

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./TA/ NO. 51/2009-2008
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by Mrs. M. Deka Sri. C. A. Bgn 23/12/2015
SECTION OFFICER (JUDL.)

FORM NO. 4
[see Rule II (b)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDERSHEET

1. Original Application No. 51 / 2009

2. Mise Petition No. /

3. Contempt Petition No. /

4. Review Application No. /

Applicant(S) Sri Pramod Kp. Pathak

-VS-

Respondent(S) Bharat Sanchar Nigam Ltd. BSNL

Advocate for the applicant(S) Mr. R. Mazumdar
Mr. H. Bezbarua

Advocate for the respondent(S) Standing Counsel BSNL
Ramkanan Das, Addl. Case

Notes of the Registry	Date	Order of the Tribunal
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30.03.2009

On the oral prayer of Mr. Mazumdar, Union of India represented through the Secretary to the Government of India, Ministry of Telecom, Sanchar Bhawan, New Delhi - 110001 is impleaded as Respondent No.5 in this case.

Mr. R. Mazumdar undertakes to make necessary entry in the cause title page of the O.A. and file an extra copy of this O.A. by tomorrow.

Heard. Perused the materials placed on record. Issue notice to the Respondents (including newly added Respondent No.5) requiring them to file written statement by 29.05.2009.

Call the matter 29.05.2009.


(M.R. Mohanty)
Vice-Chairman

20.3.09
Extra Copy of The Application received with envelope for issue notice to the Respondents No. 1 to 4, and a copy of the application served upon the Stand Counsel for the BSNL on 13.3.09.

20/3/09
Copies of notices along with order dt. 30/3/09, send to D/Sec. for issuing to R- 1 to 5 by regd. A/D post. D/No-1543-47
1/4/09. Dt= 2-4-09

29.05.2009 Mr. R. Mazumdar, learned counsel for the Applicant is present. On the prayer of Mr.B.C.Pathak, learned counsel for BSNL, call this matter on 22.7.2009 awaiting written statement from the Respondents.

Mr. G.Baishya, learned Sr. Standing counsel representing Union of India undertakes to file written statement in this case in course of the day.


(N.D. Dayal)
Member(A)


(M.R. Mohanty)
Vice-Chairman

1.6.09
W/S filed by the
Respondents No. 3 & 5.

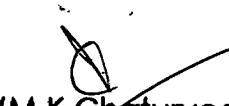
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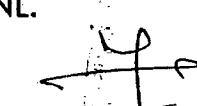
22.07.2009 In this case written statement has already been filed on behalf of the Respondent Nos. 3 & 5 through Mr.G.Baishya, learned Sr. Standing counsel.

NO W/S filed by
R.No. 1, 2 & 4.

Mr.B.C.Pathak, learned counsel for the BSNL wants more time to file written statement.

Call this matter on 25.08.2009 awaiting written statement from the BSNL.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

? PB

25.08.2009

In- Day

Send copies of this order to the Respondent No. 1, 2 and 4.

W.O
25/8/09

copies of order dated 25/8/2009 send to D/Sec for issuing to the Resp. No-1,2 and 4 by post.

/pb/

D/NO-9950-9952

Clk 3/9/09, Dt: 3.9.09

① W/Ls filed by R.No.

3 & 5.

② No W/Ls filed by

R.No. 1, 2 & 4.

25/10/09

No W/Ls filed by R.No. 1, 2 & 4.

5.11.09

In this case written statement has already been filed on behalf of the Govt. of India. BSNL, however, is yet to file written statement.

Call this matter on 06.10.2009 awaiting written statement from the BSNL.

Send copies of this order to Respondent Nos. 1, 2 and 4.

~~✓~~

(M.K.Chaturvedi)
Member(A)

~~✓~~

(M.R.Mohanty)
Vice-Chairman

06.10.2009

In this case Government of India has already filed a written statement. BSNL however, has yet to file written statement.

Subject to legal pleas to be examined at the time of final hearing, this case is admitted.

Liberty is hereby granted to BSNL to file written statement by 6th November 2009.

Call this matter on 06.11.2009 awaiting written statement from the BSNL.

~~✓~~

(M.R.Mohanty)
Vice-Chairman

/lm/

06.11.2009

Reply has been filed. Thus, pleadings are complete.

Admit subject to question of limitation as ordered on 31.03.2009.

wrongly typed.

List for hearing on 03.12.2009.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta),
Member (A) Member (J)

/bb/

10.11.09

N/S filed by the
R. Nos. 1, 2 & 4.
with undertakings
to serve a copy to
the L/Mov. for the
Applicant.

st 10/11/09

06.11.2009

Sri B.C.Pathak, learned counsel for Respondent Nos.1, 2 & 4 states that reply would be filed within one week as the concerned officer who is to sign all the papers is not available today. Acceding to such request, case is adjourned to 13.11.2009.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta),
Member (A) Member (J)

/bb/

23
12.12.09

13.11.2009

Learned proxy counsel for the applicant Mr A. Kumar states that he has received a copy of the reply filed by the respondents 1, 2 and 4 only today and in turn seeks some time to file rejoinder.

List on 14.12.09 for order.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

O.A. No.51 of 2009

17.12.09

1) Rejoinder has been filed by the Applicant against N/S filed by the R.No. 1, 2 & 4; Cops served.

2) Rejoinder has been filed by the Applicant against N/S filed by the R.No. 3 & 5 with out filed by the Advocate for the Applicant. Cops served.

The case is ready for hearing.

22.1.2010

The case is ready for hearing.

18.2.2010

The case is ready for hearing.

8.3.2010

The case is ready for hearing.

31.3.2010

The case is ready for hearing.

27.4.2010

14.12.2009

None appears for the Applicant. Rejoinder has not been filed despite opportunity was granted. O.A. was admitted on 06.10.2009. Pleadings are completed.

List the matter on 25.1.2010.

