

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

ORDER SHEET

Original Application No. 16/2006

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) Hari Prasad Neopamy

Respondent(S) U. O. I 90ms

Advocate for the Applicants Mr. S. Sauma, Mr. B. Devi

Advocate for the Respondent(S) Mr. M. U. Ahmed, Addl. CGSC
Rly. St. Counsel

Notes of the Registry Date

Order of the Tribunal

23.1.06 Present: The Hon'ble Shri K.V. Sachidanandan, Vice-Chairman.

The application is filed on

in favour of

dispos

No. 206/156758

Date 21.12.05

By Registrar
21.1.06

Steps not taken

By

The claim of the applicant is that he was working as GDS Masalchi postal IB, Oakland, Shillong from 1996 onwards and in the year of 2003 he fell sick and could not attend his duty. The applicant informed the respondents about his ailment and also sent leave application. But on enquiry, the charges for unauthorised absence levelled against the applicant was found to be proved and hence he was dismissed from service vide order dated 5.4.05. Being aggrieved the applicant approached the Tribunal and the Tribunal directed the respondents to disposed of the appeal filed by the applicant. The appeal was considered and vide order dated 26/27.10.05 (Annexure 15) the punishment was confirmed and a fresh order is passed which is impugned in this O.A.

Mr. M. U. Ahmed, learned Addl. C.G.S. C. took notice on behalf of the respondents and submits that he would like to get instruction. Let it be done.

Contd.

contd.

23.1.2006 However, considering the facts of the case and circumstances of the case the O.A. is admitted. Post the matter on 24.2.06.

Vice-Chairman

bb

24.2.2006

When the matter came up for order Mr. M. U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that he would like to have some more time to file reply statement. Let it be done. Post on 27.3.2006.

Vice-Chairman

bb

27.3.2006

Ms. B. Devi, learned counsel for the applicant submits that she has get a copy of the reply statement and she would like to rejoiner, if necessary. That will file within three weeks. Let the case be posted on 02.05.2006.

Vice-Chairman

mb

02.05.2006 Post before the next Division Bench.

Vice-Chairman

mb

2.8.06

Heard Miss B. Devi, learned counsel for the applicant and Mr. M. U. Ahmed, learned Addl. C.G.S.C for the respondents. Hearing concluded. Judgment reserved.

Member

Vice-Chairman

pg

Pte 26/11/06

Addl. C.G.S.C.

Steps received

2/2/06

Addl. C.G.S.C.

Notice duly served on resp. nos. 1 to 4.

Cons

2/2/06

23.2.2006

Service completed
No W/S filed
Cor

24-3-06

No W/S has been
filed.

27.3.06

W/S filed by the
Respondents.

1-8-06

No rejoinder has
been filed.

3

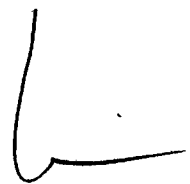
18.8.06

C.C. copy has
been collected
by the t/Adv. or
applicant.
2/1

10.08.2006 Judgment pronounced in open Court,
kept in separate sheets. The applicat-
ion is ^{disposed of} ~~disposed of~~ in terms of the order
No order as to costs.

24/8/06
Add GSS


Member



Vice-Chairman

mb

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.16 of 2006.

DATE OF DECISION: 10.08.2006

Shri Hari Prasad Neaupaney

.....APPLICANT(S)

Mr S. Sarma and Ms B. Devi

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

.....RESPONDENT(S)

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

ADVOCATE(S) FOR THE
RESPONDENT(S)

CORAM:

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

THE HON'BLE SHRI G. RAY, ADMINISTRATIVE MEMBER

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

Vice-Chairman

17/8/06

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 16 of 2006

Date of Order: This the 10th day of August 2006

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman

The Hon'ble Shri G. Ray, Administrative Member

Shri Hari Prasad Neaupaney,
S/o Late B.P. Neaupaney,
Resident of, C/o Subhash Pan Shop,
Rynguh Bazar, Shillong-6,
Meghalaya.

.....Applicant

By Advocates Mr S. Sarma and Ms B. Devi.

- versus -

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Communication,
Department of Posts,
Dak Bhawan, New Delhi-1.
2. The Chief Post Master General,
Department of Posts,
N.E. Circle, Shillong-793001.
3. The Director of Postal Services (HQ),
O/o Chief Post Master General,
N.E. Circle, Department of Posts,
Shillong.
4. The Assistant Director (Staff),
O/o Chief Post Master General,
N.E. Circle, Department of Posts,
Shillong-1.

..... Respondents

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

.....

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

The applicant who is an Extra-Departmental Agent in the departmental Inspection Bungalow at Oakland, Shillong was appointed on 14.11.1996 (Annexure-1). The applicant suddenly fell ill on 13.09.2003 and could not attend duty with effect from 14.09.2003. The applicant was staying all alone and there was no one to look after him and some friends took him to the nearest Doctor and the applicant's treatment continued. The applicant was suffering from Peripheral Nervergia and Sciatica and the applicant was advised to take rest for about two months. It took considerable time for the applicant to recover (Medical Certificate dated 14.09.2003 at Annexure-2). The applicant immediately informed the concerned authority regarding his illness and also intimated his address with a prayer to allow him to avail medical leave. The applicant reported for duty on 12.01.2004 by producing fitness certificate, but the applicant was not allowed to join. A memorandum of charges was issued to the applicant for unauthorised absence (Annexure-3). According to the applicant the respondents ought not have refused the applicant to resume duty (Annexure-5 letter dated 08.03.2004 has been annexed to that effect). An enquiry was conducted and the same was completed on 11.06.2004. The applicant made a representation on 23.06.2004 and by order of the Disciplinary Authority dated 09.08.2004 the applicant was removed from service. The applicant preferred an appeal on 06.09.2004 before the Appellate Authority- The Director of Postal Services, Head Quarter, N.E. Circle, Shillong with a prayer to exonerate the applicant and to allow him to resume

duty. The applicant filed O.A.No.332 of 2004 challenging the impugned order and this Tribunal by order dated 17.01.2005 disposed of the said O.A. directing the respondents to dispose of the appeal of the applicant within a time frame of three months.

2. The Appellate Authority cancelled the order dated 09.08.2004 on the ground of in competency of the authority who passed the order and thereafter the competent authority issued order dated 26/27.10.2005 (Annexure-15) rejecting the appeal of the applicant. Aggrieved by the inaction of the respondents the applicant has filed the present O.A. seeking the following reliefs:

"8.1 To set aside and quash the impugned proceeding initiated against the applicant pursuant to the charge sheet dated 02.01.04 as well as the impugned orders dated 05.04.2005 and 26/27.10.2005, and to reinstate him in his service with full back wages.

8.2 Cost of the application.

8.3 Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper."

3. The respondents have filed a detailed written statement contending that the applicant has deserted duty with effect from 14.09.2003 and remained absent from duty unauthorisedly from the said date and left his Head Quarter also. By letter dated 8.10.2003 the applicant was asked to explain the reason of his unauthorised absence and also to explain as to why Disciplinary action should not be taken against him. The letter was sent under Registered Post but it was received back with the remark 'Addressee left Oakland IB & hence returned to sender'. Another letter dated 12.11.2003 was again issued to the applicant placing him under 'Put off duty' which also could not

be delivered even in the applicant's last known home address and received back with the remark 'Addressee left without instruction'. Disciplinary action under Rule 10 of the Department of Posts GDS (Conduct & Employment) Rules, 2001 was initiated and vide letter dated 02.01.2004 and the applicant submitted a representation dated 11.01.2004 stating that he was ill and under the treatment of a doctor who advised him to take rest for fiftyseven days. The applicant was willfully absent from duty. Therefore, after due enquiry the Disciplinary Authority removed the applicant from service. The Appellate Authority after application of due mind upheld the order of removal vide letter dated 26/27.10.2005. The averment regarding the applicant's ailment and that the applicant's change of address was intimated to the Department is a falsehood. The letter sent to the applicant's last known address also was sent back with the remark, 'Addressee left without instruction'.

4. Heard Ms B. Devi, learned counsel for the applicant and Mr M.U. Ahmed, learned Addl. C.G.S.C. for the respondents. The learned counsel for the applicant submitted that since the applicant was living all alone and he was suffering from severe pain and completely ill the applicant could not attend the office which was duly intimated to the respondents. The applicant never absented himself willfully. The applicant also informed the Department about his illness and correct address. Therefore, the applicant could have been allowed to resume duty. The learned counsel for the respondents, on the other hand, argued that the story of illness and furnishing of correct address was falsehood and only after due process of law and

procedure the applicant was removed from service by the Disciplinary Authority, which was upheld by the Appellate Authority.

5. We have perused the evidence on record, statement of imputation of charges against the applicant, the gist of which is quoted below:

"Article-I

That the said Shri Hari Prasad Neaupanay, while functioning as GDS Masalchi Postal I.B. Oakland during the period from 15.11.96 onwards deserted and remained absent from duty with effect from 14.9.03 onwards without any information to the competent authority causing serious dislocation in service warranting action laid down in Rule 7 (b) of Department of Posts GDS (Conduct and Employment) Rules 2001.

By his above act the said Shri Hari Prasad Neaupanay failed to maintain absolute integrity and devotion to duty as required under Rule-21 of the above Rules.

ANNEXURE-II

Statement of imputation of misconduct or misbehavior in support of the article of charge framed against Shri Hari Prasad Neaupanay, Masalchi Postal I.B. Oakland.

Shri Hari Prasad Neaupanay while working as GDS Masalchi Postal I.B. Oakland during the period from 15.11.96 onwards remained absent from duty with effect from 14.9.03 and left the station without any information to the competent authority whatsoever and caused serious dislocation in service. The said Shri Neaupanay was however asked to explain the reason of his such unauthorised absence and why disciplinary action will not be taken against him vice the notice letter of dated 8.10.03 under Regd. Post. But the letter could not be delivered to him and returned undelivered with remarks addressee left Oakland I.B. & Hence returned to sender.

The said Shri Neaupanay was thereafter put off duty vide this office memo No. Even dated 12.11.03, which also could not be considered delivered even to his home address and returned undelivered with remarks "Addressee left without instruction". Shri Neaupanay did not furnish any information till date.

By his above act the said Shri Hari Prasad Neaupaney failed to maintain absolute integrity and devotion to duty as required under Rule 21 of Department of Posts GDS (Conduct and Employment) Rules 2001 warranting action laid down in Rule 7(b) of the said Rules.

ANNEXURE - III

List of documents by which the article of charge framed against Shri Hari Prasad Neaupaney GDS Masalchi Postal IB Oakland are proposed to be sustained.

1. Letter No. B2/Alsc/IB/03 dtd 26.9.03 from A.D. (Bldg). Co. Shillong.
2. Undelivered letter No. Staff 32-16/ED 93 dtd 8.10.03 with cover from A.D..... C.O. Shillong.
3. Undelivered letter No. Staff 32-16/ED/93 dtd. 12.11.03 with From A.D. (Staff) C.O. Shillong.

ANNEXURE - IV

List of witnesses by whom the article of GDS Masalchi Postal I.B. Oakland are proposed to be sustained.

1. Shri K.K. Choudhury then A.D. (Bldg.) no ASP (Cell) C.O. Shillong."


6. Therefore, the charges are for, in short, unauthorised absence and for leaving the Headquarters without permission. The specific case of the applicant is that the applicant intimated the department and also submitted medical certificate dated 14.09.2003, copy enclosed as Annexure-2, the Doctor certifying that the 'period of absence from duty of 63 days with effect from 14.9.03 to 15.11.03 is absolutely necessary for the restoration of his health'. But when the applicant reported for duty the respondents did not allow the applicant to join duty. This averment in the O.A. and the arguments advanced by the applicant has not been controverted by the respondents. The non-permitting for resuming duty after the absence from duty, whatsoever the reason, is not a healthy practice in a

Government Department. This is highly prejudicial and against all rules and procedure laid down in the CCS (Conduct) Rules and that of the Manual of the Postal Department. This is an indication that the respondents had acted in a prejudicial manner in not permitting the applicant to resume duty. Facts being so the allegation of unauthorised absence is not clearly borne out from the cause. The applicant probably would have been absent, but whether that constitutes unauthorised absence is a matter of record. It is the case of the party that the applicant never had a precedence of absenting himself and also has an unblemished service record. We also have no reason to doubt the medical certificate (Annexure-2) produced by the applicant given by an authorized and competent Government Doctor. Therefore, it cannot be said that the absence of the applicant is unauthorised which calls for an enquiry and a punishment under the GDS Conduct Rules. Therefore, we are of the view that the proceedings initiated and the charges leveled against the applicant is not with bonafide. It is the case of the applicant that he was sick and he could not move. In the circumstances it is to be considered whether the punishment of removal from service is justified or not.

7. The learned counsel for the applicant has taken our attention to a decision reported in 1998(Supp) SCC 436 in the case of 'M.A. Khalsa vs. U.O.I. & Ors.' wherein the Hon'ble Supreme Court of India has observed that punishment of removal from service will be harsh and a lesser punishment withholding the increments will be sufficient. Learned counsel has also drawn our attention to the decision reported in 1995(1) SLR 133 in the case of 'Deputy Inspector General, Central Industrial Security Force & Others vs. Shib Kumar

Ray wherein the Hon'ble Calcutta High Court has laid down that the punishment of removal from service for unauthorized absence for a short period is disproportionate to the gravity of the offence. It is also profitable to quote the case reported in 1996 SCC (L&S) 80 in 'B.C. Chaturvedi vs Union of India & Ors.' wherein the Hon'ble Supreme Court has stated that if the punishment awarded shocks the conscience of the Court, Court is justified to intervene.

8. Considering the fact that the applicant has put in 10 years of service and is only about 29 years of age and that the applicant has to support the family and his ailing parents, we are of the view that employee's family should not suffer, which also has to be taken into account while imposing punishment. Therefore, we are of the considered view that the short period of absence of 63 days cannot be the reason for removing the applicant from service which is directly affecting the family of the employee and therefore, we are of the considered opinion that the punishment of removal from service is shockingly disproportionate and not justified. Therefore, both orders of removal from service issued by the Disciplinary Authority and the Appellate Authority are set aside. The respondents are directed to reinstate the applicant. The matter is remitted back to the appellate authority with a direction to the concerned respondent that a lesser punishment i.e. reinstatement in service without any back wages/allowances and loss of seniority may be imposed on the applicant. There shall, however, be no break in service for the purpose of pensionary benefits. Necessary orders will be passed in this regard within a time frame of three months from the date of receipt of this order.



The Original Application is disposed of as above. In the circumstances, there will be no order as to costs.



(G. RAY)
ADMINISTRATIVE MEMBER



(K. V. SACHIDANANDAN)
VICE-CHAIRMAN

nkml

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 171 of 2005

Date of Order: This is the 6th March 2006.

THE HON'BLE SHRI B.N.SOM, VICE CHAIRMAN (A).

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

Sri Prameswar Bordoloi
S/o Sri Lohar Singh Bordoloi
Vill: Majgaon, P.O: Saraibari
Dist: Morigaon, (Assam).

.....Applicant.

By Advocate Shri J.Purkayastha

- Versus -

1. Union of India represented by
the General Manager
N.F.Railway, Maligaon.
2. The Chief Mechanical Engineer
N.F.Railway, Maligaon
(The Reviewing Authority).
3. The Additional Divisional Railway Manager
N.F.Railway, Lumding
(The Appellate Authority).
4. The Senior Divisional Mechanical Engineer (Diesel)
N.F.Railway, Lumding.

..... Respondents.

By Dr.M.C.Sarma, Railway Counsel.

O R D E R (ORAL)

SACHIDANANDAN, K.V.(V.C.) :

The applicant, while functioning as DSL/Turner-II
under Senior Section Engineer (Diesel), Lumding,
N.F.Railway, has to leave to his native place to attend his
ailing parents. He remained absent with effect from

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23.7.2001 to 28.8.2001 i.e. for 37 days. He submitted leave application on 29.8.2001 praying for joining duty but he was not allowed to resume duty. Charge memo was issued on 10.8.2001 on the alleged charge of unauthorized absence. He has also submitted his reply against the memorandum of charges but after the enquiry his services were terminated i.e. removal from service imposing a major penalty. Aggrieved by the said action the applicant has filed this application seeking for following reliefs:-

- "8.1. To set aside and quash the impugned orders dated 13.11.04, 9.9.03, 13.12.02 and to reinstate the petitioner with full back wages and consequential service benefits.
- 8.2. Cost of the application.
- 8.2.1. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper."

2. Respondents have filed a detailed reply statement contending that the procedure that has been adopted in the disciplinary and appellate proceedings was in conformity with the rules and it cannot be faulted. The applicant was given the opportunity to defend his case and the order of removal from service was issued in the best interest of the institution. He reported for duty on 29.8.2001 and was allowed to resume duty on 30.8.2001. The applicant has submitted his written defence in which the guilt was admitted. Sufficient opportunity was afforded to the applicant in defending his case while conducting the

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enquiry and finally after due application of mind the disciplinary/appellate authorities had issued the order of removal from service after considering his representation sympathetically, otherwise, harsh punishment of dismissal from service would have been meted out to him.

