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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (JUDL.)

10.6.2015
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CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH:

ORDERSHEET

1. Original Application No: 30 / 2009

2. Miscellaneous Petition No

3. Contempt Petition No

4. Review Application No

Applicant(s) Anjan Kumar Datta

Respondant(s) M.C.I. TUKS

Advocate for the Applicant(s): M. Chanda

S. Nath, Ms. M. Datta

Advocate for the Respondant(s): 6. BSNL, advocate

Notes of the Registrar	Date	Order of the Tribunal
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Application is in form
is filed/C.F. for Rs. 50/-
deposited vide IPC/PO
No. 396/378407
Dated 22/1/09

[Signature]
24.2.09
Dy. Registrar
[Signature]
20/2/09

Steps taken with envelope
copy served.

[Signature]
20/2/09

25.2.09

Pl. issue Notices to the Respondents
requiring them to file their reply
by 20.4.09.

[Signature]
26/2/09

Order dt. 25.2.2009 sent
by Regd A/S post.
Issued Notices to the Respondents
by Regd A/S post.

M. No. 1190 to 1193

dt. 18-3-2009

25.02.2009

Heard Mr. M. Chanda, learned counsel
appearing for the Applicant; Mr. G. Baishya,
learned Sr. Standing Counsel for the Union of
India and Mr. B. C. Pathak, who is usually
appears for BSNL.

Copies of this O.A. has already been
served on Mr. G. Baishya, learned Sr.
Standing Counsel for the Union of India and
Mr. B. C. Pathak, learned counsel appearing
for the BSNL.

Admit. Issue notice to the Respondents
requiring them to file their reply by 20th April,
2009.

[Signature]
(M.R. Mohanty)
Vice-Chairman

O.A.30/2009

20.04.2009

Despite notice no written statement has yet been filed by the Respondents.

Call this matter on 25.05.2009 awaiting written statement from the Respondents.

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


(M.R. Mohanty)
Vice-Chairman


/bb/

20.07.2009
25.05.2009

~~Mrs. U. Dutta, learned counsel for the Applicant is present. No written statement has yet been filed by the Respondents. On the~~
Mrs. U. Dutta, learned counsel for the Applicant is present. No written statement has yet been filed by the Respondents. On the Mr. B. C. Pathak, learned counsel for BSNL prays for six weeks time to file written statement.

Call this matter on 20.06.2009 awaiting written statement from the Respondents.

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


(N.D. Dayal)
Member(A)


(M.R. Mohanty)
Vice-Chairman

Lm

2.6.3.09

Vakalatnama
filed by Mr. B.C. Pathak,
for The Respondents No.2.
ie. BSNL.

25/5/09

① Service report
awaited.

3
17.3.09

Copies of order
dated 20/4/09 send
to D/Sec. for issuing
to respondents by
post. D/No-1976 to 1979

~~22/4/09~~ D/No-24-4-2009

Notice copies duly
served on R-1

22-5-09
no WDS filed.

27.5.09
Mr Das please
comply order to
25.5.09

HH

Copies of order
dated 25/5/09 send
to D/Sec. for issuing
to respondents by
post. D/No-2786 to 2789

~~11/6/09~~ D/No-02-6-2009
no WDS filed.

PTO

O.A. No.30/2009

20.07.2009 Mrs.U.Dutta, learned counsel for the Applicant is present. No written statement has yet been filed by the Respondents. On the prayer of Mr.B.C.Pathak, learned counsel for the BSNL, call this matter on 20.08.2009 awaiting written statement from the Respondents.

No W/s filed.

3
27.8.09

K. Das

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

/bb/

(M.K.Chaturvedi)
Member (A)

(M.R.Mohanty)
Vice-Chairman

28.08.2009 No written statement has yet been filed in this case.

Call this matter on 08.10.2009 awaiting written statement from the Respondents.

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

(M.K.Chaturvedi)
Member(A)

(M.R.Mohanty)
Vice-Chairman

/pb/

08.10.2009 None appears for either of the parties. No written statement has yet been filed by the Respondents in this case.

Call this matter on 11.11.2009 awaiting written statement from the Respondents.

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

(M.R.Mohanty)
Vice-Chairman

Copies of order dt. 8/10/2009 sent to D/Sec. for issuing to the applicant and respondents by post. D.No. - 12304-12308
3/11/09. Dt. 03-11-2009

No W/s filed.

3
7.10.09

O.A. No.30-09

10.11.2009

Memo of appearance
filed by Mr. Kankan
Dm, Addl. C.S.C.
on behalf of R.No-1.

28.10.09.

No w/s filed.

10.11.09

20.11.09

W/s filed by

/bb/

18.12.2009

14/12/09

W/s filed by
Mr. M. R. Das, Adv.
for the B.S.V.C. Com
14/12/09

W/s filed

17.12.09

No rejoinder filed

11.1.2010

No rejoinder filed

25.1.2010

Shri M. Chanda, learned counsel for
Applicant is present. Mr. Kankan Das,
learned Addl. C.G.S.C. appeared on behalf
of Respondent Nos.1 & 4.

Reply has not yet been filed despite
passage of almost eight months. Last
opportunity is granted to Respondents to
take effective steps to ^{conduct} ~~contest~~ the matter.

List on 18.12.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

Ms U. Dutta, learned counsel for
the applicant prays for some time to file
rejoinder.

List on 12.1.2010.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

Mr. M. Chanda, learned counsel
appearing for applicant in O.A. 30 of 2009
states that applicant would be available ⁱⁿ
the next week and he has to file rejoinder in
30 of 2009.

Furthermore, learned counsel for
applicant states that he has to take
instruction from him. In the circumstances,
he prays for adjournment of the case. Mrs. M.
Das, Sr. CGSC appearing for Respondents
has no objection.

List the matter on 27.01.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/PB/

O.A. 30/09

- 5 -

27.1.2010

Rejoinder filed
by the Applicant.
Copy served.

27/1/2010

27.1.2010

On the request of proxy counsel for
Mr.M.R.Das, counsel for BSNL, list the matter on
3.2.2010.

(Madan Kumar Chaturvedi)
Member(A)

(Mukesh Kumar Gupta)
Member(J)

Im

The case is ready.

03.02.2010

Heard both sides. Reserved for
orders.

Respondents have produced
copy of ACRs and minutes of the DPC
for the year 1998-99 which were taken
into consideration while considering the
applicant's case for promotion besides
complete records of the disciplinary
proceeding in sealed cover.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

10-3-2010

Judgment/Final order
dated 25/2/2010 Prepared
and sent to the d/section
for issuing the all the
respondents by post and
issued Advocate for both
sides vide No 550 to
553

25.02.2010

Judgment pronounced in open court,
kept in separate sheets. O.A. is dismissed in
terms of the said order. No costs.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

Copy of the order dated 25-02-10.

Debutuli Bore.

For Respondent.

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.32 of 2007

And

Original Application No.30 of 2009

Date of Order: This the 25th day of February 2010

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Shri Anjan Kumar Dutta

So Late N.G. Dutta

Working as Deputy General Manager, BSNL

Tezpur Assam Circle

Triveni Complex, Kocharigaon

Tezpur - 784001.

...Applicant in both the O.A.s

By Advocate: Mr. M. Chanda alongwith Mrs. U.Dutta

-Versus-

1. The Union of India
Represented by the Secretary to the
Government of India
Ministry of Communication and Information Technology
Department of Telecommunication (STG-III Section)
Sanchar Bhavan, 20 Ashoka Road
New Delhi - 110001.
2. Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
Represented by the Chairman and
Managing Director, BSNL
Registered office - Statesman House
Barkhamba Road, New Delhi - 110001.
3. Under Secretary (SNG)
Ministry of Communication IT
Department of Telecommunications (STG III Section)
Sanchar Bhavan, 20 Ashoka Road
New Delhi - 110001. ...Respondents in O.A. No. 32/2007

By Advocates: Ms. U. Das, Addl. CGSC
Mr. M.R. Das & Mrs. P. Das for BSNL

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1. The Union of India
Represented by the Secretary to the
Government of India
Ministry of Communication and Information Technology
Department of Telecommunication (STG-III Section)
Sanchar Bhavan, 20 Ashoka Road
New Delhi - 110001.
2. Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
Represented by the Chairman - Cum
Managing Director, BSNL
Registered office - Bharat Sanchar Bhavan
Harichandra Mathur Lane, Janapath
New Delhi - 110001.
3. Desk Officer (Vig.II)
Ministry of Communication and IT
Department of Telecommunications (Vigilance II Section)
915, Sanchar Bhavan, 20 Ashoka Road
New Delhi - 110001.
4. Union Public Service Commission
Represented by its Secretary
Dholpur House, Shahjahan Road,
New Delhi - 110011. ...Respondents in O.A. No. 30/2009

By Advocates: Mrs. M. Das, Sr. CGSC
Mr. M.R. Das & Mrs. P. Das for BSNL.

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ORDER

MUKESH KUMAR GUPTA, JUDICIAL MEMBER

Since issues raised in these two O.A.s, filed by Anjan Kumar Dutta, are overlapping, the same are being dealt with by present common order.

2. Vide O.A.No.32/2007 he has challenged validity of impugned letters dated 29.09.2003 (Annexure-4) and 23.11.2006 (Annexure-7) whereby certain officials including junior to him have been promoted, excluding him. He also seeks direction to the respondents to open the sealed cover and promote him to the cadre of

SAG from retrospective date with all consequential benefits including costs. Further he seeks direction to the respondents to produce minutes of DPC proceedings held in June/July 2003 including his ACRs and if his claim for promotion was rejected based on uncommunicated adverse/downgraded ACRs or on mere contemplation of disciplinary proceedings, then the same be quashed and direct holding Review DPC, consider him ignoring such uncommunicated/downgraded ACR, if any.

3. Vide O.A.No.30/2009 challenge has been made to Charge Memo dated 02.08.2004 which culminated into penalty of "censure" inflicted vide order dated 31.01.2008.

4. In nutshell, on examination of the entire records, we find that admitted facts are, applicant who is a JTS Group 'A' 1983 batch joined the services as Probationer on 17.01.1986, promoted as Divisional Engineer (STS Grade) vide order dated 23.11.1989, promoted to Junior Administrative Grade (JAG) on ad hoc basis on 14.02.1996 and regularized in JAG w.e.f. 20.08.2001. He was due for promotion to next higher grade i.e. Senior Administrative Grade (SAG). Vide order dated 23.07.2003, sixty-nine JAG officials were promoted to SAG. Officials at serial Nos.60 to 69 are stated to be his juniors. He was not promoted to SAG and his name did not find place in the aforesaid order.

5. Charge Memo dated 29.08.2003 had been issued under Rule 14 of CCS (CCA) Rules, 1965, which culminated into penalty of reduction in scale by one stage for a period of one year. Before it, Rule 16 proceedings were initiated vide memorandum dated 22.08.2003 alleging certain misconduct. In continuation of said

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memorandum another memorandum was issued on 02.08.2004. The gravamen of the charge had been that he committed the fraud in collusion with private subscribers of telephone numbers detailed therein by using highest secret commands of E-10B Exchange, at Canada Corner, Nasik Road by visiting the Exchange at night times and tampering with the meter readings using secret passwords. Thereby he caused huge revenue loss to the Department for self monetary benefits. Vide statement of imputation, it was stated that he was in overall charge of said Exchange and holding exclusive possession of the Password Management Commands with which inter alia, meter reading of any telephone number could be manipulated. Scrutiny of meter reading statements, detailed therein, revealed that there was increase and decrease in the meter reading though there should have been continuous increase in the meter reading of any working telephone. Thus, it was alleged that he failed to maintain absolute integrity and devotion to duty and acted in a manner, unbecoming of a Government servant. Allegations made therein were denied vide communication dated 30.09.2003. He also prayed for holding regular departmental proceedings, which prayer had been acceded to and, therefore, an oral enquiry was held. Presenting Officer as well as Inquiry Officer had been appointed and regular disciplinary proceedings were undertaken. Inquiry Officer submitted his report dated 15.09.2006 holding that the article of charge 'not proved'. The matter was referred to Central Vigilance Commission (CVC) which observed that on the basis of role and responsibility of applicant who was in charge of the Exchange, it can be inferred that he was responsible for any irregularity committed or occurred with regard to major Exchange faults leading to revenue loss. There was

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abnormal decrease or increase in the meter reading due to technical fault, which was a supervisory lapse on his part. Hence, charge was proved to that limited extent, which warranted imposition of minor penalty of "censure". Vide memorandum dated 05.12.2006 the Disciplinary Authority agreed with the CVC and granted an opportunity to the applicant to make a representation against aforesaid findings, if any, within the time limit prescribed. Thus, the Disciplinary Authority differed with the findings recorded by Inquiry Officer. He, indeed, made a detailed representation dated 27.01.2007 and prayed for his exoneration and also requested that the advice of CVC be ignored. Thereafter, matter was referred to UPSC and vide its advice dated 08.01.2008 it concurred with the view of CVC that charge was partially proved. Ultimately, Presidential order dated 31.01.2008 imposing aforesaid penalty of censure had been issued.

6. The basic contentions raised by the applicant are as follows:

- a) Vide order dated 23.07.2003, as many as ten juniors who figured at serial Nos.60 to 69 were promoted to SAG overlooking applicant's claim. Representation made did not yield any positive result, rather vide communication dated 29.09.2003 (Annexure-4) he was conveyed that he was assessed as unfit by DPC held in June/July 2003. Placing reliance on (2008) 8 SCC 725, Dev Dutt vs. Union of India and others, it was urged that downgraded ACRs ought to have been conveyed, which had not been done. At no point of time he was conveyed any adverse ACR.

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- b) Though vide order dated 29.01.2004 (Annexure-5) he was recommended for ad hoc promotion in SAG of ITS Group 'A' service, but it had not been given effect to. In reply to various representations made on said subject, vide communication dated 23.11.2006 he was conveyed that recommendations of DPC held after August 2003 were kept in sealed cover as disciplinary proceedings were initiated against him during August 2003. It was contended that since no disciplinary proceedings were pending when DPC was held in June/July 2003, there was no justification to assess him unfit or to follow 'sealed cover procedure'.
- c) Charge Memo dated 22.08.2003 had been issued belatedly for an alleged incident of 1995-96. Even the said proceedings were not concluded expeditiously and it took more than four years to finalize it. Departmental proceedings were prolonged without any justification and inordinate delay had been caused in initiation as well as conclusion of said proceedings, which caused serious prejudice. Placing reliance on 1990 Supp SCC 738, State of Madhya Pradesh vs. Rani Singh, it was emphasized that since there was no explanation offered for the inordinate delay in initiation as well as finalization of said proceedings, there is no justification in either initiating or concluding the said departmental proceedings.
- d) Allegations made vide Memo dated 22.08.2003, which was improved by issuing another memo dated 02.08.2004 had
- [Handwritten signature]*

been denied in specific. Though request was made to supply certain documents, 12 in number as well as to examine 7 witnesses, said request had not been duly appreciated. Only 3 out of 12 documents were supplied. Similarly, only 2 out of 7 witnesses were examined. It was further highlighted that documents listed at serial No.4 vide Annexure-III of the charge memo dated 02.08.2004 had not been supplied. Specific averments made on this aspect were totally ignored and, therefore, serious prejudice was caused to him.

- e) The charge levelled was vague and not precise. As per settled law and requirement of rule, charge must be specific and distinct. He has been punished for an allegation namely, lack of supervisory role, which did not form part of the charge. It is well settled law that a person cannot be penalized for an allegation for which he had not been tried and which was not made part of the charge levelled against him.
- f) He had been exonerated by the Inquiry Officer. Said findings had never been disagreed. The Disciplinary Authority without recording tentative reasons for disagreement straightaway punished him. Merely because CVC as well as UPSC observed that due to technical fault supervisory lapse on his part was established, is inconsequential. CVC as well as UPSC have inferred that he was in possession of highest commands of Exchange and there was abnormal increase or decrease in the meter

reading without any basis. Documents listed at serial No.4 vide charge memo dated 02.08.2004 was a material document namely, computerized sheet, hard copy available with the Exchange as narrated by Shri Sandeep Kolwadkar, ADE E-108 in his letter dated 02.07.1996.

- g) On the one hand UPSC in its recommendation dated 08.01.2008 clearly observed that Disciplinary Authority had not made available any evidence to show that applicant caused huge financial loss of revenue as well as quantum of loss had not been specified, but on the other hand made an observation that he being a DGM and holding administrative control of the Exchanges in Nasik was in possession of important passwords by which he manipulated the meter reading of the given telephone numbers. Learned counsel emphasized that said findings are contradictory in nature. When there was no evidence to link the allegations levelled against him, how he could be made responsible for certain supervisory lapses particularly, in the absence of making the same as part of the charge.
- h) Placing reliance on Guidelines for 'Arrangement of Password Grouping of Various Commands into Different Classes And Remedial Measures To Avoid Leakage Of Revenue By Misusing Certain Commands In E108 Exchanges', issued on 26.2.1991 (Annexure-20), it was emphasized that the Password Authority is vested with the DE and not with the applicant.
- 2

- i) Reliance was also placed on (2004) 2 SCC 570, Union of India and another vs. Sneha Khemka and another, particularly para 23 to contend that as the order of Disciplinary Authority which has severe civil consequences, is not supported by any reasons and there was no justification to impose impugned penalty of censure. A decision must be arrived at on "some evidence", which is legally admissible. The provisions of the Evidence Act may not be applicable in departmental proceedings, but the principles of natural justice are. Suspicion has no role to play. (2007) 1 SCC 338, Government of A.P. and others vs. A. Venkata Raidu, para 9 in particular, was cited to contend that it is settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. Further a chargesheet should not be vague; it should be specific. (2006) 4 SCC 713, Narinder Mohan Arya vs. United India Insurance Co. Ltd. and others, particularly para 26 was relied upon to contend that the circumstances under which the findings arrived at in the departmental proceedings can be successfully questioned by a delinquent before the court including where the Inquiry Officer traveled beyond the charge and any punishment imposed on the basis of the findings which was not the subject matter of the charge is wholly illegal. Further reliance was placed on (2006) 5 SCC 88, M.V. Bijlani vs. Union of India and others, particularly paras 14, 19, 23


16 and 25 to contend that Inquiry Officer performs a quasi-judicial function. While analyzing the documents and arriving at a conclusion, he must not take into consideration any irrelevant fact or refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. It was further urged that the Disciplinary Authority cannot proceed on a wrong premise where the charges were vague. Lastly, reliance was placed on (2004) 13 SCC 797, SBI and others vs. Arvind K. Shukla, to contend that the findings even recorded in favour of the charged employee, Disciplinary Authority can certainly take a different view but it is required to record its tentative reasons and give it to the delinquent officer and provide him an opportunity to represent, before recording its ultimate findings.

7. In the above backdrop, learned counsel for applicant vehemently contended that he is entitled to relief as prayed for.

8. Contesting the claim made by applicant and by filing separate reply in these two O.A.s, it was stated that he was duly considered by DPC held in June/July 2003 against vacancy year 2003-04 and was assessed "unfit". As such, he could not be promoted to SAG alongwith his juniors in JAG, vide order dated 23.07.2003. SAG is a selection post and one has to achieve the prescribed Benchmark of 'very good'. As per instructions contained vide para 6.3.1 of DOPT O.M. dated 10.04.1989 read with subsequent O.M.s dated 27.03.1997 and 08.02.2002, the benchmark for promotion to SAG is 'Very Good'.

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A conscious decision had been taken by UPSC that an officer attaining at least 4 'Very Good' gradings out of 5 ACRs, should be assessed as fit for promotion and said decision was applicable to all DPCs pertaining to the vacancy year 2003-04 and subsequent years. Merely because he was declared unfit, he could not be allowed to challenge his non-promotion to SAG vide order 23.07.2003. Subsequently, charge sheets under Rules 14 and 16 were issued on 29.08.2003 and 22.08.2003 respectively. In view of above departmental proceedings, his case was considered by subsequent DPCs and recommendations were kept in sealed cover. Ms U. Das, learned counsel for respondents in O.A.No.32/2007 produced the minutes of DPC as well as his ACRs and contended that applicant had not attained the prescribed benchmark and, therefore, was rightly declared "unfit" by the Selection Committee. Reliance was placed on Union Public Service Commission Vs. Hirayanalal Dev and others, AIR 1988 SC 1069, to contend that jurisdiction to make the selection is vested with the Selection Committee. The Selection Committee has to make selection by applying the same yardstick and norms as regards the rating to be given to the officials, who were in the field of choice by categorizing the concerned officials as "Outstanding", "Very Good", "Good" etc. This function had to be discharged by the Selection Committee by applying the same norms and tests and the selection was also to be made by the Selection Committee as per rules. Tribunal has no role to play in such selection. Reliance was also placed on Dalpat Abasaheb Solunke etc. Vs. Dr B.S. Mahajan etc, AIR 1990 SC 434, to contend that: whether a candidate is fit for particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The



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decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the Selection or proved malafides affecting the selection etc. *Nutan Arvind (Smt) Vs. Union of India and another*, (1996) 2 SCC 488, was cited to contend that, when a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, the court will not sit over the assessment made by DPC. Same view was taken in *Anil Katiyar (Mrs) Vs. Union of India & others*, (1997) 1 SLR 153. Even very recently in *Union of India and Another Vs. S.K. Goel and others*, decided on 12.02.2007 Hon'ble Supreme Court held that DPC enjoys full discretion to devise its methods and procedure for objective assessment of suitability and merit of the candidates being considered by it. In the aforesaid background, learned counsel vehemently contended that applicant has failed to make out any case warranting judicial interference. With reference to records produced it was pointed out that his ACRs for the period of 1997-98 to 2001-02 were considered by DPC while considering his case for SAG against vacancy year 2003-04. As the grading made in said ACRs was not 'Very Good' for four years, he had no claim at all.

9. By filing reply in O.A.No.30/2009 it was highlighted that there was no delay in initiating disciplinary proceedings against the applicant. As and when the irregularities came to its notice an investigation was conducted and chargesheet was issued after following due procedure such as obtaining advice of the CVC, approval of competent authority etc. His request for providing additional documents was allowed after considering their relevance to

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its case. No prejudice was caused to him and he was afforded full opportunity during course of enquiry. CVC was justified to advice the Disciplinary Authority and based on its advice and other records of the case the Disciplinary Authority came to the conclusion that allegations against him were established. Furthermore, the Disciplinary Authority has been vested with the power to disagree with the findings of Inquiry Officer. There were valid reasons and justification to disagree with the Inquiry Officer as the Inquiry Officer has failed to take into consideration vital material, evidence brought on record. UPSC tendered its advice after a thorough, judicious and independent consideration of all the relevant facts and circumstances of the case. After analyzing the findings of the Inquiry Officer and evidence on record, documents made available, UPSC rendered its advice which is self-contained and self-explanatory. The competent authority duly considered the records of the case and advice of the UPSC and decided to accept the same since, which advice was a reasoned one. The allegation that UPSC was influenced by the advice of CVC was denied. It was further stated that both the institutions are independent and arrived at their own individual conclusions. He was afforded an opportunity of making representation after the Disciplinary Authority decided to disagree with the findings of the Inquiry Officer and, therefore, no prejudice was caused to him, strongly emphasized learned counsel for respondents. Our attention was drawn to the enquiry report particularly to the deposition of Shri Sandeep Kolwadkar SW-1, Shri N.A. Kulkarni and Shri D.D. Wani, DW1 and DW2 respectively. SW1 in his deposition had confirmed that the applicant was incharge of E-10B Exchange maintenance and password was with him. He further confirmed that after December

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1995 the exchange keys were with the CO and he only used to open and lock the exchange daily. Similarly, DW1 who was introduced as Technical expert in E-10B exchange narrated the possible reasons for such erratic behaviour as under:

- "i) ~~Malfunctioning~~ Malfunctioning of the rack which may result in Zero Meter Reading (ZMR) for all the numbers from that rack
- ii) For the entire exchange to show Zero Meter Reading, it can be either due to malfunctioning of Charging unit or use of MMRAZ command
- iii) One man made reason for erratic meter reading could be the possibility of misusing the ABOMU command. In such a case of man made misuse of ABOMU command, it is recorded in the YJDB log file of the exchange."

Similarly, DW2 who was working as SDE (Mobile), Nashik had stated as follows:

- "i) after major exchange fault on 06.05.1996, the meter reading of the entire exchange was reset to 000
- ii) The Meter Reading for all the subscribers were added manually to the previous Meter Reading of 30.04.1996 on the basis of average of calls made during earlier periods
- iii) He also deposed that applicant's visits to the exchange were occasional."

It is undisputed fact that these witnesses were examined and cross-examined by the applicant at length.

10. In the above backdrop, Mrs M. Das, learned Sr. C.G.S.C. forcefully contended that there being no merit in the claim made, O.A. deserves to be dismissed. Mr M.R. Das, learned counsel appearing for BSNL contended that BSNL had no role to play in the charge Memo issued and action taken thereon, and, therefore, he had nothing more to add.

[Signature]

11. We have heard learned counsel for parties at length, perused the pleadings and other material placed on record besides, the original records produced by the respondents in O.A.No.32/2007. We have also examined various citations used by the parties as noticed hereinabove. We may also note that M.P.No.14/2008 had been filed by applicant for production of CRs. As the CRs had been produced, no further order is required in said M.P. On examination of the matter and upon hearing the parties, the question which arise for consideration are:

- 1) Whether there was any justification to exclude the applicant from the order dated 23.07.2003?
- 2) Whether the respondents' action in adopting the sealed cover procedure while considering him for SAG was justified?
- 3) Whether the departmental proceedings initiated against him which culminated in the penalty of "censure" requires any judicial interference?

12. As noticed hereinabove, we have examined applicant's CR as well as DPC minutes dated 30th June, 1st and 2nd July 2003, as produced by the respondents, perusal of which reveals that said DPC considered applicant along with various other officials for the vacancy years 2002-03 and 2003-04. We have also perused the applicant's ACR for the years 1997-98 to 2001-2002 which were considered and taken into account by the aforementioned DPC. The record further reveals that he was considered for the vacancy year 2003-04 and assessed as "unfit", which was the basic reason for not including him vide order

22- dated 23.07.2003 whereby 69 officials were promoted to Sr. Administrative Grade of JTS Group 'A'. It also reveals that he had been graded in the ACRs concerned as, 'good', 'very good', 'average', 'good' and 'very good' respectively in the concerned years. It is not in dispute that Benchmark prescribed for the said post has been "Very Good" and as per UPSC policy/guidelines, an officer attaining at least 4 very good grading out of 5 ACRs alone should be assessed as fit for promotion, which policy decision was applicable to all DPCs pertaining to the years 2003-04 and subsequent years. Examining the present case on the touchstone of above policy decision/guidelines, it is clear that the applicant had not attained 4 "very good" grading out of 5 ACRs, considered for the vacancy year 2003-2004. On this basis, our considered view is that applicant was rightly found "unfit" by the concerned DPC. As far as the DPCs held subsequent to the charge memo dated 29.8.2003 issued under Rules 14 and 16 of CCS (CCA) respectively are concerned, it is the categorical stand of the respondents that it adopted sealed cover procedure. In such circumstances even if he had been recommended for promotion vide order dated 29.01.2004 is concerned, as by that time departmental proceedings had been initiated against him, he was rightly and justly not promoted. The law on said aspect is well settled that if the departmental proceeding is initiated or a person who is suspended on the day DPC had met or such promotion order issued, such delinquent officials need not be promoted. Keeping in view the aforesaid rule position and in the given facts of present case, we do not find any illegality in the communication dated 23.11.2006 whereby he was conveyed that since disciplinary proceedings were initiated against him in August 2003 the recommendations of DPC held thereafter had

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been kept under sealed cover as per Government rules and instructions. In this view of the matter, we do not find any justification in the contention raised by the applicant.

13. In view of the discussion made hereinabove, we have no hesitation to conclude that the respondents' action in finding him "unfit" vide DPC held in June/July 2003 as well as adopting sealed cover procedure by DPCs held subsequent to August 2003 did not suffer any illegality warranting any judicial interference. Therefore, the first two issues noted hereinabove are answered in negative.

14. Coming to the third issue noted hereinabove, at the outset, we may note that scope of judicial review in departmental proceedings has been laid down in unequivocal term by Hon'ble Supreme Court in B.C. Chaturvedi vs. Union of India, relevant portion of which is quoted below:

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

(emphasis supplied)

15. The basic issue which requires consideration is whether there is any justification warranting re-appreciation of material, findings and conclusion arrived at by the Disciplinary Authority namely, the President of India. We may note that vide statement of imputation of misconduct, appended alongwith charge memo dated 22.08.2003 it had been observed that applicant as DGM (Imp) was in overall charge of E-10B Exchange Nasik, and had in his exclusive possession the Password Management Commands with which inter alia the meter reading of any telephone no., details of which provided therein, could be manipulated. Para 3 thereof ^Aspecific narrated that scrutiny of meter reading of various statements of telephone numbers detailed therein revealed that there was increase and decrease in meter reading though there should have been continuous increase in the meter reading of any working telephone number. SW1, Sandeep Kolwadkar, the then ADET Nasik had in specific confirmed his earlier statement that the applicant "was in charge of E-10B Exchange maintenance and password was with him". He further stated that no password was handed over to him i.e. Sandeep Kolwadkar. He had further deposed that "after December 1995 the Exchange keys were" with the applicant and he only used to open and lock the Exchange daily. Similarly, N.A. Kulkarni, DW1 in his deposition highlighted the reasons for erratic behaviour of the meter reading. DW2 in his deposition in specific stated that the frequency of visit by the applicant to the Exchange were occasional. When we examined this aspect vis-à-vis the findings recorded by the Inquiry Officer we find that the Inquiry Officer has totally overlooked these material aspects while arriving at his conclusions and in such circumstance, the Disciplinary Authority was fully justified and had good and sufficient

reasons to disagree with the findings recorded by the Inquiry Officer. In our opinion, in the given circumstance, no exception can be taken by the applicant to said course of action. As far as the contention raised that no disagreement note was recorded by the Disciplinary Authority, is concerned we find the same is totally misconceived as the Disciplinary Authority had in its memo dated 05.12.2006 vide para 2 specifically recorded that on the basis of the role and responsibility of the applicant it can be inferred that he was in possession of highest command of exchange. Therefore, he was responsible for any irregularity committed or occurred with regard to major exchange faults leading to revenue loss. There was abnormal decrease or increase in the meter reading stated to be due to technical fault is the supervisory lapse on his part. Said observations are, in our opinion, reasons for disagreement. Vide said Memo dated 05.12.2006 applicant was afforded an opportunity to make a representation which opportunity he indeed availed by submitting a detailed representation dated 27.01.2007.

16. Based on the assessment of evidence the Inquiry Officer though observed that the charges were not proved, we find that the CVC, the UPSC as well as the Disciplinary Authority were justified to disagree with the findings of the Inquiry Officer, for which they had enough material to justify. When three witnesses in specific pointed out that after December 1995 the exchange keys were with him, he used to open and lock the Exchange daily, the erratic behaviour of the meter reading because of malfunctioning of the rack as well as misuse of ABOMU command and frequent visits by the applicant to the exchange, how the applicant could be absolved of his supervisory role. We may note that the applicant has been punished by imposing a

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minimum penalty of censure only based on preponderance of probability and holding that he being in administrative control of all the exchanges in Nasik and in possession of the important passwords could have manipulated the meter readings of the telephones. As per the statement of imputation, a specific allegation was made against him that a scrutiny of meter readings of various telephone numbers revealed that there was increase and decrease in the meter reading though there should have been continuous increase in the meter reading of any working telephone.

17. As far as reliance placed on Sneha Khemka (supra) is concerned, we may observe that said judgment itself says that if a decision is arrived at on "some evidence", which is legally admissible, the same cannot be questioned. In present case, there had been overwhelming evidence against the applicant and, therefore, said judgment basically did not support his case, rather it goes against him. As far as A. Venkata Raidu (supra) is concerned, in our considered opinion, the charges levelled against the applicant were specific and not vague, as projected. The statement of article of charge has to be read alongwith imputation of misconduct. When read together, in the present case, we do not find any ambiguity in the same. The same in specific alleged that he was in overall charge of E-10B Exchange and, therefore, it cannot be accepted that he has been punished for an allegation which has not included in the Charge Memo. Similarly, it has not been shown as to how the document No.4, the listed documents had been used against him by any authority. As long as a document is listed but not used against the delinquent official it need not be supplied. Similarly, Narinder Mohan Arya (supra) is also inapplicable in the facts and circumstances of present

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case, particularly when the Inquiry Officer had not traveled beyond the charge and the punishment was based on the findings. M.V. Bijlani (supra) also is totally distinguishable in the facts of the present case as in present case it is the Inquiry Officer who had not analyzed the documents properly and totally ignored the vital material deposition made by the witnesses which basically pointed out the guilt of the applicant. Arvind K. Shukla (supra) is also of no assistance to him as the Disciplinary Authority had taken a different view than the findings arrived at by the Inquiry Officer, for the cogent and relevant reasons. Similarly, we do not find any justification in the contention raised that there had been delay either in initiating or concluding said proceedings. We may note that said contention had not been raised at the earliest. Applicant had participated in the Disciplinary Proceedings without any demur, and at this stage, after conclusion of said proceedings, which culminated into minor penalty of censure, he is precluded from raising such contention. Moreover, no prejudice has been established by the applicant because of said alleged delay. Thus the judgments on which reliance had been placed by the applicant are of no assistance to him in the peculiar facts and circumstances of the present case.

18. Taking an overall view of the matter and in view of discussion made hereinabove as well as finding no merits, O.A.Nos.32/2007 and 30/2009 are dismissed. No costs.

Sd/- M.K. Gupta
Member (J)
Sd/- M.K. Chaturvedi
Member (A)

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IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram
and Arunachal Pradesh)

W.P.(C) No.5615 of 2010

Sri Anjan Kumar Dutta,
S/o Late N.G. Dutta,
Working as Deputy General Manager,
Bharat Sanchar Nigam Ltd.,
Tezpur, Assam Circle, Triveni Complex,
Kocharigaon, Tezpur-784001.

..... **Petitioner.**

- Vs -

1. The Union of India, through the
Secretary to the Govt. of India,
Ministry of Communication & Information Technology,
Department of Telecommunication (STG-III Section),
Sanchar Bhavan, 20 Ashoka Road, New Delhi-110 001.
2. Bharat Sanchar Nigam Ltd. (A Govt. of India enterprise),
Represented by the Chairman and Managing Director, BSNL,
Registered Office - Statesman House,
Barkhamba Road, New Delhi - 110 001.
3. The Under Secretary (SNG),
Ministry of Communication (IT),
Department of Telecommunications,
(STG III Section), Sanchar Bhavan,
20 Ashoka Road, New Delhi - 110 011.
4. Union Public Service Commission,
Represented by its Secretary,
Dholpur House, Shahjahan Road,
New Delhi - 110 011.

..... **Respondents.**

W.P.(C) No.5617 of 2010

Sri Anjan Kumar Dutta,
S/o Late N.G. Dutta,
Working as Deputy General Manager,
Bharat Sanchar Nigam Ltd.,
Tezpur, Assam Circle, Triveni Complex,
Kocharigaon, Tezpur-784001.

..... **Petitioner.**

- Vs -

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1. Bharat Sanchar Nigam Ltd. (A Govt. of India enterprise),
Through the Chairman-cum-Managing Director,
Bharat Sanchar Nigam Limited,
Registered Office at Bharat Sanchar Bhavan,
Harichandra Mathur Lane, Janapath, New Delhi – 110 001.

2. The Desk Officer (Vig.II),
Ministry of Communication and IT,
Department of Telecommunications,
(Vigilance II Section), 915, Sanchar Bhavan,
20 Ashoka Road, New Delhi – 110 011.

3. The Union Public Service Commission,
Represented by its Secretary,
Dholpur House, Shahjahan Road,
New Delhi – 110 011.