 (Madan Kumar Chaturvedi)  (Mukesh Kumar Gupta)
Member (A) Member (J)

lm/

25.01.2010

List the matter on 19.02.2010.

 (Madan Kumar Chaturvedi)
Member (A)

/bb/

O.A.51-09

19.02.2010

Learned counsel for BSNL Mr.B.C.Pathak states that complete departmental records of the present case are not available with him, and therefore, to produce the same, he prays for some time.

List on 09.03.2010.

 (Madan Kumar Chaturvedi)  (Mukesh Kumar Gupta)
Member (A) Member (J)

/bb/

09.03.2010

Being Division Bench matter, list it on 01.04.2010.

 (Mukesh Kumar Gupta)
Member (J)

/bb/

01.04.2010

Learned proxy counsel for the applicant prays for adjournment.

List on 28.4.2010.

 (Madan Kr. Chaturvedi)
Member (A)

 (Mukesh Kr. Gupta)
Member (J)

O.A.M. 57/2009

28.04.2010 Heard learned counsel for the parties.

For the reasons recorded separately, O.A. is allowed. No costs.

Received by of order date 28/4/10
atul Nalekhan A/C
for R. Mazumdar
Advocate for the
applicant.
1/6/10

✓ (Madan Kumar Chaturvedi)
Member (A)

✓ (Mukesh Kumar Gupta)
Member (J)

nkm

Copy received by
Adv. A/C dated
1/6/10
for the order
for the
1/6/10

23-6-2010

Judgment / Final order dated
28/4/2010 Prepared and
Sent to the D/Section
for issuing to applicants /
respondents by Post
vide No 1397 to 1391
dated 28-6-2010

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 51 of 2009

DATE OF DECISION: 28.04.2010

Shri Pramod Kr Pathak

APPLICANT(S)

Mr R. Mazumder

**ADVOCATE(S) FOR THE
APPLICANT(S)**

- versus -

Union of India & Ors.

RESPONDENT(S)

Mr B.C. Pathak, Standing Counsel, BSNL

**ADVOCATE(S) FOR THE
RESPONDENT(S)**

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi Administrative Member

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Member (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.51 of 2009

Date of Order: This the 28th day of April 2010

'The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

'The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Shri Pramod Kr Pathak,
S/o Late Jogendra Nath Pathak,
Village & Town, Milanpur,
Biswanath Chariali,
Dist.- Sonitpur.

..... Applicant

By Advocate Mr R. Mazumder

- versus -

1. Bharat Sanchar Nigam Limited, represented by
Chairman cum Managing Director,
Sanchar Bhawan, New Delhi-110001.
2. The Director (Human Resources Development)
Bharat Sanchar Nigam Limited
Corporate Office, Statesman House,
New Delhi-110001.
3. The Advisor, Telecom Commission,
Government of India,
West Block-1, Wing 2 RK Puram,
New Delhi-110066.
4. The General Manager
Telecom District,
Bharat Sanchar Nigam Limited,
Tezpur-784001. Respondents

Mr B.C. Pathak, Standing Counsel, BSNL.

.....



ORDER (ORAL)MUKESH KUMAR GUPTA, JUDICIAL MEMBER

Order dated 23.02.2004 passed by Disciplinary Authority inflicting penalty of reduction by one stage in the time scale of pay for a period of one year with immediate effect, as upheld by the Appellate Authority's Order dated 01.09.2008 is challenged in present proceedings.

2. Admitted facts are: a charge memo dated 31.07.2000 containing one Article of Charge had been issued whereby it was alleged that applicant committed certain misconduct. The gravamen of said charge reads as follows:

"While Shri P. Pathak JTO was posted and functioning as JTO under SDE(P), Biswanath Chariali during the year 1996 failed to maintain absolute integrity and devotion to duty as much as he had countersigned 13 Nos. of false and fabricated experience certificates issued by S/sh Rajendra Rai, Sub-Inspector, Lambodar Jha, Sub-Inspector, Rambilash Rai, line Inspector, Sakaldeo Singh, Sub-Inspector Deonath Rai, Sub-Inspector in favour of S/Sh Prabhat Sarma, Biren Das, Biren Bora, Prajnal Kataki, Maina Bora, Dharmendra Kr. Rai, Ambika Barman, Basanta Bhuyan, Prabhat Kalita, Dwipen Bhuyan, Kishore Kr. Pathak, Cheniram Sarma and Govinda Bora without going through any documentary evidence and verification and on the basis of his countersignature, the TDE Tezpur has regularized all the 13 persons vide order No.X-1/CMPT/96-97/Con-7 dtd. 25/5/96 as Temporary Status Mazdoors and thereby the above acts be contravened the provision of Rule 3(1) and (2) of CCS (Conduct) Rule, 1964"

(emphasis supplied)

3. Since aforesaid charge had been denied, an oral enquiry was held. The Inquiry Officer vide its report dated 17.12.2002, based on preponderance of probability concluded that charge could not be proved. Disagreeing with said findings, a memorandum dated 30.10.2003 had been issued by the Adviser (HRD), Telecom

Commission and applicant was required to submit representation, if any, against the same. On examination of aforesaid aspects, the enquiry report dated 17.12.2002 as well as applicant's representation, the Disciplinary Authority vide order dated 23.02.2004 (Annexure-7) observed that he has: "failed to give convincing reply to refute the charges levelled against him", and ultimately proceeded to impose aforesaid penalty. Detailed statutory appeal was preferred, which had been rejected vide order dated 01.09.2008 (Annexure-A/11). Aforesaid aspects have been assailed in present case on diverse grounds namely:

