank of Assistant Field Officer, Telecommunication Cadre to perform Wireless Telegraphy Tele-Communication Jobs.

Regarding nature of duties of the members of the Telecommunication Cadre, the extract of Rule 39 of our Research and Analysis Wing (Recruitment, Cadre and Service) Rules, 1975, (Copy No. 086 /Chapter-V / Page-23 ) is as hereunder:-

" The nature of duties of the members of the Telecommunication Cadre shall generally be to procure, operate and maintain electronic and telecommunication equipment required for the work of the Organisation and also to collect intelligence through electronic means."

From serial no.15 of the table of para no.122 of R & AW (RCS) Rules, 1975 (Copy No.086/Chapter-XIV/Page-62) also, it is evidently clear that the post of Plumber belongs to Miscellaneous Cadre.

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In this context further I beg to state that Sri Bhakat. Plumber joined at SB, Hathikanda in the month of July, 1998 and since then I was exempted from the said Plumber Duties.

It is crystal clear that the said Plumber duty is outside the status and/or schedule of work attached to the post of Assistant Field Officer of Telecommunication Cadre and the job of Plumber, as assigned to me, is beyond the ambit and scope in terms of the letter of my appointment also.

It is evidently true that against the said Plumber duties, I was submitting my grievance representations next to next higher Superior Officers of our Department, as per instructions contained in para 16(I), (II), (III) & (IV) of our Departmental Standing Orders.

In this context I beg to state that the statement of para 6 of my brief dated 21.07.04 is evidently true and factually correct in the facts and circumstances.

8. With reference to Para 8 of the Enquiry Report dated 23.07.2004, I beg to state that the statements of my brief dated 21.07.2004 are evidently true and factually correct in the facts and circumstances.
9. With reference to para 9 of the Enquiry Report dated 23.07.2004 it is regretted to state that in this case the respected Shri Y. V. Dayal, Inquiry Officer has somehow tried to establish the charge against me.

The conclusion of the Enquiry Report dated 23.07.2004 itself is not only contradictory in the facts and circumstances, also showing perverted from the facts and Principles of Natural / Procedural Justices.

One article of charge was levelled against me in the chargesheet (02.01.98) with allegation of contravention of Rule 3(I)(III) of CCS(Conduct) Rules, 1964 on the following Statement Of Imputation Of Misconduct /Imagination and in this case Rule 3(i) and (iii) are co-related and not separate :-

" If my grievance representation dated 17.07.97 (against the said Plumber Duties as assigned to me) would fall into the hands of some unscrupulous elements during the postal transit, it would cause serious damage to the security of the department and also would cause embarrassment to the Government".

Further, the Competent Authority, Hqrs., New Delhi and the Inquiry Officer (Shri Y. V. Dayal) respectively are also pleased to find that there is nothing happened on my part as alleged against me in the Statement of Imputation Of Misconduct of the said Chargesheet dated 02.01.1998 that any question adverse can remain against my integrity in this case.

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- P/10 -

And when there is nothing happened on my part as alleged against me in the Statement Of Imputation Of Misconduct of the said Chargesheet dated 02.01.1998, accordingly, question of unbecoming can not remain against me in this case.

Further, as per findings and observations of the Competent Authority, Hqrs., New Delhi (vide memorandum dated 06.01.2000) as well as the reports of the Inquiry Authority also when it is found that my integrity is intact in the case of this Chargesheet dated 02.01.1998, so question of Unbecoming has got no manner of application as alleged against me on this or that.

in this context further I beg to state that the certificate (memorandum dated 06.01.2000) was communicated to me with reference to the memorandum dated 14.07.98 on culmination of the above-mentioned Departmental Enquiry Proceedings.

Issuance of the above-mentioned certificate(dated 06.01.2000) implies that the Competent Authority, Hqrs., New Delhi has already declared the Departmental Enquiry Proceeding on the above-mentioned Chargesheet (02.01.98) completed and as such the charge of 3(i)(iii), as levelled against me therein, has already been absolved by the Competent Authority, Hqrs., New Delhi.

And vide para 2 of this Enquiry Report dated 23.07.2004, the Inquiry Officer (Shri Y. V. Dayal) has also admitted that I have not committed any civil or criminal offence in this case and also has admitted that once a decision of the department has been conveyed, the certificate (memorandum dated 06/01/2000) should be honoured and finding excuses to reframe the charge on one pretext or the other, might not set a correct precedent.


10. At length this subordinate staffmember beseech upon Your Honour that I may kindly be exonerated from the above so that I may proceed with the official duties assigned to me and also would be further pleased to continue a peaceful my new married life with my new born baby(aged 8/9 months).

11. For this act of kindness I shall ever remain grateful to Your Honour.

With regards,

Date : 29.10.2004  
Place : TP/ WT, Agartala.

Yours faithfully

  
(SIMUL DATTA)

AFO(Tele)/ID NO. 03349-V.

*Attended  
Datte  
Advocate*

CONFIDENTIAL

No.65/3/97-Kol(Pers.)- 2855  
Government of India  
Special Bureau  
Kolkata

1008/DCR  
84.3.05

Dated the  
02/03/05

ORDER

WHEREAS a Departmental Enquiry under Rule 14 of CCS(CCA) Rules, 1965 was initiated against Shri Simul Datta, AFO(T) vide No.65/3/97-CAL(PERS.)-dated 2.1.98 on the following charge :-

ARTICLE

That the said Shri Simul Datta while functioning as AFO(Tele) at SB, Hathikanda during July, 1997 conspicuously mentioned the nature of his duties in the enclosure to his representation dated 17.7.97 and sent it by post to the address of the Secretary, Cabinet Secretariat, through JS(Pers.), Hqrs, New Delhi. Disclosing information relating to the functioning of the organization in this manner being strictly prohibited, he contravened the Departmental security Instructions, the official secrets Act and the Intelligence Organization(Restriction of Rights Act, 1985. By this act of omission and commission on his part, Shri Simul Datta, AFO(T), has acted in a manner unbecoming of a government servant. Thereby contravening Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

2. WHEREAS Shri Y.V. Dayal, DC, SB, Agartala was appointed as Inquiry Officer vide no.65/3/97-CAL(PERS.)- dated 30.12.03. Shri Y.V. Dayal, submitted the Inquiry Report concluding that the charges levelled against Shri Simul Datta, AFO(T) has been proved.

3. WHEREAS a copy of the Inquiry Report was sent to Shri Datta, AFO(T) for making representation if any, against the findings in the Inquiry Report within 15 days. The Charged officer has submitted the representation dated 29.10.2004 denying all the charges framed against him.

4. WHEREAS the undersigned has very carefully gone through the Inquiry Report and connected records of the enquiry. The charge framed against Shri Simul Datta, AFO(T) relates to contravening the Departmental Security Instructions, the Official Secrets Act and the Intelligence Organization(Restriction of Rights) Acts, 1985.

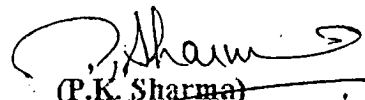
5. Shri Simul Datta, while posted at SB, Hathikanda sent a representation dated 17.7.97 to the address of Secretary, Cabinet Secretariat, New Delhi through JS(PERS.), Hqrs., New Delhi by post enclosing therewith a copy of his representation dated 12.5.97. In para 6(a) of the aforesaid enclosure, he conspicuously mentioned the exact nature of his duties. Had this representation of his fallen into the hands of some unscrupulous elements during the postal transit, it would have caused serious damage to the security of

Attested  
Sub  
Signature

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the department and also would have also caused embarrassment to the government. Disclosing information relating to the functioning of this organization in this manner is strictly prohibited in accordance with the Departmental Security Instructions, the Office Secrets Act and Intelligence organizations (Restriction of Rights) Act, 1985. Shri Datta wittingly committed this laps in that he was well aware of the DSI, Official Secrets Act, 1923 and the Intelligence Organizations (Restriction of Rights) Acts 1985 and was also aware of the consequences of violation thereof. But when this breach of security was brought to his notice and his explanation was called for through memo no. 40/41/91-Pers.15-Vol.II-94/97 dated 23.8.97, he acted in a very contemptuous manner flatly denying the charges through his letter dated 10.9.97 without explaining this act of gross misconduct on his part. This is grave misconduct on his part and warrants a severe penalty. It appears to me that though the charge against him has been proved but a lenient view is being taken as his act of commission has been found to have occurred for the first time. Whereas the undersigned is satisfied that the enquiry was held as per CCS(CCA) Rules, 1965 and that I.O. has given full opportunity to Shri Datta to explain his case and defend himself.

6. Now therefore having carefully considered the entire facts and circumstances of the case, the undersigned in exercise of the powers conferred under Rule 15(3) of the CCS(CCA) Rules 1965, hereby orders imposition of the penalty of 'Censure' on Shri Simul Datta.

  
(P.K. Sharma)

COMMISSIONER

&

DISCIPLINARY AUTHORITY

✓ Shri Simul Datta, AFO(T)  
Thro' DC, SB, Agartala

*Arrested  
Datta  
Advocate*

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To  
The Appellate Authority  
&  
Additional Secretary(Pers.)  
Cabinet Secretariat  
Government Of India  
Room No. 7, Bikaner House(Annexe)  
Shantalan Road, New Delhi.

Ref : Office Order of No. 65/3/97-Kol(Pers.)-2855 dated  
02/03/2005 , served upon me on 05.03.2005.

Sub : **Appeal for a Natural Justice.**

Sir,

I am extremely shocked and aggrieved on receipt of the office order under-reference wherein my representations/statements, as submitted by me categorically and/or respectively as my defence, have not been spoken and wherein even the reports of the Competent Authority , Hqrs., New Delhi and Inquiry Officers of the case which favour me, have not also been spoken and wherein Commissioner, Special Bureau , Kolkata has , at length , after 7/8 years imposed upon me the said punishment in the matter of Charge-sheet dated 02.01.1998 which was framed against me on an imagination only.

