

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 238/2006

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SECTION OFFICER (Judl.)

Farida
26/10/17

FROM NO. 4.
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

Original Application No. 238/06

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) Avril Chandra Mathur
h. o. p. 90m

Respondents Adv. A. Ahmed, Mr. S. Bhattacharya
Advocate for the Applicant(s) Adv. A. Ahmed

Advocate for the Respondant(s) Case: M. A. Ahmed

Notes of the Registry	Date	Order of the Tribunal
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15.9.06 Present: The Hon'ble Shri K.V.Sachidanandan
Vice-Chairman.

This application has been filed by the applicant against the impugned order dated 27.1.2005 (Annexure G). Disciplinary proceeding was initiated against the applicant wherein penalty of 'censure' in the name of the President was imposed on him, which was challenged before this Tribunal in O.A.No.190 of 2005. On 20.7.2005, this Tribunal directed the applicant to file an appeal before the competent authority, which was rejected, on the ground that no appeal lies against any order made by the President. Being aggrieved, the applicant has filed this O.A. seeking for a direction to set aside the impugned order of punishment.

266326017
2-9-06
sheet
S. A. S.
14/9/06

Steps taken
O.A.

Contd...

Contd

15.6.06

Notice & order sent
to D/Section for
issuing to resp.
nos - 1 to 4 by regd.
A/D post and another
resp. no - 5 sent to -
received by hand.

Cont
19/6/06 - D/No - 983 to 987

Dt = 21/9/06.

lm

Notice duly served
on resp. no - 5.

3/10/06.

① Notice duly served
on R.No - 5, Services
awarded from R.No -

1 to 4.

8.1.07.

/mb/

Vice-Chairman

Learned Counsel for the Respondents wanted to have further time to file reply statement. Post on 08.01.2007.

No wts has been
filed.

lm

Vice-Chairman

My
5-1-06.

7.2.2007

Mr. M.U.Ahmed, learned Addl.

C.G.S.C. requested further time to file reply statement. Let it be done.

Post the case on 8.3.2007.

No wts has been
filed.

22
6.2.07.

No wts has been
filed.

/bb/

Vice-Chairman

My
7.3.07.

8.3.2007

Mr.M.U.Ahmed, learned Addl.
C.G.S.C. sought for further time for
filing of reply statement.

Post on 10.04.2007.

No Wks hrs been
billed.

3-4
7.5.07.

Vice-Chairman

/bb/

9.5.07

8.5.2007

Written statement has been filed.

Reply filed by Respondent
Nos. 1 to 5, page 1 to 11.
Service copy not received.

Q/H,

Four weeks' time is granted to the
Applicant to file rejoinder, if any.

Post the matter on 11.06.2007.

L

Vice-Chairman

/bb/

11.6.07. Counsel for the applicant prays
for time to file rejoinder. Let it be done.

Post the matter on 4.7.07.

No rejoinder hrs
been billed.

3
8.6.07.

Vice-Chairman

3-7-07
no rejoinder filed. lm
on

4.7.2007

Mr.A.Ahmed, learned counsel for the
Applicant requested for a short time to file
rejoinder. Let the rejoinder be filed
tomorrow with a copy to the counsel for
the Respondents.

Post the case on 18.7.2007.

Wks and rejoinder
billed by the parties. /bb/

26.7.07.

Vice-Chairman

27.7.07

Counsel for the parties has submitted that pleadings are over. Post the matter on before next Division Bench.
Post the matter on 13.8.07..

Vice-Chairman

Lm

The case is ready
for hearing.

3
12.5.08

Dt. 13.5.08

Pl. send copies of this
order to the Applicant
and to the Respondents

↓
13.5.08

13.05.2008 None appears for the Applicant nor the Applicant is present. Mr A. Ahmed, learned Counsel appearing for the Applicant, has sent a leave note. Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, is, however, present.

Call this matter on 23.06.2008 for hearing.

Send copies of this order to the Applicant and to the Respondents in the addresses given in the O.A. The records of the disciplinary proceeding files will be produced through the learned Addl. Standing Counsel on the date fixed.

92
(Khushiram)
Member (A)

90
(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.

3
20.6.08

23.06.08

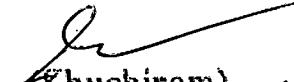
Mr A. Ahmed, learned counsel appearing for the Applicant and Mr M.U. Ahmed, learned Addl. Standing counsel for the Union of India are present.

Call this matter on 28.07.2008 before Division Bench.

90
(M.R. Mohanty)
Vice-Chairman

28.07.2008 On behalf of the Applicant a prayer has been made seeking adjournment.

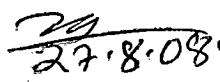
Call this matter on 28.08.2008.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

nkm

*The case is ready
for hearing.*


27.8.08

28.08.2008 Mr A. Ahmed, learned Counsel appearing for the Applicant is absent. He has sent a leave note. However, Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, is present.

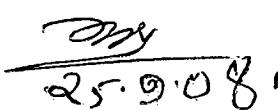
Call this matter on 26.09.2008 for hearing.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

nkm

*The case is ready
for hearing.*


25.9.08

26.09.08 Mr A. Ahmed, is stated to be on accommodation for today. Mr M.U. Ahmed, learned Addl. Standing counsel for the Respondents is also absent.

Call this matter on 26.11.2008 for hearing.


(S.N. Shukla)
Member(A)


(M.R. Mohanty)
Vice-Chairman

pg

O.A.238 of 06

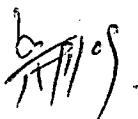
26.11.2008 Call this matter on 15th January 2009,
for hearing.


(M.R. Mohanty)
Vice-Chairman

lm

Vacation on 16.1.09.
Hence posted to 19.1.09.

19.1.09 NO Bench is available.
List on 16.2.09 for
hearing.


b/11/09


C.O.

The case is ready
for hearing.

16.2.09 Bench is not available.
List on 2.4.09.


C.O.


15.5.09

02.04.2009

Call this matter on 20.05.2009 for hearing.


(M.R. Mohanty)
Vice-Chairman


C.O.

20.05.2009 Heard Mr A. Ahmed, learned Counsel
appearing for the Applicant and Mr M.U.
Ahmed, learned Addl. Standing Counsel for
the Union of India, in part.

On the request of the learned Counsel
for the parties, call this matter on
21.05.2009 for further hearing.


(N.D. Dayal)
Member(A)

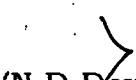
nkm


(M.R. Mohanty)
Vice-Chairman

O.A.238/06

21.05.2009 Heard Mr A.Ahmed, learned counsel appearing for the Applicant and Mr M.U.Ahmed, learned Addl. Standing counsel appearing for the Respondent organization. Hearing concluded. *CAV*

For the reasons recorded
separately this O.A is allowed.


(N.D. Dayal)
Member(A)


(M.R. Mohanty)
Vice-Chairman

pg

O.A.238 of 2006

27.05.2009 Judgment pronounced in
open Court. Kept in separate sheets.
Application is allowed. No costs.

Received by
N. Dayal
1/6/09

lm

→
(N.D.Dayal)
Member(A)

Y
(M.R.Mohanty)
Vice-Chairman

3/6/09

8.6.09

Judgement & order dated
27.5.09 send to the D/Section
for issuing the same to the
Respondents and 1/adv. for the
application. D/No. 2972 to
2977
dtd 8/6/09

DD
8/6/09

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A No.238/2006

Dated 27.5.2009

Shri Anil Chandra Mathur

Applicant

By Advocate Mr. Adil Ahmed

Versus

The Union of India & others

Respondents

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

Present: The Hon'ble Mr. Manorajan Mohanty, Vice-Chairman
The Hon'ble Mr. N.D. Dayal, Member [Administrative]

1. Whether reporters of local newspapers may be allowed to see the Judgment?
2. Whether to be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?

Yes/No

Yes/No

Yes/No

Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A.No. 238 of 2006

The 27th day of May 2009

Present: The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman
The Hon'ble Mr. N.D. Dayal, Member, Administrative

Shri Anil Chandra Mathur
Surveyor of Works [Civil]
Office of the Superintending Engineer
[Civil], Civil Construction Wing,
All India Radio, Ganeshguri Chariali,
Dr. P.Kotaki Building, 1st Floor, Guwahati-6.

Applicant

By Advocate Mr. Adil Ahmed

Versus

1. The Union of India
represented by the Secretary
to the Government of India,
Ministry of Information
& Broadcasting, A Wing,
Sashtri Bhawan,
New Delhi-1
2. The Director General,
All India Radio,
Civil Construction Wing,
Parliament Street, New Delhi-1
3. The Secretary,
Union Public Service Commission,
Dholpur House,
Sahjanan Road,
Delhi-11.
4. The Chief Engineer I [Civil],
Civil Construction Wing
All India Radio, 5th Floor
Sushna Bhawan, Lodhi Road,
New Delhi-3
5. The Superintending Engineer
[Civil], Civil Construction Wing,
All India Radio, Ganeshguri
Chariali, Dr. P.Kotaki Building,
1st Floor, Post Office-Dispur
Guwahati-6

Respondents

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



O.A.No.238/2006
O R D E R

Manoranjan Mohanty, Vice-Chairman:-

This is the third journey, to this Tribunal, of the Applicant, a Surveyor of Works [Civil] of the Office of the Superintending Engineer [Civil] of Civil Construction Wing of All India Radio at Guwahati, who has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 [on 14.09.2006] with the following prayers:-

“8.1 That the Hon’ble Tribunal may be pleased to direct the Respondents to set aside and quash the impugned Office Order No.C-13013/43/92-CW-i/Vol.III/580 Dated 17-02-2005 issued by the Respondent No.2.

8.2 To pass any other relief or relieves to which the applicant may be entitled and as may be deem fit and proper by the Hon’ble Tribunal.

8.3 To pay the cost of application.”

2. Background of the facts leading to the present case are noted herein below,-

2.1 By a Memo dated 15.07.1994 of Superintending Surveyor in the Directorate of Civil Construction Wing of AIR/New Delhi, an explanation [pertaining to a seven year old incident/of pre-1987] was called for from the Applicant [who was then posted as Surveyor of Works of Civil Construction Wing of All India Radio at New Delhi]; the text of which reads as under,-

“It has come to the notice of this Directorate that Sh. A.C. Mathur, SW[C] CCW, AIR, New Delhi while working as AE[C] , CCW, AIR, Jaipur had physically verified CCW AIR Stores, Jaipur during the period when Sh.T.M. Meena, JE[C] was incharge of CCW,AIR Stores from August, 83 to August, 87. Whereas the physical verification was carried out by Sh. A.C. Mathur but the report in this regard was never submitted to competent authority thus defeating the very purpose of verification.

Sh. A.C. Mathur, SW[C] is therefore found responsible for dereliction of duties and is hereby

directed to submit his explanation by 14.8.94 failing which it will be presumed that he has no reasons to offer and further appropriate action under conduct rules shall be initiated against him."

2.2 By his communication dated 01.08.1994, the Applicant explained the circumstances in which he could not undertake physical verification of Stores. He also disclosed as under in the said communication dated 01.08.1994:-

"The whole matter was reported to then EE[C], CCW, AIR, Jodhpur. He also did not show any kind of dissatisfaction, did not emphasize for further any action in the matter. He made payment for my Travelling Allowance Bill as well.

Since the construction works at AIR Suratgarh & A.I.R. Bikaner was suffering badly at CCW, AIR Suratgarh & Bikaner, u/s returned back to my H/Q."

2.3 Five years thereafter, on 29.12.1999, a Departmental Proceeding was initiated against the Applicant by way of issuance of a Charge Sheet [under Rule 16 of the Central Civil Services [Classification, Control & Appeal] Rules, 1965 pertaining to the said incident of pre-1987; when he failed to verify the stock in the Stores. The said Charge Sheet dated 29.12.1999 was communicated, under forwarding letter dated 07/10.01.2000 of Superintending Surveyor of Works-II of Directorate General of Civil Construction Wing of All India Radio, and the Applicant submitted his written statement of Defence/Representation 19.01.2000; wherein, in para-6, he claimed for an oral & detailed enquiry. He also prayed, in para-8 of his written statement of Defence/Representation dated 19.01.2000, to supply him [Applicant] a copy of the "preliminary enquiry report". Para-6 & 8 of the said Representation dated 19.01.2000 of the Applicant are extracted herein below;:-

"(6) That the matter is complicated one. I had gone two times for physical verification of store and contacted concerned persons, incharge of store. But, no one cooperated. After submission of tour report to the then EE[C], my T.A. Bills were passed. Since thereof nothing was heard from EE[C]. Then I remained under impression that the matter is closed and physical verification is not required. This fact could be made evident in an oral and detailed enquiry by examining the witness and relevant record. If your honour is inclined to proceed in

the matter, I request that a detailed oral enquiry may be conducted.

(8) That I may be supplied with a copy of preliminary inquiry report conducted by Vigilance Section of AIR and CCW, AIR, on which basis charge sheet has been framed, along with comments of all concerned officers, e.g. CE[Civil]-1, SE[Civil], EE[Civil], AE[Civil], JE[Civil], SSW-II, SW[Vig.] etc.”

[emphasis supplied by us]

2.4 Without conducting any oral enquiry in the matter, final orders were passed, on 27.01.2005, imposing penalty of “Censure” on the Applicant and the same was communicated to the Applicant under a forwarding letter dated 16/17.02.2005 of Executive Engineer [Vig-I] of the Directorate General, AIR, New Delhi. Before imposing the said penalty [of “Censure”] on the Applicant, the Union Public Service Commission was consulted; who conveyed their advice by their communication dated 07.10.2004.

2.5 Challenging the order dated 27.01.2005 [by which, penalty of “Censure” was imposed] the Applicant approached this Tribunal with O.A.No. 190/2005; which was disposed of on 20.07.2005. The said order dated 20.07.2005 of a Division Bench of this Tribunal [rendered in O.A.190/2005] reads as under:-

“The applicant presently working as Surveyor Works [Civil] Civil Construction Wing, All India Radio, Guwahati has filed this application challenging the order of censure passed by the disciplinary authority [Annexure G] dated 27.1.2005.

2. We have heard Mr. A. Ahmed, learned counsel for the applicant and Mr. A.K. Choudhury, learned Addl. CGSC appearing for the Respondents. Mr. A.K. Choudhury, has pointed out that the Applicant has not exhausted the alternative remedy, namely filing appeal against the impugned order before the competent Appellate Authority and therefore the application is premature. We find merits in his submission. This application is accordingly disposed of at the admission stage itself with a direction to the applicant to file an appeal before the Mr. A.K. Choudhury, has pointed out that the applicant competent appellate authority.

The application is disposed of as above.”
 [emphasis supplied by us]

2.6 Thereafter, the Applicant preferred an appeal [addressed to the President of India] on 30.09.2005 [through proper channel]; wherein "not holding any oral enquiry" and "follow of opinion of the UPSC, without application of mind" were, amongst others, taken as grounds. In fact the Applicant received an acknowledgement dated 18.10.2005 from the President's Secretariat. Without any response on his Appeal, the Applicant again approached this Tribunal with Misc. Application No.31/2006. By a communication dated 19.07.2006, however, the Under Secretary to Govt. of India [in the Ministry of Information & Broadcasting] intimated the Applicant as under:-

"Subject: Appeal under Rule 29-A of CCS[CCA] Rules, 1965 against the Office Order No.C-14015/1/99-Vig. Dated 27-1-2005 issued by the Govt. of India, Ministry of I&B, New Delhi.

Sir,

I am directed to refer to your appeal dated 30-09-2005 on the above subject and to say that no Appeal lies against any order made by the President."

2.7 On receipt of the above communication dated 19.07.2006, the Applicant made third journey to this Tribunal with the present Original Application with the prayers aforesaid.

3. By way of filing a written statement, the Respondents have raised the question of "Res-judicata" [for the Applicant, in the earlier O.A.No.190/2005 challenged the order, imposing penalty, dated 27.01.2005]; "Mis-joinder" [for UPSC has been made a party-respondent in the present case]; "no requirement of oral enquiry"; "no requirement to supply the preliminary enquiry report" etc. and prayed for dismissal of the present case; while supporting imposition of the penalty on the Applicant.

4. By way of filing a Rejoinder, the Applicant has reiterated his case as made out in the Original Application and has answered the points raised in the written statement of the Respondents.

5. Having heard Mr. Adil Ahmed, learned Counsel appearing for the Applicant, and Mr. M.U. Ahmed, learned Addl. Standing Counsel appearing for the Respondents; we perused the materials placed on record.

6. Mr. Adil Ahmed, learned Counsel for the Applicant submitted that when the submissions of the representative of Govt. of India [made on 20.07.2005 in]

course of hearing of O.A. No.190/2005] was accepted by this Tribunal and the Applicant was asked [by this Tribunal] to prefer an Appeal, instead of holding the Appeal to be incompetent and raising the question of "res-judicata", the Respondents ought to have considered the case of the Applicant [as raised in his Appeal Memo dated 30.09.2005] at least in exercise of the powers of Review available in Rule 29-A of the CCS[CCA] Rules, 1965. He proceeded to submit that since the Respondents [de-hors the opinion of the States Representative/Addl.S.C.; that was accepted by this Tribunal] refused to entertain the Appeal, the Applicant had to, without any course of remedy open before him, came back to this Tribunal, for redressal of his grievances, and, as such, the present case cannot be taken to be a case of Res-judicata. That apart, it is submitted on behalf of the Applicant that no issue, touching the merit of his grievances, were framed nor answered by this Tribunal in the earlier O.A.No.190/2005 and, as such, the same prayer, which is sought to be answered in the present case, cannot be said to be a case of Res-judicata nor a case of constructive Res-judicata. We have found enough force in the contentions of Mr. Adil Ahmed and hold that this case [in the facts and circumstances] is not one to be held as a case of Res-judicata. Thus, the objection "Res-judicata" is hereby over-ruled.

