50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

17

(DESTRUCTION OF RECORD RULES,1990)

INDEX

O.A/T.A No. 284/06

R.A/C.P No. 11/2009

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SECTION OFFICER (Judl.)

FORM No.4
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O R D E R S H E E T.

1. Original Application No. 284/06

2. Misc.Petition No.

3. Contempt Petition No.

4. Review Application No.

Applicant(s) Madhurjya Kr. Gogoi

Respondent(s) U.O.I. & ors.

Advocate for the Applicant(s) ~~C.K. Bhattacharyya~~, B. Choudhury
P. Kalkoty, Ms. J. Gogoi

Advocate for the Respondent(s) Sr.C.G.S.C. G.Baruah

Notes of the Registry	Date	Order of the Tribunal
Application is in order. Petition is filed. C.F. for Rs. 50/- deposited vide IPO/BD No. 286 932484 Dated 15.11.06. Dy. Registrar	21.11.2006	Present: The Hon'ble Shri K.V.Sachidanandan Vice-Chairman. The applicant is presently working as Deputy General Manager (Planning and Administration) in Kamrup Telecom District, Guwahati-1. While working as Telecom District Engineer, Tezpur the applicant conferred temporary status provisionally to certain casual workers. The contention of the respondents is that the applicant committed serious irregularities in as much as he in collusion with the members of the Selection Committee constituted by him, regularised 34 nos of casual labourers of North Lakhimpur with malafide intention thereby contravening the rules. Subsequently the order conferring temporary status has been withdrawn vide order dated 20.10.1997 but at the next whisper the said withdrawn order was cancelled vide order dated 19.11.1997. Enquiry Officer in all
Steps not taken		
NOTICE FOR R-2 Sr.C.G.S.C. 23.11.06		
Received B.Choudhury Adv. 23.11.06.		

Contd.
21.11.2006

six proceedings that were initiated under the same cause of action against the applicant were appointed. Two out of six proceedings are under challenge in this O.A. It is pleaded and argued that the Enquiry Officers have found the charges against the applicant as not proved. But the Disciplinary Authority differed with the findings of the Enquiry Officer, according to the applicant, without a valid reason. However, vide order dated 2.5.2006 punishment of *"reduction to a lower stage, by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years with the direction that the Charged Officer will not earn increments of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of postponing his further increments of pay"* has been imposed on the applicant. Similar punishment is also imposed on the applicant in another proceeding vide order dated 3.5.2006.

Mr.G.K.Bhattacharyya, learned Sr. counsel for the applicant argued that the respondents could have initiated single proceeding rather than six different proceedings and different punishments which is double jeopardy.

Considering the issue I am of the view that the O.A. is to be admitted. The O.A. is admitted. Issue notice to the respondents. Six weeks time is granted to Mr.G.Baishya, learned Sr.C.G.S.C. for filing of reply statement. Post the matter on 10.1.2007.

Contd.P/2

OA. 284/06.

-3-

Contd.
21.11.2006

Mr.Bhattacharyya submitted that the applicant is prepared to accept one punishment but wants stay of the operation of the other punishment order till disposal of the O.A. By way of interim order I direct the respondents that punishment order dated 2.5.2006 will be sufficient for the time being and the other punishment order dated 3.5.2006 shall be kept in abeyance till the next date.

Vice-Chairman

bb

13.1.07.

Counsel for the Respondents wanted to file written statement. Let it be done. Post the matter on 12.2.07.

Interim order shall continue.

Vice-Chairman

OA 284/06

12.2.2007 Mr.G.Baishya, learned Sr. C.G.S.C. seeks for further time to file reply statement. Four weeks further time is granted to him for the same. After receipt of the copy of the reply statement Applicant is at liberty to file rejoinder, if any, within two weeks thereafter.

Post on 13.3.2007.

Vice-Chairman

/bb/

No W/s has been filed.
12.3.07

13.3.07. Counsel for the respondents prays for four weeks time to file reply statement. Let it be done. Post the matter on 23.4.07. Interim order shall continue.

Member Vice-Chairman

lm

14.3.07
Pl. comply order dated 13.3.07.
NS
14.3.07.

23.4.2007 Present: The Hon'ble Mr. G. Shanthappa
Member (J)

The Hon'ble Mr.G.Ray, Member (A)

Mr. A. Sarma, learned counsel for the Applicant is present. Ms. U. Das, learned Addl. C.G.S.C. representing the Respondents request for time to file reply statement. Her request for four weeks time to file reply statement is granted.

order dt. 13/3/07 issuing to learned advocates for both the parties.
15/3/07.

No W/s has been filed.
19.4.07

O.A No.284/2006

ces of the Registry	Date	Order of the Tribunal
No W/s has been filed. 15.5.07.	23.04.2007	Mr. B. Choudhury, learned counsel for the Applicant is present. Mr.G.Baishya, learned Sr.C.G.S.C. for the Respondents sought some more time to file reply statement. Since sufficient time was already granted to the Respondents to file reply statement it is just and proper to grant some time as a final chance to file reply statement. Accordingly, three weeks time is granted finally. If the reply statement is not filed as directed above the case will be heard finally. Call on 16.05.2007.
17.5.07 W/s filed by the Respondents page Contains 1 to 17. Applicant's Copy served. Pg	/bb/	Member (A) Member
No rejoinder has been filed. 31.5.07	16.5.2007	Mr. G. Baishya, learned Sr has filed reply statement. Copy is furnished to Mr. B. Choud counsel for the Applicant time, as prayed, is allowed to file rejoinder. Post on 01.06.2007
Rejoinder has been filed by the applicant /bb/ NS 14.6.07.	01.06.07	Rejoinder has been respondents, with Post the matter on
W/s and rejoinder filed. 28.6.07.		

OA. 284/06

1.6.2007 Mr.A.Ahmed, learned counsel for the Applicant was represented and submitted that he could not be present today due to personal inconvenience. Hence the matter is adjourned and the posted on 15.06.2007.

Vice-Chairman

/bb/

1.6.2007 Post on 6.6.2007. Applicant is at liberty to file rejoinder.

Vice-Chairman

/bb/

29.6.07. Liberty is given to the Counsel for the parties for further pleading. Post the matter on 20.7.07.

Vice-Chairman

lm

Case is ready.

5.7.07.

.07
al affidavit
Applicant.
ted. Page

W.S.

07
bmitted
nd not A.
ed. page

R&O.

Vice-Chairman

pg

26.7.07 Counsel for the applicant has filed an additional affidavit bringing to the notice of the Court about the latest developments. The other four penalties imposed on the applicant alleged to be on the same incident. Affidavit will be brought on record. Counsel for the respondents prays for 3 weeks time to take instruction.

Post on 17.8.2007 for order.

Vice-Chairman

pg

14.9.07. Pleadings are completed. Post the matter before the next available Division Bench.

Vice-Chairman

lm

22.10.07
Additional affidavit submitted by the Applicant. Copy served.

23.01.2008 It is reported that there is a bereavement in the family of Mr.K.N.Choudhury, learned counsel appearing for the Applicant. On the prayer of Mr. B.Choudhury, learned counsel appearing for the Applicant matter stands adjourned, to be taken up on 28.01.2008.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

lm

The case is ready for hearing.
22.1.08.

28.01.2008 Mr K.N. Choudhury, learned Sr. Advocate(assisted by Mr B. Choudhury) appearing for the Applicant, is present. Mr G. Baishhya, learned Sr. Standing Counsel for the Union of India, appearing for the Respondents, is also present.

Heard-in-part ~~Part heard stage~~. Mr K.N. Choudhury seeks an adjournment of this matter and, accordingly, the case stands adjourned to be taken up on 14.02.2008.

The case is ready for hearing.
25.1.08.

Objection filed by the respondents against the rejoinder filed by the applicant.
13.2.08.

(Khusiram)
Member

(M. Mohanty)
Vice-Chairman

nkm

O.A.284 of 08

14.02.2008 On the prayer of learned counsel appearing for the Applicant, call this matter on 3rd April, 2008 alongwith newly filed O.A. Nos.25 and 26 of 2008.

Call this matter on 03.04.2008.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

Lm

The case is ready for hearing.
16.5.08

03.04. 2008 Call this matter on 19th May, 2008; the Respondents should cause production of 'B/File' of departmental proceedings on the next date.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

lm

19.05.2008 On the prayer of Mr B.Choudhury, learned counsel appearing for the Applicant (made in presence of Mr G.Baishya, Sr. Standing counsel) this matter stands adjourned to be taken up for hearing on 24.06.2008 along with O.A.25/08, O.A.26/08, O.A.44/08 and 45/08.

Respondents should cause production of the departmental proceeding files on the date of hearing.

Send copy of this order to the Applicant and Respondents in the address given in the O.A.

(M.R.Mohanty)
Vice-Chairman

Dt.19.5.'08
Pl. send copy of this order to Applicant & Respondents
21.5.08

order dt. 19/5/08
send to D/section for issuing to applicat and to the respondents by post.
D/No-2518to2520
Cas 26/5/08. Dt= 27/5/08. pg

The case is ready

24.06.08 Mr B. Choudhury, learned counsel appearing for the Applicant and Mr G. Baishya, learned Sr. Standing counsel for the Union of India are present.

Call this matter on 12.08.2008 before Division Bench.

(M.R.Mohanty)
Vice-Chairman

pg

The case is ready for hearing.
11.08.2008.

12.08.2008 Call this matter on 11.9.2008 for hearing.

(M.R.Mohanty)
Vice-Chairman

The case is ready for hearing.
10.9.08.

lm

11.09.2008 Prayer is being made on behalf of Mr. K. N. Choudhury, learned Sr.counsel appearing for the Applicant, seeking an adjournment of hearing of this case to be taken up on 25th September 2008. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India has no objection, if the matter is listed on 25th September 2008.

Accordingly, call this matter on 25th September 2008. for hearing.

The case is ready for hearing.
24.9.08.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

lm

O.A.284/06

25.09.2008 Mr.K.N.Choudhury learned counsel appearing for the Applicant and Mr.G.Baishya, learned Sr. Standing Counsel appearing for the Union of India are present.

For the reason of the sad demise of Justice B. N Sarma, the Court works remain suspended, for the day.

Accordingly, on consent of the parties, call this matter on 3rd October, 2008 for hearing.

(S.N.Shukla)
Member(A)

((M.R.Mohanty)
Vice-Chairman

03.10.2008 Heard Mr.K.N.Choudhury, learned Sr. counsel for the Applicant and Mr.G.Baishya, learned Sr. Standing counsel appearing for the Respondents.

Hearing concluded. Orders reserved.

(S.N.Shukla)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

OA 284/06

14.11.08

14.11.2008 Mr. M. Mahanta, Advocate, is present representing the Applicant's side. Mr.G. Baishya, Sr. Standing Counsel appearing for the Union of India is on accommodation for to-day.

Written Submission filed by the applicant's Counsel.

In the said circumstances, call this matter for hearing on 10.12.2008 to be spoken to.

S.N.Shukla)
Member(A)

(M.R.Mohanty)
Vice-Chairman

26.12.08

Vakalatnama filed by Mr. J. Joga, advocate,

lm

10.12.2008 None is present for either of the parties.

This is a Division Bench matter.

Division Bench not being available today, call this matter on 09.01.2009.

(S.N.Shukla)
Member (A)

The case is ready for hearing.

/bb/

7.1.09

09.01.2009 Call this matter on 28.01.2009.

(M.R.Mohanty)
Vice-Chairman

lm

The case is ready for hearing.

28.01.2009 Mr.B.Choudhury, learned counsel appearing for the Applicant is present. Mr.G.Baishya, learned Sr. Standing counsel appearing for the Respondents is also present.

27.01.09

31.28.1.09

Call this matter on 25.02.2009 for hearing.

Pl. send copies of this order to the Respondents in the add. given in the OA.

Send copies of this order to the Respondents in the address given in the O.A.

The case is ready for hearing.

O.A.284 of 06

25.02.2009 Mr.B.Choudhury, learned counsel appearing for the Applicant is present. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents is also present.

Call this matter for full and fresh hearing on 18.03.2009 along with O.A.Nos.119 of 2006, 25 of 2008, 26 of 2008, 44 of 2008 and 45 of 2008. Mr.G.Baishya, learned Sr.Standing Counsel for the Respondents undertakes to produce Departmental proceedings records at the hearing.

(M.R.Mohanty)
Vice-Chairman

lm

18.03.2009 Call this matter on 25.03.2009.

(M.R. Mohanty)
Vice-Chairman

lm

27.03.2009 Order pronounced in open court.

Kept in separate sheets. O.A. is disposed of.

(Khushiram)
Member (A)

(A.K. Gaur)
Member (J)

/bb/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

Original Application No. 284/06, M.P.130/05 (in O.a.119/04),
O.A. 25/08, 26/08, 44/08 and 45/08.

DATE OF DECISION: 27-03 -2009.

Sri M. K. Gogoi

.....Applicant/s

Mr K.N.Choudhury & B.Choudhury

.....Advocate for the Applicant/s

-Versus –

Union of India & Ors.

.....Respondent/s

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

.....Advocate for the Respondent/s

CORAM

THE HON'BLE MR A. K. GAUR, JUDICIAL MEMBER

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/~~No~~

2. Whether to be referred to the Reporter or not ? Yes/~~No~~

3. Whether their Lordships wish to see the fair copy of the judgment ? ~~Yes~~/No.

Member(A)/Member(J)

15

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 284/06, M.P.130/05 (in O.A.119/04), O.A. 25/08, 26/08, 44/08 & 45/08.

Date of Order : This the 27th day of March, 2009.

THE HON'BLE MR A. K. GAUR, JUDICIAL MEMBER

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Madhurya Kumar Gogoi
S/o late Debeswar Gogoi
Presently working Deputy General Manager
(Planning and Administration)
Office of the General Manager,
Kamrup Telecom District B.S.N.L,
Panbazar, Guwahati-781001. .....Applicant in all the above cases

By Advocate Mr K.N.Choudhury, B. Choudhury

-Versus-

1.Union of India,
represented by the Secretary to the
Government of India-cum Chairman of
Telecom Commission, Ministry of
Communications & Information Technology,
Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi.

2.Senior Deputy Director General (Vigilance)
Department of Telecom, West Block-II,
Wing-2, Ground Floor,
R.K.Puram, New Delhi-66. .....Respondents in all the above cases

By Mr G.Baishya, Sr.C.G.S.C. & Miss D. Kar

ORDER

KHUSHIRAM (MEMBER-A)

All these 5 Original Applications have been filed by Sri M.K.Gogoi, former Telecom District Manager (TDM) Tezpur and presently Deputy General Manager, Guwahati for issuing 6 charge sheets to him by the department for granting temporary status

provisionally to 221 casual labourers in Tezpur and thus he failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government servant thereby contravening the provisions of Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964. The details of each case is shown as under :

Charge Sheet No.	Case No.	No. of labourers Granted TSM	Divn/Sub-Dvn	Date of penalty Order
I, II	O.A.284/06	34 22	North Lakhimpur SDEP Tezpur	23.05.06 19.05.06
III	O.A.25/08	22	Dhemaji	30.05.07
IV	O.A.26/08	21	Udalguri	30.05.07
V	O.A.44/08	15	SDOT Tezpur	30.05.07
VI	O.A.45/08	7	SDE (Comp)Tezpur	20.06.07

In compliance with the DOT circular dated 17.12.1993 for grant of temporary status to the Mazdoors working in the department continuously from 31.3.1985 to 22.6.1988. Copy of which was circulated vide circular dated 28.1.94, the applicant granted temporary status on the recommendation of a Committee consisting of 4 officers from different circles of the department including Accounts Officer, who was custodian of the payment vouchers. The Committee verified the names of eligible casual Mazdoors forwarded by the SDOs. The applicant on recommendation of the Committee conferred temporary status provisionally on 221 casual labourers vide order dated 27.10.1996. The Chief General Manager, Assam Circle, Guwahati directed to cancel provisional order conferring TSM to casual labourers and ordered to start the process for further scrunity a-fresh to identify the casual labourers entitled for temporary status within a period of one month.

This order dated 20.10.97 (Annexure-IV) of withdrawal of TSM was subsequently revoked by TDM after one month vide order dated 19.11.97 (Annexure-V) under pressure of the Union. However, the applicant was charge sheeted under Rule 14 of CCS(CCA) Rules 1965 alleging that he, in collusion with the members of the Selection Committee, regularized casual labourers of North Lakhimpur. Thereafter, the applicant received other 5 memorandam one after another on the same allegations/charges in respect of different sub divisions. The enquiry officer held the charge against the applicant as not proved but the disciplinary authority disagreeing with the Inquiry Officer held the charges as proved. After accepting the advice of the UPSC Disciplinary Authority imposed the penalty of reduction of pay to a lower stage by 3 stages in the time scale of pay of Rs. 14300-400-18300/- for a period of 2 years in two cases respectively. The applicant challenged the above action of the respondents by filing O.A284/06. During pendancy of the O.As the applicant received four penalty orders alongwith UPSC advice in respect of the four remaining proceedings which is apparently the basis of impugned action. On completion of all the proceedings and imposition of penalty the applicant filed O.A.25/08, 26/08, 44/08 and 45/08 challenging each of the four penalty orders and the four proceedings. The applicant has challenged the action of the respondents on the following grounds :

The disciplinary authority is not legally justified in issuing as many as 6 (six) charge sheet for the same cause of action. The disciplinary authority acted irrationally and arbitrarily. Secondly, report of the CBI which is apparently the basis of impugned action has

not been furnished to the applicant violating the principle of natural justice. Thirdly, 3 different Enquiry Officer came to different findings on the same cause of action is in itself a good enough reason for interfering with the inquiries in question to prevent miscarriage of justice. In not initiating any proceeding against Sri B.K.Goswami, the then TDM Tezpur who vide order dated 19.11.97 revoked the cancellation order dated 20.10.97 issued by the applicant smacks of discrimination and colourable exercise of power by the disciplinary authority.

2. The respondents have filed written statement stating that the officer committed the irregularities. The charge sheets were issued to the officer after due consultation with the CVC and after following the prescribed procedure. Hence it is not correct that these charge sheets were identical. The Hon'ble Tribunal in earlier proceedings have rightly upheld the separate charge sheets since the disciplinary proceeding are statutory in nature, the prescribed procedure has to be followed and no step can be avoided. There was adequate evidence on record to hold the charges as fully proved. The disciplinary authority considered the records of the case, submission of the applicant, advice of CVC and UPSC and took a conscious decision to impose the penalty. Hence the O.A filed by the applicant deserves to be dismissed.

3. We have heard Mr K.N.Choudhury, learned Sr. counsel assisted by Mr B.Choudhury and Mr G.Baishya, learned Sr.C.G.S.C assisted by Miss D. Kar and perused the materials placed on record. Learned counsel for the applicant argued that conferment of temporary status in compliance of the policy of the Government was carried out by

the applicant on the recommendation of the Committee consisting of 4 officers and the provisional conferment of temporary status was within the declared policy of the Government. The action of the applicant conferring temporary status to 221 Mazdoors under TDM Tezpur was ordered to be cancelled by the then Chief General Manager, Assam Telecom Circle, Guwahati in compliance of that order, the applicant withdrew the conferment of temporary status vide order dated 20.10.1997 and the said order of the applicant was again cancelled by the TDM Tezpur vide order dated 19.11.1997. Unless the TDM Tezpur who cancelled the withdrawal of TSM order of applicant and other officers who recommended conferment of temporary status on 221 casual labourers are proceeded against,the applicant cannot be singled out for panel action by the respondents. He has cited the decision reported in (1983) 4 SCC 225, Sengara Singh & Ors. Vs. State of Punjab and others, wherein it was held that arbitrary picking and choosing for reinstatement after mass dismissal violative of Article 14 – Mass dismissal of police personnel for misconduct of participation in unlawful agaitation – But majority of them except the petitioners, reinstated and criminal prosecution against them withdrawn on the basis of recommendations of a committee comprising senior officers – Criteria for depriving the petitioners of the largesse of reinstatement not disclosed or unconvincing – Held dismissal of petitioners arbitrary and discriminatory. He also cited (2007) 7 SCC 206, Bongaigaon Refinery & Petrochemicals Ltd. and others vs. Girish Chandra Sarma, wherein it was held that well established proposition of law reiterated that courts cannot sit as appellate authority over the domestic enquiry.

However, the findings of the domestic enquiry in this case found unsustainable inasmuch as one person alone made scapegoat for collective decisions in which others also collectively participated. Division Bench of High Court rightly set aside the penalty.

Mr G.Baishya, learned Sr.Standing counsel assisted by Miss D.Kar appearing for the respondents contended and vehemently defended the action of the respondents and tried to justify the action against the applicant.

4. After having gone through the arguments made by the learned counsel of the parties and perusal of the records, we feel that admittedly applicant had granted temporary status to 221 casual labourers on the recommendation of a Committee consisting with 4 other officers who have not been proceeded against by the respondents and one Shri A.K.Sarkar who was also a member of the said committee was exonerated and let off by the disciplinary authority. The action of the applicant withdrawing the grant of TSM vide order dated 20.10.1997 was further cancelled by the TDM Tezpur vide order dated 19.11.1997 and as a result the temporary status granted by the applicant continued to be enjoyed by 221 persons and respondents have not cared even to scrutinize their records to see whether action of the applicant was justified or not. Resultantly the 221 persons continued to be with the respondents without any action having been initiated against them, nor the TDM Tezpur has been asked to explain his action revoking the order of the applicant dated 20.10.1997 by which he had cancelled the temporary status granted provisionally to the 221 casual labourers. In this background it is apparent that respondents have not

been fair as far as they have acted by picking the applicant singularly. Failing to take action against others who are also equally responsible, if not more, for grant of temporary status to 221 persons; the respondents have adopted "pick and choose" policy which is violative of Article 14 & 16 of the Constitution and thus not sustainable in the eye of law. The citations submitted by the learned counsel for the applicant also strengthens the case of the applicant. In the above ~~conspectus~~ facts and circumstances of the matter, action against the applicant is not justified and smack of partiality and vedentta and cannot be sustainable in the eye of law and accordingly the same is quashed and set aside. The respondents however, are at liberty to consider the matter a fresh and take appropriate action, if they so desire against all those who are responsible for the conferment of temporary status on 221 persons.

With the above order and observation all the O.As are disposed of. There will be no order as to costs.

27.3.09

(KHUSHIRAM)
ADMINISTRATIVE MEMBER

(A.K.GAUR)
JUDICIAL MEMBER

/pg/

Administrative Member

Shri Ajit Kumar Sarkar
S/o Late Rajkrishna Sarkar,
Sub-Divisional Officer, Telegraph,
Dhekiajuli, Sonitpur,
Assam.

By Advocates Mr B.P. Kataki,
Mr M. Khaitoniar and Mr N. Bora. .....Applicant

- Versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Communication,
Department of Telecommunication,
New Delhi.
2. The Chairman-cum-Managing Director,
B.S.N.L., Statement House,
Barakhamba Road, New Delhi.
3. The Chief General Manager,
B.S.N.L., Assam Telecom Circle,
Ulubari, Guwahati.
4. The Telecom District Engineer,
Tezpur, P.O.- Tezpur,
Sonitpur, Assam.
5. The Inquiry Officer, D.E.O.,
Office of the Chief General Manager, Telecom,
Assam Circule,
Guwahati. .....Respondents

By Advocate Mr A.K. Chaudhuri, Addl. C.G.S.C.

O R D E R (ORAL)

D.C. VERMA, VICE-CHAIRMAN

By this O.A. the applicant has prayed for the following reliefs:

"8.1 That, the disciplinary proceedings initiated by issuing memorandum No.Vig./Assam/Disc-VIII/2000-01/6, dated 26-12-2000 (vide ANNEXURE-C); No.Vig./Assam/Disc-IX/00-01/3, dated 23-03-2001 (vide ANNEXURE-E); No.Vig/Assam/43(C)/6, dated 05-11-2001 (vide ANNEXURE-F); No.Vig./Assam/Disc-XV/11,

dated 05-12-2001 (vide ANNEXURE-G); No.Vig./Assam/Disc-XII/6, dated 10-12-2001 (vide ANNEXURE-H) and No.Vig./Assam/Disc-XIV/5, dated 28-12-2001 (vide ANNEXURE-I) be declared illegal and bad in law and the same be set aside and quashed.

8.2 That, the respondent authority be directed not to harass the applicant by initiating him to participate in all the 6(six) Departmental proceedings initiated on the same allegations.

8.3 That, the respondent authority be directed to proceed with only one 'disciplinary proceeding and declare the other 5(five) disciplinary proceedings as illegal.

8.4 That, the Hon'ble Tribunal may be pleased to grant any other relief or reliefs as itdeem fit and proper.

Consequential relief has also been claimed.

2. When the O.A. was filed, the Tribunal passed an interim order on 17.2.2001 by which proceedings on the Charge Memorandum dated 23.3.2001, 5.11.2001, 5.12.2001, 10.12.2001 and 28.12.2001 were stayed. Thus the first Charge Memorandum issued on 26.12.2000 was to proceed. The rest remained stayed. During the pendency of this O.A the enquiry in the Charge Memorandum dated 26.12.2000 has been completed and as appears from the documents filed with rejoinder the Inquiry Officer exonerated the applicant. Consequently, the Disciplinary Authority has passed order dated 20/24.11.2003 by observing as below:

> "Taking into account the findings of the Inquiring Authority, records of the case and on an objective assessment of the facts and circumstances of the case in its entirety, I, P.K. Chanda, Member (Services), Telecom Commission, hereby order to 'exonerate' Shri A.K. Sarkar, SDOT of the charges levelled against him, vide aforesaid Memorandum."

3. The submission of Mr M. Khatoniar, learned counsel for the applicant is that the first Charge Memorandum was issued to the applicant with the imputation that the applicant while working as SDE, Tezpur failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of his position inasmuch as he as a

member.....

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member of the selection committee for regularization of eligible casual labourers as temporary status Mazdoors under TDE, Tezpur during 1996, in collusion with other members of the selection committee without verifying the genuineness of recommendation of different JTOs/SDEs and certificates issued by JTOs/Lineman etc, recommended with malafide intention names of 221 Nos of casual labourers, consequent upon which posts of 221 casual labourers were regularised, although none of them were eligible for such regularisation and thereby the applicant put the department to huge financial loss. With these allegations the applicant has been served with Charge Memorandum for contravention of Rule 3(1)(i)(ii) and (iii) of the CCS(Conduct)Rules, 1964.

4. Subsequent to the issues of aforesaid Charge Memorandum the applicant was served with five other Charge Memorandums as below:

i) Mrmorandum dated 23.3.2001 in respect of same 221 persons

ii) Memorandum dated 5.11.2001 in respect of 7 Nos. casual labourers of Tezpur

iii) Mrmorandum dated 5.12.2001 in respect of 15 Nos. casual labourers of Tezpur

iv) Memorandum dated 10.12.2001 in respect of 22 Nos. casual labourers of Dhemaji Sub-Division

v) Mrmorandum dated 28.12.2001 in respect of 21 Nos. casual labourers of Udalguri Sub-Division.

5. The learned counsel for the applicant has taken us through the statement of imputation of misconduct in respect of these Charge Memorandums and also the documents by which the article of charges are to be proved by the respondents. He has pointed out that the names of these

persons.....

persons given in the five Charge Memorandums is amongst the 221 for which the enquiry has already been completed and the applicant has been exonerated. The learned counsel submitted that these Charge Memorandums cannot stand and have to be quashed.

6. When the case was taken up for hearing on the previous date we granted time to the learned counsel for the respondents to enquire whether the names of the other recommended persons for which the five Charge Memorandums have been issued are included in the first Charge Memorandum dated 26.12.2000. Learned counsel for the respondents, Mr A.K. Choudhuri, however submitted that though he tried to confirm the same but the same has not been confirmed because the concerned file has been sent to CVO, Delhi and the local office could not verify the same.

7. In view of the above we have ourselves gone through the list of documents and the names of persons given in the various Charge Memorandums and have tallied the same with the list of 221 casual labourers who were granted Temporary Status on 27 May 1996 and in respect of whom Charge Memorandum dated 26.12.2000 was issued.

8. In the light of the above we would discuss the details of the subsequent Charge Memorandums separately as below:

Charge Memorandum dated 23.3.2001

This Charge Memorandum which was issued in respect of 221 persons is exactly the same which was issued vide the Charge Memorandum dated 26.12.2000. Annexure-I attached with the Charge Memorandum dated 23.3.2001 and the Annexure-I attached with the Charge Memorandum dated 26.12.2000 appears to be photocopies of the same so far the contents therein are concerned. The list of 221 persons annexed with Charge Memorandum dated 26.12.2000 includes

all.....

all the names of casual labourers which are contained in Annexure-III, i.e. list of documents furnished with the Charge Memorandum dated 23.3.2001. Thus the enquiry which is proposed to be undertaken in pursuance to Charge Memorandum dated 23.3.2001 is in all respect in the matter which has been already concluded while making enquiry on the Charge Memorandum dated 26.12.2000. Consequently, no enquiry can be allowed to proceed on the basis of Charge Memorandum dated 23.3.2001.

Charge Memorandum dated 5.11.2001

This Charge Memorandum has been served with regard to 7 Nos. of Mazdoors of Tezpur for appointment as temporary status Mazdoors. The list of 7 Nos. is contained in Annexure-III to this Charge Memorandum. They are:

1. Certificate issued in favour of Sri Dandadhar Das, S/o Lt. Mahendra Nath Baloi, the then Cable Splicer, O/o the SDEO, Tezpur.
2. Certificate issued in favour of Sri Nagen Saikia, S/o Sri Chandra Kt. Saikia by Sri Sarat Nath, thethen Line Inspector O/O the SDEO, Tezpur.
3. Certificate issued in favour of Sri Mridul Kr. Das, S/o Manik Das by Sri Sarat Nath, L.I of the O/o the SDEO, Tezpur.
4. Certificate issued in favour of Sri Naba Kr. Sarmah, S/o Lt Dharani Sarmah by Sri Sukan Roy, S.I. O/o SDEO, Tezpur.
5. Certificate issued in favour of Sri Dharani Swargiary by Sri Sukan Roy, S.I O/o the SDEO, Tezpur.

6. Certificate issued in favour of Sri Rajib Gogoi, S/o Sri Nilakanta Gogoi by Sri Sukan Roy, S.I. O/o the SDEO, Tezpur.

7. Certificate issued in favour of Sri Avani Ch. Talukdar, S/o Sri Upen Ch. Talukdar by Sri Mohan Prasad Roy, S.I. O/o the SDEO, Tezpur.

All these 7 names appear in the list of 22 under heading SDE(Computer), Tezpur which were recommended by the applicant and for which the enquiry has already been completed in pursuance to the Charge Memorandum dated 26.12.2000. For the reasons mentioned above this Charge Memorandum too cannot proceed once, on same allegation the applicant has already been exonerated earlier.

Charge Memorandum dated 5.12.2001

This Charge Memorandum is in respect of 15 Nos. casual labourers of Tezpur. All these 15 names are given in Annexure-III to the Cahrge Memorandum. They are:

1. Experience Certificate of Smt Paramita Dey, D/O Late Narayan Chandra Dey issued by Shri A.C. Dutta (LI)
2. Experience Certificate of Shri Atul Chandra Deka S/o Late Madan Deka issued by Shri N.C. Boro
3. Experience Certificate of Shri Biswajit Malakar S/o Sachin Malakar issued by Shri A.C. Dutta, LI
4. Experience Certificate of Shri Dina Kanta Ghatowal S/o Phagum Ghatowal issued by Shri A.C. Dutta LI
5. Experience Certificate of Shri Anup Dutta S/o Amal Chandra Dutta issued by Shri A.C. Dutta LI
6. Experience Certificate of Shri Dukhan Roy S/o Shankar Roy issued by Shri A.C. Dutta LI
7. Experience Certificate of Smt Mina Das D/o Jamini Das issued by Shri A.C. Dutta LI

8. Experience Certificate of Shri Parimal Sarkar S/o Ranjan Sarkar issued by Shri A.C. Dutta LI

9. Experience Certificate of Shri Phulena Basphor S/o S. Basphor by Shri A.C. Dutta LI

10. Experience Certificate of Shri Rupen Das, S/o Sarat Das issued by Shri N.C. Paul SI

11. Experience Certificate of Shri Sanjay Kumar Deb S/o Nani Gopal Deb issued by N C Paul, SI

12. Experience Certificate of Shri Karuna Lahkar S/o Dasrath Lahkar issued by Shri N.C. Paul, SI

13. Experience Certificate of Shri Sakiram Majhi, S/o Durga Majhi issued by Shri A.C. Dutta LI

14. Experience Certificate of Shri Duijan Baishya S/o H.N. Baishya issued by Shri N.C. Paul

15. Experience Certificate of Smt Dipali Bazarika issued by Shri Ramesh Ch. Haloi.

11 These 15 names are in the list of 221 under heading SDO(T), Tezpur. From this list one name Mazibur Rahman whose name is at serial 4 is not in Annexure-III. Thus for all the 15 persons in respect of whom this charge Memorandum has been issued has already been enquired into under the Charge Memorandum dated 26.12.2000 for which the applicant has been exonerated. The applicant, therefore, cannot be enquired second time for the same misconduct.

Charge Memorandum dated 10.12.2001

This Charge Memorandum has been issued to the applicant as he allegedly recommended names of 22 Nos. of casual Mazdoors of Dhemaji Sub-Division. The names of these 22 Nos. are in Annexure-III to the Charge Memorandum. Their names are in the list of 221 candidates contained under head SDE (Phones), Dhemaji. Thus in respect of all these persons also enquiry has been already completed under the Charge Memorandum dated 26.12.2000.

Charge Memorandum dated 28.12.2001

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This Charge Memorandum is for recommending 21 Nos. casual labourers for appointment as temporary status Mazdoorsin Udalguri Sub-Division. Their names are mentioned in Annexure-III of this Charge Memorandum and their names are contained under head SDE (Phones), Udalguri in the list of 221 persons for which enquiry has been already completed in pursuance to Charge Memorandum dated 26.12.2000.

9. From all the materials which have been found on record it is noticed that the first Memorandum dated 26.12.2000 was issued for the recommendations made in respect of 221 Mazdoors and after due enquiry the applicant has been exonerated. In the same matter the second Charge Memorandum also issued in respect of same 221 persons, by Charge Memorandum dated 23.3.2001 cannot be allowed to proceed second time. By Other Charge Memorandum, dated 5.11.2001, 5.12.2001, 10.12.2001 and 28.12.2001 are also found in respect of persons whose names are already included in the list of 221 persons. Thus though a joint enquiry was conducted earlier, seperate Charge Memorandums have been filed for different groups of persons on the same allegations. Once the applicant has been exonerated he cannot be tried the second time. Consequently, none of the five Charge Memorandums can stand and they are to be quashed.

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10. In view of the discussions made above, the Charge Memorandums dated 23.3.2001, 5.11.2001, 5.12.2001, 10.12.2001 and 28.12.2001 are quashed.

The O.A. is allowed to that extent. No costs.

This person recommended — why DA disagreed.

sd/ VICE CHAIRMAN

sd/ MEMBER(Adm)

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Filed by:
Gitiram Choudhury
Adv.
6.10.08.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH: GUWAHATI

WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT IN RESPECT OF O.A. NO 284/06, O.A.NO25/08, O.A.NO 26/08, O.A. NO 44/ O8 AND O.A. NO 45/08.

Sri Madhuryya Kumar Gogoi
..... Applicant.

- Versus -

Union of India and others.
..... Respondents

WRITTEN SUBMISSION:

(1) Assuming while not admitting that in issuing the order dt: 27.5.96 (Annexure-II), the applicant committed any misconduct within the meaning of the conduct rules, the disciplinary authority is not legally justified in issuing as many as 6 (six) charge sheet for the same cause of action. In so doing the disciplinary authority not only violated Rule 14 (1) and Rule 14 (3) of CCS (CCA) Rules 1965,(hereinafter referred to as Rules) but also violated Article 14 of the Constitution of India inasmuch as the applicant has been denied equality before law and equal protection of the law. A perusal of the 6(six) charge memos would reveal that the basic allegation against the applicant is that the applicant ***without verifying the genuineness of the recommendations of different SDO's/SDE's and experience certificate issued by JTO's/Lineman etc issued the order dt: 27.5.96 and, thereby, putting the department to huge financial loss.*** The expression definite and ***distinct*** used in Rule 14 (3) of the Rules has a definite legal connotation. A distinct and definite charge can emanate only from a distinct cause of action. Since the cause of action in the instant case is one and the same as indicated above, the disciplinary authority committed an act of irrationality in issuing 6 different and distinct charge memorandum. Therefore, in view of Rule 14 of the Rule, the impugned orders of penalty passed in respect of aforesaid 6 (six) charge memorandums cannot withstand judicial scrutiny.

1983(3)SCC 225
Surjeet Singh
Vs
State Punjab

(2) It is respectfully submitted that in view of the order of this Hon'ble Tribunal in O.A. 27/03 (Sri A.K.Sarkar- Vs- Union of India and ors) which has since being seemingly accepted by the disciplinary authority, in law, it is not permissible to maintain even one charge against the applicant . It will be noticed that Sri A.K. Sarkar was one of the member of the Selection Committee constituted by the applicant vide order dt: 27.5.96. The charge framed against Sri Sarkar is identical i.e. Sri Sarkar ***without verifying the genuineness of***

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the recommendation of different JTO's/ Linesman etc. recommended with malafide intention the name of 221 casual labour .....It is respectfully submitted that responsibility of Sri Sarkar was much more than that of the applicant, inasmuch as Sri Sarkar as a member of the Selection committee discharged a primary role while the applicant in his capacity as TDE, Tezpur, discharged a secondary role. In case of Sri Sarkar the disciplinary authority accepted the finding of not guilty recorded by the Inquiring Officer. Seemingly, the order of this Hon'ble Tribunal quashing the remaining 5 charge memos in respect of Sri Sarkar has attained finality, as the department had chosen not to assail the same, though it was open to it. It is in this context, it would be relevant to refer to the decision of the Apex Court in M. Raghavelu -vs- Govt. of A.P. and Another reported in 1997 (10) SCC 779, Para 4 & 5, wherein in identical facts situation the Apex Court quashed the disciplinary proceeding against the appellant Sri M. Raghavelu, Executive Engineer, Panchayat Raj, Kavali as disciplinary proceeding against the Deputy Executive Engineer and the Supervisors, who were directly in charge of the construction and who were similarly charged for ***identical misconduct,*** though in different proceedings, they were exonerated of the charge. Copy of the decision is enclosed herewith and marked as D-1

(3) It is respectfully submitted that in view of the acquittal granted by the Hon'ble Gauhati High Court to the JTO's/Supervisors and the beneficiaries i.e. casual mazdoors, it would be unjust, unfair and oppressive to allow the disciplinary authority to maintain the finding of the guilt arrived at by the disciplinary authority, that to, in violation of Rule 14 and Rule 15 of the CCS (CCA) Rule indicated above. If any authority is required for the aforesaid proposition, one can gainfully refer to 2006 (5) SCC 446, Para 29 and 30 (G.M. Tank-Vs-State of Gujarat and others). Copy of the Hon'ble Gauhati High Court decisions and the citation of the Apex Court is enclosed herewith and marked as D-2 (Series) and D-3 respectively.

(4) It is respectfully submitted that permitting the disciplinary authority to inflict 6 different punishments which are to run concurrently though the misconduct (not admitted) is one and the same, the same would have the potential of permitting the disciplinary authority to inflict more than one punishment in violation of Article 20 (2) of the Constitution of India. In this regard the applicant begs to rely and refer upon the decision of the Apex Court given in 2004 (13) SCC 342 (Lt. Governor, Delhi and others -Vs- HC Narinder Singh). Copy of the decision is enclosed herewith and marked as D-4.

(5) In para 4 and 6 of written statement, it has been contended that because of the report submitted by CBI, different charge sheet were

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issued. Curiously enough the purported report of the CBI, which appears to be the basis of impugned action, has not been furnished to the applicant. Thus there is gross violation of principles of natural justice.

In any case CBI Inspector, Sri K. Barman, who was examined as SW-7 categorically stated during the departmental inquiry that no charge could be framed against the applicant after due investigation. SW-7 further stated that no evidence of collusion between the applicant and member of the Selection Committee could be gathered during investigation. In this regard the applicant begs to refer and rely upon the decision of the Apex Court in 1970 (1) SCC 709, Para 11 and 24 (State of Assam VS Mahendra Kumar Das). Copy of the decision is enclosed herewith and marked as D-5

(6). The purported legal justification for the disciplinary authority to disagree with the findings of the Inquiry Officer dt: 26.7.05 (in respect of 3rd charge memo dt: 7.3.02) as recorded in memorandum dt: 4.10.05 (Page 131 of O.A. 284/06) is that the Inquiry Officer in its report found that conferment of TSM status can be done only after referring the case to DOT. It is respectfully submitted that neither the Inquiry Officer can inquire into allegations with which a delinquent had not been charged with nor the disciplinary authority can base its finding towards imposition of penalty without framing a definite and distinct charge that the applicant confirmed TSM status without referring the cases to DOT. For the aforesaid proposition the applicant begs to rely upon the following authorities:

(i) AIR 1957 SC page 7, Laxmi Devi Sugar Mills Ltd. Vs Nand Kishore Singh, Para 18.

(ii) 2006 (5) SCC page 88, M.V. Bijlani- Vs- Union of India & Ors, Para 14, 23, 25 and 26. Copy of the above decisions are enclosed herewith and marked as D-6 and D-7 respectively.

That the decision making process in the instant case having vitiated in the manner alluded above, it is respectfully submitted that this Hon'ble Tribunal in exercise of power under the Administrative Tribunal Act 1985 may be pleased to interfere with the 6 (six) disciplinary proceeding initiated against the applicant and further be pleased to set aside and quash all consequential order passed therein.

Settled by
K.N. Choudhury.
Senior Advocate

Drawn by
Bikram Choudhury
Advocate.

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CA No. 2703 of 1997 [SLP (C) No. 8685 of 1991]

12. Special leave granted.

13. The learned counsel for the appellant in the appeal preferred in SLP (C) No. 8685 of 1991 prays that he may be permitted to withdraw the appeal. The prayer is granted. The appeal is dismissed as withdrawn.

14. No costs.

(1997) 10 Supreme Court Cases 779

(BEFORE K. VENKATASWAMI AND S.P. KURDUKAR, JJ.)

M. RAGHAVELU .. Appellant;

Versus

GOVT. OF A.P. AND ANOTHER .. Respondents.

Civil Appeal No. 4677 of 1990, decided on April 3, 1997

Service Law — Misconduct — Lack of supervision — Liability of overall in-charge for misconduct of the delinquent-subordinate not more than that of the direct in-charge — Wrong measurement recorded in the M. Book by the Supervisor with the connivance of the Deputy Executive Engineer, Panchayat Raj and allowed by the Supervisor, Panchayat Samithi, to entrust construction of house colony containing a large number of (54) blocks to contractor and thereby beneficiaries deprived of participation in the construction work — The Deputy Executive Engineer and the Supervisor, who were directly in-charge of the building construction, having been exonerated of the charge of failure to recheck the said entry, held, the Executive Engineer, Panchayat Raj, who was overall in-charge of the work could not be found to be guilty of the same charge on the same evidence although different findings were given by the enquiry officer — Liability to (Para 5)

Appeal allowed H-M/18283/SL

ORDER

1. The appellant was charged for misconduct when he was working as Executive Engineer, Panchayat Raj, Kavali, Andhra Pradesh. The charge levelled against him reads as follows:

> "That you, while working as Executive Engineer, Panchayat Raj, Kavali from April 1960 to October 1982, in abuse of your official position and actuated by corrupt motives failed to supercheck the measurements in the M. Book recorded by Shri D. Ram Singh, Supervisor, with the connivance of Shri C. Venkateswara Rao, Dy. Executive Engineer, Panchayat Raj, Buchireddipale and allowed Shri D. Ram Singh, Supervisor, Panchayat Samithi, Kovuru to entrust the construction of a housing colony containing 54 blocks through a contractor at Pallipalem, H/o Utukur village, Kovuru taluk, Nellore District at an estimate of Rs 4,36,000 against the rules and regulations and thus deprived the beneficiaries in participating in the construction work of the colony and that thereby you are guilty of misconduct within

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the meaning of Rule 2(*b*) of the rules framed under the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960."

2. The enquiry officer has found that the charge has been proved and he has also specifically stated in para 42 of his report as follows:

"But taking into consideration the fact that he is not actually in charge of the building construction, but only overall in-charge being the Executive Engineer of the Panchayat Raj, it is hereby recommended to the Government that two increments may be stopped with cumulative effect as far as this charged officer is concerned."

3. Accepting the recommendation of the enquiry officer, the disciplinary authority imposed the penalty as recommended. Against that, the appellant preferred a representation petition before the Tribunal without success. Hence the present appeal by special leave.

4. Mr A.V. Rangam, learned counsel for the appellant, submits that the appellant was not factually in charge of the building construction, as admitted by the enquiry officer, and as a matter of fact the persons, namely, the Deputy Executive Engineer and the Supervisor, who were directly in charge of the building construction, were similarly charged for identical misconduct and on the same set of evidence, though in different proceedings, they were exonerated of the charge. The Government who is the punishing authority, accepting the recommendation, exonerated them of the charge.

5. The argument of the learned counsel for the appellant is that if the persons directly in charge of the construction work were found not guilty of the charge framed, the appellant, who was indirectly in charge of the work, cannot be punished for similar charge levelled against him. We find force in the argument of the learned counsel for the appellant and we do not think that the argument of the learned counsel for the respondent that the enquiry officer in this particular case has gone into the merits and has given different finding should be accepted. As pointed out earlier, on the basis of the same set of evidence the officers who were directly in charge of the construction work were exonerated of the charge and we see no reason to pick out the appellant alone for finding him guilty of the charge.

6. The appeal is accordingly allowed and the judgment and order under appeal is set aside.

7. No order as to costs.

END OF THE VOLUME

35 D-2 (Series).

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IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND:MEGHALAYA:

MANIPUR: TRIPURA: MIZORAM AND ARUNACHAL PRADESH)

1.Criminal Appeal No. 263 of 2003

1.Sri Rajendra Rai

2:Sri Lambodhar Jha

3.Sri Sakaldeo Singh

4.Sri Rambilash Rai

5.Sri Radharam Deka

6.Sri Deonath Rai Appellants

Versus

Central Bureau of Investigation (CBI) Respondent

For the appellant-Mr. D.C. Mahanta, Senior Advocate,

Mr. T.J. Mahanta, Mr. M. Khataniar

Ms. P. Bhattacharyya, Mr. N. Bora, Advocates

For the respondent-Mr. D.K. Das, Standing Counsel, CBI,

2.Criminal Appeal No. 269 of 2003

1.Sri Jitu Sarma

2.Sri Jyoti Prasad Saikia

3.Sri Dhanpat Swargiary

4.Miss Juri Sarma

5.Sri Kishore Kr. Pathak

6.Sri Maina Bora

7.Sri Pawan Kataki

8.Sri Gobinda Bhuyan

9.Sri Biran Das

10.Sri Gagan Bhuyan

11.Sri Jiten Sarma

12.Smti. Tunmoni Saikia

13.Sri Gobinda Bora

14.Sri Ramji Bhagat

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15.Sri Tilok Bora
16.Sri Pranjal Kataki
17.Sri Abani Baruah
18.Sri Biren Bora
19.Sri Basanta Bhuyan
20.Sri Dharmendra Kumar Rai
21.Sri Ambika Barman
22.Sri Prabhat Kalita
23.Sri Dipen Bhuyan
24.Sri Pulin Borah
25.Sri Prabhat Sarma — Appellants

Versus

Central Bureau of Investigation (CBI) — Respondent

For the appellants- Mr. D.C. Mahanta, Senior Advocate,
Mr. T.J. Mahanta, Ms. P. Bhattacharyya,
Mr. N. Bora, Advocates

For the respondent-Mr. D.K. Das, Standing Counsel, CBI,

3.Criminal Appeal No. 277 of 2003

1.Babul Saikia
2.Cheniram Sharma — Appellants

Versus

Central Bureau of Investigation (CBI) — Respondent

For the appellant-Mr. D.C. Mahanta, Senior Advocate,
Mr. T.J. Mahanta,
Mr. N. Bora, Advocates

For the respondent-Mr. D.K. Das, Standing Counsel, CBI,

PRESENT

THE HON'BLE MR. JUSTICE P.G. AGARWAL

Date of Hearing:-1.3. 2007

Date of Judgment:- 14.3.2007

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JUDGMENT AND ORDER

Criminal Appeal Nos. 268/ 2003, Criminal Appeal No. 269/ 2003 and Criminal Appeal No. 277/ 2003 have been heard analogously and disposed of by this common Judgment and Order as these three appeals have arisen out of the Judgment and Order dated 28.7. 2003 passed by the Special Judge, Assam at Guwahati in Special Case No. 9(C)/ 2000 whereby the trial court convicted the accused appellants u/s 120B, 420, 471 IPC r/ w section 13 (1) (d), P.C. Act, 1988 and awarded different sentences and all the sentences were ordered to run concurrently.

2. Heard the learned counsel for both sides.

3. The prosecution case in brief is that during the period 1985 to 1996 accused appellants were serving as Sub Inspectors, Line Inspectors, etc. The prosecution case is that all these accused persons pursuant to a criminal conspiracy, decided to cheat the Government in the Telecom Department and thereupon accused A-1 to A-6 fabricated false Experience Certificates in favour of accused A-7 to A-33 and these were approved by A-1 and using these certificates as genuine, accused A-7 to A-33 were shown as regular casual Mazdoors working in the Office of the BSNL during the period 1988-96 and thereafter they were given the status of TSM and paid as such. According to the prosecution, accused A-7 to A-33 were not serving as casual Mazdoors in view of the ban imposed and the Experience Certificates were forged documents.

4. During trial, the prosecution examined as many as 14 witnesses. The defence plea as seen from the trend of examination is that accused A-7 to A-33 were working as casual Mazdoors and as such, accused A-1 to A-6 issued experience certificates and these were counter signed by A-1 on verification.

5. We, thus, find that in the present case, there is no dispute at the Bar as regards issuance of experience certificates by accused A-1

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to A-6 and counter signature thereupon by A-1. The fact that accused A-7 to A-33 received pecuniary advantage pursuant to the above experience certificates, is also not challenged or disputed before us.

6. In view of the above, the first point for consideration is whether accused A-7 to A-33 were serving/ working as casual Mazdoors during relevant period under TSMs, under SDE (P), B. Chariali or not

7. PW 1 proved and exhibited experience certificates and as the experience certificates are not challenged, the evidence of this witness is not material. The prosecution came up with a plea that the accused persons were not serving or working as casual Mazdoors and that there was a ban for engagement of casual workers. So far the first part is concerned, the prosecution has not led any evidence regarding the factual aspect and although a number of witnesses were examined and these persons were serving under the TDM, Tezpur during the relevant period, none of these witnesses have stated a single word to the effect that they never saw these accused persons A-7 to A-33 working as casual workers or Mazdoors.

8. So far the circular providing for a ban on engagement of casual Mazdoors, the admitted position is that it was applied more in violation and casual Mazdoors used to be engaged for taking care of contingency and emergent works. PW M.K. Gogoi has deposed that a circular was issued on 17.12.93 providing that persons who were engaged as casual workers from 1985 till June, 1988 may be given the status of TSM provided that they fulfill certain conditions. The said circular was applicable to whole of India and the prosecution has also accepted the above position modifying the earlier circular banning engagement of casual workers.

9. Ajit Kumar Sarkar (PW 7) has deposed that the TDE M.K. Gogoi had constituted a selection committee for conferment of TSM status on casual labourers.

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10. Thus, we find that so far the selection committee consisting of A-1 to A-6 are concerned, was constituted by the competent authority to select and recommend the names of persons for conferment of the status of TSM and out of 32 candidates, the committee recommended the names of 27 candidates. The selection committee considered the experience certificates issued by A-1 to A-6. Md. I. Ahmed (PW 2) has deposed about the payment which is not under challenge in this case. Prosecution witness has deposed about the circular banning appointment of casual workers after 31.03.95. The said circular is not relevant for our purpose. Rajib Yadav (PW 1) had granted sanction for prosecution and we find that the said sanction is not under challenge.

11. In this case, we find that Mr. M. Bhuyan, SDE (Cable) who constituted the selection committee for the purpose of examining the cases of 27 persons including A-7 to A-33 had not been examined and he has also not been arrayed as an accused and although the entire process was initiated by him, Mr. Bhuyan would have been the best person to say whether A-7 to A-33 were working as casual Mazdoors or not or as to what led him to constitute the committee to consider the cases of these accused persons.

12. So far the plea of the prosecution that the accused persons A-7 to A-33 should not have worked as casual Mazdoors because of the ban imposed, it has not much basis, more so, in view of the circular which provides that the casual Mazdoors, who worked during the period 1985 to 1988, can be given the status of TSM on fulfillment of certain conditions which goes to show that in spite of the ban, casual Mazdoors used to be engaged every where in India.

13. As stated above, none of the prosecution witnesses has come forward to depose that although they were working under the TDM, Tezpur during the period 1985 to 1996, they never saw these accused persons A-7 to A-33 serving or working as casual Mazdoors in the capacity of Sub Inspector, Cable Splicer etc. and they have issued the experience certificates and they are before us as accused.

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14. The main foundation on the basis of which the Tribunal has recorded the order of conviction is the Accounts Books and the system prevailing in the Telecom Department which was narrated by PW 8, the Chief Accounts Officer, TDM, Tezpur. He has deposed as follows-

" For execution of capital work and maintenance works of temporary advance were sanctioned to SDOs and Field Officer including JTO by head of the SSA. Capital work means and signify execution of new works while maintenance means execution of day to day maintenance works. For execution of works man power is necessary. For execution of maintenance works employment of casual labour is necessary. The payment to the casual labourers were made out of the temporary advance given to the SDO concerned. Payment is made through LI, SI and JTO and CS to the casual labourers. All kinds of payments are made through ACG 17 including payment to the casual labourers. ACG should contain the signature of the payee and the payer. All expenditures made by LI, SI, CS and JTO etc. will be entered into in ACE 3 forms and it will be submitted to the SDO who will incorporate the same in ACE 2 accounts. ACE 2 accounts will contain the annexure like ACE 3 bills etc. Form ACE 2 accounts will be forwarded to accounts section for its scrutiny. The expenditure made through ACE 2 were finally adjusted in the cash book in the accounts section. All expenditure made through ACE 2 are to be kept in the accounts section for audit purpose. After one year of the audit the documents of accounts can be destroyed. All accounts including ACE 2 are stored by the department in the godown under a store Incharge. SDE (general) is the store Incharge. Every documents maintained in the course of official business should be preserved "

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made to any casual worker or Mazdoor. Further, the Government Department must have some audit to the accounts and audit report, if any, could have been produced; but no document has been produced by the prosecution in support of their contention.

19. Merely because the prosecution utterly failed to trace out the ACG 17 vouchers and produce the same before the court, it can not be presumed, by any stretch of imagination, that no payment was made to the accused persons during the relevant period as casual Mazdoors. The learned trial court fell in error in holding that the failure of the TDM Office to produce the record has no bearing in the matter and on the other hand, it can be inferred that TDM Office did not appoint any casual Mazdoor including A-7 to A-33. The trial court also observed that appointment of casual Mazdoor during the period 1995-1996 was misplaced and it was irrelevant.

20. We also find the trial court has placed much reliance on the evidence of B.K. Goswami (PW 3) who has deposed that during his period, ACG 17 vouchers for the period 1988 to February, 1996 were not available and he had joined in September, 1995 and worked till 3.11.98. The witness has further stated that despite the ban in the engagement of causal labourers, such engagement continued and labourers were engaged during 1985-88 and they were regularized.

21. The members of the selection committee appointed by M.K. Gogoi considered the cases of A-7 to A-33 along with other persons and on being fully satisfied about the genuineness of the cases, they recommended the cases of A-7 to A-33 for conferring the status of TSM. They have also deposed that they did not find any anomaly in respect of experience certificates and these experience certificates were issued on the basis of work done during the calendar year on the basis of ACG 17. Hence, if ACG 17 was considered by the selection committee while recommending the names of the accused persons,

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subsequent non production of documents, can not be held against the accused persons.

22. At this stage, we may have a look in the evidence of G.S. Mathur (PW 12) who has deposed that all the labourers mentioned in Ext. 1 to Ext. 27 were engaged and working under him. The evidence of PW 12 has been supported and corroborated by Promod Kr. Pathak (PW 13) who states that the casual workers mentioned in Ex. 2 to 10, 12, 20, 21, 23 and 24 were actually engaged during the relevant period. Both PW 12 and PW 13 were Supervising Officers. Their evidence strikes the final nail in prosecution coffin.

23. In a criminal trial, the burden is on the prosecution to establish the offence beyond all reasonable doubt. The distance between the accused 'may be guilty' and 'must be guilty', must be travelled by the prosecution and no conviction can be based on surmises and conjectures.

24. In the present case, we find that there is no reliable evidence to hold that accused A-7 to A-33 were not working as casual workers during 1985 –88 or the experience certificates-Ext. 1 to Ext. 27 issued by the accused A-1 to A-6 and counter signed by accused A-1 are forged documents. As the very foundation of the prosecution allegation is missing, we hold that this is a case of no evidence and the accused persons are entitled to acquittal.

25. In the result, the appeals are allowed. The impugned order of conviction and sentence is set aside and the accusod appellants are acquitted and they are set at liberty forthwith. The accused appellants are on bail and as such, they need not surrender to their bail bonds.

26. Send down the records.

Sd/- P.G. Agarwal
Judge

Certified to be true Copy
Kamrup Law
14.3.07
Section Officer (Judicial)
Gauhati High Court
Authorised U/S 76, Act 1, 1872

Sl. No. 71304

14/3/07

14.3.07

प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
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THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA MANIPUR, TRIPURA, MIZORAMAND ARUNACHAL PRADESH)

Criminal Appeal No. 47/2004

1. Sri Gopal Chakraborty,
S/o Narayan Chakraborty,
Resident of Adarpara,
P.S. Jalpaiguri, Dist. Jalpaiguri,
North Bengal.
2. Md. Abdul Aziz,
S/o Late Abdul Rahman,
Resident of Village Patahabad,
P.S. Hazipur,
Dist. Vaisali,
Bihar.
3. Sri Prabin Chandra Boro,
S/o Patiram Boro,
Resident of village – Barokhara,
P.S. Dhula, Dist. Darrang,
Assam.
4. Md. Mazibar Rahman,
S/o Khagaru Ali,
Resident of village - Athara,
P. S. Rangia, Dist. Kamrup,
Assam.
5. Sri Khagendra Nath Deka,
S/o Sambhuram Deka,
Resident of village – Bamunpara,
P.S. Mangaldoi, Dist. Darrang,
Assam.
6. Md. Samsad Alam,
S/o Late Kafil Adfhmed,
Village – Japarigog, P.S. Dispur,
Guwahati – 5.
7. Sri Sudhiram Deka,
S/o Late Jagat Chandra Deka,
Village – Bhebarghat, P.S. Mangaldoi,
Dist. Darrang, Assam.
8. Smt. Indira Bora,
D/o Sri Dhan Bora, Resident of Rup Nagar,
By Lane 1, Sewa Mandir,
P.O. Bhangagarh, Guwahati – 5.
9. Md. Inarmul Gowala,
S/o Late Tilak Gowala,
Resident of Mrinal Nagar,
P.S. Udalguri, Dist. Darrang,
Assam.

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10. Md. Taizuddin Ahmed,
S/O Kazim Ali,
Village – Sanca, P.S. Sipajhar, Dist. Darrang,
Assam.
11. Md. Surtaz Ahmed,
S/o Abdul Aziz,
Village – Jalukbari, P.S. Tangla,
Dist. Darrang, Assam.
12. Sri Babul Kalita,
S/o Late Prabin Chandra kalita,
Village – Sipajhar Kalita Para,
P.S. Sipajhar,
Dist. Darrang, Assam.
13. Sri Gajen Baruah,
S/o Sri Narayan Baruah,
Village – Bhebarghat (Gaonburapara),
P.S. Mangaldoi,
Dist. Darrang, Assam.
14. Sri Swapan Kumar Saha,
S/o Hemanta Kumar Saha,
Resident of Gopal Nagar,
Kharupetia Town, P.S. Dalgaon,
Dist. Darrang, Assam.
15. Md. Maznoor Ali,
S/o Late Kandu Ali,
Village – Khandikar, P.S. Rangia,
Dist. Kamrup, Assam.

Accused No. 1 is now SDO, Mangaldoi Sub-Division, Telecom, Accused No. 2 is retired Sub-Inspector, Mangaldoi Sub-Division, Telecom and Accused No. 3 to 15 are all Temporary Status Mazdoors of Mangaldoi Telephone Division.

: Accused- Appellants.

-versus-

Central Bureau of Investigation,
Government of India,
New Delhi with Regional Office at Guwahati,
Assam.

: Respondents.

B E F O R E
THE HON'BLE MR JUSTICE I.A. ANSARI

For the Appellants-accused : Mr. J. M. Choudhury,
Senior Advocate,
Mr. P. K. Ghose, Senior Advocate,

For the Respondents : Mr. D. K. Das, Senior Advocate.

Date of hearing and order : 14.06.2007.

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JUDGMENT & ORDER
(ORAL)

This is an appeal against the judgment and order, dated 30.01.2004, passed, in Special Case No. 11(c)/2000, by the learned Special Judge, Guwahati, convicting the accused-appellants, who are 15 in number, under Sections 120(B), 420, 468 and 471 IPC and Section 13(2) read with Section 13(1)(a) of the Prevention of Corruption Act and sentencing each of the appellants to undergo simple imprisonment for one year and pay fine of Rs. 5,000/- each and, in default of payment of fine, undergo simple imprisonment for a further period of two months, the sentences passed against the accused-appellants having been directed to run concurrently.

2. The case against the accused-appellants, as unfolded at the trial, may, in brief, be described as follows:

A1 and **A2**, while posted and functioning as Junior Telecommunication Officer (in short, "JTO") and Sub-Inspector (in short, "S.I.") respectively, under the Sub-Divisional Officer, Telecommunication, had entered into a criminal conspiracy with **A3** to **A15** and, by manipulation of record and forging and fabricating documents, gave to **A3** to **A15** the status of Temporary Status Mazdoor (in short, "TSM") and thereby made the State sustain wrongful loss. Despite the fact that by Circular, dated 30.05.85, a ban had been imposed on appointment of Casual labourers by the Telecommunication Department, engagement of Casual labourers continued in the said Department. A Circular was, eventually, issued, on 17.12.93, by the said Department extending

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temporary status to all those Casual labourers, who had been engaged by the Project Circles and the Electrical Circles during the period from 31.03.85 to 22.06.88. Taking advantage of the Circular, dated 17.12.93, aforementioned, **A1** and **A2** entered into a criminal conspiracy with **A3** to **A15** and forged and fabricated documents to show that **A3** to **A15** had been working as causal labourers under the said Department and on the basis of the certificates, which were so issued by **A1** and **A2** and countersigned by the then SDO(T), Mangaldoi, namely, Safi Ahmed, the Selection Committee, which was constituted by the then TDE, Tezpur, namely, K. K. Gogoi, recommended the case of **A3** to **A15** for conferring on them the status of Temporary Mazdoor. Based on the recommendations, so made, A3 to **A15** were conferred the status of Temporary Mazdoor (i.e. TSM) and since then **A3** to **A15** had been drawing their salary and wages, although **A3** to **A15** had never worked as casual labourers. The Department is required to maintain a form, called ACG-17 form, in respect of the payments made to casual labourers. No such documents could, however, be shown indicating that **A3** to **A15** had ever been engaged as casual labourer and/ or that they had ever received their salary.

3. To the charges framed against the accused persons under Sections 120(B)/420/468/471 IPC read with Section 13(1) (a) and 13(2) of the Prevention of Corruption Act, the accused pleaded not guilty. In support of their case, prosecution examined as many as 15 witnesses. The accused-appellants were, then, examined under Section 313 CrPC and, in their examination aforementioned, they denied that they had committed

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the offences alleged to have been committed by them, the case of the defence being that of total denial with further assertion that **A3** to **A15** had worked as casual labourers and had been rightfully and legally conferred the status of Temporary Mazdoors. No evidence was, however, adduced by the defence. The learned trial Court, having found the accused guilty of the charges framed against them, convicted them accordingly and passed sentences against them as mentioned hereinabove. Aggrieved by their conviction and the sentences passed against them, the appellants are, now, before this Court.

4. I have heard Mr. J. M. Choudhury, learned Senior counsel, and Mr. P.K. Ghose, learned Senior counsel, appearing on behalf of the accused-appellants. I have also heard Mr. D. K. Das, learned Senior counsel, appearing on behalf of the respondents.

5. While considering the present appeal, the material facts, which are not in dispute, need to be taken note of and these facts are, in brief, as under: By a Circular, dated 30.05.85, aforementioned, engagement of Casual labourers had been banned; but the ban was violated by engaging casual labourers and, eventually, for conferring on those Casual labourers, who had been engaged between 31.03.85 and 22.06.88, the status of Temporary Mazdoor, the Circular, dated 17.12.93, aforementioned, was issued. While it has been the case of the prosecution that **A3** to **A15** had never been engaged as casual labourer and that the Experience Certificates, which had been issued, in their favour, by **A1** and **A2**, were false and fabricated, the assertion of the

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defence was that **A3** to **A15** had worked as casual labourers and the Experience Certificates granted to them were correct and not manipulated or fabricated ones. All these Experience Certificates were countersigned by Safi Ahmed, the then SDO(T), Mangaldoi, and it was he, who had forwarded the said certificates to the TDE, Tezpur. There is also no dispute that based on the Experience Certificates and the materials available, the Selection Committee had recommended the cases of **A3** to **A15** for conferring on them the status of Temporary Mazdoor and the status of Temporary Mazdoor was accordingly conferred on **A3** to **A15**.

6. In the backdrop of the above admitted facts, when the present appeal is considered, what attracts the attention, most prominently, is that in the present case, there is no direct evidence adduced by the prosecution that **A3** to **A15** had never worked as casual labourers. On the contrary, PW4, who has worked as a clerk, in the office of the SDO(T), since 1990 and who has proved the signatures of the accused-appellants on the said Experience Certificates, namely, Exhibit 7(1) to 21(1), in no uncertain words, deposed that **A3** to **A15** were casual labourers employed on daily basis and he had seen them working since the date of his joining in the year 1990. This assertion of PW4 went unchallenged by the prosecution.

7. As far as PW2, who was the Chief Accounts Officer, in the year 1998, in the office of the TDE, is concerned, he has clarified that S.I.s used to engage casual labourers and payments in respect of their salary

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and wages used to be made to the casual labourers by obtaining their signatures on ACG-17 form, which was required to be signed by the SDO. PW2 has also deposed that for such payments, ACG-17 forms were maintained in the office of the SDO and that accounts were also audited periodically.

8. Though from the evidence of PW2 no indication is received that **A3** to **A15** had ever worked as casual labourers, what cannot be ignored is that according to the evidence of PW2, payment to casual labourers could not have been made without obtaining their signatures on ACG – 17 form and these forms were required to be countersigned by the SDO(T). Considered thus, it is clear that if **A3** to **A15** had worked as casual labourers and payments had really been made to them from time to time, such payments had to be recorded in ACG-17 form. Those forms were, however, not produced and proved by the prosecution at the trial. From non-production of those documents, the learned trial Court has inferred that **A3** to **A15** had never worked as casual labourers. When **A1** to **A15** were not the custodians of the ACG-17 forms, the question of placing burden of production of the said documents on **A1** to **A15** was wholly contrary to law.

9. It is trite that it is the burden of the prosecution to prove its case beyond all reasonable doubt. The prosecution could have proved its case by adducing direct evidence that **A3** to **A15** were never engaged as casual labourers. The prosecution could also have proved its case that **A3** to **A15** had never worked as casual labourers by either showing that

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ACG-17 forms had never been maintained or that these forms were forged and/or manipulated or fabricated. The prosecution, however, apart from not adducing any direct evidence to show that **A3** to **A15** had never worked as casual workers, did not also produce ACG -17 forms, in question. When, according to the evidence on record, the custodian of ACG-17 forms was the SDO(T) and not **A1** and/ or **A2** during the relevant period of time, even **A1** and **A2** could not have been held answerable for non-production of the ACG 17 forms, particularly, when the prosecution witness, namely, PW4 had clearly deposed that payments were made on the basis of ACG-17 forms and this assertion of PW4 had gone wholly unchallenged by the prosecution.

10. What surfaces from the above discussion is that the prosecution has offered no explanation for non-production of the ACG-17 forms. In his evidence, the Investigating Officer (PW4) has deposed that he had been told by the Chief Accounts Officer that ACG-17 forms were available in the stores. The Investigating Officer has, however, conceded that he did not search for the said documents. In such circumstances, when none of the accused-appellants was, admittedly, custodian of the ACG-17 forms, the learned trial Court was wholly incorrect in placing the burden of production of the said forms on the accused-appellants and in inferring that since ACG -17 forms had not been produced, **A3** to **A15** had not been engaged as casual workers.

11. Now, if the evidence of PW9, PW10, PW11 and PW13 are considered together, it becomes clear that a Selection Committee was

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constituted by PW13 and it was on the basis of the said experience certificates and upon examination of other relevant documents that the said Selection Committee had recommended the cases of **A3** to **A15** for conferring on them the status of Temporary Mazdoor. It is not the case of the prosecution that the Selection Committee had recommended the cases of **A3** to **A15** without verifying the necessary documents. There is also nothing, in the evidence on record, to show that ACG-17 forms were not available for examination by the Selection Committee. In fact, PW10 has clearly deposed that all the Experience Certificates were countersigned by the SDO(T) and it was on the basis of these documents and also after proper scrutiny thereof that they had made the recommendations, because they had not found any irregularity. When the SDO(T) had countersigned the experience certificates and when the SDO(T) had not been made an accused, the inference, which is irresistible, is that until some evidence, direct or indirect, was made available to the Court, it could not have been held that the Experience Certificates, in question, were false and/ or fabricated documents.

12. Now, turning to the evidence of PW12, it needs to be noted that though PW12 is the informant of this case, the fact remains that he worked as TDE from 1996 to 1998 and he had no personal knowledge as to whether **A3** to **A15** had ever worked as casual labourers or not. Thus, the informant (PW12) has not been able to sustain the accusations made by him to the effect that **A3** to **A15** had not worked as casual labourers. PW14, who is the Investigating Officer, has given no evidence to show that any of the accused was custodian of any of the documents, in

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question; rather, his evidence, as already discussed above, shows that the documents were claimed to be available in the godowns, but the Investigating Officer made no efforts to search the godown for the documents. If ACG -17 forms were not produced, the custodians thereof ought to have been made liable. Had **A3** to **A15** or any one of the accused-appellants been the custodian of the documents, then, the position would have been a little different. The learned trial Court's entire approach to the evidence on record is, thus, incorrect, faulty and contrary to the rudimentary principle of criminal jurisprudence that an accused shall be presumed to be innocent until proved guilty. In fact, the learned trial Court has, it appears, placed the onus of proof of innocence on the accused, when the prosecution had failed to discharge its burden of proving the case, which it had set up against the accused. The Selection Committee was constituted by competent authority and this Committee did not consist of **A1** and **A2** and according to the undisputed evidence of the members of the Committee, they had made the recommendations upon finding everything in order. In such circumstances, **A1** and **A2** could not have been made responsible for non-production of the ACG-17 forms.

13. Because of what have been discussed and pointed out above, what clearly emerges is that there was no evidence on record to indicate that the Experience Certificates, which had been issued by **A1** and **A2**, were false or fabricated. There was also no evidence on record to show that **A3** to **A15** had never worked as casual labourers contrary to what the Experience Certificates reflected. In such circumstances, the learned

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trial Court ought to have held the accused-appellants not guilty of the charges framed against them and ought to have acquitted them accordingly.

14. In view of the circumstances and the reasons discussed above, this appeal succeeds. The impugned judgment and order shall accordingly stand set aside. The accused-appellants are held not guilty of the charges framed against them and are acquitted of the same accordingly.

15. Bail bonds of the accused-appellants shall stand cancelled and their sureties shall stand discharged.

16. Send back the LCR.

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Gauhati High Court
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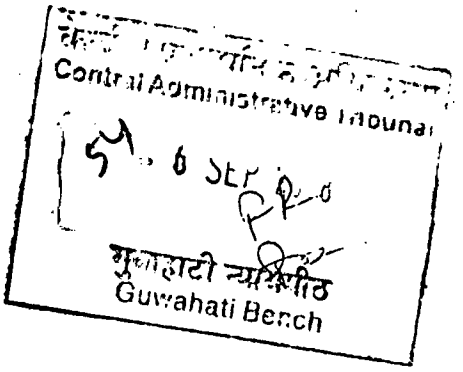
SI. 77915
Date 25/6/09



IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND:MEGHALAYA:

MANIPUR: TRIPURA: MIZORAM AND ARUNACHAL PRADESH)

1.Criminal Appeal No. 254 of 2005

Sri Supriya Kar — Appellant

Versus

Central Bureau of Investigation (CBI) — Respondent

For the appellant-Mr J.M. Choudhury, Senior Advocate,

Mr N. Dutta, Senior Advocate.

Mr U.K Goswami, Mr. T.J.Mahanta,

Mr A.M. Bora, Advocates

For the respondent-Mr. D.K. Das, Standing Counsel, CBI,

2.Criminal Appeal No. 258 of 2005

1.Sri Sarat Chandra Nath

2.Sri Harendra Nath Haloi

3.Sri Baiju Rai

4.Sri Janak Rai

5.Sri Mohan Prasad Rai

6.Sri Ghanashyam Lahkar

7.Sri Romesh Ch. Nath

8.Sri Pulak Haloi

9.Sri Aravinda Haloi

10.Sri Sankar Ghatak

11 Sri Bipul Nath

12.Sri Purna Ch. Nath

13.Smti. Kalpana Saikia

14.Sri Jitu Talukdar

15.Sri Digambar Das

16.Sri Kamal Das

17 Sri Basanta Bijoy Mohanta

18 Sri Rana S.

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19.Sri Nipul Choudhury
20.Sri Mridul Deka
21.Sri Babul Saikia
22.Sri Uttam Saha
23.Sri Pulin Bora
24.Sri Bijit Bora
25.Sri Bhagya Sangma
26.Sri Nripen Haloi
27.Sri Mohesh Deka
28.Sri Bhaben Saikia
29.Sri Babul Bhuyan
30.Sri Prasanta Kuch
31.Sri Ranjit Das
32.Sri Pankaj Chetri
33.Sri Balin Das
34.Sri Balin Swargiary
35.Sri Anil Thakur

Appellants

Versus

Central Bureau of Investigation (CBI) Respondent

For the appellants-Mr. J.M. Choudhury, Senior Advocate,
Mr. N. Dutta, Senior Advocate,
Mr. U.K.Goswami, Mr. T.J.Mahanta,
Mr. A.M. Bora, Advocates

For the respondent-Mr. D.K. Das, Standing Counsel, CBI,

PRESENT

THE HON'BLE MR. JUSTICE P.G. AGARWAL

Date of Hearing:-1.3. 2007

Date of Judgment:- 14.3.2007

JUDGMENT AND ORDER

Criminal Appeal Nos. 254/ 2005 and Criminal Appeal No. 258/ 2005 have been heard together and disposed of by this common

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Judgment and Order as these two appeals have arisen out of the Judgment and Order dated 19.11. 2005 passed by the Special Judge (CBI), Assam at Guwahati in Special Case No. 11/ 2004 (Old Case No. 38 c 2001) whereby the trial court convicted as many as 36 accused persons u/s 120B, 420, 468, 471 r/ w 465 IPC and section 13 (2) r/ w 13 (1) (d), P.C. Act, 1988 and awarded different sentences and all the sentences were ordered to run concurrently.

2 Criminal Appeal No. 254/ 2005 has been preferred by the accused appellant Sri Supriya Kar whereas Criminal Appeal No. 258/ 2005 has been preferred by the remaining accused persons.

3. Heard the learned counsel for both sides.

4. The prosecution case in brief is that during the period 1985 to 1996, accused appellant Supriya Kar was serving as JTO whereas accused Nos. 2 to 6 were serving as Sub Inspector, Linesman, Cable Splicer etc and accused Nos. A-7 to A-36 were serving as Casual Mazdoors. The prosecution case is that all these accused persons pursuant to a criminal conspiracy, decided to cheat the Government in the Telecom Department and thereupon accused A-2 to A-6 fabricated false Experience Certificates in favour of accused A-7 to A-36 and these were approved by A-1 and using these certificates as genuine, accused A-7 to A-36 were shown as regular casual Mazdoors working in the Office of the BSNL during the period 1988-96 and thereafter they were given the status of TSM and paid as such. According to the prosecution, accused A-7 to A-36 were not serving as casual Mazdoors in view of the ban imposed and the Experience Certificates were forged documents.

5. During trial, the prosecution examined as many as 14 witnesses and the defence examined three witnesses. The defence plea as seen from the trend of examination is that accused A-7 to A-36 were working as casual Mazdoors and as such, accused A-2 to A-6 issued experience certificates and these were counter signed by A-1 Supriya Kar on verification

6. We, thus, find that in the present case, there is no dispute at the Bar as regards issuance of experience certificates by accused A-2 to A-6 and counter signature thereupon by A-1. The fact that accused A-7 to A-36 received pecuniary advantage pursuant to the above experience certificates, is also not challenged or disputed before us.

7. In view of the above, the first point for consideration is whether accused A-7 to A-36 were serving/ working as casual Mazdoors during relevant period under TDM, Tezpur or not.

8. PW 1 is Shri B.K. Talukdar, who proved and exhibited experience certificates and as the experience certificates are not challenged, the evidence of this witness is not material. The prosecution came up with a plea that the accused persons were not serving or working as casual Mazdoors and that there was a ban for engagement of casual workers. So far the first part is concerned, the prosecution has not led any evidence regarding the factual aspect and although a number of witnesses were examined and these persons were serving under the TDM, Tezpur during the relevant period, none of these witnesses have stated a single word to the effect that they never saw these accused persons A-7 to A-36 working as casual workers or Mazdoors.

9. So far the circular providing for a ban on engagement of casual Mazdoors, the admitted position is that it was applied more in violation and casual Mazdoors used to be engaged for taking care of contingency and emergent works. PW 2 M.K. Gogoi has deposed that a circular was issued on 17.12.93 providing that persons who were engaged as casual workers from 1985 till June, 1988 may be given the status of TSM provided that they fulfill certain conditions. Ext. 33 is the said circular and it was applicable to whole of India and the prosecution has also accepted the above position that Ext. 33 modifies the earlier circular banning engagement of casual workers. The evidence of PW 2 is to that effect only.

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10. Ajit Kumar Sarkar (PW 5) has deposed that the TDE M.K. Gogoi had constituted a selection committee vide Ext. 34 for conferment of TSM status on casual labourers.

11. Thus, we find that so far the selection committee consisting of A-2 to A-6 are concerned, was constituted by the competent authority to select and recommend the names of persons for conferment of the status of TSM and out of 32 candidates, the committee recommended the names of 30 candidates. K. Swargiary (PW 7) was a member of the said selection committee and he has deposed about the same. The selection committee considered the experience certificates- Ext. 1 to Ext. 30 issued by A-2 to A-6. Md. I. Ahmed (PW 8) has deposed about the payment which is not under challenge in this case Amarendra Kr. Das (PW 10) has deposed about a circular (Ext. 48) banning appointment of casual workers after 31.03.95. Ext. 48 is not relevant for our purpose. Rajiv Yadav (PW 11) and S. Satagopan (PW 12) had granted sanction for prosecution and we find that the said sanctions are not under challenge. Babul Ch. Nath (PW 13) has identified the signature of A-1 and K. Barman (PW 14) is the investigating police officer.

12. In this case, we find that Mr. M. Bhuyan, SDE (Cable) who constituted the selection committee for the purpose of examining the cases of 32 persons including A-7 to A-30 had not been examined and he has also not been arrayed as an accused and although the entire process was initiated by him. Mr. Bhuyan would have been the best person to say whether A-7 to A-30 were working as casual Mazdoors or not or as to what led him to constitute the committee to consider the cases of these accused persons.

13. So far the plea of the prosecution that the accused persons-A-7 to A-30 should not have worked as casual Mazdoors because of the ban imposed, it has not much basis, more so, in view of Ext. 33 which provides that the casual Mazdoors, who worked during the period 1985 to 1988, can be given the status of TSM on fulfillment of certain

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conditions which goes to show that in spite of the ban, casual Mazdoors used to be engaged every where in India.

14. As stated above, none of the prosecution witnesses has come forward to depose that although they were working under the TDM, Tezpur during the period 1985 to 1996, they never saw these accused persons A-7 to A-30 serving or working as casual Mazdoors under Sub Inspector, Cable Splicer etc. and they have issued the experience certificates and they are before us as accused.

15. The main foundation on the basis of which the trial court has recorded the order of conviction is the Accounts Books and the system prevailing in the Telecom Department which was narrated by PW 7, the Chief Accounts Officer, TDM, Tezpur. He has deposed as follows-

> " For execution of capital work and maintenance works of temporary advance were sanctioned to SDOs and Field Officer including JTO by head of the SSA. Capital work means and signify execution of new works while maintenance means execution of day to day maintenance works. For execution of works man power is necessary. For execution of maintenance works employment of casual labour is necessary. The payment to the casual labourers were made out of the temporary advance given to the SDO concerned. Payment is made through LI, SI and JTO and CS to the casual labourers. All kinds of payments are made through ACG 17 including payment to the casual labourers. ACG should contain the signature of the payee and the payer. All expenditures made by LI, SI, CS and JTO etc. will be entered into in ACE 3 forms and it will be submitted to the SDO who will incorporate the same in ACE 2 accounts. ACE 2 accounts will contain the annexure like ACE 3 bills etc. Form ACE 2 accounts will be forwarded to accounts section for its scrutiny. The expenditure made through ACE 2 were finally adjusted in the cash book in the accounts section. All expenditure made through ACE 2 are to be kept in the accounts section for audit purpose. After one year of the audit the documents of accounts can be destroyed. All accounts including ACE 2 are stored by the department in the godown under a store Incharge. SDE (general) is the store Incharge. Every documents maintained in the course of official business should be preserved."

16. The evidence of PW 7 has been reiterated by PW 9, the Asstt. Director, Establishment. Telecom Department.

17. In the present case. the prosecution has not produced the vouchers ACG 17 for the relevant period to show that in these vouchers. the names of the present accused appellants-A-7 to A-36 do not appear These documents were vital documents to support the prosecution that no such payment was made to the accused persons during the relevant period as casual Mazdoors.

18. On the other hand, the prosecution has led evidence to show that the vouchers under ACG 17 were not available. Although no evidence has been led as to the reasons of non availability, the prosecution argued that although the Accounts under ACG 17 are not available showing the names of the accused persons, it must be presumed that the names of the accused persons do not appear in these accounts and the inference may be drawn against the accused persons. The trial court also accepted the above and held that when ACG 17 forms are not available in respect of A-7 to A-36, it must be deemed to have not worked as casual workers. We are unable to comprehend such a situation in a criminal trial. The burden is on the prosecution to establish the guilt and the prosecution may either lead direct evidence or indirect evidence. Moreover, there is no evidence on record to show that the accounts books/ vouchers under ACG 17 were kept in the custody of the accused persons or that they were responsible for their safe custody and they have destroyed the same to screen out the evidence of criminal offence.