2. As an appeal at the out set I beg to state that the said Chargesheet was issued against me on an imagination only and depending on this imagination only , as hereunder, the above-referred order of

*Alleson  
Sir Advocate*

3. As an appeal I beg to state that the article of charge with allegation of contravention of Rule 3(i)(iii) of CCS (Conduct) Rules, 1964 was levelled against me on the said Imagination which is as hereunder and which was annexed with the said Impugned Chargesheet (02.01.98) as the Statement Of Imputation Of Misconduct :-

" If my grievance representation dated 17.07.97 would fall into the hands of some unscrupulous elements during the postal transit , it would cause serious damage to the security of the department and also would cause embarrassment to the Government".

4. As an appeal I beg to state that the said Plumber duty is outside the status and/or schedule of work attached to the post of Assistant Field Officer of Telecommunication Cadre and the job of Plumber, as assigned to me, is beyond the ambit and scope in terms of the letter of my appointment also.

5. As an appeal I beg to state that as per para 16 of our Departmental Standing Orders (copy No. 206/ Chapter One) I submitted my grievance against the said Plumber Duties through my representations before my Superior Officers and finally our Secretary , Hqrs., New Delhi , seeking therein exemption from the said Plumber Duties only and in this course further I had no other intention.

Contd. P/3.

-P/3-

6. As an appeal I beg to state that the extract of the para 16 (iii) of our Departmental Standing Orders (Copy No.206/Chapter One/ Page 04) is as hereunder :-

" Having exhausted the first two stages and if the official is still not satisfied with the result, he is allowed a final chance to represent to the Additional Secretary / Secretary .

However, in his final representation he should clearly state his case."

7. As an appeal I beg to state that regarding sending of advance copy to our Hqrs., New Delhi, the extract of the provision of above-mentioned para 16(iv) of our Departmental Standing Orders is as hereunder:-

" During none of the above three stages is there any necessity for the applicant to send an advance copy of his representation endorse to the Director(Pers.)/ Joint Secretary (Pers),Hqrs., New Delhi. Similarly, when the final representation is made and if action is required on the contents within 7 days and advance copy may be sent to the Additional Secretary / Secretary."

8. As an appeal I beg to state that it was also not known to me that the Superior Officers would be annoyed with my above-mentioned grievance representations and as such a chargesheet under Rule 14 of CCS(CCA) Rules could be issued against me on the above-mentioned imagination and on the name of Departmental Enquiry Proceedings my mental agony would have to be lengthening for about 7/8 years and my mental peace would be disturbed.
9. As an appeal I beg to state that the Chargesheet dated 02.01.98 was made against me without the following documents:-
- i) First Information Report, ii) List of Witness, iii) Statement of Witness, etc.
10. As an appeal I beg to state that vide the memorandum dated 02.07.2001, Commissioner, SB, Kolkata directed me to co-operate with the Departmental Enquiry so that it could be completed expeditiously and not necessarily in a manner prejudicial to me.
11. As an appeal I beg to state that during this posting at Agartala I attended the hearings of the D. E. without my Defence Assistant - Shri Jaharlal Sengupta - on 17.09.2001, 02.04.2002, 26.04.2002, 14.08.2002, 12.06.2004 and 05.07.2004.
12. As an appeal I beg to state that the Inquiry Officer (Shri Y. V. Dayal) states that my grievance representation dated 17.07.97 was not misdelivered and did not fall into the hands of some unscrupulous elements.

Contd. P/5.

-P/5-

13. As an appeal I beg to state that the Inquiry Officer (Shri Y. V. Dayal) states that all those serving in this department know that the official dak can be sent through the Department of Post.
14. As an appeal I beg to state that vide the memorandum dated 14.07.98 I was informed that for want of completion of the above-mentioned Departmental Enquiry, my Integrity column had been left blank and further communication in this regard would follow on culmination of the said Departmental Enquiry Proceedings.
15. As an appeal I beg to state that with reference to the above-mentioned memorandum dated 14.07.98, our Hqrs., New Delhi issued the memorandum dated 06.01.2000.
16. As an appeal I beg to state that the Inquiry Officer has absolved me from the charge of the article 3(i) of CCS(Conduct) Rules, 1964.
17. As an appeal I beg to state that even the Inquiry Officer also states that the memorandum dated 06/01/2000 should be honoured.

Contd.P/6.



18. As an appeal I beg to state that the above-mentioned memorandum dated 06.01.2000 was communicated to me with reference to the memorandum dated 14.07.98 on culmination of the above-mentioned Departmental Enquiry Proceedings.
19. As an appeal I beg to state that the gist of Official Secrets Act-1923, Intelligence Organisation (Restriction of Rights) Act 1985 and our Departmental Security Instructions is as hereunder :-  
" The Central Civil Service(Conduct)Rules Prohibit a government servant from communicating, without authority, to anyone."
19. As an appeal I beg to state that Official Secrets Act 1923, Intelligence Organisations (Restriction of Rights) Act 1985 and our Departmental Security Instructions do not restrict the official of our department to communicate his/her grievance representation to the Superior officers of our department.
20. As an appeal I beg to state that Rule 3 (i) (iii) of CCS(Conduct)Rules 1964 also do not restrict the officials of our department to communicate his grievance application to his superior officers of our department.
21. As an appeal I beg to state that the Presenting Officer also admits as true that my grievance representation (in Service matter) was within the organisation and not to an outsider and hence it could not be called as a breach of the said Official Secrets Acts.

Contd.P/7.

-P/7-

22. As an appeal I beg to state that the Inquiry Officer (Shri Y. V. Dayal) also states that I have not committed any civil or criminal offence in this case.
23. As an appeal I beg to state that issuance of the above-mentioned memorandum dated 06.01.2000 implies that the Competent Authority, Hqrs., New Delhi has already completely exonerated me from the said Chargesheet dated 02.01.1998 as well as the said Departmental Enquiry and as such the Competent Authority, Hqrs., New Delhi has already completely absolved me from the said article of charge of contravention of Rule 3(I)(III) of CCS(Conduct)Rules, 1964.
24. As an appeal I beg to state that in para 2 of the final report (dated 23/07/2004) of the Enquiry also, the Inquiry Officer has stated that the memorandum dated 06/01/2000 should be honoured and finding excuses to reframe the charge on one pretext or the other, might not set a correct precedent.
25. As an appellant I, therefore, beseech upon Your Honour that I may kindly be completely exonerated from the Charge-sheet dated 02.01.1998 as well as the above-referred Office Order dated 02.03.2005 without any punishment and without marking any stigma in my service career.
26. And for this act of kindness I shall ever remain grateful to Your Honour.

Date : 18/04/2005

Place : TP/WT, Agartala

Yours faithfully

*Simul*  
18/04/2005

(SIMUL DATTA)

AFO(Tele)/ID NO. 03349-V.

*Accepted  
Datta  
Advocate*

CONFIDENTIAL

No.40/41/91-Pers.13-Vol.IV - 10333  
Government of India  
Cabinet Secretariat

Room No.7  
Bikaner House (Annexe)  
Shahjahan Road  
New Delhi - 110 011.

25/7/05  
Dated the

ORDER

WHEREAS departmental proceedings under Rule 14 of CCS(CCA) Rules, 1965, were initiated against Shri Simul Datta, AFO(Tele), ID No.03349V, vide a memorandum of Charge sheet dated 02-01-1998 issued by the Commissioner, SB, Kolkata and Disciplinary Authority, on the following Article of Charge :-

- i) That the said Shri Simul Datta, while functioning as AFO(Tele) at SB, Hathikanda during July, 1997 conspicuously mentioned the nature of his duties in the enclosure to his representation dated 17/7/97 and sent it by post to the address of the Secretary, Cabinet Secretariat, through JS(Pers), Hqrs., New Delhi. Disclosing information relating to the functioning of the organization in this manner being strictly prohibited, he contravened the Departmental Security Instructions, the Official Secrets Act and the Intelligence Organisation (Restriction of Rights) Acts, 1985.
- ii) By this act of omission and commission on his part, Shri Simul Datta, AFO(T), has acted in a manner unbecoming of a government servant, thereby contravening Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

WHEREAS Shri Y.V. Dayal, Deputy Commissioner, SB Agartala was appointed as Inquiry Officer to enquire into the charges. The Inquiry Officer submitted his report on 23/7/2004. A copy of the enquiry report was forwarded to Shri Simul Datta, AFO(T) with direction to submit his representation, if any, against the findings in the Inquiry Report within 15 days of receipt of order.

WHEREAS, Shri Datta submitted a representation on 29/10/2004 raising several points against the findings of the Inquiry Officer and denying all the charges framed against him. The Commissioner, SB, Kolkata, in his capacity as Disciplinary Authority, ordered that the necessity of holding an enquiry had been obviated and accordingly, he recorded his findings on the charge and passed an order dated 02-03-2005 imposing a penalty of "Censure" on Shri Simul Datta, AFO(T).

*Allexto  
for  
signature*

WHEREAS, the present appeal dated 18/4/2005 has been filed by Shri Simul Datta, AFO(T), to the undersigned against the said order dated 02-03-2005 of the Disciplinary Authority.

WHEREAS Shri Simul Datta has raised the following points in his appeal :-

- i) That the DE was initially proposed for violation of Rule 3(1)(iii) of CCS(Conduct) Rules, 1964 and subsequently under Rule 14 of CCS(CCA) Rules, 1965 on the "basis of imagination", annexed with the Memo of Charge sheet dated 2/1/1998.
- ii) That the Charge sheet dated 2.1.1998 was served on him without the documents viz., (i) First Information Report ; (ii) List of Witness and (iii) Statement of Witness, etc.
- iii) That nothing adverse against his integrity for the period 1.4.97 to 31.3.98 has been found. In spite of this vide Memo dated 11.6.2001, Commissioner, SB, Kolkata has reopened the matter of Departmental Enquiry on the same charge sheet dated 2.1.1998.
- iv) That during his posting at Agartala, he attended the hearings of the Departmental Proceedings without his Defence Assistant – Shri Jaharlal Sengupta.
- v) That he was assigned Plumber duties during his posting at Satex, Hathikanda.
- vi) That his representation addressed to the Superior Officers of the department cannot be construed as a breach of the Official Secrets Act.

WHEREAS the undersigned has carefully gone through the contentions made by the appellant and the relevant records of the case. The undersigned finds that the appellant in the present appeal has not raised any new issue and the issues raised by him have already been carefully considered by the Disciplinary Authority while recording his findings on the charge. The undersigned is satisfied that the Inquiry was held strictly in accordance with the Rules laid down in CCS(CCA) Rules, 1965. The undersigned fully agrees with the view of the Disciplinary Authority in the matter and therefore, have nothing to modify the same.