7. In this case, the Applicant has branded the advice of the UPSC to be discriminatory. The said written advice dated 07.10.2004 of UPSC was supplied to the Applicant along with the impugned order dated 17.02.2005. It is the case of the Applicant, basing totally on the said advice of UPSC, the penalty has been imposed on the Applicant. Mr. Adil Ahmed, learned Counsel appearing for the Applicant has argued that without making UPSC as a party-respondent, nothing could have been commented on the written advice of UPSC. Mr. M.U. Ahmed, learned Addl.S.C. for the Govt. of India, however, submitted that since UPSC merely rendered advice in the matter, they [UPSC] were not required to be made party to this case. We find sufficient force in the submissions of both parties and yet proceed to hold that mere presence of UPSC has not made this case bad for "mis-joinder".

8. It is seen from the material placed on record that [a] the Applicant failed to verify the stock in the Store at Jaipur [when he was engaged in construction work of CCW at Suratgarh and at Bikaner] prior to 1987; [b] non-submission of verification report became subject matter [of requiring an explanation from the

Applicant] during 1994 i.e. after a period of seven years; [c] on receipt of his explanation [submitted in the year 1994], in which the Applicant explained that the fact of failure to undertake verification [for non-cooperation of local officers] was reported to the then Executive Engineer; the Respondents remained silent; [d] after another five years, during 1999, the Applicant was charge-sheeted initiating a minor penalty proceeding under Rule 16 of the CCS[CCA] Rules, 1965; [e] in his representation dated 29.01.2000, the Applicant prayed to supply him a copy of preliminary enquiry report [basing on which he was charge-sheeted] and to cause an oral enquiry to ascertain the truth; [f] without causing any oral enquiry and without supplying [to the Applicant] the copy of the 'preliminary enquiry report', the Disciplinary Authority took a tentative view to impose a minor penalty on the Applicant and proceeded to obtain advice from the UPSC, before imposing any penalty; [g] while examining the matter, the UPSC not only found the "preliminary enquiry report" to be part of the Disciplinary Proceeding Records, but took the same into consideration for giving its advices; [h] UPSC found that there were no loss in the stock and that the stand of the Applicant [that he reported the Executive Engineer, the next higher authority, about his inability to verify the stock in the Store] has not been disputed; and yet it advises the Disciplinary Authority to impose a minor penalty of "Censure"; for he [Applicant] failed to submit a not-final report and [i] basing of the said advice of UPSC, penalty of "Censure" has been imposed on the Applicant.

9. At the hearing, 'non-supply of a copy of the preliminary enquiry report' was shown, by the learned Counsel for the Applicant, to be fatal. On the other hand, learned addl. Standing Counsel appearing for the Respondent Department argued that mere non-supply of the preliminary enquiry report can just not be fatal; unless it is shown that the same has been utilized to his [Applicant] prejudice. While the Applicant called for the said document [preliminary enquiry report] in his representation dated 19.01.2000 [Annexure-E to the O.A.] and raised a grievance pertaining to non-supply of the said document in para 5 of his Appeal Memo dated 30.09.2005 [Annexure-K to the O.A.] and in para 4.10 of his Original Application, the Respondents answered about the said point in para 7 of their written statement as under,-

"....as per instructions contained in para (23) under Rule 14 of CCS[CCA] Rules, reports made after preliminary inquiry or the report made by police after investigation, are usually

confidential and intended only to satisfy the competent authority whether further action is called for. It is not necessary to give access to these reports as per CCS[CCA] Rules."

No doubt, "preliminary enquiry report, which has not been utilized in the proceeding, need not be supplied to the delinquent of that proceeding"; but, where the same has been utilized [in forming an opinion] against the delinquent, in that case non-supply of the same to the delinquent becomes fatal to the proceeding.

In the present case, the record goes to show that entire matter was not only based on the preliminary enquiry/investigation report of the Vigilance Wing of the Respondent Organisation, but, basing on the same, the UPSC even proceeded to record its advices. It is seen from Annexure-F dated 07.10.2004 [the letter of UPSC] that the preliminary enquiry/investigation report is the basic document from initiation till closer of the Departmental Proceeding in question. Relevant portion of the said UPSC letter dated 07.10.2004 [in which advices were given in regard to the Applicant & others] reads as under:-

"As per the investigation report of the Vigilance Unit of CCW[AIR], the three COs in question were found responsible for non-maintenance of stores and alleged loss to the Govt."

It goes to show that the 'preliminary investigation report' was utilized to the prejudice of the Applicant and yet a copy of the same was not supplied to him; despite his prayer. Thus, we are inclined to hold that non-supply of the copy of the "preliminary enquiry/investigation report" has resulted in grave miscarriage of justice in the decision making process.

10. The Applicant, in his representation dated 19.01.2000 [Annexure-E to the O.A.] prayed to cause a detailed/oral enquiry [into the charges levelled against him under Annexure-D dated 29.12.1999 issued under Rule 16 of CCS[CCA] Rules, 1965] and also raised the said point in para 5 to his Appeal dated 30.09.2005 [Annexure-K to the O.A.] and in para 4.10 of his present Original Application. At the hearing, Mr. Adil Ahmed, learned Counsel for the Applicant, drew our attention to Rule 16[2][b] of the CCS[CCA] Rules, 1965 to say that the rules making authorities having vested powers in the Disciplinary Authority to cause oral enquiry [even in minor penalty proceeding] in an appropriate case and, despite the prayer of the Applicant to cause an oral

enquiry, no oral enquiry having been undertaken [before imposition of the penalty] the final orders [imposing penalty] has vitiated. Relevant portion of Rule 16[2][c] of CCS[CCA] Rules, 1965 read as under:-

"16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule[3] of Rule 15, no order imposing on a Government servant any of the penalties specified in Clauses (i) to (iv) of Rule 11 shall be made except after-

- (a) xxx xxx xxx
- (b) holding an inquiry in the manner laid down in sub-rules(3) to (23) of Rule14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary.

xxx xxx xxx"

In answering to the above point of the Applicant, the Respondents have stated, as under, in para 7 of their written statement:-

"...respondents beg to submit that the applicant was charged sheeted for minor penalty proceedings under Rule 16 of CCS[CCA] Rules, 1965. The written statement of defence dated 19.01.2000 in respect of Sh. A.C. Mathur was carefully examined in the Ministry and no oral inquiry was conducted in this case as it was not found necessary. Clause(b) of sub-rule(1) under Rule 16 of CCS[CCA] Rules, 1965, specifies that holding of any inquiry in the manner laid down in the sub-rules (3) to (23) of Rule 14 in the case in which Disciplinary Authority is of the opinion that such inquiry is necessary."

Taking a clue from the above, Mr. M.U. Ahmed, learned Addl. Standing Counsel, appearing for the Respondents, argued that in exercise of their discretion, the Department felt that oral enquiry in the matter was not necessary and, therefore, non-exercise of discretion in favour of causing an oral enquiry cannot be branded as a miscarriage of justice.

No doubt discretion has been vested with the authorities under Rule 16(2) (b) of CCS[CCA] Rules, 1965. But that should not only be reasonable but should also appear to be just in the fact and circumstances of the case.

In the present case, some 12 years back [to the issuance of charge-sheet] the Applicant was deputed to cause a verification of Stores. As per his explanation, the Applicant failed to undertake the said responsibility, for the Stock were not properly kept in the Stores and for the reason of non-co-operation of the local officer in-charge of the Stores. As per his explanation, he reported the matter to the Executive Engineer [i.e. next higher authority] who, being satisfied, passed his TA Bills for payment. In order to substantiate his said stand, the Applicant prayed to cause a detail oral enquiry, apparently, to obtain oral statements from individuals; may be about the Stock & Stores position and non-co-operation of local officers etc. and about his report to the then Executive Engineer. Instead of causing an oral enquiry, the authorities proceeded to bank on the 'preliminary enquiry/investigation report' [even without supplying a copy thereof to the Applicant; despite his prayer] to draw an adverse order against the Applicant. Had there been a detail oral enquiry, as prayed for by the Applicant, not only the Applicant would have got opportunity to examine/cross-examine individuals in charge of the Stock & Stores and the persons associated with the same to bring things in his support; the Respondents would also have got opportunity to adduce evidence against the Applicant to bring home the charges against him [by confronting the 'preliminary enquiry/investigation report' to him] to the hilt. Thus, we are inclined to hold that the decision [not to hold detail oral enquiry] was unjust, un-reasonable and has caused gross miscarriage of justice in the decision making.

11. On examination of the entire matter, the UPSC held that, 'as there were no loss of Stock & Store during the time of the Executive Engineer' [to whom the Applicant reported about non-co-operation/inability to verify Stock & Store]; it [UPSC] suggested to exonerate him [Executive Engineer] and proceeded to hold that 'Department having not disputed the stand of the Applicant that he reported [about his difficulties, for which he failed to verify the Stock] to the Executive Engineer, the said stand was to be accepted' and, yet, strangely, instead of asking to impose penalty of "Censure" by raising an imaginary question 'as to why the Applicant did not submit an incomplete verification report'; although non-submission of an incomplete verification report was not a charge against the Applicant. Non-submission of report, upon enquiry, was a charge against the Applicant, UPSC having, very fairly, accepted the stand of the Applicant that he reported to the Executive Engineer about his inability to verify the Stock [which

stand of the Applicant was never disputed] and having found that there were no loss of stock during the time of the said Executive Engineer; there were no reason to ask for imposition of punishment.

From the above discussion, we are agreeable with the stand of the Applicant that the advice of the UPSC was discriminatory. While exonerating the Executive Engineer, the UPSC ought not to have advised to impose punishment on the Applicant.

12. When the Applicant did not verify any stock in Store at all, the expectation of UPSC [and also of the Disciplinary Authority] that the Applicant ought to have 'submitted an in-complete report' was an unjust one.

13. That apart, the UPSC having noted, in Annexure-F dated 09.10.2004, as under, there were no reason to impose penalty on the Applicant:-

"The Commission observe that the CO visited the CW(AIR) Store/Jaipur twice - from 4.8.87 to 7.8.87 and on 23.8.87 - for the purpose of verification of stores, but as per his own statement could not conduct the verification due to non-cooperation of the Stores Incharge and non-stacking of the material in proper and systematic manner. This, according to the CO, was reported to the EE[C] and the Prosecution has not denied this. There is also no evidence to show that any directions were issued by the then EE(C) to the CO or the Stores Incharge subsequent to CO's reporting the matter to EE[C]."

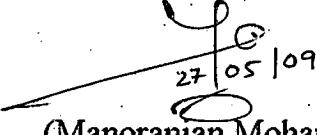
14. For the reason of the foregoing discussions, the final order, imposing punishment of "Censure" was outcome of violation of principles of natural justice; miscarriage of justice in the decision making process; discriminatory and unjust.

15. In the conclusion, we hereby set aside and quash the impugned order dated 27.01.2005, by which penalty of 'Censure' was imposed on the Applicant.

16. This case is accordingly allowed. However, there shall be no order as to costs.


(N.D. Dayal)
Member, Administrative

cm


27/05/09
(Manoranjan Mohanty)
Vice-Chairman

22

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

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

ORIGINAL APPLICATION NO. 238 OF 2006.

Shri Anil Chandra Mathur

...Applicant

- Versus -

The Union of India & Others

...Respondents

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Date: 14 - 9 - 2006.

Filed By:

Smita Bhattacharjee
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

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

ORIGINAL APPLICATION NO. 238 OF 2006.

Shri Anil Chandra Mathur

...Applicant

- Versus -

The Union of India & Others

...Respondents

LIST OF DATES AND SYNOPSIS:

The Applicant is working as Surveyor of Works (Civil) Civil Construction Wing, All India Radio under the Office of the Respondent No.2. While he was posted at New Delhi in the year 1994, the Respondent No.4 issued an Office Memorandum dated 15.07 (the year was not mentioned) alleging that during his posting at Jaipur as Assistant Engineer (Civil) he did not submit the Verification Report of Civil Construction Wing, All India Radio Stores from August 1983 to 1987. Applicant was directed to submit his explanation for his alleged lapse on his part. Applicant submitted his reply on 01.08.1994 before the Respondent No.2. The Office of the Respondent No.1 vide his Memorandum dated 29.12.1999 proposed to take against the applicant under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules 1965. He filed a reply on 19.01.2000 and denied the charges leveled against him. He had also requested to the Authority Concerned to hold details Oral Enquiry in this matter. The Union Public Service Commissioner vide their letter dated 07.10.2004 advised the Respondent No.1 to impose penalty of "Censure" against the Applicant. Accordingly penalty of Censure was imposed against the Applicant. Being aggrieved by this Applicant files and Original Application No.190 of 2005 before this Hon'ble Tribunal. This Hon'ble Tribunal directed the Applicant to file an Appeal before the Competent Authority. In pursuance of the direction of this Hon'ble Tribunal the Applicant filed an Appeal under Rule 29 A of CCS (Class, Control & Appeal) of 1965 through Respondent No.1 before the Hon'ble President of India. The Respondent No.1 vide his letter dated 19.07.2006 stated that no appeal lies against any order made by the President. Hence this Original Application praying for ends of Justice.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

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

FILED BY

Shri Anil Ch. Mathur
... Applicant
26/ Smriti Bhattacharjee
(Advocate)

ORIGINAL APPLICATION NO. 238 OF 2006.

BETWEEN

Shri Anil Chandra Mathur
Surveyor of Works (Civil)
Office of the Superintending Engineer
(Civil), Civil Construction Wing,
All India Radio, Ganeshguri Chariali,
Dr. P. Kotaki Building, 1st Floor,
Post Office-Dispur, Guwahati-6

... Applicant

- AND -

- 1) The Union of India represented by the Secretary to the Government of India, Ministry of Information & Broadcasting, A wing, Sashtri Bhawan, New Delhi-1.
- 2) The Director General, All India Radio, Civil Construction Wing, Parliament Street, New Delhi-1.
- 3) The Secretary, Union Public Service Commission, Dholpur House, Sahjahan Road, New Delhi-11.
- 4) The Chief Engineer I (Civil), Civil Construction Wing, All India Radio, 5th Floor, Sushma Bhawan, Lodhi Road, New Delhi - 3.
- 5) The Superintending Engineer (Civil), Civil Construction Wing, All India Radio, Ganeshguri Chariali, Dr. P. Kotaki Building, 1st Floor, Post Office-Dispur, Guwahati-6.

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... Respondents

DETAILS OF THE APPLICATION

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

This instant application is made against the impugned Office Order No.C-14015/1/99-Vig. dated 27.01.2005 issued by the Office of the Respondent No.2 and also letter No. C-14015/1/99/Vig dated 19.07.2006 issued by the Office of the Respondent No. 1.

2) JURISDICTION OF THE TRIBUNAL:

The Applicant declares that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3) LIMITATION :

The Applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985.

4) FACTS OF THE CASE :

Facts of the case, in brief, are given below:

4.1) That your humble Applicant is a citizen of India and as such, he is entitled to all the rights, protections and privileges guaranteed under the Constitution of India. He is aged about 45 years.

4.2) That your Applicant begs to state that he is working as Surveyor Works (Civil), Civil Construction Wing, All India Radio under the Office of the Respondent No.4. The Applicant is a Central Government Employee and he is not absorbed in Prashar Bharati (Broadcasting Corporation of India), nor he is drawing the pay scale of Prashar Bharati (Broadcasting Corporation of India).

4.3) That your Applicant begs to state that while he was working as Surveyor of Works (Civil), Civil Construction Wing, All India Radio, New Delhi in the year 1994, the office of the Respondent No.2 issued an Office Memorandum No.C-13013/43/92-CW I/409

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Dated 15-07 (the year was not mentioned by the Respondents) alleging that while the Applicant was working as Assistant Engineer (Civil) Civil Construction Wing, All India Radio, Jaipur physically verified the Civil Construction Wing, All India Radio Stores, at Jaipur during the period when one Shri T. M. Meena, Junior Engineer (Civil) was in-charge of Civil Construction Wing, All India Radio Stores from August '83 to August'87. But the Applicant did not submit the verification report to the Competent Authority. The Applicant was directed to submit his explanation for the alleged lapses on his part. The Applicant submitted his reply on 01-08-94 before the Respondent No.2 vide his letter No.1 (1)/91/Misc./Sw.III/435 dated 1.08.94. It may be stated that at the relevant time Applicant was posted at Suratgarh not in Jaipur.

ANNEXURE - A is the photocopy of Office Memorandum No.C-13013/43/92-CW I/409 dated 15-07 (the year was not mentioned by the Respondents).

ANNEXURE - B is the photocopy of letter No.1 (1)/91/Misc./Sw.III/435 Dated 01-08-94.

4.4) That your Applicant begs to state that the Office of the Respondent No.1 vide their Office Memorandum No.C-14015/1/99-Vig dated 29-12-99 proposed to take action against the Applicant under Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules 1965. The said Office Memorandum was forwarded to him by the Office of the Respondent No.2 vide their letter No.C-13013/43/92-CW-1/9 dated 07/10.01.2000. The Applicant has submitted his reply on 19.01.2000. In his reply he denied all the charges leveled against him. He has stated that he had gone to Jaipur for Physical Verification of Store for two times but due to non cooperation of the then incharge of the stores he could not conduct the Verification. He had reported the matter to then EE (Civil) and nothing was happened, the then EE (Civil) simply passed his TA Bill. Moreover, he also stated that since the matter is 13 years old and it is difficult for him to remember the same at this belated stage. He requested the Authority concerned to hold Details Oral Enquiry in this matter.