4. The Union of India, through the
Secretary to the Govt. of India,
Ministry of Communication & Information Technology,
Department of Telecommunication, Sanchar Bhavan,
20 Ashoka Road, New Delhi-110 001.

..... Respondents.

BEFORE
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MR. JUSTICE S. TALAPATRA

Advocate for the petitioner : Mr. S. Dutta, Advocate.
Mr. M. Chanda, Advocate.

Advocate for the respondents : Ms. J. Huda,
Mr. S. Dasgupta,
Central Govt. Standing Counsel.
Mr. M.R. Das, Standing Counsel, BSNL.

Date of hearing : **18.11.2011.**

Date of delivery of
Judgment & order : **03.02.2012**

JUDGMENT & ORDER (CAV)

(S. Talapatra J.)

The writ petitioner herein filed Original Application No. O.A. No.32/2007, challenging the order bearing No.315-21/2003-STG-III, dated 23.11.2006 (*Annexure-7 series to the W.P.(C) No.5615/2010*) and No.315-21/2003-STG-III, dated 29.09.2003 (*Annexure-4 to the W.P.(C) No.5615/2010*), issued by the respondents, rejecting the prayer of the petitioner for consideration of his promotion to the cadre of Senior Administrative Grade of Indian Telecom Service (Group-A) and another Original Application being O.A. No.30/2009, challenging the legality and validity of the memorandum of charge dated 02.08.2004 (*Annexure-6 to the W.P.(C) No.5617/2010*) and the order of penalty dated 31.01.2008 (*Annexure-17 to the W.P.(C) No.5617/2010*). Both the Original Applications being O.A. No.32/2007 and O.A. No.30/2009 were dismissed by a composite judgment dated 25.02.2010. Being aggrieved, the petitioner has filed these two writ petitions being W.P.(C) No.5615/2010 and W.P.(C) No.5617/2010.

Since the issues raised in the original applications were addressed by a composite judgment, it would be expedient, for avoiding any confusion, if these two writ petitions are collated and disposed of by a common judgment and order.

2. On examination of the records, the facts not in dispute are that the petitioner, as an ITS Group-A 1983 batch, joined the services on 19.01.1986. He was promoted as Divisional Engineer (STS Grade) by order dated 23.11.1989, to Junior Administrative Grade (JAG) initially on ad-hoc basis on 14.02.1996 and regularised in JAG w.e.f. 20.08.2001. He was due for promotion to the next higher grade i.e. Senior Administrative Grade (SAG) along with 69 JAG officials who were promoted by order dated 23.07.2003. The officers at Sl. No. 60 to 69 who were junior to the petitioner in the feeder grade got promotion but his name did not find place in the said order of promotion dated 23.07.2003. Being aggrieved, the petitioner submitted a representation to the Member (Services), Department of Telecom, New Delhi on 14.08.2003 and prayed for review/reconsideration of his promotion (*Annexure-3 to the W.P.(C) No.5615/2010*).

3. Immediately thereafter, the petitioner was served by a Memorandum No.8-99/2003-Vig.II dated 22.08.2003 issued under Rule 16 of CCS (CCA) Rules, 1965, with the charge of misconduct. The petitioner responded to the said memorandum, and submitted a further representation urging for appropriate enquiry stating the charges as baseless. On the face of such representation, by another Memorandum No.8-99/2003-Vig.II dated 29.08.2003, the earlier charge as communicated by the Memorandum dated 22.08.2003 was revised and the said proceeding culminated in awarding a penalty of 'censure' by order dated 31.01.2008.

4. The O.A. No.30/2009, was filed challenging the said order of penalty of censure. On 14.08.2003 the petitioner filed a representation against

denial of promotion and in response thereto, a communication bearing Endst. No.DGM(Admn)/X/SAG/Rfr. & pstg/2, dated 07.10.2003 was issued by the Deputy General Manager (Admn.), Mumbai. With that communication, the petitioner was furnished with the copy of the impugned letter No.315-21/2003-STG-III, dated 29.09.2003, issued by the DOT, New Delhi. By the said letter dated 29.09.2003 (Annexure-4 to the writ petition), it was disclosed that the petitioner could not be promoted to SAG, ITS Group-A since he was assessed 'unfit' by the Departmental Promotional Committee (in short 'DPC') held in June-July, 2003.

By order No.315-10/2003-STG-III, dated 29.01.2004 (Annexure-5 to the writ petition), another group of 93 officials borne in the JAG including the petitioner were promoted on purely ad-hoc basis to the cadre of SAG but the petitioner's promotion was not given effect to as a disciplinary proceeding was initiated against him. The grievance of the petitioner as it emerged from the averments is that the DPC in its meeting held during June-July, 2003 i.e. on 30.06.2003, 01.07.2003 and 02.07.2003) had assessed the petitioner as 'unfit' for promotion. At that point of time, there was no disciplinary proceeding pending against the petitioner nor was there any adverse ACR against him which might have stood in the way of promotion. The petitioner prayed for reconsideration and for holding a review DPC to provide his promotion from the date on which his juniors were promoted to SAG, ITS Group-A.

5. The petitioner's said representation dated 12.10.2006 (part of Annexure-6 series) was responded by a letter dated 23.11.2006 (part of Annexure-7 series) from the office of the DOT, New Delhi, communicating that

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a vigilance case/disciplinary proceeding was initiated against the petitioner in August, 2003 as such recommendation of the DPC held thereafter for promotion to SAG in respect of the petitioner had been kept in sealed cover as per the Government Rules. But it was not disclosed why the petitioner was assessed 'unfit'. The petitioner succinctly made assertion that the petitioner had consistently earned 'very good' ACRs all through. The petitioner highlighted that on 20.08.2001, the petitioner was promoted to JAG on regular basis which event indicated that the ACRs at least for the five years prior to 2001 were satisfactory and fulfilled the required benchmark. When the DPC were assessing the fitness of the petitioner and other officials in June-July, 2003, how there could be any reason for assessing the petitioner 'unfit' on the basis of ACRs unless the ACRs had been downgraded deliberately and purposefully. Since such downgrading was adverse in consequence it was mandatory for the respondents to communicate such downgraded ACRs to the petitioner but no such communication was made in this regard. It has been further contended by the petitioner that if the DPC had assessed the petitioner as 'unfit' on the basis of those un-communicated adverse/downgraded ACRs then those gradings ought to have been ignored for the purpose of promotion. It has been emphatically stated that mere contemplation of a disciplinary proceeding would not stand in the way of promotion unless the memorandum of charge was drawn and served on the officer whose promotion was under consideration by the DPC. Since the memorandum of charge was issued on 22.08.2003 followed by another memorandum dated 02.08.2004 under Rule 16 of the CCS (CCA) Rules, 1965 it is apparent on the face of record that no disciplinary proceeding was pending

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when the DPC was convened for consideration of promotion. The DPC under no such circumstances could assess the petitioner 'unfit'.

6. From the affidavit-in-opposition as filed for the respondent Nos.1-3, it appears that the petitioner was considered by the DPC held in June-July, 2003 i.e. before issuance of charge sheet. The DPC held in June-July, 2003 assessed him 'unfit' whereas recommendation of the DPC held afterwards was placed in sealed cover. As per the then existing rules and instructions of Govt. of India, there was no provision to communicate downgraded grading, the respondents contended. It is also asserted that the DPC is not guided merely by the overall grading as recorded in the ACRs but they would make their own assessment of the gradings in the ACRs. From their affidavit-in-opposition it transpires that the SAG is a selection post and for promotion to that grade one has to achieve the prescribed benchmark. The petitioner did not achieve that benchmark. The respondents further stated that there was no provision to communicate downgraded ACRs. Even all grading below the benchmark cannot be taken as adverse. The respondents reiterated that the petitioner was considered 'unfit' against the vacancy year 2003-04 as per the guidelines contained in DoPT & TOM No.22011/3/88-Estt.(D) dated 11.05.1990.

7. The petitioner also challenged the memorandum of charge dated 29.08.2003 along with the revised memorandum dated 02.08.2004 and the order dated 31.01.2008, whereby the petitioner was awarded with the penalty of 'censure'. The petitioner's contention in short is that on completion of inquiry as conducted under Rule 16 of the CCS(CCA) Rules, 1965, he was served with the enquiry report dated 15.09.2006 along with Memorandum No.8/99/2003-

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VIG dated 05.12.2006 and the CVC's advice bearing No.022/P&T/250-41526 dated 22.11.2006 under a covering letter bearing No.Vig/Assam/43 Pt-VI/46 dated 09.01.2007 (Annexures 12, 13 and 14 to the writ petition being W.P.(C) No.5617/2010).

8. The petitioner was asked by the Office Memorandum dated 05.12.2006 to make representation, if any, against that inquiry report within 15 days. In para-2 of the said Memorandum dated 05.12.2006, the observation as follows was made and the same is reproduced hereunder.

"Although the Inquiry Authority has held the charges as not proved, the Disciplinary Authority has observed that on the basis of the role and responsibility of Shri A.K. Dutta who was in charge of the exchange, it can be inferred that he was in possession of highest command of exchange. Therefore, he is responsible for any irregularity committed or occurred with regard to major exchange faults leading to revenue loss. Keeping in view the fact that there was abnormal decrease or increase in the meter reading stated to be due to technical fault is the supervisory lapse on the part of Charged Officer. The disciplinary authority proposes that the charge has to be considered proved to this extent."

9. The petitioner, in his representation filed in response to the said O.M. dated 05.12.2006, highlighted *inter alia* from the report of the Inquiry Authority, which is as follows :

"..... that it is an established fact that in E-10B Exchanges, the password protection as well as all important password are with DE Incharge of the Exchange. This is also confirmed by the DOT circular No.19-9/90-PHM dated 10/4/91 and same is reflected in MTNL Tech Circular of E-10B No.01.21.006-MSE, issue -01 dated 26/2/91 on arrangement of passwords and grouping of various commands into different classes in E-10B Exchanges. In nowhere DGM's are Incharge of the Exchange."

The petitioner further laid emphasis on the findings of the Inquiry Authority that the prosecution has failed to establish as to who was the In-charge of the Exchange and was in possession of the password in question.

10. The grievance of the petitioner as surfaced is that no consideration was made of his representations and the impugned order of penalty dated 31.01.2008 was issued arbitrarily. The disciplinary authority held him guilty of supervisory lapse as to abnormal decrease or increase in the meter reading which was found occurred for technical fault. Even the article of charge under Memorandum dated 02.08.2004 did not contain any such charge or any charge cognate to the said charge. The article of charge may usefully be extracted.

"Article.

Shri A.K. Dutta while working as DGM(I&P), O/o GMT, Nasik, during the period 1995-96 has committed the fraud in collusion with private subscribers of telephone No.575138, 576116, 577087, 577097, 565656, 562900, 564070 by using highest secret commands of E-10B Exchange at Canada Corner, Nasik Road by visiting the Exchange at night times and tampering with the meter readings using the secret passwords. Thereby he caused huge revenue loss to the department for alleged self monetary benefits.

By this aforesaid acts, Shri A.K. Dutta, DGM, failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government Servant, thereby violated the provisions of Rule 3(1)(i)(ii) & (iii) of CCS (Conduct) Rules, 1964.

By order and in the name of the President."

It is apparent from the said article of charge that there is no charge of supervisory lapse on the part of the petitioner in regard to abnormal decrease or increase of the meter reading, the petitioner asserted.

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11. The petitioner stoutly submitted that he has been condemned by awarding penalty whereas the report of the Inquiry Officer had completely exonerated him from the charge as stated. As such, the conclusion of the disciplinary authority to impose the said punishment of 'censure' on the ground of alleged supervisory lapse is wholly unwarranted and liable to be interfered with.

12. The respondents did not file any counter-affidavit in the writ petition being W.P.(C) No.5517/2010. They filed their replies in the Central Administrative Tribunal against the Original Applications. Even at the risk of repetition, let us traverse the respondents' case as projected in the said replies.

13. In the reply as filed in O.A. No.32/2007, the respondents stated in brief that the petitioner was duly considered by the DPC held in June-July, 2003 against the vacancy year 2003-04 and was assessed "unfit". As such he could not be promoted to SAG along with his juniors in the grade of JAG by the order dated 23.07.2003. SAG being a selection post, one has to achieve benchmark of 'very good' for consideration of promotion. A conscious decision was taken by the UPSC that an officer attaining at least 4 'very good' gradings out of 5 ACRs should be assessed 'fit' for promotion and the said decision was applicable to all DPCs pertaining to the vacancy year 2003-04 and subsequent years. Merely because the petitioner was declared 'unfit', he could not be allowed to challenge the promotion to SAG vide order dated 23.07.2003. Subsequently, the charge-memos under Rules 14 and 16 were issued on 29.08.2003 and 22.08.2003 respectively. For the above departmental proceedings, his case was considered by the subsequent DPCs and recommendations were kept in sealed cover. The

petitioner did not attain the prescribed benchmark. Therefore, he was rightly declared 'unfit' by the selection committee. The respondents contended that jurisdiction to make selection is exclusively vested with the selection committee and when the selection committee by applying the standard yardstick formulated, their decision that cannot be allowed to be questioned. The selection committee by categorising the concerned officials as 'outstanding', 'very good', 'good' etc. attributed the benchmark. During the selection, the ACRs for the year 1997-98 to 2001-02 were considered by the DPC. While considering the petitioner's case against the vacancy year 2003-04 the petitioner was awarded 'very good' for 4 years and accordingly he was not recommended for promotion.

14. In O.A. No.30/2009, the respondent highlighted that there was no delay in initiating disciplinary proceeding against the petitioner. When the irregularities came to their notice an investigation was immediately conducted and charge sheet was issued following the due procedure on obtaining advice of the CVC. The petitioner was afforded full opportunity during the course of enquiry and the CVC was justified to advise the disciplinary authority to take action against the petitioner. Furthermore, the respondents submitted that the disciplinary authority is vested with the power to disagree with the findings of the Inquiry Officer. There were valid reasons and justifications to disagree with the Inquiry Officer as the Inquiry Officer completely exonerated the petitioner from the charges as brought. After analysing the findings of the Inquiry Officer, the disciplinary authority on advise of the CVC, decided to impose penalty of 'censure' on the petitioner and the same was approved by the UPSC. They have

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also relied some part of the depositions of DW.1 in the inquiry proceedings, such as, malfunctioning of the rack which might result in 'zero' meter reading (ZMR) for all numbers from that rack. The DW.2 though categorically stated that after major exchange fault on 06.05.1996, the meter reading of the entire exchange was reset to 000 and the meter reading for all the subscribers were added manually to the previous meter reading of 30.04.1996 on the basis of average of calls made during earlier periods.

15. In this backdrop, the learned Tribunal considered two aspects as agitated in the Original Applications viz.

- (1) Whether considering the un-communicated gradings of the petitioner below 'very good', the DPC had acted arbitrarily and deprived the petitioner from his promotion due or whether in the subsequent DPC, keeping the recommendation in sealed cover the DPC acted legally or not? and
- (2) Whether in absence of any charge of supervisory lapse the disciplinary authority was correct to award penalty of 'censure' on the petitioner?

16. The learned Tribunal held on purported consideration of the CR of the petitioner as well as the DPC minutes dated 30.07.2003, 01.07.2003 and 02.07.2003 that in the year 2003-04 the petitioner was assessed 'unfit', which was the basic assigned reason for not including him in the order of promotion dated 23.07.2003, whereby 69 officials were promoted to Sr. Administrative Grade of ITS Group-A. The petitioner had been graded in the ACR as 'good'.

'very good', 'average', 'good' and 'very good' respectively in the concerned years from 1997-98 to 2001-02. On the touchstone of the policy that one officer must have 4(four) 'very good' gradings out of 5(five) ACRs, the petitioner was rightly found 'unfit' by the concerned DPC. The learned Tribunal further held that as far as the DPC held subsequent to the charge memo dated 29.08.2003 the petitioner was communicated that the recommendation had been kept under sealed cover as per the Government Rules. On the question of the scope of judicial review in the departmental proceedings, the learned Tribunal relying on a decision of the Apex Court in **B.C. Chaturvedi vs. Union of India & Ors.**, as reported in **(1995) 6 SCC 749**, held that judicial review is not an appeal but review of the manner in which the decision is made. The disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge if there is some offence. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

17. Even thereafter, the learned Tribunal gone for appreciation of the evidence and found that the petitioner was in-charge of E-10B Exchange Maintenance and Password and as such in the event of any mechanical failure in the Exchange he might be made liable for lapse and the disciplinary authority was fully justified and for sufficient reason has disagreed with the findings recorded by the Inquiry Officer. The learned Tribunal further observed that the CVC, UPSC as well as the disciplinary authority were justified to disagree with the findings of the Inquiry officer for which they had enough materials to justify. However, 'enough materials' are not referred in the findings of the Tribunal,

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save and except that the petitioner was with the administrative control of all Exchanges and in possession of the password. Thus he could have manipulated the meter readings of the telephones even though that was nobody's case so far as the charge of supervisory lapse is concerned. On the basis of the finding that no prejudice in the departmental proceedings having not been established by the petitioner no interference is warranted in the fact and circumstances of the case the Tribunal observed.

18. It is evident from the records that the petitioner was assessed in the ACRS for the relevant 5(five) years as follows :

1997-98	Good
1998-1999	Very Good
1999-2000	Average
2000-2001	Good
2001-2002	Very Good

19. The admitted position is that the downgradings of the petitioner were not communicated and the respondent stood at their contentions that since those assessed gradings were 'not adverse in nature' they were not under any obligation to communicate such downgradings to the petitioner. The learned Tribunal also concurred with such submissions. It is also admitted that on the basis of overall assessment of those uncommunicated gradings, the petitioner was assessed by the DPC as 'unfit' for promotion and as such those gradings had consequential adverse impact on the promotion of the petitioner.

20. Law in regard to communication of downgradings has taken a cataclysmic change, as would be evident from the decision of the Apex Court in

U.P. Jal Nigam and ors. vs. Prabhat Chandra Jain and ors., as reported in (1996) 2 SCC 363, wherein the Apex Court held :

"3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidence in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

21. In **Dev Dutt vs. Union of India**, as reported in (2008) 8 SCC 725, law has been further developed dissenting the ratio as laid down by the Apex Court in **U.P. Jal Nigam(supra)** and **Union of India & Anr. Vs. S.K. Goel & Ors.**, as reported in (2007) 14 SCC 641. It evinces that the respondents had relied those two dissented judgments before the Tribunal and the learned Tribunal

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had made reliance on the ratio of those judgments. In **Dev Dutt**(supra), the Apex Court has laid down as follows :

"8. Learned counsel for the respondent relied on a decision of this Court in *Vijay Kumar v. State of Maharashtra* in which it was held that an uncommunicated adverse report should not form the foundation to deny the benefits to a government servant when similar benefits are extended to his juniors. He also relied upon a decision of this Court in *State of Gujarat v. Suryakant Chunilal Shah* in which it was held:

"25. Purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance."

On the strength of the above decisions learned counsel for the respondent submitted that only an adverse entry needs to be communicated to an employee. We do not agree. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

9. In the present case the benchmark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have "very good" entry for the last five years. Thus in this situation the "good" entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a "good" entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

10. Hence, in our opinion, the "good" entry should have been communicated to the appellant so as to enable him to make a

representation praying that the said entry for the year 1993-1994 should be upgraded from "good" to "very good". Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the "good" entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the "good" entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the "good" entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable.

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13. **In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not. Even if there is no benchmark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry.**

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17. **In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) had the entry been communicated to him he would know about the assessment of his work and**

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conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* that arbitrariness violates Article 14 of the Constitution.

18.

19. Learned counsel for the respondent has relied on the decision of this Court in *U.P. Jal Nigam v. Prabhat Chandra Jain*. We have perused the said decision, which is cryptic and does not go into details. Moreover it has not noticed the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* which has held that all State action must be non-arbitrary, otherwise Article 14 of the Constitution will be violated. In our opinion the decision in *U.P. Jal Nigam* cannot be said to have laid down any legal principle that entries need not be communicated. As observed in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* (vide AIR para 9):

"9. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context."

20. In *U.P. Jal Nigam* case there is only a stray observation "if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading". There is no discussion about the question whether such "good" grading can also have serious adverse consequences as it may virtually eliminate the chances of promotion of the incumbent if there is a benchmark requiring "very good" entry. And even when there is no benchmark, such downgrading can have serious adverse effect on an incumbent's chances of promotion where comparative merit of several candidates is considered.

21. Learned counsel for the respondent also relied upon the decision of this Court in *Union of India v. S.K. Goel* and on the strength of the same submitted that only an adverse entry need be communicated to the incumbent. The aforesaid decision is a two-Judge Bench decision and hence cannot prevail over the seven-Judge Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* in which it has been held that arbitrariness violates Article 14 of the Constitution. Since the aforesaid decision in *Union of India v. S.K. Goel* has not

considered the aforesaid Constitution Bench decision in *Maneka Gandhi* case, it cannot be said to have laid down the correct law. Moreover, this decision also cannot be treated as a Euclid's formula since there is no detailed discussion in it about the adverse consequences of non-communication of the entry, and the consequential denial of making a representation against it.

22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted."

22. The Apex Court in para-36 of **Dev Dutt**(supra) also has formulated the principle of natural justice vis-à-vis communication of ACRs in the manner as reproduced.

"36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O. requiring communication of the entry, or even if there is a rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders."

23. The principle as laid down in **Dev Dutt**(supra) has also been followed in **Abhijit Ghosh Dastidar vs. Union of India & Ors.**, as reported in **(2009) 16 SCC 146**, wherein the Apex Court observed as follows :

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"8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion, admittedly the entry of "good" was not communicated to the appellant. The entry of "good" should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above-referred decision relied on by the appellant. **Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.**"

24. The learned Tribunal has failed to appreciate that the downgrading having not been communicated to the petitioner, the petitioner was deprived of his opportunity of representation as laid down in **Dev Dutt**(supra). Apart that, the very purpose of maintaining Annual Confidential Records (ACR) has also been frustrated in the process. In **State of Gujarat & Anr. Vs. Suryakant Chunilal Shah**, as reported in **(1999) 1 SCC 529**, the Apex Court held in regard to the purpose of adverse entries in the following terms:

"25. Purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance."

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25. In **Sh. J.S. Garg vs. Union of India & Ors.**, as decided on 16.08.2002 by a Full Bench of Delhi High Court may also be profitably reproduced in this regard.

*"The learned Tribunal, in our opinion, committed a serious misdirection in law in so far as it failed to pose unto itself a right question so as to enable it to arrive at a correct finding of fact with a view to give a correct answer. The question which was posed before the learned Tribunal was not that whether the petitioner had been correctly rated by the DPC? **The question, as noticed hereinbefore, which arose for consideration before the learned Tribunal as also before us was as to whether having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors.(supra) as also Rule 9 of the CPWD Manual the concerned respondents had acted illegally in not communicating his 'fall in standard'. It is not trite that the court or the Tribunal cannot usurp the jurisdiction of the statutory authority but it is also a settled principle of law that the jurisdiction of this court to exercise its power of judicial review would arise in the event it is found that the concerned authority has, in its decision making process, taken into consideration irrelevant fact not germane for the purpose of deciding the issue or has refused to take into consideration the relevant facts. The learned Tribunal, in our opinion, while holding that having regard to the decision of the Apex Court in U.P. Jal Nigam and Ors. the DPC could ignore categorisation, committed a serious error in usurping its jurisdiction. **Once such categorisations are ignored, the matter could have been remitted to the DPC for the purpose of consideration of the petitioner's case again ignoring the remarks 'good' and on the basis of the other available remarks. This position stands settled by various judgments of the Supreme Court.**"***

Following that decision, the Delhi High Court in **Union of India vs. Smt. Ravinder Narang**, as decided on 01.03.2005, had observed :

"It is no more res integra that if down grading has got effect of adverse consideration in the matter of promotion then that ACR has to be communicated to the person concerned."

26. In the backdrop of the petitioner's case and the law as referred, we are of the opinion that the Annual Confidential Reports with uncommunicated downgrading remarks against the petitioner were not considered by the respondents and the petitioner was assessed 'unfit'. Therefore, the decision making process stood vitiated for taking into consideration irrelevant fact, as such interference is definitely warranted.

27. Another aspect as decided by the learned Tribunal regarding imposition of penalty of 'censure' on the petitioner is required further examination inasmuch as it is apparent from the charge that there was no charge of supervisory lapse at any stage against the petitioner. Whether the respondents were correct to draw a fresh charge on the basis of the inquiry report against the petitioner and impose penalty or not? Even though the petitioner referred the decision of the Apex Court in **M.V. Bijlani vs. Union of India & Ors.**, as reported in **(2006) 5 SCC 88**, the learned Tribunal without considering the ratio as laid down by the Apex Court therein, discarded the contention of the petitioner. The Apex Court in **M.V. Bijlani(supra)**, held as follows :

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

of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

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

28. The Apex Court in **Govt. of A.P. & Ors. Vs. A. Venkata Raidu**, as reported in **(2007) 1 SCC 338**, precisely laid down the law how the charge has to be framed:

"9. We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge 1, what is mentioned is that the respondent violated the orders issued by the Government. However, no details of these orders have been mentioned in Charge 1. **It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the GO which is said to have been violated by the respondent, the number of that GO, etc. but that was not done. Copies of the said GOs or directions of the Government were not even placed before the enquiry officer. Hence, Charge 1 was not specific and hence no finding of guilt can be fixed on the basis of that charge.** Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessors. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged."

29. It is admitted position that the petitioner was not afforded any opportunity of defending the charge of supervisory lapse and even no charge in this regard was framed at any stage of the inquiry. Only on the advise of the

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CVC, the Disciplinary Authority proposed the punishment of 'censure' on the charge of supervisory lapse, purportedly gathered from the findings of the Inquiry Officer to which the UPSC has given its accord. The entire proceeding as such is vitiated in law in view of this ratio as expounded by the Supreme Court. The learned Tribunal thus failed to discharge its function properly. Apart that, regarding the scope and ambit of judicial review in **B.C. Chaturvedi**(supra), has already laid down the general principles and thus general principles does not stand contra to decide whether without framing of charge in specific terms or otherwise a person can be penalised or not. This is not a question of re-appreciating the evidence in the garb of judicial review. It is an offshoot of whether the process that was followed was followed having regard to the principles of natural justice or not. In this regard, a passage from Professor de Smith's Judicial Review of Administrative Action (3rd Edn.(1973) P.320) may profitably be extracted.

"Secondly, a court may hold that it can interfere if the competent authority has misdirected itself by applying a wrong legal test to the question before it, or by misunderstanding the nature of the matter in respect of which it has to be satisfied. Such criteria are sufficiently elastic to justify either a broad or a narrow test of validity; and they seem to have become increasingly popular. Thirdly, a court may state its readiness to interfere if there are no grounds on which a reasonable authority could have been satisfied as to the existence of the conditions precedent. This test can be combined with the first and the second."

30. For the reasons as stated above, we direct the respondents to consider the petitioner for promotion to SAG of ITS Group-A by convening a review DPC without considering the downgraded ACRs with retrospective effect from 23.07.2003, admittedly from which date the juniors of the petitioner in the

Grade of JAG were promoted to SAG. The entire exercise has to be completed within a period of 3(three) months from this date. The order of penalty as imposed on the petitioner for supervisory lapse being altogether a fresh charge and the petitioner having not been afforded opportunity to defend, is also interfered with and accordingly the order of penalty dated 31.01.2008 (Annexure-17 to the writ petition) is set aside. The petitioner be deemed to have been exonerated from the charge as levelled against him by the Memorandum dated 02.08.2004 (Annexure-6 to the writ petition).

31. With this observation and directions, both the writ petitions being W.P.(C) No.5615/2010 and W.P.(C) No.5617/2010 are allowed. The impugned judgment and order dated 25.02.2010 as passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No.32/2007 and O.A. No.30/2009 stand quashed.

Send down the Tribunal Records.

Sd/- S. TALAPATRA
JUDGE

Sd/- AMITAVA ROY
JUDGE

Contd....

URGENT

By Special Messenger

Memo No. HC.XXI..... 5224 - 30 R.M. Dtd. 13/3/12

Copy forwarded for information and necessary action to:-

1. The Union of India, through the Secretary to the Govt. of India, Ministry of Communication & Information Technology, Department of Telecommunication (STG-III Section), Sanchar Bhavan, 20 Ashoka Road, New Delhi-110001.
2. The Bharat Sanchar Nigam Ltd. (A Govt. of India enterprise), represented by the Chairman and Managing Director, BSNL, Registered Office- Statesman House, Barkhamba Road, New Delhi-110001.
3. The Under Secretary (SNG), Ministry of Communication (IT), Department of Telecommunication (STG-III Section), Sanchar Bhavan, 20 Ashoka Road, New Delhi-110011.
4. The Union Public Service Commission, represented by its Secretary, Dholpur House, Shahjahan Road, New Delh-110011.
5. The Bharat Sanchar Nigam Ltd. (A Govt. of India enterprise), through the Chairman cum Managing Director, BSNL, Registered Office at Bharat Sanchar Bhavan , Harichandra Mathur Lane, Janapath, New Delhi-110001.
6. The Desk Officer (Vig. II), Ministry of Communication and IT, Department of Telecommunications, (Vigilance II Section), 915, Sanchar Bhavan, 20 Ashoka Road, New Delhi-110011.
7. The Section Officer, Central Administrative Tribunal, Guwahati Bench, Guwahati-5, Dist.- Kamrup, Assam. He is requested to acknowledge the receipt of the following case records. This has a reference to his letter No.16-3/02-JA/450 dtd. 18.05.2011.

Enclo.-

Case Record No. O.A. No. O.A. 32/2007 & 30/2009 (Part A)

Two File

By Special Messenger

By order

[Signature]
12/3

Asstt. Registrar
Gauhati High Court, Guwahati

gc (net)

[Signature]
12/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

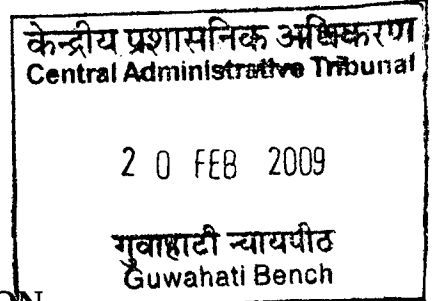
(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 30 /2009

Sri Anjan Kumar Dutta.

-Vs-

Union of India and Others.



AND SYNOPSIS OF THE APPLICATION

Applicant is working as Deputy General Manager, BSNL, Assam Circle, Tezpur. He is aggrieved with the impugned memorandum of charge sheet dated 02.08.2004 (Annexure- 6) and the impugned penalty order dated 31.01.2008 (Annexure- 17). It is stated that the inquiry officer on the basis of the documentary and oral evidences in his report came to the conclusion that article of charge "Not Proved." UPSC could not find out any defect, irregularity or infirmity in the inquiry proceeding and in the findings of the inquiry officer but even then tendered an unlawful advice to impose penalty of 'censure' on the alleged ground of supervisory lapse. Central Vigilance Commission although could not find out any infirmity in the inquiry proceeding but advised to impose penalty of 'censure' upon the applicant on the alleged ground of 'supervisory lapse' on the part of the C.O when admittedly there is no article of charge on 'supervisory lapse' brought against the applicant in the memorandum of charge sheet dated 02.08.2004. The Disciplinary authority mechanically followed the unlawful advice of the CVC and UPSC and without independent application of mind and imposed penalty of censure upon the applicant vide impugned penalty order dated 31.01.08, which was communicated to him on 21.02.2008 vide letter dated 20/21.02.2008.

Hence this Original Application.

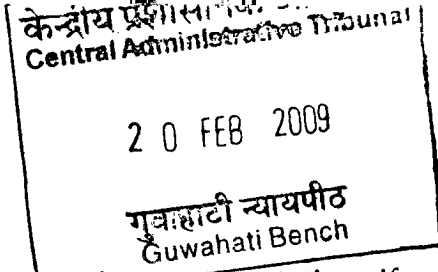
LIST OF DATES

- 29.06.1999- Central vigilance commission imposed restriction in the matter of taking action on the basis anonymous and pseudonymous complains. (Annexure- 5)
- 22.08.2003- Memorandum of charge sheet under rule 16 of the CCS (CCA) Rules 1965, was served upon the applicant alleging that while he was functioning as DGM (I & P), office of the General Manager, Nasik Telecom District during the period 1995-96, he was overall in charge of the E-10 B, Nasik, thus, manipulated the meter readings of the

telephone numbers, thereby showing undue favour to the subscribers, and causing loss of revenue to the Government. Such manipulation was possible only by the person having in his possession the Password Management Commands. And the Passwords management commands were in exclusive possession of the applicant. (Annexure- 1)

Advice of CVC was forwarded along with the memorandum of charge sheet dated 22.08.2003. (Annexure- 2)

- 30.09.2003- Applicant submitted reply against the memorandum of charge sheet dated 22.08.2003 which was forwarded to the Principal General Manager, Kalyan. (Annexure- 3 and 4)
- 02.08.2004- Disciplinary authority without canceling or recalling the earlier memorandum of charge sheet dated 22.08.03, served a fresh charge sheet vide impugned memorandum dated 02.08.04 on the same set of allegation under Rule 16 of CCS (CCA) Rules 1965. (Annexure- 6)
- 17.08.2004- Memorandum of charge sheet dated 02.08.2004 was served upon the applicant. (Annexure- 7)
- 26.08.2004- Applicant submitted reply specifically denying the charges and also requested the disciplinary authority for personal hearing and also to supply listed documents at Annexure- III. (Annexure- 8)
- 02.04.2005- Applicant prayed for supply of 12 relevant additional documents and a list of 7 additional defence witnesses to be examined to defend his case. (Annexure-9)
- 30.09.2004- Inquiry officer and Presenting Officer was appointed. (Annexure- 10 series)
- 21.10.2004- Principal General Manager, Telecom communicated order of appointment of I.O and P.O dated 30.09.04 to the applicant. (Annexure- 10)
- 17.03.2005- Preliminary hearing was held at Kalyan on 17.03.2005.
- 13.09.2005- Presenting Office supplied only 3 documents thereby caused serious prejudice to the applicant.
- 13/14.09.2005- Regular hearing held at Mumbai.
- 21/22.04.2006- Regular hearing held at Mumbai.
- 24/26.06.2006- Final hearing held.
- 15.09.2006- Inquiry officer submitted his report with the conclusion that the charge labeled against the applicant is not proved. (Annexure- 12)
- 22.11.2006- Central Vigilance Commission tendered its' advice to impose penalty of 'censure' upon the applicant on an allegation or charge which is not incorporated in the charge sheet. (Annexure- 13)



- 05.12.2006- Applicant was given an opportunity to give representation, if any, against the inquiry report within 15 days. (Annexure- 14)
- 27.01.2007- Applicant submitted representation stating that he is no way involved or responsible for supervisory lapse or due to abnormal decrease or increase in the meter reading due to technical fault (Annexure- 15)
- 08.01.2008- UPSC tender its' advice to impose penalty of 'censure' upon the applicant on the alleged ground of supervisory lapse. (Annexure- 16)
- 31.01.2008- Ministry of Communication and I.T, vide impugned penalty order dated 31.01.08 imposed the penalty of censure upon the applicant. (Annexure-17)
- 15.02.2008- Asstt. Director Telecom (vig.) forwarded impugned penalty order dated 31.01.08 and advice of UPSC. (Annexure- 18)
- 20/21.02.2008- General Manager, Telecom district, Tezpur forwarded impugned penalty order dated 31.01.08 and UPSC letter dated 08.01.2008 to the applicant. (Annexure-19)
- 21.02.2008- Applicant received impugned penalty order dated 31.01.2008.
- 26.02.1991- Circular was issued by the Dy. General Manager (MSE) regarding arrangement of password grouping of various commands into different classes and remedial measures to avoid leakage of revenue by mis-using certain commands in E10B Exchanges. (Annexure-20)
In view of the circular dated 26.02.91, Shri Kolwadkar had the highest command of the exchange. Inquiry authority observed that Sri Kolwadkar, ADET (SW-1) in fact was the in charge of the E-10 B exchange.