WHEREAS on an overall analysis of the case, the undersigned finds that the misconduct on the part of the official involved serious irregularities. The Disciplinary Authority has taken a lenient view in the matter and has imposed only a penalty of Censure whereas the misconduct on the part of the official would have justified a much severe penalty. Under the circumstances, the undersigned does not find any reason to interfere with the order passed by the Disciplinary Authority either on the findings recorded by him as regards the guilt of the officer or on the quantum of penalty as imposed by him.

NOW, therefore, having considered the entire facts and circumstances of the case, the undersigned does not find any merit in the present appeal filed by Shri Simul Datta, AFO(Tele), and the same is accordingly rejected. The penalty imposed by the Disciplinary Authority on Shri Simul Datta stands hereby confirmed.

*Tripathi*  
(S.K. TRIPATHI)  
ADDITIONAL SECRETARY(PERS)  
&  
APPELLATE AUTHORITY

Shri Simul Datta, AFO(T)  
Thro' Commissioner, SB, Kolkata.

*Attested*  
*Shri Datta*  
*Advocate*

To  
The Secretary(R& AW)  
&  
Reviewing Authority  
Hqrs., New Delhi

Ref : Office Order of No. 40/41//91-Pers.13-Vol.IV-10333 dated 25/7/05  
wherein my appeal failed to get Natural Justice and was rejected.

Sub : Chargesheet being memorandum dated 02.01.1998 framed on imagination and finally imposed penalty on me after expiry of 7/8 years on 02.03.2005 i.e. after the due date of my ACP (12.10.2004) which affects the benefits of the ACP to be extended to me from the due date on 12.10.2004 despite the intimation, communicated to me before restarting of the D.E. proceedings on the same Chargesheet (02.01.98) vide the memorandum dated 02.07.2001 that the D.E. proceedings would not be necessarily in a manner prejudicial to me and despite the fact remains that the Competent Authority already declared closing of the D. E. Proceedings on the above-mentioned Chargesheet (02.01.98) therewith by issuance of the memorandum dated 06.01.2000 with reference to the memorandum dated 14.07.98 and the respected Inquiry Officers also have admitted that the memorandum dated 06.01.2000 should be honoured and I have not committed any civil or criminal offence . My prayer herein therefore needs a Natural Justice and sympathetic consideration of Your Honour.

Sir,

With due respect I beg to submit following few lines in the matter of under-reference so that I may have thereon a Natural Justice and sympathetic consideration of Your Honour, please :

- (a) I joined in Telecommunication Cadre of this Organisation as Assistant Field Officer .
- (b) While I was working at SB, Hathikanda , I was directed to perform the job of Plumber and I was also performing the said Plumber-Duties accordingly.
- (c) Against the said Plumber duties , I was submitting my grievance representations next to next higher Superior Officers of our Department and even after 16/17 months(i.e.from February'96) my grievance was not redressed and I was not exempted from the said Plumber duties and later as per para 16 (iii) of our Departmental Standing Orders (Copy No.206/Chapter One/Page 04), I took the opportunity of final chance to represent the grievance to the office of Your Honour through my representation dated 12.05.1997.

Contd...P/2.

*Attested  
for  
Advocate*

- P/2 -

The extract of the above-mentioned para16(iii) of our Departmental Standing Orders (Copy No.206 / Chapter One/Page 04) is as hereunder :-

" Having exhausted the first two stages and if the official is still not satisfied with the result, **he is allowed a final chance to represent to the Additional Secretary / Secretary .**

**How-ever, in his final representation he should clearly state his case."**

- (d) When I had come to learn that my representation dated 12.05.1997 was not forwarded to the office of Your Honour and even after 18/19 months my grievance was not redressed and I was not exempted from the said Plumber duties, then as per para 16 (iv) of our Departmental Standing Orders (Copy No.206/Chapter One/Page 04), I took the opportunity to send an advance copy of my grievance representation dated 12.05.1997 to the Joint Secretary(Pers), Hqrs., New Delhi, so that my grievance could be redressed without further delay. The advance copy of my representation dated 12.05.97 sent, to the Joint Secretary(Pers) by registered AD on 17. 07.1997, was duly recieved by our Hqrs., New Delhi.

The extract of the above-mentioned para16(iv) of our Departmental Standing Orders (Copy No.206 / Chapter One/Page 04) is as hereunder :-

" During none of the above three stages is there any necessity for the applicant to send an advance copy of his representation endorse to the Director(Pers.)/Joint Secretary (Pers),Hqrs.,New Delhi. Similarly, when the final representation is made and if action is required on the contents within 7 days and **advance copy may be sent to the Additional Secretary / Secretary."**

- (e) And Shri Bhakat,appointed to the post of Plumber, joined at SB, Hathikanda in the month of July, 1998 and since then I was exempted from the said Plumber Duties.
- (f) But it is regretted to state that being annoyed with my above-mentioned grievance represntation addressed to the office of Your Honour , the then Commissioner, SB, Kolkata communicated to me the above-referred Chargesheet dated 02.01.98 wherein framed against me the article of charge with allegation of contravention of Rule 3(i)(iii) of CCS(Conduct) Rules,1964 and subsequently under Rule 14 of CCS(CCA) Rules ,1965 Departmental Enquiry was proposed against me on the following imagination which was annexed with the said impugned Chargesheet (02.01.1998) as the Statement Of Imputation Of Misconduct :-

" If my grievance representation dated 17.07.97(against the said Plumber Duties as assigned to me) would fall into the hands of some unscrupulous elements during the postal transit , it would cause serious damage to the security of the department and also would cause embarrassment to the Government".

Contd...P/3.

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- P/3 -

- (g) In this context, I beg to state that through my representation dated 12.05.97, I submitted my grievance only against the said Plumber duties as would be assigned to me along with the duties of my post -Assistant Field Officer-Telecommunication Cadre so that the matter of my grievance as far as be clearly stated, 'as have been instructed in the **above-mentioned para16(iii) of our Departmental Standing Orders** further I had no other intention and/or I did not mention any Classified information therein my said grievance representation.

And as having contained the provisions of sending advance copy of grievance representation therein **the above-mentioned para16(iv) of our Departmental Standing Orders**, I took the opportunity to send an advance copy of my grievance representation dated 12.05.97 to the Joint Secretary(Pers), Hqrs., New Delhi, so that my grievance could be redressed without further delay.

Further while on the subject it needs to be stated that all those serving in this department know that the documents of classified information are sent by our out posts/ SBx to our Hqrs as official dak through the Department of Post.

- (h) Vide the **memorandum dated 14.7.98** I was informed that **for want of completion of the above-mentioned Departmental Enquiry, my Integrity column had been left blank and further communication in this regard would follow after completion of the said D. E. proceedings.**

- (i) Meanwhile, with reference to the above-mentioned memorandum dated **14.07.98** the Section Officer (CCR Cell), Hqrs., New Delhi issued the **memorandum dated 06.01.2000** wherein it has been intimated that Shri Simul Datta, AFO(T) is hereby informed that his Integrity has been **certified by the Competent Authority and there is nothing adverse against his Integrity.**

In this context I beg to state that **the certificate** being memorandum dated **06.01.2000**, issued by the Competent Authority, was **communicated to me with reference to the memorandum dated 14.07.98.**

Issuance of the above-mentioned certificate (dated 06.01.2000) implies that the Competent Authority, Hqrs., New Delhi has declared closing of the D. E. Proceedings on the above-mentioned Chargesheet (02.01.98) therewith.

- (j) It is regretted to state that **vide the memorandum dated 11.06.2001** Shri Rana Banerjee, the then Commissioner, SB, Kolkata re-proposed D.E. Proceedings on the same Chargesheet dated 02.01.1998 which was already declared closed then and therewith the issuance of the memorandum dated 06.01.2000 by the Competent Authority, Hqrs., New Delhi, with reference to the memorandum dated 14.07.98.

Contd.....P/4



- P/4 -

- (k) Further, vide the memorandum dated 02.07.2001, it was intimated to me that the D.E. proceedings would not be necessarily in a manner prejudicial to me.

And accordingly, I attended the hearings of the D. E. on 17.09.2001, 02.04.2002, 26.04.2002, 24.08.2002, 12.06.2004 and 05.07.2004 as was directed to me by the Inquiry Officers.

The respected Inquiry Officers also have admitted that I have not committed any civil or criminal offence in this case and the memorandum dated 06.01.2000, issued by the Competent Authority, Hqrs., New Delhi, should be honoured.

2. In the premises, I beg to state that it was not known to me that the Superior Officers would be annoyed with my abovementioned grievance representation and as such charge sheet/ D.E. proceedings under Rule 14 of CCS(CCA) Rules would be instituted against me on the above-mentioned imagination and on the name of Departmental Enquiry Proceedings my mental agony would have to be lengthening for about 7/8 years and my mental peace would be so long disturbed and the D. E. proceedings would be reopened and would be ended after due date (12.10.2004) of my ACP imposing penalty against me so that the benefits of ACP would not be extended to me from the due date (12-10-2004) and as such the intimation, communicated to me before restarting of the D.E. proceedings on the same Chargesheet dated 02.01.98 vide the memorandum dated 02.07.2001 that the D.E. proceedings would not be necessarily in a manner prejudicial to me, has also not been followed in this case and at this stage I am extremely shocked and surprised that I have been punished relying upon an imagination only..
3. Under the facts and circumstances this low-paid employee, therefore, beseech upon Your Honour for a natural justice and for this act of kindness I shall ever remain grateful to Your Honour.

Yours faithfully

Date : 23.11.2005  
Place : TTD, Gurgaon

*Simul*  
23/11/2005

( SIMUL DATTA )  
AFO(T) / 03349 -V.

*Attested  
Simul  
Advocate*

To  
The Secretary,  
Hqrs., New Delhi.

(THROUGH PROPER CHANNEL)

**Ref:** The memorandum which rejected my representation dtd. 12.09.2005

**Sub:** Prayer for the case of grant of First Financial Upgradation under ACP Scheme with effect from 12.10.04 instead of 25.08.05 may kindly be reconsidered.