3. We have heard Mr.J.Purkayastha, learned counsel for the applicant and Dr.M.C.Sarma, learned Railway counsel for the respondents. Counsel for the applicant is stressing on the point that the punishment that has been given to the applicant is disproportionate to the gravity of his guilt considering his 14 years of unblemished service records. Dr.Sarma, on the other hand, submits that the Reviewing Authority has made it clear that he was absent many times before and it is not a single instance. Therefore, any concession towards the imposed punishment cannot be granted.

4. We have also perused the evidence on records. The statement of articles and imputation of charges framed against the applicant are quoted below:-

" ARTICLE-I

That the said Shri P. Bordoloi, while functioning as DSL/Turner-II during the period

(here enter definite and distinct articles of charge)

Absenting from duty wef:-23.07.2001 unauthorisedly without giving any information to SSE/DSL/LMG. This shows your gross neglect of duty which leads in turn violation of Sub-Rules No.3.1(ii) of Rly. Service Conduct Rules, 66.

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ANNEXURE-II

Statement of imputations of mis-conduct or mis-behaviour in support of the articles of charge framed against Shri P.Bordoloi, DSL/Turner-II

That the said Sri P. Bordoloi, while functioning as DSL/Turner-II, unauthorisedly absenting from duty wef:- 23.07.2001, according to his own will without giving any prior information to SSE/DSL/LMG which shows his gross neglect of duty & did not bother for Railway Service. This type of activities tantamounts to violation of Sub-Rules. No.3.1 (ii) of Rly. Service Conduct Rules, 66."

It is quite clear from the above that the only charge framed against the applicant is unauthorized absence of 37 days. In the imputation of charge there is no mention about antecedent absence from any record or any separate charges were framed in the same charge sheet. The applicant in the appeal at Annexure-8 has submitted that he was absent but he had also submitted that the absence was due to his father's illness. For better appreciation relevant portion of the appeal is quoted below:-

" That Sir, it may be evident from the findings of enquiry officer that I was not absent willfully. My old aged father, wife and an unmarried sister are residing at my home in the village near Nagaon in the district of Morigaon (Assam). My father is an ailing patient. Since I have no Rly. Qrs at Lumding that is why they are to reside at my home in the village and of and on, when I receive information of my father's seriousness, I have to go to my father to see him at his last moment which caused my absence from duty several times. Some how I have arranged one relative to look after him now.

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That Sir, in the light of above fact, I assure that, I will not remain absent unauthorisedly from duty any more. Of course, I did not know the rules in this respect earlier. Now, I am aware of the rules. It will be a great help to me if your honour would be kind enough to allot me a Rly Qrs at Lumding so that, I can shift my family members along with my ailing father in the Qrs. at Lumding and my anxiety for them may be minimized and I can perform my duty smoothly. I am a poor man and removal from service will effect my remaining life miserably along with my family members too."

It is also borne out that the applicant has about 14 years of service and he has to attend his old parents and his family to support, therefore, it is to be considered whether the punishment of removal from service is justified or not. [Counsel for the applicant has taken our attention to a decision reported in 1988 (Supp) SCC 436 in the case of 'M.A.Khalsa vs. U.O.I. & Ors.' wherein the Hon'ble Supreme Court of India has observed that punishment of removal from service will be harsh and a lesser punishment withholding the increments will be sufficient. Learned counsel has also drawn our attention to the decision reported in 1995(1) SLR 133 in the case of 'Deputy Inspector General, Central Industrial Security Force & Others vs. Shib Kumar Ray' wherein the Hon'ble Calcutta High Court has laid down that the punishment of removal from service for unauthorized absence for a short period is disproportionate to the gravity of the offence. It is also profitable to quote the case reported in 1996 SCC (L&S) 80 in 'B.C.Chaturvedi vs. Union of India & Ors.' wherein the

Hon'ble Supreme Court has stated that if the punishment awarded shocks the consciousness of the Court, Court is justified to intervene.

5. Considering the fact that the applicant has put in 14 years of service and he is only 34 years of age and he has to support the family and his ailing parents, we are of the view that employer's family should not suffer, which also has to be taken into account while imposing punishment. Therefore, we are of the considered view that the short period of absence of 37 days cannot be the reason for removing the applicant from service which is directly affecting the family of the employer and therefore, we are of the considered opinion that the punishment of removal from service is shockingly disproportionate and not justified. The punishment of removal from service is set aside and therefore, the respondents are directed to reinstate the applicant. The matter is remitted back to the appellate authority with a direction to the concerned respondent that a lesser punishment i.e. reinstatement in service without any back wages ^{OR. ✓} ~~or~~ allowances [^] by withholding two increments with cumulative effect and with consequential loss of seniority may be imposed on the applicant as the authority deem fit in the circumstances of the case. There shall however be no break in service for the purpose of pensionary benefits. Necessary orders will be passed in this regard within a time frame of two months from the date of receipt of this order.

The Original Application is disposed of as above.

In the above circumstances, there is no order as
to costs.

Sd/ VICE CHAIRMAN(A)

Sd/ VICE CHAIRMAN(J)

5/06

16/06

LEDDA

13/9/03 to 12-1-04

3 months

Remainder -

not in proportion to the group

9 miles

Remit factor there

~~but no travel wages~~

27

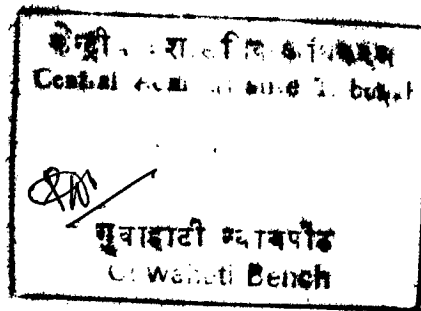
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

Original Application No. 16/06

1. a) Name of the Applicant: H. P. Neopany
b) Respondants: Union of India & Ors.
c) No. of Applicant(S): -
2. Is the application is the proper form: Yes / No.
3. Whether name & description and address of the all the 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. Has the application is in time :- Yes / No.
10. ~~Has~~ the Vokatlatnama/Memo of appearance /Authorisation is filed: Yes / No.
11. Is the application by IPO/BD/for Rs.50/- 206/56758
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 annexurea duly attested filed: Yes / No.
15. Has the Index of the documents been filed all available :- Yes / No.
16. Has the required number of enveloped bearing full address of the respondants 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 interim relief is prayed for :- Yes / No.
20. Is 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 pointd :-
23. Result of the Scrutiny with initial of the Scrutiny Clerk:
The application is in order.

SECTION OFFICER(J)

19.1.06
DEPUTY REGISTRAR



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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 16 of 2006.

BETWEEN

Shri Hari Prasad Neopany. Applicant.

AND

Union of India & ors Respondents.

I N D E X

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Filed by :B.DEVI, Advocate, Regn.No.:

File :... d:\private\HPNEOPANY Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Q.A. No. 16 of 2006

Shri Hari Prasad Neopany.

..... Applicant.

AND

Union of India & ors

..... Respondents.

SYNOPSIS

The applicant in the instant application is aggrieved by the action on the part of the respondents in terminating his service by issuing the impugned orders dated 5.4.05. The applicant preferred an appeal dated 25.4.05 to the appellate authority and the appellate authority without going to core of the issue issued the impugned order dated 26/27-10-05 by which appeal preferred by the applicant has been rejected. The applicant having no other alternative now has come under the protective hands of the Hon'ble Tribunal seeking redressal of his grievances. Hence this application.

H. Prasad Neopany

Filed by -
The Applicant
through
Bomdona Devi
Advocate - 25

Dist:

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.
GUWAHATI BENCH.

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

O.A.No. 16 of 2006.

BETWEEN

Sri Hari Prasad Naupany,
S/o Lt. B.P. Naupany.
R/o, C/o Subhash Pan Shop.
Rynguh Bazar, Shillong-6,
Meghalaya.

..... Applicant.

AND

1. Union of India,
Represented by the Secretary to the Govt. of India,
Ministry of Communication,
Department of Posts,
Dak Bhawan, New Delhi-1.
2. The Chief Post Master General,
Deptt. of Posts,
N.E.Circle,
Shillong-793001.
3. The Director of Postal Services (HQ)
O/o Chief Post Master General,
N.E.Circle, Deptt. of Posts,
Shillong-1.
4. The Assistant Director (Staff)
O/o Chief Post Master General,
N.E.Circle, Deptt. of Posts,
Shillong-1.

.....Respondents.

DETAILS OF THE APPLICATION.

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

This application is directed against the orders issued vide memo No. Staff/3-ED/PF/99 dated 5.4.05 issued by the Director of Postal Services, (HQ) N.E.Circle, Shillong, and the order issued vide Memo No Staff/3-ED/PF/99 dated 26/27-10.05 issued by the Chief Post Master General, N.E. Circle.

2. LIMITATION:

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

3. JURISDICTION:

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

4. FACTS OF THE CASE:

4.1. That the applicant in the instant application is aggrieved by the action on the part of the respondents in terminating his service by issuing the impugned orders dated 5.4.05. The applicant preferred an appeal dated 25.4.05 to the appellate authority and the appellate authority without going to core of the issue issued the impugned order dated 26/27-10-05 by which appeal preferred by the applicant has been rejected. The applicant having no other alternative now has come under the protective hands of the Hon'ble Tribunal seeking redressal of his grievances.

This is the crux of the issue involved in the instant OA. Detailed facts are narrated in the following paragraphs for proper adjudication of the case.2

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4.2. That the applicant is a citizen of India and as such he is entitled to all the rights, privileges and protection guaranteed by the Constitution of India and laws framed thereunder.

4.3. That the applicant in the instant application got his initial appointment as Extra-Departmental Agent in the departmental inspection bungalow at Oakland, Shillong under the Postal Department vide an order issued by the Chief Post Master General, NE Circle, Shillong bearing memo No.Staff/32-16/EB/93 dated 14.11.96, and as such he continued to perform his duties till his service was terminated illegally by the respondents.

A copy of the said appointment order dated 14.11.96 is annexed herewith and marked as Annexure-1.

4.4. That the applicant pursuant to the aforesaid order of appointment continued to discharge his duty to the best of his ability and without any blemish from any quarter. However, all on a sudden w.e.f. 13.9.03 the applicant fell ill and due to such illness he could not attend his duty w.e.f. 14.9.03. The applicant in the morning of 13.9.03, felt severe pain in the lower part of the body and he could not move from his bed. It is noteworthy to mention here that the applicant was staying alone at Shillong and there was no one look him after. At that point of time the some friends of the applicant took him to the nearest doctor, and took his advise and treatment. The consulting doctor diagnosed that the applicant to be suffering from Peripheral Nerveralgia and Sciatica and advised him to take rest for about 2 months. The applicant who is not a permanent resident of Meghalaya could not resist the cold and due to severe cold he felt sick and it took substantial time for his recovery.

H. P. Sengupta

A copy of the medical certificate dated 14.9.03 is annexed herewith and marked as Annexure-2.

4.5. That the applicant who was staying in a rented house was alone and there was nobody to look him after during the period of his ailment. It was under this circumstance the applicant was compelled to stay with one of his known person Sri Ram Bahadur Magar at Umpling, Shillong-6 and he was undergoing treatment upto 10.1.04. The applicant immediately informed the concerned authority regarding his ailment and also intimated regarding his address with a prayer to allow him to avail medical leave. Thereafter, the applicant after regaining his health submitted representation to the Assistant Director (Staff), Circle Office, Shillong praying for allowing him to resume duty. The applicant reported to duty on 12.1.04 by submitting the required medical certificate, but he was not allowed to join.

4.6. That the respondents however, without taking into consideration, the facts and circumstances of the case as well as the known fact of ailment of the applicant as reported, issued the memorandum of charges vide memorandum dated 2.1.04. The only charge level against the applicant is regarding his absence from 14.9.03 onwards without any information to the competent authority.

A copy of the said memorandum of charge dated 2.1.04 is annexed herewith and marked as Annexure-3.

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4.7. That the basic contention raised in the charge sheet dated 2.1.04 is relating to applicant's remaining absent from duty w.e.f. 14.9.03 without any intimation and to that effect he was given an intimation on 8.10.03 through a registered letter to explain the absence. However, the said letter dated 8.10.03 could not be delivered with the remark that the addressee left the Oakland I.B. The respondents however, did not send any other letter to his alternative address. It is pertinent to mention here that the applicant during his ailment informed the authority regarding his alternative address with a prayer to allow him to avail medical leave but his such request was never acceded to. The Respondents authority knowing fully well about the alternative address of the applicant never served any intimation in the said address keeping him in dark about the development. It is pertinent to mention here that the authority concerned however, sent the memorandum of charge dated 2.1.04 to his alternative address and the said fact clearly indicates that the respondents authorities knew the alternative address of the applicant.

4.8. That immediately on receipt of the charge-sheet dated 2.1.04, the applicant submitted representation dated 11.1.04 to the concern authority enclosing the medical certificate as well as fitness certificate with a prayer to allow him to resume duty.

A copy of the said representation dated 11.1.04 is annexed herewith and marked as Annexure-4.

4.9. That the respondents inspite of the repeated requests made by the applicant never allowed him to resume duty. The

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respondents to that effect issued an order dated 8.3.04 rejecting the requests of his reinstatement and the applicant was requested to cooperate in the proceeding for early disposal of the case.

The applicant begs to state that during the pendency of the said proceeding he was never placed under put off duty and to that effect no order has been served on him. In the fact situation of the case the respondents ought not to have refused the applicant to resume his duty.

A copy of the said order dated 8.3.04 is annexed herewith and marked as Annexure-5.

4.10. That the applicant in terms of the order dated 8.3.04 continued to participate in the departmental proceeding through his Defence Assistant Sri R.B.Roy. As per the procedure the applicant submitted his written brief explaining the case in detail and pointing out the procedural defects in the said proceeding.

A copy of the said written brief is annexed herewith and marked as Annexure-6.

4.11. That the respondents immediately on receipt of the written brief submitted its enquiry report vide official letter dated 11.6.04 asking the applicant to submit representation against the said report. In the enquiry report, the enquiry officer while discussing certain irrelevant facts gave its finding that the explanation given by the applicant regarding his absence is not satisfactory.

A copy of the said enquiry report dated 11.6.04 is annexed herewith and marked as Annexure-7.

4.12. That immediately on receipt of the enquiry report the applicant submitted his representation dated 23.6.04 indicating the facts and circumstances prevailing at that point of time with a prayer to consider his case sympathetically.

A copy of the said representation is 23.6.04 is annexed herewith and marked as Annexure-8.

4.13. That the disciplinary authority after the receipt of the representation dated 23.6.04 issued the impugned order dated 9.8.04 removing the applicant from his service.

A copy of the said impugned order dated 9.8.04 is annexed herewith and marked as Annexure-9.

4.14. That the applicant begs to state that the aforesaid order dated 9.8.04 has been issued by the Asstt. Director Staff, without any jurisdiction and authority. The said authority being over enthusiastic issued the said order dated 9.8.04 removing him from his service. The applicant being aggrieved by the said order preferred an appeal before the higher authority with a prayer to reinstate him in the service as well as to exonerate him from the charges.

4.15. That the applicant after the issuance of the impugned order of removal submitted the statutory appeal dated 6.9.04 to the Appellate authority i.e. the Director of Postal

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H. Narayana

Services, Head Quarter N.E.circle, Shillong with a prayer to exonerate him from the charge and to allow him to resume duty.

A copy of the said appeal dated 6.9.04 is annexed herewith and marked as Annexure-10.

4.16. That the applicant being aggrieved by the action on the part of the respondents preferred O.A No 332 of 2004, before the Hon'ble Tribunal. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to dispose of the said OA vide its judgment and order dated 17.01.05 directing the respondents, the Director of Postal Services to dispose of the appeal dated 6.9.04 filed by the applicant, within a period of three months. The aforesaid O.A came up for resorting compliance of the judgment dated 17.1.05 on 29.04.05 before the Hon'ble Tribunal. The respondents on the said date placed an order dated 05.04.05 issued by the respondents towards compliance of the said judgment. The Hon'ble Tribunal having regard to the issuance of the said order dated 05.04.05 closed proceeding vide order dated 29.04.2005.

A copy of the said order dated 29.04.2005 is annexed herewith and marked as ANNEXURE-11.

4.17. That the applicant states that the respondents i.e, the Asstt. Director, for CPMG has issued an order vide memo No STAFF/3-ED/PF/99 dated 05.04.2005, indicating that the order dated 09.08.04 issued by the Asstt Director of Postal Services, (Staff) has been treated as canceled.

A copy of the said order dated 05.04.2005, is annexed herewith and marked as ANNEXURE-12.

4.18. That the Director Postal Services, on the same day i.e., 05.04.2005, issued another order vide memo No Staff/3-ED/PF/99 dated 05.04.2005, by which the applicant has been removed from his service. In fact in the order dated 05.04.2005, the Director of Postal Services made the clarification that the order dated 9.8.05 issued by the Asstt Director of Postal services was not a valid order as he was incompetent to issue such order.

A copy of the order dated 05.04.2005 is annexed herewith and marked as ANNEXURE-13.

