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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 153/2005

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SECTION OFFICER (Judl.)

Malib
2/11/2017

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

original Application No. 153/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) Mr. K. Nayak

Respondents Worlons

Advocate(s) for the Applicant(s) Mr. S. U. Mazumdar, M. Chanda, S. Nati

Advocate(s) for the Respondents C.G.S.C. M. U. Ahmed

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C.C. F. f. Rs. 30/- C posted via P.T.O.D No.....206/11/7462 Dated.....16/6/05.....</p> <p><i>gur</i> Dy. Registrar <i>NP/20/6/05</i></p>	21.6.2005	<p>Heard Mr. S.U. Mazumdar, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why this application shall not be admitted.</p> <p>Post on 21.7.2005. In the meantime, the order dated 4.6.2005 (Annexure - 17) shall stand stayed since the said order takes effect only on 4.7.2005.</p> <p>Written statement, if any, in the meantime.</p> <p><i>2/7/05</i></p>
<p>Notice & order Set to D/Section for issuing to resp. Nos. 1 to 4 by regd. A/D post.</p> <p><i>23/6/05. D/No. 948 to 951 D=24/6/05.</i></p> <p>Notice duly served on resp. No - 1, 3, 4.</p> <p><i>5/7.</i></p>	mb 21.7.2005	<p><i>K. Nayak</i> Member</p> <p>Mr. M. Chanda, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents are present. C.G.S.C. seeks further time for filing written statement. Post on 24.8.05. Interim order shall continue till next date.</p> <p><i>2/7/05</i></p>

K. Nayak
Member

Vice-Chairman

20.7.05 24.8.05. Mr. M. Chanda learned counsel for the applicant submits that the Respondents have filed their written statement and therefore the applicant wants to file rejoinder. Post the matter on 27.9.05. Interim order shall continue.

fl. camply order
dated 21.7.05.

22/7/05

order dt. 21/7/05
issuing to learned
advocates for both
the parties.

Cy
25/7/05

Wts filed by 11u

Respondent Nos. 1 to 4.

lm

order dt. 24/8/05
issuing to learned
advocates for both
the parties.

(25/8/05)
25/8/05

(1) Wts have been filed.
(2) No. Rejoinder has
been filed.

26/9/05

26.9.05

order dt. 27/9/05 issuing to
both the parties. Cy
27/9.

Vice-Chairman

lm

27.9.05. Mr. M. Chanda learned counsel for the applicant is present and submits that the applicant has filed rejoinder. Mr. M. U. Ahmed learned Addl. C.G.S.C. submits that an additional written statement ~~will be~~ be produced and the same documents has also to be filed.

Post the matter on 14.11.05.
Interim order shall continue, till
the next date.

29/9/05
Vice-Chairman

① Wts has been filed.
② No Reply inder has been filed.

2/11/05
11.11.05

14.11.2005 Mr. S. Nath, learned counsel for the applicant submits that this O.A. can be posted for hearing. Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents has no objection. Post before the next Division Bench. Interim order dated 21.6.2005 shall continue till the next date.

Pl. comply order stated

14.11.05

WT
14.11.05

9
2/11/05
Vice-Chairman

order dt. 14/11/05
issuing to
learned advocate
for ~~the~~ both the parties.
14/11/05

mb
10.3.2006

When the matter came up for hearing Mr. S. Nath, learned counsel for the applicants submits that he is not ready with the case and prays ~~for adjournment~~ for adjournment.

Post before next Division Bench

2/11/05
Vice-Chairman (J)

14/11/05
Vice-Chairman (A)

bb

8. 3. 06

Rejoinder submitted
by the Applicant.

2/11/05

06.06.2006 Present : Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

When the Court assembled today, Mr. S. Nath, learned counsel for the applicant mentioned that the matter is to be taken up today. He further submitted that since relief has already been granted, he does not want press the application and requests for withdrawal of the O.A.

Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents was also present.

Permission is granted to the learned counsel for the applicant to withdraw the O.A. Accordingly, the O.A. is dismissed on withdrawal. However, applicant has any further grievance, he is at liberty to approach the appropriate forum.

Vice-Chairman

/mb/

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APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL

ACT, 1985.

TITLE OF THE CASE—

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Koushik Nayak

File No. 12 of 2005
Sri K. Nayak
Guwahati Bench
20/6/05

IN THE CENTRAL ADMINISTRISTRAL TRIBUNAL GUWAHATI BENCH: GUWAHATI.

[Application under Section 19 of the

Administrative Tribunal Act, 1985]

Title of the Case-

Sri Koushik Nayak.

Son of Sri Paramananda Nayak.

99 S.B. Road, Post Office- Ichapur Nawab Ganj.

Dist- 24 Pargona [N] -743144.

Place of employment- MES/264781/[E-4 Section]

HQ CE Shillong Zone,

SE Falls Shillong Zone.

Meghalaya.

-----Applicant.

----VERSUS---

[1] The Union of India.

Represented by the Commissioner and Secretary, Defense.

New Delhi- 110011

[2] The HQ CE Eastern Command.

Fort William.

Kolkata-21.

[3] The Chief Engineer , Shillong Zone.

Spread Eagle Falls, Shillong-21.

Meghalaya.

[4] The SO 1[Adm].

Chief Engineer, Shillong Zone.

SE Falls, Shillong-21.

Meghalaya.

-----Respondents.

DETAILS OF THE APPLICATION

1. Particulars of the order against which the application is made.

Order of Termination of service passed by the Chief Engineer, HQ CE Shillong Zone dated 04-06-2005 vide order No 77102/C/1/127/E7B.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

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

4. Facts of the case.

4.1 That the applicant is a citizen of India having the permanent address as above; as such he is legally entitled to be protected by the Constitution of India and any other law/laws being in force.

4.2 That the applicant as a schedule caste candidate was appointed LDC in the MES on 24th December 2003 under the scale of pay Rs 3050-75-3950-80-4590 plus usual allowances as admissible to Central Govt servants from time to time in the office of the Chief Engineer, Shillong Zone. The applicant after due check up by the registered physician submitted the joining report to the competent authority on 07-01-04.

A copy of the appointment letter and a copy of the fitness certificate are

annexed as ANNEXURE-1 and 2 respectively.

4.3 That the applicant states that after joining the service the applicant has been facing some irregularities in his normal physique and one day the condition of the body forced him to approach a physician to conduct check up. As a new person in the area the applicant was advised to approach one reputed and Authorized Medical Attendant of the Central Govt. Employee Mr. Basab Roy. The said senior physician after prolong check up found that there developed anxiety neurosis with acute gastro. The doctor referred to further treatment and evaluation at Kolkata issuing a medical certificate dated 06-02-2004. It is further advised that during the period of treatment the applicant should reside in a known place under the guidance of his family.

A copy of the certificate and a copy of the prescription are annexed as ANNEXURE 3 and 3[A] respectively.

4.4 That the applicant states that as to respond the advice of the reputed and experienced physician the applicant filed an application seeking leave enclosing all the certificate and documents. The SOI E/M forwarded the application to the higher competent authority for consideration of the matter on 09-02-2004 vide letter No 74001/2/259/E4. The authority was highly pleased and sympathized to grant the leave and accordingly accorded permission to move to Calcutta and undergo further treatment.

A copy of the forwarding letter dated 09-02-04 is annexed as ANNEXURE-4.

4.5 That the applicant states that for the sake of his newly recruited service the applicant has started running from pillar to post to get himself fit to resume in such a responsible duty. The applicant approached there in Kolkata a renowned physician especially in stomach who conducted through examination in to the body of the applicant and advised to take medicine as was prescribed and examined blood, stool and urine on 09-02-04. Since it is a question of life and service of the applicant he approached with his sincere effort the best laboratory of the region. Accordingly specimen was collected and a detailed report of blood, stool, and urine is given on 10-02-2004 by the Diagnostic Laboratory, 2 No Jan Mohammed Ghat Road, Naihati, 24 Pargona referred by Dr G.Nayak.

A copy of the prescription dated 09-02-04 and copies of laboratory report are annexed as ANNEXURE-5, 5[A], 5[B], 5[C], 5[D] and 5[E] respectively.

4.6 That the applicant states that after a through check up and conducting laboratory test upon stool, urine and blood by the consultant physician has advised to take medicines as prescribed by his prescription dated 12-02-2004. The said physician also advised him verbally to attend a good Neurologist.

A copy of prescription dated 12-02-04 is annexed as ANNEXURE-6.

4.7 That the applicant states that after due consultation with the physician the applicant approached the best neurologist of the area Dr. Tapan Banerjee M.D, D.M Consultant physician and Neurologist on 13-02-04. The said physician administered through check up on the body of the applicant and a prescription of multi type medicines is given which was duly followed up by the applicant. After consuming the prescribed medicine duly in time the applicant again approached the physician on 25-02-04 who again conducted through examination upon the body of the applicant and advised to consume further medicine and injection was also pushed as was prescribed. The physician even suggested to conduct CT Scan upon the brain of the applicant if necessary upon which the applicant got frightened and gave up to attend the said physician and attended another physician. The applicant and his family have been taking due care and response as to the treatment keeping every eye to the newly recruited service of the applicant. It is pertinent to mention here that the family of the applicant has run into debt so to administer proper treatment to the applicant as and when needed. It is not only in the knowledge of the applicant but also to the humble parents of the applicant regarding the date of return journey consequent to his joining in time to the responsible job.

Copies of the prescriptions dated 13-2-04 and 25-02-04 are annexed as ANNEXURE-7 and 7[A] respectively.

4.8 That the applicant states that the consultant physician who also attended regularly the applicant was

satisfied after conducting though examination upon the body of the applicant that the petitioner has recovered from the grip of the decease and he is at present fit to resume in his normal duty. This result of hurry recovery of the ailing applicant is due to utter sincerity of the applicant and his parents, too considering the exigency in joining the service in due course of time.

A copy of the fitness certificate is annexed as ANNEXURE-8.

4.9 That the applicant states that after reaching the head quarter at Shillong the applicant filed his joining report along with fitness certificate to the Joint Director, E/M who was pleased to forward the same on 28th February 2004 to the competent authority. The said authority after receiving the joining report together with the fitness certificate was pleased to accept the same and the applicant has resumed his routine bound normal duty.

A copy of forwarding report dated 28-2-2004 is annexed as ANNEXURE-8[A].

4.10 That the applicant states that while through check up was administered by the different physician in different ways and in many manners the applicant was advised to continue on treatment after reaching there in shillong. A regular check up of the body and taking medicine herewith must be routine bound phenomena as suggested. Again after reaching herein Shillong the applicant found himself physically unsound and started to visit Dr Basab Roy. The said Doctor again started to prescribe medicine though the applicant was perturbed in

taking such medicine again and again. But the applicant has to continue to take medicine and administer thorough check up since the question of his newly recruitment to a responsible job involved herein.

Copies of the prescriptions are annexed as ANNEXURE-9, 9[A] And 9[B] respectively.

4.11 That the applicant states that he has accrued faith upon the said doctor as in early occasion when the applicant approached many physicians there in Kolkata maximum doctor opined likewise as was opined by Dr Basu Deb. So being a new man in Shillong and recruited recently in a responsible post the applicant has to surrender to the very advice of each and every physician and determined to do everything for the sake of his service. The said physician prescribed continuously one after another changing the nature of medicine considering the change in the body. From the very beginning Dr Basob Roy Senior Medical Officer upon whom the applicant completely relied on has been advising to change the climate otherwise the applicant's health condition will turn from bad to worse. Naturally the applicant has to succumb to these awkward circumstances of the ailment and the consequent advice of the doctor only to save his service. On 10-07-04 the said physician after issuing a certificate advised the applicant to place before the authority for further consideration of the matter and to leave this atmosphere since according to his opinion the applicant had developed gradually with effect from 02-04-04 Tropical Eosinophilia and Gastro Intestinal Bleeding.

Since it is the very advice of a senior physician and Authorized Medical Attendant Central Govt. Employee no alternative was left to the applicant than to surrender to his advice. With that certificate the applicant filed a petition on 30-07-2004 before the competent authority through proper channel seeking his transfer to a new known warm place and preferably the surrounding area of Kolkata like Barrackpur, Kankinara, Alipur, Ballyganj, Fort William with all good faith that the authority shall take up the matter sympathetically. As a duty bound employee the applicant has accrued clean record in his service era though he has been sometimes advised by the physician to take rest.

Be it started here that the competent authority was pleased enough to supply the prescribed form of application for posting on compassionate ground and was duly recommended by SO III[Adm] on 30th July 2004 and also recommended the said application in another prescribed form by the competent authority the SOI E/M on the same day on the ground of self sickness.

A copy of the medical certificate dated 10-07-2004 and the subsequent transfer petition dated 30-07-2004 are annexed as ANNEXURE-10 and 11 respectively.

4.12 That the applicant states that keeping in mind that if his transfer is not favourably considered by the authority the applicant despite the physician's suggestion to leave the place has started controlling diet and administered regular medicine. To develop

mentally and physically the applicant has been taking some ayurvedic medicine and developing miracly after filing the transfer petition. Thus the applicant after elapsing a few months has become quite normal and resumed his duty with full vigour and inspiration. For that the applicant did not provide any reminder and pursue the matter of transfer since the reason for which the transfer is sought for has been vanishing rapidly. Even the applicant stopped to visit Dr Basob Roy.

4.13 That the applicant states that the AAD [Administration] has forwarded a copy of the letter dated 8-02-05 of the Director Health Services on 15-02-05 to the applicant contents of which is that the applicant has to appear before the State Standing Medical Board on 16-02-2005 at Shillong Civil Hospital at 10-30 AM. It is suggested that the applicant shall bring all the concerned papers relating to the applicant's treatment like prescription/Test reports/XRay report and Medical certificates since without which no medical examination will be conducted.

A copy of the letter dated 15-02-05 along with copy of the letter of Director Health Service dated 08-02-05 are annexed as ANNEXURE- 12 and 13 respectively.

4.14 That the applicant states that the State Standing Medical Board has conducted through examination to the body of the applicant and perused the prescription and medicine administered by the applicant. The said board while conducting the examination found satisfactorily

development of the condition of the body of the applicant in comparison of the report which was reflected long before 11-02-24 in the laboratory test. It is also opined quite favourably that the applicant is not suffering from Gastric Bleeding and Eosinophilia at the time of conducting examination. The said Board has advanced their opinion on the point that Tropical Eosinophilia cannot develop within 1[one] month but in applicant's case this symptom was developed gradually after 4[four] months. The said Board gave their opinion completely in favour of the applicant. Even when the matter was forwarded to the Board the applicant has became much more hopeful to the authority with a firm faith that the authority considering the awkward and perturb condition forwarded the applicant for better treatment. In this report the board was satisfied to issue a fitness certificate.