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ANNEXURE - C is the photocopy of Office Memorandum No.C-14015/1/99-Vig dated 29-12-99.

ANNEXURE - D is the photocopy of letter No.C-13013/43/92-CW-I/9 dated 7/10 January 2000.

4.5) That your Applicant begs to state that the Office of the Union Public Service Commission vide their letter No. Confidential F3/9/04-S-1 New Delhi-11 dated 7-10-2004 advised the Respondent No.1 to impose penalty of "Censure" against the Applicant. The Respondent No.1 vide their Order dated 27-01-2005 accepted the advice of the U.P.S.C. and imposed the penalty of "Censure" against the Applicant. The Orders dated 07-10-2004 and 27-01-2005 issued by the Office of the Respondent Nos. 3 & 1 were communicated to the Applicant by the Office of the Respondent No.2 vide their letter No.C-13013/43/92-CW-I/Vol III/580 dated 17-02-2005. The said Orders were received by the Applicant on 28.03.2005.

ANNEXURE - E is the photocopy of letter dated on 19-01-2000.

ANNEXURE - F is the photocopy of letter No. Confidential F3/9/04-S-1 New Delhi-11 Dated 7-10-2004.

ANNEXURE - G is the photocopy of the Order No. C-14015/1/99-Vig. Dated 27.01.2005.

ANNEXURE - H is the photocopy of the letter No.C-13013/43/92-CW-I/Vol III/580 Dated 17-02-2005.

4.6) That your Applicant begs to state and submit that while he was functioning as Assistant Engineer (Civil), Civil Construction Wing, All India Radio, Suratgarh he was entrusted for physical verification of Stores of Civil Construction Wing, All India Radio, Jaipur by Shri R. M. R. Parti, Executive Engineer (Civil), Civil Construction Wing, All India Radio, Jodhpur Division who was also holding the additional charge of Jaipur Division. The physical verification of the said stores was to be conducted during the period from August 1983 to August 1987 when Shri T. M. Meena, Junior Engineer (Civil), Civil Construction Wing, All India Radio was In-

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charge of the stores of Jaipur Division. Even though the Applicant visited the Jaipur Stores Division at the relevant time, but could not physically verify the stock in store at Jaipur, because the Cement and Steel was not stocked as per norms specified for this, i.e. the different Steel was intermixed and was lying in a haphazard manner and scattered at different places. It was also buried under loose soil and also even not visible. The room in which Cement was lying was overfilled by placing Cement Bags in haphazard manner. It was also not possible even to enter the store room. The then Assistant Engineer (Civil), In-Charge of the store did not extend any help for taking out the Cement and Steel for physical verification of the stocks. The whole matter was reported immediately by the Applicant to the then Executive Engineer (Civil), Civil Construction Wing, All India Radio, Jodhpur, who entrusted him to do the job. The then Executive Engineer did not show any kind of dissatisfaction and did not emphasize for any further action in this matter. The then Executive Engineer (Civil) also made payment to the Applicant for his Traveling Allowance. Since the construction works at the relevant time was going on at All India Radio, Suratgarh and Bikaner All India Radio, the applicant was compelled to return back to his Headquarter. After the said alleged incident no notice, reminder or memorandum was issued to the Applicant for not doing the physical verification and submission of verification report to the concerned authority. But after seven (7) years of the alleged incident the Applicant was served with Office Memorandum in the year 1994.

4.7) That your Applicant begs to state and submit that the Respondent No. 1 vide his letter dated 24.03.2004 referred the matter to the Union Public Service Commission for their advice regarding disciplinary proceeding against Sri R.M.R. Parti, Surveyor Works (Civil), Civil Construction Wing (i.e. the then Executive Engineer, (Civil) Jodhpur Division, who was holding the Additional Charge of Jaipur Division during the period 1987-88), All India Radio, Sri R.V. Singh, Surveyor of Works (Civil), (i.e., the then Assistant Engineer, (Civil), Jaipur Division), Civil Construction Wing, All India Radio and Sri A.C. Mathur, Executive Engineer

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(Civil), (i.e., the applicant who was working as Assistant Engineer (Civil), Suratgarh was giving the task of verification of Stores at Jaipur during the said period), Civil Construction Wing, All India Radio. The Union Public Service Commission in their findings observed that in case of Sri R.M.R. Parti who was the then Executive Engineer, Jodhpur Division holding the Additional Charge of Jaipur Division was required to have his Divisional Stores check once in a year and the charge officer i.e., Sri R.M.R. Parti vide his letters dated 04.07.1987 and 10.07.1987 directed the then Assistant Engineer (Civil) Sri A.C. Mathur, i.e. the applicant to carry out physical verification of stores. The Commission noted that copies of the above letters and T.A. bills of Sri Mathur for journeys to Jaipur in connection with verification of store are not available on record. However, from the defence of Sri A. C. Mathur, Assistant Engineer, it appears that the Charged Officer deputed him for verification of stores as also he passed his TA bills. The Commission further observed that though Sri Mathur visited the stores twice, no verification could be done because neither the material was stacked properly nor any assistance was provided by the Stores In-charge for restacking the material and taking the same to the weigh bridge. Sri Mathur claimed that this was brought to the notice of the Executive Engineer (Civil). The Commission observed that since the Charged Officer was aware that no verification could be done, there was no question for obtaining verification report from Sri Mathur and bringing the discrepancies/shortages in store to the notice of the competent authority. In view of the above, the Commission held that the charge is not clearly established against the Charged Officer, i.e. Sri R.M.R. Parti who was holding only the additional charge of Jaipur Division at that time.

But in case of the Applicant, i.e., Sri A.C. Mathur, the Commission observed that the Charge Officer, i.e., Sri A.C. Mathur visited the CCW (AIR) Store/Jaipur twice - from 04.08.1987 to 07.08.87 and on 23.08.87 - for the purpose of verification of stores, but as per his own statement he could not conduct the verification due to non-cooperation of the Stores Incharge and non-staking of the material in proper and systematic manner. This according to the

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Charged Officer, Sri A.C. Mathur was reported to the Executive Engineer (Civil) and the Prosecution has not denied this. There is also no evidence to show that any directions were issued by the then Executive Engineer (Civil) to the Charged Officer or the Stores Incharge subsequent to Charged Officer's reporting the matter to the Executive Engineer (C). Further, the Commission observed that since no shortage of steel and cement was shown in the store closing of August, 87 & September, 87 neither any shortage was recorded in the handing/taking over report dated 23.08.1987 signed by both the Junior Engineers, the Charged Officer could not be held responsible for the alleged shortfall in steel & cement. However, the Commission has held that the charge as proved to the extent that the Charged Officer did not submit even an incomplete report of verification of stores. After taking into account all other aspects relevant to the case, the Commission considered that ends of justice would be met in this case if - (a) the proceedings against Shri R.M.R. Parti, Executive Engineer (Civil) are dropped and he is exonerated of the charge, and b) the penalty of "Censure" is imposed on Shri R.V. Singh, Executive Engineer (Civil) and Shri A.C. Mathur, Executive Engineer (Civil).

From the above, it is surprising that the Union Public Service Commission has taken two different views in the same matter in a similar situation and recommended for exoneration of Shri R. M. R. Parti, but Shri A. C. Mathur's case was recommended for penalty of 'Censure', although being a Superior Officer Shri R. M. R. Parti should be held full responsible for the alleged act.

4.8) That your Applicant begs to state that the Union Public Service Commission in their findings and observation had stated that the Charged Officer i.e. the Applicant did not submit even an incomplete report of verification of stores. It is worth to mention here that the verification report of stores cannot be in part or incomplete but it must be complete. In the instant case due to non co-operation of the then Store in Charge of Jaipur Division, the Applicant could not conduct the verification and the same was immediately reported to the Executive Engineer (Civil) by the

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Applicant. However, the Executive Engineer (Civil) instead issuing direction to the Store in Charge, Jaipur for his kind Co-operation with the Applicant for the verification of the Store, had simply passed the T.A. Bill of the Applicant without going through the matter.

4.9) That your Applicant begs to state that in the instant case the Respondents particularly Respondent No.1 without applying their mind accepted the recommendation of Union Public Service Commission by imposing penalty of 'Censure' to the applicant and exonerated Sri R.M.R. Parti from the charges. The respondents also did not follow the procedures to be maintained in a disciplinary case. The All India Radio, Civil Construction Wing follow the Manual provision of CPWD Manual Volume I. In the said CPWD Manual Volume I Section 3 regarding disciplinary cases and departmental proceedings it has been stated that "where the disciplinary authority is the Director General (Works) or higher, preliminary inquiry in to the cases of administrative nature ought to be proceed by the Chief Engineers. The drill required to be performed by them is calling for the explanation of the officer concerned giving of show cause notice to him / her and examining the same. If in the opinion of Chief Engineer after the preliminary investigation there is substance in the case, warranting initiation of formal disciplinary proceedings for imposition of any of the statutory penalties, a self contained report supported by relevant documents together with the explanation of the Govt. servant concerned are required to be sent to the Director General (Works) for consideration. However the preliminary investigation does not in the opinion of the CE justify imposition of any statutory penalties, he may finalized the case himself by closing the case or by administering a recordable simple / oral warning according to the seriousness of the lapse without any reference to the Director General of Works". In the instant case, the Disciplinary Authority is the Government of India, Ministry of Information and Broadcasting. As such, the preliminary inquiry ought to be proceeded by the Chief Engineers. But surprisingly in the instant case, the office memorandum was issued to the Applicant by the Superintending Surveyor of Works II, who was the junior to the

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Chief Engineer. Hence, the whole disciplinary proceedings initiated the against the Applicant is not sustainable before the eye of law and liable to be set aside and quashed.

ANNEXURE – I is the photocopy of relevant portion of CPWD Manual Volume I Section 3 Disciplinary Cases and Departmental proceedings.

4.10) That your Applicant begs to state that the Respondents did not hold any oral inquiry in the matter. Although the Applicant in his reply dated 19-01-2000 against the Office Memorandum dated 29-12-99 requested the Respondents to hold a detail oral enquiry in this matter and he also requested the Respondents to supply preliminary Enquiry Report conducted by the vigilance section of All India Radio, Civil Construction Wing. It may be stated that the Hon'ble Supreme Court of India held in the state of Bombay –Vs- Murul latif Khan, AIR 1966 SC 269, that “the Statutory rules regulating departmental inquiry make it obligatory on the Inquiry Officer to hold oral inquiry if the charged Officer so demands, then, there should be no doubt that the failure of the inquiry officer to hold such oral inquiry would introduce a serious infirmity in the inquiry and would amount to denial of a reasonable opportunity to the officer”. As such the Respondents have totally violated the natural justice and administrative fair play in the case of the Applicant. The Respondents without holding any oral inquiry in to the matter referred this said matter to the Union Public Service Commission vide their letter No.C-14015/1/99-Vig dated 24-03-2004.

4.11) That your Applicant begs to state that being aggrieved by the impugned order dated 27.01.2005, he filed Original Application No. 190 of 2005 before this Hon'ble Tribunal and the Hon'ble Tribunal after hearing both the parties on 20.07.2005, disposed of the said O.A. at the admission stage itself by directing the Applicant to file an Appeal before the competent Appellate Authority.

ANNEXURE – J is the photocopy of the order of the Tribunal dated 20.07.2005 passed in O.A. No. 190 of 2005.

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4.12) That your Applicant begs to state that in pursuance of the order dated 20.07.2005 passed by this Hon'ble Tribunal, the Applicant filed an Appeal under Rule 29 A of CCS (Class, Control & Appeal) ^{of 1965} before the Hon'ble President of India through Respondent No.1 on 30.09.2005 and the said Appeal was forwarded to the Respondent No. 1 by the Hon'ble President's Secretariat on 18.10.2005 for appropriate action.

ANNEXURE - K is the photocopy of the Appeal dated 30.09.2005 submitted by the Applicant before the Hon'ble President of India.

4.13) That your Applicant begs to state that due to non disposal of the Appeal by the Appellate Authority, the Applicant was compelled to file a Miscellaneous Application No. 31 of 2006 in O.A. No. 190 of 2005 under Rule 24 of the Administrative Tribunals Rules 1987 praying for issuance of a direction upon the Respondents to comply with and/or implement the direction contained in the order dated 20.07.2005 passed in O.A. No. 190 of 2005. The Hon'ble Tribunal issued notice to the Respondents in the aforesaid Miscellaneous Application. The Office of the Respondent No.1 vide its letter No. C-14015/1/99/Vig. dated 19.07.2006 stated that no appeal lies against any order made by the President. Hence, findings no other alternative, the Applicant has compelled to file this Original Application before this Hon'ble Tribunal seeking justice in the matter.

ANNEXURE - L is the photocopy of the letter dated 19.07.2006

4.14) That your Applicant begs to state that the disciplinary proceeding was initiated against the Applicant after seven years which is violative to the service jurisprudence and there was no explanation for such delay. In spite of this your applicant fully co-operated with the respondents in the said disciplinary proceeding.

4.15) That your Applicant begs to state that he had informed the Executive Engineer (Civil) Civil Construction Wing, All India Radio, Jaipur at the relevant time about the difficulty he had faced in

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connection with the physical verification of stores at Jaipur and also the non co-operation attitude towards the Applicant by the officers of Jaipur stores of Civil Construction Wing, All India Radio. But the then Executive Engineer did not take any steps in this matter, he simply paid the traveling allowance of the Applicant.

4.16) That your Applicant begs to state that he most humbly obeyed the order of the then Executive Engineer for physical verification of the stores at Civil Construction Wing, All India Radio, Jaipur. The then Executive Engineer did not take interest in this matter or he also did not issue any show cause notice to the Applicant, although the whole matter was highlighted by the Applicant to the then Executive Engineer, i.e., Sri R.M.R. Parti, where onus lies on the part of the Executive Engineer for taking further necessary action.

4.17) That your Applicant begs to state that he has already completed ~~one~~ and half years as regular Executive Engineer and he is in the verge of promotion to the post of Superintending Engineer. The imposition of Censure by the Respondents to the Applicant will prejudice the future career prospect of the Applicant.

4.18) That your Applicant submits that in spite of crystal clear of lapse and negligence committed by the then Executive Engineer Shri R. M. R. Parti, the Applicant was not able to conduct the physical verification of the stores of Jaipur. Surprisingly the then Executive Engineer, Shri R. M. R. Patri was exonerated by the Respondent No.3 the reason best known to them.

4.19) That your Applicant submits that he has got reason to believe that the Respondents are resorting the colorable exercise of power.

4.20) That your Applicant submits that the action of the Respondents is in violation of the fundamental rights guaranteed under the constitution of India and also in violation of principles of natural justice.

4.21) That your Applicant submits that the action of the Respondents is arbitrary, whimsical and also the Respondents have

Nil Ch - 1

acted with a malafide intention only to deprive the Applicant from his legitimate right.

4.22) That your Applicant submits that the Respondents have deliberately done serious injustice and put him into great mental trouble.

4.23) That in the facts and circumstances stated above, it is fit case for the Hon'ble Tribunal to interfere with to protect the rights and interests of the Applicant by passing an appropriate Interim Order staying the operation of the impugned Office Order No. C-14015/1/99-Vig. dated 27.01.2005 issued by the Respondent No.1.

4.24) That this application is filed bonafide and for the interest of justice.

5) GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1) For that, due to the above reasons narrated in detailed the action of the Respondents is in *prima facie* illegal, malafide, arbitrary and without jurisdiction. Hence, impugned Office Order C-14015/1/99-Vig. dated 27.01.2005 issued by the Respondent No.1 may be set aside and quashed.

5.2) For that, the Respondent have casually initiated the Departmental proceedings against the Applicant by violating all the official procedure to be maintained as per the CPWD Manual Volume I. Hence impugned Office Order No. C-14015/1/99-Vig. dated 27.01.2005 issued by the Respondent No. 1 may be set aside and quashed.

5.3) For that the Respondents failed to hold any oral inquiry into this matter, inspite of the Applicant's request for holding detail oral inquiry. Therefore, the whole proceedings vitiated. Hence impugned Office Order No. C-14015/1/99-Vig. dated 27.01.2005 issued by the Respondent No. 1 may be set aside and quashed.

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5.4) For that, due to non cooperation of the then Store Incharge of Jaipur Division and also for lack of prompt & strict action by the then Executive Engineer to the then Store Incharge of Jaipur, the applicant could not take-up the verification of store inspite of his best efforts. Therefore, the applicant cannot be held responsible or blamed for the lapse committed by his higher official and Store Incharge of Jaipur. Hence impugned Office Order No. C-14015/1/99-Vig. dated 27.01.2005 issued by the Respondent No. 1 may be set aside and quashed.

5.5) For that, due to unknown reason the Respondents particularly the Respondent No.3 has taken two total different views in the same case by imposing penalties to the Applicant. Hence the impugned Office Order C-14015/1/99-Vig. dated 27.01.2005 issued by the Respondent No.1 may be set aside and quashed.

5.6) For that, the Applicant has reported the whole matter to then Executive Engineer, Jaipur Division about the reason of his inability to conduct physical verification but due to unknown reasons the then Executive Engineer did not reported the matter to higher authority nor he did take any initiative for conducting smooth physical verification of the stores by the Applicant. Hence impugned Office Order No. C-14015/1/99-Vig. dated 27.01.2005 issued by the Respondent No. 1 may be set aside and quashed.