4.19. That the applicant begs to state that immediately on issuance of the orders dated 05.04.2005, the earlier order dated 9.8.04 has lost its force and the respondents however, have not spelled out any thing regarding the period from 09.08.04 to 05.04.2005. In absence of any such order placing him under suspension and/or put off duty the respondents ought to have treated the period from 9.8.04 to 5.4.05 as on duty and paid him the salary and allowances as admissible. It is pertinent to mention here that the applicant as revealed from the communications as well as from the proceeding files, that the applicant was very much willing to resume his duty but the respondents did not allow him to resume duty and as such the applicant is entitled to the arrear salary w.e.f, 9.8.04 to 5.4.05. In fact the applicant was out of employment not because of his fault rather it was the fault of the respondents in not allowing him to resume his duty.

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4.20. That the applicant ventilating his grievance preferred an appeal dated 25.4.05, addressing to the Chief Postmaster General, the appellate authority, praying for setting aside of the order dated 05.04.05 issued by the Director of Postal Services. In the appeal the applicant highlighted as to how he fell sick and what was the circumstances prevailing at that relevant point of time which in fact prevented him for attending his duties.

A copy of the said appeal dated 25.04.05 is annexed herewith and marked as ANNEXURE-14.

4.21. That the appellate authority on receipt of the said appeal preferred by the applicant issued an order vide memo. No Staff/#-ED/PF/99 dated 26/27.10.05, rejecting the appeal preferred by the applicant. The order passed by the appellate authority does not indicate the reason as why the appeal has been rejected and there has been no discussion as to the issue involved in the case. In plain reading of the said order itself indicative of the said appellate authority has not applied its mind and the said order is a non-speaking one.

A copy of the said order dated 26/27.10.2005 is annexed herewith and marked as ANNEXURE - 15.

4.22. That the applicant submits that the respondents while proceeding against the applicant have violated each and every procedural rules and with a closed mind denied the applicant the

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opportunity of hearing. The enquiry has been conducted behind the back of the applicant which has caused serious prejudice to his defence. The most vital records as well as the, witnesses were never examined nor the applicant has been provided with the opportunity of hearing. The aforesaid illegalities have seriously caused prejudice to the defense of the applicant and same has vitiated the entire proceeding. Apart from that the applicant who was out of job was never allow to resume his duty, nor he was paid his remuneration and same has caused serious prejudice to the defense of his defense. On this score the entire proceeding as well as the impugned order is liable to be set aside and quashed.

4.23. That the applicant submits that the disciplinary authority while passing the impugned order dated 05.04.2005, has violated the provisions of the rules. The said disciplinary authority has failed to take into consideration the relevant factual aspect of the matter in passing the impugned order. From bare reading of the impugned order dated 05.04.2005, it is crystal clear that the said disciplinary authority has failed to apply his independent mind while passing the said order as such same can not be treated to be an order sustainable in the eye of law and as such same is liable to be set aside and quashed. Even if the charge is taken to be proved against the applicant same is shockingly disproportionate in the facts and circumstances of the case and same is required to be interfered with by the Hon'ble Tribunal.

4.24. That the applicant begs to state that against the said impugned order dated 05.04.2005, he has submitted appeal dated 25.4.2005, and same has been disposed of by the appellate

authority by a non-speaking order. The applicant is presently out of job and there is nobody to look him after. Due to the issuance of the impugned order the applicant is now facing tremendous financial hardship and same has caused total dislocation in the day to day life of the applicant.

5. G R O U N D S

5.1 For that the action/inaction on the part of the Respondents in proceeding departmentally against the applicant is per se illegal and arbitrary and same depict total malafide intention of the Respondents. It is therefore the entire action on the part of the respondents including the impugned order is liable to be set aside and quashed.

5.2 For that prima-facie the action/inaction on the part of the Respondents in not following the rules in proceeding departmentally against the applicant that too without providing him the reasonable opportunity of hearing is per se illegal and arbitrary and same is liable to be set aside and quashed.

5.3. For that the issuance of charge sheet as well as the subsequent proceeding clearly depicts the malafide intention of the respondents and on this score alone the proceeding is liable to be set aside and quashed.

5.4. For that the Respondents have acted illegally in passing the impugned orders 05.04.2005, and 26/27.10.2005, removing him from the service and from bare reading of the same clearly depicts total non-application of mind by the respondents.

5.6. For that the action on the part of the Respondents in harassing their applicant and thereby removing him from the service without any rhymes and reasons is illegal and same is liable to be set aside and quashed.

5.7. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to set aside and quashed.

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

6. DETAILS OF REMEDIES EXHAUSTED:

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

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

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

H. S. Panigrahy

8. RELIEF SOUGHT FOR:

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

8.1. To set aside and quashed the impugned proceeding initiated against the applicant pursuant to the charge sheet dated 02.01.04 as well as the impugned orders dated 05.04.2005 and 26/27.10.2005, and to reinstate him in his service with full back wages.

8.2. Cost of the application.

8.3. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application the applicant does not pray for any interim order at this stage.

10.

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

1. I.P.O. No. : 2006 156758
2. Date : 21.12.05
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

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VERIFICATION

I, Shri Hari Prasad Neopany, aged about 29 years, s/o Late D.P. Neopany at present resident of C/o Subhash Pan Shop, Ryngeeh Bazar, Shillong-6, Meghalaya, do hereby solemnly affirm and verify that the statements made in paragraphs 4:1, 4:2, 4:14, 4:22, 4:23.. are true to my knowledge and those made in paragraphs 4:3 - 4:13, 4:15 - 4:21..... are matter of records and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 6th day of January, 2006.

Hari Prasad Neopany.

DEPARTMENT OF POST
OFFICE OF THE CHIEF POSTMASTER GENERAL, NORTH EASTERN CIRCLE,
SHILLONG: 793 001.

Memo No.: Staff/32-16/LB/93/

Dated at Shillong 14/11/96.

1. Shri Hari Prasad Neupaney son of Barga Prasad Neupaney, is hereby appointed as ED, Masalchi Departmental I.Q. Shillong with immediate effect. He shall be paid such allowances as are admissible from time to time.
2. Shri Hari Prasad Neupaney should clearly understand that his employment as ED Masalchi shall be in the nature of a contract liable to be terminated by him or by the undersigned by notifying the other in writing and that his conduct and service shall also be governed by the Post and Telegraphs Extra Departmental Agents (Conduct and Services) Rules, 1964 as amended from time to time.
3. If these conditions are acceptable to him, he should communicate his acceptance in the enclosed preforma.

(P.K. Mandi Mazumdar)
Asst. Postmaster General,
For, Chief Postmaster General,
North Eastern Circle, (S)
Shillong: 793 001.

Copy to :-

1. The A.O. (A/Cs) Circle Office, Shillong.
2. The S.A.O. (BCT) Circle, Office, Shillong.
3. The Welfare Officer, Circle Office, Shillong.
4. Shri Hari Prasad Neupaney, ED Masalchi, Departmental I.Q., Shillong. He may prove furnish acceptance of this offer in the enclosed preforma.
5. File No. Staff/26-11/91.
6. Office copy.
7. Spare copy.

Attended
Advocate.

For, Chief Postmaster General,
North Eastern Circle, Shillong
P.O. 793 001.

PREScribed FORM UNDER S.R. 229 A.C.
50

Signature of applicant

DR. T. K. Roy

after careful personal examination of the case
hereby certify that MR. HARI PRASAD NEUPANANY whose signature is
given above, is suffering from PERIPHERAL NEURALGIA L5/S1 and I consider
that a period of absence from duty of 63 days with effect from
14/9/03 to 15/11/03 is absolutely necessary for the restoration of his health.

Date: 14/9/03

14/9
Dr. T. K. Roy
Government Medical Officer
Pasteur Institute
Meghalaya Shillong
Regd. No. 5022
authorised Medical Attendants
Central Govt. Employees

14/9/03

Attest
Di
Advocate

Personal
Custodian

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

Mem. No. Staff-32-16-ED-93

Dated at Shillong, the 2nd Jan 2004.

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri Hari Prasad Neaupanany, vide Mr. Masatehi are with Postal B3, Oakland under C.O. Shillong under Rule 10 of the Deptt. of Posts GDS (Conduct and Employment) Rules 2001. The substance of the imputations of mis-conduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statements of articles of charge (ANNEXURE-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (ANNEXURE-II). A list of documents by which and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (ANNEXURE-III & IV).

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

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

4. Shri Hari Prasad Neaupanany 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 Rules 10 of Deptt. of Posts GDS (Conduct and Employment) Rules, 2001 or the orders/directions issued in pursuance of the said Rules, the inquiry authority may hold the inquiry against him ex-parte.

5. Attention of Shri Hari Prasad Neaupanany is invited to rule 29 of Deptt. of Posts GDS (Conduct and Employment) Rules 2001 under which no employee shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests 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 Hari Prasad Neaupanany is aware of such a presentation and that it has made at his instance and action will be taken against him for violation of Rule 29 of Deptt. of Posts GDS (Conduct and Employment) Rules 2001.

6. The receipt of this Memorandum may be acknowledged.

BY REGD/AD

Copy to:-

Shri Hari Prasad Neaupanany,
C/O "SUBASH PAN SHOP"
UMPLING, SHILLONG-6.

(B. K. Halder)
Asstt. Director (Staff)

For Chief Postmaster General,
N.E. Circle, Shillong.

Attested
Advocate.

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ANNEXURE-I

Statement of article of charge framed against Shri Hari Prasad Neaupany, Masalehi Postal I.B. Oakland.

Article - I

That the said Shri Hari Prasad Neaupany, while functioning as GDS Masalehi Postal I.B. Oakland during the period from 15-11-96 onwards deserted and remained absent from duty with effect from 14-9-03 onwards without any information to the competent authority causing serious dislocation in service warranting action laid down in Rule 7 (b) of Department of Posts GDS (Conduct and Employment) Rules, 2001.

By his above act the said Shri Hari Prasad Neaupany failed to maintain absolute integrity and devotion to duty as required under Rule-21 of the above Rules.

ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of the article of charge framed against Shri Hari Prasad Neaupany, Masalehi Postal I. B. Oakland.

Shri Hari Prasad Neaupany while working as GDS Masalehi Postal I. B. Oakland during the period from 15-11-96 onwards remained absent from duty with effect from 14-9-03 and left the station without any information to the competent authority whatsoever and caused serious dislocation in service. The said Shri Neaupany was, however, asked to explain the reason of his such unauthorized absence and why disciplinary action will not be taken against him vide the office letter of even no. dated 8-10-03 under Regd. Post. But the letter could not be delivered to him and returned undelivered with remarks 'addressee left Oakland I.B. & hence remitted to sender'.

The said Shri Neaupany was thereafter put off duty vide this office memo No. even dt. 12-11-03, which also could not be delivered even to his home address and returned undelivered with remarks "Addressee left without instruction". Shri Neaupany did not furnish any information till date.

By his above act the said Shri Hari Prasad Neaupany failed to maintain absolute integrity and devotion to duty as required under Rule 21 of Department of Posts GDS (Conduct and Employment) Rules 2001 warranting action laid down in Rule 7(b) of the said Rules.

ANNEXURE-III

List of documents by which the article of charge framed against Shri Hari Prasad Neaupany, GDS Masalehi Postal I.B. Oakland are proposed to be sustained.

1. Letter No.B2/A Esc/IB/03 dt.26-09-2003 from A. D. (Bldg) C.O., Shillong.
2. Undelivered letter No.Staff 32-16 ED 93 dt.8-10-03 with cover from A.D.(Staff) C.O., Shillong.
3. Undelivered letter No.Staff 32-16 ED 93 dt.12-11-03 dt.12-11-03 with cover from A. D.(Staff) C.O., Shillong.

ANNEXURE-IV

List of witnesses by whom the articles of charge framed against Shri Hari Prasad Neaupany, GDS Masalehi Postal I.B. Oakland are proposed to be sustained.

1. Shri K. K. Choudhury then A. D. (Bldg) no ADP(Cell) C.O., Shillong.

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE POSTMASTER GENERAL N.E.CIRCLES:SHILLONG-793001

Memo No.Staff 32-16 ED-93

Dated at Shillong the 27th Jan 2004

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri Hari Prasad Neaupany GDS Masalchi ... with postal IB Oakland under CO Shillong under rule 10 of the Deptt. of posts GDS (Conduct and Employment) Rules 2001. The substances of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statements of Articles of charge (ANNEXURE-1). A list of document by which and the list of witness by whom the articles of charge are proposed to be sustained are also enclosed (ANNEXURE-III and IV).

2. Sri Hari Prasad Neaupany is directed to submit within 10 days on the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

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

4. Shri Hari Prasad Neaupany 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 Rules 10 of Deptt. of Posts GDS (Conduct and Employment) Rules 2001 or the orders/directions issued in pursuance of the said Rules, the inquiry authority may hold the inquiry against him ex-parte.

5. Attention of Shri Hari Prasad Neaupany is invited to rule 29 of Deptt. of Posts GDS (Conduct and Employment) Rules 2001 under which no employee shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests 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 prescribed that Shri Hari Prasad Neaupany is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule 29 of Deptt. of Posts GDS (Conduct and Employment) Rule 2001.

6. The receipt of this Memorandum may be acknowledged.

BY REGD/AD

(B.K.Halder)

Copy to:

Asstt. Director (Staff)

Shri Hari Prasad Neaupany

C/O -SUBASH PANSOP

UMPLING, SHILLONG-6

For Chief Postmaster General
17 N.L.Circle, Shillong.

Attested
Advocate.

ANNEXURE-I

statement of article of charge framed against Shri Hari Prasad Neaupanany. Masalchi Postal IB, Oakland.

Article-I

That the said Shri Hari Prasad Neaupanany, while functioning as GDS Masalchi Postal I.B. Oakland during the period from 15.11.96 onwards deserted and remained absent from duty with effect from 14.9.03 onwards without any information to the competent authority causing serious dislocation in service warranting action laid down in Rule 7 (b) of Department of Posts GDS (Conduct and Employment) Rules 2001.

By his above act the said Shri Hari Prasad Neaupanany failed to maintain absolute integrity and devotion to duty as required under Rule-21 of the above Rules.

ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of the article of charge framed against Shri Hari Prasad Neaupanany, Masalchi Postal I.B. Oakland.

Shri Hari Prasad Neaupanany while working as GDS Masalchi Postal I.B. Oakland during the period from 15.11.96 onwards remained absent from duty with effect from 14.9.03 and left the station without any information to the competent authority whatsoever and caused serious dislocation in service. The said Shri Neaupanany was however asked to explain the reason of his such unauthorised absence and why disciplinary action will not be taken against him vide the notice letter of dated 8.10.03 under Regd. Post. But the letter could not be delivered to him and returned undelivered with remarks addressee left Oakland I.B. & Hence returned to sender.

The said Shri Neaupanany was thereafter put off duty vide this office memo No.Even dated 12.11.03, which also could not be delivered even to his home address and returned undelivered with remarks "Addressee left without instruction". Shri Neaupanany did not furnish any information till date.

By his above act the said Shri Hari Prasad neaupanany failed to maintain absolute integrity and devotion to duty as required under Rule 21 of Department of Posts GDS (Conduct and Employment) Rules 2001 warranting action laid down in Rule 7(b) of the said Rules.

ANNEXURE-III

List of documents by which the article of charge framed against Shri Hari Prasad Neaupanany GDS Masalchi Postal IB Oakland are proposed to be sustained.

1. Letter No.B2/ALsc/IB/03 dtd.26.9.03 from A.D.(Bldg).Co. Shillong
2. Undelivered letter No.Staff 32-16/ED 93 dtd.8.10.03 with cover from A.D..... C.O. Shillong.
3. Undelivered letter No.Staff 32-16/ED/93 dtd.12.11.03 with ... from A.D. (Staff) C.O.Shillong.

ANNEXURE-IV

List of witnesses by whom the article of charge framed against Shri Hari Prasad Neaupanany GDS Masalchi Postal I.B. Oakland are proposed to be sustained.

1. Shri K.K.Choudhury then A.D.(Bldg.) no ASP(Cell) C.O. Shillong.

The Postmaster General
H.E. Circle
Shillong - 793001.

(Through proper channel)

Sub: Clarification against memo. No. Staff/32-16/
EO/93, dated, 2nd, Jan 2004.

Sir,

With due respect and humble submission
I would like to lay following few lines for your
Sympathetic consideration.

That Sir, I have been issued official
Memorandum vide no. Staff/32-16/EO/93, dated:
2nd, Jan, 04, That Sir, I felt suddenly ill
on the day 13-09-03 and rushed to the doctor
and was under medical observation and ^{advised} to take
complete rest w.e.f. 14-09-03. Again on 15-11-03
I felt severe pain and rushed to Dr. P.K. Roy and
was under medical treatment and advised to
take rest for another 57 days. And after felt
little better I will resumed to my duty to day
the 11th, Jan'03.

Therefore, I would like to request
you to kindly consider my case ^{more} sympathetically
and on humanitarian ground and ^{exempt} ~~consider~~ my
absence ~~for~~ leave for above mentioned period.

Attested

[Signature]

Advocate.

Contd - P.2.

And I promise to discharge my duty
more sincerely and maintain absolute integrity
and devotion in future.

Encls: Medical Certificate -
2 nos.

② Fitness Certificate
1 no.

Dated, Shillong
the 11th, Jan '06.

~~Yours~~
Yours faithfully

(Hari Pr. Haupreany)
GDS, Masaleh
Postal IB, Oakland
Shillong - 1.