A copy of the medical report dated 16-02-2005 is annexed as ANNEXYRE-14.

4.15 That the applicant states that while it is declared by the constituting Medical Board that the applicant has recovered from the physical problem he has started discharging the duty with new inspiration and endeavour so that he can attain the pleasure with good mark in the field of his routine bound duty due to the sympathy advanced by the authority to be checked up by the Board constituted by competent doctors. But instead of this on 14-03-05 he was apprised with a show cause notice for termination of service being 77102/C1/122/E7B. The summary of the show cause is that the applicant while submitted the transfer petition enclosing the medical

test report and certificate are false. The reply of the show cause shall reach within 10 days of the receipt of the letter.

A copy of the show cause dated 14-03-05 is annexed as ANNEXURE-15.

4.16 That the applicant states that after receiving the show cause the applicant found himself totally disappointed. The applicant most humbly submitted the reply on 22-03-05 to the authority that the question of submitting false certificate does not arise at all at any cost since he has been holding a responsible post of the nation upon which oath was administered. Rather having little knowledge in service the applicant with total good faith has tried to his utmost possible way to satisfy the authority regarding the condition of his health and mind considering the responsibility of the job upon which the applicant has joined and started his new era of life with bright and prospective future. But all the simplicity and good faith turned into a matter of total falsehood and the applicant is terminated from the service vide order no 77102/C/1/197/E7B dated 04-06-05 with effect from the expiry of a period of 1[one] month from the date of issue of the order.

Be it stated here that the respondent authority without even going through the contents of medical report submitted by The State Standing Medical Board comprising three competent senior doctors which is completely in favour of the applicant since the report itself signifies the very correctness and authenticity of the present physical status of the applicant and the certificate

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reports submitted by the applicant. It is the medical science upon which none can come to a conclusion which is our day today phenomenon. For that every day keeping in dark the every medical expert the living organs have been taking eternal rest. The doctors are surprising with their own theory and method and every day development on research work on human being has taking a new shape but still the surprising factors are unattended by the physician pushing them into the reign of unknown era. But in this instant matter how a responsible officer of the nation without having any mere knowledge about the human science can contradict the expert view quite in a capricious and arbitrary manner clearly establishing the ulterior motive behind such illegal action to spoil the life of a prospective boy who wished to dedicate his noble life for the cause of the nation. Not only that the very word false used in regard to the certificate and prescription has its own definition containing its particular ambit and scope. If the individual produces any certificate manufacturing the seal and signature of the doctor then it is termed as false one and for that the individual shall liable to be prosecuted seriously for such heinous activity. But in this case the applicant approached the authorized medical attendants almost in every case and their opinions cannot be ignored by an ordinary individual. In this instant case medical check up by the constituent Board was after 7{seven} months and even after elapsing a long period it is quite natural that the physique shall alter to new position automatically but the applicant's prolong treatment from

different corners certainly helped to attain such a changeable position. So the motivated, malafide, capricious, arbitrary notice of termination is liable to be quashed and set aside and allow the applicant to continue on his service.

A copy of the reply dated 22-03 -05 and the Termination order dated 04-06-2005 are annexed as ANNEXURE-16 and 17 respectively.

5. Grounds for relief with legal provisions.

5.1 For that the action of the respondents terminating the service of the applicant on ground of falsehood of the certificate issued by the competent authorized medical attendant is highly arbitrary, illegal, capricious and an outright violation of natural justice as guaranteed under Article 311[2] of the constitution of India since such declaration of falsehood is stigmatic blaming the clean and prospective life of the applicant and the order of termination is punitive, too.

5.2 For that such illegal and whimsical action giving major punishment completely on wrong footing and expression is the out come of total non application of mind which cannot sustain in law since there is no whisper of stigma at any where else in service of the applicant rendered upto date.

5.3 For that the order of removal is evidently an outright violation of Article 311[2] of the constitution of India wherein both stigma and punishment are manifestly highlighted. Therefore procedural

departmental enquiry in prescribed manner ought to be conducted. Such order passed quite in derogation of the Article 311[2] of the Constitution of India is fatal and is liable to be quashed and set aside.

5.4 For that the manner in which the order of Termination passed is a subject of hostile discrimination in violation of Article 14,16.19,21,300A, 311[2] of the Constitution of India and administrative fair play including the legitimate expectation.

5.5 For that the service the applicant is property under Article 300A of the Constitution of India and shall not be deprived of the property save by the authority of law and for that the authority is duty bound to restore the same and the applicant shall be continued on service in as usual manner.

6. Details of the remedies exhausted:

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

7. Matters not previously filed or pending in any court:

That the applicant further declares that he has filed a Writ Petition before the Hon'ble Gauhati High Court Shillong Bench on 15-06-2005 being WP[C] 184[SH]/05 and the Hon'ble Court was pleased to dispose of the petition directing the petitioner to approach this Hon'ble Tribunal since it is bared by jurisdiction.

A copy of the order of the Hon'ble High Court dated 15-06-05 is annexed as ANNEXURE-18.

8. Relief sought for:

In the premises aforesaid it is therefore prayed to Your Lordships to be graciously pleased to admit this petition, call for the records, issue rule commanding the respondents and more particularly respondents No 3 and 4 as to why the impugned order of termination dated 04-06-05 shall not be quashed and set aside and/or upon hearing both the parties and/or cause/causes being shown, make the rule absolute.

8.1 Allow the applicant to continue on service and get the service permanent as usually.

8.2 To pay the cost of the application.

8.3 Or may pass any other relief to which the applicant is found to be entitled under the facts and circumstances of the case.

9. Interim order if any prayed for:

Pending final disposal of the application it is therefore prayed to stay the impugned order of Termination dated 04-01-2005 allowing the humble applicant to continue on service in a usual manner.

9.1 The application is filed through advocate:

10 Particulars of IPO:

IPO NO : 20G1177462.

Date of issue : 18-06-05

Issued from : Rehabari Post Office.

Payable at :

10. List of enclosures:

As stated in the index:

VERIFICATION

I Sri Koushik Nayak S/O Sri Paramananda Nayak age 27 years working as LDA in the office of the Chief Engineer, Shillong Zone, SP Eagle Falls, Shillong-11 resident of 99 SB Road, P.O Ichapur Nawab Ganj Dist 24 Pargona [N] West Bengal do hereby verify that the contents of paras 1 to

4.12 ————— are true to my personal knowledge and paras 4.13 to 10 believed to be true on legal advice and that I have not suppressed any legal fact..

Date- 20-06-05.

Place- Guwahati.

Koushik Nayak
Signature of the applicant.

Tele Mily : IIT/6015

REGISTERED TRUST

Dte of Management & Service
 HQ Chief Engineer Siliguri Zone
 Sevoke Road, PO : Salugara
 Dist : Jalpaiguri (WB)
 Pin : 734318

90006/DR/ 1511/EIC(I)

24 Dec 2003

Shri Kaushik Nayak

99 S B Road, PO : Ichapur Nawab Ganj
 Dist : 24 Parsonas (N) - 743144

APPOINTMENT OF LDC (TY) IN MES

1. Reference your interview on 09 Oct 2003 for the post of LDC.
2. You are hereby offered the appointment of TY LDC in the MES on the following terms and conditions :-
 - (a) You are offered a pay of Rs. 3050/- p.m. in the scale of pay of Rs. 3050-75-3950-80-4590 plus usual allowances as admissible to Central Government Servants from time to time.
 - (b) The post is temporary but likely to continue. Your claim for permanent absorption will be considered in accordance with the rules in force.
 - (c) The appointment is provisional and is subject to the caste/tribe certificate being verified through the proper channel and if the verification reveals that the claim to belong to Scheduled Caste, Scheduled Tribe or Other Backward Class as the case may be, is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Panel Code for production of false certificates.

Contd.. P/2...

Certified to be true copy



Advocate

(d) In accordance with Central Civil Services (Conduct) Rules 1964, you will not be eligible for appointment under Govt of India if you have more than one spouse living. A declaration to this effect should be furnished before appointment.

(e) You should be declared medically fit for general as well as field service. Medical Certificate of fitness in the prescribed form signed by a Civil Surgeon/Staff Surgeon should be produced before joining the Department. Necessary Medical Forms in triplicate are enclosed.

(f) The appointment will take effect from the date you join the Office of Chief Engineer Shillong Zone.

(g) On reporting to that Office you should produce original certificate in support of your educational and technical qualifications, age and caste. Acceptance of joining report will further be subject to production of above original certificates.

(h) You will be on probation for a period of two years from the date of your appointment which may be extended by the competent authority for unsatisfactory performance during the period of probation or for failure to pass the departmental examination or non completion of training or for any other reasons to be recorded in writing. Failure to complete the period of probation to the satisfaction of the competent authority, will render you liable to discharge from service to be reverted to your substantive appointment in case you have been allowed to hold a lien against it.

Contd . . . P/3 . . .

(j) The appointment may be terminated at any time on one month's notice given by either side, via the appointing authority or you without assigning any reasons, or by reverting you to your parent Department, in case you are holding a lien in that department. The appointing authority, however, reserves the right to terminate your service forthwith or before the expiry of the stipulated period of notice by making payment to you a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

(k) If you are already employed in a State/Central Govt or a Public Sector Undertaking, you may please obtain proper relieving order from such previous employer and submit the same at the time of your joining in MES.

(l) You are liable for service in and outside INDIA (including field area) and you should give a written consent regarding the acceptance of the ALL INDIA SERVICE LIABILITY including field service liability at the time of reporting for duty.

(m) You are not eligible for travelling allowance for journey undertaken for the purpose of joining the appointment.

(n) You will be required to take oath/affirm in the following form :-

" I do swear solemnly and affirm that I will be faithful and bear the true allegiance to INDIA and to the Constitution of INDIA as by law established, that I will uphold the sovereignty and integrity of INDIA and that I will carry out the duties of my office with loyalty and impartiality, so help me GOD."

(o) If any information given or declaration furnished by you proves to be false or if you are found to have willfully suppressed any material information, you will be liable for removal from service and such other action as deemed fit will be taken against you.

(p) You should report for duty to the Office of Chief Engineer Shillong Zone on or before 14 Jun 2004. The offer of appointment shall automatically stand cancelled if you do not report for duty by the date specified in this letter.

(q) You are also required to inform the appointing authority/administrative authority about the change of your religion immediately if such change takes place.

- 20 -

2X

Please intimate to that office as well as this office regarding your acceptance or otherwise of the offer of appointment on the terms and conditions stipulated shown.

Authority :- HQ CE Eastern Command letter No 131302/
BP-LDC/12/Engrs/EIC(I) dated 23 Dec 2003.

Vastava

(VK Srivastava)

SE

SO-I (Pers & Legal)
for Chief Engineer

Enclosures : (07 Sheets)
Med Cert under Art 49 CSR, Cert for
Simple Police verification, Medical
Report on fitness for field service
(Sch-III Anxx-C)

Copy to :-

HQ Eastern Command
Engineers Branch
Fort William
Kolkata-21

CDA Patna/Gwhati

AAO Shillong

CE Shillong Zone/Kolkata Zone/
Siliguri Zone

CE Shillong Zone

1. The individual is one of the selected candidate for the above post and posted to your office against the existing vacancy.
2. Please ensure that before the individual is TOS, the original certificate as mentioned in Para 2 (a) to (r) and documents mentioned at enclosures above be checked thoroughly and make sure that he fulfills the requirements as per Recruitments Rules and Orders Instructions issued by the Govt from time to time. Intimation of assumption of appointment should be sent to all concerned on the same day of his reporting.

CWE

- 21 -

APPENDIX - 'A'

MEDICAL CERTIFICATE UNDER ART 49 CSR

I hereby certify that I have examined Shri Koushik Nayak a candidate for LDe(TY) in MES, employment in the MILITARY ENGINEER SERVICES and cannot discover that he has any disease (communicable or otherwise) constitutional weakness or bodily infirmity except None. I do not consider this is a disqualification for employment in the MILITARY ENGINEER SERVICES. Shri Koushik Nayak 's' is age according to his own statement is 27 years and by appearance about 27 years.

Koushik Nayak

SIGNATURE OF THE INDIVIDUAL MEDICALLY EXAMINED (TO BE SIGNED IN THE PRESENCE OF MEDICAL OFFICER).

Consultant
SIGNATURE & DESIGNATION OF THE MEDICAL OFFICER.

Dr. B. H. Bora S. D. Hospital
Laturkar, Barampuri (B)

Certified to be true copy


Advocate

Basab Roy
SIR MEDICAL OFFICER

AMAYA (INITIAL GOVT. EMPLOYEES
Regd. No. 8398 (AMC)

2536733 (Res.)
2224541 (Clinic)

22

29

ANNEXURE-5

This is to Certify that
Sir Keshik
Sinha from
Anti Gestos
referred for
an evaluation
During this
he is advised
a known place
of his family.

Mayak
Anupur Newalsi
and to
take treatment
at Kilkeli.
Period of treatment
to receive in
under the supervision

Bom

6/2/84
Sr. Medical & Health Officer
District Jail
Shillong.

Certified to be true copy

Advocate

Dr. Basab Roy
SENIOR MEDICAL OFFICER

AMA CENTRAL GOVT. EMPLOYEES
Regd. No. 8398 (AMC)

2536733 (Res.)
2224541 (Clinic)

150

90

Krushik Rayak

1.

Active 150 g | Water 150 g
1 wt. litter as (30)

Diele 16
Sky. front view

Alphonse 0.25 kg 9 kg 15

9
6 2

Certified to be true copy

John

Advocate

-24-

11 FEB 2004

INTER OFFICE NOTE

E-4 SECTION

ANNEXURE-4

74001/2/959/E4

9 Feb 2004

FWD OF MEDICAL LEAVE APPLICATION : SUB

1. Medical leave application dated 07 Feb 04 recd from MES/NYA- Shri Koushik Nayak, LDC alongwith medical cert is fwd herewith duly recommended for your necessary action please.

(M L Sharma)
Lt Col
SOI E/M

Encls : As above

E7B Section

PL

Certified to be true
Advocate

Dr. Goutam Nayak (4) 25 Residence : 5
M.B.B.S., M.F.I.C.A., F.R.B.T.M&H.
Ex-House Physician Calcutta National
Medical College, Chitteranjan Hospital.
(Authorised Medical Officer Oil and
Natural Gas Commission.)