- i) The basic allegation was that he countersigned 13 Nos. of false and fabricated experience certificates to some alleged casual labourers, based on which such persons were granted temporary status in terms of the policy of Central Government conferring temporary status and regularisation to casual labourers, who satisfied the conditions prescribed in said Scheme. Since allegation was that he had given false and fabricated certificates, criminal proceedings were launched against those persons who have issued certificates, which indeed had been countersigned by him. The Trial Court initially convicted all the accused vide judgment dated 28.07.2003 which included not only the casual labourers but the other officers who had issued experience certificates in their favour. Criminal appeals were preferred before the Hon'ble High Court and vide judgment dated 14.03.2007, conviction order of the Trial Court had been quashed and set aside

ii) Applicant herein had not been arrayed as party in said criminal trial, rather he had been a prosecution witness in said trial namely, PW 13

iii) On identical set of facts, material and evidence, Hon'ble High Court had acquitted the appellants before it, who were convicted by the Trial Court. Documents relied upon against him were indeed the same set of documents, which were used in said criminal trial. There was no iota of difference. As such there remains no justification and ground to punish him. When the evidence had been reappreciated by Hon'ble High Court and the accused were exonerated in the criminal appeal, a different interpretation cannot be given and taken by the departmental authorities. He had brought these facts to the notice of the Appellate Authority, yet instead of gracefully accepting said view i.e. Hon'ble High Court findings, the respondents (Appellate Authority) virtually made a post mortem of said judgment and stated that benefit of said judgment cannot go in his favour. Learned counsel drew our attention to one of the reasons advanced for said finding namely: "**he never approached the Hon'ble High Court against the decision of the Special Judge, CBI, Guwahati.**" It was contended that the reasoning advanced and the stand taken ex-facie is perverse, against the record and exhibit total non-application mind on the part of said authority inasmuch as he had never been penalised by the criminal court and,

therefore, there was no occasion for him to approach the Hon'ble High Court. A person who is aggrieved by a judgment or a decision taken by a competent authority, tried in a court of law alone can approach the High Court, but not a person who was a witness like him in the proceedings before the criminal trial. In any case the ACG-17 vouchers were basic documents which had not been produced by the prosecution even before the criminal court or by the department in the departmental proceedings initiated and concluded against him. When such are the facts, there remains no basis and justification to disagree with the findings of the Inquiry Officer who after elaborate discussion on the basis of materials produced, had exonerated him.

4. In the above backdrop, Mr R. Mazumder, learned counsel for applicant, forcefully contended that there remains no reasons and justification to penalize him. There had been no evidence on record, there was no justification to disagree with the findings of the Inquiry Officer and in any case after the judgment rendered Hon'ble High Court on 14.03.2007 there remains no basis whatsoever and the foundation laid by the department in departmental proceedings stood evaporated.

5. By filing reply, the respondents contested the matter stating that the mazdoors were given temporary status based on the certificates granted by him. "The question of making payment through ACG-17 for the casual labours who were subsequently given the status of regular mazdoor does not muster in the field and worked

continuously and drew wages through muster roll". This was the basic stand taken by the respondent Nos.3 and 5.

6. Respondent Nos.1, 2 and 4 also filed separate reply and stated that the order of punishment was issued on 23.02.2004, which was served upon him on 23.03.2004; appeal was preferred on 28.04.2004 and same had been rejected vide order dated 01.09.2008. Appeal preferred by him was time barred. We may note at once as to how the appeal was time barred has not been explained at all. On the face of it appeal was preferred within fortyfive days, time prescribed under the rules for said purpose.

7. On merit, it was stated that he countersigned as many as 13 Nos. of counterfeited certificates which were proved to be false. It is a fact that those mazdoors were given temporary status on the basis of certificates issued by him. He had failed to prove that he had issued a certificate/countersigned the certificate on the basis of documents i.e., engagement of labourers for more than 240 days in a year and also failed to observe/verify aforesaid requirement of law under Rule 151 of the Financial Handbook Vol.III before putting his counter signature. The Disciplinary Authority had carefully considered the enquiry report and for valid and just reasons, he disagreed with the findings of Inquiry Officer. The enquiry was held observing due procedure and he was afforded an opportunity of hearing. The findings recorded and the punishment order were well within the parameters of law and did not suffer from any illegality or infirmity. Findings recorded by Hon'ble High Court is an independent and not connected proceedings as far as present applicant is concerned, was the main emphasis laid by Mr B.C. Pathak, learned counsel appearing

for said respondents. It was emphasized that the technicalities of criminal law will not apply with same rigour in disciplinary proceedings as the provisions of Evidence Act do not apply in disciplinary proceeding. Strong reliance was placed on (1999) 3 SCC 679, Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another, to contend that there is no bar for simultaneous continuance of departmental proceedings vis-à-vis criminal proceedings as the two proceedings are different and the same can be continued independently. Reliance was also placed on AIR 1963 SC 1723, State of Andhra Pradesh and others vs. Sree Rama Rao. Reliance was also placed on AIR 1976 SC 1080, K.L. Shinde vs. State of Mysore. Lastly, reliance was placed on 1985 (1) SLR 773 (Madras High Court), A.V. Krishnamurthy vs. Government of Tamil Nadu and others, to contend that conclusion in the departmental enquiry should be reached based on "acceptable evidence".

7. We have heard learned counsel for the parties, perused the pleadings and the judgments referred as noticed hereinabove. Question which arises for consideration is whether a person who was a witness in the criminal trial against certain accused in whose favour he had countersigned experience certificates can be excluded from the scope of criminal trial and subjected to departmental proceedings, which though resulted in exoneration by the Inquiry Officer, be punished by recording a disagreement note particularly when in criminal appeal filed by those accused, all accused were let off honourably on the ground that there was no evidence to link their guilt and offence. In the above backdrop it would be noticeable to examine as to what has been observed by the Hon'ble High Court. Before we do so, we may note once again that applicant was PW 13 in



said criminal trial. There was another PW in the trial, whose statement had been submitted and corroborated by the applicant and as per Hon'ble High Court this very evidence "strikes the final nail in prosecution coffin". The relevant excerpts of the judgment reads as under:

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

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

15. The evidence of PW 8 has been reiterated by PW 9, the Asstt. Director, Establishment, Telecom Department.

16. In the present case, the prosecution has not produced the vouchers ACG 17 for the relevant period to show that in these vouchers, the names of the present accused appellants-A-7 to A-33 do not appear. These

documents were vital documents to support the prosecution that no such payment was made to the accused persons during the relevant period as casual Mazdoors.