19 From. the evidence of PW 7, PW 8 and PW 10, we find that there is another aspect of the matter also. The vouchers under ACG 17 are entered into ACE 3 forms and thereafter the amount is incorporated in ACF 2 accounts and finally adjusted in the cash book. Admittedly, the cash books from 1985 onwards are available and the prosecution could have produced these cash books or ACE 2 accounts to show that during the relevant period, no payment was

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made to any casual worker or Mazdoor. Further, the Government Department must have some audit to the accounts and audit report, if any; could have been produced; but no document has been produced by the prosecution in support of their contention.

20. Merely because the prosecution utterly failed to trace out the ACG 17 vouchers and produce the same before the court, it can not be presumed, by any stretch of imagination, that no payment was made to the accused persons during the relevant period as casual Mazdoors. The learned trial court fell in error in holding that the failure of the TDM Office to produce the record has no bearing in the matter and on the other hand, it can be inferred that TDM Office did not appoint any casual Mazdoor including A-7 to A-36. The trial court also observed that appointment of casual Mazdoor during the period 1995-1996 was misplaced and it was irrelevant.

21. We also find the trial court has placed much reliance on the evidence of B.K. Goswami (PW 4) who has deposed that during his period, ACG 17 vouchers for the period 1988 to February, 1996 were not available and he had joined in September, 1995 and worked till 3.11.98. The witness has further stated that despite the ban in the engagement of causal labourers, such engagement continued and labourers were engaged during 1985-88 and they were regularized vide Ext. 33.

22. PW 5, PW 6 and PW 7 were the members of the selection committee appointed by M.K. Gogoi and they had considered the cases of A-7 to A-30 along with two other persons and on being fully satisfied about the genuineness of the cases, they recommended the cases of A-7 to A-36 for conferring the status of TSM. They have also deposed that they did not find any anomaly in respect of experience certificates and these experience certificates were issued on the basis of work done during the calendar year on the basis of ACG 17. Hence, if ACG 17 was considered by the selection committee while recommending the names of the accused persons, subsequent non

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production of documents, can not be held against the accused persons.

23. In a criminal trial, the burden is on the prosecution to establish the offence beyond all reasonable doubt. The distance between the accused 'may be guilty' and 'must be guilty', must be travelled by the prosecution and no conviction can be based on surmises and conjectures.

24. In the present case, we find that there is no reliable evidence to hold that accused A-1 to A-35 were not working as casual workers during 1985 –88 or the experience certificates-Ext. 1 to Ext. 30 issued by the accused A-2 to A-6 and counter signed by accused A-1 are forged documents As the very foundation of the prosecution allegation is missing, we hold that this is a case of no evidence and the accused persons are entitled to acquittal.

25. In the result, the appeals are allowed. The impugned order of conviction and sentence is set aside and the accused appellants are acquitted and they are set at liberty forthwith. The accused appellants are on bail and as such, they need not surrender to their bail bonds.

26. Send down the records.

relevant provision i.e. sub-section (1) of Section 3 of the Act reads as follows:

"3. *Recovery of wages in certain industrial establishments as arrear of land revenue.*—(1) Where the Labour Commissioner is satisfied that the occupier of an industrial establishment is in default of payment of wages and that the wage bill in respect of which such occupier is in default exceeds fifty thousand rupees, he may, without prejudice to the provisions of Sections 5 and 6, forward to the Collector, a certificate under his signature specifying the amount of wages due from the industrial establishment concerned."

11. Though the expression used is "is in default of payment of wages" it is relatable to the date on which the claim is lodged. Otherwise, to overcome action contemplated under Section 3(1) of the Act i.e. issuance of certificate for recovery by making a part-payment to see that the amount comes below Rs 50,000, a crafty and unscrupulous employer can defeat the legislative intent. The Act as noted above is a beneficial one intended to give help to the workers who are not being paid their wages. The High Court completely lost sight of the relevant factors and relied on the decision in *Modi case*[1] which had not decided the issue under consideration.

12. Therefore, the order passed by the Assistant Labour Commissioner is restored and the impugned order of the High Court is quashed. The appeal is allowed but in the circumstances there will be no order as to costs.

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(BEFORE DR. AR. LAKSHMANAN AND R.V. RAVEENDRAN, JJ.)

G.M. TANK Appellant;

Versus

STATE OF GUJARAT AND OTHERS Respondents.

Civil Appeal No. 2582 of 2006†, decided on May 10, 2006

A. Service Law — Departmental enquiry — Acquittal in criminal trial — Sustainability of dismissal of employee concerned in case of — Departmental enquiry and criminal proceedings based on same set of facts, charges, evidence and witnesses — No evidence against employee to hold him guilty — Employee honourably acquitted in criminal trial during pendency of proceedings challenging dismissal — Finding to contrary recorded in departmental proceedings in such case, held, unjust, unfair and oppressive — Dismissal order not sustainable — Hence set aside — Prevention of Corruption Act, 1947, S. 5(1)(e) r/w S. 5(2) — Prevention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2) — Constitution of India, Art. 311

The appellant was charged for offence of acquisition of movable and immovable properties disproportionate to his known sources of income. After holding departmental enquiry, he was dismissed from service by order dated

† Arising out of SLP (C) No. 8910 of 2004. From the Judgment and Order dated 18-8-2003 of the High Court of Gujarat at Ahmedabad in SCA No. 948 of 1983 and LPA No. 1085 of 2002

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21-10-1982. Against the said dismissal order, the appellant filed a writ petition before the High Court. The Single Judge concluded that there was sufficient evidence against the appellant and dismissed the petition. Against the order of the Single Judge, the appellant preferred LPA and raised the relevant contentions. The Division Bench dismissed the LPA by confirming the order of the Single Judge. Hence the present appeal.

It is pertinent to mention here that a criminal complaint was also lodged against the appellant under Section 5(1)(*e*) r/w S. 5(2) of the Prevention of Corruption Act, 1947 which was based on same set of facts, charges, evidence and witnesses. The criminal court honourably acquitted the appellant of the said offence by holding that the prosecution failed to prove the charges levelled against the appellant. The said order of the trial court was not further challenged by the State and therefore, it became final and conclusive. Before the Supreme Court, the main contention of the appellant was that there was no evidence against him to hold him guilty. The fact of his honourable acquittal by the trial court during pendency of challenge to his dismissal order was brought to the notice of the Division Bench of the High Court, but it was not considered by it. On the above facts, it was contended that the dismissal of the appellant was bad in law and, therefore, was liable to be set aside.

Allowing the appeal, the Supreme Court

Held :

In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. (Para 30)

This is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The investigating officer and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. The judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. (Paras 20 and 30)

Thus, as the facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in *Paul Anthony case*, (1999) 3 SCC 679 will apply. (Para 31)

Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810, *applied*

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Ajit Kumar Nag v. *G.M. (PJ), Indian Oil Corpn. Ltd.*, (2005) 7 SCC 764 : 2005 SCC (L&S) 1020; *Depot Manager, A.P. SRTC* v. *Mohd. Yousuf Miya*, (1997) 2 SCC 699 : 1997 SCC (L&S) 548; *State of A.P.* v. *S. Sree Rama Rao*, (1964) 3 SCR 25 : AIR 1963 SC 1723; *Krishnakali Tea Estate* v. *Akhil Bharatiya Chah Mazdoor Sangh*, (2004) 8 SCC 200 : 2004 SCC (L&S) 1067, *distinguished on facts and law*

R.P. Kapur v. *Union of India*, (1964) 5 SCR 431 : AIR 1964 SC 787; *Corpn. of the City of Nagpur* v. *Ramchandra*, (1981) 2 SCC 714 : 1981 SCC (L&S) 455, *relied on*

Union of India v. *Jaipal Singh*, (2004) 1 SCC 121 : 2004 SCC (L&S) 12; *Commr. of Police* v. *Narender Singh*, (2006) 4 SCC 265 : 2006 SCC (L&S) 686 : (2006) 4 Scale 161, *cited*

B. Service Law — Back wages — Entitlement to — Dismissal of employee found by Supreme Court to be not sustainable due to honourable acquittal of employee during pendency of proceedings challenging dismissal — Held, until such acquittal, there was no reason to hold the dismissal to be erroneous — Hence, any relief in terms of money can be awarded only with effect from the date of acquittal — But, since employee concerned had retired by the said date, dismissal set aside without back wages — Constitution of India, Art. 311 (Para 32)

C. Prevention of Corruption Act, 1947 — S. 5(1)(e) r/w S. 5(2) — Burden of proof under — Explained — Compared with other criminal cases — Prevention of Corruption Act, 1988, S. 13(1)(e) r/w S. 13(2)

The provision contained in Section 5(1)(*e*) is a self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused. From the words used in clause (*e*) of Section 5(1) of the PC Act it is implied that the burden is on the accused to account for the sources for the acquisition of disproportionate assets. As in all other criminal cases wherein the accused is charged with an offence, the prosecution is required to discharge the burden of establishing the charge beyond reasonable doubt. (Para 19)

W-M/ASTZ/34284/CL

Advocates who appeared in this case :

L. Nageswara Rao, Senior Advocate (Sanjay Kapur, Rajiv Kapur and Ms Shubhra Kapur, Advocates) for the Appellant;

Maulik Nanavati, Ms Shivangi and Ms Hemantika Wahi, Advocates, for the Respondents.

Chronological list of cases cited *on page(s)*

1. (2006) 4 SCC 265 : 2006 SCC (L&S) 686 : (2006) 4 Scale 161, *Commr. of Police* v. *Narender Singh* 451*f-g*
2. (2005) 7 SCC 764 : 2005 SCC (L&S) 1020, *Ajit Kumar Nag* v. *G.M. (PJ), Indian Oil Corpn. Ltd.* 452*f*, 458*g*
3. (2004) 8 SCC 200 : 2004 SCC (L&S) 1067, *Krishnakali Tea Estate* v. *Akhil Bharatiya Chah Mazdoor Sangh* 452*g*, 458*a*, 458*d-e*
4. (2004) 1 SCC 121 : 2004 SCC (L&S) 12, *Union of India* v. *Jaipal Singh* 451*f-g*
5. (1999) 3 SCC 679 : 1999 SCC (L&S) 810, *Capt. M. Paul Anthony* v. *Bharat Gold Mines Ltd.* 451*f*, 457*a*, 458*c-d*, 461*b*
6. (1997) 2 SCC 699 : 1997 SCC (L&S) 548, *Depot Manager, A.P. SRTC* v. *Mohd. Yousuf Miya* 452*f-g*, 459*d-e*
7. (1981) 2 SCC 714 : 1981 SCC (L&S) 455, *Corpn. of the City of Nagpur* v. *Ramchandra* 451*g*, 457*f*
8. (1964) 5 SCR 431 : AIR 1964 SC 787, *R.P. Kapur* v. *Union of India* 451*f-g*, 457*e*
9. (1964) 3 SCR 25 : AIR 1963 SC 1723, *State of A.P.* v. *S. Sree Rama Rao* 452*f-g*, 460*c*

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J.— Leave granted.

2. This appeal is directed against the final judgment and order dated 18-8-2003 in Letters Patent Appeal No. 1085 of 2002 filed by the appellant herein. By its impugned final judgment, the High Court dismissed the LPA filed by the appellant herein.

Brief facts

3. The appellant joined the service in 1953 as an Overseer. The appellant was regularly submitting his property returns showing all his movable and immovable properties. As per the Department, the movable and immovable properties were disproportionate to his known sources of income. The Anti-Corruption Bureau carried out an investigation against the appellant and submitted a report and on the basis of the said report, a charge-sheet dated 20-2-1979 was issued alleging that the appellant had illegally accumulated the excess income by way of gratification. The appellant submitted his explanation on 15-5-1979 and denied the allegations as well as charges made in the charge-sheet. A departmental enquiry was ordered and as per departmental enquiry report dated 31-3-1980, the appellant was found guilty of the charge. The respondent by order dated 21-10-1982 passed an order of dismissal from the service as punishment.

4. Against the said dismissal order, the appellant filed a writ petition before the High Court. The learned Single Judge concluded that there is sufficient evidence against the appellant and dismissed the petition. Against the order of the learned Single Judge, the appellant preferred LPA and raised the relevant contentions. The Division Bench dismissed the LPA by confirming the order of the learned Single Judge. The said decision is challenged in this appeal by special leave.

5. The charges made against the appellant in the departmental enquiry are reproduced hereunder:

> "That total income from wages, interest, house rent, insurance policy amount, etc. of Shri Tank for the period from the year 1953 till June 1978 comes to Rs 2,75,328.00. Against that, total expenses of Shri Tank including expenses, savings, movable as well as immovable properties, comes to Rs 5,29;509.14. Thus, an amount of Rs 2,54,180.00 has been found very much in excess than his known and legal source of income and it appears that the said amount has been earned by him through bribe, corruption and illegal gratification and, therefore, he is responsible/liable for the breach of Rule 3(1) of the Gujarat Civil Services Conduct Rules, 1971."

Criminal case under the Prevention of Corruption Act

6. The Director of Anti-Corruption Bureau had entrusted the enquiry to Mr V.B. Raval, Police Inspector, Anti-Corruption Bureau, Kachchh at Bhuj. Mr V.B. Raval had enquired into the matter and submitted an enquiry report on 8-9-1979. It showed that the total income of the accused out of his salary,

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interest, rent and insurance policies, etc. from April 1953 to June 1978 was Rs 2,75,328.00. On the other side, the total expenditure, savings and movable and immovable properties of the accused was Rs 5,29,509.14. Thus, the amount of Rs 2,54,180.00 was more than the known source of income of the accused leading to the presumption that the said amount was obtained by him by illegal and corrupt means. On the basis of the said report of Mr V.B. Raval, his successor (PI Mr H.D. Sharma) lodged the criminal complaint against the appellant in Special Case No. 6 of 1987 before the Special Judge, Kachchh at Bhuj for the alleged offence punishable under Section 5(1)(*e*) read with Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as "the PC Act").

7. The Special Judge had honourably acquitted the appellant of the offence punishable under Section 5(1)(*e*) read with Section 5(2) of the Act by holding that the prosecution has failed to prove the charges levelled against the appellant and thus the appellant cannot be held to be guilty of the said offence. This acquittal is by way of complete exoneration and not by giving benefit of doubt which is evident from the judgment of the Special Judge. The Division Bench, however, overlooked this fact and the additional fact that on the basis of the very report submitted by Mr V.B. Raval, the Special Judge had acquitted the appellant.

8. It is also pertinent to notice that the respondents have not challenged the order passed by the Special Judge acquitting the appellant before any forum and that, therefore, the order passed by the Special Judge has reached its finality and has become final and conclusive.

9. We heard Mr L. Nageswara Rao, learned Senior Counsel, assisted by Mr Sanjay Kapur, learned counsel, appearing for the appellant and Mr Maulick Nanavati, learned counsel, appearing for the respondents.

10. We have been taken through the proceedings in the departmental enquiry, enquiry report submitted and the orders passed thereon and also the proceedings initiated by the respondents before the Special Court under the provisions of the PC Act under Section 5(1)(*e*) read with Section 5(2) of the said Act.

11. We have carefully read the order passed by the learned Single Judge in the writ petition and as affirmed by the learned Division Bench and the judgment passed by the learned Special Judge in the criminal proceedings.

12. Mr L. Nageswara Rao, learned Senior Counsel, appearing for the appellant, made the following submissions:

According to him, the appellant being a government servant submitted his yearly property return regarding his movable and immovable properties. The return for the year 1975 was verified by the Department and being of the view that the appellant had movable and immovable properties worth more than the known sources of his income and being dissatisfied with the explanation of the appellant, the Government requested the Director of Anti-Corruption Bureau to enquire into the matter vide its letter dated 11-1-1977 and on the basis of the report of the investigating officer, the

Department had issued a charge-sheet upon the appellant. On the same material, criminal proceedings were also initiated under Section 5(1)(*e*) of the PC Act, the charge being the same. On the same basis of the same charges and the same evidence, the Department passed the order of dismissal on 21-10-1982 whereas the criminal court honourably acquitted the appellant vide its order dated 30-1-2002.

13. Learned Senior Counsel made the following submissions:

(*a*) that there is no evidence to hold the appellant guilty or delinquent for the charges framed against him in the departmental enquiry;

(*b*) that the acquittal of the appellant in the special case is a relevant factor, as the appellant has been acquitted on merits and the acquittal is clean and not based on benefit of doubt or any technical proposition. The same evidence was led in the departmental enquiry and, therefore, the dismissal order is bad in law;

(*c*) that the enquiry officer has given finding of fact in favour of the appellant and despite that the enquiry officer has found the appellant guilty of the charges;

(*d*) the additional fact was also brought to the notice of the Division Bench that the Special Court has honourably acquitted the appellant of the same charge on 30-1-2002 but the Bench has not considered the same. The Division Bench failed to note the difference between an exoneration and acquittal by giving benefit of doubt. It routinely held that the writ court does not reappreciate or re-examine the evidence led before the enquiry officer and that unlike in criminal trial, the degree of proof in the domestic enquiry is restricted to preponderance of probability and not beyond reasonable doubt. The LPA was accordingly dismissed and the order of the learned Single Judge was affirmed;

(*e*) Since the appellant has been exonerated of the charge, the appellant is entitled to reinstatement with full salary, allowance and subsequent promotions. In support of his contention, Mr L.N. Rao relied on the following judgments:

1. *Capt. M. Paul Anthony* v. *Bharat Gold Mines Ltd.*[1] (two Judges).
2. *Union of India* v. *Jaipal Singh*[2] (two Judges).
3. *Commr. of Police* v. *Narender Singh*[3] (two Judges).
4. *R.P. Kapur* v. *Union of India*[4] (five Judges).
5. *Corpn. of the City of Nagpur* v. *Ramchandra*[5] (three Judges).

14. Mr Maulick Nanavati, learned counsel, appearing for the State submitted that upon the investigation it was found that the total income of the

1 (1999) 3 SCC 679 : 1999 SCC (L&S) 810
2 (2004) 1 SCC 121 : 2004 SCC (L&S) 12
3 (2006) 4 SCC 265 : 2006 SCC (L&S) 686 : (2006) 4 Scale 161 : JT (2006) 4 SC 328
4 (1964) 5 SCR 431 : AIR 1964 SC 787
5 (1981) 2 SCC 714 : 1981 SCC (L&S) 455 : AIR 1984 SC 626

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appellant out of the salary, interest, rent, etc. could not be sufficient to acquire the property owned by the appellant and that the total value of the movable and immovable and other properties acquired by the appellant had been found more than the known source of income of the appellant. It was further contended that the appellant was prosecuted for the offence punishable under Section 5(1)(*e*) read with Section 5(2) of the PC Act and that the appellant came to be acquitted by the learned Special Judge and that unlike in criminal trial, the degree of proof in the domestic enquiry is restricted to prepondrance of probability and not beyond reasonable doubt and that the acquittal in a criminal trial on the charges of corruption under the PC Act *ipso facto* could not be projected as a weapon to undo the result of a validly held departmental inquiry. Arguing further, the learned counsel submitted that in the present case the enquiry report is not casual, but well written, balanced and making critical evaluation of all the evidence of the witnesses and documents and it cannot be said that the report is based on no evidence and such a submission made by the learned Senior Counsel appearing for the appellant cannot be accepted when one gets into the reality of the factual profile so meticulously propounded in the enquiry report by the enquiry officer which is based on evidence and it is rightly accepted by the disciplinary authority and justifiably affirmed by the learned Single Judge and again accepted by the Division Bench. He, therefore, submitted that the acquittal in 2002 will have no bearing on the punishment imposed as per rules and the appeal on hand is totally meritless and deserves to be dismissed at the threshold. While concluding, he also submitted that the scope of interference by the High Court is very limited and that the writ court does not reappreciate or re-examine the evidence led before the enquiry officer for the simple reason that this Court while sitting and entertaining a petition under Article 226 of the Constitution of India is not an Appellate Authority.

15. In support of his contention, Mr Maulick Nanavati placed reliance on the following decisions:

1. *Ajit Kumar Nag* v. *G.M. (PJ), Indian Oil Corpn. Ltd.*[6] (three Judges).
2. *Depot Manager, A.P. SRTC* v. *Mohd. Yousuf Miya*[7] (three Judges).
3. *State of A.P.* v. *S. Sree Rama Rao*[8] (three Judges).
4. *Krishnakali Tea Estate* v. *Akhil Bharatiya Chah Mazdoor Sangh*[9] (three Judges).

16. On the above pleadings and the arguments advanced by the counsel appearing on either side, the following questions of law arise for consideration of this Court:

6 (2005) 7 SCC 764 : 2005 SCC (L&S) 1020
7 (1997) 2 SCC 699 : 1997 SCC (L&S) 548
8 (1964) 3 SCR 25 : AIR 1963 SC 1723
9 (2004) 8 SCC 200 : 2004 SCC (L&S) 1067

1. Whether in the case of no evidence, the employee can be dismissed from service?

2. Whether acquittal, absolutely on merits amounting to clear exoneration of the appellant by the Special Court under the PC Act does *ipso facto* absolve the appellant from the liability under the disciplinary jurisdiction when the charges levelled against the appellant in the departmental proceedings and the criminal proceedings are grounded on the same set of facts, charges, circumstances and evidence.

17. We have given our anxious and thoughtful consideration to the rival submissions made by the counsel on either side. We have also carefully considered the judgments impugned in this case and also of the order of acquittal passed by the Special Judge in the proceedings initiated against the appellant under the PC Act. We have already reproduced the charge framed in the disciplinary proceedings and charge framed in the criminal proceedings. A reading of both the charges would clearly go to show that both the charges are grounded upon the same set of facts and evidence and also pertains to the known source of income of the accused and the presumption raised that the said amount was obtained by him by illegal and corrupt means. In the departmental enquiry, the Government appointed Mr V.B. Raval, who was the investigating officer in the Anti-Corruption Bureau as the Presenting Officer. In the enquiry proceedings, the Department examined the relatives of the appellant, namely, the wife, father-in-law, brother-in-law and the brother of the appellant. The enquiry officer submitted his report at the end of the enquiry and held that the appellant had property disproportionate to the known source of income which, according to the enquiry officer, shows that the appellant has received illegal gratification and the charge against the appellant about the illegal possession was proved. Thereafter, the Deputy Secretary, Irrigation Department issued a show-cause notice dated 4-6-1980 to the appellant to show cause against the proposed dismissal. The appellant replied to the show-cause notice by his letter dated 27-9-1980. Thereafter, the Government ordered the appellant's dismissal from service w.e.f. 15-10-1982. Though the enquiry officer submitted his report and recorded some findings in favour of the appellant, the finding rendered that the appellant was guilty of the alleged charges. It was submitted on behalf of the appellant before the learned Single Judge and the Division Bench that there is no warrant for any action against the appellant and all the proceedings are contrary to the principles of natural justice and so it is null and void and that the order of the dismissal is passed without any material basis, application of mind and is arbitrarily on suspicion. It was submitted that the conclusion is incompatible with facts and that no reasonable man can arrive at such a conclusion in the fact of the findings referred to in this behalf. It was further submitted that this is a case of no evidence and, therefore, the High Court ought to have entertained this petition under Articles 226/227 of the Constitution of India. Before the learned Single Judge, the learned counsel for the appellant has also relied on the *Administrative Law*, 5th Edn. by Prof. H.W.R. Wade as an authority wherein under the heading "findings, evidence

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and jurisdiction", the author has discussed finding of fact—no evidence principle. However, the High Court rejected the submission made by the learned counsel for the appellant on the ground that the witnesses examined by the appellant are not independent witnesses having no interest and that they are very interested witnesses as they are very close relatives and in-laws of the appellant and, therefore, the enquiry officer has rightly examined the version of those witnesses with care and caution and has rightly not accepted the same as unimpeachable evidence in the absence of concrete documentary evidence. In the result, the learned Single Judge rejected the writ petition and on the same principle, the learned Judges of the Division Bench have also affirmed the view expressed by the learned Single Judge.

18. In this context, it is useful to refer to the judgment of the Special Court. An offence was registered under Section 5(1)(*e*) read with Section 5(2) of the PC Act against the appellant. We have already noticed the charge framed by the criminal court. The appellant explained before the Court that his father-in-law and brother-in-law are very much rich and at the time of his marriage, they had given ornaments, furniture, etc. to his wife but it could not be swallowed by the Anti-Corruption Department and, therefore, a complaint was lodged by the appellant before the police. The plea of the appellant-accused was recorded as Ext. 17. The appellant pleaded not guilty of the charge and claimed to be tried. After the prosecution completed, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 whereby he was given an opportunity to explain each piece of evidence appearing against him in the prosecution evidence. The explanation furnished by the accused in the open court was recorded and placed along with his original statement, Ext. 17. The appellant has stated that he has submitted the written explanation and that should be taken into consideration. He has further submitted that the departmental proceedings were held against him on the allegation that he has acquired the property worth more than his known source of income and that he was serving as an Engineer in the Irrigation Department of the Government of Gujarat and that he has also served as an Executive Engineer at Bhuj and that the explanation furnished by the appellant should have been accepted by the Department. The appellant did not examine any defence witnesses. The prosecution adduced oral evidence by examining the wife of the accused, the investigating officer, one Deputy Secretary of the Irrigation Department and the Investigating Officers Mr Punwar and Mr V.B. Raval and relied upon certain documents. As already noticed, the accused has been charged for the offence under Section 5(1)(*e*) of the PC Act which reads as follows:

> "5. *Criminal misconduct in discharge of official duty.*—(1) A public servant is said to commit the offence of criminal misconduct—
>
> (*a*)-(*d*) * * *
>
> (*e*) If he, or any person on his behalf is in possession of or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

This provision speaks about public servant. The Special Court after holding that the appellant was a public servant at the relevant time proceeded to discuss about the prosecution case that the accused has disproportionate income to his known source of income. It is seen from the proceedings of the Special Court that the main defence of the accused from the course of his first statement before the Department as well as before the enquiry officer Mr V.B. Raval appears to be that his father-in-law was extensively rich having huge business, two hotels at Rajkot and huge property and he has four brothers-in-law who are very affectionate towards the wife of the accused and, therefore, had gifted cash money as well as articles to her during the course of their married life. Elaborate discussion was made by the Special Court. The Court held that the burden of explaining or giving the account of such excess property lies on the accused but once that burden is discharged, again the prosecution has to prove that the explanation furnished by him is not satisfactory.

19. The provision contained in Section 5(1)(*e*) is a self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused as stated above. From the words used in clause (*e*) of Section 5(1) of the PC Act it is implied that the burden is on the accused to account for the sources for the acquisition of disproportionate assets. As in all other criminal cases wherein the accused is charged with an offence, the prosecution is required to discharge the burden of establishing the charge beyond reasonable doubt. The Special Court scrutinised the evidence led by the prosecution and after an elaborate discussion, the Court held that the witness Mr V.B. Raval has categorically admitted that the accused had stated in his statement about the amounts having been gifted to his wife by his in-laws. It is pertinent to note that this witness has categorically admitted in his examination-in-chief itself that he had enquired about the gifts given to other daughters and it was revealed that those gifts were worthless than what was gifted to the wife of the accused. He has also admitted during the course of his cross-examination that the father-in-law of the accused would not have gifted this much amount as shown by the accused to the wife of the accused. The Court held that such a presumption could not and should not have been raised by the witness in the absence of concrete evidence. The witness, Mr V.B. Raval, has also admitted that the accused has explained that an amount of Rs 25,000 was given by his father-in-law. The witness was shown the assessment order regarding the gift tax issued by the Income Tax Department in respect of the assessee, the father-in-law of the accused, for the year 1969-70. He was also shown the challan regarding the payment of gift tax and also other documents. He has admitted that there is no contradiction in the entries appearing in the passbook and the oral statement made by the accused as well as his wife as having received those amounts as gifts. The Court has held that from the evidence, it is clear that the accused had not suppressed any acquisition of immovable property from his department and therefore, under these circumstances, it is difficult to believe that the accused has not satisfactorily accounted for the said property. The

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Court also, in conclusion, said that the enquiry officer had conducted the enquiry only one way and had not tried to get the evidence regarding the explanations furnished by the accused. The Court further held that the case put forward by the accused was fully supported by his relations and there was no contradiction in the statements made by them. It is useful to reproduce the conclusion reached by the Special Court in this case which is as follows:

> "In view of this, it becomes clear that the investigation appears to have been carried or conducted only with the idea in mind to charge-sheet the accused for this offence. The account given by the accused regarding his alleged disproportionate property though is satisfactorily explained, is wrongly not accepted by the investigating officer and on the contrary the evidence on record categorically shows that the accused has given satisfactory account of his alleged disproportionate property.
>
> In this view of the matter, the learned Advocate Mr Antani, has rightly argued that there is no evidence to show that the accused had misused his office or position and that there is ample evidence to show that the accused had satisfactorily accounted for the alleged disproportionate property. He has also rightly argued that the Court should accept the say of the accused and acquit him. This Court is unable to accept the submission made by the learned Prosecutor Mr Buch, that everything was managed by the accused by stating the transactions as the transactions of gift. On the contrary, from the fact that the accused had mentioned all these acquisition of property in his returns, of property submitted to the Department it becomes clear that he has not suppressed anything, and, therefore, the transactions were quite true and correct. In view of this, Point 3 is answered in the negative."

20. It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges levelled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of the PC Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent court on the same set of facts, evidence and witness and, therefore, the dismissal order based on the same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

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21. We shall now scan through the judgments on this issue.

22. In *Capt. M. Paul Anthony* v. *Bharat Gold Mines Ltd.*[1] the question before this Court was as to whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously. In para 34, this Court held as under: (SCC p. 695)

> "*34.* There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom'. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

23. In *R.P. Kapur* v. *Union of India*[4] a Constitution Bench of this Court observed: (SCR p. 444)

> "If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. *Even in case of acquittal proceedings may follow, where the acquittal is other than honourable.*" (emphasis supplied)

24. In *Corpn. of the City of Nagpur* v. *Ramchandra*[5] the same question arose before this Court. This Court, in para 6, held as under: (SCC p. 718)

> "*6.* The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. *Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence*, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction [discretion] in any way fettered." (emphasis supplied)

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25. The rulings cited by the learned counsel appearing for the respondent are:

In *Krishnakali Tea Estate* v. *Akhil Bharatiya Chah Mazdoor Sangh*[9] it was argued before this Court on behalf of the respondent Sangh that the Labour Court ought not to have brushed aside the finding of the criminal court which according to the learned Single Judge "honourably" acquitted the accused workmen of the offence before it. The learned Judges were taken through the judgment of the criminal court. The Bench was of the opinion that the acquittal by the criminal court was "honourable" as it was based on the fact that the prosecution did not produce sufficient material to establish its charge which was clear from the following observations found in the judgment of the criminal court: (SCC p. 211, para 25)

> "Absolutely in the evidence on record of the prosecution witnesses I have found nothing against the accused persons. The prosecution totally fails to prove the charges under Sections 147, 353, 329 IPC."

26. Before the learned Judges, *Paul Anthony case*[1] was relied on in regard to the above contentions. The learned Judges held that the decision in *Paul Anthony case*[1] would not support the respondent therein because in *Paul Anthony case*[1] the evidence led in the criminal case as well as in the domestic enquiry was one and the same and the criminal case having acquitted the workmen on the very same evidence and this Court came to the conclusion that the finding to the contrary on the very same evidence by the domestic enquiry would be unjust, unfair and rather oppressive. The Bench further held as follows: (*Krishnakali Tea Estate case*[9], SCC pp. 211-12, para 26)

> "It is to be noted that in that case the finding by the Tribunal was arrived at in an ex parte departmental proceeding. In the case in hand, we have noticed that before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the materials before the criminal court and the Labour Court were entirely different. Therefore, it was open to the Labour Court to have come to an independent conclusion dehors the finding of the criminal court. But at this stage it should be noted that it is not as if the Labour Court in the instant case was totally oblivious of the proceedings before the criminal court. The Labour Court has in fact perused the order of the Judicial Magistrate and the exhibits produced therein and come to an independent conclusion that the order of the criminal court has no bearing on the proceedings before it; which finding of the Labour Court, in our opinion, is justified."

27. In *Ajit Kumar Nag* v. *G.M. (PJ), Indian Oil Corpn. Ltd.*[6] this Court in para 11 held as under: (SCC p. 776)

> "*11.* As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with

the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

28. This Court in *Depot Manager, A.P. SRTC* v. *Mohd. Yousuf Miya*[7] in para 8 held as under: (SCC pp. 704-05)

> "The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry

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in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standards of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, ... the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

29. The judgment in *State of A.P.* v. *S. Sree Rama Rao*[8] was cited for the purpose that the High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant, it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated.

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of

difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in *Paul Anthony case*[1] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

32. In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8-2-1979 and got subsistence allowance of Rs 700 p.m. i.e. 50% of the salary. On 15-10-1982 dismissal order was passed. The appellant had put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February 1986. On the basis of the same charges and the evidence, the department passed an order of dismissal on 21-10-1982 whereas the criminal court acquitted him on 30-1-2002. However, as the criminal court acquitted the appellant on 30-1-2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30-1-2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension.

33. For the foregoing reasons, we set aside the judgment and order dated 28-1-2002 passed by the learned Single Judge in Special Civil Application No. 948 of 1983 as affirmed by the Division Bench in LPA No. 1085 of 2002 and allow this appeal. However, there shall be no order as to costs.

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(BEFORE ARIJIT PASAYAT AND S.H. KAPADIA, JJ.)

MANJULA ... Petitioner;

Versus

K.R. MAHESH ... Respondent.

Transfer Petition (C) No. 947 of 2005†, decided on July 11, 2006

Hindu Marriage Act, 1955 — S. 26 — Provision for maintenance and education of children — Paramountcy of — Keeping in mind the paramount consideration of welfare of child, and irretrievable breakdown of the marriage, divorce decreed on transfer petition — Detailed directions issued as to provisions to be made for maintenance and education of child — Family Law — Divorce — Matrimonial disputes

D-M/34592/C

† Petition under Section 25 of the Civil Procedure Code, 1908 for transfer of OP No. 1857 of 2005 titled *K.R. Mahesh* v. *Manjula* pending in the Family Court, Chennai (T.N.) to the Family Court at Mumbai (Maharashtra)

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(2004) 13 Supreme Court Cases 342

(BEFORE DORAISWAMY RAJU AND ASHOK BHAN, JJ.)

LT. GOVERNOR, DELHI AND OTHERS† ... Appellants;

Versus

HC NARINDER SINGH ... Respondent.

Civil Appeal No. 5654 of 1997, decided on April 9, 2003

Service Law — Penalty/Punishment — Second penalty based on the same cause of action, held, would amount to double jeopardy — Hence, such an action could not be sustained — Disciplinary action initiated against respondent for dereliction of duty culminating in imposition of penalty of reduction of pay by one stage without cumulative effect — Thereafter, the appointing authority issuing a second show-cause notice proposing to remove his name from the promotion list — Lack of devotion to duty, which was the subject-matter of the earlier proceedings, mentioned as the reason for the said proposed action — Tribunal holding that second show-cause notice would amount to double punishment based on the same cause of action — Hence, it quashing the same — Held, Tribunal was justified in doing so — Constitution of India, Art. 20(2) — Delhi Police Promotion and Confirmation Rules, 1980, R. 19(ii) (Para 4)

Appeal dismissed W-M/28534/SL

ORDER

1. Head Constable Narinder Singh, for short the respondent, was appointed a constable in the Delhi Police on 22-12-1982. He was promoted out of turn under Rule 19(*ii*) of the Delhi Police Promotion and Confirmation Rules, 1980 for showing outstanding devotion to duty. Subsequently, in the year 1990 disciplinary action was initiated against him for dereliction of duty which culminated in the imposition of penalty of reduction of pay by one stage without cumulative effect. Appeal against the said order was dismissed. Thereafter, the appointing authority issued a second show-cause notice on 8-1-1992 proposing to remove his name from the promotion list to which he was brought under the above Rules.

2. Aggrieved by the proposed action the respondent filed an application before the Central Administrative Tribunal, for short the Tribunal, seeking quashing of the show-cause notice. The Tribunal allowed the petition and held that second show-cause notice would amount to double punishment based on the same cause of action and accordingly quashed the show-cause notice. The Delhi Administration has come up in the appeal.

3. Counsel for the parties have been heard.

4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule.

5. For the reasons stated above, we do not find any merit in this appeal and dismiss the same with no order as to costs.

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(2004) 13 Supreme Court Cases 343

(BEFORE P. VENKATARAMA REDDI AND A.K. MATHUR, JJ.)

RADHIKA KAPUR AND OTHERS ... Appellants

Versus

DLF UNIVERSAL LTD. ... Respondent.

Civil Appeal No. 7785 of 2002 and IA No. 5 of 2004†, decided on December 17, 2004

A. Monopolies and Restrictive Trade Practices Act, 1969 — Ss. 12-A, 55 and 36-A — Exercise of jurisdiction under S. 12-A by Commission — Interference with, by Supreme Court when called for — Earlier interim application seeking substantially same relief rejected — Cancellation of allotment of apartments built by respondent for non-payment of extra amount demanded from appellants — Relief against, claimed under S. 36-A by appellants — First application filed under S. 12-A in meantime seeking stay of demand of extra charges and said cancellation of allotment, rejected — Second application for possession of the said apartments, on ground that said extra amount had been paid, also being rejected, whereagainst appellants were before Supreme Court by special leave — Without going into larger question whether Commission could straightaway pass an order under S. 12-A directing possession to be handed over on payment of balance sale price, held, interference with impugned order of Commission not called for — In declining to grant relief of possession by way of interim measure, Commission cannot be said to have committed a jurisdictional error or patent illegality — There is no perversity, nor irrelevant reasoning which makes the impugned order vulnerable to attack — No irreparable damage was caused to appellants by declining the mandatory injunction to put appellant in possession even before the enquiry was concluded, as rightly held by the Commission — Moreover, it was pertinent to note that no offer was made before the Commission nor in SLP filed in the Supreme Court for payment of extra charges "without prejudice" — Above all, IA No. 4 seeking substantially the same relief was dismissed by the Supreme Court — There was no valid ground therefore to interfere with the impugned order under Art. 136, though the respondent has exhibited a somewhat unreasonable attitude in spurning an offer made in the course of hearing, to grant possession on payment of some of the dues claimed — Constitution of India — Art. 136 — Interference in interim matters — Considerations — Housing and Construction — Allotment (Para 8)

† From the Judgment and Order dated 4-9-2000 of the MRTP Commission, New Delhi in UTPE No. 206 of 1998

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only entitled to maintenance, they could not claim any share in the compensation money paid under the Rajasthan Act VI of 1952. In dealing with this aspect, we are handicapped by the circumstance that the suit was instituted before this Act VI of 1952, was passed, so that there was no specific pleading in this behalf by the plaintiffs/appellants. The Trial Court, therefore, ignored this aspect altogether, and even the High Court did not take into account the effect of Act VI of 1952, in the two aspects which have been mentioned by us above. Since, however, this is an appeal against a preliminary decree in the suit and the suit is still to continue in the Trial Court, we think it appropriate to direct that these questions should be properly raised in the Trial Court by amendment of the pleadings in the plaint, if necessary, and should be considered and decided by that Court. It will be for that Court to give a fresh decision whether the appellants are entitled to claim a share in the compensation money for in lieu of these eight villages under Rajasthan Act VI of 1952.

9. The result is that this appeal is dismissed, subject to the modification that the case will go back to the Trial Court for deciding the question whether the plaintiffs/appellants can claim a share in the compensation money or not, as indicated above. Costs of this appeal shall abide by the decision on this claim of the plaintiffs/appellants to a share in the compensation money.

1970(1) Supreme Court Cases 708

(From Delhi)

[BEFORE M. HIDAYATULLAH, C. J. AND J. C. SHAH, K. S. HEGDE, A. N. GROVER AND A. N. RAY, JJ.]

R. D. AGARWALA AND ANOTHER .. Appellants;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

and

SHRI MUSADDI LAL AND OTHERS .. Appellants;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals Nos. 2634 of 1969 and 63 of 1970, decided on 23rd February, 1970.

Constitution of India—Article 132(1)—Suo motu grant of certificate by the single judge—Right of appeal to Bench open—Propriety of.

Where, a single judge of the High Court, did not refer the matter to a larger Bench though some important questions of law were involved, decided the case singly and granted certificate suo motu under Article 132(1) of the Constitution of India.

Held, that the learned judge was in error in not making a reference to a Bench when he found that important questions of law were arising before him. Even if he did not make any reference, he should have allowed the parties to take an appeal in the High Court itself under the provisions pertaining to appeals against decision of a single judge. The practice of deciding the case sitting singly and giving a certificate under Article 132(1) for appeal to this court, although technically correct, is an improper practice. It is the right of the party to file an appeal in the High Court itself against the decision of the single judge and that right should not be shortcircuited by passing on the case to the Supreme Court for decision.

(Para 2)

Jaipur Udyog Ltd. v. *Union of India*, AIR 1969 Raj 81, *referred to.*

Certificate cancelled.

The Judgment of the Court was delivered by

HIDAYATULLAH, C. J.—This order will govern the disposal of Civil Appeals 2634 of 1969 and 63 of 1970. These two appeals arise from petitions filed in the High Court of Delhi which were disposed of by common judgment delivered by a learned single Judge on December 20, 1968. The appeals have been brought on certificate granted suo motu by the learned Judge under Article 132(1) of the Constitution of India. While granting the certificate, the learned single Judge observed that at an earlier stage of the case, request was made to him to refer these two petitions for decision to a Division Bench, because important questions were involved in them. At that time, the learned Judge felt that since there was a Division Bench decision of the Rajasthan High Court in *Jaipur Udyog Ltd.* v. *Union of India and Another*[1] there was no need to refer the matter to a larger Bench. The learned Judge goes on to say in the order granting certificate that at the time of the hearing, he found that several questions arose before him which were not covered by the Rajasthan decision. He probably felt that as the points which he had to decide were not considered by this Court in any earlier decision and as he had decided the case sitting singly, he should grant certificate suo motu for appeal to this Court.

2. In our opinion, and we say it respectfully, the learned Judge was in error in not making a reference to a Bench when he found that important questions of law were arising before him. Even if he did not make any reference, he should have allowed the parties to take an appeal in the High Court itself under the provisions pertaining to appeals against decisions of a single Judge. The practice of deciding the case sitting singly and giving a certificate under Article 132(1) for appeal to this Court, although technically correct, is an improper practice. It is the right of the party to file an appeal in the High Court itself against the decision of the single Judge and that right should not be shortcircuited by passing on the case to the Supreme Court for decision. We think we should not endorse this practice which would create a bad precedent in India. We accordingly cancel the certificate and leave the parties free to file an appeal in the High Court, if they so desire. There will be no order as to costs.

1970(1) Supreme Court Cases 709

(From Assam and Nagaland)

[BEFORE S. M. SIKRI, V. BHARGAVA AND C. A. VAIDIALINGAM, JJ.]

STATE OF ASSAM AND ANOTHER .. Appellants;

Versus

JAHENDRA KUMAR DAS AND OTHERS† .. Respondents.

Civil Appeal No. 2210 of 1966, decided on 18th March, 1970

Natural justice—Disciplinary proceeding—Enquiry into charges—Consultation by Enquiry Officer of Anti-Corruption Branch—Principles of natural justice—Violation of.

Natural justice—Enquiry proceedings—Delinquent officer—Availing opportunity of examining his witnesses and cross-examining witnesses for the prosecution—Non-furnishing of—Report of Enquiry Officer—Principles of natural justice—Violation of.

[1] AIR 1969 Raj 81.

†Appeal by special leave from the Judgment and Order, dated 20-1-1966 of the Assam and Nagaland High Court in Civil Rule No. 184 of 1964.

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The respondent a permanent Sub-Inspector of Police was placed under suspension from July 24, 1957 as a result of a confidential enquiry conducted by the Superintendent of Police, Anti-Corruption Branch. Certian charges were framed against him by the Sub-Divisional Police Officer authorised under Section 7 of the Police Act, 1961, who conducted the enquiry. The respondent cross-examined the witnesses on the side of prosecution and examined some witnesses on his side. The Enquiry Officer found him guilty. The Superintendent of Police sent a memo with a copy of the report of the Enquiry Officer to the respondent asking him to submit his explanation. The respondent's request for being furnished with copies of depositions of the witnesses recorded by the Enquiry Officer was rejected by the Superintendent of Police. The respondent submitted his explanation. The Superintendent of Police dismissed the respondent from service holding him guilty of the charges. The respondent's appeal and revision to the higher authorities failed. The respondent filed a writ petition in the High Court challenging the disciplinary proceedings initiated against him on the ground : (1) that the Enquiry Officer had used the material gathered from the Anti-Corruption Branch behind his back, (2) that the request for supply of copies of the statements of witnesses was arbitrarily rejected, and (3) that the refusal to supply a copy of the report of the Anti-Corruption Branch resulted in violation of the principles of natural justice. The High Court accepted the third ground and allowed the Writ Petition. The State appealed to the Supreme Court.

Held :

(*i*) That the High Court has not made a proper approach when it came to the conclusion that there had been a violation of the principles of natural justice in the conduct of the enquiry, on the second ground of objection raised by the respondent.

(*ii*) The rules of natural justice can be considered to have been violated only if the authority concerned acts upon information collected by it and the said information has not been disclosed to the party against whom the material has been used.

(*iii*) A perusal of the report of the Enquiry Officer, in the proceedings before us, shows that there is absolutely no reference to any data or material, if any, collected by him when he consulted the Deputy Superintendent of Police, Anti-Corruption Branch on July 14 and 15, 1958. But, we have to State that it is highly improper for an Enquiry Officer during the conduct of an enquiry to attempt to collect any material from outside sources and not make that information, so collected, available to the delinquent officer and further permit use of the same in the enquiry proceedings. There may also be cases where a very clever and astute Enquiry Officer may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information as collected, still have been influenced in the conclusions recored by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by the Enquiry Officer, without its having been disclosed to the delinquent officer, it can be stated that the enquiry proceedings are vitiated.

(*iv*) If the disciplinary authority himself had been also the Enquiry Officer and, during the course of the enquiry he had collected material without disclosing the same to the officer concerned, the position will be still worse and the mere fact that such an order passed by the disciplinary authority had even been confirmed by an appellate authority without anything more, will not alter the position in favour of the department.

(*v*) It is no doubt true that the Enquiry Officer has made a note that he consulted the Deputy Superintendent of Police, Anti-Corruption Branch on July 14 and 15, 1958 and perused the records relating to the charges. But the enquiry report does not show that the materials, if any, collected by the Enquiry Officer on those two days, have been utilised against the respondent. A perusal of the report shows that each and every item of charge had been discussed with reference to the evidence bearing on the same and findings recorded on the basis of such evidence. Therefore, it cannot be stated that the Enquiry Officer in this case has taken into account materials if any that he may have collected from the Anti-Corruption Branch. Nor is there anything to show that, in the discussion contained in his report, the Enquiry Officer was in any way influenced by the consultation that he had with the Anti-Corruption Branch. If so, it cannot be held that the enquiry proceedings are violative of the principles of natural justice.

(*vi*) It is clear from the record that the respondent had a full opportunity of participating in the enquiry and adducing evidence on behalf of himself and of cross-examining the witnesses for the prosecution and the entire evidence was recorded in his presence. The non-furnishing of the copy of the report of the Superintendent of Police, Anti-Corruption Branch, does not vitiate the enquiry proceedings. (Paras 19, 20, 24, 25, 26)

Cases referred to :

State of Mysore v. *S. S. Makapur*, (1963) 2 SCR 943, 947 ; *The Collector of Central Excise and Land Customs* v. *Sanawarmal Purchit*, C. A. Nos. 1362-1363/57, dated 16-2-1968 ; *Executive Committee of U. P. State Warehousing Corporation* v. *Chandra Kiran Tyagi*, (1969) 2 SCC 838.

Advocates who appeared in this case :

Naunit Lal, Advocate, for appellants.

D. N. Mukherjee, Advocate, for Respondent No. 1.

The Judgment of the Court was delivered by

VAIDIALINGAM, J.—This appeal, by special leave, is directed against the judgment, dated January 20, 1966 of the High Court of Assam and Nagaland, in Civil Rule No. 184 of 1964 by which the High Court quashed the enquiry proceedings conducted by the 4th respondent herein and the order, dated December 3, 1958 passed by the 3rd respondent dismissing the first respondent (hereinafter shortly referred to as the respondent) from service and the orders of the appellate authorities confirming the same.

2. The respondent joined the Assam Police Service as a constable in 1933 and was promoted to the post of Assistant Sub-Inspector of Police in 1936. He was then promoted as Sub-Inspector of Police in 1944. He was made permanent as Sub-Inspector of Police in 1952. In 1955, when the respondent was the Officer in charge of the Sorbhog Police Station, certain allegations appear to have been made against him in consequence of which a confidential enquiry was conducted by the Superintendent of Police, Anti-Corruption Branch, who submitted a report to the Government on December 21, 1957. In view of the complaints received against him, the respondent had already been placed under suspension with effect from July 24, 1957.

3. The Sub-Divisional Police Officer, Barpeta, having been authorised under Section 7 of the Police Act, 1861, framed charges against the respondent on March 22, 1958. It is not really necessary to enumerate the various items of charges, but they can be grouped under three broad heads. Under Charge No. 1, the respondent was alleged not to have taken cognizance of the items of cognizable offences reported to him and enumerated under that charge and, as such, he had neglected to perform his duty as a policer-officer

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in charge of a Police Station. The second charge related to his accumulated assets in his name as well as in the name of his wife, far b... his known sources of income. Items of assets purchased by the respo... were again given in detail. The third charge related to the respondent ... concealed the items, enumerated therein, and given false statements regard... his assets in the declaration of assets submitted to the authorities on July 1957.

4. The respondent submitted his explanation controverting the allegati... made against him. The enquiry was conducted by the Sub-Divisional Police Officer, Barpeta (shortly referred to as the Enquiry Officer) and, as many as 14 witnesses were examined on the side of the prosecution. The respondent cross-examined those witnesses and he also examined four witnesses on his side.

5. The Enquiry Officer, by his report, dated September 11, 1958, ... the respondent guilty of the various charges, excepting regarding one ite... under the first charge. He declined to place any reliance on the evid... adduced by the respondent and rejected the explanation furnished by ... Ultimately, the Enquiry Officer, after finding the respondent guilty, submitt... his report to the Superintendent of Police, Kamrup. The Superintendent of Police, after referring to the charges framed against the respondent, the natur... of the evidence adduced before the Enquiry Officer as well as the findin... recorded by the said Officer, issued a memo, dated October 18, 1958 askin... the respondent to submit his explanation. A copy of the report of the Enquiry Officer had already been given to the respondent. Still the Superintendent of Police also sent a copy along with his memo.

6. On receipt of this memo, the respondent requested the Superintendent of Police, by his letter, dated October 29, 1958 for being furnished with copie... of the depositions of the prosecution and defence witnesses recorded by the Enquiry Officer to enable him to submit his explanation. But this request was rejected by the Superintendent of Police stating that there was no rul... for giving copies of statements.

7. The respondent submitted a fairly long explanation, dated November 21, 1958. He disputed the correctness of the findings recorded against him by the Enquiry Officer and, ultimately stated that he was innocent and was not guilty of any offence. He prayed that if in case he was found guilty, he should not be awarded the extreme punishment of dismissal from service. But he added a request to the effect that he should be allowed to examine witnesses and submit documents and he should be exonerated by the Superintendent of Police after a perusal and consideration of the same.

8. On receipt of the explanation, the Superintendent of Police, by his order, dated December 3, 1958 rejected the explanation of the respondent, accepted the findings of the Enquiry Officer and holding that the charges had been proved beyond all reasonable doubt, dismissed the respondent from service with immediate effect. In the said order, the Superintendent of Police had referred to the charges framed against the respondent, the explanation furnished by him as well as the evidence recorded during the enquiry and the findings recorded by the officer and the explanation sent by the respondent to the show cause notice and ultimately held that the charges had all been proved established and that the findings recorded by the Enquiry Officer were correct. With regard to the request made by the respondent in his explanation, dated November 21, 1958 the disciplinary authority stated that the respondent was afforded a full and fair opportunity to

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duce all evidence that he desired to be placed before the Enquiry Officer and ... opportunity had also been fully utilised by the respondent. Therefore there ... no further necessity for giving the respondent an opportunity to furnish ... documentary or oral evidence. Regarding the punishment to be awarded, ... Superintendent of Police stated that the charges proved against the respondent, who, was a member of the Police force, were very serious and hence ... leniency could be shown.

9. The respondent filed an appeal before the Deputy Inspector-General of Police, Range Assam, who by his order, dated May 11, 1960 dismissed the same.

10. The respondent thereupon filed a revision before the Inspector-General of Police, Assam, which, again, was rejected on June 30, 1961. A further revision, filed before the State Government was also dismissed on January 21, 1964.

11. On August 17, 1964 the respondent filed the writ petition in question, challenging the disciplinary proceedings initiated against him and the orders of dismissal passed on the basis of the enquiry conducted by the Enquiry Officer. He had taken several grounds of attack as against the disciplinary proceedings. He alleged that no reasonable opportunity was afforded to him during the enquiry proceedings. During the enquiry, the Enquiry Officer was in frequent consultation and contact with the Deputy Superintendent of Police of the Anti-Corruption Branch, regarding the charges which were being tried by him. In particular, he referred to the record made by the Enquiry Officer in his proceedings that on July 14 and 15, 1958 he consulted the Deputy Superintendent of Police, Anti-Corruption Branch about the proceedings and went through his records relating to the charges. He averred that the nature of the consultation and the materials collected by the Enquiry Officer from the Deputy Superintendent, Anti-Corruption Branch, were not made known to him and those materials had been taken into account in recording the findings against him. He also alleged that copies of the report of the Anti-Corruption Department, on the basis of which disciplinary proceedings had been initiated, had not been furnished to him nor were the copies of the evidence recorded during the enquiry given to him, though a specific request was made in that behalf. On all these grounds, he sought to have all the orders quashed on the ground that there had been a gross violation of the principles of natural justice. He took a further ground of attack that he had been appointed by the Inspector-General of Police and the order of dismissal by subordinate authority, *viz.*, the Superintendent of Police, was illegal and void.

12. The allegations made by the respondent in the writ petition were controverted by the appellants. They averred that the respondent was not entitled to a copy of the report of the Anti-Corruption Branch, which was only in the nature of a preliminary investigation into the complaints received against the respondent to enable the disciplinary authority to consider whether disciplinary action against the respondent should be initiated or not. It was further stated that the respondent was given a full and fair opportunity to participate in the enquiry and the witnesses were all examined in his presence and, apart from cross-examining the prosecution witnesses, he had also adduced defence evidence on his behalf. The State further averred that the mere circumstance that the Enquiry Officer consulted the Deputy Superintendent of Police, Anti-Corruption Branch, did not vitiate the enquiry proceedings as no information on material gathered therein had been used by the Enquiry Officer when he recorded findings against the respondent. According to the State, the

findings had been recorded on the basis of the evidence adduced during the actual enquiry. It was also pointed out that the disciplinary authority, viz. the Superintendent of Police, after receipt of the report of the Enquiry Officer had himself gone into the various items of evidence and, after a due consideration of the explanation submitted by the respondent, had agreed with the findings recorded by the Enquiry Officer and, after further consideration of the explanation submitted by the respondent to the show cause notice, ultimately passed the order of dismissal. The appellate authority, the Deputy Inspector-General of Police had also considered the matter in great detail and had upheld the order of the Superintendent of Police.

13. The State further averred that the appointing authority of persons like the respondent, was the Superintendent of Police and not the Inspector-General of Police, and, as such, the order of dismissal passed by the former was perfectly legal. On these grounds the State maintained that the enquiry proceedings were valid and legal and did not suffer from any infirmity.

14. Though, as pointed out above, several grounds of attack against the disciplinary proceedings initiated against the respondent were taken in the writ petition, it is seen from the judgment of the High Court under appeal that the order of dismissal was ultimately assailed only on two grounds : (1) The request of the respondent, made on October 29, 1958 after receipt of the second show cause notice, dated October 18, 1958 issued by the Superintendent of Police, for supply of copies of the statements of the witnesses recorded at the enquiry, was arbitrarily rejected on the ground that there was no rule under which copies could be given and hence the respondent did not have any reasonable opportunity to show cause against the action proposed against him ; (2) The Enquiry Officer, during the course of the enquiry was keeping himself in regular contact with the Anti-Corruption Branch and had utilised the material so gathered by him, behind the back of the respondent, against the respondent in the enquiry proceedings. The respondent's request for being furnished with a copy of the report of the Anti-Corruption Branch had also been refused and therefore there had been a violation of the principles of natural justice in the conduct of the enquiry.

15. So far as the first ground of objection is concerned, the High Court did not accept the same as it was satisfied that the witnesses were all examined in the enquiry in the presence of the respondent and that he had a full and fair opportunity of cross-examining the prosecution witnesses and also of examining witnesses on his behalf. Though the request of the respondent, made on October 29, 1958 for being furnished with copies of the evidence recorded during the enquiry was rejected, the High Court was of the view that as the respondent was fully aware of the nature of the evidence adduced in his presence during the enquiry, his grievance that he had no reasonable opportunity to show cause to the notice issued by the Superintendent of Police was unfounded.

16. So far as the second ground of objection was concerned, the High Court was impressed by the fact that the enquiry proceedings showed that on July 14, 1958 and July 15, 1958 the Enquiry Officer consulted the Deputy Superintendent of Police of the Anti-Corruption Branch about the proceedings and went through his records relating to those charges. Based upon those entries found in the record of the enquiry proceedings, the High Court came to the conclusion that it was abundantly clear that the Enquiry Officer had discussion with the Anti-Corruption Branch, the report of which had not been furnished to the respondent. The High Court was further of the view that the Enquiry Officer had taken into consideration the materials gathered from the records of the Anti-Corruption Branch. It was the further view of the High Court that inasmuch as a copy of the report of the Anti-Corruption Branch as well as the materials that were gathered by the Enquiry Officer during his consultation with that branch had not been furnished to the respondent, the enquiry held under such circumstances was violative of the principles of natural justice and hence the order dismissing the respondent from service was void. In this view the High Court set aside the order of dismissal and allowed the writ petition.

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17. Mr. Naunit Lal, learned counsel for the appellant State, raised two contentions : (1) The report of the Enquiry Officer, dated September 11, 1958, clearly shows that the findings against the respondent have been recorded exclusively on the basis of the evidence adduced before him and there is nothing to show that the enquiry proceedings have been influenced by the consultations that the Enquiry Officer had with the Deputy Superintendent of Police, Anti-Corruption Branch, on July 14/15, 1958. (2) In any event, the disciplinary authority, viz. the Superintendent of Police, before accepting the findings recorded by the Enquiry Officer, has himself considered the entire evidence bearing upon the charges and the explanations offered by the respondent and it is after such a consideration that he has agreed with the findings of the Enquiry Officer regarding the guilt of the respondent. The appellate authority, the Deputy Inspector-General of Police, has also made a similar approach when disposing of the appeal filed by the respondent and therefore there has been no violation of the principles of natural justice.

18. Mr. D. N. Mukherjee, learned counsel for the respondent, has urged that the High Court's view that the enquiry proceedings is vitiated inasmuch as the Enquiry Officer has acted upon the information collected from the Anti-Corruption Branch is perfectly justified, especially in view of the record made by the Enquiry Officer himself. Counsel pointed out that the examination of witnesses commenced on June 23, 1958 and concluded only on August 30, 1958. It was during this period when the enquiry was actually going on that the Enquiry Officer, on July 14 and 15, 1958, consulted the Anti-Corruption Branch about the matters connected with the enquiry proceedings and had gone through the records available with that Branch relating to the charges levelled against the respondent and which were being tried by the Enquiry Officer. Counsel further urged that the respondent was not furnished with a copy of the report of the Anti-Corruption Branch nor was he furnished with the information and materials that must have been gathered by the Enquiry Officer in his consultation with the Anti-Corruption Branch and from their records which he inspected on July 14 and 15, 1958. All these circumstances would clearly show that there had been a violation of the principles of natural justice in the conduct of the enquiry. When once the enquiry proceedings were so vitiated, the order of dismissal based upon the findings recorded at such an enquiry, has been rightly held by the High Court to be illegal and void.

19. We are of opinion that in the particular circumstances of this case, which will be indicated presently, the High Court has not made a proper approach when it came to the conclusion that there had been a violation of the principles of natural justice in the conduct of the enquiry, on the second ground of objection raised by the respondent. The principle, in this regard, has been laid down by this Court in *State of Mysore* v. *S. S. Makapur*[1] :

[1] (1963) 2 SCR 943, 947.

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"For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by the rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts."

20. It has been further laid down by this Court in *The Collector of Central Excise and Land Customs* v. *Sanawarmal Purohit*[2] that :

"A quasi-judicial authority would be acting contrary to the rules of natural justice if it acts upon information collected by it which has not been disclosed to the party concerned and in respect of which full opportunity of meeting the inferences which arise out of it has not been given."

21. The above two extracts, it will be noted, emphasize that rules of natural justice can be considered to have been violated only if the authority concerned acts upon information collected by it and the said information has not been disclosed to the party against whom the material has been used.

It Paragraph 10 of his writ petition the respondent has alleged that the Enquiry Officer had, during the course of the enquiry, maintained regular correspondence and contact with the Deputy Superintendent of Police, Anti-Corruption Branch, Gauhati. In Para 12 he had further alleged that the Enquiry Officer started recording statements of witnesses on and from June 23, 1958 and after recording the statements of thirteen witnesses, came to Gauhati on July 14, 1958 and had consultation with the Deputy Superintendent, Anti-Corruption Branch, about the proceedings against the respondent and also went through the record of the Anti-Corruption Branch on July 15, 1958. The request of the respondent for being furnished with a copy of the report of the Anti-Corruption Branch was not complied with. He further alleged that the enquiry proceedings show that the Enquiry Officer had taken into consideration, against the respondent, the report of the Anti-Corruption Branch.

22. In the counter-affidavit on behalf of the State, filed in the writ petition, it was contended in Para 10 that the report of the Anti-Corruption Branch being a confidential document and not having been used as an exhibit in the disciplinary proceedings, the respondent was not entitled to a copy of the same. It was further averred in Para 11 that the findings of the Enquiry Officer, Barpeta, recorded against the respondent were based on the evidence recorded during the enquiry and not on any consultation with the Anti-Corruption Branch Officers. It was further averred in Para 13 that as the report of the Anti-Corruption Branch was not exhibited in the disciplinary proceedings, there was no question of the Enquiry Officer taking the said report into consideration and, as a matter of fact also the report was not taken into consideration by the Enquiry Officer and the findings against the respondent had been recorded on the basis of the evidence recorded by the Enquiry Officer and no part of it is based on the report of the Anti-Corruption Branch.

23. From the above averments it will be noted that the respondent no doubt made a grievance of the consultation stated to have taken place during the midst of the enquiry between the Enquiry Officer and the Anti-Corruption Branch. But his specific averment was that the findings against him recorded in the enquiry were based upon the report of the Anti-Corruption Branch the copy of which was not furnished to him. The State, on the other hand, did not controvert the fact that the Enquiry Officer did have consultation with the Anti-Corruption Branch on the dates mentioned in the record of proceedings. But, according to the State, no part of any information contained in that report had been taken into account in the enquiry proceedings and that on the other hand the report of the Enquiry Officer was exclusively based on the evidence adduced during the enquiry.

24. A perusal of the report of the Enquiry Officer, in the proceedings before us, shows that there is absolutely no reference to any data or material, if any, collected by him when he consulted the Deputy Superintendent of Police, Anti-Corruption Branch on July 14 and 15, 1958. But, we have to state that it is highly improper for an Enquiry Officer during the conduct of an enquiry to attempt to collect any materials from outside sources and not make that information, so collected, available to the delinquent officer and further make use of the same in the enquiry proceedings. There may also be cases where a very clever and astute enquiry officer may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusions recorded by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by the Enquiry Officer, without its having been disclosed to the delinquent officer, it can be stated that the enquiry proceedings are vitiated. It was, under such circumstances, that this Court, in *Executive Committee of U. P. State Warehousing Corporation* v. *Chandra Kiran Tyagi*[3] accepted the view of the High Court that the enquiry proceedings were vitiated by the Enquiry Officer collecting information from outside sources and utilising the same in his findings recorded against the delinquent officer without disclosing that information to the accused officer. It was, again, under similar circumstances that this Court in *Sanawarmal Purohit's case* (supra) upheld the order of the High Court holding the enquiry proceedings to be contrary to the principales of natural justice when the Enquiry Officer had collected information from third parties and acted upon the information so collected, without disclosing the same to the accused. If the disciplinary authority himself had been also the Enquiry Officer and, during the course of the enquiry he had collected materials behind the back of the accused and used such materials without disclosing the same to the officer concerned, the position will be still worse and the mere fact that such an order passed by the disciplinary authority had even been confirmed by an appellate authority without anything more, will not alter the position in favour of the department.

25. But, in the case before us, it is no doubt true that the Enquiry Officer has made a note that he consulted the Deputy Superintendent of Police, Anti-

2. Civil Appeals Nos. 1362-1363/1967, decided on 16-2-1968.

3. 1969(2) SCC 838.

Corruption Branch on July 14 and 15, 1958 and perused the records relating to the charges. But the enquiry report does not show that materials collected by the Enquiry Officer on those two days, have been utilised as against the respondent. We do not find any warrant for the High Court's view that

"there is no doubt that the S. D. P. O. took into consideration the materials found by the Anti-Corruption Branch....."

On the other hand, a perusal of the report shows that each and every item of charge had been discussed with reference to the evidence bearing on the same and findings recorded on the basis of such evidence. Therefore, it cannot be stated that the Enquiry Officer has in this case taken into account materials, if any that he may have collected from the Anti-Corruption Branch. Nor is there anything to show that, in the discussion contained in his report, the Enquiry Officer was in any way influenced by the consultation that he had with the Anti-Corruption Branch. If so, it cannot be held that the enquiry proceedings are violative of the principles of natural justice.

26. The fact that a copy of the report of the Superintendent of Police, Anti-Corruption Branch, dated December 21, 1957 was not furnished to the respondent is, in our opinion, of no consequence in relation to the actual enquiry conducted against the respondent. That report was necessitated in view of the complaints received against the respondent and the enquiry made by the Anti-Corruption Branch was only for the purpose of enabling the Government to consider whether disciplinary proceedings should be initiated against the respondent. On receipt of the report, the Government felt that disciplinary proceedings will have to be initiated against the respondent and that is how the enquiry proceedings were commenced. The validity of the enquiry will have to be decided only by the manner in which it has been conducted. So far as that is concerned, it is clear from the record that the respondent had a full opportunity of participating in the enquiry and adducing evidence on behalf of himself and of cross-examining the witnesses for the prosecution and the entire evidence was recorded in his presence. The non-furnishing of the copy of the report of the Superintendent of Police, Anti-Corruption Branch, does not vitiate the enquiry proceedings.

27. Over and above these circumstances, it is also to be seen that the Enquiry Officer was not the disciplinary authority competent to impose the punishment against the respondent. The competent authority is the Superintendent of Police. The show cause notice, issued on October 18, 1958 as well as the order of dismissal passed by the Superintendent of Police, dated December 3, 1958 clearly show that the said officer has independently gone into the evidence on record in respect of the charges for which the respondent was tried and has, after taking into account the explanations furnished by him, independently come to the conclusion that the respondent is guilty. Similarly, the Deputy Inspector-General of Police, Range Assam, before whom the respondent filed an appeal has also very elaborately and in considerable detail discussed the entire evidence on record and has agreed with the conclusions regarding the guilt of the respondent. We have already held that there is no violation of the rules of natural justice in the enquiry proceedings. Even assuming that there was any defect in the said enquiry proceedings, inasmuch as the punishing authority and the appellate authority, the Superintendent of Police and the Deputy Inspector-General of Police, respectively, have independently considered the matter and found the respondent guilty on the evidence on record, it must be held that in the circumstances of this case there has been no violation of the principles of natural justice when the order of dismissal was passed.

28. We may state that the respondent, when he sent his explanation on

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November 21, 1958 to the show cause notice issued by the Superintendent of Police on October 18, 1958 did not make any grievance regarding the consultation by the Enquiry Officer with the Anti-Corruption Branch on July 14 and 15, 1958. For the first time the respondent took this ground of objection to the enquiry proceedings only when he filed the appeal before the Deputy Inspector-General of Police and the latter has quite rightly rejected this objection holding that any consultation that the Enquiry Officer had with the Anti-Corruption Branch has not affected the case in any way since the findings had been recorded against the respondent entirely on the evidence adduced during the enquiry. The High Court has not considered the various aspects referred to above. Both the contentions of the learned counsel for the appellant, in the circumstances, will have to be accepted and, in consequence, it must be held that the view of the High Court that the order of dismissal is illegal and void is erroneous.

29. Mr. Mukherjee, learned counsel for the respondent, raised the contention that the materials on record disclose that the respondent was appointed permanent Sub-Inspector by the Inspector-General of Police whereas the order of dismissal has been passed by a subordinate authority, the Superintendent of Police and therefore the order of dismissal is illegal and void. Normally, this contention should not be entertained, because it is stated by the High Court that apart from the two points considered by it, no other grounds of objection were raised by the respondent against the order of dismissal. But, if really the records support this contention of Mr. Mukherjee, that will make the order of dismissal illegal and so we permitted the counsel to raise this contention. But, after a reference to the material on record, we are satisfied that this contention is devoid of merit...

30. The respondent, no doubt, averred in his writ petition that he was appointed to the substantive post of Sub-Inspector of Police by order of the Inspector-General of Police, Assam, and therefore the orderof dismissal passed by a subordinate authority, *viz.*, the Superintendent of Police, is illegal and *ultra vires*. In the counter-affidavit filed before the High Court, the State maintained that the Superintendent of Police was the appointing authority of a Sub-Inspector of Police and it placed reliance upon Rule 66, as corrected by the Correction Slip No. 150, dated June 1, 1938 of the Assam Police Manual, Part III. The State further categorically stated that the Superintendent of Police is the appointing and punishing authority of the Sub-Inspector of Police and the respondent has been properly and validly dismissed by the competent authority. Rule 66, referred to above, clearly supports the contention of the State in this regard.

31. Annexure X to the counter-affidavit of the State in the High Court is the order of the Inspector-General of Police, Assam, dated December 16, 1952. That refers to the selection for confirmation as Sub-Inspectors of Police of the persons mentioned therein. The respondent is Serial Number 5 in the said order. Note No. 2 to this order specifically directs the Superintendents of Police to send to the Inspector-General of Police, Assam, copies of confirmation orders issued by them in respect of the officers. In accordance with the orders of the Inspector-General of Police, dated December 16, 1952 the Superintendent of Police passed an order D. O. No. 3777, dated December 31, 1952 that among other officers, the respondent, who was officiating as Sub-Inspector, has been selected for confirmation as Sub-Inspector of Police (Unarmed Branch) with effect from September 1, 1951 and that he has been confirmed as Sub-Inspector of Police (Unarmed Branch) from the same date and absorbed against an existing substantive vacancy in the district. These orders clearly show that the respondent was appointed permanent Sub-Inspector of Police not by the Inspector-General of Police but by the Superintendent of Police. Obviously

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because of these records, such a contention, as is now taken on behalf of respondent, was not raised before the High Court.

32. The appeal is accordingly allowed and the judgment of the High Court set aside. The first respondent will pay the costs of the appellants.

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(*From Gujarat*)

[BEFORE A. N. RAY AND I. D. DUA, JJ.]

HETHUBHA Alias JITHUBA MADHUBA AND ORS. .. Appellants

Versus

THE STATE OF GUJARAT .. Respondent

Criminal Appeal No. 100 of 1967, decided on 13th March, 1970

Code of Criminal Procedure, 1898 (V of 1898)—Section 429—Difference of opinion—Case laid before third judge—Third judge if, can deal with the whole case.

Penal Code, 1860, (XLV of 1860)—Section 34—Act done by, in furtherance of common intention of all—Pre-arranged plan to kill 'A'—Accused killed 'B' bona fide believing that he was 'A'—Killing of 'B', if, in furtherance of common intention of all.

The appellants were charged with offences under Sections 302 and 323 read with Section 34, I. P. C. for causing death of Amarji and for causing simple hurt to Vaghji Mansangji. Accused Nos. 1 and 2 were charged with individual offences under Sections 302/34, I. P. C. Sessions Judge, on trial, acquitted all the three accused under Section 304(*ii*), read with Section 34, I. P. C. He further convicted Accused Nos. 1 and 2 under Section 323 and accused No. 3 under Section 323/34, I.P.C. Before the Division Bench in the High Court one of the judges held that accused No. 1 alone was guilty under Section 302 while accused Nos. 2 and 3 were guilty under Section 324/34, I. P. C. The other judge was of the view that all the accused must be acquitted. The case was placed under Section 429, Cr. P. C. before the third judge, who held that accused No. 1 must be convicted under Section 302 while accused Nos. 2 and 3 under Section 302/34, I. P. C.

Appellants, on appeal to Supreme Court contended that—

(1) the third judge under Section 429, Cr. P. C. could only deal with the differences between two learned judges and not with the whole case and

(2) there was no common intention to kill Amarji.

Held:

(*i*) That two things are noticeable in Section 429, Cr.P.C. First, that the case shall be laid before another judge, and, secondly the judgment and order will follow the opinion of third learned judge can or will deal with the whole case. (Para 10)

Babu and Others v. *State of U.P.* (1965) 2 SCR 771, *relied on.*

(*ii*) The plea that Amarji was mistaken for Vaghji would not take away the common intention established by pre-arranged plan and participation of all the accused in furtherance of common intention. (Para 14)

(*iii*) The act might be done by one of the several persons in furtherance of the common intention of them all without each one of them having intended to do the particular act in exactly the same way as an act might be done by one member of an unlawful assembly in prosecution of the common intention which the other members of the unlawful assembly did not intend to be done. (Para 14)

(*iv*) That in (1965) 1 SCR 285 this Court said that if the common intention was to kill 'A' and if one of the accused killed 'B' to wreak his private vengeance, it could not be possibly in furtherance of the common intention for which others can be liable. But if on the other hand he killed 'B' bona fide believing that he was 'A' and the common intention was to kill 'A' the killing of 'B' was in furtherance of the common intention. (Para 15)

Shankarlal Kachrabhai and Others v. *State of Gujarat*, (1965) 1 SCC 287, *referred to.*

The Judgment of the Court was delivered by

RAY, J.—This is an appeal from the judgment of the High Court of Gujarat.

2. The appellants were charged with offences under Sections 302 and 323, read with Section 34 of the Indian Penal Code. Accused Nos. 1 and 2 were charged for the individual offences under Sections 302 and 323 of the Indian Penal Code for intentionally causing death of Amarji and for causing simple hurt to Vaghji Mansangji. The deceased Amarji was the brother-in-law (sister's husband) of Vaghji Mansangji. Two important eye-witnesses were Pabaji Dajibha and Pachanji Kesarji. Amarji was Pabaji's mother's sister's son. Pachanji is the first cousin of Vaghji Mansangji.

3. Accused No. 3 Mulubha is the maternal uncle (mother's brother) of accused No. 2 Ranubha Naranji and accused No. 1 Hethubha alias Jitubha is the son of another maternal uncle of accused No. 2.

4. Accused No. 2 was residing at Bhalot. Vaghji also resided there. About two months prior to the date of the occurrence on 26th January, 1965 at 8 p. m. there was a quarrel between the children of the house of accused No. 2 Ranubha and the children of the house of Vaghji. There was exchange of words between the members of the two families. Accused No. 2 Ranubha and his father Naranji assaulted the wife of Vaghji. Vaghji then filed a complaint. Ultimately, the complaint was compounded on the intervention of accused No. 3 Mulubha. The prosecution case is that because of the behaviour of accused No. 2 Ranubha toward the wife of Vaghji, Ranubha had to leave his own village of Bhalot and had to go to reside with his maternal uncles at Bhuvad. The further prosecution case is that the relations of Ranubha thereafter went to village Bhalot for fetching the goods of Ranubha and at that time they had threatened Vaghji and others that Ranubha had to leave the village and Vaghji and others would not be able to continue to reside in the village.

5. On 26th January, 1965 Amarji, Pabaji, Vaghji and Pachanji took their carts of fuel wood for selling it in the village Khedoi which is about 7 miles from Bhalot. They left Bhalot at about 10 a. m. and reached Khedoi at about 1 p. m. The cart loads of fuel wood were sold in Khedoi by about 5 p. m. They made some purchases and then left Khedoi at about 7 p. m. While returning home Amarji's cart was in the front and Pabaji, Pachanji and Vaghji followed him in that order. There was not much distance between each cart. When the carts had gone about 2 miles from Khedoi and they were about to enter village Mathda, the three accused persons were noticed waiting on the road. All of them caught hold of Amarji and attacked him

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employees with whom we are concerned were put on the spare list between March and July 1952 and the second batch were put on the spare list in August 1952 when the relevant erection works were completed. The finding of the Labour Appellate Tribunal with regard to the completion of erection works was vitiated by reason of the failure to take into consideration the circumstances stated above.

(9) With regard to the terms of employment embodied in the temporary appointment form, the respondents' case was that the appointment forms were signed as a result of the strike in 1948, it was never suggested that these forms were never signed at all and the comment of learned counsel for the respondents that the appellant company have not produced the appointment forms has very little force. The respondents gave no evidence in support of the allegation that the appointments forms were taken from them for the purpose of humiliating or terrorising them, nor did the Appellate Tribunal come to any such finding. None of the affidavits filed on behalf of the respondents suggested, even in a remote way, that the appellant company were resorting to any unfair practice or victimisation in the matter of the proposed discharge.

(10) Learned counsel for the respondents has contended before us that the finding of the Labour Appellate Tribunal is a finding on a question of fact, namely, whether the respondents were temporary or permanent employees. He has argeed that this Court should not interfere even though the finding is based on reasons which may not appear convincing to us. We have, however, pointed out that the Labour Appellate Tribunal gave no finding on the question whether the respondents were temporary employees or not. The only finding which the Tribunal gave related to a different matter, namely, the completion of erection works.

Secondly, learned counsel for the respondents has contended that under S. 22 of the Act the Appellate Tribunal had a discretion either to lift the ban or not to lift it and in a matter of discretion this Court should not interfere. It is true that this Court does not sit upon the decisions of Industrial Tribunals like an ordinary Court of appeal, and there must be special circumstances to justify the exercise of our special powers under Art. 136 of the Constitution. In our opinion, such special circumstances exist in the present case where the Labour Appellate Tribunal did not directed its mind to the real question to be decided on an application under S. 22 of the Act and has passed an order on the basis of a somewhat irrelevant finding which has resulted in manifest injustice.

(11) The discretion which an Industrial Tribunal has must be exercised in accordance with well recognised principles. There is undoubtedly a distinction between commercial and industrial arbitration. As has been pointed out by Ludwig Teller (Labour Disputes and Collective Bargaining, Vol, I, page 526 :

"Industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations or disputes relating to existing agreements."

A Court of law proceeds on the footing that no power exists in the Court to make contracts for people ; and the parties must make their own contracts. The Courts reach their limit of power when they enforce contracts which the parties have made. An Industrial Tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate

trade union activities and to prevent unfair practice or victimisation. We cannot, however, accept the extreme position canvassed before us that an Industrial Tribunal can ignore altogether an existing agreement or existing obligations for no rhyme or reason whatsoever.

(12) It has been necessary for us to go into the facts and circumstances of this case in greater detail than is usual with this Court, because the Labour Appellate Tribunal did not do so. The Act under which the Appellate Tribunal purported to pass its orders has now been repealed by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. A question of some nicety as to the correct interpretation of S. 33, Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, might have arisen if we had thought it to remand this case.

We do not, however, think it necessary to pass an order of remand in this case and therefore abstain from expressing any opinion as to the correct position in law under sub-s. (2) of S. 33 of that Act. No new facts need investigation in this case. Learned counsel for the parties have taken us through all the affidavits filed and the facts necessary for an enquiry under S. 22 of the Act clearly emerge from those affidavits. We are satisfied *prima facie* that the respondents were temporary employees and were put on the spare list as and when the erection works were gradually completed. The appellant company have made out a *prima facie* case for the permission which they have asked for and there is no suggestion even of any unfair practice or victimisation.

(13) In these circumstances, we would allow the appeal, set aside the decision of the Labour Appellate Tribunal dated 25-9-1953 and pass the order which that Tribunal should have passed in this case, namely, that permission be granted to the appellant to discharge ninety-six temporary workmen. In the circumstances of this case, we think that the parties must bear their own costs throughout.

D.H.Z. — Appeal allowed.

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4th October 1956

BHAGWATI, VENKATARAMA AIYAR AND GOVINDA MENON JJ.

Civil Appeal No. 162 of 1954.

Laxmi Devi Sugar Mills Ltd., Appellant v. Nand Kishore Singh, Respondent.

(From : Misc. Case No C.III-33 of 1952, D/- 21-7-1953—L. A. T. of India, at Lucknow.)

(a) Industrial Employment (Standing Orders) Act (1946), S. 5 — Standing Orders, cl. L (1) (j) —Act subversive of discipline.

Prima facie, any resolution passed by the Union asking for the removal of the General Manager would be perfectly legitimate if the members of the Union thought that there were circumstances warranting the same. The correctness or otherwise of the reasons given for such removal would not be liable to scrutiny by the Court, the only thing requisite being that the Union was not acting *mala fide* or was not actuated by any malice or illwill against the General Manager in passing such resolution. The resolution by itself would not have the effect of harming the General Manager at all. It would have to be forwarded to the management and the management would take such steps as it may be advised on receipt of the resolution It would then be for the management to find for itself whether the reasons given for the removal of the General Manager were such as to warrant his removal. The Management would, then, if it thought necessary, institute proper enquiries and come to its own conclusion as to the desirability or otherwise of the removal of the General Manager. So far as the Union is concerned, apart from *mala fides* or malice or illwill, the act of its passing the resolution would be innocuous and would not be liable to be visited with any punishment and the members of the Union would not be committing any breach of the standing orders nor would they be guilty of any act subsersive of discipline. (Para 13)

(b) Industrial Employment (Standing Orders) Act (1946), S. 5—Standing Orders, cl. L (1) (j)—Act subversive of discipline.

Held that the conduct of the employee in the course of the correspondence which took place between the General Manager and himself, was to say the least, impudent. He relied upon

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his dual personality distinguishing between his capacity as the steno-typist and his capacity as the Vice-President of the Union. The act complained of was attributed to his capacity as the Vice-President of the Union and he refused to give any reply to the queries addressed to him because in the letters addressed by the General Manager to him he was described as the steno-typist. This conduct of the employee was subversive of discipline and amounted to such misconduct as would entitle the employer to dismiss him from his employ. Even though he happened to occupy what he considered to be the august position of the Vice-President of the Union he did not cease to be an employee of the employer and the attempt to distinguish between his capacity as the steno-typist and his capacity as the Vice-President of the Union was absolutely puerile. He ought to have realised that he was first and foremost, an employee of the employer and owed a duty to him to answer all the queries which had been addressed to him by the General Manager. His evasion to give such replies on the pretext of shielding himself under his capacity as the Vice President of the Union was absolutely unjustifiable and if such insubordination and breach of discipline had been the subject-matter of the charges made against him, he could not have escaped the punishment of dismissal.