55, S. B. Road
P.O. : Ichapur-Nawabganj
24 Parganas (North)
Visiting Hrs. : Mor. 8 A.M. to 9.30 A.M.
Eve, 6 P.M. to 8 P.M.
Sunday 8-30 A.M. to 12 (Noon)
Phone : 2592-3716

TUESDAY EVENING CLOSED

Date ... 9-2-04

For, Nawab Nayan

1. Fever

✓ Appetite

7E

9.76/min.

B.P. - 130/80

mmHg

Abr.

Blood grp

Tc, Dc, ESR

Hb%, M.P.

Blood grp

Serum bilirubin

Urea for R/E

(with salt &

protein)

1 stool for o/p.

① → 1) Tab. Lazino - 5 mg (5)

Before lunch 1 tab daily x 5 days

② → 2) Tab. Nenpro - 20

→ 1 tab daily before
breakfast x 10 days

③ → 3) Tab. Calpol - 500 mg (4)

→ 1 tab every 8 hrs
interval 5.0.5

TO ATTEND HOSPITAL IN EMERGENCY

certified to be true copy


Advocate



-26-

Phone : 681-1380

DIAGNOSTIC LABORATORY

2 No. JANMOHAMMAD GHAT ROAD, NAIHATI, 24 PARGANAS (N)

[Behind Naihati Municipality]

5(A)

Date 10/02/04.

ANNEXURE- 5(A)

REPORT ON THE EXAMINATION OF URINE

Name Koushik Nayak, 27 Yrs.

Referred by Dr. G. Nayak, FICA.

Physical Examination

Quantity	<u>10 ml.</u>	Sediment	<u>(+)</u>
Appearance	<u>Pale Yellow.</u>	Specific Gravity	<u>Q. I.</u>

Chemical Examination

Reaction	<u>Acid.</u>	Bile Salts	<u>n i l</u>
Protein	<u>n i l</u>	Bile Pigments	<u>n i l</u>
Sugar	<u>n i l</u>	Ketone Bodies	<u>n i l</u>

Microscopic Examination H.P.F.

Pus cells	<u>Occasionally.</u>	CRYSTALS :	
R. B. C.	<u>n i l</u>	Calcium Oxalate	<u>n i l</u>
Epithelial Cells	<u>Occasionally.</u>	Triple Phosphate	<u>n i l</u>
CASTS :		Amorphous Phosphates	<u>n i l</u>
Hyaline	<u>n i l</u>	Uric Acid	<u>n i l</u>
Granular	<u>n i l</u>	Spermatozoa	<u>n i l</u>
R. B. C. Cast	<u>n i l</u>	Micro Organism	<u>n i l</u>
W. B. C. Cast	<u>n i l</u>	Other Findings	<u>n i l</u>

Remarks :

Pathologist

Certified to be true copy. S. S. S. S. A., M.D. (PATHO) KOL

Advocate



DIAGNOSTIC LABORATORY

2. No. JANMOHAMMAD GHAT ROAD, NAIHATI, 24PARGANAS (N)

(BACK SIDE OF NAIHATI MUNICIPALITY)

ANNEXURE 50

Name..... Kaushik Nayak Age..... 27 yrs

Ref. by Dr..... G. Nayak, FICA

Date..... 10.02.2004 Sample : Outside/Laboratory

BLOOD BIOCHEMISTRY

(By Analyser Joly 100, Italy)

True Glucose Fasting (70-110 mg/dl)	PP/75/100 mg Glucose (Up to 140mg/dl)	True Glucose (At Random)	Uric Acid Male : 3.4-7.0 mg/dl Female : 2.4-5.7 mg/dl
Urea (10-45 mg/dl)	N P N (21-44 mg/dl)	Creatinine (0.5-1.4 mg/dl)	Serum Cholesterol Adult : 150-240 mg/dl Child : <180mg/dl
H D L (30-55 mg/dl)	L D L (60-190 mg/dl)	V L D L (8-22 mg/dl)	Serum Triglycerides (40-165 mg/dl)
Total Bilirubin (upto 1 mg/dl)	Bilirubin Conjugated 0.75	Bilirubin unconjugated	S G P T (upto 49 U/L)
S G O T (upto 46 U/L)	Alk phosphatase Adult: (80-306 u/l) (Child<645u/l)	Acid Phosphatase 1-4 K.A.U/L	Serum Amylase (9-50 Street-Close Unit/100 ml)
Serum Protein (Total) 6.8-8.0 g/dl	Albumin 3.8-5.4 g/dl	Globulin (2.0-3.5 g/dl)	SERUM CALCIUM (9-11 mg/100 ml)
Serum Sodium 135-155 mmol/L	Serum Potassium (3.5-5.5mmol/L)	Serum Choloride (98-109mmol/L)	Bicarbonate(NaHCO ₃) (22-30 meq/L)

M. K. MUKHERJEE, M.B.B.S., Pathologist

Certified to be true copy

Advocate



DIAGNOSTIC LABORATORY

2, No. JANMOHAMMAD GHAT ROAD, NAIHATI, 24PARGANAS (N)
(Back Side of Naihati Municipality)

T : 2581-1380

Name..... Koushik Nayak,..... Age..... 27 Yrs.
Ref. by Dr..... G. Nayak, FICA......
Date..... 11/02/04..... Sample : Outside/Laboratory

REPORT ON ROUTINE HAEMATOLOGY

HAEMOGLOBIN (CMG)	:	9.80	gm./dl
RBC COUNT	:	3.71	Million/cmm.
WBC count	:	9,500	/cmm.
PLATELET COUNT	:		/cmm.

DIFFERENTIAL WBC COUNT / PREMATURE CELLS :

Neutrophils	56 %	BLAST CELL	%	PCV	%
Lymphocytes	32 %	PROMYELOCYTE	%	MCV	CU. μ gm.
Monocytes	2 %	MYELOCYTE	%	MCH	μ . μ gm.
Eosinophils	10 %	METAMYELOCYTE	%	MCHC	%
Basophils	0 %				

ESR (Westergreen) 25 mm 1st Hr.
40 mm 2nd Hr.
22.5 mm Mean

BLEEDING TIME : Minutes Seconds
CLOTTING TIME : Minutes Seconds

..... Minutes Seconds

Microfilaria None found.

MicroRNA

Abnormal Cells

Absolute Eosinophils Count : /Cmm

Reticulocytes Count : /%

Morphology of RBC :

Pathologist

REVIEW ARTICLE

Certified to be true copy

✓
Advocate



29 -
DIAGNOSTIC LABORATORY

T : 2581-1380

No. JANMOHAMMAD GHAT ROAD, NAHATI, 24PARGANAS (N)
(Back Side of Naihati Municipality) **ANNEXURE-50**

Name..... Koushik Nayak..... Age..... 27 Yrs.
Ref. by Dr..... G. Nayak, FICA.....
Date..... 10/02/04..... Sample : Outside/Laboratory

REPORT ON THE EXAMINATION OF STOOL

PHYSICAL EXAMINATION :

CHEMICAL EXAMINATION :

Colour	Brownish.....	Reaction	Acid.....
Consistency	Semi formed.....	*Occult Blood	
Mucus	(+).....	(Benzidin	
Blood	n i l.....		

MICROSCOPICAL EXAMINATION

Protozoa : Not found.	Pus Cells	1--2/F.....
Cysts : Not found.	R. B. Cs	n i l.....
Ova : Not found.	Undigested Food particles	(+.).....

***Flotation Method :**

***Conc. Method :**

***Examined only when specially asked for**

C
ll

Pathologist

Dr. A. K. SARKAR, M.A., M.D., M.R.C.P. (LOND.)

Certified to be true copy

Copy Date



DIAGNOSTIC LABORATORY

2. No. JANMOHAMMAD GHAT ROAD, NAIHATI, 24PARGANAS (N)

(BACK SIDE OF NAIHATI MUNICIPALITY)

Date : 17/02/04.

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ANNEXURE- 5(E)

Name : Kousik Nayak, 27 Yrs.

Ref. by Dr. G. Nayak, FICA.

REPORT ON THE EXAMINATION OF

URINE FOR CULTURE & SENSITIVITY TEST :-

CULTURE SHOWS THE GROWTH OF :

' Esch. Coli. '

COLONY COUNT :

(7×10^4 Colonies/ml.)

DRUG SENSITIVITY TEST :

Amikacin	S
Ceftraxone	
Cefuroxime	
Chloromycetin	
Ciprofloxacin	S
Doxycycline	IS
Erythromycin	
Gatifloxacin	S
Centamycin	S
Lincomycin	
Lomefloxacin	IS
Neomycin	

Norfloxacin	S
Oflloxacin	IS
Pefloxacin	
Penicillin-G	
Roxythromycin	
Tetracyclin	
Tobramycin	S.
Cephalexin	IS
Cloxacilin	R
Amoxycilin	R

S = Sensitive

IS = Intermediate Sensitive

R = Resistant

Certified to be true copy

Pathologist

Adv. C. R. Nayak

Dr. Tapas Banerjee
M.D., D.M.
Consultant physician and neurologist

Ph. No. 25359060
Mobile-31032335

Dr. 13/2/64

C/C

single attack of
abdominal pain
On/E

BP-130/80

epigastric &
suprapubic
tenderness

Inv.

SI- Hb-
9.8 gm/100

P.D.

Name

Mr. Kanshik Nayak.

Age-

27yrs

Domizol

DS

1- BDAC x 1m

Carmimare

2HF BD x 1m

Oflomac-T2

1- BD x 5d

~~✓~~ Fersolate

CM

1- BDAC x 1m

Certified to be true copy

Advocate.

Nitret / Solbrinn (5gm)

1- NC

20/2/64

~~✓~~ Norflex (400mg)
1- BD x 10d

Roff BC (50mg)
1- ODX5d

ANNEXURE-7(A)

Dr. Tapas Banerjee

M.D., D.M.,

Consultant Physician & Neurologist

PH NO. 2535-9060

MOBILE. 31032335

DL. 25/2/04

Bh
CIC

single attack
of headache
episodic & temporary
ON EXAM

BP- 130/80

INV.

31-146
q. 8 gm 16

P.D.

9 sensory 56
/ CPS.

Mr. Kanshik Noyek / 27m

Slime / Tryptomer (10m)

1 - H.S. x 1½ m
2

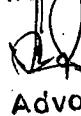
Oxetol / Selzic (300m)

1 - 1 x 5d
↓ then
1 - T.D.S x cont

CT scan brain (Contract if needed)
B.B.G.

Calamose (10m) - temporary
/ an

Certified to be true copy


Advocate

1 MAR 2004

-35-

ANNEXURE 8(A)

INTER OFFICE NOTE

E-4 SECTION

74001/2/270/E4

FWD OF ARRIVAL REPORT : SUB

RE	CE
28 Feb 2004	1102
28 Feb 2004	1102
RE	CE

1. Ref this section ION No 74001/2/259/E4 09 Feb 2004.
2. Arrival report dated 27 Feb 2004 in respect of MES-264881 Sh Koushik Nayak, LDC is forwarded herewith alongwith fitness certificate for your further necessary action please.

Encls : As above

E-7B Section

(Rishi Kumar, IDSE
Jt. Director E/M)

Certified -  copy


Advocate

Dr. Basab Roy
SENIOR MEDICAL OFFICER

36- ANNEXURE 9
AMA CENTRAL GOVT. EMPLOYEES
Regd. No. 8398 (AMC)

2536733 (Res.)
2224541 (Clinic)

K. M. M. | Babuji Halankar As.
Age 65 | Nurse.

1. Nycos 400 mg 10 (0-0)
Wt 2 times day

- Daylow 500 mg 20 (0-0)
(1 tab) twice day

Cineffin 300 mg - daily at bedtime (3x1)

Venomid 300 mg
Wt daily
2 tabs

Pergrastol 100 mg
to any 100 mg
twice day 250 mg

6. Certified to be true copy

Advocate

Dr. Basab Roy
SENIOR MEDICAL OFFICER

AMA CENTRAL GOVT. EMPLOYEES
Regd. No. 8398 (AMC)

⑥ Tax - 9(A)
2536733 (Res.)
2224541 (Clinic)

37-

ANNEXURE - 9(A)

k My pk

Collar stiff
slip - daily ab. levuline
so little bals

Pilon tab / Aliz. tab
2 bals. turb. nov
1223

Plaster ad
to one tray
two tray

7/5

certified to be true copy



doc. no. 100

Dr. Basab Roy
SENIOR MEDICAL OFFICER

38-
AMA CENTRAL GOVT. EMPLOYEES
Regd. No. 8398 (AMC)

⑥ Apr-46
2536733 (Res.)
2224541 (Clinic)
ANNEXURE - 9(B)

WATSON

4. Vibh. Jm.

B. Cefalexin SW Gr 10
(1x2) An twice daily 10 | 5 days
(1x2) Nise 1/2 1/2 twice daily
(3x2) Enzyme & Lysine
3 wks - twice daily
by mouth

Glucosid

11/4/5

Vig. soap

Certified to be true copy



Advocate

ANNEXURE-10

This is to certify that Shri
Kanak Nayak, L.A.T. No. 103
Shillong Zone, Shillong is suffering from
Tropical Diarrhoea with recurrent
Gastric & Rectal Bleeding since 24/04
for which he is under my treatment
Since the same date
since his ailment has been caused
by factors such as the climate and
terrain at Shillong as well as
improper diet, it is advised that
he may be transferred to reside in
a brother climate in plains area
under the supervision of his family.

Basab Roy

Certified to be true by Sr. Medical & Health Officer
District Jail
Shillong
10.7.04.

Advocate

To : Mes. Koushik Nayak
Key Rank Nayak, LDC
C/Officer-in-Charge
Chief Engineer
Shillong Zone
Spread Eagle Hall
Shillong-11

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ANNEXURE - 11

To : The Chief Engineer
HQ Eastern Command
Fort William
Kolkata-21

(Through Proper Channel)

Sub : Request for Posting on Extreme Compassionate Medical Ground

Respected Sir,

1. With due respect and humble submission I the above named beg to state following few lines for your kind consideration and favourable action please.
2. That Sir, I was enrolled in MES on 07 Jan 2004 at HQ Chief Engineer Shillong Zone vide your HQ CE EC Kolkata letter No 13102/BP-LDC/12/Engrs/E1C(I) dt 23 Dec 2003 and HQ Chief Engineer Siliguri Zone letter No 90006/DR/1511/E1C(I) dt 24 Dec 2003.
3. That Sir, since my appointment, I have been suffering from different elements of diseases and frequently fallen sick.
4. That Sir, since the day of my joining in service and within a couple of months I became victim by attack of Tropical Eosinphilia with recurrent Gastro Intestinal Bleeding since 02-04-2004.
5. That Sir, due to above diseases I have lost blood which is passing during motion due to which I have become an anemia patient. As a result, my health condition has became so weak, that I am not in stable position getting frequently unconscious. Doctors under whose treatment I am has advised to shift to warmer place in planes area. The copy of investigations and treatment as well as doctors advise is attached herewith.
6. I fervently request your honour to kindly consider my appeal of transfer in any warm station at Kolkata or its surrounding area particularly Barrackpore, Kankinara, Alipore, Ballyganj, Fort William. So that I can get better treatment and improve in my health then I will be in better position to serve my nation and family.
7. For this act of your kindness towards redressal of my prayer, I shall remain grateful to you.