PRAYERS

- 1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum of charge sheet bearing No. 8-99/2003-Vig. II dated 02.08.2004 (Annexure- 6) and impugned penalty order bearing letter No. 8-99/2003-Vig.II dated 31.01.2008 (Annexure- 17).
2. Costs of the application.
3. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

Title of the case : O.A. No. 80 /2009

Shri. Anjan Kumar Dutta.

: Applicant.

-Versus-

Union of India & Ors.

: Respondents.

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22.	20	Copy of circular dated 26.02.1991	90-99

23.

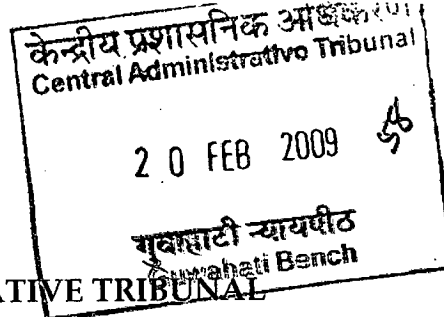
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25.

Date: - 20.02.09

W/S fm R No 1, 2 on 4
W/S fm R.No. 2
Rejoinder. —

100-106
107-111
Filed By: 112-115
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O.A. No. 30/2009

BETWEEN:

Shri Anjan Kumar Dutta.

S/o- Late N.G. Dutta,
Working as Deputy General Manager, BSNL.
Tezpur, Assam Circle,
Triveni Complex, Kocharigaon,
Tezpur-784001.

.....Applicant.

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Communication and Information Technology,
Department of Telecommunication,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi-110001. ✓
2. Bharat Sanchar Nigam Limited
(A Govt. of India enterprise)
Represented by the Chairman-cum-
Managing Director, BSNL,
Registered office- Bharat Sanchar Bhavan,
Harichandra Mathur Lane, Janapath, New Delhi-110001. ✓
3. Desk Officer (Vig. II),
Ministry of Communication and IT,
Department of Telecommunications, (Vigilance II section)
915, Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001. ✓
4. Union Public Service Commission,
Represented by its Secretary,
Dholpur House, Shahjahan Road, New Delhi-110011. ✓

..... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of the order (s) against which this application is made:

Anjan Kumar Dutta

Filed by the applicant
through U. Dutta, advocate
on 20.02.09

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

This application is made against the memorandum of charge sheet bearing No. 8-99/2003-Vig. II dated 02.08.2004 (Annexure- 6) and also against the impugned penalty order bearing No. 8/99/2003-Vig. II dated 31.01.2008 (Annexure- 17) communicated to the applicant on 21.02.2008 vide letter bearing No. AKD/VIG/TZ/07-08/04 dated 20.02.2008 and further praying for setting aside of the impugned memorandum of charge sheet dated 02.08.2004 as well as impugned penalty order dated 31.01.2008.

2. **Jurisdiction of the Tribunal:**

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. **Limitation:**

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

4. **Facts of the case:**

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That the applicant initially joined in ITS Group "A" service in 1983 batch as probationer on 17.01.1986 under staff No. 8188 in the respondent department. Thereafter he was promoted as Divisional Engineer (STS Grade) vide order dated 23.11.1989. On the basis of his performance, he was subsequently promoted to the Junior Administrative Grade (JAG) on ad hoc basis vide letter dated 14.02.1996 and eventually promoted in the JAG on regular basis w.e.f. 20.08.2001. Presently he is working as Deputy General Manager, BSNL, Tezpur, Assam Circle, Tezpur.
- 4.3 That your applicant while serving as Deputy General Manager, Maharashtra Telecom Circle, he was served with a memorandum of chargesheet bearing No. 8/99/2003-Vig. II dtd. 22.08.2003 under rule 16 of

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the CCS (CCA) Rules 1965, wherein it was alleged that while he was functioning as DGM (I & P), office of the General Manager, Nasik Telecom District during the period 1995-96, he was overall in charge of the E-10 B, Nasik and had in his exclusive possession, the password management commands with which inter alia the meter reading of any telephone number could be manipulated. However on scrutiny of the meter reading statements of certain telephone numbers, it is alleged that such scrutiny revealed that there was increase and decrease in the meter reading, though there should have been continuous increase in the meter reading of any working telephone.

It was further alleged that the applicant was given verbal instruction for diversion of one telephone number 565656 (old No. 65656) from strowger exchange to the E-10 B. Exchange though the said telephone No. did not qualify for such diversion as per prescribed criteria.

It was further alleged that the applicant has further manipulated meter reading of 7 (seven) telephone numbers while working as DGM, in overall charge of the E-10 B, Exchange Nasik, thereby shown undue favour to the subscriber and causing loss of revenue to the Government. Thus committed misconduct and failed to maintain in absolute integrity and devotion to duty and acted in a manner of unbecoming of a Govt. servant and there by acted in contravention of rules.

It is relevant to mention here that along with the memorandum of charge sheet a copy of the CVC 1st stage advice also served upon the applicant, wherein CVC specifically pointed out that it would be difficult from the documents and evidence available to pin-point the culpability on the applicant but the commission advises initiation of stiff minor penalty.

Copy of the memorandum of charge sheet dated 22.08.2003 and CVC 1st stage advice are enclosed hereto and marked as Annexure- 1 and 2 respectively.

- 4.4 That your applicant immediately after receipt of the memorandum of charge sheet dated 22.08.2003 submitted a detailed reply on 30.09.2003 denying the charges. However, the authority forwarded reply dated 30.09.2003 vide his letter dated 30.09.2003 to the Principal General Manager, Kalyan on the same

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day on 30.09.2003. The applicant in his reply has specifically stated that he was trained in transmission branch and it was not true that he was in exclusive possession of pass ward commands of E-10 B Exchange. The applicant specifically stated that Sri Sandeep Kolwadkar, ADET (E-10B) at Nasik and two JTO's Sh D.D. Wani and Ms. Varsha Ahire were working in the exchange under the control of Sri Sandeep Kolwadkar, ADET (E-10B) Exch. and Sri Kolwadkar, ADET (E-10B) having password commands of subscriber management and various routine maintenance of E 10 B exchange. Sri Kolwadkar, ADET E-10B) was also carrying out the work of creation, closer and modification of subscriber lines and accessories. The applicant also fairly admitted that he had limited knowledge of E-10 B exchange.

It is learnt from the applicant that the alleged memorandum of charge sheet was initiated against the applicant following receipt of an anonymous complains.

Copy of the forwarding letter dated 30.09.03 and reply dated 30.09.03 are enclosed as Annexure- 3 and 4 respectively.

- 4.5 That it is stated that central vigilance commission vide his letter No. 3 (V)/99/2 dtd. 29th June 1999, whereby imposed restriction in the matter of taking action on the basis anonymous and pseudonymous complains however without verification of genuineness of the complain, the memorandum of charge sheet dated 22.08.2003 was initiated by the disciplinary authority that too when the applicant is due for consideration of promotion. Therefore the disciplinary authority deliberately instituted the proceeding against the applicant without any verification or preliminary investigating of the allegation, thereby the disciplinary authority violated the instruction of the CVC. So far anonymous complains are concerned. In the subsequent instruction of the CVC, it was specifically stated that before initiation of formal proceeding in the event of receipt of anonymous/pseudonymous complains reasonable opportunity should be provided to the concerned officer by obtaining his comments on the allegation but such reasonable opportunity has been denied to the applicant

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but the disciplinary authority deliberately instituted a formal proceeding against the applicant on the basis of receipt of anonymous letter.

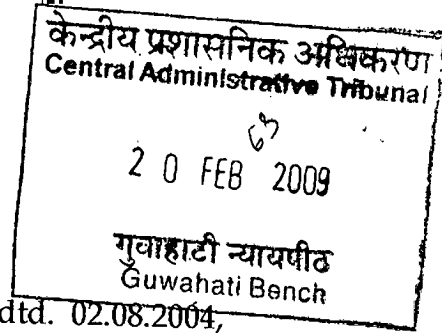
Copy of the CVC letter dtd. 29.06.1999 are annexed hereto and marked as Annexure-5.

4.6 That it is stated that after submission of reply dated 30.09.2003 the authority remain silent without any further action, where as those allegations were pertaining to the year 1995-96, but authority remain silent for a period of about 7 to 8 years for initiation of a disciplinary proceeding but the same was deliberately instituted in the year 2003, when the applicant is due for consideration of promotion to the post of SAG of ITS, Group A. It is relevant to mention here that DPC proceeding of the applicant was held in the month of June, July 2003 for consideration of his promotion to the cadre of SAG of ITS Group-A.

4.7 That your applicant while eagerly waiting for his exoneration from the charges brought against him through memorandum dtd. 22.08.2003, the disciplinary authority without canceling or recalling the earlier memorandum of charge sheet dated 22.08.2003 served a fresh memorandum of charge sheet on the same set of allegation vide memorandum of charge sheet bearing No. 8-99/2003-Vig. II. dated 02.08.2004 under Rule 16 of CCS (CCA) Rules 1965. The said memorandum of charge sheet was served upon the applicant through PGMAT's letter No. KYN/VIG/AKD-16/2004-05/20 dtd. 17.08.2004. The applicant being disciplined employee submitted a reply on 26.08.2004 specifically denying the charges and also requested the disciplinary authority to provide an opportunity to him of personal hearing. The applicant also stated in his reply that the copies of the listed documents at Annexure-III should also be supplied to the charged officer to enable him to submit a comprehensive reply based on such documents.

A memorandum of charge sheet dated 02.08.2004 in fact served upon the applicant through letter No. KYN/VIG/AK-16/2004-05/20 dated 17.08.2004.

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Copy of the memorandum of charge sheet dtd. 02.08.2004, letter dtd. 17.08.2004 and reply dtd. 26.08.2004 are enclosed as Annexure- 6, 7 and 8 respectively.

✓ 4.8 That your applicant thereafter prayed for supply of 12 relevant additional documents in order to defend his case, vide annexure-1 of his letter dtd. 02.04.2005, applicant also submitted a list of 7 additional defence witnesses to be examined to defend his case. However, out of 12 additional documents prayed by the applicant, only 3 documents were supplied by the Presenting Officer on 13.09.2005, thereby caused serious prejudice to the applicant.

Copy of the letter dtd. 02.04.2005 is enclosed herewith and marked as Annexure-9.

4.9 That it is stated that it was communicated to the applicant by the Principal General Manager, Telecom vide letter No. KYN/VIG/AKD-14/2004-05/24 dated 21.10.2004, that Shri M.M. Gupta, G.M (D), office of the PGMT, Kalyan has been appointed as inquiry authority and Sri S.T. Patil, D.E, Nasik, Maharashtra Telecom Circle pointed as Inquiry officer vide letter No. 8/99/2003-Vig.II dated 30.09.2004 and letter No. 8/99/2003-Vig. II dated 30.09.2004 respectively.

Copy of letter dated 21.10.2004 and letter dated 30.09.2004 are annexed hereto as Annexure-10 and 11 respectively.

4.10 That it is stated that preliminary hearing was held at Kalyan on 17.03.2005, however regular hearing of the inquiry proceeding were held at Mumbai on 13th, 14th September 2005 and also 21st and 22nd April, 2006. However final hearing was held at Mumbai on 24th and 26th June, 2006. The applicant attended all the hearings along with his defence assistant.

During the course of regular hearing only 2 defence witnesses were examined in the inquiry proceeding i.e. DW 1 and DW 2, out of the list of 7 DWs for examination as prayed by the applicant. It is also relevant to mention here that out of the 12 list of documents only 2 documents were supplied to the applicant.

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Guwahati Bench

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4.11 That it is stated that after closure of the inquiry proceeding, the applicant was served with the inquiry report dtd. 15.09.2006 along with O.M bearing No. 8/99/2003-VIG dtd. 05.12.2006 as well as CVC advice bearing No. 022/P&T/250-41526 dtd. 22.11.2006 vide letter bearing No. Vig/Assam/43 Pt-VI/46 dtd. 09.01.2007.

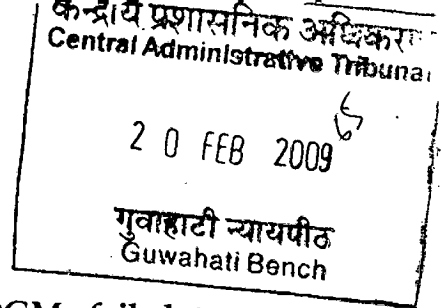
In the said O.M dtd. 05.12.2006 the applicant was given an opportunity to give representation if any against the inquiry report within 15 days. However it is observed in para 2 of the memo. dtd. 05.12.2006 that although the inquiry was held and the charges were found not proved, the Disciplinary Authority has observed that on the basis of the role and responsibility of the applicant who was in charge of the exchange, it can be inferred that he was in possession of highest command of exchange. Therefore, applicant is responsible for any irregularity committed or occurred with regard to major exchange faults leading to revenue loss. The Disciplinary authority also stated that in view of the fact that there was abnormal decrease or increase in the meter reading stated to be due to technical fault is the supervisory lapse on the part of the charged officer. Therefore, disciplinary authority proposes that the charge has to be considered to be proved to this extent.

It is to be noted here at this stage that the disciplinary authority has decided that the applicant is guilty for supervisory lapse in view of abnormal decrease or increase in the meter reading, stated to be due to technical fault whereas the article of charge brought against the applicant in the memo. dated 02.08.2004 is quite different. The relevant portion of article of charge is quoted hereunder for perusal of the Hon'ble Tribunal.

"Article

Shri A.K. Dutta while working as DGM (I&P), O/o GMT, Nasik, during the period 1995-96 has committed the fraud in collusion with private subscribers of telephone No. 575138, 576116, 577087, 577097, 565656, 562900, 564070 by using highest secret commands of E-10B Exchange at Canada Corner, Nasik Road by visiting the Exchange at night times and tampering with the meter readings using the secret passwords. Thereby he caused huge revenue loss to the department for alleged self monetary benefits.

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By this aforesaid acts, Shri A.K. Dutta, DGM, failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government Servant, thereby violated the provisions of Rule 3 (1) (i), (ii), & (iii) of CCS (Conduct) Rules, 1964.

By order and in the name of the President”.

On a mere reading of the above article of charge, it is quite clear that there is no charge of supervisory lapse on the part of the applicant due to abnormal decrease or increase in the meter reading. Therefore the observation of the disciplinary authority that the applicant is guilty of supervisory lapse has no relevancy with the article of charge contained in memo. dtd. 02.08.2004. It appears that the disciplinary authority through impugned memo. dtd. 05.12.2006 brought a new article of charge against the applicant in total violation of the provision laid down in rule 14 and 16 of the CCS (CCA) Rules, 1965, where detail procedure has been laid down with regard to initiation of a disciplinary proceeding in the event of any serious allegation or misconduct committed by the Govt. employees. As such the proposal of the disciplinary authority to treat the article of charge brought through memo. dtd. 02.08.2004 as proved in consideration of his supervisory lapse due to technical fault in meter reading is not sustainable in the eye of law. The observation of the disciplinary authority made in para 2 of the memo. dtd. 05.12.2006 reveals that the disciplinary authority has acted or traveled beyond the scope and jurisdiction conferred upon him by the relevant provision of the CCS (CCA) Rules, 1965. Therefore such decisions of the Disciplinary Authority is not sustainable in the eye of law.

Copy of the inquiry report dated 15.09.06, CVC advice dated 22.11.06 and memorandum dated 05.12.06 are enclosed as Annexure-12, 13 and 14 respectively.

- 4.12 That it is stated that it would be evident from inquiry report, more particularly from the discussion made by the inquiry officer while assessment of evidences was recorded in the inquiry report. The inquiry officer elaborately discussed all the relevant documents relied upon by the

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disciplinary authority and also discussed the evidence recorded in the inquiry proceeding after examination of the state witnesses. The inquiry officer after a detailed discussion held that the charge of committing the fraud is not proved against the charged officer. The inquiry officer also observed that the imputation of misconduct in diverting the telephone from strowger to E-10 B is not proved against the CO, and the inquiry officer in his finding specifically came to the conclusion that on the basis of the documentary and oral evidences, the article of charge is not proved.

It is also to be noted here at this stage that it was observed in the inquiry report that "It is an established fact the prosecution has failed to establish as to who was the in charge of the exchange in possession of all the important passwords".

It was further observed by the inquiry officer in his inquiry report as follows:-

"Although S. Kolwadkar has stated in his written statement (Ex. P-4) that he gave a letter to Sh. A.K.Dutta, DGM (I&P) to confirm his verbal instructions for diverting 65656 from Strowger Exchange to E-10 BRLU NKRD, no copy of such a letter was produced during the inquiry. The P.O did not press this charge against the CO either during the oral enquiry or in his written brief."

Thereafter the inquiry officer came to the following findings:-

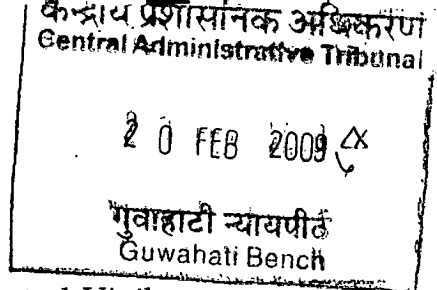
"On the basis of the documentary and oral evidences discussed above, it is concluded that:

Article of charge: Not Proved."

Therefore it is quite clear that the inquiry officer came to the above finding on the basis of the listed documents and after examination of the statement of the state witnesses and also on the basis of documentary or oral evidences relied upon by the disciplinary authority for sustaining proposed charges.

Therefore there is no infirmity in the findings of the inquiry officer.

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4.13 That it is stated that the inquiry report was sent to the Central Vigilance Commission for its second stage advice by the disciplinary authority. The CVC tendered its advice vide letter No. 022/P&T/250-41526 dtd. 22.11.2006, wherein the CVC has observed that on the basis of role and responsibility of the applicant who was in charge of the exchange, as such it can be inferred that the applicant was in possession of highest command of exchange. Therefore applicant is responsible for any irregularity committed or occurred with regard to major exchange faults leading to revenue loss. CVC further observed that there was abnormal decrease or increase in the meter reading stated to be due to technical fault in the supervisory lapse on the part of the charged officer. Hence the charge has to be considered proved to this extent and commission advised imposition of minor penalty of "censure" against the applicant for his supervisory failure.

It is pertinent to mention here that the CVC while tendering its advice for imposition of minor penalty of censure against the applicant for his supervisory lapse in fact lost sight of the fact that the article of charge has not been initiated against the applicant on the alleged ground of "supervisory lapse".

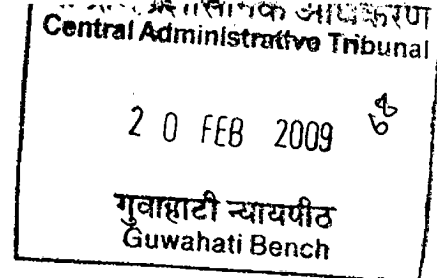
The CVC also failed to notice that the inquiry officer while made assessment of the evidence came to the specific conclusion as follows:-

"The prosecution has failed to establish as to who was the incharge of the exchange in possession of all the important passwords".

But in spite of such specific finding of the inquiry officer the CVC without application of mind made a recommendation just casually for imposition of penalty of censure for supervisory lapse. Hence the inquiry officer came to a firm conclusion that the prosecution has failed, who is the in-charge of the exchange in possession of all the important password but CVC made casual recommendation contrary to the evidence recorded in the inquiry proceeding.

It is categorically stated that CVC further observed that there was a abnormal decrease or increase of meter reading stated to be due to technical fault is the supervisory lapse on the part of the charged officer, but

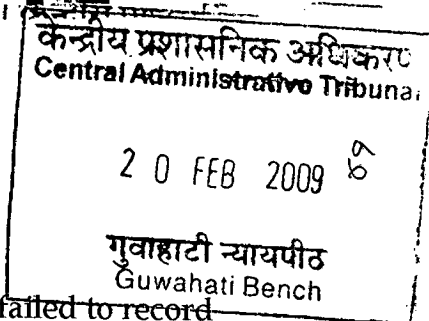
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surprisingly the CVC failed to notice that the abnormal decrease or increase due to technical fault of the exchange or supervisory lapse are not the charges contained in the article of charge. Therefore CVC cannot travel beyond the article of charge brought against the applicant. It is to be noted here at this stage that the CVC did not find any fault or infirmity either in conducting the inquiry proceeding by the inquiry officer or to the conclusion or findings given by the inquiry officer. As such CVC has no jurisdiction to tender its advice for imposition of penalty of censure against the allegation of charges which are not brought against the applicant in the memorandum of charge sheet dated 02.08.2004 and on that score alone the CVC advice tendered through O.M dated 22.11.2006 is not sustainable in the eye of law.

- 4.14 That it is stated that it appears from the impugned memorandum dtd. 05.12.2006 that the disciplinary authority has been influenced by the observation of the Central Vigilance Commission communicated vide O.M dtd. 22.11.2006 and after being influenced the disciplinary authority without application of independent mind most mechanically followed the view expressed by the CVC and issued the impugned memorandum dtd. 05.12.2006 with the observation made in paragraph 2 of the impugned memorandum dtd. 05.12.2006 and held that applicant is guilty for supervisory lapse in view of abnormal decrease or increase in the meter reading stated to be due to technical fault when the article of charge contained in the impugned memorandum dtd. 02.08.2004 do not contain any such allegation or charge. As such the decision of the disciplinary authority that the charge has to be considered as proved is contrary to the evidence recorded in the inquiry proceeding, as well as contrary to the article of charge contained in the impugned memo. dtd. 02.08.2004.
- 4.15 That on a mere reading of the impugned memo. dated 05.12.2006 as well as CVC memo dtd. 22.11.2006, it appears that no infirmity or irregularity in the proceeding was pointed out in the inquiry proceeding, as such CVC or disciplinary authority has no jurisdiction to tender advice to impose penalty of 'censure' on an allegation or charge which is not incorporated in

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the memo. of charge sheet. Moreover, disciplinary authority failed to record any infirmity or irregularity in the inquiry proceeding. As such decision of the disciplinary authority to impose censure on the alleged ground of supervisory lapse on the dictation of the CVC advice communicated through O.M dtd. 22.11.2006 is not sustainable in the eye of law, and on that score alone impugned order of penalty of 'censure' is liable to be set aside and quashed.

- 4.16 That your applicant after receipt of the inquiry report and O.M dtd. 05.12.2006 submitted a detailed representation to the disciplinary authority on 27.01.2007. In the said representation, the applicant submitted a detailed explanation more particularly it would be evident from the following statement of the applicant. The relevant portion is quoted from the representation dtd. 27.01.2007.

"The inquiry authority in his report has clearly stated that it is an establish fact that in E-10B Exchanges, the passwords protection as well as all important password are with DE Incharge of the Exchange. This is also confirmed by the DOT circular no. 19-9/90-PHM dated 10/4/91 and same is reflected in MTNL Tech Circular of E-10B no. 01.21.006-MSE, issue -01 dated 26/2/91 on arrangement of passwords and grouping of various commands into different classes in E-10B Exchanges. In Nowhere DGM's are Incharge of Exchange.

From here it is clearly indicated that Sri Kolwadker, ADET (SW-1) was the incharge of the E-10B Exchange and was looking after the charge of DE (E-10B) also in the absence of DE and having the highest command of the Exchange in his possession. He is fully responsible for any kind irregulare in the Exchange. If any supervisory lapses are found or proved then it would be the solely responsibility of Shri Kolwadkar, ADET incharge of the Exchange who was looking after the charge of the DE (E- 10B) in the absence of DE. The Inquiry Authority in his report has clearly indicated that the prosecution has failed to establish as to who was the incharge of the Exchange in possession of the entire important

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password. In Nowhere the DGM's are Incharge of the Exchange. I hereby fully deny the charge leveled against me by the Disciplinary Authority regarding supervisory lapses, failures on the part of Charged Officer.

The Vigilance Officer's report and statement enclosed therein at Item no. 6 and 9 of Annexure- III of Memorandum of charges become a suspect as nothing is supported by any Exchange Printout (ABOIN or SABLA report) to show that Meter Reading showing therein is factual and correct or even taken. Secondly as stated by the P.O that the Meter Reading was daily recorded completely misguided."

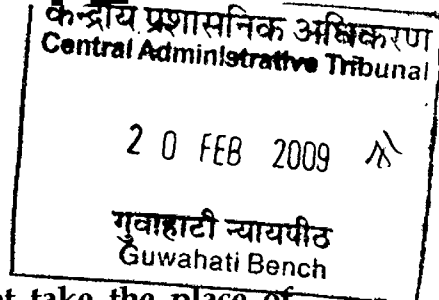
It would also evident from the following statement of the applicant given in this representation dated 27.01.2007 that the applicant is no way involved or responsible for supervisory lapse or due to abnormal decrease or increase in the meter reading due to technical fault. The relevant portion of the representation dated 27.01.2007 is quoted below:-

"The primary responsibility of the prosecution are to prove his case and the onus cannot be shifted to the defence despite the fact that the degree of the evidence required in the Departmental Proceedings that the preponderance of possibility is not proved beyond reasonable doubt as recorded in Criminal case but still P.O has to prove some possibility if not preponderance thereof.

By applying general principle of Evaluating Evidence the second principle is that the burden of proof rests on the Disciplinary Authority i.e. it would be the responsibility of the Presenting Officer to establish the charge first and then only the defendant would be required to controvert the same. It is not the charged officer to prove his innocence or absorb himself from the charges. If the P.O fails to bring home the charges, no duty is cast on the Charged Officer to prove his innocence.

A further requirement is that the conclusion must be rested on the evidence and not on the matter out side the record and when it is said that the conclusion must be rested on the evidence, it goes without saying that it must not be based on the misreading

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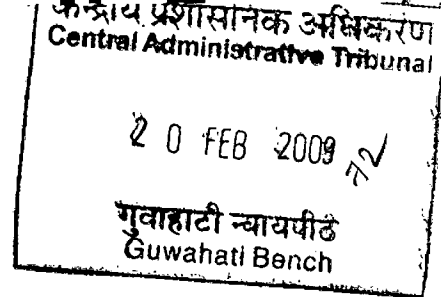
of evidence. Similarly, mere suspicion cannot take the place of evidence or proof, suspicion, however, strong has not evidentiary value whatsoever. Moreover no conclusion should be arrived at arbitrarily without evidence or misreading of evidence.

Here No Meter Reading set have been reported without generating it by a command ABOIN. No ABOIN records have been put in evidence for any Meter Reading recorded shown in the statement and therefore every reading in the statement becomes a Suspect. Hence this cannot take place any evidentiary value. The charges leveled by the Disc. Authority regarding abnormal decrease or increase in the Meter Reading stated to be technical fault is totally wrong without having any evidence at all. The Inquiry Authority has clearly stated in his report that both SW-1 as well as P.O have failed to recollect the reason and to establish the fact of any kind of existence of abnormal increase or decrease in the Meter Reading and failed to produce any evidence during the entire hearing of the case.

Hence, the charges framed by the Disciplinary Authority regarding lapses or failure in supervision on the part of the charge officer do not arise as no evidence/documents are found to be establish for any kind of existence of abnormal decrease or increase in the Meter Reading."

Therefore, the 2nd stage advice of the CVC is contrary to the findings of the inquiry officer, more so when the CVC could not find out any defect or irregularity in the inquiry proceeding as such CVC has no jurisdiction to tender advice for imposition of penalty of 'censure' when there is no charge of supervisory lapse or allegation regarding abnormal increase or decrease in the meter reading due to technical fault, as because the allegation was tempering with the meter reading using the secret passwords at night in the exchange. Hence the allegation pointed out by CVC is factually not correct and contrary to article of charge and on its score alone the impugned order of penalty of 'censure' is liable to be set aside and quashed.

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Copy of the representation dtd. 27.01.2007 is enclosed hereto and marked as Annexure-15.

- 4.17 That it is stated that the Desk Officer (Vig. II), Ministry of Communication and I.T, Department of Telecommunications (Vigilance- II Section) vide impugned penalty order No. 8/99/2003-Vig.II dated 31.01.2008 imposed the penalty of Censure upon the applicant. The office of the General Manager, Telecom district, Tezpur vide letter bearing No. AKD/VIG/TZ/07-08/04 dated 20.02.2008 served upon the applicant impugned penalty order dated 31.01.08 along with the UPSC advice issued under letter dated 08.01.2008. However, the impugned penalty order dated 31.01.2008 communicated to the applicant on 21.02.2008.

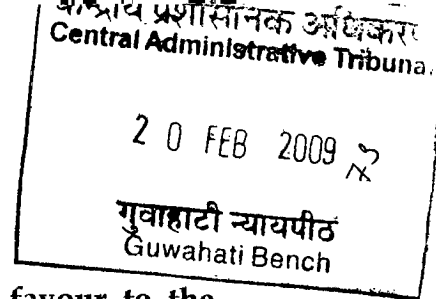
On a mere looking at the UPSC advice it appears that the Commission in para 6.3 although satisfied with the findings of the inquiry officer, however could not find out any defect, irregularity or infirmity in the inquiry proceeding and made a specific observation in para 6.3 to the following effect.

"6.3 The commission observe that the DA has not made available any evidence to show that the CO caused huge financial loss of revenue to the department for self monetary gains. The quantum of loss has not been specified. So, to this extent only, the element of charge is not proved."

From the above observation of the commission, it is quite clear that the charge brought against the applicant is not proved. But surprisingly, the UPSC being influenced by the CVC advice or otherwise made a reverse observation just for the sake of imposition of penalty of 'censure'. The relevant portion of further observation of the UPSC is quoted hereunder:-

"6.3 But on preponderance of probability it is proved that the CO in his capacity of DGM and being in administrative control of all the exchanges in Nasik was in possession of important passwords by which he manipulated the meter readings of the telephone numbers as indicated in the statement of imputations of

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misconduct. The CO's motive of showing undue favour to the subscriber is self evident."

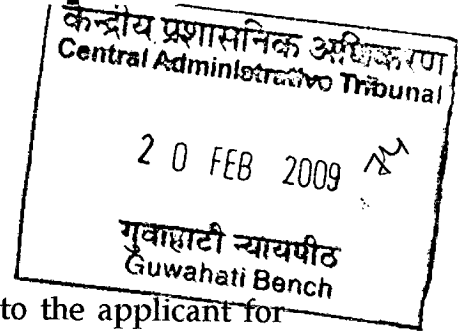
7. In the light of findings as discussed above and after taking into account all relevant facts, the Commission are of the view that the charges against the CO under the Article are partially proved. The element of charge which is not proved is that the CO caused huge revenue loss to the Department for self monetary benefits, but the fact is that loss was actually caused and that was due to lack of supervisory role of the CO. The Commission consider that the ends of justice would be met in this case if the penalty of 'Censure' is imposed on Shri A.K. Dutta, the CO. They advice accordingly."

It appears from the above observation that the UPSC also being influenced by the advice of the CVC held that article of charge is partially proved and as such UPSC tendered its advice for imposition of penalty of censure due to supervisory lapse of the charged officer.

It is pertinent to mention here that there was no charge brought against the applicant for supervisory lapse or supervisory role. As such question of imposition of penalty of 'censure' upon the applicant is not sustainable in the eye of law. Moreover there is only one article of charge, as such view of the commission that the charge is partially proved also cannot be sustained in the eye of law. More so, when the amount of loss is also not determined in the inquiry proceeding. As such question of imposition of penalty of 'censure' does not warrant in the instant case of the applicant on the alleged ground of supervisory lapse. It appears that the UPSC in fact influenced with the advice of the CVC in an arbitrary manner which is not sustainable in the eye of law.

- 4.18 That it is stated that the disciplinary authority did not apply its mind independently, but mechanically acted on the dictation of CVC and UPSC, came to the conclusion that the applicant is responsible with respect to the major exchange faults leading to revenue loss. It is further alleged in para 4 of the impugned order of penalty that the disagreement of the disciplinary

Arijan Kumar Dutta



authority with the inquiry report was communicated to the applicant for making representation if any in the matter. Accordingly, applicant had submitted a representation dated 27.01.2007 against the CVC advice and the disagreement of the disciplinary authority. It is to be noted here at this stage that the disciplinary authority surprisingly made the following observation in para 4.

".....In his representation, he had only reiterated the findings of the inquiry authority which was not accepted by the CVC. Advice of the CVC has been accepted by the disciplinary authority and accordingly disciplinary authority proposed to disagree with the findings of the IO. Hence he may be exonerated on the basis of the findings of the I.O".

It is quite clear from the above observation of the disciplinary authority that the disciplinary authority did not apply his mind independently rather the disciplinary authority has acted mechanically on the advice of the CVC and accordingly disciplinary authority proposed to disagree with the findings of the inquiry officer without looking into the merit of the findings of the inquiry officer. It is also surprising that the disciplinary authority has decided to propose disagreement on the basis of the advice of the CVC. Therefore it appears proposal of disagreement not initiated by the disciplinary authority of his own. Rather disciplinary authority mechanically followed the advice of the CVC as well as UPSC, while imposing penalty of 'censure'. When admittedly the disciplinary authority failed to point out any infirmity or irregularity in conducting the inquiry proceeding or in the matter of appreciating evidences recorded in the inquiry proceeding. Similarly, neither CVC nor UPSC could able to find out any infirmity or irregularity in the inquiry proceeding. Rather Disciplinary authority, CVC and UPSC are in agreement with the findings of the inquiry officer so far the article of charge brought against the applicant is concerned. As such, question recording "reason of disagreement also does not arise". But interestingly CVC has tendered its advice for imposition penalty upon the applicant on the allegation that the

Arjan Kumar Datta

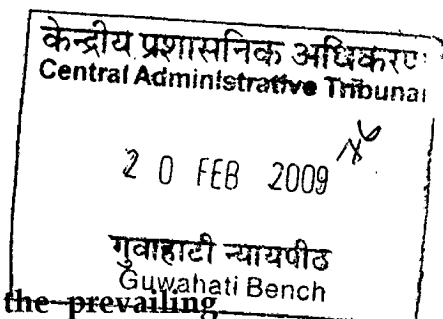
applicant is guilty of supervisory lapse, when admittedly there is no charge of supervisory lapse in the impugned memorandum of charge sheet dated 02.08.2004. Therefore, advice of the CVC and UPSC is contrary to the records of the inquiry proceeding. Moreover, the disciplinary authority failed to point out any valid ground for recording disagreement with the findings of the I.O. As such disciplinary authority has no jurisdiction to impose penalty of 'censure' on alleged ground of supervisory lapse when admittedly there is no charge of supervisory lapse and on that score alone the impugned penalty order dated 31.01.2008 is liable to be set aside and quashed.

Copy of the UPSC advice dtd. 08.01.2008, impugned penalty order dtd. 31.01.2008, CGMT letter dtd. 15.02.2008 and GMT letter dtd. 20.02.2008 are enclosed hereto and marked as Annexure- 16, 17, 18 and 19 respectively.

- 4.19 That it is stated that grounds raised by the applicant in his representation dated 27.01.2007 in fact not considered by the disciplinary authority while decided to impose penalty of censure upon the applicant but the disciplinary authority mechanically followed the unlawful advice of the CVC and UPSC without independent application of mind. Therefore, the impugned order of penalty dtd. 31.01.2008 is liable to be set aside and quashed.
- 4.20 That it is stated that the basic document i.e. serial No. 4 of the listed documents, mainly computerized sheets, hard copy, which is relied upon by the disciplinary authority in annexure-III of the memorandum of charge sheet dtd. 02.08.2004 could not be made available to the charged officer, or in other words, failed to produce the same by the Presenting Officer in the inquiry proceeding, for examination to determine or establish the alleged fact, of meter reading observation of 7 telephones in question. Observations given by the inquiry officer in his report is quoted hereunder:-

"But the prosecution did not present any document to establish that whether these commands were used and by whom, although a log of these commands or automatically

Anjan Kumar Dutta



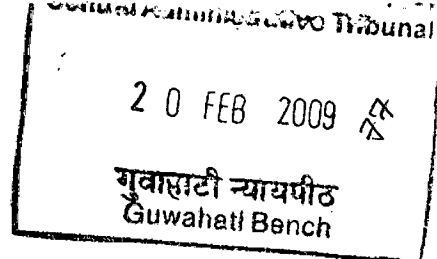
in YJDB log file of the exchange. As per the prevailing instructions issued by the Deptt. of Telecom on this subject, the YJDB log file should be preserve for a period of three months. The preliminary vigilance inquiry was conducted by the DE (Vig.) Nasik before completion of the three months of the alleged incidents of manipulation of the meter readings; and, therefore, he could have easily taken out a copy of the YJDB printout to pin-point the alleged misuse of the ABOMU command. But no efforts seem to have been made by the DE (Vig.) Nashik."