17. On the other hand, the prosecution has led evidence to show that the vouchers under ACG 17 were not available. Although no evidence has been led as to the reasons of non availability, the prosecution argued that although the Accounts under ACG 17 are not available showing the names of the accused persons, it must be presumed that the names of the accused persons do not appear in these accounts and the inference may be drawn against the accused persons. The trial court also accepted the above and held that when ACG 17 forms are not available in respect of A-7 to A-33, it must be deemed to have not worked as casual workers. We are unable to comprehend such a situation in a criminal trial. The burden is on the prosecution to establish the guilt and the prosecution may either lead direct evidence or indirect evidence. Moreover, there is no evidence on record to show that the accounts books/vouchers under ACG 17 were kept in the custody of the accused persons or that they were responsible for their safe custody and they have destroyed the same to screen out the evidence of criminal offence.

18. From the evidence of the prosecution witnesses, we find that there is another aspect of the matter also. The vouchers under ACG 17 are entered into ACE 3 forms and thereafter the amount is incorporated in ACE 2 accounts and finally adjusted in the cash book. Admittedly, the cash books from 1985 onwards are available and the prosecution could have perused these cash books in ACE 2 accounts to show that during the relevant period, no payment was made to any casual worker or Mazdoor. Further, the Government Department must have some audit to the accounts and audit report, if any, could have been produced, but no document has been produced by the prosecution in support of their contention.

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

20. We also find the trial court has placed much reliance on the evidence of B.K. Goswami (PW 3) who had deposed

that during his period, ACG 17 vouchers for the period 1988 to February, 1996 were not available and he had joined in September, 1995 and worked till 3.11.98. The witness has further stated that despite the ban in the engagement of casual labourers, such engagement continued and labourers were engaged during 1985-88 and they were regularized.

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

22. At this stage, we may have a look in the evidence of G.S. Mathur (PW12) who has deposed that all the labourers mentioned in Ext.1 to Ext.27 were engaged and working under him. The evidence of PW 12 has been supported and corroborated by Pramod Kr. Pathak (PW 13) who states that the casual workers mentioned in Ex.2 to 10, 12, 20, 21, 23 and 24 were actually engaged during the relevant period. Both PW 12 and PW 13 were Supervising Officers. Their evidence strikes the final nail in prosecution coffin.

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

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

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

(emphasis supplied)

8. On examination of the matter with reference to material placed on record and relied upon in the departmental proceedings against him vis-à-vis criminal trial initiated against the officials as well as 13 casual labourers in whose favour applicant had countersigned experience certificates are based on "same set of facts and evidence". When the same set of facts and evidence have been reappreciated by a constitutional body namely Hon'ble High Court, how the respondents/department could be allowed to take a different view on the subject? is the fundamental question that arises for consideration.

9. We have given our considerable and anxious thought to both aspects of the matter and are of the firm opinion that if some leverage is allowed to the respondents to record a view different from the findings arrived at by the constitutional body, it will certainly set a very bad precedent and the executive would be in a position to sit over the judgment recorded by a competent court of law, which had attained finality. In other words, the executive would be in a position to set at naught the judicial decision, which inheres a great danger in itself. Such a course of action is impermissible and opposed to rule of law. Perusal of the judgment noticed hereinabove would reveal that the prosecution had failed to produce vouchers under ACG 17. Their contention that since there had been a ban on engagement of casual labourers and the names of casual labourers did not appear in the accounts books would lead to an inference against said accused has been rejected by Hon'ble High Court. Similarly, it has been noticed that vouchers under ACG 17 were entered in ACE 3 forms and thereafter the amount was incorporated in ACE 2 accounts and finally adjusted in the cashbook. Cashbooks from 1985 were available and

yet the same had not been produced in the present case also. Respondents have taken a stand that question of making payment through ACG 17 did not arise. Ex facie, the stand taken is contrary to the aforesaid findings. Our attention was drawn by the applicant to the audit report, and it was noticed therein that the payment to casual labourers had been made on ACG 17 under MICE head through ACE 3. Thus, stand taken by respondents as noticed hereinabove is a bundle of lies and cannot be accepted. Issue before Hon'ble Supreme Court in Capt. M. Paul Anthony's case (*supra*) had been as to whether department can proceed simultaneously with the criminal proceedings on the one hand and whether findings recorded by the court as reappreciated by the High Court could be ignored by the departmental authorities as done in the present case. In such context it was observed that: "there is a consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common". It has been observed therein that the standard of proof in departmental proceedings is one of preponderance of probabilities while in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. On examination of the facts of said case, it was concluded that when the facts and the evidence in the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable. In our considered view the later observation of the Hon'ble Supreme Court is

squarely applicable in the facts and circumstances of the present case. Said judgment basically do not support the respondents, as projected, rather it helps the applicant squarely. Similarly, in A.V. Krishnamurthy's case (*supra*), Hon'ble Supreme Court observed that findings should be recorded based on "acceptable evidence". What is acceptable evidence in the present case has not been pointed out. As far as reliance placed on Sree Rama Rao (*supra*) and K.L. Shinde (*supra*), is concerned, in our considered view the same do not advance the stand taken by the respondents in any manner.