-25-

ANNEXURE -

5

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

No. Staff/3-ED/PF/99

Dated at Shillong, the 8th March' 2004.

To,

Sri Hari Prasad Ncaupanay,
C/O "SUBASH PANSHP"
Rynjah, Shillong-6.

Ref:-

Your letter No.Nil dated 1-3-2004.

With reference to your letter above, this is to intimate that no joining order can be issued till finalisation of the disciplinary proceedings initiated against you under Rule 10 of GDS (Conduct & Employment) Rules 2001. Therefore you are requested to co-operate with the I.O for prompt settlement of the case.

(B. R. Halder)
Asstt. Director (Staff)
For Chief Postmaster General,
N. E. Circle, Shillong.

Attested

Advocate.

Charged Official's written brief in connection with disciplinary/inquiry proceedings against Shri Hari Prasad Neaupanay, GDS Masalchi, Postal I.B., Oakland, Shillong under Rule-10 of GDS (Conduct & Employment) Rules, 2001 : Department of Posts.

Shri Hari Prasad Neaupanay the Charged Official (C.O.) was appointed as ED (GDS) Masalchi in the Postal Inspection Bungalow, at Oakland, Shillong on regular basis w.e.f., 15-11-1996 where he worked continuously without any disruption of service till 13-9-2003. After performing his duty on 13-9-03, the official started to feel physical discomfort and left for his dwelling place at Umpling, Shillong-6 for rest.

2) Next morning i.e., on 14-9-03, Shri H.P. Neaupanay visited a senior Doctor in the city for medical check-up and treatment. The concerned Doctor detected the actual ailment that the patient was suffering from, and prescribed medicines together with a medical certificate advising rest by abstaining from duty for a period of 63 (sixty three) days from 14-9-03 to 15-11-03 in the first spell for restoration of health. After expiry of prescribed period, Shri H.P. Neaupanay visited the said doctor for check-up and further treatment since he was not completely cured. The Doctor continued his treatment and issued similar certificate for rest for another 57 (fifty seven) days from 16-11-03 to 11-1-2004 in the 2nd spell. During this period, Shri Neaupanay started to recover by taking rest and medicines as prescribed by the Doctor, and on completion of prescribed period, he reported to the Doctor about his total recovery from illness and requested him (Doctor) to check-up finally to decide possibility whether he (Shri Neaupanay) could joint his duty or not. Accordingly, the Doctor carefully examined Shri Neaupanay and issued a certificate dated 12-1-2004 declaring him recovered from illness and fit to resume duties.

3) But, in the meantime, Shri H.P. Neaupanay, had received the Memorandum No. Staff/32-16/ED-93 dated 2-1-2004 under Registered post at the following address,

Shri Hari Prasad Neaupanay,
C/O "SUBASH PAN SHOP"
UMPLING, SHILLONG - 6.

The said memo. contained the Articles of charges and list of documents by which the article of charges against Shri Hari Prasad Neaupanay are proposed to be sustained. Besides, it was proposed in the said memo, to hold an inquiry against Shri Neaupanay under Rule-10 of the Department of Posts GDS (Conduct and Employment) Rules 2001.

4) However, being fully unaware of the fact that his service was already put off sometime earlier, Shri H.P. Neaupanay reported to the ADPS (Staff) on 12-1-04 and submitted an application together with medical certificates and fitness certificates supplied by the attending Doctor, explaining the reason for not attending office since 14-9-2003. The ADPS (Staff) received the application and certificates from Shri Neaupanay, but did not allow him to join his duty for the reason that inquiry under Rule-10, as cited above, was contemplated.

5) Subsequently, inquiry proceedings were started by formation of Inquiry Authority with appointment of Shri S.K. Chakraborty, ASPOs (Cell), C.O., Shillong as Inquiry Officer and Shri Bidhan Ch. Das, SDIPOs, North Sub division, Shillong as Presenting Officer while Shri Hari Prasad Neaupanay (CO) had nominated Shri R.B. Roy, PA (BCR) C.O., Shillong as his Defence Assistant. The preliminary hearing date was fixed by the I.O., on 15-3-2004 in which the Charged Official was present accompanied by his D.A. Besides inspection of listed documents, the C.O., had sought for some additional documents as listed below for his defence.

Attested

[Signature]

Advocate.

- i) Medical Certificate dated 14-9-03
- ii) Medical Certificate dated 16-11-03
- iii) Medical Certificate (Fitness) dated 12-1-04
- iv) Defence statement submitted in reply to charge sheet.

6) The regular first hearing of inquiry was fixed by the I.O., on 3-4-04. Prior to that, the C.O., submitted a requisition dated 19-3-04 seeking production of Shri Ram Bahadur Magar as Defence witness. On the first hearing date on 3-4-04, the deposition of Shri K.K. Choudhury, (Prosecution witness) the then AD (Bldg) in the form of examination-in-chief, cross examination and re-examination was obtained. The next and second and last hearing was fixed and held on 10-4-04, as per decision and arrangement made by the I.O., in which the deposition of Shri Ram Bahadur Magar, Defence witness was obtained.

7) After going through the Article of charges and inspecting the listed and requisitioned documents, as well as examination/cross examination of both prosecution and defence witnesses by 10-4-04, findings as noted in the following paras, could be traced out.

Findings :-

8) Summarily, the charges leveled against Shri Hari Prasad Neaupaney are as follows:-

- i) "The official deserted and remained absent from duty w.e.f., 14-9-03 onwards without any information to the competent authority....."
- ii) "..... The official remained absent from duty w.e.f., 14-9-03 and left the station without any information to the competent authority"

The C.O., had sincerely admitted, on the date of preliminary hearing, that he was absent from duty w.e.f., 14-9-03, but he denied the charge of having left the station during the period of absence.

9) On examining 3 (three) letters "under list of documents" by which the Disciplinary Authority proposed to sustain the charges against the charged official, it was observed that,

- i) Shri K.K. Choudhury, AD (Bldg) C.O., Shillong requested the Chief Postmaster General (Staff) Shillong to take suitable action against the ED official (Shri H.P. Neaupaney) vide his memo No. B-2/Misc/IB/03 dated 26-9-2003 on the basis of report received by him regarding absence of Shri Neaupaney from duty from 14-9-2003. In the said letter, AD (Bldg) was found to have reported to CPMG (Staff) in compliance of, or, with reference to CPMG (Staff)'s letter No. Staff/32-16/ED-93 dated 14-11-2003 i.e., after the service of Shri Neaupaney was already put off from duty (vide CO's No. Staff/32-16/ED/93 dated 12-11-03). Here, it reveals that this document is doubtful since the date of report of AD (Bldg) does not commensurate with the date of Circle Office letter referred to, therein. Further, the AD (Bldg) (Prosecution witness), during cross examination by Defence Assistant, could not give the clear and bold answer to the following question,

Q. No.5 (DOS No.2 dated 3-4-04)

"Are you sure that the letter dated 19-9-03 (referred to in his letter No. B-2/Misc/IB/03 dated 26-9-03) was actually issued by you, and received by Shri Hari Prasad Neaupaney?"

Answer was,

"Without consulting records, I can not say".

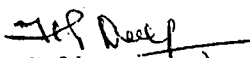
ii) Document No.2 "Under list of documents: i.e., No. Staff/32-16/ED/93 dated 8-10-03 (calling for explanation for remaining absent from duty w.e.f., 14-9-03 onwards) and document No.3 i.e., No. Staff/32-16/ED/93 dated 12-11-03 (Order for putting off Shri H.P. Neaupaney from duty w.e.f., 14-9-03) were shown as undelivered letters. Both the letters were addressed to the official at Postal I.B., Oakland, Shillong though it was known that the official remained absent there from 14-9-03. Therefore, the order putting off Shri Neaupaney from duty was issued without confirmation/satisfaction that the explanation letter No. Staff/32-16/ED/93 dated 8-10-03 was actually received by the Charged official.

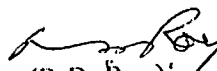
10) On examination of the additional documents it was found that while the Authority was proceeding with departmental actions against the official, Shri Neaupaney was striving with life in sickbed since he was suffering from "PERIPHERIAL NEURALGIA & SCIATICA" which was, as per Doctor, a critical ailment with the joints of the backbone causing tremendous pain spreading towards lower part of the body i.e., waist and feet compelling the patient unable to walk or move.

11) Since the charged official being less educated, did not know the Office Rules and procedures. Even he could not call back his family members from home town due to critical illness. Moreover, his local Caretaker was also an unemployed ordinary man knowing nothing of office rules. All these factors made the official failure to report to Competent Authority regarding his absence from duty in due course of time.

The Charged Official, therefore, deserves sympathetic consideration of the Authority on humanitarian grounds.

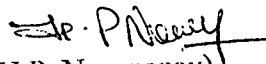
Dated, Shillong,
The 8-5-2004



(H.P. Neaupaney)
C.O.
(ED - Masalchi)
I.B., Shillong.


(R.B. Roy)
D.A.
(PA - BCR)
C.O., Shillong.

Copy forwarded to Shri Santosh Chakraborty, I.O., & ASPOs (Cell), O/O the Chief P.M.G., Shillong.

Dated, Shillong,
The 8-5-2004


H.P. Neaupaney)
C.O.
(ED - Masalchi)
I.B., Shillong.


(R.B. Roy)
D.A.
(PA - BCR)
C.O., Shillong.

DEPARTMENT OF POSTS: INDIA.

O/O THE CHIEF POSTMASTER GENERAL, N.E. CIRCLE, SHILLONG: 1.

No. Staff/3-ED/PF/99.

Dated at Shillong, the 11th June 2004

To

Shri Hari Prasad Neaupaney, ED(GDS), Postal IB.
C/O. "Subash Pan Shop".
Umpling, Shillong- 6.

Sub: Inquiry report under Rule 10 of DOP, GDS (Conduct & Employment) Rules 2001, against Shri Hariprasad Neaupaney, GDS, ED Masalchi, Postal IB, Oakland, Shillong.

Please find herewith a copy of Inquiry Report on the above subject.

You are asked to submit your representation/ reply if any on the above subject within 15 days of receipt of the Inquiry Officer's report.

Encl: As above (One Copy)

(B.R. Halder)

Asstt. Director (Staff)

For Chief Postmaster General,
N.E. Circle, Shillong.

Attested

[Signature]

Advocate.

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

Memo.No.B-1/Rule 10/ Enquiry/04.Dtd.at Shillong-1,the 18th May.'04.

Inquiry Report under Rule -10 of ²⁰⁰¹GDS (Conduct & Employment) Rules 2001, against Sri Hariprasad Neaupany, GDS Masalchi, Postal IB, Oakland, Shillong.

The undersigned was appointed as Inquiry Authority by the Chief Postmaster General, N. E. Circle, Shillong, vide his letter No. Staff/3-ED/PF/99 Dtd. 28.1.04, to inquire into the charges framed against Sri Hariprasad Neaupany, GDS Masalchi, Postal IB, Oakland, Shillong, under Rule -10 of ²⁰⁰¹GDS (Conduct & Employment) Rules 2001, vide CPMG, N.E. Circle, Shillong's Memo No. Staff/32-16/ED-93 dtd. 02.01.04. There were three hearings of the case on 15.3.04, 3.4.04 & 10.4.04. The Charged official attended all the hearings accompanying his Defence Counsel, Sri R. B. Roy and co-operated with the inquiry.

There was only one Article of Charges against Sri Hariprasad Neopanay, GDS Masalchi, Postal IB, Oakland, Shillong, under Rule -10 of GDS (Conduct & Employment) Rules 2001, issued by the Chief PMG, Shillong, vide his Memo No. Staff/32-16/ED-93, Dtd. 2.1.04. and the Statement of imputation of misconduct and misbehavior in support of the Article of Charges was as under :

" Sri Hariprasad Neopanay while working as GDS Masalchi Postal I.B. Oakland during the period from 15.11.96 onwards remained absent from duty with effect from 14.9.03 and left the station without any information to the competent authority whatsoever and caused serious dislocation in service. The said Sri Neopanay was however asked to explain the reason of his such unauthorized absence and why disciplinary action will not be taken against him vide this office letter of even No. dtd.8.10.03 under Regd. Post. But the letter could not be delivered to him and returned undelivered with remarks 'Addressee left Oakland I.B. & hence returned to sender.'

The said Sri Neopanay was thereafter put off duty vide this office memo No. even dtd. 12.11.03, which also could not be delivered even to his home address and returned undelivered with remarks 'Addressee left without instruction'. Sri Neopanay did not furnish any information till date.

By his above act, the said Sri Hariprasad Neopanay failed to maintain absolute integrity and devotion to duty as required under Rule 21 of Department of Posts GDS (Conduct and Employment) Rules 2001 warranting action laid down in Rule 7(b) of the said Rules."

In the preliminary hearing of the case held on 15.3.04, Sri Hari Prasad Neaupany, the charged official, admitted that he was absent from duty w.e.f. 14.9.03. But he completely denied that he left the station/address. He categorically told that he was in the address under C/O Subash Pan Shop, Umpling, Shillong-6, and during the period he was ill.

Contd...2

The charged official opted for his Defence Witness and submitted list of Addl. documents as under:

- i) Medical Certificate Dtd. 14.9.03.
- ii) Medical certificate Dtd. 16.11.03.
- iii) Medical certificate (Fitness) Dtd. 12.1.04.
- iv) Defence Statement, submitted in reply to the Charge Sheet.

All the enlisted and additional documents were examined by the Charged official and his Defence Counsel in presence of Sri Bidhan Das, the Presenting Officer and the documents were brought on records being marked as follows:

Enlisted Documents :-

1. Memo No. B-2/ Misc/IB/03. Dtd. 26.9.03. Marked as Ex. P-1.
2. Letter No. Staff/32-16/ED/93. Dtd. 8.10.03 with cover. marked as Ex. P-2.
3. Letter No. Staff/32-16/ED/93. Dtd. 12.11.03 with cover. marked as Ex. P-3.

Additional Documents :-

1. Medical certificate issued by Dr. T.K. Roy for illness of Sri Hariprasad Neaupaney, the Charged official, dtd. 16.11.03. marked as Ex. D- 1.
2. Medical certificate issued by Dr. T.K. Roy for illness of Sri Hariprasad Neaupaney, the Charged official, dtd. 14.9.03. marked as Ex. D- 2.
3. Medical certificate issued by Dr. T.K. Roy for fitness of Sri Hariprasad Neaupaney, the Charged official, dtd. 12.01.04. marked as Ex. D- 3.
4. Defence Statement of Sri Hariprasad Neaupaney, the Charged official, dtd. 11.1.04. marked as Ex. D- 4.

Sri K. K. Choudhury, the then Asstt. Director, Building, O/O the CPMG, Shillong and now working as Dy. Supdt. of POs, Agartala, the only Prosecution Witness, was summoned and his deposition was recorded in presence of the Presenting Officer, the Charged Official and his Defence Counsel, on 03.4.04. The Prosecution Witness was examined, cross examined and re-examined by the Presenting Officer and the Defence Counsel of the Charged Official. The same have been recorded on the spot.

Sri Choudhury, the Prosecution Witness, confirmed that the Charged official was absent from duty w.e.f. 14.9.03 without any information. He also confirmed that he did not know the whereabouts of the charged official during the period.

Sri Ram Bahadur Magar, S/O Lt. Mohan Bahadur Magar, the Defence witness, was summoned and he appeared before me on 10.4.04. His deposition was recorded. Sri Magar was Examined and cross-examined by the Defence Counsel and the Presenting officer respectively and the same were also recorded.

Contd.....3

Sri Ram Bahadur Magar, the defence Witness, confirmed that Sri Hari Prasad Neopanay, the Charged official, was staying in the residence of Sri Magar as tenant and Sri Neopanay was ill during the period from 14.9.03. Sri Magar could not remember exact date and month etc. Sri Magar also told that he helped Sri Neopanay for going to Doctor and coming from as there was no other fellow to help him.

The Presenting Officer and the Defence counsel, on behalf of the Charged official, were asked if they had any oral submission or not and they replied in negative.

The cases of the Presenting Officer and that of the Charged official were closed at this stage and the Presenting Officer was asked to submit his written brief within 10 days to me with a copy to the Charged official. The Charged official and his defence counsel were also asked to submit the written brief within 10 days of receipt of the copy of the brief from the Presenting Officer.

The Presenting Officer submitted his brief vide his letter dtd. 18.4.04 which may be read as follows:

"In the Article-I in Annexure-I to the Charge Sheet, it is recorded that Sri Hari Prasad Neopanay while functioning as GDS Masalchi postal IB, Oakland during the period from 15.11.96 onwards deserted and remained absent from duty with effect from 14.9.03 onwards without any information to the competent authority causing serious dislocation in service warranting action laid down in Rule-7(b) of department of Posts GDS (Conduct and Employment) Rules 2001.

2. In DOS No. 01 dtd. 15.3.04, Sri Neopanay (CO) admitted that he was absent from duty w.e.f. 14.9.03. In the said DOS no. 01 dtd. 15.3.04, the Charged official stated that he was in his home address C/O Subash Pan Shop, Umpling, Shillong-6.
3. In DOS No. 03 dtd. 10.4.04, Sri Ram Bahadur Magar, defence Witness deposed that the Charged official was staying in his residence w.e.f. Sept '03. He did know the C.O. earlier and did not enquire about antecedent of the C.O. before allowing the C.O. to stay at his residence as tenant.
4. In DOS No. 02 dtd. 03.4.04, the Prosecution Witness (PW) stated that in course of his incumbency as AD (Bldg.), his duty included personnel management of Postal IB, Oakland. as such, the report of the AD (Bldg) bearing No. B2/ Misc/IB/03 dtd. 26.9.03 is not on hear-say account.
5. Sri K.K. Choudhury, the Prosecution witness deposed that the Charged official was not staying in the allotted room during the period in question.