It is quite clear from the above observation of the inquiry officer that the prosecution failed to produce the document indicated at sl. No. 4 of the listed document (Annexure-III) relied upon by the disciplinary authority to establish the manipulation in meter reading of the 7 telephone in question by the charged officer, as such the entire allegations or article of charge brought through memorandum dtd. 02.08.2004 cannot be sustained at all, as such, inquiry officer rightly came to the conclusion that the charge 5 "not proved".

- 4.21 That it is stated that the inquiry authority observed that Sri Kolwadker, ADET (SW-1) in fact was the incharge of the E-10 B exchange, as such in the circumstances as stated above it is abundantly clear particularly in view of the circular dated 26.02.1991, that Shri Kolwadkar having the highest command of the exchange. As such advice of the CVC as well as advice of the UPSC is contrary rule in force. It is also clear that at the relevant point of time applicant holding the post of DGM, as a result of his promotion w.e.f. 29.12.1995, as such question of possession of password management command by the charge officer who was not the in charge of the exchange cannot be said to have exclusive possession of the exchange as per rule in force, which would be evident from the representation dated 27.01.2007, the relevant portion is quoted hereunder:-

"The Inquiry Authority in his report has clearly stated that it is an established fact that in E-10B Exchanges, the

Arijan Kumar Dutta



passwords protection as well as all important password are with DE Incharge of the Exchange. This is also confirmed by the DOT circular No. 19-9/90-PHM dated 10/4/91 and same is reflected in MTNL Tech Circular of E-10B No. 01.21.006-MSE, issue- 01 dated 26/2/91 on arrangement of passwords and grouping of various commands into different classes in E-10B Exchange. In Nowhere DGM's are Incharge of Exchange."

And on that score alone the impugned penalty order dated 31.01.2008 is liable to be set aside and quashed.

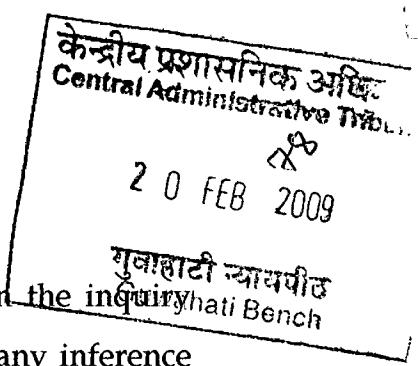
Copy of the circular dated 26.02.1991 is enclosed hereto and marked as Annexure- 20.

4.22 That this application is made bona fide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

- 5.1 For that, the alleged article of charge brought against the applicant in the memo dated 02.08.2004 in fact not proved after detailed inquiry conducted by the inquiry officer at the instance of the disciplinary authority on the basis of the listed documents and state witnesses relied upon the disciplinary authority to sustain the proposed charges as such the impugned order of penalty dated 31.01.2008 is liable to be set aside and quashed.
- 5.2 For that, the inquiry officer reached to the ultimate finding after detailed assessment of evidences recorded in the inquiry proceeding that the article of charge is not proved.
- 5.3 For that, the disciplinary authority, CVC and UPSC in their findings could not find out any infirmity, irregularity or lapses on the part of the inquiry officer either in conducting the inquiry proceeding or in the matter of assessment of evidence made by the inquiry officer as such the findings of the inquiry officer is binding upon the disciplinary authority.

Anjan Kumar Dutta

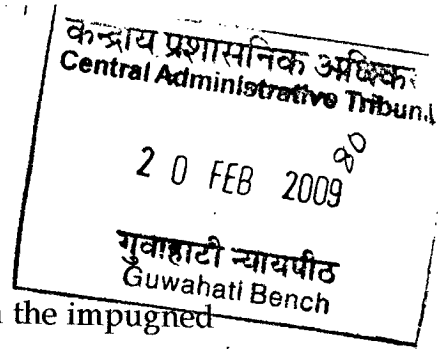


- 5.4 For that, when the CVC could not find out any infirmity in the inquiry proceeding as such CVC has no scope or authority to draw any inference that applicant was in possession of highest command of exchange.
- 5.5 For that, the advice of the CVC to impose penalty of 'censure' upon the applicant on the alleged ground of 'supervisory lapse' on the part of the CO is beyond the scope and jurisdiction of the CVC when admittedly there is no article of charge on 'supervisory lapse' brought against the applicant in the memorandum of charge sheet dated 02.08.2004.
- 5.6 For that the prosecution side also failed to establish any amount of revenue loss as alleged in the article of charge as such advice tendered by the CVC is contrary to the record of the inquiry proceeding.
- 5.7 For that UPSC also could not find out any infirmity and irregularity in the inquiry proceeding while making assessment of evidence recorded in the inquiry proceeding as such CVC has no jurisdiction or scope to hold that the sole article of charge is "partially proved" on the alleged ground of revenue loss caused to the department due to 'supervisory lapse'.
- 5.8 For that, UPSC also without consulting the record of the inquiry proceeding mechanically followed advice of the CVC that there is a supervisory lapse on the part of the charged officer admittedly when supervisory lapse is not a part of the charge. As such advice tendered by the UPSC beyond its scope and jurisdiction. Hence the advice is not sustainable in the eye of law.
- 5.9 For that, penalty cannot be imposed in a disciplinary proceeding merely on suspicion that too when the charges not proved in the inquiry proceeding.
- 5.10 For that no valid reason has been assigned by disciplinary authority for recording reason of disagreement with the findings of the I.O.
- 5.11 For that there is no independent application of mind on the part of the disciplinary authority rather the disciplinary authority acted on the dictation of the CVC and UPSC and followed illegal and arbitrary advice of the Commission which is contrary to the record of the inquiry proceeding.

Anjan Kumar Dutta

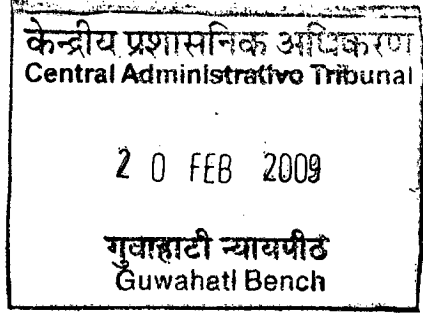
- 5.12 For that advice of the CVC and UPSC is not binding upon the disciplinary authority, more so when such advice is contrary to the findings and record of the inquiry proceedings.
- 5.13 For that neither the disciplinary authority nor CVC or UPSC has the power and scope to travel beyond the article of charge and the evidences recorded in the inquiry proceeding.
- 5.14 For that unlawful advice of the CVC or UPSC is not binding upon the disciplinary authority.
- 5.15 For that the disciplinary authority even failed to produce in the enquiry proceeding the relevant vital documents relied upon by the authority to sustain the proposed changes, as such CVC or UPSC has no authority to tender unlawful advice to impose penalty upon the applicant.
6. **Details of remedies exhausted.**
That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.
7. **Matters not previously filed or pending with any other Court.**
The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.
8. **Relief (s) sought for:**
Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief (s):

Anjan Kumar Dutta



- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum of charge sheet bearing No. 8-99/2003-Vig. II dated 02.08.2004 (Annexure- 6) and impugned penalty order bearing letter No. 8-99/2003-Vig.II dated 31.01.2008 (Annexure- 17).
- 8.2 Costs of the application.
- 8.3 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.
9. Interim order prayed for:
During pendency of the application, the applicant prays for the following interim relief: -
- 9.1 That the Hon'ble Tribunal be pleased to observe that the pendency of this application shall not be a bar for the respondents to provide the relief as prayed for.
10.
11. Particulars of the I.P.O
- | | | |
|------|---------------|--------------------|
| i) | I.P.O No. | : 396 378407 |
| ii) | Date of issue | : 22.12.2008 |
| iii) | Issued from | : G.P.O, Guwahati. |
| iv) | Payable at | : G.P.O, Guwahati. |
12. List of enclosures :
As given in the index.

Anjan Kumar Dutta



VERIFICATION

I, Shri Anjan Kumar Dutta, S/o- Late N. G. Dutta, aged about 50 years, working as Deputy General Manager, BSNL Tezpur, Assam circle, Tezpur, Assam, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

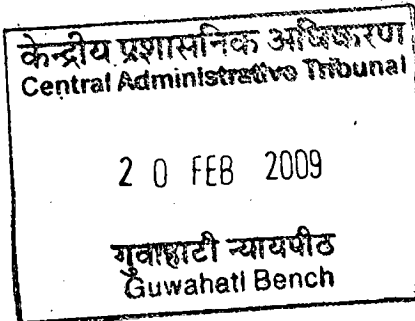
And I sign this verification on this the 14th day of February 2009.

Anjan Kumar Dutta

No. 8/99/2003-Vig.II

Government of India

Ministry of Communications & Information Technology
Department of Telecommunications



West Block-I, Wing-2
Ground Floor
R.K. Puram Sector-I
New Delhi-110066

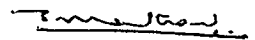
Dated the 22-8-2003

MEMORANDUM

Shri A.K. Dutta (Staff No. 8188), Deputy General Manager, Maharashtra Telecom Circle, is hereby informed that it is proposed to take action against him under Rule 16 of the CCS (CCA) Rules, 1965. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above, is enclosed.

2. Shri A.K. Dutta is hereby given an opportunity to make such representation as he may wish to make against the proposal.
3. If Shri A.K. Dutta fails to submit his representation within ten days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri A.K. Dutta ex-parte.
4. The receipt of this Memorandum should be acknowledged by Shri A.K. Dutta.

By order and in the name of the President,



(JOHN MATHEW)

UNDER SECRETARY TO THE GOVT. OF INDIA

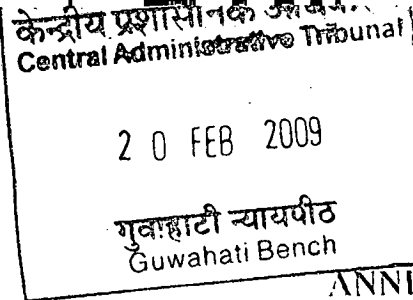
To,

Shri A.K. Dutta,
(Staff No. 8188),
Deputy General Manager,
Maharashtra Telecom Circle.

(Through the CGM Telecom, Maharashtra Telecom Circle, Mumbai).

Attested
Dutta
Adv.

- 26 -



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ANNEXURE

Statement of imputations of misconduct or misbehaviour on which action is proposed to be taken against Shri A.K. Dutta (Staff No. 8188), Deputy General Manager, Maharashtra Telecom Circle.

That the said Shri A.K. Dutta was functioning as Deputy General Manager (I&P), O/o General Manager, Nasik Telecom District, during the period 1995-96.

2. As the Deputy General Manager (I&P), the said Shri A.K. Dutta was in overall charge of the E-10B Exchange, Nasik, and had in his exclusive possession, the Password Management Commands with which inter alia the meter reading of any telephone number could be manipulated.

3. Scrutiny of the meter reading statements of the following telephone numbers, revealed that there was increase and decrease in the meter reading, though there should have been continuous increase in the meter reading of any working telephone :

Statement of meter reading of numbers kept under observation

Date	Telephone No.						
	575138	576116	577087	577097	565656	562900	564070
1	2	3	4	5	6	7	8
28/02	300	136	67	24	----	----	----
15/03	343	181	136	77	----	----	----
31/03	419	225	207	128	----	----	----
15/04	488	261	248	190	54	----	----
01/05	591	287	292	213	113	----	----
06/05	000	000	000	000	000	----	----
16/05	41	48	47	41	260	----	----
24/05	1135	46	1762	789	342	----	----
25/05	41	48	255	42	352	----	----
01/06	94	101	94	101	439	----	----
04/06	965	97	126	94	264	----	----
05/06	1220	945	126	98	264	----	----
06/06	95	94	126	99	265	----	----
07/06	2494	2116	126	94	266	000	000
10/06	130	96	----	----	261	000	2
11/06	133	177	133	177	261	000	13
13/06	140	178	133	177	278	000	15

Contd...2

Signature

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

-2-

Date	Telephone No.						
	575138	576116	577087	577097	565656	562900	564070
1	2	3	4	5	6	7	8
15/06	133	177	133	178	645	000	24
17/06	177	133	133	177	654	3	32
19/06	177	133	1077	753	663	6	30
21/06	1492	177	133	894	680	7	28
22/06	177	133	177	134	680	11	204
24/06	180	153	178	206	782	11	220
25/06	180	153	178	206	---	---	---
26/06	182	155	178	206	911	14	273

4. Further, one of the aforesaid seven telephone numbers, viz. telephone No. 565656 (old No. 65656) was diverted from the Strowger Exchange to the E-10B Exchange on the verbal instructions of the said Shri A.K. Dutta, though the said telephone number did not qualify for such diversion as per the prescribed criteria. However, the said Shri A.K. Dutta, as the Deputy General Manager, refused to confirm his verbal instructions in writing, after the diversion had been carried out, as stated by Shri Sandeep Kolwadkar, the then Assistant Divisional Engineer (E-10B), vide his statement dated 2.7.1996.

5. The said Shri A.K. Dutta, as the Deputy General Manager (I&P), in overall charge of the E-10B Exchange, Nasik, thus, manipulated the meter readings of the aforesaid telephone numbers, thereby showing undue favour to the subscribers, and causing loss of revenue to the Government. Such manipulation was possible only by the person having in his possession the Password Management Commands. And the Password Management Commands were in the exclusive possession of the said Shri A.K. Dutta during the relevant period.

6. Thus, by his above acts, the said Shri A.K. Dutta committed misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

By order and in the name of the President.

(JOHN MATHEW)
UNDER SECRETARY TO THE GOVT. OF INDIA

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

20 FEB 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

CENTRAL VIGILANCE COMMISSION

Department's No. 3-17/2000-VM.II

During the examination of the case it appears that there were certain malpractices relating to meter reading in respect to the 3 telephone numbers, but from the documents/evidence available it will be difficult to pin-point the culpability on Shri A.K. Dutta. In view of this, the Commission advises initiation of proceedings for a stiff minor penalty against Shri A.K. Dutta, DGM.

All the documents received in the Commission are returned herewith in toto.

67/4062 VM.II/03
27/7

67/4062 VM.II/03
27/7

24.1.2003

182
27/11/03

(R.L. Banerjee)
Director

Department of Telecom (Shri G.S. Grover, SR.DDG(V) New Delhi)
C.V.C.I.D. Note No. 002/P&T/250

Shri M. I.
Dir (V.M.)

Bu
27/1/03

Adv (VM.II)

27.1.03
S/A.C.

Attested
Dutta
Adv

JAO

1.1.02

-29-

ANNEXURE-3

Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
Office of Principal General Manager,
Kalyan Telecom District

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal
20 FEB 2009
गुवाहाटी न्यायपीठ Guwahati Bench

To,

Principal General Manager,
Kalyan Telecom District,
Kala Talao, Kalyan.

Respected Sir,

Kindly find enclosed herewith my representation against memo no.8/99/2003-Vig.II Dated the 22.8.2003 from Sh. John Mathew, Undersecretary to the Govt. of India.

My representation may kindly be forwarded through proper channel to Sh. John Mathew with your appropriate comment.

The receipt of this letter may kindly be acknowledge.

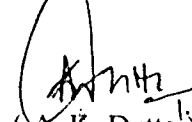
Thanking You,

Encl : My Representation.

Date : 30th Sept '03

Place : Kalyan

Yours sincerely,


(A. K. Dutta)
Area Manager (Kalyan)
Kalyan Telecom District.

Recd

उपमंडल अभियंता (सतर्कता)
प्रधान महाप्रबंधक का कार्यालय
भारत संचार निगम लि. कल्याण ४२१ ३०१
Sub. Divl. Engineer (Vigilance)
O/o. Principal General Manager
BSNL, Kalyan 421 301.

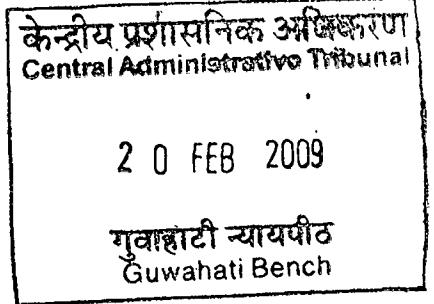
Attested
Adu

From : A. K. Dutta
Staff No. 8188
Deputy General Manager,
Maharashtra Telecom Circle.

To,

HIS EXCELLENCY THE PRESIDENT OF INDIA

Kind Attention : Sh. John Mathew
Under Secretary to the Govt. of India,
Ministry of Communication & Information Technology,
Department of Telecommunication,
R. K. Puram, New Delhi - 110066.



(Through Proper Channel)

I respectfully acknowledged the receipt of the Memo No. 8/99/2003-Vig.II Dated the 22.8.2003.

1. I, the undersigned submit the following few lines for your kind consideration and delivering natural justice to me. I was working as DGM(Installation), Nashik w.e.f. 29.12.95 having overall charge of mtce. of 9.5K E-10B exchange at Nashik, 4.2K C-DOT exchange at Satpur, 5.0K C-DOT exchange at Ambad, PCM and OFC junction network and 3.0K D-TAX exchange at Nashik City. In addition to above, I was having overall charge for the Installation of 4.0K Main OCB-283 exchange at Canada Corner, Nashik, 6.0K OCB-283 exchange at Ambad, 3.0K E-10B RLU exchange at Nashik Road and OFC and PCM system. Additional charge of DGM(Rural & Admn.) was also looked after by me w.e.f. 14.6.96 due to prolonged illness of Sh. Ajit Singh, DGM(Rural and Admn.). As DGM(Rural & Admn.) I was holding overall charge of Internal and External Mtce. of entire Rural Exchanges, Installation of various C-DOT exchanges in rural areas, Installation and Mtce. of Transmission system in rural areas, Administration, Establishment and General Section. With the responsibility of so much of work on shoulder, I was very busy and always remained under tremendous pressure to carry out day-to-day work of the Telecom District having working lines capacity of approximately One Lakh lines.

2. I, myself is trained in Transmission branch. I have only taken a 5 weeks Basic training course of E-10B exchange at Madras. The Basic training gives brief ideas about the functioning of various modules of E-10B exchange. The E-10B exchange was installed and commissioned by M/s ITI at Nashik. Therefore I was not having enough knowledge of E-10B exchange. In fact, in view of too much work on my shoulder, I was not having much time to visit E-10B exchange at Nashik.

Cont..2.

Accepted
A. K. Dutta
Adv

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

All the subscriber management work and day-to-day routine maintenance work were under the control of Sh. Sandeep Kolwadkar, ADET(E-10B) at Nashik and two JTOs Sh. D.D. Wani and Ms. Varsha Ahire, who were working under the control of Sh. Sandeep Kolwadkar. Sh. Sandeep Kolwadkar was trained in E-10B specialization course and was having deep knowledge of working of E-10B exchange. He used to handle all kind of trouble shooting in E-10B exchange. It was not true that I was in exclusive possession of Password Command of E-10 B exchange. Sh. Sandeep Kolwadkar, ADET(E-10B) was also having Password Commands of Subscriber Management and various routine maintenance of E-10B exchange. He was carrying out the work of creation, closure and modification of subs lines and accessories. He was also taking meter readings of all the working lines and sending it to AOTR, Nashik.

As my knowledge of E-10B exchange was very much limited therefore I did not have any knowledge and methods of command through which inter alia the meter reading of any telephone number could be manipulated. The charge leveled against me is totally uncalled for and completely false and therefore I deny the charge.

The YJDB log print out would be able to describe about the execution of commands regarding, if there was any manipulation of meter reading. Therefore I may kindly be provided the attested copy of YJDB log print out for my scrutiny and to prepare my defense.

3. The fortnightly meter readings of E-10B exchange are taken on Mag Tape and sent to M/s DSS, Pune (an approved vendor for Nashik Telecom District) for processing the detailed bills for STD and ISD calls. The hard copy of print out along with floppy containing OMR (Opening Meter Reading) and CMR (Closing Meter Reading) of all the subscribers telephone numbers were sent to AOTR by ADET(E-10B) exchange, Nashik for taking further action by AOTR, Nashik for the purpose of issue of bills to the subscribers.

The fortnightly meter readings taken during the period of the referred telephone numbers had shown continuous increase in meter reading. There was no fluctuation noticed in the fortnightly meter readings. The meter reading statement taken fortnightly of the referred telephone numbers are indicated below:

Cont..3.

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Date	Telephone Numbers							Remarks
	575138	576116	577087	577097	565656	562900	564070	
28/2	300	136	67	24	--	--	--	
15/3	343	181	136	77	--	--	--	
31/3	419	225	207	128	--	--	--	
15/4	488	261	248	190	54	--	--	
1/5	591	287	292	213	113	--	--	
6/5	000	000	000	000	000	--	--	
								The E-10B Exchange had Failed on 6/5 due to some technical problem **
16/5	41	48	47	41	260	--	--	
1/6	94	101	94	101	439	--	--	
15/6	133	177	133	178	645	000	24	

** The E-10B exchange had failed on 6/5 due to some technical problem. The exchange had been restored with back up Mag Tape. Due to which the meter readings of all the subscribers had been changed. Therefore all the meter readings had been set to zero in order to avoid any metering complaint of the subscriber and loss of revenue to the department.

Due to this reason, the fortnightly meter reading taken on 16/5 had been found less than the meter reading taken on earlier fortnight on 1/5. The exchange had been restored by ADET(E-10B), Nashik with the help of JTOs under him. From the above mentioned table it clearly indicates that meter readings were found increasing trend continuously in every subsequent fortnight.

Since the meter readings were taken every fortnight regularly and there were no fluctuation noticed in the fortnightly meter readings of the above referred telephone numbers. The meter reading position shown in the statement in between the two consecutive fortnight period between 1/6 to 15/6 which were on 4/6, 5/6, 6/6, 7/6, 10/6, 11/6 and 13/6 had not been brought into my notice by ADET(E-10B) exchange, Nashik. Similarly, the meter readings taken in between the fortnight period of 15/6 to 30/6 which were on 17/6, 19/6, 21/6, 22/6, 24/6, 25/6 26/6 had not been brought into my notice by ADET(E-10B) exchange, Nashik. Therefore, I did not have any opportunity to know about the fluctuation of meter readings of above referred telephone numbers nor any body had brought into my notice about these fluctuations of meter readings then under such circumstances, how I could be held accountable for the fluctuation of meter readings of above referred tel. numbers ?

It may kindly be noted that all the commands which had been restricted by the Directorate, were deleted from the class of commands. Since I am not aware as what kinds of observation had been taken for meter readings of above referred telephone numbers therefore, I may kindly be provided attested copies of all the print outs of all kinds of observation taken for my scrutiny and to prepare my defense.

4. As far as my memory goes to year 1996 to best of my ability, there was no prescribed criteria defined by GMT, Nashik to change the number from Strowger exchange to E-10B exchange. No written order or instructions were issued by GMT, Nashik in this regard. It was found that the Strowger exchange at Nashik Road was having serious problems of frequent held up of dial tone and call dropping. The telephone numbers which were having serious complaint of frequent held up and call dropping or having high calling rate were generally changed to E-10B exchange on the basis of complaint made by subscribers in order to reduce the subscribers complaint and to improve the image of the department.

Regarding the change of telephone number from 65656 to 565656 from Strowger exchange to E-10B exchange, as far as my memory goes to year 1996 to best of my ability, I had not given any verbal instruction to anybody to carry out the diversion of above telephone number from Strowger exchange to E-10B exchange. Neither I had any knowledge about the refusal to confirm the verbal instruction. It is not understood as to why Sh. Sandeep Kolwadkar, ADET(E-10B) exchange, Nashik had sought confirmation in writing about the particular number only? As already stated generally, the telephone numbers having serious complaints of frequent held up and call dropping and having high calling rate were considered for diversion from Strowger exchange to E-10B exchange and this type of work was solely the responsibility of ADET(E-10B) exchange as he was having all subscriber management commands.

As far as I remember, I do not know the subscriber who was having telephone number 565656. As it is alleged that above telephone number did not qualify the diversion as per prescribed criteria, I did not have any knowledge about such prescribed criteria available at that time in Nashik Telecom district. Therefore, I may kindly be provided the attested copy of such prescribed criteria for my scrutiny and to prepare for my defense.

5. As I have already mentioned about my work as DGM, I was very busy and remained under tremendous pressure to carry out day-to-work. Since I was not having enough knowledge of E-10B exchange and since Sh. Sandeep Kolwadkar, ADET(E-10B) exchange, Nashik was having specialisation training of E-10B exchange and having deep knowledge of E-10B exchange and used to handle the trouble shooting of E-10B exchange therefore most of the day-to-day routine work of E-10B exchange was being looked after by ADET(E-10B) exchange.

AKG

As I had to cover the work of entire rural area so I was frequently visiting various exchanges in rural area apart from Installation work of major exchanges and OFC system in urban areas and the Administration work, I was not having much time to visit E-10B exchange. Therefore, manipulating the meter readings of telephone number was out of my knowledge and out of question in my day-to-day busy time schedule. I had not done any undue favour to any subscriber and also I have not caused to any revenue loss to the Government as alleged. I, therefore deny the charge.

I could not able to understand as to how Vigilance Officer of Nashik Telecom District had arrived to a conclusion of malpractice by me on the basis of what kind of observation taken by him. I, therefore request that I may kindly be provided the attested copy investigation report of Vigilance Officer, Nashik so as to ascertain on what basis he had arrived to a conclusion of malpractice alleged against me, which is essential for my scrutiny and to prepare my defense.

6. In view of my explanation above, it can be seen that allegations against me are very much extraneous in nature and completely false and baseless and without any evidence.


Hence, I may kindly be let-off from all the allegation made against me. And for this act of kindness I shall ever be grateful to you. I, hereby deny all the charges leveled against me.

In the event of any further action against me, I request that an oral inquiry be ordered in order to meet the end of natural justice.

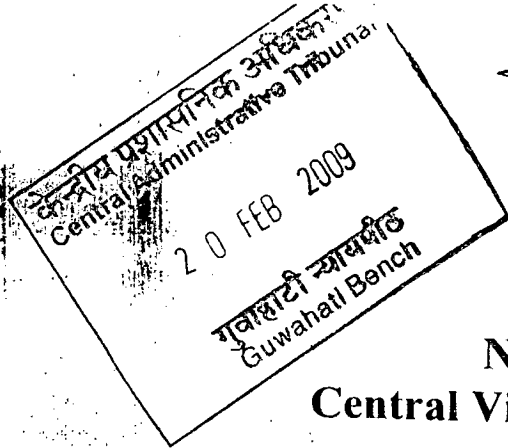
Thanking You Sir,

Date : 30th Sept'03
Place : Kalyan

Yours sincerely,


(A. K. Dutta)





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①
ANNEXURE-5

No.3 (v)/99/2
Central Vigilance Commission

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023
Dated the 29th June 1999

Subject: Improving vigilance administration - no action to be taken on anonymous/pseudonymous petitions/complaints.

By virtue of the powers invested in the CVC under para 3(v) of the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training Resolution No.371/20/99-AVD.III dated 4th April 1999, the 'CVC' is empowered to exercise superintendence over the vigilance administration of the various Ministries of the Central Government or Corporations established under any Central Act, Government Companies, Societies and local authorities owned or controlled by that Government.

2. One of the facts of life in today's administration is the widespread use of anonymous and pseudonymous petitions by disgruntled elements to blackmail honest officials. Under the existing orders, issued by Department of Personnel & Training letter No.321/4/91-AVD.III dt.29.9.92, no action should be taken on anonymous and pseudonymous complaints and should be ignored and only filed. However, there is a provision available in this order that in case such complaints contain verifiable details, they may be enquired into in accordance with existing instructions. It is, however, seen that the exception provided in this order has become a convenient loophole for blackmailing. The public servants who receive the anonymous/pseudonymous complaints, generally, follow the path of least resistance and order inquiries on these complaints. A peculiar feature of these complaints is that these are resorted to especially when a public servant's promotion is due or when an executive is likely to be called by the Public Enterprises Selection Board for interview for a post of Director/CMD etc. If nothing else, the anonymous/pseudonymous petition achieves the objective of delaying the promotion if not denying the promotion. These complaints demoralise many honest public servants.

*Affected
Walter
Adh*

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3. A person will resort to anonymous or pseudonymous complaints because of the following reasons:

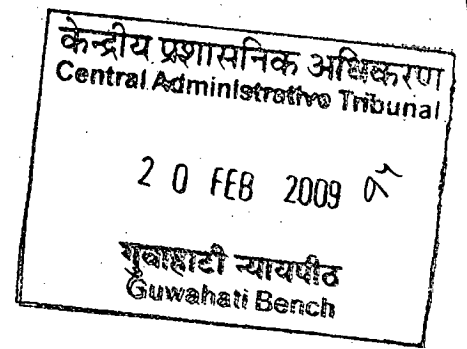
- i. He is an honest person who is a whistle blower but he is afraid to reveal his identity because of fear of consequences of the powerful elements in the organisation.
- ii. He is a blackmailer who wants to psychologically pressurise the public servant complained against

4. There could be a view that if the anonymous/pseudonymous complaints contain an element of truth and if no action is to be taken on them then an important source of information will be lost. To that extent, corrupt practices may get a boost. At the same time the Central Vigilance Commission has initiated a number of steps to provide a channel of communication against the corrupt public servants. These measures include the following:

- i. Under CVC's order No.8 (1)(h)(1) dated 18.11.98, even junior officers can complain to the CVC in cases of corruption against the seniors;
- ii. The CVC has issued instructions that the name of the complainant will not be revealed when the complaint is sent to the appropriate authorities for getting their comments or launching inquiries;
- iii. Under CVC Order No. 8(1)(g)/99(4) dated 12th March 1999, in every office there should be public notice displayed directing that no bribe should be paid. If any bribe is demanded, the complaint should be made to the appropriate authority like CVO, CVC etc.; and
- iv. The CVC is now available on web - <http://cvc.nic.in> If anybody wants to complain they can easily lodge complaints on the website of CVC and also through e-mail - vigilance@hub.nic.in

5. In view of the above measures taken, there is very little possibility that genuine cases of corruption will not be brought to the notice of the appropriate authorities by those who were earlier resorting to anonymous/pseudonymous complaint route.

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6. It is, therefore, ordered under powers vested in the CVC under para 3(v) of the DOPT Resolution No.371/20/99-AVD.III dated 4th April 1999 that with immediate effect no action should at all be taken on any anonymous or pseudonymous complaints. They must just be filed.

7. This order is also available on web site of the CVC at <http://cvc.nic.in>
All CVOs must ensure that these instructions are strictly complied with.



29.6.99

(N. VITTAL)

CENTRAL VIGILANCE COMMISSIONER

To

(i)

(ii)

(iii)

(iv)

(v)

The Secretaries of All Ministries/Departments of Government of India
The Chief Secretaries to All Union Territories
The Comptroller & Auditor General of India
The Chairman, Union Public Service Commission
All Chief Vigilance Officers in the Ministries /Departments/PSEs /Public
Sector Banks/Insurance Companies/Autonomous Organisations/Societies
President's Secretariat/ Vice-President's Secretariat/Lok Sabha Secretariat/
Rajya Sabha Secretariat/PMO

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No 8-99/2003-Vig II

Government of India

Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance Wing)

ANNEXURE-6

R.No.915, Sanchai Bhawan,
20, Ashoka Road, New Delhi-1

Dated 02-08-2004

MEMORANDUM

1. In continuation of Memorandum No.8-99/2003-Vig II dated 22.08.2003 issued under Rule 16 of CCS(CCA) Rules, 1965, the President after considering the request of Shri A.K. Dutta, DGM is of the opinion that it is necessary to hold an inquiry against Shri A.K. Dutta, DGM under Rule 16(1)(b) of CCS(CCA) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexures III & IV). A copy of the first stage advice of CVC for instituting minor penalty proceedings against Shri A.K. Dutta is also enclosed.

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

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

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

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

6. Receipt of this Memorandum should be acknowledged by Shri A.K. Dutta, DGM

By order and in the name of the President.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Shri A.K. Dutta
DGM,

Maharashtra Telecom Circle
Mumbai.

(Through CGMT, Maharashtra Circle)

Mohinder Singh
(Mohinder Singh)
Director(VA)

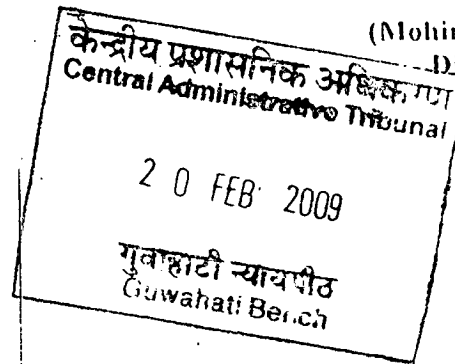
Attested
Dutta
Adv

Copy to:

The Chief General Manager, BSNL, Maharashtra Telecom Circle, Mumbai with the request to deliver the enclosed Memorandum to Shri A.K. Dutta and to send his dated acknowledgement to this office for record. His defence statement in triplicate, may be forwarded to this office immediately on its receipt. In case the officer fails to submit any defence within the stipulated period an intimation to that effect may be sent to this office. Service particulars of the officer may be sent in the pro forma prescribed in duplicate duly signed by the Vigilance Officer. The staff number and date of birth of the officer should invariably be indicated in the service particulars.

Mohinder Singh

(Mohinder Singh)
Director(VA)



2/8/04

Administrative
20 FEB 2009
गुवाहाटी न्यायाधीश
Guwahati Bench

ANNEXURE-I

Statement of article of charge framed against Shri A.K. Dutta (Staff No. 8188),
Deputy General Manager, Maharashtra Telecom Circle.

Article

Shri A.K. Dutta while working as DGM (I&P), O/o GMT, Nasik, during the period 1995-96 has committed the fraud in collusion with private subscribers of Telephone No. 575138, 576116, 577087, 577097, 565636, 562900, 564070 by using highest secret commands of E-10B Exchange at Canada Corner, Nasik Road by visiting the Exchange at night times and tampering with the meter readings using the secret passwords. Thereby he caused huge revenue loss to the Department for alleged self monetary benefits.

By his aforesaid acts, Shri A.K. Dutta, DGM, failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government Servant, thereby violated the provisions of Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

By order and in the name of the President,

Mohinder
(Mohinder Singh)
Director(VA)

ANNEXURE-II

Statement of imputations of misconduct or misbehaviour on which action is proposed to be taken against Shri A.K. Dutta (Staff No. 8188), Deputy General Manager, Maharashtra Telecom Circle.

That the said Shri A.K. Dutta was functioning as Deputy General Manager (I&P), O/o General Manager, Nasik Telecom District, during the period 1995-96.

2. As the Deputy General Manager (I&P), the said Shri A.K. Dutta was in overall charge of the E-10B Exchange, Nasik, and had in his exclusive possession, the Password Management Commands with which inter alia the meter reading of any telephone number could be manipulated.