(Para 15)

(c) Industrial Employment (Standing Orders) Act (1946), S. 5 — Standing Orders, cl. L (1) (j) – Act subversive of discipline.

Held that the charge sheet which was furnished by the employer to the worker formed the basis of the enquiry which was held by the General Manager and the employer could not be allowed to justify his action on any other grounds than those contained in the charge-sheet. The worker not having been charged with the acts of insubordination which would have really justified the employer in dismissing him from his employ he could not take advantage of the same even though these acts could be brought home to the worker. (Para 18)

Mr. H. J. Umrigar and Mr. R. A. Govind, Advocates, for Appellant; Mr. B. P. Maheshwari for Respondent.

The Judgment of the Court was delivered by

BHAGWATI J. — The Labour Appellate Tribunal of India at Lucknow dismissed the application of the appellant made under S. 22, Industrial Disputes (Appellate Tribunal) Act, 1950, for permission to dismiss the respondent, its workman, and the appellant obtained from this Court Special Leave to Appeal against that order.

(2) The respondent has been working as a Steno-typist with the appellant since 3-12-1946, and is also the Vice-President of the Union of workers which is affiliated to the Indian National Trade Union Congress and is known as Chini Mills Mazdoor Sangh. One M. P. Singh has at all relevant times been and is still the General Manager of the appellant.

(3) The relations between the appellant and its workmen are governed by the Standing Orders framed by mutual agreement between the Labour and the Sugar Mills in Uttar Pradesh which have been approved by the Government of Uttar Pradesh. Clause L (1) (j) of the said Standing Orders runs as under:—

"Drunkenness or gambling or riotous or disorderly behaviour while on duty in factory premises, or in quarters provided by the mills, or elsewhere *or any act subversive of discipline*."

These are among the items of misconduct which would entitle the appellant, after due enquiry, to dismiss a workman from its employ.

(4) There were longstanding disputes between the appellant and its workmen since October, 1946, and on 23-2-1949, Kedar Nath Khetan, one of the partners of the appellant, wrote to Shri Kashi Nath Pandey, General Secretary, Indian National Sugar Workers Federation, promising to remove the General Manager as soon as the season of the Chhitauni factory was over. There was, however, an agreement arrived at between the partners of the factory and the Chini Mills Mazdoor Sangh on 13-9-1949, under which the demand for the removal of the General Manager was withdrawn by the workers.

The disputes, however, continued and matters came to a head in 1952. In May, 1952, the management charged 76 members of the Union for participation in a 'Tools-down' strike. The matter went up to the Labour Appellate Tribunal which, by its award, reinstated all the 76 workmen. The management preferred writ petitions Nos. 402 and 409 in the Allahabad High Court but the same also were dismissed. Special Leave was obtained from this Court against those decisions of the Allahabad High Court and the same are pending.

(5) During the pendency of the application of the management for the discharge of the said 76 workmen before the Labour Appellate Tribunal, the workers held a meeting on 10-6-1952, near an old mosque outside the factory area to consider the situation arising out of the suspension of the 76 workmen and the ways and means of meeting the same. The respondent participated in the said meeting as the Vice-President of the Union and made a speech criticising the attitude of the General Manager in terms which were set out in the report dated 10-6-1952, submitted by two workers by name Dhar Tewari and Jamuna Prasad to the General Manager. The speech of the respondent as reported there was to the following effect :—

"The General Manager of this factory wants to crush the Labour movement from the very beginning. He allowed some of his intermediaries to join strike when Shri Shri Shibban Lal Saxena had served a strike notice. His men had also persuaded some of our members to join the strike. As a result of this we had decided to launch a strike. On the other hand, the Manager Sahib was sitting on the phone for the permission of the Collector to dismiss all our fellow workers. Shri Moti Lal Singh was able to discover this conspiracy and he at once prevented us from going on strike. Then Manager Sahib could not succeed in his plan.

This time he has falsely accused 76 of our workers of resorting to Tools-down strike These workers will surely be reinstated. But our efforts are rendered useless due to the acts of the Government Officers; the Collector of this District is getting some thing secretly from the Manager Sahib. We have only one alternative open to us, let us again agitate for his dismissal. Many of the proprietors have written to me against him".

A resolution was moved at that meeting for the reinstatement of the 76 workers and dismissal of Shri Madan Pal Singh, the General Manager and the same was passed.

(6) As stated above, the two workers Ganga Dhar Tewari and Jamuna Prasad reported the proceedings of the said meeting to the General Manager on the very same day. The General Manager thereafter addressed a letter to the respondent on 16-7-1952, stating that he, the respondent, was present in and addressed a meeting held on 10-6-1952 wherein, among other matters, a resolution for the reinstatement of the 76 suspended workers and the removal of the General Manager was passed. He asked the respondent to give him information regarding the above-mentioned facts within 24 hours of the receipt of the letter.

The respondent replied on 17-7-1952, stating that he never attended any meeting whatever in his capacity as the Stenotypist of the factory and expressed his inability, therefore, to say anything in the capacity in which the letter dated 16-7-1952, had been addressed by the General Manager to him. Not being content with by-passing the whole issue in this manner, he proceeded to observe that it was none of the factory's business to seek information from him for his personal, social or political activities outside the factory area. He stated that as a matter of courtesy any information asked for would have been supplied by him, but, as the things stood, he very much regretted his inability to comply with the wishes of the General Manager.

The General Manager again addressed a letter to the respondent on 17-7-1952, stating that he was entitled to seek the information from him even in his personal capacity and asked him to let him have the reply to the queries contained in the letter dated 16-7-1952. The respondent, in his letter dated 17-7-1952 in reply, observed that some of the conclusions

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drawn by the General Manager were "simply out of self-complacency" and he respectfully begged to differ from the General Manager. He stated that he had nothing further to add to his earlier reply dated 17-7-1952.

(7) The General Manager waited for a while and on 1-8-1952, served upon the respondent a charge-sheet calling upon the respondent to show cause why action should not be taken against him under cl. L (1) (j) of the Standing Orders for making a speech in a meeting held near the local mosque on 10-6-1952, wherein, among other defamatory remarks, he, the respondent, instigated the workers to take steps for the removal of the General Manager. The respondent was asked to submit his explanation latest by 10 a. m. on 2-8-1952.

The respondent submitted his written statement accordingly wherein he stated that there was absolutely no justification whatsoever for charging him with breach of the Standing Orders under cl. L (1) (j). He denied the allegations contained in the charge-sheet and wound up by asking the General Manager to enlighten him as to under what rules of the Factories Act, Commercial Establishments Act or the Standing Orders, written replies in the matters other than one's daily routine work of the factory were demanded at such short notice.

(8) The General Manager fixed 10 a. m. on Monday 4-8-1952, for the holding of the enquiry and the respondent was called upon to present himself in time and he was also intimated that he would be at liberty to produce oral or documentary evidence in defence against the charges framed against him.

(9) An enquiry was accordingly held by the General Manager on 4-8-1952. The proceedings thereat were recorded in the form of questions and answers. The respondent adopted an attitude which was consistent with the one which he had adopted in the course of the correspondence above referred to. He refused to answer the questions which were categorically put by the General Manager to him and stated that he had nothing to add to his written statement. He also took up the attitude that if he had taken part in any meeting held under the auspices of the Chini Mills Mazdoor Sangh outside the factory, the General Manager should write to the officials of the Sangh for necessary information.

When it was specifically put to him that no confidential work was taken from him as he had been taking active interest in the anti-management activities maliciously and had been exploiting the poor labour to force himself being confirmed by the management, he said that he did not agree with it and it was not a question which needed any reply.

(10) As a result of the enquiry, the General Manager made his report on 24-10-1952, wherein he found that the respondent had made a speech exhorting the workmen of the factory to pass a resolution for the removal of the General Manager, that the management was bound to lose confidence if a worker who had excited other workers against the General Manager of the concern refused to give a direct reply to direct questions, that, in the absence of a Steno-typist who could enjoy the confidence of the management, it was impossible to run the factory without the risk of any trouble and that the respondent was thus guilty of misconduct and acts subversive of discipline. As, however, there was a pendency of a proceeding before the Labour Appellate Tribunal, an application should be made to that authority for permitting his dismissal.

(11) This report was accepted by the management and the appellant made

application under S. 22, Industrial Disputes (Appellate Tribunal) Act, 1950, for permission to dismiss the respondent from its employ.

(12) The Labour Appellate Tribunal embarked on the freedom of speech vouchsafed to the citizens of India under Art. 19 (1) (a) of the Constitution, observed that the making of the speech in question at the meeting held by the respondent as the Vice-President of the Union was within the scope of the legitimate activities of the Union and held that the speech said to have been made by the respondent at the meeting could not be said to be an act subversive of discipline. The application of the appellant was accordingly dismissed. Hence this appeal before us.

(13) The only question for determination before us is whether the speech made by the respondent at the meeting held on 10-6-1952, was an act subversive of discipline. The respondent was the Vice-President of the Union and, *prima facie*, any resolution passed by the Union asking for the removal of the General Manager would be perfectly legitimate if the members of the Union thought that there were circumstances warranting the same. The correctness or otherwise of the reasons given for such removal would not be liable to scrutiny by the Court, the only thing requisite being that the Union was not acting *mala fide* or was not actuated by any malice or illwill against the General Manager in passing such resolution.

The resolution by itself would not have the effect of harming the General Manager at all. It would have to be forwarded to the management and the management would take such steps as it may be advised on receipt of the resolution. It would then be for the management to find for itself whether the reasons given for the removal by the General Manager were such as to warrant his removal. The management would then, if it thought necessary, institute proper enquiries and come to its own conclusion as to the desirability or otherwise of the removal of the General Manager. So far as the Union is concerned, apart from *mala fides* or malice or illwill, the act of its passing the resolution would be innocuous and would not be liable to be visited with any punishment and the members of the Union would not be committing any breach of the Standing Orders nor would they be guilty of any act subversive of discipline.

The gravamen of the charge made by the management against the respondent, however, was that the latter was not merely responsible for the passing of such resolution, but, in the speech which he made in support, he gave vent to such expressions as were quite false and defamatory and was actuated by malice against the General Manager. He incited the members of the Union who were there assembled against the General Manager with the result that his act was thus subversive of discipline. The speech had the effect of lowering the General Manager in the esteem of the workmen and subjecting him to hatred or ridicule and the necessary effect of making such speech before the workmen would be that they would look down upon the General Manager and would not be amenable to discipline and it would be impossible to conduct the management with efficiency with such disgruntled workmen in the factory.

The words used by the respondent were, therefore, it was urged, calculated to undermine the discipline in the factory and his act was, therefore, subversive of discipline bringing him well within the mischief of cl. L (1) (j) of the Standing Orders.

(14) It was further urged that the conduct of the respondent in the course of the correspondence which took

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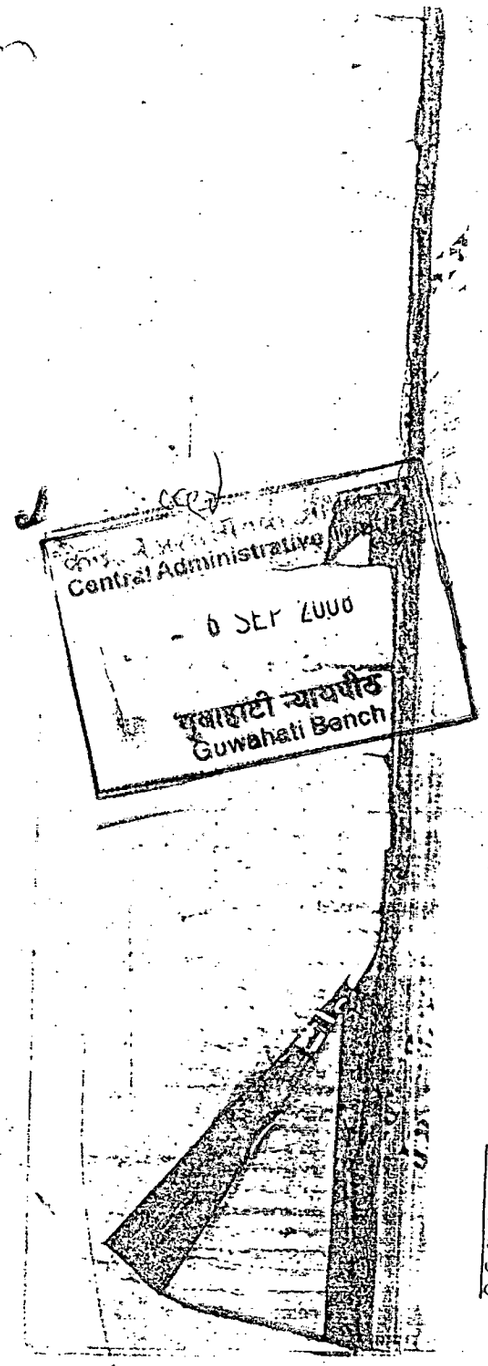

place between the General Manager and himself was, to say the least, impudent. He relied upon his dual personality distinguishing between his capacity as the Steno-typist and his capacity as the Vice-President of the Union.

The act complained of was attributed to his capacity as the Vice-President of the Union and he refused to give any reply to the queries addressed to him because in the letters addressed by the General Manager to him he was described as the Steno-typist. He refused to give any information to the General Manager and asked him to communicate with the Sangh or the Union if any information was required by the General Manager in the matter of what took place at the meeting of the Union on 10-6-1952. In the enquiry also, he adopted a similar attitude and refused to answer the direct questions addressed to him by the General Manager in regard to the proceedings of that meeting.

(15) It was strenuously urged before us by the learned counsel for the appellant that this conduct of the respondent was subversive of discipline and amounted to such mi-conduct as would entitle the appellant to dismiss him from its employ. There is considerable force in this argument and we are of the opinion that the respondent adopted an attitude unbecoming an employee of the appellant. He adopted a truculent attitude in the course of the correspondence and resorted to the theory of his dual personality refusing to answer the queries addressed to him by the General Manager. This attitude was, to say the least, reprehensible.

Even though he happened to occupy what he considered to be the august position of the Vice President of the Union he did not cease to be an employee of the appellant and the attempt to distinguish between his capacity as the Steno-typist and his capacity as the Vice-President of the Union was absolutely puerile. He ought to have realised that he was first and foremost an employee of the appellant and owed a duty to the appellant to answer all the queries which had been addressed to him by the General Manager. His evasion to give such replies on the pretext of shielding himself under his capacity as the Vice-President of the Union was absolutely unjustifiable and such insubordination and breach of discipline had been the subject-matter of the charges made against him. We do not see how the respondent could have escaped the punishment of dismissal.

(16) Similar is the position in regard to the attitude which the respondent adopted at the enquiry. He refused to answer the direct questions which were addressed to him and had the temerity to ask the General Manager to see his written statement and find out for himself the answers to the same. To say the least, the respondent was guilty of insubordination and if his attitude was such as would not conduce to the maintenance of discipline in the factory, here also we would have found it difficult to resist the appellant's claim for his dismissal if he had been charged with having been guilty of such misconduct.

(17) The charge-sheet, however, only complained about the speech which he had made on 10-6-1952, wherein among other defamatory remarks, the respondent, had instigated the workers to take steps for the removal of the General Manager. The enquiry which was held on 4-8-1952, also concentrated on this particular charge and the report which was made by the General Manager on 24-10-1952, also found that the respondent had made a speech exhorting the workers to pass the resolution for the removal of the General Manager.

The acts of insubordination calculated to undermine the discipline in

the factory which we have adverted to above were neither the subject-matters of the charge nor were they relied upon by the General Manager in his report as the grounds of misconduct entitling the management to dismiss the respondent from its employ. The passing of the resolution for the removal of the General Manager by itself was not, as already stated, an act subversive of discipline and would not entitle the management to dismiss him and we are of the opinion that, on the record as it stood, the Labour Appellate Tribunal was justified in refusing to the appellant the permission to dismiss the respondent from its employ.

(18) The charge-sheet which was furnished by the appellant to the respondent formed the basis of the enquiry which was held by the General Manager and the appellant could not be allowed to justify its action on any other grounds than those contained in the charge-sheet. The respondent not having been charged with the acts of insubordination which would have really justified the appellant in dismissing him from its employ, the appellant could not take advantage of the same even though these acts could be brought home to him. We have, therefore, come to the conclusion that the order made by the Labour Appellate Tribunal was correct even though we have done so on grounds other than those which commended themselves to it.

(19) We accordingly dismiss this appeal but having regard to the conduct of the respondent which we have characterised above as reprehensible we feel that the ends of justice will be met if we ordered that each party do bear and pay its own costs of this appeal.

D H Z. Appeal dismissed.

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* 1957 S. C. 13 ((S) AIR V 44 C 3 Jan.)

21st September, 1956

Bhagwati, Imam and Govinda Menon JJ.

Criminal Appeal No. 146 of 1954.

G A. Monterio, Appellant v. The State of Ajmer, Respondent.

(From : Criminal Appeal No. 15 of 1954, D/. 27-11-1951, Ajmer.)

Penal Code (1860), S. 21 (9)—Officer—Test to determine whether person is officer—Person employed as Chaser in Railway Carriage Workshop if officer and public servant — Prevention of Corruption Act (1947), S. 2).

The true test in order to determine whether a person is an officer of the Government, is :—

(1) whether he is in the service or pay of the Government and

(2) whether he is entrusted with the performance of any public duty.

If both these requirements are satisfied it matters not the least what is the nature of his office whether the duties he is performing are of an exalted character or very humble indeed. If therefore on the facts of a particular case the Court comes to the conclusion that a person is not only in the service or pay of the Government but is also performing a public duty, he has delegated to him the functions of the Government or is in any event performing duties immediately auxiliary to those of some one who is an officer of the Government and is therefore 'an officer' of the Government within the meaning of S. 21 (9). (Paras 13 and 15)

A person, who is a Class III servant and is employed as a metal examiner known as Chaser in the Railway Carriage Workshops and is working under the Works Manager who is an officer of the Government and the duties which he performs are immediately auxiliary to those of the Works Manager who, beside being an officer of the Government is also armed with some authority or representative character qua the Government, is an officer in the service or pay of the Government performing as such a public duty entrusted to him by the Government and is therefore a public servant within the meaning of S. 21 (9) and being such public servant he falls within the definition of a public servant contained in S. 2, Prevention of Corruption Act. Dicta of West J., in 12 Bom H. C. R. 1 Applied; I L R 28 Cal 344 and 1918 Lah 152 (2) (AIR V 5), Approved. (Paras 16 and 18)

Anno : A. I. R. Man., Penal Code, S. 21, N. 6.

CASES REFERRED: Paras

(A) 1956 S C 476 ((S) AIR V 43): 1956 Cri L J 837 5

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(2006) 5 Supreme Court Cases 88

(BEFORE S.B. SINHA AND P.P. NAOLEKAR, JJ.)

M.V. BIJLANI .. Appellant;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeal No. 8267 of 2004†, decided on April 5, 2006

A. Service Law — Departmental enquiry — Enquiry procedure — Enquiry into allegations in respect of which the delinquent officer had not been charged with, held, was not proper — Inferences drawn by enquiry officer regarding misutilisation/misappropriation of telegraph copper wire by the appellant delinquent Engineer though no specific charge was framed in respect thereof — Charges framed related only to non-maintenance of register showing acquisition and utilisation of copper wire and failure to supervise work — Thus, disciplinary authority proceeded on a wrong premise — Evidences recorded and inferences drawn were not commensurate with the charges — Charges were vague — Testimony of witnesses deposing totally against the department was disbelieved without assigning any reasons therefor — Hence, appellant's removal from service on the basis of the aforesaid enquiry report, not sustainable — Appellant directed to be reinstated in service, if not reached the age of superannuation, with 50% back wages — Civil Procedure Code, 1908, S. 35 (Paras 14 to 28)

B. Service Law — Departmental enquiry — Nature of — Standard of proof required — Held, disciplinary proceedings being quasi-criminal in nature, there should be some evidence to prove the charge — Though proof beyond all reasonable doubt as required in criminal trial is not necessary in departmental proceedings, charges in said proceedings has to be proved by preponderance of probability — Constitution of India, Art. 311 (Para 25)

C. Service Law — Departmental enquiry — Enquiry officer — Function, powers and duties of — Held, he performs a quasi-judicial function — He upon analysing the documents must arrive at conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record — While doing so, he cannot take into consideration any irrelevant fact or refuse to consider the relevant facts — He cannot shift the burden of proof or reject the relevant testimony of the witnesses only on the basis of surmises and conjectures — He cannot enquire into the allegations with which the delinquent officer had not been charged with — Constitution of India, Art. 311 (Para 25)

D. Service Law — Departmental enquiry — Delay in initiation of — Held, initiation of disciplinary proceedings after 6 years and continuance thereof for a period of 7 years prejudiced the delinquent officer — Constitution of India, Art. 311 (Para 16)

† From the Judgment and Order dated 26-11-2002 of the High Court of Madhya Pradesh at Jabalpur in WP No. 1889 of 2000

State of M.P. v. *Bani Singh*, 1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514, *relied on*

E. Service Law — Relief — Case where order of removal from service based upon improper enquiry report held by Supreme Court to be not sustainable — In such case, the matter would have been remitted to the disciplinary authority — But, since it was an old matter (36 years old) and due to pendency of proceedings delinquent officer already suffered a lot, direction made to reinstate the said officer in service, if not reached the age of superannuation, with 50% of back wages — Departmental enquiry — Enquiry report — Impugned order based upon improper enquiry report — Relief (Para 28)

F. Service Law — Departmental enquiry — Appreciation of evidence — Witnesses examined on behalf of the department deposing totally against the department — Credibility of — Held, that per se would not mean that the said witnesses deposed falsely — If they deposed falsely, they should have been cross-examined — Evidence Act, 1872, Ss. 154 & 155 (Para 21)

W-M/ATZ/34077/CL

Advocates who appeared in this case :

Kailash Vasudev, Senior Advocate (Milanka Chaudhary and M.A. Chinnasamy, Advocates, with him) for the Appellant;

N.K. Verma and Sarla Chandra, Advocates, for the Respondents.

Chronological list of cases cited *on page(s)*

1. 1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514, *State of M.P.* v. *Bani Singh* 93*a*

The Judgment of the Court was delivered by

S.B. SINHA, J.— The appellant was working as a Junior Engineer at Jagdalpur in the year 1969-70. He allegedly failed and/or neglected to maintain a register known as ACE-8 Register. After he had handed over charge to his successor Shri K.C. Sariya, on or about 11-4-1975, a disciplinary proceeding was initiated against him on the following charges:

> "(*i*) that he had failed to maintain ACE-8 Register showing acquisition and utilisation of 4000 kg of telegraph copper wire received from SDOT, Raipur, through Sub-Inspectors Kashiram and Badul Quadir on 22-10-1969, 30-10-1969 and 2-12-1969 for utilisation on Geedam-Bairagarh truck line against Estimate No. 2162 duly approved;
>
> (*ii*) that he had failed to supervise the working of the line and utilisation of copper wire while the rules require the personal supervision and accountability of the said wire; and
>
> (*iii*) that he also showed misleading entries on the bills of transportation for transportation of the material."

2. The disciplinary proceedings remained pending for a period of seven years. A report was submitted by the enquiry officer only in the year 1982. In the disciplinary proceeding, the first two charges were held to have been proved against the appellant but the third charge was not proved. He was directed to be removed from service by the disciplinary authority by an order dated 21-12-1983. An appeal preferred thereagainst came to be dismissed by

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the Appellate Authority by an order dated 21-2-1991 i.e. after a period of seven years, holding:

> "The ACE-8 sheets were still not available in estimate files of 2160 D(*a*) and 2161 D(*a*) for the years 1969-70. If the statement of Shri Bijlani is taken to be correct that ACE-8 were prepared and kept in respective estimate files and were made over to Shri Sariya, then it should not have been necessary for Shri Bijlani to prepare ACE-8 again on 25-12-1973. He could have mentioned that numerical account of 150 lb copper wire can be made from ACE-8 slips kept in the respective estimate files. The statement of Shri Bijlani that he prepared ACE-8 of 150 lb copper wire on 25-12-1973 on the basis of limited records shown to him is also not acceptable. He could have demanded access to all the records for preparing numerical account of 150 lb/mile copper wire. The EO has therefore rightly recorded 150 lb/mile wire in ACE-8 (DOC-1). 150 mile copper wire was issued to East Jagdalpur on 22-10-1969 (2204 lb), 30-10-1969 (2218 lb) and 2-12-1969 (4398 lb). By 20-10-1969 (2218 lb/mile) copper wire received 8820 lb of 150 lb/mile copper wire but he did not keep its numerical account in ACE-8 and could not prove its utilisation properly."

3. The Appellate Authority went into question of maintenance of muster roll and the diaries maintained on day-to-day basis, although that was not the subject-matter of charge. On the said basis, it was held:

> "Thus the charge of failure to maintain ACE-8 and his failure to supervise the work of SIT and utilisation of copper wire is proved."

4. Attention of the Appellate Authority was also drawn towards a number of lapses committed by the enquiry officer, but it was opined:

> "Opportunity was available to Shri Bijlani to point out all these in the defence brief, but he failed to submit the defence brief even up to 15-5-1983 although he himself requested the EO to permit him to file defence brief by 15-2-1983. Shri Bijlani also failed to point out the lapses being made in the inquiry to the disciplinary authority."

5. The appellant filed an original application before the Central Administrative Tribunal which was marked as OA No. 200 of 1992 questioning the correctness of the orders passed by the disciplinary authority as well as the Appellate Authority. The said original application was dismissed by the Tribunal by an order dated 24-6-1999.

6. The Tribunal as regards the delay in conclusion of the proceedings held that charges were framed on the basis of the findings of CBI (Anti-Corruption Bureau) and, thus, the delay stands explained.

7. The Tribunal furthermore considered only the question as regards the quantum of sentence. It did not go into other contentions raised on behalf of the appellant.

8. A writ petition was filed thereagainst by the appellant herein. A contention was raised before the High Court that the findings of the disciplinary authority are perverse.

9. Before the High Court, a contention was raised on behalf of the respondents that it was a case where there had been misutilisation of substantial quantity of copper wire and not a case of lack of minor supervision. The High Court reproduced the following findings of the enquiry officer:

> "The prosecution has verified through documents and witnesses that the above quantity of wire was certified as having been received by Shri M.V. Bijlani. In this context Bills Nos. A-26 and A-27 dated 11-11-1969 of Shri Garage, Raipur (DOC-11) issue letter of store lineman, Raipur dated 30-10-1969 for 1000 kg of 150 lb/mile copper wire (sent through SIT garage) along with issue letter of store lineman dated 2-12-1969 for 4398 lb of copper wire 150 lb/miles (sent through SIT Kashiram in Truck No. MPR 2700) and Bills Nos. A-22 and 23 dated 22-10-1969 of Shri Garage along with issue list of 100 kg of copper wire 150 lb/mile (sent through SIT Kashiram in Truck No. MPR 2607), were produced in evidence on which Shri M.V. Bijlani has certified to have received the goods in good condition. None of the vouchers show that the goods were received for Estimate No. 2161 D(*a*). It is thus only established that about 4000 kg of copper wire 150 lb/mile was received by EST. Jagdalpur during the period October-December 1969. These are not accounted for in ACE-8 of EST, Jagdalpur (Documents-I).
>
> Muster roll and work diaries of M/s Kashiram SIT MR No. 463/11539 (Sept. 1969), MR No. 463/11532 (Sept. 1969) MR No. 463/11547 (Oct. 1969) MR No. 464/11556 (Nov. 1969) M/s Abdul Sattar SIT MR No. 463/11537 (Sept. 1969) MR No. 463/11459 (Oct. 1969) MR No. 464/11557 (Nov. 1969) and M/s Daya Shankar Singh MR No. 463/11533 (Sept. 1969) MR No. 463/11546 (Oct. 1969) MR No. 464/11558 (Nov. 1969), Dec. 1969 and January, February, March 1970. SIT. Abdul Sattar diaries of September, October, November, December 1969 and January, February, March 1970 [vide Document No. 216 D(*a*)] viz. erection of 150 lb/mile work has been done on these muster rolls and diaries."

10. On the basis of the aforementioned findings of the enquiry officer, the High Court opined that there had been dereliction of duty which penetrates into the arena of misutilisation. The High Court rejected the contention of the appellant that there had been a theft of copper wire, again relying upon the report of the enquiry officer.

11. The High Court, however, noticed that the Tribunal had not delved deep into the matter.

12. Mr Kailash Vasudev, learned Senior Counsel appearing on behalf of the appellant, has taken us through the report of the enquiry officer and submitted that on reading thereof in its entirety, it would appear that the enquiry officer misdirected himself in arriving at the finding of guilt against the appellant without considering the nature of the charges levelled against the appellant.

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13. Mr N.K. Verma, learned counsel appearing on behalf of the respondents, however, supported the impugned judgment. It was pointed out that the witnesses examined on behalf of the department stated that ACE-8 Register was not being maintained in a register and kept in loose sheets and kept in the estimate files separately. It was furthermore submitted that the appellant had not been able to prove theft of copper wire and as the allegation against the appellant was that the copper wire "amounting to 24 miles single wire" was missing and the entire onus was on him to prove the utilisation thereof.

14. From a perusal of the enquiry report, it appears to us that the disciplinary authorities proceeded on a wrong premise. The appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kg of telegraph copper wire or misutilisation thereof. If he was to be proceeded against for misutilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti-Corruption Bureau). It was, therefore, expected that definite charges of misutilisation/misappropriation of copper wire by the appellant would have been framed. The appellant, therefore, should have been charged for defalcation or misutilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he failed to account for the copper wire over which he had physical control.

15. It will bear repetition to state that the charges which were framed related to only non-maintenance of ACE-8 Register and non-supervision of working of the line. In the absence of any charge that he had in fact misappropriated copper wire for his own benefit out of the disposal thereof, the question as regards purported misconduct by way of misutilisation of 4000 kg of copper wire could not have been gone into. Furthermore, it has not been shown that ACE-8 Register was required to be maintained in an appropriate form or in a particular manner i.e. in bound form or in loose sheets.

16. So far as the second charge is concerned, it has not been shown as to what were the duties of the appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the Appellate Authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the appellant. The Appellate Authority in its order stated that the appellant was not required to prepare ACE-8 Register twice. The appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years

and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

17. In *State of M.P.* v. *Bani Singh*[1] this Court has clearly held: (SCC p. 740, para 4)

> "The irregularities which were the subject-matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

18. The Appellate Authority totally ignored the evidences adduced before the disciplinary authority and in particular the evidence of Shri K.C. Sariya in favour of the appellant in this behalf. The Appellate Authority was required to apply its mind on the materials placed on record. It failed to take into consideration that the disciplinary authority purported to have relied upon the police report which was not proved.

19. It is really a matter of great surprise that a disciplinary proceeding was initiated five years after the appellant handed over charge. At that time he was admittedly not having possession of any documents. The enquiry officer furthermore took a period of seven years to complete the enquiry. The Appellate Authority also took seven years in disposing of the appeal. Even then, the Appellate Authority did not go into the question as to whether the procedures laid down for holding the disciplinary proceedings had been followed or not. He did not go into the contentions of the appellant herein minutely. The memo of appeal filed by the appellant was very elaborate. He raised a number of contentions therein. The enquiry officer was charged with bias. He was also charged with unfair conduct. He was said to have committed a large number of irregularities in the departmental proceeding. The memo of appeal of the appellant was in about 65 typed pages. It was subdivided into five parts. He made all endeavours to deal with each and every finding of the enquiry officer and dealt with almost all the documents relied upon by the department. He also dealt with the deposition of the witnesses examined on behalf of the parties.

20. The enquiry officer proceeded as if in the departmental proceedings the appellant was charged with misappropriation of property. The witnesses not only spoke of theft of copper wire, but also stated about the existence of muster roll diaries. According to one Daya Shankar, the work shown in the diaries was correct. According to him, apart from erection of 300 lb iron wire

[1] 1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514

in Section Geedam-Bijapur. 150 lb was erected in the entire section. He stated that broken pieces of wire found were sent to Jagdalpur through SIT diary. According to him, the work of erecting copper wire started from 5-11-1969 and continued up to March 1970. One Shri K.C. Sariya who was the successor of the appellant stated about the maintenance of the muster rolls and ACE-8 Register. According to him, stores pertaining to estimate were accounted for and ACE-8 sheets attached to estimate file. He further stated that ACE-8 sheets were in the estimate file. One Shri K.D. Shrivastava had stated that there was report of copper wire theft by one Shri Kashiram.

21. While making the enquiry as against the appellant, the enquiry officer made adverse comments about the correctness or otherwise of the statements made by the witnesses examined on behalf of the department without assigning any reasons therefor. They were examined by the department. If they deposed falsely, they should have been cross-examined. Only because their evidence was totally against the department, the same per se would not mean that they deposed falsely. The enquiry officer opined:

> "He did not maintain ACE-8 as if ACE-8 were maintained there was no necessity of preparing Document I viz. numerical account of EST, Jagdalpur prepared by Shri M.V. Bijlani, JET, Jagdalpur, on 25-12-1973. If there was any ACE-8 prepared earlier by Shri Bijlani, he would have definitely objected to submit another ACE-8 (DOC-1) which is alleged to have been prepared on the basis of document shown to him by JE (Vigilance). According to SDOT, Raipur, ACE-8 (Document-20) issue of copper wire 150 lb/mile to EST, Jagdalpur had been mentioned on 22-10-1969, 30-10-1969 and 2-12-1969 as 2204 lb, 2218 lb and 4398 lb respectively. There are no entries of the above quantity of wire in ACE-8 (DOC-1) of EST, Jagdalpur."

22. The said finding of the enquiry officer itself demonstrates that ACE-8 sheets were being maintained and the quantity of copper wire mentioned therein existed of 4000 lb. He had furthermore noticed the muster rolls, work diaries and work orders of M/s Kashiram. The ultimate finding of the enquiry officer was:

> "... As such there is nothing to establish that copper wires 4000 kg taken for copper wire theft replacement were utilised for erection on theft spots. Even if 175 spans are taken as erected out of 4000 kg of copper wire is not accounted for. In the requisition slip (DOC-6) 1000 kg of copper wire was issued by store linemen on 20-10-1969 to SIT Kashiram (purpose not mentioned) 4398 lb/2000 kg of copper wire was issued for shifting work from Tumar river to Mari river (vide DOC-8) through SIT Kashiram. 1000 kg of copper wire 150 lb/mile was issued vide DOC-10 to SIT Abdul Quadir for transportation to Bijapur on 30-10-1969. As such based on police report, work orders and diaries produced in evidence there appears to be no case of copper wire theft and if any wire was received for the work has not been accounted for. Thus, if there was a copper wire theft, supervision effected properly. All the facts that remain unexplained would have been taken care of. Defence has also not come out with details of receipt utilisation and theft report in their defence statement and has also avoided to submit written brief to prove his innocence."

23. Evidently, the evidences recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.

24. Mr Verma, when questioned, submitted that the appellant might have utilised the same on unsanctioned works. If that be so, a specific charge to that effect should have been framed.

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26. The report of the enquiry officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions properly.

27. For the views we have taken, the impugned judgments are wholly unsustainable.

28. The appeal is, therefore, allowed. The consequence of the said order would have been to remit the matter back to the disciplinary authority. We, however, do not intend to do so as the charges relate to the year 1969-70. The appellant, due to pendency of these proceedings, has suffered a lot. He is, therefore, directed to be reinstated in service, if he has not reached the age of superannuation. However, keeping in view the fact that he has not worked for a long time, we direct that he may only be paid 50% of the back wages. He is also entitled to costs of this appeal. Counsel's fee assessed at Rs 5000.

प्रशासनिक अधिकरण Central Administrative Tribunal Guwahati Bench

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
O.A. No. 284 of 2006

Guwahati, this the 3 day of October, 2008

CORAM : The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman
The Hon'ble Mr. S.N. Shukla, Member[Administrative]

Sri Madhuryya Kumar Gogoi
S/o- Late Debeswar Gogi
Presently working as Deputy General
Manager [Planning and Administration]
Office of the General Manager,
Kamrup Telecom District, B.S.N.L.,
Panbazar, Guwahati – 781 001.

... Applicant

By Advocate Mr. K.N. Choudhury

Versus

1. Union of India
Represented by the Secretary to the
Government of India-cum-Chairman of
Telecom Commission, Ministry of
Communications and Information
Technology, Department of
Telecommunications, Sanchar Bhawan,20-
Ashoka Road, New Delhi.

2. Senior Deputy Director General
[Vigilance], Department of Telecom, Wes
Block – II, Wing – 2 Ground Floor, R.K.
Puram, New Delhi – 66.

.. Respondents

By Advocate Mr. G. Baishya, Senior C.G.S.C.

ORDER

Manoranjan Mohanty, Vice-Chairman:

Applicant, who came to be posted as District Engineer of Telephone [TDE] at Tezpur and joined as such on 28.01.1994, constituted a Committee [consisting of four officers of different wings; including the Accounts Officer] on 25.03.1996 to verify the records and to recommend the names of eligible casual mazdoors [from among the casual mazdoors, who were named by various Sub-Divisions] for conferment of Temporary Status in

terms of circular dated 17.12.1993 of the Department of Telecommunication [DOT] and on the basis of the recommendation of the said Committee, the Applicant provisionally conferred, on 27.05.1996, Temporary Status on 221 casual labour. Therefore, DOT issued a circular No.269-4/93-STN-II dated 17.12.1993 to grant Temporary status to mazdoors working continuously between 31.03.1985 and 22.06.1988 and the said circular was sent to all Subordinate Divisions of Tezpur Division on 28.01.1994. By issuance of Instruction dated 18.09.1997, the Chief General Manager of Assam Telecom Circle asked the TDM of Tezpur to cancel the provisional order dated 27.05.1996 [conferring Temporary Status to the Casual Laborers] and to start the process of further scrutiny, afresh, to identify the casual labourers entitled to Temporary Status. By the said time, the Applicant, being transferred, was posted as DE [P&A] and, in the said premises, the instructions dated 18.09.1997 was marked to the Applicant [by the successor TDM/Tezpur on 25.09.1997] and the Applicant, on 20.10.1997, cancelled the provisional order of [27.05.1996] conferment of Temporary Status. However, on 19.11.1997, the successor TDM/Tezpur, it is alleged, under the pressure of the Casual Labourers Union Union revoked the cancellation order dated 20.10.1997. Long four years thereafter, the Applicant was charge-sheeted on 19.06.2001; again on 26.03.2002; on 17.10.2003; and on 21.10.2003. All total six charge sheets were served on the Applicant alleging therein that grant of provisional Conferment of Temporary Status to 221 Casual Labourers of different Sub-Divisions of Tezpur Telephone Division on 27.05.1996 was done without proper verification and, as a consequence thereof persons with aid of forged materials got Temporary Status wrongly leading to financial loss to Govt. Upon submission of reply, there were

enquiries and, upon receipt of enquiry report, the Disciplinary Authority of the Applicant drew dis-agreement notes and supplied the same [with the Enquiry Report] to the Applicant; who submitted his representation thereon. Finally, different punishments [six in number] were imposed on the Applicant in all the six Departmental Proceedings on different dates. The said punishments are subject-matter of challenge in all these Original Applications and, as such all these cases were heard together and are being disposed of by this common order.

By way of filing written statements the Respondent-Department have contested these cases.

In course of hearing of all these cases, we have heard Mr.K.N. Choudhury, learned Counsel appearing for the Applicans and Mr. G. Baishya, learned Senior Standing Counsel appearing for the Respondent Organization and perused the materials placed on record.

The dates of charge-sheets, dates of filing replies thereto, the dates of respective enquiry reports, dates of respective dis-agreement notes of the Disciplinary Authority, dates of respective CVC advice, respective dates of service/receipt thereof on the Applicant; respective dates of representation of the Applicant and the dates of imposition of penalty on the Applicant in the respective disciplinary proceeding are given in a tabular form on the next page;-

Relevant portion of the Article of Charge framed against the Applicant under Memo Dated 19.06.2001 [1st Charge-sheet] is extracted hereunder;-

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M.K. Gogoi while functioning as TDE, Tezpur during 1996 committed serious irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him, regularized 34 numbers of Casual Mazdoors of North Lakshmipur as Temporary Status Mazdoors with mala fide intention although none of them was eligible for such regularization that too without verifying the genuineness of the recommendations of different SDO's/SDE's and Experience Certificates issued by JTE/Lineman etc. and thus putting the Department to a huge financial loss."

Relevant portion of the Statement of imputations on which above Article of Charge was based] is extracted hereunder;-

"4. That the field staff of Tezpur Telecom Division in collusion with these 34 persons, concerned JTOs and SDOs/SDEs, who issued 34 false and fabricated Experience Certificates in favour of the said 34 persons showing them as Casual Labourers working since 1988 to 1996 [Feb] and the same were got countersigned by the respective JTOs and SDOs/SDEs as a token of proof of their having worked under them without being based on any material evidences.

5. That the concerned SDOs/SDEs of Tezpur Telecom Division in collusion with Shri M.K. Gogoi, formerly TDE, Tezpur, forwarded all the Certificates to Shri M.K. Gogoi with their recommendation for consideration of the total 221 persons including these 34 casual mazdoors as Temporary Status Mazdoors [TSM]. Shri M.K. Gogoi thereafter constituted a Selection Committee on 25-3-1996 with four persons, namely [I] Shri P.Das, SDE[P], Tezpur [2] Shri U.C. Swarglary, AO [Cash], Tezpur [3] Shri D. Payeng SDO [P], Tezpur and [4] Shri A.K. Sarkar, SDE [HRD], O/o TDE, Tezpur for recommendation/selection of eligible casual labourers for regularization as TSMs vide order No.X-1[CMPT/Tz/95-96/Con-1 dated 25-3-96.

6. That the Selection Committee had prepared/got prepared gradation list of all total 221 casual labourers including these 34 casual mazdoors sub-division wise and recommended for their regularization as TSMs. Shri M.K. Gogoi, formerly TDR, Tezpur knowing fully that the said gradation lists were bogus and with malafide intention passed order for regularization of 221 persons as TSM within his Telecom Division vide No.X-

1.CMPT/96-97/Con-7 dated 27-5-96 by putting interest of the Department in jeopardy."

Relevant portion of the Article of Charge framed against the Applicant under Memo Dated 07.03.2002 [2nd charge-sheet] is extracted hereunder;-

"Shri M.K. Gogoi while functioning as TDE, Tezpur during 1996 committed serious irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him, regularized 22 numbers of Casual Mazdoors of SDE [P], Tezpur as Temporary Status Mazdoors with mala fide intention although none of them was eligible for such regularization that too without verifying the genuineness of the recommendations of different SDO's/SDE's and Experience Certificates issued by JTO/Lineman etc. and thus putting the Department to a huge financial loss"

Relevant portion of Statement of imputations [on which above Article of Charge was based] is extracted hereunder;-

"4. That the field staff of Tezpur Telecom Division in collusion with these 22 persons, concerned JTOs and SDOs/SDEs, who issued 21 false and fabricated Experience Certificates in favour of the said 22 persons showing them as Casual Labourers working since 1988 to 1996 [Feb] and the same were got countersigned by the respective JTOs and SDOs/SDEs as a token of proof of their having worked as Casual Mazdoors under them without being based on any material evidences.

5. That the concerned SDOs/SDEs of Tezpur Telecom Division in collusion with Shri M.K. Gogoi, formerly TDE, Tezpur, forwarded all the Certificates to Shri M.K. Gogoi with their recommendation for consideration of the total 221 persons including these 22 casual mazdoors as Temporary Status Mazdoors [TSM]. Shri M.K. Gogoi thereafter constituted a Selection Committee on 25-3-1996 with four persons namely [1] Shri P. Das, SDE [P], Tezpur [2] Shri U.C. Swargary, AO [Cash], Tezpur [3] Shri D. Payeng, SDO [P], Tezpur and [4] Shri A.K.Sarkar, SDE [HRD], O/o TDE, Tezpur for recommendation/selection of eligible casual labourers for regularization as TSMs vide order No.X-1/CMPT/1/Tz/95-96/Con-1 dated 25-3-1996.

6. That the Selection Committee had prepared/got prepared gradation list of all total 221 casual labourers including these 22 casual mazdoors sub-division wise and recommended for their regularization as TSMs. Shri M.K. Gogoi, formerly TDE, Tezpur knowing fully that the said gradation lists were bogus and with malafide intention passed order for regularization of 221 [including these 22 casual mazdoors] persons as TSM within his Telecom Division Vide No.X-1/CMPT/96-97/Con-7 dated 27-5-1996 by putting interest of the Department in jeopardy."

Relevant potion of the Article of Charge framed against the Applicant under Memo Dated 11.09.2003 [3rd Charge-sheet] is extracted hereunder;-

"That the said Shri M.K. Gogoi while posted and functioning as TDE, Tezpur, now Area Manager, Assam Telecom Circle, during 1996 committed serious irregularties in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoor in Tezpur SSA including 22 in Dhemaji Sub-Division on the basis of forged experience certicates."

Relevant portion of the Statement of imputation [on which the above charge was based] is extracted hereunder;-

"Whereas, it is alleged that Shri M.K. Gogoi knew that no permanent records are maintained in the SDE office regarding the engagement of Casual Labourers either on Muster Roll basis or on ACG-17 basis as only broad ACE-2 accounts is maintained in SDE office. The permanent records are kept in his office i.e. the O/O TDE, Tezpur. Thus he appointed 221 Casual Labourers including 22 in Dhemaji Sub-Division as TSM on the basis of the forged experience certificates in which the number of working days of a casual labourer in corresponding years from 1988 to 1996 were filled up by the field staff by sheer imagination. He knew that none of the field staff have records to support the certificates given by them as no records are available with the field staff such as Lineman, Line Inspector, Sub-Inspector, Phone Inspector, JTO."

Relevant portion of Article of charge under Memo Dated [4th charge-sheet] is extracted hereunder;-

Relevant portion of the Statement of imputation [on which the above Charge was based] is extracted hereunder;-

Relevant portion of the Article of charge under Memo Dated [5th charge-sheet] is extracted hereunder;-

Relevant portion of the Statement of imputation [on which the above charge was based] is extracted hereunder;-

Enquiry Report in the 2nd charge-sheet dated 07.03.2002 was drawn on 18.12.2004 regarding a finding that the charge could not be substantiated/not proved.

Before recording the above findings, the Enquiry Officer took note of the evidence of the CBI Officer [who investigated the matter] with the following words;-

Page 82 of OA 284/06

Disciplinary Authority by its communication dated 24.02.2005 disclosed disagreement with the finding recorded in the Enquiry Report, to the extent indicated below;-

[i]

Page 712 of OA 284/06

[ii]

On the points of dis-agreement of the Disciplinary Authority held that the charge to have been proved.

The Applicant submitted his representation, on 21.03.2005, directed against the above said dis-agreement note.

Enquiry Report in the 1st Charge- Sheet dated 19.06.2001 was drawn on 31.01.2005 recording a finding

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Guwahati Bench

Filed by Bikram Chaudhury Adv. 28.10.06

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

O. A. NO. 284 /2006.

Sri Madhuryya Kumar Gogoi

..... Applicant.

- Versus -

Union of India and others.

..... Respondents

BRIEF FACTS OF THE CASE

17.12.1993: DOT issued circular vide no 269-4/93-STN-II to grant Temporary Status to mazdoors working in the department continuously after 31.3.1985 to 22.6.1988 as casual labour.
Annexure- I, Page 22 of O.A.

28.1.1994: The Telecom District Engineer (in short TDE), Tezpur circulated aforesaid DOT circular to all Head of Sub-Division in his Division vide no E-38/Casual Labour/93-94/125.

31.1.1995: The applicant joined as TDE, Tezpur, while the process for conferring Temporary Status Mazdoor (in short TSM) was going on.

25.3.1996: Applicant constituted a Selection Committee consisting of 4(four) members from different wing of the Department including Accounts Officer who was custodian of the payment vouchers. The committee was formed to verify the records and to recommend the names of eligible casual mazdoors from among the list of casual mazdoors forwarded by the SDO's

27.5.1996: Following the recommendations made by the Selection Committee the applicant by order no X-I/CMPT/96-97/Con-7 conferred TSM provisionally to 221 casual labours. No other order was issued by him.
Annexure- II, Page 24 of O.A.

18.9.1997: The Chief General Manager, Assam Circle, Guwahati vide its letter no Rectt.-3/10/loose/Pt-V issued instruction to Telecom District Manager, Tezpur to cancel the provisional order of conferring TSM to casual labour in the Division and to start the process of further scrutiny afresh to identify the casual labours entitled for temporary status within a period of one month.

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TDM marked the letter to DE (P&A) (i.e. the applicant) who had issued the order for conferring TSM).

Annexure-III, Page 32 of O.A.

20.10.1997: Accordingly, the applicant being DE (P&A) cancelled the provisional order of conferring TSM issued by him vide letter no X-I/CMPT/96-97/Con-7.The cancellation order was subsequently revoked by the TDM after one month.

Annexure-IV, Page 33 of O.A.

19.11.1997: TDM, Tezpur revoked the order dt: 20.10.1997 issued by the applicant provisionally on pressure of Union.

Annexure-V, Page 34 of O.A.

Against this back drop charges were framed against the applicant under Rule 14 of CCS (CCA) Rules, 1965.

19.6.2001: The applicant received Memorandum no 8-180/2000-Vig-II from the department.

Annexure- VI, Page 35 of O.A.

It was alleged in the memo dt: 19.6.2001 that during 1996 serious irregularities were committed, in as much as , the applicant in collusion with the committee members of the selection committee regularized 34 nos of casual mazdoors of North Lakhimpur as TSM with malafide intention although none of them were eligible for such regularization. The department subsequently issued five more charge memos on identicial charges by splitting the single order issued on 27.5.1996 in respect of 221 casual labourers into six different charge memos. The department could not prove the collusion factor before the inquiry through oral or documentary evidences. Even the allegation that none of them were eligible for regularization also could not be established. In all six cases the prosecution could not even establish a faint link from the evidences, oral or documentary, with the allegation made.

The department could not sustain the allegation through State witnesses. SW-1 Sri B.K. Goswami, who was TDM, Tezpur, deposed before the inquiry that he had to cancel the revocation order issued by the applicant under the threat of the Union. SW-1 also told that the procedure adopted by the TDE, Tezpur (i.e. the applicant) for conferring TSM seemed to be ok. SW-4 Sri A.K.

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Sarkar who was a selection committee member told that the certificates were not there. He was also charge sheeted on same allegations but exonerated by the Enquiry Officer. But the disciplinary authority did not choose to differ with the findings of the enquiry officer as has been done in the case of the applicant. Seemingly the enquiry officer accepted the evidence of SW-4, who is a co-accused, without any corroboration on material aspects against the settled principle of law.SW-6 Sri D.Payeng told the inquiry how they have verified the records as a selection committee member. The prosecution then produced before the inquiry SW-7 Sri K. Barman the investigating officer, CBI, who told that no charge could be framed against the applicant after completion of investigation of the case. Thus the CBI gave clean shit to the applicant. SW-7 told that he has not found any case where the charged officer regularized casual mazfoor without the recommendation of Selection Committee. SW-7 told in very clear terms that no evidence of collusion among the applicant and the members of selection committee as mentioned in the chargesheet was found during investigation by the CBI. Even the enquiry officer in the instant case also could not establish the charge of collusion.SW-9 Sri U. Swargiary, a selection committee member from Account section told the inquiry that it was not possible to check all the accounts from 1985 to 1996, so they have done checking at random. Further, SW-9 has checked the statement issued by the controlling officer at the time of payment of bonus and DA arrear where it was clearly mentioned their working days in a year. Thus from the deposition of all the state witnesses it has become very clear that there is no evidence to sustain any of the charge framed against the applicant.

In the statement of imputations of misconduct/misbehavior in support of article of charge at para 7, it is alleged that no casual labour were engaged in the SSA w.e.f. 31.3.1985 as K. Balasubramaniam, the then TDE, Tezpur had informed Assam Circle vide his letter no E-38/CMP T/ Vol.II/ 123 dt: 7.12.93 (State Ext. 60) in reply to a letter no Rectt.3./10/Pt.III/5 dt: 27.8.93 that no casual labourers were

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recruited in his SSA. The defence submitted two ID cards issued by the same TDE to some casual labourers in his own seal and signature before the inquiry to disprove that there were no casual labourers working in the SSA. Moreover, TDE office was not maintaining any records of casual labour as the appointing authority of regular mazdoor was Class-II officer and mazdoors are sub-divisional cadre. The letter in question was issued in the context of inclusion of casual labour under Central Government Group Insurance scheme but the then TDE without circulating the letter to all SDO's/SDE replied to ADT, Assam Circle that there was no casual labourer working in the SSA. It is understandable that the then TDE gave a Nil report to avoid any complicacy concering him in the matter. Further the same TDE made objection in the ACE-2 accounts for making payments to 34 casual labourers in his own seal and signature for the month of Dec'91, Feb'92 andApril'94, after that how the TDE submitted Nil report, is not understood.

It is alleged in para-8 that the applicant had informed Assam Telecom Circle vide his letter no E-38/CMPT/94-95/168 dated 17.2.1995 (State Ext.59) and letter no E-38/CMPT/Vol.III/96-97/15 dated 30.8.1996 (State Ext.57), that no casual labourers have been engaged in his division. The letter dt: 17.2.1995, was in the context of the earlier order of 1988 for those casual labourers who were engaged before31.3.1985 and subsequently made TSM and RM during 1989/1990. No where in this letter it was mentioned that no casual labour has been engaged in this division. The other letter dt: 30.8.1996 stated that expect Traffic wing no casual labourer were engaged in the division and all the casual labours engaged before 22.6.88 were conferred TSM vide letter dt: 27.5.96.Therefore a nil report was submitted.

That with regard to allegation made in para-9 that even after appointing these 34 casual mazdoors conferring them Temporary Status on 27.5.1996, the applicant was also found to have issued a false certificate to Sri M.K. Sundarsanam, DGM (Admn) vide his letter no E-38/COMPT/Vol.III/96-97/15 dt:30.8.96 certifying with reference to DGM's letter no:1-

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3/COMPT/96 dt:20.8.96 that no casual mazdoors was engaged in his division except 21 casual labours in Traffic wing on permanent basis, the applicant issued this letter when DGM wanted to fix responsibility for taking action against those who were responsible for making appointments of casual employees inspite of ban order issued earlier. The report in question was correct and charged officer rightly replied as the casual mazdoors in questions were already made TSM on the basis of the order dt: 17.12.1993 circular and they were working long before his joining in Tezpur. The charged officer only mentioned about the casual mazdoors engaged after his joining and not about those who were working continuously before the cut off date i.e.22.6.88. There is difference between working and engaged and the charged officer rightly mentioned about the casual labours engaged during his tenure and not about the casual labours working since 1988 or before and made TSM. If the dept. wanted to fix responsibility there were no hurdles in this as the official/officer who had engaged the casual labours had issued certificate under their name, seal and signature with full responsibility.

That with regard to the allegation made in para-11 that M.K.Sudarsanam, DGM (Admn) vide his DO letter addressed to Sri B.K.Goswami, TDM informed him that the statement furnished to them vide letter no: E-38/COMPT/Vol.III/96-97/15 dt:30.8.96 and no X-I/COMPT/96-97/21 dt: 7.8.96 contradicts the information given by the SSA regarding casual labour, it may be stated that the D.O. letter under reference was not proved and exhibited by the dept., though requisition for the same given by the charged officer. In any case both the letters dt: 30.8.96 and 7.8.96 were issued by the charged officer in different context altogether. Position with regard of letter dt: 30.8.96 is not reiterated herein. The other letter dt: 7.8.96 was issued by the charge officer in the context of conferring TSM to casual labours. It would be thus evident how perfunctorily the charge was held to be partly proved.

That after going through the statement of imputation of misconduct/misbehavior it appears that no material evidence

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directly or indirectly was put forward to sustain the charges. The whole allegation was based on suspicion and it is a settled law that suspicion should not be allowed to take the place of evidence, however strong it may be. The conferment of TSM was carried out as per guidelines issued by the nodal ministry/department, namely Department of Personnel and Training from time to time prescribing constitution of internal screening committee.

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GROUNDS ON WHICH THE IMPUGNED ACTION ARE CHALLENGED

(1) Assuming while not admitting that in issuing the order dt: 27.5.96 (Annexure-II), the applicant committed any misconduct within the meaning of the conduct rules, the disciplinary authority is not legally justified in issuing as many as 6 (six) charge sheet for the same cause of action. To the aforesaid extent the disciplinary authority acted irrationally and arbitrarily attracting the vice of Article 14 of the Constitution of India.

(2) In para 4 and 6 of written statement, it has been contended that because of the report submitted by CBI, different charge sheet were issued. Curiously enough the purported report of the CBI, which appears to be the basis of impugned action, has not been furnished to the applicant. Thus there is gross violation of principles of natural justice.

In any case CBI Inspector, Sri K. Barman, who was examined as SW-7 categorically stated during the departmental inquiry that no charge could be framed against the applicant after due investigation. SW-7 further stated that no evidence of collusion between the applicant and member of the Selection Committee could be gathered during investigation.

(3) By framing 6 different charge sheet for the same cause of action i.e. provisionally conferring Temporary Status to 221 casual mazdoors, the disciplinary authority has not only committed an act of irrationally but the said action has potential of inflicting double punishment in violation of Article 20 (2) of the Constitution of India.

(4) The fact that 3 different Enquiry Officer came to different findings in respect of the same cause of action is in itself a good enough reason for interfering with the inquiries in question and directing a single inquiry to prevent miscarriage of justice.

(5) The action of disciplinary authority in not proceeding departmentally against SW-1 Sri B.K. Goswami, the then TDM, Tezpur,

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though he revoked the cancellation order dt: 20.10.97 issued by the applicant smacks of discrimination and arbitrariness and colourable exercise of power.

(6) The further action of disciplinary authority in accepting the finding of the enquiry officer in respect of A.K.Sarkar, a member of Selection Committee, is another instance of colourable exercise of power.

(7) The findings of the Enquiry Officer in respect of Charge Sheet dt: 19.6.01 cannot withstand the legal scrutiny on account of the following:

(a) Findings are perverse and based on no evidence.

(b) The enquiry officer committed an act of impropriety in accepting the evidence of Sri A.K. Sarkar a co-accused without corroboration on material points.

(c) The enquiry officer in the garb of establishing the charges has even taken note of materials which were not part of show cause thereby infringing the principles of natural justice.

① Why 6-proceedings?

Ans: Para 6 of W/S

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Filed by
Bikram Choudhury
Adv.
22.1.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH: GUWAHATI

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Sri Madhuryya Kumar Gogoi

..... Applicant.

- Versus -

Union of India and others.

..... Respondents

LIST OF DATES:

17.12.1993: DOT issued circular vide no 269-4/93-STN-II to grant Temporary Status to mazdoors working in the department continuously after 31.3.1985 to 22.6.1988 as casual labour.

Annexure- I, Page 22 of O.A.

28.1.1994: The Telecom District Engineer (in short TDE), Tezpur circulated aforesaid DOT circular to all Head of Sub-Division in his Division vide no E-38/Casual Labour/93-94/125.

31.1.1995: The applicant joined as TDE, Tezpur, while the process for conferring Temporary Status Mazdoor (in short TSM) was going on.

25.3.1996: Applicant constituted a Selection Committee consisting of 4(four) members from different wing of the Department including Accounts Officer who was custodian of the payment vouchers. The committee was formed to verify the records and to recommend the names of eligible casual mazdoors from among the list of casual mazdoors forwarded by the SDO's

27.5.1996: Following the recommendations made by the Selection Committee the applicant by order no X-I/CMPT/96-97/Con-7 conferred TSM provisionally to 221 casual labours. No other order was issued by him.

Annexure- II, Page 24 of O.A.

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18.9.1997: The Chief General Manager, Assam Circle, Guwahati vide its letter no Rectt.-3/10/loose/Pt-V issued instruction to Telecom District Manager, Tezpur to cancel the provisional order of conferring TSM to casual labour in the Division and to start the process of further scrutiny afresh to identify the casual labours entitled for temporary status within a period of one month. TDM marked the letter to DE (P&A) (i.e. the applicant, who had issued the order for conferring TSM).

Annexure- III, Page 32 of O.A.

20.10.1997: Accordingly, the applicant being DE (P&A) cancelled the provisional order of conferring TSM issued by him vide letter no X-I/CMPT/96-97/Con-7.The cancellation order was subsequently revoked by the TDM after one month.

Annexure- IV, Page 33 of O.A.

19.11.1997: TDM, Tezpur revoked the order dt: 20.10.1997 issued by the applicant provisionally on pressure of Union.

Annexure- V, Page 34 of O.A.

Against this back drop charges were framed against the applicant under Rule 14 of CCS (CCA) Rules, 1965.

19.6.2001: The applicant received Memorandum no 8-180/2000-Vig-II from the department, wherein it was alleged that he in collusion with the members of the Selection Committee constituted by him, regularized 34 nos of casual labourers of North Lakhimpur with malafide intention.

Annexure- VI, Page 35 of O.A.

26.03.2002: While the first proceeding was going on, the applicant received another memorandum No. 8-15/2001-1 Vig-II dated 7.3.2002 from the department. In this second memorandum the charges were identical in nature as stated in memorandum dated 19.6.01 and it related to regularizing 22 nos of casual mazdoors of SDE (P), Tezpur.

Annexure-VII, Page 46 (A) of O.A.

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17.10.03: While the above two proceedings were going on the applicant received another memorandum No. 8-181/2001-Vig-II dated 11.9.03 on the same set of identical charges as stated in memo dt: 19.6.01 and in this third memorandum it related to appointment of 22 Nos of casual mazdoors under Dhemaji Sub-division on the basis of forged experience certificates.

Annexure-VIII, Page 62 of O.A.

17.10.03: The applicant received another memorandum no 8-186/2001-Vig.II dt: 11.9.2003 on the same set of identical charges as stated in memo dt: 19.6.01 and in this fourth memorandum it related to appointment of 21 Nos of casual mazdoors under Udalguri Sub-division on the basis of forged experience certificates.

Annexure-XXXVI (A) Page no 6 of additional affidavit (ii) dt: 15.10.07

17.10.03: On this date the applicant received another memorandum no 8-167/2001-Vig.II dt: 11.9.2003 on the same set of identical charges as stated in memo dt: 19.6.01 and in this fifth memorandum it related to appointment of 15 Nos of casual mazdoors under SDO (T), Tezpur on the basis of forged experience certificates.

Annexure-XXXVII (A) Page no 6 of additional affidavit (iii) dt: 15.10.07

21.10.03: The applicant received another memorandum no 8-165/2001-Vig.II dt: 09.10.2003 on the same set of identical charges as stated in memo dt: 19.6.01 and in this fifth memorandum it related to appointment of 7 Nos of casual mazdoors under SDE (Comp),Tezpur on the basis of forged experience certificates.

Annexure-XXXVIII (A) Page no 6 of additional affidavit (iv) dt: 15.10.07

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The applicant states that the above 6 charge memos were on the same allegations and with regard to order dt: 27.5.96 issued by the applicant.

March'05: The applicant received the Inquiry Report dt: 18.12.04 and also memorandum of disagreement dated 24.2.05 along with CVC advice dated 27.12.05 and this were related to second proceeding. In this inquiry report the Inquiry Officer held the charge against the applicant as "NOT PROVED"

In the memorandum dated 24.2.05 the Disciplinary Authority did not gave any definite findings on the charges and the reasons for disagreement.

Annexure- IX, Page 71 of O.A.
Annexure- X, Page72 of O.A.
Annexure - XI, Page 84 of O.A.

21.3.05: The applicant submitted representation against the disagreement.

Annexure- XII, Page 85 of O.A.

26.4.05: Received the Inquiry Report dated 31.1.05 and memorandum of disagreement dated 1.4.05 alongwith CVC advice dated 7.3.05 relating to the first proceeding. In this Inquiry Report, the Inquiry Officer held the charge against the applicant as proved but not fully.

In the memorandum dated 1.4.05, the disciplinary authority disagreed with the findings of the Inquiry Officer and held the charge as fully proved.

Annexure- XIII, Page91 of O.A.
Annexure- XIV, Page 92 of O.A.
Annexure- XV, Page 120 of O.A.

10.5.05: Applicant as directed submitted his representation against the disagreement with the findings of the Inquiry Officer in his report.

Annexure- XVI, Page 121 of O.A.

केन्द्रीय प्रशासनिक अधिकरण
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Guwahati Bench

October'05:The applicant received memorandum No. 8-181/2001 Vig-II dated 4.10.05 (i.e. disagreement) from the department alongwith the Inquiry Report dated 27.7.05 and the CVC advice dated 23.9.05 relating to third proceeding against the applicant. The Inquiry Officer held the charge against the applicant as not proved, but the disciplinary authority disagreed with the findings of the Inquiry Officer and held the charge as proved.

Annexure-XVII, Page 131 of O.A.
Annexure-XVIII,Page 132 of O.A.
Annexure- XIX, Page 138 of O.A.

16.11.05: Submitted representation against the memorandum dt: 4.10.2005 (disagreement).

Annexure- XX, Page 139 of O.A.

18.10.05: The applicant received memorandum No. 8-186/2001 Vig-II dated 18.10.05 (i.e. disagreement) from the department along with the Inquiry Report dated 26.7.05 and the CVC advice dated 28.9.05 relating to fourth proceeding against the applicant. The Inquiry Officer held the charge against the applicant as not proved, but the disciplinary authority disagreed with the findings of the Inquiry Officer and held the charge as proved.

Annexure- XXXVI (B), Page15 of additional affidavit (ii) dt:15.10.07
Annexure- XXXVI (C), Page 16 of additional affidavit (ii) dt:15.10.07
Annexure- XXXVI (D), Page 22 of additional affidavit (ii) dt: 15.10.07

17.11.05: Submitted representation against memorandum (disagreement) dt: 18.10.2005.

Annexure- XXXVI (E), Page23of additional affidavit (ii) dt:15.10.07

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
7 OCT 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

18.10.05: The applicant received memorandum No. 8-167/2001 Vig-II dated 18.10.05 (i.e. disagreement) from the department along with the Inquiry Report dated 27.7.05 and the CVC advice dated 23.9.05 relating to fifth proceeding against the applicant. The Inquiry Officer held the charge against the applicant as not proved, but the disciplinary authority disagreed with the findings of the Inquiry Officer and held the charge as proved.

Annexure- XXXVII (B), Page16 of additional affidavit (iii)dt:15.10.07
Annexure- XXXVII (C), Page17 of additional affidavit (iii)dt:15.10.07
Annexure- XXXVII (D),Page23 of additional affidavit (iii) dt:15.10.07

12.11.05: Submitted representation against the above disagreement.

Annexure- XXXVII, Page 24 of additional affidavit(iii)dt:15.10.07

18.10.05: The applicant received memorandum No. 8-165/2001 Vig-II dated 18.10.05 (i.e. disagreement) from the department along with the Inquiry Report dated 26.7.05 and the CVC advice dated 28.9.05 relating to sixth proceeding against the applicant. The Inquiry Officer held the charge against the applicant as not proved, but the disciplinary authority disagreed with the findings of the Inquiry Officer and held the charge as proved.

Annexure- XXXVIII (B), Page17 of additional affidavit (iv)dt:15.10.07
Annexure- XXXVIII (C), Page 18 of additional affidavit (iv)dt:15.10.07
Annexure- XXXVIII (D), Page 24 of additional affidavit(iv) dt:15.10.07

10.11.2005: Submitted representation against the above disagreement.

Annexure- XXVIII, Page 25 of additional affidavit(iv) dt:15.10.07

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19.5.2006: Received order No. 8/15/2001- Vig II dated 2.5.06 issued from the office of Respondent No. 2 whereby the President of India, the competent displiniary authority accepting the advice of the UPSC tendered vide letter dated 7.4.06 imposed penalty of reduction to a lower stage, by 3 stages in the time scale of pay of Rs. 14,300-400-18300 for a period of 2 years. The above penalty relates to 2nd disciplinary proceeding.

Annexure - XXI, Page 144 of O.A
Annexure-XXII (U.P.S.C. advice), Page 147 of O.A.

23.5.06: Order No. 8/180/2000-Vig II dated 3.5.06 from the office of Respondent No. 2 whereby the President, the competent disciplinary authority accepting the advice of the UPSC informed by letter dated 31.3.05, imposed the penalty of reduction to a lower stage by 3 stages in the time scale of pay of Rs. 14,300-400-18300 for a period of 2 years. This penalty related to first proceeding.

Annexure-XXIII, Page 153 of O.A.
Annexure-XXIV (U.P.S.C. advice), Page 156

June 2007: During the pendency of the original application the applicant received the four penalty orders alongwith UPSC advice in respect of the four remaining disciplinary proceedings.

The penalty orders were as follows:

(i) Order no 8/181/2001-Vig II dt: 30.5.07 in respect of the 3rd disciplinary proceeding.
(ii)Order no 8/186/2001-Vig.II dt: 30.5.07 in respect of the 4th disciplinary proceeding.
(iii)Order no 8/167/2001-Vig.II dt: 30.5.07 in respect of the 5th disciplinary proceeding.
(iv)Order no 8/165/2001-Vig.II dt: 20.6.07 in respect of the 6th disciplinary proceeding.

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In the above mentioned four penalty orders, the disciplinary authority imposed upon the applicant in each four disciplinary proceedings, the penalty of reduction to a lower stage, by one stage in the time scale of pay of Rs 14,300-400-18,300/ for a period of 2 years, with further direction that the applicant will not earn increments of pay during the period of reduction and on expiry of such period, the reduction will have the effect of postponing his future increment of pay.

Annexure- XXVIII, Page 6 of additional affidavit dt: 26.7.2007

Annexure- XXIX, Page 9 of additional affidavit dt: 26.7.07

Annexure- XXX, Page 14 of additional affidavit dt: 26.7.07

Annexure- XXXI, Page17 of additional affidavit dt: 26.7.07

Annexure- XXXII, Page 23 of additional affidavit dt: 26.7.07

Annexure- XXXIII, Page 26 of additional affidavit dt: 26.7.07

Annexure- XXXIV, Page 32 of additional affidavit dt: 26.7.07

Annexure- XXXV, Page 35 of additional affidavit dt: 26.7.07

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

ORIGINAL APPLICATION NO. 284 /2006

Sri Madhuryya Kumar Gogoi
..... Applicant

-Vs-

Union of India & Others
..... Respondents

filed by
Krishna Choudhury
15.11.06

Advocate, Guwahati

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
16 AUG 2006
गुवाहाटी न्यायपीठ
Guwahati Bench

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

O. A. NO. 284 /2006.

Sri Madhuryya Kumar Gogoi

..... Applicant.

- Versus -

Union of India and others.

..... Respondents

LIST OF DATES

1986 : The applicant passed the Indian Telecom Service (ITS) conducted by the UPSC.

Para 1, page No. 3

22.9.89 : The applicant was appointed as Assistant Divisional Engineer (Gruop A) (Probation) in respondent's department and was posted at Advance Level Telecom Training Centre at Ghaziabad.

Para 1, page No. 3

August 1992 : The applicant ws promoted as Telecom District Engineer (Senior Time Scale) and was posted at Dibrugarh.

Para 1, page No. 3

At present the applicant is serving as Deputy General Manager (Planning and Administration) and Area Manager (Rural) under the Kamrup Telecom District, BSNL from January 2002

Para 2, page No. 3

On 31.1.95 the applicant was posted on transfer as Telecom District Engineer (hereinafter called as TDE), Tezpur and continued in that capacity upto September 1996.

Para 3, page No. 3

Contd....

17.12.93 : The applicant came across a circular issued by the department for the conferment of Temporary Status toCasual Labourers engaged in different circle of the Department after 31.3.85 upto 22.6.88 provided they fulfil the conditions given in the circular.

28.1.94 : The aforesaid circular was forwarded to all Sub-Divisional Officer/Engineer from the office of the TDE through letter No. E-98/Casual/Labour/93-94/ 125.

Para 4, Page No. 4
Annexure- I, Page No. 22 to 23.

Thereafter in response to circular dated 17.12.93 all Sub-Divisions (all total 11 sub-division) under TDE Tezpur recommended the names of eligible casual labourers working under their jurisdiction and engaged before 22.6.88.

Para 5, Page No. 4

After receiving some of the recommedations from some sub-divisions, the TDE office was verifying the records when the applicant joined the office of Telecom District Engineer.

Para 5, Page No. 4

25.3.96 : The applicant then constituted a Selection Committee consisting of four members, who were all gazetted officer from different fileds of the Department for selection of eligible casual labourers for regularisation as Temporary Status Mazdoors forwarded by various sub-divisions on the basis of circular dated 17.12.93. The applicant was not a member of the said Selection Committee.

Para 5, page No. 5

Thereafter the Selection Committee after examing the list of casual labourers forwarded by the Sub-Division alongwith the available records, recommended names of 226 casual labourers continously working in respective Sub-Divisions or on before 22.6.88.

Contd....

27.5.96 : After verifying the applicant by order No. X-/CMPT/ 96-97/CON-7 confered Temporary Status provisionally to 221 casual labourers working in eleven sub-division under Telecom District Engineer, Tezpur.

Para No. 6, Page No.5.
Annexure- II, Page No. 24 to 31.

18.9.97 : The Chief General Manager, Assam Telecom Circle Guwahati issued instructions to the then Telecom District Manager, Tezpur vide his letter No. Rcctt-3/ 10/LOOSE/Pt-V to cancel the order conferring Temporary Status of casual labourers in the division as there was discrepancy and to start the process of further scrutiny afresh within a period of 1 (one) month.

Para No. 7, Page No. 5.
Annexure - III, Page No. 32.

The then TDM endorsed the letter 18.9.97 to the applicant for taking necessary action.

Para 7, Page No. 5

20.10.97 : The applicant cancelled the provisional order of conferring Temporary Status to Casual Labourers vide letter No. X-1/CMPT/96-97/CON-7 which was earlier conferred by him.

Para 7, Page No. 6
Annexure- IV, Page No. 38 .

19.11.97 : Order passed by Telecom District Manager, Tezpur reconsidering the factual position cancelled the order dated 20.10.97 issued by the applicant.

Para No. 7, Page No. 6
Annexure- V, Page No.34.

15.6.2001 : The applicant received memorandum No. 8-180/2000-Vig-II from the Department whereby the applicant was informed that an inquiry under Rule 14 of the CCS (CCA) Rules 1965 was propsed to be held against the applicant.

Para 8, Page No. 6

Contd....

In the charge memorandum, it was alleged that the applicant committed serious irregularities in as much as he in collusion with the members of the Selection Committee constituted by him, regularzied 34 Nos of casual laboures of North Lakhimpur with malafide intention.

Pare 8, Page No. 6
Annexure- VI, Page 35 to 46 .

The Inquiry Officer and Presenting Officer were appointed vide order dated 12.2.02 and thereafter the hearing started.

26.03.2002 : While the first proceeding was going on, the applicant received another memorandum No. 8-15/2001-1 Vig-II dated 7.3.2002 from the department whereby he was informed that an inquiry under Rule 14 CCS (CCA) Rules, 1965 was proposed to be held against the applicant.

It will relevant to mention here that charge under the aforesaid memorandum dated 7.3.02 are identical in nature to the allegations stated in memorandum dated 19.6.01. Allegation levelled against the applicant was that he regularise 22 nos of casual mazdoors of SDE (P), Tezpur with malafide intention as none of them were eligible.

Para 9, Page 7
Annexure - VII, at Page No.46 (A) to 61

Thereafter he submitted his reply denying the charge and then regular hearing started on 17.2.03 after the Inquiry and Presenting Officer were appointed.

Para 10, page No. 7

17.10.03 : While the above two proceedings were going on the applicant received another memorandum No. 8-181/ 2001-Vig-II dated 11.9.03 whereby it was alleged that while working as TDE, Tezpur during 1996 he appointed 22 Nos of casual mazdoors under Dhemaji Sub-division on the basis of forged experience certificates. As such, the disciplinary authority proposed to hold

Contd....

on inquiry against him under Rule 14 CCS (CCA) Rule 1965. The applicant denied the charges in

Para 11, Page No. 8
Annexure- VIII, page No.62 to 70.

That the Department thereafter issued another 3 chargesheets all on the same allegations with regard to the conferment of Temporary Status to 221 casual mazdoors of different subdivision. This 3 (three) chargesheets were issued on the same cause of action and against one order dated 27.5.96 issued by the applicant.

Para 13, page No. 9

The applicant made representation before the authorities to combine/club together all the chargesheets and proceed with by a single departmental proceedings as the charges are samed and framed on the basis of 1 (one) order but the authorities did not concured and reacted to his prayer and the applicant appeared in all the 6 (six) proceedings and submitted his written statements denying the charges.

Para 14, Page No. 9

The applicant filed an original application before this Hon'ble Tribunal when the first two proceedings were going in a slow manner and the rest of 4 proceedings were at an initial stage with the prayer to combine all the chargesheets and complete the same in a common proceeding.

The original application was registered and numbered as OA 119/04 and the same was disposed of by the Tribunal on 20.7.04 with a direction to complete the departmental proceedings within six months from the date of receipt of the order. The departmental proceedings progressed in a snail speed for which the applicant had to suffer immensely.

The applicant received the Inquiry Report the General Manager, BSNL Kamrup, Telecom District

Contd....

Ulubari Gauwhati dated 18.12.04 and a memorandum dated 24.2.05 along with CVC advice dated 27.12.05 relating to the second proceeding.

Para 17, Page 10
Annexure- IX, Page 71.
Annexure X, Page 72 to 83.
Annexure - XI, Page 84.

In this inquiry report the Inquiry Officer held the charge against the applicant as "NOT PROVED"

24.2.05 : Memorandum issued by the disciplinary authority whereby it proposed to disagree with findings of the Inquiry Officer and held the charges against the applicant as proved.

The applicant states that in the memorandum dated 24.2.05 the Disciplinary Authority did not gave any definite findings on the charges and the reasons for disagreement.

Para 18, Page No. 11.

21.3.05 : Representation submitted by the applicant against the disagreement of the disciplinary authority on the findings of the Inquiry Officer.

Para 18, Page No. 11
Annexure- XII, Page 85 to 90.

26.4.05 : The applicant received the Inquiry Report dated 31.1.05 submitted by the Inquiry Officer and memorandum No. 8/180/2000 - Vig-II dated 1.4.05 alongwith CVC advice dated 7.3.05 relating to the first proceeding from the General Manager, BSNL Kamrup Telecom District, Guwahati.

Para 19, page 11
Annexure- XIII, Page 91.
Annexure- XIV, Page 92 to 119.
Annexure- XV, Page 120 .

In the Inquiry Report held the charge against the applicant as proved but not fully in the memorandum dated 1.4.05, the disciplinary authority disagreed with

Contd....

the findings of the Inquiry Officer and held the charge as fully proved. The CVC also in a cryptic manner advised stiff penalty

Para 20, Page 12

10.5.05 : Applicant as directed submitted his representation against the disciplinary authority's disagreement with the findings of the Inquiry Officer in his report.

Para 20, Page 12
Annexure- XVI, Page 121 to 130.

The applicant received memorandum No. 8-181/ 2001 Vig-II dated 4.10.05 from the department alongwith the Inquiry Report dated 27.7.05 and the CVC advice dated 23.9.05 relating to third proceeding against the applicant. The Inquiry Officer held the charge against the applicant as not proved.

Para 21, Page 12
Annexure- XVII, Page 131.
Annexure- XVIII, Page 132 to 137.
Annexure- XIX, Page 138.

The applicant found that in the memorandum dated 4.10.05 the displinary authority proposed to disagree with the findings of the Inquiry Officer and hold the charges as proved. The CVC in their advice has concurred concerned with the findings of the department and advised for impostion of penalties against the applicant and directed him to submit his representation.

Para 22, Page 13

16.11.05 : The applicant submitted his representation against the disagreement of the displinary authority with the findings of the Inquiry Officer.

Para 22, page 13
Annexure- XX, Page 139 to 143.

The applicant thereafter received the inquiry reports, notices of disagreement by the displinary authority and the CVC advice relating to the remaining 3 proceedings on the same allegation. In all this 3 proceedings the Inquiry Officer held the charge as not proved.

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10.11.05 12.11.05 17.11.05	:	Applicant submitted representation on disagreement by the displinary authority Para 23, Page 14
19.5.06	:	Order No. 8/15/2001- Vig II dated 2.5.06 issued from the office of Respondent No. 2 whereby the President of India, the competent displiniary authority accepting the advice of the UPSC tendered vide letter dated 7.4.06 imposed penalty of reduction to a tower stage, by 3 stages in the time scale of pay of Rs. 14,300-400-18300 for a period of 2 years. The above penalty relates to 2nd disciplinary proceeding. Para No. 24, Page No. 14 Annexure - XXI, Page 144 to 146 Annexure -XXII, Page 147 to 152
23.5.06	:	Order No. 8/180/2000-Vig II dated 3.5.06 from the office of Respondent No. 2 whereby the President, the competent displinary authority accepting the advice of the UPSC informed by letter dated 31.3.05, imposed the penalty of reduction to a lower stage by 3 stages in the time scale of pay of Rs. 14,300-400-18300 for a period of 2 years. Para 25, Page 15 Annexure - XXIII, Page 153 to 155 Annexure- XXIII, Page 156 to 160

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

O. A. NO. 284 /2006.

Sri Madhuryya Kumar Gogoi

..... Applicant.

- Versus -

Union of India and others.

..... Respondents

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Filed by :

Bikram Chowdhury
15.11.06.

Advocate

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Madhuryya Kumar Gogoi
Filed by the applicant through
Bikram Choudhury, Advocate
15.11.06

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

(An Application under section 19 of the Administrative Tribunal Act., 1985)

O. A. NO. /2006.

Sri Madhuryya Kumar Gogoi
S/o- Late Debeswar Gogoi
Presently working as Deputy General Manager (Planning and Administration)
Office of the General Manager,
Kamrup Telecom District, B.S.N.L.,
Panbazar, Guwahati - 781001.

..... **Applicant.**

- Versus -

1. Union of India
Represented by the Secretary to the Government of India-cum-Chairman of Telecom Commission, Ministry of Communications and Information Technology, Department of Telecommunications, Sanchar Bhawan, 20-Ashoka Road, New Delhi.

2. Senior Deputy Director General (Vigilance), Department of Telecom, West Block - II, Wing - 2 Ground Floor, R.K. Puram, New Delhi - 66.

..... **Respondents**.

Contd....

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

(i) Action of the authorities in initiating 6 (Six) disciplinary proceedings against the applicant for issuing the provisional order No. X-1/CMPT/96-97/Con - 7 dated 27.5.96 whereby the applicant has granted temporary status to 221 casual labourers while working as Telecom District Engineer, Tezpur.