10. Before we conclude, we would like to observe the manner which applicant's statutory appeal had been decided by the Appellate Authority. Relevant excerpts of the same reads as under:

"On perusal of the facts and records of the case, it is observed that the acquittal of Appellants by Hon'ble High Court, Guwahati in respect of Criminal Appeal Nos.258 of 2005, 269 & 277 of 2003, it is observed that out of the three cases, the two cases namely 258 of 2005 and 277 of 2003 is related to the acquittals of some officials like LL, SI, JM and casual labourers and not related to Shri Pramod Kr. Pathak, the then JTO or any other JTO. Therefore, these two cases have no relevance and cannot be taken into consideration for deciding the appeal petition of Shri Pramod Kr. Pathak, SDEP, Biswanath Chariali. The case No.269 of 2003 in which the Officials like LL, SI and casual labourers were acquitted. In this case, the casual labourers who were acquitted are S/Shri Prabhat Sarma, Biren Das, Biren Bora, Pranjali Kataki, Maina Bora, Dharmendra Kr. Rai, Ambika Barman, Basanta Bhuyan, Prabhat Kalita, Dwipen Bhuyan, Kishore Kr. Pathak, Cheniram Sarma and Gobinda Bora. Shri Pramod Kumar Pathak, the then JTO of Biswanath Chariali, countersigned the certificates in respect of those thirteen casual labourers. The Hon'ble High Court observed that the prosecution could not establish the offence beyond all reasonable doubt. Distance between the accused 'May be guilty' and 'Must be guilty' must be traveled by the prosecution and no conviction can be based on surmises and conjectures."

"Now the question arises whether Shri P.K. Pathak can be exonerated from the charges leveled against him on the basis of judgment delivered by the Hon'ble High

Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh, in favour of 25 casual labourers whereas he never approached the Hon'ble High Court against the decision of the Special Judge, CBI, Guwahati.

As per my view, the benefit of judgment of delivered by Hon'ble High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh cannot go in favour of Shri Pramod Kr. Pathak."

(emphasis supplied)

On the face of it, it gives an impression that Appellate Authority had taken the pain to appreciate Hon'ble High Court's judgment, while deciding the appeal, but the same is converse when one reads in its proper perspective. An attempt was made by the Appellate Authority to contend that the case decided by Hon'ble High Court had no relevance merely because in its opinion certain other appeals of similarly placed accused are pending before it. Similarly, the basis for rejecting his appeal had been that he had not approached the High Court against the decision of the Special Judge. In our considered opinion when the same common judgment rendered by the Special Judge has been appealed by some of the accused and the same is decided in their favour, mere pendency of certain other accused would be insignificant, irrelevant and cannot stand in the way of accepting the findings of the constitutional body. As already observed hereinabove, applicant was not an aggrieved party against the judgment pronounced by the Special Judge, CBI and, therefore, it was immaterial as to whether he did not file an appeal, and in no case he would have been justified to approach the Hon'ble High Court. Such could not be the basis for drawing a line of distinction, as adopted by the Appellate Authority. We may further note that the judgment dated 14.03.2007 of Hon'ble High Court is not a judgment *in personam*, but it is a judgment *in rem*.

11. Taking a cumulative view of the matter we hold that there was no justification to: (i) disagree with the findings of the Inquiry Officer, (ii) no cogent reasons were assigned. Further the decision of the Hon'ble High Court was rendered on the same set of facts and materials, and as such there was no justification for the Appellate Authority to adopt a different line of option than to follow and respect the judgment rendered on 14.3.2007, which has attained finality. We may observe herein that it is not the case of either party that said judgment has been appealed before any higher court. Thus the penalty imposed on 23.02.2004 as upheld on 01.04.2008 are rendered unsustainable in the eyes of law. Said orders are quashed and set aside with all consequential aspects.

12. Thus, O.A. is allowed. No costs.

Chaturvedi
(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER

Mukesh
(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

nk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH: GUWAHATI

ORIGINAL APPLICATION NO.....

51/09

केन्द्रीय प्रशासनिक अधिकार परामर्शदाता
Central Administrative Tribunal

3
20 MAR 2009
S. S. D.

गुवाहाटी न्यायालय
Guwahati Bench

Pramod Kumar Pathak

-Vs-

Union of India and others.

SYNOPSIS

The present application has been filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant had joined his services as a Junior Telecom Officer in the Department of Telecommunications, Government of India and was absorbed to the Bharat Sanchar Nigam Limited with effect from 1-10-2000. The applicant is challenging the order dated 23-2-2004 passed by the Disciplinary Authority imposing the punishment of reduction by stage in the time scale of pay with future effects. The applicant is also challenging the order dated 1-9-2008 passed by the Appellate Authority, whereby the appeal preferred by the applicant was dismissed. It is stated that the applicant was charged of countersigning allegedly fake experience certificates of some causal mazdoors in the year 1996. It is stated that during the departmental enquiry it was found that such casual mazdoors were actually engaged during the relevant period. It was also held in the enquiry that the department could not establish that no such laborers were engaged. Thus, the enquiry officer had held the charges to be not proved. The Disciplinary Authority disagreed with the enquiry report and holding the applicant guilty, imposed punishments. It is relevant to mention here that Spl. Case no 9/2000 was registered in the Court of the Id. Special Judge pursuant to an investigation held by the Central Bureau of Investigation, and The Hon'ble High Court, while sitting in appeal over the judgment passed by the Special Judge, Kamrup in Spl. Case no. 9/2000, has held that there was no evidence to show that the casual laborers were not engaged at the relevant time. The accused in the Spl. Case 9/2000, which also included the causal laborers in respect of whom the departmental action against the applicant herein was taken,

were acquitted. It is also stated that several similarly situated officials who had countersigned such experience certificates have been exonerated by the department. However, the appeal filed by the applicant and the rejoinder thereto stating the ^{fore}said facts, has been dismissed by the appellate authority, only on the ground that the applicant was not an appellant ⁱⁿ the appeal filed before the Hon'ble Court. The Appellate authority had failed to appreciate that the applicant was never an accused in the said case but rather he was one of the prosecution witness.