5.7) For that, the Respondent No.3 in their finding and observation has stated in a casual manner that the applicant could have submit incomplete report to the authority concern. However, in service jurisprudence it is not allowed to submit incomplete report to the authority concerned. Therefore, the observations made by the Respondent No.3 is non application of their mind. Hence impugned Office Order No. C-14015/1/99-Vig. dated 27.01.2005 issued by the Respondent No. 1 may be set aside and quashed.

5.8) For that, the Respondents have violated the Articles 14,16 & 21 of the Constitution of India.

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5.9) For that, the Respondents have totally violated the principles of Natural Justice in this case.

5.10) For that, the action of the respondents is arbitrary, malafide and discriminatory with an ill motive.

5.11) For that, in any view of the matter the action of the respondents are not sustainable in the eye of law as well as facts.

The Applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

6. DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious and remedy available to the Applicant except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

That the Applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority, nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that Your Lordship may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the applicant may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relieves.

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8.1) That the Hon'ble Tribunal may be pleased to direct the Respondents to set aside and quash the impugned Office Order No.C-13013/43/92-CW-i/Vol.III/580 Dated 17-02-2005 issued by the Respondent No.2

8.2) To Pass any other relief or relieves to which the applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

8.3) To pay the cost of the application.

9) INTERIM ORDER PRAYED FOR:

9.1) The Applicant prays before this Hon'ble Tribunal seeking an interim order by this Hon'ble Tribunal for stay the impugned Office Order No.C-13013/43/92-CW-i/Vol.III/580 Dated 17-02-2005 issued by the Respondent No.2.

10) Application is filed through Advocate.

11) Particulars of L.P.O.:

I.P.O. No.	:	26 G 326017
Date of Issue	:	2-8-2006
Issued from	:	G. P. O. Guwahati
Payable at	:	Guwahati.

12) LIST OF ENCLOSURES:

As stated above.

Verification...

Arindra Chakraborty

VERIFICATION

I, Shri Anil Chandra Mathur, Surveyor of Works (Civil), Office of the Superintending Engineer, Civil Construction Wing, All India Radio, Ganeshguri Chariali, Dr.R.Kakati Building, 1st Floor, Post Office-Dispur, Guwahati-6 do hereby solemnly verify that the statements made in paragraph Nos. 4.1, 4.2, 4.6, 4.7, 4.8, 4.10, 4.14 to 4.17..... are true to my knowledge, those made in paragraph Nos. 4.3, 4.4, 4.5, 4.9, 4.11, 4.12, 4.13..... are being matters of record are true to my information derived therefrom which I believe to be true and those made in paragraph 5 Are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 13th day of September, 2006
at Guwahati.

Anil Chandra Mathur

CONFIDENTIAL

GOVERNMENT OF INDIA
DIRECTORATE GENERAL : ALL INDIA RADIO
CIVIL CONSTRUCTION WING

New Delhi 110 001.

Dated:

No. C-13013/43/92-CW I/

MEMORANDUM

It has come to the notice of this Directorate that Sh. A.C. Mathur SW(C) CCW, AIR, New Delhi, while working as AE(C), CCW, AIR, Jaipur had physically verified CCW AIR Stores, Jaipur during the period when Sh. T.M. Meena, JE(C) was incharge of CCW AIR Stores from August, 83 to August, 87. Whereas the physical verification was carried out by Sh. A.C. Mathur but the report in this regard was never submitted to competent authority thus defeating the very purpose of verification.

Sh. A.C. Mathur SW(C) is therefore found responsible for dereliction of duties and is hereby directed to submit his explanation for the lapses on his part mentioned above by 14.8.94 failing which it will be presumed that he has no reasons to offer and further appropriate action under conduct rules shall be initiated against him.

Summer 197

(S.K. MOHINDRA)
Superintending Surveyor of Works II.

Sh. A.C. Mathur,
Surveyor of Works,
Civil Construction Wing,
All India Radio,
6th floor, Khan Market,
Lok Nayak Bhawan,
New Delhi.

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ADVOCATE

Dated - 1.8.94.

CONFIDENTIAL

ANNEXURE-- B

No: 1(1)/91/Misc/Sw. III/435
The Directorate General,
Civil Construction Wing,
All India Radio,
2nd Floor,
PTI Building,
New Delhi-110 001.

Ref. : 1- Your office Memorandum No. C-13013/43/92-CI-I/409
dated 15.7.

With your above referred memorandum I will like to submit the following facts about the incidence (as far as I remember) (since I am enquired in this regard after nearly seven year)

1) Yes, I was nominated for the task of physical verification of stores at CCW, AIR, Jaipur but I was not AE(C), CCW, AIR, Jaipur.

2) Secondly, I proceeded for the physical verification of stores at CCW, AIR, Jaipur but I could not conclude the task i.e. I could not physically verify the CCW/AIR store at Jaipur because:

i) The cement & steel was not stacked as per norms specified for this i.e. the different dia steel was inter mixed & was lying in haphazard manner & scattered at 2-3 different places. Somewhere it was buried under loose soil also & was not even visible. The room in which cement was lying was over filled by placing cement bags in haphazard manner & it was not possible to even enter the room, what to think of counting.

ii) Further AE(C) incharge of the store did neither extended his help by fixing any agency for restacking of the cement & steel & providing mechanical transportation for taking the steel to nearest weighing bridge after by loading getting it weighed & returning back to the store & unloading in stacks nor assured me for making necessary arrangement for the same.

I will like to intimate the recent similar incidence at CCW, AIR, Jodhpur during my tenure at CCW, AIR Jodhpur. Whereas I was the incharge of store at CCW, AIR, Jodhpur. I fixed some agency for physical verification of store, immediately so as to help the officer concerned, who was nominated for the physical verification.

3) The whole matter was reported to then EE(C), CCW, AIR,

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Jodhpur. He also did not show any kind of dis-satisfaction, did not emphasized for further any action in the matter. He made payment for my Travelling Allowance Bill as well.

4) Since the construction works at AIR Suratgarh & A.I.R. Bikaner was suffering badly at CCW, AIR Suratgarh & Bikaner, we returned back to my H.Q.

Since After this whole incidence, no reminders or memorandums etc. were issued by the authority to u/s for not doing physical verification & submitting the report. It was understood that it is not necessitated at this stage.

Hence, I will request your good office to remove the charge "Found responsible for dereliction of duties".

Submitted for your further necessary action please.

Thanking You

Yours faithfully,

Anil C. M.
(A.C. MATHUR) 1/8/94
Surveyor of Works (C)-III

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ADVOCATE

No: C-14015/1/99-Vig.
Government of India
Ministry of Information & Broadcasting

ANNEXURE - C

New Delhi, dated 29.12.99.

MEMORANDUM

Shri A.C. Mathur, Executive Engineer (Civil), Civil Construction Wing, All India Radio, Jaipur is hereby informed that it is proposed to take action against him under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above is enclosed.

2. Shri A.C. Mathur is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri A.C. Mathur fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri A.C. Mathur ex parte.

4. The receipt of this Memorandum should be acknowledged by Shri A.C. Mathur.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

(P.K. VARMA)

Under Secretary to the Govt. of India

Ph: (०११२४५४५५५)

(P.K. VARMA)

अवश्य सचिव (प्रतर्कता)

Under Secretary (Vig.)

✓ Shri A.C. Mathur,
Executive Engineer (Civil), सूचना एवं प्रसारण विभाग, DG: AIR,
Civil Construction Wing, Min. of Information & Broadcasting
All India Radio, Jaipur, भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

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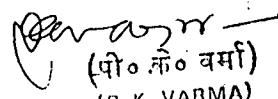
ADVOCATE

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR
AGAINST SHRI A.C. MATHUR, EXECUTIVE ENGINEER (C),
CIVIL CONSTRUCTION WING, ALL INDIA RADIO, NEW DELHI.

That the said Shri A.C.Mathur, while functioning as Assistant Engineer (C), CCW, AIR, Suratgarh was given the task of verification of stores at Jaipur during the period when Shri T.M. Meena, JE(C) was in-charge of the stores from August, 1983 to August, 1987. As evident from his own submissions made by Shri Mathur, vide his letter dated 1.8.94, in response to the CCW, AIR's Memorandum No.C-13013/43/92-CW.I dated 15.7.94, he visited the CCW, AIR stores, Jaipur but never submitted the report on the outcome of the physical verification, to his superiors. The above act of Shri Mathur is in violation of CPWD Manual vol.II 1983 section 48 para 6 & 7, which states that the result of all vérifications of stores should be reported to the competent authority for orders, also, as soon as a discrepancy is noticed, the book balance must be set right by the verifying officer, treating surplus as a receipt and deficit as an issue with suitable remarks.

2. Subsequently, the Junior Engineer (C) stores, Shri T.M.Meena was transferred and Shri M.L.Dagla took over the charge from him on 23.8.87. The handing over/taking over of the charge between them had shown a shortage of 5.12 MT of steel (tor and mild steel) and 20.10 MT (later verified as 10.00 MT) of cement which was again manipulated by Shri Dagla for further loss of 6.36 MT of steel and 10 MT of cement. Had Shri Mathur conducted the verification of stores on time and reported the discrepancies to the notice of the competent authority, further loss to the Govt. could have been avoided and also suitable action could have been taken against the officers concerned at that time itself.

3. By his above acts, Shri A.C. Mathur exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. servant and thus contravened Rule 3(1) (ii) and 3(1) (iii) of Central Civil Services (Conduct) Rules, 1964.


(पी.के.वर्मा)
(P.K. VARMA)
अवर सचिव (सतर्कता)
Joint Secretary (Vig.)
राष्ट्रीय प्रायोगिक संचालन
राष्ट्रीय संचार & Broadcasting
शास्त्र सरलार, नई दिल्ली
Govt. of India, New Delhi

ATTESTED


ADVOCATE

ANNEXURE - 15

Confidential
By Hand

PRASAR BHARTI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL: ALL INDIA RADIO
CIVIL CONSTRUCTION WING

2nd floor, PTI Bldg.
New Delhi-110001.

No C-13013/43/92-CW-I/9

7 January, 2000
To

Subject :- Disciplinary proceedings against Sh. A.C.Mathur , EE (C),

Enclosed please find herewith Ministry of I & B Memorandum no. C-14015/1/99-

Vig. Dt. 29.12.99, on the subject cited above, in original.

2. Receipt of the above memorandum may please be acknowledged in triplicate and send to this office immediately.

[Signature]
(K. VELUKUTTY)
Superintending Surveyor of Works-II

✓ **Shri A C Mathur**
Surveyor Of Works
CCW AIR
6th Floor, Lok Nayak Bhawan
New Delhi

ATTESTED

[Signature]
ADVOCATE

ANNEXURE-E

BY HAND
CONFIDENTIAL

No: ACM/CS/1

Dated: 19.1.2000

To

Shri P.K. Verma,
Under Secretary (Vig.),
Ministry of I & B,
Shastry Bhawan,
New Delhi

Sub:- Disciplinary proceedings against
Shri A.C. Mathur, EE(C)

Ref:- (1) No. C-13013/43/92-CW-I/9 7/10 Jan. 2000
of CCW : AIR

(2) Ministry of I & B Memorandum No. C-14015/1/99-
Vig. dated 29.12.99

Sir,

I have the honour to submit the reply to aforesaid
chargesheet as under:-

- (1). I deny the charges for the reasons mentioned below.
- (2). That I was issued a memorandum dated 15.7.94 in the same matter (copy annexed). I replied the same vide letter dated 1.8.94 (copy annexed) to the satisfaction of CCW, AIR, New Delhi, (since nothing has been heard in the matter since then). The contents of the same may be read as a part of this reply. It has been specifically and clearly mentioned that physical verification could not be conducted for the reasons mentioned therein, though I visited store twice. But, this part has lost the attention of your honour.
- (3). Even though I visited twice the store, but at times concerned persons failed to intimate the exact date of physical verification, which have to be conducted simultaneously to handing over taking over of charge between Shri M.L. Dagle and Shri T.M. Meena (as per order No. EE(C)/Jdp/Store/87-88/324 dated 10.7.87)
- (4). That if there was any shortage revealed during physical verification, the concerned stock holder could be responsible, only, even if I was the stock verifier. In the instant case the shortage was revealed by Shri M.L. Dagle, while taking over the charge.

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ADVOCATE

contd....?/-

(5). That the subject matter relates to an incident which took place in 1987, i.e., about 13 long years have elapsed. It is difficult to remember the facts of the case at this belated stage. The delay is also unexplained and no purpose would be served at this stage.

(6). That the matter is a complicated one. I had gone two times for physical verification of store and contacted concerned persons, incharge of store. But, no one cooperated. After submission of tour report to the then EE(C), my T.A. Bills were passed. Since thereof nothing was heard from EE(C). Then I remained under impression that the matter is closed and physical verification is not required. This fact could be made evident in an oral and detailed enquiry by examining the witness and relevant records. If your honour is inclined to proceed in the matter, I request that a detailed oral enquiry may be conducted.

(7). With reference to C.P.W.D. Manual Vol-I page 142 Para (4) (5) & (6) comments of superior officers of CCW, AIR may kindly be sought in the matter and sent to undersigned for my further necessary action.

(8). That I may be supplied with a copy of preliminary inquiry report conducted by Vigilance Section of AIR and CCW, AIR, on which basis charge sheet has been framed, alongwith comments of all concerned officers, e.g., CE(Civil)-I, SE(Civil), EE(Civil), AE(Civil), JE(Civil), SSW-II, SW(Vig.) etc.

(9). It may also, please, be borne in mind before deciding next course of action that I would have neither been benefited nor put to any loss, if I had conducted physical verification (which could not be conducted due to explanation elaborated above) as per point raised at point (4).

contd....3/-

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- 3 -

It is, therefore, requested that the chargesheet
may be cancelled/dropped in the interest of justice or in the
alternative an oral inquiry may be conducted.

Thanking you,

Enclosure : as above

Yours faithfully,

A.C. Mathur
(A.C. MATHUR)
SURVEYOR OF WORKS (C)-II
19/1/2000

Dated: The 19th January, 2000

ATTESTED
B. Bhatia
ADVOCATE

ANNEXURE - F 29

CONFIDENTIALNo. F.3/9/04-S-I

No.

TELECOM
Telex : 031-62677
Fax : 011-3385345

संघ लोक सेवा आयोग
धौलपुर हाउस, शाहजहां रोड
UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOG)
DHOLPUR HOUSE, SHAHJAHAN ROAD

रोका में
Toनई दिल्ली-110011
New Delhi-110011

The Secretary to the Govt. of India,
 Ministry of Information and Broadcasting,
 'A' Wing, Shastri Bhavan,
New Delhi.

[Attn: Shri S.K. Arora, Under Secretary]

Sub: Disciplinary proceedings against S/Shri R.M.R. Parti, SW(C), R.V. Singh,
 SW(C) and A.C. Mathur, EE(C), CCW, AIR.

Sir,

I am directed to refer to your letter No.C-14015/1/99-Vig. dated 24.3.2004 on the above subject and to convey the advice of the Union Public Service Commission as follows:

2. The Commission note that vide Charge Memorandum No.C-14015/1/99-Vig. dated 29.12.1999 S/Shri R.M.R. Parti, SW(C) CCW(AIR), R.V. Singh, SW(C) CCW(AIR) and A.C. Mathur, EE(C) CCW, AIR were called upon under Rule 16 of the CCS (CCA) Rules, 1965 to explain the following imputations of misconduct and misbehaviour:

I. Shri R.M.R. Parti

That the said Shri R.M.R. Parti, while functioning as Executive Engineer (C), Jodhpur division, was also holding the additional charge of Jaipur Division during the period 1987-88. During that period, a shortage of 5.12 MT of steel (tor and mild steel rods) and 20,10 MT of cement (later on verified as 10,00 M Tonnes) was noticed in the CCW stores, Jaipur, when Shri M.L. Dagla, the then Junior Engineer (C), Jaipur, took over charge of CCW stores, Jaipur from his predecessor Engineer(C) Shri T.M. Meena, on 23.8.87. But Shri Parti

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ADVOCATE

Dated 07.10.2006.
UPSC

take any action to find out the cause of shortage or even to report the same to his higher authorities. This facilitated in manipulation of materials accounts by Shri Dagla, by maintaining two different material at site A/C books, one showing the actual quantity handed over by Shri Meena and other showing the book quantities.

As per CPWD Manual Vol.II 1983 Section 48 para 1, 6 and 7 the verification of stores under the divisions has to be conducted once in a year and the discrepancies have to be brought to the notice of the competent authorities for necessary action. Shri Parti not only failed in his duties to follow the above guidelines but also, as per CPWD code para 44, he failed to check the correctness in all respects of the original records of stores under his division..

By his above acts, Shri R.M.R. Parti exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. Servant and thus contravened Rule 3(1) (ii) and 3(1) (iii) of Central Civil Services (Conduct) Rules, 1964.