(ii) Order dated 2.5.2006 issued by the disciplinary authority in the disciplinary proceeding instituted vide memo No. 8-15/2001-Vig.II, dated 7.3.2002, whereby the applicant was imposed the penalty of reduction to a stage, by 3 stages in the time scale of pay of Rs. 14,300/- -400-18,300/- for a period of 2 years with the direction that the applicant will not earn increments of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay.

(iii) Order dated 3.5.2006 issued by the disciplinary authority in another disciplinary proceeding instituted vide memo No. 8-180/2000-Vig-II dated 19.6.01, whereby the applicant was imposed the penalty of reduction to a lower stage, by 3 stages in the time scale of pay of Rs. 14,300/- 400-18,300/- for a period of 2 years, with the direction that the applicant will not earn increments of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay.

2. **JURISDICTION OF THE TRIBUNAL** :

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

Contd....

3. **LIMITATION**:

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

4. **FACTS OF THE CASE :**

1. That the applicant begs to state that after passing the Indian Telecom Service (ITS) examination conducted by the U.P.S.C. in the year 1986, he was initially appointed as Assistant Divisional Engineer (Group- A) (Probation) by order dated 22.9.89 in the respondent's department and was posted at Advance Level Telecom Training Centre at Ghaziabad. Accordingly he joined his post on 22.9.89. Thereafter the applicant was promoted as Telecom District Engineer (Senior Time Scale) in August, 1992 and was posted at Dibrugarh. Since then the applicant has been discharging his duties sincerely under various capacities in various division. The applicant states that he is not an officer absorbed in BSNL but a Group -A officer of the Government of India.

2 That the applicant begs to state that since the date of his joining service he has been discharging his duties sincerely, honestly and to the best of his abilities and there was no occasion when he incurred the displeasure of his superior at any point of time. The applicant states that at present he is serving as Deputy General Manager (Planning and Administration) and Area Manager (Rural) under the Kamrup Telecom District, BSNL since January, 2002.

3. That the applicant begs to state that in the year 1995, he was posted on transfer as Telecom District Engineer (hereinafter stated as TDE), Tezpur and joined in the post at Tezpur on 31.01.1995 and continued in that capacity upto September, 1996.

Contd....

4. That after joining Tezpur as TDE, the applicant came across a circular issued by the department vide memo No. 269-4/93-STN-II dated 17.12.93 for the conferment of Temporary Status to Casual Labourers engaged in different circles of the Department after 31.3.85 upto 22.6.88 provided they fulfil the conditions given in the circular. This circular was forwarded to all Sub-Divisional Officers/Engineers from the office of the TDE under letter No. E-98/Casual Labour/93-94/125 dated 28.1.94 for information, guidance and necessary action as these Sub-Divisional Officers/ Engineers were Field Officers and the casual mazdoors were working under them.

It will be pertinent to mention here that before the applicant joined the Tezpur Division large numbers of causal labours were there in the District under the scheme prevalent in the Department.

Copy of the circular dated 17.12.93 is annexed herewith and marked as **ANNEXURE- I.**

5. That the applicant begs to state that in response to the aforesaid circulars issued by D.O.T. and forwarded by the office of the Telecom Divisional Engineer on 28.1.1994, all the Sub-Divisions (all total 11 sub-division) under TDE, Tezpur recommended the names of casual labourers engaged before 22.6.88 working under their jurisdiction and who were eligible for conferring Temporary Status as per circular dated 17.12.93. After receiving some of the recommendations from some sub- divisions, the TDE office was verifying the records when the applicant joined the office as Telecom District Engineer.

On finding that large number of cases of casual labourers working in the division were pending for conferring Temporary Status as per circular dated 17.12.93, the applicant by order No. X-1/CMPT/TZ/95-96/Con - 1 dated 25.3.96 constituted a selection committee consisting

Contd....

of four members, who were all gazetted officers from different field of the Department namely Accounts, Human Resource Development, Engineering and Field Units, for selection/recommendation of eligible casual labourers for regularisation as Temporary Status Mazdoors forwarded by various sub-divisions The applicant was not a member of the said Selection Committee.

6. That, thereafter the Selection Committee after examining the list of casual labourers forwarded by the Sub-division alongwith the available records recommended the names of 226 (Two Hundred Twenty Six) eligible casual labourers continuously working in respective Sub-Divisions on or before 22.6.88. Based on the recommendation of Selection Committee the applicant further verified the records at random and on being satisfied he issued order of conferring Temporary Status provisionally to 221 (Two Hundred Twenty One) casual labourers working in eleven Sub-Divisions under Telecom District Engineer vide order No. X-1/CMPT/96-97/CON-7 dated 27.5.96.

Copy of the order dated 27.5.96 is annexed herewith and marked as **ANNEXURE- II.**

7. That, while things remained as such, the Chief General Manager, Assam Telecom Circle, Guwahati issued instruction to Telecom District Manager, Tezpur vide his letter no Rcctt.-3/10/LOOSE/Pt-V dated 18.9.97 to cancel the order of conferring Temporary Status of Casual labourers in the division as there was some discrepancy and to start the process of further scrutiny afresh within a period of one month (in the year 1996, Telecom District Engineer, Tezpur was upgraded to Telecom District Manager and a TDM was posted in place of the applicant and the applicant was posted as Divisional Engineer (P & A) in the office Telecom District Manager). The then TDM endorsed the letter dated 18.9.97 to the applicant for taking necessary action. Accordingly, the applicant cancelled the provisional order of conferring Temporary

Contd....

Status to Casual Labourers vide letter No. X-1/CMPT/96-97/CON-7 dated 20.10.97, which was earlier conferred by him. Later on the then Telecom District Manager (Sri B.K. Goswami), Tezpur, reconsidered the factual position and passed an order on 19.11.97 cancelling the order dated 20.10.97 issued by the applicant. Thereafter in the year 1998 the applicant was transferred to Kolkata as DGM (TP).

Copy of the letter dated 18.9.97 and order dated 20.10.97 and 19.11.97 are annexed herewith and marked as **ANNEXURE- III, IV & V respectively.**

8. That, while working as Director, RTTC, the applicant on 5.7.2001 received memorandum no 8-180/2000 - Vig- II dated 19.6.2001 from the Department whereby the applicant was informed that an inquiry under Rule 14 of the CCS (CCA) Rules, 1965 was proposed to be held against the applicant. The article of charges, the imputation of misconduct, the list of documents and witnesses by which the charges against the applicant was going to be sustained were annexed along with the charge memorandum and CVC first advice.

In the charge memorandum, it was alleged that the applicant committed serious irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him, regularised 34 numbers of casual mazdoors with malafide intention although none of them was eligible for such regularisation that too without verifying genuineness of the recommendation of SDO's/SDE's and experience certificate issued by JTO/Lineman etc. thus putting the department to a huge financial loss. It be stated the 34 casual mazdoors are of North Lakhimpur and were included in the total 221 mazdoors as stated in letter dated 27.5.96. Later on the Inquiry Officer and Presenting Officer were appointed vide order dated 12.2.02 and thereafter the regular hearing got started.

Contd....

A copy of the chargesheet dated 19.6.01 alongwith the CVC advice is annexed herewith and marked as **ANNEXURE-VI.**

9. That while the first proceeding was going on the applicant on 26.3.02 received another memorandum No. 8-15/2001-Vig-II dated 7.3.2002 from the department whereby he was informed that an inquiry under Rule 14 CCS (CCA) Rules, 1965 was proposed to be held against the applicant. The article of charges, the imputation of misconduct, the list of documents and witnesses by which the charges against the applicant was going to be sustained were also annexed with the charge memorandum and CVC first advice.

It was alleged that the applicant while functioning as TDE, Tezpur during 1996 he committed serious irregularities in collusion with members of the Selection Committee, by regularising 22 (twenty two) numbers of Casual Mazdoor of SDE (P) Tezpur as Temporary Status Mazdoor with malafide intention as none of them were eligible for such regularization and that to without verifying the recommendations of different SDO's etc. and experience certificate issued by JTO/ Lineman etc., thereby putting the department to a huge financial loss.

It will be relevant to mention here that the charges under the aforesaid memorandum dated 7.3.02 are identical in nature to the allegation stated in memorandum dated 19.6.01 (Annexure -VI)

A Copy of the memorandum dated 7.3.02 alongwith the CVC advice is annexed herewith and marked as **ANNEXURE-VII**

10. That the applicant begs to state that after receiving the second charge sheet/memorandum of charge he submitted his reply stating that he was not guilty and thereafter the Enquiry Officer and Presenting Officer were appointed and the regular hearing started on 17.2.2003

Contd....

11. That the applicant begs to state that while the above two proceedings were going on the applicant by letter No. GM/SDE (DIG)/X-115/03-04/02 dated 17.10.2003 received another memorandum No. 8-181/ 2001-Vig.II dated 11.9.03 whereby it was alleged that while working as TDE, Tezpur during 1996 he committed serious irregularities in appointing 221 casual mazdoors including 22 (twenty) numbers under Dhemaji Sub-division on the basis of forged experience certificates. Therefore the disciplinary authority is proposing to hold an inquiry against him under Rule 14 CCA (CCS) Rule 1965.

Accordingly the inquiry got started and in the inquiry the applicant denied the charges. The applicant further states that the allegations in this chargesheet was similar in nature to the earlier two proceedings.

A copy of the memorandum dated 11.9.03 alongwith the CVC advice is annexed herewith and marked as **ANNEXURE- VIII.**

12. That the Department subsequently issued the following 3 (three) chargesheets all on the same allegations (i.e, the applicant appointed the casual workers on the basis of forged experience certificates) for different units/Sub-division consisting the 221 mazdoors.

Sl. No.	Chargesheet No.	Date	Sub-division	No of casual Mazdoors appointed as Temporary Status Mazdoors
1	Memo No. 8-186/ 2001-Vig.II	11.9.03	Udalguri	21
2	Memo No. 8-167/ 2001-Vig. II	11.9.03	SDO (T), Tezpur	15
3	Memo No. 8-165/ 2001-Vig. II	9.10.03	SDE (Comp), Tezpur	7

Contd....

The above chargesheets were issued on the same cause of action and against 1 (one) order i.e. No. X-1/CMPT/96-97/CON-7 dated 27.5.96 issued by the applicant, by breaking into sub-division the list of 221 casual mazdoors appointed as temporary status mazdoors. (The applicant craves leave of this Hon'ble Tribunal to produce and rely upon the above 3 chargesheets at the time of hearing)

13. That the applicant begs to state that in the above 6 (six) charge sheets it is alleged that Sri K. Balasubhramaniyan the then TDE, Tezpur had submitted a report through his letter no E-38/CM -PT/VOL-II/123 dated 7.12.93 stating that no casual labourer was recruited in Tezpur Division after 31.03.85 and having knowledge about that, how the applicant could say that there was casual labourer after 31.03.85.

In this regard, the applicant states that the letter dated 7.12.93 was sent by K. Balasubhramaniyan in reference to letter No. RECTT-3/ 10/Part -III/3 dated 26.8.93 issued by the circle office regarding inclusion of casual labours in Central Government Employment Group Insurance Scheme. Moreover, Sri K. Balasubhramaniyan had full knowledge about the payment of wages to casual labourers during this period and this is evident from the accounts record. He also issued identity cards and security passes to casual labourers under his seal and signature during his period.

14. That the applicant begs to state that after receiving 6 (six) charge memos the applicant made representation before the authorities to combine/ club together all the chargesheets and proceed with by a single departmental proceeding as the charges are same and framed on the basis of 1 (one) order issued by the applicant and which was subsequently cancelled by him but the authorities did not pay any heed to his prayer. The applicant thereafter duly appeared in all the 6 (six) proceedings and submitted his written statements denying the charges.

Contd....

15. That the applicant begs to state that while the first two proceedings were progressing in a very tardy manner and the rest of four proceedings were at the initial stage, he filed an original application before this Hon'ble Tribunal with the prayer to combine all the chargesheets and finalise the same in a common proceeding. The original application was registered and numbered as O.A No. 119/2004 and the same was disposed of by this Hon'ble Tribunal on 20.7.2004 with a direction to complete the departmental proceedings within six months from the date of receipt of the order.

16. That inspite of the Hon'ble Tribunal's direction the departmental proceedings progressed in a snail speed and the authorities prayed for extension of time to complete the proceedings before this Hon'ble Tribunal.

The applicant further states that the authorities conducted the departmental proceedings in a very casual manner and thereby causing in ordinate delay for which the applicant had to suffer immensely.

17. That thereafter the applicant received from the General Manager, BSNL, Kamrup Telecom District, Ulubari, Guwahati the Inquiry Report dated 18.12.04 submitted by the Inquiry Officer with memorandum No. 8-15/2001-Vig.II dated 24.2.05 alongwith the CVC advice dated 27.1.05. Copy of the memorandum dated 24.2.05 alongwith Inquiry Report dated 18.12.04 and the CVC advice dated 27.1.05 are annexed herewith and marked as **ANNEXURE- IX, X and XI respectively.**

18. That the applicant begs to state that the above mentioned documents relates to the second departmental proceeding initiated against him. The Inquiry Officer in his report held the charges against the applicant

Contd....

as "NOT PROVED". But the applicant was shocked and surprised when he found that the disciplinary authority by memorandum dated 24.2.05 has proposed to disagree with the findings of the Inquiry Officer and held the charges against the applicant as proved. The applicant further states that in the memorandum dated 24.2.05 the disciplinary authority did not give any definite reason of disagreement and also his findings on the charges by analysing the evidence for the purpose of coming to the conclusion as to how and in what manner the charges against the applicant can be said to have been proved by such evidence on record. The CVC in their advice has in a casual manner concurred with the findings of the department/disciplinary authority that the charges against the applicant was proved and advised for imposition of a suitable major penalty. The applicant was further directed to submit a representation in the matter and accordingly the applicant submitted his representation on 21.3.2005, against the disagreement of the disciplinary authority on the findings of the Inquiry Officer.

Copy of the representation dated 21.3.05 is annexed herewith and marked as **ANNEXURE -XII.**

19. That thereafter, the applicant received the Inquiry Report dated 31.1.05 submitted by the Inquiry Officer and memorandum No. 8/180/2000-Vig-II dated 1.4.05 alongwith the CVC advice dated 4.3.05 relating to the first proceeding from the General Manager, BSNL, Kamrup Telecom District, Guwahati under cover of his letter No. GM/SDE (Vig)/ X-102/05-06/10 dated 26.4.05

Copy of the memorandum dated 1.4.05 alongwith Inquiry Report dated 31.1.0 and CVC advice dated 4.3.05 are annexed herewith and marked as **ANNEXURE -XIII, XIV AND XV respectively.**

20. That after receiving the documents mentioned in paragraph No. 19, the applicant was shocked and surprised to find that the Inquiry Officer

Contd....

in a very peculiar manner basing on surmises and conjectures held the charges against the applicant as proved but not fully.

The applicant was further shocked to find in the memorandum dated 1.4.05 (Annexure- XIII) that the disciplinary authority has disagreed with the findings of the Inquiry Officer and proposes to hold the charge against the applicant as fully proved based on the analysis of the evidence by the Inquiry Officer in his report and the prosecution documents and deposition. The applicant states that in the memorandum dated 1.4.05 (Annexure- XIV) the disciplinary authority didnot disclose as to how the evidence on record was taken into consideration to come to the conclusion of disagreement with the findings of the inquiry officer. The CVC also in a very cryptic manner stated that "Keeping in view the gravity of charges considered fully proved by DOT against M.K. Gogoi, then TDE, Tezpur, now DGM, Guwahati, the Commission would advice imposition of stiff major penalty". The applicant was further directed to submit a representation in the matter and accordingly the applicant submitted his representation on 10.5.05, against the disciplinary authority's disagreement with the findings of the Inquiry Officer in his report.

A copy of the representation dated 10.5.05 is annexed herewith and marked as **ANNEXURE - XVI.**

21. That thereafter the applicant received memorandum No. 8-181/2001-Vig.II dated 4.10.05 from the department alongwith the Inquiry Report dated 27.7.2005 and the CVC advice dated 23.9.05 relating to the third proceeding against the applicant.

Copies of the memorandum dated 4.10.2005 alongwith Inquiry Report dated 27.7.2005 and the CVC advice are annexed herewith and marked as **ANNEXURE - XVII, XVIII AND X IX respectively.**

Contd....

22. That the applicant begs to state that the Inquiry Officer in his inquiry report held that the charge that the applicant appointed the casual labourers as temporary status mazdoors on the basis of forged certificates was not established. But the applicant was surprised when he found that in the memorandum dated 4.10.2005 the disciplinary authority proposed to disagree with the findings of the inquiry officer and hold the charge as proved. The applicant states that while disagreeing with the findings of inquiry officer, the disciplinary authority didnot give any definite reason for such disagreement as well as its own findings on such charge, when infact the inquiry officer has held that the no case has been made out by the prosecution to prove the charge against the applicant. Moreover, the CVC in their advice has concurred with the findings of the department and advised for imposition of major penalty on him. As directed in the memorandum dated 4.10.05, the applicant submitted his representation on 16.11.2005, against the disagreement of the disciplinary authority with the findings of the inquiry officer.

Copy of the representation dated 16.11.05 is annexed herewith and marked as **ANNEXURE XX**

23. That subsequently the applicant received the inquiry reports, notice of disagreement by the disciplinary authority and CVC advice as enumerated below :

Sl No.	Letter No.	Inquiry Report	CVC advice	Finding of the Inquiry Officer
1	Memo. No. 8-186/01. Vig.II dated 18.10.05 (relating to the 4th proceeding)	dated 26.7.05	Concurs with the findings of the depart-ment by letter dated 28.9.05	Charge is not established

Contd....

2	Memo No. 8-167/01 Vig. II dated 18.10.05 (relating to the 5th proceeding)	dated 27.7.05	Concurs with the findings of the dept. by letter dated 23.9.05	-Do-
3	Memo No. 8-165/01 Vig-II dt. 18.10.05 (relating to the 6th proceeding)	dated 18.10.05	Concurs with the findings of the Dept. by letter dated 28.9.05	-Do-

The applicant states that the disciplinary authority in the above mentioned has disagreed without giving any definite reasons of disagreement with the findings of the inquiry officer. As directed in the above mentioned memos, the applicant submitted his representations on disagreement by the disciplinary authority on 17.11.05, 12.11.05 and 10.11.05 respectively. (The applicant craves leave of this Hon'ble Tribunal to produce and rely upon the above inquiry reports, memorandums of disagreement, CVC advises and representations at the time of hearing)

24. That, thereafter, the applicant became shocked and surprised to have received the order no. 8/15/2001-Vig.II dated 2.5.06 issued from the office of Respondent No. 2 on 19.5.06, whereby the President, the competent disciplinary authority accepting the advice of the UPSC tendered vide letter dated 7.4.06, imposed the penalty of reduction to a lower stage, by 3 stages in the time scale of pay of Rs. 14,300-400-18,300/- for a period of 2 years with the direction that the applicant will not earn increments of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay. It be stated that the above penalty relates to the 2nd disciplinary proceeding and this has already come into effect.

Copy of the order dated 2.5.06 alongwith the UPSC advice dated 7.4.06 are enclosed herewith and marked as **ANNEXURE - XXI AND XXII respectively.**

Contd....

25. That, on 23.5.06, the applicant was astounded when he received another order No. 8/180/2000- Vig.II dated 3.5.06 from the office of Respondent No. 2, whereby the President, the competent disciplinary authority, accepting the advice of the UPSC given by letter dated 31.3.06, imposed the penalty of reduction to a lower stage, by 3 stages in the time scale of pay of Rs. 14,300/- -400-18,300/- for a period of 2 years with the direction that the applicant will not earn increments of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of posting his future increments of pay.

Copy of the order dated 3.5.06 and UPSC advice dated 31.3.06 are enclosed herewith and marked as **ANNEXURE - XXIII AND XXIV respectively.**

26. That the applicant beg to state that he had given a single order conferring temporary status to 221 casual mazdoors and the authorities by splitting that order into 6 (six) departmental proceedings instead of conducting the same in a common proceeding has highly prejudiced him. Moreover, Rule 14 of CCS (CCA) Rules, 1965 does not contemplate multiplication of proceedings for one cause of action.

27. That the applicant begs to state that as stated in the preceding paragraphs the applicant has been imposed 2 (two) penalties of identical nature in 2 (two) of the 6 (six) proceedings and as such he apprehends that he shall be imposed penalties of similar nature in other 4 (four) proceedings which will cause irreparable loss and injury and as such being aggrieved he is approaching the Hon'ble Tribunal for relief.

28. That the reliefs prayed for in this application are consequential to one another.

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5. **GROUNDS FOR RELIEF WITH LEGAL PROVISIONS** :

I. For that the action of the authorities in initiating 6 (six) disciplinary proceedings against the applicant for issuing the provisional order dated 27.5.96 granting temporary status to 221 casual mazdoors/labourers is highly illegal, arbitrary and bad in law and as such the proceedings are liable to be quashed on this ground alone.

II. For that in the Inquiry Report dated 31.1.05, the Inquiry Officer held the charge against the applicant as proved but not fully and this was not based on any evidence on record but was based on surmises and conjectures and as such the Inquiry Report is bad in law on this ground only.

III. For that, the Disciplinary Authority in its memorandum dated 1.4.05 while disagreeing with the findings of the Inquiry Officer and proposing the charge to be fully proved (relating to the first (1) proceeding) did not give any clear and definite reason of disagreement with finding of the Inquiry Officer and its own finding by which it has come to conclusion of disagreement and as such the penalty imposed on the basis of unclear definite reason is illegal, arbitrary and bad in law and is liable to be quashed and set aside.

IV. For that, the Enquiry Officer in its report dated 18.12.04 (relating to the second proceeding) has held that the charges against the applicant as "NOT PROVED" and as such the action of the Disciplinary Authority in disagreeing with the findings of the Inquiry Officer without giving any reason shows non application of mind and as such the same is bad in law and is liable to be set aside.

V. For that, the Disciplinary Authority is required to apply its mind to the facts and circumstances of the case and then record its own findings on each imputation of misconduct giving reason for its finding to show

Contd....

that it has applied its mind to the case and that having not being done the entire proceeding and resultant penalty is bad in law and liable to be set aside.

VI. For that, the Union Public Service Commission while tendering advice to the Disciplinary Authority, should not have specified the particular penalty specially when they have no role in the matter of imposing penalty to the applicant and the Disciplinary Authority, by following what the UPSC has suggested, imposed the penalty without recording any reason for such imposition without proper application of mind and as such the action of the authorities is bad in law and is liable to be set aside.

VII. For that, the disciplinary authority while issuing the penalty order did not record any reasons as to why various contentions raised by the applicant in his representation against the disagreement did not appeal to him and as such the resultant penalty imposed is bad in law and is liable to be quashed and set aside.

VIII. For that the action of the authority in punishing the applicant twice for one cause of action is highly unreasonable in as much as the penalty imposed is too harsh and grossly disproportionate to the gravity of misconduct alleged and as such same is bad in law and liable to be set aside.

IX. For that, the disciplinary authority while recording the grounds for disagreement took into consideration extraneous matters and which were fully explained by the applicant and as such the purported findings of the disciplinary authority while disagreeing with the findings of Inquiry Officer is bad in law and is liable to be set aside.

X. For that, the manner in which the entire proceedings were conducted it will be apparent that the disciplinary authority did not applied its own

Contd....

mind and were guided by the advice tendered by authorities not recognised under the rules and as such the impugned orders imposing penalty are bad in law and liable to be set aside.

XI. For that, disciplinary authority while imposing the penalties didnot apply its mind independently and acted mechanically and as such the entire exercise is bad in law and is liable to be set aside.

XII. For that, the disciplinary authority while drawing up six different proceedings for a single cause of action did not take into consideration that the applicant would be penalised six times for the same offence and this has resulted in miscarriage of justice and as such the impugned action and orders are bad in law and liable to be set aside.

XIII. For that, the disciplinary authority while drawing up 6 (six) different proceedings for the same cause of action didnot consider the fact that the effect of drawing up 6 (six) different proceedings would result in excess punishment which would be disproportionate to the offence alleged and as such the proceedings and orders of penalty are bad in law and liable to be set aside.

XIV. For that, in any view, of the matter the action of the authorities in instituting 6 (six) different proceedings and imposing penalties is bad in law and on facts and as such the impugned action and orders are bad in law and liable to be set aside.

6. **DETAILS OF THE REMEDIES EXHAUSTED** :

The applicant states that the penalty orders has been issued by the President of India and therefore no appeal lies under the service rules.

Contd....

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

The applicant states that he had earlier filed O.A. No. 119/2004 and the same was disposed of by this Hon'ble Tribunal on 20.7.2004 directing the respondents to complete the six departmental proceedings within 6 (six) months from the date of receipt of the order.

The applicant later on also filed O.A. 47/2005 but the same was with drawn on 30.10.06 with liberty.

8. **RELIEF SOUGHT :**

It is, therefore prayed that Your Lordships' would be pleased to admit this application, call for the entire records of the case, ask the Respondents to showcause as to why the impugned action of the authorities in drawing up 6 (six) different proceedings for issuing order dated 27.5.96 (Annexure- II), and orders of penalties dated 2.5.06 (Annexure- XXI) dated 3.5.06 (Annexure - XXII) should not be set aside and quashed and after perusing the causes shown if any and hearing the parties, allow the application by setting aside the orders as prayed for and/or pass any other order or orders as Your Lordships may deem fit and proper.

And for this act of kindness the applicant as in duty bound shall ever pray.

Contd....

9. **INTERIM ORDER :**

It is, further prayed that pending disposal of this application Your Lordships would be pleased to stay the operation of the impugned orders of penalties dated 2.5.06 (Annexure- XXI) dated 3.5.06 (Annexure - XXII) and direct the authorities not to give effect to any order (s) that may be passed or already passed with regard to the remaining 4 other proceeding and/or pass any other order or orders as Your Lordships may deem fit and proper.

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

(i) I.P.O. No. 2BG932684.
(ii) Date of issue : 15.11.06.
(iii) Issued by : G.P.O., PANBAZAR.

11. **LIST OF ENCLOSURES :**

As stated in the Index.

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VERIFICATION

I, SRI MADHURYA KUMAR GOGOI, son of Late Debeswar Gogoi, resident of 2 C, Block A, Brindaban Apartment, Ganesh Mandir Path, New Guwahati -20, in the district of Kamrup Assam at present serving as Deputy General Manager (Planning and Administration) Office of the General Manager, Kamrup Telecom District, B.S.N.L., Panbazar, Guwahati - 781001 in the district of Kamrup do hereby state that I am the applicant and I verify that the contents of paragraphs 1,2,3,5,13,14,16,26,27 and 28. are true to my personal knowledge and those in paragraphs 4,6,7,8,9,10,11,12,15,17,18 19,20,21,22,23,24 and 25 are believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this 15th day of November, 2006 at Guwahati.

Date : 15.11.06.

Madhurya Kumar Gogoi

Place : GUWAHATI.

Signature of the applicant.

S-7

-22-

ANNEXURE-I

143

No.269-4/93-SMT-II
Government of India
Department of Telecommunications
STN Section

New Delhi.

To

All Heads of Telecom. Circles/Metro Telecom. Distt.
All Heads of other Administration Offices,
All Heads of Mtce. Regions/Project Circles.

Dated 17 Dec 1993

Subject: Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989 engaged in Circles After 30.3.85 and upto 22.6.88.

Sir,

I am directed to refer to this office order No.269-4/93-STN dated 25th June,1993, wherein orders were issued to extent the temporary status to all these Casual Mazdoors who were engaged by the Project Circles/Electrification Circles, during the period 31.3.85 to 22.6.88 and who were still continuing for such works where they were initially engaged and who were not absent for the last more than 365 days counting from the date of issue of the above said orders.

2. The matter has further been examined in this office and it is decided that all those Casual Mazdoors who were engaged by the Circles during the period from 31.3.85 to 22.6.88 and who are still continuing for such works in the Circles where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the above said scheme.

3. The engagement of Casual Mazdoors after 30.3.85, in violation of the instructions of the Head Quarter, has been viewed very seriously & it is decided that all past cases wherein recruitment has been made in violation of instructions of the Head Quarter dtd. 30.3.85 should also be analysed and disciplinary action be initiated against defaulting officers.

4. It has, also been decided that engagement of any Casual Mazdoors after the issue of this order should be viewed very seriously and brought to the notice of the appropriate authority for taking prompt and suitable action. This should be the personal responsibility of the Heads of Circles, concerned DE/Class-II officers and amount paid to such Casual Mazdoors towards wages should be recovered from the person who has recruited/ engaged Casual Labour in violation of these instructions.

5. It is further stated that the services of all the Casual Mazdoors who have not rendered at least 240 days (206 days in the case of Administrative Offices observing 5 days a week) of service in a year on the date of issue of these orders, should be

Attested by
Chowdhury
Adv

terminated after following the conditions as laid down in I.D. Act. 1947 under Section 25.F, G & H.

6. These orders are issued with the concurrence of Member (Finance) vide U.O. No.3811/93-FA-I dated 1.12.93.

Hindi version follows.

Yours faithfully,

Sd/-
(S.K. DHAWAN)
ASSISTANT DIRECTOR GENERAL(STN)

Copy to :-

1. All the Staff members of Department JCM
2. All Recognized Unions/Associations
3. Budget/TE-I/TE-II/SSA/CWC/PAT/NCS/SR Sections of the Telecom Commission.
4. SPB-I Section, Department of Posts, New Delhi.

No.TF/NE/STAFF-45/VOL-V Dated at GH. the 29.2.93

Copy to :-
All Directors & DEs under T/F → for necessary action.

Sd/-
Assistant Engineer(Admn)
O/o the CGMT Task Force
Guwahati-781003.

ANNEXURE - II

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DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE TDE, TEZPUR
TEZPUR-784001.

No.X-1/CMPT/96-97/Con-7 Dated at Tezpur the 27th May,96.

With reference to the CGMT, Assam Circle, Guwahati RJCM Minutes & C.O. forwarded under GMST/2/Vol-VI/58 dtd. 29.8.95 the under mentioned Casual Mazdoors/Part Time Casual Mazdoors are hereby conferred Temporary Status provisionally under the scheme "Casual Labour (Grant of temporary Status & Regularisation) with immediate effect.

The terms & conditions are as under :-

(I) Conferment of Temporary Status to the Casual Labours would not involve any change in their duties & responsibilities . The engagement will be on daily rate of pay on a need basis. They may be deployed any where within the recruitment unit/territorial Circles on the basis of availability of work.

(II) Each Casual Labours who acquire Temporary Status will not however, be brought on the permanent establishment unless they were selected through regular selection process for Group 'D' posts.

(III) Temporary Status would entitle the Casual Labourers to the following benefits.

(a) Wages at daily rate with reference to the minimum of the scale of pay for a regular Gr.'D' official including DA, HRA & CCA.

(b) Benefit in respect of increments in the pay scale will be admissible for every one year of service subject to performance of duty for at least 240 days in a year.

© Leave entitlement will be on a pro-rata basis, one day for every 10 days of work. Casual leave or any other kind of leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefit of encashment of leave on termination of service for any reason or their quieting service.

(d) Counting of 50% of service rendered under Temporary Status for the purpose of retirement benefit after their regularization.

(e) After rendering three years continuous service on attainment of Temporary Status the Casual Labourers would be treated at per with temporary Gr.'D' employees for the purpose of contribution of G.P.F. & would also further be eligible for the grant of Festival Advance/ Flood Advance on the same conditions as per applicable to temporary

Attested by
Choudhury
Adv.

7/3/06

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Gr.'D' employees, provided they furnish two sureties from permanent Govt. Servant of this department.

(f) Until they are regularized, they would be entitled to productivity linked bonus only at rates as applicable to casual labours.

(g) Despite conferment of temporary status, the service of a casual labourer may be dispensed with in accordance with the relevant positions of the industrial disputes Act,1947 on the ground of non availability of work. A casual labourer with temporary status can quit service by giving one month's notice.

(h) If a casual labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with they will not be entitled to the benefit of encashment of leave on termination of services.

(i) The payment will be given w.e.f. joining date.

N.B. Their names are not being arranged in order of seniority.

LIST OF CASUAL MAZDOORS/PART TIME MAZDOORS SELECTED FOR CONFERING TEMPORARY STATUS.

SL. NO.	NAME OF THE CASUAL MAZDOOR.	WORKING UNDER	DT.ENTRY IN DEPT.
	SDE(CABLE),TEZPUR.		
1.	Arabinda Halai	SDECABL	03/02/88
2.	Pulin Bora	SDECABL	05/03/88
3.	Prasanta Koch	SDECABL	05/03/88
4.	Digambar Das	SDECABL	08/03/88
5.	Babul Bhuyan	-	11/03/88
6.	Jitu Talukdar	-	11/03/88
7.	Basanta Bijoy Mahanta	-	15/03/88
8.	Rana Sur	-	15/03/88
9.	Sankar Ghatak	-	15/03/88
10.	Uttam Saha	-	20/03/88
11.	Ranjit Das	-	26/03/88
12.	Mahesh Deka	-	26/03/88
13.	Ghanashyam Lahkar	-	26/03/88
14.	Kamal Ch. Das	-	26/03/88
15.	Nripen Ch.Haloi	-	26/03/88
16.	Balin Das	-	26/03/88
17.	Nipul Choudhury	-	26/03/88

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18.	Pulak Haloi	SDECABL	26/03/88
19.	Bipul Nath	-	28/03/88
20.	Babul Saikia	-	28/03/88
21.	Bijit Bora	-	28/03/88
22.	Smt. Kalpana Saikia	-	28/03/88
23.	Ramesh Ch. Nath	-	28/03/88
24.	Pankaj Chetri	-	28/03/88
25.	Bhaben Ch. Saikia	-	28/03/88
26.	Anil Thakur	-	28/03/88
27.	Mridul Deka	-	30/03/88
28.	Puran Ch. Nath	-	20/03/88
29.	Balin Swargiary	-	30/03/88
30.	Bhagya Sangma	-	30/03/88

SDE (COMPUTER), TEZPUR

1.	Rajib Gogoi	SDECOM	01/01/88
2.	Dharani Swargiary	-	01/01/88
3.	Naba Kumar Sarma	-	01/01/88
4.	Arani Ch. Talukdar	-	01/01/88
5.	Mridul Kr. Das	-	01/02/88
6.	Nagen Saikia	-	01/02/88
7.	Dandhar Das	-	01/02/88

SDE(CONSTRUCTION),TEZPUR

1.	Jiten Kr. Sut	SDECONS	19/04/88
2.	Prasanna Sarania	-	20/04/88
3.	Indreswar Bhuyan	-	21/04/88
4.	Kandanpa Saikia	-	22/04/88
5.	Ranaprasad Bodo	-	23/04/88
6.	Pankaj Sutradhar	-	25/04/88

SDE(PHONES),CHARIALI

1.	Jitu Sarmah	SDECLI	01/01/88
2.	Jyoti Prasad Saikia	-	01/01/88
3.	Dhanpad Swargiary	-	01/01/88
4.	Juri Sarma	-	01/01/88
5.	Kishore Kr. Pathak	-	01/01/88
6.	Maina Borah/Khargeswar Bora	-	01/01/88
7.	Babul Saikia	-	01/01/88
8.	Paban Kataki	-	01/01/88
9.	Gobinda Bhuyan	-	01/01/88
10.	Biren Das	-	01/01/88

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11.	Gagan Bhuyan	SDECLI	01/01/88
12.	Jiten Sarma	-	01/01/88 *heldup
13.	Gobinda Borah	-	01/01/88
14.	Coniram Sarmah	-	01/01/88
15.	Prabhat Sarmah	-	01/01/88
16.	Ramdeb Bhakat	-	01/01/88 *heldup
17.	Tilak Bora	-	01/01/88
18.	Pranjal Kataki	-	01/01/88
19.	Abani Baruah	-	01/01/88
20.	Tunmoni Saikia	-	01/01/88
21.	Biren Bora	-	01/01/88
22.	Basanta Bhuyan	-	01/01/88
23.	Dharmendra Kr. Rai	-	01/01/88
24.	Pulin Borah	-	01/01/88
25.	Amika Barman	-	01/01/88
26.	Prabhat Kalita	-	15/02/88
27.	Deepen Bhuyan	-	15/02/88

*Held up due to non submission of Employment Exchange Card.

SDE(PHONES),DHEMAJI

1.	Bharat Basphore	SDEPDMJ	01/01/88
2.	Jayanta Phukan	-	01/01/88
3.	Kalyan Mech	-	01/02/88
4.	Biman Kr. Payeng	-	01/04/88
5.	Biren Duwarah	-	01/04/88
6.	Lila Ram Panyang	-	01/04/88
7.	Sunanda Sonowal	-	01/04/88
8.	Ananda Sonowal	-	01/04/88
9.	Monan Sonowal	-	01/04/88
10.	Nabin Sonowal	-	01/04/88
11.	Lolit Sonowal	-	01/04/88
12.	Prafulla Sonowal	-	01/04/88
13.	Cheni Ram Bora	-	01/05/88
14.	Robin Doley	-	01/05/88
15.	Khemachand Pegu	-	01/05/88
16.	Dinesh Pegu	-	01/05/88
17.	Kzamal Ch. Nath	-	01/05/88
18.	Babul Bora	-	24/04/88
19.	Kalipada Bora	-	23/03/88
20.	Thagi Ram Taye	-	25/03/88
21.	Bibekananda Pegu	-	25/03/88
22.	Gagan Deka	-	25/03/88

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SDE(PHONES), TEZPUR.

1.	Anil Kumar Das	SDEPTZ	01/01/88
2.	Ranjan Adhikari	-	01/01/88
3.	Shivjyoty Majumder	-	01/01/88
4.	Ujjal Mahanta	-	01/01/88
5.	Abdul Karim	-	01/02/88
6.	Dipak Deka	-	01/02/88
7.	Satya Ranjan Kalita	-	01/02/88
8.	Mahesh Baroi	-	01/02/88
9.	Resmi Acharjee	-	01/02/88
10.	Swadesh Seal	-	01/02/88
11.	Debasis Das	-	01/02/88
12.	Ajit Das	-	01/02/88
13.	Abdul Jabbar	-	01/02/88
14.	Chintumoni Borah	-	01/02/88
15.	Siba Pd. Sarmah	-	01/04/88
16.	Nabajyoty Deka	-	01/05/88
17.	Jadav Deka	-	01/05/88
18.	Nanki Devi	-	01/06/88
19.	Nayan Kalita	-	01/06/88
20.	Reba Kanta Saikia	-	01/06/88
21.	Dinen Ch. Deka	-	01/06/88
22.	Phulena Basphore	-	01/07/88 4 hrs a day.

SDE(PHONES), UDALGURI

1.	Rahini Kanta Basumatary	SDEPUDL	01/05/88
2.	Bhupen Barman	-	01/05/88
3.	Moinul Haque	-	01/05/88
4.	Mozamil Haque	-	01/05/88
5.	Rajat Bhattacharjee	-	01/05/88
6.	Jatin Saloi	-	01/05/88
7.	Miran Daimary	-	02/05/88
8.	Nabin Rava	-	02/05/88
9.	Dayaram Bodo	-	03/05/88
10.	Durlab Baruah	-	16/04/88
11.	Binendra Basumatary	-	18/04/88
12.	Rajin Kr. Bodo	-	24/04/88
13.	Baneswar Bodo	-	25/04/88
14.	Nigam Swargiary	-	26/04/88
15.	Sanjoy Dutta	-	26/04/88
16.	Narendra Basumatary	-	27/04/88
17.	Kamaleswar Narzary	-	28/04/88
18.	Vama Kt.Chamlagain	-	28/04/88

19.	Biar Ali	SDEPUDL	28/04/88
20.	Biran Rava	-	30/04/88
21.	Tandram Bodo	-	30/04/88

SDO(PHONES), TEZPUR

1.	Bhaba Kt. Sarma	SDOPTZ	01/01/88
2.	Rajkumar Kataki	-	01/01/88
3.	Pradip Sut	-	01/01/88
4.	Pulak Ch. Mahanta	-	01/01/88
5.	Pradip Kr. Bora	-	01/01/88
6.	Babul Ch. Das	-	01/01/88
7.	Pradip Borah	-	01/01/88
8.	Narendra Kataky	-	01/01/88
9.	Ganesh Das	-	01/01/88
10.	Nagina Ray	-	01/01/88
11.	Ramesh Katel	-	01/01/88
12.	Gautam Kr. Paul	-	01/01/88

SDO(T), MANGALDOI

1.	Swapan Kr. Saha	SDOTMLD	01/01/88
2.	Indira Borah	-	01/01/88
3.	Inarmal Gowala	-	01/01/88*heldup
4.	Gajen Baruah	-	01/01/88
5.	Samshad Alam	-	01/01/88
6.	Binod Ch. Bodo	-	01/01/88
7.	Mazidur Rahman	-	01/01/88
8.	Taizuddin Ahmed	-	01/01/88
9.	Rabin Ch. Bodo	-	01/01/88
10.	Khagendra Nath Deka	-	01/01/88
11.	Sartaz Ahmed	-	01/01/88
12.	Sadhi Ram Deka	-	01/01/88
13.	Maznur Ali	-	01/01/88
14.	Babul Ch. Kalita	-	01/01/88

- held up due to non submission of Employment Exchange Card.

SDO(T) NORTH LAKHIMPUR

1.	Balo Saikia	SDOTNMP	01/01/88
2.	Ratneswar Sonowal	-	01/01/88
3.	Rohit Sonowal	-	01/01/88
4.	Dambaru Chutia	-	01/01/88

5.	Dilip Neog	SDOTNMP	01/01/88
6.	Maina Sonowal	-	01/01/88
7.	Jogeswar Borah	-	01/01/88
8.	Gahin Sonowal	-	01/01/88
9.	Dimbeswar Sonowal	-	01/01/88
10.	Jiten thengal	-	01/01/88
11.	Mahendra Chelleng	-	01/01/88
12.	Dhaniram Basumatary	-	01/01/88
13.	Rebat Sonowal	-	01/01/88
14.	Dimbeswar Saikia	-	01/01/88
15.	Motilal Mili	-	01/01/88
16.	Gobin Sonowal	-	01/01/88
17.	Lohit Borah	-	01/01/88
18.	Ghana Sonowal	-	01/01/88
19.	Lakeswar Sonowal	-	01/01/88
20.	Niju Hazarika	-	01/01/88
21.	Dibya Sonowal	-	01/01/88
22.	Atul Sonowal	-	01/01/88
23.	Prafulla Sonowal	-	01/01/88
24.	Giridhar Saikia	-	01/01/88
25.	Upendra Nath Saikia	-	01/01/88
26.	Siba Gogoi	-	01/01/88
27.	Nirmal Pawe	-	01/01/88
28.	Rudra Thengal	-	01/01/88
29.	Tulan Thengal	-	01/01/88
30.	Khargeswar Sonowal	-	01/01/88
31.	Anil Nath	-	01/01/88
32.	Ghana Kt. Sonowal	-	01/01/88
33.	Maheswar Saikia	-	01/01/88
34.	Jogen Sonowal	-	01/10/88

SDO(T), TEZPUR

1.	Dipali Hazarika	SDOTTZ	01/01/88
2.	Dwijen Baishya	-	01/05/88
3.	Atul Ch. Deka	-	01/05/88
4.	Mazibur Rahman	-	01/05/88
5.	Phulena(Golapmani)Basphore	-	01/05/88 Heldup
6.	Parimal Sarkar	-	10/05/88
7.	Sakiram Mazhi	-	15/05/88
8.	Karuna Ch. Lahkar	-	15/05/88
9.	Biswajit Malakar	-	15/05/88
10.	Mina Das	-	15/05/88
11.	Paramita Dey	-	20/05/88
12.	Rupen Ch. Das	-	21/05/88

13.	Sanjoy Kr. Deb	SDOTTZ	21/05/88
14.	Dukhan Ray	-	21/05/88
15.	Anup Kr. Dutta	-	30/05/88
16.	Dina Kanta Ghatowal	-	01/06/88*heldup

- Held up due to non submission of Educational, Age Certificates & Employment Exchange card.

TDE, TEZPUR

1.	Manjula Das	TDETZ	01/01/88
2.	Sekhar Chetia	-	05/05/88
3.	Ranjan Das	-	05/05/88
4.	Aloke Shome	-	05/05/88
5.	Prasanta Das	-	05/05/88
6.	Sabitri Dasroy	-	07/05/88
7.	Ananda Rava	-	07/05/88
8.	Biswa Das	-	07/05/88
9.	Baneswar Baishya	-	07/05/88
10.	Rumi Kalita	-	07/05/88

Sd/-
TDE, Tezpur.

Copy for information to :-

1. CGMT/GH w.r.t. his letter No.
2. ADT(S&E),O/O CGMT,GH.
3. AMT/GH.
4. All Gr.'B' officers of Tezpur SSA
5. JAO's, SSS(Construction, Staff & General) O/O TDE,TZ.
6. Spares.
7. File No.E-38/CMPT/TZ.

Sd/-
TDE,Tezpur.

ANNEXURE-III

Government of India
Department of Telecommunications
Office of The Chief General Manager, Telecom: Assam Circle
Ulubari Guwahati-7

NO.Rectt-3/10/Loos/Pt-V Dated at Guwahati the 18-9-96

To

Confidential

Sri B.K.Goswami
Telecom Dist. Manager,
Tezpur

Sub:- Conferment of Temporary status .

Ref:- TDE,TZ Memo No. X-1/CMPT/TA/Conf./97-98/38 dated 7-4-97

The case is examined in the context of the reports submitted by Tezpur during the preceding years wherein he consistently mentioned that no Casual Mazdoor has been engaged in the Tezpur SSA after 31-3-85. It follows from these reports that there is no Casual Mazdoor in the SSA.Obviously there showed not,in the normal course, arise a situation necessiating the conferment of Temporary status.

The Temporary status has been confered solely on the basis of post facto certificate issued by line staff and countersigned by SDEs. Authenticity of these certificates has not been verified from Moster Roll paid voucher. There is also no supporting record indicating the sponsorship of Employment Exchange. The absence of these vital records has further complicated the issue and gives room for foulplay.

In view of the above anomally it has been decided to cancell the order conferring the Temporary status. This should be followed by a renewed exercise to identify the Casual Mazdoors entitled for Temporary status on the basis of authenticated records as shown above. The exercise has to be completed within a period of one month.Simultenously,the office who engaged the Casual Mazdoors in defiance of the ban order should be identified .I have been directed to request you to take action on the above line and to send detailed report in confidence.

(A.K.Cheleng)
Asstt. General Manager(Admn)
O/O The Chief General Manager,
Assam Telecom Circle Guwahati

Examine & take necessary action.
25/9/97

DE(P&A)

Attested by Chowdhury Adv

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ANNEXURE - IV

(TYPED COPY)

No. X-1/CMPT/96-97/CON-7 Dated : 20.10.97
Tezpur

With reference to the CGMT, Assam Telecom Circle, Gauhati office order No. Rectt. 3/10/Loos/Pt.V dated at Guwahati the 18.9.97, the provisional Conferment of Temporary status to the casual majdoor at Tezpur vide the TDE/ Tezp order No. X-1/CMPT/96-97/Con.7 dated 27.10.96 has been withdrawn with immediate effect. The entire exercise has to be completed within a period of one exercise from the date of issue of this letter. A xerox copy of the above order is enclosed for reference and evidence

O/C

Sd/- Illegible
(M.K. Gogoi)
DE (D & A), Tezpur.

Copy to :

1. The CGMT, Assam Telecom Circle, Gauhati for information and necessary action.
2. The TDM/Tezpur for information & necessary action.
3. The AGM (Admn.) Gauhati for information & necessary action.
4. All Grade B officers
5. The AO (cash)
6. File No. E.38/CMPT/Vol III

Sd/- Illegible
DE (D & A), Tezpur

Attested by.
Choudhury.

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ANNEXURE-V

(TYPED COPY)

DEPARTMENT OF TELECOMUNICATION
OFFICE OF THE TELECOM. DISTRICT MANAGER: TEZPUR

No. X-1/CMPT/96-97/Con. 7 dated at Tezpur, the 19.11.97

Memo No. X-1/CMPT/96-97/Con. 7 dated 20.10.97 issued by D. E (P&A), Tezpur may be treated as cancelled.

Sd/-
(B. K. Goswami)
Telecom. District Manager,
Tezpur- 784001

Copy to :-

1. The C.G.M.T., Assam Telecom Circle, Guwahati - for information.
2. The D.E. (P&A), Tezpur- for information & necessary action.
3. The A.G.M (Admn.), Guwahati for information.
4. All Group 'B' Officers
5. The A.O. (Cash), O/O TDM/Tezpur.
6. File No. E-33/CMPT/Vol-III.

Sd/- Illegible
Telecom. District Manager,
Tezpur- 784001

Attested by
Choudhury
Adv.

ANNEXURE-VI

(2)

No.8-180/2000-Vig.II
Government of India
Ministry of Communications
Department of Telecom

West Block-I, Wing-2
Ground Floor
R.K. Puram Sector-I
New Delhi-110066

Dated the 19th June 2001

MEMORANDUM

The President proposes to have an inquiry held against Shri M.K. Gogoi, formerly TDE, Tezpur and now Director RTTC, Guwahati under Rule 14 of the CCS (CCA) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures-III & IV).

A copy of the first stage advice of CVC for instituting major penalty proceedings against Shri M.K. Gogoi, is also enclosed.

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

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

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

5. Attention of Shri M.K. Gogoi is invited to Rule 20 of the CCS (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political

Contd... 2

Attested by
Advocate

Cancelled

or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri M.K. Gogoi is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.

6. Receipt of this Memorandum may be acknowledged.

By order and in the name of the President:

(OM PARKASH)
ADG III (VIG II)

Encl: As above.

Shri M.K. Gogoi,
Director,
RTTC, Guwahati,
(Through the CGM, BSNL, Assam Telecom Circle, Guwahati)

(A')

V8

ANNEXURE-I

Statement of article of charge framed against Shri M.K. Gogoi, formerly TDE, Tezpur and now Director RTTC Guwahati.

ARTICLE

That the said Shri M.K. Gogoi while functioning as TDE, Tezpur during 1996 committed serious irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him, regularised 34 numbers of Casual Mazdoors of North Lakshimpur as Temporary Status Mazdoors with mala fide intention although none of them was eligible for such regularisation that too without verifying the genuineness of the recommendations of different SDO's/SDE's and Experience Certificates issued by JTO/Lineman etc. and thus putting the Department to a huge financial loss.

Thus, by his above acts, the said Shri M.K. Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

By order and in the name of the President.

(OM PARKASH)
ADG III (VIG II)

one of S.D.O against whom similar charge was drawn he has been let-off & Government Punishment cannot be given

19/10/01

ANNEXURE-II

Statement of Imputations of misconduct/misbehaviour in support of article of charge framed against Shri M.K. Gogoi, formerly TDE, Tezpur and now Director, RTTC, Guwahati.

The said Shri M.K. Gogoi was functioning as TDE, Tezpur during 1996.

2. That the Directorate of Telecom, New Delhi issued a circular vide No. 269-4/93-STN-II dated 17-12-1993 for regularisation of Casual Labourers engaged in different circles of the Deptt. after 31-3-85 upto 22-6-88 and to appoint them as Temporary Status Mazdoors. In the said circular the following conditions are clearly mentioned in respect of the casual labourers, who are eligible for regularization under this scheme:

(i) It extended the temporary status to all those casual mazdoors who were engaged by the Project Circle/Electrification circles during the period from 31-3-85 to 22-6-88 and who were still continuing for such works where they were initially engaged and who were not absent for the last more than 365 days counting from the date of issue of the said order dated 17-12-93.

(ii) That all those causal mazdoors who were engaged as per the aforesaid Circular during the period from 31-3-85 to 22-6-88 and who are still continuing for such works in the circles, where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the said scheme.

(iii) The engagement of casual mazdoors after 30-3-85 in violation of instructions of the Head Quarter, has been viewed seriously and it is decided that all past cases wherein recruitment has been made in violation of instructions of the Head Quarter should also be analysed and disciplinary action be initiated against defaulting Officers.

(iv) That engagement of any casual mazdoor after the issue of the order should be viewed very seriously and brought to the notice of the appropriate authority for taking prompt and suitable action. This should be the personal responsibility of the Heads of Circles concerned/Class II Officers and amount paid to such Causal Mazdoors as wages should be recovered from the person(s) who has/have recruited/engaged casual mazdoors in violation of these instructions.

(v) That the services of all the casual mazdoors who have not rendered at least 240 days (206 days in case of Administrative Offices observing 5 days a week) of service in a

year on the date of issue of those orders, should be terminated after following the conditions as laid down in I.D. Act, 1947 under Sec, 25 F.G. & H

(vi) These orders are issued with concurrence of Member (Finance) vide UO No. 3811/93-FA-I dated 1-12-93.

3. That the above said circular/order dated 17-12-93 was sent to all Head of Telecom Circles, Metro Telecom district, all Heads of other Administrative Offices etc. The copy of this circular/order was circulated amongst the TDMs/TDEs under Assam Circle, Guwahati vide No. Rectt-3/10/General (E&R) for CGMT/Guwahati including TDE, Tezpur. The DE (P), Tezpur had also circulated the same to all Heads of Sub-Division vide endorsement No. E-98/Casual Labour/93-94/125 dated 28-1-1994 for information, guidance and necessary action.

4. That the field staff of Tezpur Telecom Division in collusion with these 34 persons, concerned JTOs and SDOs/SDEs, who issued 34 false and fabricated Experience Certificates in favour of the said 34 persons showing them as Casual Labourers working since 1988 to 1996 (Feb) and the same were got countersigned by the respective JTOs and SDOs/SDEs as a token of proof of their having worked under them without being based on any material evidences.

5. That the concerned SDOs/SDEs of Tezpur Telecom Division in collusion with Shri M.K. Gogoi, formerly TDE, Tezpur, forwarded all the Certificates to Shri M.K. Gogoi with their recommendation for consideration of the total 221 persons including these 34 casual mazdoors as Temporary Status Mazdoors (TSM). Shri M.K. Gogoi thereafter constituted a Selection Committee on 25-3-1996 with four persons namely (i) Shri P. Das, SDE (P), Tezpur (2) Shri U.C. Swargiary, AO (Cash), Tezpur (3) Shri D. Payeng SDO (P), Tezpur and (4) Shri A.K. Sarkar, SDE (HRD), O/o TDE, Tezpur for recommendation/selection of eligible casual labourers for regularisation as TSMs vide order No. X-1/CMPT/Tz/95-96/Con-I dated 25-3-96.

6. That the Selection Committee had prepared/got prepared gradation list of all total 221 casual labourers including these 34 casual mazdoors sub-division wise and recommended for their regularisation as TSMs. Shri M.K. Gogoi, formerly TDE, Tezpur knowing fully that the said gradation lists were bogus and with malafide intention passed order for regularisation of 221 persons as TSM within his Telecom Division vide No. X-1/CMPT/96-97/Con-7 dated 27-5-96 by putting interest the of Department in jeopardy.

7. That it was within the knowledge of Shri M.K. Gogoi that no casual labourers were engaged in his SSA w.e.f. 31-3-85 as Shri K. Subramanium, the then TDE, Tezpur had informed Shri S.C. Chakraborty, the then Asstt. Director Telecom (E&R), O/o CGMT, Assam Circle, Guwahati vide his letter No. E-38/CMPT/Vil.II/123 dated 7-12-93 in reply to a letter No. Rectt.3/10/Pt.III/5 dated 27-8-93 that no casual labourers were recruited in his SSA.

8. That Shri Gogoi had informed the Assam Telecom Circle vide his letter No. E-38/CMPT/94-95/168 dated 17-2-1995 and letter No. E-38/CMPT/Vol. III/96-97/15 dated 30-8-1996 that no casual labourers have been engaged in his division.

9. Even after appointing these 34 casual mazdoors conferring on them TSM status on 27-5-1996 Shri M.K. Gogoi was also found to have issued a false certificate to Shri M.K. Sudarsanam, DGM (Admn) vide his letter No. E-38/COMPT/VOL.III/96-97/15 dated 30-8-1996 certifying with reference to DGM's letter No. 1-3/COMPT/96 dated 20-8-1996 that no casual mazdoor was engaged in his division except 21 casual labourers in Traffic Wing on permanent basis. Shri M.K. Gogoi issued this letter when DGM wanted to fix responsibility for taking action against those who were responsible for making appointments of casual employees in spite of the ban order issued earlier.

10. Shri Gogoi again vide his letter No. X-1/COMPT/TZ/Confdl/29 dated 12-9-1996 addressed to A. Baruah, AD Employment Exchange intimated that no employment in Grade 'D' under his SSA was made in view of total ban in employment.

11. It is also revealed that Shri M.K. Sudarsanam, DGM (Admn) vide his DO letter addressed to Shri B.K. Goswami, TDM informed him that the statement furnished to them vide letter No. E-38/COMPT/VOL.III/96-97/15 dated 30-8-1996 and No. X-1/COMPT/96-97/21 dated 7-8-1996 were contradicting to the information given by their SSA, regarding casual mazdoor. He was aghast how a 'nil' report has been sent by their SSA and at the time of relaxation of the ban order, TDE had appointed these 34 casual employees as TSM in 1996. He requested Shri Goswami to look into the matter and fix responsibility on all erring officers.

12. On the basis of recommendation of Shri P.Das, formerly SDE (Phones), Tezpur, Shri M.K. Gogoi issued order vide No. S-I/COMPT/96-97/CON/24 dated 14-8-1996 selecting them as TSM.

Thus, by his above acts, the said Shri M.K. Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

ANNEXURE-III

List of documents by which the articles of charge framed against Shri M.K. Gogoi, formerly TDE, Tezpur and now Director, RTTC, Guwahati are proposed to be sustained.

1. Gradation list of casual labours under SDO (T), North Lakshimpur.
2. Letter No.A-20/96-97/88 dated 1-5-1996 of SDO (T), North Lakshimpur addressed to TDE/Tezpur.
3. Attested copy of School Transfer certificate No: 21 dated 23-8-1991 of Gagaldubi Janajajti High School, Gagaldubi of Shri Gohin Sonowal S/o Khatiram Sonowal.
4. Attested copy of HSLC passed school certificate of Miss Niju Hazarika D/o Suren Hazarika passed from Badhakara High School.
5. Attested copy of leaving certificate No. 44 dated 10-2-1991 of Ruddhar Tengal S/o Haliram Tengal of Bhurbandha Jalbhari M.E. School, Gereki.
6. Attested copy of transfer certificate No.433 dated nil of Gagamukh Nagar High School, Moinapara of Shri Anil Nath.
7. List of 33 casual Majdoors under SDOT, North Lakshimpur duly recommended for conferring the status of TSM by selection committee.
8. Letter No.A-20/95-96/87 dated 15-3-1996 of ADOT, North Lakshimpur addressed to TDE/Tezpur in R/o casual laboures engaged after 30-3-1985 to 22-6-1988.
9. Certicate to Ghanakanta Sonowal issued by G. Das, SI.
10. Certificate to Maheswar Saikia issued by G. Das, SI.
11. Certificate to Bolo Saikia issued by G. Das, SI.
12. Certificate dated 11-3-1996 to Ratneswar Sonowal by G. Das, SI.
13. Certificate dated 11-3-1996 to Rohit Sonowal isued by G. Das, SI.
14. Certificate dated 11-3-1996 to Dambaru Chetia by G. Das, SI.
15. Certificate dated 11-3-1996 to Dilip Neog by G. Das, SI.
16. Certificate dated 11-3-1996 to Maina Sonowal by G. Das, SI.
17. Certificate dated 11-3-1996 to Jogeswar Borah by G. Das, SI.
18. Certificate dated 11-3-1996 to Gohin Sonowal by G. Das, SI.

19. Certificate dated 11-3-1996 to Dimbeswar Sonowal by Maheswar Ray, SI.
20. Certificate dated 11-3-1996 to Jiten Thengal by Maheswar Ray, SI.
21. Certificate dated 11-3-1996 to Mahendra Chelleng by Maheswar Ray, SI.
22. Certificate dated 11-3-1996 to Dhaniram Bastumatary by Maheswar Ray, SI.
23. Certificate dated 11-3-1996 to Rebot Sonowal by Maheswar Ray, SI.
24. Certificate dated 11-3-1996 to Dimeswar Saikia by G. Das, SI.
25. Certificate dated 11-3-1996 to Motilal Mili by G. Das, SI.
26. Certificate dated 11-3-1996 to Gobin Sonowal by G. Das, SI.
27. Certificate dated 11-3-1996 to Lohit Bara (Sonowal) by G. Das, SI.
28. Certificate dated 11-3-1996 to Ghana Sonowal by G. Das, SI.
29. Certificate dated 11-3-1996 to Lokeswar Sonowal by G. Das, SI.
30. Certificate dated 11-3-1996 to Miss Niju Hazarika by G. Das, SI.
31. Certificate dated 11-3-1996 to Dibya Sonowal by Md. Taslim.
32. Certificate dated 11-3-1996 to Atul Sonowal by Md. Taslim.
33. Certificate dated 11-3-1996 to Prafulla Sonowal by Md. Taslim.
34. Certificate dated 11-3-1996 to Giridhar Saikia by Md. Taslim.
35. Certificate dated 11-3-1996 to Upendra Nath Saikia by Md. Taslim.
36. Certificate dated 11-3-1996 to Siba Gogoi by Md. Taslim.
37. Certificate dated 11-3-1996 to Nirmal Pawe by Md. Taslim.
38. Certificate dated 11-3-1996 to Jogen Sonowal by Md. Taslim
39. Certificate dated 11-3-1996 to Radha Thengal by G. Das, SI.
40. Certificate dated 11-3-1996 to Tulon Thengal by G. Das, SI.
41. Certificate dated 11-3-1996 to Khargeswar Sonowal by G. Das, SI.
42. Certificate dated 11-3-1996 to Babul Nath (a) Anil Nath by M. Ray, SI.
43. Absence statement of TSM under SDO (T), North Lakshimpur for the Month of June '96 to Oct' 97.
44. Absentee statement of TSM under SDO (P), North Lakshimpur for the month of September '96 to October' 97.
45. Statement of Salary of TSM under SDO (P), North Lakshimpur for June, July & August, 1996.
46. Attendance Register of TSM under SDO (T) North Lakshimpur.

47. Joining reports of TSMS.

48. Promotion order of Shri Guneswar Das and Md. Taslim order No. E-198/OTBP/88-89/149 dated 20-7-1988 of TDE, Tezpur.

49. Promotion order of Shri Guneswar Das and Md. Taslim as Lineman vide order No. E-198/OTBP/III dated 24-3-1997 of TDE, Tezpur.

50. Promotion order of Shri Maheswar Ray as Sub Inspector vide order No. E-198/OTBP/90-91/15 dated 7-6-1990 of TDE, Tezpur.

51. Joining report dated 22-4-1989, 26-6-1990 & 23-2-1997 earned leave application dated 30-12-1989, 6-9-1990, 1-6-1996 & C.L. application dated 2-1-1996 of Shri Maheswar Ray SI under SDOT, North Lakshimpur.

52. Joining report dated 21-1-1981 and Earned Leave application for 5 days w.e.f. 5-3-1995 dated Nil and dated 27-2-1986 of Shri Guneswar Das, SI under SDO (T). North Lakshimpur.

53. Joining order dated 5-12-1990 & Earned Leave applications dated 6-12-1989, 26-10-1990 15-5-1997 & 23-1-1998 of Md. Taslim the then SI under SDOT, North Lakshimpur.

54. Seizure memo dated 20-11-1997

55. -do - dated 6-6-1998.

56. - do - dated 23-7-1998.

57. - do - dated 8-9-1998.

58. - do - dated 16-11-1998.

59. Order No.X-1/CMPT/96-97/Con-7 dated 27-5-1996 of TDE, Tezpur in R/o regularisation of casual labours under SDOT, North Lakshimpur as TSM.

60. Letter No. E-38/CMPT/Vol. III/96-97/15 dated 30-8-1996 of TDE, Tezpur addressed to DGM (Admn), O/o CGMT, Assam Circle, Guwahati regarding engagement of casual labourers.

61. Letter No. X-1/CMPT/TZ/95-96/Confdl/1 dated 25-3-1996 of TDE, Tezpur in respect of constitution of selection committee for conferring casual labours to TSM.

62. Letter No. E-38/CMPT/94-95/168 dated 17-2-1995 of TDE, TZ addressed to Asstt. Director Telecom (E&R), O/o CGMT, Guwahati in respect of Nil report of casual labours w.e.f. 31-12-1993 onwards.

63. Letter No. E-38/CMPT/Vol.II/123 dated 7-12-1993 of TDE, Tezpur addressed to Asstt. Director Telecom (E&R), O/o CGMT, Guwahati in respect of Nil report of recruitment of casual labour after 31-3-1985.

64. Original letter No. 269-14/93-STN. II dated 17-12-1993 of Asstt. Director General (STN), New Delhi in respect of regularisation of casual labours engaged in circles after 30-3-1985 and upto 22-6-1988.

65. Letter No. 269-8/93-STN dated 29-7-1993 of Asstt. Director General (STN), New Delhi.

66. Letter No. Rectt. 3/10/Part.III/3 dated 26-8-1993 of Asstt. Director Telecom (E&R), O/o CGMT, GHY addressed to TDE, Tezpur.

67. Letter No. TDM/Tez/1005/CBI dated 11-8-1998 of Shri B.K. Goswami, TDM, Tezpur in respect of non-availability of payment documents ACG-17.

68. Letter No. 270/6/84-STN, New Delhi dated 30-3-1985 of Shri S. Krishnan, Director (ST), Posts & Telegraph in respect of banning of engagement of casual labours.

69. FIR of the case.

70. Part-III, Central Civil Services Group 'C' of CCS (CCA) Rules in respect of Authority competent to impose penalties under Rule 11.

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ANNEXURE-IV

List of witnesses by whom articles of charge framed against Shri M.K. Gogoi, formerly TDE, Tezpur and now Director, RTTC, Guwahati are proposed to be sustained.

1. Md. Islam Ahmed S/o Late Sh. Basiruddin Ahmed, Chief Accounts Officer, O/o TDM, Tezpur.
2. Shri B.K. Goswami, TDM, Tezpur R/o 100/5 Jessore Road, Dum-Dum, Bhagabati Park, Calcutta-74.
3. Shri Upen Swargeswary, Sr. Accounts Officer, O/o TDM, Tezpur R/o Indira Nagar, PS & PO- Tezpur, Sonitpur (Assam).
4. Shri Ajit Kumar Sarkar, the then SDE (HRD) and now SDO (T), Tezpur R/o Village & P.O. – Dhekiajuli Ward No. 6, District-Sonitpur.
5. Shri Dharmeswar Payeng, the then SDO (P), Tezpur and now DE (Phones), Jorhat R/o Town Bantu, North Lakshimpur, Ward. No. 14.
6. Shri P. Das, the then SDE (Phones), Tezpur.
7. Shri B.C. Pal, Asstt. Director Telecom (E&R), O/o CGMT, Guwahati.
8. Shri Gajanan Deuri, Sr. Section Supervision (S.S.S.) under SDOT North Lakshimpur S/o Late Shri Maya Singh Deuri R/o Nakari Nagar, Baptist Mission Path, P.O. & P.S. North Lakshimpur.
9. Shri N.C. Kakati, JSO under SDOT, North Lakshimpur.
10. Shri K. Barman, I.O. or the Case.
11. Shri Gunja Ram Deuri, Sr. Telecom Supervision, O/o SDO (P) North Lakshimpur.
12. Shri H.S. Debnath, JAO, O/o TDM, Tezpur.

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(TYPED COPY)

CONFIDENTIAL

NO. 000/P&T/070
GOVERNMENT OF INDIA
CENTRAL VIGILANCE COMMISSION

Satarkta Bhawan
TDE, IG PAO Complex
..... B lock - A, ...
New Delhi

4 Aug 2000

OFFICE MEMORANDUM

R.C No. 14 (A)/97-SHG against Shri M.K. Gogoi, the then TDE and others D/o- Telecom

Department of Telecom may please refer to their TED Note No. 9-41/ 2000- Vig . I dated 18.06.2000 on subject cited above.

Commission in consonance with the recommendations of the Department of Telecom advises initiation of major penalty proceedings against Shri M. K. Gogoi, the then TDE and 45 others. Department may hold inquiry proceedings by appointing their own I.O and revert to the Commission for second stage advice alongwith their recommendations emanated from the findings of I.O's report.

Department's F. No. 9-41/2000- Vig. 1 has already been returned vide Commission's D.O. letter No. 000/P & T/070 dated 19.07.2000

Sd/- Illegible
(S. M. Batra)
Director

Department of Telecom
(Shri Ranbir Khanna, Sr. DDG (V))
New Delhi.

DESPATCH UNIT
CMC
Received .....
issued Sign.....

Attested by
Adv

-46(A)- ANNEXURE-VII

BHARAT SANCHAR NIGAM LIMITED

(A Government of India Enterprise)

O/O THE G.M., KAMRUP TELECOM DISTRICT

Ulubari, Guwahati-781007.

No. GM/SDE(Vig)/X-106/01-02/2, Dated at Guwahati, The 26-03-2002.

To,

Sri M. K. Gogoi, AMT (East),
Telephone Exge. Bldg.,
Dispur, Guwahat-781005.

Subject :- *Memorandum Of Charge Sheet.*

Reference :- Vig / Assam / Disc. IX / 48, Dtd. 21-03-2002.

As directed, find enclosed herewith the Memorandum no. 8-15/2001-Vig. II, dtd. 07-03-2002 along with enclosures in origin received from ADG. III(Vig-II), New Delhi.

In this regard you are requested to send the following documents to this office at the earliest for onward transmission to the Circle VO, O/O The CGMT/GH.-

(1). Your dated acknowledgement of receipt of the above Memorandum in origin.
(2). Your Defence Statement in quadruplicate in origin.

Matter may please be treated as "Urgent" pl.

Enclo:- As above.

26/3

S.D.E.(Vig),
O/O The G.M., Kamrup Telecom District,
Ulubari, Guwahati-7

Attested by.
Advocate

ANNEXURE - VII

No.8-15/2001-Vig.II
Government of India
Ministry of Communications
Department of Telecom

West Block-I, Wing-2
Ground Floor
R.K. Puram Sector-I
New Delhi-110066

Dated 7-3-2002

MEMORANDUM

The President proposes to have an inquiry held against Shri M.K. Gogoi, formerly TDE, Tezpur and now Director, (RTTC), Guwahati under Rule 14 of the CCS (CCA) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures-III & IV).

A copy of the first stage advice of CVC for instituting major penalty proceedings against Shri M.K. Gogoi, is also enclosed.

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

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

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

5. Attention of Shri M.K. Gogoi is invited to Rule 20 of the CCS (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political

Contd.....2

Attested by
Chaudhury
Adv

or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri M.K. Gogoi is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.

6. Receipt of this Memorandum may be acknowledged.

By order and in the name of the President.

(OM PARKASH)
ADG III (VIG II)

Encl: As above.

Shri M.K. Gogoi.
Director (RTTC),
Guwahati
(Through the CGM, BSNL, Assam Circle, Guwahati

ANNEXURE-I

atement of Article of Charge framed against Shri M.K. Gogoi, formerly TDE, Tezpur d now Director, RTTC, Guwahati.

RTICLE

That the said Shri M.K. Gogoi while functioning as TDE, Tezpur during 1996 mmitted serous irregularities in as much as he in collusion with the Members of the election Committee constituted by him, regularized 22 numbers of Casual Mazdoors of DE (P), Tezpur as Temporary Status Mazdoors with mala fide intention although none them was eligible for such regularization that too without verifying the genuineness of e recommendations of different SDO's/SDE's and Experience Certificates issued by TO/Lineman etc. and thus putting the Department to a huge financial loss.

Thus, by his above acts, the said Shri M.K. Gogoi failed to maintain absolute ntegrity and devotion to duty and acted in a manner unbecoming of a Government ervant thereby contravening the provisions of Rule 3 (1) (i), (ii) & (iii) of CCS Conduct) Rules, 1964.

By order and in the name of the President.

(OM PARKASH)
ADG III (VIG II)

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ANNEXURE-II

Statement of imputations of misconduct/misbehaviour in support of Article of Charge framed against Shri M.K. Gogoi, formerly TDE, Tezpur and now Director, RTTC, Guwahati.

The said Shri M.K. Gogoi was functioning as TDE, Tezpur during 1996.

2. That the Directorate of Telecom, New Delhi issued a circular vide No. 269-4/93-STN-II dated 17-12-1993 for regularization of Casual Labourers engaged in different circles of the Deptt. after 31-3-1985 upto 22-6-1988 and to appoint them as Temporary Status Mazdoors. In the said circular, the following conditions are clearly mentioned in respect of the casual labourers, who are eligible for regularization under this scheme:

i) It extended the temporary status to all those casual mazdoors who were engaged by the Project Circle/Electrification circles during the period from 31-3-1985 to 22-6-1988 and who were still continuing for such works where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the said scheme.

ii) That all those casual mazdoors who were engaged as per the aforesaid Circular during the period from 31-3-1985 to 22-6-1988 and who are still continuing for such works in the circles, where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the said scheme.

iii) The engagement of causal mazdoors after 30-3-1985 in violation of instructions of the Head Quarter, has been viewed seriously and it is decided that all past cases wherein recruitment has been made in violation of instructions of the Head Quarter should also be analysed and disciplinary action be initiated against defaulting officers.

iv) That engagement of any casual mazdoor after the issue of the order should be viewed very seriously and brought to the notice of the appropriate authority for taking

prompt and suitable action. This should be the personal responsibility of the Heads of Circles concerned/Class II Officers and amount paid to such Casual Mazdoors as wages should be recovered from the person(s) who has/have recruited/engaged casual mazdoors in violation of these instructions.

v) That the services of all the casual mazdoors who have not rendered at least 240 days (206 days in case of Administrative Officers observing 5 days a week) of service in a year on the date of issue of those orders, should be terminated after following the conditions as laid down in I.D. Act, 1947 under Sec, 25 F.G. & H.

vi) These orders are issued with concurrence of Member (Finance) vide UO No. 3811/93-FA-1 dated 1-12-1993.

3. That the above said circular/order dated 17-12-1993 was sent to all Heads of Telecom Circles, Metro Telecom District, all Heads of other Administrative Offices etc. The copy of this circular/order was circulated amongst the TDMs/TDEs under Assam Circle, Guwahati vide No. Rectt-3/10/General (E&R) for CGMT/Guwahati including TDE, Tezpur. The DE (P), Tezpur had also also circulated the same to all Heads of Sub-Divisions vide endorsement No. E-98/Casual Labour/93-94/125 dated 28-1-1994 for information, guidance and necessary action.

4. That the field staff of Tezpur Telecom Division in collusion with these 22 persons, concerned JTOs and SDOs/SDEs, who issued 21 false and fabricated Experience Certificates in favour of the said 22 persons showing them as Casual Labourers working since 1988 to 1996 (Feb) and the same were got countersigned by the respective JTOs and SDOs/SDEs as a token of proof of their having worked as Casual Mazdoors under them without being based on any material evidences.

5. That the concerned SDOs/SDEs of Tezpur Telecom Division in collusion with Shri M.K. Gogoi, formerly TDE, Tezpur, forwaded all the Certificates to Shri M.K. Gogoi with their recommendation for consideration of the total 221 persons including these 22 casual mazdoors as Temporary Status Mazdoors (TSM). Shri M.K. Gogoi thereafter constituted a Selection Committee on 25-3-1996 with four persons namely (1) Shri P.Das, SDE (P), Tezpur (2) Shri U.C. Swargary. AO (Cash), Tezpur (3) Shri D.

Gyeng SDO (P), Tezpur and (4) Shri A.K. Sarkar, SDE (HRD), O/o TDE, Tezpur for recommendation/selection of eligible casual labourers for regularization as TSMs vide order No. X-1/CMPT/Tz/95-96/Con-1 dated 25-3-1996.

6. That the Selection Committee had prepared/got prepared gradation list of all total 221 casual labourers including these 22 casual mazdoors sub-division wise and recommended for their regularization as TSMs. Shri M.K. Gogoi, formerly TDE, Tezpur knowing fully that the said gradation lists were bogus and with malafide intention passed order for regularization of 221 (including these 22 casual mazdoors) persons as TSM within his Telecom Division vide No. X-1/CMPT/96-97/Con-7 dated 27-5-1996 by putting interest of the Department in jeopardy.

7. That it was within the knowledge of Shri M.K. Gogoi that no casual labourers were engaged in his SSA w.e.f. 31-3-1985 as Shri K. Subramanium, the then TDE, Tezpur had informed Shri S.C. Chakraborty, the then Asstt. Director Telecom (E&R), O/o CGMT, Assam Circle, Guwahati vide his letter No. E-38/CMPT/Vol. II dated 7.12.1993 in reply to a letter No. Rectt.3/10/Pt.III/5 dated 27-8-1993 that no casual labourers were recruited in his SSA.

8. That Shri Gogoi had informed the Assam Telecom Circle vide his letter No. E-38/CMPT/94-95/168 dated 17-2-1995 and letter No. E-38/CMOT/Vol.III/96-97 dated 13-8-1996 that no casual labourers have been engaged in his division.

9. Even after appointing these 22 casual mazdoors conferring on them TSM status on 27-5-1996 Shri M.K. Gogoi was also found to have issued a false certificate to Shri M.K. Sudarsanam, DGM (Admn) vide his letter No. E-38/COMPT/Vol. III/96-97/15 dated 30-8-1996 certifying with reference to DGM's letter No. 1-3/COMPT/96 dated 20-8-1996 that no casual mazdoor was engaged in his division except 21 casual labourers in Traffic Wing on permanent basis. Shri M.K. Gogoi issued this letter when DGM wanted to fix responsibility for taking action against those who were responsible for making appointments of casual employees in spite of the ban order issued earlier.

10. Shri Gogoi again vide his letter No. X-1/COMPT/Confdl/29 dated 12-9-1996 addressed to Shri A. Baruah, AD Employment Exchange intimated that no employment in Grade 'D' under his SSA was made in view of total ban in employment.

11. It is also revealed that Shri M.K. Sudarsanam, DGM (Admn) vide his DO letter addressed to Shri B.K. Goswami, TDM informed him that the statement furnished to them vide letter No. E-38/COMPT/Vol. III/96-97/15 dated 30-8-1996 and No. X-I/COMPT/96-97/21 dated 7-8-1996 were contradicting to the information given by their SSA, regarding casual mazdoors. He was aghast as to how a 'nil' report has been sent by their SSA and at the time of relaxation of the ban order, TDE had appointed these 22 casual employees of SDEP, Tezpur out of 221 casual employees as TSM in 1996. He requested Shri Goswami to look into the matter and fix responsibility on all erring officers.

12. On the basis of recommendation of Shri P. Das, formerly SDE (Phones), Tezpur, Shri M.K. Gogoi issued order vide No. S-I/COMPT/96-97/CON/24 dated 14-8-1996 selecting them as TSM.

Thus, by his above acts, the said Shri M.K. Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964

ANNEXT

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINS SHRI M.K. GOGOI FORMERLY TDE, TEZPUR NOW DIRECTOR, RTTC, GUWATI ARE PROPOSED TO BE SUSTAINED.

1. Certificate issued in favour of Smt.Chint Bora, D/O. Purna Bora by A.B.Dutta, P.I (2 sheets).

2. Certificate issued in favour of Sh.Nayan Kal S/O Lt. Dhaniram Kalita by Jiten Baruah, L.M. (sheets).

3. Certificate issued in favour of Abdul Jabbar S/ Dousuf Ali by Baiju Rai C/S (two sheets)

4. Certificate issued in favour of Banki Devi Bharat Ray by Medini Baruah, Tech (two sheets).

5. Certificate issued in favour of Dinen Ch.Das Lt. Surya Deka by Jiten Baruah, L.M. (two sheets)

6. Certificate issued in favour of Ranjan Adhik C.Adhikary by A.B.Dutta, P.I. for 1988, 1989 (two sh

7. Certificate issued in favour of Ranjan Adhi Medini Baruah, Tech for 1989 to 1996 (two sheets).

8. Certificate issued in favour of Ajit Das S. Ch.Das by Jogen Ch.Baruah,S.I. for 1988 to 1996 sheets).

9. Certificate issued in favour of Ajit Das D.Saha,JTO for 1996 (two sheets).

10. Certificate issued in favour of Shivjyoti S/O Lt. Arun Kr. Hazumar by A.B.Dutta, P.I. for 1991 (two sheets).

11. Certificate issued in favour of Shivjyoti by D.Saha ,JTO fro 1991 to 1996 (two sheets).

12. Certificate issued in favour of Dipak Deka Kanta Deka by A.B.Dutta, P.I. for 1988 to 199 sheets).

13. Certificate issued in favour of Dipak D.Saha,JTO for 1991 to 1996 (two sheets).

14. Certificate issued in favour of Satya Ran S/O Lt.Rupeswar Kalita by Jogen Ch.Baruah, S.I. for 1996.

15. Certificate issued in favour of Debasis A.K.Das by Jogen Ch.Baruah for 1988 to 1993 (two sh

16. Certificate issued in favour of Debasis Das to 1996 (two sheets).

17. Certificate issued in favour of Shadesh Lt. Paresh Seal by Jogen Ch.Baruah, S.I. for 1988 two sheets).

18. Certificate issued in favour of Shades Seal by Hemanta Bora for 1992 to 1996 (two sheets).

19. Certificate issued in favour of Reba Kanta Saikia S/O. Lt. Hari Kanta Saikia by Sukan Ray, S.I. for 1988 to 1996 (one Sheet).

20. Certificate issued in favour of Abdul Karim S/O. Lt. Esuf Ali by A.B.Dutta P.I. for 1988 to 1991 (two sheets).

21. Certificate issued in favour of Abdul Karim by Hemanta Bora TTA (PRX) for 1991 to 1996 (two sheets).

22. Certificate issued in favour of Jadav Deka S/O. Jagnu Deka by Baiju Rai C/S for 1988 to 1996 .

23. Certificate issued in favour of Mahesh Barol S/O. Lt. Manindra Barol by A.B.Dutta, P.I. for 1988 to 1992 (two sheets).

24. Certificate issued in favour of Mahesh Barol by Hemanta Bora for 1992 to 1996 (Two sheets).

25. Certificate issued in favour of Rashmi Acharjee D/O. Sushil Acharjee by A.B.Dutta, P.I. for 1988 and 1989 (two sheets).

26. Certificate issued in favour of Reshmi Acharjee by Sarat Hazarika, S.S(O) for 1990 to 1996 (two sheets).

27. Certificate issued in favour of Anil Kumar Das S/O. Kanak Ch.Das by A.B.Dutta, P.I. for 1988 to 1991 (two sheets).

28. Certificate issued in favour of Anil Kr. Das by Hemanta Bora, TTA(PRX) for 1991 to 1996 (two sheets).

29. Certificate issued in favour of Nabajyoti Deka S/O. Kamaleswar Deka for 1988 to 1996 by Baiju Rai, C/S (two sheets).

30. Certificate issued in favour of Shiva Prasad Sharma, S/O Lt. Hari Prasad Sharma by A.B.Dutta, P.I. for 1988 to 1996 (two sheets).

File No.8 of SDE(Phones) Tezpur Contains:

31. Recommendation sheet of Selection Committee in respect of Casual Labourers of 22 Nos. (four sheets).

32. List of twenty one no. daily rated Mazdoors vide letter No.E-27/DRM/95-96/9 dt. 1.3.96 of Shri Prantosh Das, SDE(Phones), Tezpur with his recommendation.