Filed by


(Rajesh Mazumdar) 31/3/09
ADVOCATE.
(Counsel for the applicant)

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

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LIST OF DATES AND EVENTS

February 1991 Applicant joined the service in the Department of Telecommunications.

25-06-1993 Department of Telecommunications (DOT) issued a circular for grant of Temporary Status to casual Mazdoors who were engaged between 31-3-85 to 22-6-88 and who were still continuing in service and who were not absent for last more than 365 days counting from date of issue of this order.

17-12-1993 The DOT issued circular for grant of Temporary status to casual Mazdoors engaged by the circles during the period from 31-3-85 to 22-6-88 and who were not absent from last more than 365 days counting from the date of issue of this order be brought under the scheme.

1996 The Applicant countersigned a few experience certificates issued by Line Inspectors and SIs to Mazdoors after proper verification.

27-5-1997 13 Mazdoors were regularized as Temporary Status Mazdoors after selection by a committee constituted for the purpose.

31-7-2000 Applicant was issued a charge sheet, alleging that he had committed an act contravening provision of Rule 3(1) and (2) of CCS Conduct Rules, inasmuch as, he had countersigned 13

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nos. of false and fabricated experience certificates issued by SI and LI in the year 1996, consequent to which, casual Mazdoors were granted Temporary Status.

7-8-2000 Applicant filed his reply.

8-11-2001 Enquiry officer was appointed.

11-1-2002 Enquiry officer was replaced as the original IO was transferred.

7-3-2002 Enquiry was started.

17-12-2002 Enquiry officer submitted enquiry report.

Central Bureau of Investigation (CBI) launched an investigation against the SIs, LIs and several employees for criminal conspiracy of false experience certificates issued by officials in favour of co-accused conferring the Temporary Status.

28-7-2003 Pursuant the charge sheet filed by the CBI, Lt. Special Judge Assam held all the accused guilty and sentenced them accordingly. Applicant was not an accused in the said case.

25-9-2003 Central Vigilance Commission gave advice regarding punishment to the applicant in the disciplinary proceedings pending against him.

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30-10-2003 Disciplinary authority served show cause notice upon the applicant regarding disagreement with findings of Enquiry report.

8-12-2003 Applicant gave reply to the show cause. Meanwhile, the accused convicted by the Ld. Special Judge preferred appeals in the Hon'ble High Court against the order of Ld. Special Judge dated 28-7-2003.

23-2-2004 Disciplinary authority imposed penalty of reduction in rank of the applicant by one stage for one year, holding that applicant had failed to give convincing reply.

28-4-2004 Applicant preferred appeal against order dated 23-2-2004.

14-3-2007 The Hon'ble High Court disposed of the appeals filed by the accused against the order of the Ld. Special Judge, by common judgment allowing the appeal and acquitting the appellants.

6-3-2008 Applicant presented a rejoinder before the Appellate Authority to bring on record the findings of High Court in its order dated 14-3-2007.

1-9-2008 The Appellate Authority rejected the departmental appeal filed by the applicant herein.

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DISTRICT: SONITPUR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

OA NO. 51/2009

Sri Pramod Kumar Pathak

.....Applicant

VS

Bharat Sanchar Nigam Limited and Ors.

.....Respondents

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Filed by the petitioner
Thru: Rajiv Nigam
473/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

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

Original Application No. 51/09

Sri Pramod Kr Pathak.
Son of Late Jogendra Nath Pathak.
Village & Town: Milanpur
Biswanath Chariali
Dist-Sonitpur.

.....Applicant

- versus -

1. Bharat Sanchar Nigam Limited
Represented by Chairman cum
Managing Director, Sanchar
Bhawan, Statesman House New ~~AD~~
Delhi- 110001

2. The Director (Human
Resources Development),
Bharat Sanchar Nigam Limited
Corporate Office, Statesman House
New Delhi- 110001

3. The Advisor, Telecom
Commission, Government of India,
West Block-1, Wing 2 RK Puram,
New Delhi 110066.

4. The General Manager,
Telecom District, Bharat Sanchar
Nigam Limited, Tezpur, 784001.

.....Respondents

5. Union of India, through the Secretary,
Ministry of Communication and Information
Technology, Sanchar Bhawan, 20, A/ Lata Road,
New Delhi. 110001.

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DETAILS OF THE APPLICATION:

1. PARTICULARS FOR WHICH THIS APPLICATION IS MADE:

The applicant in the present application is challenging the order dated 23-02-2004 passed by the Advisor, Telecom Department by which a punishment of reduction by one stage in the time scale of pay for a period of one year was imposed on the applicant and it was stated that the applicant would not earn increments of pay during the period and further, on expiry of the period, the reduction would have the effect of postponing his future increments of pay, was imposed upon the applicant. The applicant is also challenging the order dated 1-9-2008 passed by the Director (Human Resource Development), Bharat Sanchar Nigam Limited, who is the appellate authority, whereby the appeal preferred by the applicant herein was dismissed. The applicant had received a copy of the order dated 1-9-2008 on the 12th of January 2009.

2. JURISDICTION:

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

3. LIMITATION:

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Applicant also declares that the application is made within the limitation prescribed by the Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and as such entitled to the rights and privileges guaranteed by the Constitution of India. He belongs to Schedule Tribe community. The petitioner had joined as an employee of the Department of Telecommunications, Government of India, and was absorbed in Bharat Sanchar Nigam Limited permanently vide order dated 26th of October 2004, with effect from 1-10-2000 (forenoon).

4.2 That the applicant herein joined his services as a Junior Telecom Officer in the Department of Telecommunications in the year 1991 and was posted at Biswanath Chariali. The applicant herein is presently serving as Sub-Divisional Engineer and is posted at Biswanath Chariali. The applicant herein has been serving the department to the best of his ability and sincerity since his joining.