3. Scrutiny of the meter reading statements of the following telephone numbers, revealed that there was increase and decrease in the meter reading, though there should have been continuous increase in the meter reading of any working telephone :

Statement of meter reading of numbers kept under observation

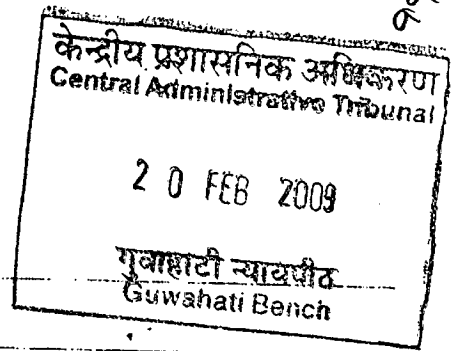
Date	Telephone No.							
	575138	576116	577087	577097	565656	562900	564070	
	2	3	4	5	6	7	8	
11/02	300	136	67	24	---	---	---	
15/03	343	181	136	77	---	---	---	
11/03	419	225	207	128	---	---	---	
15/04	488	261	248	190	54	---	---	
01/05	591	287	292	213	13	---	---	
06/05	000	000	000	000	000	---	---	
16/05	41	48	47	41	260	---	---	
24/05	1135	46	1762	789	342	---	---	
25/05	41	48	255	42	352	---	---	
01/06	94	101	94	101	439	---	---	
04/06	965	97	126	94	264	---	---	
05/06	1220	945	126	98	264	---	---	
06/06	95	94	126	99	265	---	---	
07/06	2494	2116	126	94	266	000	000	
10/06	130	96	---	---	261	000	2	
11/06	133	177	133	177	261	000	13	
13/06	140	178	133	177	278	000	15	

केन्द्रीय प्रशासनिक अपिलेशन
Central Administrative Tribunal

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

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Date

Telephone No.

	575138	576116	577087	577097	565656	562900	564070
1	2	3	4	5	6	7	8
15/06	133	177	133	178	645	000	24
17/06	177	133	133	177	654	3	32
19/06	177	133	1077	753	663	6	30
21/06	1492	177	133	894	680	7	28
22/06	177	133	177	134	680	11	204
24/06	180	153	178	206	782	11	220
25/06	130	153	178	206	----	----	----
26/06	132	155	178	206	911	14	273

4. Further, one of the aforesaid seven telephone numbers, viz. telephone No. 565656 (old No. 65655) was diverted from the Strowger Exchange to the E-10B Exchange on the verbal instructions of the said Shri A.K. Dutta, though the said telephone number did not qualify for such diversion as per the prescribed criteria. However, the said Shri A.K. Dutta, as the Deputy General Manager, refused to confirm his verbal instructions in writing, after the diversion had been carried out, as stated by Shri Sandeep Kolwadkar, the then Assistant Divisional Engineer (E-10B), vide his statement dated 27.1.1996.

5. The said Shri A.K. Dutta, as the Deputy General Manager (I&P), in overall charge of the E-10B Exchange, Nasik, thus, manipulated the meter readings of the aforesaid telephone numbers, thereby showing undue favour to the subscribers, and causing huge loss of revenue to the Government. Such manipulation was possible only by the person having in his possession the Password Management Commands. And the Password Management Commands were in the exclusive possession of the said Shri A.K. Dutta during the relevant period.

6. Thus, by his above acts, the said Shri A.K. Dutta committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

ANNEXURE-III

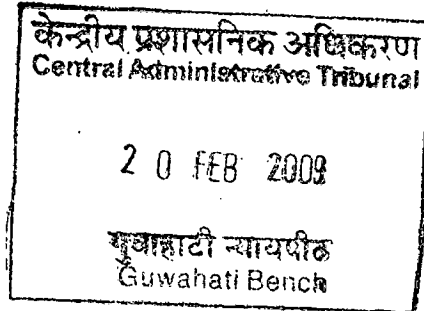
List of documents by which the articles of charge framed against Shri A.K. Dutta (Staff No. 8188), Deputy General Manager, Maharashtra Telecom Circle, are proposed to be sustained.

1. A note regarding anonymous telephone call received by DE (Vig), O/o GMT, Nasik on 27.5.1996.
2. Letter No. GMT-NSK/VIG/DAK/96/2 dated 27.5.1996 regarding statement of meter reading addressed to Shri Sandeep Kolwadkar, SDE, E-10B, Nasik.
3. Reminder letter No. GMT-NSK/VIG/DAK/96/3 dated 13.6.1996 addressed to Shri Sandeep Kolwadkar.
4. Letter No. NST/ADE/E-10B/SPK/96-97/1 dated 2.7.1996 from Shri Sandeep Kolwadkar, ADE (Phones, E-10 Exchange, Nasik regarding reply to DE (Vig) letter dated 27.5.1996 along with meter reading and status sheets of each telephone number (computerized sheets, hard copy available with exchange).
5. Statement of Shri Sandeep Kolwadkar, SDE, E-10B, Nasik dated 4.7.1996.
6. Investigation Report of DE (Vig), Nasik Telecom District dated 24.7.1997.
7. Statement of Shri A.K. Dutta dated 9.9.1996.
8. Complaint from Shri P.I. Joshi addressed to Shri B. Prasad regarding unholy nexus between Shri Deepak Teckchandani with Shri A.K. Dutta.
9. Final investigation report of DE (Vig), Nasik Telecom District in which he has arrived at the conclusion that Shri A.K. Dutta has misused the password code by virtue of his status thereby tampered the meter reading for self monetary benefits thereby causing loss to the Department.

ANNEXURE-IV

List of witnesses by whom the articles of charge framed against Shri A.K. Dutta (Staff No. 8188), Deputy General Manager, Maharashtra Telecom Circle, are proposed to be sustained.

Shri Sandeep Kolwadkar, DE, Nasik.



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ANNEXURE-7
Confidential
102

BHARAT SANCHAR NIGAM LTD

(A Govt. of India Enterprise)

O/o the Principal General Manager Telecom
Kalyan Telecom District, Telephone Bhavan, Kala Talav
Kalyan - 421 301

To,
Shri A.K. Dutta,
DGM(HQ)
BSNL, Kalyan

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench at KYN. 17.08.2004

No. KYN/VIG/AKD-16/2004-05/20

Sub: Disciplinary proceedings against Shri A.K. Dutta, D.G.M.,
Ulhasnagar

Ref: No. T/Vig/Disc.Proc/AKD/30 dtd. 10.08.2004

Kindly find enclosed herewith DOT, New Memorandum No. 8-99/2003-Vig.II dated 02.08.2004 alongwith CVC's advice I.D.Note No. 002/18/250 dtd. 23.01.2003 in respect of Shri A.K. Dutta, DGM. You are requested to acknowledge the receipt of the Memorandum with date. Defence statement in triplicate, if any may be submitted through this office within the stipulated period.

Recd

[Signature]
17/8/2004

*Attested
Dutta
Adv*

[Signature]
17/8/04
(Gopal Jagwani)
Divisional Engineer(Vig)
O/o PGMT Kalyan

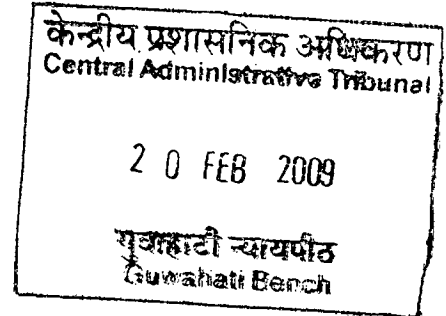
- 46 -

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ANNEXURE-8

From:
Shri A.K.Dutta,
Staff no.8188,
Deputy General Manager,
Maharashtra Telecom Circle,
Kalyan

TO:
**YOUR EXCELLENCY,
THE PRESIDENT OF INDIA**



Kind attention: Shri Mohinder Singh,
Director(VA), Ministry of Communication and Information
Technology, Department of Telecommunications, Sanchar
Bhavan, Ashoka Road, New Delhi-1

(Through proper channel)

I hereby acknowledge the receipt of Memorandum no.8-
99/2003-Vig.II dated 2/8/04 proposing to hold an Inquiry against me under
Rule 16(1)(b) of CCS (CCA) Rules, 1965.

At the outset may I request to invite your kind attention to the
C.V.C. Circular No.10DSP3 dated 19/6/87 wherein it is emphasized that
alongwith the Memo of Charges, copies of the listed documents at Annexure
III should also be enclosed to facilitate a comprehensive reply well based on
the documents otherwise the charged officer would become handicapped to
submit a comprehensive Statement of defence so that the Disciplinary
Authority could consider the Statement of defence to see if the charge can be
dropped at the stage of initial stage of defence as brought out in letter No.
GLMHA.,O.M. No.11012/2/79-Estt(A), dated 12th March 1981, and O.M.
No.11012/8/82-Estt(A), dated the 8th December, 1982.

May I again request to invite your kind attention to the C.V.C.
reference as reported in C.V.C. I.D. Note No.002/P&T/250 (enclosed
alongwith the above Memorandum) the C.V.C. itself opined that it will be
difficult to pinpoint my culpability. This shows weakness of the case even
at the initial stage of the case and the final stage will confirm the suspicion
raised by the C.V.C.

*Attended
Dutta
ASW*

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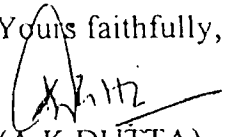
104

There is only one Article of Charge vide Memorandum no.8-99/2003-Vig.II dated 2/8/2004 against me.

I deny the charge leveled against me on the said Memorandum no.8-99/2003-Vig.II dated 2/8/2004.

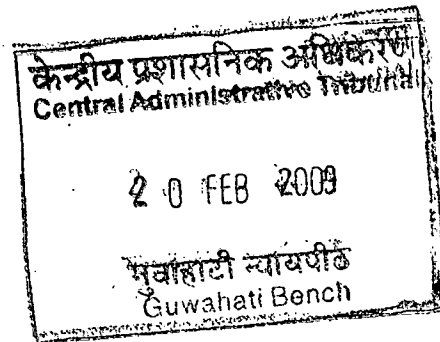
I may kindly be heard in person.

Yours faithfully,


(A.K.DUTTA)

Date: 26/8/2004

Place: Kalyan



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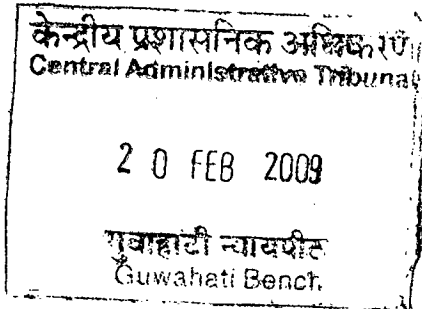
ANNEXURE-9

From:

A.K. Dutta,
DGM (HQ),
BSNL, Kalyan

TO:

Shri M.M. Gupta,
Inquiry Authority,
General Manager (Dev),
BSNL, Kalyan-421 301



NO: KYN/DGM/AKD/Conf./05-06


2/4/2005

SUB: Daily Order Sheet, case of Shri A.K. Dutta, DGM, BSNL,
Kalyan

REF: Your office letter no. KYN/GMD/Vig/AKD/04-05 dated
17/3/2005

Respected Sir,

Kindly find enclosed herewith the Annexure-I containing the
list of Additional Documents and Witnesses for your kind information and
further action please.

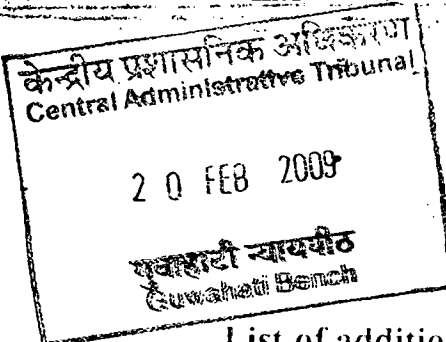

A.K. DUTTA
DGM (HQ),
BSNL, Kalyan

o/c

Copy to:

Shri S.T. Patil, P.O. As directed by the I.O.
P.O. may kindly acknowledge the receipt of the letter
please.

Attested
Patil
Adv



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ANNEXURE-I

List of additional documents required to base my defence upon

Sl. No.	Description of Documents	Custodian	Relevance
1	Letter no.3(v)/99/2 of CVC dated 29 th June 1999	CVC ND or Secretary to Ministry of Telecom to whom a copy was endorsed.	These two letter deal with the anonymous/pseudonymous complaints and disposal of such complaints to say that such complaints SHOULD only be filed and no action to be taken.
2	Letter no.321/4/91 AVD III dated 29/9/92 issued by Dept. of Personnel & Training	Dept. of Personnel & Training or with Telecom Communication.	
3	No.245-19/02-O&M of BSNL dated 28/10/02 issued by Shri S.N.Bhambbani, Jt.DDG(MSE) enclosing copy of TBVI/F/Conf/TEC.01 dated 1/7/02 from TEC, DOT, New Delhi.	BSNL corporate office New Delhi Or With Jt. DDG(MSE), Sanchar Bhaavan, New Delhi Or With DE(Vig), O/o.GMT NSK or PGMT, Kalyan	This letter qualifies the State of affairs that could take place the way secrete password of Exchange could be HACKED using a program. "In Visible Key Logger" (IKL) XXX. This program can be installed locally as well as remotely, when installed on OMC, it logs all the key strokes including secret password.

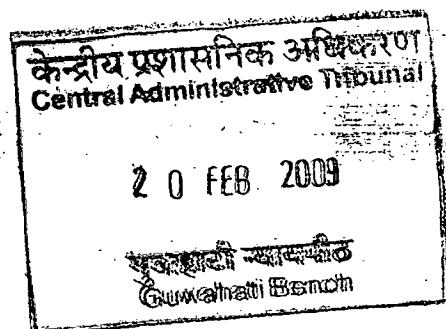
4	YJDB log print out during Feb'96 to June'96 during which alleged framed is said to have been commuted.	DE (E-10B) at Canada Corner, Nasik	These prints out do show all the operations of the Exchange system on minute to minute basis.
5	The PSAD print out indicates threshold limit and SABLA observation during the above period of all the suspected Telephone numbers as noted in the charge-sheet.	-do-	These will show that no such numbers though suspected were Not observed on SABLA.
6	Printout of OPMN files, PFAC files and PFAU files.	With DE (E-10B), Nashik as above	These ref. File reports would show that the faults etc. occurring on system were to be got automatically recorded for attention of the SDE incharge of the exchange. Such file reports could reveal the malfunctioning of Exchanges to affect the meter readings as well.
7	Failure of E-10B Exchange on 6/5/96 and action taken as per submitted by SDE (Incharge) of E-10B Exchange.	-do-	The whole Exchange system had been failed on 6-5-96 and though the system was restored and its effects on meter reading etc.
8	Computerised sheets, hard copy as mentioned in the Item no.4 at Annexure-III of the Memorandum of Charges.	Said to be available with the exchange under SDE/DE as above DE/SDE (E-10B) Nasik.	The said computerized sheets + hard copy should have been made available to me without asking. Since this is the all evidence to prove charge against me.

केन्द्रीय प्रशासनिक अधिकरण
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 20 FEB 2009
 गुवाहाटी न्यायपीठ
 Guwahati Bench

N/A

9	Prescribed criterion if any issued by the then GMT Nasik during 1996 for diversion of nos. from Strowger Exchange Nashik Road to New E-10B RLU Exchange, Nashik Road.	GMT Nasik	This is element of Imputation at page 2 para 4 of Annexure-II of the Memo of charges.
10	Copy of the letter written by Shri Kolwadkar, ADET, E-10B to me as alleged in his statement on dated 27/96 in reference to diversion of Telephone no.65656	SDE (E-10B) Nashik	Shri Kolwadkar's statement gave room to this imputation at page 2, Annexure-II, para 4 that he sought confirmation from me.
11	Six months F/N. Meter reading of all the numbers mentioned in the memorandum of charges from July'96 to December'96.	SDE (E-10B) Nasik	The required information is required to check the status of the affected numbers.
12	Exchange log Book during Feb'96 to June'96.	SDE (E-10B), Nashik	Status of E-10B Exchange system during the period.

Any other documents required by me, may kindly be permitted before fixing the **R.H.** please.



LIST OF WITNESS TO BE EXAMINED

Sl.No.	Name of the official	Present posting as far as I know	Relevance to defence
1	Shri R.Y.Shahpetti केन्द्रीय प्रशासनिक अदालत Central Administrative Tribunal 20 FEB 2009	Vigilance officer, Nashik (Retired)	He was the Vigilance officer. who investigated and his report are cited in state documents at S1-S9 of Annexure-III of Memorandum of Charges.
2	Shri D.A.Joglekar गुवाहाटी न्यायपीठ Guwahati Bench	Vigilance Officer, O/o.GMT, Nashik	He was the AVO and recorded the statement of Shri Sandeep Kolwadkar.
3	Shri Mascarenhas Fernandis	DE, Mallabar Hill, MTNL, Mumbai	He is expert in E-10B Exchange system during this services in MTNL, Mumbai and would through light about the erratic readings.
4	Shri M.Krishnan	DE (RMC), Retired in MTNL, Mumbai	-do-
5	Shri N.Krishnamurthy	DGM (Admn). MTNL, Mumbai	-do-
6	Shri D.D.Wani	SDE(Tax) in GMT Nashik	He was the JTO E-10B during the period.
7	Smt. V.K.Ahire	SDE (Internet) in GMT Nashik	-do-

The name of the Defense Assistant will be submitted shortly. The delay is mainly due to non-availability of suitable Defense Assistant at present.

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No. 8/99/2003-Vig.II

Government of India

Ministry of Communications and Information Technology
Department of Telecommunications
(Vigilance II Section)

ANNEXURE-10

110

915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi : 11 00 01.

ORDER

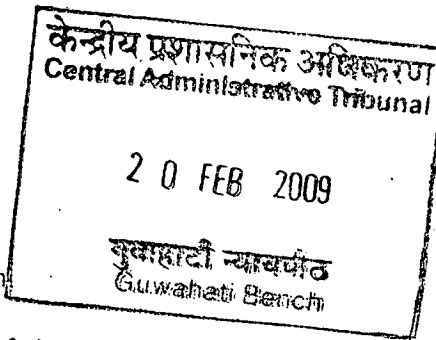
Dated the 30-8-2004

WHEREAS proceedings under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, has been initiated against Shri A.K. Dutta (Staff No. 8188), Dy. General Manager, Kalyan, Maharashtra Telecom Circle, Mumbai.

AND WHEREAS the said Shri A.K. Dutta has denied the charges leveled against him and has requested that an oral inquiry be ordered. The Competent Disciplinary Authority i.e. the President has agreed to the request of the said Shri A.K. Dutta and considers that an Inquiring Authority should be appointed to inquire into the charges framed against Shri A.K. Dutta.

NOW, THEREFORE, the President, in exercise of the powers conferred by sub-rule 1 (b) of the said Rule, hereby appoints Shri S.T. Patil, Divisional Engineer, Nasik, Maharashtra Telecom Circle, Mumbai, as the Presenting Officer to present the case in support of the articles of charge against the said Shri A.K. Dutta before the Inquiring Authority.

By order and in the name of the President.



(Signature)
(A.K. Patro)
Desk Officer (Vig.II)

1. Shri A.K. Dutta,
(Staff No. 8188),
Dy. General Manager,
Kalyan Telecom District, Kalyan,
Maharashtra.

(Through the CGM Telecom, Maharashtra Telecom Circle, Mumbai).

2. Shri S.T. Patil,
Divisional Engineer,
Nasik,
Maharashtra.

The following documents as required under Rule 14(6) of the CCS (CCA) Rules, 1965 are sent herewith:-

- Department of Telecom Memo No. 8/99/2003-Vig.II dated 2.8.2004 along with Annexes I to IV.
- Copy of the acknowledgement dated 17.8.2004 from Shri A.K. Dutta acknowledging the receipt of the Memo referred to at (i) above.
- Copy of representation dated 26.8.2004 from the charged officer denying the charges leveled against on him.
- Department of Telecom Order No. 8/99/2003-Vig.II dated 2004 appointing Shri M.M. Gupta, GM(D), O/o PGMT, Kalyan, Maharashtra, as Inquiring Authority.

*Accepted
W.D. Dutta
Adv*

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ANNEXURE-10
(series)

No. 8/99/2003-Vig.II

Government of India

Ministry of Communications and Information Technology

Department of Telecommunications

(Vigilance-II Section)

915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi : 11 00 01.

Dated the 30-9-2004

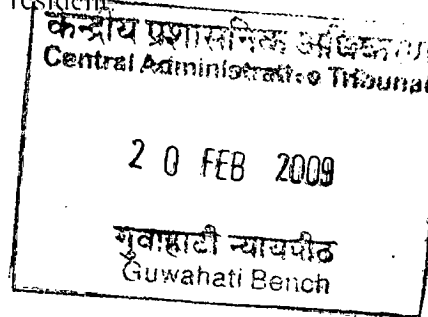
ORDER

WHEREAS proceedings under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, has been initiated against Shri A.K. Dutta (Staff No. 8188), Dy. General Manager, Kalyan, Maharashtra Telecom Circle, Mumbai.

AND WHEREAS the said Shri A.K. Dutta has denied the charges leveled against him and has requested that an oral inquiry be ordered. The Competent Disciplinary Authority i.e. the President has agreed to the request of the said Shri A.K. Dutta and considers that an Inquiring Authority should be appointed to inquire into the charges framed against Shri A.K. Dutta.

NOW, THEREFORE, the President, in exercise of the powers conferred by sub rule 1 (b) of the said Rule hereby appoints Shri M.M. Gupta, General Manager(D), O/o PGMT, Kalyan as the Inquiring Authority to inquire into the charges framed against the said Shri A.K. Dutta.

By order and in the name of the President



(Signature)
(A.K. Patro)
Desk Officer((Vig.II))

Shri A.K. Dutta,
(Staff No. 8188),
Dy. General Manager,
Kalyan Telecom District, Kalyan,
Maharashtra.

(Through the CGM Telecom, Maharashtra Telecom Circle, Mumbai).

2. Shri M.M. Gupta,
General Manager(D)
O/o PGMT, Kalyan.

The following documents as required under Rule 14(6) of the CCS (CCA) Rules, 1965 are sent herewith :-

- Department of Telecom Memo No. 8/99/2003-Vig.II dated 2.8.2004 along with Annexes I to IV.
- Copy of the acknowledgement dated 17.8.2004 from Shri A.K. Dutta acknowledging the receipt of the Memo referred to at (i) above.
- Copy of representation dated 26.8.2004 from the charged officer denying the charges leveled against on him.
- Department of Telecom Order No. 8/99/2003-Vig.II dated 30-9-2004 appointing Shri S.T. Patil, DE, Nagik, as Presenting Officer.

Statement of witnesses, if any, will be produced during the course of inquiry.

(Signature)
A.K. Dutta
A.K.W.

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Confidential

ANNEXURE-11



BHARAT SANCHAR NIGAM LTD

(A Govt. of India Enterprise)

O/o the Principal General Manager Telecom
Kalyan Telecom District, Telephone Bhavan, Kala Talav
Kalyan - 421 301

To,
Shri A.K. Dutta,
DGM(HQ)
BSNL, Kalyan

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

No. KYN/VIG/AKD-14/2004-05/24 dated at KYN. 21.10.2004

Sub: Disciplinary proceedings against Shri A.K. Dutta, D.G.M.

Ref: AGM(Vig-I), MH Circle, Mumbai letter No. T/Vig/ Disc.Proc/
AKD/34 dtd. 12.10.2004

Kindly find enclosed herewith letters received from Desk Officer, DOT, Nos. 8/99/2003-Vig.II & No. 8/99/2004-Vig.II dtd. 30.09.2004 for appointment of IO/PO in respect of Disciplinary case against Shri A.K. Dutta, DGM. You are requested to acknowledge the receipt of the same with date.

(Gopal Jagwani)

Divisional Engineer(Vig)
O/o PGMT Kalyan

Attended
Dutta
A.K.

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(3)

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ANNEXURE-12

BHARAT SANCHAR NIGAM LIMITED
O/O GENERAL MANAGER TELECOM
BHARUCH 392 001

No. GMT/VIG/AKD/05-06

dated at Bharuch, 15.9.2006

SUBJECT : Departmental Inquiry against Sh. A.K.Dutta, (Staff no. 8188) D.G.M. presently posted as D.G.M. o/o GMT Tezpur (Assam)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

REPORT

I. INTRODUCTION

Vide Office Order no. 8/ 99/ 2003-Vig. II dtd. 30.9.2004, issued by the Disciplinary Authority, the undersigned was appointed as Inquiring Authority to inquire into the charges leveled against Sh. A.K.Dutta, (Staff no. 8188), Dy. General Manager presently working as Dy. G.M. Tezpur (Assam). Sh. S.T.Patil, DE Nasik was appointed as the Presenting Officer vide the same O.M. Sh. B.G. Deshkar, DE (Retd.), Bombay telephones acted as Defence Assistant to the CO.

II. BRIEF HISTORY

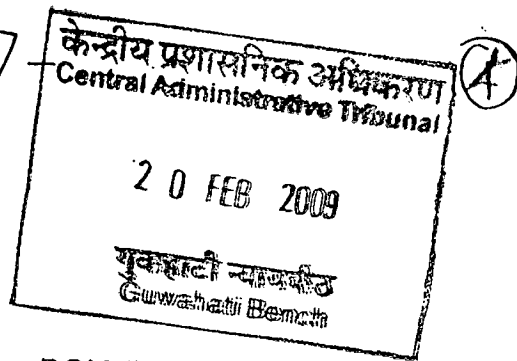
Preliminary Hearing in this case was held at Kalyan on 17.3.2005 in which the PO and the CO were present. Regular Hearing in the case were held at Mumbai on 13th -14th September 2005, and 21st-22nd April 2006. The Final Hearing was held at Mumbai on 24th and 26th June 2006. All the Regular Hearings were attended by the PO, the CO and his Defence Assistant.

During the course of the Regular Hearing, Eight prosecution documents were produced by the PO which were taken on record and marked as Ex. P-1 to Ex. P-8. Prosecution also produced one State Witness whose deposition was recorded and marked SW-1. Thereafter, the case of the prosecution was closed. After the closure of the prosecution case, CO denied the charges and submitted his Statement of Defence. Three defence documents were submitted by the CO and marked as Ex. D-1 to Ex. D-3 and taken on record. Two defence witnesses were also examined by the CO as DW-1 and DW-2. As the CO did not appear as witness in his own case, his general examination was conducted by the undersigned. Brief from the PO was received on 29.6.2006 and from the CO on 5.7.2006.

Attended
Dutta
A.K.

MKS

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III. ARTICLE OF CHARGE

Article of Charge

" Sh. A.K.Dutta, the while working as DGM (I&P), O/o GMT, Nasik, during the period 1995-96 has committed the fraud in collusion with private subscribers of Telephone nos. 575138, 576116, 577087, 577097, 565656, 562900, 564070 by using highest secret commands of E-10B Exchange at Canada Corner, Nasik Road by visiting the Exchange at night times and tampering with the meter readings using the secret passwords. Thereby he caused huge revenue loss to the Department for alleged self monetary benefits.

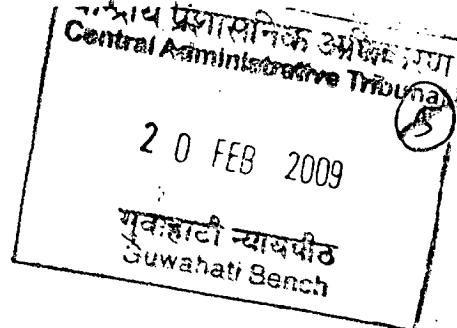
By his aforesaid acts, Shri A.K.Dutta, DGM, failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government Servant, thereby violated the provisions of Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964."

IV. STATEMENT OF IMPUTATIONS OF MISCONDUCT - As per Annexure

V. CASE AS PRESENTED BY PO

The PO in his written brief initially referred to the Article of Charge & Imputation of Misconduct. Thereafter, the PO proceeded to give a brief narration of the contents of the prosecution documents filed during the inquiry proceedings. For the sake of brevity reference is made only to those state exhibits which relate to CO's role, as pointed out by the PO. These are :

1. Exhibit P-4 ; It is the reply letter no. NST/ADE/E-10B/SPK/96-97/1 dtd. 2.7.1996 written by Sh. Sandeep Kolwadkar ADET, who is also the only State Witness (SW-1) to Sh. R.Y.Shahpetti, DE CTTC Nashik. This letter also contains a statement of meter readings of numbers kept under observation. As per the P.O., the readings on 06.05.1996 for all numbers in Ex. P-4 are 000 and are (*) star marked. The readings on dated 16.5.1996 are increased to some value. The reading on dated 24.5.1996 show that there is sudden increase in meter reading and on 25.5.1996, there is decrease in meter reading. Such type of increase observed on 5.6.1996, decrease on 6.6.1996. Again increased on 7.6.1996 and decreased on 10.6.1996. Such type of increase and decrease in meter readings for few numbers is possible only by manual command "ABOMU" only.



- 1.1 The PO has also relied on following oral evidence of state witness produced during the hearing which also supports the above charges :-

SW-1 : Sh. Sandeep Kolwadkar, the then ADET Nashik, presently working as DGM(BD) Maharashtra Circle who confirmed Ex. P-4 and his statements as SW-1 that Sh. A.K.Dutta was in-charge of E-10B exchange maintenance and password was with him (Sh. Dutta) and no password was handed over to him i.e. to Sh. Kolwadkar. During his deposed cross-examination, while scrutinizing the Note of Vigilance Officer Nashik (Ex P-1), it came to be revealed that there was an over-writing on the dates at two places viz. the date of the anonymous complaint and the date of signature of the Vigilance Officer. He also confirmed that on 6.5.96, all the 5 numbers are showing zero Meter reading, but could not recollect as to how this might have happened. He deposed that by using the command "ABOMU", the readings can be made zero or modified to any other value. He also deposed that the preservation period for YJDB printouts is 3 months, but he did not check from the YJDB log whether the ABOMU command has been used or not and by whom? He deposed that he was not having access to YJDB records. As per his deposition, after December 1995 the exchange keys were with Sh. Dutta, the CO and he only used to open and lock the exchange daily.

2. The involvement of Sh. A.K.Dutta, DGM with reference to the produced evidence in the case was as under :

- (i) That the CO manipulated the meter readings of Telephone nos. 575138, 576116, 577087, and 577097 by using highest password which is available only with the Exchange in-charge. These manipulations in the meter readings were done by using the manual command ABOMU.

VI CASE AS PRESENTED BY CO

- 1.0 As per rulings in the departmental inquiries, the burden of proof lies on the Disciplinary Authority. It is the primary responsibility of the prosecution to prove his case and the onus can not be laid on the defence despite the fact that the degree of the evidence required in the Departmental proceedings that the preponderance of possibility is not proved beyond reasonable doubt as recorded in criminal case; but still the PO has to prove some possibility if not preponderance thereof. By applying general principal of evaluating

evidence, the second principle is that the burden of proof rests on the Disciplinary Authority, i.e. It would be the responsibility of the Presenting Officer to establish the charges first and then only the defendant would be required to controvert the same. It is not for the Charged Officer to prove his innocence or absolve himself from the charges. Prosecution (Disciplinary Authority represented by PO) has failed to bring home the charges, through documentary evidences and also in testing the veracity of listed documents or through any oral evidence, except exhibiting them. That as Disciplinary Authority has failed to discharge onus to establish the charges against the CO, as such the charges leveled against the delinquent automatically failed. That however the CO has succeeded to absolve himself from the charges by producing additional (defence) evidences listed and exhibited them as D-1 to D-3.

D-1 is an official circular bearing no. 3(v)/99/2 dtd. 29.6.1999 issued by Central Vigilance commission, New Delhi regarding no action to be taken on anonymous/pseudonymous complaints.

D-2 is an Office Note bearing no. TB VII/ F/ Conf/ TEC.01 dtd. 1.7.2002 issued by DDG (V) TEC to Sr. DDG (Vig.) DoT, New Delhi, listing a number of safeguards to be adopted for avoiding chances of hacking secret password.

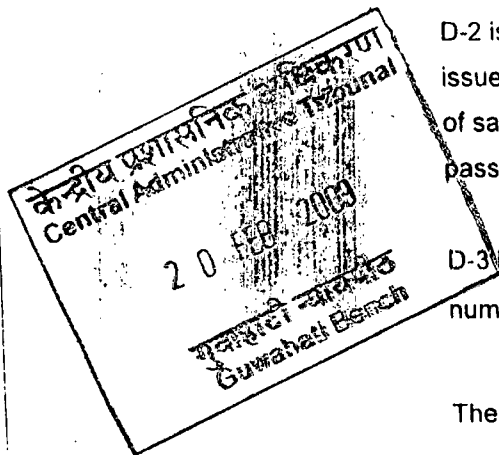
D-3 is the computerized sheet containing meter readings of the telephone numbers included in the Article of Charge alongwith other numbers.

The CO also produced two Defence Witnesses DW1 and DW2.

✓ Sh. N.A. Kulkarni, DW1 is working as SDE (RMC) in MTNL Mumbai and was introduced as Technical expert in E-10B exchanges. The deposition of DW1 mainly focused on the reasons for erratic behaviour of the Meter Readings as were found in the present case. As per him, the possible reasons for such erratic behaviour could be :-

- (i) Malfunctoning of the rack which may result in Zero Meter Reading (ZMR) for all the numbers from that rack.
- ✓ (ii) For the entire exchange to show Zero Meter Reading, it can be either due to malfunctioning of Charging unit or use of MMRAZ command.
- (iii) One man made reason for erratic meter readings could be the possibility of misusing the ABOMU command. In such a case of man made misuse

[Handwritten signature]



of ABOMU command, it is recorded in the YJDB log file of the exchange.

He also deposed that change of meter reading is possible if the mag tape is changed in between a fortnightly meter reading cycle.

He also deposed that all the passwords of the exchange can be made open to all if "LP-55" card is removed from the system; and also there is no indication in the exchange whether this card has been removed..

Sh. D.D.Wani, DW2, is presently working as SDE (Mobile) Nashik. He was working as JTO (E-10B) in Canada Corner exchange Nashik during the period 1995-96. During his deposition, Sh. Wani came out with the following observations:-

- (i) When shown the Exhibit P-4, the letter dtd. 2.7.96 of Sh. Kolwadkar, (the PW-1) containing statement of Meter Readings, he deposed that there was a major exchange fault on 6.5.96, which led to the failure of the entire exchange. The Meter Reading of the entire exchange was reset to 000.
- (ii) The Meter Reading for all the subscribers were added manually to the previous Meter Reading of 30.4.96 on the basis of average of calls made during earlier periods.
- (iii) He also deposed that the frequency of visits of the CO to the exchange were occasional.

VII. WHAT WAS THE CASE :-

The entire case with reference to the Article of Charge and the Imputations of misconduct and misbehaviour on which action is proposed to be taken against the CO is that during the period 1995-96, he committed the fraud in collusion with private subscribers of telephone nos. 575138, 576116, 577087, 577097, 565656, 562900, 564070 by using highest secret commands of E-10B Exchange at Canada Corner, Nashik Road, by visiting the Exchange at night times and tempering with the meter readings using the secret passwords. Thereby he caused huge revenue loss to the Department for alleged self monetary benefits.

केन्द्रीय प्रशासनिक अपील
Central Administrative Tribunal
12 FEB 2009
गुवाहाटी बेंच
Guwahati Bench

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Further one of the aforesaid seven telephone numbers, viz. telephone no. 565656 (old no. 65656) was diverted from the Strowger Exchange to the E-10 B exchange on the verbal instructions of the said Sh. A.K. Dutta, though the said telephone number did not qualify for such diversion as per the prescribed criteria. However, the said Shri A.K. Dutta, as the Deputy General Manager, refused to confirm his verbal instructions in writing, after diversion had been carried out, as stated by Sh. Sandeep Kolwadkar, the then ADE (E-10B), vide his statement dated 2.7.1996 (Ex. P-4).

Charge -wise position of the Charged officer is however explained in details, for further examination :

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal
20 FEB 2003
गुवाहाटी न्यायपीठ
Guwahati Bench

VIII. IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

8.1 The CO, as the DGM (I & P), in overall Charge of the E-10B exchange, Nashik, manipulated the meter readings of the seven Telephone numbers, as per details given in ANN. II, thereby showing undue favour to the Subscribers, and causing huge loss to the Government.