Sir,

My representation dated 12.09.2005 was rejected showing the reason that the First Financial Up-gradation under ACP Scheme can not be granted for me with effect from 12.10.04 instead of 25.08.05 due to the D.E. ; in this connection my representation dated 23.11.2005 addressed to the office of Your Honour (still remaining un-replied) may also kindly be referred; despite the fact remains that vide the memorandum dated 29.07.04 it is crystal clear that I am eligible for grant of ACP w.e.f. 12.10.2004 and it is also evident that the memorandum dated 06.01.2000 was communicated with reference to the memorandum dated 14.07.98 on culmination of the said D.E. on the charge sheet dated 02.01.98 at Hathikanda and where I remained upto 01.05.2001 and as per the direction contained in the relieving order dated 14.05.2001 I had to proceed on transfer from Hathikanda and was to join at Agartala on 14.05.2001 but vide the office order dated 11.06.2001 the closed matter of said D.E. was reopened and further vide the memorandum dated 02.07.2001 intimated to me that that the D.E. proceedings would not be necessarily in a manner prejudicial to me and finally, the respected Inquiry Officers submitted the Enquiry Report on 23.07.04 and wherein the respected Inquiry Officers also have admitted that I have not committed any civil or criminal offence in this case and the memorandum dated 06.01.2000, issued by the Competent Authority, Hqrs., New Delhi, should be honoured and further it needs to be mentioned that date of Enquiry Report on 23.07.2004 is also before the actual due date of my ACP on 12.10.2004 but the Disciplinary Authority imposed penalty on me on 02.03.2005 i.e. after the due date of my ACP (12.10.2004) which affects the benefits of the ACP to be extended to me from the due date on 12.10.2004 and further it is evident that the delay in imposing of the punishment on the said reopened D.E./charge sheet dated 02.01.1998 based on imagination is not due to me and even after completion of my tenure at this far North-East Region, I was not transferred on the name of pendency of the said D.E. on the charge sheet dated 02.01.1998, and finally I have been transferred in the DTAC-2006 from this North-East Region to another North-East Region-Gangtok despite the facts remain how this low-paid employee facing severe financial problems to run double establishments; for dependent parents/unmarried sister at Kolkata and my ailing wife, a patient of hypertension and my new born baby, require nursing of our parents at Kolkata and in this connection my representation dated 15.02.2006 may kindly be referred and as such I have been being time and again punished and harassed and financially looser on the same cause of my representations against the said allotment of Plumber Duties since long from 1996, though subsequently I was exempted from the said Plumber Duties as soon as after joining of Shri A. K. Bhakat, Plumber at SB, Hathikanda.

2. I, therefore, pray for a kind and sympathetic consideration and reconsideration of Your Honour in the above matter, please.

Date : 20.03.2006

Place : TP/WT, SB, Agartala

Yours faithfully

*Amul*  
20.03.2006  
(SIMPAL DATTA)  
ARO(T) / ID NO. 03340-1

*Attested  
Author Advocate*

CONFIDENTIAL

No.40/41/91-Pers.13-Vol.IV - 5052  
Government of India  
Cabinet Secretariat

Served upon Simul Datta, AFO(T)  
on 18.05.2006

Room No.7  
Bikaner House (Annexe)  
Shahjahan Road  
New Delhi - 110 011.

Dated the

3 MAY 2006

### ORDER

WHEREAS a Departmental Enquiry under Rule 14 of CCS(CCA) Rules, 1965, was initiated against Shri Simul Datta, AFO(Tele), ID No.03349V, vide a memorandum of charge sheet dated 02-01-1998 issued by the Commissioner, SB, Kolkata and Disciplinary Authority, on the following Article of Charge :-

### ARTICLE OF CHARGE

"That the said Shri Simul Datta, while functioning as AFO(Tele) at SB, Hathikanda during July, 1997 conspicuously mentioned the nature of his duties in the enclosure to his representation dated 17-07-1997 and sent it by post to the address of the Secretary, Cabinet Secretariat, through JS(Pers), Hqrs., New Delhi. Disclosing information relating to the functioning of the organization in this manner being strictly prohibited, he contravened the Departmental Security Instructions, the Official Secrets Act and the Intelligence Organisation (Restriction of Rights) Acts, 1985. By this act of omission and commission on his part, Shri Simul Datta, AFO(T), has acted in a manner unbecoming of a government servant, thereby contravening Rule 3(1)(iii) of CCS(Conduct) Rules, 1964."

2. Shri Simul Datta, AFO(T) was directed to submit his written statement of defence against the article of charge within ten days of receipt of the memorandum of charge sheet. Shri Datta submitted a written statement of defence on 12-01-1998 denying the Article of Charge.

3. WHEREAS, Shri Y.V. Dayal, Deputy Commissioner, SB Agartala appointed as Inquiry Officer to enquire into the charges, submitted his report on 23-7-2004. A copy of the inquiry report was forwarded to Shri Simul Datta, AFO(T) vide memo dated 6/10/2004 with the direction to submit his representation, if any, within 15 days of receipt of order against the findings in the Inquiry Report..

4. WHEREAS, Shri Datta submitted a representation on 29-10-2004 raising several points against the findings of the Inquiry Officer and denying all the charges framed against him. The Commissioner, SB, Kolkata, in his capacity as Disciplinary Authority, recorded his findings on the charge and passed an order dated 02-03-2005 imposing a penalty of "Censure" on Shri Simul Datta, AFO(T).

Attest  
Advocate

5. WHEREAS on an appeal filed by Shri Datta against the order of the Disciplinary Authority, the Appellate Authority recorded full agreement with the order of the Disciplinary Authority and upheld the penalty of 'Censure' imposed on Shri Simul Datta. The present representation of Shri Datta seeks a review of the penalty imposed. The representation has been treated as an application for 'Revision' of the penalty order under Rule 29 of the CCS(CCA) Rules, 1965, and has accordingly been submitted to the undersigned for orders.

6. WHEREAS, in his present revision application dated 23-11-2005 Shri Simul Datta has raised the following new issues :-

- i) That being annoyed with his grievance representation dated 12-05-1997 addressed to the Secretary, the then Commissioner, SB Kolkata communicated to him the charge sheet dated 02-01-1998.
- ii) That vide Memo dated 11-06-2001, the then Commissioner, SB Kolkata re-proposed DE proceedings on the same charge-sheet dated 02-1-1998 which was already declared closed by then and therewith the issuance of the memorandum dated 06-01-2000.
- iii) That the DE proceedings would be reopened and would be ended after due date of his 1<sup>st</sup> financial upgradation under ACP Scheme and as such the intimation communicated to him before restarting of the DE proceedings vide Memo dated 02-07-2001, that the DE proceedings would not be necessarily in a manner prejudicial to him, has not been followed and he has been punished relying upon an imagination only.

7. These issues have been examined with reference to the material available on record.

- i) There is nothing to show that charges were framed against him on the Commissioner, Kolkata being annoyed by his representation dated 12-05-1997;
- ii) The memo dated 06-01-2000 was issued certifying the integrity for filling the Annual Confidential Report of Shri Datta and had held out no promise regarding the outcome of the DE against him;
- iii) The delay in completion of the DE was caused due to the CAT appeal filed by Shri Datta in Calcutta High Court against his transfer from Hathikanda to Tuensang and the frequent changes of IOs and POs appointed for the proceedings.

8. AND WHEREAS, The undersigned has carefully gone through the contentions made by the appellant and all the relevant records of the case. Whereas, the undersigned is satisfied that the Inquiry was held strictly in accordance with the Rules laid down in CCS(CCA) Rules, 1965. The undersigned fully agrees with the views of the Disciplinary Authority and the Appellate Authority in the matter and therefore, have nothing to modify the same.

9. On an overall analysis of the case, the undersigned finds that the misconduct on the part of the official involved serious irregularities. The Disciplinary Authority and the Appellate Authority have already taken a lenient view in the matter and has imposed only a penalty of "Censure". Under the circumstances, the undersigned does not find any reason to interfere with the order passed by these Authorities either on the findings recorded by them as regards the guilt of the officer or on the quantum of penalty as imposed by them.

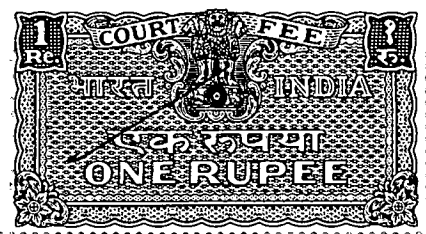
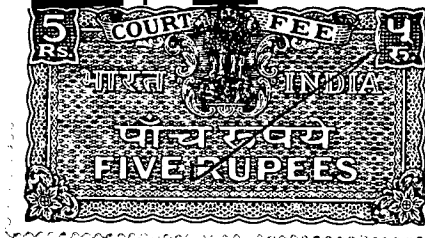
10. NOW, therefore, having considered the entire facts and circumstances of the case, the undersigned in exercise of the powers vested in him under Rule 29 (1) (a) of CCS (CCA) Rules 1965, hereby confirms the order dated 02-03-2005 passed by the Disciplinary Authority imposing the penalty of "Censure" on Shri Simul Datta, AFO(T) and rejects his revision petition dated 23-11-2005 being devoid of merit.

( P.K.H. THARAKAN )  
SECRETARY  
&  
REVISING AUTHORITY

✓ Shri Simul Datta, AFO(T)  
Thro' Commissioner, Eastern Zone, Kolkata.

Attested  
Advocate

not P.K.H. Tharakan's job



Simul Datta.

VAKALATNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

O. A. No. 121 /2006

...Applicant(s)

Shri Simul Datta.

-Vs-

Union of India & Others

...Respondent(s)

Know all men by these presents that the above named Applicant do hereby appoint, nominate and constitute Sri Manik Chanda, Sri S. Nath. ~~Sri~~ Mrs. U. Dutta. and \_\_\_\_\_, Advocate(s) and such of below mentioned Advocate(s) as shall accept this VAKALATNAMA to be my/our true and lawful Advocate(s) to appear and act for me/us in the above noted case and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me/us and on my/our behalf and I/We agree to ratify and confirm all such acts to be mine/our for all intends and purposes. In case of non-payment of the stipulated fee in full, no Advocate(s) shall be bound to appear and/or act on my/our behalf.