4.3 That vide a memorandum of charges dated 31st of July 2000 issued by the Chief General Manager Telecom,

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Guwahati, it was alleged that the petitioner, while serving as the Junior Telecom Officer under Sub Divisional Engineer (Phones), Biswanath Chariali, during the year 1996, had failed to maintain absolute integrity and devotion to duty, inasmuch as, he had countersigned 13 numbers of false and fabricated experience certificates issued by certain S.I.s and Line Inspectors, without going through any documentary evidence and verification and that, on the basis of the countersignatures, all the 13 persons were regularized as Temporary Status Mazdoors vide order dated 27/5/1997. It was alleged that such acts of the applicant herein contravened the provision of Rule 3(1) and (2) of the CCS (Conduct) Rules, 1964. The applicant herein was afforded 10 days to submit his reply to the charge sheet.

A true copy of the memorandum dated 31-7-2000 along with its annexure is annexed hereto and marked as **Annexure A1.**

4.4 That the applicant herein filed his reply dated 7-8-2000 to the memorandum dated 31-7-2000, denying the charges leveled against him. The applicant herein had stated in his reply that since more than four years had passed since he had countersigned certain certificates after proper verification, he

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could not recollect as to how many certificates had been counter signed. However, the applicant herein had specifically stated that none of the certificates were forwarded to any authority for appointment or for any other purpose under any reference. The applicant herein had also stated that during the relevant period, mazdoors were engaged for execution and completion of the works entrusted to the petitioner, and such engagement of mazdoors was specified on the basis of the work and the payments were made through S I Inspectors and/or Line Inspectors through "ACG-17" Forms (payment vouchers of casual labours) from temporary advance received against approved work.

A true copy of the reply filed by the applicant herein is annexed hereto and marked as **Annexure A2.**

4.5 That not being satisfied with the reply furnished by the petitioner, the Chief General Manager, Assam Telecom Circle, initiated an enquiry under Rule 14 of the CCS (Classification, Control and Appeal) Rules 1965 and appointed Sri P.D Sonowal, Divisional Engineer, (DI), as the Inquiring Authority. However, as the said Inquiring Authority was transferred, Sri Binod Pegu, Divisional Engineer, (DI), ^{was appointed} as the enquiry officer to enquire into the charges leveled against the petitioner. The Enquiry officer held the enquiry on different

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dates and on completion of the enquiry, the enquiry officer submitted his report dated 17-12-2002 to the disciplinary authority. The Enquiry Officer, in his report, had discussed the charges leveled against the petitioner, the evidence led by the presenting officer to prove the charges and also the defence stated by the applicant herein and had come to a conclusion that the presenting officer could not establish that the concerned casual laborers were not engaged during the relevant period. It is relevant to mention here that specific observations were made in the enquiry report that since the Department had itself failed to produce the relevant documents, i.e. the payment vouchers like ACE-2 and ACE-3 including ACG- 17, the facts could not be ascertained properly. It was further observed that the Selection Committee, which was responsible for recommending the names of eligible casual laborers for conferment of Temporary Status Mazdoors had done so only after verifying records maintained by the Sub-Division. The Enquiry officer had concluded on preponderance of probability that the Articles of Charges framed against the applicant herein could not be substantiated and were hence not proved.

A copy of the Enquiry report is annexed hereto and marked as
Annexure A3.

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4.6 That the applicant states that more than a year after the submission of the enquiry report, the Advisor, Telecom Commission, who had now taken over as the Disciplinary Authority vide his Memorandum dated 30/10/2003 expressed the disagreement of the Disciplinary Authority with the Enquiry report to the extent that the charged official had to prove that he had issued the certificate/countersigned the certificates on the basis of the documents. Thus the charges against the charged officer were held to be proved. The applicant was also provided with a copy of the advice of the Central Vigilance Commission.

True copies of the memorandum dated 30-10-2003 along with the advice of the Central Vigilance Commission is annexed hereto and marked as **Annexure A4** and **Annexure A5** respectively.

4.7 That vide his reply dated 8/12/2003, the applicant herein submitted his representation against the memorandum of disagreement with the enquiry report. The applicant herein had specifically made out that since he was not the mustering officer for casual laborers, therefore, he could not have kept copies of engagement particulars of such laborers. The applicant herein had further stated that moreover, the official

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documents would be available with the Sub-Divisional Office. It was further pointed out that the attendance register etc. which were exhibited during the enquiry had proved the engagement of casual laborers in the sub-division. The applicant herein had also brought on record the fact that the details of payment were available in the ACE-2 accounts and ACG-17 Accounts which would be available in the TDE office and had prayed for verification of such records for proper appraisal of the case. The applicant herein had also made several other grounds in his representation and he prays the leave of this Hon'ble Tribunal to refer to and rely upon the contents of the representation at the hearing of the application.

A true copy of the representation dated 8/12/2003 is annexed hereto and marked as **Annexure A6**.

4.8 That it is stated that the Disciplinary Authority, i.e. the Advisor, Telecom Commission, Department of Telecommunications, had passed order dated 23-2-2004 whereby he held that the applicant herein had failed to give a convincing reply to refute the charges against him. Allegedly taking into account the findings of the enquiry authority, the records of the case and the circumstances of the case, the Advisor, Telecom Commission imposed the penalty of

Pramod Iyer, Pathak

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reduction by one stage in the time scale of pay of the applicant herein for a period of one year with immediate effect with further directions that the applicant herein would not earn increments of pay during the period and such reduction to have the effect of postponing his future increments of pay.

A true copy of the order dated 23-2-2004 is annexed hereto and marked as **Annexure A7**.

4.9 That it is respectfully stated that the applicant herein had preferred an appeal dated 28-4-2004 under Rule 23 of the CCS (CCA) Rules 1965 to the Appellate Authority. The said appeal was not disposed of by the appellate authority for a long period of time.

A true copy of the appeal filed by the applicant herein is annexed hereto and marked as **Annexure H**.