EVALUATION OF THE PRODUCED EVIDENCES :

On a perusal of the documentary and oral evidences on record, the following observations are made :

- (i) Ex. P-1, which is a note from DE(Vig.) Nashik originally states the date of anonymous complaint as 23.5.96 and purported to have been signed on 24.5.96. Later on the date of complaint has been overwritten as 25.5.96 and date of signature also overwritten as 27.5.96. The SW-1 in his oral deposition also failed to clarify these dates.
- (ii) The Ex. P-4 which contains the statement of Meter readings enclosed to letter dtd. 2.7.96, from Sh. Sandeep Kolwadkar, ADE(E-10B) Nashik shows that on 6.5.96, all the five telephone numbers (575138, 576116, 577087, 577097 and 565656) were showing Zero Meter Reading. However the Computerised sheet of Meter Readings (Ex. D-3) as sent by DE (vig.) Nashik to the PO vide his Ir. No. GMT-NSK/VIG/22/07-96/PART-I/21 dtd. 23.7.2005 shows that none of these numbers were having Zero Meter reading on that particular day i.e. on 6.5.96. In fact, all the Numbers were showing less meter readings on 15.05 as compared to the meter readings on 30.04. In a normal working, such type of readings do not happen. During cross-examination by the CO (as per Ex. SW-1), the SW-1 failed to re-collect the reasons for these abnormal readings.

[Signature]

- (iii) Further Sh. D.D.Wani, (the DW-2) who was working as JTO(E-10B) Nashik during the above period i.e.95-96, in his deposition stated that there was a major exchange fault in E-10 B Exchange, Nashik on 6.5.96 due to which the Meter Readings of all the numbers were reset to 000 and then increased manually by adding the average of the earlier periods for these six days between 30.04 and 06.05.
- (iv) The deposition of Sh. N.A.Kulkarni, DW-1 who is presently working as SDE (RMC) MTNL Mumbai states that the only way to manipulate the Meter readings is by using " ABOMU" command. If any person is using the ABOMU command by using his secret password, the log of the same is recorded in YJDB log file.
- (v) The SW-1 in his deposition has accepted the fact that the preservation period of YJDB log is 3 months.
- (vi) The PO could not produce a copy of the YJDB log file for the period Feb.'96 to June 96 as requested by the CO.

8.2 Another imputation of misconduct against the CO is that one of the aforesaid seven telephone numbers, viz. telephone no. 565656 (old no. 65656) was diverted from the Strowger Exchange to the E-10B Exchange on the verbal instructions of the said Sh. A.K.Dutta, though the said telephone number did not qualify for such diversion as per the prescribed criteria. However, the said Sh. A.K.Dutta, as the Deputy General Manager refused to confirm his verbal instructions in writing, after the diversion had been carried out, as stated by Shri Sandeep Kolwadkar, the then Asstt. Divisional Engineer (E-10B), vide his statement dated 2.7.96.

EVALUATION OF THE PRODUCED EVIDENCES :-

On a perusal of the documentary and oral evidences on record, the following observations are made ;

- (i) Sh. Sandeep Kolwadkar, the then ADE(E-10B) Nashik in his letter dated 2.7.1996 (Ex. P-4) has stated that "...His telephone no. (old no. 65656) was diverted to E-10B RLU Nashik-Road on verbal instruction of Shri A.K.Dutta DGM(I&P) to Shri A.K.Deshpande JTO (I/D), NKRD. The bill of this no. was neither more than Rs. 10000/- nor it was coming in the area diversion. These were the two criteras set by GMT Nashik., Shri Satyapal during first phase of cutover. Latter I gave a letter to Sh. A.K.Dutta DGM (I&P) requesting him to confirm his verbal instructions for diverting 65656 from Strowger Exchange to E-10B RLU NKRD. So far I have not received any confirmation from him."

IX COMMENTS ON WRITTEN BRIEF OF P.O.

The Presenting Officer has submitted his written brief issued vide his no. AGM/VPT/DI/PO/1 dtd. 29.6.06 with a copy to the CO. First of all, the P.O. has narrated the alleged charges in Annexure-I of the Charge sheet. Thereafter he has given a brief history of the case and discussed regarding listed document Ex. P-4 and the deposition of the state witness SW-1. In short, the PO has given nothing new except what is already mentioned in the Annexures-I and II of the charge sheet and whatever has been discussed above. The PO has stated that the YJDB file assignment was not possible, due to limitation of system.

X ASSESSMENT OF THE EVIDENCES

On a perusal of the documentary and oral evidences on record and upon consideration of the PO/CO briefs, the following is concluded with respect to the charge and statement of imputation enclosed in support thereof :

On a combined reading of the article of charge and statement of imputation with respect to the same, it is observed that the CO is charged that he failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of government servant. The charge on the CO is that he manipulated the meter readings of seven nos. thereby showing undue favour the subscribers and causing huge monetary loss to the Government.

As per the prosecution, the CO misused the secret password and manipulated the meter readings by using ABOMU command. But the prosecution did not present any document to establish that whether these commands were used and by whom, although a log of these commands are automatically stored in YJDB log file of the exchange. As per the prevailing instructions issued by the Deptt. of Telecom on this subject, the YJDB log file should be preserved for a period of three months. The preliminary vigilance inquiry was conducted by DE (Vig.) Nashik before completion of the three months of the alleged incidence of manipulation of the meter readings; and, therefore, he could have easily taken out a copy of the YJDB printout to pin-point the alleged misuse of the ABOMU command. But no such efforts seem to have been made by the DE(Vig.) Nashik.

The CO was working as DGM(I&P) Nashik, but has denied in his written brief, that he was overall in-charge of E-10B Exchange Nashik. On further evaluation of the written statement (Ex. P-5) of Sh. Sandeep Kolwadkar, SDE(E-10B) Nashik, it is noticed that

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(11)

In reply to the 1st question regarding his name and designation, Sh. Kolwadkar has written in his own hand that his designation is Divisional Engineer (E-10B & OCB 283) o/o GMT Nashik; and further in reply to Q. no 3, he has stated that he has been allotted a password by Sh. A.K.Dutta, DGM (I & P). It is an established fact that in E-10B Exchanges, the password protection as well as all important passwords are with DE i/c of the exchange. The prosecution has failed to establish as to who was the in-charge of the exchange in possession of all the important passwords.

It has been brought out during the oral deposition of Sh. D.D.Wani, the DW-2, that there was a major exchange fault on 6.5.96 which necessitated the resetting of all the meter readings to 000 and manually adding the readings as stated in reply to Q. nos. 1 and 9 of DW-2. For example, the Meter Reading statement of Telephone number 75138 annexed to Ex. P-2 shows that on 6.5.96, the M.R. was 000 whereas the computerised Meter reading statement (Ex. D-3) for the same telephone no. for the same date shows the M.R. as 615. This vital fact was not made a part of the investigations initiated by DE(Vig.) Nashik in May 1996.

Another element of charge in the Article of charge against the CO is that he used to visit the exchange at night times and tamper with the Meter readings. The PO has not produced any documentary evidence in his support except to rely upon the statement of Sh Kolwadkar (Ex. P-2) that the exchange is kept locked during night hours and DGM (I&P) Shri A.K.Dutta, possess the key. Further the final investigation report (Ex. P-8) of the Vigilance Officer o/o GMT Nashik states that:

[M] As no record is found to be maintained at security person for the visits by D.O.T. staff to E-10B Exchange Building, in order to confirm the visits by the officers to E-10B exchange during late night hours, following efforts were made to contact the security person posted at main gate of E-10B Exchange to record his statement.

(a) The Supervisor of Security services was instructed personally to make the concerned Security Guards available, for recording their statements. He assured the u/s for the same but failed to do so.

(b) Shri B.B.Dixit, the Digvijay Security Services, Nashik Road was addressed (vide letter No. GMT-NSK/VIG/DAK/96-97/14 dtd. 7.1.97) for making Security Guards available for investigation.

But surprisingly he also not responded to our communication. Therefore the doubtful person could not be spotted.

Thus keeping in view above facts and the brief of the PO and the CO, the charge of committing the fraud is not proved against the CO.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer

20 FEB 2009

गुवाहाटी
Guwahati

Mini

The next imputation of misconduct against the CO is that one Telephone no 565656 (old no.65656) was diverted from the Strowger Exchange to the E-10B exchange on the verbal instructions of the CO, though the said telephone no. did not qualify for such diversion as per the prescribed criteria. The CO also refused to confirm his verbal instructions in writing after the diversion had been carried out, as stated by Sh. Sandeep Kolwadkar, the then ADE (E-10B), vide his statement dated 2.7.1996.

As per the statement dated 2.7.1996 (Ex. P-4), Sh Kolwadkar has stated that the aforesaid telephone no.565656(old no.65656) was diverted to E-10B RLU Nashik Road on verbal instructions of Sh. A.K.Dutta DGM(I&P) to Sh. A.K.Deshpande JTO(I/D) NKRD. However during the vigilance enquiry by the Vigilance wing of Nashik Telecom, no statement of Sh. Deshpande, JTO(I/D) seems to have been recorded as no such statement has been produced by the PO during the oral enquiry. Neither the said Sh. Deshpande, JTO(I/D) has been made a witness by the prosecution. Although Sh. Kolwadkar has stated in his written statement (Ex. P-4) that he gave a letter to Sh. A.K.Dutta DGM(I&P) to confirm his verbal instructions for diverting 65656 from Strowger Exchange to E-10B RLU NKRD, no copy of such a letter was produced during the enquiry. The P.O. did not press this charge against the CO either during the oral enquiry or in his written brief.

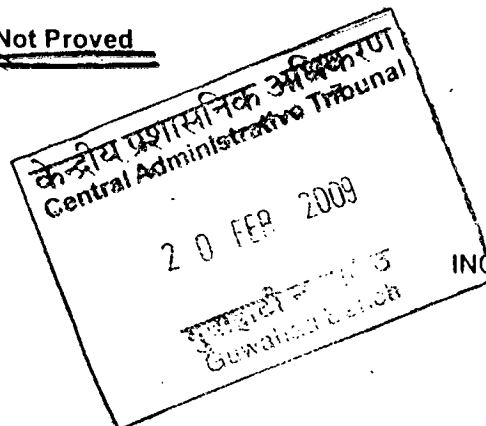
Thus keeping in view above facts and the brief of the PO and the CO, it is observed that the imputation of misconduct in diverting the telephone from Strowger to E-10B is not proved against the CO.

XI FINDINGS

On the basis of the documentary and oral evidences discussed above, it is concluded that :

Article of Charge : Not Proved

15.9.2006



(M.M.GUPTA)
GMT BHARUCH
&
INQUIRING AUTHORITY

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

ANNEXURE

Statement of imputations of misconduct or misbehaviour on which action is proposed to be taken against Shri A.K. Dutta (Staff No. 8188), Deputy General Manager, Maharashtra Telecom Circle.

That the said Shri A.K. Dutta was functioning as Deputy General Manager (I&P), O/o General Manager, Nasik Telecom District, during the period 1995-96.

2. As the Deputy General Manager (I&P), the said Shri A.K. Dutta was in overall charge of the E-10B Exchange, Nasik, and had in his exclusive possession, the Password Management Commands with which inter alia the meter reading of any telephone number could be manipulated.

3. Scrutiny of the meter reading statements of the following telephone numbers, revealed that there was increase and decrease in the meter reading, though there should have been continuous increase in the meter reading of any working telephone :

Statement of meter reading of numbers kept under observation

Date	Telephone No.						
	575138	576116	577087	577097	565656	562900	564070
	1	2	3	4	5	6	7
28/02	300	136	67	24	----	----	----
15/03	343	181	136	77	----	----	----
31/03	419	225	207	128	----	----	----
15/04	488	261	248	190	54	----	----
01/05	591	287	292	213	113	----	----
06/05	000	000	000	000	000	----	----
16/05	41	48	47	41	260	----	----
24/05	1135	46	1762	789	342	----	----
25/05	41	48	255	42	352	----	----
01/06	94	101	94	101	439	----	----
04/06	965	97	126	94	264	----	----
05/06	1220	945	126	98	264	----	----
06/06	95	94	126	99	265	----	----
07/06	2494	2116	126	94	266	000	000
10/06	130	96	----	----	261	000	2
11/06	133	177	133	177	261	000	13
13/06	140	178	133	177	278	000	15

Contd...2

20 FEB 2009

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Guwahati Bench

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Date	Telephone No.						
	575138	576116	577087	577097	565656	562900	564070
1	2	3	4	5	6	7	8
15/06	133	177	133	178	645	000	24
17/06	177	133	133	177	654	3	32
19/06	177	133	1077	753	663	6	30
21/06	1492	177	133	894	680	7	28
22/06	177	133	177	134	680	11	204
24/06	180	153	178	206	782	11	220
25/06	180	153	78	206	----	----	----
26/06	182	155	178	206	911	14	273

4. Further, one of the aforesaid seven telephone numbers, viz. telephone No. 56565 (old No. 65656) was diverted from the Strowger Exchange to the E-10B Exchange on the verbal instructions of the said Shri A.K. Dutta, though the said telephone number did not qualify for such diversion as per the prescribed criteria. However, the said Shri A.K. Dutta, as the Deputy General Manager, refused to confirm his verbal instructions in writing, after the diversion had been carried out, as stated by Shri Sandeep Kolwadkar, the then Assistant Divisional Engineer (E-10B), vide his statement dated 2.7.1996.

5. The said Shri A.K. Dutta, as the Deputy General Manager (I&P), in overcharge of the E-10B Exchange, Nasik, thus, manipulated the meter readings of the aforesaid telephone numbers, thereby showing undue favour to the subscribers, and causing huge loss of revenue to the Government. Such manipulation was possible only by the person having in his possession the Password Management Commands. And the Password Management Commands were in the exclusive possession of the said Shri A. Dutta during the relevant period.

6. Thus, by his above acts, the said Shri A.K. Dutta committed grave misconduct, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a Government Servant, thereby contravening Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964.

Attended
Dutta
A.K.

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- 13/10 -

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(15)

ANNEXURE-13

Address :
KTA" New Delhi
Mail Address :
vigil@nic.in

No 002/P&T/250-41526

भारत सरकार
केन्द्रीय सतर्कता आयोग
GOVERNMENT OF INDIA
CENTRAL VIGILANCE COMMISSION

Satarkta Bhawan, G.P.O. Complex,
Block-A, INA, New Delhi-110023

Website :
www.cvc.nic.in

EPABX
24651001

20 FEB 2009
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Guwahati Bench

OFFICE MEMORANDUM

Dated.....

22 NOV 2006

Sub:- Case against Shri A.K.Dutta, DGM, - D/o Telecom.

Department of Telecom may please refer to their file no. 8-99/2003-
Vig.II dated 06/11/2006 on the subject cited above.

The Commission has perused the inquiry report alongwith all the documents of the case and the comments of the Disciplinary Authority thereon. It is observed that on the basis of the role & responsibility of Shri A.K.Dutta who was in charge of the Xchange, it can be inferred that he was in possession of highest command of Xchange. Therefore, he is responsible for any irregularity committed or occurred with regard to major Xchange faults leading to revenue loss. Keeping in view the fact that there was abnormal decrease or increase in the meter reading stated to be due to technical fault is the supervisory lapse on the part of charged officer, hence the charge has to be considered proved to this extent, and Commission would advise imposition of minor penalty of "Censure" against Shri A.K.Dutta, DGM for his supervisory failure.

All the records of the case as received in the Commission are returned herewith.

2480
23/11/06

Dir (A)

W
23/11.
DO (Vig II)

(Yogesh)
Director
Tel no. 24651019

Department of Telecom
(Shri D.K.Agarwal, Sr.DDG(V),
Room No. 901, Sanchar Bhawan,
20, Ashoka Road, New Delhi

No. 4115/EC/Vig II
T.T.M.

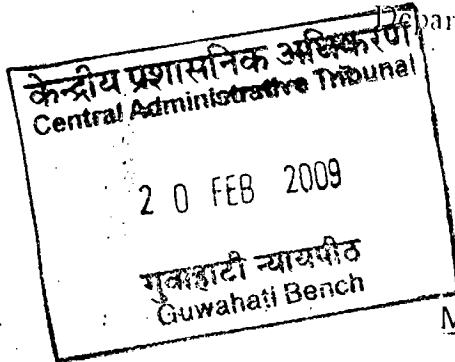
Affected
Dutta
dhw

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No. 8/99/2003-Vig.
Government of India

Ministry of Communications & Information Technology
Department of Telecommunications
(Vigilance-II Section)

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ANNEXURE-14



915, Sanchar Bhawan, 20-Ashoka Road,
New Delhi-110066

Dated the 05-12-2006

MEMORANDUM

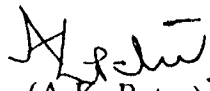
A copy of the Inquiry Report dated 15.09.2006 submitted by Shri M.M. Gupta, GMT, Bharuch, Gujarat who was appointed as the Inquiring Authority to inquire into the charges framed against Shri A.K. Dutta, (Staff No. 8188), the then Dy. G.M., Maharashtra Telecom Circle, Mumbai presently DGM, Assam Telecom Circle, Guwahati is forwarded herewith. A copy of ID Note No. 002/P&T/250-41526 dated 22.11.06 of the Central Vigilance Commission (CVC), is also forwarded herewith.

2. Although the Inquiry Authority has held the charges as not proved, the Disciplinary Authority has observed that on the basis of the role and responsibility of Shri A.K. Dutta who was in charge of the exchange, it can be inferred that he was in possession of highest command of exchange. Therefore, he is responsible for any irregularity committed or occurred with regard to major exchange faults leading to revenue loss. Keeping in view the fact that there was abnormal decrease or increase in the meter reading stated to be due to technical fault is the supervisory lapse on the part of Charged Officer. The disciplinary authority proposes that the charge has to be considered proved to this extent.

3. Shri A.K. Dutta, DGM is hereby informed that he may make such representation as he may wish to make in the matter. Such representation, if any, shall be made in writing within fifteen days of the receipt of this Memorandum, failing which it will be presumed that he has no representation to make, and further necessary action in the matter is liable to be taken accordingly.

4. The receipt of this Memorandum, alongwith a copy each of the Inquiry Report and CVC's advice, shall be acknowledged by Shri A.K. Dutta.

By order and in the name of the President,


(A.K. Patro)
Desk Officer (Vig.II)

- Encl. : 1. Copy of Inquiry Report.
2. Copy of CVC's advice ID Note No.002/P&T/250-41526 dated 22.11.06

Shri A.K. Dutta,
(Staff No. 8188),
Dy. General Manager,
Assam Telecom Circle,
Guwahati.
(Through the DGM, Assam Telecom Circle, Guwahati).

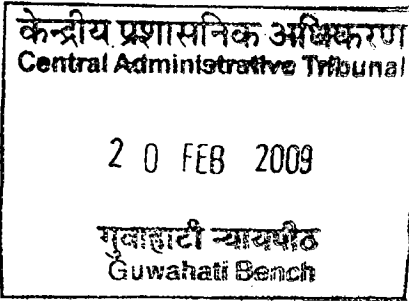
Noted
A.K. Dutta

From:
Shri A.K.Dutta,
D.G.M., BSNL,
Tezpur,
Assam Circle

ANNEXURE-15

TO:

His Excellency,
The President,
Union of India



Kind Attn:- Shri A.K.Patro, Desk. Officer, (Vig-II) Section, DOT,
Sanchar Bhavan, New Delhi)

Sub :-Representation against the Inquiry Report

REF:-Your office Memorandum no.8/99/2003 Vig-II dated 5/12/06

You'r Excellency,

I am acknowledging herewith the receipt on your memorandum quoted
along with the copy of the Inquiry Report dated 15/9/06 and CVC IIInd
stage advice dated 22/11/2006, it is represented as follows:

At the outset, I may submit that I did not commit any irregularities
whatsoever to call upon disciplinary action against me. The 1st stage of
Advice of C.V.C. itself was more than sufficient to drop the case even at the
initial stage since it is clearly said "that from the Documents/Evidence
available, it will be difficult to pinpoint the culpability on Shri A.K.Dutta
and yet gave a cryptic advice to initiate a minor penalty against Shri
A.K.Dutta.

The C.V.C. had only the power of superintendents and was not
required to advice on any penalty and much on quantum thereof.

There are many judgments stating clearly that in giving advice, the
C.V.C. has over stepped its limit in suggesting quantum of penalties
resulting in voiding the entire disciplinary proceedings.

Attested
Dutta
Adv

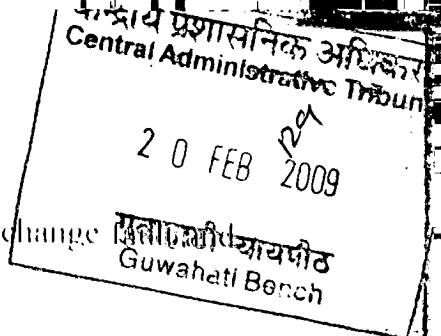
20 FEB 2009

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Guwahati Bench

advised and concluded by C.V.C. there was no proof enough building up any case. This has been more than sufficiently proved during the 1st hearing of the case and the presenting officer could not build up the case for want of proper document and could not get the charged proved through its only Witness (SW1) Shri Kolwadker.

Neither the Presenting Officer nor the Disciplinary Authority presented the Investigating Officer which proved fatal to the prosecution of the case as Presenting Officer was handicapped for want of material/documentary evidence. The Presenting Officer could not produce even documents to build up the case.

Referring to item 4, Annexure-III of the Memo of Charges, the computerized sheets, hard copy available in the exchange could not be presented as any documentary proof to substantiate the Disciplinary Authority's case though these documents were requested to supply through my letter no.KYN/DGM/AKD/Conf/05-06 dated 2/4/2005 to the I.O. and copy to the P.O. but it was intimated to us as "Not Available". The genesis of the case started from 6/5/96 when there was a major exchange fault on that day sometime in the forenoon. There was no dial tone for the subscribers for the whole exchange as deposed by DW-2 (Shri Wani) the then JTO (E-10B) of Narmada E-10B Exchange in Q.A.4. After consulting with RMC (Repair and Maintenance Centre) Bombay and other Senior Officers by the JTO (E-10B) Shrik and his immediate Superior Shri Kolwadker (SW-1), of the E-10B Exchange, the last available tape was loaded to restart the Exchange. He also deposed that as the available tape was of older than 30/4/96 so the Senior Officer decided to reset the M.R. of the entire Exchange to 000 to avoid any complaints from the public. The JTO (E-10B) (DW-2) has also deposed at QA-9 that the entire Exchange M.R. was reset to 000 but to account for the calls made by the subscribers between 30/4 and 6/5 these were manually calculated for 6 days on the average of the earlier periods and added to the M.R. of 30/4. This has been done in order to save any Revenue Loss due to major Exchange fault as well as to avoid any complaints from the public. This is proved by D-3 where the stepping up and down of the Meter Reading on 6/5 is very clear. Thus the charge leveled against me by the Disc. Authority regarding revenue loss due to major exchange fault are completely wrong without specifying or producing any evidence by the Disc. Authority or P.O. or through (SW-1). The JTO (E-10B) Shri Wani has deposed at QA-9 regarding steps taken by him to restore the exchange fault



as well as to save any possible revenue loss due to major exchange also to avoid complaints of the public.

In the prescribed statement, Shri Kolwadker (SW-1) never touched the point and systematically avoided to confirm the exchange fault which necessitate zeroing of all Meter Reading of the system to restart the working of the Exchange. He was asked by me as a DGM(I & P) to submit a special report regarding cause of the major Exchange fault to apprise to the knowledge of the Head of the SSA (Shri Satyapal) the then G.M. Nashik. In the meantime, Shri Satyapal, GM Nasik was transferred and the new incumbent Shri B. Prasad, GM, Nasik took over in the mid of June '96 and in between the two Shri Kolwadker never submitted any special report despite of my repeated demand. In spite of submitting the report of Exchange fault, Shri Kolwadker (SW-1) colluded with the Vigilance Officer to fabricate false complaint against me.

The Vigilance Officer fabricated a note forging the dates so called anonymous complaints received on dated 23/5/96 which was subsequently over written as 25/5/96 but his signature on the letter showed as 24/5/96 and that too well scratched (S-1, Item-1 of Annexure-III of the memo of the charges). Thus the genesis of the case of initiating on 23/5, 24/5 & 25/5/96 itself was a manipulation. Secondly as a Vigilance Officer, he should have been well conversant with the Departmental Instructions and also Vigilance Circulars on the subject of dealing the anonymous/pseudonymous complaints vide Dept. of Personal and Training letter no. 321/4/91-AVD.III dated 29/9/92 and C.V.C. letter no. 3(V)/99/2 dated 29/6/99 which clearly stated that no action should be taken on anonymous and pseudonymous complaints and should be ignored and only file. The C.V.C. circulars also state that all the C.V.O. must ensure that these instructions must be strictly complied with. This was necessitated because it is found that the DDOPT resolution no 371/20/99-AVD III dated 4/4/99 was not being followed though clear cut instruction of dealing the anonymous/pseudonymous complaints by the DDOPT issued in Sept'92 which are never followed in spirit or in a letter. Even agreeing but not accepting that the anonymous complaints were taken cognizance.

In the whole case no ABOIN (Interrogation Command to know the status of Meter Reading of the Telephone Number) are executed by Shri Kolwadker (SW-1), Incharge of the Exchange to confirm whether the meter reading are actually increasing or decreasing abnormally. Similarly, no

Telephone Numbers were kept under observation to know the status of the Meter Reading whether decreasing or increasing abnormally. No statement has been produced by Shri Kolwadker (SW-1) in his recorded statement at Item-4 of Annexure-III but enclosed a table indicating Meter Reading of numbers kept under observation without any signature and any authentication which becomes a **suspect and doubtful** and hence can not be treated any evidence at any stage. There is no system or command in the entire E-10B systems which gives or exhibit the Meter Reading of any previous dates which was submitted by Shri Kolwadker (SW-1) after directed by V.O. on or after 25/5/96. The unsigned typed observation sheet attached at Item-4 of Annexure-III of the Memo of Charges where the Meter Reading of 6/5/96 prior to 25/5/96 as directed by V.O.) shown to Zero. There is no ABOIN Report nor any observation report to prove or justify any increase or decrease of the Meter Reading but exposed to Shri Kolwadker (SW-1) to the extent that he was fully aware of the Meter Reading to Zero on 6/5 which he refrained from confirming that there was any major or minor fault which caused all the Meter Reading reduced to Zero as per Q.A. 12, 14, 16 of SW-1. Shri N.A.Kulkarni, SDE (RMC) MTNL, MBI (DW-1) has deposed at QA-2 where he has stated that it is not possible by any mechanism to note the Meter Reading of any mid day say 6/5 and also clarified at QA-7 the duties of responsibility of AE/ADET Incharge of the exchange. The D-3 which is a fortnight Meter Reading statement does not show the Meter Reading of 6/5 is 000 for all the numbers. D-3 is a generated report by the SDE(E-10B) Nasik after he was requested through I.O. & P.O. to furnish the details of telephone number during the period.

D-3 could have not been generated during the month of May and June 96 for the purpose of documents to be used on behalf of prosecution to prove their case. Therefore all the Meter Readings shown in the Statements at Item-4, Annexure-III of Memo of Charges becomes a suspect without any Exchange printout and observation report, hence is **fully doubtful** for lack of authentic documents to generate a basis for observation report and indicates fabricated documents only. The generation of unsigned observation itself appears to be a false documents not supported by any documentary evidence. The P.O. has completely failed to produce any authentic Evidence to prove his case. The I.O. has clearly indicated in his report on page 8 in para-4 that no preliminary Vigilance Inquiry was conducted by DE (Vig) Nasik before completion of the three month of the alleged incidence of manipulation of the Meter Readings and no YJDB printout have been produced to pinpoint the alleged misuse of ABOMU command. In short the

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Wahari Bench

P.O. has given nothing new except what is already mentioned in Annexure-I and II of the Charge Sheet. This is also expressed by the I.O. in his report.

Shri Wani, JTO (E-10B) (DW-2) in his deposition at QA-7 stated that there is no possibility of ups and down in the Meter Reading as per indicated by Shri Kolwadker in Item-4 of Annexure-III of Memorandum of Charges and he has no knowledge of any ups and down in the Meter Reading taken place.

At QA-9, the DW-2 has deposed how the Meter Reading are changed by using ABOSU and ABOCR command. These commands are available in subscriber management under Class-1 which are accessible to SDE (E-10B) as the subscriber Management command are given to the password of SDE(E-10B).

It is a fact that I was DGM(I & P) in the O/o.GMTD Nashik but not Incharge of E-10B Exchange during the period. I was promoted on local officiating basis to JAG of TIS Grp.A vide CGMT MH Circle Bombay order no.Staff B/AE-22/JAG/F/23 dated 21/12/95 and accordingly posed as DGM(I & P) vide GMT, Nasik order no.Staff-11/Go/Engg/160 dated 28/12/95 and joined as DGM (I&P) w.e.f. 29/12/95, consequently as per DOT order no.314-3/95 STC III dated 14/2/96 and CGMT Bombay order no.Staff-B/AE-22/JAG/P/43 dated 23/2/06, I was promoted to DGM on Adhoc basis and posted as DGM (I&P) Nasik. I cease to be the overall Incharge of E-10B Exchange Nashik w.e.from 29/12/95.

In fact all the Exchanges including E-10B Exchange, OCB Exchange, CDOT Exchange and all OFC /PCM system D.TAX Exchange are under my Administrative control but not under any Executive Control. The charge of DE (E-10B) Nasik was looking after by Shri Kolwadker (SW-1) after my promotion as DGM(I&P) w.e.from 29/12/95. In his statement at Item no.5 of Annexure-III of Memorandum of charges, Shri Kolwadker(SW-1) has accepted at Q.No.1 that his designation is DE(E-10B & OCB 283) O/o.GMT, Nasik and further he has stated that he has been allotted a password by Shri A.K.Dutta. DGM (I&P).

The Inquiry Authority in his report at page no.8 (last para) and 9(first para) has also stated this fact. During the cross examination at QA-1, Shri Kolwadker (SW-1) has accepted about his looking after charge of DE

20 FEB 2009

(E-10B) in Nasik SSA in the absence of regular DE. Shri Wani, JTO (E-10B) (SW-2) has stated during his deposition at QA-2 and against cross-examination by P.O. at Q.A.-4 about looking after the charge of DE (E-10B) in Nasik by Shri Kolwadker (SW-1) after I was promoted as DGM (I&P) w.e.from 29/12/95.

The Inquiry Authority in his report at page no.9 (first para) has clearly stated that it is an established fact that in E-10B Exch, the password protection as well as all important password are with DE Incharge of the Exchange. The prosecution has failed to establish as to who was the incharge of the Exchange in possession of all the important passwords. Under the direction of GMT, Nasik, the system was entirely under the control of the ADET Incharge of the Exchange who was very near to DET and almost equal to or higher than Senior SDE for the purpose of status and pay. As per para-2(VII) C(3) of Mtee. Of Electronic Switching Hand book (Vol.I) issue by the Dept. of Telecom Circular no.19-9/90-PHM dated 10/4/91 (page no.433) and same is reflected in MTNL Tech. Circular on E-10B no.01.21.006-MSE, issue 01 dated 26/2/91 (page no.418) on arrangement of password, Grouping of various commands into different classes and remedial measure to avoid leakage of revenue by misusing various commands in E-10B Exchange it is clearly quoted as "Only DE Incharge of the Exchange and Senior AE should have access to most important operation and maintenance commands" The status of ADET who was fully trained in E-10B having deep knowledge of E-10B and handled all troubleshooting day-to-day routine work of the E-10B Exchange.

Hence the ADET was solely in command and incharge of the Exchange and looking after the charge of DE (E-10B) of the Exchange. DGM are never put in command except for the Administrative purposes. I was the only DGM against the existing three DGM's. The other two DGM's one on Medical Leave since long and the other are under relieved on transfer to Pune SSA. I was generally the overall Incharge of all the Exchanges system including D.TAX Exchange, OFC & PCM junction network in the Nasik Urban Area for the Administrative purposes only and not for any particular Exchange for a particular ward as in Nowhere DGM's are Incharge of the Exchange.

Shri N.A.Kulkarni, SDE (RMC), MTNL Mumbai (DW-1) has also clarified during his deposition at QA-10.

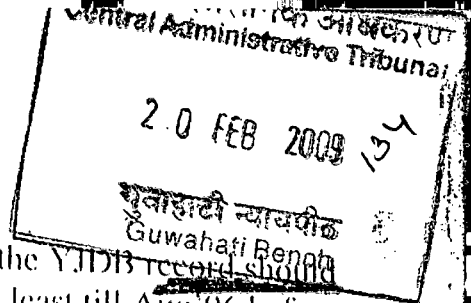
Central Administrative Tribunal
20 FEB 2009
गुवाटी नं. 13
Shri Kolwadker

The contention of the P.O. that No password was handed over to Shri Kolwadker (SW-1) is wrong as Shri Kolwadker was having the password as per his admission in the prerecorded statement in Q.A.-3 at Item no.5, Annexure-III of Memo of Charges that he has been allotted the password. The same has also confirmed by his JTO Shri Wani (DW-2) at Q.A.-2 during cross examination by P.O. Shri Wani (DW-2) has categorically stated that in case of carrying out the work of subscriber management the password allotted to Shri Kolwadker, ADDET or DE as the ADDET was looking after the work of DE (E-10B) Exchange also were opened by Shri Kolwadker (SW-1).

✓ The Inquiry Authority in his report has clearly stated that it is an established fact that in E-10B Exchanges, the password protection as well as all important password are with DE Incharge of the Exchange. This is also confirmed by the DOT circular no.19-9/90-PHM dated 10/4/91 and same is reflected in MTNL Tech Circular of E-10B no.01.21.006-MSI, issue -01 dated 26/2/91 on arrangement of passwords and grouping of various commands into different classes in E-10B Exchanges. In Nowhere DGM's are Incharge of the Exchange.

✓ From here it is clearly indicated that Shri Kolwadker, ADDET (SW-1) was the incharge of the E-10B Exchange and was looking after the charge of DE (E-10B) also in the absence of DE and having the highest command of the Exchange in his possession. He is fully responsible for any kind of irregularities in the Exchange. If any supervisory lapses are found or proved then it would be the solely responsibility of Shri Kolwadker, ADDET incharge of the Exchange who was looking after the charge of DE (E-10B) in the absence of DE. The Inquiry Authority in his report has clearly indicated that the prosecution has failed to establish as to who was the incharge of the Exchange in possession of the entire important password. In Nowhere the DGM's are Incharge of the Exchange. I hereby fully deny the charge leveled against me by the Disciplinary Authority regarding supervisory lapses, failures on the part of Charged Officer.

→ The Vigilance Officer's report and statement enclosed therein at Item no.6 and 9 of Annexure-III of Memorandum of charges become a suspect as nothing is supported by any Exchange Printout (ABOIN or SABLEA report) to show that Meter Reading showing therein is factual and correct or even taken. Secondly as stated by the P.O. that the Meter Reading was daily recorded is completely misguided.



During the period of investigation in June '96, the YIDB record should have been kept preserved yet another three months at least till Aug '96 before which the Vigilance Officer has submitted his report but miserably failed to check the commands during May & June '96 when Shri Kolwadker (SW-1) alleged that commands were used by me without support of any Authentic document/Evidence.

The primary responsibility of the prosecution are to prove his case and the onus can not be shifted to the defence despite the fact that the degree of the evidence required in the Departmental proceedings that the preponderance of possibility is not proved beyond reasonable doubt as recorded in Criminal case but still P.O. has to prove some possibility if not preponderance thereof.

By applying general principle of Evaluating Evidence the second principle is that the burden of proof rests on the Disciplinary Authority i.e. it would be the responsibility of the Presenting Officer to establish the charge first and then only the defendant would be required to controvert the same. It is not the Charged Officer to prove his innocence or absolve himself from the charges. If the P.O. fails to bring home the charges, no duty is cast on the Charged Officer to prove his innocence.