33. Request letter of Shri Siba Prasad Sharma for temporary Status Mazdoor with no. of days he worked yearwise from 1988 to 1996, duly certified and recommended by Sh.Prantosh Das, SDE (Phones), Tezpur.

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File No.1 of SDE (Phones), Tezpur.

34. Letter No.E-27/CM/96-97/2 dated 13.5.96 of P.Das,SDE(Phones), Tezpur addressed to Telecom District Engineer, Tezpur in r/o confering of TSM to Casual / part time labourers.

35. Gradation List of 22 Nos.Casual labourers duly recommended by Selection Committee.

36. Proforma of 22 Nos. Casual labourers submitted by P.Das, SDE (Phones), Tezpur (two sheets).

37. H.S.L.C.Examination passed Certifcate of Sh. Ajit Das, passed in 1992 from Vivekananda Vidyapeeth H.S.School,Tezpur (attested copy).

38. H.S.L.C.Exam.passed certificate of Abdul Jabbar passed in 1989 from Barmi High School, Barmi, Kamrup, now Dist. Nalbari (attested copy).

39. ADMIT Card to H.SL.C. Exam - 1995 of Miss Chintamani Bora of SEBA No.62573 (attested copy).

40. ADMIT Card No.128702 and Certificate to H.S.L.C.Examination in 1991 of Nayan Kalita (2 Nos. attested copy).

41. H.S.L.C.Passed certificate of Sh.Navajyoti Deka passed in 1990 as a regular candidate from Tezpur Govt. H.S. School (attested copy).

42. Certificate No.480 dt. 12.3.96 of H.S.L.C. Exam. 1991 passed Certificate of Sh.Jadav Deka.

45. Promotion / Posting order of Sh.Sarat Ch.Hazarika w.e.f. 20.4.88 vide order No.E-148/OTBP/90-91/45 dt. 25.9.90 of T.D.E., Tezpur.

46. Joining report dt. 17.7.96 of Sh.Hemanta Bora as TTA (PRX), Tezpur.

47. Posting Order No.E-4/P1/TFR/83-84/218 dt. 30.7.83 of DET, Tezpur in r/o. posting of Sh. Ashim Bijoy Dutta as Phone Inspector (P.I.) w.e.f. 9.7.83.

48. Joining report dt. 9.7.83 of Sh.Ashim Bijoy Dutta, as P.I..

49. Posting Order No.E-12/LM/84-85/223 dt.18.10.84 of Shri Jiten Barma as Lineman at Tezpur.

50. Letter No.X-I/CMPT/96-97/CON-7 dt. 27.5.96 of TDE, Tezpur in r/o order for regularisation of Casual Labourers under SDE(P) Tezpur as TSM (relevant file page- 4) (total 7 sheets) original in RC.10(A)/97).

51. Joining report of Sh.Shibjyoti Mazumdar dt. 30.5.96 as TSM.

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52. Joining report of Sh. Nanki Devi, dt. 30.5.96 TSM.

53. Joining report of Sh.Ujjal Mahanta dt. 30.5.96 TSM.

54. Joining report of Sh.Ajit Das, dt. 30.5.97 as TSM.

55. Joining report of Sh.Swadesh Sh11 dt. 30.5.96 TSM.

56. Joining report of Sh. Reshmi Acharjee dt. 30.5.96 TSM.

57. Joining report of Miss Chintamani Bora, dt. 30.5. as TSM.

58. Joining report of Sh.Debasis Das dt. 30.5.96 as TS

59. Joining report of Sh. Reba Kanta Saikia dt. 30.5. as TSM.

60. Joining report of Sh.Jadav Deka dt. 30.5.96 as TSM

Joining report of Abdul Jabbar dt. 30.5.96 as TSM.

62. Joining report of Dinen Deka dt. 30.5.96 as TSM.

63. Joining report of Nayan Kalita dt. 30.5.96 as TSM.

64. Joining report of Ranjan Adhikary dt. 30.5.96 TSM.

65. Joining report of Mahesh Barol dt. 30.5.96 as TSM.

66. Joining report of Satya Ranjan Kalita dt. 30.5.96 TSM.

67. Joining report of Abdul Karim dt. 30.5.96 as TSM.

68. Joining report of Dipak Deka dt. 30.5.96 as TSM.

69. Joining report of P.Basphare dt. 30.5.96 as TSM.

70. Joining report of Anil Kr.Das dt. 30.5.96 as TSM.

71. Joining report of Nabajyoti Deka dt. 30.5.96 as TSM

72. Acquittance Roll in r/o. TSM under (Phones)Tezpur for June, July, and August, 1996 (Total Sheets).

73. Attendance Register of TSM under SDE(P) Tezpur June'96 to Nov.'97 in respect of TezpurTelephone TK Expn.

74. Attendance Register of TSM under SDE(P) Tezpur June '96 to Feb'98 in r/o Tezpur Telephone Expn.

75. Attendance register of TSM under SDE(P) Tezpur June '96 to Nov '97 in r/o O/O SDE(Phones) Tezpur.

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76. Letter No.E-38/CMPT/VOL-III/96-97/15 dt. 30.8.96 of TDE,Tezpur addressed to Dy.GM (Admn) O/O CGMT,Assam Circle, Guwahati regarding engagement of casual labourer (File No. X-I/CMPT/TZ/Confdl.,1996 relevant page 72).

(original at Sl. No.2406 listed documents in RC.10(A)/97-SHG)

77. Letter No. X-I/CMPT/TZ/95-96/Confdl/1 dt. 25.8.96 of TDE,Tezpur in r/o. constitution of selection committee for confering casual labourers to TSM (File No.X-I/CMPT/TZ/Confdl,1996 relevant page -15).

(Original letter listed document Sl.No.26 in RC. 10(A)/97-SHG).

78. Letter No.E-38/CMPT/94-95/168 dt. 17.2.95 of TDE,Tezpur,addressed to Asstt. Director Telecom (E&R),O/O DGMT,Guwahati in r/o. NIL report of Casual Mazdoor w.e.f. 31.12.93 onward (File No.Rectt-3/10(Part-II)/Loose. Rectt-3/10/Part-II of O/O CGMT,Guwahati relevant pag- 117).

(Original letter at listed document S.No.28 in in Rc.10(A)/97-SHG).

79. Letter No.E-38/CMPT/Vol-III/123 Dt. 7.12.93 of TDE, Tezpur addressed to Asstt. Director Telecom(E&R). O/O CGMT, Guwahati in r/o NIL report of recruitment of Casual Labour after 31.3.85 (File No.Rectt.3/10(Part-II)/Loose, Rectt.3/10/Part-III of O/O CGMT,Guwahati relevant page -76)

(Original letter at listed document at Sl.No.29 in RC.10(A)/97-SHG).

80. Original letrter No.269-4/93-STN-II dt. 17/12.93 of Asstt. Director General (STN) New Delhi in r/o regularisation of Casual labourers engaged in Circles after 30.3.85 and upto 22.6.88.(File No. Rectt.3/10(Part-II)/Loose, Rectt. 3/10/Part-III of O/O CGMT,Guwahati,relevant page-35)

(original letter listed document Sl.No.30 in RC.10(A)/97-SHG).

81. Letter No.269-8/43-STN dt. 29.7.93 of Asstt. Director General (STN), New Delhi.

82. L/No. rectt.3/10/Part-III/3 dated 26.8.93 of Asstt. Director Telecom (E&R) O/O CGMT,Guwahati addressed to TDE, Tezpur.

(Sl.No.81 and 82 are in the same file at Sl No.79 above).

83. Letter No.E-38/CMPT/VOL.III/96-97/15 Dt.30.8.96 of TDE, Tezpur addressed to Dy.GM (Admn), O/O CGMT,Guwahati in r/o. engagement of Casual labour (NIL report) (File No.Rectt.3/10/Part-V of O/O CGMT,Guwahati,relevant page-4).

(Original letter at listed document Sl.No.33 in RC.10(A)/97-SHG).

	D/No. FDM/TEZ/1005/CBI dt. 11.8.98 of Shri D.K. Goswami, FDM/Tezpur to I/c non availability of Arc 17 Stones (Total Qty. 10(A)/97-SHG).pdf	Page -2) (Original letter at Sl.No.58 of
	D/No. 270/6/84-SIU, New Delhi dt. 30.3.9185 of Sh. Krishnan, Director (SIU), posted Telegraph In I/c banning engagement of Casual labour (attested copy)
	(Original (A(A)/97-SHG).pdf	at Sl. No.59 of listed documents In
86.	Seizure Memo dt. 16.11.98	
87.	Seizure memo dt. 6.11.98	

88. FIR of Case No. Re. 13 (A)/97-SGH.

89. Any other document which may be considered relevant.

ANNEXURE-IV

List of witnesses by whom Article of Charge framed against Shri M.K. Gogoi, formerly TDE, Tezpur and now Director, RTTC, Guwahati are proposed to be sustained.

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1. M. Islam Ahmed S/o Late Shri Basiruddin Ahmed, Chief Accounts Officer, O/o TDM, Tezpur.

2. Shri B.K. Goswami, TDM, Tezpur R/o 100/5 Jessore Road, Dum-Dum, Bhagabati Park, Calcutta-74.

3. Shri B.C. Pal. Asstt. Director Telecom (E&R), O/o CGMT, Guwahati.

4. Shri Babul Ch. Nath S/o Late Upen Ch. Nath, Telecom Office Asstt. (TDA), O/o TDM, Tezpur. Vill: Saikia Suburi, P.O. Dekragaon, P.S. Mission Chariali, Distt. Sonitpur (Assam)

5. Shri Badal Saha, SS (O), O/o TDM, Tezpur, S/o Radha Raman Saha, Vill. Tengabari, PO & PS Mangaldai, Dist. Darrang (Assam).

6. Shri K. Barman, Inspector, CBI, ACB, Guwahati (IO).

7. Shri Maheswar Bhuyan, SDE (Cable), Tezpur.

8. Shri H.S. Debnath, JAO, O/o TDM, Tezpur.

CENTRAL VIGILANCE COMMISSION

Commission in consonance with the recommendations of the C.B.I and the Department of Telecom advises initiation of major penalty proceedings against following officers:-

1. Shri M.K.Goyal, the then TDM
2. A.K.Barkar, the then SDE
3. D.Payeng, the then ADO
4. U.Barthary, the then AO
5. Prantosh Das, the then SDE(P)
6. Manoj Karki, the then JTO
7. Harendra Ch. Paul, JTO
8. Dhiranjan Deka, JTO
9. Jogen Ch.Baruah, the then SI,
10. Raju Rai, the then Cable Splicer,
11. Sukan Rai, the then PSI
12. Ashim Bijoy Dutta, the then Instr.
13. Jiten Baruah, Lineman
14. Hemanta Kr. Borah,
15. Sarat Hazarika, the then SS
16. Madini Kr. Borah, the then Tech.
17. Mahesh Barot, TSM
18. Anil Kumar Das, TSM
19. Shivjoti Mazumdar, TSM
20. Md. Abdul Karim, TSM
21. Ranjan Adhikari, TSM
22. Dipak Deka, TSM
23. Mina Kashmi Goharjee, TSM
24. Swadesh Ghil, TSM
25. Debasis Das, TSM
26. Ajit Das, TSM
27. Md. Abdul Jabbar, TSM
28. Smti Chintamoni Borah, TSM
29. Nanki Devi, TSM
30. Nayan Kalita, TSM
31. Jadav Deka, TSM
32. Siba Prasad Sharma, TSM
33. Reba Kanta Saikia, TSM
34. Dinen Ch. Deka, TSM
35. Satya Ranjan Kalita, TSM

The Department is also advised to conduct inquiry proceedings by appointing their own I.O and revert to the Commission for 2nd stage advice after conclusion of the proceedings alongwith their recommendations thereon emanated from the findings of I.O's report.

Department's F.No. 9-97/2000-VTg.I is returned herewith.

(S.M.Batra)
Director

Department of Telecom(Sh.Ranbir Khanna,Sr.DDG(V)N.Delhi.

C.V.C's I.O Note No. 000/P&T/069 dated

Encl: As above

28 NOV 2000

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ANNEXURE-VIII

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BHARAT SANCHAR NIGAM LIMITED

(A GOVT OF INDIA ENTERPRISE)

O/o THE GENERAL MANAGER, KAMRUP TELECOM DISTRICT

ULUBARI, GUWAHATI-781007.

No. GM/SDE(Vig)/X-115/03-04/02, Dated at Guwahati, The 17-10-2003.

Shri Madhurya Kr. Gogoi,
Area Manager (West),
Telephone Exchange Building,
Panbazar, Guwahati - 781001.

Subject :- Memorandum.

Reference :- Memorandum No. 8-181/2001-Vig.II, dtd. 11-09-2003

Reference to above, enclosed find here with a Memorandum vide no. 8-181/2001-Vig.II, dtd. 11-09-2003 issued by Shri S. D. Kaushik, Assistant Director General (VT), O/O The Sr. DDG (Vig), New Delhi along with Annexure I, II, III & IV.

The acknowledgement receipt of the Memorandum and your Defence Statement i.r.o. the said Memorandum if any, may be sent to the this office (each in quadruplicate in original) for onward transmission to V.O. O/O The CGMT, Assam Telecom Circle Guwahati for his further necessary disposal.

Encl:-
1) Memorandum
2) C.V.C Advice

17-X

General Manager, BSNL,
Kamrup Telecom District, Ulubari,
Guwahati - 781007.

Attested by
Advocate

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No.8-181/2001-Vig.II
Government of India
Ministry of Communications & Information Technology
Department of Telecommunications
(Vigilance Wing)

West Block-1, Wing-2,
R.K. Puram, New Delhi-66.

Dated 11-9-2003

MEMORANDUM

The President proposes to have an inquiry held against Shri Madhurya Kr. Gogoi, the then TDE, Tezpur, presently Area Manager, Assam Telecom Circle under Rule 14 of the CCS(CCA) Rules, 1965. A substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexures III & IV). A copy of the first stage advice of CVC for instituting major penalty proceedings against Shri Madhurya Kr. Gogoi is also enclosed.

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

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

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

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

6. Receipt of this Memorandum may be acknowledged by Shri Madhurya Kr. Gogoi.

By order and in the name of the President.

(S.D. Kaushik)
Assistant Director General (VT)

Shri Madhurya Kr. Gogoi,
Area Manager
BSNL
Assam Telecom Circle
Guwahati.
(Through CGMT, Assam Circle)

ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI M.K.GOGOI THE THEN TDE, TEZPUR NOW AREA MANAGER, ASSAM TELECOM CIRCLE

That the said Shri M.K.Gogoi while posted and functioning as TDE, Tezpur, now Area Manager, Assam Telecom Circle, during 1996 committed serious irregularities in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoor in Tezpur SSA including 22 in Dhemaji Sub-Division on the basis of forged experience certificates.

By his above acts, Shri M.K.Gogoi failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant thereby violating Rule 3(1) (i),(ii) and (iii) of CCS(Conduct) Rules 1964.

By order and in the name of the President.

(S.D.Kaushik)
Assistant Director General (VT)

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ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI M.K.GOGOI, THE THEN TDE, TEZPUR, NOW AREA MANAGER, ASSAM TELECOM CIRCLE

It is alleged that Shri M.K.Gogoi while posted and functioning as TDE Tezpur during 1996 failed to maintain absolute integrity and utmost devotion to duty and acted in a manner unbecoming of a Govt. servant in as much as he appointed 221 casual labourers as Temporary Status Mazdoors (TSM) in Tezpur Division including 22 in Dhemaji Sub-Division on the basis of forged experience certificates in the context of following facts and circumstances.

i) Whereas it is alleged that Shri M.K.Gogoi was posted as TDE, Tezpur during 1996.

ii) Whereas it is alleged that TSM scheme was introduced by the Department of Telecom to regularize Casual labourers engaged between 30-3-85 and 22-6-88 and it was circulated to different circles vide letter No. 296/4/93-STN dtd. 17-12-93. As per the scheme, a Casual labourer should complete at least 240 days when engaged in field work or 206 days when engaged in office and he should not be absent from his duties last 365 days from the date of issuance of the Circular. The casual labourers should also be engaged on Muster Roll basis.

iii) Whereas it is alleged that Shri K.Balasubramaniam, TDE Tezpur had submitted a report through his letter No. E-38/CMPT/Vol.II/123 dtd. 7-12-93 stating that no casual labourer was recruited in Tezpur Division after 31-3-85. A similar NIL reply was sent to Telecom commission, Head Quarter, New Delhi by Sh. D.Payeng, the then SDO i/c of O/o TDE, Tezpur vide letter No. E-38/CMPT/Vol.II/167 dtd 8-12-94.

iv). Whereas it is alleged that the Casual labour can be engaged by SDO/SDE office on Muster roll basis as per Rule 150-170 given in Post and Telegraph Financial Hand Book-III Part-I. However, the engagement on Muster Roll basis was stopped from 30-3-85. The Muster Roll is stored permanently in the Office of TDE. The Casual Labour can also be engaged on ACG-17 basis to attend to works of emergency nature. No attendance register is maintained in this case. The ACG-17 payment vouchers are forwarded to the TDE office and only a broad ACE-2 account is maintained in the O/O SDE. Thus, no permanent records regarding the number of working days against particular orders for the casual laoburers are available in the O/O SDE/SDO or with the field staff as such Line Man, Line Inspector, Sub-Inspector and Phone Inspector.

v) Whereas, it is alleged that Shri B.K.Panyeng, the then P.I, P.C.Dowrah, the then SI, Indreswar Baruah, the then SI , Baijnath Prasad, L.I, J.C.Tamuli, SI issued 22 NOs. of false and fabricated experience certificates in favour of 22 casual labourers showing them as Casual labourers working since 1988 to February, 1996 in the O/O SDE(P) Dhemaji and Shri M.N.Pegu, the then SDE(P) Dhemaji alongwith S/Sh B.D.Pegu, SDE(P), Dhemaji countersigned the experience certificates without verifying the records and knowing that no records exists for the same and forwarded them to Sh. M.K.Gogoi, the then TDE, Tezpur. Shri Gogoi appointed these 22 persons as Temporary Status Mazdoor (TSM) on the basis of the recommendations of the members of the Departmental Promotion Committee (DPC) viz.S/Shri

D.Payeng, the then SDE(P) Tezpur, P.Das, the then SDOP Tezpur, A K.Sarkar the then SDO(HRD), U. Swargiary, the then AO(Cash).

vi) Whereas, it is alleged tht Shri M.K.Gogoi knew that no permanent records are maintained in the SDE office regarding the engagement of Casual Labourers either on Muster Roll basis or on ACG-17 basis as only broad ACE-2 accounts is maintained in SDE office. The permanent records are kept in his own office i.e. the O/O TDE Tezpur . Thus he appointed 221 Casual labourers including 22 in Dhemaji Sub-Division as TSM on the basis of the forged experience certificates in which the number of working days of a casual labourer in corresponding years from 1988 to 1996 were filled up by the field staff by sheer imagination. He knew that none of the field staff have records to support the certificates given by them as no records are available with the field staff such as Lineman, Line Inspector , Sub-Inspector , Phone Inspector , JTO.

vii) Whereas it is alleged that Shri M.K.Gogoi did not verify the genuineness of the experience certificates before appointing the Casual labourers as TSM's. Though the Muster Roll Register is stored in the office of TDE, Sh. M.K.Gogoi did not check the Muster Roll Register. He also did not verify the ACG-17 payment vouchers before passing the order of appointment of TSM's.

viii) Whereas, it is alleged that Shri M.K. Gogoi appointed 221 casual labourers as TSMs in Tezpur division including 22 in Dhemaji Division without obtaining approval of Telecom Commission, Head quarter and without giving an intimation to the CGMT, Assam Circle, Guwahati. But when he was asked to explain by Sh. S.K.Kayal, Area Director Telecom, Guwahati vide letter No. AMD-GH/CORR/96 dtd. 28-6-96, he deliberately gave a wrong and misleading reply vide letter No. X-1/CMPT/96-97/21 dtd. 7-7-96 explaining the DOT order for the appointment had been obtained and quoted the letter reference number which in fact, is the original Circular under which appointment was to be done. Likewise , while explaining the circumstances under which such recruitment was resorted to Shri M.K.Gogoi referred to the RJCMs meeting quoting minutes No. CMPT/L/Vol-VI/58 dtd. May 1996 whereas in the said minutes, there is no reference to the appointment of TSM under Tezpur Division at all.

ix) Whereas it is alleged that Shri M.K.Gogoi joined as TDE in the Tezpur Division in Jan'95. In Feb'95 he had sent a letter to the then Area Director Telecom (E & R) , Shri M.Biswas of the O/O CGMT Guwahati in which he has stated that from 31-12-93 onwards no candidate was given TSM status nor there was any candidate yet to be regularized as TSM. Thus, Sh. M.K.Gogoi had the full knowledge that there was no casual laborers under Tezpur Division eligible for appointment as TSM. Even if the casual laborers were not appointed as TSM on Muster roll basis but were appointed on ACG-17/ACE-2 basis even then their records relating to their appointments i.e. ACG-17 payment vouchers are preserved in the TDE office for a temporary period of two years. In view of the above fact TDE was well aware of the fact that the experience certificate submitted by different accused persons in favour of the casual laborers concerned were bogus ones, as there was no record to support those certificates.

By his above acts, Shri M.K.Gogoi failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant thereby violating Rule 3(1) (i),(ii) and (iii) of CCS(Conduct) Rules 1964.

ANNEXURE-III

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SHRI M.K.GOGOI THE THEN TDE, TEZPUR, NOW AREA MANAGER, ASSAM TELECOM CIRCLE ARE PROPOSED TO BE SUSTAINED.

1) E-38/CMPT/94-95/168 Tz dtd. 17-2-95 giving details of TSM employed after 1989 written by Shri M.K.Gogoi TDE Tezpur .
2) Letter No. E-38/CMPT/Vol-II/167 Tz dtd. 8-12-94 written by D.Payeng SDOP (I/c) (Page 106)
3) Letter NO. AMT-GH/Corr/96 dtd. 28-6-96 written by Shri S.K.Koyal, Area Director GH.
4) Letter No. ZX-1/CMPT/96-97/21 dtd. 7-7-96 written by Shri M.K.Gogoi to AMT GH.
5) X-1/CMPT/Tz/95-96/Confdl/Tz dtd. 25-3-96 regarding constitution of DPC (Page-15)
6) Minutes of meeting of RJCM item –38 (Page-5)
7) E-38/CMPT/Vol-III/ 123 Tz dtd. 9-12-93
8) Letter No. 269-4/95-STN-II dtd. 17-12-93 of ADG(STN) New Delhi in regard of CL engagements in Circle after 30-3-85 upto 22-6-88
9) Letter No. 270/6/84-STN New Delhi dtd. 30-3-85 Barring engagement of casual labours .
10) DO No. Rectt 3/10/Pt.V dtd. 25-7-97 written by CGMT violation of name of Muster roll and sponsorship form of employment exge (Page-77)
11) Letter No. Estt 9/12 dtd. 30-6-2000 written by A.K.Challeng.
12) No. X-1/CMPT/96-97/CON-7 dtd. 27-5-96 by TDE Tz.
13) X-1/DMJ/96-97 DMJ dtd. 14-5-96 issued by B.D.Pegu forwarding a list of 22 casual labours (Page-83).
14) Certificate of Prafulla sonowal, Sunanda Sonowal, Ananda Sonowal, Mohan sonowal, Nabin sonowal, Lalit Sonowal, Khemson Pegu, Babul Bora, Dinesh Pegu, Jayanta Phukan, Kamal Ch. Nath, Kalyan Mech.
15) Proforma of selected and rejected candidate prepared and signed by DPC members (Page-33,32,31).
16) Letter No. A-21/95-96/06 Dhemaji dtd. 24-1-96 written by M.N.Pegu SDOP Dhemaji forwarding 15 Nos. documents of Casual labours.
17) Certificates of Kalipada Bora, Thagiram Taye, Bibekanandda Pegu, Bharat Baspore, Cheniram Bora, Biman Kr. Payeng, Rabin Dolley, Lilaram Payeng, Biren Dowlah and Gagan Deka.
18) Seizure Memos dt.20.8.1999, 13.9.1999 and 29.9.1999

ANNEXURE-IV

LIST OF WITNESSES BY WHOM THE ARTICLES OF CHARGE FRAMED AGAINST SHRI M.K.GOGOI THE THEN TDE TEZPUR NOW AREA MANAGER, ASSAM TELECOM CIRCLE ARE PROPOSED TO BE SUSTAINED.

1) Shri A.K.Challeng, AGM(Admn) O/O CGMT Guwahati.
2) Shri Dilip Kumar Rai Barman, AO(Cash) O/O TDE Tezpur
3) Shri Rajiv Yadav TDM Tezpur, Vill.Vedi, PO Ramaipatty Dist. Varanasi UP.
4) Shri S.K.Kayal, Area Manager (T) Howrah, Kolkata Telephones R/o 23/3/2A Rup Narayan Nanda Lane, Kolkata-25.
5) Shri M.K.Bhattacharjee, SDE O/O TDM Tezpur.
6) Shri Bishnu Kr. Paul, AAO O/O TDM Tezpur.
7) Devalal Lazhon SS O/O SDEAP Dhemaji
8) Shri Lakshminath Saikia TOA O/O SDEP Dhemaji
9) Shri Vaibhav Agashe, DSP CBI Shillong.
10) Shri B.K. Pegu, JTO(Jonai), Dhemaji
11) Shri H.S. Debnath, JAO in the O/o TDM, Tezpur
12) Surendra nath Boro, SI(Stores), in O/o Dhemaji
13) Shri K. Barman, Inspector/CBI
14) Shri D. Dutta, Inspector/CBI

CENTRAL VIGILANCE COMMISSION

The Commission observes that CBI had registered two other regular cases viz RC.13(A))/97-SHG and RC-14(A)/97-SHG against Shri M.K.Gogai and other where charges were similar in nature i.e appointment of casual labourers as TSM wherein the Commission has agreed with the recommendation of CBI for initiation of RDA for major penalty against Shri M.K.Gogai and others. Keeping in view the conformity with the earlier decision the Commission agrees with the recommendations of the DOT and advises initiation of major penalty proceedings against the following officers.

1. S/Shri M.K.Gogoi, the then TDE 2. D.Payeng,SDE
3. P.Das, the then SDE 4. Ajit Kr. Sarkar, the then SDO
5. Upen Swargiary, the then AO 6.M.N.Pegu, the then SDE
7. B.D.Pegu, the then SDE 8. B.K.Panyang, the then PI
9. P.C.Dowrah, SI 10. I.Baruah, SI
11. B.N.Prasad, LI 12. J.C.Tamuli, SI
13. J.Phukhan, TSM 14. A.Sonowal, TSM
15. Mohan Sonowal, TSM 16. S.Sonowal, TSM
17. B.K.Payeng, TSM 18. D.Pegu, TSM
19. R.Doley, TSM 20. T.R.Taye, TSM
21. Babul Bora, TSM 22. Kalipada Bora, TSM
23. Kamal Ch. Nath, TSM 24. Lalit Sonowal, TSM
25. Prafulla Sonowal, TSM 26. Nabin Sonowal, TSM
27. K.Pegu, TSM 28. Lila Ram Panyang, TSM
29. Bharat Basphore, TSM 30. Biren Dowrah, TSM
31. Kalyan Mech, TSM 32. Cheniram Bora, TSM
33. G.Deka, TSM 34. B.Pegu, TSM

Department may conduct the inquiry proceedings by appointing their own I.O and revert to the Commission for 2nd stage advice on conclusion of inquiry proceedins alongwith their recommendations since emanated from the findings of I.O's report.

Department's F.No 9-56/2001-VIG.I is returned herewith.

(Ms. Indu Gupta)
Director

Department of Telecom(Sh.Ranbir Khannar,Sr.DDG(V)N.Delhi

C.V.C's I.D Note No. 001/P&T/120

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ANNEXURE - IX

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Confidential

No. 8-15/2001-Vig. II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunication
(Vigilance-II Section)

915, Sanchar Bhawan, 20, Ashok Road,
New Delhi-110 001.

Dated, the 24-2-2005

MEMORANDUM

A copy of the Inquiry Report dated 18.12.2004 submitted by Shri Shrihari Roy, GM(Operation – South) Kolkata Telephones, Kolkata who had been appointed as the Inquiring Authority to inquire into the charges framed against Shri M.K. Gogoi, formerly TDE, Tezpur and now Area Manager(East), Kamrup Telecom District, Guwahati, is forwarded herewith. A copy of ID Note No. 000/P&T/069/1657 dated 27.01.2005 of the Central Vigilance Commission (CVC), is also forwarded herewith.

2. Although the Inquiry Authority has held the charges as not proved, the Disciplinary Authority proposes to disagree with the findings of the IO to the extent indicated below and held the charges as proved :-

(i) The IO failed to take into account the fact that 22 TSMS were appointed based on fake experience certificate. The Selection Committee constituted by the Charged Officer recommended for their appointment and the Charged Officer accepted the same. This charge is sustained based on the evidences at S/1 to S/29, S/30 & S/68.

(ii) The documentary evidences taken into account during the course of inquiry i.e. S/35, S/41 & S/71 proves that the Charged Officer was aware of the DoT's guidelines regarding appointment of Temporary Casual Mazdoors (TSM) still he allowed 22 ineligible casual mazdoors to be appointed as TSMs.

3. Shri M.K. Gogoi, Area Manager is hereby informed that he may make such representation as he may wish to make in the matter. Such representation, if any, shall be made in writing within fifteen days of the receipt of this Memorandum, failing which it will be presumed that he has no representation to make, and further necessary action in the matter is liable to be taken accordingly.

4. The receipt of this Memorandum, alongwith a copy each of the Inquiry Report and CVC's advice, shall be acknowledged by Shri M.K. Gogoi, Area Manager.

By order and in the name of the President,

PS
PI date of receipt

(A.K. Patro)
Desk Officer((Vig.II)

Encl. : 1. Copy of Inquiry Report.
2. A Copy of CVC's I.D. Note No.000/P&T/069/1657 dated 27.01.2005

Shri M.K. Gogoi
Area Manager,
Kamrup Telecom District,
Guwahati.
(Through the CGM, Assam Telecom Circle, Guwahati).

Attested by
Chaudhury
Adv.

ANNEXURE - X

CONFIDENTIAL

INQUIRY REPORT

No: GM(S)/Disc I / MKG /2004-05 Dated at Kolkata, the 18 -12-2004

DISCIPLINARY PROCEEDINGS UNDER RULE – 14 OF CCS (CCA) RULES, 1965 AGAINST SRI M. K. Gogoi, Area Manager(East), Kamrup Telecom District, Guwahati.

INQUIRY OFFICER : Shrihari Roy, General Manager (South) Calcutta Telephones, BSNL, the inquiry Officer.

PRESENTING OFFICER : Shri Nirmalendu Pegu, Dy General Manager (P&A), O/o the GM Telecom District, Assam Telecom Circle, Guwahati.

DEFENSE ASSISTANT : Shri S. K. Sikider, DE(TP- I), Dimapur.

The aforesaid Suspected Public Servant, Sri M. K. Gogoi, hereinafter referred to as SPS or Charged Officer (CO), was charge sheeted vide Memo No.8 – 15/2001-Vig II dated 7-3-2002 by the Disciplinary Authority.

The undersigned was appointed as Inquiry Authority, hereinafter referred to as Inquiry Officer (IO) or IA, to inquire into the charges against the said SPS vide No. S-15/2001 – Vig II (i) dated 8-6-2002 issued by the Disciplinary Authority.

Sri Nirmalendu Pagu, Dy General Manager (P & A) was appointed as the Presenting Officer (hereinafter referred to as P.O.) vide No. 8 –15/2001 – Vig (ii) dated 6-8-2002 to present the case before the Inquiry Authority on behalf of the Disciplinary Authority.

The SPS nominated Shri S.K. Sikider, DE (TP–1) – Dimapur as his Defense Assistant (hereinafter referred to as D.A.) to assist him in the case. Shri S.K. Sikider has submitted his willingness to work as a Defense Assistant of the SPS along with the declaration that he has got not more than 3 (three) pending departmental cases in hand. Accordingly, the Inquiry Authority permitted Shri S.K. Sikider, DE (TP–1) – Dimapur to work as D.A. on behalf of the SPS.

The Inquiry sittings started with its Preliminary Hearing on 19-10-2002 in the Inspection Quarters Hall, BSNL Panbazar, Guwahati – 6.

When questioned by Inquiry Authority, the Charged officer (C.O.) admitted to have received the charge sheet and to have fully understood the charges leveled against him. He, however, pleaded not guilty for the charges leveled against him and preferred to be heard in person as stated in his reply dated 27-03-2002 to the charge sheet.

The P.O, as directed, appeared before the Inquiry with the attested photo copies of only 75 (seventy five) documents out of 88 listed in annexure III, which were reportedly supplied to him by the Disciplinary Authority. The I.O. temporarily put his signature on the photo copies for authentication of the documents. The PO, however, was directed IO to obtain all the documents in original from their custodians and produce it before the Inquiry on the next day of hearing.

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Attested by Choudhury, Adv

The Charged Officer (C.O.) was directed to inspect the documents available with the P.O. in the next 5 days. I.O further mentioned that in case the Charged Officer needs extract of some of the documents (as per additional documents list given) those could also be taken from the P.O. The P.O. was directed to procure all the remaining documents and inform the I.O. accordingly so that those documents are also permitted to be inspected by the Charged officer (C.O.).

The Charged Officer (C.O.) was directed to submit a requisition for defense documents, if any, after inspecting documents, which are in the possession of the Govt. and not mentioned in the annexure –III of the charge sheet but relevant to his defense. While doing so he may also indicate the relevance of the documents required by him and custodian thereof.

The Charged Officer (C.O.) was further directed to submit a list of defense witness/witnesses proposed to be examined on his behalf.

The 2nd day of preliminary hearing was held on 9-1-2003 in the IO, - BSNL, Panbazar, Guwahati – 6. The PO was again directed to procure all the documents in original from their custodians and produce before the Inquiry on the next day of hearing. The DA was advised to submit the list of additional documents and their custodians at the earliest. The PO was again directed to procure all the remaining documents and inform the IO accordingly so that those documents are also permitted to be inspected by the Charged Officer.

The PO submitted a list of eight witnesses to the IO. The Charged Officer was further directed to submit a list of defense witnesses proposed to be examined on his behalf. The sitting was then adjourned.

On completion of Preliminary Hearing proceedings, the Regular Hearing was held on 17-2-2003, 18-2-2003 and 22-4-2003 in the IB – BSNL, Panbazar, Guwahati- 6.

On the 1st day of Regular Hearing, i.e., on 17-2-2003, the SPS appeared before Inquiry along with his defense assistant, Shri S.K. Sikider, DE(TF)- Dimapur.

The prosecution produced the following six numbers of state witnesses before the Inquiry and their depositions are examined, cross-examined and recorded.

Sl. No.	Name of the State Witness	Designation/Office
1.	Md. Islam Ahmed, S/o Late Basiruddin Ahmed.	Chief Accounts Officer O/o TDM/ Tezpur.
2.	Shri B.K. Goswami	Rtd. TDM/Tezpur, R/o Jessure Road, Dum-Dum Bhagavati Park, Kolkata-74.
3.	Shri B.C. Pal	Asstt. Director Telecom.(E&R) o/o CGMT, Assam Circle, Guwahati
4.	Shri Babul Ch. Nath	TOA o/o TDM/ Tezpur.
5.	Shri Badal Saha	SS(O),o/o TDM/ Tezpur
6.	Shri Maheswar Bhuyan	SDE (Cable)/ Tezpur.

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Presenting Officer also produced the statements of Sl. No. 1 to 5 recorded during investigation of the case and brought the same before the inquiry.

The listed document placed before the Inquiry by P.O. during 'Preliminary Inquiry are brought to the record and marked as State Exhibits – 01 to 75 as shown in the list of State Exhibits. The case was adjourned for the day and the hearing was scheduled to be resumed on the next day, on 18.2.2003

As scheduled, the hearing was resumed on 18.2.2003. On this second day of regular *hearing*, the Presenting Officer produced Shri K. Barman, Inspector – CBI, Investigating Officer of the case, as a state witness before the inquiry. The witness was examined, cross-examined by Prosecution and Defense respectively. Presenting Officer made petition before the Inquiry Authority for grant of producing one additional witness not included in Annexure-IV of the charge sheet. This was allowed by IO and the new witness was allowed to be called on the next hearing day for recording his deposition.

At the beginning of the next hearing day on 22.04.2003, the Presenting Officer was allowed by the Inquiry Authority to produce another state witness Sri A.K. Sarkar a member of Selection Committee the then SDE(HRD) Tezpur, outside the list of witnesses at annexure-IV. The witness was examined and cross-examined. The State Witness Shri H. S. Debnath JAO, O/O TDM Tezpur was not produced by the PO stating that it was not relevant to the case according to him.

The evidence on behalf of the Suspected Public Servant was then allowed to be produced before the Inquiry. All the documents requisitioned by the defense could not be produced by the appropriate authority. In order to avoid delay in completion of inquiry, defense was asked by IO whether to continue with the inquiry with readily available documents or to wait for the recovery of the remaining documents also. On getting consent of the defense to continue the inquiry without the remaining documents the available defense documents are brought to record and copies are handed over to defense and prosecution.

Out of 14 documents requisitioned earlier, only 7 available were brought to record. The seven documents, as shown in the list of Defense Exhibits, were marked and brought to record.

The Defense also produced three oral witnesses before the Inquiry. The witnesses were examined and cross-examined by the defense and the prosecution respectively.

After the submission of defense case, the hearing of the case was closed. It was decided that no further hearing would be necessary in this case. PO was asked to submit the prosecution brief within 15 (fifteen) days time. The defense was asked to submit their brief within 15 (fifteen) days from the date of receipt of prosecution brief.

The written prosecution brief was received vide no. GM/Inquiry/Con/MKG/2002-03 dated 16-6-2003. The SPS filed statement of defense under CCS(CCA) Rule-14(16) with a copy endorsed to the P.O. on 7.8.2003.

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Thus, all the documentary evidences adduced and submissions made were thoroughly examined. At the same time, the Prosecution as well as the Defense was allowed full and reasonable opportunity which they availed to the best of their satisfaction and simultaneously it was also ensured that there was absolutely no complaint in this regard from either side.

Articles of Charges:

The following articles of charges were framed against Sri M.K.Gogoi, Area Manager (East), Kamrup Telecom District.

That the said Shri M K Gogoi while functioning as TDE, Tezpur during 1996 committed serous irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him, regularized 22 numbers of Casual Mazdoors of SDE (P), Tezpur as Temporary Status Mazdoors with mala fide intention although none of them was eligible for such regularization that too without verifying the genuineness of the recommendations of different SDO's /SDE's and Experience Certificates issued by JTO/Lineman etc. and thus putting the Department to a huge financial loss.

Thus, by his above acts, the said Shri M.K. Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3 (1) (I), (ii) & (iii) of CCS (Conduct) Rules, 1964.

Statement of Imputations of Misconduct/misbehaviour:

The following are the statements of imputations of misconduct/misbehaviour in support of Article of Charge framed against Shri M K Gogoi, formerly TDE, Tezpur.

1. The said Shri M K Gogoi was functioning as TDE, Tezpur during 1996.
2. That the Directorate of Telecom, New Delhi issued a circular vide No. 269-4/93-STN-II dated 17.12.1993 for regularization of Casual Labourers engaged in different circles of the Department after 31.03.1985 upto 22.06.1988 and to appoint them as Temporary Status Mazdoors. In the said circular, the following conditions are clearly mentioned in respect of the casual labourers, who are eligible for regularization under this scheme :

i. It executed the temporary status to all those casual mazdoors who were engaged by the Project Circle/Electrification circles during the period from 31.03.1985 to 22.06.1988 and who were still continuing for such works where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the said scheme.

ii. That all those casual mazdoors who were engaged as per the aforesaid Circular during the period from 31.03.1985 to 22.06.1988 and who are still continuing for such works in the circles, where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the said scheme.

iii. The engagement of casual mazdoors after 30.03.1985 in violation of instructions of the Head Quarter, has been viewed seriously and it is decided that all past cases wherein recruitment has been made in violation of instructions of the Head Quarter should also be analyzed and disciplinary action be initiated against defaulting officers.

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iv. That engagement of any casual mazdoor after the issue of the order should be viewed very seriously and brought to the notice of the appropriate authority for taking prompt and suitable action. This should be the personal responsibility of the Heads of Circle concerned/Class II Officers and amount paid to such Casual Mazdoors as wages should be recovered from the person(s) who has/have recruited/engaged casual mazdoors in violation of these instructions.

v. That the services of all the casual mazdoors who have not rendered at least 240 days (206 days in case of Administrative Officers observing 5 days a week) of service in a year on the date of issue of those orders, should be terminated after following the conditions as laid down in I.D. Act, 1947 under Sec, 25 F.G. & H.

vi. These orders are issued with concurrence of Member (Finance) vide UO No. 3811/93-FA-1 dated 01.12.1993.

3. That the above said circular/order dated 17.12.1993 was sent to all Heads of Telecom Circles, Metro Telecom District, all Heads of other Administrative Offices etc. The copy of this circular/order was circulated amongst the TDMs/TDEs under Assam Circle, Guwahati vide No. Rectt-3/10/General (E&R) for CGMT/Guwahati including TDE, Tezpur. The DE(P), Tezpur had also circulated the same to all Heads of Sub-Divisions vide endorsement No. E-98/Casual Labourer/93-94/125 dated 28.01.1994 for information, guidance and necessary action.

4. That the field staff of Teazur Telecom Division in collusion with these 22 persons, concerned JTOs and SDOs/SDEs, who issued 21 false and fabricated Experience Certificates in favour of the said 22 persons showing them as Casual Labourers working since 1988 to 1996 (Feb) and the same were got countersigned by the respective JTOs and SDOs/SDEs as a token of proof of their having worked as Casual Mazdoors under them without being based on any material evidences.

5. That the concerned SDOs/SDEs of Tezpur Telecom Division in collusion with Shri M K Gogoi, formerly TDE, Tezpur forwarded all the Certificates to Shri M K Gogoi with their recommendation for consideration of the total 221 persons including these 22 casual mazdoors as Temporary Status Mazdoors (TSM). Shri M K Gogoi thereafter constituted a Selection Committee on 25.03.1996 with four persons namely (1) Shri P Das, SDE(P), Tezpur (2) Shri U C Swargary, AO(Cash), Tezpur (3) Shri D Payeng, SDO(P), Tezpur and (4) Shri A K Sarkar, SDE (HRD), O/O TDE, Tezpur for recommendation/selection of eligible casual labourers for regularization as TSMs vide order No. X-1/CMPT/Tz/95-96/Con-1 dated 25.03.1996.

6. That the Selection Committee had prepared/got prepared gradation list of all total 221 casual labourers including these 22 casual mazdoors sub-division wise and recommended for their regularization as TSMs. Shri M K Gogoi, formerly TDE, Tezpur knowing fully that the said gradation lists were bogus and with mala-fide intention passed order for regularization of 221 (including these 22 casual mazdoors) persons as TSM within his Telecom Division vide No. X-1/CMPT/96-97/Con-7 dated 27.05.1996 by putting interest of the Department in jeopardy.

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7. That it was within the knowledge of Shri M K Gogoi that no casual labourers were engaged in his SSA w.e.f. 31.03.1985 as Shri K Subramanium, the then TDE, Tezpur had informed Shri S C Chakraborty, the then Asstt. Director Telecom (F&R), O/o CGMT, Assam Circle, Guwahati vide his letter No. E-38/CMPT/Vol.II dated 07.12.1993 in reply to a letter No. Rectt. 3/10/Pt.III/5 dated 27.08.1993 that no casual labourers were recruited in his SSA.

8. That Shri Gogoi had informed the Assam Telecom Circle vide his letter No. E-38/CMPT/94-95/168 dated 17.02.1995 and letter No. E-38/CMOT/Vol.III/96-97 dated 13.08.1996 that no casual labourers have been engaged in his division.

9. Even after appointing these 22 casual mazdoors conferring on them TSM status on 27.05.1996 Shri M K Gogoi was also found to have issued a false certificate to Shri M K Sudarsanam, DGM(Admn) vide his letter No. E-38/COMPT/Vol.III/96-97/15 dated 30.08.1996 certifying with reference to DGM's letter No. 1-3/COMPT/96 dated 20.08.1996 that no casual mazdoor was engaged in his division except 21 casual labourers in Traffic Wing on permanent basis. Shri M K Gogoi issued this letter when DGM wanted to fix responsibility for taking action against those who were responsible for making appointments of casual employees in spite of the ban order issued earlier.

10. Shri Gogoi again vide his letter No. X-1/COMPT/Confdl/29 dated 12.09.1996 addressed to Shri A Baruah, AD Employment Exchange intimated that no employment Grade 'D' under his SSA was made in view of total ban in employment.

11. It is also revealed that Shri M K Sudarsanam, DGM (Admn) vide his DO letter addressed to Shri B K Goswami, TDM informed him that the statement furnished to them vide letter No. E-38/COMPT/Vol.III/96-97/15 dated 30.08.1996 and No. X-1/COMPT/96-97/21 dated 7.8.1996 were contradicting to the information given by their SSA, regarding casual mazdoors. He was against as to how a 'nil' report has been sent by their SSA and at the time of relaxation of the ban order, TDE had appointed these 22 casual employees of SDEP, Tezpur out of 221 casual employees as TSM in 1996. He requested Shri Goswami to look into the matter and fix responsibility on all erring officers.

12. On the basis of recommendation of Shri P Das, formerly SDE(Phones), Tezpur, Shri M K Gogoi issued order vide No. S-1/COMPT/06-97/CON/24 dated 14.08.1996 selecting them as TSM.

Thus, by his above acts, the said Shri M K Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3 (1) (I), (ii) & (iii) of CCS (Conduct) Rules, 1964.

Inquiry findings:

The substance of imputation of misconduct or misbehaviour in respect of this Inquiry is that the said Shri M K Gogoi while functioning as TDE, Tezpur during 1996 committed serous irregularities in as much as he in collusion with the Members of the Selection

Committee constituted by him, regularized 22 numbers of Casual Mazdoors of SDE (P), Tezpur as Temporary Status Mazdoors with mala-fide intention although none of them was eligible for such regularization that too without verifying the genuineness of the recommendations of different SDO's /SDE's and Experience Certificates issued by JTO/Lineman etc. and thus putting the Department to a huge financial loss.

Thus, by his above acts, the said Shri M.K. Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3 (1) (I), (ii) & (iii) of CCS (Conduct) Rules, 1964.

The Presenting Officer in his final written brief dated 16.06.2003 highlighted the following:

1. *The deposition of state witness Shri K Barman CBI Inspector (SW-6), as mentioned in the answer to Question No. 7 by examination in chief, there was no proof of engagement of casual labourers as there were no attendant registers or payment particulars available. PO further mentioned in the brief that it was proved in cross examination by Defense Assistance, as mentioned in the answer to Question No. 1, that the Selection Committee has verified the certificates issued by concerned SI/Line Man and countersigned by SDE/JTO on the basis of the department circular No. 260-4/93-STN-II dated 17.12.93 issued by DOT/New Delhi, but not on the basis of attendant registers or the payment particulars. Hence the certificates issued for 22 casual labourers were false and fabricated.*

2. *From the deposition of state witness of Shri M Bhuyan, SDE (Cable), (SW-7) the answers to Question Nos. 2,6 & 8 in examination in chief that he had countersigned the certificates issued in favour of casual mazdoors by SI/Line Man Countersigned by JTOs without verifying the certificates or payment particulars. It was also confirmed from his deposition that he was knowing well the ban order of casual mazdoors after 31.03.1985, but still allowed his field staffs to engage casual mazdoors violating norms just to do favour all those casual labourers for their conferring temporary status.*

3. *From the deposition of Shri A K Sarkar, SDE (HRD)/Tezpur (SW-8) from answer to question no 7 in examination chief that as a member of the selection committee he has not checked the attendance register and payment vouchers for individual casual mazdoors but could only make sample check thus proving that the certificates were false and fabricated and on the basis of that he has given his opinion as member of the committee the recommendation for conferment of Temporary status.*

4. *From the deposition of Shri D Payeng the then SDO Phones/Tezpur (DW-2) in answered to Question No. 1, 2 & 3 in cross-examination that as a committee member he verified only the doubtful cases. It was their primary duty as a member of selection committee to check thoroughly all the documents case by case before recommending. So the gradation list recommended was totally false and fabricated.*

18/XII/95

5. *From the deposition of Defense Witness of Shri Manoj Karky, JTO/Tezpur (DW-3) in answers to Question No. 2,3 & 4 by cross-examination in chief (Defense Assistance), since he had joined the department in 1991 only but he countersigned the certificates for the period before his joining in the department without verifying the genuineness of the documents like attendant register, payment vouchers. Thus he has favoured all the casual labourers in conferring temporary status by countersigning in the false and fabricated certificates.*

Referring to the above points mentioned in the written brief, the Presenting Officer merely stated that the gradation list prepared by the Selection Committee was false and vogues and in collusion with each other and the Charged Officer approved the gradation list which was false and fabricated and regularized all the 22 casual mazdoors with TSMs in collusion with the committee member abusing his official position with mala-fide intention. However, the PO failed to indicate any specific documentary evidence or specific deposition of any of the witnesses in support of the main allegations and could not correlate any of the above five points in establishing the main allegations against CO namely collusion with the Committee Member, abuse of official position or mala-fide intention.

Further more, the PO merely mentioned in his written brief that the Charged Officer had also failed to maintain absolute integrity and devotion to duty. However, the PO failed again in respect of showing any documentary evidence or deposition of any of the witnesses in support of these allegations against CO.

Para-1 to 4 of the statement of imputations of misconduct/misbehaviour in support of Article of Charge merely provides some basic information for the allegations made in the subsequent para of the statement.

The allegation in para-5 of the statement of imputations of misconduct/misbehaviour is that the concerned SDOs/SDEs of Tezpur Telecom Division in collusion with the CO forwarded all the Certificates to the later with their recommendation for consideration of the total 221 persons including these 22 casual mazdoors as Temporary Status Mazdoors (TSM). This allegation of collusion, however, could not be supported by any specific documentary evidence or specific deposition of any of the witnesses.

The allegation in para-6 of the statement of imputations of misconduct/misbehaviour is that the Selection Committee had prepared/got prepared gradation list of all total 221 casual labourers including these 22 casual mazdoors sub-division wise and recommended for their regularization as TSMs. The CO knowing fully that the said gradation lists were bogus and with mala-fide intention passed order for regularization of 221 (including these 22 casual mazdoors) persons as TSM. However, this allegation that it was known to the charged officer that the gradation list prepared by the selection committee was bogus and the CO had mala-fide intention in passing order for regularization also could not be supported by any specific documentary evidence or specific deposition of any of the witnesses. Moreover, the Presenting Officer did not make any mention of this allegation in his written brief.

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The allegation in para-7 that it was within the knowledge of the CO that no casual labourers were engaged in his SSA w.e.f. 31.03.1985 as Shri K Subramanium, the then TDE, Tezpur had informed Shri S C Chakraborty, the then Asstt. Director Telecom (E&R), O/o CGMT, Assam Circle, Guwahati vide his letter No. E-38/CMPT/Vol.II dated 07.12.1993 in reply to a letter No. Rectt. 3/10/Pt.III/5 dated 27.08.1993 that no casual labourers were recruited in his SSA does not appear to be sustainable because TDE office was not maintaining any record of casual Mazdoors and the appointing authority for regular Mazdoor is class-II officer and Mazdoors are sub-divisional cadre. Secondly, had there not been any casual Mazdoor in the SSA then the TDE Tezpur would not have circulated copy of the circular dtd. 17.12.1993 to all his SDOs/SDEs vide his letter No. E-38/Casual Labourer/93-94/125 dtd. 28.1.1994 as stated in para 3 of the statement of imputation of misconduct/misbehaviour, within a period of less than one month.

Moreover, the letter in question was issued to include casual Mazdoors in Central Govt. Employment Group Insurance Scheme but the then TDE without circulating the letter to all SDOs/SDEs of Tezpur replied to ADT (E&R) Guwahati that there was no casual Mazdoor. The Charged Officer joined as TDE Tezpur on 31.1.1995 and it appears that before his joining most of the SDOs/SDEs submitted the list of casual Mazdoor working in their respective unit. No action was taken till it was decided in the RJCM/LJCM meeting that the casual labourer that were engaged before 22.6.1988 would be conferred TSM and administration accepted the demand of RJCM and fresh initiative was taken in this regard. Further the same TDE made objection for making payment of casual Mazdoor vide his letter no As-3/AE cable (mtce.) Tz/93-94 dtd. 7.3.94 in his own seal and signature for 36 casual labourers and made objection for taking LTI without attestation of 25 casual mazdoors (a copy of the letter enclosed in defense brief), after that how the said TDE submit the nil report is not very clear. It appears that it was in the knowledge of Sri K. Bala Subramanium the then TDE Tezpur that there were casual labourers.

Regarding the allegation in para-8 that Shri Gogoi had informed the Assam Telecom Circle vide his letter No. E-38/CMPT/94-95/168 dated 17.02.1995 and letter No. E-38/CMOT/Vol.III/96-97 dated 13.08.1996 that no casual labourers have been engaged in his division does not appear to be correct. In letter No. E-38/CMPT/94-95/168 dtd. 17.02.95 it was mentioned that from 1.10.89 to 31.12.90 total number of TSM made was 80 and number of candidate to be regularized was 9, from 31.12.91 to 31.12.92 TSM made was 11, number of candidate yet to be regularized was 8 and 31.12.93 onward nobody was declared TSM and nobody was made RM i.e. regularized. The CO said that the reply was in the context of the earlier order of 1988 of that casual labourer that were engaged before 31.03.1985 and subsequently made TSM and RM during 1989 and 1990. Nowhere in this letter it was clearly mentioned that no casual labourers have been engaged in the divisions. The letter No. E-38/CMPT/Vol.III/96-97 dated 30.08.1996 addressed to Sri M K Sudarsanam, DGM (Admn), Guwahati, it was mentioned that except in traffic wing no casual Mazdoor was engaged in the division. This letter was issued on 30.08.1996 whereas all other casual labourers engaged before 22.6.1988 were conferred TSM vide letter No. X-1/CMPT/96-97/CON-7 dtd. 27.5.1996 and remaining casual labourers engaged after 22.6.1988 were terminated who could not be made TSM. Therefore, the reason for submitting the nil report the Charged Officer, appears to have been explained reasonably by the CO as at that time traffic wing was not controlled by SSA.

The next allegation in para-9 is that even after appointing these 22 casual mazdoors and conferring on them TSM status on 27.05.1996 the CO was also found to have issued a false certificate to Shri M K Sudarsanam, DGM(Admn) vide his letter No. E-38/COMPT/Vol.III/96-97/15 dated 30.08.1996 certifying with reference to DGM's letter No. 1-3/COMPT/96 dated 20.08.1996 that no casual mazdoor was engaged in his division except 21 casual labourers in Traffic Wing on permanent basis. The CO issued this letter when DGM wanted to fix responsibility for taking action against those who were responsible for making appointments of casual employees in spite of the ban order issued earlier.

The above allegation appears to be incorrect, as it appears that the casual Mazdoors in question were already made TSM on the basis of the order dtd.17.12.1993 and they were working long before his joining in Tezpur. The CO only mentioned about the casual Mazdoors engaged after his joining and not mentioned about those who were working continuously before the cut off date of 22.6.1988. There appears to be a wide gap between working and engaged and the charged officer mentioned about the casual labourers engaged during his tenure and not about the casual labourers working since 1988 or before and made TSM. The official/officer who had engaged the casual labourers had issued certificate under their name, seal and signature and only they can be held responsible, if the same not found in order instead of the CO.

That regarding the statement in para-10 of the statement of imputation of misconduct/misbehaviour that the CO again vide his letter No. X-1/COMPT/Vonfdl/29 dtd 12.9.1996 addressed to Sri A Barua AD Employment Exchange intimated that no employment in Grade 'D' under his SSA was made in view of total ban in employment, it found that the CO as TDE Tezpur had never engaged any casual labourer. He had conferred TSM to those casual labourers that were working in Tezpur Division and engaged before 22.6.1988 on the instruction of the department after completing all the formalities as per norms of the department. Engagement of Group 'D' official during the tenure of CO and even casual labourer (who are not treated as Group 'D' in the department) did not take place. Therefore, the reply given on 12.9.1996 that no employment in Group 'D' under the SSA was made in view of total ban does not seem to be wrong.

With regard to the allegation made in para-11 of the statement of imputation of misconduct/misbehavior that it was revealed that Sri M K Sudarsanam, DGM (Admn) vide his DO letter addressed to Sri B K Goswami, TDM informed him that the statement furnished to them vide letter No. E-38/COMPT/Vol.III/96-97/15 dtd 30.8.1996 and then vide letter No. E-38/COMPT/Vol.III/96-97/15 dtd 30.8.1996 and No. X-1/COMPT/96-97/21 dated 7.8.1996 were contradicting to the information given by their SSA, regarding casual Mazdoors. He was aghast as to how a 'Nil' report has been sent by their SSA and at the time of relaxation of the ban order, TDE had appointed these 22 casual employees of SDEP Tezpur out of 221 casual employees as TSM in 1996. He requested Sri Goswami to look into the matter and fix responsibility of all erring officers. In this regard, the CO explained that 'Nil' report was sent as most of the casual labourers engaged before 22.6.1988 were made TSM.

Regarding the allegation in para-12 of the statement of imputation of misconduct/misbehaviour that on the basis of recommendation of Sri P Das, formerly SDE (Phones) Tezpur Sri M K Gogoi issued order vide No S-1/COMPT/96-97/CON/24 dtd 14.8.1996 selecting them TSM. It is observed that there was no such order issued by the CO to confer TSM on the recommendation of a single officer. The CO on receiving the recommendation constituted an independent selection committee consisting of four members from different wing of the Division such as Accounts, HRD, and field unit etc. to recommend the names of casual labourers who fulfilled the criteria as per the circular. The CO acted in a reasonable manner in this regard. and in no way in collusion with any other officer. The order for conferring TSM was issued once by the CO based on the recommendation of the Selection Committee.

Moreover, the letter mentioned in this para was not included in the list of documents. SW-6, who was the investigating officer in the case, was asked during cross examination whether any casual Mazdoor was regularized by the CO beyond the list without the recommendation of the selection committee. His reply before the inquiry was that he has not found any such thing.

After going through all the points made in the statement of imputation of misconduct/misbehaviour and conducting this inquiry, it appears that hardly any documentary evidence, directly or indirectly, was put forwarded by the prosecution to sustain the charges.

It is further observed that the order issued by the CO for conferring TSM of 221 persons in Tezpur Division on the basis of the recommendation of the selection committee was a provisional one, which was subsequently cancelled by the CO. Moreover the cancellation order was issued by CO on the instruction of circle office to start re-verification. But subsequently, some other officer i.e., TDM revoked the cancellation order without re-verification.

The very vital state witness (SW-6) fro this inquiry, the investigating CBI Officer of the case, in his deposition stated he partially agreed to the charges framed against Sri M K Gogoi, when asked about the word partially he explained that as because during investigation of this case, no such serious violation was detected, as the genuineness of the certificates issued to so called casual labourers were to be verified by the concerned SDO/SDEs. When asked about the relevancy of the word collusion SW-6 replied that the word collusion used in the article of charges is not relevant, as because it was found during the investigation that the selection committee was constituted by Sri M K Gogoi the then TDE Tezpur (charged officer) as per procedure. SW-6 mentioned that during investigation all members of the Selection Committee were examined by him also told the Inquiry that no casual labourer was regularized by the Charged Officer without any recommendation of the selection committee.

Thus, in view of the aforesaid inquiry and analysis of circumstances, evidences, statement of witnesses and observed facts, I am of the opinion that the preponderance of probability goes in favour of the Charged Officer Shri M. K. Gogoi, Area Manager (East), Kamrup Telecom District, Guwahati.

Accordingly, I hold that the Article of Charges against the SPS under annexures I & II to the Memorandum of Charges cold not be substantiated.

In other words, the charges leveled against the SPS Shri M. K. Gogoi, Area Manager (East), Kamrup Telecom District, Guwahati stands NOT PROVED.

18/10/95

Shrihari Roy

Inquiry Officer &
General Manager (Operation - South)
Calcutta Telephones
Bharat Sanahar Nigam Limited.

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ANNEXURE-XI

(TYPED COPY)

CONFIDENTIAL

CENTRAL VIGILANCE COMMISSION

Sub : Charge Sheet against Shri M.K. Gogoi, formerly TDE, Tezpur, now Area Manager (EAST), Kamrup Telecom District, Guwahati.

Ref : DOT's File No. 8-15/2001-Vig. II dated 12.01.2005,

The Commission has perused the inquiry report, along with its relevant records and the comments of the administrative authorities thereon, he does not agree with the findings of the inquiring authority. It concurs with the findings of the D/o Telecom that the charge against Shri M.K. Gogoi, formerly TDE, Tezpur now Area Manager (East), Kamrup Telecom District, Guwahati is proved and would advise for imposition of a suitable major penalty on him.

All the records of the case as received in the Commission are returned herewith . Its receipt may please be acknowledge. Action taken in pursuance of Commission's advice may also please be intimated within a month of the receipt of this communication

Sd/- Illegible	D.O (Vig II)	Sd/- Illegible
28.1.05	28.1.05	(Yogesh.....)
		Director

Enclosed as above :
Department of Telecom (Shri G..S. Grover, SR. DDG (Vig.)), Sanchar Pawan Room No. 909___ 20, Ashoka Road, New Delhi
_____ Memo No. 000 P&T 069 dated
27 Jan 2005

No. 457/05/Vig. II
28.1.05

Attested by
Adv.

ANNEXURE-XVI

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To

The President
Government of India
Department of Telecommunications
915, Sanchar Bhawan, 20 Ashoka Road,
New Delhi- 110001.

Dated at Guwahati the 21.03.2005.

Sub:- **Representation on disagreement with the findings of I.O.'s report.**
Ref:- (Vigilance-II section) Memo No.8-15/2001-Vig.II
Dated 24.2.2005.

Sir,

Most respectfully I beg to submit hereunder my prayer for kind consideration and sympathetic action.

That with regards to para-2(1) of the memo I beg to state that it was not proved that 22 TSMs were appointed based on fake experience certificate. "The certificates were fake" could not be proved during inquiry. S.Ext-1 to 29 are certificate of casual labourers forwarded by SDE(P) Tezpur with number of days working by the casual labourers. SDE's were not having payment particulars of casual labourers as the vouchers of ACE-2 a/c were in TDE office because of that I as TDE Tezpur constituted a selection committee with Accounts Officer of the SSA as one of the member who was the custodian of ACE-2 a/c's for verification of records along with other members. S.Ext-30, the recommendation sheet of selection committee in respect of 22 casual labourers (four) which proved that all the 22 casual labourers names were recommended by the selection committee and on the recommendation only Temporary status was conferred to these 22 casual labourers. S.Ext-68, Letter No. X-1/CMPT/TZ/95-96/Confdl/1 dated 25.3.96 (mistakenly written 25.8.96) in respect of constitution of selection committee which proved that being TDE,Tezpur the undersigned as per office procedure constituted selection committee for verification of records of payment particulars to authenticate the selection process. The numbering of state Exhibits are as per marking of I.O's Daily Order Sheet dated 17.2.2003.

That with regards to para-2(II) of the memo, I beg to state that I had taken over the charge of Tezpur SSA on 31.1.95 when the order of DOT to confer Temporary Status already reached to all sub-Division under TDE, Tezpur as confirmed at paragraph –3 of statement of imputations of misconduct/ misbehaviour of the Chargesheet (Annexure-II). The letter was circulated by TDE, Tezpur vide letter dated 28.1.94 long before my joining (para-3 Annexure-II). The process was delayed due to some or other pretext and ultimately, it was a big union issue. After my joining the issue was raised in RJCM/LJCM forum and administration side agreed to settle the issue. What was expected from a TDE who has just joined and found numbers of cases of casual labourers for conferring Temporary Status were pending in the SSA; there were union pressure and instruction of RJCM minutes for compliance. Whether to keep these all cases pending and witnessed some unruly union activity or wait to see the casual labourers took the

Attested by
Adv

shelter of law to burden the department to face the number of court cases, considering all the facts it was decided after discussion at all levels and like other divisions and other circles to form a selection committee for verification of service particulars of casual labourers in question and accordingly whole process was carried out. Before signing the provisional order I have further verified some cases of payment voucher and after confirming that there was full proof verification I on due believe signed the provisional order and this **order of conferring Temporary Status was also cancelled** by the undersign on the order of circle office for further verification which was placed before the inquiry as D.Ext-06. The then TDM on union pressure ultimately had withdrawn the cancellation order. TDM also issued show cause notice to the officers who were responsible for engagement.

That as per S.Ext-71 the original order of DOT for conferring TSM dated 17.12.1993 it is clearly mentioned in para-4 that the responsibility to be fixed and action against the officer/official who has engaged the casual labourers were to be taken after conferring Temporary status to the casual labour. Accordingly name of officer/official who were responsible for the engagement were forwarded and show cause notice was served from SSA to those officers. The intention of DOT was not to punish the officer who were in the administration as the casual labourers were engaged in the field and field officer like JTO/PI and LI/SI were engaging them for field work and allowed to continue their service which was clear from the order of DOT dated 17.12.1993. Moreover written certificate were taken from officers/ officials responsible for engagement , so that they could not shoulder off their responsibility in future.

That it is pertinent to mention here that the allegation was, while functioning as TDE, Tezpur during 1996 committed serious irregularities in as much as in collusion with members of the selection committee constituted by him, regularized 22 numbers of casual Mazdoors. But during inquiry the prosecution could not prove that in collusion with selection committee the undersign had regularized the casual labour in question. Even investigating officer who as SW-6 told before the inquiry that the word collusion used in the article of charges is not relevant as because it was found during the investigation that selection committee was constituted by Sri M.K. Gogoi the then TDE Tezpur as per procedure. One JTO who had issued the certificates for some numbers of casual labours, was exonerated after Rule-14 proceeding (a copy enclosed as Annexure-I, the JTO was also Defence witness) . Moreover one selection committee member against whom Rule-14 proceeding was initiated was also exonerated by the Disciplinary authority (a copy enclosed for ready reference as annexure-II).

Under the circumstances I beg to appeal before your benign authority to exonerate me on the basis of I.O.'s report and the defence brief where all the points were discussed in details to disprove the charges.

Enclo: As above.

Yours faithfully,

(M.K. GOGOI)

Annexure-2

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No.8-357/2003-Vig.II
Government of India
Ministry of Communications & Information Technology
Department of Telecommunications
(Vigilance II Section)

West Block 1, Wing 2,
R.K. Puram, New Delhi-110 066

Dated: 15.12.2003

ORDER

Shri M. Karki, JTO, O/o the DE (OCB), Tezpur, has been proceeded against under Rule 14 of CCS (CCA) Rules, 1965 by the CGM, Assam Telecom Circle, Guwahati, vide Memo No. Vig./Assam/Disc-IX/00-01/4 dated 27.2.2001 on the following Articles of charge :-

That Shri Manoj Karki, while working as JTO under SDE (P), Tezpur during 1996, failed to maintain absolute integrity and acted in a manner unbecoming of his position in as much as he countersigned 6 Nos. of certificates issued by :

1. Sri Hemendra Bora, TTA/PRX
2. Sri Sukan Rai, S.I.

In favour of casual mazdoors knowining/or having reasons to believe that the said certificate/certificates issued as aforesaid in favour of the casual mazdoors were bogus as they had never been appointed in the office by SDE (P), Tezpur and thereby contravened Rule 3 (1) (i) (ii) & (iii) of CCS Conduct Rule, 1964.

On denial of the charges by the C.O., Shri B. Pegu, DE (DI), O/o the CGMT, Assam Circle, Guwahati and Shri S. C. Das, ADT (Legal), O/o the CGMT, Assam Circle, Guwahati, were appointed as Inquiry Officer and Presenting Officer, respectively, by the CGMT, Assam Circle, Guwahati.

The Inquiry Officer has submitted his Inquiry Report on 25.7.2003. The I.O. in his findings has concluded that the P.O. failed to establish that the C.O. counter-signed the said certificates issued in favour of those 6 (six) casual laborers without proper verification of the relevant documents through both oral documentary evidence.

He also mentioned in view of the facts, circumstances and evidences on record, he was of the opinion that preponderance of probability goes in favour of the C.O. He further held that the charges leveled against Shri Majoj Kumar Karki, JTO (OCB), Tezpur, the SPS, stands **not proved,** (copy enclosed).

The case was referred to the Central Vigilance Commission (CVC) for their advice and their advice is contained in I.D. Note No. 000/P&T/069 dated 03.12.2003, (copy enclosed).

Contd..2/-

Taking into account the findings of the Inquiring Authority, the records of the case and on an objective assessment of the facts and overall circumstances of the case in its entirety, I, B.B. Singh, Adviser (HRD), Telecom Commission, taking a lenient view of the case hereby order for **dropping** the charges levelled against Shri M. Karki, JTO, O/o the DE (OCB), Tezpur, and **closure** of the Case.

The receipt of this Order shall be acknowledged by Shri M. Karki, JTO, O/o the DE (OCB), Tezpur, Assam Telecom Circle, Guwahati.

Encls.: 1) Inquiry Report
2) CVC advice dated 03.12.2003.

(B. B. SINGH)
ADVISER (HRD)
TELECOM COMMISSION

Shri M. Karki,
JTO, O/o the DE (OCB),
Tezpur,
Assam Telecom Circle,
Guwahati.

(Through the CGMT, BSNL, Assam Telecom Circle, Guwahati)

No.8-163/2000-Vig.II
Government of India
Ministry of Communications & Information Technology
Department of Telecommunications
(VIGILANCE II SECTION)

West Block No.1, Wing No.2,
Ground Floor, R.K. Puram,
New Delhi - 110 066.

Dated the 24 Nov,2003

ORDER

Shri A.K. Sarkar, SDOT, Assam Circle, has been proceeded against under Rule 14 of the CCS(CCA) Rules, 1965, vide Memorandum No.Vig/Assam/Disc-VIII/2000-01/6 dated 26.12.2000 for the following charge :

ARTICLE

That Shri A.K. Sarkar while working as SDE, Tezpur failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of his position in as much as he as a member of the selection committee constituted by Sri M.K. Gogoi, the then TDE/Tezpur for regularization of eligible casual labours as Temporary status Mazdoors under TDE/Tezpur during 1996, in collusion with other members of the Selection Committee without verifying the genuineness of recommendation of different JTOs/SDEs and certificates were issued by JTOs/Lineman etc recommended with malafide intention by abusing his official position. The names of 221 Nos. of casual labours under TDE/Tezpur and consequent upon while, Sri M.K. Gogoi, the then TDE/Tezpur issued letter No.X/CMPT/96-97 dtd.27.5.97 regularizing those 221 Nos. of Casual Labours as Temporary Status Mazdoors, although none of them was eligible for such regularization and thereby putting the department to huge financial loss, which he caused by his above acts and abuse of his official position with dishonest intention and thereby contravened Rule 3.1(i), (ii) and (iii) of CCS(Conduct) Rules, 1964.

Shri A.K. Sarkar denied the charge, therefore, an oral inquiry was ordered to be held by Shri B. Pegu, DE(DI) as Inquiring Authority. The Inquiring Authority submitted his report dated 28.8.2003, concluding in his findings that charge is not proved. Copy of which is attached herewith.

Contd....2

2/2

The Central Vigilance Commission was consulted who furnished their advice, vide I.D. Note No.000/P&T/070 dated 10th Nov, 2003, copy of which is also attached herewith.

Taking into account the findings of the Inquiring Authority, records of the case and on an objective assessment of the facts and circumstances of the case in its entirety, I, P.K. Chanda, Member(Services), Telecom Commission, hereby order to **'exonerate'** Shri A.K. Sarkar, SDOT of the charges levelled against him, vide aforesaid Memorandum.

The receipt of this order shall be acknowledged by Shri A.K. Sarkar, SDOT.

Encl : 1.**Copy of IO's report.**
2.CVC's advice dtd.18.3.2003

20/XI/03

(P.K. CHANDA)
Member(Services)
Telecom Commission

Shri A.K. Sarkar,
SDOT
BSNL, Assam Circle
GUWAHATI.

(Through CGM, BSNL, Assam Circle, Guwahati).

ANNEXURE XIII

No. 8/180/2000-Vig.II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance –II Section)

915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110001.

Dated, the 01-04-, 2005

MEMORANDUM

A copy of the Inquiry Report dated 31.01.2005 submitted by Shri R.K. Mishra, GM Varanasi Telecom District, Varanasi who was appointed as the Inquiring Authority to inquire into the charges framed against Shri M.K. Gogoi DGM, Guwahati, forwarded herewith. A copy of ID Note No. 000/P&T/070-4560 dated 4th March, 2005 of the Central Vigilance Commission is also forwarded herewith.

2. Although, the inquiring officer has submitted his report dated 31.01.05 holding the article of charge as partly proved the Disciplinary Authority proposes to hold the charge as fully proved based on the analysis of the evidence by the IO in his report and the prosecution documents adduced during the Inquiry viz S-2, S-8, S-65, S-70, S-72 and depositions of SW-4, SW-7 and SW-9.

3. The said Shri M.K. Gogoi is hereby informed that he may make such representation as he may wish to make in the matter. Such representation, if any, shall be submitted in writing within 10 days of the receipt of this Memorandum, failing which it will be presumed that he has no representation to make and further necessary action in the matter is liable to be taken accordingly.

3. The receipt of this memorandum shall be acknowledged by the said Shri M.K. Gogoi.

By order and in the name of the President.

Encls : 1. Copy of Inquiry Report.
2. Copy of CVC's ID Note No. 000/P&T/070-4560 4th March, 2005

(A.K. Patro)
Desk Officer((Vig.II)

Shri M.K. Gogoi,
Dy. General Manager,
Guwahati Telecom District,
Guwahati.
(Through the CGM, Assam Telecom Circle, Guwahati)

Attested by
Advocate

ANNEXURE XIV

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INQUIRY REPORT

Ref- DOT letter No. 8-180/2000-Vig.II (i) dated 19.6.2001 and 12.2.2002

Disciplinary case under Rule-14 of CCS (CCA) Rules 1965, against Shri M.K.Gogoi, Ex-TDE Tezpur, now Area Manager (East), Dispur, Guwahati.

INTRODUCTION.

A disciplinary case under Rule-14 of CCS (CCA) Rules, 1965 was initiated vide DOT letter No. 8-180/2000-Vig.II (i) dated 19.6.2001, against Shri M.K.Gogoi, Ex-TDE Tezpur now Area Manager Dispur at, Guwahati. Undersigned was appointed as Inquiring Authority vide DOT letter No. 8-180/2000-Vig.II (i) dated 12.2.2002 & Shri Nirmalendu Pegu, Deputy General Manager (Installation), O/o G.M. Kamrup Telecom. District Guwahati was appointed as Presenting Officer vide DOT letter No. 8 –180/2000-Vig.II (i) dated 12.2.2002 in the aforesaid disciplinary case. State documents from serial 1 to 72 were produced by P.O. and these were marked as Exhibits 1 to 72. Total of five defence documents marked D1 to D5 were produced by C.O. Nine state witnesses and one defence witness appeared before the Inquiry. Charges against Shri M.K.Gogoi Ex-TDE Tezpur is given below.

2.0 Article of Charge

2.1 That the said Shri M.K.Gogoi while functioning as TDE Tezpur during 1996 committed serious irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him, regularised 34 numbers of Casual Mazdoors of North Lakhimpur as Temporary Status Mazdoors with malafide intention although none of them was

Attested by
Choudhury
Adv.

eligible for such regularisation that too without verifying the genuineness of the recommendations of different SDOs/SDEs and Experience Certificate issued by JTO/Lineman etc. and thus putting the Department to a huge financial loss.

2.2 Thus by his above acts, the said Shri M.K.Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

3.0 Prosecution case in brief

3.1 The said Shri M.K.Gogoi was functioning as TDE, Tezpur during 1996.

3.2 That the Directorate of Telecom, New Delhi issued a circular vide No. 269-4/93-STN-II dated 17.12.1993 for regularisation of casual laborers engaged in different circles of the Deptt. after 31.3.85 upto 22.6.88 and to appoint them as Temporary Status Mazdoors. In the said circular the following conditions are clearly mentioned in respect of the casual laborers, who are eligible for regularisation under this scheme.

3.2.1 It extended the temporary status to all those casual mazdoors who were engaged by the Project Officers/Electrification circles during the period from 31.3.85 to 22.6.88 and who were still continuing for such works where they were initially engaged and who were not absent for the last more than 365 days counting from the date of issue of the said order dated 17.12.93.

3.2.2 That all those casual mazdoors who were engaged as per the aforesaid Circular during the period from 31.3.85 to 22.6.88 and who are still

continuing for such works in the circles, where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the said scheme.

3.2.3 The engagement of casual mazdoors after 30.3.85 in violation of instructions of the Head Quarter, has been viewed seriously and it is decided that all past cases wherein recruitment has been done in violation of instructions of the Head Quarter should also be analysed and disciplinary action be initiated against defaulting officers.

3.2.4 That engagement of any casual mazdoor after the issue of the order should be viewed very seriously and brought to the notice of the appropriate authority for taking prompt and suitable action. This should be the personal responsibility of the Head of Circle concerned /class II officers and amount paid to such casual mazdoors as wages should be recovered from the person(s) who has/have recruited /engaged mazdoors in violation of these instructions.

3.2.5 That the services of all the casual mazdoors who have not rendered at least 240 days (206 days in case of Administrative Offices observing 5 days week) of service in a year on the date of issue of those orders, should be terminated after following the conditions as laid down in the I.D.Act 1947 under Sec., 25 F.G. & H.

3.2.6 These orders are issued with concurrence of Member (Finance) vide UO No. 3811/93-FA-1 dated 1.12.93.

3.3 That the above said circular/order dated 17.12.93 was sent to all Heads of Telecom. Circles, Metro Telecom. District, all Heads of other Administrative offices etc. The copy of this circular/order was circulated

amongst the TDMs/TDEs under Assam Circe, Guwahati vide No. Rectt. - 3/10/General (E&R) for CGMT/Guwahati including TDE, Tezpur. The DE (P) Tezpur had also circulated the same to all Heads of Sub/Division vide endorsement No. E-98/Casual Labour/93-94/125 dated 28.1.1994 for information, guidance and necessary action.

3.4 That the said field staff of Tezpur Telecom Division in collusion with these 34 persons, concerned JTOs and SDOs/SDEs, who issued 34 false and fabricated Experience Certificates in favour of the said 34 persons showing them as Casual Laborers working since 1988 to 1996 (Feb) and the same were got countersigned by the respective JTOs and SDOs/SDEs as a token of proof of their having worked under them without being based on any material evidences.

3.5 That the concerned SDOs/SDEs of Tezpur Telecom Division in collusion with Shri M.K.Gogoi, formerly TDE, Tezpur, forwarded all the Certificates to Shri M.K.Gogoi with their recommendation for consideration of the total 221 persons including these 34 casual mazdoors as Temporary Status Mazdoors (TSM). Shri M.K.Gogoi thereafter constituted a Selection Committee on 25.3.1996 with four persons namely (1) Shri P.Das, SDE(P), Tezpur (2) Shri U.C.Swargiary, AO(Cash), Tezpur (3) Shri D.Payeng, SDO(P), Tezpur and (4) Shri A.K.Sarkar, SDE(HRD), O/o TDE, Tezpur for recommendation/ selection of eligible casual laborers for regularisation as TSMs vide order No. X-1/CMPT/Tz/95-96/Con-1 dated 25.3.96.

3.6 That the selection committee had prepared/got prepared gradation list of all total 221 casual laborers including these 34 casuals laborers sub-division wise and recommended for their regularisation as TSMs. Shri M.K.Gogoi, formerly TDE, Tezpur knowing fully that the said gradation lists were bogus and with malafide intention passed order for

regularisation of 221 persons as TSM within his Telecom. Division vide No. X-1/CMPT/96-97/Con-7 dated 27.5.96 by putting the Department in jeopardy.

3.7 That it was within the knowledge of Shri M.K.Gogoi that no casual laborers were engaged in his SSA w.e.f. 31.3.85. as Shri K. Subramanium, the then TDE, Tezpur had informed Shri S.C. Chakraborty, the then Asstt. Director Telecom. (E&R), O/o CGMT, Assam Circle, Guwahati vide his letter No. E-38/CMPT/Vil.II/123 dated 7.12.93 in reply to a letter No.Rectt..3/10/Pt.III/5 dated 27.8.93 that no casual labourers were recruited in his SSA.

3.8 That Shri Gogoi had informed the Assam Telecom Circle vide his letter No. E-38/CMPT/94-95/168 dated 17.2.1995 and letter No. E-38/CMPT/Vol.III/ 96-97/15 dated 30.8.1996 that no casual labourers have been engaged in his division

3.9 Even after appointing these 34 casual mazdoors conferring them TSM status on 27.5.1996 Shri M.K.Gogoi was also found to have issued a false certificate to Shri M.K. Sudarsnam, DGM (AMN) vide his letter No. E-38/COMPT/ VOL.III/96-97/15 dated 30.8.1996 certifying with reference to DGM's letter No. 1-3/COMPT/96 dated 20.8.1996 that no casual mazdoor was engaged in his division except 21 casual labourers in traffic wing on permanent basis. Shri M.K.Gogoi issued this letter when DGM wanted to fix responsibility for taking action against those who were responsible for making appointments of casual employees in spite of the ban order issued earlier.

3.10 Shri M.K.Gogoi again vide his letter No. X-1/COMPT/TZ/Confdl./29 dated 12.9.1996 addressed to A.Baruah, AD Employment Exchange

intimated that no employment in Grade 'D' under his SSA was made in view of total ban in employment.

3.11 It also revealed that Shri M.K.Sudarsnam, DGM (Admn) Vide his DO letter addressed to Shri B.K.Goswami, TDM informed him that the statement furnished to them vide letter No. E-38/COMPT/VOL.III/96-97/15 dated 30.8.1996 and No. X-1/COMPT/96-97/21 dated 7.8.1996 were contradicting the information given by their SSA, regarding casual mazdoor. He was aghast how a 'nil' report had been sent by their SSA and at the time of relaxation of the ban order, TDE had appointed these 34 casual employees as TSM in 1996. He requested Shri Goswami to look into the matter and fix responsibility of all erring officers.

3.12 On the basis of recommendation of Shri P.Das, formerly SDE (Phones), Tezpur, Shri M.K.Gogoi issued order vide No. S-1/COMPT/96-97/CON/24 dated 14.8.1996 selecting them as TSM.