In witness whereof, I/We hereunto set my/our hand on this the 19<sup>th</sup> day of May 2006.

Received from the Executant, Mr. \_\_\_\_\_ And accepted  
satisfied and accepted. Senior Advocate will lead me/us in the case.

S. Nath.  
Advocate

Subrata Nath  
Advocate

Manik Chanda.  
Advocate

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NOTICE

From:  
Subrata Nath.  
Advocate  
Central Administrative Tribunal  
Guwahati Bench, Guwahati.

To,  
Shri G. Baishya  
Sr. C.G.S.C  
Central Administrative Tribunal  
Guwahati Bench,  
Guwahati.

Sub: - O.A. No. 821 /2006

Shri Simul Datta - Vs- Union of India & Ors.

Sir,

Please take notice that the above Original application, a copy whereof is enclosed herewith for your information and necessary action, is being filed before this Hon'ble Central Administrative Tribunal today.

Kindly acknowledge receipt of the same.

Thanking you,

Yours sincerely,

*Sub.*  
Advocate  
19/5

Received Copy of the Original Application  
Consisting pages \_\_\_\_\_ including Annexure.

(G. Baishya)  
Sr. C.G.S.C

*I undertake to serve a copy of  
this application to Mr. G. Baishya,  
Sr. C. G. S. C.  
Sub.  
19/5*

**MEMORANDUM OF APPEARANCE**

Date : 6/6/06

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To,

**Py. The Registrar**

Central Administrative Tribunal  
Bhangagarh, Rajgarh Road,  
Guwahati.

**IN THE MATTER OF :**

O.A. No. 121 of 2006

Sri Samuel Datta

----- Applicant

- Vs -

**Union of India & Others**

----- Respondents

I, M. U. Ahmed, Addl. Central Govt. Standing Counsel, Central Administrative Tribunal, Guwahati, hereby enter appearance on behalf of the Union of India & Respondents Nos. all in the above case. My name may kindly be noted as Counsel and shown as Counsel for the Respondent/s.

  
(Motin Ud-Din Ahmed)  
Addl. C.G.S.C.



केन्द्रीय प्रशासनिक अपीकरण  
Central Administrative Tribunal  
23 NOV  
गुवाहाटी पञ्चायत  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

IN THE MATTER OF :

O.A.No. 121 of 2006

Sri Simul Dutta

...Applicant

- Versus -

Union of India & Ors.

....Respondents

- AND -

IN THE MATTER OF :

Written Statement submitted by the Respondents No.

WRITTEN STATEMENT

The humble answering respondents  
submit their written statement as  
follows :

1.(a) That I am the Deputy Commissioner, Special  
Bureau, Govt of India, Guwahati

and Respondents No. 5 (Rep) 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 the above 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.

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Subd.

11/11/06

Deputy Commissioner

Special Bureau

Govt. of India, Guwahati

11/11/06

(d) 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. That with regard to the statements made in paragraphs 1 of the application, the answering respondents beg to submit that the whole case/claim is a misconceived one and it is misrepresentation of facts. The applicant was assigned the job only for switching on/off the submersible water pump and that too on rotation basis along with other AFOs(T). When any difficulty arose in operation of pump, it used to be taken care of by some FOs(T) in the workshop or by a private mechanic.

3. That with regard to the statements made in paragraphs 2 & 3 of the application, the answering respondents beg to submit that all other staff in his rank did this job with responsibility and devotion except him. He had failed to show the work spirit and attitude.

4. That with regard to the statements made in paragraphs 4, 5 & 6 of the application, the answering respondents beg to submit that ACR is such type of a report in which official's spirit & attitude towards work, devotion of duty, behaviour towards higher authority and other Govt. official like qualities are reflected. Only for request for exemption from plumber duty is not the reason of making adverse remarks.

It is a settled position of law that the system of confidential report has two principle objectives. First and foremost is to improve the performance of the subordinate in his present job. The second one is to

assess his potentialities and provide him appropriate feed back and guidelines for correcting and improve his performance.

But in the instant case, apart from the charge mentioned in the article of charges/charge sheet, the applicant has been found lack of general importance such as integrity, keenness attitude to superior officers and subordinate officers, relation with fellow employees etc.

5. That with regard to the statements made in paragraphs 7 & 8 of the application, the answering respondents beg to submit that as the official had not proceeded/availed of the periods of leave after receipt of sanction of the Competent authority, the periods of absence have been regularized by the competent authority considering the situation and relevant rules.

That was done to maintain the correct record of service. But those unauthorized absence from duty cannot be equated with any other sanction leave.

6. That with regard to the statements made in paragraph 9 of the application, the answering respondents beg to submit that it was not issued without any legitimate and valid reasons. It was issued because the official had committed a serious security lapse and also had violated the instructions contained in para 16(iii) of Chapter I of Standing Orders.

7. That with regard to the statements made in paragraphs 10 of the application, the answering respondents beg to submit that the applicant was asked to submit his explanation of serious security lapse which is mentioned in para 9. But he had not submitted the same. Therefore, a charge sheet was served on him for violation of Departmental Security Instructions, official secret Act and Intelligence Organizations (Restriction of rights) Acts, 1985.

8. That with regard to the statements made in paragraphs 11 and 13 of the application, the answering respondents beg to submit that they do not admit anything except those are in record with rational foundation and tenable in the eye of law. The applicant is put to strict proof thereof.

9. That with regard to the statements made in paragraphs 12 of the application, the answering respondents beg to submit that the memo dated 6.1.2000 issued by Headquarters does not imply that Headquarters New Delhi had declared closure of the DE Proceedings on the above charge sheet dated 2.1.98. The said DE against Shri Simul Dutta, AFO(T) which was started on the basis of Charge-sheet dated 2.1.98 was kept in abeyance, as Shri Dutta had filed a case in High Court for his transfer to Tuensung from Hathikanda. After receipt of decision of the High Court, the said DE was again started as per Headquarters instruction.

10. That with regard to the statements made in paragraphs 14 of the application, the answering respondents beg to submit that there is no connection of the memos dated 6.1.2000, 8.2.96 and 14.7.97 with the DE, initiated against him. The departmental enquiry was initiated not for being annoyed with his grievances for exemption from pump duty but for misconduct as mentioned in the Charge Sheet.

11. That with regard to the statements made in paragraphs 15 of the application, the answering respondents beg to submit that it took long time to complete the said departmental enquiry due to frequent change of I.O & P.O, appointed for this proceedings.

12. That with regard to the statements made in paragraphs 16 of the application, the answering respondents beg to submit that the

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appellate authority has not found any merit in the appeal submitted by Shri Simul Dutta.

13. That the humble respondents crave leave of the Hon'ble Court to file additional/amended written statement as and when required to do so.

14. That the answering respondents beg to submit that the application is devoid of merits and as such the same is liable to be dismissed.

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

Under the above circumstances your Lordships would be pleased to dismiss the application filed by the applicant for the ends of justice.


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VERIFICATION

I, Arvind Kumar aged  
about 40 years, working as Deputy Commissioner,  
Special Bureau, Govt. of India, Guwahati.  
and competent officer of the answering respondents, do  
hereby verify that the statements made in paras  
9 are true to my knowledge and those made  
in paras 1 & 8, 8 & 11 being matters of record are  
true to my information derived there from which I believe  
to be true and the rest are my humble submissions before  
this Hon'ble Tribunal.

And I sign this verification on this the  
16 th day of October ~~August~~ 2006 at Guwahati.

Signature

  
**Deputy Commissioner**  
**Special Bureau**  
**Govt. of India, Guwahati**

13 JUN

गुवाहाटी न्यायपीठ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

10/4  
Filed by the applicant  
through U. Datta, advocate  
on 13.06.08

In the matter of:-

O.A. No. 121 of 2006

Sri Simul Datta

.....Applicant.

-Vs-

Union of India & Ors.

.....Respondents.

-And-

In the matter of: -

Rejoinder submitted by the  
applicant in reply to the written  
statements submitted by the  
respondents.

The applicant above named most humbly and respectfully begs to  
state as under; -

1. That with reference to the paragraphs 1 (a), (b), (c), (d) & (e) of the  
written statement the applicant categorically deny and dispute the  
correctness of the statements and/or allegations and/or contentions  
made therein save and except which are borne out of records. In this  
context, the applicant begs to submit prima facie of the case as  
hereunder: -

**A. ANOMALY IN DATE OF CONFIRMATION**

After imposition of the punishment (charge sheet dated 02.01.1998)  
against which the applicant has filed instant OA No. 121/2006, the  
respondents concerned communicated the office order dated 08.06.05  
to the applicant regarding confirmation of his service w.e.f. 01.01.98  
instead of w.e.f. 01/10/95.

a) The applicant joined in the respondents Organisation/Government  
Service as Assistant Field Officer (Tele-Communication Cadre) at SB,  
Patiala, on 12.10.92 (FN) and remained there up to 01.01.1996 and

13/6

Simul Datta

during the said period, at Patiala, the Annual Confidential Reports (ACRs) of the applicant were clean and unblemished and/or during the said period (i.e. 12.10.92 to 01.01.96) no adverse substance of ACR was communicated to the applicant.

b) The applicant was under probation from 12.10.92 to 11.10.95 in terms of the letter of his appointment and accordingly vide Office order being No. 31/INC/1996 under endorsement No. 13/2.95-CAL (PERS)-18273 dated 05.12.96, the fourth stage of his scale of pay was released from 01.10.95 consequent upon successful completion of the probation period w.e.f. 12.10.92, in pursuance of Rule 145 of R & AW (RC &S) Rules, 1975.

(c) Regarding Confirmation of service, extract of the respondents organization's Rule 144 & 145 of R & AW (RC &S) Rules, 1975 are as hereunder:

**RULE 144: CONFIRMATION**

Where a probationer has completed his period of probation to the satisfaction of the Head of the organization or the Appointing Authority, as the case may be, he shall, subject to the other provisions of these rules, be confirmed at the end of the probation in the grade to which he was appointed on probation.