Sri Ram Bahadur Magar, Defence witness deposed that the C.O. had tenancy at his residence w.e.f. Sept 2003.

As Such, desertion established and charge proved."

The Charged official and his Defence Counsel have also submitted the written brief vide their letter dtd. 8.5.04, which may be read as follows:

Charged Official's written brief in connection with disciplinary/inquiry proceedings against Shri Hari Prasad Neaupaney, GDS Masalchi, Postal I.B., Oakland, Shillong under Rule-10 of GDS (Conduct & Employment) Rules, 2001 : Department of Posts.

Shri Hari Prasad Neaupaney the Charged Official (C.O.) was appointed as ED (GDS) Masalchi in the Postal Inspection Bungalow, at Oakland, Shillong on regular basis w.e.f. 15-11-1996 where he worked continuously without any disruption of service till 13-9-2003. After performing his duty on 13-9-03, the official started to feel physical discomfort and left for his dwelling place at Umpling, Shillong-6 for rest.

2) Next morning i.e., on 14-9-03, Shri H.P. Neaupaney visited a senior Doctor in the city for medical check-up and treatment. The concerned Doctor detected the actual ailment that the patient was suffering from, and prescribed medicines together with a medical certificate advising rest by abstaining from duty for a period of 63 (sixty three) days from 14-9-03 to 15-11-03 in the first spell for restoration of health. After expiry of prescribed period, Shri H.P. Neaupaney visited the said doctor for check-up and further treatment since he was not completely cured. The Doctor continued his treatment and issued similar certificate for rest for another 57 (fifty seven) days from 16-11-03 to 11-1-2004 in the 2nd spell. During this period, Shri Neaupaney started to recover by taking rest and medicines as prescribed by the Doctor, and on completion of prescribed period, he reported to the Doctor about his total recovery from illness and requested him (Doctor) to check-up finally to decide possibility whether he (Shri Neaupaney) could joint his duty or not. Accordingly, the Doctor carefully examined Shri Neaupaney and issued a certificate dated 12-1-2004 declaring him recovered from illness and fit to resume duties.

3) But, in the meantime, Shri H.P. Neaupaney, had received the Memorandum No. Staff/32-16/ED-93 dated 2-1-2004 under Registered post at the following address,

Shri Hari Prasad Neaupaney,
C/O "SUBASH PAN SHOP"
UMPLING, SHILLONG - 6.

The said memo. contained the Articles of charges and list of documents by which the article of charges against Shri Hari Prasad Neaupaney are proposed to be sustained. Besides, it was proposed in the said memo, to hold an inquiry against Shri Neaupaney under Rule-10 of the Department of Posts GDS (Conduct and Employment) Rules 2001.

4) However, being fully unaware of the fact that his service was already put off sometime earlier, Shri H.P. Neaupaney reported to the ADPS (Staff) on 12-1-04 and submitted an application together with medical certificates and fitness certificates supplied by the attending Doctor, explaining the reason for not attending office since 14-9-2003. The ADPS (Staff) received the application and certificates from Shri Neaupaney, but did not allow him to join his duty for the reason that inquiry under Rule-10, as cited above, was contemplated.

5) Subsequently, inquiry proceedings were started by formation of Inquiry Authority with appointment of Shri S.K. Chakraborty, ASPOs (Cell), C.O., Shillong as Inquiry Officer and Shri Bidhan Ch. Das, SDIPOs, North Sub division, Shillong as Presenting Officer while Shri Hari Prasad Neaupaney (CO) had nominated Shri R.B. Roy, PA (BCR) C.O., Shillong as his Defence Assistant. The preliminary hearing date was fixed by the I.O., on 15-3-2004 in which the Charged Official was present accompanied by his D.A. Besides inspection of listed documents, the C.O., had sought for some additional documents as listed below for his defence.

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- i) Medical Certificate dated 14-9-03
- ii) Medical Certificate dated 16-11-03
- iii) Medical Certificate (Fitness) dated 12-1-04
- iv) Defence statement submitted in reply to charge sheet.

6) The regular first hearing of inquiry was fixed by the I.O., on 3-4-04. Prior to that, the C.O., submitted a requisition dated 19-3-04 seeking production of Shri Ram Bahadur Magar as Defence witness. On the first hearing date on 3-4-04, the deposition of Shri K.K. Choudhury, (Prosecution witness) the then AD (Bldg) in the form of examination-in-chief, cross examination and re-examination was obtained. The next and second and last hearing was fixed and held on 10-4-04 as per decision and arrangement made by the I.O., in which the deposition of Shri Ram Bahadur Magar, Defence witness was obtained.

7) After going through the Article of charges and inspecting the listed and requisitioned documents as well as examination/cross examination of both prosecution and defence witnesses by 10-4-04, findings as noted in the following paras, could be traced out.

Findings :-

8) Summarily, the charges leveled against Shri Hari Prasad Neaupaney are as follows:-

- i) "The official deserted and remained absent from duty w.e.f., 14-9-03 onwards without any information to the competent authority....."
- ii) "..... The official remained absent from duty w.e.f., 14-9-03 and left the station without any information to the competent authority"

The C.O., had sincerely admitted, on the date of preliminary hearing, that he was absent from duty w.e.f., 14-9-03, but he denied the charge of having left the station during the period of absence.

9) On examining 3 (three) letters "under list of documents" by which the Disciplinary Authority proposed to sustain the charges against the charged official, it was observed that,

i) Shri K.K. Choudhury, AD (Bldg) C.O., Shillong requested the Chief Postmaster General (Staff) Shillong to take suitable action against the ED official (Shri H.P. Neaupaney) vide his memo No. B-2/Misc/IB/03 dated 26-9-2003 on the basis of report received by him regarding absence of Shri Neaupaney from duty from 14-9-2003. In the said letter, AD (Bldg) was found to have reported to CPMG (Staff) in compliance of, or, with reference to CPMG (Staff)'s letter No. Staff/32-16/ED-93 dated 14-11-2003 i.e., after the service of Shri Neaupaney was already put off from duty (vide CO's No. Staff/32-16/ED/93 dated 12-11-03). Here, it reveals that this document is doubtful since the date of report of AD (Bldg) does not commensurate with the date of Circle Office letter referred to, therein. Further, the AD (Bldg) (Prosecution witness), during cross examination by Defence Assistant, could not give the clear and bold answer to the following question,

Contd. . . . 6

Page-6.

Q. No.5 (DOS No. 2 dated 3.4.04)

Are you sure that the letter dated 19.9.03 (Referred to in his letter No. B-2/ Misc/IB/03 dtd. 26.9.03) was actually issued by you and received by Sri Hari Prasad Neaupanay ?

Answer was, 'Without consulting records, I can not say.'

ii) Document No. 2 "Under list of documents : i.e. No. Staff/32-16/ED/93 dtd. 8.10.03 (Calling for explanation for remaining absent from duty.....w.e.f. 14.9.03 onwards) and document No. 3 i.e. No. Staff/32-16/ED/93 dtd. 12.11.03 (Order for putting off Sri H.P.Neaupanay from duty w.e.f. 14.9.03) were shown as undelivered letters. Both the letters were addressed to the official at Postal IB Oakland, Shillong though it was known that the official remained absent therefrom 14.9.03.. Therefore the order putting off Sri Neaupanay from duty was issued without confirmation/ satisfaction that the the explanation No. Staff/32-16/ED/93 dtd. 8.10.03 was actually received by the Charged official.

10. On examination of the additional documents it was found that while the Authority was proceeding with departmental actions against the official, Sri Neaupanay was striving with life in sickbed since he was suffering from 'PERIPHERIAL NEVRALGIA & SCIATICA' which was as per Doctor a critical ailment with the joints of the backbone causing tremendous pain spreading towards lower part of the body i.e. waist and feet compelling the patient unable to walk or move.

11. Since the charged official being less educated, did not know the Office Rules and procedures, even he could not call back his family members from home town due to critical illness. Moreover, his local caretaker was also an unemployed ordinary man knowing nothing of office rules. All these factors made the official failure to report to Competent Authority regarding his absence from duty in due time.

The Charged official, therefore, deserves sympathetic consideration of the Authority on humanitarian grounds."

The lone Article of the Charges was unauthorized absence from duty and leaving of the station without permission of the competent authority w.e.f. 14.9.03. In the preliminary hearing itself, held on 15.3.04., Sri Hariprasad Neopanay, the Charged official categorically admitted that he was absent from duty w.e.f.14.9.03. But he denied the fact that he left the station without permission of the competent authority. Up to submission of written brief and in the brief itself also; the Charged official explained that he was seriously ill during the period from 14.9.03 to 11.1.04 and reported to the authority on 12.1.04. for his joining. And during the period he was under treatment and was staying in the rented house of one Sri Ram Bahadur Magar, Umpling, Shillong-6.

Contd...7

Page-7.

Sri Hariprasad Neopanay, could not satisfactorily explain as to why he failed to inform the competent authority about his absence, during the period of about four months (i.e. 14.9.03 to 11.1.04.)

FINDINGS :-

As admitted by the Charged official and from the deposition of both the witnesses (PW & DW) and all the documentary evidences the article of charge is proved that Sri Hariprasad Neaupanay, the Charged official, was absent from duty without any information to the competent authority.

18/5/04
(Sri. S. Chakraborty)

Inquiring Authority &

ASP (Cell) O/O the CPMG, Shillong-1.

Copy forwarded to : The Chief Postmaster General (Staff) N.E. Circle, Shillong and Disciplinary Authority. The entire Inquiry folder containing 1/C to 37/C is enclosed.

mfr.

18/5/04
(Sri. S. Chakraborty)

Inquiring Authority &

ASP (Cell) O/O the CPMG, Shillong-1.

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ANNEXURE - (8) b1

From :-

Dated, Shillong,
The 23-6-2004

Shri Hari Prasad Neaupanany,
E.D. (GDS), Postal I.B., (Oakland/Shillong),
C/O Subash Pan Shop,
Umpling, Shillong - 793 006.

To

The Chief Postmaster General (Staff)
N.E. Circle,
Shillong - 793 001.

Subject : Inquiry report under Rule-10 of DOP, GDS (Conduct & Employment)
Rules 2001, against Shri Hari Prasad Neaupanany, GDS, ED Masalchi,
Postal I.B., Oakland, Shillong.

Ref : C.O's letter No. Staff/3-ED/PF/99 dated 11-6-2004.

Sir,

With reference to your letter cited above, I beg respectfully to state that I have received your letter under which a copy of Inquiry Report on the above mentioned subject is supplied to me.

2. That Sir, I have already admitted during the inquiry proceedings that I could not attend my duty of ED Masalchi at Postal I.B., Oakland, Shillong since 14-9-2003 till 11-1-2004.

3. The reason for absents from duty was elaborated in the Charged Official's written brief dated 8-5-2004. During the period of my absence, I was severely suffering from the ailment "PERIPHERIAL NEVRALGIA & SCIATICA". My family members were at home-town at that time, and Shri Ram Bahadur Magar, the owner of my rented house was looking after me in respect of my treatment, fooding and lodging etc. Nobody else was available with me to inform the office regarding my absence from duty.

4. I, therefore, pray before you to kindly consider my case and allow me to join my duty pardoning the lapses on my part on humanitarian ground. I shall try my best to avoid such lapses in future.

I shall be ever grateful if you would kindly pass necessary order in my favour to re-instate me in duty as early as possible.

H. P. Neaupanany
Yours faithfully,

H. P. Neaupanany
(Hari Prasad Neaupanany)

Attested
[Signature]
Advocate.

DEPARTMENT OF POSTS: INDIA

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

Memo No.Staff/3-ED/PF/99

Dated at Shillong, the 9th August 2004.

Sri Hari Prasad Neaupaney, GDS, masalchi, Postal I. B. Oakland, Shillong was proceeded against under Rule 10 of GDS (Conduct & Employment) Rules 2001 on the charges of misconduct or misbehaviour based on the articles of charges framed against him under C.O., Shillong No.Staff/32-16/ED-93 dated 2-1-2004. The articles of charges drawn against the said Sri H. P. Neaupaney, is as under.

2. That Sri Hari Prasad Neaupaney, while functioning as GDS masalchi, Postal I.B. Oakland, Shillong during the period from 15-11-96 onwards, deserted and remained absent from duty with effect from 14-9-03 onwards without any information to the competent authority causing serious dislocation in service warranting action laid down in Rule 7 (b) of Department of Posts GDS (Conduct and employment) Rules 2001.

By his above act the said Shri H. P. Neaupaney, failed to maintain absolute integrity and devotion to duty as required under Rule 21 of the above rule.

3. Statement of imputation of misconduct or misbeviour in support of the article of charge framed against Shri Hari Prasad Neaupaney, GDS masalchi, Postal I. B. Oakland, Shillong.

That the said Shri Hari Prasad Neaupaney, while working as GDS masalchi, Postal I.B. Oakland, Shillong during the period from 15-11-96 onwards remained absent from duty with effect from 14-9-03 and left the station without any information to the competent authority whatsoever and caused serious dislocation in service.

The said Shri Hari Prasad Neaupaney, was however asked to explain the reason of his unauthorized absence and why disciplinary action will not be taken against him vide this office letter No.Staff/32-16/ED-93 dtd.8-10-2003 under registered post. But the letter could not be delivered to him and returned undelivered with remarks "Addressee left Oakland I.B. and hence returned to sender".

The said Shri Hari Prasad Neaupaney was thereafter put off duty vide this office letter No.Staff/32-16/ED-93 dated 12-11-2003, the copy of which also could not be delivered even to his home address and was returned undelivered with remarks "Addressee left without instruction". Sri Hari Prasad Neaupaney did not furnish any information till date.

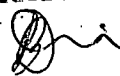
By his above act, the said Sri Hari Prasad Neaupaney failed to maintain absolute integrity and devotion to duty as required under Rule 21 of Department of Posts GDS (Conduct and employment) Rules 2001, warranting action laid down in Rule 7 (b) of the said Rule".

4. On receipt of the memorandum of imputation of misconduct or misbehaviour, the said Shri Hari Prasad Neaupaney submitted his written defence vide his representation dated 11-1-2004 stating as under.

"That sir, I felt suddenly ill on the day 13-9-03 and rushed to the doctor and was under medical observation and advised to take complete rest w.e.f. 14-9-03. Again on 15-11-03. I felt severe pain and rushed to Dr. T. K. Ray and was under medical treatment and advised to take rest for another 57 days and after felt little better. I will resumed to my duty to day the 11th Jan 2004.

Contd...2/-

Attested



Advocate.

Therefore, I would like to request you to kindly consider my case more sympathetically on humanitarian ground and exempt my absence of leave for above mentioned period. And I promise to discharge my duty more sincerely and maintain absolute integrity and devotion in future."

5. Thereafter Shri S. k. Chakraborty, ASP (Cell), Circle, Office, Shillong was appointed as I.O, to enquire into the articles of charges. The Inquiry officer on completion of the enquiry submitted his enquiry report vide No.B-1/Rule 10/Enquiry/04 dated 18-5-2004. The findings of the Inquiry officer is as under.

"After going through the Article of charges and inspecting the listed and requisitioned documents as well as examination/cross examination of both prosecution and defence witnesses by 10-4-04, findings as noted in the following paras, could be traced out.

Findings:-

Summarily, the charges leveled against Shri Hari Prasad Neaupanay are as follows:-

- i) The official deserted and remained absent from duty w.e.f. 14-9-03 onwards without any information to the competent authority_____"
- ii) "_____The official remained absent from duty w.e.f. 14-9-03 and left the station without any information to the competent authority_____".

The C.O., had sincerely admitted, on the date of preliminary hearing, that he was absent from duty w.e.f. 14-9-03, but he denied the charge of having left the station during the period of absence.

On examining 3 (three) letters "under list of documents" by which the Disciplinary Authority proposed to sustain the charges against the charged official, it was observed that,

i) Shri K. K. Choudhury, A.D. (Bldg), C.O., Shillong requested the Chief Postmaster General(Staff), Shillong to take suitable action against the ED official (Shri H.P. Neaupanay) vide his memo. No.B-2/Misc/IB/03 dated 26-9-2003 on the basis of report received by him regarding absence of Shri Neaupanay from duty from 14-9-2003. In the said letter, A.D.(Bldg) was found to have reported to CPMG(Staff) in compliance of, or with reference to CPMG (Staff)'s letter No.Staff/32-16/ED-93 dated 14-11-2003 i.e., after the service of Shri Neaupanay was already put off from duty (vide C.O's No.Staff/32-16/ED/93 dated 12-11-03). Here, it reveals that this document is doubtful since the date of report of A.D.(Bldg) does not commensurate with the date of Circle Office letter referred to, therein. Further, the A.D.(Bldg) (prosecution witness), during cross examination by Defence Assistant, could not give the clear and bold answer to the following question,

Q. No.5 (DOS No.2 dated 3-4-04)

'Are you sure that the letter dated 19-9-03 (Referred to in his letter No.B-2/Misc/IB/03 dtd.26-9-03) was actually issued by you and received by Sri Hari Prasad Neaupanay ?'