Thanking you Sir.

Certified to be true copy

Advocate

Yours faithfully

Koushik Nayak

(Koushik Nayak)
MES-264781

Enclos : (Medical Certificate in original)
(4 Sheets)

Dated : 30 Jul 2004

APPLICATION FOR POSTING ON COMPASSIONATE GROUNDS

1. Name of the applicant (In block letters) : KOUSHIK NAYAK.

2. Date of birth : 26-03-1977

3. Present appointment held : LDC

4. Name of present appointment : LDC

5. Name of present unit : HQ Chief Engineer, Shillong Zone.

6. Location of the present unit : Shillong, Spread Eagle Falls.

7. Date from which serving in the present unit : 07 Jan 2004.

8. Auth under which posted to present unit : HQ CE EC Kolkata Appt letter No 131302/BP-LDC/12/Engrs/EIC (I) dt 23 Dec 2003 and HQ CE Siliguri Zone letter No 90006/DR/1511/EIC (I) dt 24 Dec 2003.

9. Pay and grade of the present post : 3050 + All allowances as admissible.

10. Initial (First) appointment held : LDC

11. Name of the unit where recruited : HQ Chief Engineer, Shillong Zone.

12. Date of initial appointment : 07 Jan 2004.

13. Whether initially recruited through employment exchange. If not the reason thereof : No, Applied for the post on the basis of News paper advertisement.

14. Whether the individual is SC/ST or Ex-Serviceman : SC.

15. Whether willing to accept regular temporary appointment in the case of individual is Pt/Qpt : NA being a new appointee.

16. Whether the individual had applied for posting previously. If so give full details. : No.

17. Names of the station where the individual is desired of posting : Any office in Kolkata complex.

18. Reasons for transfer (in case transfer is applied for on Med ground, a Medical Certificate to be attached) : Tropical Eosinphilia with recurrent Gastro Intestinal Bleeding.
(Medical Certificate in original attached)

Koushik Nayak
(Signature of the applicant)

COUNTERSIGNED

S. Bandyopadhyay
(S. Bandyopadhyay)
Lt
SO III (Adm)
for Chief Engineer

Station : Shillong
Dated : 30 Jul 2004.

— 482 —
SERVICE PARTICULARS

1. M.L. Name and Design : 264781 Sh. Koushik Nayak, I.D.C
2. Whether Pt Opt'dy : Ty
3. Date of Birth : 26.01.1977
4. Date of first appointment : 07 Jan 2004.
5. If the individual was overage on the date of the appointment whether sanction of the competent authority for relaxation of age limit was obtained and entry to that effect in the service Book. : No.
6. Station served with date since appointment : HQ Chief Engineer, Shillong Zone
wef 07-01-2004 till to date being new appointee.
7. Home Address (In full) : 99 SB Road, Ichapore Nawabganj, Saha Para,
P.O. Nawabganj, 24 Paraganas (N)
Pin-743144.
8. Whether willing to travel at his own expense : Yes.
9. i) Whether indl involved in any disciplinary case. : No.
(In case his move will be stopped till finalization of case) : No.
Whether he has been placed under specialist reports and if so has the report been rendered : No.
10. Whether character and antecedents have been verified and found satisfactory. : Yes.
11. Whether the individual can be relieved within 7 days on receipt of posting order if the transfer is materialized. : Yes.
12. Recommendation of the head of the section : Recommended ✓
with replacement/
without replacement

Station : Shillong
Dated : 30 Jul 2004.


(M L Sharma)
Lt Col
SOI E/M
for Chief Engineer

← 43 →

APPA 'A'

COMPASSIONATE POSTING

REASONS

APPLICABLE/NOT APPLICABLE
TO APPLICANT

1. Compassionate Reasons

(a) Terminal sickness/ Self/ Parents/Wife/Child/Spouse etc. : Self sickness.

(b) Serious illness/ self/parents/ Wife/Child/Spouse etc. : NA.

(c) Physically handicapped child/ his education : NA.

(d) Loss due to natural calamity : NA.

(e) Widow/Widower/Spinster : NA.

(f) Construction of house/Property dispute/civil case/last leg posting. : NA.

2. Sector profile

(a) Total service : 7 months approx.

(b) No of years sensitive appointment held : NA.

(c) No of years Non-sensitive SDO (T) appointment held : NA.

(d) Due for promotion (Yes/No) : No.

(e) Present appointment (sensitive/ Non-Sensitive) : Non sensitive.

3. Sector profile

(a) No of tenure done in
 (i) Hard station (2 years tenure station) : NA.

 (ii) Soft station (3 Years tenure station) : Still serving at Shillong since Apptt.

4. No of Establishments being maintained by individual.

5. If Husband/Wife in Govt, No of years of separation.

6. Period of present appointment

: 07 Jan 2004, LDC.

Roushik Nayak
(Signature of the individual)

COUNTERSIGNED

S Bandyopadhyay
(S Bandyopadhyay)

Lt
SO III (Adm)
for Chief Engineer

Station : Shillong

Dated : 30 Jul 2004

ADDITIONAL INFORMATION

1 MES No, Name and Designation : 264781 Sh Koushik Nayak, LDC.

2 Particulars of Dependents

Name	Age	Relationship with the applicant
1 Paramananda Nayak	58	Father.

2 Suvra Nayak	50	Mother.
---------------	----	---------

3 Particulars of other close family members not dependent on the applicant.

Name	Age	Occupation	Relationship
1 Sudeshna Saha	31	House wife	Sister.

4 Station / formations served during last ten years with date :- NA.

Station : Shillong
Dated : 30 Jul 2004.

S Bandyopadhyay
(S Bandyopadhyay)
Lt
SO III (Adm)
for Chief Engineer

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Appx 'A' to E-in-C's Branch
letter No 79840/RPDS/EIC(I)
dated 08 Oct 96

I, MES/264781 Shri Koushik Nayak, LDC of HQ Chief Engineer, Shillong Zone is hereby declare that my posting is applied for in the same command and hence the question of other command does not arise

Station : Shillong

Dated : 30 Jul 2004

Koushik Nayak
(Signature of the applicant)

COUNTERSIGNED

S Bandyopadhyay
(S Bandyopadhyay)
Lt
SO III (Adm)
for Chief Engineer

Appx 'A'

CERTIFICATE

I, MES/264781 Shri Koushik Nayak, LDC of HQ Chief Engineer, Shillong Zone, agree that the seniority I the category held by me at the time of move to my new duty station will reckon from the day I report to my new duty station as contained in Raksha Mantralaya No 28(b)/67/D(Appts)dated 29 Jun 73 (reproduced in CRPO 73/73).

Station : Shillong

Dated : 30 Jul 2004

Koushik Nayak
(Signature of the applicant)

COUNTERSIGNED

S Bandyopadhyay
(S Bandyopadhyay)
Lt
SO III (Adm)
for Chief Engineer

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CERTIFICATE

I, MES/264781 Sh Koushik Nayak, LDC of HQ Chief Engineer Shillong Zone, willing to travel my own expense when transferred on compassionate grounds. I agree to abide by the existing rules governing, leave seniority and so on.

Koushik Nayak
(Signature of the indl)

CERTIFICATE BY THE OC UNIT

(a) Certified that the grounds on which Shri Koushik Nayak, LDC has applied for posting have been verified in consultation with the civil authorities and found to be correct.

OR

Certified that I am satisfied of the genuineness of the grounds on which Shri Koushik Nayak, LDC has applied for posting to the stations(s) of his choice.

(b) Certified that on receipt of the posting order and after ascertaining the availability of the vacancies from the receiving unit, Shri Koushik Nayak, LDC will be relieved within 7 days.

(c) Certified that Shri Koushik Nayak, LDC is held against the post sanctioned in the Estt sanction by the HQ CESZ

Station : Shillong
Dated : 30 Jul 2004.

S Bandyopadhyay
S Bandyopadhyay
Lt
SO III (Adm)
for Chief Engineer

2/4/00/2/64

- 47 -

TON

EIC(I) SECTION

54 13(A) 410

70604/ADM/

13 /EIC(I)

ANNEXURE-12

Dated : 15 Feb 2005

MEDICAL EXAMINATION OF SHRI KOU SHIK NAYAK : LDC

Xerox copy of Director of Health Services, Meghalaya, Shillong letter No HSM/NE/Gen1/05/04/1147 dated 08 Feb 05-regarding above subject is fwd herewith for your info and necessary action.

Enclos : (As above)

Shantadurga
S. Bhattacharjee
AAD (Adm)

~~E-7 Section~~

~~E-4 Section~~

Certified to be true copy


Advocate

170-48
OFFICE OF THE DIRECTOR OF HEALTH SERVICES, MEGHALAYA, SHILLONG.

NO. HSM/MB/Genl/05/04/1147.

Dt. Shillong the, 8/2/05

From:

The Director of Health Services (M.I.),
Meghalaya, Shillong.

To:

Shri S. Bhattacharjee
ADD (Adm)
HQ Chief Engineer, Shillong Zone,
Spread Eagle Falls, Shillong-793 011.

Sub:

Medical examination of Shri Kaushik Nayak.

Ref:

Your letter No. 70604/Adm/36/EHC (I) dt. 05.01.2005.

Sir,

I have the honour to request you to please direct Shri Kaushik Nayak, to appear before the State Standing Medical Board on 16.02.2005 at Shillong Civil Hospital at 10.30 A.M. and to bring with him all the connected papers relating to her treatment like Prescription, Test reports/X-Ray reports and Medical certificates, without which no medical examination will be conducted.

Yours faithfully,

61
Director of Health Services (M.I.),
Meghalaya, Shillong.

Memo No. HSM/MB/Genl/05/04/

Dt. Shillong the,

Copy for information and necessary action to :-

1. The Lt. Director of Health Services (SS) Civil Hospital, Shillong.
2. The State Leprosy Officer of this Directorate.
3. The District Medical & Health Officer, East Khasi Hills, Shillong.

Certified to be true copy

DK

Advocate

Director of Health Services (M.I.),
Meghalaya, Shillong.

MEDICAL BOARD REPORT

The State Standing Medical Board sat on 16.02.2005 at Civil Hospital Shillong. On examination Shri Kaushik Nayak is found that the Laboratory Test dt. 11.02.04 and the present one does not tally. The individual is not suffering from Gastric bleeding and Eosinophilia at present, Tropical Eosinophilia cannot develop within one month. Hence from the fin lab. findings he is not suffering from any disease at present and fit to continue service.


President,
State Standing Medical Board
Meghalaya, Shillong.


Member,
State Standing Medical Board
Meghalaya, Shillong


Member,
State Standing Medical Board
Meghalaya, Shillong

Certified to be true copy


Advocate

CONFIDENTIAL

ANNEXURE - 15

Mil Tele : 5006(Mil)

77102/C/1/12/E7B

Headquarters
Chief Engineer Shillong Zone
Spread Eagle Falls
Shillong - 793011

14 Mar 2005

MES-264781

Shri Kaushik Nayak, LDC
HQ Chief Engineer Shillong Zone
(Through E-4 Section)

SHOW CAUSE NOTICE

1. While serving as LDC in E-4 Section of this HQ, you had submitted an application dt 30 Jul 2004 alongwith medical certificate dt 10 Jul 2004 issued by Dr Basab Roy, Senior Medical & Health Officer, Distt Jail Shillong and Diagnostic Laboratory Naihati, 24 Pargana(WB) report dt 11 Feb 2004 requesting for posting on extreme compassionate grounds to Kolkata/nearby places mentioning that you are suffering from Tropical Eosinophilia with recurrent Gastro Intestinal Bleeding.
2. Based on a request by this HQ to Director of Health Service(MI) Shillong, you were medically examined by State Standing Medical Board on 16 Feb 2005 at Shillong Civil Hospital. As per medical board report, laboratory report dt 11 Feb 2004 submitted by you while applying for posting on medical ground and the tests conducted by the medical board does not tally. Medical Board has further stated that you are also not suffering from Gastric Bleeding and Eosinophilia.
3. Perusal of report of medical Board, laboratory report dt 11 Feb 2004 and the medical certificate dated 10 Jul 2004 reveals that these certificates/reports submitted by you while applying for posting, were false. This implies you have tried to get posting on the basis of false medical report and certificates.
4. In view of the above, you are hereby called upon to show cause within 10 days of receipt of this letter as to why disciplinary action against you should not be initiated for submitting false medical report and certificate.
5. Receipt of this letter will be acknowledged.

Certified to be true copy

Advocate

(B S Jamwal)
Lt Col
SO-1(Adm)
for Chief Engineer

CONFIDENTIAL

From: MES-264781
Sh Koushik Nayak
LDC
HQ CE Shillong Zone (E-4 Sec)
Shillong

ANNEXURE - 16

To: The Chief Engineer
Shillong Zone
SE Falls
Shillong - 793011

(Through proper channel)

SHOW CAUSE NOTICE

Respected Sir,

1. Ref your HQ letter No 77102/C/1/122/E7B dated 14 Mar 2005.
2. With reference to your letter above, I beg to explain the following facts for favour of your kind consideration and sympathetic orders please:-
 - (a) That Sir, I was enrolled in MES on 07 Jan 2004 and Joined at your HQ to put my services under your kind control after producing the relevant documents/particulars as required.
 - (b) Sir, as I belongs to Schedule Caste Community, born and brought up in a warm place of environment at West Bengal. Within one month of my joining duty, I fell sick with severe complications, which might have been caused due to severe cold (climatic condition of Shillong) on 06 Feb 2004. Immediately I rushed to nearby AMA for treatment. After preliminary observation, the AMA (Dr Basab Roy) advised me to go to Kolkata a warmer place nearer to my home station for further investigation / treatment. Therefore, I applied for leave on Medical ground supported by the certificate obtained from the AMA and accordingly proceeded on Extra Ordinary Leave wef 08 Feb 2004 to 26 Feb 2004. I rejoined duty on 27 Feb 2004 after obtaining necessary fitness certificate.
 - (c) Sir, being a low paid employee, I continued my services with entire satisfaction to my superiors without any adverse remarks with reference to my service even after joining on 27 Feb 2004, I had some health problem and accordingly took advice / medicine as prescribed by the AMA (Dr Basab Roy) (Prescription dated 25/03/04, 07/05/04 and 11/05/04 refers). Suddenly in the month of Jul 2004, I fell sick again with a symptom of previous nature even after taking medicine prescribed by my physician and thus I had to pay another visit to my AMA (Dr Basab Roy) for check up / treatment. But the AMA declared that I may not be cured in case I will not change the cold effective climate and check up improper diet. Being puzzled on account of my ill health, I depressed psychologically and mentally for my services and requested the AMA to issue me a certificate duly recommended his opinion so that I may approach my good office to help me by posting on compassionate ground to nearer my home station at Kolkata. Accordingly I applied for posting on compassionate grounds duly endorsed the Medical Certificate dated 10 Jul 2004 obtained from the AMA. Though I had poor knowledge of the rules / regulations on the subject matter being a newly recruited, I got a little hope to get my posting on compassionate ground which has got special weight rather than postings on Turn over / Tenure.
 - (d) Sir, I continued my services by taking proper care of my health under treatment / advice of the above named AMA and got improvement of my health condition day by day and I did not further approach or otherwise to the authority to materialize my posting as applied for even after a lapse of 5 - 6 months as because the requirement of compassionate ground posting defeated the purpose for which I applied for on account of my health condition improved and I am able to serve under your kind control sincerely without any drawbacks. Moreover, I proceeded on sanctioned leave on 09 Nov 2004 to 01 Dec 2004 and rejoined duty after availing the same in time.