3.13 Thus, by his above acts, the said Shri M.K.Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

4.0 Oral Evidences produced by presenting officer.

4.1 SW-1-Shri B.K.Goswami in his statement to CBI on 29.8.98 stated that payments to casual labours are made on ACG-17. On requisition of ACG-17 by CBI, the ACG-17 were traced in the office but not found. The same was informed to CBI in writing. He also stated that engagement of casual labours was banned by DOT in year 1985 and there was no record available in the office regarding engagement of casual labourers. In his

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deposition (SW-1) Shri B.K. Goswami, generally agreed to what he stated to CBI except that he handed over few documents on 23.7.1998 to Inspector CBI. On pressure of union people he had to order for cancellation of cancelled letter conferring TSM by TDE (P&A) Shri M.K.Gogoi. When asked whether he noticed any anomaly in conferring TSM by TDE, he said that since relevant documents on the basis of which TSM order were issued, was not seen by him or made available to him, he can not say the exact position. SW-1 also conceded in cross-examination that the ban order was prevailing though it was not seen by him in office of TDM Tezpur. He saw it while working as AGM. Rectt. & Est. in CTD. Procedure adopted by TDE Tezpur in conferring TSM was seemed OK. He further confirmed that the documents on which conferring of TSM was based were not available, either the documents were not there or these were removed or destroyed.

4.2 SW-2- Shri Islam Ahmad, CAO, in his statement to CBI on 3.7.98 stated that temporary advances are drawn by SDOs/SDEs of sub-division from concerned TDE/TDM for maintenance of capital works. These include engagement of mazdoors, payment of electricity bills and other contingency works. These advances are given on monthly basis and the bills are submitted by the end of month. Payment to labourers is done by SDOs/SDEs through their JTOs /LIs/SIs/LM and the receipts are taken on ACG-17 at the end of month, JTOs submit bills including ACG-17 to SDOs who in turn after compiling all the relevant bills submit ACE-2 and ACE-3 to TDM/TDE who sends these bills to AO (Cash) for checking and proper accounting. After checking all the bills these are sent to TDM/TDE for passing. These bills are kept under the custody of AO (Cash) till audit is done. As per his knowledge audit for the vouchers upto 95 was done. He further stated that there is no order or circular regarding preservation period of bills and vouchers. These bills and voucher after audit are handed over to administration for preservation.

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He did not know whether these ACE-2, ACE-3 bills were available in stores but categorically stated that these should be there if not officially destroyed. He (SW-2) accepted his statement given to CBI.

4.3 SW-3 Shri B.C. Paul formerly AD(Est&Rectt) in his statement to CBI on 1.12.98, stated that engagement of casual labourers was banned in 1985. Earlier casual labourers were engaged for specific works on specific approval of TDE. After execution of work, the payment was being done, for continuous work a register was maintained indicating date of engagement address etc. A photo identity card was also being issued to casual labourers. He stated that coaxial cable means cable connected with Microwave towers and electrification project circle means circle where electrical works are executed. During his deposition he stated that whatever circular issued from DOT has been circulated to all SSA from time to time. During cross-examination he stated that in the order issued in 1985 word ban is not mentioned.

4.4 SW-4 Shri A.K.Sarkar formerly SDE (HRD) and a member of selection committee in his statement to CBI on 9.3.98 stated that TDE Tezpur had constituted selection committee in March, 1996 to select temporary status mazdoors from casual labourers engaged in Tezpur division between 31.3.85 to 22.6.88. I was one of the members of the committee. All the certificates issued by SIs/LIs/ TIs etc. sub-division wise, were handed over to selection committee by Shri M.K.Gogoi he further stated that he did not have knowledge about guidelines for selection of TSMs. Sub-division wise list was prepared by selection committee and shown to him. Shri A.K.Sarkar (SW-4) in his deposition generally agreed with the statement given to CBI excepting that " He did not have knowledge about guidelines for selection of TSMs." And Stated that selection committee met on 9.4.1996 and verified work experience certificate, age certificate, qualification certificates employment exchange card. These were done as

per guide lines issued vide DOT letter No. 269-4/93-STN-II dated 17.12.93. He further clarified that work experience certificate was issued by respective Linemen; LI, SI's countersigned by controlling officer. In case of doubt for no. of days, work diary was consulted. In some doubtful cases payment vouchers were checked to cross check the things. By doubtful cases he meant "the names on which questions were raised by certain members". He did not verify physically the casual mazdoors. He was charge sheeted on above matter but later on exonerated by the Deptt.

4.5 SW-5, Shri N.C. Kakati JSO under SDOT North Lakhimpur in his deposition stated that he has never seen experience certificate and has no knowledge of casual mazdoors working in North Lakhimpur during 1988-93, as he was an indoor staff as a telephone operator.

4.6 SW-6- Shri Dharmeswar Payeng formerly SDOT Tezpur, in his statement to CBI on 9.3.98, stated that he was one of the members of selection committee constituted by Shri M.K.Gogoi. The committee was to select the causal labourers who were engaged before June, 1988 and who worked not less 240 days in a year, we went through the certificates issued by PIs/ LIs /CS /LM under sub-divisions. The certificates were countersigned by the JTOs/SDOs as token of correctness. We recommended the selections of TSMs on basis of the certificates sub-division wise. The list was shown to me and the list was prepared by ourselves. In his deposition SW-6 before inquiry he generally agreed with the statements given to CBI excepting the lines 12 to 16 for which he replaced as "TDE Tezpur did not specifically ask the committee to recommend the names of casual labourers who have served for 240 days and engaged before June, 1988 rather it was to recommend the names of eligible casual labourers. No instruction was given to him for recommendation of conferring the temporary status". He followed the

guidelines given in letter No. 269-4/93-STN-II dated 17.12.93. Documents given to him were work diary, engaging official/officers certificate for no. of days in a year, employment registration card, age certificate etc. As per this witness, started work 4-5 days earlier and recommended the names at about 11 PM on 9.4.1996. Only sample check with payment vouchers were made for work experience. Other certificates were not verified simply these were checked. He did not refer S-Ext.-65 while recommending for TSM (guidelines issued by DOT not to engage casual mazdoor any more excepting limitations given). He further clarified that fact of casual mazdoors engaged in Project and Electrification circle and continuing on such works was not checked by him. He also stated that casual labourers were not called, case of 221 out of probably 275 casual labourers were recommended for temporary status

4.7 (SW-7) Shri K. Barman, CBI Inspector during his deposition stated that in investigation of this case, it was found that the experience certificates issued by SI/PI/LI/CS etc and duly authenticated by concerned SDEs/JTOs were false and fabricated. The different SDEs sent all the experience certificates along with their recommendations to TDE, Tezpur for awarding the status of TSM. During investigation it was also found that SI/PI/LI/CS issued these certificates in favour of 221 persons in criminal conspiracy with the persons in whose favour these certificates were issued and the matter was taken to court in which 40 to 50 persons found involved, have been convicted in the court. till that day. During cross-examination he stated that he did not find any case in which the charged officer regularised the casual mazdoors without recommendation of selection committee duly constituted by him, and that no evidence of collusion among M.K.Gogoi and selection committee was found.

4.8 (SW-8) Shri H.S.Debnath told nothing material to the case in his deposition in the inquiry.

4.9 SW-9 Shri U.C. Swargiary AO(Cash) and members of selection committee in his statement to CBI 9.3.98. stated that all the certificates, qualification certificates employment registration cards were handed over to selection committee by Shri M.K.Gogoi. The experience certificates as casual labourers were issued by respective SIs/LIs/ LMs sub-division wise. I have gone through all the certificates and documents supplied to us and we prepared the list sub-division wise and recommended for selection of TSMs on the basis of certificates issued sub-division wise. The certificates were countersigned by JTOs/SDEs/SDOs. The lists were prepared by selection committee and were shown to me. I did not certify the contents of certificates issued as the certificates were countersigned by SDOs/SDEs. State witness (SW-9) in his deposition before inquiry accepted his statement given to CBI. He stated that the meeting for selection and recommendation of 221 casual labourers to TSM was started at 11.00 hours on 9.4.1996 and most probably completed on that day. He verified the experience certificate after checking the documents which mention year wise no. of days worked. It was ensured that there were at least 240 days of working every year duly certified by issuing authority and countersigned and duly forwarded by the controlling authority. In reply to further question on mode of verification, he stated that he had seen the signature of unit officer and countersignature of controlling officer and took it as authentic document. When asked whether he received any ACE-2 account stating the payment of casual labourers along with the experience certificates, he stated that it was not possible to check and verify ACE-2 account. Other documents checked were age proof certificate, employment exchange card, as per guidelines issued by TDE Tezpur. He further stated that he checked all the documents for 221 thoroughly which have been recommended for

conferment of TSM as well as documents of all other casual labourers who were submitted for recommendation. No casual mazdoor was called by him. When asked by D.A. during cross-examination whether he verified the payment voucher also, he told that only a few documents were checked as a sample. He had checked the statement during payment of Bonus & DA arrear where it is mentioned total working days in the year. When questioned by IO regarding time taken for checking one application he evaded and told he cannot remember.

5.0 Oral Evidence from defence side.

5.1 Defence witness (DW-1) Shri Swargeswar Taid stated that he recommended the case of casual mazdoor after verifying the record (ACE-2 account of JTO, vouchers of ACE-3 bills of SI/LI). The casual mazdoors were engaged in different works like maintenance, Capital works etc. He further stated that 2/3 casual labourers were engaged by sectional lineman to petrol different section of Railway control. In the cross examination, he stated that he did not engage any casual mazdoor during his tenure as JTO (1982 to March, 1988) and no casual labour was engaged for any work under him during his tenure as JTO. He further stated that he did not allow engagement of any casual labourer under him during his tenure as SDOT from 1991.

6.0 Analysis of evidence with regard to statement of imputation of misconduct/misbehavior.

Contents of pare 1 to 3 are not opposed in any of the evidence.

In Para-4 of statement of imputation of misconduct/misbehavior, it is stated that concerned JTOs and SDOs/SDEs, in collusion with 34 persons who issued 34 false and fabricated experience certificates in favour of the said persons shown them as Casual Labourers working since 1988 to 1996(Feb). The same was countersigned by respective JTOs, SDOs and SDEs as token of proof of their working under them without being based on any material evidences. In support of the allegation under this para presenting officer (page-3, para-4-5) has referred the statement of state witness SW-7 C.B.I. Inspector Shri K. Barman who stated that the experience certificates issued by different S.I., P.I., L.I., C.S. duly authenticated and countersigned by concerned SDEs/JTOs were false and fabricated and these were sent to TDE by SDEs along with their recommendation. Charge sheets were filed in Court of Law under different Section of IPC against these persons and 40-50 persons involved in the case have been convicted. The SDEs & JTOs who countersigned the certificates as a token of genuineness were recommended for regular departmental action for major penalty. It proves that the certificates submitted were false and fabricated. The deposition of SW-7 supports the allegation in this para. Contention of charged officer in written brief (page-7, para1) that allegation could not be substantiated cannot be accepted as it is not based on any evidence.

Presenting officer has pointed in written brief (Page-3, para2) that DW-1 during cross-examination stated that no casual labourers were engaged in North Lakhimpur under his tenure as JTO (He did not engage casual

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labourers and casual labourers were not engaged under him). He further stated that during 1990, 2-3 casual labourers were engaged by Section Lineman to patrol at different Section from North Lakhimpur to Morkang but it does not proved that the same casual labourers were engaged continuously. Charged officer in his brief (Page-3, Para-2) tried to misinterpret in his favour the deposition of defence witness that 2-3 casual labours were engaged by each section lineman whereas DW-1 has actually deposed in cross-examination that 2-3 casual labours were engaged. Charged officer further stated that in normal circumstances it is seen that casual labourers when engaged are allowed to continue if he is not leaving on his own. Above contention of presenting officer is correct that it is not proved that same casual labourers engaged continuously in absence of any evidence. In the regularization letter issued by charged officer dated 27.5.96, (S.Ext. 56), it is mentioned that 34 casual labourers were engaged in North Lakhimpur on 1.1.88. This is opposed to the deposition of the Defence witness.

2 After being shown the (S-Ext-2) letter dated 1.5.96 (Letter sent by SDO North Lakhimpur (DW-1) enclosing certificates of Casual mazdoors after 22 days of the meeting of selection committee) he was asked during examination in chief under what circumstances you forwarded some name of casual labour for conferring temporary status to TDE Tezpur with your recommendation, he replied that during 1994, he received letter from Circle Office to forward the names of Casual Mazdoors who were working since 1988 and he instructed to JTOs to collect records of the Casual Mazdoors who were engaged before 1988. On further inquiry, he stated that JTOs showed him ACE-2, ACE-3 bills of L.I. and S.I. In cross-examination he stated the duplicate copy of ACE-2 were shown to him when it was pointed out to him that custodian of ACE-2 bills are Accounts Officer. Statement of DW-1 is contradictory and manipulative firstly as he himself was JTO North Lakhimpur during that time (1982 to 3/1988) and he said that he did not engage any casual labourer and that

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casual labourers were not engaged under him (In the regularization letter issued by charged officer dated 27.5.96, (S.Ext. 56), it is mentioned that 34 casual labourers were engaged in North Lakhimpur on 1.1.88.), secondly after receiving the circular in 1994 he did not send any information for more than 2 years and after 2 years on 1.5.96 (S-Ext-2) in response to letter no. X-1/CMPT/Tz/96-97 dated 18.04.96 of TDE he sent the statement of casual labourers along with the certificates, in deposition he has wrongly stated that he sent the names in response to circular of 1994 (letter No. 269-4/93-Stn-II dated 17.12.1993 was circulated under TDE's letter No. E-78/Casual Labour/93-94/125 dated **28.1.1994** to all SDOs/SDEs for forwarding the names of eligible casual Mazdoors). Had there been eligible casual labours engaged, the list could have been sent in 1994. Dispatch of records regarding Casual mazdoors after holding of selection committee shows manipulation and this supports the allegation. DW-1 further stated that casual labourers were engaged by LI/SI & LM, this contradicts his earlier statement that no casual labourers were engaged by him and no casual labourer was engaged during his tenure (1982 to March 1988). It is also clear from the statement (S-Ext-68) of Mohd Islam Ahmad CAO (SW-2) that the engagement of casual labour cannot be done without knowledge of JTO /SDO/ TDE as the advance for payment for casual labourer is to be requisitioned to TDE by SDO after getting the advance, the SDO will make payment to casual labourers through JTO/SI/LI/LM and take the vouchers corresponding to payment i.e. ACG-17 and submit the same to TDE office compiled with his ACE-2 bill, these bills after proper checking by AO are passed by TDE.

2.3 If a J.T.O. engages 34 Casual Labourers in a day or 34 Casual Labourers are engaged under him, that instance cannot be easily forgotten. Expenditure as a result of such engagement in ACE-2 and ACE-3 would certainly increase at least by 45-55 thousand (as per calculation in D-5/16) in single month and this fact cannot be easily ignored. It is clear

from the testimony of witness (DW-1) that no Casual Labourers were engaged till March'88 and also after 1991.Thus the list sent by him was bogus. A bogus list of Casual Labourers was sent on 16.3.1996 (S-Ext-8) by SDO North Lakhimpur and again on 1.5.1996 (S-Ext-2) along with false and fabricated certificates list was sent duly countersigned by JTO/SDO. It proves the collusion existed between the field staff and the persons in favour of whom the certificates were issued. Contention of charged officer in written brief (page-7, para-2) that allegation could not be substantiated, is not correct, in absence of any corroborative evidence.

6.3 In para 5 it is stated that the concerned SDOs/SDEs of Tezpur Telecom Division in collusion with Shri M.K.Gogoi, formerly TDE, Tezpur, forwarded all the Certificates to Shri M.K.Gogoi with their recommendation for consideration of the total 221 persons including these 34 casual mazdoors as Temporary Status Mazdoors (TSM). Shri M.K.Gogoi thereafter constituted a Selection Committee on 25.3.1996 with four persons namely (1) Shri P.Das, SDE(P), Tezpur (2) Shri U.C.Swargiary, AO(Cash), Tezpur (3) Shri D.Payeng SDO(P), Tezpur and (4) Shri A.K.Sarkar, SDE(HRD), O/o TDE, Tezpur for recommendation/selection of eligible casual laborers for regularisation as TSMs vide order No. X-1/CMPT/Tz/95-96/Con-1 dated 25.3.96. Defence has stated in his written brief (Page-7, Para-2 and again Page-13, Para-1) that the charged officer joined on 31.1.95 and the circular for conferring temporary status was of dated 17.12.93 and was circulated amongst SDOs/SDEs on 28.1.94. In response to this circular, SDOs/SDEs recommended the names. The contention of the charged officer is not correct because the statement of Casual Laborers was forwarded to TDE office on 16th March, 1996 by SDO (T) North Lakhimpur (S.Exh.8) in response to the letter of TDE dated 15.6.95 not earlier; along with this letter only statement of Casual Laborers engaged between 30.3.85 to 22.6.88 was sent. Copies of school certificates, Employment Exchange

cards and experience certificates along with the list were sent on 1.5.96(S.Exh.2); 22 days after the date of recommendation of Selection Committee for conferment of TSM. This exhibit (S.Exh.2) was shown to DW-1 by D.A. in examination in chief and he agreed that he forwarded the names of Casual Laborers under this letter to TDE, Tezpur in response to the letter no. X-1/CMPT/Tz/96-97 dated 18.04.96 of TDE (reference of TDE's letter is noted on the body of the letter (S-Ext-2)). The Selection Committee was constituted on 25.3.96 with four officers, namely Shri P. Das, SDE (P), Tezpur, Shri U.C. Swargiary, A.O. (Cash), O/o TDE Tezpur, Shri D. Payeng, SDOP Tezpur and Shri A.K. Sarkar, SDE HRD o/o TDE Tezpur.

Committee Member SW-9 and SW-4 in their statement (S-Ext-72 and S-Ext-70) to C.B.I. have stated that all the certificates, qualification certificates, employment registration cards were handed over to Selection committee by Shri M.K. Gogoi, the charged officer. It shows that the certificates were not received/kept in office but were personally handed over to charged officer by the field officers. Statement of SW-9 and SW-4 shows, charged officer worked against the norms of office, kept the documents under his custody and latter on handed over to committee on 9.4.1996. Committee members stated that charged officer gave him certificate which were not there in office till 1.5.96 (para 6-3) and these were the document basing on which the TSM status was recommended for 34 casual labours on 9.4.96. This indicates probability of collusion between charged officer, committee members and the SDO North Lakhimpur.

In para 6 it is stated that the selection committee had prepared/got prepared gradation list of all total 221 casual laborers including these 34 casuals laborers sub-division wise and recommended for their regularisation as TSMs. Shri M.K.Gogoi, formerly TDE, Tezpur knowing fully that the said gradation lists were bogus and with malafide intention

passed order for regularisation of 221 persons as TSM within his Telecom. Division vide No. X-1/CMPT/96-97/Con-7 dated 27.5.96 by putting the Department in jeopardy. The Selection Committee members SW-4, SW-6 & SW-9 in their statements to CBI S-Ext-70, S-Ext-71, S-Ext-72 generally stated that the "Selection List was shown to them and was made by them". This statement appears a little contradictory. Presenting officer in his written brief has pointed out that collusion is further strengthened (page4, para4), as committee members took very little time in verification of authenticity of certificates issued by field officers. Presenting officer contended that none of the committee members pointed out that

a) Ban of recruitment of casual labours after 30.3.1985.

b) Employment exchange sponsorship.

c) Authentication of certificates issued by SI/LI and countersigned by JTO/SDO/SDEs.

d) Provision of paid vouchers-ACE-2 Accounts.

e) Authority letter for engagement of casual mazdoors.

Charged officer in his written brief (page4, para1) has mentioned that there was no ban order as per order produced before inquiry as S-Ext-65. Although the word "ban" is not mentioned in the letter but it is very much clear from the content of S-Ext-65 that no engagement or recruitment casual labour be done after 30.3.1985 (1st three lines and last three lines of para-2 of S-Ext-65), there is nothing wrong if presenting officer used word ban in place of word "Stopped" in present context, as such contention of charged officer is not correct. Charged officer has further referred DO letter of DDG (Estt.) to CGM Task force (CGM of a project organization not circle where ban was not there upto 22.6.88 as per S-Ext-65) that there was complete ban on engagement of casual w.e.f.22.6.88, this letter has reiterated the facts stated in S-Ext-

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S.Exh-61.

65) None of the points mentioned by presenting officer has been checked by committee members.

6.4.1 Inquiring Authority agrees with the contention of presenting officer, as experience certificates of 227 persons for 8 years were not possible to be checked in a single day. The committee members stated that the certificates were taken as genuine on the basis of signatures of JTOs & SDEs on the body of certificates. The members stated that they simply checked the certificates but did not verify. It was stated that Sample verification of payments records was done with ACE-2 bills. None of the members specifically told which samples were checked. It would be mentioned here that the record submitted by SDOs were for year-wise, no. of days engagement of casual persons (S-Ext-9 to S-Ext-42) but in ACE-2 bill, month-wise record is compiled (statement (S-Ext-68) of Md. Islam Ahmad CAO). For verifying one entry 12 ACE-2 bills were required to be seen of the same year. For checking record of one person more than 96 ACE-2 accounts were required to be checked. In addition 4-5 certificates of each person say about 1000 papers were required to be checked as there were 227 application (written brief of charged officer Page-5, Para2). SW-9 stated that thorough checking was done but when asked how much time was taken to check the certificates he evaded and told that he does not remember even approximately; The contention of charged officer in his written brief that 22/23 ACE-2 bills were checked (Page-5, para-2) for 227 persons may be true. But with checking of 22/23 ACE-2, record of even one person would not be completely checked, as complete checking of one persons record would require checking of 98 ACE-2 bills (12 each of 1988 to 1995 and 2 of 1996) bills. In this way it was not possible to check the records of more than 5 to 6 casual laborers in a day. Contention of charged officer is not supported in any of the oral or written evidence that 22/23 ACE-2 bills were checked. Charged officer without giving any oral or documentary evidence tried to justify that 2% sample checking of the records was

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sufficient in his written brief (page-5, para1), as is done in A/T and Inspections, is completely out of context as for recruitment 100% checking is necessary particularly those documents which were vital for verification of conditions of regularisation. Members of selection committee said that they followed the condition given in letter no 269-4/93-STN-II dated 17.12.93 (S-Ext-61) but none of the members of committee testified to have checked the condition given in pare 2 and 6 fully as for satisfying this condition checking of 100% of ACE-2 bills would have been necessary. From above analysis contention of presenting officer is corroborated that there was collusion among the charged officer, selection committee members and SDEs/JTOs and the persons in favour of whom the certificate were issued.

6.4.2 Presenting officer stated that there was no question of checking of ACE-2 bills, as these were not there in Tezpur as per the statement of SW-1. SW-1 stated that he did not find the documents in the office excepting few documents which he handed over to CBI. About reason of non-availability of document he told that either the documents were not there at all or may have been removed or destroyed, no further action was taken to find out whereabouts of these vital documents. The explanation of charged officer in his written brief (Page-5, para-3) about disappearance of document from the office that in two years documents may get spoiled in very short time because of excessive humidity or may have been destroyed by rodents/white ants, owing to special condition in North East or may have been weeded off, is not tenable as he admits that the document of 1988 were available in 1996 (after 9 years) for verification but documents disappeared after Selection Process within two years. Further defence documents D-5/4-5 placed before inquiry taken from TDE Tezpur are more than 12 years old. Disappearance in this manner is not based on common knowledge also. SW-1 has also stated there was no record of availability of ACG-17. (As per statement of SW-2 (S-Ext-68) ACG-17 are compiled in ACE-2). From above analysis,

presenting officer's contention is further strengthened that the certificates, documents were not genuine, were countersigned by JTO/SDE in collusion with the persons in favour of whom these certificates were issued. Selection committee did not check the records properly; conditions of regularisation i.e. a) Engagement between 30.3.1985 and 22.6.88 and continuing for such works where they were initially engaged. b) No absence for more than 365 days c) working of 240/206 days in a year; were not checked. These documents were also not checked in the concerned section as these documents were in custody of charged officer. Charged officer in his written brief (page-3, para-1) has tried to grossly misinterpret and misquote the content of the letter no 269-4/93-STN-II dated 12.12.1993 (S-Ext-61); he has stated " as per circular S-Ext-61, the casual labourer engaged before 22.6.1988 and continuously engaged in department for similar works of casual nature were eligible for conferring of TSM". No such thing is mentioned in above referred exhibit. Either the charged officer has not understood the content and meaning of above exhibit properly or he has tried deliberately to mislead the inquiry. The content of 2nd para is reproduced to clarify the matter further "all those casual labourers who were engaged by circles during the period from 30.3.1985 to 22.6.1988 and who are still continuing for such works in the circles where they were initially engaged and who are not absent for more than last 365 days counting from the date of this order, be brought under this scheme (grant of temporary status)". Further, disappearance of important documents with the help of which experience certificates could be verified any time supports the allegation in Para 6. From foregoing pare it is proved that the list prepared by selection committee was bogus and TDE was knowing it as the documents were in his custody and the certificates were not there on basis of which the TSM status was recommended for conferment. Even then he regularised these casual labours putting department in jeopardy and causing heavy financial loss to department. It is also to be pointed out that SDOs did not send the list of casual

labours for 2 years after circulation of the letter by TDE, Tezpur letter dated 28.1.94 but afterwards all the works were completed within very short time.

6.5 In para 7 it is stated that it was within the knowledge of Shri M.K.Gogoi that no casual laborers were engaged in his SSA w.e.f. 31.3.85. as Shri K. Subramanium, the then TDE, Tezpur had informed Shri S.C. Chakraborty, the then Asstt. Director Telecom. (E&R), O/o CGMT, Assam Circle, Guwahati vide his letter No. E-38/CMPT/Vil.II/123 dated 7.12.93 in reply to a letter No.Rectt..3/10/Pt.III/5 dated 27.8.93 that no casual labourers were recruited in his SSA. Charged officer has disagreed with the contents of letter (S.Exh.60) written to circle office by the then TDE indicating that there were no casual labours engaged after 30.3.85 in Tezpur SSA. In defence he has stated that 1) TDE cannot have knowledge of engagement of Casual Laborers because he is not maintaining any record 2) If the then TDE knew that there are no Casual Laborers in the SSA then why letter dated 17.12.93 was circulated to SDOs (S.Exh.61) 3) The letter NO.RECTT-3/10/Part-III/3 dated 26.8.93 was not circulated to field units and the nil information was sent grudgingly to Circle Office by the then TDE. Contention of charged officer is not correct as 1a) The payment of Casual Laborers is controlled by SSA head as he sanctions advances to sub divisional officers and the bills of payments are received in TDE's office on monthly basis, these bills are checked by AO and passed by TDE (statement (S-Ext-68) of Shri Islam Ahmad CAO, SW-2). 1b) The information which is not available in TDE office is collected from the places where it is available, circle office will always ask information from divisional offices whether it is available in divisional office or sub divisional offices or in any office/exchange under jurisdiction of the SSA. 2) Letters received from higher office are always circulated to the concerned offices for information and necessary action there is nothing wrong in circulation of the letter. 3) The charged officer has not given any evidence in support of this; letter was replied (S-Ext-60) after about three

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and half months of the letter of Circle Office (S-Ext-63) and not in hurry so without evidence it cannot be agreed that the letter was not circulated to field. Charged officer referred two objection memos D-5/4-5 issued by the then TDE to SDOs for irregular payment done against engagement to casual laborers and asked SDO to stop such engagement; this memo does not indicate that the payment was done to casual laborers who were engaged in SSAs on regular basis, varying objected amounts in two memos also indicates that engagement was not on regular basis. For an instance, if we agree that the casual laborers were engaged by SDO in violation to the instructions under (S-Ext-65), then the objected amount (amount in memo of 1991-Rs.9285, 1992-Rs.1689) is sufficient approximately only for payment to 5-6 C/Ls in 1991 & for 1 in 1992 and is not sufficient for payment for wages of 34 casual laborers that charged officer assumed that they were engaged during that period.

6.5.1 Contention of charged officer that the list of casual labours was submitted before joining of charged officer is not correct as it has already been stated earlier that the list of labourers was submitted by field units in the month of March'96 and the certificates in May'96 (Para 6.2.2) not earlier and in response to the letter of charged officer not in response to the letter circulated in 1994 by the then TDE. Regarding issuance of security passes, referred by charged officer in written brief (D-5/2-3), charged officer has not given any evidence that these Casual mazdoors were engaged in violation of orders contained in S.Exh.65. From above analysis it is clear that the then TDE was not wrong in reporting (S-Ext-60) to circle office that no casual labours recruited in Tezpur SSA after 31.03.85. The charged officer did not plead that he was unaware about the letter referred above of the then TDE. Hence he knew that there were no casual labours engaged after 30.03.85 till 7.12.93(Date of reply by the then TDE). **Hence the allegation under this para is proved.**

6.6 Under Para-8 it is alleged that charged officer informed the circle vide letter NO.E-38/CMPT/94-95/168 dated 17.2.95 (S-Ext-59) and vide No.E-38/CMPT/Vol.III/96-97/15 dated 30.8.96 (S-Ext-57) no casual labourer have been engaged in his division. Charged officer in his written brief (Page-9, last para) has denied the allegation and stated that vide No.E-38/CMPT/94-95/168 dated 17.2.95 (S.Ext 59) information was sent regarding regularisation of TSMs as RM and this information does not relate to regularisation of casual mazdoors. Presenting officer has not given any evidence in support of this and has not stated anything about it in his written brief. The contention of charged officer is correct as it is very much clear from the content of letter NO.E-38/CMPT/94-95/168 dated 17.2.95 (S.Ext 59). About letter no No.E-38/CMPT/Vol.III/96-97/15 dated 30.8.96 (S-Ext-57) the charged officer contended that since the casual mazdoors engaged before 22.6.88 were regularised vide no X-1/CMPT/96-97/con-7/ dated. 27.5.96 and remaining casual labour engaged after 22.6.88 were terminated who could not be made TSM and therefore nil report was sent the contention of the charged officer is not correct as the letter was meant for collecting information for fixing responsibility on the officers/officials who engaged casual laborers after 30.3.85. It is very clear with the contents of letters placed at S-Ext. 65 & S-Ext 61 that the action is to be initiated against those officers who were responsible for engagement of casual labourers after 30.3.85. And therefore the information regarding all the casual labours engaged in violation to the instructions contained in S-Ext-65 was to be sent. The plea of charged officer couldn't be accepted. ***Hence charge under this para is proved.***

6.7 In para 9 it is stated that Even after appointing these 34 casual mazdoors conferring them TSM status on 27.5.1996 Shri M.K.Gogoi was also found to have issued a false certificate to Shri M.K. Sudarsnam, DGM (AMN) vide his letter No. E-38/COMPT/ VOL.III/96-97/15 dated 30.8.1996 certifying with reference to DGM's letter No. 1-3/COMPT/96

dated 20.8.1996 that no casual/mazdoor was engaged in his division except 21 casual labourers in traffic wing on permanent basis. Shri M.K.Gogoi issued this letter when DGM wanted to fix responsibility for taking action against those who were responsible for making appointments of casual employees in spite of the ban order issued earlier. Information submitted vide letter No.E-38/CMPT/Vol.III/96-97/15 dated 30.8.96 (S.Ext. 57) appears to be misleading as the letter was meant for collecting information for fixing responsibility on the officers/officials who engaged casual laborers after 30.3.85. It is very clear with the contents of letters placed at S-Ext. 65 & S-Ext 61 that the action is to be initiated against those officers who were responsible for engagement of casual labourers after 30.3.85. The charged officer contended that (Page-10, para-2) he gave the information relating to engagement of casual labourers after his joining and not for those who had been engaged earlier. The contention of the charged officer is not correct as if he wanted to give information about certain period then it must have been clearly mentioned in the letter. Further if he only wanted to give information for which he was responsible then he should not have included the information regarding casual labours engaged under traffic wing, which was not under him as per his own statement. Thus the plea of charged officer couldn't be accepted. It is clear that charged officer gave wrong information to circle office. ***Thus the allegation in this para is proved.***

6.8 It is stated in para 10 that charged officer vide his letter No. X-1/COMPT/TZ/Confdl. /29 dated 12.9.1996 addressed to A.Baruah, AD Employment Exchange intimated that no employment in Grade 'D' under his SSA was made in view of total ban in employment. P.O. has not mentioned anything about this letter in his brief and has not given any evidence to support allegation under this para. Charged officer has contended in written brief (Page-10, Last para) that he has never engaged any casual labour nor allowed to engage any casual labour in

his knowledge. He has only conferred TSM status. In absence of any evidence from presenting officer, ***allegation in this para are not proved.***

6.9 It is stated in para 11 that Shri M.K.Sudarsnam, DGM (Admn) Vide his DO letter addressed to Shri B.K.Goswami, TDM informed him that the statement furnished to them vide letter No. E-38/COMPT/VOL.III/96-97/15 dated 30.8.1996 and No. X-1/COMPT/96-97/21 dated 7.8.1996 were contradicting the information given by their SSA, regarding casual mazdoor. He was aghast how a 'nil' report had been sent by their SSA and at the time of relaxation of the ban order, TDE had appointed these 34 casual employees as TSM in 1996. He requested Shri Goswami to look into the matter and fix responsibility of all erring officers. Charged officer has rightly mentioned that D.O. letter referred under this Para was not placed before Inquiry. However, it is clear that contradictory information was supplied vide letter NO.E-38/CMPT/COMPT/Vol.III/96-97/15 dated 30.8.96 and letter No. Ex.1/COMPT/96-97/21 dated 7.8.96. The earlier letter was sent to DGM, Circle Office and the later was to Area Director Telecom. Guwahati. It has already been established above that charged officer supplied wrong information to Circle Office vide letter no E-38/CMPT/COMPT/Vol.III/96-97/15 dated 30.8.96. (Para-6.6 & 6.7). Plea of the charged officer that he informed about the existence of TSM and not casual Mazdoors can not be accepted ***Thus the allegation under this para is proved***

6.10 Under Para-12, it is stated that the charged officer issued order vide No.S-1/Compt./96-97/CON/24 dated 14.8.96 on the recommendation of Shri P. Das, formerly SDEP, Tezpur selecting them as TSM. No Evidence oral or documentary was placed before inquiry in support of this allegation by P.O. Letter No.S-1/Compt. /96-97/CON/24 dated 14.8.96 was also not placed before inquiry. Charged officer has contended in his written brief (Page-11, Last Para) that no such order

was issued by him to confer TSM on recommendation of single officer. Contention of charged officer can be accepted to the extent that no regularisation was done vide letter mentioned above in absence of any evidence by persecution. Charged officer in support of his contention has further stated that SW-7, who was the investigating officer in the case, during cross-examination, stated that the charged officer did not appoint any casual labourer without recommendation of Selection Committee. On close scrutiny of documents S. Exh.56 & S.Exh.7 it is clear that at least 2 casual labourers were appointed without recommendation of Selection Committee. Selection committee has recommended the names of 33 casual labourers for conferment of status of TSM (S.Exh.7- list of casual labourers recommended by Selection committee). In the order of TDE, regularizing 221 Casual labourers as TSM including 34 of North Lakhimpur Sub Division (S. Exh.56) only 32 name out of these 33 of Selection Committee list are appearing; one name at Sl.No.33 of S. Exh.7 i.e. Shri Bheem Kant Ligika is not there. Further in the order of TDE dated 27.5.96, (S.Exh.56), two new names i.e. Ghana Kant Sonowal and Shri Maheshwar Saikia placed at Sl.NO.32 & 33 were added who were not in the Selection Committee list. Although the ***allegation under this para are not proved*** but it is clear from documentary evidences that the charged officer regularised at least 2 TSMs without the recommendation of selection committee.

.11 On page-13, para 1 the charged officer stated that long before his joining, letter No. 269-4/93-Stn-II dated 17.12.1993 was circulated under TDE's letter No. E-78/Casual Labour/93-94/125 dated 28.1.1994 and all the SDEs /SDOs forwarded names of eligible casual labourers in response to this letter. It has already been stated that the contention of charged officer is not at all correct as the names of casual labourers were sent by SDOT North, Lakhimpur on 16.3.1996 (S-Ext.8) in response to TDE's letter dated 15.6.1995 and the certificates were sent by SDOT North Lakhimpur on 1.5.1996 along with the list of casual labours (S-

Ext.2) in response to TDE's letter No. X-1/CMPT /TZ/96-97 dated 18.4.1996. DW-1 during cross-examination has confirmed that he sent the information about casual labourers under this letter. Thus the contention of charged officer couldn't be accepted.

6.12 Finding

On the basis of analysis in forgoing pare it is concluded that serious irregularities were committed by the charged officer Shri M.K.Gogoi Ex TDE, he regularised 34 nos. of casual mazdoors of North Lakhimpur as temporary status mazdoor although none of them was eligible for such regularisation without verifying the genuineness of the recommendation of SDO North Lakhimpur and the experience certificates issued by JTO/LM etc. and thus putting the Department to a huge financial loss. No direct evidence for collusion with members of selection committee constituted by him was brought before the enquiry. However the probability of collusion is not ruled out.

Thus charge is proved but not fully.

(R.K.Misra)
Inquiring Authority
General Manager
Varanasi telecom district
Varanasi

ANNEXURE - XV

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CONFIDENTIAL

CENTRAL VIGILANCE COMMISSION

SUB:- Case against Shri M. K. Gogoi, then TDE, Tezpur, now DGM, Guwahati.

Ref:- DoT's File No. 8/180/2000-Vig. II dated 09/02/2005.

The Commission has perused the inquiry report, along with its relevant records, and the comments of the administrative authorities thereon. Keeping in view the gravity of charges considered fully proved by DoT against Shri M. K. Gogoi, then TDE, Tezpur, now DGM, Guwahati, the Commission would advise imposition of stiff major penalty on him.

Further, the Commission would advise the department to expedite enquiries in the remaining cases on priority basis.

All the records of the case as received in the Commission are returned herewith. Its receipt may please be acknowledged. Action taken in pursuance of Commission's advice may also please be intimated within a month of the receipt of this communication.

(Yogesh)
Director

Encl.: as above.

Department of Telecom (Shri G.S. Grover, Sr DDG(Vig.), Sanchar Bhawan, Room No. 909, 20, Ashoka Road, New Delhi.
C.V.C I.D. Note No. 000/P&T/070 dated 4.5.05

04 MAR 2005

Attested by
Advocate

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ANNEXURE-XVI

To

The President
Government of India,
Department of Telecommunications
915,Sanchar Bhawan
20, Ashoka Road,
New Delhi-110001.

Dated at Guwahati the 10.5.2005.

Sub: - Representation on disagreement with findings of I.O.'s report.
Ref: - Memo No.8/180/2000-Vig.II dated 1.4.2005.

Sir,

I most respectfully beg to submit the following few lines against the findings of the inquiry authority on the article of charge as "Partially Proved" for your kind consideration and sympathetic action.

That Sir, the contention expressed by the Inquiry Authority in its reports in page-13 para-6.2 that the deposition of SW-7 supports the allegation is not based on facts. SW-7 stated before the inquiry in a generalize manner in respect of PI, SI, LI, CS etc. against whom they have filed cases. But in the instant case of North Lakhimpur CBI has not filed any case in the court of law against any official/officers of the Sub-Division. The CBI has recommended departmental action against SDE/JTO, LI, PI, SI, CS etc. against conferment of TSM to 34 casual Mazdoor of North Lakhimpur. The reference made by SW-7 regarding conviction of 40 – 50 persons in the lower court is in respect of Mongoldoi, Biswanath Charali & Cable Sub-Division only, where I was summoned as witness in the case (a copy of summon is enclosed for ready reference), the case is now pending in the Gauhati High Court. The SW-7 clearly stated in reply to Q.No.4 of P.O. that no evidence was found against Sri M.K.Gogoi recommending any action against him as Investigating Officer of the case. The SW-7 also told during cross-examination that no evidence of collusion among Sri M.K Gogoi and members of selection committee as mentioned in the chargesheet was found during the investigation. Hence on the basis of the deposition of

Attested by
Choudhury
Adv

SW-7 how it could be concluded that the deposition of SW-7 support the allegation. Rather it disproves the allegation.

That Sir, the view expressed by I.O. at para 6.2.1. is also not based on records. It is mentioned in the report, " Whereas DW-1 has actually deposed in cross-examination that 2-3 casual labours were engaged". But in deposition of DW-1, I have not found anywhere it is written. Rather in Examination-in-chief DW-1 told, "Moreover about 170 km of Railway control, Deputy Control and block line were maintained, the lines were passing through thick forest where two, three casual Mazdoors were engaged by section lineman to petrol at different section from North-Lakhimpur to Murkangselee (Jonai)." It was clearly mentioned by DW-1 that 2/3 casual Mazdoors were engaged by section lineman to petrol at different section. 170 km route could not be maintained by one/two lineman. The arguments put forwarded by I.O. in this para is not based on any material fact. Deposition of DW-1 who had forwarded the names of all the 34 casual labourers only disproves the charges. From the deposition of DW-1 it is crystal clear that after verification of records only he has forwarded the names and because of that the CBI could not file case in the court of law against any officer/officials of North Lakhimpur Sub-Division. Moreover the department has already exonerated one JTO.

That Sir, the views expressed in para- 6.2.2. Of page- 14, 15 are based on facts. It is true that DW-1 did not engage any casual labourer. LI, SI, and PI etc. engaged the casual labourers during execution of fieldwork. Moreover at that time during 1982-88 there were four JTO's working under SDO (T) North-Lakhimpur and this sub-division was bifurcated later because of increase in tele density. Statement of DW-1 was not contradictory but interpreted wrongly. The circular was received in 1994 and the correspondence with TDE was continuing. The process was taking time. SDOT office has not sent the entire document in time. There were queries from TDE office in regards to the educational certificate, employment exchange registration etc. In S.Ext-2 it is clearly written, " enclosed herewith the list of casual labours with the attested copies of school certificate / Employment exchange card and experience certificate for your kind necessary action." The SDOT Office forwarded the names of casual labourers without other details like employment exchange registration, school certificates etc. So SDOT North Lakhimpur was instructed to forward the name with certificate

for age/employment exchange card etc. The process of conferring TSM took so long because of non-submission of proper records and authentication by concerned SDO's. Although the issue was discussed at different level of JCM, conferring of TSM was done after authentication of candidature. The I.O. made an error in judging the timing properly. No dispatch of records regarding casual Mazdoor was made after selection. S.Ext-2 which was sent on 1.5.96 for which further clarification asked by TDE office vides letter dtd. 18.4.96 was considered by selection committee on 14.5.96, which was placed before the inquiry as S.Ext-1. Further analysis of I.O. about tenure of DW-1 as JTO from 1982 to March, 1988 is not relevant in the instant case. DW-1 was brought before the inquiry to confirm that he has sent the record of all the casual Mazdoor in his seal and signature and he has taken the responsibility of authenticating their services. I did not have role in preparing the list of casual Mazdoor. It is true that engagement of casual Mazdoor cannot be done without knowledge of JTO/SDO/TDE. It is to mention here that duplicate copy of ACE-2 bills are always kept with the officer writing the ACE-2 bills without voucher. The officer writing the ACE-2 always clearly note the particulars of expenditure in description column so that in future any audit objection could be replied without any difficulty.

That Sir, the views expressed in para 6.2.3. Page 15 and 16 of I.O.'s report are not based on facts. DW-1 never told before the inquiry that no casual labourers were engaged till March'88 and also after 1991. He has told before the inquiry that he has not engaged any casual labour. The prosecution did not asked in which post he was working. A JTO working in In-door did not require engaging casual labour. Before coming to conclusion the I.O. or P.O should have asked whether any casual labour were working under him at that time as JTO or whether there was casual labour working in the sub-division when he has joined as SDOT in July, 1990. There were four JTOs working in North-Lakhimpur sub-division since long before 1988. Moreover all the casual labours were not engaged in a single day. They were slowly increased in proportionate to the expansion work. During the period in question all the outdoor work were carried out departmentally by engaging casual labour for laying under ground cable, drawing C-8 lines providing new connection etc. unlike present practice since 1997-98 that the department engaged contractors for these works. Besides those officers/official submitted records, might have thought that the records

since 1988 was only required and previous records were not necessary. The I.O. further erred in his contention that SDO North Lakhimpur (DW-1) sent a bogus list of casual labourers on 16.3.1996 (S.Ext-8) and again on 1.5.1996 (S.Ext.2) along with false and fabricated certificates. The fact is different. SDOT North Lakhmpur sent a list of casual labourers dated 16.3.96 (S.Ext-8) and from that list the selection committee recommended for conferring TSM to 33 casual labouer (S.Ext-7) . However I as TDE Tezpur further verified the list and asked for more particulars in respect of some casual labourers vide letter No.X-1/CMPT/TZ/96-97 dated 18.4.96, which was mentioned by I.O. in page 15 top para. The SDOT in reply has forwarded the names eligible casual labourers on 1.5.96 (S.Ext.2), which was again considered by selection committee and recommended on 14.5.96 (S.Ext-1). Thus there was nothing wrong in making queries before issue of order. It was a process, which took very long time.

That Sir, the I.O. has made some mistake in verifying the documents that he has mentioned in para 6.3 last line, " the statement of casual labours was forwarded to TDE office on 16th March, 1996 by SDOT North Lakhimpur (S.Ext.8) in response to the letter of TDE dated 15.6.95 not earlier. Copies of school certificates, employment cards and experience certificates along with list were sent on 1.5.96 (S.Ext.2) 22 days after the date of recommendation of selection committee." SDOT North Lakhimpur in his letter-dated 16.3.96 S.Ext-8 not only made the reference of TDE's letter dated 15.6.95 but also made another reference of his office letter dated 8.2.96 also. So the process of verification of records was continued since long. It was wrong to conclude that SDOT North Lakhimpur sent the list after 22 days of recommendation by selection committee when S.Ext-1 is telling differently.

That Sir, the I.O. is contradicting his own view in para 6.3.1. to the extent, "kept the documents under his custody and later on handed over to committee on 9.4.1996. Committee member stated that charged officer gave him certificates which were not there in office till 1.5.96". In the previous para-6.3 he has stated, " the statement of casual labour was forwarded to TDE office on 16th March, 1996 by SDOT North Lakhimpur (S.Ext-8) in response to letter of TDE dated 15.6.95 not earlier," which negate the inference of I.O. " charged officer gave him certificate which were not there in office till 1.5.96. (S.Ext-2)", The I.O.

made this comments without taking into consideration S.Ext-1. In respect of I.O.'s comments regarding keeping of records in TDE's custody it is to submit that all correspondences were made in the name of TDE, all files recording though made in the name of TDE but done actually by SDE (HRD) and who was the custodian of all records of casual Mazdoor, R/M, LI, SI etc. The records were placed before the selection committee as per instruction of TDE and on behalf of TDE because of that they might have told that they received it from TDE. It is not proper to think that TDE as head of the SSA would personally hand over the documents to the member of selection committee. The inferences made in this para are not based on facts. Rather the I.O. had not considered all the evidences placed before him to come to a conclusion.

That Sir, the view expressed by I.O. in para 6.4 page- 19 that none of the points mentioned by P.O. has been checked by committee, is not relevant in the case. The department has issued guidelines about selection in the circular dated 17.12.1993 (S.Ext-61). In regards to ban on engagement of casual labour the department has already accepted that the casual labours were engaged on emergency and continued in the work because of that the circular for conferring TSM was issued. There are instances that in Assam Circle alone even after 1988 engaged casual labours to carry out the work of the department and were allowed to continue. The DOT has issued approval to regularize 672 numbers of such casual labours. (A copy enclosed for ready reference).

That Sir, in para-6.4.1 it is mentioned that I.O. agrees with the contention of P.O., as experience certificate of 227 persons for 8 years were not possible to be checked in a single day. How the P.O. came to a conclusion that the selection committee completed the work in a single day without considering S.Ext-1 and S.Ext-7.It was a continued process which started long back and selection committee was constituted on 25.3.1996 by TDE (S.Ext-58) and selection committee submitted its report on 9.4.96 (S.Ext-7) and again on 14.5.96 (S.Ext-1). From deposition of selection committee member SW-4, SW-6, SW-9 it has become crystal clear that they checked the authenticity of documents. The inference made by I.O. was not based on any material fact. Rather the contention of P.O. is not corroborated by material fact. All the officer of a Division cannot be part of any collusion.

That Sir, it is not correct that there was no record available in TDE office. SW-9 in his deposition clearly stated that it was not possible to check and verify all ACE-2 account. In reply to DA's Q.No.2 SW-9 told the inquiry that it was a fact that it was not possible to check all the ACE-2 account since 1985 to 1996. So they had done sample check specially SW-9 had checked the statement issued by controlling authority at the time of payment of Bonus and DA arrears where it was clearly mentioned their total working days in a year. Thus the contention of P.O. is totally incorrect without taking into consideration the deposition of state witnesses. It is not true that the documents were in the custody of TDE. In fact I.O. is treating the TDE as storekeeper he was keeping the document of casual labourer and payment vouchers every thing in his custody. All the ACE-2 accounts after passing kept by concern A.O. and that is the rule. I.O.'s view in the last line of same para is also contradicting his own comments in para-6.3. One side he is telling statement of casual labourers was forwarded to TDE office on 16.3.1996 by SDO(T) North Lakhimpur (S.Ext-8) in response to the letter of TDE dated 15.6.1995 . Again he is telling in this para-6.4 all the works were completed within very short time.

That Sir, in regards to para 6.5 it is stated that the reply given by the TDE in the context of inclusion of casual labourers in Central Government Employment Group Insurance Scheme not only with reference to memo No. Rectt-3/10/Part-III/19 dated 26.8.93 but with reference to D.O. of Area Director Telecom Guwahati No.DIR-GH/STA/21-8/90/61 dtd. 30.11.93 which was endorsed in the letter (S. Ext-63) which was not circulated to field unit. The contention of I.O. in this para that the objected amount (as per objection memo D-5/4-5) is sufficient approximately only for payment of to 5 – 6 casual labour. The I.O. like many other defence exhibit has not brought record D-5 in the inquiry and he has not mentioned even in his report earlier. However the objections of Accounts Officer was placed before him as token of proof that there were casual labour working in the sub-division. It was not possible to bring all the record during proceeding. It was supposed to be verified during preliminary enquiry conducted by the Agency.

That Sir, I.O.'s inference that the allegation under this para i.e. para – 6.5.1. is proved. It is not clear the allegation under which para is proved. The allegation against charged officer was that he in collusion with the members of the selection committee constituted by him

regularized 34 numbers of casual Mazdoors of North Lakhimpur as Temporary Status Mazdoor and I.O. was supposed to prove this charge but it seems I.O. has deviated from the main point. However I.O. has already pointed out the reference of TDE's letter dated 15.6.95 through which the list forwarded by SDOT was returned for fresh submission with requisite documents. It is not correct that the list were submitted in *March* 96. Regarding issuance of security passes D-5/ 2-3 which was intentionally not brought to record. I beg to submit that the then TDE who has submitted 'Nil' report to circle office, issued two security passes to two casual labourers working in his office. All the casual labour engaged before 1985 were made TSM during 1990-91. Hence there should be no casual labour in Tezpur SSA as per letter of the then TDE. The TDE should have sent report that two casual labour working instead of 'Nil' report. And thereby it is proved that the then TDE submitted a wrong report to Circle office. Hence the charges in this para cannot be said to be proved. Rather the document D-5/ 2-3 disprove the charges.

That Sir, the I.O. on the one hand accepted in his report in para-6.6 that the contention of charged officer is correct as it is very much clear from the content of the letter S.Ext-59. Again in regards to the letter S. Ext-57 he wrote in the same para that the contention of the charged officer not correct as the letter was meant for collecting information for fixing responsibility on the officers/official who engaged casual labourers after 30.3.85 which letter I.O. was referring. If the I.O. was referring DGM's letter No.1-3/COMPT/96 dated 20.8.96 then this letter was not made available during the inquiry. The deference placed requisition for this letter before the inquiry which was not produced. But I.O. wrote about contents of the letter in his report and contended that the plea of charged officer could not be accepted. I.O. either did not go through the case thoroughly before writing his report or biased in his findings. The contents of the letter is self explanatory.

That Sir, the views expressed by I.O. in his report in para- 6.7 are not based on facts. In the previous para he has mentioned that the reference letter, on which the I.O. has expressed his views has not been produced before the inquiry and the letter was not included in the listed document. Although the defence placed requisition for recovery of the document, the letter was not placed before the inquiry. In absence of the letter how the I.O. made inferences is not understood. The I.O. also

misquoted my defence brief. It was a logical argument because after my joining there was no casual labour engaged and casual labourer already working in the SSA were engaged since 1988 for that the different SDO/SDEs has issued certificate. There was no wrong information submitted to DGM. Neither circle office has made any adverse remark in this regard. In the circumstances the I.O's findings in this para 6.7 is uncalled for without any reference. Moreover the circle office wanted to know about how many casual labourers were working in the SSA. In reply to that it was informed that there was no casual labour in the SSA as those engaged before 22.6.88 were already made TSM in May'96 but there were casual labourers working in traffic wing whose payments were made by the SSA because of that it was informed to circle office.

That Sir, I.O. has agreed in para 6.9 of his report that D.O. letter under para-11 of annexure-II of the chargesheet was not place before the inquiry. But the I.O. made comment that it has already been established above that charged officer supplied wrong information to circle office. Under what reference the I.O. made such comment, is not clear. Two letter mentioned in this para were written to two different authorities sitting in different office. Letter No.X-1/COMPT/96-97/21 dated 7.8.1996, which was produced before inquiry as D.Ext-3, through which Area Director Telecom Guwahati was intimated about conferment of TSM to 221 casual labours. Letter No.E-38/CMPT/Vol-III/96-97/15 dated 30.8.1996 (S.Ext.57) through which it was replied to DGM(A) circle office against his letter mentioned in para-9 of annexure-II of the chargesheet regarding existence of casual labour not TSM. The inference made in this para is not based on material facts and contents of the aforesaid letters.

That Sir, in para 6.10 of the report the I.O. has accepted to the extent that no regularization was done vide letter mentioned in para-12 of annexure –II of the chargesheet. But I.O. has expressed further view in last line of this para that the charged officer regularised at least 2 TSMs without the recommendation of selection committee. The I.O. rightly mentioned about the list (S.Ext-7) and name of Sl.No.33 is not available in S.Ext-56 the order of TDE. The fact is S.Ext-7 submitted before the inquiry consisting 33 names of casual labour. However after the recommendation made by Selection Committee I myself raised some objection vide letter-dated 18.4.96, which was replied by SDOT/North Lakhimpur, produced as S.Ext-2. This was again sent to selection

committee for further verification and the selection committee recommended the new list after scrutiny, which was submitted before the inquiry as S.Ext-1. But the I.O. has not taken into consideration the recommendation made in S.Ext-1. There was not a single name available in the list of conferring TSM without the recommendation of the selection committee.

That Sir, the I.O. in para 6.11 has not made the assessment correctly without any material fact that the contention of charged officer is not at all correct as name of casual labourers were sent by SDOT North Lakhimpur on 16.3.96 (S.Ext-8) in response to TDE's letter dated 15.6.95 where is the letter of TDE dated 15.6.95? The process of conferment of TSM was started in 1994. There were so many letters that was not mentioned in the chargesheet and investigating team also did not find anything in this regard. The union was all along fighting on this issue. There were discussions in the RJCM and LJCM. At last it was decided that the cases which would be authenticated by SDO's/SDE's, those cases would be considered for confer ing TSM. Accordingly all the list were returned to SDO's/SDE's vide letter dated 15.6.1995. The points raised by the I.O. in this para are without any context. The documents submitted before the inquiry are photocopies not the original.

That Sir, I.O. in the concluding para 6.12 of I.O.'s findings he has commented, "No direct evidence for collusion with members of selection committee constituted by him was brought before the enquiry. However the probability of collusion is not ruled out. Thus charge is proved but not fully". As per Rule-14 of CCS (CCA) Rules 1965 it is mandatory that the I.O. has to make definite conclusion on each article of charge and reason thereof and also assessment of the evidence in respect of each article of charge. In the instant case I.O. did not come out with definite findings. Even preponderance of probabilities could not be made out from the listed documents or state witnesses. As per instruction for conducting departmental inquiry the I.O. after taking into consideration all the circumstances and facts has to draw inferences to record his reasoned conclusion as to whether charges are proved or not, but in the instant case no reasoned conclusion has been drawn.

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In the circumstances I beg to request you that taking into consideration S-1, S-2, S-7, S-8, S-56, S-65, S-70, S-72 and SW-1, SW-4, SW-7 and SW-9 and the following points the case may be analysed.

1. I was witness in the court proceedings for conferring TSM in one order dated 27.5.1996 (S.Ext-56). How a departmental proceeding could be initiated on the same order against a witness (S.Ext-56)?
2. There was no procedural mistake in conferring TSM as told by SW-1 and SW-7 in their deposition.
3. The selection committee was constituted from different field without any prejudice.
4. All the SDOs/SDEs authenticated the working certificate of all the casual labourers.
5. IO. failed to bring all the defence documents in record.
6. I.O. took long three years to complete the inquiry for the reason best known to him against all the norms.
7. D. Ext-2 submitted before the inquiry through which I have cancelled the provisional order of conferring TSM, which was also agreed by Sw-1. Thus the allegation stands disprove.

Considering all the facts and circumstances I beg to submit that there is no reason in support of the charges made in the chargesheet. Hence the charges may be dropped and I may be exonerated.

Yours faithfully,

(M.K. GOGOI)

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ANNEXURE-XVII

Confidential

No. 8-181/2001-Vig. II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunication
(Vigilance-II Section)

915, Sanchar Bhawan, 20, Ashok Road,
New Delhi-11 00 01.

Dated, the 04-10-2005

MEMORANDUM

A copy of the Inquiry Report dated 27.07.2005 submitted by Shri G. Jayaraman the then GMTD, Boogaigaon, Assam Telecom Circle, Guwahati who had been appointed as the Inquiring Authority to inquire into the charges framed against Shri M.K. Gogoi, formerly TDE, Tezpur and now Area Manager(East), Kamrup Telecom District, Guwahati, is forwarded herewith. A copy of ID Note No. 001/P&T/120/7072 dated 23rd September 2005 of the Central Vigilance Commission (CVC), is also forwarded herewith.

2. Although the Inquiry Authority has held the charges as not proved, the Disciplinary Authority proposes to disagree with the findings of the IO to the extent indicated below and hold the charges as proved :

The IO has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT. The documentary evidences taken into account during the course of inquiry i.e. SE/7 & SE/8 proves that the Charged Officer was aware of the DOT's guidelines regarding appointment of Temporary Casual Mazdoors (TSM) ; still he allowed the ineligible casual mazdoors to be appointed as TSMs.

3. Shri M.K. Gogoi, Area Manager is hereby informed that he may make such representation as he may wish to make in the matter. Such representation, if any, shall be made in writing within fifteen days of the receipt of this Memorandum, failing which it will be presumed that he has no representation to make and further necessary action in the matter is liable to be taken accordingly.

4. Attention of Shri M.K. Gogoi is drawn to the orders of the CAT, Guwahati, passed in the O.A. No.119/04, regarding passing of the final orders at the earliest. In case Shri Gogoi fails to submit his representation within the time indicated in Para 3, it will be presumed that he is trying to delay the process of finalization of the disciplinary cases and this would be brought to the notice of the Hon'ble Court as and when raised before it.

5. The receipt of this Memorandum, alongwith a copy each, of the Inquiry Report and CVC's advice, shall be acknowledged by Shri M.K. Gogoi, Area Manager.

By order and in the name of the President.

(A.K. Patro)
Desk Officer((Vig.II)

Encl. : 1. Copy of Inquiry Report.
2. CVC's I.D. Note No.001/P&T/120/7072 dated 23rd September 2005

Shri M.K. Gogoi
Area Manager,
Kamrup Telecom District,
Guwahati.
(Through the CGM, Assam Telecom Circle, Guwahati).

Attested by
Adv.

ANNEXURE-XVIII

REPORT

MEMO NO. 8-181/2001-Vig II

Upon deciding to hold an inquiry under Rule-14 of CCS Rules 1965, against Shri M.K.Gogoi, the then TDE and presently Area Manager Assam Telecom Circle, I was appointed as Inquiring Authority Vide No.8-181/2001 Vig.II dated 18.6.04 issued by Director (V&T).

The Charge against Shri M.K.Gogoi is that:-

While posted and functioning as TDE Tezpur during 1996, Shri Gogoi committed serious irregularities in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoor in Tezpur SSA including 22 in Dhemaji Sub-division, on the basis of forged experience certificates, and by his above acts, Shri Gogoi failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a government servant, thereby violating Rule 3 (1) (i) & (iii) of CCS conduct Rule 1964.

The Officer in his statement of defence dated 19.11.03 denied the charge, consequent to which formal enquiries under Rule 14 of CCS rules 1965 were held by the undersigned.

Before going into the arguments, witnesses and documents provided by both the sides, it is relevant to recollect the basic issues involved.These are as below:-

(i) DOT vide letter No.269-10/89-STN dated 7.11.89, forwarded the details of a scheme approved by Telecom Commission for conferring temporary status on casual labourers engaged up to 30.3.85. The order reiterates several earlier orders directing field units to stop engaging casual labour after 30.3.85. It also specifies that in case of any casual labour engaged after 30.3.85 requiring consideration for TSM status, the case should be referred to Telecom Commission. As per clause 3.3 of the annexure to this letter no casual labour recruited after 30.3.85 should be given TSM status without specific approval from DOT.

(ii) On 17.12.93 DOT issued another order 269-4/93/STN-II stating that Casual Labourers engaged from 31.3.85 to 22.6.88 by circles also are to be brought under the TSM scheme. It also stipulates that recruitments made after 30.3.85 is to be analysed and disciplinary action initiated against defaulting officers.

(iii) In the instant case the then TDE Tezpur granted TSM status to 221 CLs including 22 recommended by SDE(Phones) Dhemaji on the basis of forged experience certificates.

The case was presented on behalf of the disciplinary authority by the P.O. Eighteen documents were taken on record as state exhibits and 12 as defense exhibits. Five witnesses were examined on behalf of P.O and five on behalf of defense , records of which are produced in the relevant folders. This includes the depositions of some witnesses common to case no 8-165/2001-Vig II and this case .The deposition of Sri. B.K.Goswami TDM Tezpur in a similar case against the charged officer but handled by another I.O was also taken on recordes.

General Manager Telecom
B. S. N. L. Vasai 401 202.

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Attested by
Choudhury
Adv.

The case of the disciplinary authority as presented by the PO.-

a) The charged officer has not taken proper approval of the competent authority before signing the order coferring temporary status of the casual laborers in question.

b) In one case, he cites letter No.269-4/93-STN-II as the authority in which he acted whereas this is the original letter of DOT which extend the benefit of TSM status to Causal Labourers engaged between 31.3.85 and 22.6.88. This order has to be read in conjunction with the order No.269-10/89-STN dated 7.11.89 which lays down the details for grant of temporary status. While the charged officer has ensured adherence to the procedures to be adopted for granting temporary status, he has not adhered to other relevant and binding clauses in the same letter which require all such cases to be referred to the Telecom Commission.

c) In his actual order granting TSM status, he cited the RJCM Meeting Minutes as the circumstances under which he acted. Minutes of meetings should not be take as the authority to act in such cases of important nature.

d) Even granting that, no mention is made of pending cases for conferment of TSM status in Tezpur SSA in these minutes.

e) Recommendation of the DPC is flawed and TDE has not bothered to check these. DPC has to go through all the pros and cons of the relevant documents, but this has not been done. During different stages of the enquiry, the DPC members have stated that they made only sample check of the ACE-2 bills. But the then AO Cash who is supposed to be the custodian of the ACE-II bills has said that some of the ACE-2 accounts were not available. Since no such records were disposed off, the inference is that they never actually existed. The then TDM Shri. Goswami also corroborated this saying that no document regarding payment to the said casual labourers were available in the office.

f) The officials who gave the certificates, have during the proceedings, stated that they presumed 'grant of temporary advance' as approval for engaging casual labourers. This is not acceptable. No formal approval was taken from the TDE.

g) Even in the proforma submitted recommending names of casual labourers, the column pertaining to approval has been left blank. One official who issued such certificate also said that no authentic records were consulted before issue of certificates.

General Manager Telecom
B. S. N. L. Vasai 401 202,

Case of Defence as presented by the defense assistant.

a) The certificates given by earlier TDEs that there was no casual labour engaged after 31.3.85 was false and given without verifying facts. One TDE Sri. Balasubramanian who gave such certificate has himself signed security passes for casual labour engaged after 31.3.85. The other TDE has told during the hearings that there were actually casual labourers engaged.

b) DPC Members have clearly told the enquiry that there was cross checking of certificates given by field officers; records were produced before DPC; various parameters like DOB, work experience certificate, signature, recommendation by controlling officer were verified.

c) casual labour were employed on ACG-17 and not muster roll and field officers have told during the hearing that casual labour were engaged for more than 19 days in a month.

d) DOT only imposed certain restrictions in engaging casual labour after 30.3.8. Complete ban was imposed only since 1989.

e) Recruiting authority for even Regular Mazdoor is SDE only. Hence all records of engaging casual labour will be only with SDE. It is not correct to say that the no original records exist in the SDE's office and that original records are available only in the office of TDE.

f) TDE cannot check each record individually, he has to depend on SDE/AO.

g) Selection Committee set up by TDE included officers of accounts / HRD and field units to ensure that all aspects like actual payments, proper certificates and engagement details were checked before recommendation. No violation in DPC constitution was found even by CBI.

h) DPC enjoys full discretion to device their own procedures for assessing suitability of casual labours.

i) Since documents like ACE-17 & ACE2 have to maintained for only three and five years respectively, it is possible that some of the relevant documents were no available to the DPC due to misplacement.

j) Circle Office vide defense exhibit 10 has said that only TDE is the authority in respect of grant of TSM status. They did not say TDE should forward cases to DOT.

k) Charged officer issued only provisional order. On further orders of Circle Office and under the direction of TDM, he also cancelled this provisional order.

l) TDM Shri Goswami has given evidence that he was forced to revoke this 'cancellation order' issued by charged officer due to threats, gheros, dharna etc. of Union.

m) For effecting a renewed exercise to identify casual labour for giving TSM status, it is the TDM who has to take action and not the charged officer.

General Manager Telecom
B. S. N. L. Vasai 401 207

Assessment of evidence :

From the evidence produced by way of statements, deposition of witnesses and briefs submitted by the presenting officer and the defense assistant the following are clear.

a) The authority for selection of casual labours eligible for conferment of TSM status is the TDE.(DE10).
b) The actual conferment of TSM status can be done only after referring to the DOT (SE 7,8).
c) Nomination of the members of the selection committee has been done by the charged officer with due care. He has included members from the accounts,HRD and field units.
d) The information given to Circle office by the earlier TDEs is incorrect. One of them Sri D.Payeng has said during the enquiry that there were CLs engaged on 19 day basis while the other Sri Balasubramanian has himself signed security pass for CLs after the said date. (DE8,9).
e) The contention of defense that there was no complete ban in engaging CLs till 1989 and only some restrictions were imposed in 1985 (Page 3 of defense brief) is incorrect. The engagement of CLs was to be totally stopped after 30.3.85 (SE8).
f) DPC was not formed based on clear authority but on the basis of RJCM minutes where no specific mention of Tezpur SSA was made. This is improper.
g) No clear terms of reference were given to the DPC.
h) While the charged officer quotes RJCM minutes as the authority in the order (SE11), he cites DOT letter dated 17.12.93 (SE7) in his reply to circle office. There seems to be confusion and it seems probable that the DPC was constituted under pressure.
i) SDE(P) Dhemaji has forwarded the names of CLs on 24.1.96 but has not given details of " approval or authority " on this date (SE15). On 14.5.96 (SE15) he refers to a letter from TDE dated 18.4.96 and sends various details for the sam CLs to TDE in connection with conferment of TSM status to CLs (SE12). From the above it is reasonable to presume that full details were available to DPC only after 14.5.96.
j) DPC members have actually signed their recommendations for the above CLs on 9.4.96 itself (SE14) ie earlier than 14.5.96.This confirms that the recommendation were made before full details were received from field.
k) The charged officer cancelled the provisional order issued by him on the directions of circle office but this cancellation was revoked by the TDM on pressure from the unions (Deposition of Sri Goswami TDM in an earlier similar case taken on record for this case also).

26/2

General Manager
B. S. N. L. Ltd.

(36)

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FINDINGS :

a) It is established that the charged officer is not competent to issue the said orders without referring the eligible cases of casual labours to DOT. However he is the appropriate authority to constitute a selection committee which he did. The constitution of the selection committee was proper but no clear terms of reference was given to the committee.
b) The members of the DPC made their recommendations before they received all relevant documents.
c) The order conferring TSM status was cancelled by the charged officer as directed by circle office but the TDM Sri B.K Goswami revoked this cancellation on pressure from the unions without taking approval of circle office.

The way the DPC made its recommendations leaves a lot of doubts about the genuineness of the cases recommended. As TDE Sri Gogoi was fully empowered to constitute the DPC. Once the recommendations are submitted he can overrule the recommendations only on exceptional grounds. To go into the basis of th recommendations in each case would mean repeating the work of the selection committee, which not feasible for the TDE to do.

The charge against Sri. Gogoi is that he granted TSM status to the 22 CLs based on forged experience certificates. No case is made out that he knew that the certificates were forged. Hence the charge that Sr. Gogoi appointed the casual labourers as TSM on the basis of forged certificates is not established.

26/7

General Manager Telecom
B. S. N. L. Vasai 401 202

Form 5 -137-

1.Name and designation of charged officer : M.K.Gogoi
2.Name and designation of Presenting officer : K.K.Das, DE Admn o/oGMTD,Kamrup, Guwahati,Assam
3.Name and designation of Defense Assistant : S.K.Sikidar, DE,o/oCGM.NETF, Guwahati.

Service particulars of C.O :
Date of superannuation
Present pay with scale
Date from which present pay drawn
Service to which he belongs ITS

5 Date of receipt of
appoint order as I.O 1.9.2004
other documents from displinay authority : over a period
6 Date of first appearance of charged officer before I.O 7.10.2004
7. Date of preliminary hearing 7.10.2004
8.Date of completion of inspection of documents
9.Dates of regular hearings 5.2.05, 7.2.05 24.3.05
10.Date of submission of report 27.7.05
11.Time taken for submission from date at 5 above 11 months
12.Suggestions for improvement if any :

a) No officer who is head of SSA in a hard tenure station is to be made I.O.
b) The maximum number of cases to be handled by an I.O to be restricted as per rule.
c) At least listed documents are to be made available within reasonable time.
d) Any order passed by CAT or courts should be given to the IO immediately. In this case of the 60 days given by CAT to complete the inquiry I was not intimated for around 40 days and extreme pressure put on me to give the report in about 10 days time which is grossly unfair to all parties involved. I AM MYSELF NOT FULLY SATISFIED WITH THE WORK I HAVE DONE.
e) Initiating so many cases against the same officer for the same order dilutes the seriousness of a Rule 14 inquiry. This non serious approach due to the above reason was reflected in a similar case against Sri D.Payeng DE in Assam circle where even his name was put incorrectly in the charge sheet.

The recent order permitting IO, PO to take 20 days in two stages to attend full time to the inquiry is a good step but more steps to be taken to avoid delays in providing documents to the PO.

(G.Jayaraman,)
GMTD Vasai, Maharashtra.
Inquiry Officer

ANNEXURE-XIX

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CONFIDENTIAL

CENTRAL VIGILANCE COMMISSION

SUB:- Case against Shri M.K.Gogoi, then TDE, Tezpur.

Ref:- DoT's File No. 8-181/2001-Vig.-II dated 29/08/2005.

The Commission has perused the inquiry report, along with its relevant records and the comments of the administrative authorities thereon. It does not agree with the findings of the inquiring authority. It concurs with the findings of DoT that the charges against Shri M.K.Gogoi, then TDE are proved and would advise for imposition of major penalty on him.

All the records of the case as received in the Commission are returned herewith. Its receipt may please be acknowledged. Action taken in pursuance of Commission's advice may also please be intimated within a month of the receipt of this communication.

3992/ES/Vig.II/26/9/05

4509
26.9.05

(Yogesh)
Director

Department of Telecom, (Shri J.R.Gupta, , Sr DDG(Vig.), Sanchar Bhawan, Room No. 909, 20, Ashoka Road, New Delhi.
C.V.C I.D. Note No. 001/P&T/120 dated /7072

DD(Vig)

Director (V&T)
Dy. No 2096
Date 26.9.05

26/9

DD II(Vig II)

9

Attested by
Choudhury
Adv.

ANNEXURE -XX

261

To
The President
915, Sanchar Bhawan
20, Ashoka Road
New Delhi-110001.

Dated at Guwahati, the 16.11.2005.

Sub: - Representation on the points of disagreement of the Disciplinary Authority with the findings of I.O.

Ref: - Memorandum No.8-181/2001-Vig.II dated 04.10.2005.

Sir,

I beg respectfully to acknowledge the receipt of your memorandum under reference received on 8.11.2005.

That sir, on the points of disagreement that I.O. has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT. In this regard I beg to submit that the I.O. has made error on this point in his judgment. I.O. in his findings stated in paragraph (a) that the charged officer is not competent to issue the said orders without referring the eligible cases of casual labours to DOT. But I.O. has not explained how he has come to this conclusion.

That Sir, the issue was discussed elaborately during the regular hearing and P.O. asked questions to SW-1 on this point. On the day of regular hearing I.O. suggested that since four cases of similar charges are to be inquired against the C.O. the recording of the Examination – in - Chief, cross-examination, re-examination etc. of the common witnesses done during this hearing (case no.165) may be taken on record for all other cases. This was agreed by both the parties, which was recorded in daily order sheet dated 4.2.2005 in case No. 165. At the time of preliminary enquiry the statement of SW-1 was taken which was brought to record by prosecution during regular hearing and marked the statement as S.Ext-27. In last para of page-1 of the statement (S.Ext-27) SW-1 stated that concerned TDM/TDE were actually in charge of implementation of this scheme. SW-1 Sri A.K. Challeng, AGM (Admn) Assam Circle, Guwahati was nominated by the CCMT/Assam to give

Attested by
Choudhury
Advt.

the statement on behalf of circle office. In reply to Q.No.5 of P.O. SW-1 replied that the order stated as S.Ext-21 in case No.165 and S.Ext.7 in this case is the authority, which is to be acted upon. Thus from the deposition and statement of SW-1 it has become crystal clear that DOT letter dated 17.12.1993 (S.Ext-7) was a clear order instructing the circles to confer temporary status to eligible casual Mazdoors as per the order. Language of the order (S.Ext-7) was written thus, "I am directed to refer to this office order No.269-4/93- STN dated 25th June, 1993, wherein orders were issued to extent the temporary status to all those casual Mazdoors who were engaged by the project circles/ Electrification Circles, during the period 31.3.85 to 22.6.88.

2. The matter has further been examined in this office and it is decided that all those casual Mazdoors who were engaged by the circle during the period from 31.3.85 to 22.6.88 and who are still continuing for such works in the circles where they were initially engaged and who are not absent for the last more than 365 days continuing from the date of issue of this order, be brought under the above said scheme." The order was very clear and unambiguous because of that circle office circulated the order (S. Ext-7) to all the SSA for implementation of the order. The order issued by DOT on 7.11.89 has been superseded by the order referred in S.Ext-7. Accordingly all the circles have conferred Temporary Status to all eligible casual Mazdoors as per the order. The department also did not frame charge in statement of Articles of charge that the conferment of TSM status was done without referring the case to DOT as pointed out in the memorandum under reference. If this point is taken into consideration while awarding the final order in this case then great injustice will be done to the undersign. As per CCS (CCA Rules) 1965 if in the opinion of the Inquiry Officer the proceeding of the inquiry establish any article of charge different from original articles of charge he may not record his findings on such articles of charge unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity during the course of the enquiry of defending himself against such article of charge, otherwise it is violative of principle of Natural Justice . In the instant case the I.O. has brought a new charge that the charged officer is not competent to issue the said orders without referring the eligible cases of casual labourers to DOT, which was brought before the inquiry by P.O. But DOT has issued order in superseding its earlier order to extend the facility to eligible casual Mazdoors as per instruction thus the new charge do not have any basis whatsoever.

ANNEXURE-XX

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That Sir, the question of obtaining further approval of DOT was not required as the order for conferring TSM was issued on the order of DOT memo No. 269-4/95 STN-II dated 17.12.1993 and produced before the inquiry as S.Ext-7 which was circulated by CGMT/Assam to all SSA and accordingly the then TDE Tezpur forwarded the order to all SDO's / SDE's for implementation. The defence document produced before the inquiry D.Ext-10 which was written by ADT (E&R) for CGMT/Assam addressed to Divisional Secretary NUTEE, L/S and Group-D Tezpur of which a copy endorsed to TDE Tezpur. In his letter ADT has very clearly written, "concern Telecom District Engineer is the authority to regularize the casual Mazdoors as per DOT guide line, Circle office cannot interfere in this matter. Cases may be settled with Telecom District Engineer only." Thus the Circle Office itself had authorized the TDE Tezpur to confer TSM as per DOT order. Apart from this the Inquiry Officer, summoned the CBI investigating officer Sri K. Barman as state witness no. 10 (common witness in all the cases as agreed) during the hearing who has very clearly told before the inquiry in reply to question no. 2 of defence asstt that during investigation no such violation (in respect of constituting selection committee) was found nor department could able to produce any document regarding the violation of any rule provision. When asked about whether SW- 10 has noticed any violation of departmental rules/ procedure or any irregularities committed by charged officer in conferring TSM, the SW-10 replied that he did not find any violation of rules from the documents seized from the department. Thus from the above points it is revealed that the disciplinary cases framed against me was not based on any material fact rather based on extraneous ground.

That Sir, S.Ext-7 and S.Ext-8 has not given any such guidelines to refer the case of casual labouers to DOT before conferring TSM. S. Ext-7 is the order of DOT No. 269-4/95 STN-II dated 17.12.1993 and it is discussed in details in respect of the context of the letter in aforesaid paragraph. S.Ext-8 DOT letter No. 270/6/84-STN dated 30.3.1985 was issued to restrict the engagement of casual Mazdoors and it was instructed that every effort should be made to reduce the number of casual Mazdoors. As such there was no link between S.Ext-7 / S.Ext-8 with referring the cases of eligible casual Mazdoors to DOT for approval to be appointed as TSM. The I.O. though made erroneous finding in stating to refer the eligible cases to DOT but has rightly pointed out in his findings at Sl.No. (b) and (c) that DPC was constituted before taking any action and DPC recommendation can be overruled

only on exceptional grounds. But as soon as the circle office instructed to review the process, the order for conferring TSM was cancelled by the undersign. Thus the charges cannot be sustained as the mistake, if any, was rectified with corrective measures.

That Sir, I beg to state that I had taken over the charge of Tezpur SSA on 31.1.1995 when the order of DOT to confer Temporary Status already reached to all sub-division under TDE Tezpur. The letter (S.Ext-7) was circulated by TDE,Tezpur vide letter dated 28.1.1994 long before my joining. The process was delayed due to some or other pretext and ultimately it was a big union issue. After my joining the issue was raised in RJCM/ LJCM forum and administration side agreed to settle the issue. What was expected from a TDE who has just joined and found number of cases of casual labourers were pending in the SSA for conferring Temporary status. There were union pressure and agreement in the LJCM/RJCM. Considering all the facts it was decided to form a selection committee for verification of service particulars of casual labours in question after discussion at all levels and like other division and other circles and accordingly whole process was carried out. Before signing the provisional order I have further verified some cases of payment vouchers at random and after confirming that there was full proof verification I on due believe signed the provisional order. This order of conferring Temporary status was also cancelled by the undersign (D.Ext-03) on the order of circle office for further verification (D. Ext-02). The D.Ext-2 and D.Ext-3 were brought to record in case No. 165 which was mentioned in daily order sheet on 8.2.2005.

That Sir, it is pertinent to mention here that the allegation was while posted and functioning as TDE Tezpur during 1996 committed serious irregularities in as much as he appointed 221 casual labourers as Temporary Status Mazdoor in Tezpur SSA including 22 in Dhemaji Sub-division on the basis of forged experience certificate. Crux of the case is that the prosecution has to prove or to show preponderance of probability that the certificates were forged which is required as standard of proof in a disciplinary case. Inquiry Authority in his report clearly stated in unequivocal term, " No case is made out that he knew that the certificates were forged". Thus the I.O. has given definite findings on the article of charge that the charge has not been established. But the point of disagreement with the findings of the I.O. is not made in respect of article charge in this case. Question of referring the case to DOT has not come in this case. Even the Assam Circle Office

while instructing to review the cases of casual labourers has not made any comment that TDE Tezpur has not referred the case to DOT (D. Ext-02). Thus it proves bias in preparing the disagreement memo. The language use in paragraph-3 of the memo is not as per laid down procedure of CCS (CCA) Rules. The charged officer is not allowed to make representation as he may wish to make in the matter. The charged officer is to confine his representation within the recorded material in the inquiry proceeding. The expression is biased as this may be interpreted that the decision has already been taken irrespective of whatever representation one wish to make.

Under the circumstances, I beg to appeal to your benign authority to consider the case with all the facts and documentary evidences submitted before you. There are no direct or corroborative evidences to sustain the charges made in the chargesheet. Hence the charges may be dropped and I may be exonerated and for this I shall ever pray.

Yours faithfully,

16.11.05

(M.K. GOGOI)
Area Manager (East)
Dispur Telephone Exchange
Dispur, Guwahati-6.

ANNEXURE-XXI

264

BHARAT SANCHAR NIGAM LIMITED

(A Government Enterprise)

O/O, The General Manager, Kamrup Telecom District,
Panbazar, Guwahati – 781001.

No. GM/SDE(Vig)/X-106/06-07/15, 19 Dated at Guwahati, the 19-05-2006.

To,

Shri Madhurya Kr. Gogoi,
D. G. M. (P & A),
O/o The General Manager,
Kamrup Telecom District, B S N L,
Panbazar, Guwahati – 781001.

SUBJECT :- **Final Order i.r.o. Disciplinary Case under Rule-14 instituted vide Memo. No. 8-15/2001-Vig.II, Dtd. 07-03-2002.**

REFERENCE :- **Final Order No. 8/15/2001-Vig.II, Dtd. 02-05-2006.**

Reference to the subject cited above, enclosed find herewith the Final Order (In Original) vide No. under reference as above.

Your dated acknowledgement receipt of the aforesaid Final order (In triplicate in original) may be submitted immediately on receipt of the same for onward transmission to TCHQ, New Delhi.

Enclo :- Order No. 8/15/2001-Vig.II, Dtd. 02-05-2006 along with UPSC's Ltr. No. 3/161-05 S.I., Dtd. 07-04-2006. (7 no. of sheets in Original).

V. Mulla 19/5/06

General Manager,
Kamrup Telecom District, BSNL,
Panbazar, Guwahati – 781001.

Copy to :

(1) D. G. M. (Finance), O/o The GM/KTD, GH-1 for infn & N/A. (Enclo- Final Order)
(2) D. E. (Admn), O/o The GM/KTD, GH-1 for infn & N/A. (Enclo- Final Order)
(3) D. G. M. (Vig), O/o The CGMT, BSNL, GH-7 for infn.
(4) Office Copy.

Sd/—

General Manager,
Kamrup Telecom District, BSNL,
Panbazar, Guwahati – 781001.

Attested by
Advocate

No. 8/15/2001-Vig.II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance-II Section)

915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110001.