Answer was 'Without consulting records, I can not say.'

ii) Document No.2 "Under list of documents: i.e. No.Staff/32-16/ED/93 dtd.8-10-03 (Calling for explanation for remaining absent from duty..... w.e.f. 14-9-03 onwards) and document No.3 i.e. No.Staff/32-16/ED/93 dtd.12-11-03 (Order for putting off Sri H. P. Neaupanay from duty w.e.f. 14-9-03) were shown as undelivered letters. Both the letters were addressed to the official at Postal I.B. Oakland, Shillong though it was known that the official remained absent there from 14-9-03. Therefore the order putting off Sri Neaupanay from duty was issued without confirmation/satisfaction that the explanation No.Staff/32-16/ED/93 dtd.8-10-03 was actually received by the charged official.

10. On examination of the additional documents it was found that while the Authority was proceeding with departmental actions against the official, Sri Neaupanay was striving with life in sickbed since he was suffering from 'PERIPHERIAL NEVRALGIA & SCIATICA' which was as per Doctor a critical ailment with the joints of the backbone causing tremendous pain spreading towards lower part of the body i.e. waist and feet compelling the patient unable to walk or move.

11. Since the charged official being less educated, did not know the office Rules and procedures, even he could not call back his family members from home town due to critical illness. Moreover, his local caretaker was also an unemployed ordinary man knowing nothing of office rules. All these factors made the official failure to report to Competent Authority regarding his absence from duty in due time.

The Charged official, therefore, deserves sympathetic consideration of the Authority on humanitarian ground."

The lone Article of the Charges was unauthorized absence from duty and leaving of the station without permission of the competent authority w.e.f. 14-9-03. In the preliminary hearing itself, held on 15-3-04., Sri Hari Prasad Neaupanay, the charged official categorically admitted that he was absent from duty w.e.f. 14-9-03. But he denied the fact that he left the station without permission of the competent authority. Up to submission of written brief and in the brief itself also, the Charged official explained that he was seriously ill during the period from 14-9-03 to 11-1-04 and reported to the authority on 12-1-04 for his joining. And during the period he was under treatment and was staying in the rented house of one Sri Ram Bahadur Magar, Umpling, Shillong-6.

Sri Hari Prasad Neaupanay, could not satisfactorily explain as to why he failed to inform the competent authority about his absence, during the period of about four months (i.e., 14-9-03 to 11-1-04).

FINDINGS:-

As admitted by the charged official and from the deposition of both the witnesses (PW& DW) and all the documentary evidences the article of charges is proved that Sri Hari Prasad Neaupanay, the charged official was absent from duty without any information to the competent authority."

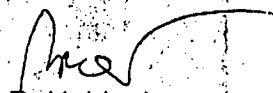
6. I have gone through the articles of charge, the imputation of misconduct and misbehaviour, the defence representation dtd.11-1-2004 submitted by the charged official on receipt of the charge-sheet, the report of the I.O. with his concluding findings, the written representation dtd.23-6-04 submitted on receipt of the copy of I.O's report as well as the relevant records of the case very carefully. I fully agree with the final findings of the I.O. stating that the article of charge is proved that Sri Hari Prasad Neaupanay, the charged official was absent from duty without any information to the competent authority. But elsewhere in his report the I.O., on the one hand opined, interalia, that the charged official deserves sympathetic consideration as he was striving with life in sickbed since he was suffering from 'PERIPHERIAL NEVRALGIA & SCIATICA' which is a critical ailment with the joints of the back bone causing tremendous pain spreading towards lower part of the body i.e. waist and feet compelling the patient unable to walk or move. On the other hand he stated that Shri H. P. Neaupanay could not satisfactorily explain why he failed to inform the competent authority about his absence during the period of long 4 months or so as he pleaded not to have left the station. From the available records like undelivered cover in respect of C.O's letter No.Staff/32-16/ED/93 dtd.8-10-03 and the A/D in respect of C.O's letter No.Staff/32-16/ED/93 dtd.12-11-03 signed by one Sri Om Nath Neapanay for Hari Neaupanay on 19-11-03, it could be guessed that the charged official left station as he was not available either at his working address or at his residential address. This idea could be deeply and more safely substantiated later, as the charged official failed to explain satisfactorily the reason of not informing the competent authority of his such serious illness either by post or through special messenger supported by medical certificate at least for the initial period of 63 days granted by the attending doctor on 14-9-03, because he was fully conscious both physically as well as virtue of his experience of service for long 7 years or so, which would not have required any personal physical

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movements. Evidently enough that the plea and episode engineered by the charged official appear to be fabricated in entirety and do not have any leg to stand. In view of the facts and circumstances discussed above there is hardly any scope left with the undersigned to deal with the case leniently as the charged official exhibited serious negligence of duty by causing total dislocation of service for such a long period which warrants deterrent action.

ORDER

I, Shri B. R. Halder, Asstt. Director of Postal Services, (Staff) O/O the Chief PMG, N. E. Circle, Shillong do hereby impose the penalty of removal of Sri Hari Prasad Neaupanay, GDS Masalchi, Postal I. B. Oakland, Shillong from service with effect from the date of issue of the order.

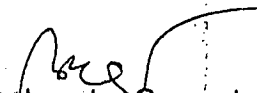

(B. R. Halder)

Asstt. Director (Staff)

For Chief Postmaster General,
N. E. Circle, Shillong.

Copy to:-

- 1) Shri Hari Prasad Neaupanay, GDS Masalchi, Postal I.B. Oakland, Shillong (Put off duty) at C/O Subash Pan Shop, Umpling, Shillong-793 006.
- 2) The A. O. Accounts, C.O., Shillong.
- 3) The Asstt. Director (Vig) C.O., Shillong.
- 4) The AAO (BGT) C.O., Shillong.
- 5) P/F of the official.


For Chief Postmaster General,
N. E. Circle, Shillong.

To

The Director Postal Services (HQ)
O/O the Chief Postmaster General,
N.E. Circle, Shillong-793 001. (Appellate Authority)

Through

The Asstt. Director (Staff),
O/O the Chief Postmaster General,
N.E. Circle, Shillong-793 001. (Disciplinary Authority)

Appellant :-

Sri Hari Prasad Neaupaney, GDS Masalchi,
Postal I.B. Oakland, Shillong.

Sub. : Appeal against the Order of removal from Service.

Reference :- Asstt. Director (Staff), O/O the Chief Postmaster General, N.E. Circle,
Shillong's Letter No. Staff/3-ED/PF/99 dtd. 09.8.04.

Respected Sir,

With due respect and humble submission, I beg to state that I, Sri Hari Prasad Neaupaney, GDS Masalchi, Postal I.B. Oakland, has been working in the post since 15.11.96, being appointed by the then Asstt. Postmaster General, N.E. Circle, Shillong, a Class-I Officer, vide his letter No. Staff/32-16/ED/93/ dtd. 14.11.96, (Copy enclosed) continuously, without any dispute or irregularity.

That Sir, most unfortunately, what may be happened to the human beings, I fell ill seriously and suddenly w.e.f. 13.9.03 (A/N) and could not attend my duty w.e.f. 14.9.03. I thought I would be cured soon but day by day my illness became more serious. As detected by the physician I was suffering from 'PERIPHERAL NEURALGIA & SCIATICA' with joints of the back bone causing tremendous pain spreading towards lower part of the body i.e. Waist and feet compelling me unable to walk or move. I am staying at Shillong alone and no one is there to help me nor I could seek help from anybody as I was striving with life in sick-bed. I took shelter in my rented house owned by Sri Ram Bahadur Magar, Umpling, Shillong-6, and was under treatment of Dr. T.K. Roy at Shillong up to 10.1.04. By this time, my authority initiated Disciplinary action against me and issued Charge-Sheet vide C.O. Shillong letter No. Staff/32-16/ED-93 dtd. 2.1.04. The Article of Charge was that I was absent from duty un-authorizedly w.e.f. 14.9.03. onwards and left the Station without information to the Competent Authority, in brief.

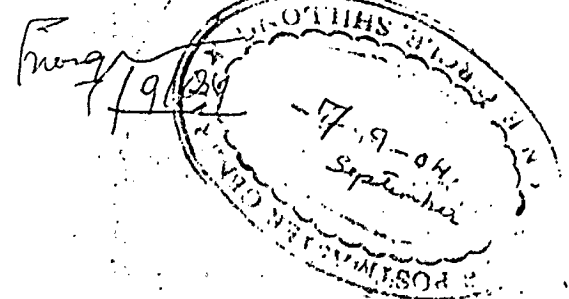
As soon as I felt something better, I rushed to my controlling authority, Asstt. Director (Staff) Circle Office, Shillong, for my joining w.e.f. 11.1.04, but he did not allow me to resume my duty but initiated inquiry appointing Inquiring Authority etc.

Contd.....2

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In the preliminary inquiry itself, I sincerely and most frankly admitted the fact and expressed my helpless condition what was going on me during the period. I told the fact that actually I did not leave the station but I took shelter in the residence of one Sri Ram Bahadur Magar as a tenant as there was none to look after me during my critical condition.

The Inquiring Authority continued the inquiry but finally Sri Ram Bahadur Magar, the House-Owner himself confirmed my Statement before the Inquiring Authority.

The Inquiring Authority concluded his inquiry and held that the Article of Charges was 'Proved'. At the same time he opined that the Charged official deserves sympathetic consideration of the Disciplinary Authority, since he was striving with life in sickbed during the period.

The Disciplinary Authority fully agreed with the first part of findings of the Inquiring Authority, but unfortunately he did not agree with the recommendation of the Inquiring authority that the Charged official deserves sympathetic consideration of the Disciplinary Authority (vide Para 6 of the letter of the Disciplinary Authority under reference) and snatched away the smallest job of my Bread-earning.

My respected Disciplinary Authority did not consider helpless condition of a poor fellow during his serious illness, he did not consider undisputed service of (7) Seven years, he did not allow his subordinate even to draw subsistence allowance during Put-off period as admissible as per Rules, he did agree with the recommendation of the Inquiring Authority appointed by himself, but desired to snatch away the poor job of a Gramin Dak Sevak, like me.

And thus he imposed the penalty of 'Removal' upon me vide Order under reference, while I was appointed by the then Asstt. Postmaster General, a class- I Officer, already mentioned above.

I therefore request you Sir, kindly to consider my case and to reinstate me as early as possible for which kind of action I shall remain ever grateful.

- Enclo. i) A copy of the Appointment letter.
ii) A copy of the Memo. No. Staff/3-ED/PF/99
Dtd. 09.8.04.

Yours faithfully,

H. P. Neupany 6.8.04
(Hari Prasad Neupanay.)
GDS Masalchi, Postal I.B.
Oakland, Shillong-1.

Advance copy to: Sri A. Walia, Director Postal Services (HQ), O/O the Chief Postmaster General, N.E. Circle, Shillong-793 001, for his kind information & necessary action.

H. P. Neupany 6.7.04
(Hari Prasad Neupanay.)

ok

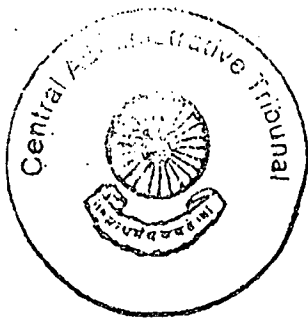
ORDER SHEET

Original Application No. 332/01
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____
Applicants: H. P. Narupany
Respondents: W. V. I. Fars
Advocates for the applicant: Mr. S. S. Sarma, Miss U. Das, Miss B. Devi
Advocates of the respondents: CASE
Notices of the Registry: Date _____ Order of the Tribunal

29.04.2005

Present: Hon'ble Justice Sri G.
Sivaraman, Vice-Chairman

This application was disposed of at the admission stage by order dated 17.01.2005 directing the 3rd respondent - Director of Postal Services (HQ), C.P.M.G., N.E. Circle Department of Posts, Shillong - 1 to dispose of the appeal dated 06.09.2004 within a period of three months from the date of receipt of copy of the order. The case was posted today for reporting compliance.



Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. appearing on behalf of the respondents has now placed before the Bench a copy of the order dated 05.04.2005 and submitted that the direction issued in the order dated 17.01.2005 has been complied with.

Mr. S. Sarma, learned counsel for the applicant submits that the party has already received the order but this is not an order of disposal of the appeal as directed by this Tribunal.

After perusal of the order, it is seen that the order dated 05.04.2005 is issued in place of the original order after rectifying the illegality

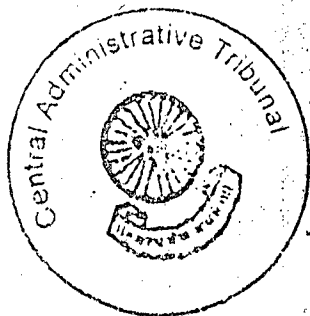
Attested

Advocate

Contd/-
29.04.2005

pointed out in the appeal memorandum. However, the present order is also one of removal of the applicant from service.

Mr. S. Sarma, learned counsel for the applicant further submits that against the order dated 05.04.2005, an appeal has already been filed before the Competent Appellate Authority. If that be so, the said authority shall dispose of the said appeal in accordance with law as expeditiously as possible, at any rate within a period of three months from the date of receipt of copy of this order.



This application is accordingly closed.

Sd/VICE CHAIRMAN

Memo No 707

20.11-5-05

Copy for information and necessary action:

1) Sri Hari Prasad Neupaney, s/o Late B.P. Neupaney, R/o, c/o Subhash P. M. Shop, Ryngeech Bazar, Skilling - 6

2) Mr. A.K. Chandany, Addl. C.G. Sec., C.A.T.

(Signature)
Section Officer (O).
10/5

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ANNEXURE - 12

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

No.STAFF/3-ED/PF/99

Dated at Shillong the 05th April 2005

This office memo no. Staff/3-ED/PF/99 dated 9.8.04 has been treated as cancelled, on due approval from the competent authority. The office memo issued by the then AD(S) stands cancelled as he was not competent to issue the said orders.

(K.R. Roy)

Asstt. Director (Staff)
For Chief Postmaster General,
N.E. Circle, Shillong-793001.

Copy to:-

- ✓ 1.) Sri. Hari Prasad Neaupaney, GDS, Masalchi, Postal I.B. Oakland, Shillong (Put off duty) at C/o Subhash Pan Shop, Umpling Shillong - 793006.
- 2.) The Accounts Officer (A/C), C.O., Shillong.
- 3.) Asstt. Director (Vig), C.O., Shillong.
- 4.) JAO (BGT), C.O., Shillong.
- 5.) P/F of the official.

For Chief Postmaster General,
N.E. Circle, Shillong-793001.

Attended
Pri
Advocate.

- 47 -
DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL N. E. CIRCLE:
SHILLONG-793 001.

ANNEXURE - 13

A1

Memo No.Staff/3-ED/PF/99

Dated at Shillong, the 5th of April 2005.

Sri Hari Prasad Neaupanay, GDS, masalchi, Postal I. B. Oakland, Shillong was proceeded against under Rule 10 of GDS (Conduct & Employment) Rules 2001 on the charges of misconduct/ misbehaviour based on the articles of charges framed against him under C.O., Shillong memo No.Staff/32-16/ED-93 dated 2-1-2004. The articles of charges drawn against the said Sri H. P. Neaupanay, are stated *supra*.

Article of charge

2. That Sri Hari Prasad Neaupanay, who had functioned as GDS masalchi, Postal I.B. Oakland, Shillong from 15-11-96 onwards, suddenly deserted and remained absent from duty with effect from 14-9-03 onwards without any prior information to the competent authority, thereby, causing serious dislocation in service which, in turn, warranted action laid down under Rule 7 (b) of Department of Posts GDS (Conduct and Employment) Rules 2001.
3. By his above act of unauthorized absence, the said Shri H. P. Neaupanay, failed to maintain absolute integrity and devotion to duty as required under Rule 21 of the *ibid*. Rules.
4. The statement of imputation of misconduct/misbehaviour in support of the article of charge framed against Shri Hari Prasad Neaupanay, GDS masalchi, Postal I. B. Oakland, Shillong, issued on 02-1-04 is stated *infra*.

That the said Shri Hari Prasad Neaupanay, while working as GDS masalchi, Postal I.B. Oakland, Shillong remained absent from duty with effect from 14-9-03 and left the station without any information whatsoever to the competent authority and, thereby, caused serious dislocation in service.

The said Shri Hari Prasad Neaupanay was, nevertheless, directed to explain the reason(s) of his unauthorized absence and why disciplinary action should not be taken

Attested



Advocate.

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against him vide this office letter No.Staff/32-16/ED-93 dtd.8-10-2003 under registered post. However, the letter could not be delivered to him and was returned undelivered with remarks "Addressee left Oakland I.B. and hence returned to sender".

The said Shri Hari Prasad Neaupanay was thereafter put-off duty vide this office letter No.Staff/32-16/ED-93 dated 12-11-2003, the copy of which also could not be delivered even to his home address and was returned undelivered with remarks "Addressee left without instruction". Sri Hari Prasad Neaupanay failed to furnish any information till this date.