**RULE 145: SALARY DURING PERIOD OF PROBATION**

(1) During the first, second and third year of probation, a probationer shall receive pay at lowest, the second and the third stage respectively of the scale applicable to the post or grade to which he is appointed on probation.

(2) No further increment shall be admissible to him until he is declared to have successfully completed his probation by the Appointing Authority.

(d) In terms of above-cited Rule 144 & 145 of R & AW (RCS) Rules, 1975 and from the said Office Order dated 05.12.1996, it is crystal clear that the

*Simul Datta*



service became confirmed accordingly at the rank of Assistant Field Officer (Tele-Communication Cadre) to which the applicant was appointed and his service became confirmed w.e.f. 01.10.95 from when he was granted the increment beyond the third stage of the scale of his pay at the end of his probation.

During the said period 12.10.92 to 01.10.95, no charge sheet was served upon the applicant and/or no Departmental Enquiry was pending against him.

(c) After imposition of the punishment (Charge sheet 02.01.1998) against which filed this instant OA No. 121/2006, the respondents concerned communicated the Office Order of No. 40/41/91-Pers. 13-Vol. IV-8431 dated 08.06.05 to the applicant regarding confirmation of his service as AFO (T) in a substantive capacity at maintenance stage w.e.f. 01/01/98 instead of operational stage w.e.f. 01/10/95.

(f) Against the aforesaid order (08.06.2005) regarding anomaly in the date of his confirmation in service, the applicant submitted his representation on 20.07.2005 which is still remaining un-replied.

**B. ASSIGNMENT OF PLUMBER DUTIES**

**DIRECTED THE APPLICANT, WHO IS ASSISTANT FIELD OFFICER TO PERFORM PLUMBER DUTIES:**

(a) It is evident that the respondents department directed the applicant to perform the jobs of the post of Plumber (Miscellaneous Cadre) in addition with the duties of the applicant's post Assistant Field Officer (Telecommunication Cadre);

(b) It is evident that in compliance with the direction of his Superior Officers, vide the memorandum dated 08.02.1996, the applicant was performing the said Plumber Duties from February 1996 till July 1998 and/or till then when Shri A.K. Bhakat, rank-Plumber, joined at that station, Hathikanda and till then the applicant was exempted from the said Plumber Duties. During the pendency of the case before the Hon'ble Courts, Kolkata, a Plumber named Shri Anant Bhakat was posted at Hathikanda and the applicant was exempted

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from the said Plumber Duties. Presently, at Hathikanda, the said Plumber Duties are done by the above named staff member of the post of Plumber but when he remains on leave and/or off duties, the said Plumber duties are performed by the Group - D staff members ;

(c) Regarding nature of duties of the members of the applicant's Telecommunication Cadre, the extract of the respondents organization's - Rule 39 of R & AW (R C S) Rules, 1975, (Copy No. 086 / Chapter-V / Page-23) is as hereunder :-

"The nature of duties of the members of the Telecommunication Cadre shall generally be to procure, operate and maintain electronic and telecommunication equipment required for the work of the Organisation and also to collect intelligence through electronic means."

(d) It is evident that the respondents concerned as directed the applicant to perform the duties of Plumber vide their memorandum dated 08.02.1996, at SB, Hathikanda is not tenable in the eye of Law as because of that the applicant was recruited not as Plumber and not in Miscellaneous Cadre; the applicant was recruited as Assistant Field Officer in the Telecommunication Cadre of the respondents organization, to perform the jobs of Telecommunication duties to collect intelligence.

(e) It is evident that the Plumber duties as would be assigned to the applicant by his controlling officers, could/can never be termed legitimately as assigned duties and it is also evident that the respondents can not legally compel the applicant - Assistant Field Officer to perform the impugned Plumber duties and/or such type of demotion- duties without any fault on his part.

(f) Before writing against the said Plumber Duties, the applicant went to the office of his Superior Officers - Assistant Commissioner (Tele), Deputy Commissioner (Tele), Hathikanda and the office of Deputy Commissioner (Admin), Kolkata, respectively and verbally placed before them his grievance with a following question -

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"Presently, the staff-member of the post of Plumber since not being available at the office of Hathikanda, staff-member of the post of Assistant Field Officer (Telecommunication Cadre) like the applicant has been forced to perform the said Plumber duties;

In future, when the staff-member of the post of Sweeper will not be available, staff-members of the post of Assistant Field Officer (Telecommunication Cadre) like the applicant will be assigned the said Sweeper duties???"

Every Officer replied --- "No";

Further in reply, Shri Goutam Roy, the then Deputy Commissioner (Admin), SB, Kolkata tells that they are not in position to exempt the applicant from the said Plumber Duties as per his verbal request; the Officer - DC (Admin) advised the applicant to submit his grievance in writing;

(g) After ten months, when his verbal prayer as above failed, then the applicant started to submit his aforesaid grievance applications in writing to next higher officers of the respondents department respectively, as per respondent's departmental standing orders.

#### C. ADVERSE ACRs OF 96-97, 97-98 & 98-99

(a) As it is why the applicant submitted his grievance and as it is why he showed his attitude against the said PLUMBER DUTIES, the respondent higher authority- Shri S. K. Tripathi became angry and aggravated against the applicant and as per his desire ACRs of the applicant for 1996-1997, 1997-1998 & 1998-1999 adversely reported and many other disciplinary proceedings/harassment instituted against the applicant:

(b) The higher authorities like Shri Tripathi since passing above order against the applicant, Shri C. Sridhar, DC (Tele), Hathikanda reported adversely the ACRs of the applicant for three consecutive years i.e. 1996-1997, 1997-1998 & 1998-1999 and in 1999 Shri C. Sridhar proceeded from Hathikanda on transfer;

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While on the subject, it needs to be stated that during 13 years of his service in the respondents organization, except above three consecutive years, the ACRs of the applicant always remained unblemished and/or never adversely reported;

**D. MINOR CHARGE SHEET/ DIES-NON/ Rs. 2440 DEDUCTED**

Respondents issued minor charge sheet under Rule 11 of CCS (CCA) Rules and punished the applicant treating 15 days of his service as DIES-NON and deducted Rs. 2440/- from his salary, as the applicant, on those 15 days, could not perform the said PLUMBER DUTIES in addition with the duties of his post-Assistant Field Officer (Tele Communication) though the applicant was present full duty hours of those 15 days at office and performed the duties of his Post-Assistant Field Officer (Telecommunication) full duty hours on those 15 days:

- (a) It is evident that during the said period of 3 years, only on various 15 days (15 different dates) (not at a stretch) the applicant could not perform the said Plumber Duties in addition with his telecommunication duties;
- (b) It is evident that on those 15 days the applicant was present full duty hours at office and performed full duty hours his telecommunication duties;
- (c) It is evident that Shri N. K. Singh, the then Additional Commissioner, SB, Kolkata, presently working as Commissioner, SB, Kolkata, issued minor charge sheet being the memorandum dated 14.01.98 and the Order of No. 21/11/96/CAL (PERS) -10022 dated 27.08.98 vide which punished the applicant under Rule 11 of CCS (CCA) Rules, 1965 and deducted Rs. 2440/ from his pay packet treating abovementioned 15 days of his service as Dies-Non, for which the respondents intimated the reason that the applicant did not perform the said Plumber duties in addition to the applicant's telecom duties on those 15 days;

**E. CANCELLATION OF THE PUNISHMENT TRANSFER**

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(a) The Hon'ble High Court, Kolkata passed, on 19.09.2000, the Judgment in the matter of W.P.T.C. of No. 206/1999 and cancelled the punishment transfer order (to Tuensang, Nagaland, North East Region) which was ordered by the respondent no. 3 as the applicant could not do the duties of Plumber/Pump Operator instead of working as Telecom Operational Tasks;

Again, the respondent no. 3 ordered the applicant to proceed on transfer from Hathikanda to Agartala and accordingly the applicant joined at Agartala on 14.05.2001.

**F. MAJOR CHARGESHEET/PUNISHMENTS/AFFECTS**

The respondent Commissioner, SB, Kolkata issued major charge sheet (dated 02.01.1998) under Rule 14 of CCS (CCA) Rules on an imagination and punished the applicant though the respondents competent authority HQRS., New Delhi issued the certificate (vide memo dated 06.01.2000) on culmination of the D.E. (Departmental Enquiry) on the same charge sheet (02.01.1998) (Vide memo dated 14.07.1998) and after date of imposition of above-mentioned punishment (charge sheet dated 02.01.98) the respondents have sanctioned the ACP w.e.f. 25.08.2005 instead of 12.10.2004:

(a) It is evident that the said Shri S. K. Tripathi himself issued a major charge-sheet against the applicant under Rule 14 of CCS (CCA) Rules, 1965 framing the article of charge with allegation of contravention of Rule 3 (i) (iii) of CCS(Conduct) Rules, 1964 (i.e. the charge of integrity in doubt/acted in unbecoming way of a government servant) on the following imagination which was annexed with the above-mentioned charge-sheet (02.01.98) as the statement of imputation of misconduct :-

"If the grievance representation of the applicant dated 17.07.97 would fall into the hands of some unscrupulous elements during the postal transit, it would cause serious damage to the security of the department and also would cause embarrassment to the government".