A further requirement is that the conclusion must be rested on the evidence and not on the matter out side the record and when it is said that the conclusion must be rested on the evidence, it goes without saying that it must not be based on a misreading of evidence. Similarly, mere suspicion can not take the place of evidence or proof, suspicion, however, strong has not evidentiary value whatsoever. More over no conclusion should be arrived at arbitrarily without evidence or misreading of evidence.

Here No Meter Reading set have been recorded without generating it by a command ABOIN. No ABOIN records have been put in evidence for any Meter Reading recorded shown in the statement and therefore every reading in the statement becomes a Suspect. Hence this can not take place any evidentiary value. The charges leveled by the Disc. Authority regarding abnormal decrease or increase in the Meter Reading stated to be technical fault is totally wrong without having any evidence at all. The Inquiry Authority has clearly stated in his report that both SW-1 as well as P.O. have failed to recollect the reason and to establish the facts of any kind of

20 FEB 2009

महानगरपालिका
Guwahati Bench

existence of abnormal increase or decrease in the Meter Reading to produce any evidence during the entire hearing of the case.

Hence, the charges framed by the Disciplinary Authority regarding lapses or failure in supervision on the part of charged officer do not arise as no evidence/documents are found to be established for any kind of existence of abnormal decrease or increase in the Meter Reading.

The 11nd stage of opinion given by the C.V.C. in his report on dated 22/11/2006 alongwith the charge leveled by the Disciplinary Authority is produced without specifying any Evidence of existence. The P.O. has completely failed to establish any of the charges leveled against me by the Disciplinary Authority. The Inquiry Authority in his findings on basis of documentary and oral evidence during the regular hearing has concluded that no Article of Charge leveled by the Disc. Authority are proved against the Charged Officer. Hence, charges leveled against me by the Disciplinary Authority in his report on dt.5/12/06 regarding supervisory lapses or failure on the part of charged officer do not arise as no evidence/documents are found to be established for any kind of existence of abnormal decrease or increase in the Meter Reading. The P.O. or through his only witness (SW-1) could not establish the only charge against me."

The C.V.C. in his 11nd advice has noted "It can be inferred that he was in possession of highest command of Exchange. Therefore, he is responsible for any irregularities committed or occurred with regard to major Exchange fault leading to revenue loss. Keeping in view the fact that there were abnormal decreases or increase in the Meter Reading stated to be due to technical faults is the supervisory lapse on the part of charged officer, hence the charge has to be considered proof to the extent".

The same has been reproduced verbatim by the Disc. Authority in its show-cause notice intravening the provision under Rule-15(2) on action on the Inquiring Authority Report where the reason of disagreement if any, with the findings of Inquiring Authority should be submitted with the Evidence/record available. Both the C.V.C. and Disc. Authority have used the same word 'inferred' but avoided to show existence of any evidence on a record sufficient enough for the purpose. The Inquiry Report shows that no attempt was made to prove that I was the Incharge of the Exchange and as such the dissent note made by the Disc. Authority under Rule-15(2) is not correct.

It is against the spirit of letter of the Rule where some evidence on record should have been shown in the dissent of Disc. Authority. As such, the dissent is not based on any evidence at all therefore no penalty needs be imposed even 'Censure' as advised by the C.V.C. The charge may be dropped honorably.

The P.O. has proved nothing either through his Witness (SW1) or by contradicting the defence Witness to show how the deposition of defence Witnesses were not logical. The Inquiring Authority has clearly stated in his report that both SW-1 as well as P.O. have failed to recollect the reason and to establish the fact of any kind of existence of abnormal meter reading and failed to produce any evidence during the entire hearing of the case. The Inquiring Authority has clearly submitted in its Findings that 'on the basis of the documentry and oral evidences discussed above, it is concluded that the Article of Charge is not proved'.

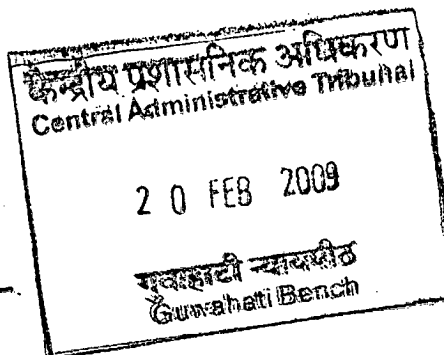
Therefore, I may kindly be exonerated from the charges leveled against me vide Memorandum no. 8/99/2003-VIG.III dated 2/8/2004.

I remain,

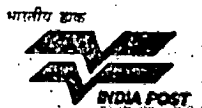
Thanking you,

Date: 27/01/2007

Tezpur



*Attested
Dutta
Adw*



TEZPUR (784001)
SF EE846643003IN
Counter No:1, SF-Code: PUSPA
To: A.K. PATRO, 22 ASHOK ROAD
New Delhi, PIN: 110066
From: A.K. DUTTA, BSNL TEZPUR
Wt: 72 grams,
Amt: 57.00, 05/02/2007, 16:23
Taxes: Rs. 7.00 (Have a nice day)

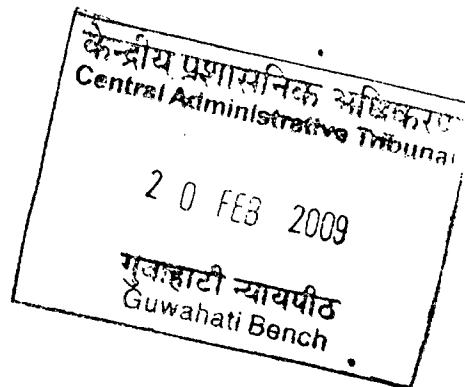


TEZPUR (784001)
SF EE846643003IN
Counter No:1, SF-Code: PUSPA
To: D.K. SHARMA, PANBAZAR
Guwahati, PIN: 781
From: A.K. DUTTA, BSNL TEZPUR
Wt: 70 grams,
Amt: 25.00, 05/02/2007, 16:23
Taxes: Rs. 3.00 (Have a nice day)



ANNEXURE-16

CONFIDENTIAL



ADVICE OF

UNION PUBLIC SERVICE COMMISSION

IN THE

DISCIPLINARY PROCEEDINGS

AGAINST

SHRI A.K. DUTTA, DGMA.

MINISTRY OF COMMUNICATION & IT

*Arrested
Dutta
Feb*

81-

138

Gram : UNISERCOM
Telex : 031-62677
Fax : 011-23385345

CONFIDENTIAL

F. 3/ 523 / 2006-
Central Administrative Tribunal

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench



UNION PUBLIC SERVICE COMMISSION
(SANGH LOK SEVA AYOG)
DHOLPUR HOUSE, SHAHJAHAN ROAD
New Delhi - 110069,

To

The Secretary to the Government of India,
Ministry of Communications & Information Technology,
Department of Telecommunications,
915, Sanchar Bhavan,
New Delhi.

N. 8.1.08

[Attention: Shri A.K. Patro, Desk Officer)

Subject: Disciplinary proceedings under Rule 16 of CCS(CC&A) Rules, 1965
against Shri A.K. Dutta, Staff No. 8188, the then DGMA(A&P). O/o
GM, Nashik presently DGM, Assam Telecom Circle, Guwahati.

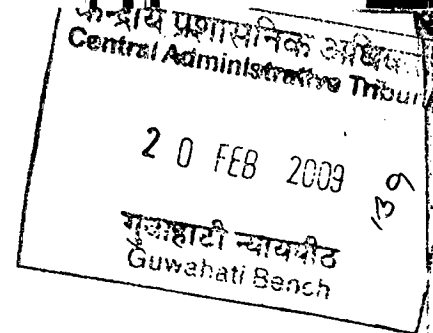
Sir,

I am directed to refer to your letter No. 8/99/2003-Vig.II dated 21.3.2007 on the above subject and to convey the advice of the Union Public Service Commission as under:-

2. The Commission note that the Disciplinary Authority(DA) proposed to take action against Shri A.K. Dutta, Staff No. 8188, the then DGMA(A&P). O/o GM, Nashik [hereinafter referred to as the Charged Officer (CO)] under Rule 16 of the CCS (CC&A) Rules, 1965 and vide its Memorandum No. 8/99/2003-Vig.II dated 22.8.2003 called upon the CO to submit his representation on the following substance of imputations of misconduct or misbehaviour in respect of which the inquiry was proposed to be held was set out in the following statement of article of charge.

[Handwritten signature]

*Collected
Dutta
[Handwritten signature]*



ARTICLE

Shri A.K.Dutta while working as DGM (I&P), O/o GMT, Nasik, during the period 1995-96 has committed the fraud in collusion with private subscribers of Telephone No. 575138, 576116, 577087, 577097, 565656, 562900, 564070 by using highest secret commands of E-10B Exchange at Canada Corner, Nasik Road by visiting the Exchange at night times and tampering with the meter readings using the secret passwords. Thereby he caused huge revenue loss to the Department for alleged self-monetary benefits.

By his aforesaid acts, Shri A.K.Dutta, DGM, failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government Servant, thereby violated the provisions of Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

3. The Commission note that a Statement of imputations of misconduct or misbehavior in support of article of charge was enclosed with the charge memorandum dated 22.8.2003. The CO submitted his representation and requested for an oral inquiry in the matter. Accordingly, the CO was issued another charge memorandum dated 2.8.2004 in continuation of the charge Memorandum dated 22.8.2003 stating therein that after considering CO's request, the President is of the opinion that it is necessary to hold an inquiry under Rule 16(1)(b) of the CCS (CC&A) Rules, 1965. The charge memorandum contained one Article of charge. The CO denied the charges and an inquiry was ordered. The IO held the charges against the CO as 'not proved'. The DA disagreed with the IO. The DA sent a copy of the IO's report along with the copy of the CVC's advice in the matter and its memorandum of disagreement to the CO for making representation, if any. The President, i.e. Hon'ble Minister of State (C&IT), after considering the submissions made by the CO and all other facts and circumstances relevant to the case, has come to a tentative conclusion that a suitable minor penalty may be imposed on the CO. The case records have been sent to the Commission for its advice regarding the quantum of punishment to be imposed on the CO.

4. The Commission note that the Article of Charge has the following elements:-

- (i) The CO committed fraud in collusion with private subscribers;

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20 FEB 2009

गुवाहाटी न्यायाधीश
Guwahati Bench

- (i) The fraud was committed by using highest secret commands of E-10B Exchange at Canada Corner, Nasik Road by visiting the Exchange at night times and tampering with the meter readings using the secret passwords;
- (ii) He caused huge revenue loss to the Department for self-monetary benefits.

5. The Commission note that with regard to the elements of charge (i) & (ii) above that the CO committed fraud in collusion with private subscribers by visiting the Exchange at night hours and using secret commands of E-10B Exchange at Canada Corner, Nasik Road to tamper the metre readings, the CO in his defence has stated that he was DGM (I&P) in the O/o GMTD Nasik. But he was not In-charge of E-10B Exchange during the period. CO was promoted as DGM (I&P) on 29.12.95 and thereafter he ceased to be the overall In-charge of E-10B Exchange Nasik. All the Exchanges in Nasik Urban areas were under his Administrative Control but not under any Executive control. As regards tampering of meter readings by using secret passwords, CO admitted that the Meter Reading was set to zero on 6.5.96.

5.1. The IO held that the above elements of charge were not proved because in E-10B Exchanges, the password protection as well as all important passwords are with DE in-charge of the exchange. The proceedings of inquiry do not establish who was in-charge of the exchange in possession of all the important passwords. Shri D.D. Wani, DW-2, deposed that there was a major exchange fault on 6.5.96 which necessitated the resetting of all the meter readings to 000 and manually adding the readings. For example, the Meter Reading statement of Telephone No. 575138 showed that on 6.5.96, the Metre Reading was 000. But the Computerised Meter reading statement for the same telephone No. for the same date showed the Metre Reading as 615. This fact was not made part of the investigations initiated by DE (Vig.) Nashik in May 1996. As regards the element of charge that the CO used to visit the exchange at night times and tamper with the Meter readings, no documentary evidence has been produced in support except to rely upon the statement of Sh. Kolwadkar (Ex.P.2) that the exchange is kept locked during night hours and the CO possessed the key.

5.2 The Commission note that the DA disagreed with the IO and held that on the basis of CO's role and responsibility, it can be held that he was possessing highest command of exchange. Therefore, CO is responsible for any irregularity with regard to major exchange faults leading to revenue loss. There was an abnormal

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fluctuation in the meter reading which may be due to technical fault. But it is a supervisory lapse on CO's part. The charge is proved to that extent.

5.3 The Commission observe that the CO has admitted that he was having administrative control of all the Exchanges in Nasik Urban areas. So in the capacity of Deputy General Manager (I&P), the CO was in overall charge of the E-10B Exchange, Nasik. There is no evidence on record to prove that the CO had exclusive possession of Password Management Commands. But according to the CO, under the direction of GMT, Nasik, the system was entirely under the control of ADET Incharge of the Exchange. This has not been disputed by the DA. But this does not prove that the CO in his capacity of administrative head of the exchange did not know the Password Management Commands. With the Password Management Commands, the meter reading of any telephone number could be manipulated. Details of meter readings of various telephone numbers which were tampered with are on record. Scrutiny of the meter reading statements of the telephone numbers indicated in the statement of imputations of misconduct reveals that there was increase and decrease in the meter reading of those telephone numbers. Instead of decrease in the meter reading there should be a continuous increase of any working telephone. So the CO on the basis of his role and responsibility was in possession of highest command of exchange. Therefore, CO is responsible for any irregularity with regard to major exchange faults leading to loss of revenue. The elements of charge at (i) & (ii) above are proved.

6. The Commission note that with regard to the element of charge at (iii) in para 4 above that the CO caused huge revenue loss to the Department for self monetary benefits. DA has stated that the CO was overall in charge of the E-10B Exchange, Nasik. He thus, manipulated the meter readings of the telephone numbers as indicated in the statement of imputations of misconduct. The CO showed undue favour to the subscribers. In the process, the CO caused huge loss of revenue to the Government. The manipulation of telephone meter readings was possible only by the person who had possession of Password Management Commands. The Password Management Commands was in the exclusive possession of the CO during the relevant period.

6.1 The Commission note that in his defence, the CO stated that ADET was solely in command and incharge of the Exchange. DGM are never put in command except for Administrative purposes. Nowhere DGMs are Incharge of the Exchange.

6.2 The Commission note that the IO held that the element of charge was not

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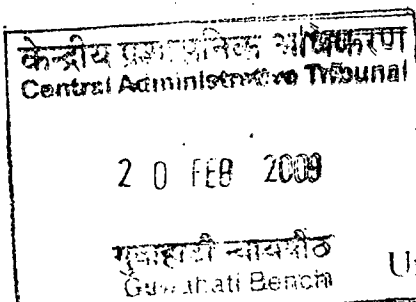
proved on the ground that the identity of the person who was the in-charge of the exchange in possession of all the important passwords was not established.

6.3. The Commission observe that the DA has not made available any evidence to show that the CO caused huge financial loss of revenue to the Department for self monetary gains. The quantum of loss has not been specified. So, to this extent only, the element of charge is not proved. But on preponderance of probability it is proved that the CO in his capacity of DGM and being in administrative control of all the exchanges in Nasik was in possession of the important passwords by which he manipulated the meter readings of the telephone numbers as indicated in the statement of imputations of misconduct. The CO's motive of showing undue favour to the subscribers is self evident.

7. In light of the findings as discussed above and after taking into account all relevant facts, the Commission are of the view that the charges against the CO under the Article are partially proved. The element of charge which is not proved is that the CO caused huge revenue loss to the Department for self monetary benefits, but the fact is that loss was actually caused and that was due lack of supervisory role of the CO. The Commission consider that the ends of justice would be met in this case if the penalty of 'Censure' is imposed on Shri A.K. Dutta, the CO. They advise accordingly.

8. A copy of the order passed by the Department in this regard may kindly be forwarded to this Office for Commission's perusal and record.

9. The case records as per list attached are being returned herewith. Their receipt may kindly be acknowledged.



Yours faithfully,

(Signature)
(A.Baines)

Under Secretary (SI)

s/c

Encl: i) Two spare copies of this letter
ii) Case records as per list attached.

No. 8/99/2003-Vig.II
Government of India

Ministry of Communications and Information Technology

केन्द्रीय प्रशासनिक न्यायाधीश
Central Administrative Tribunal (Vigilance-II Section)

20 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

915, Sanchar Bhawan, 20-Ashoka Road
New Delhi : 11 00 01.

Dated, the 31-01-2008

ORDER

WHEREAS minor penalty proceedings were instituted against Shri A.K. Dutta (Staff No.8188) the then DGM, O/o CGMT, Maharashtra Circle, Mumbai presently DGM, Tezpur, Assam vide Memorandum No. 8/99/2003-Vig.II dated 22/08/2003 for the imputation of misconduct detailed in the aforesaid Memorandum.

2. WHEREAS Shri A.K. Dutta, DGM, vide his written statement dated 30.09.2003 requested for an oral inquiry in this case. The disciplinary authority considered the request and agreed to the same. Therefore, a revised charge-sheet containing the Article of charge, Statement of imputations, List of documents and List of witnesses by which the allegation was proposed to be sustained was issued vide Memorandum of even number dated 02.08.2004 for the following article of charge.

Shri A.K. Dutta while working as DGM (I&P), O/o GMT, Nasik, during the period 1995-96 has committed the fraud in collusion with private subscribers of Telephone No. 575138, 576116, 577087, 577097, 565656, 562900, 564070 by using highest secret commands of E-10B Exchange at Canada Corner, Nasik Road by visiting the Exchange at night times and tampering with the meter readings using the secret passwords. Thereby he was causing revenue loss to the Department for alleged self monetary benefits.

By his aforesaid acts, Shri A.K. Dutta, DGM, failed to maintain absolute integrity and acted in a manner which is unbecoming of a Government Servant, thereby violated the provisions of Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964.

3. WHEREAS Shri M.M. Gupta, the then GM(D), O/o PGMT, Kalyan, Maharashtra Circle, Mumbai and Shri S.T. Patil, DE, Nasik, Maharashtra Circle, Mumbai, were appointed as the Inquiring Authority and Presenting Officer, respectively. Shri M.M. Gupta, GM, who was appointed as the Inquiring Authority to inquire into the charges framed against Shri A.K. Dutta has submitted his Inquiry Report dated 15.09.2006, holding the charges as not proved. Although the IO has held the charge as not proved, the disciplinary authority had observed that on the basis of the role and responsibility of Shri A.K. Dutta who was in charge of the exchange, it can be inferred that he was in possession of highest command of exchange. Therefore, he is responsible for any irregularity committed or occurred with regard to major exchange faults leading to revenue loss. Keeping in view the fact that there was abnormal decrease or increase in the meter reading stated to be due to technical fault is the supervisory lapse on the part of Charged Officer, hence the charge has to be considered proved to that extent. They have advised imposition of minor penalty of Censure against Shri A.K. Dutta, DGM for his supervisory failure. The Disciplinary Authority therefore proposed to disagree with the findings of the IO to the extent indicated above.

4. WHEREAS the case was referred to the CVC for their 2nd stage advice. They have advised for imposition of the penalty of Censure on the Charged Officer for his supervisory lapses. A copy of IO's report alongwith the copy of CVC's advice and the disagreement of the disciplinary authority was communicated to the Charged Officer for making the representation, if any, in the matter. Shri A.K. Dutta has submitted his representation dated 27/01/07 against the advice of CVC and the disagreement of the disciplinary authority. In his representation, he had only reiterated the findings of the inquiring authority which was not accepted by the CVC. Advice of the CVC has been accepted by the disciplinary authority and accordingly disciplinary authority proposed to disagree with the findings of the IO. Hence he is not exonerated on the basis of the findings of the IO.

Attended
A.K. Dutta
Roh

4. WHEREAS the disciplinary authority considered all the records of the case indicating the report of the Inquiry Officer, advice of CVC, representation of the Charged Officer dated 27/01/2007 and come to a conclusion that suitable minor penalty in consonance with the 2nd stage advice of the CVC may have to be imposed on the Charged Officer. Therefore, with the approval of the Competent Disciplinary Authority the case was referred to the UPSC for their statutory advice as to the quantum of punishment that may be imposed on Shri A.K. Dutta, DGM.

5. AND WHEREAS the UPSC have tendered their advice in this matter vide their letter No.F.3/523/2006-S.I. dated 08/01/2008. The Commission have, inter-alia observed that the element of charge was not proved on the ground that the identity of the person who was the in-charge of the exchange in possession of all the important passwords was not established. The Commission observe that the DA has not made available any evidence to show that the Charged Officer caused huge financial loss of revenue to the Department for self momentary gains. The quantum of loss has not been specified. So, to this extent only, the element of charge is not proved. But on preponderance of probability, it is proved that the Charged Officer in his capacity of DGM and being in administrative control of all the exchanges in Nasik was in possession of the important passwords by which he manipulated the meter readings of the telephone numbers as indicated in the statement of imputations of misconduct. The CO's motive of showing undue favour to the subscribers is self evident. The Commission are of the view that the charges against the CO under the Article are partially proved. The element of charge which is not proved is that the CO caused huge revenue loss to the Department for self monetary benefits, But the fact is that loss was actually caused and that was due lack of supervisory role of the CO. The Commission consider that the ends of justice would be met in this case if the penalty of "Censure" is imposed on Shri A.K. Dutta, DGM.

6. NOW THEREFORE, after careful consideration of the records of the case such as the statement of imputations, the findings of the IO, the submissions made by Shri A.K. Dutta, the Charged Officer, in his written statement of defence vide his representation dated 27/01/2007, the advice tendered by the UPSC, vide their aforesaid letter dated 08/01/2008 and all relevant facts and circumstances of the case, the President, the Competent Disciplinary Authority hereby accepts the advice of UPSC and orders for imposition of penalty of "Censure" on Shri A.K. Dutta, DGM.

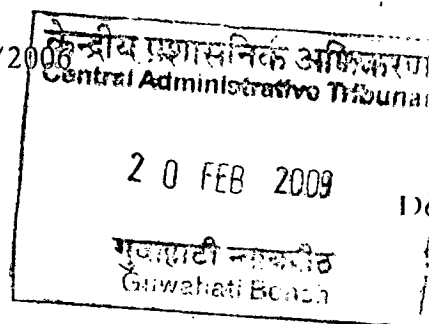
7. The receipt of this Order shall be acknowledged by Shri A.K. Dutta.

By order and in the name of the President.

Encl : Copy of UPSC's letter No.F.3/523/2006 dated 08/01/2008

Shri A.K. Dutta,
(Staff No. 8188),
Dy. General Manager,
Assam Telecom Circle,
Guwahati.

(Through the CGM, Assam Telecom Circle, Guwahati).



(A.K. Patro)
Desk Officer (Vig.II)

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CONFIDENTIAL
ANNEXURE-18

BIHARAT SANCHARNIGAM LIMITED,
(A Govt. of India Enterprise)
Office of the Chief General Manager,
Assam Telecom Circle,
Panbazar, Guwahati-781001.

No.Vig./Assam/43 Pt-VI/70

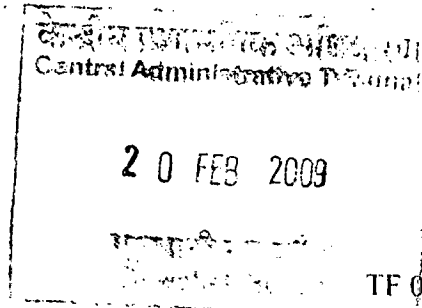
To
The GMTD, Tezpur
Pin.-784001

dated at Guwahati the 15/02/2008

Sub -- DOT, New Delhi No. 8/99/2003-Vig-II dated 31/01/2008

As directed copy of the order alongwith advice of UPSC in the disciplinary proceedings against Shree A K Dutta DGM, Tezpur is forwarded for serving the same to the officer and dated acknowledgement receipt obtained from the officer may be forwarded to this office for onward transmission to DOT New Delhi

Encl. -- 8 sheets a.a.



[Signature]
Asstt Director Telecom (vig).
O/o the CGMT, Guwahati.
TF 0361 2736357, Fax:0361 2526536

*Attested
Dutta
A.W.*

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146
ANNEXURE-19

BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)
OFFICE OF THE GENERAL MANAGER TELECOM DISTRICT
TEZPUR-784001

No. AKD/VIG/TZ/07-08/04

Dated the 20-02-2008

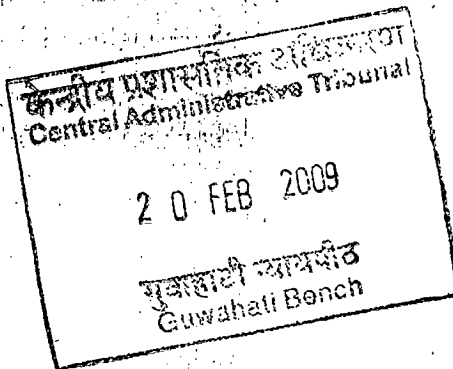
To

Sri A K Dutta, DGM
O/o the GMTD/Tezpur

Sub: - Order from DOT, ND in respect of Sri A K Dutta, DGM
Ref:-1) Vig/Assam/43PT-VI/70 dated the 15-02-2008.

Please find enclosed herewith the **Order** No. 8/99/2003-Vig.II Dated the 31-01-2008 issued by the Desk Officer (Vig.II), DOT, ND along with advice of UPSC.

Please acknowledge the receipt.



(ND) 21/2/08
Sub Divisional Engineer (vig)
O/o the GMTD, Tezpur

*Attested
Dutta
Adm*

ARRANGEMENT OF PASSWORD GROUPING OF VARIOUS COMMANDS INTO DIFFERENT CLASSES AND REMEDIAL MEASURES TO AVOID LEAKAGE OF REVENUE BY MIS-USING CERTAIN COMMANDS IN E10B EXCHANGES.

No.01.21.006-MSE, Issue-01, Date-26-2-91.

1. There are nearly 320 commands available in E10B system for performing various functions. These commands are grouped and put into 16 different classes. Any class of command can be put in pass-word for protection. There is a complete flexibility regarding arrangement of commands in different classes. It is noticed that there is no uniformity in the arrangement of grouping of these commands in different classes in E10B exchanges. Whatever has been arranged by the Installer either the same is being followed or some DEs are arranging commands as per their convenience. It is also noticed that in some exchanges, some important commands are not guarded by password.

It has further been noticed that it is possible to prevent incrementing of sub meter reading during STD call by entering certain commands and possible mis-use of this deficiency in the system cannot be avoided with the intention of mal-practice. This deficiency in the system has already been brought to the notice of TEC for working out suitable preventive solution.

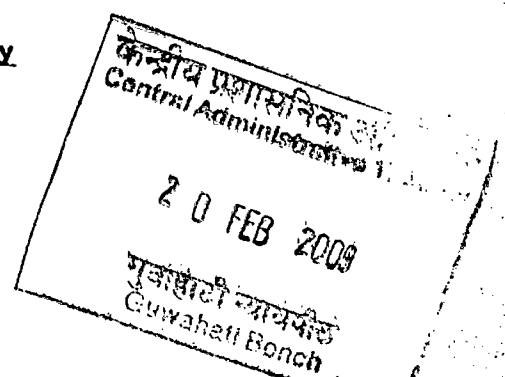
2. Till the time TEC is able to bring out suitable solutions to streamline the arrangement of password in E10B exchange, a committee was constituted by MTNL, Bombay and RMC, Bombay. Their report has been accepted by the DOT, for implementation in all E10B exchanges in the country including MTNL. Details are given below :-

1) The following commands may be deleted from class of commands. However, they will remain in OMC system. In case of requirement, these can be re-inserted by DE incharge and again deleted after doing the needful.

1.ABOMU 2.CXDAR 3.MMRAZ 4.DPHAC

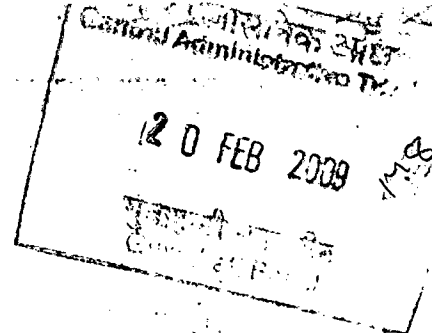
11) The following commands may be put under password :

Command	Class	Authority
FICIN	16	DE
IDABSE	1	AE
OABLA	1	AE
SABLA	1	AE



*Attached
Dutta
How*

-91-



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iii) PSAD file should be assigned to particular TTY and, DEs incharge should monitor the "Charge-Interruption" message to check manual interruption in disconnecting STD calls by use of commands like CTMO and CXDAR.

iv) The conference facility should not be given in E10B numbers working in service centres to avoid possibility of revenue leakage.

v) A close watch may be kept on discrepancy in detail bill by computer section and RMC may be kept informed of such discrepancy.

vi) During installation, most of the 320 commands available in E10B system are used. It is the responsibility of installer to arrange the commands in different classes and delete whenever necessary at the time of commissioning as per standardised commands list appended herewith. This arrangement has to be got acceptance tested by T & D Circle before the commissioning of the exchange.

vii) All commands required for subs management, translation management and special functions may be guarded by password, as per details given below :-

Operator commands are grouped within 16 classes of commands corresponding to the main Operation and Maintenance functions. The grouping of commands should be done in such a way :-

a) To give minimum commands to test room TTYs to protect the system against malicious manipulations.

b) Un-skilled staff are given few operator commands in Switch Room.

c) The skilled maintenance staff are divided into three classes according to hierarchy in the Department i.e., JTOs, AEs and DEs are given access to the following commands :-

1. JTOs : All JTOs are given access to commands which are required for day-to-day operation and maintenance i.e., common functions, subscriber lines systematic test, computer peripherals management, charging, circuit testing, traffic observation, Calendar management, interrogation and listing.

2. AEs : All AEs have access to subscriber management, translation management and some other important commands which are required for operation and maintenance of exchange in addition to those mentioned in (1) above. These commands are under password of AEs in Class-I.

3. DEs : Only DEs incharge of the exchange & Sr. AE should have access to most important operation and maintenance commands. These commands are under password of DEs in Class-16. The usage of these commands in Class-16 require thorough knowledge of exchange software and operation and maintenance of E10B exchanges.

d) All interrogation and listing commands are clubbed in class 14 and class 15 respectively excepting a few commands which overload the exchange or expose important parameters of the exchange. All maintenance staff in S/R should have access of these interrogation and listing commands.

e) All the password management commands are grouped and kept in class 12 which is to be operated under password.

f) System management commands are clubbed in class 7 and this class is to be assigned to ITTs in exchanges co-located with OMC.

g) All commands relating to Translation Management are grouped under class 8 and kept under the password of DE I/C as the usage of these commands requires detailed knowledge of the system.

The following is the broad classification of commands :

CLASS	Main function of commands in the class	Password authority
Class 1	Subscriber Management	AE
Class 2	Subscriber Line Testing	
Class 3	Common Functions	
Class 4	Subscriber Lines Systematic Tests	
Class 5	Computer Peripheral Management	
Class 6	Maintenance Functions	
Class 7	System Management	
Class 8	Translation Management	-DE
Class 9	Charging & Calendar Management	
Class 10	Circuit Testing	
Class 11	Traffic Observation	
Class 12	Password Management	DE
Class 13	Second Level Management	
Class 14	Interrogation	
Class 15	Listing	
Class 16	Special Commands	DE

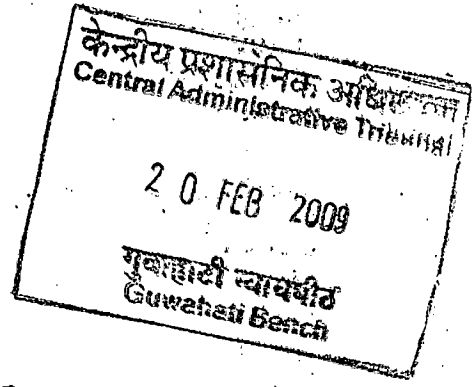
The final arrangement of commands in various classes after providing all guarding in leakage of revenue is as follows :-

Class of Commands

Class-I Subscriber Management -Under pass-word of A.E.

ABOCRM New Subscriber Line Addition

ABOCR	New Subscriber Line Addition
ABOMOM	Line Class of Service Modification
APOMO	Line Class of Service Modification
ABOMOS	Modification of Subscriber TOS
ABOSUM	Subscriber Line Deletion.
ABORTM	Subscriber Cancellation/Transfer
ABOSUM	Subscriber Line Deletion
CACMO	Routing Calendar Modification
CXDLA	Start of Directed Connection.
CTIAR	Stop of OMC
FEMAR	Stop of Anomaly Message Transmission
FORIN	Unit File Interrogation
FSSMO	Circuit Group Threshold Modification
GLPAD	Addition of Lines to Preferential Group
GLPRE	Lines withdrawal from Preferential Group
GLXAD	Addition of Lines of group
GPPCR	New Preferential Group Addition.
GPPSU	Preferential Group Deletion
GPXCR	New Group Addition
GPXSU	Group Deletion
HORMO	Clock Modification
HPRMO	Busy Hour Modification
IDABSE	Subscriber Identification
LSPCR	New Semi Permanent Link Addition
LSPSU	Semi Permanent Link Deletion.
OABLA	Start of Subscribers Sample Observation
SABLA	Start of Charging Supervision
SRCEN	Recording of Restricted Service.
SRCAN	Cancelling of Restricted Services
SURGCR	New Emergency Service Addition
SURGMO	Emergency Service Modification
SURGSU	Emergency Service Modification
URSMO	UR Threshold Modification



CLASS 2 : SUBSCRIBER LINE TESTING

ABSEL	Subscriber Line Routine Test
ABFASE	List of Subs Group in Permanent Glow Condition
ESMB	Battery Measurement
ESRZ	Test Call Responder Resetting
GABIN	Line Caliber Interrogation
INFES	Peripheral In Service

CLASS 3 : COMMON FUNCTIONS

INFES	Peripheral In Service
PWOLA	Start of Keyword Session
PWOAR	End of Keyword Session
TELEX	Telex Message Sending.

CLASS 4 : SUBSCRIBER LINES SYSTEMATIC TESTS

ESER	Test Call Responder Calibration
ESFIN	Stop of Systematic Tests on Subscribers
ESMB	Battery Measurement

ESRZ
ESSY
ESMAN
GABIN

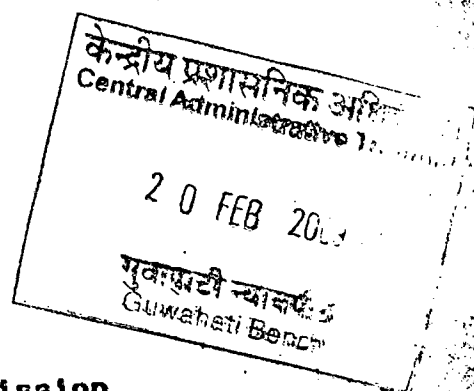
Test Call Responder Resetting
Actuate Systematic Tests on Subscribers
Subscriber Tested Manually.
Line Caliber Interrogation.

CLASS 5 : COMPUTER PERIPHERAL MANAGEMENT

CCIMO	Implicit Exchange Modification
TDALL	Terminal Allocation To File
TDASS	Print Out Terminal Assignment
TDILF	List of Terminals Assigned To File
TDILT	List of Files Assigned To Terminal
LECBAN	Analysis of Tape OPFA/GTDT/GTLC.