Certified to be true copy

(e) Sir, your good office directed me to attend a Medical Board on 16 Feb 2005 conducted by the DHS (MI) Meghalaya, to ascertain whether I was suffering from Gastro intestinal bleeding and Tropical Eosinophilia based on doubt on my Medical certificate dated 11 Feb 2004 and 10 Jul 2004 endorsed alongwith my application for compassionated ground after a lapse of about seven months and accordingly I attend the same. Now I got satisfaction in mind on hearing of confirmation that at present I am not suffering from Gastro intestinal bleeding and Tropical Eosinophilia cannot develop within one month. Also it has been confirmed from Lab Report that I am not suffering from any disease at present and fit to continue services.

In view of my present health condition and confirmation given by the Medical Board, I feel that the necessity of getting posting on compassionate ground as applied for during Jul 2004 is not considered and may please be treated as cancelled as the same was not materialized when required for the purpose.

I never took medical leave after Jul 2004 which inforces that I am hale and hearty and recovered fully. Doctor has advised me to change the place based on my physical state and repeated sickness. I have applied for posting on compassionate ground of my poor health after obtaining advice from doctors only. Even during that period of Feb 2004 to July 2004, my collegous working in my section E4 knows that I was suffering and not keeping well. It is once again assures you sir that I was sick and submitted the genuine certificate. However now I have recovered and attending office regularly.

In view of what has been said above, your honour may kindly be justified that I have never been applied for compassionate posting duly endorsed any false Medical certificate in the month of July 2004 as on best of my knowledge and belief that the certificate issued by the AMA was based on my health condition at that time and was genuine. Sir, now I am satisfied in mind that the present state of my health is good and I assure you and thanks god that I should not face any detoriation of my health condition and liable to serve under your goodself to earn my bread and butter to survive and oblized.

Thanking you.

Yours faithfully

Koushik Nayak

(Koushik Nayak
LDC
MES - 264781)

Dated: 22 Mar 2005

CONFIDENTIAL

By Hand

Headquarters

Chief Engineer

Shillong Zone

Spread Eagle Falls

Shillong-793 011

Tele : Mil-5001(O), 5011 (R)
 Civ 0364 2537822 (O)
 0364 2535259 (R)

77102/C/1/ 127 /E7B

01 Jun 2005

MES/264781 Shri Koushik Nayak, LDC
 (E-4 Section)
 HQ CE Shillong Zone
 SE Falls, Shillong - 11

ORDER OF TERMINATION OF SERVICE

1. In pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I hereby give this order to MES-264781 Shri Koushik Nayak, LDC that his services shall stand terminated with effect from the date of expiry of a period of one month from today.
2. This communication may be acknowledged by MES/264781 Shri Koushik Nayak, LDC.

(RB Singh)
 Brig
 Chief Engineer

Copy to :-

HQ CE Eastern Command
 Fort William
 Kolkata - 21

for info please.

W. Chandram Kumar Das 1997 1 GELT

Certified to be true copy
 Advocate

Date of copy.	Date on delivery of the requisite stamp and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
15-6-08	15-6-08	16-6-08	16-6-08

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR AND TRIPURA)
SHILLONG BENCH
CIVIL APPELLATE SIDE

Appeal from W.P. (C)

No 184 (S) 2008

of 20

Civil Rule

M.E.S. 264781 Shri Kaushik Nayak

Appellant

Petitioner

Amriti q. Bania Versus Shri Kaushik Nayak

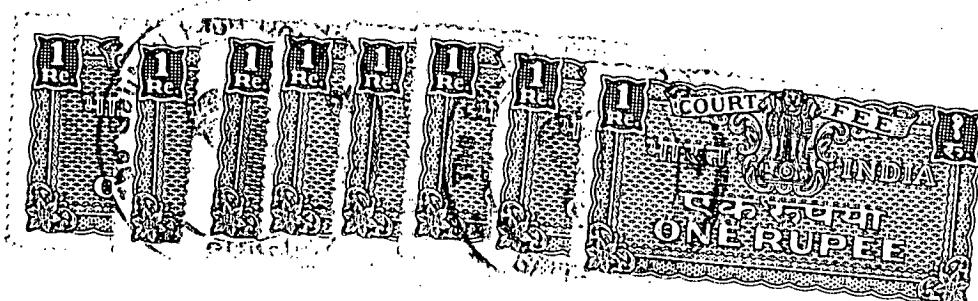
Respondent

Opposite-Party

Appellant Mr. S. K. Majumder
For Petitioner

Respondent Mr. P. Dey Addl. C. S.C.
For Opposite-Party

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4



Certified to be true copy

Advocate

MES/264781 Sri Koushik Nayak, LDC.

[E-4 Section]

HQ CE Shillong Zone.

SE Falls, Shillong-11.

Meghalaya.

-----Petitioner.

----Versus----

[1] The Union of India represented by
the Commissioner and Secretary
Defense, New Delhi.

[2] The HQ CE Eastern Command.

Fort William.

Kolkata -21.

[3] The Chief Engineer.

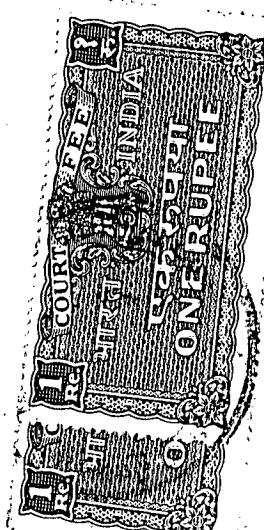
Shillong Zone.

Spread Eagle Falls.

Shillong-11.

[4] The SO I [Adm].

Chief Engineer, Shillong Zone.



FORMER OWNER OF AFFIDAVIT

Respondents

WPC No.184(SH)2005

BEFORE

THE HON'BLE MR JUSTICE BK SHARMA

15-06-2005

Heard Mr SU Mazumdar, learned counsel for the petitioner and also heard Mr P Dey, learned Addl. CGSC.

By means of this writ petition, the petitioner seeks to challenge the Annexure-16 order dated 04.06.2005 by which he has been intimated that as per proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, his service as LDC under the respondents would stand terminated with effect from the date of expiry of a period of one month from the date of issue of the order dated 04.06.2005.

There is no dispute that the petitioner is a civil employee which fact has been admitted by the learned counsel for the parties. If that be so, as per the provisions of the Administrative Tribunals Act, 1985 and the law laid down by the Apex Court in the case of L Chandrakumar vs. Union of India, reported in JT 1997 (3) SC 589, jurisdiction lies with Central Administrative Tribunals, Gauhati Bench, same being the court of first instance.

The learned counsel for the petitioner on being apprised of the above position, seeks to withdraw the writ petition with a liberty to approach the Central Administrative Tribunals, Gauhati Bench by filing appropriate application there.

The writ petition stands closed with a liberty to the petitioner to approach the Central Administrative Tribunals, Gauhati Bench as per the provisions of Administrative Tribunals Act, 1985.

The writ petition stands disposed of.

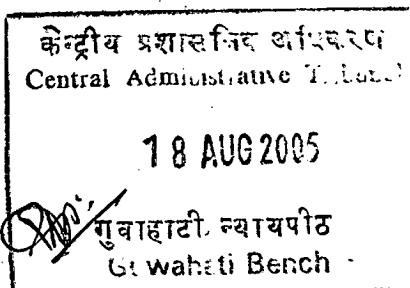
Certified

To be true Copy

Biju
Copy16/6/05
Av
M8th B. K. Sharma
JUDGE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI



IN THE MATTER OF :-

O.A. No 153 of 2005

Shri Koushik Nayak, Applicant

-Versus-

Union of India & Ors. Respondent

**WRITTEN STATEMENT FOR AND ON BEHALF OF
RESPONDENT NO. 1, 2, 3 & 4.**

**I, Lt Col. B. P. Singh, SO-I(Pers & Legal), office of the Chief
Engineer, Shillong Zone, Spread Eagle Falls, Shillong-11 do
hereby solemnly affirm and say as follows :-**

1. That I am the SO-I(Pers & Legal), officer of the Chief Engineer, Shillong Zone, Spread Eagle Falls, Shillong Zone and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statement may be deemed to have been denied. I am authorised to file the written statement on behalf of all the respondents.
2. That the respondents have offer no comments to the statements made in Paragraph 1 of the application.
3. That with regard to the statements made in paragraph 2 & 3 of the application, the respondents offer no comments. The issue be examined by the Hon'ble CAT.
4. That with regard to the statement made in paragraph 4.1 of the application, the respondents beg to state that we agree that the applicant is citizen of India and his constitutional rights are protected by the law.

69
67
18/8/05
Mr. Md. Ziaul Haq, M.A.B.Sc.IIT B
Addl. Central Govt. Standing Counsel
Guwahati Bench

5. That with regard to the statement made in paragraph 4.2 of the application, the respondents beg to state that the appointment letter was issued to the petitioner by the Chief Engineer Siliguri Zone vide their letter No 90006/DR/1511/EIC(I) dated 24th December 2003 (please refers Annexure -1 to petitioner's Original Application) on behalf of Headquarter Chief Engineer Eastern command to join duty at Headquarter Chief Engineer Shillong Zone on or before 14th January 2004. The applicant alongwith other documents produced medical fitness certificate dated 31st December 2003 duly signed by the medical officer of 24 Parganas (North) on 07th January 2004 as required vide para 2 (e) of appointment letter and accordingly applicant was allowed to join duty wef 07th January 2004. It is emphasized that the individual was appointed on purely temporary basis and is on probation for two years from the date of joining duty at Headquarters Chief Engineer Shillong Zone. In term of para 2(e) of appointment letter the individual is required to be medically fit for general as well as field service condition.

6. That with regard to the statements made in paragraph 4.3 of the application, the respondents beg to state that we do not entirely agree with the facts brought out to the notice of Hon'ble CAT by the petitioner.

Facts of the Case

7. The individual while joining duty was physically and medically fit as per the medical certificate produced by him at the time of joining duty (please refers Annexure 2 to petitioner's original application).

8. During initial period of his service at this Headquarter nothing adverse about his physical and medical condition was reported to administrative authority at this Headquarters except that he applied for short medical leave for apparently minor ailments.

9. However, within seven months of his appointment, the petitioner applied for posting to Kolkata on medical ground stating that he was suffering from Tropical Eosinpheilia with recurrent Gastro Intestinal bleeding since 02nd April 2004 and he was advised to shift to a warmer climate in plain area (para 4 & 5 of Annexure III of the petitioner's original application be perused). It may be noted by the Honorable CAT that the area of responsibility of Shillong Zone spread in all the seven states of North East and warmer climate exists in all other areas except Shillong. However, individual applied for posting to Kolkata region only which is close to his home station. To support his medical condition he produced following documents.

(a) Medical certificate/prescription of Dr P Chakraborty of Laitumukhrah Shillong dated 04th February 2004 which does not record the diagnosis but prescribed certain medicine. Hon'ble CAT is requested to note that this medical prescription dated 04th February 2004 has been hidden by the petitioner and doesn't find mention in his Original Application. A copy of Medical certificate of Dr P Chakraborty of Laitumukhrah Shillong dated 04th February 2004 is annexed hereto and made marked as **Exhibit R-1**.

(b) Medical certificate/prescription of Dr Goutam Nayak of 24 Parganas (North) Kolkata dated 09th February 2004 which also does not give diagnosis but prescribed certain medicine and test to be carried out. A copy of certificate/prescription of Dr Goutam Nayak of 24 Parganas (North) Kolkata dated 09th February 2004 is annexed hereto and made marked as **Exhibit R-II**.

(c) Test carried out by Diagnostic Laboratory, Naihati of 24 Parganas (North) Kolkata which indicate that his Eosinophils Counts were 10% and HB 9.8% (Please refer Annexure 5(B) & 5(C) of petitioner's application).

(d) Medical certificate from Dr Tapas Banerjee dated 13th February 2004 which also did not give the diagnosis but prescribed certain medicine. (Please refer Annexure 7 of the petitioner's application).

(e) A medical certificate from Dr. Basab Roy, AMA for Central Govt employees at Shillong dated 10th July 2004 (Please refer Annexure 10 of petitioner's application) who certified that the individual was under his treatment since 02nd April 2004 and was suffering from Tropical Eosinophilia with recurrent Gastro. Intestinal bleeding. The medical certificate further advised that he may be transferred to a warmer climate in plain area.

(f) The petitioner was under treatment of Dr Basab Roy since 02nd April 2004 and whereas he (Dr Basab Roy) issued number of prescriptions dated 07th May 2004, 11th May 2004, 25th May 2004 (Please refer Annexure 9A, 9B and 9 respectively of petitioner's application) but none of these prescriptions diagnosed the disease as mentioned in the certificate dated 10th July 2004 (please refer Annexure 10 of Petitioner's application) and as mentioned in the application of the petitioner for posting to Kolkata (Please refer Annexure III of petitioner's application).