II. Shri R.V. Singh

That the said Shri R.V. Singh, while working as Assistant Engineer(C), CCW, AIR, under Jaipur division, was given the task of verification of stores at Jaipur during the period when Shri T.M. Meena, JE(C) was in charge of the stores from August, 1983 to August, 1987. It was found that Shri R.V. Singh never submitted the report on physical verification of stores to his superiors in respect of the outcome of verifications. Hence, Shri R.V. Singh was directed to explain the reasons for not submitting the verification report; vide CCW, AIR's Memorandum No.C-13013/43/92-CW.I/410 dated 15.7.94, wherein he was allowed time to make his submissions by 14.8.94. In response, Shri Singh sought time upto 30.9.94 to submit his explanation after inspecting the records. Shri Singh was given further opportunities to submit his explanation, vide CCW, AIR's Memorandums dated 28.9.94, 24.10.94 and 3.12.95. However, he did not submit any explanation in this regard. As such, it is evident that he violated Section 48, para 6 & 7 of CPWD Manual Vol.II, which states that the result of all verifications of stores should be reported to the competent authority for orders, also, as soon as a discrepancy is noticed, the book balance must be set right by the verifying officer, treating surplus as a receipt and deficit as an issue with suitable remarks.

Subsequently, the Junior Engineer (C) stores, Shri T.M. Meena was transferred and Shri M.L. Dagla took over the charge from him on 23.8.87. The handing over/taking over of charge between them showed a shortage of 5.12 MT of steel (tor and mild steel) and 20.10 MT of cement (later verified as 10 MT), which was again manipulated by Shri Dagla for further loss of 6.36 MT of

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Bhattacharya
ADVOCATE

10 MT of cement. Had Shri R.V. Singh conducted the verification of stores on time and reported the discrepancies to the competent authority, further loss to the Govt. could have been avoided and also suitable action could have been taken against the Officers concerned at that time itself.

By his above acts, Shri R.V. Singh, exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. servant and thus contravened Rule 3(1) (ii) and 3(1) (iii) of Central Civil Services (Conduct) Rules, 1964.

III. Shri A.C. Mathur

That the said Shri A.C. Mathur, while functioning as Assistant Engineer(C), CCW, AIR, Suratgarh was given the task of verification of stores at Jaipur during the period when Shri T.M. Meena, JE(C) was in-charge of the stores from August, 1983 to August, 1987. As evident from his own submissions made by Shri Mathur, vide his letter dated 1.8.94, in response to the CCW, AIR's Memorandum No. C-13013/43/92-CW.I dated 15.7.94, he visited the CCW, AIR stores, Jaipur but never submitted the report on the outcome of the physical verification, to his superiors. The above act of Shri Mathur is in violation of CPWD Manual Vol.II 1983 section 48 para 6 & 7, which states that the result of all verifications of stores should be reported to the competent authority for orders, also, as soon as a discrepancy is noticed, the book balance must be set right by the verifying officer, treating surplus as a receipt and deficit as an issue with suitable remarks.

Subsequently, the Junior Engineer (C) stores, Shri T.M. Meena was transferred and Shri M.L. Dagla took over the charge from him on 23.8.87. The handing over/taking over of the charge between them had shown a shortage of 5.12 MT of steel (tor and mild steel) and 20.10 MT (later verified as 10 MT) of cement which was again manipulated by Shri Dagla for further loss of 6.36 MT of steel and 10 MT of cement. Had Shri Mathur conducted the verification of stores on time and reported the discrepancies to the competent authority, further loss to the Govt. could have been avoided and also suitable action could have been taken against the officers concerned at that time itself.

By his above acts, Shri A.C. Mathur exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. Servant and thus contravened Rule 3(1) (ii) and 3(1) (iii) of Central Civil Services (Conduct) Rules, 1964.

3. The case has been carefully examined by the Commission keeping in view the evidence on record and the points raised by the three CO's in their defence and their observations in case of each CO are discussed as follows:-

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ADVOCATE

R. Parti

The Commission observe that vide letter dated 17.12.92 the SE brought to the notice of CE(C), CCW (AIR), the matter regarding non-submission of full charge of store at Jaipur by Shri M.L. Dagla, JE(C) and informed that as reported by EE(C) the Government suffered a loss of Rs.3,56,347/- on account of shortage of steel/cement in the store. The SE, therefore, requested the CE to have the matter investigated.

As per the investigation report of the Vigilance Unit of CCW(AIR) the three COs in question were found responsible for non-maintenance of stores and alleged loss to the Govt. 62 ✓ 22

The Commission observe that defence plea of CO No.1 (Shri R.M.R. Parti) is that -

no shortage was reflected in the stock accounts submitted by AE for the months of August & September, 87.

As per para 7.2.35 (9) of the CPWD Code, physical verification of stores was to be made once in a year on the orders of the HOD (Supdt. Engr.) but no such orders were issued by the Competent Authority during his tenure. He alongwith Asstt. Accts. Officer scrutinized the stock account returns for the months of August and September, 87 submitted by AE(C) stores and forwarded the same to PAO. Had any shortage in stores been reported to him in the store accounts statements, it would have been brought to the notice of the Competent Authority but no shortage in store was reflected in the store accounts.

The Commission observe that in the handing over/ taking over report dated 23.8.87 duly signed by both the JEs no shortage of steel/cement or any other store item was indicated. In the said handing over taking over report only the names of different store items and the quantity available was mentioned. The Commission further observe that discrepancy in store and non-submission of full charge of store by Shri Dagla on his promotion as AE/Suratgarh was pointed out by EE(C) to SE(C) vide letter dated 3.12.1992 which is not connected with handing over/taking charge between Shri T.M. Meena and Shri M.L. Dagla on 23.8.87. Hence there is no question of his (COs) taking action to find out the cause of shortage or reporting the matter to higher authorities.

Further it has been alleged that as per para 1,6 & 7 of Section 48 of the CPWD Manual - Vol-II, verification of store under the division had to be

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ADVOCATE

once in a year and discrepancies, if any, were to be brought to the Competent Authority, but the CO failed to follow these provisions of WD Manual. He also failed to check correctness of the original store records under his division as required under para 44 of CPWD Code.

The plea of CO in this regard is that as per para 7.2.35(9) of CPWD Code, such verification was to be done on the orders of the competent authority i.e. the SE but no such orders were issued. The department has also admitted that no orders were issued by the Superintending Engineer in charge of the division for verification of stores during incumbency of CO as EE(C), Jaipur.

The Commission observe that in the light of para 1 of Section 48 of CPWD Manual Vol. II, the EE was required to have his divisional stores checked once in a year and the CO too vide his letters dated 4.7.87 and 10.7.87 directed the then AE(C) (Shri A.C. Mathur) to carry out physical verification of stores. The Commission note that copies of the above letters and the T.A. bills of Shri Mathur for journeys to Jaipur in connection with verification of store are not available on record. However, from the defence of Shri A.C. Mathur, AE, it appears that the CO deputed him for verification of stores as also he passed his TA bills. The Commission further observe that though Shri Mathur visited the stores twice, no verification could be done as neither the material was stacked properly nor any assistance was provided by the Stores Incharge for restacking the material and taking the same to the weigh bridge. Shri Mathur claimed that this was brought to the notice of the EE(C). The Commission observe that since the CO was aware that no verification could be done, there was no question of his obtaining the verification report from Shri Mathur and bringing the discrepancies/shortages in store to the notice of the competent authority.

In view of the above, the Commission have held that the charge is not clearly established against the CO who was holding only the additional charge of Jaipur Division at that time.

4. Shri R.V. Singh

The Commission note that this CO is alleged to have violated provisions of paras 6 & 7 of Section 48 of CPWD Manual Volume II because while working as AE(C) under Jaipur Sub Division, he was deputed for verification of stores at Jaipur, but he did not submit the report of physical verification of stores despite memo dated 15.7.94 allowing him to do so till 14.8.94. Further it has been stated that had he conducted the verification of stores and reported the discrepancies to the competent authority, the shortage in stores could have been avoided.

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B. Bhatia
ADVOCATE

The CO has stated that:

No written orders of SE's directing him to undertake physical verification of stores were shown to him. However, as far as he remembered verification of stores was undertaken by him on the oral instructions of Shri T.K. Das, the then EE(C)/Jaipur. While verification of stores was in process, the cartage agents engaged for carrying steel from store to weigh bridge expired leaving the verification incomplete. This was brought to the notice of EE(C) but no alternate arrangements were made. Hence, there was no action on his part.

He was not aware of any shortage in steel/cement during handing over/taking over charge by Shri T.M. Meena and Shri M.L. Dagla in August, 1987 as at that time he was working under CCW(AIR), Bareilly Division.

The Commission observe that as claimed by the CO and accepted by DA no orders were issued by the SE for verification of stores. However, following verbal directions of EE, the CO started the work of verification of stores but could not complete the same because of passing away of the cartage contractor. Since no alternate arrangements were made thereafter, the work of verification of stores could not be completed.

The Commission observe that the basic charge against the CO is that he did not carry out physical verification of stores thereby facilitating manipulation in stores material. The CO has also admitted that for the reasons explained by him, verification of stores could not be carried out. The Commission note that the reasons given by the CO for not carrying out verification of stores (such as non-cooperation by the store incharge, not stacking the material in proper manner or passing away of the Cartage Contractor) could have delayed the process of verification but it cannot be accepted as an ultimate cause for non-verification.

The Commission further observe that the CO could have atleast submitted a part report of verification of cement where only the cement bags were required to be counted.

As regards alleged financial loss due to non-verification of stores/shortage of steel/cement, the Commission observe that there is no direct linkage between verification of stores and alleged financial loss as the handing over/taking over report between Shri Meena and Dagla (JEs) did not mention any shortage in stores. The closing balance of stores as on August, 87 &

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ADVOCATE

September, 87 also did not indicate any shortfall. Since the CO left in July, 87, and the handing over report did not show any shortage, he (the CO) cannot be held responsible for shortage.

In view of above the Commission have held the charge as proved to the extent that the CO failed to submit even a part report on verification of cement bags.

5. Shri A.C. Mathur

This CO has also been charged with non-submission of report of physical verification of stores/Jaipur. The CO has contended that he proceeded for verification of CCW(AIR) Store/Jaipur but could not verify the stock as the material was not properly stacked nor any assistance was extended by the AE incharge of the stores for re-stacking the material or carrying it to weigh bridge. The CO has stated that this was reported to EE(C) but nothing was heard from him. Hence he remained under the impression that the matter was closed and no further action regarding verification of stores by him was required. The CO has further stated that these facts were open for verification by holding an oral inquiry.

XXX
The Commission observe that the CO visited the CCW(AIR) Store/Jaipur twice – from 4.8.87 to 7.8.87 and on 23.8.87 – for the purpose of verification of stores, but as per his own statement could not conduct the verification due to non-cooperation of the Stores Incharge and non-stacking of the material in proper and systematic manner. This according to the CO was reported to the EE(C) and the Prosecution has not denied this. There is also no evidence to show that any directions were issued by the then EE(C) to the CO or the Stores Incharge subsequent to CO's reporting the matter to EE(C).

Further the Commission observe that since no shortage of steel and cement was shown in the store closing reports of August, 87 & September, 87 neither any shortage was recorded in the handing/taking over report dated 23.8.87 signed by both the JEs he (the CO) could not be held responsible for alleged shortfall in steel & cement. However, the Commission have held the charge as proved to the extent that the CO did not submit even an incomplete report on verification of stores.

6. In the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that ends of justice would be met in this case if - (a) the proceedings against Shri R.M.R. Parti, EE(C) are dropped and he is exonerated of the charge, and (b) the penalty

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ADVOCATE

of "Censure" is imposed on Shri R.V. Singh, EE(C) and Shri A.C. Mathur, EE(C). They advise accordingly.

7. A copy of the orders passed by the Ministry in this regard may please be endorsed for Commission's perusal and record.

8. The case records as per the list attached are returned herewith receipt of which may please be acknowledged.

Yours faithfully,


(SAROJ)

UNDER SECRETARY
UNION PUBLIC SERVICE COMMISSION
TEL: 23070393

Encl. 1. Case records as per list attached.
2. Two spare copies of this letter.

ATTESTED


ADVOCATE

No.- C-14015/1/99-Vig.
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
'A' Wing Shastri Bhawan, New Delhi - 110 001

Date: 27.1.2005.

ORDER

WHEREAS disciplinary proceedings under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, were initiated against Shri A.C. Mathur, the then Assistant Engineer, Civil Construction Wing, All India Radio, Suratgarh, vide this Ministry Office Memorandum No.C-14015/1/99-Vig. dated 29.12.99, on the following Statement of imputations of Misconduct or Misbehaviour:-

**STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR
AGAINST SHRI A.C.MATHUR, EE(C) CCW, AIR, NEW DELHI.**

That the said Shri A.C.Mathur, while functioning as Assistant Engineer (C), CCW, AIR, Suratgarh was given the task of verification of stores at Jaipur during the period when Shri T.M.Meena, JE (C) was in charge of the stores from August, 1983 to August 1987. As evident from his own submission made by Shri Mathur, vide his letter dated 1-8-94, in response to the CCW, AIR's Memorandum No.C-13013/43/92-CW-I dated 15-7-94, he visited the CCW, AIR stores, Jaipur but never submitted the report on the outcome of the physical verification to his superiors. The above act of Shri Mathur is in violation of CPWD Manual vol.II 1983 section 48 para 6 & 7, which states that the result of all verifications of stores should be reported to the competent authority for orders, also, as soon as a discrepancy is noticed the book balance must be set right by the verifying officer, treating surplus as a receipt and deficit as an issue with suitable remarks.

Subsequently, the Junior Engineer (C), stores, Shri T.M. Meena was transferred and Shri M.L. Dagla took over the charge from him on 23-8-87. The handing over/ taking over of the charge between them had shown a shortage of 5.12 MT of steel (tor and mild steel) and 20.10 MT (later verified as 10.00 MT) of cement which was again manipulated by Shri Dagla for further loss of 6.36 MT of steel and 10 MT of cement. Had Shri Mathur conducted the verification of stores on time and reported the discrepancies to the notice of the competent authority, further loss to the Government could have been avoided and also suitable action could have been taken against the officers concerned at that time itself.

By his above acts, Shri A.C. Mathur exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. Servant and thus contravened Rule 3 (1) (ii) and 3 (1) (iii) of Central Civil Services (Conduct) Rules, 1964.

WHEREAS Shri A.C.Mathur denied the allegations and submitted his written statement of defence dated 19-1-2000.

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ADVOCATE

WHEREAS the said written statement of defence of Shri Mathur was duly considered by the disciplinary authority. The comments of the disciplinary authority on the said written statement of defence of Shri Mathur, are as under:

COMMENTS ON THE REPRESENTATION OF SHRI A.C.MATHUR

Though he visited Jaipur twice for this purpose, he never submitted verification report to the EE ©. If the stock holders at Jaipur had not cooperated with Shri Mathur (as claimed by him) for verification of stores, he could have reported the same to his superiors. Shri Mathur had also claimed TA for his visits to Jaipur for store verification, duly got approved by the EE (C), without submitting the verification report. Had Shri Mathur conducted the verification of stores in time and submitted the report to the competent authority further loss of stores could have been avoided.

WHEREAS the Disciplinary Authority after carefully examining the written statement of defence submitted by Shri Mathur took a tentative view to impose one of the minor penalties on Shri Mathur for the lapse on his part and the case was referred to Union Public Service Commission, vide this Ministry's letter dated 24.3.2004; for their advice.

WHEREAS vide their letter No.F.3/9/04-S.I dated 07.10.2004 (copy enclosed), the UPSC tendered their advice and, for the reasons mentioned therein, advised this Ministry that the ends of justice would be met in this case, if the penalty of 'Censure' is imposed on Shri A.C.Mathur EE(C). While tendering their advice UPSC has observed that the charged officer visited the CCW (AIR) Store/Jaipur twice – from 4.8.87 to 7.8.87 and on 23.8.87 – for the purpose of verification of stores, but as per his own statement could not conduct the verification due to non-cooperation of the Stores Incharge and non-stacking of the material in proper and systematic manner. This according to the charged officer was reported to the EE(C) and the Prosecution has not denied this. There is also no evidence to show that any directions were issued by the then EE(C) to the charged officer or the Stores Incharge subsequent to charged officer's reporting the matter to EE (C).

Further the Commission observe that since no shortage of steel and cement was shown in the store closing report of August, 87 and September, 87 neither any shortage was recorded in the handing/taking over report dated 23.8.87 signed by both the JEs he (the CO) could not be held responsible for alleged shortfall in steel and cement. However, the Commission have held the charge as proved to the extent that the charged officer did not submit even an incomplete report on verification of stores.

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AND, WHEREAS the Disciplinary Authority has, after taking careful consideration of the relevant records, the advice tendered by UPSC, and keeping in view the facts and circumstances of the case has come to the conclusion that the advice dated 07.10.2004, tendered by UPSC is appropriate and therefore, the ends of justice would be met in this case if the aforesaid advice of UPSC is accepted and the penalty of 'Censure' is imposed on the said Shri A.C. Mathur, EE(C).

NOW, THEREFORE, the Disciplinary Authority orders accordingly.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

S. K. Arora
(S.K. ARORA)

UNDER SECRETARY TO THE GOVT. OF INDIA

PH:2338 45 97.

Shri A.C. Mathur,)
Executive Engineer,)
Civil Construction Wing)
All India Radio)
New Delhi)
(Through DG:AIr)

copy
(along with UPSC's letter
No. No.F.3/9/04-S.I. dated. 07.10.2004)

ATTESTED

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ADVOCATE

ANNEXURE

Confidential

PRASAR BHARTI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL : ALL INDIA RADIO
CIVIL CONSTRUCTION WING
(VIGILANCE UNIT)

5th Floor, Soochna Bhawan
CGO Complex, Lodi Road
New Delhi – 110003

No. C-13013/43/92-CW-I/Vol. III/ 580

dt. 17/2/05

✓ Sh. A.C. Mathur,
Surveyor of Works©,
O/o SE©,
CCW AIR,
Guwahati.