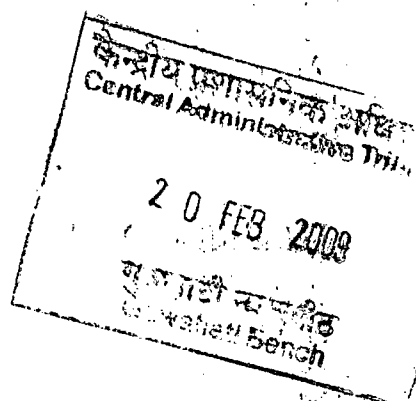
CLASS 6 : MAINTENANCE

APDLA	Start of Directed Calls
APDAR	Stop of Directed Calls
CMDTE	Test On Central Unit
CMDTL	Central Units Location
CMDTR	Central Units Repair
COMTL	Switching Units Location
COMTR	Switch Repair
CTMO	Terminal Circuit Modification
FEMLA	Actuate Anomaly Message Transmission
GRFTES	Tests on GT-RF-CM-LRE-/LRS
IDBASE	Subscriber Identification
IDLIN	Software Identification
LAIEN	Hot Line Record
LCCECH	Transmission of Message to Exchange
LCCIL	LCC Counters Reading
LRLIB	LR Counters Forced Release
LSPMO	Semi Permanent Link Reconfiguration
MMCTL	Memory Check
MMRFT	Fault Searching
MMTRA	Memory Address Translation
MTRAZ	MTA Reinitialization
NABEN	Short Code Numbers Record
NSSSV	NSS Meters Duplication
NUTIL	List of Numbers in use.
PGVMO	Alarms Display Panel Modification
REVAC	Request For Alarm Clock
REVAN	Alarm Clock Service Cancellation
RVTAN	Temporary Call Forwarding cancellation
RVTAC	Temporary Call Forwarding Request
TELIN	Exchange Equipment Status Display
TELEMO	Exchange Equipment Status Modification
TELINB	Exchange Equipment Status Display
TELBSC	Exchange Equipment Status Modification
URTE	Test on Connection Unit.
URTL	Connection Unit Location
URTR	Connection Unit Repair



CLASS 7 : SYSTEM MANAGEMENT

BMASS	Volume Assignment to File
BMBSC	Change of Volume
BMCLF	File Close
BMCLV	Volume Close
BMCNF	Loading Confirmation
BMCOP	Magnetic Tape Copying
BMDMO	Volume Removal
BMMNT	Volume Loading Expected
BMOPF	Permant File Opening
BMPMQ	Volume Premarking
BMPOB	Positioning of A Block
BMPOF	Positioning of A File
DSFLA	Start of DSF Tape Reading
DSFAR	Stop of DSF Tape Reading
ETMES	OMC ETM Link Cut Over into service.
ETMRZC	ETM Exchange Link Reset
ETMRZG	ETM General Reset
INFMT	Peripheral Maintenance
INFHS	Peripheral Out of Service
LCCCR	New ETM Exchange Link Addition
MMSV	Memory Saving
TAXFC	Subscribers Billing
TAXIL	Charging Meters Output



CLASS 8 : TRANSLATION MANAGEMENT-Under pass-word of D.E.

ACHCR	New Routing Addition
ACHMO	Routing Modification
ACHSP	Special Service Routing Modification
ACHSU	Routing Deletion
AIPCR	New International Anaysis Creation
AIPMO	International Analysis Modification
AIPSU	International Analysis Suppression
ALOCR	New Local Analysis Creation
ALOMO	Local Analysis Modification
ALOSU	Local Analysis Suppression
ANACR	New National Analysis Addition
ANAMO	National Analysis Modification
ANASU	National Analysis Deletion
ARECR	New Regional Analysis Creation
AREMO	Regional Analysis Modification
ARESU	Regional Analysis Delation
CACMO	Routing Calender Modification
FSCAD	Addition of Circuits to Circuit Group
FSCCR	New Circuit Group Addition
FSCMO	Circuit Group Modification
FSCRE	Circuit Group Deletion
FSSMO	Circuit Group Threshould Modification
SSPCR	New Special Service Analysis Addition
SSPM	Special Service Analysis Modification.
SSPSU	Special Service Analysis Deletion

CLASS 9 : CHARGING & CALENDER

HORCT	Clocks Check
MMSVX	Charge Accounts Saving
TAXINC	Charging Calender Interrogation
TAXINH	Charging Hourly Interrogation
TAXINT	Charging Compustation Interrogation
TAXIL	Charging Meters Output
TAXIN	Charging Meters Interrogation

CLASS 10 : CIRCUIT TESTING

CIRACT	Systematic Tests on Circuits
CIRDEM	Circuit Tests Upon Request
CIRFIN	Stop of Systematic Tests On Circuit
CTMO	Terminal Circuit Status Modification
CIRMAN	Circuit Test Manually.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer

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गुवाहाटी न्यायक्षेत्र
Guwahati Bench

CLASS 11 : TRAFFIC OBSERVATION

OABAI	Stop of Subscriber sample Observation
OABMO	Modification of Subscriber Modification
OABTP	Subscriber Sample Observation Modification/printout
OCELA	Processors load Observcation
OCHAR	Stop of Hours Duplication
OCHLA	Start of Hourly Duplication
OCHMO	Modification on List Hourly Observaction
OCHTP	Modification of Hourly Meter List
OCRLA	Stat of Meters Display
OCRMO	Displayed Meters List Modification
OCRTP	Obsarvation Period Modification
OCRAR	Stop of Meters Display
OFNAR	Stop of Wrong Number Observation
OLXMO	Groups List Modification.
OLXAR	Stop of Observation of Groups/Lines
OMALA	Start of Mesh Observation.
OMAMO	Stop of Mesh Observation.
ORILA	Start of Path Observation.
ORIMO	Obsrved Path Lists Modification
ORIRAR	Stop of path Observation
ORVLA	Start of Forwarded calls Observation
ORVAR	Stop of Forwarded calls
OSELA	Stat of Limit Display
OSELIC	Checked Threshold List
OSEMO	Threshods Modification
OSEAR	Stop of out of Limit Display
OTDLA	Start out going Traffic Observation
OTDMO	O/G Traffic Observation List Modofication
OTDAR	Stop of O/G Traffic Observation
OTFLA	Start of Circuit Group Complete Obsarvation
OTFMO	Circuit Group Ccomplementary Obsvation List Modification
OTFAR	Stop of Circuit Group Complete Obsevation
OTXLA	Start of Charging Obsevation
OTXAR	Stop of Charging Obsevation

SABAR Stop of Charging Supervision

CLASS 12 : PASSWORD MANAGEMENT -Under pass-word of D.E.

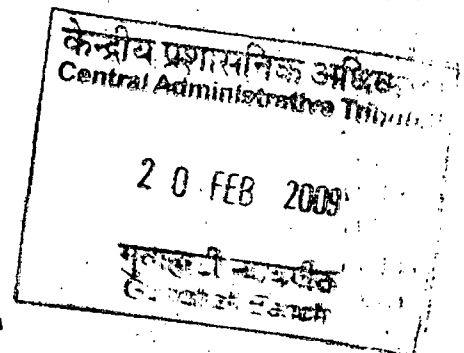
CLCAS	Command Class Assignment to Terminal
CLCMO	Command Class Modification
CLPAF	Class Attribution to Terminal
LASCR	New Terminal Addition
LASMO	Terminal Modification
LASSU	Terminal Withdrawal
PWOGES	Keyword Management
PWOIL	Keywords List
PWOMO	Rights Modification

CLASS 13 : CALENDAR MANAGEMENT

CALID	Calendar Recopy
CALIN	Calendar Interrogation
CALMO	Insertion In Calendar
CALSU	Calendar Command Deletion

CLASS 14 : INTERROGATION

ABOIN	Subscriber Characteristics Interrogation
ACHIN	Routing Interrogation
AIPIN	International Analysis Interrogation
ALOIN	Local Analysis Interrogation
ANAIN	National Analysis Interrogation
AREIN	Regional Analysis Interrogation
CACIN	Routing Calendar Interrogation
CAFIN	Catostrophe Event Interrogation
CCIIN	Implicit Exchange Interrogation
CTIN	Circuit Status Interrogation
CLCIA	Class Distribution Interrogation
FCAIN	Unit Catalogue File Interrogation
FILIN	Filtering Conditions Interrogation
FSCIN	Circuit Group Interrogation
FSSIN	Circuit Group Threshold Interrogation
GABIN	Line Calibration Interrogation
HACIN	Routing Interrogation(Time Dependant)
INDIN	Analysis Interrogation
INFIN	Peripheral Status Display
LSPIN	Semi Permanent Link Interrogation
LAAIN	Hot Line Interrogation
NSSIN	NSS Meters Interrogation
NLIBR	Idle Number Searching
NABIN	Short Code Numbers Interrogation
PAMIN	Translator Parameters Interrogation
PGIN	Programme Interrogation
RANIN	Routing Codes Associated to Routes
REVIN	Alarm clock service Characteristics
SABIN	Interrogation of Supervition Records
SSPIN	Special service Analysis Interrogation
SURGIN	Emergency Service Interrogation
TAXIN	Charging Meters Interrogation



TELIN
TELINB
TLVIL
TRHIN
RVTIN
URSIN

Exchange Equipment Status Display
Exchange Equipment Status Display
Broad band Transmission Interrogation
Rate Periods Interrogation
Search for Call Forwarding Number
UR Threshold Interrogation

CLASS 15 : LISTING

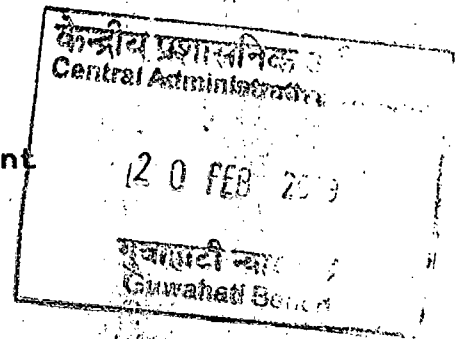
ABOIL	Subscribers Characteristics List
ACHIL	Data Characteristics Routing
ALAIL	Started Alarms List
APDIL	Directed calls List
ANOIL	Printout of Anomalies List
CCIL	Implicit Exchange List
CLCIL	Command Class List
CPTIL	List YCMD and YPAR File Meters
CTETIL	Terminal Circuit Status List
ETETIL	Exchange Equipment Status List
FEMIL	Inhibited Anomalies List
FFIL	Anomaly Filters List
FSCIL	Circuit Group List
GPXIL	list of Main Groups
INFIL	Peripheral Characteristics
OABIL	Sample Subscriber Observation List Interrogation
OCHIL	Interrogation on List Hourly Observation
OLXIL	Observed Group List Interrogation
OMAIL	Observed Mesh List Interrogation
ORIL	Observed Path List Interrogation
OSEIL	Duplicated Thresholds List
OTDIL	O/G. Traffic Observation Lists Interrogation
OTFIL	Complete Observation Circuit Group Lists Interrogation
SABIL	Supervised Subscriber Listing
URAIL	URA Equipment List

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer
20 FEB 2009
महानगरपालिका न्यायपीठ
Mahanagar Bench

CLASS 16: SPECIAL COMMANDS - Under pass-word of D.E.

CACMO	Routing Calander Modification
CAFMO	Catastrophe Extent Modification
DMASS	Logic File Assignment to Physical File
DMRG	Disk File Restoring
DMSV	Disk File Saving
EXEC	Command File Execution
FCAMO	Unit Catalogue File Modification
FFILA	Actuate Anomaly Filter
FFIMO	Anomalies Filter Modifiaction
FFIAR	Stop of Anomalies Filter
FICCR	New File Item Addication
FICIN	File Item Interrogation
FICMO	File Item Modification
FICSU	File Item Deletion
FILMO	Filtering Condition Modification
FORMO	Unit File Modification

FRMRG	OMC Format Regeneration
FRMSV	OMC Format Saving
FRMMO	Modification of Format Test
FZTMOS	Work Area Adoption to Exchange
GABMO	Line Caliber Modification
HACMO	Routing Modification (Time Dependent)
INDCR	New Analysis Addition
INDMO	Analysis Modification
INDSU	Analysis Deletion
LFNIL	Checksum Indicated on Disk File
MICCR	New Multiplex Addition
MICSU	Multiplex Withdrawn
MMTRF	Transfer into Unit File
MONCR	New MNP Position Addition
MONIL	MNP Position List
MONMO	MNP Position Modification
MONPO	Subscribers Under MNP Management
MONSU	MNP Position Deletion
MMCOF	Memory Recopying
MMTXC	Charge Account Recopying
ORGCR	New Unit Addition
ORGSU	Unit Deletion
PAMMO	Translator Parameters Modification
PGCH	Programmes Loads
PGIL	Programmes Library List
PGMO	Programmes Modification
PGREN	Programmes Renaming
PGRP	Programmes Replacement
PGRT	Garbage Collection on Library
PGSU	Programme Deletion
PGSV	Programme Saving
SRCIN	Specification of Restrictated Service
TAXMOC	Charging calender Modification
TAXMOH	Charging Hourly Modification
TAXMOT	Charging Computation Modification
TLBCR	New Broad Band Transmission Addition
TLBSU	Broad Band Transmission Deletion
TRHMO	Rate Periods Modification

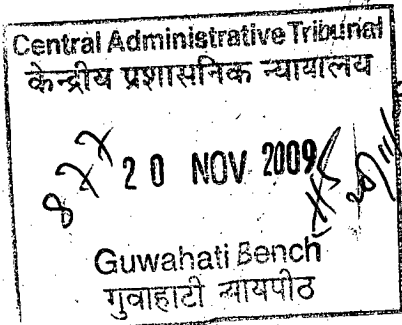


Sd/-

Dy. General Manager (MSE).

*Collected
Data
for*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI



O.A. NO. 30 OF 2009

Sri A.K. Dutta

...Applicant

-Versus-

Union of India & Ors.

....Respondents

Written statement on behalf of the
Respondent No.1 (Union of India),
Respondent No.2 (DOT, VIG-II Sec) and
Respondent No.4 (Union Public Ser-
vice Commission) in the above noted
original Application.

MOST RESPECTFULLY SHEWETH:

1. That a copy of the above noted original application has been served upon the respondents and the respondents after going through the same has understood the content thereof.
2. That the respondents beg to state that the statements which are not specifically admitted by the respondents are deemed to be denied by them.
3. That with regard to the statements made in paragraph 1 of the original application the respondents beg to offer no comment as the same are matter of records.

Contd...P/-

Filed by

Jitip Chandra

Comm. Accounts Officer,
O/o the C.C.A.

Assam Telecom Circle
Guwahati-781001

Manoj Chandra

30-05-09

-101-

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
20 NOV 2009
Guwahati Bench गुवाहाटी न्यायपीठ

[2]

4. That with regard to the statements made in paragraphs 2 and 3 of the original application the respondents beg to offer no comment as those are ^{within} the specific knowledge of the specific knowledge of the applicant.

5. That with regard to the statements made in paragraph 4.1, 4.2., 4.3 and 4.4 of the original application the respondents beg to offer no comment as those are matters of record.

6. That with regard to the statements made in paragraph 4.5 of the original application the respondents beg to state that the allegation of the applicant is not true. The charge sheet was issued to him after holding an investigation and ascertaining that there was prima facie evidence against the applicant.

7. That with regard to the statements made in paragraph 4.6 of the original application the respondents beg to state that the allegation of the applicant that the authorities remained silent without any action, is incorrect and, therefore, denied. As and when the irregularities came to the notice, an investigation was conducted and charge sheet was issued after following due procedure such as obtaining the advice of CVC, approval of the competent authority, etc.

Indip Chaurabarty

Contd...P/-

Comm. Accounts Officer,
O/o the C.C.A.
Assam Telecom Circle
Guwahati-781001

-102-

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

20 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

[3]

8. That with regard to the statements made in paragraph 4.7 of the original application the respondents beg to offer no comments as those are matters of record.

9. That with regard to the statements made in paragraph 4.8 of the original application the respondents beg to state that the Inquiring Authority has considered the request of the applicant for additional defence documents and allowed them after considering their relevance to this case. Hence no prejudice has been caused to the applicant, since he was given full opportunity during the course of inquiry.

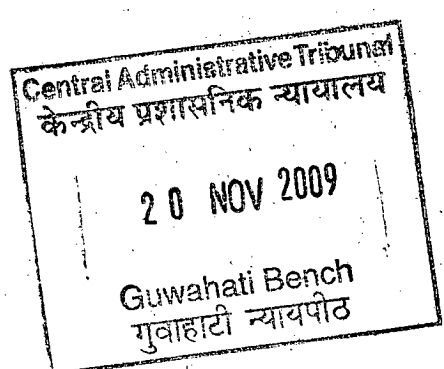
10. That with regard to the statements made in paragraph 4.9, 4.10, 4.11 & 4.12 of the original application the respondents beg to offer no comment as those are matters of record.

11. That with regard to the statements made in paragraph 4.13, 4.14 & 4.15 of the original application the respondents beg to state that the CVC has the mandate to advise the disciplinary authority who has considered the advice of CVC and other records of the case and found that the allegations are established. The disciplinary authority has been vested with the powers to disagree with the findings of the Inquiring Authori-

Indip Chandra

Comm. Accounts Officer,
O/o the C.C.A.
Assam Telecom Circle
Guwahati-781001

Contd...P/-



[4]

ty, if it feels that there are evidences to establish the allegations which the Inquiring Authority did not take into account during the inquiry. Hence the action of the disciplinary authority to disagree with the findings of the Inquiring Authority is valid and there is no illegality in the same.

12. That with regard to the statements made in paragraph 4.16 of the original application the respondents beg to offer no comment as those are matters of records. It is humbly submitted that the advice of the CVC was self contained and was based on the evidences taken on record during the inquiry.

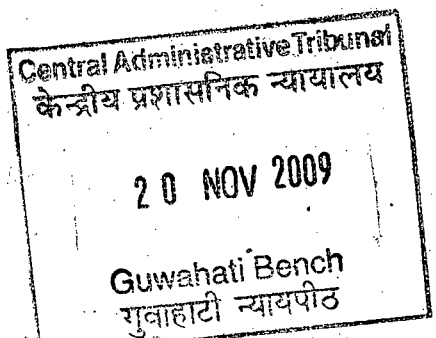
13. That with regard to the statements made in paragraph 4.17 of the original application the respondents beg to offer no comment as those are matters of record. The UPSC tendered their advice after a thorough judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on record, documents made available by the Ministry, representations of the charged officer etc. The advice of the UPSC is self contained and self explanatory. It is also humbly submitted that UPSC is a constitutional body who had tendered their advice after considering the entire records of the case, the submissions of the applicant, etc. The competent disciplinary authority also considered the

Indip Chakraborty

Comm. Accounts Officer,
O/o the C.C.A.
Assam Telecom Circle
Guwahati-781001

Contd...P/-

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[5]

records of the case and the advice of the UPSC and decided to accept the same since the advice of the UPSC was a reasoned one. Hence the allegation of the applicant that UPSC was influenced with the advice of the CVC is not true since both are independent institutions who considered the evidences in entirety before arriving at their own independent conclusions.

14. That with regard to the statements made in paragraph 4.18, 4.19, 4.20 & 4.21 of the original application the respondents beg to state that the allegations of the applicant is not true and hence denied. The UPSC tendered their advice after a thorough judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on record, documents made available by the Ministry, representations of the charged officer etc. The advice of the UPSC is self contained and self explanatory. The disciplinary authority after following due procedure and applying its own mind, took an independent decision to impose the impugned penalty on the applicant. While going so disciplinary authority considered all the records of the case including the submissions of the applicant.

15. That with regard to the statements made in paragraph 4.22 of the original application the respondents beg to offer no comment.

Indip Chandra Borah
Comm. Accounts Officer,
O/o the C.C.A.
Assam Telecom Circle
Guwahati-781001

Contd...P/-

20 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

[6]

16. That with regard to the statements made in paragraphs 5.1 to 5.15 of the original application the respondents beg to state that the UPSC tendered their advice after a thorough judicious and independent consideration of all the relevant facts and circumstances of the case, findings of the inquiry officer, the evidence on record, documents made available by the Ministry, representations of the charged officer etc. The advice of the UPSC is self contained and self explanatory. The disciplinary proceedings against the applicant was instituted after conducting a preliminary investigation and observing that prima facie evidences existed to support the allegations. Therefore, minor penalty proceeding were initiated against the applicant. Although it is not mandatory to hold inquiry in minor penalty proceedings, the competent disciplinary authority considering the request of the applicant allowed an inquiry to be held. This clearly indicates that the disciplinary authority desired to allow full opportunity to the applicant to defend himself. After the inquiry the disciplinary authority observed the procedure prescribed in the statutory rules. Consultation with the relevant agencies were also made. All the principles of natural justice were followed in this case. Hence the reliefs sought by the applicant is not justified since there is no violation of any of the procedures or violation of any principles of natural justice. The respondents



Comm. Accounts Officer,
O/o the C.C.A.
Assam Telecom Circle
Guwahati-781001

Contd...P/-

-105-

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
20 NOV 2009
Guwahati Bench गुवाहाटी न्यायपीठ

103

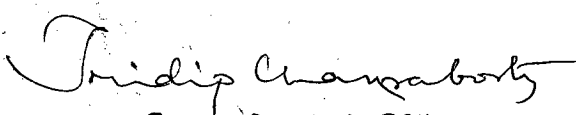
[7]

further submits that the grounds set forth in the original application are not tenable in law, as well as, on facts and those are not good grounds for which the original application is liable to be dismissed.

17. That with regard to the statements made in paragraph 6 and 7 of the original application the respondents beg to offer no comment as those are within the specific knowledge of the applicant. It is also submitted that the applicant has not availed the remedy of scanning review as prescribed in Rule 29A of the CCS(CCA) Rule 1965.

18. That with regard to the statements made in paragraph 8 and 9 of the original application the respondents beg to state that for the reasons explained in para 16, no relief including the interim relief sought by the applicant be allowed. It is also prayed that the OA be dismissed with costs of the respondents.

19. That with regard to the statements made in paragraph 10 to 12 of the original application the respondents beg to offer no comment.


Comm. Accounts Officer,
O/o the C.C.A.
Assam Telecom Circle
Guwahati 781001

VERIFICATION

I. Tridip Chandra Borah S/o. N. C. Chandra Borah
aged about 48 years, R/o (17/B) 13, Panpara 3rd Lane (N), Talpukur
District 24 Pgs (N), WB. and working as Communication Accounts Officer
has been authorised by the Respondent to verify the
statement on their behalf. I, do hereby verify that the
statement made in paras 1 to 19

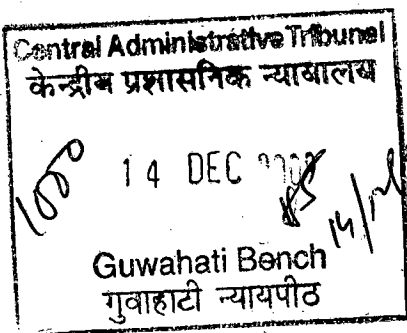
are true to my knowledge and

those made in paras _____

being matters of record are true to my information
derived therefrom which I believe to be true and the
rests are my humble submission before this Hon ble
Tribunal and I have not suppressed any material facts.

And I sign this verification on this 28 th day
of May 2009 at Guwahati.

Tridip Chandra Borah
(Tridip Chandra Borah)
Signature
Comm. Accounts Officer,
O/o the C.C.A.
Assam Telecom Circle
Guwahati 781001



107-

(1)

BEFORE THE COURT OF THE CENTRAL ADMINISTRATIVE
TRIBUNAL, GUWAHATI BENCH AT GUWAHATI

Filed by

S. N. Chakravarty

Asst. Director Telecom

O/o CGMT, BSNL

Panbazar, Guwahati

Through 'Memorandum on Das

Advocate

14.12.09

ORIGINAL APPLICATION NO.30/2009

IN THE MATTER OF:

O.A. No.30/2009

Sri Anjan Kumar Dutta

..... APPLICANT

- VERSUS -

Union of India & Ors.

.....RESPONDENTS

WRITTEN STATEMENT ON BEHALF OF RESPONDENTS NO.2 BSNL

I, Sri S.N. Chakravarty, son of Late Taranath Chakravarty,
aged about 55 years, resident of Ulubari, Guwahati-7, District :
Kamrup, Assam; do hereby solemnly affirm and declare as
follows:

1. That at present I am working as the Assistant Director Telecom
(Legal) in the office of the Chief General Manager, Assam
Circle of the M/ S Bharat Sanchar Nigam Limited, Pan
bazar, Guwahati-1 and competent and authorized to
swear this affidavit. I have made the statements

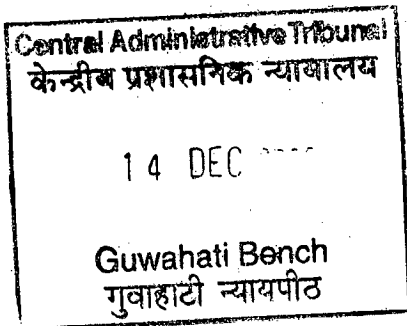
Received
Dutta
14/12/09

(2)

hereunder after having read and understood the contents of the writ petition, a copy of which has been received by the respondents. Hence, I am fully acquainted with the facts and circumstances of the case.

2. That unless specifically admitted, all the statements of the writ petition shall be deemed to have been denied. Nothing contrary to and inconsistent with the records is admitted. Substantial counter-statements are advanced to avoid repetition.
3. That the humble deponent most respectfully begs to state that the Chief General Manager, Assam Telecom Circle, BSNL, Guwahati was informed by the Asstt. Director General (Pers.I) BSNL Corporate Office (Personal Section) 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-1 vide letter No.404-05/2005-Pers.I dated 1-4-2009 that the reply in O.A. No.30/2009 (A.K. Dutta) shall be filed by the Department of Telecommunication, New Delhi and as such the humble answering respondent respectfully begs to submit that BSNL has no part in the above noted O.A. 30/09.

A copy of the said letter dated 1.4.2009 is annexed herewith and marked as Annexure-I and I(A)



(3)

VERIFICATION

I, Sri S.N. Chakravarty, son of Late Taranath Chakravarty, aged about 55 years, working as Assistant Director Telecom (Legal) in the office of the CGMT, BSNL, Assam Telecom Circle, Guwhati-1; do hereby verify that the statements made in Para.....1...2..... are true to my knowledge and behalf, those made in Para.....3..... Being matters of records of e case derived which I believed to be true and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts before the Hon'ble Tribunal and I signed this verification non the day of11th..... December, 2009.

S. N. Chakravarty

DEPONENT

Asstt. Director Telecom (Legal)
O/o CGMT, BSNL
Panbazar, Guwahati-1

484
3/C
4-110-
3/C
ANNEXURE - 1/168
BHARAT SANCHAR NIGAM LIMITED

CORPORATE OFFICE
(PERSONNEL - I SECTION)

4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-1

No. 404-05/2005-Pers.I

Dated: 31 March, 2009

To

The Director (Staff)
Department of Telecommunications
Sanchar Bhawan
New Delhi.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

14 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

Subject: OA No. 30/2009 filed by Shri A.K. Dutta, DGM, Tejpur before
the Hon'ble Central Administrative Tribunal, Guwahati
Bench.

The undersigned is directed to forward herewith notice dated
8.03.2009 addressed to CMD (in original) received from the Hon'ble
CAT Guwahati Bench on the subject mentioned above for taking
further necessary action as the subject matter pertains to DoT.

The reply is to be filed by 20th April 2009.

Encls: as above.

(R.K. Verma)
Asstt. Director General (Pers.I)

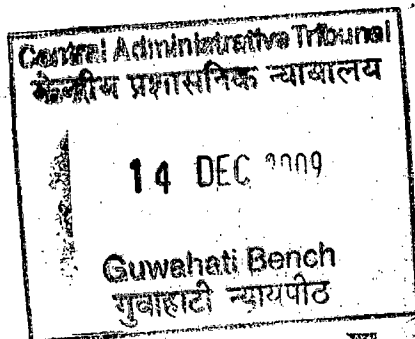
1. The CGM, Assam Telecom Circle, BSNL, Guwahati for
information and necessary action.
2. The ACS & DGM (Legal), BSNL CO for information w.r.t. his
letter No. BSNL/SECTT/54-1-2009/Pers (32) dated
21.03.2009

DGN/A

12/4

ADT (Legal)
16/4

Verified to be true copy
P.D. Adv



Annexure I (A) 16

COURT CASE
URGENT

Bharat Sanchar Nigam Limited.
(A Govt. Of India Enterprise)
O/o Chief General Manager Telecom
Assam Telecom Circle, Panbazar, Guwahati – 1

No. STES-21/669/Legal/2

Dated at Guwahati the 05.03.2009

To

The Controller of Communication Accounts
Assam Telecom Circle, Guwahati
Administrative Building, 5th Floor
Panbazar, Guwahati – 781001.

Sub:- OA No. 30/2009 filed by Shri A. K. Dutta, DGM, Tezpur.

Kindly find enclosed herewith one copy of OA No. 30/2009 filed by Shri A. K. Dutta, DGM, Tezpur Vs UOI & others praying for setting aside and quashing the impugned memorandum of charge sheet bearing No. 8-99/2003-Vig.-II dated 02.08.2004 and impugned penalty order bearing letter No. 8-99/2003-Vig.-II dated 31.01.2008. All the respondents are from DOT, Govt. of India, New Delhi and UPSC and the applicant is also DOT employee and hence, the undersigned is directed to request you defend the case in consultation with CGSC.

Compliance may kindly be reported to this office please.

Enclo:- As above.

(N. K. Rabha)

Asstt. General Manager (Admn)

Copy to :-

- (1). Joint Deputy Director General (Pers.)
BSNL Corporate Office, Statesman House,
Barakhamba Road, New Delhi – 110001.

For information please.

- (2). Director (Staff)
Department of Telecommunication,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi – 110001.

For CGMT, Assam Telecom Circle
Guwahati.



Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

केन्द्रीय प्रशासनिक न्यायालय

14 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

गुवाहाटी न्यायपीठ

VAKALATNAMA

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
AT GUWAHATI
(Form No 12, Rule 67)

S. N. Chakravarty.
H
Asst. Director Technical (Local)
O/o CGMT, DDA
Punebazar, Calcutta-1

OA/RIA/CP/PT.....O.A.....NO...30.....OF 2008

Shri Arjan Kumar Dutta -Applicant(s)

-VS-

Union of India, 2 Mrs. -Respondent(s)

I, Sri ..S...N...Chakraborty applicant in the above applicant/Resp
petitioner do hereby appoint and return Sri.....M..R...Das..... and..Ms.Burasi
.....Das.....(Advocate/s) to appear, plead and act for me/us in the above
application/petition and to conduct and prosecute all proceedings that may be taken in
respect thereof including contempt of court petitions and review applications for return
of documents, enter into compromise and to draw any moneys payable to me/us in the
proceedings.

Guwahati

Mamoringem Dm
Adv BSNL
14.12.09

Accepted

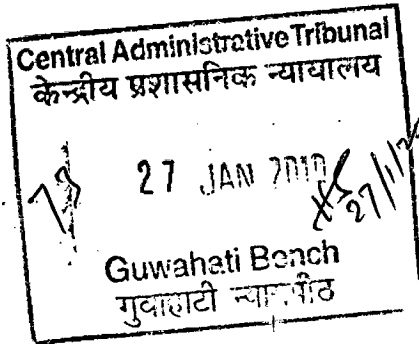
Signature of Parties

1 Puraki Des.
Adv
14.12.09

Accepted

17/1
Filed by the applicant
through U. Dutta, advocate
on 25.01.10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI



In the matter of: -

O.A. No. 30 of 2009.

Shri Anjan Kumar Dutta.

..... Applicant.

-Vs-

Union of India and Others.

..... Respondents.

-AND-

In the matter of: -

Rejoinder submitted by the applicant in
reply to the written statements submitted
by the Respondents.

The humble applicant above named most humbly and respectfully state as
under; -

1. That your applicant duly received a copy of the written statement and carefully gone through the same and understood the contents thereof. The applicant categorically denies all the averments made in the written statement save and except which are borne on record.
2. That your applicant denies the statements made in para 6, 7, 9 and 11 of the written statements and further begs to say that the respondents deliberately issued the charge sheet immediately before consideration of promotion of the applicant to the cadre of Senior Administrative grade. However, the memorandum of charge sheet was initiated on 02.08.2004 i.e after a delay of about 9 years and on the ground of inordinate delay, the impugned memorandum of charge sheet dated 02.08.2004 as well as the impugned penalty order dated 31.01.2008 are liable to be set aside and quashed. Further at least 4 years time have been taken by the respondents in passing the final order of penalty dated 31.01.2008 by the disciplinary authority.

Received for
Mrs. H. Das,
Sr. C.G.S.C.
Wimshim Vashum
(Advocate)
25/01/10

Anjan Kumar Dutta

27 JAN 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

17V

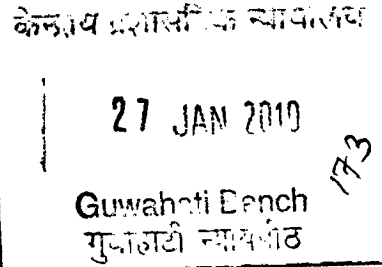
Therefore, all together there is a delay of about 13 years which has caused serious prejudice to the applicant and on that short ground the impugned order of penalty dated 31.01.2004 is liable to be set aside and quashed.

If the instant disciplinary proceeding would have been initiated without having any delay, the same would have ended in the year 1997-1998. But due to the delayed initiation of the instant proceeding, moreso, when the proceeding is culminated with penalty of censure, the same has caused serious prejudice to the promotion prospect of the applicant. The completion of disciplinary proceeding by no stretch of imagination could take a prolonged time of 4 years and on that score alone the proceeding is liable to be set aside and quashed.

The applicant further stated that he had prayed for supply of 12 additional defence documents and also prayed for examination of 7 defence witnesses. But surprisingly, the disciplinary authority could able to supply only 3 out of 12 defence documents and the disciplinary authority also failed to furnish the most vital listed documents i.e document no. 4 of Annexure-3 of the list of documents relied upon by the disciplinary authority i.e computer sheets, hard copy of the exchange, which is most basic vital document for ascertaining the correctness of the alleged article of charge brought against the applicant. Therefore, non supply of vital documents and non examination of defence witnesses as prayed by the applicant has caused serious prejudiced to the applicant.

It is further stated that when CVC as well as UPSC in their second stage of advice, specifically admitted that there was no evidence could be furnished by the disciplinary authority to establish the alleged article of charge against the applicant. But inspite of admission of such facts the CVC as well as the UPSC in a most arbitrarily manner without having any jurisdiction traveled beyond the article of charge and acted contrary to the record of the inquiry proceedings and in a most illegal fashion tendered advice to the disciplinary authority to impose penalty upon the applicant although there is no evidence against the applicant. Moreover, no reason has been recorded by the disciplinary authority against the report of the

Arijan Kumar Dutta



inquiry officer while penalty was imposed upon the applicant by the disciplinary authority without recording the ground of disagreement.

3. That your applicant categorically denies the statements made in paragraph 12, 13, 14, 16, 17 and 18 of the written statements and further begs to say that it is categorically submitted that the disciplinary authority failed to supply at least 9 vital defence documents as prayed by the applicant and also could not supply the basic listed documents is indicated at serial no. 4 of the list of documents which has caused serious prejudice to the applicant even with the other listed documents. The alleged article of charge could not be established as per finding of the enquiry officer, but the CVC as well as the UPSC in a most arbitrary manner on the alleged ground of supervisory lapse tendered advice to the disciplinary authority for imposition of penalty of censure and the said advice was mechanically followed by the disciplinary authority without independent application of mind and thereby imposed penalty of censure after a lapse of 13 years from the date of alleged incident which has cause serious prejudice to the promotion prospect of the applicant.

The CVC and the UPSC has no jurisdiction to travel beyond the article of charge and tender advice contrary to the evidence recorded in the enquiry proceeding.

4. In the facts and circumstances stated above the original application deserves to be allowed with cost.

Aujan Kumar Dutta

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
27 JAN 2010
Guwahati Bench गुवाहाटी न्यायपीठ

VERIFICATION

I, Shri Anjan Kumar Dutta, Son of Late N.G.Dutta, aged about 50 years, working as Deputy General Manager, BSNI, Tezpur, Assam Circle, Tezpur, Assam, do hereby verify that the statements made in Paragraph 1 to 4 of this rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 17th day of January, 2010.

Anjan Kumar Dutta