10. The attention of Hon'ble CAT is drawn to the fact that Dr. Basab Roy had also issued a medical certificate dated 06th February 2004 which gives the diagnosis as "Anxiety Neurosis with acute Gastro" which is entirely different from "Tropical Eosinphelia with recurrent Gastro Intestinal bleeding". This also implies that the petitioner was under treatment of Dr. Basab Roy since 06th February 2004 and not from 04th April 2004 as certified. A copy of medical certificate dated 06th February 2004 of Dr. Basab Roy is annexed hereto and made marked as **Exhibit R-III**. Therefore, administrative authority after the analysis of above report concluded that

- (a) The individual is medically & physically not fit as per the condition laid down at para 2(e) of the appointment letter and therefore his service ought to be terminated.
- (b) Also the individual appears to have developed medical problem since February 2004, i.e. within one months from the date of joining duty. Such a disease like Anxiety Neurosis & Tropical Eosinphelia & Gastro Intestinal bleeding etc cannot develop in a short period of one months and therefore administrative authority concluded that he was already suffering from medical problem before joining duty and hence medical fitness certificate produced by him at the time of joining duty was false with may have been due to insufficient input to the doctor. This implies that the individual had falsified the documents at such an early stage of this service when he is still under probation. Therefore, the administrative authority found that the individual was not fit to be a Government employee and accordingly SHOW CAUSE notice was issued to the individual keeping in view the constitutional right of the individual to explain reason for falsification of documents and medical incompatibility to serve in a Government office and also to comply with law & procedure in force.
- (c) It is also to reiterate and bring to the notice of the Hon'ble CAT that Dr Basab Roy issued a certificated dated 10th July 2004 and certified that the individual was under his treatment since 02nd April 2004 and suffering from Tropical Eosinphelia with recurrent Gastro Intestinal bleeding whereas he had also issued a medical certificate on 06th February 2004 in which he mentioned that the individual was suffering from Anxiety Neurosis & Acute Gastritis and referred him for further treatment and evaluation at Kolkata which is contrary to diagnosis mentioned late in the certificate dated 10th July 2004. This also indicates false statement by Dr. Basab Roy. These contradictions indicate effort of the petitioner to falsify medical certificate in connivance with Dr Basab Roy to secure posting to his home station. i.e. Kolkata which is not desirable from a Central Government employee and petitioner exhibits in a manner unbecoming a government servant as per CCA (Conduct) Rules.

11. That with regard to the statements made in paragraph 4.4 of the application, the respondents beg to state that the individual was granted leave from 07th February (AN) to undergo treatment for the medical problem indicated by Dr. Basab Roy, i.e. Anxiety Neurosis with Acute Gastro. The individual returned from leave and joined duty on 27th February 2004 and produced a medical fitness certificate issued by Dr. PK Mazumdar, AMA for Central Government employees who is supposed to have treated him (petitioner) for Gastritis and not for Acute Neurosis. Therefore, the actual problem of the petitioner was Gastritis which most of the people of the country suffer and it is not a serious disease for seeking posting on medical ground. Moreover, when he joined the duty, he was medically & Physically fit as per medical certificate submitted by him. At this stage the notice of the Hon'ble CAT is drawn to the fact that the petitioner was sent on leave on 07th February 2004 for treatment for the diseases mentioned by Dr. Basab Roy (**Exhibit R-III**), the petitioner went to Dr. Goutam Nayak on 09th February 2004 at Kolkata (please refer Annexure 5 of petitioner's application) for weakness, fever & loss of appetite who prescribed certain medicine and test. The petitioner remained under treatment of Dr. Goutam Nayak till 17th February 2005 (please refer Annexure 5, 5E & 6 of petitioner's application) whereas at the time of joining the submitted fitness certificate from Dr. P. K. Mazumdar stating that petitioner was under his (Dr. P. K. Mazumdar) treatment from 08th February 2004 to 25th February 2004. This is an act of hiding facts & falsification of facts and attempt to falsely justify and secure leave and further support a case for posting. The petitioner is also trying to mislead the Hon'ble Court.

12. That with regard to the statements made in paragraph 4.5 of the application, the respondents beg to state that the individual got laboratory test done on 11th February 2004 at Diagnosis Laboratory based on recommendation of Dr. Goutam Nayak dated 09th April 2004 (please refer Annexure 5 of petitioner's application refers). But the individual did not go back to Dr. Goutam Nayak to get fitness certificate from him and the diagnosis based on these reports (please refer para 11 above). It is not clear whether he produced these reports to Dr. Basab Roy or not and it is pertinent to ask the petitioner as to why did he not take the similar certificate from Dr. Goutam Nayak who is also an AMA for ONGC (Which is also a public Sector Undertaking).

13. That with regard to the statements made in paragraph 4.6 of the application, the respondents beg to state that the individual states " He was verbally advised to attend good Neurologist by Dr. Goutam Nayak " which indicates that the individual is suffering from Neurological problem. The administrative authority is not aware of such a medical condition of the petitioner. However, if it is so, it is all the more reason that he is medically unfit to be a Government servant.

14. That with regard to the statement made in paragraph 4.7 of the application, the respondents beg to state that the individual mentions that he has consulted Dr. Tapari Banerjee for Neurological problem of which administration had no knowledge except that he had enclosed prescription of medicine given to him but the very fact the Doctor found him to be suffering from Neurological problem and advised him for CT Scan (brain), which the individual did not get done, indicated that the individual is medically and mentally not sound. This is in violation to condition of the service as stipulated at para 2(e) of the appointment letter and hence individual is not fit to continue in service.

15. That with regard to the statement made in paragraph 4.8 of the application, the respondents beg to state that the petitioner is wasting time of Hon'ble CAT by making unnecessary lengthy statement. Thus far, it is not clear whether the petitioner is suffering from Anxiety Neurosis & Acute Gastritis, only Gastritis, Neurological problem requiring CT Scan(Brain) or Tropical Eosinophilia with recurrent Gastro Intestinal bleeding. In case he is suffering from all these diseases as certified by various doctors, he cannot be cured in such short time and be medically fit and in case he is medically and physically fit then he was and is not suffering from above diseases and hence it is clearly indicates the petitioner's effort to falsify the facts & documents which is unbecoming of a government servant as per CCS(Conduct) Rules.

16. That with regard to the statement made in paragraphs 4.9 of the application, the respondents beg to state that agree that the petitioner was allowed to proceed on leave based on recommendation of doctor and was allowed to join duty after termination of leave based on fitness certificate produced by the petitioner from AMA. At this stage the administrative authority had no reason to reject his leave and the medical certificate produced by him as his intention was not suspected. it is only after having gone in detail that true character of the petitioner has come to light.

17. That with regard to the statement made in paragraphs 4.10 of the application, the respondents beg to state that the petitioner is conscious of the fact that he has to be physically & Medically fit to remain in service. It also indicates that he is physically not fit therefore he had to go to various doctors again and again. Corollary of this assessment is that his fitness certificate earlier produced by him was false.

18. That with regard to the statement made in paragraph 4.11 of the application, the respondents beg to state that the fact brought out by the petitioner is the circumstances under which he applied for posting. His application was recommended by SO III(Adm) and SO III (E/M) based on its face value. However, SO III (Adm) and SO III(E/M) are not the competent authority to recommend or grant posting. The analysis of the medical reports as brought out above specially at para 10 revealed that the petitioner was either medically unfit or was falsifying medical certificates in connivance with various doctors and therefore his application for posting was not recommended by the Chief Engineer who is competent authority. Notwithstanding the same, his application with recommendation of Chief Engineer was forwarded to Headquarter Eastern Command. To give die justice and protect the constitutional right of the individual, Headquarter Eastern command, who is the competent authority to issue his posting order also gave due consideration of his application and directed Headquarter Chief Engineer Shillong Zone to get the petitioner medically examined through a medical board is annexed hereto and made marked as **Exhibit R-IV**. The medical Board found him to be medically and physically fit and also opined that he was not suffering from any of the diseases and also opined that Tropical Eosinphilia with recurrent Gastro Intestinal bleeding cannot develop within one months (please refer Annexure 14 of Petitioner's application) which indeed re-inforces the assessment of the administrative authority as brought out in para 10 (b) above. This clearly indicates that petitioner, during all these days, was trying to make out a case for securing posting to Kolkata region which is close to his home town. At this stage the attention of Hon'ble CAT is brought to the fact that every individual cannot be given job at his home town, service condition demand that one should serve with integrity & honesty wherever he is posted and conduct in a manner becoming of Government official. Whereas in this case the petitioner tried to falsify medical certificates with connivance with various doctors mentioned above which indicates the character of the petitioner and UOI is of the opinion that such individual would be a parasite to the organization in particular and to society at large and therefore, such an individual has no right to continue in service if he cannot adhere to the laid down service condition and doesn't display a character which is becoming of a government official as laid down in CCS(Conduct) Rules.

19. That with regard to the statement made in paragraph 4.12 of the application, the respondents beg to state that individual is again trying to mislead the CAT and hiding his true character of being a manipulator since he did not succeed in securing his posting based on false documents and now when his service has been terminated after having assessed his character and

potential; he is trying to say that he has become fit by taking aurovedic medicine and diet control. If it was so he would have done diet control and aurovedic medicine right from the beginning. The petitioner has not produced any evidence to authenticate his claim of having taken aurovedic treatment. It is not clear to the administrative authority as to how diseases like Anxiety Neurosis & Acute Gastritis, Gastritis, Neurological problem or Tropical Eosinphilia with recurrent Gastro Intestinal bleeding etc vanish within a span of one year without going to the warmer climate in plain area as advised by doctors based on which petitioner had made out a case for posting. It is clearly indicates falsehood, manipulation and attempt to mislead the Hon'ble CAT.

20. That with regard to the statement made in paragraph 4.13 of the application, the respondent beg to state that it is a statement of fact. it has already been elaborated at para 18 above.

21. That with regard to the statement made in paragraph 4.14 of the application, the respondents beg to state that the petitioner is again trying to mislead the Hon'ble CAT. The individual was treated by Dr. Basab Roy for Anxiety Neurosis & Acute Gastro, was treated by Dr. Goutam Nayak for Gastritis, was treated by Dr. Tapa Banerjee for Neurological problems and advised for CT Scan(Brain) and later opined by Dr. Basab Roy that he was suffering from Tropical Eosinphilia with recurrent Gastro Intestinal bleeding. He was required to go to the medical board with all these documents and he has been found suffering from none of these diseases by a medical board. He was supposed to be suffering from above disease since February 2004 whereas the medical Board has opined that he could not have developed such problems in a short span of one month. The opinion of the medical board reinforces initial assessment of the administrative authority that petitioner was indulging in falsification of his medical condition by producing false medical certificates to secure posting close to his home station. The medical board opined that he is fit to continue in service is restricted to his medical and physical fitness. However, in the opinion of the administrative authority the petitioner is not fit to continue in service because of this unbecoming of a government official as per CCS(Conduct) Rules and tendency to falsify the documents and manipulate system for personal gain which indicates lack of integrity and good character.

22. That with regard to the statement made in paragraph 4.15 of the application, the respondents beg to state that the medical board has opined that he did not have any physical and medical problems in the past. The petitioner was served a SHOW CAUSE NOTICE to give him justice under the law and procedure in force. As the reply of the petitioner to the SHOW CAUSE NOTICE was not found satisfactory and convincing, his service has been terminated as per the rule & law in force.

23. That with regard to the statement made in paragraph 4.16 of the application, the respondents beg to state that the issues brought out by the petitioner in this para have already been deliberated. It is to reiterate that after having given due consideration to all the facts, as explained above, the petitioner has been terminated from service as he does not bear good character, good conduct and integrity for continuation in Government service. An individual while under probation can be terminated from service without assigning any reasons in terms of para 2(j) of the appointment letter and Rule 5 of CCS (Temporary Service) Rule. A copy of Rule 5 of CCS(Temporary Service) Rule is annexed hereto and made marked as **Exhibit R-V**. Therefore, termination of service of the petitioner is very much within the rule & law in force. At this stage the attention of Honourable CAT is brought to the fact that thirty-seven more officials were employed in this Zone alongwith the petitioner but similar action has not been taken with any of them nor was it to be taken against petitioner till the entire facts about the conduct, character & integrity of the petitioner came to the notice of administrative authority after he applied for posting to Kolkata on medical ground. A copy of nominal roll of thirty seven alongwith the name of petitioner is annexed hereto and made marked as **Exhibit R-VI**.

24. That with regard to the statement made in paragraph 5.1 of the application, the respondents beg to state that termination of service of the petitioner is as per the rule and condition of service as brought out earlier and it is not arbitrary, illegal, capricious and violation of any natural justice. Any and everybody cannot be appointed as the government service and if appointed, cannot be allowed to continue in service unless they abide by the service condition specified & follow the conduct rules and maintain the honesty, integrity and perform the duty as expected from them.

25. That with regard to the statement made in paragraph 5.2 of the application, the respondent beg to state that the termination of service of petitioner is legal which has been done after due consideration of all the facts mentioned above & as per the law in force.

26. That with regard to the statement made in paragraph 5.3 of the application, the respondent beg to state that no Departmental Inquiry is required to be conducted in the case of temporary employee under probation. Attention of the Hon'ble CAT is invited in para 2(f) of appointment letter and Rule 5 of CCS (Temporary Service) Rules (please refer Exhibit V).

27. That with regard to the statement made in paragraph 5.4 & 5.5 of the application, the respondents beg to state that there has been no discrimination with the petitioner. However, it is up to Hon'ble CAT to examine statement made by the petitioner.

28. That the respondents have offer no comments to the statements made in Paragraph 6 & 7 of the application.

29. That with regard to the statement made in paragraph 8 & 8.1 of the application, the respondents beg to state that Hon'ble CAT is requested to dismiss the case at the admission state itself because it has been proved beyond doubt (please refer para 18, 19 & 21) that the petitioner was medically & physically fit when he joined duty and was found medically & physically fit by a medical board later but during the intervening period he tried to falsify his medical condition through false medical certificates in connivance with various medical practitioners for selfish motive to secure posting near to his home town which is unbecoming of a government official as per CCS(Conduct) Rules. Moreover, the individual being a temporary employee under probation, termination is as per the service condition and rule laid down for the same and therefore, the petitioner does not deserve any relief nor dies this issue require intervention of CAT/Court being purely and administration matter. It has already been brought to the notice of the CAT that many temporary employees were recruited and are serving in this Headquarter as well as within the jurisdiction of this Headquarter, but similar action has not been taken against them as nothing adverse against them has come to the notice of administrative authority, whereas manipulative characteristic, lack of integrity, absence of good character & good conduct and lack of devotion to duty to serve wherever posted have come out clearly in the case of petitioner.

30. That with regard to the statement made in paragraph 8.2 & 8.3 of the application, the respondents beg to state that cost of the case is not payable by UOI. It is the petitioner who is responsible for his present state of affairs and it is he who has dragged the UOI to the CAT.