Dated, the 2nd May, 2006

ORDER

WHEREAS major penalty proceedings under Rule 14 of CCS(CCA) Rules, 1965 were instituted against Shri M.K. Gogoi, formerly TDE, Tezpur and now DGM, Guwahati vide memorandum no.8-15/2001-Vig.II dated 07.03.2002 for the following article of charge :

Article :

That the said Shri M.K. Gogoi while functioning as TDE, Tezpur during 1996 committed serious irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him, regularized 22 numbers of Casual Mazdoors of SDE(P), Tezpur as Temporary Status Mazdoors with malafilde intention although none of them was eligible for such regularization that too without verifying the genuineness of the recommendations of different SDO's/SDE's and Experience Certificates issued by JTO/Lineman etc. and thus putting the Department to a huge financial loss.

Thus by his aforesaid acts, Shri M.K. Gogoi failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

2. WHEREAS, the Charged Officer had denied the charges vide his defence statement dated 27.03.2002, a detailed inquiry as prescribed under CCS(CCA) Rules was conducted by appointing S/Shri Srihari Roy, the then GMTD, Silchar and Nirmalendu Pegu, DGM(P&A), O/o GMTD, Guwahati as IO/PO respectively. The Inquiring Authority has submitted his inquiry report dated 18.12.2004 holding the charge as not proved. However, the disciplinary authority proposed to disagree with the findings of the IO to the extent indicated below :

(i) The IO failed to take into account the fact that 22 TSMS were appointed based on fake experience certificates. The Selection Committee constituted by the Charged Officer recommended for their appointment and the Charged Officer accepted the same. This charge is sustained based on the evidences at S/1 to S/29, S/30, S/68 & S/68.

(ii) The documentary evidences taken into account during the course of inquiry i.e. S/35, S/41 & S/71 proves that the Charged Officer was aware of the DoT's guidelines regarding appointment of Temporary Casual Mazdoors (TSM) still he allowed 22 ineligible casual mazdoors to be appointed as TSMs.

3. WHEREAS the case was referred to CVC for their second stage advice. The CVC vide their I.D. Note No. 000/P&T/0691657 dated 27.01.2005, have advised that a suitable major penalty may be imposed on Shri M.K. Gogoi. A copy of the Inquiry Report along with a copy of the CVC's advice was sent to the charged officer, duly accepted by the Competent Disciplinary Authority, to enable him to make a representation as he may wish to make. Shri M.K. Gogoi submitted his representation dated 10.05.05, wherein he could not bring out any new facts to rebut the findings of the IO. Therefore, with the approval of the Competent Disciplinary Authority, the case was referred to the UPSC for their statutory advice as to the quantum of punishment that may be imposed on Shri M.K. Gogoi.

|Contd.....|

4. AND WHEREAS the UPSC have tendered their advice in this matter vide their letter No.F.3/164/05-S.I. dated 07.04.2006 (Copy enclosed). The Commission have, inter-alia observed that the charge that the 22 ineligible persons were granted 'Temporary status mazdoors' by the Charged Officer on the basis of the recommendations of the Seclection Committee constituted by him, stands proved due to the following findings :

(a) It was the Charged Officer's responsibility to get the list of eligible persons prepared on the basis of the attendance registers/pay rolls and place it before the Committee, for its consideration. Alternatively, these documents should have been ab initio placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents which were placed before it, the responsibility lay on the Charged Officer/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The Charged Officer failed in this respect.

(b) The exercise at (a) above ought to have been got done by Charged Officer before (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The Charged Officer failed here also.

(c) Charged Officer's averment in his defence that he acted under pressure of the Union actually exposes his guilt, though obliquely, in that, it is admission that whatever he did was done knowingly and consciously.

(d) In view of (b) to (c) and Para 4 (iii) above, there is preponderance of probability that the Charged Officer wanted to unduly favour 21 persons, either in collusion or otherwise, for reasons better known to him.

(e) Charged Officer's misdemeanor acquire a serious contour in view of (d) above.

5. AND WHEREAS the Commission are of the view that the ends of justice would be met in this case if the penalty of "reduction to a lower stage, by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years, with the direction that the Charged Officer will not earn increments of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay" is imposed on Shri M.K. Gogoi, DGM.

6. NOW THEREFORE, after careful consideration of the findings of the Inquiry Officer, submissions made by Shri M.K. Gogoi, DGM, the Charged Officer, in his representation dated 10.05.2005, the advice tendered by the UPSC, vide their aforesaid letter dated 07.04.2006 and all relevant facts and circumstances of the case, the President, the competent disciplinary authority, accepts the advice of the UPSC and hereby imposes on Shri M.K. Gogoi, the penalty of "reduction to a lower stage, by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years with the direction that the Charged Officer will not earn increments of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay".

7. The receipt of this Order shall be acknowledged by Shri M.K. Gogoi, DGM.

By order and in the name of the President.

Encl : UPSC's letter No.3/164/05-S.I. date 07.04.2006.

(A.K. Patro)
Desk Officer (Vig.II)

Shri M.K. Gogoi,
(Staff No.9657),
Dy. General Manager,
Guwahati Telecom District,
Guwahati.

ANNEXURE-XXII

4

269

CONFIDENTIAL

ADVICE OF

UNION PUBLIC SERVICE COMMISSION

IN THE

DISCIPLINARY PROCEEDINGS

AGAINST

SHRI M.K. GOGOI, FORMERLY TELECOM DIVISIONAL ENGINEER.

MINISTRY OF COMMUNICATIONS AND I.T.

Attested by
Choudhury
Adv.

R
iram : UNISERCOM

Telex : 031-62677
Fax : 011-3385345

CONFIDENTIAL
No:3/164/05-S.I

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

सेवा में
To

नई दिल्ली 110011
New Delhi-110011

दि. 7.11.06
Dt.

The Secretary,
Department of Telecommunication,
Ministry of Communication & Information Technology,
New Delhi.

[Kind Attn.: Shri A.K Patro, Desk Officer II (Vig.)]

Subject: Minor penalty proceedings under Rule 14of CCS [CCA] Rules, 1965 instituted against Shri M. K Gogoi formerly Telecom Divisional Engineer (TDE), Tezpur and now Area Manager (East), Kamrup Telecom District, Guwahati.

Sir,

I am directed to refer to your letter no.8/15/2001- Vigii dated 27.06.2005 on the subject noted above and to convey the Commission's advice as under:

2. The Commission note that Vide Memorandum NO.8-15/2001-Vig.II dated 7.3.2002 issued under Rule 14 of the CCS(CCA) Rules, 1965 to Shri M.K.Gogoi, formerly TDE,Tezpur and now Director,(RTTC), Guwahati he was called upon to answer the following article of charge.

Article

That the said Shri M.K. Gogoi while functioning as TDE,Tezpur during 1996 committed serious irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him regularized 22 numbers of Casual Mazdoors of

SDE(P), Tezpur as Temporary Status Mazdoors with mala fide intention although none of them was eligible for such regularization that too without verifying the genuineness of the recommendations of different SDO's/SDE's and Experience Certificates issued by JTO/Lineman etc. and thus putting the Department to a huge financial loss.

Thus , by his above acts, the said Shri M.K. Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3(1)(i),(ii) & (iii) of CCS (Conduct) Rules, 1964.

2.1 A statement of imputations of misconduct or misbehaviour in support of article of charge was also annexed to the charge memo. The CO denied the charge and remitted the case to the inquiry. The IO submitted his inquiry report dated 18.12.2004 holding the charges as not proved. The DA disagreed with the findings of the IO. A copy of the IO's report along with CVC's advice was sent to the CO to enable him to make a representation if any. The CO submitted his representation dated 21.0.305. The DA after considering the representation of the CO and the circumstances of the case took a tentative decision to impose a suitable major penalty. All the case records were then forwarded to the Commission for seeking their advice in the matter.

3. The Commission note that DA's case, in brief, is as follows:

i) CO was TDE, Tezpur during 1996.

ii) DOT issued a circular dated 17/12/1993 for regularization of casual labourers, engaged between 31/3/1985 and 22/6/1988, as temporary status mazdoors.

iii) The benefits of the said circular applied to those who were, firstly, engaged between 31/3/1985 and 22/6/1988; secondly, were continuing to work where they were initially engaged and, thirdly, were not absent for more than 365 days from and including the date of issue of the circular.

iv) The circular further stipulates that if any casual mazdoor is employed *after* the issue of the said circular, the wages paid to such casual

mazdoor should be recovered from the official(s) who has/have recruited/engaged the casual mazdoors.

v) On the basis of false experience certificates issued in favour of 22 persons by JTOs and SDOs/SDEs, the SDOs/SDEs of Tezpur Telecom Division (in collusion with the CO) forwarded the certificates to the CO with recommendation for consideration of 221 persons (including the said 22) as temporary status mazdoors.

vi) Thereafter, the CO constituted a Selection Committee on 25/3/1996.

vii) The Selection Committee recommended regularization of all 221 persons.

viii) The CO passed orders regularizing all 221 persons.

4. The Commission also note that the CO's defence, in brief, is as under--

i.) He was not a member of the Selection Committee.

ii) Verification of the certificates issued by SDOs/SDEs was entrusted to the Committee. Only those individuals, who were found eligible after verification of recommendations made by the SDOs/SDEs, were approved on a provisional basis by the Committee.

iii)He himself verified some cases of payment vouchers and, only after confirming that complete verification had been carried out, did he sign the provisional order.

5. The Commission have gone through the facts of the case in great detail and their observation in brief, are as follows :

5.1. The charge that the 22 ineligible persons were granted '*temporary status mazdoors*' by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved due to the following findings::

a) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/pay rolls and place it before the Committee, for its consideration. Alternatively, these documents should have been *ab initio* placed before the Committee. If

these documents were not placed before the Committee and the Committee went by some other documents which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

b) The exercise at (a) above ought to have been got done by CO *before* (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

c) CO's averment in his defence that he *acted under pressure of the Union* actually exposes his guilt, though obliquely, in that it is admission that whatever he did was done knowingly and consciously.

d) In view of (b) to (c) and Para4 (iii) above, there is preponderance of probability that the CO *wanted* to unduly favour 21 persons, either in collusion or otherwise, for reasons better known to him.

e) CO's misdemeanor acquires a serious contour in view of (d) above.

6. In the light of their findings as discussed above and after taking into account all other aspects relevant to this case the Commission hold the charge against the CO as fully proved. Therefore, the Commission are of the view that ends of justice would be met in this case, if penalty of reduction to a lower stage, i.e., by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years. with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay is imposed on the C.O. They advise accordingly.

7. A copy of the orders passed by the Ministry in this case may be sent to this office for information / records.

8. The case records are returned herewith. Their receipt may kindly be acknowledged.

Yours faithfully,

[S.B. SINHA]
DEPUTY SECRETARY

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

ANNEXURE-XXIV

BHARAT SANCHAR NIGAM LIMITED

(A Government of India Enterprise)

O/O, The General Manager, Kamrup Telecom District,
Panbazar, Guwahati – 781001.

No. GM/SDE(Vig)/X-106/06-07/15, Dated at Guwahati, the 22-05-2006.

To,

Shri Madhurya Kr. Gogoi,
D. G. M. (P & A),
O/o The General Manager,
Kamrup Telecom District, B S N L,
Panbazar, Guwahati – 781001.

SUBJECT :- **Final Order i.r.o. Disciplinary Case under Rule-14 instituted vide Memo. No. 8-180/2000-Vig.II, Dtd. 19-06-2001.**

REFERENCE :- **Final Order No. 8/180/2000-Vig.II, Dtd. 03-05-2006.**

Reference to the subject cited above enclosed find herewith the Final Order (In Original) vide No. under reference as above.

Your dated acknowledgement receipt of the aforesaid Final order (In triplicate in original) may be submitted immediately on receipt of the same for onward transmission to TCHQ, New Delhi.

Enclo :- Order No. 8/180/2000-Vig.II, Dtd. 03-06-2006 along with UPSC's Ltr. No F.3/348/05-S.I., Dtd. 31-03-2006. (7 no. of sheets in Original).

V. Mallin 23/5/06

General Manager,
Kamrup Telecom District, BSNL,
Panbazar, Guwahati – 781001.

Copy to :

(1) D. G. M. (Finance), O/o The GM/KTD, GH-1 for infn & N/A. (Enclo- Final Order)
(2) D. E. (Admn), O/o The GM/KTD, GH-1 for infn & N/A. (Enclo- Final Order)
(3) D. G. M. (Vig), O/o The CGMT, BSNL, GH-7 for infn.
(4) Office Copy.

Sd/-

General Manager,
Kamrup Telecom District, BSNL,
Panbazar, Guwahati – 781001.

Attested by
Advocate

No. 8/180/2000-Vig.II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance-II Section)

915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110001.

Dated, the 03-05-2006

ORDER

WHEREAS major penalty proceedings under Rule 14 of CCS(CCA) Rules, 1965 were instituted against Shri M.K. Gogoi, formerly TDE, Tezpur and now DGM, Guwahati vide memorandum no.8-180/2000-Vig.II dated 19.06.2001 for the following article of charge :

Article :

That the said Shri M.K. Gogoi while functioning as TDE, Tezpur during 1996 committed serious irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him, regularized 34 numbers of Casual Mazdoors of North Lakshimpur as Temporary Status Mazdoors with malafide intention although none of them was eligible for such regularization that too without verifying the genuineness of the recommendations of different SDO's/SDE's

and Experience Certificate issued by JTO/Lineman etc, and thus putting the Department to a huge financial loss.

Thus, by his above acts, the said Shri M.K. Gogoi, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

2. WHEREAS, the Charged Officer had denied the charge, a detailed inquiry, as prescribed under CCS(CCA) Rules, 1965, was conducted by appointing S/Shri R.K. Misra the then GM, Dibrugarh and Nirmalendu Pegu, DGM (Installation), O/o GMT, Kamrup Telecom District, Guwahati as Inquiry Officer and Presenting Officer respectively. The inquiring officer has submitted his report dated 31.01.05 holding the article of charge as partly proved. However, based on the analysis of the evidence by the IO in his report and the documents adduced during the Inquiry, the disciplinary authority proposed to hold the charge as fully proved. The case was referred to CVC for their second stage advice. The CVC vide their I.D. Note No. 000/P&T/070-4560 dated 4th March, 2005, have advised that stiff major penalty may be imposed on Shri M.K. Gogoi. A copy of the Inquiry Report along with a copy of the CVC's advice was sent to the charged officer, duly accepted by the Competent Disciplinary Authority, to enable him to make a representation as he may wish to make. Shri M.K. Gogoi submitted his representation dated 10.05.05, wherein he could not bring out any new facts to rebut the findings of the IO. Therefore, with the approval of the Competent Disciplinary Authority, the case was referred to the UPSC for their statutory advice as to the quantum of punishment that may be imposed on Shri M.K. Gogoi

4. WHEREAS the UPSC have tendered their advice in this matter vide their letter No.F.3/348/05-S.I. dated 31.03.2006 (Copy enclosed). The Commission have, inter-alia observed the following :

|Contd.....|

(a) The charge that the 34 ineligible persons were granted 'temporary status mazdoors" by the Charged Officer on the basis of the recommendations of the Selcetion Committee constituted by him, stands proved due to the following reasons :

i) It was the Charged Officer's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/pay rolls and place it before the Committee, for its consideration. Alternatively, these documents should have been ab initio placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The Charged Officer failed in this respect.

ii) Further the Commission observe that the exercise at (i) above ought to have been got done by Charged Officer before (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the committee did conform to facts on record. The CO failed here also.

(b) In view of (i) & (ii) above the Commission observe that, the CO wanted to unduly favour 34 persons, either in collusion or otherwise, for reason better known to him.

(c) Charged Officer's misdemeanor acquires a serious contour in view of (b) above.

5. AND WHEREAS the Commission are of the view that the ends of justice would be met in this case if the penalty of "reduction to a lower stage, by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years with the direction that the Charged Officer will not earn increments of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay" is imposed on Shri M.K. Gogoi, DGM.

6. NOW THEREFORE, after careful consideration of the findings of the Inquiry Officer, submissions made by Shri M.K. Gogoi, DGM, the Charged Officer, in his representation dated 10.05.2005, the advice tendered by the UPSC, vide their aforesaid letter dated 31.03.2006 and all relevant facts and circumstances of the case, the President, the competent disciplinary authority, accepts the advice of the UPSC and hereby imposes on Shri M.K. Gogoi, the penalty of "reduction to a lower stage, by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years with the direction that the Charged Officer will not earn increments of pay during the period of reduction and on the expiry of such period, the reduction will have the effect of postponing his future increments of pay" on Shri M.K. Gogoi, DGM.

7. The receipt of this Order shall be acknowledged by Shri M.K. Gogoi, DGM.

By order and in the name of the President.

(A.K. Patro)
Desk Officer (Vig.II)

Shri M.K. Gogoi,
(Staff No.9657),
Dy. General Manager,
Guwahati Telecom District,
Guwahati.
(Through the CGMT, Assam Circle, Guwahati)

ANNEXURE -XXIV

4

24

CONFIDENTIAL

सत्यमेव जयते

ADVICE OF

UNION PUBLIC SERVICE COMMISSION

IN THE

DISCIPLINARY PROCEEDINGS

AGAINST

SHRI M.K. GOGOI, FORMERLY TDE.

MINISTRY OF COMMUNICATIONS & IT.

Attested by
Advocate

CONFIDENTIAL
F.3/348/05-S.1

तार Gram : UNISERCOM
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

नई दिल्ली-110011
New Delhi-110011

सेवा में
To

Dt. 31.3.06

The Secretary,
Ministry of Communications and Information Technology,
Department of Telecommunications,
Sanchar Bhawan
New Delhi.

(*Attn. Shri A.K Patro, Desk Officer Vig II*)

Subject: *Disciplinary proceedings against Shri M.K.Gogoi formerly TDE Tejpur and presently area manager Kamrup under rule 14 of CCS(CCA)Rules 1965*

Sir,

I am directed to refer to your letter no. 8/180/2000-Vig.II dated 26-9-2005 on the subject noted above and to convey the advice of the Commission as under:

2. The Commission note that disciplinary proceedings were initiated under Rule 14 of the CCS (CCA) Rules, 1965, vide Memo dated 19/6/2001 against Shri M K Gogoi, formerly Telecom Divisional Engineer (TDE), Tezpur and now Area Manager (East), Kamrup Telecom District, Guwahati on the following article of charge:

Article

That the said Shri M.K. Gogoi while functioning as TDE,Tezpur during 1996 committed serious irregularities in as much as he in collusion with the Members of the Selection Committee constituted by him regularized 34 numbers of Casual Mazdoors of North Lakshimpur as Temporary Status Mazdoors with mala fide intention although none of them was eligible for such regularization that too without verifying the

genuineness of the recommendations of different SDO's/SDE's and Experience Certificates issued by JTO/Lineman etc. and thus putting the Department to a huge financial loss.

Thus , by his above acts, the said Shri M.K. Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3(1)(i),(ii) & (iii) of CCS (Conduct) Rules, 1964.

2.1 The Commission also note that a statement of imputations of misconduct or misbehaviour in support of article of charge was annexed to the charge memo. The CO denied the charge, and therefore the case was remitted to inquiry. The IO submitted his inquiry report dated 31.1.05 holding the charges as proved but not fully. A copy of the IO's report was sent to the CO to enable him to make a representation, if any. The CO submitted his representation dated 10.05.05. The DA after considering the representation of the CO and the circumstances of the case, took a tentative decision to impose a suitable major penalty. All the case records were then forwarded to the Commission for their advice in the matter.

3. The Commission note that the DA's case, in brief, is as follows:

i) CO was TDE, Tezpur during 1996.

ii) DOT issued a circular dated 17/12/1993 for regularization of casual labourers, engaged between 31/3/1985 and 22/6/1988, as temporary status mazdoors.

iii) The benefits of the said circular applied to those who were, firstly, engaged between 31/3/1985 and 22/6/1988; secondly, were continuing to work where they were initially engaged and, thirdly, were not absent for more than 365 days from and including the date of issue of the circular.

iv) The circular further stipulates that if any casual mazdoor is employed *after* the issue of the said circular, the wages paid to such casual mazdoor should be recovered from the official(s) who has/have recruited/engaged the casual mazdoors.

v) On the basis of false experience certificates issued in favour of 34 persons by JTOs and SDOs/SDEs, the SDOs/SDEs of Tezpur Telecom Division (in collusion with the CO) forwarded the certificates to the CO with recommendation for consideration of 221 persons (including the said 34) as temporary status mazdoors.

vi) Thereafter, the CO constituted a Selection Committee on 25/3/1996.

vii) The Selection Committee recommended regularization of all 221 persons.

viii) The CO passed orders regularizing all 221 persons.

3.1 The Commission further note that CO's defence, in brief, is as under:

i) He was not a member of the Selection Committee.

ii) Verification of the certificates issued by SDOs/SDEs was entrusted to the Committee. Only those individuals, who were found eligible after verification of recommendations made by the SDOs/SDEs were approved on a provisional basis by the Committee.

4. The records of the case has been examined by the Commission in great detail and their observation are as under:

a) The charge that the 34 ineligible persons were granted '*temporary status mazdoors*' by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved due to the following reasons :

i) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/pay rolls and place it before the Committee, for its consideration. Alternatively, these documents should have been *ab initio* placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

ii) Further the Commission observe that the exercise at (i) above ought to have been got done by CO *before* (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

b) In view of (i) & (ii) above the Commission observe that, the CO *wanted* to unduly favour 34 persons, either in collusion or otherwise, for reasons better known to him.

c) CO's misdemeanor acquires a serious contour in view of (b) above.

5. In light of their findings as discussed above and after taking into account all other facts relevant to the case, the Commission are of their view that the ends of the justice would be met in this case if a penalty of reduction to a lower stage, by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay is imposed on him. They advise accordingly.

6. A copy of the order passed by the Ministry in this case may be sent to this office for information/records.

7. The case records as per list attached are returned herewith; receipt of which may kindly be acknowledged.

Yours faithfully,

(S.B. SINHA)
Deputy Secretary
Telc: 23070392

a/c

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

Central Administrative Tribunal

16 MAY 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

O.A. NO. 284 OF 2006

Sri Madhuryya Gogoi

...Applicant

-Versus-

Union of India & Ors.

....Respondents

The written statements on b[illegible]
the Respondents.

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWE

1. That with regard to the statement made in paragraph 1 of the instant application the Respondents have no comment.

2. That with regard to the statement made in paragraphs 2 and 3 of the instant application the Respondents have no comment.

3. That as regard to the statement made in paragraph 4.1 to 4.8 of the instant application the Respondents beg to state that these are matter of record hence no comment and the respondents do not admit anything which is not borne out of record.

Contd...P/-

4. That as regard to the statement made in paragraph 4.9 of the instant application the Respondents beg to state that the contention of the applicant is not true hence denied. While the allegations made vide charge memo No.8-180/2000-Vig.II dated 19.06.01 relate to the irregularity committed by the applicant in appointing 34 number of Casual Mazdoors of North Laxmipur as TSMs, those contained in charge memo No. 8-15/2001-Vig.II dated 07.03.2002 related to the irregularity in appointment of 22 Casual Mazdoors as TSMs of Tezpur. Both these charge sheets were issued to the applicant after the irregularities came to the notice of the deptt. which were investigated by the CBI. Prima facie, it was found that the officer committed the irregularities. The charge sheets were issued to the officer after due consultation with the CVC and after following the prescribed procedure. Hence it is not correct that these two charge sheets were identical. The cases were investigated separately and the evidence in each case and beneficiaries were different. Therefore, it was not possible to combine the two charge sheets.

5. That as regard to the statement made in paragraph 4.10 and 4.11 of the instant application the Respondents beg to state that these are matter of record hence no comment and the respondents do not admit anything which is not borne out of record.

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6. That as regard to the statement made in paragraph 4.12 of the instant application the Respondents beg to state that although the nature of irregularity is same in all the charge sheets issued to the applicant, the allegations related to different Sub-Divisions which were brought to the notice of the department by the CBI who had submitted separate reports for each Sub-Division at different points of time. The cases were investigated separately. The evidence and beneficiaries in each case were different. It was therefore not possible to combine all the charge sheets.

7. That as regard to the statement made in paragraph 4.13 of the instant application the Respondents beg to state that these are matter of record. It is only added that the applicant Shri N.M. Gogoi issued order vide No. G-I/COMP/96-97/CON/24 dated 14.08.1996 selecting the ineligible persons as TSMs, who had submitted forged documents.

8. That as regard to the statement made in paragraph 4.14 of the instant application the Respondents beg to state that the disciplinary proceedings were initiated under Rule 14 of the CCS(CCA) Rules, 1964 which were quasi-judicial in nature. The proceedings against the applicant were initiated after following due process and based on the irregularities pointed out by CBI

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and after consultation with the CVC. The CBI submitted their separate report for each Sub-Division at different points of time. It was not feasible to combine all the six charge sheets into one since the proceedings were at different stages. It is also stated that evidence and beneficiaries were different in each case. It was, therefore, not possible to combine all the charge sheet.

10. That as regard to the statement made in paragraph 4.15 to 4.17 of the instant application the Respondents beg to state that these are matter of record and no further comments are needed. Since the quasi-judicial proceedings were initiated through separate charge sheet, this Hon'ble Tribunal rightly upheld the separate charge sheets. Since the disciplinary proceedings are statutory in nature, the prescribed procedure has to be followed and no step can be avoided. However, the applicant is also responsible for delay in the proceedings as he has been filing cases in various courts rather than expediting the statutory inquiries without any valid cause of action before arriving at a final decision.

11. That as regard to the statemen paragraph 4.18 of the instant application dents beg to state that the Disciplinary Au been vested with the powers, under the sta

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to disagree with the findings of the I.O. if it finds that the evidence available on record has not been taken into cognizance by the I.O. Hence the action the Disciplinary Authority to diasgree with the fi of the I.O. is as per the rules and based on e adduced during the inquiry. It is denied that there any casual approach at any stage.

12. That as regard to the statement made paragraph 4.19 of the instant application the Respon dents beg to state that these are matter of record hen no further comments are needed. It is also stated t there was adequate evidence on record to hold t ges as fully proved.

13. That as regard to the statement m paragraph 4.20 of the instant application the Re dents beg to state that the I.O. gave his finding the allegations taking into account the ev on record and h charge as "Proved but n The Disciplinary Authority di agreed with th of the I.O. and proposed to proved. The Disciplinary Autho the powers, under the statut the findings of the I.O. if available on record has not been by the I.O. Hence the action of the Di ity disagreed with the findings of the

the rules and based on evidence on record adduced during the inquiry.

14. That as regard to the statement made in paragraph 4.21, 4.22 and 4.23 of the instant application the Respondents beg to state that the Disciplinary Authority has been vested with the powers, under the statutory rules, to disagree with the findings of the I.O. if it finds that the evidence available on record has not been taken into cognizance by the I.O. Hence the action of the Disciplinary Authority disagreed with the findings of the I.O. is as per the rules and based on evidence on record adduced during the inquiry.

15. That as regard to the statement made in paragraph 4.24 and 4.25 of the instant application the Respondents beg to state that those are maters of record. In the instant case, the UPSC, an independent and statutory body, have tendered their advice after a through examination of all the records. The service particulars and the CR dissier were also furnished to UPSC along with the case records which was perused by UPSC before tendering their advice. The competent authority examined all the records and the advice tendered by UPSC and decided to accept the advice after due consideration and proper application of mind. Orders were passed accordingly, thereafter. Each case is decided on its merits keeping in view the facts and the

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nature of irregularties. If any officer is found to have committed serious irregularities while discharging his official duties, he has to face the penal consequences of his acts of omission and commission. The rules and procedures with regard to the disciplinary proceedings were strictly followed in the case of the applicant. The disciplinary authority after arriving at a tentative view consulted the UPSC as required under the provisions of the statutory rules. Thereafter the disciplinary authority considered the records of the case, submission of the applicant, advice of CVC and UPSC and took a conscious decision to impose the penalty. It is also mentioned that advice of CVC and UPSC are only guiding factors for the disciplinary authority who has to apply its mind and arrive at its own conclusion regarding the quantum of penalty on the delinquent official. The disciplinary authority has exercised its own wisdom and arrived at its own conclusion as the lapses committed by the applicant constituted grave misconduct. Accordingly the disciplinary authority took the decision to impose the said penalities on the applicant. There has been neither any violation of the principles of natural justice nor the provisions of the statutory rules. Hence the O.A. of the applicant is liable to be rejected at the admission stage itself.

16. That as regard to the statement made in paragraph 4.26 of the instant application the Respon-

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dents beg to state that the disciplinary proceedings were initiated under Rule 14 of the CCS(CCA) Rules, 1964 which were quasi judicial in nature. The proceedings against the applicant were initiated after following due procedure based on the irregularities pointed out by CBI and after consultation with the CVC. The CBI submitted their separate report for each Sub-Division at different points of time. It was not feasible to combine all the six charge sheets into one since the proceedings were at different stages and the evidence and beneficiaries in each case were different.

17. That as regard to the statement made in paragraph 4.27 and 4.28 of the instant application the Respondents beg to state that there is no merit in the submissions of the applicant. Each case is decided on its merits keeping in view the facts and the nature of irregularties. If any officer is found to have committed serious irregularities while discharging his official duties, he has to face the penal consequences of his acts of omission and commission. The penalties imposed on the applicant are commensurate with the gravity of the offences committed by him and are not excessive.

In accordance with the directions of the Hon'ble Tribunal, the inquiries have been completed in the four remaining cases and all the cases are presently with the independent constitutional body i.e. UPSC for advice to the President about the quantum of penalty to be

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imposed in each case. Efforts are being made to get the advice of UPSC expedited in all the remaining cases.

18. That as regard to the statement made in paragraph 5.I of the instant application the Respondents beg to state that the action of the respondent is neither arbitrary not illegal for the reason that the delinquent officials are proceeded against after an investigation is conducted and after obtaining the advice of the CVC which is competent authority to tender such advice. The disciplinary proceedings are quashi-judicial in nature and prescribed procedure has been followed as per the provisions of the statutory rules. Hence the plea of the applicant is not valid. No injustice has been done to him. He has been awarded the penalty in accordance with the statutory rules, for the irregularities established on his part. Hence the allegations of the applicant are not true and hence denied. The penalties imposed on the applicant are commensurate with the gravity of the offence committed by him and are not excessive. Six cases were initiated on the basis of separate investigations by the CBI as the reports were received at different points of time as the evidence and beneficiaries were different in each case.

19. That as regard to the statement made in paragraph 5.II, 5.III and 5.IV of the instant application the Respondents beg to state that the Disciplinary

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Authority has been vested with the powers, under the statutory rules to disagree with the findings of the I.O. if it finds that the evidence available on record has not been taken into cognizance by the I.O. Hence the action of the Disciplinary Authority to diasgree with the findings of the I.O. is as per the rules and based on evidence on record.

20. That as regard to the statement made in paragraph 5.V to 5.XI of the instant application the Respondents beg to state that after the inquiry, the disciplinary authority consulted the CVC and the UPSC as required under the provisions of the staturoty rules. Thereafter the disciplinary authority considered the records of the case, submission of the applicant, advice of CVC and UPSC and took a conscious decision to impose the penalty. It is also mentioned that advice of CVC and UPSC are only guiding factors for the disciplinary authority who has to apply its mind and arrive at his own conclusion regarding the quantum of penalty on the delinquent official. The disciplinary authority has exercised his own wisdom and arrived at his own conclusion as the lapses committed by the applicant constituted grave misconduct. Accordingly the disciplinary authority took the decision to impose the said penality on the applicant. There has been neither any violation of the principles of natural justice nor the provisions

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of the statutory rules. Hence the O.A. of the applicant is liable to be rejected at the admission stage itself.

After the inquiry, the disciplinary authority consulted the CVC and the UPSC as required under the provisions of the staturoty rules. Thereafter the disciplinary authority considered the records of the case, submission of the applicant, advice of CVC and UPSC and took a conscious decision to impose the penalty. It is also mentioned that advice of CVC and UPSC are only guiding factors for the disciplinary authority who has to apply its mind and arrive at its own conclusion regarding the quantum of penalty on the delinquent official. The UPSC which is an independent body under the Constitution of India examines the entire records of the case dispassionately before tendering their advice. Hence the submission of the applicant that the UPSC did not consider the records of the case is wrong. The disciplinary Authority considered the submission of the applicant, advice of UPSC etc. exercised its own wisdom and arrived at its own conclusion that the lapses committed by the applicant constituted grave misconduct. Accordingly the disciplinary authority took the decision to impose the said penalities on the applicant. The penalties imposed on the applicant, after following the prescribed procedure, is as per the relevant statutory rules and there has been no violation of any statutory rules or principles of natural justice. It is also submitted that the penalties imposed on the applicant are commensurate with the

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gravity of the offence committed by him and are not excessive.

21. That as regard to the statement made in paragraph 5.XII & 5.XIII of the instant application the Respondents beg to state that the Disciplinary Authority has been vested with the powers, under the statutory rules to disagree with the findings of the I.O. if it finds that the evidence available on record has not been taken into cognizance by the I.O. Hence the action of the Disciplinary Authority to disagree with the findings of the I.O. is as per the rules and based on evidences. The irregularities committed by the applicant are serious in nature. He defied the instructions of Govt. of India, DoT and appointed the ineligible Casual Labourers as TSMs in violation of the records and with malafide intention for which he deserved to be given exemplary punishment. However, the entire disciplinary proceedings from the stage of issue of charge sheet till issuance of the orders of penlty have been conducted as per the laid down rules and procedures and the respondent has not violated any of the provisions of the statutory rules. Final orders in this case has been passed by the President after due consultation with the UPSC as per the statutory rules. The respondent has not violated any of the said rules and procedures. The issue of the charge sheet conduct of the inquiry and issue of final orders are legal and valid.

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22. That as regard to the statement made in paragraph 6 of the instant application the Respondents beg to state that the content of the applicant is not correct. Although no appeal lies against the orders of the President, remedy is still available to the applicant under Rule 29 (A) of the CCS (CCA) Rules, 1965 for seeking review of the orders of the President which the applicant has not exhausted so far.

23. That as regard to the statement made in paragraph 7 of the instant application the Respondents beg to offer no comment.

24. That as regard to the statement made in paragraph 8 and 9 of the instant application the Respondents beg to state that the applicant had filed OA No.119/2004 and a series of Misc petitions in Hon'ble CAT, Guwahati for early completion of the proceedings. In the MP N.130/05 in OA No.119/04 the Hon'ble Tribunal had ordered the respondents to take up the matter with the CVC/UPSC and to take appropriate advice and to complete the proceedings within six weeks, vide their order dtd. 23.8.06. Accordingly UPSC have been requested to tender their advice at the earliest in the remaining four cases. UPSC have sought time as they have to examine the voluminous records thoroughly for giving their

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advice. Hence at this stage it is not feasible to comply with the relief sought for by the applicant. It is therefore, prayed that relief sought by the applicant including the interim relief be rejected since the respondents have referred all the cases to UPSC in accordance with the direction of the Hon'ble Tribunal which are pending before them. It is also prayed that the stay imposed by the Hon'ble Tribunal for operation of the order dated 03.05.06 be vacated.

25. That as regard to the statement made in paragraph 10 and 11 of the instant application the Respondents beg to offer no comments.

The Hon'ble Supreme Court has held in State of Andhra Pradesh Versus Sree Rama Rao, AIR 1963 SC 1723, that "there is no warrant for the view that, in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reesonable doubt to the satisfaction of the Court, must be applied and if that rule be not applied, the High Court in a petition under Article, 226 of the Constitution is competent to declare the order of the authorities holding a departmental inquiry, invalid. The High Court is not consituted in a proceeding under Article 226 of the Constitution - to declare the order of the authorities hol-

Contd...P/-

ding a departmental inquiry against a public servant, it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and if the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High court in a petition under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some consideration extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion is reached on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of the fact and if there is some legal evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Construction.

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The above position has been reiterated in a number of cases, e.g. in A.S. Sethi Vesrus Union of of India, AIR 1968 Delhi 26, and in State of Andhra Pradesh Versus Chitra Venkata Rao, 1975 SCC (L&S) 349.

In view of the position explained above, it is stated that the present OA is devoid of any merit and deserves to be dismissed with costs. It is accordingly prayed that the OA be dismissed with costs.

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VERIFICATION

I, Md. Abdul Hamid ..... S/o L. Baharuddin... aged about years, R/o O/o C.C.A. Assam Telecom Circle, Guwahati District Kamrup... and competent officer of the answering respondents, do hereby verify that the statement made in paras 1 to 25 are true to my knowledge and those made in paras ——— being matters of record are true to my information derived therefrom which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this th day of 2007 at Guwahati.

Signature

By C.C.A.
To the C.C.A.
Assam Telecom Circle
Panbazar, Guwahati

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
14 JUN 2007
गुवाहाटी न्यायपीठ
Guwahati Bench

306

Madhuryya Kumar Gogoi
Filed by the applicant
through Bikram Choudhury
Adv.
6.6.07.

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

O. A. NO. 284/2006

Sri Madhuryya Kumar Gogoi

..... **Applicant.**

- Versus -

Union of India & Others

..... **Respondents**.

A rejoinder by the applicant to the written statement submitted by the respondents.

MOST RESPECTFULLY BEGS TO STATE :

1. That the applicant begs to state that he has received a copy of the written statement submitted by the respondents and has understood the contents thereof. At the outset, before replying to the various statements made in the written statement, this applicant states that none of the statements made therein are admitted save and except those, if so specifically admitted in this reply.

2 That the statements made in paragraphs No. 1 and 2 are routine and needs no reply.

3. That with regard to the statements made in paragraph No. 3 and 5 the applicant begs to reiterate what is stated in the relevant paragraphs in the original application.

4. That the applicant denies the correctness of the statements made in paragraph No. 4 and 6 and reiterates the averments made in paragraphs 4.9 and 4.12 of the original application. At the outset, the applicant begs to state that the disciplinary authority committed material irregularity entailing miscarriage of justice in initiating 6 (six) different disciplinary proceedings inrespect of the alleged

Contd....

misconduct committed by the applicant. It is not in dispute that the applicant in his capacity as Telecom District Engineer, Tezpur issued the order dated 27.5.96 (Annexure - II to the original application). It is a different matter that no disciplinary proceeding within the meaning of rule 14 of the rules could have been initiated for issuing the order dated 27.5.96.

Curiously enough, a stand is sought to be taken in the written statement justifying issuance of 6 (six) different charge sheet, based on alleged CBI reports, neither in the show cause notice nor during the course of proceeding this fact was brought to the notice of the applicant. It is a fundamental principle of law that disciplinary authority cannot rely upon any material without furnishing a copy thereof to the delinquent. Thus there was gross violation of the principle of natural justice while conducting the proceedings.

The further stand taken in the written statement that the charges contained in the 6 (six) different charge sheets are not identical is also wholly misconceived. Assuming while not admitting that the applicant has committed a misconduct which entails initiation of disciplinary proceeding, then the applicant is guilty of approving the appointment of 221 casual mazdoors. It is inconceivable that because 221 casual mazdoors were conferred the status of TSM from different sub-division, therefore as many proceeding can be initiated. The view of the disciplinary authority is highly irrational.An authority properly instructed in law could not have taken the view as has been taken in the instant case.

The applicant undertakes to make further legal submissions in this regard at the time of hearing of the case.

5. That with regard to the statements made in paragraph No. 8, this applicant begs to reiterate what is stated in paragraph No. 13 of the original application.

The applicant further denies the statement that "the applicant Sri M. K. Gogoi issued order No. S-I COMPT/96-97/ CON/24 dated 14.8.96 selecting the ineligible persons as TSMs, who

Contd....

Mgogoi

had submitted forged documents". The applicant states that he had never issued the order dated 14.8.96 and this fact was duly proved in the disciplinary proceeding.

6. That the applicant denies the correctness of the statement made in paragraph No. 9 of the written statement and reiterates the statement made in paragraph 4.14 of the original application. The disciplinary authority wholly misconstrued the scope of rule 14 of the statutory rules in initiating disciplinary proceedings causing serious prejudice to the applicant. A perusal of the charge sheets, though does not reveal any element of misconduct within the meaning of the conduct rules as far as the applicant is concerned, would reveal that the cause of action, if any, is the issuance of order dated 27.5.96. In such a circumstance issuance of 6 (six) charge sheets allegedly based on CBI reports is not only a reflection of ignorance of the authority as regard the correct legal position in this regard, but also the impugned action demonstrates the malafide intention of the disciplinary authority in purporting to harass a honest government servant.

The observation of Sri G. Jayaraman Inquiry Officer in respect of charge sheet dated 11.9.2003 vindicates the stand of the applicant.

Assuming for the sake of argument but while not admitting that issuance of order dated 27.5.96 warrants/justifies initiation of disciplinary proceedings, the disciplinary authority should have initiated one proceeding. By drawing up different charge sheet in respect of the same cause of action, serious prejudice has been caused to the applicant. In a more or less identical fact situation N.F. Railway authority initiated different proceedings against one Sri Anil Kumar Sarkar and another. Being aggrieved, by initiation of different proceedings and also aggrieved by order passed by the Hon'ble Tribunal, said Sri A.K. Sarkar approached Gauhati High Court. The Hon'ble High Court by order dated 3.6.05 passed in RA 37/05 and 45/05 was pleased to direct the N.F. Railway to appoint 1 (one) Inquiry Officer in respect of 4 (four) disciplinary proceedings.

Contd....

This is not to contend that the respondent authority can initiate one proceeding in respect of the 6 (six) charge sheets. As pointed out above, there are no material whatsoever even to remotely construe the impugned action as misconduct justifying initiation of disciplinary proceeding.

The applicant craves leave to refer and rely upon Inquiry Report dated 18.10.05.

A copy of the aforesaid order dated 2005 passed by Hon'ble High Court is annexed herewith and marked as **ANNEXURE - XXV.**

7. That the applicant denies the correctness of the statement made in paragraph 10 of the written statement and reiterates the averments made in para 4.15 and 4.17 of the original application. It is not a fact that the instant original application has been filed to delay the matter. Needless to say that the applicant will not gain anything by delaying the matter, rather continuance of the proceeding is to his detriment. Merely because the disciplinary proceeding has been initiated based on alleged CBI report and advice of CVC, no legitimacy can be attached to such proceeding. The Inquiry Reports in respect of 6 (six) disciplinary proceedings are clear manifestation of the fact that it is a case of no evidence. Therefore it is the pleaded case of the applicant as supported by the Inquiry Reports, that the applicant has been unnecessarily dragged into the instant proceedings. The CVC's advice are not determinative of misconduct having been committed. CVC plays only an advisory role, in as much as, the facts of the present case is good enough example to show how mechanically advisory role is played by CVC.

8. That with regard to the statements made in paragraph No. 11, 12, 13 and 14 of the written statement, the applicant begs to state that there is no quarrel with the proposition that in a given fact situation disciplinary authority can disagree with the findings of an Inquiry Officer. But this power of the disciplinary authority to disagree with

Contd....

the findings of Inquiry Officer is not an unfettered power, in as much as, exercise of the said power must be consistent with the cardinal principles of rules of natural justice. Another legal requirement as judicially evolved in that disciplinary authority must not only give notice to the delinquent of such disagreement but should also expressly indicate the reason of such disagreement. In a catena of judgments the Apex Court has emphasised such requirement, the underlying reason being the delinquent/ charged officer must get an opportunity to persuade the disciplinary authority that the Inquiry Officer took the correct view while recording the finding of 'NOT PROVED'. A perusal of the notices of disagreement in the present cases needs much to be desired as far as compliance of aforementioned legal requirement is concerned.

The applicant undertakes to refer and rely upon the deposition of witnesses, Inquiry Report and the notices of disagreement at the time of hearing to show that disciplinary authority was not legally justified in issuing the notices of disagreement and consequential order passed.

In the proceedings arising out of charge sheet dated 19.6.01, the applicant, during the course of the inquiry relied upon certain documents which were not taken note by the Inquiry Officer while recording the finding of charges as "Partly Proved". The said documents could have established the innocence of the applicant .

Therefore the applicant reiterates that it is a case of no evidence as distinguished from "some materials" being available to apply the test of preponderance of probability. As a matter of fact, this Hon'ble Tribunal vide judgment dated 25.8.2004 passed in original application No. 27/2003 (A.K. Sarkar - Vs- Union of India) was pleased to set aside and quash the charge sheets itself as he was exonerated in respect of one of the charge sheet. Sri A.K Sarkar, applicant of the original application happened to be SDE (HRD) and one of the member of the Selection Committee who had recommended conferment of TSM to 221 casual mazdoors. It was based on the recommendation made by the Committee that the

Contd....

applicant issued the order dated 27.5.96. Curiously, enough Union of India has not preferred an appeal against the order of this Hon'ble Tribunal in the case of A. K. Sarkar. In the respectful submission of the applicant applying the ratio of A.K. Sarkar case the present original application also deserves to be allowed by interfering with the impugned actions. Not to speak of splitting of the charges, there is no case at all made out for initiating a disciplinary proceeding.

Copies of the Daily Order Sheet dated 21.9.2004 and the letter dated 16.10.04 of GMTD/Tezpur are enclosed and marked as **ANNEXURE - XXVI & XXVII** respectively.

9. That with regard to the statements made in paragraph No. 15, this applicant begs to state that the punishment to be imposed whether minor or major depends upon the nature of every case and the extent to which the misconduct is proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. The applicant states that the function of UPSC is purely advisory and as such the authorities are to act independently and not under the dictation of the UPSC. No third party like CVC or UPSC could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer.

It will be apparent from the impugned penalty orders and advice of the UPSC that in this case the disciplinary authority acted under the dictation of the UPSC and it didnot applied its own judicious mind to the facts and circumstances of each case as required under the Rules.

10. That with regard to the statement made in paragraph No. 17, this applicant begs to state that the disciplinary authority has failed to take into consideration or understand that the facts and the nature of irregularities in each of the 6 (six) disciplinary proceedings are similar in nature and that to for a single cause of action and the

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applicant has been unnecessarily subjected to 6 (six) disciplinary proceeding and the 2 (two) punishments that has been imposed are identical in nature and are too severe in the given facts and circumstances of the case. This action of the authorities tantamounts to double jeopardy which is not permissible under the statutory rules.

11. That with regard to the statements made in paragraph No. 18, this applicant begs to state that a departmental proceeding is initiated against an employee under the relevant rules to find out the truthness of the allegations made against him and thereafter to punish him if the allegations are found to be true and if so in what manner. Rule 14 of CCS (C&A) Rules 1965 provides for a single departmental proceeding for one cause of action, but in the case of the applicant the authorities in blatant violation of the statutory rules initiated 6 (six) disciplinary proceeding for a single cause of action. The applicant states that even assuming but not admitting, if at all he has committed any irregularities he should have been subjected to one proceeding as per statutory rules, more so, when the allegations in all the 6 (six) disciplinary proceedings were similar in nature. As such the action of the authorities in initiating 6 (six) disciplinary proceeding for a single cause of action is illegal and arbitrary.

The applicant further states that it will be evident from the 6 (six) Inquiry Reports submitted by the different inquiry officers that the materials produced before couldnot establish any exclusive role of the applicant for which he could be held responsible.

12. That with regard to the statements made in paragraph No. 19, 20 and 21, the applicant begs to state that in a case where disciplinary authority decides to disagree with the finding of the Inquiry Officer and want to record the finding independent of the Inquiry Officer, the same can be done only by indicating the reasons of such disagreement. The law in this regard is no longer res-intergra. But the facts of the present case would reveal that the same requirement has not complied and thereby rendering the proposed action to disagree with the findings of Inquiry Officer is a nullity. Therefore

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the impugned decision vitiates.

13. That with regard to the statements made in paragraph No. 22, this applicant begs to state that from the statement made by the respondents it is apparent that they have not misconstrued Rule 29 (A) of CCS (C&A) Rule, 1965. The rule provides that an order can be reviewed when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case. The applicant states that in his case every facts and evidence were in the records but from the action of the disciplinary authority it is apparent that he has not acted by applying his mind to the facts of the case.

14. That with regard to the statements made in Paragraph No. 24 of the written statement the applicant begs to deny that the applicant filed series of Misc. petitions before this Hon'ble Tribunal. The applicant never filed any Misc. petition before this Tribunal other than the original applications. Rather the Department has filed series of Misc. petitions for extension of time as the cases are pending with the CVC/UPSC. But the respondents could not produce any evidence before this Hon'ble Tribunal that the matter has been taken up with the CVC/UPSC to tender their advice at an early date. This will not be out of place to mention here that the disciplinary authority issued 6 (six) charge sheet since 2001 and the last chargesheet was served on 9.10.2003 for issuance of a single order of conferring TSM and since 2001 to 2006 in only two cases final order has been issued where as the CVC guidelines is to complete the disciplinary proceeding within 10 months from the date of issuance of chargesheet upon issue of a final order. The delay in completing the proceeding is in no way be said to be reasonable even the order of this Hon'ble Tribunal in O.A. 119/04 to complete the proceeding within 6 (six) months has not been complied and for this unjustified and unreasonable delay all the chargesheet may be set aside. During the pendency of the six chargesheets since 2001 the applicant suffered tremendously in all respect and in respect of promotion

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Nyaya

(confirmation in the level of JAG) and the name of the applicant will not be considered for future promotion also till the completion of all the proceedings. The applicant also begs to submit that there is no relevance as stated in this para, in the relief sought by the applicant and referring the cases to UPSC as the charges were framed with no evidence.

15. That the statement made paragraph 23 and 25 being misconceived is denied by the applicant. There is no quarrel with the proposition of law laid down in AIR 1963 SC 1928 that when there is some evidence the disciplinary authority would be justified in inflicting punishment and High Court exercising power under Article 226 should not normally interfere with such exercise of power. The applicant is conscious of the limitation of this Hon'ble Tribunal to interfere in a matter of such nature, but the case which has been made out for consideration of this Tribunal is that it is a case of no evidence and therefore the applicant is well within his right to invoke jurisdiction of this Tribunal under section 19. That being the position in law this Tribunal be pleased to allow the original application interfering with the impugned orders.

VERIFICATION

I, SRI MADHURYA KUMAR GOGOI, son of Late Debeswar Gogoi, aged about - ____ years, resident of 2 C, Block A, Brindaban Apartment, Ganesh Mandir Path, New Guwahati -20, in the district of Kamrup Assam at present serving as Deputy General Manager (Planning and Administration) Office of the General Manager, Kamrup Telecom District, B.S.N.L., Panbazar, Guwahati - 781001 in the district of Kamrup do hereby state that I am the applicant and I verify that the contents of paragraphs ~~_____~~ 1,2,4,5,10,11,12 and 13 are true to my personal knowledge and those in paragraphs 3,5,6,7,8,14 and 15 _____ are believed to be true on legal advice and that I have not suppressed any material fact.

Date : 6.6.07.

Place : Guwahati.

Madhurya Kumar Gogoi

Signature of the applicant.

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SN-7 SN/347 310

Annexure-XXV

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

RA Nos.37/2005 and 45/2005..

BEFORE
THE HON'BLE MR JUSTICE D. BISWAS
THE HON'BLE MR JUSTICE A.H.SAIKIA

03.06.2005.

Heard Mr KN Choudhury, learned senior counsel for the review applicants and also Mr S. Sarma, learned Standing Counsel for the Railways.

2. By this common order the RA Nos.37/2005 and 45/2005 are being disposed of.

3. The aforesaid two review applications have been filed for review of the common judgment and order dated 9th March 2005 passed in WP(C) Nos.1590/2005 and 1591/2005.

4. In the aforesaid two applications, the petitioners, who are indicted by the Respondent authority for alleged negligence in duty, are facing 4(four)

GAUHATI HIGH COURT AT GUWAHATI

Attested
10/6/05
Reservation Officer/Budget
Railway Station, Guwahati-11

Attested by:
Choudhury
Adv

Court-8/01-80,000 21-8-2001

Officer or	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	2	3	4

departmental proceedings. The offences were committed at the Headquarters of NF Railways, Maligaon, Guwahati and these arise out of transactions of similar nature. By the order dated 9th March 2005, a direction was given to the Respondent authority to hold enquiry at the Headquarters at Maligaon, Guwahati. It is alleged that since the transactions are of same nature, four different enquiry officers with different set of mind may not be in a position to render complete justice to the review applicants in the four-independent separate disciplinary proceedings. It is in this context Mr KN Choudhury submitted that the enquiry officer in all the proceedings might be the one and the same person so that there is no conflict in the decision.

GAUHATI HIGH COURT AT GUWAHATI

5. Considering the argument of Sri Choudhury and after hearing Mr Sarma,

Section Officer (Judl.)
Gauhati High Court
Maligaon, Guwahati-11

by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	2	3	4
			learned Standing Counsel, the review applications are disposed of with direction to the Respondent authority to appoint an officer to be the enquiry officer in all the four departmental proceedings to be completed expeditiously, preferably within a period of three months. 6. Order accordingly.

Sd/ A.H.Saikia
Judge

Sd/ D.Biswas
Judge

CERTIFIED TO BE TRUE COPY,
Utkon Borpatra Gohain
Date 09/6/05
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76, Act I, 1872

GAUHATI HIGH COURT GUWAHATI

Memo 34913 dtd 03/6/05

Attested
D. Das
Senior Accounts Officer/Budget
N.F. Rly, Maligaon, Guwahati-11

ANNEXURE - XXVI

-14-

3/3

BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)
OFFICE OF THE GENERAL MANAGER TELECOM. DISTRICT
VARANASI

No.GMTD. DR/Inquiry/MKG/Con. **Venue: Varanasi**
Dated at Varanasi the 21.9.2004 **Chamber of G.M. Telecom.**
District Varanasi.

Disciplinary proceeding under Rule-14 of CCS/CCA Rules, 1965 against Shri M.K. Gogoi, the then TDE, Tezpur (now Area Manager(East), Dispur, Guwahati.

DAILY ORDER SHEET

Today is the date fixed for regular hearing in the above case. The hearing began as per schedule and venue fixed, at 11.30 hours in presence of the following officers.

1. Shri R.K. Mishra; G.M.T.D., Varanasi	-	Inquiry Officer
2. Shri N. Pegu, DGM, O/o CGMT, Guwahati	-	Presenting Officer
3. Shri M.K. Gogoi, Area Manager(East), Guwahati	-	Charged Officer
4. Shri S.K. Sikidar, D.E.(SCP), Guwahati	-	Defence Assistant

After the close of the prosecution case, charged officer submitted his defence in writing. The copy was provided to the Presenting Officer.No additional documents were produced by P.O. Two documents earlier presented were taken on record. The P.O. stated that no further documents could be procured as he could not get the same inspite of his best efforts from the custodian of the document.

Defence Documents -
1. Letter No.Rectt-3/10/Loose/pt-1 dated 18.9.96 (Defence Exhibit no. -1)
2. Letter No.X-1/CMPT/96-97/Con-1 dated 20.10.97 (Defence Exhibit no.–2)

With the above, inquiry was adjourned. Hearing will again start at 11:30 Hrs. tomorrow at the same place.

Charged Officer Defence Assistant Presenting Officer Inquiry Officer

Attested by
Advt

ANNEXURE-XXVII

BHARAT SANCHAR NIGAM LIMITED
(A Government of India Enterprise)
Office of the GMTD::TEZPUR – 784 001

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No. DE(P&A)/TZ/Displ/2004-05/3 Dated at Tezpur the 16th. October, 2004.

To
Shri. R.K.Mishra
Inquiry Officer
General Manager Telecom, BSNL
Shivpuruwa Telephone Exchange, Sigra
Varanasi (Uttar Pradesh)

Sub :- Forwarding office document to I.O.

Ref :- Shri. S.K.Sikdar, Defence Assistant, DE TP-I, BSNL T/F, Bhangagarh , Guwahati 5 letter No. Nil. Dated 28-09-2004 & letter No. Nil dated 16-10-2004

With reference to the above cited subject and letter kindly find enclosed herewith the documents as listed below for the disciplinary proceeding under Rule-14 of CCS(CCA) Rules 1965 initiated against Sri. M.K.Gogoi, the then TDE/Tezpur for favour of your necessary action please.

Sl.No. Document	Name & Addressed
1. Security Pass Issued By TDE/TZ	(i) Raj Kr. Kakoty, CM – Issued on June/1994 (ii) Alok Shome, CM -- Issued on June/1994
2. Objection in ACE-2 a/cs	SDOT, North Lakhimpuur (i) December/1991 (ii) February/1992 (iii) April/1995 (iv) February/1996 (v) Requisition/Note Sheet/Ty.Adv Sanction Memo for the period May/1991 (vi) Requisition/Note Sheet/Ty.Adv Sanction Memo for the period September/1992 (vii) Requisition/Note Sheet/Ty.Adv Sanction Memo for the period March/1994 (viii) Requisition/Note Sheet/Ty.Adv Sanction Memo for the period April/1994 (ix) Requisition/Note Sheet/Ty.Adv Sanction Memo for the period March/1995 (x) Requisition/Note Sheet/Ty.Adv Sanction Memo for the period April/1995 (xi) Requisition/Note Sheet/Ty.Adv Sanction Memo for the period August/1996
3. Compliance of 18th. RJCM meeting by TDE, Tezpur	

Encl :- Total 26 (twenty six) pages.

Sd/-
Divisional Engineer (P&A)
O/o GMTD/Tezpur-784 001.

Copy to :- Shri. S.K.Sikdar, Defence Assistatnt, DE TP-I, Bhangagarh, Guwahati – 781005 for information please.

Attested by
Adv

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
26 JUL 2007
गुवाहाटी न्यायपीठ
Guwahati Bench

3/5

Madhuryya kumar Gogoi
Filed by the applicant through
Bikram Choudhury, Adv.
26.7.07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH :: GUWAHATI

O. A. NO. 284/2006

Sri Madhuryya Kumar Gogoi

..... **Applicant.**

-VERSUS-

Union of India & Others

..... **Respondents**.

IN THE MATTER OF:

An additional affidavit by the applicant in the above noted original application

The applicant above named:

MOST RESPECTFULLY BEGS TO STATE :

1. That the applicant begs to state that after submission of the rejoinder in the above case on 6.6.07, certain development took place for which it has become necessary to file this additional affidavit to bring those facts and documents in record for proper adjuducation of the case. The applicant further states that these facts will not change the basic structure of the original application.

2 That the applicant begs to state that he had filed the above noted original application challenging the action of the respondent authorities in initiating 6(six) disciplinary proceedings against him for issuing the provisional order no X-1/CMPT/96-97/CON-7 dt: 27.5.96(Annexure-II to the original application) whereby he had conferred temporary

status to 221 casual labourers, while working as Telecom District Engineer, Tezpur. The applicant had also challenged the impugned penalty order dt: 2.5.06 (Annexure XXI to the original application) and penalty order dt: 3.5.06 (Annexure XXIII to the original application) with regard to the second and first disciplinary proceedings respectively.

3. That, thereafter, the respondent authorities submitted their written statement and the applicant had also submitted his rejoinder. But after submission of the rejoinder, the applicant has now received the four penalty orders alongwith the UPSC advice in respect of the four remaining disciplinary proceedings, which were not issued at the time of filing of the original application.

The four penalty orders are as follows:

(i) Order no 8/181/2001-Vig II dt: 30.5.07 in respect of the 3rd disciplinary proceeding.

(ii) Order no 8/186/2001-Vig.II dt: 30.5.07 in respect of the 4th disciplinary proceeding.

(iii) Order no 8/167/2001-Vig.II dt: 30.5.07 in respect of the 5th disciplinary proceeding.

(iv) Order no 8/165/2001-Vig.II dt: 20.6.07 in respect of the 6th disciplinary proceeding.

The applicant further states that in the above mentioned four penalty orders, the disciplinary authority imposed upon him in each four disciplinary proceedings, the penalty of reduction to a lower stage, by one stage in the time scale of pay of Rs14,300-400-18,300/ for a period of 2 years, with further direction that the applicant will not earn increments of pay during the period of reduction and on expiry of such period, the reduction will have the effect of postponing his future increment of pay.

Copies of the aforesaid orders alongwith the UPSC advice are annexed herewith and marked as **ANNEXURE - XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV & XXXV**

4. That, on perusing the above four orders , the applicant was shocked and surprised when he found that the UPSC inspite of being aware that there were 6(six) disciplinary proceedings with similar charges against the applicant, out of which two have been decided wherein the penalty of reduction to a lower stage i.e. by 3 stages in the time scale of pay of Rs14,300-400-18,300/ for a period of 2 years, with cummulative effect , has been imposed, the Commission tendered advice to the disciplinary authority in each of the four cases that ends of justice would be met if the penalty of reduction to a lower stage, by one stage in the time scale of pay of Rs14,300-400-18,300/ for a period of 2 years, with further direction that the applicant will not earn increments of pay during the period of reduction and on expiry of such period, the reduction will have the effect of postponing his future increment of pay. Accordingly, the disciplinary authority imposed upon him the above penalty in each of the remaining four disciplinary proceedings.

5. That, the applicant begs to state that when it was within the knowledge of the UPSC that there were 6 (six) cases with similar charges against the applicant, out of which in two cases similar/identical punishment has already been imposed, then they shouldnot have specified a particular penalty against the applicant, when they have no role to play in the matter of imposing penalty. But the disciplinary authority in a very mechanical manner adopted the advice of the UPSC

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3/8

without applying its mind to the facts and circumstances of each case.

Thus from the above action of the authorities it is apparent that the disciplinary authority while imposing the penalty did not took into consideration the fact that the applicant shall be penalised six times for one and the only offence and thus the authorities have exposed the applicant to the vice of double jeopardy besides flouting the letter and spirit of Rule 14 of CCS (CCA) Rules 1965. Such action of the authorities are irrational and amounts to miscarriage of justice

6. That it is inconceivable that for approving the appointments of 221 casual mazdoors vide order dt: 27.5.96 as many as 6(six) disciplinary proceeding can be initiated against the applicant merely because casual mazdoors' who were recommended for grant of Temporary Status belongs to six different sub-divisions under the Tezpur Telecom district. There is an inherent fallacy in the stand taken by the department, in as much as, the impugned action suffers from the vice of abject irrationality. No reasonable person properly instructed in law could have acted in the manner as has been acted upon in the instant case.

7. That, therefore, to avoid multiplicity of proceedings and as the four subsequent penalty orders brought on record by way of this affidavit eminates from the same cause of action, the applicant has filed this affidavit seeking leave of this Hon'ble Tribunal to challenge the four penalty orders in this original application itself. This Hon'ble Tribunal may also be pleased to treat the averments made in this affidavit as a part of the original application.

Mujgar

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AFFIDAVIT

I, SRI MADHURYYA KUMAR GOGOI, S/O Late Debeshwar Gogoi, aged about....years, by religion Hindu, resident of 2C, Block A, Brindaban Apartment, Ganesh Mandir Path, New Guwahati-20,Kamrup do hereby solemnly affirm and state as follows.

1. That I am applicant in the original application and as such I am fully conversant with the facts and circumstances of the case.

2. That the statements made in this affidavit and in paragraph No. 1,4,5,6 and 7.....of the additional affidavit are true to my knowledge and those made in paragraphs No. 2 and 3.....being matters of records which I believe to be true and rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this July 26, 2007 at Guwahati.

Identified by

Bikram Choudhury
26.7.07

Advocate

Madhuryya Kumar Gogoi

DEPONENT

Solemnly affirmed and declared before me by the deponent who is identified by Sri Bikram Choudhury,Advocate at Guwahati on this 26th day of July2007.

Subrata Nath
Advocate
26/7

ANNEXURE-XXVIII

No. 8/181/2001-Vig.II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance-II Section)

915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110001.

Dated, the 30-05-2007

ORDER

WHEREAS major penalty proceedings under Rule 14 of CCS(CCA) Rules, 1965 were instituted against Shri M.K. Gogoi, formerly TDE, Tezpur and now DGM, Guwahati vide memorandum no.8/181/2001-Vig.II dated 11.09.2003 for the following article of charge :

Article :

That the said Shri M.K.Gogoi while posted and functioning as TDE, Tezpur, now Area Manager, Assam Telecom Circle, during 1996 committed serious irregularities in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoor in Tezpur SSA including 22 in Dhemaji Sub-Division on the basis of forged experience certificates.

By his above acts, Shri M.K.Gogoi failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant thereby violating Rule 3(1) (i),(ii) and (iii) of CCS(Conduct) Rules 1964.

2. WHEREAS the Charged Officer had denied the charges vide his defence statement dated 19.11.2003, a detailed inquiry as prescribed under CCS(CCA) Rules was held. S/Shri G. Jayaraman, the then GMTD, Bongaigaon and K.K. Das, DE(Admn.), O/o GMT, Kamrup Telecom District were appointed as IO/PO respectively. The Inquiring Authority has submitted his inquiry report dated 26.07.2005 holding the article of charge as not proved. Although the IO has held that the charges against the Charged Officer is not proved, the disciplinary authority has observed that the IO has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT. The documentary evidences taken into account during the course of inquiry i.e. S/7 & S/8 proves that the Charged Officer was aware of the DOT's guidelines regarding appointment of Temporary status Mazdoors (TSM) still he allowed the ineligible casual mazdoors to be appointed as TSMs. In view of this the disciplinary authority proposed to hold the charge as proved.

3. WHEREAS the case was referred to CVC for their second stage advice. The CVC vide I.D. Note No. No.001/P&T/120/7072 dated 23rd September 2005, have advised that a suitable major penalty be imposed on Shri M.K. Gogoi. A copy of the Inquiry Report and the disagreement of the disciplinary authority along with a copy of the CVC's advice was sent to the charged officer, duly accepted by the Competent Disciplinary Authority, to enable him to make such representation as he may wish to make. Shri M.K. Gogoi has submitted his representation dated 16.11.05, wherein he has not brought out any new facts to rebut the findings of the Inquiring Authority. The position explained by the Charged Officer was already considered during the course of inquiry.

[Contd.....]

The inquiry authority considered the records of the case such as the imputation of misconduct, the report of the IO, the advice of the CVC, the representation of the Charged Officer against the disagreement proposed by the disciplinary authority etc. and come to a tentative conclusion that the charge against the Charged Officer is proved and he deserves to be imposed with a suitable major penalty. Therefore, with the approval of the Competent Disciplinary Authority, the case was referred to the UPSC for their statutory advice as to the quantum of punishment that may be imposed on Shri M.K. Gogoi, DGM.

4. WHEREAS the UPSC have tendered their advice in this matter vide their letter No.F.3/498/06-S.I. dated 23.04.07. The Commission have, inter-alia, observed the following in this case:

a) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/pay rolls and place it before the committee, for its consideration. Alternatively, these documents should have been ab initio placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents, which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

b) The exercise at (a) above ought to have been got done by CO before (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

c) CO's averment in defence that he acted under pressure of the Union actually exposes his guilt, though obliquely, in that, it is admission that whatever he did was done knowingly and consciously.

d) In view of (a) to (c) above, there is preponderance of probability that the CO wanted to unduly favour 22 persons, either in collusion or otherwise, for reasons better known to him.

e) CO's misdemeanor acquires a serious contour in view of (d) above.

5. WHEREAS the Commission have observed further that the charge that the 22 ineligible persons were granted 'temporary status mazdoors' by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved.. The Commission observe that there are six cases with similar charges against this CO, out of which two have already been decided by the Commission wherein a penalty of reduction to a lower stage, i.e. by 3 stages in the time scale of pay Rs.14,300-400-18,300/- for a period of 2 years, with cumulative effect upon the Charged Officer has been advised, in each case.

6. AND WHEREAS in view of the above analysis and considering the totality of the facts and circumstances of the case the Commission are of the view that in the present case also, gravity of the proven charge warrants a similar penalty. However, considering the hardship that the CO would be eventually put to, the Commission have taken a compassionate view and consider that the ends of justice would be met in this case if the penalty of 'reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs. 14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay' is imposed on Shri M.K. Gogoi, DGM.

[Contd.....]

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NOW THEREFORE, after careful consideration of the submission made by Shri M.K. Gogoi, the Charged Officer in his representation dated 16.11.05, the advice tendered by the UPSC, vide their aforesaid letter dated 23.04.2007, and all relevant facts and circumstances of the case, the President, the Competent Disciplinary Authority hereby orders for imposition of the penalty of reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs. 14.300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay' is imposed on Shri M.K. Gogoi, DGM.

8. The receipt of the order shall be acknowledged by Shri M.K. Gogoi, DGM.

By order and in the name of the President.

Encl : UPSC letter No. F.3/498/06-S.I
dated 23.04.2007

(A.K. Patro)
Desk Officer (Vig.II)

Shri M.K. Gogoi,
(Staff No.9657),
Dy. General Manager,
Guwahati Telecom District,
Guwahati.
(Through the CGMT, Assam Circle, Guwahati)

ANNEXURE-XXIX

CONFIDENTIAL

ADVICE OF

UNION PUBLIC SERVICE COMMISSION

IN THE

DISCIPLINARY PROCEEDINGS

AGAINST

SHRI M.K.GOGOI (STAFF No. 9657), AREA MANAGER.

MINISTRY OF COMMUNICATION & IT.

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Gram :UNISERCOM
Telex: 031-62677
Fax. No. 011-23385345

CONFIDENTIAL
F.3/498/06-SI

UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOG)
DHOLPUR HOUSE, SHAHJAHAN ROAD
नई दिल्ली - 110069
New Delhi - 110069,

23.04.07

To

The Secretary to the Govt. of India,
Ministry of Communications & Information Technology,
Department of Telecommunications,
Sanchar Bhawavn,
New Delhi.

(Attention: Shri A.K. Patro, Desk Officer (Vig.II)

Subject:- Disciplinary proceedings under rule 14 of the CCS(CCA) Rules,1965, instituted against Shri M.K. Gogoi(Staff No.9657) formerly TDE, Tezpur and now Area Manager (East), Kamrup Telecom District, Guwahati.

Sir,

I am directed to refer to your letter No.8-181/2001-Vig.II dated 03.01.2006 on the above mentioned subject and to convey the advice of the Union Public Service Commission as follows.

2. The Commission note, that vide Memorandum NO.8-181/2001-Vig.II dated 11.09.2003 issued under Rule 14 of the CCS(CCA) Rules, 1965 to Shri M.K.Gogoi, formerly TDE, Tezpur and presently Area Manager, Assam Telecom Circle and he was called upon to answer the following article of charge.

Article

That the said Shri M.K. Gogoi while posted and functioning as TDE, Tezpur now Area Manager, Assam Telecom Circle during 1996 committed serious irregularities in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoors in Tezpur ,SSA including 22 in Dhemaji Sub-Division on the basis of forged experience certificates.

By his above acts, Shri M.K. Gogoi failed to maintain absolute integrity devotion to duty acted in a manner unbecoming of Govt. servant thereby contravening the provisions of Rule 3(1)(i),(ii) & (iii) of CCS (Conduct) Rules, 1964.

2.1 The Commission note that a statement of imputations of misconduct or misbehaviour in support of article of charge was also annexed to the charge memo. The CO denied the charge and remitted the case to the inquiry. The IO submitted his inquiry report dated 26.07.2005 holding the article of charge as not proved. The DA disagreed with the findings of the IO. A copy of the IO's report and the disagreement note of the disciplinary authority along with CVC's advice was sent to the CO to enable him to make a representation if any. The CO submitted his representation dated 16.11.05. The DA, after considering the representation of the CO and the circumstances of the case has taken a tentative decision to impose a suitable major penalty.

3. The Commission observe that DA's case, in brief, is as under:

i) CO was TDE, Tezpur during 1996.

ii) DOT issued a circular dated 17/12/1993 for regularization of casual labourers, engaged between 31/3/1985 and 22/6/1988, as temporary status mazdoors.

iii) The benefits of the said circular applied to those who were, firstly, engaged between 31/3/1985 and 22/6/1988; secondly, were continuing to work where they were initially engaged and, thirdly, were not absent for more than 365 days from and including the date of issue of the circular.

iv) The circular further stipulated that if any casual mazdoor is employed *after* the issue of the said circular, the wages paid to such casual mazdoor should be recovered from the official(s) who has/have recruited/engaged the casual mazdoors.

v) False experience certificates were issued in favour of 22 persons by field officers (Lineman, Line Inspector, Sub Inspector and Phone Inspector) showing them as casual labourers in the office of SDE (P), Dhemaji, and countersigned and forwarded by SDE (P), Dhemaji (in collusion with the CO) to the CO with recommendation for consideration of the said 22 persons as temporary status mazdoors.

vi) Thereafter, the CO constituted a Selection Committee.

vii) The Selection Committee recommended regularization of all 221 persons.

viii) The CO passed orders regularizing all 221 persons (including 22 in Dhemaji Sub Division).

4. The Commission also note that the CO in his defence, in brief has stated that:–

i) He was not a member of the Selection Committee.

ii) Verification of the certificates issued by SDOs/SDEs was entrusted to the Committee. Only those individuals, who were found eligible after verification of recommendations made by the SDOs/SDEs, were approved on a provisional basis by the Committee.

iii) He himself verified some cases of payment vouchers and, only after confirming that complete verification had been carried out, did he sign the provisional order.

5. The records of the case have been examined very carefully by the Commission and their observations are given below:

a) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/ pay rolls and place it before the Committee, for its consideration. Alternatively, these documents should have been *ab initio* placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

b) The exercise at (a) above ought to have been got done by CO *before* (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

c) CO's averment in defence that he *acted under pressure of the Union* actually exposes his guilt, though obliquely, in that, it is admission that whatever he did was done knowingly and consciously.

d) In view of (a) to (c) above as also Para 8 (iii), there is preponderance of probability that the CO *wanted* to unduly favour 22 persons, either in collusion or otherwise, for reasons better known to him.

e) CO's misdemeanor acquires a serious contour in view of (d) above.

In view of above the charge that the 22 ineligible persons were granted *'temporary status mazdoors'* by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved.

6. The Commission observe that there are six cases with similar charges against this CO. Out of there, two have already been decided by the Commission and a penalty of reduction to a lower stage, i.e., by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years, with cumulative effect, has been advised, in each case.

7. In view of above analysis and considering the totality of the facts and circumstances of the case the Commission observe that in the present (third) case also, gravity of the proven charge warrants a similar penalty. However, considering the hardship that the CO would be eventually put to, the Commission have taken a compassionate view and consider that the ends of justice would be met in this case if the penalty of reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years is imposed, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay. They advise accordingly.

8. A copy of the order passed by the Ministry in this case may be sent to this office for information/records.

9. The case records as per list attached are returned herewith receipt of which may kindly be acknowledged.

Yours faithfully,

(S.B. SINHA)
DEPUTY SECRETARY
TEL: 23073406

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

-B-
-14-
ANNEXURE-XXX

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No. 8/186/2001-Vig.II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance-II Section)

915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110001.

Dated, the 30-05-2007

ORDER

WHEREAS major penalty proceedings under Rule 14 of CCS(CCA) Rules, 1965 were instituted against Shri M.K. Gogoi, formerly TDE, Tezpur and now DGM, Guwahati vide memorandum no.8/186/2001-Vig.II dated 11.09.2003 for the following article of charge :

Article :

It is alleged that Shir M.K. Gogoi while posted and functioning as TDE, Tezpur, during 1996, failed to maintain absolute integrity and utmost devotion to duty and acted in a manner unbecoming of a government servant in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoor in Tezpur Division including 21 in Udalguri Sub-division on the basis of forged experience certificates and thereby violated provisions of Rule 3(1) (i),(ii) and (iii) of CCS(Conduct) Rules 964.

2. WHEREAS the Charged Officer had denied the charges vide his defence statement dated 19.11.2003, a detailed inquiry as prescribed under CCS(CCA) Rules was held by S/Shri G. Jayaraman, the then GMTD, Bongaigaon and K.K. Das, DE(Admn.), O/o GMT, Kamrup Telecom District who were appointed as IO/PO respectively. The Inquiring Authority has submitted his inquiry report dated 26.07.2005 holding the article of charge as not proved. Although the IO has held that the charges against the Charged Officer is not proved, the disciplinary authority has observed that the IO has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT. The documentary evidences taken into account during the course of inquiry i.e. SE-6 & SE-7 proves that the Charged Officer was aware of the DOT's guidelines regarding appointment of Temporary status Mazdoors (TSM) still he allowed the ineligible casual mazdoors to be appointed as TSMs. In view of this the disciplinary authority proposed to hold the charge as proved.

3. WHEREAS the case was referred to CVC for their second stage advice. The CVC vide I.D. Note No. 001/P&T/126/7348 dated 28th September 2005 have advised that a suitable major penalty be imposed on Shri M.K. Gogoi. A copy of the Inquiry Report along with the disagreement of the disciplinary authority and a copy of the CVC's advice was sent to the charged officer, duly accepted by the Competent Disciplinary Authority, to enable him to make such representation as he may wish to make. Shri M.K. Gogoi has submitted his representation dated 17.11.05, wherein he has not brought out any new facts to rebut the disagreement of the Disciplinary Authority. The position explained by the Charged Officer was already considered during the course of inquiry. The inquiry authority considered the records of the case such as the imputation of misconduct, the report of the IO, the advice of the CVC, the representation of the Charged Officer against the disagreement proposed by the disciplinary authority etc. and come to a tentative conclusion that the charge against the Charged Officer is proved and he deserves to be imposed with a suitable major penalty. Therefore, with the approval of the Competent Disciplinary Authority, the case was referred to the UPSC for their statutory advice as to the quantum of punishment that may be imposed on Shri M.K. Gogoi, DGM.

Attested by
Choudhury

|Contd.....|

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4. WHEREAS the UPSC have tendered their advice in this matter vide their letter No.F.3/501/05-S.I. dated 27.04.07. The Commission have, inter-alia, observed that the following in this case :

a) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/pay rolls and place it before the committee, for its consideration. Alternatively, these documents should have been ab initio placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

b) The exercise at (a) above ought to have been got done by CO before (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

c) CO's averment in defence that he acted under pressure of the Union actually exposes his guilt, though obliquely, in that, it is admission that whatever he did was done knowingly and consciously.

d) In view of (a) to (c) above, there is preponderance of probability that the CO wanted to unduly favour 21 persons, either in collusion or otherwise, for reasons better known to him.

e) CO's misdemeanor acquires a serious contour in view of (d) above.

5. WHEREAS the Commission have observed further that the charge that the 21 ineligible persons were granted 'temporary status mazdoors' by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved. The Commission observe that there are six cases with similar charges against this CO, out of which two have already been decided by the Commission wherein a penalty of reduction to a lower stage, i.e. by 3 stages in the time scale of pay Rs.14,300-400-18,300/- for a period of 2 years, with cumulative effect upon the Charged Officer has been advised.

6. AND WHEREAS in view of the above analysis and considering the totality of the facts and circumstances of the case the Commission are of the view that in the present case also, gravity of the proven charge warrants a similar penalty. However, considering the hardship that the CO would be eventually put to, the Commission have taken a compassionate view and consider that the ends of justice would be met in this case if the penalty of 'reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs. 14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay' is imposed on Shri M.K. Gogoi, DGM.

[Contd.....]

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7. NOW THEREFORE, after careful consideration of the submission made by Shri M.K. Gogoi, the Charged Officer in his representation dated 17.11.05, the advice tendered by the UPSC, vide their aforesaid letter dated 27.04.2007, and all relevant facts and circumstances of the case, the President, the Competent Disciplinary Authority hereby orders for imposition of the penalty of reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs. 14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the *reduction* will have the effect of postponing future increments of his pay' is imposed on Shri M.K. Gogoi, DGM.

8 The receipt of the order shall be acknowledged by Shri M.K. Gogoi, DGM.

By order and in the name of the President.

Encl : UPSC letter No. F.3/501/05-S.I
dated 27.04.2007

(A.K. Patro)
Desk Officer (Vig.II)

Shri M.K. Gogoi,
(Staff No.9657),
Dy. General Manager,
Guwahati Telecom District,
Guwahati.
(Through the CGMT, Assam Circle, Guwahati)

-16-17- ANNEXURE-XXXI

CONFIDENTIAL

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ADVICE OF

UNION PUBLIC SERVICE COMMISSION

IN THE

DISCIPLINARY PROCEEDINGS

AGAINST

SHRI M.K.GOGOI (STAFF No. 9657), AREA MANAGER.

MINISTRY OF COMMUNICATION & IT.

Attested by
Choudhury

Gram :UNISERCOM
Telex : 031-62677
Fax : 011-23385345

CONFIDENTIAL
F.3/501/05-SI

UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOG)
DHOLPUR HOUSE, SHAHJAHAN ROAD
New Delhi - 110069,

Dt. 27.4.07

To

The Secretary to the Govt. of India,
Ministry of Communications & Information Technology,
Department of Telecommunications,
Sanchar Bhawan,
New Delhi.

(Attention: Shri A.K. Patro, Desk Officer (Vig.II)

Subject:- Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules,1965, instituted against Shri M.K. Gogoi(Staff No.9657) formerly TDE, Tezpur and now Area Manager (East), Kamrup Telecom District, Guwahati.

Sir,

I am directed to refer to your letter No.8/186/2001-Vig.II dated 03.01.2006 on the above-mentioned subject and to convey the advice of the Union Public Service Commission as follows.

2. The Commission note that vide Memorandum No.8-186/2001-Vig.II dated 11.09.2003 issued under Rule 14 of the CCS (CCA) Rules, 1965 to Shri M.K. Gogoi, formerly TDE, Tezpur and now Director, (RTTC), Guwahati and he was called upon to answer the following article of charge.

Article

"It is alleged that Shri M.K. Gogoi while posted and functioning as TDE, Tezpur during 1996 failed to maintain absolute integrity and utmost devotion to duty and acted in a manner

integrity and utmost devotion to duty and acted in a manner unbecoming of a Government servant in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoors in Tezpur Division including 21 in Udalguri Sub-division on the basis of forged experience certificates and thereby violated the provisions of Rule 3(1)(i),(ii) & (iii) of CCS (Conduct) Rules, 1964".

2.1 The Commission note that a statement of imputations of misconduct or misbehavior in support of article of charge was also annexed to the charge memo. The CO denied the charge and remitted the case to the inquiry. The IO submitted his inquiry report dated 26.07.2005 holding the article of charge as not proved. The DA disagreed with the findings of the IO. The CVC advice was obtained. A copy of the IO' s report along with CVC' s advice was sent to the CO to enable him to make a representation if any. The CO submitted his representation-dated 17.11.05. The DA, after considering the representation of the CO and the circumstances of the case has taken a tentative decision to impose a suitable major penalty. Now all the case records have been forwarded to the Commission for seeking their advice in the matter.

3. The Commission note that DA's case in brief as seen from the statement of imputation of misconduct or misbehavior is as under:

i) The CO was TDE, Tezpur during 1996.

ii) DOT issued a circular dated 17/12/1993 for regularization of casual labourers, engaged between 31/3/1985 and 22/6/1988, as temporary status mazdoors.

iii) The benefits of the said circular applied to those who were, firstly, engaged between 31/3/1985 and 22/6/1988; secondly, were continuing to work where they were initially engaged and, thirdly, were not absent for more than 365 days from and including the date of issue of the circular.

iv) The circular further stipulates that if any casual mazdoor is employed *after* the issue of the said circular, the wages paid to such casual mazdoor should be recovered from the official(s) who has/have recruited/engaged the casual mazdoors.

v) False experience certificates were issued in favour of 21 persons by field officers (JTOs, AE, Sub Inspectors, Line Inspector) showing them as casual labourers in the office of SDE (P), Udalguri, and countersigned and forwarded by SDE (P), Udalguri (in collusion with the CO) to the CO.

vi) Thereafter, the CO constituted a Selection Committee.

vii) The Selection Committee recommended regularization of all 221 persons (including 21 for Udalguri Sub Division).

viii) The CO passed orders regularizing all 221 persons.