SUB: Disciplinary proceedings against Sh. A.C.Mathur, EE©.

REF: M/o I&B Order no. C-14015/1/99-Vig. Dt. 27.1.2005.

Kindly find enclosed herewith, M/o I&B order no. C-14015/1/99-Vig. Dt. 27.1.2005 meant for you, along with a copy of UPSC's letter no. F.3/9/04-S.I. dt. 7.10.2004. You are requested to send your dated acknowledgement for the above order in triplicate in the enclosed proforma immediately please.

(Signature)
(D.K. JAIN)

Executive Engineer © Vig. –I

Encl: A/A

Copy to:

Sh. Imran Farid, SO(Vig.) DG AIR Akashwani Bhawan, New Delhi w.r.t. their ID Note no. 7/64/94-Vig./224 dt. 11.2.05 for information.

sd-
Executive Engineer © Vig. –I

*Received
on 28/3/05
Ans
28/3/05*

ATTESTED

Bhattacharya
ADVOCATE

38

ACKNOWLEDGEMENT

RECEIVED MINISTRY OF I&B ORDER NO. C-14015/1/99-Vig. Dt. 27.1.2005,
MEANT FOR ME, IN ORIGINAL, ALONG WITH A COPY OF UPSC's LETTER
NO. F.3/9/04-S.I. DT. 7.10.2004.

(A.C.MATHUR)
SURVEYOR OF WORKS©
DT. _____

ACKNOWLEDGEMENT

RECEIVED MINISTRY OF I&B ORDER NO. C-14015/1/99-Vig. Dt. 27.1.2005,
MEANT FOR ME, IN ORIGINAL, ALONG WITH A COPY OF UPSC's LETTER
NO. F.3/9/04-S.I. DT. 7.10.2004.

(A.C.MATHUR)
SURVEYOR OF WORKS©
DT. _____

ACKNOWLEDGEMENT

RECEIVED MINISTRY OF I&B ORDER NO. C-14015/1/99-Vig. Dt. 27.1.2005,
MEANT FOR ME, IN ORIGINAL, ALONG WITH A COPY OF UPSC's LETTER
NO. F.3/9/04-S.I. DT. 7.10.2004.

(A.C.MATHUR)
SURVEYOR OF WORKS©
DT. _____

ATTESTED

Abhijit
ADVOCATE

6. In the case of ministerial or drawing office establishment, the Head Clerk/Accountant/Superintendent/Estimator/Draftsman shall, in addition to a detailed note, enclose a list of files and equipment in their personal custody and a list of returns or data which may be required to be submitted to the higher authorities within the next fortnight.

7. Similarly, the ministerial and drawing office staff shall hand over the lists of pending cases/estimates and undisposed of references to their successors. A census of the Library Books, Measurement Books, Tools and Plant and stationery and office equipment, libraries of Group 'D' etc., shall be taken and made over to the successor.

SECTION 3--DISCIPLINARY CASES & DEPARTMENTAL PROCEEDINGS

Procedure in Disciplinary Cases

1. The procedure to be followed in disciplinary cases has a statutory basis. Any neglect in its due observance is liable to vitiate the whole proceedings and the ultimate orders passed. The officers and staff dealing with this type of cases shall be well conversant with the Instructions laid down in the Vigilance Manual Volumes I and II and the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The procedure is summarised hereunder:—

- (i) Decision to proceed against the officer concerned after a preliminary enquiry.
- (ii) Framing of charge-sheet and issue of charge-sheet.
- (iii) Consideration of the case by the Disciplinary Authority in the light of the defence statement received from the accused officer and passing of final orders or conducting any oral inquiry into the charges by the disciplinary authority itself or by appointing an Inquiry Officer and passing final orders on receipt of the Inquiry Officer's report after examination of the oral and documentary evidence.

Note: Where the disciplinary authority is the Director General (Works) or higher, preliminary enquiry into the cases of administrative nature ought to be proceeded by the Chief Engineers. This shall be required to be performed by them if calling for the explanation of the officer concerned, giving of show cause notice to him/her and examining the same. If in the opinion of Chief Engineer after the preliminary investigation there is substance in the case, warranting initiation of formal disciplinary proceedings for imposition of any of the statutory penalties, a self-contained report supported by relevant documents together with the explanation of the Govt. servant concerned are required to be sent to the Director General (Works) for consideration. Where, however, the preliminary investigation does not in the opinion of the CE justify imposition of any of the statutory penalties, he may finalise the case himself by closing the case or by administering a recordable simple/oral warning according to the seriousness of the lapse without any reference to the Director General of Works.

Complaints

2. Complaints received against Govt. servants are entered in a Complaint Register in Form CVC I. Only those complaints in which there is an allegation of corruption or improper motive or a prima facie indication of an offence with a vigilance angle are entered in this register. Information gathered from Audit reports, returns, inspection notes, news-papers, proceedings of Parliament etc. which has a vigilance angle also come under the term 'Complaint' and entered in the register for further action.

Anonymous and Pseudonymous complaints

3. No action shall be taken on anonymous complaints against Govt. servants. Pseudonymous Complaints against Government servants are also treated similarly. However, in case of doubt, the pseudonymous character of a complaint is verified by enquiry from the signatory of the complaint whether it has actually been sent by him. If he cannot be contacted at the address given in the complaint or if no reply is received from him within a reasonable time it may be presumed that the complaint is pseudonymous and may be ignored.

Preliminary enquiry

4. On receipt of a complaint, a preliminary inquiry is conducted immediately. At the preliminary inquiry all available evidence and relevant documents are collected and oral evidence of witness, if any, is recorded in writing and got signed by them, if possible, in the presence of the officer complained against. The preliminary inquiry report is examined by the disciplinary authority in order to decide whether a prima facie case exists and whether departmental disciplinary action may be taken or the case be referred to the Central Bureau of Investigation for further investigation.

Complaints against Gazetted Officers are made through the Ministry to the Central Vigilance Commission alongwith the finding of the preliminary enquiry for advice and opinion with regard to the action to be taken.

ATTESTED

Sharma

ADVOCATE

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH**Original Application No. 190 of 2005.****Date of Order: This the 20th day of July, 2005.****HON'BLE MR JUSTICE G. SIVARAJAN, VICE-CHAIRMAN****HON'BLE MR.K.V. PRAHLADAN, ADMINISTRATIVE MEMBER**

Shri Anil Chandra Mathur,
 Surveyor of Works(Civil)
 Office of the Superintending Engineer
 (Civil),Civil Construction Wing,
 All India Radio, Ganeshguri Chariali,
 Dr.P.Kakati Building,1st Floor
 Post Office-Dispur, Guwahati-6

.... Applicant**By Advocate Mr. A. Ahmed.****Versus -**

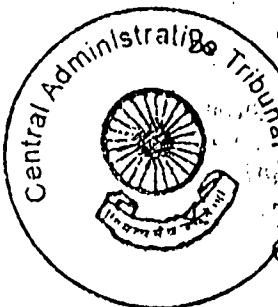
1. The Union of India represented by the
 Secretary to the Government of India
 Ministry of Information & Broadcasting
 A Wing, Shastri Bhawan, New Delhi-1.

2. The Director General,
 All India Radio, Civil Construction Wing,
 Parliament Street, New Delhi-1'

The Secretary,
 Union Public Service Commission
 Dholpur House, Sahjanan Raod,
 New Delhi-11

The Chief Engineer 1(Civil),
 Civil Construction Wing, All India Radio,
 5th Floor, Susma Bhawan, Lodhi Raod, New Delhi-3.

5. The Superintending Engineer(Civil),
 Civil Construction Wing,
 All India Radio, Ganeshguri Chariali,
 Dr.R.Kakati Building, 1 Floor
 Post Office-Dispur, Guwahati-6.

.... Respondents**By Advocate Mr. A.K. Chaudhuri, Addl. C.G.S.C.****29/3/5****ATTESTED***Bhattacharya***ADVOCATE**

ORDER(ORAL)

SIVARAJAN, J.(V.C.)

Bhawna &

The applicant presently working as Surveyor Works(Civil) Civil Construction Wing, All India Radio, Guwahati has filed this application challenging the order of censure passed by the disciplinary authority(Annexure G) dated 27.1.2005.

2. We have heard Mr. A. Ahmed learned counsel for the applicant and Mr. A.K. Choudhury, learned Addl. CGSC appearing for the Respondents. Mr. A.K. Choudhury, has pointed out that the applicant has not exhausted the alternate remedy, namely filing appeal against the impugned order before the competent Appellate authority and therefore the application is premature. We find merits in his submission. This application is accordingly disposed of at the admission stage itself with a direction to the applicant to file an appeal before the competent appellate authority.

The application is disposed of as above.



Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

TRUE COPY

সত্যপুঁথি

N.S. 22/7/05
অনুমতি অধিকারী
Section Officer (Jedl)
Central Administrative Tribunal
GUWAHATI-5

ATTESTED

B. Shaha
ADVOCATE

No: ACM/CS/I/

~~ADMISSION~~ K

To

The Honorable President of India,
 (Through Govt. of India,
 Ministry of I & B,
 Shastri Bhawan, A-Wing, 5th floor,)
 New Delhi-110001.

Dated 30th Sept, 2005

Subject :- Appeal under Rule 29A of CCS(Class, Control & Appeal) of 1965 against the Office order No.C-14015/1/99-Vig. Dated 27-01-2005 issued by the Government of India, Ministry of Information & Broadcasting, A Wing, Shastri Bhawan, New Delhi-110001.

Honorable Sir,

Most humbly with due respect I beg to state that I have filed an Original Application No.190 of 2005 before the Central Administrative Tribunal, Guwahati bench, Guwahati against the Office Order No.C-14015/1/99-Vig. Dated 27-01-2005 issued by the Government of India, Ministry of Information & Broadcasting, A Wing, Shastri Bhawan, New Delhi, imposing, penalty of 'Censure' The Hon'ble Tribunal on 21st July, 2005 directed me to file an Appeal before the Appellate Authority for consideration of the matter after perusal of my Appeal and also may be pleased to pass an order for setting aside the Office Order No. C-14015/1/99-Vig. Dated 27-01-2005 issued by the Under Secretary to the Government of India, Ministry of Information & Broadcasting, A Wing, Shastri Bhawan New Delhi-110001. Later, I appealed to Govt. of India Ministry of I & B , vide my appeal dated 26 July 2005 (copy enclosed)..

1. That Sir, while I was working as Surveyor of Works(Civil) Civil Construction Wing, All India Radio, New Delhi in the year 1994, the office of the Director General, All India Radio, Civil Construction Wing, New Delhi issued an Office Memorandum No. C-13013/43.92-CW I./409 15-07 (the year was not mentioned by the Office of the Director General, All India Radio) which was signed by one Shri S.K.Mohindra, the then Superintending Surveyor of Works-II, alleged that while I was working as Assistant Engineer(Civil) Civil Construction Wing, All India Radio, Jaipur that I had physically verified Civil Construction Wing, All India Radio, stores at Jaipur during the period when one Shri T.M. Meena, Junior Engineer(Civil) was in charge of CCW AIR stores from August,1983 to August,1987. But I never submitted the verification report to the competent authority. As such I was directed to submit my explanation for the alleged lapses on my part. I submitted my reply on 01-08-1994 before the Office of the Directorate General, CCW, All India Radio vide my letter No.1(1)/91/Misc./SW-III/ 435 dated 1.08.1994 . It may be stated here that at the relevant time I was not working as AE(Civil) CCW AIR Jaipur but I was posted as AE(Civil) CCW AIR Suratgarh(Raj.)

2. That Sir, the Government of India, Ministry of I&B, shastri Bhawan, A Wing, New Delhi vide their O.M. No.C-14015/1/99-Vig. Dated 29-12-1999 proposed to take action against me under Rule 16 of the CCS(CCA) Rules,1965. The said O.M. was forwarded to me by the Office of the Director General, CCW, AIR New Delhi vide their letter No.C-13013/43/92-CW.I/9 dated 7/10-01-2000.

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Bhattacharya
ADVOCATE

3. That Sir, I had filed a reply on 19-01-2000 before the Under Secretary(Vig.) Ministry of I&B, New Delhi. In the said reply, I completely denied the charges framed against me. In the reply I also requested that oral inquiry may be conducted if the charges are not dropped or canceled. But surprisingly, without conducting any oral inquiry of the said matter, the case was referred to the Union Public Service Commission vide letter No.C-14015/1/99-Vig. Dated 24-03-2004 by the Under Secretary, Ministry of I&B, New Delhi. The office of UPSC vide their letter No. Confidential F3/9/04-S-1, New Delhi-110011 dated 7-10-2004, advised the Under Secretary, Ministry of I&B, New Delhi to impose penalty of "Censure" against me. The Under Secretary to the Govt. of India, Ministry of I&B, New Delhi vide their order No.C-14015/1/99-Vig. Dated 27-01-2005 accepted the advice of the UPSC and imposed the penalty of Censure against me. The orders dated 7-10-2004 and 27-01-2005 issued by the Office of UPSC and the Govt. of India, Ministry of I&B, New Delhi were communicated to me by the office of DG, AIR, CCW New Delhi (Vigilance Unit) vide their letter C-13013/43/92-CW.I/Vol-III/580 dated 17-02-2005, the said orders were received by me on 28-03-2005.

4. That Sir, while I was functioning as AE(Civil) CCW AIR Suratgarh, I was entrusted for physical verification of stores at CCW AIR Jaipur by Shri R.M.R. Parti, the then EEC CCW AIR Jaipur. I was directed to conduct physical verification simultaneous to handing over/taking over of charge between Shri T.M.Meena and Shri M.L.Dagla vide the then EEC CCW AIR Jodhpur letter No. EEC/JDP/Store/87-88/324 dated 10-07-1987. The physical verification of the said stores was to be conducted for the period from August, 1983 to August, 1987 when Shri T M Meena JE CCW AIR was in charge of the stores of Jaipur Division. Even though, I visited twice, the Jaipur stores at the relevant time (obeying the orders to that effect, promptly) but could not physically verify the stores, because the exact date of handing over/taking over was not intimated to me. Moreover, the cement and steel was not stocked as per norms specified for this i.e. the different dia steel was mixed and lying in haphazard manner and scattered at different places. It was also buried under loose soil and also even not visible. The room in which cement was lying, was over filled by placing cement bags in haphazard manner. It was also not possible to enter the store room. The then AECC, in charge of the store, did not extend any help for taking out the cement and steel for physical verification of stores or by fixing a date of handing over/taking over between Shri TM Meena, JECC Store and Shri ML Dagla, JECC and intimating the same to me. The whole matter was reported immediately by me to the EEC CCW AIR Jodhpur, who entrusted me to do this job. The EEC did not show any kind of dissatisfaction and did not emphasize for any further action in this matter. The then EEC also made payment to me, for my traveling allowance. Since the construction works at relevant time was going on at AIR Suratgarh and AIR Bikaner, I was compelled to return back to my Head Quarter i.e. Suratgarh. After the said alleged incident no notice, reminders, or memorandum was issued to me for not doing the physical verification and submission of verification report to the concerned authority. But after seven years of alleged incident, I was served the office memorandum in the year 1994. The memorandum was served to me in belated stage. As such it should be set aside and quashed. It is to be stated that, inordinate, unexplained delay in initiating proceeding vitiated enquiry. The Hon'ble Supreme Court has also held in the State of Madhya Pradesh Vs Bani Singh, ATR 1990(I) SC 581 that no satisfactory explanation for the inordinate delay in issuing the charge memo will be unfair to permit the Departmental Inquiry to be proceeded at the belated stage.

hdc

ATTESTED

S. Bhatia
ADVOCATE

5. That sir, the Department did not hold any oral inquiry into this matter. Although, in my reply dated 19-01-2000 against O.M. dated 29-12-1999, I requested the Disciplinary Authority to hold a detailed oral inquiry of this matter and I also requested the Disciplinary authority to supply the preliminary inquiry report conducted by the vigilance section of CCW All India Radio. The Hon'ble Supreme Court of India, held in the State of Bombay Vs Murul Latif Khan, AIR 1996 SC269 that "the statutory rules regulating departmental inquiry make it obligatory on inquiry officer to hold oral inquiry, if the charged officer so demand, then there should no doubt that the failure of the inquiry officer to hold such oral inquiry would introduce a serious infirmity and would amount to denial of reasonable opportunity to the officer." As such the Department has totally violated the natural justice and administrative fair play in my case. The Disciplinary Authority without holding any oral inquiry into the matter referred the said matter to the UPSC vide letter No.C-14015/1/99-Vig. Dated 24-03-2004.