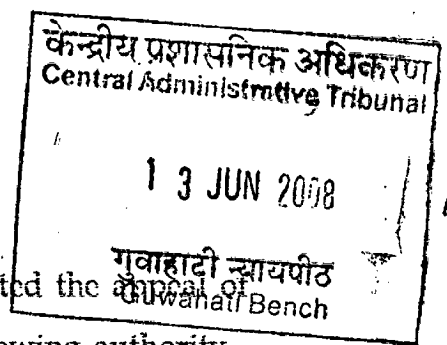
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- (b) Vide the Office Order dated 30.03.98, the respondent proposed Departmental Enquiry (herein after D.E.) on the above charge sheet (02.01.98);
- (c) Vide the memorandum dated 14.07.98, the respondents concerned intimated the applicant that for want of completion of above-mentioned D.E. his integrity column had left blank and further communication in this regard would follow on culmination of the abovementioned D.E proceedings on the Charge-sheet (02.01.1998);
- (d) With reference to the aforesaid memorandum dated 14.07.98, a memorandum dated 06.01.2000 was communicated to the applicant, with intimation that integrity of the applicant has been certified by the Competent Authority, Hqrs., New Delhi that there was nothing adverse against the applicant for the said period i.e. during the period in which the said charge-sheet dated 02.01.1998 was initiated against the applicant;
- (e) It is evident that the memorandum dated 06.01.2000 was issued by the Competent Authority, Hqrs., respondents department, after declaration of the completion of the above-mentioned Departmental Enquiry (D.E.) (on the charge sheet dated 02.01.98); vide the memorandum dated 14.07.1998; And no D.E. is pending on the charge sheet against the applicant;
- (f) The applicant remained at Hathikanda upto 30.04.2001 and he was relieved on 30.04.2006 with a direction to report at Agartala on 14.05.2001 and accordingly the applicant joined on transfer at Agartala on 14.05.2001 ;
- (g) It is regretted that after about one month of his joining at Agartala on transfer, the then Commissioner, SB, as Disciplinary Authority, re-proposed D.E. (on the same Charge- sheet dated 02.01.1998) and as such the closed matter of the said D.E. was reopened ; vide the Office Orders dated 11.06.2001;
- (h) Finally, Shri P. K. Sharma, the then Commissioner, SB, Kolkata imposed punishment upon the applicant, on a closed matter of Departmental Enquiry (D.E.) Charge sheet dated 02.01.98) and on an above-mentioned imagination, without any fault on his part , Shri S.

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K. Tripathi, himself, as an appellate authority, rejected the appeal of the applicant and the respondent no. 1, as a reviewing authority, replied that he will not interfere into the matter;

**G. OTHER AFFECTS DUE TO THE ABOVE D.E.**

- (a) On the name of the above D.E. the applicant was not sanctioned A.C.P from 12 October 2004 on which the applicant completed his 12 years regular service in the same post - Assistant Field Officer ;
- (b) The respondents concerned sanctioned the said ACP from 25 Aug' 2005; in this regard the respondents showed the reason that after completion of the D.E. i.e. after date of imposition of above-mentioned punishment (Charge Sheet 02.01.98) they have sanctioned the ACP w.e.f. 25.08.2005 instead of 12.10.2004;
- (c) Against the aforesaid order (08.06.2005) regarding anomaly in the date of his confirmation in service, the applicant submitted his representation on 20.07.2005 which is still remaining un-replied.
- (d) On the name of the above-mentioned D.E. (Charge sheet 02.01.1998), the applicant was not transferred from the North-East Region-Agartala even after completion of his 3 years tenure at Agartala;
- (e) After the date of imposition of above-mentioned punishment (charge sheet 02.01.1998) and after 5 years of his service at Agartala, the applicant was transferred to another North-East Region-Cangtok;

**H. RELIEFS GOT DURING THE PENDENCY OF THIS O.A 121/06**

- (a) During the pendency of the said OA 121/2006 before this Hon'ble Tribunal, the respondents concerned cancelled the said transfer order of Cangtok and issued a new transfer order and the applicant was relieved from Agartala and allowed to join on transfer at his home town Kolkata from North East region.

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(b) During the pendency of the said OA No. 121/2006 the applicant got promotion from Assistant Field Officer to Deputy Field Officer.

(c) During the pendency of the said OA No. 121/2006 before this Hon'ble Tribunal, the respondents concerned sanctioned Dual HRA @ 30% of the HRA of the last place of posting (Hathikanda) for his dependents and released the payments as arrear (without interest) for the period from 20.09.2001 to 18.05.2006;

But till the date the respondents concern did not release the payments of the said Dual HRA from 14.05.2001 to 19.09.2001 i.e. from the joining date on 14.05.2001 on which the applicant joined on transfer at the said North East Region - Agartala;

Whimsically, the respondents concern sanctioned the said Dual HRA w.e.f. 20.09.2001 instead of 14.05.2001.

(e) During the pendency of the said OA 121/2006 before this Hon'ble Tribunal, the respondents concern communicated the Office Order of No. 40/41/91-Pers.13-Vol.IV-8431 dated 08.06.05 to the applicant and confirmed the service of the applicant as AFO (T) in a substantive capacity at maintenance stage w.e.f. 01/01/98 instead of operational stage w.e.f. 01/10/95.

Against the aforesaid order (08.06.2005) regarding anomaly in the date of his confirmation in service, the applicant submitted his representation on 20.07.2005, which is still remaining un-replied.

#### I. AFFECTS/PUNISHMENTS AT A GLANCE

The injustices/punishments/affects on the applicant done by the respondents are at a glance as hereunder which are as the respondent Shri Tripathi took as ego matter rather than judicially consider the prayer of the applicant against the impugned plumber duties:

- 1) Issued Minor Charge sheet and punished the applicant under Rule 11 of CCS (CCA) Rules, 1965 and deducted Rs. 2440/- from the salary of the applicant;

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- 2) Issued Major Charge sheet under Rule 14 of CCS (CCA) Rules, 1965 and proposed Departmental Enquiry against the applicant and later, punished the applicant;
- 3) Entered adverse report in ACR of the applicant for 96-97;
- 4) Entered adverse report in ACR of the applicant for 97-98;
- 5) Entered adverse report in ACR of the applicant for 98-99;
- 6) Applied for one day E/L on 07.03.97 (vide E/L application submitted on 03.03.97) but initially it was granted as own, initially as EOL without medical certificate (i.e. Break-in-service) and subsequently as 1 day Half Pay Leave without leave salary and deducted Rs. 157/- from the salary of June' 1998;
- 7) Put the applicant in a great financial loss of Rs. 20,000/- to Rs. 25,000/-, in the way of open discrimination, not giving him the Cash Compensatory Off (C/Off) financial benefits at the end of the calendar year, during that 3 years of his service at Hathikanda;
- 8) Transferred the applicant to Tuensang in the way of Punishment (Hon'ble High Court passed the order in the matter of W.P.T.C. 206/1999 and this punishment transfer order was cancelled);
- 9) Further, transfer him to Agartala and subsequently it is evidently proved that the applicant was transferred to Agartala to punish him;
- 10) Yet, do not sanction Dual HRA, from 14.05.2001 on which he joined at the North East region, Agartala for the applicant as he is entitled for; but sanctioned the said Dual HRA from 20.09.2001;
- 11) Yet, do not confirm his service from 01.10.95 (confirmed from 01.01.98); in this regard the representation of the applicant dated 20.07.2005 is still remaining un-replied;
- 12) Yet, do not grant him ACP from 12.10.2004 (Granted ACP from 25.08.2005);
- 13) Even after completion of 4 years of service at North-East Region, the applicant was not transferred on the reason due to the said Departmental Enquiry;
- 14) (a) The mental agony of the applicant was so lengthening and was so deteriorated by the respondents that were forcing the applicant to die.

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(b) It is matter of regret that for ~~the reasons stated~~ of above, not only the applicant, his family members, while was staying at Agartala Departmental Quarter complex, were also punished;

(c) In this context refer to the para 4.61, 4.66, 4.67, 4.68, 4.69, 4.70, 4.73 & 4.74 of the instant OA No. 121/06;

J. ANOTHER A.F.O (TELE) COMMITTED SUICIDE

(a) Sri R. Ravi Kumar, another Assistant Field Officer Telecommunication Cadre), while was working at SB, Hathikanda, was also assigned the said Plumber duties and when he submitted his grievance representation against the said Plumber duties ;

In reply, the same Shri S.K. Tripathi threatened Shri Ravi Kumar aggressively that the mental position of the Ravi Kumar so deteriorated;

Later, it is heard that after joining at Pondichery from Hathikanda on transfer, Shri Ravi Kumar committed suicide.

(b) Before his death, Shri Ravi Kumar sent the original copy of the memorandum dated 17.10.95 to the applicant regarding the above-mentioned threatening of Shri S. K. Tripathi, the then Commissioner, SB, Kolkata.

K. O.A. No. 121/06 SUFFICIENTLY BONAFIDE FOR ENDS OF JUSTICE AND SUFFICIENTLY MAINTAINABLE IN LAW OR IN FACT:

In the facts and circumstances, it is evident that the instant Original Application being O.A. No. 121/06 is sufficiently bonafide for ends of Justice and sufficiently maintainable in Law or in fact.

4. That with reference to the paragraphs 2 of the written statement of the respondents, the applicant denies and dispute the correctness of the statements and/or allegations and/ or contentions made therein save and except what are matters of records of the case. The applicant repeats and reiterates the paragraph 1 of the instant original application being O.A. No. 121/06.

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In this context the applicant repeats and reiterates also the following statements which are evidently true; further the applicant begs to state that he had never submitted any misrepresentation of the facts and the whole case/claim furnished with evidences in the instant Original Application being O.A. No. 121/06 is sufficiently bonafide for ends of Justice and sufficiently maintainable in Law or in fact :-

- (a) It is evident that the respondents department directed the applicant to perform the jobs of the post of Plumber (Miscellaneous Cadre) in addition with the duties of the applicant's post Assistant Field Officer (Telecommunication Cadre);
- (b) It is evident that in compliance with the direction of his Superior Officers, vide the memorandum dated 08.02.1996, the applicant was performing the said Plumber Duties from February 1996 till July 1998 and/or till then when Shri A. K. Bhakat, rank- Plumber, joined at that station, Hathikanda and till then the applicant was exempted from the said Plumber Duties;
- (c) Regarding nature of duties of the members of the applicant's Telecommunication Cadre, the extract of the respondents organization's - Rule 39 of R & AW (R C S) Rules, 1975, (Copy No. 086 /Chapter-V/Page-23) is as hereunder:-

"The nature of duties of the members of the Telecommunication Cadre shall generally be to procure, operate and maintain electronic and telecommunication equipment required for the work of the Organisation and also to collect intelligence through electronic means."

- (d) It is evident that the respondents concerned as directed the applicant to perform the duties of Plumber vide their memorandum dated 08.02.1996, at SB, Hathikanda is not tenable in the eye of Law as because of that the applicant was recruited not as Plumber and not in Miscellaneous Cadre; the applicant was recruited as Assistant Field Officer in the Telecommunication Cadre of the respondents organization to

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perform the jobs of Telecommunication ~~Collect~~  
intelligence.