By his above cited act, the said Sri Hari Prasad Neaupanay failed to maintain absolute integrity and devotion to duty as required under Rule 21 of the Department of Posts GDS (Conduct and Employment) Rules 2001, warranting action laid down in Rule 7 (b) of the said Rule.

4. The said Shri Hari Prasad Neaupanay, on receipt of the memorandum of imputation of misconduct/misbehaviour submitted his written defence vide his representation dated 11-1-2004, stating therein

"That sir, I felt suddenly ill on the day 13-9-03 and rushed to the doctor and was under medical observation and advised to take complete rest w.e.f. 14-9-03. Again on 15-11-03 I felt severe pain and rushed to Dr. T. K. Ray and was under medical treatment and advised to take rest for another 57 days and after felt little better. I will resumed to my duty to day the 11th Jan 2004.

Therefore, I would like to request you to kindly consider my case more sympathetically on humanitarian ground and exempt my absence of leave for above mentioned period. And I promise to discharge my duty more sincerely and maintain absolute integrity and devotion in future."

5. Thereupon, Shri S. K. Chakraborty, ASP (Cell), Circle Office, Shillong was appointed as I.O. to enquire into the article of charge. The Inquiry Officer upon completing the enquiry submitted his report vide letter No.B-1/Rule 10/Enquiry/04 dated 18-5-2004. The findings of the Inquiry officer are stated *infra*.

"After going through the Article of charges and inspecting the listed and requisitioned documents as well as examination/cross examination of both prosecution

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and defence witnesses by 10-4-04, findings as noted in the following paras, could be traced out.

Findings of Inquiry Authority.

The charges leveled against Shri Hari Prasad Neaupaney are as follows:-

i) The official deserted and remained absent from duty w.e.f. 14-9-03 onwards without any information to the competent authority"

ii) "The official remained absent from duty w.e.f. 14-9-03 and left the station without any information to the competent authority".

The Charged Official had admitted on the date of preliminary hearing, that he was absent from duty w.e.f. 14-9-03, but he denied the charge of having left the station during the period of absence.

On examining the three letters under "list of documents" by which the Disciplinary Authority proposed to sustain the charges against the charged official, it was observed that [stated verbatim from the Inquiry Report],

Shri K. K. Choudhury, A.D. (Bldg), C.O., Shillong requested the Chief Postmaster General(Staff), Shillong to take suitable action against the ED official (Shri H.P. Neaupaney) vide his memo. No B-2/Misc/IB/03 dated 26-9-2003 on the basis of report received by him regarding absence of Shri Neaupaney from duty from 14-9-2003. In the said letter, A.D.(Bldg) was found to have reported to CPMG(Staff) in compliance of, or with reference to CPMG (Staff)'s letter No.Staff/32-16/ED-93 dated 14-11-2003 i.e., after the service of Shri Neaupaney was already put off from duty (vide C.O.'s No.Staff/32-16/ED/93 dated 12-11-03). Here, it reveals that this document is doubtful since the date of report of A.D.(Bldg) does not commensurate with the date of Circle Office letter referred to, therein. Further, the A.D.(Bldg) (prosecution witness), during cross examination by Defence Assistant, could not give the clear and bold answer to the following question:-

Q No 5 (DOS No.2 dated 3-4-04)

'Are you sure that the letter dated 19-9-03 (referred to in his letter No.B-2/Misc/IB/03 dtd.26-9-03) was actually issued by you and received by Sri Hari Prasad Neaupanay?'

Answer was 'Without consulting records, I can not say.'

ii) Document No.2 "Under list of documents: i.e. No.Staff/32-16/ED/93 dtd.8-10-03 (Calling for explanation for remaining absent from duty..... w.e.f. 14-9-03 onwards) and document No.3 i.e. No.Staff/32-16/ED/93 dtd.12-11-03 (Order for putting off Sri H. P. Neaupanay from duty w.e.f. 14-9-03) were shown as undelivered letters. Both the letters were addressed to the official at Postal I.B. Oakland, Shillong though it was known that the official remained absent there from 14-9-03. Therefore the order putting off Sri Neaupanay from duty was issued without confirmation/satisfaction that the call for explanation vide No.Staff/32-16/ED/93 dtd.8-10-03 was actually received by the Charged official.

On examination of the additional documents it was found that while the Authority was proceeding with departmental actions against the official, Sri Neaupanay was striving with life in sickbed since he was suffering from 'PERIPHERIAL NEVRALGIA [sic] & SCIATICA' which was as per Doctor a critical ailment with the joints of the backbone causing tremendous pain spreading towards lower part of the body i.e. waist and feet compelling the patient unable to walk or move.

Since the charged official being less educated, did not know the office Rules and procedures, even he could not call back his family members from home town due to critical illness. Moreover, his local caretaker was also an unemployed ordinary man knowing nothing of office rules. All these factors made the official failure to report to Competent Authority regarding his absence from duty in due time.

The Charged official, therefore, deserves sympathetic consideration of the Authority on humanitarian ground."

The lone Article of Charge was unauthorized absence from duty and leaving the station without permission of the competent authority w.e.f. 14-9-03. In the preliminary hearing itself, held on 15-3-04, Sri Hari Prasad Neaupanay, the charged official categorically admitted that he was absent from duty w.e.f. 14-9-03. However he denied

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having left the station without permission of the competent authority. Up to submission of written brief and in the brief itself also, the charged official explained that he was seriously ill during the period from 14-9-03 to 11-1-04 and reported to the authority on 12-1-04 for his joining. And during the period he was under treatment and was staying in the rented house of one Sri Ram Bahadur Magar, Umpling, Shillong-6.

Sri Hari Prasad Neaupaney, could not provide any concrete reason about why he failed to inform the competent authority about his absence, during the period of about four months (i.e., 14-9-03 to 11-1-04).

In other words, the Charged Official could not adduce any sound reason for unauthorized absence from 14.9.03 to 11.1.04.

The I.O concluded his enquiries by recording:

“As admitted by the charged official and from the deposition of both the witnesses (PW& DW) and all the documentary evidences the article of charges is proved that Sri Hari Prasad Neaupaney, the charged official was absent from duty without any information to the competent authority.”

6. I have carefully examined (i) the article of charge, the imputation of misconduct and misbehaviour, (ii) the defence representation dtd. 11-1-2004 submitted by the charged official on receipt of the charge-sheet, (iii) the report of the I.O. with his concluding findings, (iv) the written representation of the charged official dtd. 23-6-04 submitted on receipt of the copy of I.O's report and (v) the relevant records of the case. I fully agree with the final findings of the I.O. stating that the article of charge stands proved, that is Sri Hari Prasad Neaupaney, the charged official was absent from duty without any information to the competent authority. The I.O., had also opined, that the charged official deserves sympathetic consideration as he was struggling with life in sickbed since he was suffering from peripheral neuralgia & sciatica. Nonetheless, the fact remains that Shri H. P. Neaupaney failed to satisfactorily explain why he could not inform the competent authority about his absence for a period of about 4 months especially as he pleaded not to have left the station. From the available records, such as undelivered cover in respect of C.O's letter No.Staff/32-16/ED/93 dtd.8-10-03 and the A/D in respect of C.O's letter No.Staff/32-16/ED/93 dtd.12-11-03 signed by one Sri O. N. Neaupaney for Hari Neaupaney on 19-11-03, it is self evident that the charged official was unavailable either at his working address or at his residential address. This fact was further

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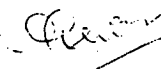
substantiated later, as the charged official failed to explain satisfactorily the reason(s) of ~~not~~ informing the competent authority of his serious illness either by post or through special messenger supported by medical certificate even for the initial period of 63 days granted by the attending doctor on 14-9-03. In any case, there was no injunction that the charged official had to appear in person to convey the information. In other words, the information about illness could have been conveyed through a messenger. This too did not happen, thereby, depicting gross negligence of duty. It is sufficiently clear that the charge of unauthorized absence is irrefutable. In view of the foregoing facts and circumstances discussed *supra*, coupled with the fact that the charged official's absence caused severe dislocation of service for such a long period warrants deterrent action, it goes without saying that the case needs to be dealt with stringently, i.e. in the manner it deserves.

Clarification

7. Sh. Hari Prasad Neaupaney, GDS. masalchi was removed from service by Sh. B. R. Halder, the then Assistant Director (Staff), CO, Shillong vide memo. no. Staff/3-ED/PF/99 dt. 9.8.2004. Howbeit, it later transpired that Sh. Halder was incompetent to decide the case, as the appointing authority of Sh. Hari Prasad Neaupaney, GDS was Assistant Postmaster General (Staff), CO, Shillong. As such, the order of removal or any other penalty could have been imposed on the said GDS only by an authority of the rank of Assistant Postmaster General or above. Therefore, the orders issued by Sh. Halder are hereby rescinded. The case is decided as stated thus.

Order

8. I, Abhinav Walia, Director of Postal Services (HQ) O/O Chief P.M.G, N. E. Circle, Shillong hereby impose the penalty of removal of Sri Hari Prasad Neaupaney, GDS Masalchi, Postal I.B. Oakland, Shillong from service with effect from the date of issue of order.


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

Copy to:-

- 1) Shri Hari Prasad Neaupaney, GDS Masalchi, Postal I.B. Oakland, Shillong (put off duty) at C/O Subash Pan Shop, Umpling, Shillong-793 006. This is in disposal of his appeal dtd.6-9-04.
- 2) The A. O. Accounts, C.O., Shillong.

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- 3) The Asstt. Director (Vig) C.O., Shillong.
- 4) The AAO (BGT) C.O., Shillong.
- 5) P/F of the official.

6-00

For Chief Postmaster General,
N. E. Circle, Shillong.

Date - 25.4.05

To
The Chief Post Master General
Deptt. of Posts, N.E. Circle,
Shillong, (Meghalaya).

Sub:- Appeal against the order issued vide No.Staff/3-
ED/PF/99 dated 05.04.2005.

Sir,

With due deference and profound submission I beg to lay
the following few lines for your kind consideration and
necessary action thereof.

That Sir, I was working as a Gramin Dak Sebak in
Masalchi Postal IB Oakland since 15.11.96. I was appointed
in the said post by the Asstt. Post Master General N.E.
Circle Shilling vide order dated 14.11.96 and since then I
have been working in the said capacity without any blemish.
Unfortunately on 13.9.2003 I felt ill and I was suffering
from pain of the lower part of the body. The pain was so
severe that I could not even move my lower part of the body.
Since I was staying alone at Shillong there was nobody to
look me after and it was under these circumstances I had to
take the shelter of one Sri Rambahadur Magar. At that
relevant point of time I took the medical treatment of one
Sri T.K.Roy upto 10.1.2004 immediately on the next day, i.e.
11.01.2004, I visited the office of the Asstt. Director
Staff, N.E. Circle to allow me to resume my duty. However, I
was not allowed to resume my duty.

That Sir, during the aforesaid period, I was asked
to show cause vide letter No.8.10.2003 but same could not be
served on me. The aforesaid order dated 8.10.2003 was
followed by another order dated 12.11.2003 by which I was
placed under put off duty. However, the aforesaid order is
also not served on me.

That Sir, in the midst of such development, the
authority started the proceeding against me for my
unauthorised absence.

That Sir, immediately having come to know about

Attested



Advocate

the charge sheet I submitted my representation dated 11.1.2004, controverting the stand in the charge sheet. In my said reply I made it clear that the issue requires humanitarian ground. It is an admitted fact that I was ill and it was not possible on my part to resume duty. It is emphatically stated that I had no intention to disregard or neglect the official duty willfully. During my service tenure there is no such indents. It was only due to my illness I could not attend my duty. Infact I made several requests to the concerned authority but my prayer was not considered. The authority however concluded the proceeding against me by imposing penalty of removal by order dated 9.8.2004. The said order was issued illegally without any authority.

That Sir, challenging the order 9.8.2004 , I preferred the OA No.332/2004 before the Hon'ble Tribunal. The Hon'ble Tribunal on 17.1.2005 disposed of the OA directing the authority to dispose of my appeal dated 6.9.2004.

That now I have reviewed order dated 05.04.2005 by which the order dated 9.8.2004 has been set aside. The aforesaid order in fact followed by another order dated 05.04.2005 issued by the DPS(HQ), who is my disciplinary authority. However said order has also been shown to be issued on behalf of CPMG N.E. circle who is my present appellate authority. I think the authority i.e. DPS(HQ) has again created some confusion in the matter.

In view of the aforesaid facts and circumstances I request you to kindly look into the matter and exonerate me from the charges and allow me to resume my duty.

Thanking you,

Sincerely yours

Hari Prasad Narufany

H.P. Neopany

प्रमाणित नहीं NOT INSURED
 चिपके गये डाक टिकटों का मूल्य रु. 22/- P.
 Amount of Stamps affixed Re. 22/- P.
 प्राप्त किया प्राप्ति किया
 Received a Registered Letter
 पानिपत का नाम
 Addressed to
 Date Stamp
 58
 शेरीहोंग - पानिपत अधिकांश के अध्यक्ष
 Signature of Receiving Officer

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

Memo No.Staff/3-ED/PF/99

Dated at Shillong, the 26th October 2005.
27th

This is regarding the appeal preferred by Shri Hari Prasad Neaupaney, GDS Masalchi Postal IB, Oakland, Shillong dtd.6-9-2004 against the punishment of removal from service awarded vide C.O. No.Staff/3-ED/PF/99 dated 9-8-2004.

The said Shri Hari Prasad Neaupaney, GDS Masalchi Postal IB, Oakland Shillong was proceeded against under Rule 10 of GDS (Conduct and Employment) rules 2001 on the charges of misconduct and misbehaviour based on the articles of charges framed against him under C.O. Shillong No.Staff/32-16/ED-93 dtd.2-1-2004. The charge drawn against him was as under:

"That Shri Hari Prasad Neaupaney while functioning as GDS Masalchi Postal IB, Oakland Shillong during the period from 15-11-96 onwards deserted and remained absent from duty w.e.f. 14-9-03 onwards without any information to the competent authority causing serious dislocation in service warranting action laid down in Rule 7 (b) of Deptt. of Posts GDS (Conduct and Employment) rules 2001.

By his above act, the said Shri Hari Prasad Neaupaney failed to maintain absolute integrity and devotion to duty as required under Rule 21 of the above rules."


The said Shri Neaupaney was given a reasonable opportunity to submit his defence. Accordingly the said Shri Neaupaney submitted his representation on 11-1-2004 in defence of the charge sheet issued on 2-1-2004.

I have carefully gone through his representation and the circumstances stated in his appeal dtd.6-9-2004.

From the observations adduced in course of formal enquiry into the matter it evidently transpires that the said Shri Neaupaney was unauthorisedly absent from duty w.e.f. 14-9-03. Therefore, the following appellate orders are issued.

APPELLATE ORDER

I Shri Lalhluna, Chief Postmaster General, N. E. Circle hereby order that the punishment of removal from service awarded to Shri Hari Prasad Neaupaney, GDS Masalchi Postal IB Oakland, Shillong w.e.f. 9-8-2004 may be upheld.


(Lalhluna)

Chief Postmaster General,
N. E. Circle, Shillong.

Copy to:-

Shri Hari Prasad Neaupaney, GDS Masalchi, Postal I.B. Oakland, Shillong (put off duty) at C/O Subash Pan Shop, Umpling, Shillong-793 006. This is in disposal of his appeal dtd.6-9-04.

Attested



Advocate.

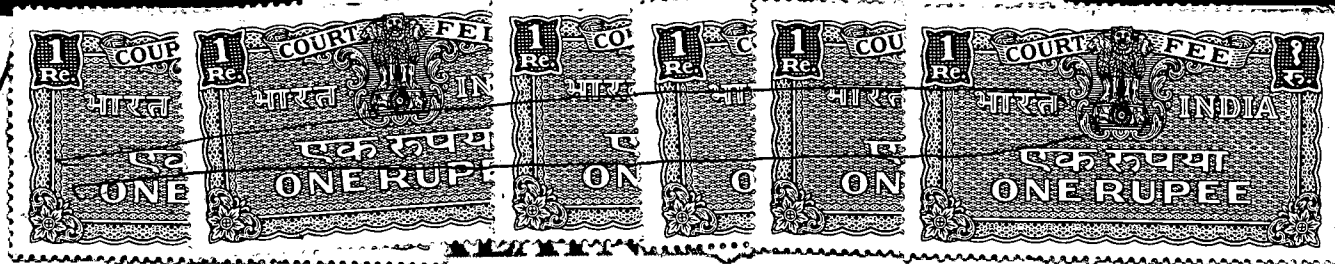
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- 2) The A. O. Accounts, C.O., Shillong.
- 3) The Asstt. Director (Vig) C.O., Shillong.
- 4) The AAO (BGT) C.O., Shillong.
- 5) P/F of the official.



For Chief Postmaster General,
N. E. Circle, Shillong.

Rege



IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
✓ MIZORAM AND ARUNACHAL PRADESH)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
IN THE COURT OF, AT GUWAHATI

OA NO. 16 OF 06

Appellant

Sri Hari Prasad Neaupany

Plaintiff/Petitioner

VERSUS

Respondent

Union of India & Ors.

Defendant/Opposite Party

Know all men by these presents that the above named:.....applicant.....

do hereby nominate, constitute and appoint Sri.....S. Sarma....., B. Devi.....