6. That Sir, the Under Secretary, Ministry of I&B vide his letter dated 24-03-2004 referred the matter to the UPSC for their advice regarding disciplinary proceeding against Shri R.M.R.Parti, Surveyor of Works(Civil), CCW (i.e. the then EE© Jodhpur Division, who was holding the additional charge of Jaipur division during the period 1987) AIR, Shri R.V.Singh, Surveyor of Works(Civil), (the then AE(Civil) ,Jaipur Division) CCW AIR and Shri A.C.Mathur, Executive Engineer(Civil), (i.e. myself, who was working as AE(Civil) Suratgarh, was given the task of verification of stores at Jaipur during the said period) CCW AIR. The U.P.S.C. in their findings observed in case of Shri R.M.R. Parti, who was the then EE© Jodhpur Division holding the additional charge Jaipur division was required to have his divisional stores check once in a year and charged officer i.e. Shri R.M.R. Parti, vide his letter 04-07-1998 and 10-07-1998 directed the then AE© Shri A.C.Mathur, i.e. myself to carry out the physical verification of stores. The Commission noted that copies of the above letters and TA bills of Shri A.C.Mathur fro journeys to Jaipur in connection with verification of stores are not available on records, however from the defence of Shri A.C.Mathur, it appears that the charged officer deputed him for verification of stores, as also he passed his TA bills. The Commission further observed that though Shri Mathur visited stores twice, no verification could be done as neither the material was stacked properly nor any assistance was provided by the stores in charge for re-stacking the materials and taking the same to the weigh bridge. Shri Mathur claim that this was brought to the notice of the EE© . The Commission observed that since charged officer was aware that no verification could be done, there was no question of his obtaining verification report from Shri Mathur and bringing the discrepancy/ shortages in store to the notice of competent authority. In view of above, the Commission has held that the charge is not clearly established against the charged officer i.e. Shri R.M.R. Parti, who was holding the additional charge of Jaipur Division at that time. But in my case the Commission observed that the charged officer Shri A.C.Mathur visited the CCW AIR store Jaipur twice – from 04-08-87 to 07-08-87 and on 23-08-87 – for the purpose of verification of store, but as per his own statement could not conduct the verification due to non-cooperation of the stores in charge and non-stacking the material in proper and systematic manner. This according to the charged officer Shri A.C.Mathur, was reported to the EE© and prosecution has not denied this. There is also no evidence to show that any direction were issued by the then EE© to the charged officer or the stores in charge subsequent to charged officer reporting the matter to EE©. Further, the Commission observed that since no shortage of steel and cement was shown in the store closing of August, 1987 and September,87, neither any shortage was reported in the handing/taking over report dated 23-08-1987 signed by both the Junior Engineer©. The charged officer could not be held responsible alleged the short fall in steel and cement. However, the Commission have held that the charges as proved to

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ATTESTED

Bhattacharya

ADVOCATE

the extent that the charged officer did not submit even an incomplete report on verification of stores. After taking into account all other aspects, relevant to the case, the Commission considered that ends of justice would be met in this case if - (a) the proceeding against Shri R M R Parti, EE(C) are dropped and he is exonerated of the charges and (b) the penalty of "Censure" is imposed on Shri R.V.Singh, EE(C) and Shri A.C.Mathur, EE(C).

From the above it is surprising that U.P.S.C. has taken two different views in the same matter, in a similar situation and recommended for exoneration of Shri R.M.R. Parti but Shri A.C.Mathur's case was recommended for penalty of "Censure" although being a superior officer Shri R.M.R. Parti should be held fully responsible for the alleged act i.e. inaction even after reporting the whole matter by Shri A.C.Mathur.

7. That Sir, in the instant case, competent authority particularly the Under Secretary to the Ministry of I&B, without applying his mind accepted the recommendation of the U.P.S.C. by imposing penalty of "Censure" to me and exonerated Shri RMR Parti from the charges. The Disciplinary Authority has also did not followed the proper procedures to be maintained in a disciplinary case. The All India Radio, CCW follow the Manual provisions of CPWD Manual Vol.-I. In the said CPWD Manual Vol.I Section -III regarding disciplinary case and departmental proceedings it had been stated that - "where the Disciplinary Authority is Director General(Works) or higher, preliminary inquiry into the cases of administrative nature ought to be proceed by the chief Engineers. The drill required to be performed by them is calling for explanation of the officer concerned, giving of show cause notice to him/her and examining the same. If in the opinion of Chief Engineer after the preliminary investigation, there is substance in the case, warranting initiation of the formal disciplinary proceedings for imposing any of the statutory penalties, a self contained report supported by relevant documents together with the explanation of the Govt. servant concerned are required to be send to the Director General(Works) for consideration. However, the preliminary investigation does not in the opinion of the Chief Engineer justify imposition of any statutory penalties, he may finalized the case himself by closing the case or by administering a recordable simple/oral warning according to the seriousness of the lapse without any reference to Director General(Works)." In the instant case, Disciplinary Authority of the applicant is Govt. of India, Ministry of I&B as such the preliminary inquiry ought to be proceed by the Chief Engineer but surprisingly in the above said case the inquiry and office memorandum was issued to me by the Superintending Surveyor of Works-II, who is Junior to Chief Engineer. Hence the whole disciplinary proceedings initiated against me is not sustainable before eye of law and liable to be set aside and quashed.

8. That Sir, I had informed the then EE© CCW AIR Jodhpur at the relevant time about the difficulty I had faced in connection with the physical verification of stores at Jaipur and also the non-cooperative attitude towards me by the officers of Jaipur Stores of CCW AIR but the then EE© did not take any steps in the matter, he simply paid the T.A. to me.

9. That Sir, I most humbly obeyed the order of the then EE© for physical verification of stores at CCW AIR Jaipur. The then EE© did not take any interest in the matter and he did not issued any show cause notice or reminder or memorandum etc to me, although the whole matter was highlighted to him. Here onus lies on the part of the EE© for taking further necessary action in the matter.

Abdul

ATTESTED

Bhattacharya
ADVOCATE

10. That Sir, I have already completed Eight and half years as regular EE© and I am on the verge of promotion to the post of Superintending Engineer. By imposing of "Censure" by the Disciplinary Authority to me will prejudice future bright carrier prospect.

11. That Sir, in spite of crystal clear lapse and negligence committed by the then EE© Shri RMR Parti, I was not able to conduct the physical verification of stores Jaipur. Surprisingly the then EE© Shri RMR Parti was exonerated by the Disciplinary Authority as well as the UPSC for the reasons best known to them and I have been penalized for none of my fault.

In view of the above, it is very clear that my ground is genuine, legal and may be considered. The findings of disciplinary authority wholly bereft of substances and no credence ought to be given to it. Apart from this also, the Disciplinary Authority fully violated the principle of natural justice by not holding the oral inquiry although I requested to hold the same. Hence, the penalty issued by the Disciplinary Authority to me is liable to be set aside and quashed.

In the end I would request your goodself to kindly condone the delay (if any), for the reason and details cited in first para, in submitting the appeal.

I, therefore, request your honour to accept my appeal and exonerate me from the penalty of "Censure" as expeditiously as possible, preferably within a month time.

Thanking you in anticipation.

Yours faithfully,

Anil Ch *3/9/05*
(Anil Chandra Mathur)

Surveyor of Works(Civil)
Office of Superintending Engineer(Civil)
Civil Construction Wing, All India Radio,
Ganeshguri Chariali,
1st floor, Dr. P. kakoti Building,
P.O. Assam Sachivalaya,
Guwahati-781006.

ATTESTED

Shatto
ADVOCATE

PRESIDENT'S SECRETARIAT
PUBLIC - I. SECTION

No. : P1/A- 50603
Dated: 18-Oct-2005

Rashtrapati Bhavan
NEW DELHI - 110004

Dear Sir / Madam,

I am to acknowledge receipt of your communication dated 30-Sep-2005 which has been forwarded to SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF INFORMATION AND BROADCASTING.

SHASTRI BHAWAN
New Delhi, for appropriate action.

Yours faithfully,

Ashish Kalia
Ashish Kalia
Under Secretary (P)

P1/A- 50603

"Righteousness is the key to peace and harmony in the home."

TO

SHRI ANIL CHANDRA MATHUR
1ST FLOOR, DR. P. KAKOTI BUILDING
PO. ASSAM SACHIVALAYA
GUWAHATI-781006
ASSAM

GOVERNMENT OF INDIA
10.11.05
SERIAL NO. 324/2005-N
SECRET. DEPT.

भारत INDIA
05.00
POSTAGE
SC.P2814

FROM:
President's Secretariat
Rashtrapati Bhavan
New Delhi - 110004

ATTESTED

B. Shalla
ADVOCATE



C-14015/1/99-Vig.
 Government of India
 Ministry of Information & Broadcasting
 'A' Wing, Shastri Bhavan, New Delhi

Date: 19-07-2006.

To

Shri Anil Chandra Mathur,
 Surveyor of Works (Civil)
 Office of Superintending Engineer (Civil)
 Civil Construction Wing, All India Radio,
 Ganeshguri Chariali,
 1st Floor, Dr. P. Kakoti Building,
 P.O. Assam Sachivalaya,
 Guwahati - 781 006.

Subject : Appeal under Rule 29-A of CCS (CCA) rules, 1965 against the Office order No. C-14015/1/99-Vig. dated 27-1-2005 issued by the Govt. of India, Ministry of I&B, New Delhi.

Sir,

I am directed to refer to your appeal dated 30-09-2005 on the above subject and to say that no Appeal lies against any order made by the President.

Yours faithfully,

M.K.Sharma

(M.K.Sharma)
 Under Secretary to the Govt. of India
 PH:23381569

RA

ATTESTED

Sharma

ADVOCATE

9 MAY 2007

गुवाहाटी बैठकाल

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

IN THE MATTER :-

O.A. NO. 238/2006

Shri Anil Chandra Mathur

... Applicant

- Versus -

Union of India & others.

... Respondents

AND

Reply on behalf of Respondents No.1 to 5

The reply submitted as under :-

1(a) That I am the Superintending Engineer(Civil), CCW, All India Radio, Guwahati and Respondent No.5 in the above case. I have gone through a copy of application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this reply, the contentions and statements made in the application and authorized to file the reply on behalf of respondents No.1 to 5.

(b) The application is unjust and unsustainable both 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, estoppels and acquiescence and liable to be dismissed.



M.L. Ahmed Case 8/5/07

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

2) That with regard to the statement made in paragraph 1 to 4.5 of the OA, the respondents do not admit anything contrary to the case. The statements, which are not borne on records, are denied and the applicant is put to the strictest proof thereof.

3) That with regard to the statement made in paragraph 4.6 of the OA, the answering respondents beg to submit that the statement which are not borne on records are denied. It is submitted that the applicant was afforded with full opportunity to represent and defend his case in accordance with the provision of CCW(CCA) Rules, 1965. It is apparent that the applicant has already endeavored to exaggerate and twist the facts to mislead the Hon'ble Tribunal.

4) That with regard to the statement made in paragraph 4.7 of OA, the answering respondents beg to submit that the allegation against UPSC is denied. The Commission is only an advisory body and the Government has taken action and decision and the Commission have been impleaded unnecessarily in this case. The advice of Commission had been sought in this case in accordance with the requirement of Constitution of India read with regulation 5(1) of the UPSC (Exemption from Consultation) Regulations, 1958.

The Commission tendered its advice after through judicious and independents consideration of all the relevant facts and circumstances of the case, findings of the inquiry officers, the evidence on record, document made available by the Ministry, representations of the charged officer etc. The Commission

A handwritten signature in black ink, appearing to read "Shankar".

examines each case on its own facts and merits. The case of Shri RMR Parti as specially pointed out in this para is a separate entity. When there are co-accused officers the matter is dealt with accordingly based on their relevant grounds. In the instant case, based on relevant records and facts and circumstances of the case UPSC concluded that Shri R.M.R. Parti was not accountable. However, in respect of Shri A.C.Mathur, UPSC held submission of an incomplete report of verification of stores.

- 5) That with regard to the statement made in paragraph 4.8 of the OA, the answering respondents beg to submit that UPSC has tendered its advice after considering all aspect of the case, based on merits. The advice in respect of co-accused was tendered based on facts and circumstances relevant to them.
- 6) That with regard to the statement made in paragraph 4.9 of the OA, the answering respondents while denying all allegations made therein beg to submit that the penalty of "Censure" has been imposed on the applicant by the Disciplinary Authority after considering all relevant aspect after due application of mind. The disciplinary proceedings are governed by CCS(CCA) Rules 1965 and the same were held accordingly. Further, the vigilance unit in CCW was headed by Chief Engineer© and SSW-II was working under him as per the hierarchy existed during the relevant period.
- 7) That with regard to the statement made in paragraph 4.10 of the OA, the answering respondents beg to submit that the applicant was charged sheeted for minor penalty proceedings under Rule 16 of CCW (CCA) Rules 1965. The written statement of defence dated 19-01-2000 in respect of Sh. A.C.Mathur was carefully examined in the Ministry and no oral inquiry was conducted in this case as it was not found necessary. Clause(b) of sub rule (1) under Rule 16 of CCS (CCA) Rules 1965, specifies that holding of any inquiry in the manner laid

down in the sub rules(3) to (23) of rule 14 in the case in which Disciplinary Authority is of the opinion that such inquiry is necessary.

The charge against Shri A.C.Mathur was prima facie stands proved to the extent that he did not submit store verification report though he visited CCW AIR Jaipur twice for the said purpose. Shri Mathur submitted his tour programme and claimed his TA bills for physical verification of stores but he did not submit tour report/verification report showing the result of his tour. If he could not conduct the verification report both the time, he could have submitted a report on that account to his superior stating that valid reasons for the same. If the stock holders had not cooperated in carrying out the stores verification, as stated by Sh. Mathur, he could have at least submitted an incomplete report of verification of stores to his superior. The applicant did not submit the report. To the extent his misconduct stands proved. However, keeping in view of facts and circumstances of the case, and also taking into consideration of the advice tendered by UPSC, the Disciplinary Authority has taken a lenient view against him by imposing one of the minor penalties of "Censure". In view of the above, the contention of the applicant are not tenable.

It is submitted that as per instructions contained in para (23) under Rule 14 of CCS (CCA) Rules, reports made after preliminary inquiry or the report made by police after investigation, are usually confidential and intended only to satisfy the competent authority whether further action is called for. It is not necessary to give access to these reports as per CCS (CCA) Rules.

*Confidential
but taken into
consideration*

- 8) That with regard to the statement made in paragraph 4.11 of the OA, the answering respondents beg to submit that the present OA is bared by the principle of res-judicata because the Hon'ble

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Tribunal has already heard the matter and disposed of his earlier Original Application No.190/2005. (copy of order is attached as ANNEXURE- A1)

- 9) That with regard to the statement made in paragraph 4.12 of the OA, the answering respondents beg to submit that it is a matter of record and require no comments.
- 10) That with regard to the statement made in paragraph 4.13 of the OA, the answering respondents beg to submit that the appeal filed by the applicant was examined by the Disciplinary Authority and it was found that no appeal lies against any order made by the President. The same has been communicated to the applicant as well vide Ministry of I&B letter No.14015/1/99-Vig dated 19-07-2006. (Annexure A2) . The Hon'ble Tribunal was pleased to dispose of the MP No.31/2006 in OA No.190/2005. The applicant has not justified cogent reason to approach the Hon'ble Central Administrative Tribunal for redressal prayed for by him.
- 11) That with regard to the statement made in paragraph 4.14 of the OA, the answering respondents beg to submit that delay reported in the matter is not intentional but procedural one since time is required to process the matter after being referred to vigilance for detailed investigation in order to ascertain whether a prima-facie case exist or not.
- 12) That with regard to the statement made in paragraph 4.15 and 4.16 of the OA, the answering respondents beg to submit that though the applicant visited Jaipur twice for verification of stores. However, he did not submit a verification report to his superior. He claimed the TA bills of the tour but no report was furnished to his superior officer. If the stock holders had not cooperated in carrying out the store verification, as alleged by the applicant, he could have at least submitted an incomplete

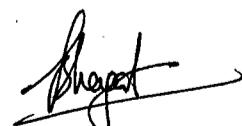


report of verification of stores to his superior. The applicant did not submit the report. Shri R.M.R. Parti, EE was also a co-accused officer in this case and disciplinary proceedings were also initiated against him as per CCS (CCA) Rules.

- 13) That with regard to the statement made in paragraph 4.17 of the OA, the answering respondents beg to submit that the penalty has been imposed by the Disciplinary Authority as per provision of CCS(CCA) Rules, 1965 which do not provide for exoneration of a charged officer merely on ground that he is at the verge of promotion.
- 14) That with regard to the statement made in paragraph 4.18 of the OA, the answering respondents beg to submit that the charges in respect of co-accused officer Shri R.M.R. Parti, EE, were different. The case of Shri Parti was decided by the Disciplinary Authority based on the facts and circumstances relevant to his case in consultation with UPSC. The allegation against UPSC is denied. The Commission is only an advisory body and action and decision have been taken by the Government. The advice of UPSC had been sought in this case in accordance with the requirement of consultation with UPSC as laid down in Article 320(3) (C) of the Constitution of India read with regulation 5(1) of the UPSC (Exemption from Consultation) Regulation ,1958.

The Commission tendered its advice after through judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on record, documents made available by the Ministry, representation of the charged officer etc.

- 15) That with regard to the statement made in paragraph 4.19 and 4.20 of the OA, the answering respondents beg to submit that the submissions of the applicant are baseless. The applicant was



provided ample and full opportunity to submit his representation against the charges and defend his case under the provisions of CCS(CCA) Rules, 1965. None of his fundamental rights was violated.

16) That with regard to the statement made in paragraph 4.21 to 4.24 of the OA, the answering respondents beg to submit that the submissions of the applicant are wrong and baseless and are denied. The same matter has already been brought out by the applicant in OA No.190/2005 before the Hon'ble Tribunal, which was disposed on as well as related M.P.No.,31/2006 filed by the applicant. In view of the same, the present OA is not maintainable as this is hit by law of Res-judicated. The settled matter can not be agitated again. Moreover the applicant has not been denied the natural justice. The disciplinary proceedings have been carried out as per CCS(CCA) Rules 1965. In view of the facts and circumstances narrated above present OA is liable to be dismissed with cost.