4. The Commission also note that the CO in his defence, in brief has stated that :–

i) He was not a member of the Selection Committee.

ii) Verification of the certificates issued by SDOs/SDEs was entrusted to the Committee. Only those individuals, who were found eligible after verification of recommendations made by the SDOs/SDEs, were approved on a provisional basis by the Committee.

iii) He himself verified some cases of payment vouchers and, only after confirming that complete verification had been carried out, did he sign the provisional order.

5. The records of the case have been examined very carefully by the Commission and their observations are as under:

a) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/ pay rolls and place it before the Committee, for its consideration. Alternatively, these documents should have been *ab initio* placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents, which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

b) The exercise at (a) above ought to have been got done by CO *before* (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

c) CO's averment in defence that he *acted under pressure of the Union* actually exposes his guilt, though obliquely, in that, it is admission that whatever he did was done knowingly and consciously.

d) In view of (a) to (c) above as also Para 8 (iii), there is preponderance of probability that the CO *wanted* to unduly favour 21 persons, either in collusion or otherwise, for reasons better known to him.

e) CO's misdemeanor acquires a serious contour in view of (d) above.

In view of above, the Commission observe that the charge that the 21 ineligible persons were granted '*temporary status mazdoors*' by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved

6. The Commission observe that there are six cases with similar charges against the CO out of these two have already been decided by the Commission wherein a penalty of reduction to a lower stage, i.e., by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years, with cumulative effect, upon the CO has been advised in each case. .

6.1 In view of above analysis and considering the totality of the facts and circumstances of the case the Commission are of the view that in the present case also, gravity of the proven charge warrants a similar penalty. However, considering the hardship that the CO would be eventually put to, the Commission have taken a compassionate view and consider that the ends of justice would be met in this case if the penalty of reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay ' is imposed on the CO. They advise accordingly.

7. A copy of the order passed by the Ministry in this case may be sent to this office for information/records.

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

Yours faithfully,

(S.B. SINHA)
DEPUTY SECRETARY
TEL: 23073406

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

-23- ANNEXURE-XXXII

No. 8/167/2001-Vig.II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance-II Section)

915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110001.

Dated, the 30-05-2007

ORDER

WHEREAS major penalty proceedings under Rule 14 of CCS(CCA) Rules, 1965 were instituted against Shri M.K. Gogoi, formerly TDE, Tezpur and now DGM, Guwahati vide memorandum no.8/167/2001-Vig.II dated 11.09.2003 for the following article of charge :

Article :

That the said Shri M.K. Gogoi while posted and functioning as TDE, Tezpur now Area Manager, Assam Telecom Circle, during 1996 committed serious irregularities in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoor in Tezpur SSA including 15 in the office of SDO(T), Tezpur on the basis of forged experience certificates.

By his above acts, Shri M.K. Gogoi failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

2. WHEREAS the Charged Officer had denied the charges vide his defence statement dated 19.11.2003, a detailed inquiry as prescribed under CCS(CCA) Rules was held by S/Shri G. Jayaraman, the then GMTD, Bongaigaon and K.K. Das, DE(Admn.), O/o GMT, Kamrup Telecom District were appointed as IO/PO respectively. The Inquiring Authority has submitted his inquiry report dated 26.07.2005 holding the article of charge as not proved. Although the IO has held that the charges against the Charged Officer is not proved, the disciplinary authority has observed that IO has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT. The documentary evidences taken into account during the course of inquiry i.e. S/7 & S/8 proves that the Charged Officer was aware of the DOT's guidelines regarding appointment of Temporary status Mazdoors (TSM) still he allowed the ineligible casual mazdoors to be appointed as TSMs. In view of this the disciplinary authority proposed to hold the charge as proved.

3. WHEREAS the case was referred to CVC for their second stage advice. The CVC vide I.D. Note No. No.001/P&T/127/7073 dated 23rd September 2005 have advised that a suitable major penalty be imposed on Shri M.K. Gogoi. A copy of the Inquiry Report and the disagreement of the disciplinary authority along with a copy of the CVC's advice was sent to the charged officer, duly accepted by the Competent Disciplinary Authority, to enable him to make such representation as he may wish to make. Shri M.K. Gogoi has submitted his representation dated 12.11.05, wherein he has not brought out any new facts to rebut the findings of the Inquiring Authority. The position explained by the Charged Officer was already considered during the course of inquiry.

Attested by
Choudhury
Adv

[Contd.....

The inquiry authority considered the records of the case such as the imputation of misconduct, the report of the IO, the advice of the CVC, the representation of the Charged Officer against the disagreement proposed by the disciplinary authority etc. and come to a tentative conclusion that the charge against the Charged Officer is proved and he deserves to be imposed with a suitable major penalty. Therefore, with the approval of the Competent Disciplinary Authority the statutory advice as to the quantum of punishment that may be imposed on Shri M.K. Gogoi, DGM.

4. WHEREAS the UPSC have tendered their advice in this matter vide their letter No.F.3/500/05-S.I. dated 26.04.07. The Commission have, inter-alia, observed the following :

a) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/pay rolls and place it before the committee, for its consideration. Alternatively, these documents should have been ab initio placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents, which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

b) The exercise at (a) above ought to have been got done by CO before (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

c) CO's averment in defence that he acted under pressure of the Union actually exposes his guilt, though obliquely, in that, it is admission that whatever he did was done knowingly and consciously.

d) In view of (a) to (c) above, there is preponderance of probability that the CO wanted to unduly favour 15 persons, either in collusion or otherwise, for reasons better known to him.

f) CO's misdemeanor acquires a serious contour in view of (d) above.

5. WHEREAS the Commission have further observed that the charge that the15 ineligible persons were granted 'temporary status mazdoors' by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved. The Commission observe that there are six cases with similar charges against this CO, out of which two have already been decided by the Commission wherein a penalty of reduction to a lower stage, i.e. by 3 stages in the time scale of pay Rs.14,300-400-18,300/- for a period of 2 years, with cumulative effect upon the Charged Officer has been advised.

6. AND WHEREAS in view of the above analysis and considering the totality of the facts and circumstances of the case the Commission are of the view that in the present case also, gravity of the proven charge warrants a similar penalty. However, considering the hardship that the CO would be eventually put to, the Commission have taken a compassionate view and consider that the ends of justice would be met in this case it the penalty of 'reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs. 14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay' is imposed on Shri M.K. Gogoi, DGM.

[Contd.....]

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7. NOW THEREFORE, after careful consideration of the submission made by Shri M.K. Gogoi, the Charged Officer in his representation dated 12.11.05, the advice tendered by the UPSC, vide their aforesaid letter dated 24.04.2007, and all relevant facts and circumstances of the case, the President, the Competent Disciplinary Authority hereby orders for imposition of the penalty of reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs. 14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the priod of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay' on Shri M.K. Gogoi, DGM.

8. The receipt of the order shall be acknowledged by Shri M.K. Gogoi, DGM.

By order and in the name of the President.

Encl : UPSC letter No. F.3/500/2005-S.I
dated 26.04.2007

(A.K. Patro)
Desk Officer (Vig.II)

Shri M.K. Gogoi,
(Staff No.9657),
Dy. General Manager,
Guwahati Telecom District,
Guwahati.
(Through the CGMT, Assam Circle, Guwahati)

ANNEXURE-XXXIII

CONFIDENTIAL

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ADVICE OF

UNION PUBLIC SERVICE COMMISSION

IN THE

DISCIPLINARY PROCEEDINGS

AGAINST

SHRI M.K.GOGOI (STAFF No. 9657), AREA MANAGER.

MINISTRY OF COMMUNICATION & IT.

Attested by.
Choudhury
Adv.

341

Gram :UNISERCOM
Telex : 031-62677
Fax : 011-23385345

CONFIDENTIAL
F.3/500/2005 -SI

UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOG)
DHOLPUR HOUSE, SHAHJAHAN ROAD
New Delhi - 110069, Dt. 26.4.07

To

The Secretary to the Govt. of India,
Ministry of Communications & Information Technology,
Department of Telecommunications,
Sanchar Bhawavn,
New Delhi.

(Attention: Shri A.K. Patro, Desk Officer (Vig.II)

Subject:- Disciplinary proceedings under rule 14 of the CCS(CCA) Rules,1965, instituted against Shri M.K. Gogoi(Staff No.9657) formerly TDE, Tezpur and now Area Manager (East), Kamrup Telecom District, Guwahati.

Sir,

I am directed to refer to your letter No.8/167/2001-Vig.II dated 03.01.2006 on the above mentioned subject and to convey the advice of the Union Public Service Commission as follows.

2. The Commission note that vide Memorandum NO.8-167/2001-Vig.II dated 11.09.2003 issued under Rule 14 of the CCS(CCA) Rules, 1965 to Shri M.K.Gogoi, formerly TDE,Tezpur and presently Area Manager, Assam Telecom Circle and he was called upon to answer the following article of charge.

Article

'That Shri M.K. Gogoi while posted and functioning as TDE,Tezpur now Area Manager, Assam Telecom Circle, during 1996 committed serious irregularities, in as much as he appointed 221

Casual Labourers as Temporary Status Mazdoors in Tazpur SSA including 15 in the office of SDO(T), Tezpur on the basis of forged experience certificates.

By his above acts, Shri M.K. Gogoi failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby violating Rule 3(1)(i),(ii) & (iii) of CCS (Conduct) Rules, 1964".

2.1 The Commission note that a statement of imputations of misconduct or misbehaviour in support of article of charge was also annexed to the charge memo. The CO denied the charge and remitted the case to the inquiry. The IO submitted his inquiry report dated 26.07.2005 holding the article of charge as not proved. The DA disagreed with the findings of the IO. The CVC advice was obtained. A copy of the IO's report and the disagreement of the disciplinary authority along with CVC's advice was sent to the CO to enable him to make a representation if any. The CO submitted his representation dated 12.11.05. The DA, after considering the representation of the CO and the circumstances of the case has taken a tentative decision to impose a suitable major penalty. Now all the case records have been forwarded to the Commission for seeking their advice in the matter.

3. The Commission note that DA's case in brief as seen from the statement of imputation of misconduct or misbehaviour is as under:

i) The CO was TDE, Tezpur during 1996.

ii) DOT issued a circular dated 17/12/1993 for regularization of casual labourers, engaged between 31/3/1985 and 22/6/1988, as temporary status mazdoors.

iii) The benefits of the said circular applied to those who were, firstly, engaged between 31/3/1985 and 22/6/1988; secondly, were continuing to work where they were initially engaged and, thirdly, were not absent for more than 365 days from and including the date of issue of the circular.

iv) The circular further stipulates that if any casual mazdoor is employed *after* the issue of the said circular, the wages paid to such casual

mazdoor should be recovered from the official(s) who has/have recruited/engaged the casual mazdoors.

v) False experience certificates were issued in favour of 15 persons by field officers (JTOs, AE, Sub Inspectors, Line Inspector) showing them as casual labourers in the office of SDO (T), Tezpur, and countersigned and forwarded by SDO (T), Tezpur (in collusion with the CO) to the CO.

vi) Thereafter, the CO constituted a Selection Committee.

vii) The Selection Committee recommended regularization of all 221 persons [including 15 for SDO (T), Tezpur]

viii) The CO passed orders regularizing all 221 persons.

4. The Commission also note that the CO in his defence, in brief has stated that :–

i) He was not a member of the Selection Committee.

ii) Verification of the certificates issued by SDOs/SDEs was entrusted to the Committee. Only those individuals, who were found eligible after verification of recommendations made by the SDOs/SDEs, were approved on a provisional basis by the Committee.

iii) He himself verified some cases of payment vouchers and, only after confirming that complete verification had been carried out, did he sign the provisional order.

5. The records of the case have been examined very carefully by the Commission and their observations are as under:

a) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/pay rolls and place it before the Committee, for its consideration. Alternatively, these documents should have been *ab initio* placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents, which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

b) The exercise at (a) above ought to have been got done by CO *before* (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

c) CO's averment in defence that he *acted under pressure of the Union* actually exposes his guilt, though obliquely, in that, it is admission that whatever he did was done knowingly and consciously.

d) In view of (a) to (c) above as also Para 8 (iii), there is preponderance of probability that the CO *wanted* to unduly favour 15 persons, either in collusion or otherwise, for reasons better known to him.

e) CO's misdemeanor acquires a serious contour in view of (d) above.

In view of above, the Commission observe that the charge that the 15 ineligible persons were granted '*temporary status mazdoors*' by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved.

6. The Commission observe that there are six cases with similar charges against this CO, out of these two have already been decided by the Commission wherein a penalty of reduction to a lower stage, i.e., by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years, with cumulative effect, upon the CO has been advised.

6.1 In view of above analysis and considering the totality of the facts and circumstances of the case the Commission are of the view that in the present case also, gravity of the proven charge warrants a similar penalty. However, considering the hardship that the CO would be eventually put to the Commission have taken a compassionate view and consider that the ends of justice would be met in this case if the penalty of 'reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay' is imposed on the CO. They advise accordingly.

7. A copy of the order passed by the Ministry in this case may be sent to this office for information/records.

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

Yours faithfully,

(S.B. SINHA)
DEPUTY SECRETARY
TEL: 23073406

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

ANNEXURE-XXXIV

No. 8/165/2001-Vig.II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance-II Section)

915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110001.

Dated, the 20-6- 2007

ORDER

WHEREAS major penalty proceedings under Rule 14 of CCS(CCA) Rules, 1965 were instituted against Shri M.K. Gogoi, formerly TDE, Tezpur and now DGM, Guwahati vide memorandum no.8/165/2001-Vig.II dated 09.10.2003 for the following article of charge :

Article :

It is alleged that Shri M.K.Gogoi while posted and functioning as TDE, Tezpur, during 1996, failed to maintain absolute integrity and utmost devotion to duty and acted in a manner unbecoming of a government servant in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoor in Tezpur Division including 7 in the O/o SDE(Comp.), Tezpur on the basis of forged experience certificates

By his aforesaid acts Shri Madhurya Kumar Gogoi contravened Rule 3(1) (i).(ii) and (iii) of CCS(Conduct) Rules 1964.

2. WHEREAS the Charged Officer had denied the charges vide his defence statement dated 19.11.2003, a detailed inquiry as prescribed under CCS(CCA) Rules was held by S/Shri G. Jayaraman, the then GMTD, Bongaigaon and K.K. Das, DE(Admn.), O/o GMT, Kamrup Telecom District who were appointed as IO/PO respectively. The Inquiring Authority has submitted his inquiry report dated 26.07.2005 holding the article of charge as not proved. Although the IO has held that the charges against the Charged Officer as not proved, the disciplinary authority has observed that the IO has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT. The documentary evidences taken into account during the course of inquiry i.e. S/21 & S/22 proved that the Charged Officer was aware of the DOT's guidelines regarding appointment of Temporary status Mazdoors (TSM) still he allowed the ineligible casual mazdoors to be appointed as TSMs. In view of this the disciplinary authority proposed to hold the charge as proved.

4. WHEREAS the case was referred to CVC for their second stage advice. The CVC vide I.D. Note No. No.001/P&T/118/7352 dated 28th September 2005 have advised that a suitable major penalty be imposed on Shri M.K. Gogoi. A copy of the Inquiry Report and the disagreement of the disciplinary authority along with a copy of the CVC's advice was sent to the charged officer, duly accepted by the Competent Disciplinary Authority, to enable him to make such representation as he may wish to make. Shri M.K.Gogoi has submitted his representation dated 10.11.05, wherein he has not brought out any new facts to rebut the findings of the Inquiring Authority.

Attested by
Advocate

[Contd.....]

The position explained by the Charged Officer was already considered during the course of inquiry. The disciplinary authority considered the records of the case such as the imputation of misconduct, the report of the IO, the advice of the CVC, the representation of the Charged Officer against the disagreement proposed by the disciplinary authority etc. and come to a tentative conclusion that the charge against the Charged Officer is proved and he deserves to be imposed with a suitable major penalty. Therefore, with the approval of the Competent Disciplinary Authority the statutory advice as to the quantum of punishment that may be imposed on Shri M.K. Gogoi, DGM.

5. WHEREAS the UPSC have tendered their advice in this matter vide their letter No.F.3/499/05-SI dated 24.04.07 (copy enclosed). The Commission have, inter-alia, observed that the following :

a) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/pay rolls and place it before the committee, for its consideration. Alternatively, these documents should have ab initio placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents, which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

b) The exercise at (a) above ought to have been got done by CO before (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

c) CO's averment in defence that he acted under pressure of the Union actually exposes his guilt, though obliquely; in that, it is admission that whatever he did was done knowingly and consciously.

d) In view of (a) to (c) above there is preponderance of probability that the CO wanted to unduly favour 7 persons, either in collusion or otherwise, for reasons better known to him.

e) CO's misdemeanor acquires a serious contour in view of (d) above.

6. WHEREAS the Commission have further observe that the charge that the 7 ineligible persons were granted 'temporary status mazdoors' by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved. The Commission observe that there are six cases with similar charges against this CO, out of which two have already been decided by the Commission wherein a penalty of reduction to a lower stage, i.e. by 3 stages in the time scale of pay Rs.14,300-400-18,300/- for a period of 2 years, with cumulative effect upon the Charged Officer has been advised.

7. AND WHEREAS in view of the above analysis and considering the totality of the facts and circumstances of the case the Commission are of the view that in the present case the gravity of the proven charge warrants a similar penalty. However, considering the setback that the CO would be eventually put to, the Commission have taken a compassionate view and consider that the ends of justice would be met in this case if the penalty of reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs. 14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay' is imposed on Shri M.K. Gogoi, DGM.

|Contd.....|

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8. NOW THEREFORE, after careful consideration of the submission made by Shri M.K. Gogoi, the Charged Officer in his representation dated 10.11.05, the advice tendered by the UPSC, vide their aforesaid letter dated 24.04.2007 and all relevant facts and circumstances of the case, the President, the Competent Disciplinary Authority hereby orders for imposition of the penalty of reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs. 14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay on Shri M.K. Gogoi, DGM.

9. The receipt of the order shall be acknowledged by Shri M.K. Gogoi, DGM.

By order and in the name of the President.

Encl : UPSC letter No. F.3/499/2005-SI dated 24.04.2007

(A.K. Patro)
Desk Officer (Vig.II)

Shri M.K. Gogoi,
(Staff No.9657),
Dy. General Manager,
Guwahati Telecom District,
Guwahati.
(Through the CGMT, Assam Circle, Guwahati)

ANNEXURE - XXXV

CONFIDENTIAL

ADVICE OF

UNION PUBLIC SERVICE COMMISSION

IN THE

DISCIPLINARY PROCEEDINGS

AGAINST

SHRI M.K.GOGOI (STAFF No. 9657), AREA MANAGER.

MINISTRY OF COMMUNICATION & IT.

Attested by
Adv

Gram :UNISERCOM
Telex : 031-62677
Fax : 011-23385345

CONFIDENTIAL
F.3/499/05-SI

UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOG)
DHOLPUR HOUSE, SHAHJAHAN ROAD
नई दिल्ली - 110069
New Delhi - 110069, Dated 24.4.07

To

The Secretary to the Govt. of India,
Ministry of Communications & Information Technology,
Department of Telecommunications,
Sanchar Bhawavn,
New Delhi.

(Attention: Shri A.K. Patro, Desk Officer (Vig.II)

Subject:- Disciplinary proceedings under rule 14 of the CCS(CCA) Rules,1965, instituted against Shri M.K. Gogoi(Staff No.9657) formerly TDE , Tezpur and now Area Manager (East), Kamrup Telecom District, Guwahati.

Sir,

I am directed to refer to your letter No.8/165/2001-Vig.II dated 03.01.2006 on the above mentioned subject and to convey the advice of the Union Public Service Commission as follows.

2. The Commission note that vide Memorandum NO.8-165/2001-Vig.II dated 09.10.2003 issued under Rule 14 of the CCS(CCA) Rules, 1965 to Shri M.K. Gogoi, formerly TDE, Tezpur and presently Area Manager, Assam Telecom Circle . . . he was called upon to answer the following article of charge.

Article

"It is alleged that Shri M.K. Gogoi while posted and functioning as TDE, Tezpur during 1996 failed to maintain absolute integrity and utmost

devotion to duty and acted in a manner unbecoming of a Government servant in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoors in Tezpur Division including 7 in the office of SDE(Comp), Tezpur on the basis of forged experience certificates.

"By his aforesaid acts, Shri Madhurya Kr. Gogoi contravened Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964".

2.1 The Commission note that a statement of imputations of misconduct or misbehaviour in support of article of charge was also annexed to the charge memo. The CO denied the charge and DA remitted the case to inquiry. The IO submitted his inquiry report dated 26.07.2005 holding the article of charge as not proved. The DA disagreed with the findings of the IO. A copy of the IO's report and the disagreement note of the disciplinary authority along with CVC's advice was sent to the CO to enable him to make a representation if any. The CO submitted his representation dated 10.11.05. The DA, after considering the representation of the CO and the circumstances of the case has taken a tentative decision to impose a suitable major penalty. Now all the case records have been forwarded to the Commission for seeking their advice in the matter.

3. The Commission note that DA's case in brief as seen from the statement of imputation of misconduct or misbehaviour is as under:-

i) The CO was TDE, Tezpur during 1996.

ii) DOT issued a circular dated 17/12/1993 for regularization of casual labourers, engaged between 31/3/1985 and 22/6/1988, as temporary status mazdoors.

iii) The benefits of the said circular applied to those who were, firstly, engaged between 31/3/1985 and 22/6/1988; secondly, were continuing to work where they were initially engaged and, thirdly, were not absent for more than 365 days from and including the date of issue of the circular.

iv) The circular further stipulated that if any casual mazdoor is employed *after* the issue of the said circular, the wages paid to such casual mazdoor should be recovered from the official(s) who has/have recruited/engaged the casual mazdoors.

v) False experience certificates were issued in favour of 7 persons by field officers (JTO, Sub Inspector, Line Inspector, Cable Splicer and JSO) showing them as casual labourers in the office of SDO (T), Tezpur, and countersigned and forwarded by SDE (Comp), Tezpur (in collusion with the CO) to the CO.

vi) Thereafter, the CO constituted a Selection Committee.

vii) The Selection Committee recommended regularization of all 221 persons (including 7 for the office of SDE (Comp), Tezpur.

viii) The CO passed orders regularizing all 221 persons.

4. The Commission also note that the CO in his defence, in brief has stated that:–

i) He was not a member of the Selection Committee.

ii) Verification of the certificates issued by SDOs/SDEs was entrusted to the Committee. Only those individuals, who were found eligible after verification of recommendations made by the SDOs/SDEs, were approved on a provisional basis by the Committee.

iii) He himself verified some cases of payment vouchers and, only after confirming that complete verification had been carried out, did he sign the provisional order.

5. The records of the case have been examined very carefully and the following observations are made in this case:

a) It was the CO's responsibility to get the list of eligible persons prepared, on the basis of attendance registers/ pay rolls and place it before the Committee, for its consideration. Alternatively, these documents should have been *ab initio* placed before the Committee. If these documents were not placed before the Committee and the Committee went by some other documents, which were placed before it, the responsibility lay on the CO/Administration. The pay roll is the only authenticated document to vouch for a person's employment. The CO failed in this respect.

b) The exercise at (a) above ought to have been got done by CO *before* (if not initially) accepting the recommendations of the Selection Committee, in order to satisfy himself that the recommendations of the Committee did conform to facts on record. The CO failed here also.

c) CO's averment in defence that he *acted under pressure of the Union* actually exposes his guilt, though obliquely, in that, it is admission that whatever he did was done knowingly and consciously.

d) In view of (a) to (c) above as also Para 8 (iii), there is preponderance of probability that the CO *wanted* to unduly favour 7 persons, either in collusion or otherwise, for reasons better known to him.

e) CO's misdemeanor acquires a serious contour in view of (d) above.

In view of above, the Commission observe that the charge that the 7 ineligible persons were granted '*temporary status mazdoors*' by the CO on the basis of the recommendations of the Selection Committee constituted by him, stands proved.

6. The Commission observe that there are six cases with similar charges against this CO, out of which two have already been decided by the Commission wherein a penalty of reduction to a lower stage, i.e., by 3 stages in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years, with cumulative effect, upon the CO has been advised.

6.1 In view of above analysis and considering the totality of the facts and circumstances of the case the Commission are of the view that in the present case also, gravity of the proven charge warrants a similar penalty. However, considering the hardship that the CO would be eventually put to, the Commission have taken a compassionate view and consider that the ends of justice would be met in this case if the penalty of 'reduction to a lower stage, i.e., by one stage in the time scale of pay of Rs.14,300-400-18,300/- for a period of 2 years, with further direction that the CO will not earn increments of pay during the period of reduction and, on the expiry of such period, the reduction will have the effect of postponing future increments of his pay' is imposed on the CO. They advise accordingly.

7. A copy of the order passed by the Ministry in this case may be sent to this office for information/records.

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

Yours faithfully,

(S.B. SINHA)
DEPUTY SECRETARY
TEL: 23073406

S/C

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

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
22 OCT 2007
गुवाहाटी न्यायपीठ
Guwahati Bench

Filed by the applicant through Madhuryya Kumar Gogoi
Bikram Chaudhury, Advocate
15.10.07.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH :: GUWAHATI

O. A. NO. 284/2006

Sri Madhuryya Kumar Gogoi

..... **Applicant.**

-VERSUS-

Union of India & Others

..... **Respondents**.

IN THE MATTER OF:

An additional affidavit by the applicant in the above noted original application

The applicant above named:

MOST RESPECTFULLY BEGS TO STATE :

1. That the applicant begs to file this additional affidavit to bring on record certain facts which is necessary for proper adjudication of the case and this Hon'ble Tribunal may be pleased to treat the averments made in this additional affidavit as a part of the original application. The applicant further states that these facts will not change the basic structure of the original application.

2 That the applicant begs to state that he had filed the above noted original application challenging the action of the respondent authorities in initiating 6(six) disciplinary proceedings against him for issuing the provisional order no X-1/CMPT/96-97/CON-7 dt: 27.5.96(Annexure-II to the original application) whereby temporary status was conferred upon 221 casual labourers on the basis of recommendation of

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Selection Committee. The applicant had also challenged the impugned penalty order dt: 2.5.06 (Annexure XXI to the original application) and penalty order dt: 3.5.06 (Annexure XXIII to the original application) with regard to the second and first disciplinary proceedings respectively. After filing of the original application, the applicant received the remaining four proposed penalty orders alongwith the CVC advice in respect of the four remaining disciplinary proceedings, which has already been brought on record by the applicant in the form of an additional affidavit filed on 26.7.07

In the four proposed penalty orders, the disciplinary authority purportedly imposed upon him in each four disciplinary proceedings, the penalty of reduction to a lower stage, by one stage in the time scale of pay of Rs 14,300-400-18,300/ for a period of 2 years, with further direction that the applicant will not earn increments of pay during the period of reduction and on expiry of such period, the reduction will have the effect of postponing his future increment of pay.

3. That, in the third proceeding initiated by the respondent authorities vide memo dt: 11.9.2003(Annexure-VIII to the original application), the charge against the applicant was that while working as TDE, Tezpur during 1996, he committed serious irregularities in appointing 221 casual mazdoors including 22 numbers under Dhemaji Sub-Division on the basis of forged experience certificate. In respect of the said charge the inquiry officer recorded the following finding "No case is made out that he knew that the certificates is forged". The disciplinary authority however in his memorandum dt: 4.10.2005 (Annexure-XVII to the original application) purportedly disagreed with the finding of the inquiry officer given in his report dt:27.7.05(Annexure-XVIII to the original application) that the charge against the applicant was not established instead

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he held the charge against the applicant as proved by purportedly bringing a new charge against the applicant by stating that "the inquiry officer has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT".

Pursuant to the notice dt: 4.10.05, the applicant submitted representation dt: 16.11.05(Annexure XX to the original application) and in the said representation it was specifically contended that unless definite and distinct charges are framed as envisaged in rule 14 (3) of the CCS(CCA) Rules 1965, the disciplinary authority cannot proceed against a government servant. As a corollary to the above proposition, the disciplinary authority while purporting to disagree with the findings of inquiry officer could not have based its conclusion on a charge which is not part of the memorandum of charge. The net result is that the applicant was highly prejudiced in defending his case. Had it been the case of disciplinary authority that conferment of temporary status requires approval of DOT, which as it transpires, is not correct, the applicant could have appropriately dealt with the charge. Therefore the alleged new charge couldnot have been the basis of disagreement, thus it was urged in the representation, that serious prejudice would be caused if a penalty is to be imposed based on charge memo dt: 11.9.03.

Copies of the memorandum dt:4.10.05 (disagreement), Inquiry report dt:27.7.05 alongwith the CVC advice and the representation dt:16.11.05 are annexed and marked as Annexure-XVII,XVIII,XIX and XX to the original application.

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4. That, the applicant begs to state that while issuing charge memo dt: 11.9.2003, the respondent authorities framed only one charge against him and as such once a charge has been framed by the competent authority, it is not open to the inquiry officer to bring into consideration a new charge at the later stage of the inquiry, without affording the applicant a reasonable opportunity to rebut them in the inquiry. Under the rules, if in the opinion of the inquiry officer the proceedings of the inquiry establishes any article of charge different from the original article of charge, it may record its findings on such charge, provided the delinquent had either admitted the facts on which such article of charge is based or had a reasonable opportunity of defending himself against such article of charge. However, in the instant case the same was not followed, which is violative of principle of natural justice.

5. That this application has been filed bonafide and for the ends of justice.

Nyogal

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AFFIDAVIT

I, SRI MADHURYYA KUMAR GOGOI, S/O Late Debeshwar Gogoi, aged about....years, by religion Hindu, resident of 2C, Block A, Brindaban Apartment, Ganesh Mandir Path, New Guwahati-20,Kamrup do hereby solemnly affirm and state as follows.

1. That I am applicant in the original application and as such I am fully conversant with the facts and circumstances of the case.

2. That the statements made in this affidavit and in paragraph No. .....1,4 and 5.....of the additional affidavit are true to my knowledge and those made in paragraphs No. .....2 and 3.....being matters of records which I believe to be true and rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 15th October, 2007 at Guwahati.

Identified by

Bikram Choudhury
15.10.07.

Advocate

Madhuryya Kumar Gogoi

DEPONENT

Solemnly affirmed and declared before me by the deponent who is identified by Sri Bikram Choudhury, Advocate at Guwahati on this 15th day of October, 2007.

Bipasha Das.
Advocate
15.10.07.

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Madhuryya Kumar Gogoi
Filed by the Applicant through
Bikram Choudhury, Adv.
15.10.07.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH :: GUWAHATI

O. A. NO. 284/2006

Sri Madhuryya Kumar Gogoi

..... **Applicant.**

-VERSUS-

Union of India & Others

..... **Respondents.**

IN THE MATTER OF:

An additional affidavit (ii) by the applicant in the above noted original application

The applicant above named:

MOST RESPECTFULLY BEGS TO STATE :

1. That the applicant begs to file this additional affidavit to bring on record certain facts which is necessary for proper adjudication of the case and this Hon'ble Tribunal may be pleased to treat the averments made in this additional affidavit as a part of the original application. The applicant further states that these facts will not change the basic structure of the original application.

2 That the applicant begs to state that he had filed the above noted original application challenging the action of the respondent authorities in initiating 6(six) disciplinary proceedings against him for issuing the provisional order no X-1/CMPT/96-97/CON-7 dt: 27.5.96(Annexure-II to the original application) whereby temporary status was conferred upon 221 casual labourers on the basis of recommendation of

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Selection Committee. The applicant had also challenged the impugned penalty order dt: 2.5.06 (Annexure XXI to the original application) and penalty order dt: 3.5.06 (Annexure XXIII to the original application) with regard to the second and first disciplinary proceedings respectively. After filing of the original application, the applicant received the remaining four proposed penalty orders alongwith the CVC advice in respect of the four remaining disciplinary proceedings, which has already been brought on record by the applicant in the form of an additional affidavit filed on 26.7.07

In the four proposed penalty orders, the disciplinary authority purportedly imposed upon him in each four disciplinary proceedings, the penalty of reduction to a lower stage, by one stage in the time scale of pay of Rs14, 300-400-18,300/ for a period of 2 years, with further direction that the applicant will not earn increments of pay during the period of reduction and on expiry of such period, the reduction will have the effect of postponing his future increment of pay.

3. That, in the fourth proceeding initiated by the respondent authorities vide memo no 8-186/2001-Vig.II dt: 11.9.2003, the charge against the applicant was that while working as TDE, Tezpur during 1996, he committed serious irregularities in appointing 221 casual mazdoors including 21 numbers under Udalguri Sub-Division on the basis of forged experience certificate. In report of the said charge the inquiry officer recorded the following finding "No case is made out that he knew that the certificates is forged". The disciplinary authority however in his memorandum no 8-186/2001-Vig.II dt: 18.10.2005 purportedly disagreed with the finding of the inquiry officer given in the report dt:26.7.05 that the charge against the applicant was not established, instead he held the charge against the applicant as proved by purportedly bringing a new charge against the

Mejogar

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applicant by stating that "the inquiry officer has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT".

Pursuant to the notice dt: 18.10.05, the applicant submitted representation dt: 17.11.05 and in the said representation it was specifically contended that unless definite and distinct charges are framed as envisaged in rule 14 (3) of the CCS (CCA) Rules 1965, the disciplinary authority cannot proceed against a government servant. As a corollary to the above proposition, the disciplinary authority while purporting to disagree with the findings of inquiry officer could not have based its conclusion on a charge which is not part of the memorandum of charge. The net result is that the applicant was highly prejudiced in defending his case. Had it been the case of disciplinary authority that conferment of temporary status requires approval of DOT, which as it transpires, is not correct, the applicant could have appropriately dealt with the charge. Therefore the alleged new charge couldnot have been the basis of disagreement, thus it was urged in the representation, that serious prejudice would be caused if a penalty is to be imposed based on charge memo dt: 11.9.03.

Copies of the charge memorandum dt: 11.9.03, memorandum dt: 18.10.05 (disagreement), Inquiry report dt: 26.7.05 alongwith the CVC advice and the representation dt: 17.11.05 are annexed herewith and marked as Annexure- **XXXVI(A)**, **XXXVI(B)**, **XXXVI(C)**, **XXXVI(D)** and **XXXVI(E)** respectively.

4. That, the applicant begs to state that while issuing charge memo dt: 11.9.2003, the respondent authorities framed only

Nyogai

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one charge against him and as such once a charge has been framed by the competent authority, it is not open to the inquiry officer to bring into consideration a new charge at the later stage of the inquiry, without affording the applicant a reasonable opportunity to rebut them in the inquiry. Under the rules, if in the opinion of the inquiry officer the proceedings of the inquiry establishes any article of charge different from the original article of charge, it may record its findings on such charge, provided the delinquent had either admitted the facts on which such article of charge is based or had a reasonable opportunity of defending himself against such article of charge. However, in the instant case the same was not followed, which is violative of principle of natural justice.

5. That this application has been filed bonafide and for the ends of justice.

Mejoger

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Central Administrative Tribunal
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गुवाहाटी न्यायपीठ
Guwahati Bench

AFFIDAVIT

I, SRI MADHURYYA KUMAR GOGOI, S/O Late Debeshwar Gogoi, aged about....years, by religion Hindu, resident of 2C, Block A, Brindaban Apartment, Ganesh Mandir Path, New Guwahati-20,Kamrup do hereby solemnly affirm and state as follows.

1. That I am applicant in the original application and as such I am fully conversant with the facts and circumstances of the case.

2. That the statements made in this affidavit and in paragraph No. .....1, 4 and 5.....of the additional affidavit are true to my knowledge and those made in paragraphs No. .....2 and 3.....being matters of records which I believe to be true and rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 15 th October, 2007 at Guwahati.

Identified by

Bikram Choudhury
15.10.07

Advocate

Madhuryya Kumar Gogoi

DEPONENT

Solemnly affirmed and declared before me by the deponent who is identified by Sri Bikram Choudhury, Advocate at Guwahati on this 15th day of October 2007.

Bipasha Das
Advocate
15.10.07.

ANNEXURE-XXXVI(A)

Additional . . .

BHARAT SANCHAR NIGAM LIMITED

(A GOVT OF INDIA ENTERPRISE)

O/o THE GENERAL MANAGER, KAMRUP TELECOM DISTRICT

ULUBARI, GUWAHATI-781007.

No. GM/SDE(Vig)/X-117/03-04/02, Dated at Guwahati, The 17-10-2003.

To,

Shri Madhurya Kr. Gogoi,
Area Manager (West),
Telephone Exchange Building,
Panbazar, Guwahati - 781001.

Subject :- Memorandum.

Reference :- Memorandum No. 8-186/2001-Vig.II, dtd. 11-09-2003

Reference to above, enclosed find here with a Memorandum vide no. 8-186/2001-Vig.II, dtd. 11-09-2003 issued by Shri S. D. Kaushik, Assistant Director General (VT), O/O The Sr. DDG (Vig), New Delhi along with Annexure I, II, III & IV.

The acknowledgement receipt of the Memorandum and your Defence Statement i.r.o. the said Memorandum if any, may be sent to the this office (each in quadruplicate in original) for onward transmission to V.O. O/O The CGMT, Assam Telecom Circle Guwahati for his further necessary disposal.

Enclo:-
(1) Memorandum
(2) CVC Advice

17-X

General Manager, BSNL,
Kamrup Telecom District, Ulubari,
Guwahati - 781007.

Attested by
Choudhury
Adv.

No.8-186/2001-Vig.II
Government of India
Ministry of Communications & Information Technology
Department of Telecommunications
(Vigilance Wing)

West Block-1, Wing-2,
R.K. Puram, New Delhi-66.

Dated 11-9-2003

MEMORANDUM

The President proposes to have an inquiry held against Shri Madhurya Kr. Gogoi, the then TDE, Tezpur, presently Area Manager, Assam Telecom Circle under Rule 14 of the CCS(CCA) Rules, 1965. A substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of the article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom the article of charge is proposed to be sustained are also enclosed (Annexures III & IV). A copy of the first stage advice of CVC for instituting major penalty proceedings against Shri Madhurya Kr. Gogoi is also enclosed.

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

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

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

5. Attention of Shri Madhurya Kr. Gogoi is invited to Rule 20 of the CCS(Conduct) Rules, 1964, under which no government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Madhurya Kr. Gogoi is

aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules, 1964.

6. Receipt of this Memorandum shall be acknowledged by Shri Madhurya Kr. Gogoi.

By order and in the name of the President.

(S.D. Kaushik)
Assistant Director General (VT)

Shri Madhurya Kr. Gogoi,
Area Manager
BSNL
Assam Telecom Circle
Guwahati.
(Through CGMT, Assam Circle)

ANNEXURE-I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI M.K.GOGOI THE THEN TDE TEZPUR, NOW AREA MANAGER, ASSAM TELECOM CIRCLE

It is alleged that Sh. M.K.gogoi while posted and functioning as TDE Tezpur during 1996, failed to maintain absolute integrity and utmost devotion to duty and acted in a manner unbecoming of a Government servant in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoor in Tezpur Division including 21 in Udalguri Sub-division on the basis of forged experience certificates and thereby violated provisions of Rule 3 (1) (i) (ii) & (iii) of CCS(Conduct) Rules 1964.

By order and in the name of the President.

(S.D. Kaushik)
ADG(VT)

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ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI M.K.GOGOI, THE THEN TDE TEZPUR, NOW AREA MANAGER, ASSAM TELECOM CIRCLE

It is alleged that Shri M.K.Gogoi while posted and functioning as TDE, Tezpur during 1996 failed to maintain absolute integrity and utmost devotion to duty and acted in a manner unbecoming of a Government servant in as much as he appointed 221 casual labourers as Temporary Status Mazdoors (TSMs) in Tezpur Division including 21 in Udalguri Sub-Division on the basis of forged experience certificates in the context of following facts and circumstances.

1. Whereas it is alleged that Shri M.K.Gogoi was posted as TDE Tezpur during 1996.

2. Whereas it is alleged that TSM scheme was introduced by the Department of Telecom to regularize Casual labourers engaged between 30-3-85 and 22-6-88 and it was circulated to different Circles vide letter No.296/4/93-STN dt.17-12-93. As per the scheme, a Casual labourer should complete at least 240 days when engaged in field work or 206 days when engaged in office and he should not be absent from his duties for last 365 days from the date of issuance of the circular. The casual labourers should also be engaged on Muster Roll basis.

3. Whereas it is alleged that Shri K.Balasubramaniam, TDE, Tezpur had submitted a report through his letter No.E-38/CMPT/Vol.II/123 dt.7.12.93 stating that no casual labourer was recruited in Tezpur Division after 31-3-85. A similar NIL reply was sent to Telecom commission, Head Quarter, New Delhi by Sh. D.Payeng, the then SDO i/c of O/O TDE Tezpur vide letter No. E-38/CMPT/Vol.II/167 dtd. 8-12-94.

4. Whereas it is alleged that the Casual labour can be engaged by SDO/SDE office on Muster roll basis as per Rule 150-170 given in Post and Telegraph Financial Hand Book-III Part-I. However, the engagement on Muster Roll basis was stopped from 30-3-85. The Muster Roll is stored permanently in the Office of TDE. The Casual Labour can also be engaged on ACG-17 basis to attend to works of emergency nature. No attendance register is maintained in this case. The ACG-17 payment vouchers are forwarded to the TDE office and only a broad ACE-2 account is maintained in the O/O SDE. Thus, no permanent records regarding the number of working days against particular orders for the casual labourers are available in the O/o SDE/SDO or with the field staff such as Line Man, Line Inspector, Sub-Inspector and Phone Inspector.

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5. Whereas, it is alleged that S/Shri R.K.Das, the then JTO, Sailendra Swargiary , JTO, S.K.Dutta the then Sub-Inspector, S.Bhattacharjee, Sub-Inspector, Gopal Singh, the then Sub-Inspector, Lankeswar, Rava Lineman, N.C.Boro, Lineman, K.B.Chetri, Lineman issued 21 numbers of false and fabricated experience certificates in favour of 21 casual laborers showing them as Casual laborers working since 1988 to Feb'96 in the office of the SDE(P) Udalguri and Shri J.N.Deori the then SDE(P) Udalguri countersigned the experience certificates without verifying the records and knowing that no records exists for the same and forwarded them to Shri M.K.Gogoi, the then TDE Tezpur, who appointed these 211 persons as Temporary Status Mazdoor on the basis of the recommendations of the members of the Departmental Promotion Committee viz. Shri D.Payeng the then SDE(P) Tezpur, P.Das, the then SDOP Tezpur , A.K.Sarkar, the then SDO(HRD) and U.Swargiary the then AO(Cash).

6. Whereas, it is alleged that Shri M.K.Gogoi knew that no permanent records are maintained in the SDE office regarding the engagement of Casual Labourers either on Muster Roll basis or on ACG-17 basis as only broad ACE-2 account is maintained in SDE office. The permanent records are kept in his own office i.e. the O/O TDE Tezpur. Thus he appointed 221 Casual labourers including 21 in Udalguri Sub-Division as TSM on the basis of the forged experience certificates in which the number of working days of a casual labourer in corresponding years from 1988 to 1996 were filled up by the field staff by sheer imagination. He knew that none of the field staff have records to support the certificates given by them as no records are available with the field staff such as Lineman, Line Inspector, Sub-Inspector , Phone Inspector , JTO.

7. Whereas, it is alleged that Shri M.K.Gogoi did not verify the genuineness of the experience certificates before appointing the Casual labourers as TSMs. Though the Muster Roll Register is stored in the office of TDE, Sh. M.K.Gogoi did not check the Muster Roll Register. He also did not verify the ACG-17 payment vouchers before passing the order of appointment of TSMs.

8. Whereas, it is alleged that Shri M.K. Gogoi appointed 221 casual labourers as TSMs in Tezpur division including 21 in Udalguri Division without obtaining approval of Telecom Commission, Head quarter and without giving an intimation to the CGMT, Assam Circle, Guwahati. But when he was asked to explain by Sh. S.K.Kayal, Area Director Telecom, Guwahati vide letter No. AMD-GH/CORR/96 dtd. 28-6-96, he deliberately gave a wrong and misleading reply vide letter No. X-1/CMPT/96-97/21 dt.7-7-96 explaining the DOT order for the appointment had been obtained and quoted the letter reference number which in fact, is the original Circular under which appointment was to be done. Likewise , while explaining the circumstances under which such recruitment was resorted to, Shri M.K.Gogoi referred to the RJCMs meeting quoting minutes No.CMPT/L/Vol-VI/58 dt. May 1996 whereas in the said minutes, there is no reference to the appointment of TSM under Tezpur Division at all.

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9. Whereas it is alleged that Shri M.K.Gogoi joined as TDE in the Tezpur Division in Jan'95. In Feb'95 he had sent a letter to the then Area Director Telecom (E & R), Shri M.Biswas of the O/O CGMT Guwahati in which he has stated that from 31-12-93 onwards no candidate was given TSM status nor there was any candidate yet to be regularized as TSM. Thus, Sh. M.K.Gogoi had the full knowledge that there was no casual laborers under Tezpur Division eligible for appointment as TSM. Even if the casual laborers were not appointed as TSM on Muster roll basis but were appointed on ACG-17/ACE-2 basis, their records relating to their appointments i.e. ACG-17 payment vouchers are preserved in the TDE office for a temporary period of two years. In view of the above fact, the TDE was well aware of the fact that the experience certificates submitted by different accused persons in favour of the casual laborers concerned were bogus ones, as there was no record to support those certificates.

By his above said acts Shri M.K. Gogoi failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant thereby violating Rule 3(1)(i),(ii) and (iii) of CCS(Conduct) Rules, 1964.

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ANNEXURE-III

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SHRI M.K.GOGOI THE THEN TDE TEZPUR, NOW AREA MANAGER, ASSAM TELECOM CIRCLE IS PROPOSED TO BE SUSTAINED.

1. Letter No. E-38/CMPT/94-95/168 Tezpur dtd. 17-2-95 written by Sh. M.K.Gogoi TDE Tezpur to ADT(E & R) giving details of TSM employed after 1989 (Page No. 117) Sl.No. 28 in RC-10(A)/97.
2. Letter No. E-38/CMPT/94-95/167 Tezpur dtd. 8-12-94 written by CAO to Head of Division and Accounts Officer (Page 110)
3. letter NO. AMT-GH/Corr/96 dtd. 28-6-96 written by Shri S.K.Kayal Area Director Telecom Guwahati to Sh. M.K.Gogoi TDE Tezpur.
4. Letter No. ZX-1/CMPT/96-97/21 dtd. Tezpur 7-7-96 written by M.K.Gogoi TDE(Tez) to Sh. S.K.Kayal Area Director Telecom Guwahati.
5. X-1/CMPT/Tz/95-96/Confdl./1 dtd. Tz 25-3-96 by Sh. M.K.Gogoi TDE(Tz) regarding constitution of DPC(Page 15)
6. Minutes of the meeting of RJCM Item No. 38(Page-5)
7. E-38/CMPT/Col.II/ 123 dtd. 9-12-93 written by Sh. Balasubramaniam, TDE Tz addressed to Sh. S.C.Choudhury Asstt. Director Telecom O/O CGMT listed in RC-10(A)/97 Sl.No. 29.
8. Original letter No. 269-4/95-STN-II dtd 17-12-93 of ADG(STN) New Delhi in respect of regularization of CLs engaged in Circle after 30-3-85 upto 21-6-88.
9. Attested copy of letter No. 270/6/84-STN New Delhi dtd. 30-3-1985 of Shri Krishnan, Director (STN) P & T in respect of barring of engagement of Casual labourers. Attested copy of letter listed in RC-10(A)/97 Sl.No. 59.
10. Letter No. D.O. No. Rectt-3/10 Pt.V dtd. 25-7-97 written by Sh. K.Padmanabhan, CGMT Assam Circle to Sh. G.D.Gaiha DDG(Tel) in respect of violation of name of Muster roll and sponsorship from employment exchange (Page-77)
11. letter NO. Estt.9-12 dtd. 30-6-2000 written by Sh. A.K.Chelleng AGM(Admn) O/O CGMT to the DSP CBI Shillong in respect of TDEs responsibility to implement TSM Scheme.
12. Proforma in which names of 21 nos of casual labourers and details were prepared signed and recommended by DPC members (Page 36, 84, 33, 32)
13. Letter No. Misc UDL/95-96/41 dtd. Udalguri dated the 18-3-96 written by Sh J.N.Doeri SDOP Udalguri to forward a list of 19 CLs (Page 30).
14. Certificate issued to Shri Jatin Saloi, S/o late Padma Ram Saloi by Sh. R.K.Das. JTO(Page 29)
15. Certificate issued to Sh. Piar Ali, S/o Sh. Mahasin Ali by Sh. Sailendra Swargiary, JTO(Page 21)
16. Certificate issued to Sh.Durlabh Baruah, S/o Baddheswar Baruah by S. R.K.Das, JTO(Page 21)
17. Certificate issued to Sh.Moinul Haque, S/o Ayub Ali by Sh. R.K.Das, JTO (Page 20).
18. Certificate issued to Sh. Mozamil Hussain , S/o Sh. Mumtaz Ali by Sh. R.K.Das, JTO(Page 19)
19. Certificate issued to SH. Yamakanta Chamala Gai S/o Sh.Bhara Nandu Gai by Sh. Gopal Singh, SI(age 16)
20. Certificate issued to Sh. Miran Daimary S/o Shri Chiran Daimary by Sh. Sankar Bhattacharjee, SI(Page 15)

21. Certificate issued to Sh. Bhupen Barman, S/O Sh. Suresh Barman by Sh. K.B.Chetri, SI(Page 14)
22. Certificate issued to Sh. Rajat Bhattacharjee S/o Sh. Rajendrda Bhattacharjee by S.K.Dutta , SI(Page 13)
23. Certificate issued to Sh. Kameswar Narzary S/O Sh.Upen Narzary issued by N.C.Boro L/M (Page 12)
24. Certificate issued to Sh. Biren Rabha S/o Sh. Rabindra Rabha by Sh. Gopal Singh, SI(Page11)
25. Certificate issued to Sh. Tanuram Boro, S/O Late Sh. Badung Boro by Shri S.K.Dutta. SI(Page10)
26. Certificate issued to Sh Navin Rava S/O Sh. Ratiram Rava by Sh. S.K.Dutta SI(Page 9)
27. Certificate issued to Sh. Sanjay Dutta S/O Sh. Sudhendra Kr. Dutta SI(Page 8)
28. Certificate issued to Sh. Dayaram Boro, S/o Sh. Bayan Boro by Sh. Sankar Bhattacharjee, SI(Page7)
29. Certificate issued to Sh. Nigam Swargiary S/o Sh. Raghu Nath Swargiary by Sankar Bhattacharjee, SI(Page-6)
30. Certificate issued to Sh. Binanda Basumatary S/o Sh. Late Ramendra Basumatary by Sh. Gopal Singh SI (Page-5).
31. Certificate issued to Sh. Rohini Kant Basumatary S/o Sh. Guni Ram Basumatary by Sh. Lankeswar Rava (Page-4)
32. Certificate issued to Sh. Baneswar Boro, S/o Late Sh. Golap Ch. Boro by Sh S.K.Dutta SI(Page 3)
33. Certificate issued to Sh. Rajendra Boro S/o Sh. Dandi Ram Boro by Sh Gopal singh SI (page2)
34. Certificate issued to sh. Narendra Basumatary, S/O Sh. Abhiram Basumatary By Sh Gopal Singh, SI(Page 1)
35. Seizure Memo dtd. 13-9-99.
36. Seizure Memo dtd. 11-10-99
37. FIR of the case.
38. Letter NO. E-1/96-97/7 Udalguri Dt. 6-5-97 by Sh. J.N.Deori SDE(P) Udalguri in respect of forwarding names of 21 casual labourers in proper format : File 7B Udalguri.
39. Joining reports of all the 21 casual labourers in Udalguri in File 7A Udalguri.
40. Post and Telegraph Financial Hand Book (III) Part I
41. Posts and Telegraph Mannual, Vol. X

ANNEXURE-IV

LIST OF WITNESSES BY WHOM THE ARTICLE OF CHARGE FRAMED AGAINST SHRI M.K.GOGOI THE THEN TDE TEZPUR, NOW AREA MANAGER, ASSAM TELECOM CIRCLE IS PROPOSED TO BE SUSTAINED.

1. Shri A.K.Challeng, AGM(Admn) O/O CGMT Guwahati.
2. Shri Dilip Kumar Rai Barman, AO(Cash) O/O TDE Tezpur
3. Shri Rajiv Yadav TDM Tezpur, VillVedi, PO Ramaipatty Dist. Varanasi UP.
4. Shri S.K.Kayal, Area Manager (T) Howrah, Kolkata Telephones R/o 23/3/2A Rup Narayan Nanda Lane, Kolkata-25.
5. Shri M.K.Bhattacharjee, SDE O/O TDM Tezpur.
6. Shri Bishnu Kr. Paul, AAO O/O TDm Tezpur.
7. Biraj Mohan Basumatary, Sr. TOA O/O SDE Udalguri
8. Shri H.S.Debnath, JAO O/O TDM Tezpur.
9. Shri R.N.Choudhury, SDE(P) Udalguri
10. Shri K.Barman , Inspector the then IO of the case
11. Shri D.Dutta, Inspector the then IO of the case.
12. Shri Vaibhav Agashe, DSP CBI Shillong.

CENTRAL VIGILANCE COMMISSION
***

The Commission observes that CBI had registered two other regular cases viz RC.13(A))/97-SHG and RC-14(A)/97-SHG against Shri M.K.Gogai and others where charges were similar in nature i.e appointment of casual labourers as TSM wherein the Commission has agreed with the recommendation of CBI for initiation of RDA for major penalty against Shri M.K.Gogai and others. Keeping in view the conformity with the earlier decision the Commission agrees with the recommendations of the DOT and advises initiation of major penalty proceedings against the following officers.

1. S/Shri M.K.Gogoi, the then TDE	2. D.Payeng, DE
3. P.Das, the then SDE	4. Ajit Kr. Sarkar, the then SDO
5. Upen Swargiary, the then AO	6. J.N.Deori, DE(T)
7. R.K.Das, JTO	8. Sailendra Swargiary, JTO
9. S.K.Dutta, SI	10. S.Bhattacharjee, SI
11. Gopal Singh, SI	12. L.Rava, Lineman.
13. N.C.Boro, Lineman	14. K.B.Chetri, Lineman.
15. Tanuram Bodi, TSM	16. Kamleswar Narazary, TSM
17. Biran Rava, TSM	18. Y.K.C.Gain, TSM
19. Rajin Kr. Bodo, TSM	20. N.Basumatary, TSM
21. Nabin Rava, TSM	22. Jatin Soloi, TSM
23. Durlabh Baruah, TSM	24. Mozamil Hussain, TSM
25. R.K.Basumatary, TSM	26. Dayaram Boro, TSM
27. Bhupen Barman, TSM	28. Moinul Haque, TSM
29. Rajat Bhattacharjee, TSM	30. Sanjay Dutta, TSM
31. Nigam Swargiary, TSM	32. Baneshwar Boro, TSM
33. Miran Daimary, TSM	34. Piar Ali, TSM
35. Binendra Basumatary, TSM.	

Department may conduct the inquiry proceedings by appointing their own I.O and revert to the Commission for 2nd stage advice on conclusion of inquiry proceedins alongwith their recommendations since emanated from the findings of I.O's report.

Department's F.No. 9-61/2001-VIG.I is returned herewith.

(Indu Gupta)
Director

Department of Telecom(Sh.Ranbir Khanna, Sr.DDG(V)N.Delhi

C.V.C's I.D Note No. 001/P&T/126

20 AUG 2001

Encl: As above

23/8/01

ADG(Vig)A 23/8 Sr.(Vig/S.I) Shri A.T 23/08/01

ANNEXURE XXXVI (E)

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Confidential

No. 8-186/2001-Vig. II
Government of India
Ministry of Communications and Information Technology
Department of Telecommunication
(Vigilance-II Section)

1

915, Sanchar Bhawan, 20, Ashok Road,
New Delhi-11.00 01.

Dated, the 18/10/2005

MEMORANDUM

A copy of the Inquiry Report dated 26.07.2005 submitted by Shri G. Jayaraman the then GMTD, Bongaigaon, Assam Telecom Circle, Guwahati who had been appointed as the Inquiring Authority to inquire into the charges framed against Shri M.K. Gogoi, formerly TDE, Tezpur and now Area Manager(East), Kamrup Telecom District, Guwahati, is forwarded herewith. A copy of ID Note No.001/P&T/118/7352 dated 28th September 2005 of the Central Vigilance Commission (CVC), is also forwarded herewith.

2. Although the IO has held that the charges against the Charged Officer is not proved, the disciplinary authority proposes to disagree with the findings of the IO and to hold the charge as proved to the extent indicated below :-

The IO has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT. The documentary evidences taken into account during the course of inquiry i.e. SE6/ & SE/7 proves that the Charged Officer was aware of the DOT's guidelines regarding appointment of Temporary Casual Mazdoors (TSM) still he allowed the ineligible casual mazdoors to be appointed as TSMs.

3. Shri M.K. Gogoi, Area Manager is hereby informed that he may make such representation as he may wish to make in the matter. Such representation, if any, shall be made in writing within fifteen days of the receipt of this Memorandum, failing which it will be presumed that he has no representation to make, and further necessary action in the matter is liable to be taken accordingly.

4. Attention of Shri M.K. Gogoi is drawn to the orders of the CAT, Guwahati, passed in the O.A. No.119/04, regarding passing of the final orders at the earliest. In case Shri Gogoi fails to submit his representation within the time indicated in Para 3, it will be presumed that he is trying to delay the process of finalization of the disciplinary cases and this would be brought to the notice of the Hon'ble Court as and when raised before it.

5. The receipt of this Memorandum, alongwith a copy each of the Inquiry Report and CVC's advice, shall be acknowledged by Shri M.K. Gogoi, Area Manager.

By order and in the name of the President,

(A.K. Patro)
Desk Officer((Vig.II)

Encls. : 1. Copy of Inquiry Report.
2. CVC's I.D. Note No.001/P&T/118/7352 dated 28th September 2005.

Shri M.K. Gogoi
Area Manager,
Kamrup Telecom District,
Guwahati.
(Through the CGM, Assam Telecom Circle, Guwahati).

Attested by
Choudhury
Adv

REPORT

MEMO NO. 8-186/2001-Vig II

Upon deciding to hold an inquiry under Rule-14 of CCS Rules 1965, against Shri M.K.Gogoi, the then TDE and presently Area Manager Assam Telecom Circle, I was appointed as Inquiring Authority Vide No.8-186/2001 Vig.II dated 18.6.04 issued by Director (V&T).

The Charge against Shri M.K.Gogoi is that:-

While posted and functioning as TDE Tezpur during 1996, Shri Gogoi committed serious irregularities in as much as he appointed 221 Casual Labourers as Temporary Status Mazdoor in Tezpur SSA including 21 in Udalguri Sub-division, on the basis of forged experience certificates, and by his above acts, Shri Gogoi failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a government.servant, thereby violating Rule 3 (1) (i) & (iii) of CCS conduct Rule 1964.

The Officer in his statement of defence dated 19.11.03 denied the charge, consequent to which formal enquiries under Rule 14 of CCS rules 1965 were held by the undersigned.

Before going into the arguments, witnesses and documents provided by both the sides, it is relevant to recollect the basic issues involved.These are as below:-

(i) DOT vide letter No.269-10/89-STN dated 7.11.89, forwarded the details of a scheme approved by Telecom Commission for conferring temporary status on casual labourers engaged up to 30.3.85. The order reiterates several earlier orders directing field units to stop engaging casual labour after 30.3.85. It also specifies that in case of any casual labour engaged after 30.3.85 requiring consideration for TSM status, the case should be referred to Telecom Commission. As per clause 3.3 of the annexure to this letter no casual labour recruited after 30.3.85 should be given TSM status without specific approval from DOT.

(ii) On 17.12.93 DOT issued another order 269-4/93/STN-II stating that Casual Labourers engaged from 31.3.85 to 22.6.88 by circles also are to be brought under the TSM scheme. It also stipulates that recruitments made after 30.3.85 is to be analysed and disciplinary action initiated against defaulting officers.

(iii) In the instant case the then TDE Tezpur granted TSM status to 221 CLs including 21 recommended by SDE Udalguri on the basis of forged experience certificates.

The case was presented on behalf of the disciplinary authority by the P.O. 37 documents were taken on record as state exhibits and 13 as defense exhibits. Four witnesses were examined on behalf of P.O and five on behalf of defense , records of which are produced in the relevant folders. This includes the depositions of some witnesses common to case no 8-165/2001-Vig II and this case .The deposition of Sri. B.K.Goswami TDM Tezpur in a similar case against the charged officer but handled by another I.O was also taken on recordes.

General Manager Telecom
R. S. M. L. Vasai 401 202.

Attested by
Choudhury
Adv

The case of the disciplinary authority as presented by the PO.-

a) The charged officer has not taken proper approval of the competent authority before signing the order coferring temporary status of the casual laborers in question.

b) In one case, he cites letter No.269-4/93-STN-II as the authority in which he acted whereas this is the original letter of DOT which extend the benefit of TSM status to Causal Labourers engaged between 31.3.85 and 22.6.88. This order has to be read in conjunction with the order No.269-10/89-STN dated 7.11.89 which lays down the details for grant of temporary status. While the charged officer has ensured adherence to the procedures to be adopted for granting temporary status, he has not adhered to other relevant and binding clauses in the same letter which require all such cases to be referred to the Telecom Commission.

c) In his actual order granting TSM status, he cited the RJCM Meeting Minutes as the circumstances under which he acted. Minutes of meetings should not be taken as the authority to act in such cases of important nature.

d) Even granting that, no mention is made of pending cases for conferment of TSM status in Tezpur SSA in these minutes.

e) Recommendation of the DPC is flawed and TDE has not bothered to check these. DPC has to go through all the pros and cons of the relevant documents, but this has not been done. During different stages of the enquiry, the DPC members have stated that they made only sample check of the ACE-2 bills. But the then AO Cash who is supposed to be the custodian of the ACE-2 bills has said that some of the ACE-2 accounts were not available. Since no such records were disposed off, the inference is that they never actually existed. The then TDM Shri. Goswami also corroborated this saying that no document regarding payment to the said casual labourers were available in the office.

f) The officials who gave the certificates, have during the proceedings, stated that they presumed 'grant of temporary advance' as approval for engaging casual labourers. This is not acceptable. No formal approval was taken from the TDE.

g) Even in the proforma submitted recommending names of casual labourers, the column pertaining to approval has been left blank. One official who issued such certificate also said that no authentic records were consulted before issue of certificates.

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General Manager Telecom
B. S. N. L. Vasai 401 202

Case of Defence as presented by the defense assistant.

a) The certificates given by earlier TDEs that there was no casual labour engaged after 31.3.85 was false and given without verifying facts. One TDE Sri. Balasubramanian who gave such certificate has himself signed security passes for casual labour engaged after 31.3.85. The other TDE has told during the hearings that there were actually casual labourers engaged.

b) DPC Members have clearly told the enquiry that there was cross checking of certificates given by field officers; records were produced before DPC; various parameters like DOB, work experience certificate, signature, recommendation by controlling officer were verified.

c) casual labour were employed on ACG-17 and not muster roll and field officers have told during the hearing that casual labour were engaged for more than 19 days in a month.

d) DOT only imposed certain restrictions in engaging casual labour after 30.3.85. Complete ban was imposed only since 1989.

e) Recruiting authority for even Regular Mazdoor is SDE only. Hence all records of engaging casual labour will be only with SDE. It is not correct to say that the no original records exist in the SDE's office and that original records are available only in the office of TDE.

f) TDE cannot check each record individually, he has to depend on SDE/AO.

g) Selection Committee set up by TDE included officers of accounts / HRD and field units to ensure that all aspects like actual payments, proper certificates and engagement details were checked before recommendation. No violation in DPC constitution was found even by CBI.

h) DPC enjoys full discretion to device their own procedures for assessing suitability of casual labours.

i) Since documents like ACE-17 & ACE2 have to maintained for only three and five years respectively, it is possible that some of the relevant documents were not available to the DPC due to misplacement.

j) Circle Office vide defense exhibit 10 has said that only TDE is the authority in respect of grant of TSM status. They did not say TDE should forward cases to DOT.

k) Charged officer issued only provisional order. On further orders of Circle Office and under the direction of TDM, he also cancelled this provisional order.

l) TDM Shri Goswami has given evidence that he was forced to revoke this 'cancellation order' issued by charged officer due to threats, gheros, dharna etc. of Union.

m) For effecting a renewed exercise to identify casual labour for giving TSM status, it is the TDM who has to take action and not the charged officer.

General Manager Telecom
B. S. N. L. Vasai 401 202

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Assessment of evidence :

From the evidence produced by way of statements, deposition of witnesses and briefs submitted by the presenting officer and the defense assistant the following are clear.

a) The authority for selection of casual labours eligible for conferment of TSM status is the TDE.(DE10).
b) The actual conferment of TSM status can be done only after referring to the DOT (SE 6,7).
c) Nomination of the members of the selection committee has been done by the charged officer with due care. He has included members from the accounts,HRD and field units.
d) The information given to Circle office by the earlier TDEs is incorrect. One of them Sri D.Payeng has said during the enquiry that there were CLs engaged on 19 day basis while the other Sri Balasubramanian has himself signed security passes for CLs after the said date. (DE8,9).
e) The contention of defense that there was no complete ban in engaging CLs till 1989 and only some restrictions were imposed in 1985 is incorrect. The engagement of CLs was to be totally stopped after 30.3.85 (SE6,7).
f) DPC was not formed based on clear authority but on the basis of RJCM minutes where no specific mention of Tezpur SSA was made. This is improper.
g) No clear terms of reference were given to the DPC.
h) While the charged officer quotes RJCM minutes as the authority in the order , he cites DOT letter dated 17.12.93 (SE 6) in his reply to circle office. There seems to be confusion and it seems probable that the DPC was constituted under pressure.
i) The covering letter dated 8.3.96 (SE 10) from SDE Udalguri has the names of 19 CLs but the list (SE 11 to SE 30) has certificates for 20 CLs. Again vide letter dated 6.5 96 the same officer sends a list of 21 names out of which 19 are the names already indicated in the letter dated 8.3.96. In case he had missed two CLs in his earlier letter the correct and normal way would have been to indicate the two as additional names. The certificates indicate only number of days for which the CLs have been working and no further details such as qualification etc are available in any document. The recommendation of the DPC is not made available. From the above it is reasonable to presume that all was not well with the cases forwarded by SDE Udalguri and possibly he was himself acting under pressure.
j) The charged officer cancelled the provisional order issued by him on the directions of circle office but this cancellation was revoked by the TDM on pressure from the unions (Deposition of Sri Goswami TDM in an earlier similar case taken on record for this case also).

General Manager
B. S. N. L. [illegible]

FINDINGS :

a) It is established that the charged officer is not competent to issue the said orders without referring the eligible cases of casual labours to DOT. However he is the appropriate authority to constitute a selection committee which he did. The constitution of the selection committee was proper but no clear terms of reference was given to the committee.
b) The actions of SDE Udalguri leaves much room doubt if he was really having proper details of CLs or he was sending certificates based on pressure from time to time.
c) DPC recommendations are not available in the records made available to the enquiry but based on the above it is reasonable to assume that the recommendation based on the above certificates will not be above scrutiny.
d) For all the above revelations it is a fact that the order conferring TSM status was cancelled by the charged officer as directed by circle office but the TDM Sri B.K Goswami revoked this cancellation on pressure from the unions without taking approval of circle office.

The way the DPC made its recommendations leaves a lot of doubts about the genuineness of the cases recommended. As TDE, Sri Gogoi was fully empowered to constitute the DPC. Once the recommendations are submitted he can overrule the recommendations only on exceptional grounds. To go into the basis of the recommendations in each case would mean repeating the work of the selection committee, which not feasible for the TDE to do. The charge against Sri. Gogoi is that he granted TSM status to the 21 CLs based on forged experience certificates No case is made out that he knew that the certificates were forged. Hence the charge that Sr. Gogoi appointed the casual labourers as TSM on the basis of forged certificates is not established.

General Manager Telecom
B. S. N. L. Vasai 401 202.

Form 5

1.Name and designation of charged officer : M.N.Gogoi
2.Name and designation of Presenting officer : K.K.Das, DE Admn o/oGMTD,Kamrup, Guwahati,Assam

3.Name and designation of Defense Assistant : S.K.Sikidar, DE,o/oCGM NETF, Guwahati.

Service particulars of C.O :
Date of superannuation
Present pay with scale,
Date from which present pay drawn
Service to which he belongs ITS

5 Date of receipt of
appoint order as I.O 1.9.2004
other documents from displinay authority : over a period
6 Date of first appearance of charged officer before I.O 7.10.2004
7. Date of preliminary hearing 7.10.2004
8.Date of completion of inspection of documents
9.Dates of regular hearings 5.2.05, 24.3.05
10.Date of submission of report. 27.7.05
11.Time taken for submission from date at 5 above 11 months
12.Suggestions for improvement if any :

a) No officer who is head of SSA in a hard tenure station is to be made I.O.
b) The maximum number of cases to be handled by an I.O to be restricted as per rule.
c) At least listed documents are to be made available within reasonable time.
e) Any order passed by CAT or courts should be given to the IO immediately. In this case of the 60 days given by CAT to complete the inquiry I was not intimated for around 40 days and extreme pressure put on me to give the report in about 10 days time which is grossly unfair to all parties involved. I AM MYSELF NOT FULLY SATISFIED WITH THE WORK I HAVE DONE.
f) Initiating so many cases against the same officer for the same order dilutes the seriousness of a Rule 14 inquiry. This non serious approach due to the above reason was reflected in a similar case against Sri D.Payeng DE in Assam circle where even his name was put incorrectly in the charge sheet.

The recent order permitting IO, PO to take 20 days in two stages to attend full time to the inquiry is a good step but more steps to be taken to avoid delays in providing documents to the PO.

27/7

(G.Jayaraman,)
GMTD Vasai, Maharashtra.
Inquiry Officer

ANNEXURE-XXXVIII

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CONFIDENTIAL

CENTRAL VIGILANCE COMMISSION

SUB:- Case against Shri M. K. Gogoi, formerly TDE, Tezpur now Area Manager (East), Kamrup Telecom District, Guwahati.

Ref:- DoT's File No. 8/186/2001-Vig II dated 28/08/2005.

The Commission has perused the inquiry report, along with its relevant records, and the comments of the administrative authorities thereon. It does not agree with the findings of the inquiring authority. It concurs with the findings of D/o Telecom that the charge is Proved against Shri M. K. Gogoi, formerly TDE, Tezpur and would advise imposition of suitable major penalty on him.

All the records of the case as received in the Commission are returned herewith. Its receipt may please be acknowledged. Action taken in pursuance of Commission's advice may also please be intimated within a month of the receipt of this communication.

4566
29.9.05

(Yogesh) 28
Director

Encl.: as above.

(V&T) 2132 9.05

Department of Telecom, (Shri J. R. Gupta, Sr. DDG and CVO), Sanchar Bhawan, 20, Ashoka Road, New Delhi.
C.V.C I.D. Note No. 001/P&T/126 dated 7348

2 [illegible] 2005

Dir (VA)
W
29/9

DO (Vig II)
3953/05/Vig II

Attested by
Advocate

ANNEXURE-XXXVII(E)

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To
The President
915, Sanchar Bhawan
20, Ashoka Road
New Delhi-110001.

Dated at Guwahati, the 17.11.2005.

Sub: - Representation on the points of disagreement of the Disciplinary Authority with the findings of I.O.

Ref: - Memorandum No.8-186/2001-Vig.II dated 18.10.2005.

Sir,

I beg respectfully to acknowledge the receipt of your memorandum under reference received on 8.11.2005.

That sir, on the points of disagreement that I.O. has analyzed the evidence and found that the conferment of TSM status can be done only after referring the case to DOT. In this regard I beg to submit that the I.O. has made error on this point in his judgment. I.O. in his findings stated in paragraph (a) that the charged officer is not competent to issue the said orders without referring the eligible cases of casual labours to DOT. But I.O. has not explained how he has come to this conclusion.

That Sir, the issue was discussed elaborately during the regular hearing and P.O. asked questions to SW-1 on this point. On the day of regular hearing I.O. suggested that since four cases of similar charges are to be inquired against the C.O. the recording of the Examination – in - Chief, cross-examination, re-examination etc. of the common witnesses done during this hearing (case no.165) may be taken on record for all other cases. This was agreed by both the parties, which was recorded in daily order sheet dated 4.2.2005 in case No. 165. At the time of preliminary enquiry the statement of SW-1 was taken which was brought to record by prosecution during regular hearing and marked the statement as S.Ext-27. In last para of page-1 of the statement (S.Ext-27) SW-1 stated that concerned TDM/TDE were actually in charge of implementation of this scheme. SW-1 Sri A.K. Challeng, AGM (Admn) Assam Circle, Guwahati was nominated by the CCMT/Assam to give

Attested by
Advocate

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the statement on behalf of circle office. In reply to Q.No.5 of P.O. SW-1 replied that the order stated as S.Ext-21 in case No.165 and S.Ext.6 in this case is the authority, which is to be acted upon. Thus from the deposition and statement of SW-1 it has become crystal clear that DOT letter dated 17.12.1993 (S.Ext-6) was a clear order instructing the circles to confer temporary status to eligible casual Mazdoors as per the order. Language of the order (S.Ext-6) was written thus, "I am directed to refer to this office order No.269-4/93- STN dated 25th June, 1993, wherein orders were issued to extent the temporary status to all those casual Mazdoors who were engaged by the project circles/ Electrification Circles, during the period 31.3.85 to 22.6.88.

2. The matter has further been examined in this office and it is decided that all those casual Mazdoors who were engaged by the circle during the period from 31.3.85 to 22.6.88 and who are still continuing for such works in the circles where they were initially engaged and who are not absent for the last more than 365 days continuing from the date of issue of this order, be brought under the above said scheme." The order was very clear and unambiguous because of that circle office circulated the order (S. Ext-6) to all the SSA for implementation of the order. The order issued by DOT on 7.11.89 has been superseded by the order referred in the S.Ext-6. Accordingly all the circles have conferred Temporary Status to all eligible casual Mazdoors as per the order. The department also did not frame charge in statement of Articles of charge that the conferment of TSM status was done without referring the case to DOT as pointed out in the memorandum under reference. If this point is taken into consideration while awarding the final order in this case then great injustice will be done to the undersign. As per CCS (CCA Rules) 1965 if in the opinion of the Inquiry Officer the proceeding of the inquiry establish any article of charge different from original articles of charge he may not record his findings on such articles of charge unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity during the course of the enquiry of defending himself against such article of charge, otherwise it is violative of principle of Natural Justice . In the instant case the I.O. has brought a new charge that the charged officer is not competent to issue the said orders without referring the eligible cases of casual labourers to DOT, which was brought before the inquiry by P.O. But DOT has issued order in superseding its earlier order to extend the facility to eligible casual Mazdoors as per instruction thus the new charge do not have any basis whatsoever.'

That Sir, the question of obtaining further approval of DOT was not required as the order for conferring TSM was issued on the order of DOT memo No. 269-4/95 STN-II dated 17.12.1993 and produced before the inquiry as S.Ext-6 which was circulated by CGMT/Assam to all SSA and accordingly the then TDE Tezpur forwarded the order to all SDO's / SDE's for implementation. The defence document produced before the inquiry D.Ext-10 which was written by ADT (E&R) for CGMT/Assam addressed to Divisional Secretary NUTEE, L/S and Group-D Tezpur of which a copy endorsed to TDE Tezpur. In his letter ADT has very clearly written, "concern Telecom District Engineer is the authority to regularize the casual Mazdoors as per DOT guide line, Circle office cannot interfere in this matter. Cases may be settled with Telecom District Engineer only." Thus the Circle Office itself had authorized the TDE Tezpur to confer TSM as per DOT order. Apart from this the Inquiry Officer, summoned the CBI investigating officer Sri K. Barman as state witness no. 10 (common witness in all the cases as agreed) during the hearing who has very clearly told before the inquiry in reply to question no. 2 of defence asstt that during investigation no such violation (in respect of constituting selection committee) was found nor department could able to produce any document regarding the violation of any rule provision. When asked about whether SW- 10 has noticed any violation of departmental rules/ procedure or any irregularities committed by charged officer in conferring TSM, the SW-10 replied that he did not find any violation of rules from the documents seized from the department. Thus from the above points it is revealed that the disciplinary cases framed against me was not based on any material fact rather based on extraneous ground.

That Sir, S.Ext-6 and S.Ext-7 has not given any such guidelines to refer the case of casual labouers to DOT before conferring TSM. S. Ext-6 is the order of DOT No. 269-4/95 STN-II dated 17.12.1993 and it is discussed in details in respect of the context of the letter in aforesaid paragraph. S.Ext-7 DOT letter No. 270/6/84-STN dated 30.3.1985 was issued to restrict the engagement of casual Mazdoors and it was instructed that every effort should be made to reduce the number of casual Mazdoors. As such there was no link between S.Ext-6 / S.Ext-7 with referring the cases of eligible casual Mazdoors to DOT for approval to be appointed as TSM. The I.O. though made erroneous finding in stating to refer the eligible cases to DOT but has rightly pointed out in his findings at Sl.No. (b) and (c) that DPC was constituted before taking any action and DPC recommendation can be overruled

only on exceptional grounds. But as soon as the circle office instructed to review the process, the order for conferring TSM was cancelled by the undersign. Thus the charges cannot be sustained as the mistake, if any, was rectified with corrective measures.

That Sir, I beg to state that I had taken over the charge of Tezpur SSA on 31.1.1995 when the order of DOT to confer Temporary Status already reached to all sub-division under TDE Tezpur. The letter (S.Ext-6) was circulated by TDE,Tezpur vide letter dated 28.1.1994 long before my joining. The process was delayed due to some or other pretext and ultimately it was a big union issue. After my joining the issue was raised in RJCM/ LJCM forum and administration side agreed to settle the issue. What was expected from a TDE who has just joined and found number of cases of casual labourers were pending in the SSA for conferring Temporary status. There were union pressure and agreement in the LJCM/RJCM. Considering all the facts it was decided to form a selection committee for verification of service particulars of casual labours in question after discussion at all levels and like other division and other circles and accordingly whole process was carried out. Before signing the provisional order I have further verified some cases of payment vouchers at random and after confirming that there was full proof verification I on due believe signed the provisional order. This order of conferring Temporary status was also cancelled by the undersign (D.Ext-03) on the order of circle office for further verification (D. Ext-02). The D.Ext-2 and D.Ext-3 were brought to record in case No. 165 which was mentioned in daily order sheet on 8.2.2005.

That Sir, it is pertinent to mention here that the allegation was while posted and functioning as TDE Tezpur during 1996 committed serious irregularities in as much as he appointed 221 casual labourers as Temporary Status Mazdoor in Tezpur SSA including 21 in Udalguri Sub-division on the basis of forged experience certificate. Crux of the case is that the prosecution has to prove or to show preponderance of probability that the certificates were forged which is required as standard of proof in a disciplinary case. Inquiry Authority in his report clearly stated in unequivocal term, " No case is made out that he knew that the certificates were forged". Thus the I.O. has given definite findings on the article of charge that the charge has not been established. But the point of disagreement with the findings of the I.O. is not made in respect of article charge in this case. Question of referring the case to DOT has not come in this case. Even the Assam Circle Office

while instructing to review the cases of casual labourers has not made any comment that TDE Tezpur has not referred the case to DOT (D. Ext-02). Thus it proves bias in preparing the disagreement memo. The language use in paragraph-3 of the memo is not as per laid down procedure of CCS (CCA) Rules. The charged officer is not allowed to make representation as he may wish to make in the matter. The charged officer is to confine his representation within the recorded material in the inquiry proceeding. The expression is biased as this may be interpreted that the decision has already been taken irrespective of whatever representation one wish to make.

Under the circumstances, I beg to appeal to your benign authority to consider the case with all the facts and documentary evidences submitted before you. There are no direct or corroborative evidences to sustain the charges made in the chargesheet. Hence the charges may be dropped and I may be exonerated and for this I shall ever pray.

Yours faithfully,

(M.K. GOGOI)
Area Manager (East)
Dispur Telephone Exchange
Dispur, Guwahati-6.

File in Court on 23/1/08.

Court Officer.

Dy. C.C.A.
O/o the C.C.A.
Assam Telecom Circle
Guwahati-781001

23.01.08

Filed by
Md. Abdul Hannan

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
13 FEB
गुवाहाटी न्यायपीठ
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATION TRIBUNAL

KAMRUP AT GUWAHATI

O.A No.284 of 2006

Sri Madhuryya Kumar Gogoi

.... Applicant.

-VS-

Union of India & Ors.

..... Respondents.

The objection filed by the Respondents against the Rejoinder which is filed by the application.

OBJECTION FILED BY THE RESPONDENT AGAINST THE REJOINDER FILED BY THE APPLICANT

MOST RESPECTFULLY SHEWETH :

1. That with regards to the statement made in paragraph 1,2, & 3 of the instant rejoinder application the respondents have no comment.

2. That with regards to the statement made in paragraph 4 of the instant rejoinder application the respondents beg to state that it is once again hereby submitted and reiterated that the submission made in para 4 & 6 of the counter affidavit submitted by the respondents are correct and are based on facts. The reasons for issuance of charge-sheet were mentioned in each of the statements of imputations attached to the charge-sheet. Hence the plea of the applicant that it was not in his knowledge is self-contradictory since he defended all the cases initiated against him. All the principles of natural justice were followed in respect

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of all the cases and there was no violation of the same.

3. That with regards to the statement made in paragraph 5 & 6 of the instant rejoinder application the respondents beg to state that the allegation of the applicant that there malafide intention on the part of the disciplinary authority who had initiated six proceedings against the applicant is not correct as all the proceedings were held after the investigation made by the CBI who found evidence against the applicant. All the proceedings were held as per provisions statutory rules and all the principles of natural justice were followed including the consultation with the UPSC which is an independent constitutional body. No prejudice was also caused to the applicant since all the proceedings were held in transparent manner and the applicant was allowed full opportunity to defend himself.

5. That with regards to the statement made in paragraph 7 of the instant rejoinder application the respondents beg to state that it is submitted that the CVC tendered their advice after perusing all the records including the injury report. Hence it is not correct that the CVC tendered their advice mechanically.

6. That with regards to the statement made in paragraph 8 of the instant rejoinder application the respondents beg to state that the reasons of disagreement with the IO's report has been clearly mentioned in the memo of disagreement along with the documents relied upon for such disagreement. The disciplinary authority proposed to disagree with the findings of the IO as the IO did not take cognizance of certain evidence on record. The applicant has also admitting that the IO did not take cognizance of certain documents. This clearly

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