Advocate and such of the undermentioned Advocates as shall accept this Vakalatnama to be my/ our true and lawful Advocate to appear and act for me/ us in the matter noted above and in connection there with and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filling in or taking out papers, deeds of composition, etc. for me/ us and my/ our behalf and I/We agree to ratify and confirm all acts do done by the said advocates as mine/ ours to all intenet and purposes. In case of non-payment of the stipulated fee in full, no Advocate will be bound to appear or act on my/ our behalf.

In witnesses whereof I/We hereunto set my /our hand this.....26th.....day ofJanuary.....2006

- (1) Mr. P.K. Goswami
- (2) Mr. P.C. Deka
- (3) Mr. J.M. Choudhury
- (4) Mr. A.K. Bhattacharyya
- (5) Mr. L. Talukdar
- (6) Mr. P.K. Tiwari
- (7) Mr. T.N. Srinivasan
- (8) Mr. M.K. Choudhury

- (9) Mr. B.M. Sarma
- (10) Mr. G.K. Thakuria
- (11) Mr. M. Chanda
- (12) Mr. B.K. Baishya
- (13) Mr. Siddhartha Sarma
- (14) Mr. K. Paul
- (15) Mr. U.K. Nair
- (16) Mr. D.K. Sarmah

- (17) Mrs. N.S. Thakuria
- (18) Mr. U.K. Goswami
- (19) Mr. M. Dutta
- (20) Mr. S. K. Das
- (21) Miss. U. Das
- (22) Miss. B. Devi

Sri.....Senior Advocate, leads me/ us in this case.

Received from the executant,
satisfied and accepted.

Advocate

Accepted

Bondama Devi
Advocate

Accepted

Siddhartha Sarma
Advocate

Hari Prasad Neaupany

Notice

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From,

Bomdama Devi
Advocate

To,

C.G.S.C.

Sub. — OA NO. 106

Sri Hari Prasad Maupomay
-V-

Union of India & Ors.

Sir,

Please find enclosed herewith a copy of the OA being filed today. Kindly acknowledge the receipt thereof.

Thanking you,

Received copy

Sincerely yours

Bomdama Devi

Advocate

Advocate

I undertake to serve a copy of the OA on the respondents as and when available.

Bomdama Devi
Advocate

13-9-03
12-1-24

4 samples

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MEMORANDUM OF APPEARANCE

Date : 20/2/06

To,

By **The Registrar**

Central Administrative Tribunal
Bhangagarh, Rajgarh Road,
Guwahati.

IN THE MATTER OF :

O.A. No. 16 of 2006

Sri H. P. Neopany


----- Applicant

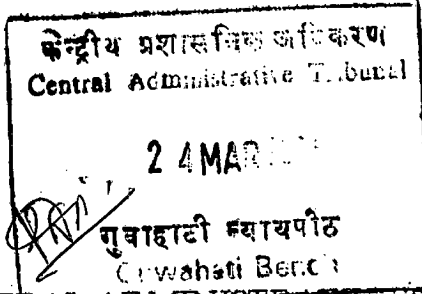
- Vs -

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. _____ in the above case. My name may kindly be noted as Counsel and shown as Counsel for the Respondent/s.

 20/2/06
(Motin Ud-Din Ahmed)
Addl. C.G.S.C.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

IN THE MATTER OF:

O.A.No. 16/2006

Sri Hariprasad Neopnay

..... Applicant

- Versus -

Union of India & Others.

..... Respondents

- AND -

IN THE MATTER OF:

Written statement submitted by the

Respondents No. 1 to 4.

WRITTEN STATEMENT

The humble answering respondents

submit their written statements as

follows :

1.(a) That I am Asst. Post Master General (Legal cell),
N.E. Circle Shillong

* and Respondents No. 2 in the case. I have gone through a copy of
the application served on me and have understood the contents thereof.
Save and except whatever is specifically admitted in the written statement,
the contentions and statements made in the application may be deemed to

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

(b) The application is filed unjust and unsustainable both on facts and in law.

(c) That the application is bad for non joinder of necessary parties and misjoinder of unnecessary parties.

(d) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.

(e) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

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

which may be treated as the integral part of this written statement.

(i) Sri Hari Prasad Neopanay, son of Durga Prasad Neopanay, was appointed as ED Masalchi of Departmental I.Q., Oakland, Shillong by the then Assam Postmaster General, Office of the Chief Postmaster General, N.E.Circle, Shillong vide his Memo No. Staff/32-16/ED/93 dated 14.11.96 and Sri Neopanay joined as such on 15.11.1996.

(ii) Said Sri Hari Prasad Neopanay deserted his duty w.e.f. 14.9.93 and remained absent from duty unauthorisedly with effect from the said date and left his head quarter also.

(iii) Sri Neopanay was asked to explain the reason of his unauthorized absence and also to explain as to why Disciplinary action will not be taken

Asstt. Postmaster General (I) (A)
O/o the Chief Postmaster General
N.E. Circle, Shillong-793 001.

against him by the Asstt. Director (Staff), Office of the Chief Postmaster General, N.E. Circle, Shillong vide his letter No. Staff/2-16/ED-93 dated 8.10.03 under Registered Post. But the letter was received back by the said authority with remark 'Addressee left Oakland IB & hence returned to sender'. Then another letter was again issued to said Sri Neopanay, placing him under 'Put off duty' vide letter No. Staff/32-16/ED-93 dated 12.11.003 which also could not be delivered even in his last known home address and received back with remark 'Addressee left without instruction'.

(iv) Thereafter, Disciplinary action under Rule 10 of the Deptt. of Post, GDS (Conduct & Employment) Rules, 2001, was initiated against said Shri Hariprasad Neopanay vide letter No. Staff/32-16/ED-93 dated 02.01.04. On receipt of the Charge Sheet on 11.01.04, said Sri Hariprasad Neopanay submitted his representation dated 11.01.04 stating that he was ill and under the treatment of a doctor who advised him to take rest for 57 days.

(v) After that a formal inquiry was constituted into the charges leveled against said Sri Hariprasad Neopanay, ED Masalchi, Postal Departmental I.Q., Oakland, Shillong. The I.Q. submitted his report vide his letter No. B-1/Rule 10/Enquiry/04 dated 18.5.04. The I.Q. concluded his report 'As admitted by the Charged official and from the deposition of both the witnesses (PW & DW) and all the documentary evidences the article of charges is proved that Sri Hariprasad Neopanay, the charged official was absent from duty without any information to the competent authority'.

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Asstt. Postmaster General
O/o the Chief Postmaster
N.E. Circle, Shillong-793 001.

(vi) Following the conclusion of the inquiry, said Sri Hariprasad Neopanay was removed from service by the then Assistant Director (Staff), Office of the Chief Postmaster General, N.E. Circle, Shillong vide his letter No. Staff/3-E/PF/99 dated 09.8.04.

(vii) The Staff Section of the office of the Chief Postmaster General, N.E. Circle, Shillong was formerly headed by the Assistant Postmaster General, a class I officer who appointed Sri Hariprasad Neopanay as ED Masalchi, Postal LB Oakland. But subsequently the post of Assistant Postmaster General was down graded by the Department of Assistant Director (Staff), a class II officer. When the technical irregularity was detected, the punishment order passed by the Assistant Director (Staff) vide letter dated 09.8.04 was cancelled vide letter No. Staff/3-ED/PF/99 dated 05.04.2005.

(viii) Again the case was considered by the Director Postal Services (HQ), N.E.Circle, Shillong, the next higher authority of the then Assistant Postmaster General (Staff), the authority who actually appointed Sri Hariprasad Neopanay, and the Director Postal Services (HQ) imposed the penalty of removal from service upon Sri Neopanay, vide letter No. Staff/3-ED/PF/99 dated 05.04.2005.

(ix) Then, Shri Hariprasad Neopanay preferred an appeal against the order of penalty to the Chief Postmaster General, N.E.Circle, Shillong vide his letter dated 25.4.05. The Chief Postmaster General, N.E.Circle, Shillong disposed the appeal and upheld the order of removal vide letter No. Staff/3-ED/PF/99 dated 26/27.10.2005.

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Asst. Postmaster General (Staff)
O/o the Chief Postmaster General
N.E. Circle, Shillong-793 003.

(x) Thereafter, Sri Neopanay filed the instant case in the Hon'ble Central Administrative Tribunal, Guwahati Bench.

3. That with regard to the statements made in paragraph 1 of the application, the answering respondents beg to state that both the orders were issued by the competent Disciplinary and Appellate Authorities respectively, observing the due formalities prescribed in the 'Department of Posts, GDS (Conduct & Employment) Rules, 2001.

4. That with regard to the statements made in paragraphs 2, 3, 4.2, 6, 7 and 9 to 12 of the application, the answering respondents beg to state that they do not admit anything except those are in record and based on legal/rational foundation.

5. That with regard to the statements made in paragraphs 4.1 of the application, the answering respondents beg to state that both the orders were issued by the competent Disciplinary and Appellate Authorities respectively observing the due formalities and giving ample scopes to the applicant, prescribed in the 'Department of Posts, GDS (Conduct & Employment) Rules, 2001.

6. That with regard to the statements made in paragraphs 4.3 of the application, the answering respondents beg to state that the applicant was removed from service due to prolonged unauthorised absence from duty w.e.f. 14.9.03 to 11.01.04, observing the due formalities and giving ample scopes to the applicant, prescribed in the 'Department of Posts, GDS (Conduct & Employment) Rules, 2001.

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O/o the Chief Postmaster General,
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7. That with regard to the statements made in paragraphs 4.4 of the application, the answering respondents beg to state that the applicant failed to give any information about his absence from duty to any authority of the Department, during the prolonged period of his unauthorised absence from 14.9.03 to 11.01.04, showing gross negligence of duty and thus failed to maintain devotion to duty as required by rule 21 of the 'Department of Posts, GDS (Conduct & Employment) rules, 2001.

8. That with regard to the statements made in paragraphs 4.5 of the application, the answering respondents beg to state that the applicant did not furnish any particulars of the communication through which he informed the authority about his absence. The applicant unambiguously admitted in his Written Brief dated 08.5.04 (Para-11) submitted to the I.O that he failed to report the fact of his absence to the authority (Annexure-6 to the O.A). As such the statement of the applicant in this Para that 'The applicant immediately informed the concerned authority regarding his ailment and also intimated regarding his address with a prayer to allow him to avail medical leave' is a sheer false and narrated on second thought.

9. That with regard to the statements made in paragraphs 4.6 of the application, the answering respondents beg to state that nothing about the reason of unauthorised absence of the applicant was known to the authority before issue and delivery of the Memorandum of Charges to the applicant. Immediately on receipt of the memorandum of Charges, the applicant turned up for his joining on 12.01.04 alongwith an application for

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O/o the Chief Postmaster General
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leave etc. Before that the whereabouts of the applicant was unknown to the authority.

10. That with regard to the statements made in paragraphs 4.7 of the application, the answering respondents beg to state that the applicant did not furnish any particulars or proof of submission of any intimation to the authority about his absence, prior to 12.01.04. He admitted to LQ in his written brief dated 08.05.04 (Para-11) that he failed to report the fact of his absence to the authority (Annexure-6 to the O.A). So, this is mere recitation of false statement as he did in para 4.6 above.

11. That with regard to the statements made in paragraphs 4.8 of the application, the answering respondents beg to state that the applicant turned up from his unauthorised absence on receipt of the memorandum of charges on 12.1.04, along with an application for leave etc.

12. That with regard to the statements made in paragraphs 4.9 of the application, the answering respondents beg to state that the applicant was placed under 'Put Off Duty' vide letter No. Staff/32-16/ED-93 dated 12.11.2003 which also could not be delivered even in his last known home-address and received back with remark 'Addressee left without instruction'. The applicant was not allowed to resume duty during the period since he was under 'Put off duty' and the disciplinary proceeding was in progress.

13. That with regard to the statements made in paragraphs 4.10 of the application, the answering respondents beg to state that the applicant was

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 O/o the Chief Postmaster General,
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given full opportunity to defend himself, as prescribed in relevant rules, as he admitted in this Para.

14. That with regard to the statements made in paragraphs 4.11 of the application, the answering respondents beg to state that the LO clearly mentioned in his report as in Annexure-7 of the O.A that 'Sri Hariprasad Neopanay, could not satisfactorily explain as to why he failed to inform the competent authority about his absence, during the period of about four months (i.e. 14.9.03 to 11.01.04) and 'as admitted by the charged official and from the deposition of both the witnesses (PW and DW) and all the documentary evidences the article of charges is proved that Sri Hariprasad Neopanay, the charged official was absent from duty without any information to the competent authority'.

15. That with regard to the statements made in paragraphs 4.12 of the application, the answering respondents beg to state that in the statement of the applicant dated 23.6.04 (Annexure-8 of the O.A) in the last line of Para 3, the applicant stated that 'Nobody else was available with me to inform the office regarding my absence from office.'

16. That with regard to the statements made in paragraphs 4.13 of the application, the answering respondents beg to state that on conclusion of the Disciplinary proceedings as per rules, the Assistant Director (Staff), Office of the Chief Postmaster General, N.E. Circle, Shillong vide his letter No.Staff/3-E/PF/99 dated 09.8.04, imposed the penalty of removal from service, upon the applicant.

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Asstt. Postmaster General (Legal Cell),
O/o the Chief Postmaster General,
N.E. Circle, Shillong-793 001.

17. That with regard to the statements made in paragraphs 4.14 of the application, the answering respondents beg to state that the Staff Section of the Office of the Chief Postmaster General, N.E.Circle, Shillong was formerly headed by the Assistant Postmaster General, a Class I officer who appointed Sri Hariprasad Neopanay as ED Masalchi, Postal LB Oakland. But subsequently the post of Assistant Postmaster General was down graded by the Department to Assistant Director (Staff), a Class II officer. When the technical irregularity was detected, the punishment order passed by the Assistant Director (Staff) vide letter dated 09.8.04 was cancelled vide letter No. Staff/3-ED/PF/99 dated 05.04.2005.

18. That with regard to the statements made in paragraphs 4.15 to 4.18 of the application, the answering respondents beg to state that the case was once again considered by the Director Postal Services (HQ), N.E. Circle, Shillong, the next higher authority of the then Assistant Postmaster General (Staff), the authority who actually appointed Sri Hariprasad Neopanay, and the Director Postal Services (HQ) imposed the penalty of removal from service upon Sri Neopanay, vide letter No.Staff/3-ED/PF/99 dated 05.04.2005.

19. That with regard to the statements made in paragraphs 4.19 of the application, the answering respondents beg to state that on conclusion of the Disciplinary proceedings, since the applicant was awarded the penalty of removal from service, placement of him under 'Put off duty' was fully justified and the question of treatment of the period of 'Put off duty' as 'Duty' does not arise at all.

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20. That with regard to the statements made in paragraphs 4.20 & 4.21 of the application, the answering respondents beg to state that the appeal of the applicant was considered by the appellate authority and passed appropriate speaking and reasoned order and same has been annexed as Annexure-15 of the O.A, which is self explanatory in this regard.

21. That with regard to the statements made in paragraphs 4.22 to 4.24 of the application, the answering respondents beg to state that the relevant steps/procedures were observed as per prescribed rules/procedures as mentioned in the foregoing paragraphs.

The applicant was given full opportunity to defend himself. Memorandum of Charge sheet was issued, an Inquiry Officer was appointed and the Inquiry Officer conducted the inquiry as per rules. The Inquiry Officer allowed the applicant to put and examine a Defence Witness also. The applicant himself stated that (i) he participated in the inquiry and he appointed Defence Assistant Sri R.B.Roy (Para 4.10 of the O.A) (ii) a copy of the Inquiry report was supplied to him and he submitted representation dated 23.6.04 (Annexure-8 of the O.A). As such no procedural lapses was there.

22. That with regard to the statements made in paragraphs 5.1 to 6 of the application, the answering respondents beg to state that the action of the respondents was quite normal and regular and in strict adherence to the provisions and procedures laid down in Rule 9 & 10 of the 'Department of Posts, GDS (Conduct & Employment) Rules 2001.

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N.E. Circle, Shillong-793 001.

The applicant is put to strictest proof of the averments made in these paragraphs.

23. That with regard to the statements made in paragraphs 8 of the application, the answering respondents beg to state that the relevant orders were issued as per prescribed rules and procedures mentioned in the foregoing paras.

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

25. That this written statement is made bonafide and for the ends of justice & equity.

Under the above circumstances, Your Lordship would be pleased to dismiss the application filed by the applicant for the ends of justice.

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Asst. Postmaster General, General, 10/11/11
O/o the Chief Postmaster General, 10/11/11
N.E. Circle, Shillong-793 001.

VERIFICATION

I, Sri Niranjan Das,

Asstt. Postmaster General (Local Comm.)

O/o the Chief Postmaster General

N.E. Circle, Shillong-793 001.

do hereby

solemnly affirm and verify that the statements made hereinabove are true to my knowledge, belief and information and nothing is being suppressed.

I sign this verification on this 24/12 day of March 2006 at

Gumrah

Niranjan Das
Signature

Asstt. Postmaster General (Local Comm.)
O/o the Chief Postmaster General
N.E. Circle, Shillong-793 001.