17) That with regard to the statement made in paragraph 5.1 and 5.2 of the OA, the answering respondents beg to submit that the submissions of the applicant are wrong and baseless and are denied. The actions of the respondents conform to the laid down procedure for the disciplinary proceedings under the CCS(CCA) Rules, 1965. The order of imposing penalty order dated 27-01-2005 of the Disciplinary Authority can not be set aside and quashed on frivolous grounds. Further, the applicant in OA No.190/2005 has agitated the same matter before the Tribunal and the same vide its order dated 20-07-2005 has already adjudicated upon the matter and disposed of the M.P.No.31/2006 filed by the applicant in OA NO.190/2005 vide order dated 24-08-2006 (copy of order is attached as Annexure-A3). In view of the facts narrated above, the present OA is not maintainable as it is hit by the principles of Res-judicata. The settled matter can not be agitated again.



18) That with regard to the statement made in paragraph 5.3 and 5.4 of the OA, the answering respondents beg to submit that the applicant was charge sheeted for minor penalty proceedings under the provisions of CCS (CCA) Rules, 1965. The written statement of defence dated 19-01-2000 in respect of applicant was carefully examined in the Ministry and no oral inquiry was conducted in this case as it was not found necessary. Clause (b) of sub rule (1) under Rules 16 of CCS (CCA) Rules, 1965, specifies that holding of an inquiry in the manner laid down in the sub rules (3) to (23) of rule 14 of the case in which disciplinary Authority is of the opinion that such inquiry is necessary.

The charges against the applicant were prima-facie stand proved to the extent that he did not submit store verification report though he visited CCW AIR Jaipur twice for the said purpose. The applicant submitted his tour programme and claimed his TA bills for physical verification of stores but he did not submit a tour report/verification report to his superiors showing the result of his tour. If he could not conduct the verification report both the times, he could have submitted a report on that account to his superior stating that valid reasons for the same. If the stockholders had not cooperated in carrying out the stores verification, as alleged by the applicant, he could have at least submitted an incomplete report of verification of stores to his superior. The applicant did not submit the report. To the extent his misconduct stands proved. However, keeping in view of facts and circumstances of the case, and also taking into consideration of the advice tendered by UPSC, the Disciplinary Authority has taken a lenient view against him by imposing one of the minor penalties of "Censure" upon him. In view of the above, the contention of the applicant are not tenable in the eye of law



Further, the applicant in OA NO.190/2005 before Hon'ble Tribunal was litigated the same matter. The Hon'ble Tribunal while adjudicating upon the matter was pleased to dispose of the same vide order dated 20-07-2005 (Annexure-A1). The Hon'ble Tribunal has also disposed of the M.P. No.31/2006 filed by the applicant in OA No.190/2005 vide order dated 24-08-2006(Annexure-A3). In view of the same, the present OA is not tenable. The settled matter can not be litigated again.

19) That with regard to the statement made in paragraph 5.5, 5.6 and 5.7 of the OA, the answering respondents beg to submit that the allegation of the applicant is denied. The Commission are only an advisory body and they tendered their advice after through judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on record, representations of the applicant etc. the Commission examines each case on its own facts and merits.

The penalty order dated 27-01-2005 of the Disciplinary Authority can not be set aside and quashed on frivolous grounds. Further, the applicant in OA NO.190/2005 before the Hon'ble Tribunal has already litigated the same matter. The Hon'ble Tribunal has disposed of the same OA vide order dated 20-07-2005. The CAT has also disposed of the M.P.No.31/2006 filed by the applicant in OA No.190/2005 vide order dated 24-08-2006. In view of the same, the present OA is not tenable. The settled matter can not be litigated again.

It is submitted by the answering respondents that none of the grounds of the applicant is tenable in the eye of law hence the present OA is not at all sustainable, same is liable to be dismissed with cost.



20) That with regard to the statement made in paragraph 5.8 to 5.11 of the OA, the answering respondents while relying and referring upon the statement made above beg to submit that the contentions of the applicant are wrong and baseless hence these are denied.

21) That with regard to the statement made in paragraph 6 of the OA, the answering respondents beg to state that in view of the submissions made herein above, the Applicant is not entitled to any relief and this OA is therefore liable to be dismissed with cost.

22) That with regard to the statement made in paragraph 7 of the OA, the answering respondents beg to submit that as mentioned above the matter has already been agitated before Hon'ble Tribunal by way of filing OA No.190/2005 and final decision has been given by the Hon'ble Tribunal.

23) That with regard to the statement made in paragraph 8, 8.1, 8.2 and 8.3 of the OA, the answering respondents beg to rely and refer upon the statements made above and further submit that in view of the submission made above the applicant is not entitled to any relief as sought for in the OA.

24) That with regard to the statement made in paragraph 9 of the OA, the answering respondents beg to submit since the OA is hit by principles of Res- Judicata the applicant is not entitled to any relief including interim relief.

25) That in view of the facts and circumstances narrated above and the submission made by the respondents the Hon'ble Tribunal may be pleased to dismiss the OA with cost.



AFF IDAVIT

I, Shri Jagdish Bhagat, aged about 47 years, son of late D N Bhagat, at present working as Superintending Engineer(Civil), Civil Construction Wing, All India Radio, Guwahati, who is one of the respondents and taking steps in this case, being duly authorized and competent to sign this verification for all respondents, do hereby solemnly affirm and state that the statement made in paragraph 1 to 19 are true to my knowledge and belief, those made in paragraph 1 to 19 being matter of records, are true to my information derived there from and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification this 2nd day of
April, 2007 here at Guwahati.

Identified by me :-

DEPONENT

(12)

ANNEXURE

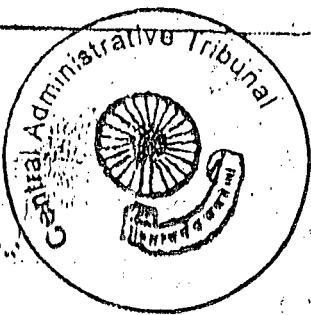
ORDER(ORAL)

SIVARAJAN I.C.V.C.)

The applicant presently working as Surveyor Works(Civil) Civil Construction Wing, All India Radio, Guwahati has filed this application challenging the order of censure passed by the disciplinary authority(Annexure G) dated 27.1.2005.

2. We have heard Mr. A. Ahmed learned counsel for the applicant and Mr. A.K. Choudhury, learned Addl. CGSC appearing for the Respondents. Mr. A.K. Choudhury, has pointed out that the applicant has not exhausted the alternate remedy, namely filing appeal against the impugned order before the competent Appellate authority and therefore the application is premature. We find merits in his submission. This application is accordingly disposed of at the admission stage itself with a direction to the applicant to file an appeal before the competent appellate authority.

The application is disposed of as above.



Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

TRUE COPY

পরিচয়

22/1/05

Section Officer (Jd)

Central Administrative Tribunal

Guwahati

22/1/05

(13) C-14015/1/99-Vig.
Government of India
Ministry of Information & Broadcasting
'A' Wing, Shastri Bhavan, New Delhi

Date: 19-07-2006.

To

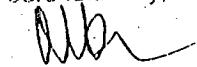
Shri Anil Chandra Mathur,
Surveyor of Works (Civil)
Office of Superintending Engineer (Civil)
Civil Construction Wing, All India Radio,
Ganeshguri Chariali,
1st Floor, Dr. P. Kakoti Building,
P.O. Assam Sachivalaya,
Guwahati - 781 006.

Subject : Appeal under Rule 29-A of CCS (CCA) rules, 1965 against the Office order No. C-14015/1/99-Vig. dated 27-1-2005 issued by the Govt. of India, Ministry of I&B, New Delhi.

Sir,

I am directed to refer to your appeal dated 30-09-2005 on the above subject and to say that no Appeal lies against any order made by the President.

Yours faithfully,



(M.K.Sharma)

Under Secretary to the Govt. of India
PH:23381569

FROM NO. 4.

(See Rule 42)

14

ANNEXURE-A3

ANV

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No.

31/06/ (DA 190/05)

2. Misc Petition No.

3. Contempt Petition No.

4. Review Application No. 2005/05

5. The Applicant(s) Anil Chandra Nath

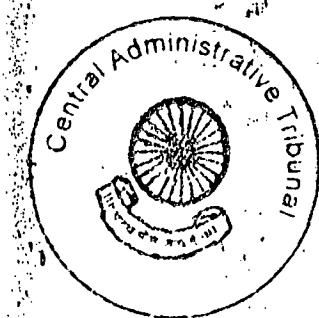
6. Respondents No. 1 & 2

7. Advocate for the Applicant(s) Mr. Adil Ahmed,
Mr. M. I. Ahmed,

8. Advocate for the Respondent(s) Addl. C.G.S.C.

Notes of the Registry Date Order of the Tribunal

24.08.2006 Present : Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.



Mr. A. Ahmed, learned Counsel for the Applicant submitted that he does not want to press the Petition. Mr. M.U. Ahmed, learned Addl. C.G.S.C. was present on behalf of the Respondents. Accordingly, the Petition is dismissed as not pressed.

Sd/ VICE CHAIRMAN

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प्रतिलिपि

No. 258-06

असम अधिकारी

Sub. Comm. (Indl)

Central Administrative Tribunal

गुवाहाटी-5

सन 2006

सन 2006

HB 298

1 - 5 JUL 2007

गुवाहाटी न्यायालय
Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::::: GUWAHATI

FILED BY

Sri Anil Chandra Mathur
Applicant

Through- Smita Bhattacharjee
(Advocate)
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IN THE MATTER OF :

O.A. No. 238 of 2006

Sri Anil Chandra Mathur
. Applicant

- Versus -

Union of India & Ors.
. . . Respondents.

- AND -

IN THE MATTER OF :

Rejoinder filed by the
applicant to the written
statement filed by the
respondent Nos. 1 to 5.

The humble applicant submit this rejoinder as follows:

1. That with regard to the statement made in paragraph 1 of the written statement the applicant begs to state that those are false, irrelevant and also misleading to this Hon'ble Tribunal.
2. That with regard to the statements made in paragraph 2 of the written statement the Applicant begs to offer no comments.
3. That with regard to the statements made in paragraph 3 of the Written Statement the Applicant begs to state that it is false and misleading to this Hon'ble Tribunal that the applicant was afforded with full opportunity to represent and defend his case in accordance with the provisions of CCW (CCA) Rules' 1965, as an Oral Enquiry which is required to be made and which was also preferred by the Applicant in his

Anil Chandra Mathur

explanation was not made against him. Moreover, since the Office Memorandum was given to the Applicant after the lapse of nearly seven years (which was itself Prima-facie illegal), he had to depend upon his memory for giving an explanation for not being able to conduct the verification. Therefore, it is not true that the applicant has endeavored to exaggerate and twist the facts and tried to mislead this Hon'ble Tribunal, as alleged by the Respondents.

4. That with regard to the statements made in paragraph 4 and 5 of the Written Statement the Applicant begs to state that the UPSC, though had admitted itself & elaborated, in their letter No. Confidential F3/9/04-S-1 New Delhi-11 Dated 07-10-2004 i.e. ANNEXURE-F of the Original Application, has failed to consider the fact that the Applicant had already reported to the then EE(C) i.e. Shri R.M.R. Parti, regarding his inability to conduct the physical verification of the stores and the reasons thereof. The then EE(C) i.e. Shri R.M.R. Parti, had also not shown any kind of dissatisfaction, nor demanded any report either complete or incomplete, but rather on the contrary, had passed the Applicant's T.A. Bills. In this connection, it is to be stated that if Shri Parti, being a Senior Officer, who was aware of all the facts and circumstances but did not took any steps in this regard, nor had advised anything to the Applicant regarding his next course of action, could be exonerated of the charges, imposition of the penalty of "Censure" over the Applicant clearly shows the discriminatory attitude of the Commission & Disciplinary Authority towards the Applicant whereas, the Applicant complied the instructions of his Superiors and there was nothing as Dereliction of duty and unbecoming of Government Servant.

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5. That with regard to the statements made in paragraph 6 of the Written Statement the Applicant begs to state that statement made therein are not fully correct and misleading to this Hon'ble Tribunal. It is not true that the Disciplinary Authority had imposed the penalty of "Censure" over the Applicant after considering all the relevant aspect of the case. The Disciplinary Authority as well as the UPSC has deliberately kept silent regarding the facts due to which the verification could not be done and has thus not considered the Applicant's explanation given vide letter No. 1(1)/91/Misc/Sw.III/435 dated 01-08-1994 i.e. ANNEXURE-B of the Original Application and reply to charge-sheet vide No.ACS/CS/1 dated 19.01.2000 i.e. ANNEXURE-E of the Original Application. Moreover the procedure adopted by the Disciplinary Authority was not right as per the CPWD Manual (ANNEXURE-I of the Original Application).

6. That with regard to the statements made in paragraph 7 of the Written statement the Applicant begs to state that it is not true that the Applicant had not submitted any Tour Report before his Seniors. The fact is that, after enormous delay and only after obtaining a Tour Report his T.A. Bills were passed. It is clear from the fact that the then EE(C) i.e. Shri Parti was aware of all the relevant facts, prior to passing the T.A. Bills of the Applicant. Moreover it is to be stated that as per procedure Preliminary Enquiry Report are to be made available, if Charged Officer is penalized as per CVC Manual.

7. That with regard to statements made in paragraph 8 of the Written statement the applicant begs to state that this Original Application is not barred by the principle of 'Res-judicata' because the Hon'ble Tribunal had already disposed of the earlier Original

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Application No. 190/2005 and thus neither this Original Application, nor any other Original Applications relating to the same subject matter is pending before this Hon'ble Tribunal or before any other Court of Law.

8. That with regard to statements made in paragraph 9 of the Written statement the Applicant begs to offer no comments.

9. That with regard to paragraph 10 of the Written Statement the Applicant begs to state that the Impugned Penalty of "Censure" imposed upon him by the Respondents is totally misconceived, mala-fide, arbitrary, whimsical and also without application of proper mind. As such, finding no other alternative he has approached this Hon'ble Tribunal for seeking justice in this matter. Hence, the statement made by the Respondents in the paragraph 10 of the Written Statements is Misconceived of facts and misleading to this Hon'ble Tribunal.

10. That with regard to statements made in paragraphs 11 the Applicant begs to state that the Respondents have not given any valid reason for the delay in initiation of the proceedings against him. They have rather very mechanically cited that the delay was procedural, without explaining what procedure they have adopted which has taken thirteen (13) years to initiate the proceedings against the Applicant.

11. That with regard to the statement made in paragraph 12 of the written statement the Applicant begs to state that he has already replied in his paragraph No.6 of this Instant Rejoinder.

12. That with regard to the statements made in paragraph 13 of the Written Statement, the Applicant begs to state the imposition of the penalty of

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"Censure" upon him by the Respondents is not sustainable in the eye of law as well as the facts of the case.

13. That with regard to the statements made in paragraph 14 of the Written Statement, the Applicant begs to state that though the charges against Shri R.M.R. Parti, the then EE(C), were different but the lapse and negligence committed on his part were not considered either by the UPSC or by the Disciplinary Authority, before exonerating him. Moreover, it may be stated that, had the Commission tendered its advice after thorough judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on records, documents made available by the Ministry, representations of the Charged Officer etc. then it would have also considered the explanation given by the Applicant (ANNEXURE-B). But it can be seen that it had ignored the reasons given by the Applicant for not being able to conduct the verification and had deliberately tend to keep silent regarding it and on the contrary demanded incomplete report, whereas applicant stated it several times that he could not conduct the physical verification and as such question of incomplete report does not arise. Moreover, it is not true that the Applicant had not submitted his Tour Report. It has already been stated that his T.A. Bills were passed only after consideration of his report given to the then EE(C) i.e. Shri R.M.R. Parti.

14. That with regard to the statements made in paragraph 15 and 16 of the Written Statement, the Applicant begs to state that they are not true and are false. It is to be stated that initiating a Disciplinary Proceeding against the Applicant after the lapse of thirteen (13) years and penalizing him without

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considering his contention and explanation altogether is certainly violative of the principles of natural justice as well as his Fundamental Rights. Moreover, it is wrong that the Application is barred by the principle of Res-judicata, as for the reasons already narrated in paragraph No. 8 of this instant rejoinder.

15. That with regard to the statements made in paragraphs 17 to 20 of the Written Statement, the Applicant begs to offer no further comments except for whatever has already been narrated in the foregoing paragraphs.

16. That with regard to the statements made in paragraphs 21 to 25 of the Written Statement, the Applicant begs to state that the same bears no substance and all the contentions made by the Respondents are already replied in the preceding paragraphs.

Therefore, the Written Statement filed by the Respondents is wholly bereft of substance and no credence ought to be given to it. Thus, in view of the abject failure of the Respondents to refute the contentions, averments, questions of law and grounds made by the Applicants in the Original Application filed by the Applicants deserved to be allowed by this Hon'ble Tribunal.

Nil et al.

... Verification

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

I, Shri Anil Chandra Mathur, aged about 45 years, Surveyor of Works (Civil), Office of the Superintending Engineer, Civil Construction Wing, All India Radio, Ganeshguri Chariali, Dr. P. Kakoti Buliding, 1st Floor Guwahati-6, do hereby solemnly verify that the statements made in paragraph Nos. 1 to 16 are true to my knowledge, those made in paragraph Nos. X being matters of records are true to my information derived there from which I believe to be true and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this Verification on this the 5th day of July 2007 at Guwahati.


D E C L A R E N T