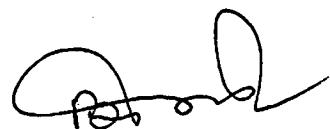
31. That with regard to the statement made in paragraph 9 of the application, the respondents beg to state that As prayed to the Hon'ble CAT at para 29 above, the application of the petitioner be dismissed at the admission stage itself as the action has been taken as per prevailing rule and law of the land and no injustice has done to the petitioner. in fact injustice will be done to UOI and the people of the country if such as employee is allowed to continue in government service.

32. That the respondents have offer no comments to the statements made in Paragraph 9.1 & 10 of the application.

VERIFICATION

I, Lt Col. B. P. Singh, SOI(Pers & Legal), S/O Shri Kedar Nath Singh office of HQs Chief Engineer, Shillong Zone, S.E. Falls, Shillong-11 being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs of the application are true to my knowledge and belief, those made in paragraphs 1 to 32 being matter of record are true to my information submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 04th day of August 2005.



DEPONENT

Dr. P. Chakraborty

M.B.B.S.

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Chamber

THE MEDICINER

Laitumkhrah,

Shillong-793003

① 2221143 (Chamber)

2224416 (Resi)

Mr. Kanshik Nayak

Pulse - 72/min

B.P - 110/74 mm

P.U. 9145
CHITTA NADA

(1) Diurnal B.G.L. Suspension - 11/21

Take 2+ capsules morning daily
15 minutes before meals(2) Enzavox forte tab - 20
Take one tablet morning daily
after meals(3) Adem 500 tab / Tempal
500 tab (6)
Take 1/2 to one tablet morning
meals only
P. Chakraborty
4/12/04

Dr. Soutam Nayak

M.B.B.S., A.F.I.C.A., F.R.B.T.M.B.H.

Ex-House P. S. Rajan Calcutta National

Medical Coll. & Chittaranjan Hospital.

(Authorised Medical Officer Oil and
Natural Gas Commission.)

(4)-25

Residence : No. 5

55, S. B. Road

P.O. : Ichapur-Nawabganj

24 Parganas (North)

Visiting Hrs. : Mor. 8 A.M. to 8-30 A.M.

Eve. 8 P.M. to 8 P.M.

Sunday 8-30 A.M. to 12 (Noon)

Phone : 2582-3718

TUESDAY EVENING CLOSED

Date ... 2-2-04

Hr. ...
Worms. For. Kausik Nayak

Fever

↓ Appetite

T/E

9.76/min

B.P. 130/80

mm.

Abs.

Blood

TG, D.G, E.S.R.

Hb% & M.P.

Blood

Serum bilirubin

Urine for R/E

(Rich pink &

purple)

1 test for O.P.C.

(1) → 1) Tab. Lazatin - 50 mg - (5)

Before lunches 1 tab daily x 5 days.

(2) → 2) Tab. Nenpr - 20 ..

→ 1 tab daily before
breakfast x 10 days.

(3) → 3) Tab. Calpol - 500 mg (4)

→ 1 tab every other
interval 5.0.5

ff

9-2-04

TO ATTEND HOSPITAL IN EMERGENCY



45

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DIAGNOSTIC LABORATORY
2 NO. JANMOHAMMAD GHAT ROAD, NAIHATI, 24 PARGANAS (N)
[Behind Naihati Municipality]

ANNEXURE - 9
Phone : 581-1330

Date 10/02/04.

REPORT ON THE EXAMINATION OF URINE

Name Koushik Nayak, 27 Yrs.

Referred by Dr. G. Nayak, FICA.

Physical Examination

Quantity 10 ml. Sediment (+)
Appearance Pale Yellow. Specific Gravity Q. I.

Chemical Examination

Reaction Acid. Bile Salts n i 1
Protein n i 1 Bile Pigments n i 1
Sugar n i 1 Ketone Bodies n i 1

Microscopic Examination

Pus cells Occasionally. CRYSTALS: n i 1
R. B. C. n i 1 Calcium Oxalate n i 1
Epithelial Cells Occasionally. Triple Phosphate n i 1
Amorphous Phosphates n i 1

CASTS:
Hyaline n i 1
Granular n i 1
R. B. C. Cast n i 1
W. B. C. Cast n i 1

Urlic Acid n i 1
Spermatozoa n i 1
Micro Organism n i 1
Other Findings n i 1

Remarks:

Pathologist

110 MEDICAL OFFICER

AMERICAN AIRLINES
Reqd. No. 8398 (AMC)

Exhibit H

20 4148644 (M01)
2224541 (Clinic)

6 | 2 | 84
Sr. Medical & Health Officer
District Jail
Shillong.

1 - 21 -

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ANNEXURE

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APPENDIX - 'A'

MEDICAL CERTIFICATE UNDER ART 49 CSR

I hereby certify that I have examined Shri Koushik Noyak a candidate for DC(TY) in MES employment in the MILITARY ENGINEER SERVICES and cannot discover that he has any disease (communicable or otherwise) constitutional weakness or bodily infirmity except W1. I do not consider this is a disqualification for employment in the MILITARY ENGINEER SERVICES. Shri Koushik Noyak's age according to his own statement is 27 years and by appearance about 27 years.

Koushik Noyak

SIGNATURE OF THE INDIVIDUAL
MEDICALLY EXAMINED (TO THE
SIGNED IN THE PRESENCE OF
MEDICAL OFFICER.

Dr. B. H. Rao S. D. Hospital
SIGNATURE & DESIGNATION OF
THE MEDICAL OFFICER

Dr. B. H. Rao S. D. Hospital
SIGNATURE & DESIGNATION OF
THE MEDICAL OFFICER

7 OCT 2004

(35) 80
Exhibit - IV

TO BE PUT UP TO CE FOR PERUSAL

Tele 2529

Chief Engineer
HQ Eastern Command
Fort William
Kolkata-21

131322/02/7DI 36

/Engrs/E1C(1)

28 Sep 2004

CE Shillong Zone
Spread Eagle Falls
Shillong-793011

POSTING/TRANSFER OF MES-264781 SHRI KAUSHIK NAYAK, LDC
ON MEDICAL GROUNDS TO ANY OFFICE AT KOLKATA

1. Ref your letter No 70304/Adm/30/E1C(1) dt 06 Sep 2004.
2. In this connection it is intimated that please initiate action as per provisions contained in para 5 of CCS Rules after confirming unsuitability of MES-264781 Shri Kaushik Nayak, LDC through civil medical board for termination of service.

(SK Kar)
Lt Col
SO II (Pers)
For Chief Engineer

BR	30
FR	36, 39, 40

CHAPTER 17

1 CENTRAL CIVIL SERVICES
(TEMPORARY SERVICE) RULES

1. Short title, commencement and application

(1) These rules may be called the Central Civil Services (Temporary Service) Rules, 1965.

(2) They shall come into force with effect from 1st May, 1965.

(3) Subject to the provisions of sub-rule (4), these rules shall apply to all persons—

(i) who hold a civil post including all civilians paid from the Defence Services Estimates under the Government of India and who are under the rule-making control of the President, but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government;

(ii) who are employed temporarily in work-charged establishments and who have opted for pensionary benefits.

(4) Nothing in these rules shall apply to—

- (a) Railway servants;
- (b) Government servants not in whole-time employment;
- (c) Government servants engaged on contract;
- (d) Government servants paid out of contingencies;
- (e) persons employed in extra-temporary establishments or in work-charged establishments [other than the persons employed temporarily and who have opted for pensionary benefits];
- (f) non-departmental telegraphists and telegraphmen employed in the Posts and Telegraphs Department; and
- (g) such other categories of employees as may be specified by the Central Government by notification published in the Official Gazette.

1. Published *vide* G.I., M.H.A., Notification No. 59/8/63-Ests. (A), dated the 1st May, 1965.

2. Definitions

In these rules, unless the context otherwise requires—

(a) “*appointing authority*” means, in relation to a specified post, the authority declared as such under the Central Civil Services (Classification, Control and Appeal) Rules, 1965;

(b) [Deleted]

(c) [Deleted]

(d) “*temporary service*” means the service of a temporary Government servant in a temporary post or officiating service in a permanent post, under the Government of India; and

(e) “*defence services*” means services under the Government of India in the Ministry of Defence and in the Defence Accounts Departments under the control of the Ministry of Finance (Department of Expenditure) (Defence Division) paid out of the Defence Services Estimates and not permanently subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957).

13. [Deleted]

14. [Deleted]

5. Termination of Temporary Service

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay *plus* allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month.

NOTE.— The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under Clause (a):—

1. Deleted *vide* G.I., Dept. of Per. & Trg., Notification No. 12011/3/88-Ests. (C), dated the 22nd February, 1989, published as G.S.R. No. 145 in the Gazette of India, dated the 11th March, 1989 and takes effect from that date.

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The notice shall be delivered or transmitted to the Government servant in person;

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post acknowledgement due at the address of the Government servant available with the appointing authority;

(iii) If the notice sent by registered post is returned unserved, it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

(2) (a) Where a notice is given by the appointing authority terminating services of a temporary Government servant, or where the service of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay *plus* allowance, the Central Government or any other authority specified by the Central Government in this behalf or a Head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, re-open the case, and after making such enquiry as it deems fit,—

(i) confirm the action taken by the appointing authority;

(ii) withdraw the notice;

(iii) reinstate the Government servant in service; or

(iv) make such other order in the case as it may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months—

(i) from the date of notice, in a case where notice is given;

(ii) from the date of termination of service, in a case where no notice is given.

(b) Where a Government servant is reinstated in service under sub-rule (2), the order of reinstatement shall specify—

(i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

GOVERNMENT OF INDIA'S DECISIONS

(1) Distinction between a simple letter of resignation and notice under Rule 5.— When a temporary Government servant submits a letter of

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distinction should be drawn between a letter of resignation purporting to be a notice of termination of service and one which is not. A notice of termination of service given by a temporary Government servant under Rule 5 (1) of the CCS (TS) Rules, 1965, is something different from a mere letter of resignation submitted by him without any reference, direct or indirect to the said rule. While the former is an exercise of the right conferred by statutory rules enabling a temporary Government servant to cease performance of his duties automatically on the expiry of the prescribed period of notice, the latter requires acceptance by the competent authority in order to become effective. Therefore, if a temporary Government servant submits a letter of resignation in which he does not refer to Rule 5 (1) of these rules or does not even say that it be treated as a notice of termination of service, the provisions of Rule 5 (1) *ibid* will not be attracted. In such a case, he can relinquish his post only when the resignation is accepted and he is relieved of his duties. It will, therefore, be possible in such circumstances to retain the temporary officer even beyond one month if it takes time to make alternative arrangements. This will not be repugnant to the provisions of these rules in any way because when a temporary Government servant submits a letter of resignation without invoking the provisions of the said rules, they will not come into the picture, notwithstanding the fact that, being a temporary Government servant, he is governed by these rules.

[G.I., M.H.A., O.M. No. 4/1/65-Estt. (C), dated the 25th May, 1966.]

(2) Standard pro formas for termination of service under Rule 5.— Standard pro formas prescribed to be used for termination of service of temporary Government servants under Rule 5 of the CCS (TS) Rules, 1965, are given below. Forms I and II are meant for use in cases where the Appointing Authority is other than the President of India. Forms III and IV are to be used in cases where the Appointing Authority is the President of India. Forms V and VI are to be used by the President of India or the Appointing Authority for termination of service during the currency of the notice of termination of services already served on the Government servant.

Form I

Notice of termination of service issued under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965.

In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, (name and designation) hereby give notice to Shri/Smt./Kumari that his/her services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on, or, as the case may be, tendered to him/her.

Station:

Date:

Signature of the Appointing Authority

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(x) dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided that, in every case in which ² [the charge of possession of assets disproportionate to known sources of income or the charge of acceptance] from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in Clause (viii) or Clause (xi) shall be imposed:

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

EXPLANATION.—The following shall not amount to a penalty within the meaning of this rule, namely:—

- (i) withholding of increment of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the Service to which he belongs or post which he holds or the terms of his appointment;
- (ii) stoppage of a Government servant at the Efficiency Bar in the time-scale of pay on the ground of his unfitness to cross the Bar;
- (iii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;
- (iv) reversion of a Government servant officiating in a higher Service, grade or post to a lower Service, grade or post, on the ground that he is considered to be unsuitable for such higher Service, grade or post or on any administrative ground unconnected with his conduct;
- (v) reversion of a Government servant appointed on probation to any other Service, grade or post, to his permanent Service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;
- (vi) replacement of the Services of a Government servant, whose Services had been borrowed from a State Government or any authority under the control of a State Government, at the disposal of the State Government or the authority from which the Services of such Government servant had been borrowed;
- (vii) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

1. Inserted by G.I., Dept. of Per. & Trg., Notification No. 11012/11/86-Ests. (A), dated the 10th June, 1987, published in Gazette of India, as S.O. No. 1591, dated the 27th June, 1987.

(viii) termination of the services—

- (a) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation, or
- (b) of a temporary Government servant in accordance with the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, or
- (c) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.

GOVERNMENT OF INDIA'S INSTRUCTIONS

(1) **Departmental action in respect of misconduct committed in earlier employment.**—It is clarified that the provision of Rule 11 of the CCS (CCA) Rules, 1965, which envisages the imposition of penalties on Government servant for 'good and sufficient reason' is adequate authority for taking action against a Government servant in respect of misconduct committed before his employment if the misconduct committed before his employment was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. When such action is taken, the charge should specifically state that the misconduct alleged is such that, it renders him unfit and unsuitable for continuance in service.

[G.I., M.H.A., O.M. No. 39/1/67-Ests. (A), dated the 21st February, 1967.]

[See also Instruction (2) below Rule 3.]

(2) **Action against employees who are later found ineligible/unqualified for their initial recruitment.**—In GII (1) above, it was clarified that departmental action can be taken against Government servant in respect of misconduct committed before his employment. In M.H.A., O.M. No. 5/1/63-Estt. (D), dated 30-4-1965, Ministries/Departments were also requested to make use of the provision of 'WARNING' inserted in the Attestation Form for taking action against Government servant furnishing false information at the time of appointment.