- (c) It is evident that the Plumber duties as would be assigned to the applicant by his controlling officers, could/ can never be termed legitimately as assigned duties and it is also evident that the respondents can not legally compel the applicant - Assistant Field Officer to perform the impugned Plumber duties and/or such type of demotion- duties without any fault on his part.
5. That with regard to the statements made in paragraphs 3 & 4 of the written statement the applicant denies and dispute the correctness of the statements and/or allegations and/or contentions made therein save and except what are matters of records of the case and further beg to repeat and reiterate the paragraph 2, 3, 4, 5 & 6 of the instant original application being O.A. No. 121/2006.
6. That with reference to the paragraphs 5 of the written statement, applicant denies and dispute the correctness of the statements and/or allegations and/or contentions made therein save and except what are matters of records of the case. I repeat and reiterate the paragraph 7 & 8 of the instant original application being O.A. No. 121/06.

In this context applicant repeats and reiterates also the following statements which are evidently true; further the applicant begs to state that he had never submitted any misrepresentation of the facts and the whole case/facts furnished with documentary evidences in the instant Original Application being O.A. 121/06 is sufficiently bonafide for ends of Justice and sufficiently maintainable in Law or in fact. In this connection the applicant states that he applied for one day E/L on 07.03.97 (vide E/L application submitted on 03.03.97) but initially it was granted by the respondents concerned as his own as one day C/Leave, then as EOL without medical certificate (i.e. Break-in-service) and deducted Rs. 157/- from the salary of June 1998 and subsequently it was granted by the respondents concerned as his own, as 1 day Half Pay Leave without leave salary;

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7. That with reference to the paragraphs 6, 7, 8, 9, 10, 11 & 12 of the written statement applicant denies and disputes the correctness of the statements and/or allegations and/or contentions made therein save and except what are matters of records of the case and further repeats and reiterates the paragraph 9, 10, 11, 12, 13, 14, 15 & 16 of the instant original application being O.A. No.121/06 and the statements made hereinabove. In this connection applicant begs to state as follows:

- (a) As it is why the applicant submitted his grievance against the said Plumber Duties in writing and as it is why the applicant showed his attitude against the said Plumber Duties, the respondent Shri S. K. Tripathi became angry and aggravated against the applicant and from the memorandum 17.03.97 it is evident that the respondent Shri Tripathi ordered Shri C. Sridhar, DC, Hathikanda, to initiate disciplinary proceedings against the applicant and to report adversely ACRs of the applicant;
- (b) With reference to the grievance representation dated 17.07.1997, the respondents communicated to the applicant the memorandum dated 23.08.1997, wherein in para one the applicant was directed to explain as to why disciplinary action should not be taken against him for breach of Departmental Security Instructions, Official Secret Act and the Intelligence Organisation (Restriction of Rights) Act 1985.

And further wherein in para two the applicant was again directed to explain as to why disciplinary action should not be taken against him for breach of Para 16 (iii) of Chapter I of Departmental Standing Orders which warranting sending even an advance copy to the Secretary, bypassing all his superior officers in chain by not routing the original representation through them.

Against the above-mentioned show-cause notice dated 23.08.97 the applicant submitted his explanation vide the application dated 10.09.97.

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But with reference to the above show-cause notice dated

23.08.1997 Commissioner, SB, Kolkata issued the memorandum dated 02.01.1998 wherein proposed to hold an inquiry against the applicant under Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964.

In the charge sheet dated 02.01.1998, the allegations as made against the applicant in para two & three of the above-mentioned show-cause notice dated 23.08.1997 (i.e. allegations of violation of para 16 (iii) of Departmental Standing Orders and allegation of the job of Plumber assigned to the applicant misrepresentation of facts) were dropped.

In the above-mentioned charge sheet dated 02.01.1998 the article of charge of contravention of Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964 was framed against the applicant on the following imagination which was annexed with the above-mentioned charge sheet (02.01.98) as the statement of imputation of misconduct:-

"If the grievance representation of the applicant dated 17.07.97 would fall into the hands of some unscrupulous elements during the postal transit, it would cause serious damage to the security of the department and also would cause embarrassment to government".

The extract of Rule 3 (i) of CCS (Conduct) Rules 1964 is "maintain absolute integrity."

The extract of Rule 3 (iii) of CCS (Conduct) Rule, 1964 is "do nothing which is unbecoming of a government servant."

Further with reference to the above-mentioned charge sheet dated 02.01.1998, the respondents communicated the corrigendum dated 17.02.1998, wherein the Departmental Enquiry has been proposed under Rule 14 of CCS (CCA)

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Rules, 1965 instead of Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964.

Further, vide the office order dated 30.03.1998, respondents concerned ordered to hold departmental enquiry against the applicant on the above-mentioned charge sheet dated 02.01.1998 which was made on imagination only.

Under Secretary- Admn.III communicated the memorandum dated 14.07.1998, in last lines of para one of wherein the applicant is informed that for want of completion of D.E. (i.e. aforesaid Departmental Enquiry) the integrity column has been left blank and further communication in this regard will follow on culmination of D.E. Proceedings.

(b) It is evident that the said Shri S. K. Tripathi himself issued a major charge-sheet dated 02.01.98 against the applicant under Rule 14 of CCS (CCA) Rules, 1965 framing the article of charge with allegation of contravention of Rule 3(i) (iii) of CCS (Conduct) Rules, 1964 (i.e. the charge of integrity in doubt/acted in unbecoming way of a government servant).

(c) Vide the memorandum dated 14.07.98, the respondents concerned intimated the applicant that for want of completion of above-mentioned D.E. his integrity column had left blank and further communication in this regard would follow on culmination of the abovementioned D.E proceedings on the Charge-sheet dated 02.01.1998;

(c) With reference to the aforesaid memorandum dated 14.07.98, a memorandum dated 06.01.2000 was communicated to the applicant, with intimation that integrity of the applicant has been certified by the Competent Authority, Hqrs., New Delhi that there was nothing adverse against the applicant for the said period i.e. during the period in which the said charge-sheet dated 02.01.98 was initiated against the applicant;

(f) It is evident that the memorandum dated 06.01.2000 was issued by the Competent Authority, Hqrs., respondents

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department, after declaration of the completion of the above-mentioned Departmental Enquiry (D.E.) (on the charge sheet dated 02.01.98); vide the memorandum dated 14.07.1998; and no D.E. is pending on the charge sheet against the applicant;

(g) The applicant remained at Hathikanda up to 30.04.2001 and he was relieved on 30.04.2006 with a direction to report at Agartala on 14.05.2001 and accordingly the applicant joined on transfer at Agartala on 14.05.2001;

(h) It is regretted that after about one month of his joining at Agartala on transfer, the then Commissioner, SB, as Disciplinary Authority, re-proposed D.E. (on the same Charge-sheet dated 02.01.1998) and as such the closed matter of the said D.E. was reopened; vide the Office Orders dated 11.06.2001;

(i) Finally, Shri P. K. Sharma, the then Commissioner, SB, Kolkata imposed punishment upon the applicant, on a closed matter of Departmental Enquiry (D.E.) Charge sheet dated 02.01.98 and on an above-mentioned imagination, without any fault on his part, Shri S. K. Tripathi, himself, as an appellate authority, rejected the appeal of the applicant and the respondent No. 1, as a reviewing authority, replied that he will not interfere into the matter;

(j) On the name of the above D.E. the applicant was not sanctioned A.C.P from 12<sup>th</sup> October '2004 on which the applicant completed his 12 years regular service in the same post - Assistant Field Officer. However, the respondents concerned sanctioned the said ACP from 25 Aug' 2005; in this regard the respondents showed the reason that after completion of the D.E. i.e. after date of imposition of above-mentioned punishment (Charge Sheet 02.01.98) they have sanctioned the ACP w.c.f. 25.08.2005 instead of 12.10.2004;

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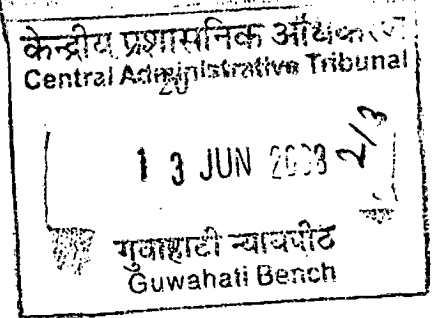
(k) After imposition of the punishment (Charge sheet dated 02.01.1998) against which filed this instant OA No. 121/06, the respondents concerned communicated the Office Order of No. 40/41/91-Pers.13-Vol.IV-8431 dated 08.06.05 to the applicant regarding confirmation of his service as AFO (T) in a substantive capacity at maintenance stage w.e.f. 01/01/98 instead of operational stage w.e.f. 01/10/95.

(l) Against the aforesaid order (08.06.2005) regarding anomaly in the date of his confirmation in service, the applicant submitted his representation on 20.07.2005 which is still remaining un-replied.

8. That with reference to the paragraphs 13, 14 and 9 (may be 15; may be 9 was erroneously typed in the said reply by the respondents concerned) of the written statement, the applicant denies and dispute the correctness of the statements and/or allegations and/or contentions made therein save and except what are matters of records of the case and further repeats and reiterates the contention raised in the Original Application.

In the facts and circumstances, it is evident that the instant Original Application being O.A. No. 121/2006 is sufficiently bonafide for ends of Justice and sufficiently maintainable in Law or in fact and the instant original application is liable to be allowed with costs.

Simul Datta



### VERIFICATION

I, Simul Datta, aged about 39 years, son of Shri Dilip Kumar Datta resident of 171, Mashunda (West), New Barrackpore, North 24 Parganas, West Bengal Pin- 700 131, presently working as Deputy Field Officer (Telecommunication Cadre), in the office of Commissioner, Special Bureau, Kolkata, do hereby solemnly affirm and say that the statements made in paragraph 1 to 8 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on the 13 day of June 2008.

*Simul Datta*

NOTICE

From

U. Dutta  
Advocate

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To

M. V. Ahmed  
Add. C.G.S.C.

Sir,

Please find herewith a copy of the rejoinder filed in O.A. No. 121/2006, Simul Dutta -vs- U.O.I & ors, for your kind and necessary action. Kindly acknowledge the receipt of the same.

Received

13/6/08

Thanking you,

U. Dutta  
(U. Dutta)