2. A question has now arisen as to whether a Government servant can be discharged from service where it is discovered later that the Government servant was not qualified or eligible for his initial recruitment in service. The Supreme Court in its judgment in the *District Collector, Vizianagaram v. M. Tripura Sundari Devi* [1990 (4) SLR 237] went into this issue and observed as under—

"It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the Appointing Authority and the appointee concerned. The aggrieved are all those who had similar or better qualifications than the appointee or appointees, but who had not applied for the post because they did not

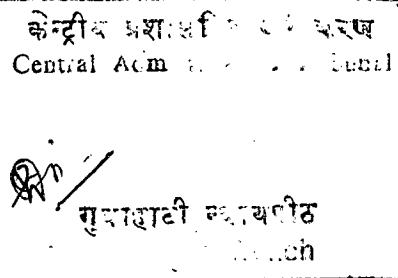
21
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Exhibit - VI

NOMINAL ROLL OF OFFICIAL WHO WERE EMPLOYED IN THIS OFFICE
ALONGWITH THE PETITIONER

<u>Ser No</u>	<u>Name</u>	<u>Designation</u>	<u>Unit</u>
01.	Shri Debajyoti Barman	JE(Civ)	AGE(I) Rangiya
02.	Shri Uma Shankar Goala	JE(Civ)	GE Dinjan
03.	Miss Iamonlang War	JE(Civ)	Zonal Lab Shillong
04.	Shri Swarup Kumar Deb	JE(Civ)	GE Jorhat
05.	Shri Nazamuding	JE(Civ)	GE 872 EWS
06.	Shri Badri Nath Gupta	JE(Civ)	GE(I)(P) Telaimura
07.	Shri Biswajit Das	JE(Civ)	GE Jorhat
08.	Shri Tapan Kumar Saloi	JE(Civ)	GE Narangi
09.	Miss Julie Chhetal	JE(Civ)	GE 869 EWS
10.	Shri Dipak Basunatri	JE(Civ)	GE Guwahati
11.	Shri Bhaskar Haldar,	JE (QS & C) HQ CESZ	
12.	Shri Swarup Naskar	-do-	HQ CESZ
13.	Shri Biswajeet Dey	JE(E / M)	CWE Tezpur
14.	Shri Arun Paul	JE(E / M)	GE Tezpur
15.	Shri Munna Das	JE(E / M)	GE 586 EP
16.	Shri Abhihit Dutta	Steno GDe-II	GE Shillong
17.	Shri Rajsekhar Patnaik	LDC	GE(I)(P) Telaimura
18.	Shri Dibyundu Kundu	LDC	-do-
19.	Shri Surjit Kumar	LDC	CWE Dinjan

<u>Ser No</u>	<u>Name</u>	<u>Designation</u>	<u>Unit</u>
20.	Shri Anurag Sharma	LDC	GE Jorhat
21.	Shri Vivek Nanda	LDC	HQ 137 WE
22.	Shri Pankaj Saikia	LDC	CWE Tezpur
23.	Shri Alescander Lepcha	LDC	CWE Tezpur
24.	Shri Subhash Narayan Sharma	LDC	GE Umroi
25.	Shri Leonard A Jyrwa	LDC	CWE Shillong
26.	Shri Narendra Kumar	LDC	GE 869 EWS
27.	Shri Dhananjoy Kumar	LDC	GE 872 EWS
28.	Shri Ramesh Kumar	LDC	GE 586 EP
29.	Shri Naresh Kumar Gupta	LDC	CESZ
30.	Shri Pravin Kumar	LDC	GE 872 EWS
31.	Shri Kaushik Nayak	LDC	CESZ
32.	Shri Biplab karjee	LDC	CESZ
33.	Shri Shailendra Kumar	LDC	AGE(I) Lekhapani
34.	Shri Mukesh Kumar	LDC	CWE Dinjan
35.	Shri Bijoy Krishna Nandi	LDC	CWE Shillong
36.	Shri M Kanagaraj	LDC	GE 859 EWS
37.	Shri Pallav Das	LDC	CESZ
38.	Shri Sashi Kumar Sharma	LDC	CWE Dinjan.



filed by the applicant
through: S. Nath.
Advocate.
07.03.06.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of

O.A No. 153/2005

Shri Kaushik Nayak.

-Vs-

Union of India & Ors.

-And-

In the matter of

Rejoinder submitted by the applicant in
reply to the written statement filed by
the respondents.

The applicant above named most respectfully begs to state as under:-

1. That with regard to the statements made in paragraph 5, 6 and 7 of the written statement, the applicant begs to state that at the time of joining his service initially on 07.01.2004, he was examined by a competent medical officer who found the applicant medically fit and accordingly issued fitness certificate dated 31.12.2003 (Annexure-2 to the O.A), which the applicant produced at the time of joining. Subsequently, in February 2004 itself the applicant developed some health problems for which he had to proceed on leave on medical ground as stated in para 4.3 of the O. A and that too as per the medical certificate dated 06.02.2004 (Annexure-3 of the

O.A) issued by a competent government Doctor, which was accepted by the respondents.

2. That with regard to the statements made in Para 8 and 9 of the written statement, the applicant begs to state that the applicant reported about his ailments as detected by the Doctor, in February 2004 itself and proceeded on medical leave which was known to the administrative authority while granting leave of the applicant.

The prescription-dated 04.02.2004 of Dr. D.P. Chakraborty, as referred to by the respondents, relates to some minor ailments of the applicant which was casual only and the said treatment was followed only for a couple of days. As such it has not been mentioned in the O.A since it is not that important one to be mentioned and there is no question of hiding the same as stated by the respondents, more so when it does not alter the merit and character of the case in any way.

Regarding other prescriptions referred to by the respondents in para 9 of the written statement, the applicant begs to state that due to his constant sufferings, he was running from one doctor to another with the hope of immediate relief only and the doctors after examining the complaints of the applicant prescribed medicines etc. on the basis of their own diagnosis. It is relevant to mention here that all those doctors are competent enough in their profession and having their own reputations. As such non-mentioning of the diagnosis in the prescription/certificate by the doctor and omission or commission thereto, if any, made by the doctors are not attributable to the applicant.

3. That the applicant categorically denies the statements made in para 10 and 13 of the written statement and begs to state that the medical certificates of Dr. Basab Roy as referred to by the respondents relate to different types of ailments suffered by the applicant on different occasions diagnosed by the Doctor and those cannot be same. Further, it is known to the respondents that the applicant had his ailments from February'2004 itself with

different types of complaints and accordingly the treatments were obtained and hence it cannot be a case that all prescriptions have to reflect the same disease and to be identical as referred to by the respondents. The Doctor in each case mentioned about that disease only which he could diagnose at that relevant time. As such the conclusion of the administrative authority as mentioned in para 10 of the written statement are not only erroneous but also unfounded and based on their imaginary inferences only.

It is relevant to mention here that the applicant joined under the respondents only after he was thoroughly examined by a competent registered doctor who found him fit and accordingly issued fitness certificate. As such the contention of the respondents that the applicant was physically not fit as per the condition laid down at para 2 (e) of the appointment letter and that a disease like anxiety neurosis and tropical Eosinophilia and Gastro intestinal bleeding cannot develop in a short period of one month and that he had been suffering from Neurological problem etc; is merely a textual conclusion as against facts in the instant case and it is only a matter of debate in medical jurisprudence. As such a difference in medical opinion in the instant case cannot form a conclusive opinion leading to termination of the applicant nor such difference can be attributable to the applicant by any stretch of imagination whatsoever.

Further, Dr. Basab Roy being a competent Govt. Doctor does not have any reason to connive with the applicant as alleged by the respondents, more so when the applicant is completely new and unknown at Shillong. As such the conclusion of the respondents that the medical certificates issued by Dr. Basab Roy are false and that the applicant falsified the medical certificate in connivance with Dr. Basab Roy is malafide, ill-conceived, and mere fits of their own imaginations only. Thus the respondents being led by erroneous, unfair and unfounded conclusions, terminated the services of the applicant making a mention of

CCA (Conduct) Rules and that too without holding any inquiry or initiating any disciplinary proceeding which is mandatory under the provisions of CCS (CCA) Rules.

4. That the applicant categorically denies the statements made in para 11 and 12 of the written statements and begs to submit that during his leave period from 07.02.2004, the applicant underwent treatment from both Dr. Gautam Nayak and Dr. P.K. Mazumdar for different ailments simultaneously and as such he took his fitness certificate from only one of them i.e. Dr. P.K. Mazumdar only which he submitted at the time of joining duties after leave since such certificates from both of them would be superfluous. As such there was no question of any falsifying on the part of the applicant as stated by the respondents.
5. That with regard to the statements made in Para 14 and 15 of the written statements, the applicant only begs to submit that the contention of the respondents that the applicant is medically and mentally not sound and that in case of all such diseases he cannot be cured in such short time etc; has not been mentioned anywhere either by Dr. Tapan Banarjee or by any doctor as stated by the respondents but it is the diagnosis and conclusion by the respondents themselves only.
6. That in reply to the statements made in para 16 and 17 of the written statements, the applicant begs to state that it appears from their statement only because the applicant prayed for his transfer to Kolkata, the respondents suspected the genuineness of his ailments and their mere suspension, they have concluded that the medical certificates given by all the doctors are false, a corollary of which is that, had there been no application for transfer, the respondents would have accepted everything to be genuine, which clearly reflects their mindset and attitude and speaks about the fairness of their subsequent actions.

7. That with regard to the statements made in para 18, 19 and 20 of the written statements, the applicant begs to reiterate that whatsoever diseases of the applicant were diagnosed and whatever medicines were prescribed were all done by the qualified and competent doctors only and the applicant had no other option but to adhere to their advices. Any error in diagnosis or treatment, if at all, are not attributable to the applicant and as such his services are not liable to be terminated. The medical board's conclusion as stated by the respondents was based on its findings at a stage when the applicant already recovered to a great extent from his ailments and as such the contention of the respondents that the all other doctors made false statements, are without any jurisdiction and as such not sustainable in the eye of law. The respondents exhibited their malice and ill-motive since they linked up the question of transfer of the applicant with the genuineness of his illness and viewed the entire thing from that angle only and with a unfounded suspicion.

Further, regarding Ayurvedic treatment resorted to by the applicant and his subsequent care thereof, the applicant did not have any reason to provide any evidence as stated by the respondents since he got relief in terms of his ailments and did not press further for his transfer. As such there is no question of misleading the Hon'ble CAT and it is also beyond the scope of the applicant to explain the efficacy of Ayurvedic treatments to the respondents as questioned by them so as to dispel their suspicion thereto.

8. That the applicant categorically denies the statements made in para 21, 22, 23, 24, 25, 26 and 27 of the written statements and further begs to submit that all the doctors who attended the applicant had based on their own diagnosis and accordingly provided treatment to the applicant from time to time ad subsequently when they found him cured, they gave him the fitness certificate. The medical board examined the applicant at a stage when the applicant was almost cure and as such they found him fit. As

such the applicant had no other option but to abide by the diagnosis and prescription of the attending doctors and if there is anything wrong in the diagnosis and prescription of the doctors, the same cannot be attributed to the applicant. But unfortunately, the administrative authority going beyond the findings of the attending doctors, formed an opinion at their own in an arbitrary manner and concluded that all those doctors gave false statements, without having any competence or jurisdiction on the matter. Further, acting on their arbitrary and illegal conclusion, the respondents have unilaterally held the applicant guilty of misconduct on the ground of alleged false reports of the doctors and terminated the service of the applicant, simply relying on a belated misleading findings of the medical board, surprisingly, the respondents while terminating the services of the applicant, took resort to the provisions of CCS (conduct) rules but did not follow the procedure laid down in the CCS (conduct) rules or the procedures established by law.

The termination of service of the applicant in a major penalty as defined under Rule 11 of the CCS (CCA) Rules and it is evident from the written statement of the respondents that applicant's service has been terminated on the ground of alleged misconduct. It is also a fact that the applicant was serving in a regular and permanent post, although he was a probationer at the relevant time and as such he is governed by the Central Civil Services Classification, Control and Appeal) Rules, 1965. Rule 14 of the said CCS (CCA) Rules, 1965 provides interalia as follows; -

"Rule 14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specifies in causes (V) to (IX) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act."

From the above quoted rule, it is clearly evident that holding of inquiry is mandatory for imposing a major penalty, but in the instant case, the applicant was terminated without holding an inquiry as provided under rules which is arbitrary, illegal and malafide.

The principles of natural justice also demand that no person should be condemned unheard. In the instant case, the applicant has been terminated without any opportunity of being heard, since no inquiry was held.

Further, though the reason of termination of the applicant has not been mentioned in the letter of termination, yet it is clearly evident from the written statements of the respondents that the said termination is on the ground of alleged misconduct. As such it is not a termination simpliciter but it is punitive and stigmatistic in nature and that too without the alleged misconduct being proved by any inquiry as per rules.

In Dipti Prakash Banarjee -Vs- Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and ors, the Hon'ble Supreme Court has held that even in case of probationer, termination order is bad if it contains stigma but no regular enquiry has been conducted. As such the law is settled and without the applicant although a probationer, cannot be terminated without holding an enquiry as per rules. It is also against the provision of Article- 311 of the Constitution of India.

The respondents therefore acted malafide and terminated to services of the applicant on the ground of alleged misconduct which amounts to a termination with stigma, without following any of the provisions of service jurisprudence. The respondents while acting as such not only violated the provisions of Rule 14 and 15 of the CCS (CCA) Rule, 1965, but their action is opposed to the principles of natural justice and the settled position of law and the provisions of Article 311 of the Constitution of India. As such their action is arbitrary, malafide, unfair, illegal and it is

a fit case for the Hon'ble Tribunal to be pleased to lift the veil and grant the prayers of the applicant herein.

9. That the applicant categorically denies the statements made in para 29, 30 and 31 of the written statements and begs to submit that the contentions of the respondents are totally wrong since those are based on their administrative opinion only, superseding the expert findings of all the attending doctors, which lacks their competence and jurisdiction, for the reasons stated in the preceding paras hereinabove. The respondents relying solely on their administrative fitness, superseded the findings of the medical experts and even went to the extent concluding that all the doctors played false and attributed the same to the applicant holding it to be a misconduct on the part of the applicant and consequently terminating the services of the applicant arbitrarily. Further, the case of other temporary employees as mentioned by the respondents in para 29 of the written statements is not relevant here since it is not the issue involved in the instant case. As such the actions of the respondents in terminating the services of the applicant on the alleged ground of manipulative characteristics, lack of integrity, absence of good character and good conduct and lack of devotion to duty etc. are arbitrary, unfair, capricious, illegal and opposed to the procedures established by law. As such this application deserves to be allowed with cost.

Under the facts and circumstances stated above, this application deserves to be allowed with costs and this application is made bonafide for the cause of justice.

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VERIFICATION

I, Shri Kausik Nayak, S/o Sri Paramananda Nayak, 99 S.B. Road, Post office- Ichapur Nawab Ganj, Dist-24 Paragana (N), 743144, working as Lower Division Clerk in the Office of the HQ, CE Shillong Zone, SE Falls Shillong Zone, Meghalaya do hereby verify that the statements made in Paragraph 1 to 9 are true to my knowledge and my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 6th day of March 2006.

Koushik Nayak