4.10 That it is humbly stated that during the intervening period, the Central Bureau of Investigation had launched prosecution against several employees of the Department, including the ~~SI~~s and the Line Inspectors who had issued the certificates and which were countersigned by the applicant herein and also against the members of the Selection Committee who had recommended conferment of

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Temporary Status on the mazdoors. The specific allegations against the accused in the said prosecution was that pursuant to a criminal conspiracy, false experience certificates were issued by the officials in favor of the co-accused, which consequently led to temporary status being conferred on the persons in whose favor the certificates were issued. It would be relevant to state here that the present applicant was not an accused in the said criminal proceedings but was presented as the Prosecution Witness no 13 in the same before the Ld. Special Judge. The Ld. Special Judge, Assam while disposing of Special Case no 9 (C) of 2000 vide order dated 28.7.2003 ~~14-3-2007~~ had held all the accused guilty and accordingly they were sentenced.

4.11 That the applicant states that the accused in Special Case no 9 (C) of 2000 had filed appeals before the Hon'ble Gauhati High Court against the order of conviction and sentence passed by the Id. Special Judge. The appeals were registered as Criminal Appeals no 268/2003, 269/2003277/2003. The Hon'ble High Court was pleased to hear and dispose of the all the three appeals by a common judgment and order dated 14-3-2007. The Hon'ble Court had come to a finding that there was no reliable evidence to hold that the accused were not working as casual workers or the

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experience certificates ^{that} were issued and /or countersigned were forged documents. It is relevant to mention here that the certificates in issue in the departmental proceedings initiated against the petitioner were the same certificates which were under consideration in Special case no 9/2000 and the appeals ~~filed~~ before the Hon'ble High Court. The Hon'ble High Court had specifically laid down that the view that, since the ACG 17 vouchers were not produced by the Department and therefore it can be assumed that the department did not appoint any casual mazdoor, was not correct.

A true copy of the order dated
14-3-2007 is annexed hereto and
marked as **Annexure A8.**

4.12 That the applicant states that the proceedings before the Hon'ble High Court had come to a conclusion and the Hon'ble High Court had come to a finding which was very material to the departmental proceedings initiated against the applicant, since both the matters were pertaining to the same issue i.e. whether the certificates issued to the mazdoors in question were false and fabricated, the applicant deemed it prudent to apprise the Appellate Authority of the developments which had occurred after he had preferred the statutory appeal. In such circumstances, the applicant herein preferred

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a rejoinder to the appeal, in which he brought on record the findings of the Hon'ble High Court with regard to the question of issuing false and fabricated experience certificates. The applicant herein had stated that since the Hon'ble High Court had recorded that there is no evidence to hold that the accused were not working as casual workers during the relevant period, or the experience certificates issued by the co-accused are forged documents, there could be no basis for framing a charge against the applicant herein that he had countersigned forged/false experience certificates.

A true copy of the rejoinder dated 6/3/2008 is annexed hereto and marked as **Annexure A9**.

4.13 That the applicant herein states that without due application of mind, vide order dated 1-09-2008, the appellate authority has rejected the appeal preferred by the petitioner.

A true copy of the order of rejection by the appellate authority is annexed hereto and marked as **Annexure A10**.

4.14 That the applicant herein is now preferring the present application before this Hon'ble Tribunal challenging the order dated 23-2-2004 passed by the disciplinary authority and the order dated 1-09-2008 passed by the appellate authority and is praying for quashing and setting aside of the aforesaid orders on the

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following amongst other

GROUND

5.1 That the applicant herein humbly submits that the disciplinary authority had committed error of law and of facts when it was alleged that the applicant herein had countersigned the experience certificates without verifying the relevant records. The disciplinary authority had failed to consider the contention of the applicant herein that after proper verification he had countersigned certain certificates issued by some SI and LI.

5.2 That it is humbly submitted that the disciplinary authority had failed to appreciate that as a matter of fact, mazdoors were infact engaged to carry out the maintenance and construction jobs entrusted to the applicant herein during the relevant period and the provision of engagement of labour was approved by the competent authority. This fact had also been brought out in the enquiry proceedings and the proceedings before the Hon'ble High Court and the enquiry officer had come to a finding that indeed such labour was engaged. In the criminal proceedings before this Hon'ble Court, it was also observed by this Hon'ble Court with ^{respect} to the ban on engagement of casual labour, that circular banning such employment was applied more in violation and casual mazdoors were engaged

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for taking care of contingency and emergency works. Further it is the accepted position that the said circular banning the engagement of casual labour was modified by circular dated 17-12-1993, which provided that persons engaged as casual workers from 1985 to June 1988 may be given the status of Temporary Status Mazdoors subject to fulfillment of certain conditions.

5.3 That it is humbly submitted that the disciplinary authority had failed to appreciate that payments to the casual mazdoors were made through the LI and SI from time to time from the temporary advance received against the approved work and such payments were recorded in the ACG-17 payment vouchers, which were available with the Divisional Office. The disciplinary authority had wrongly placed the burden of proof on the applicant herein while disagreeing with the enquiry report, in as much as, the relevant documents, i.e. the ACG 17 vouchers etc. were in the custody of the Divisional Office and the applicant herein could not have access to such documents to prove his case, more so in view of the fact that the department had led evidence to show that the vouchers under ACG-17 were not available. No evidence was led as to the reasons of such non-availability. In the absence of such vital documents, the department had in fact failed to establish that

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no payment was made to the persons who were issued the certificates. It is humbly stated that the applicant herein or any other interested person was not the custodian of the said documents. It is stated that the contention of the disciplinary authority that the applicant herein had to prove that he had issued/countersigned the certificates on basis of documents is ill-founded as the relevant documents which were in the custody of the respondents were stated to be unavailable.

5.4 That it is humbly submitted that the disciplinary authority failed to appreciate that the enquiry officer, after due enquiry had come to a finding that casual mazdoors were in fact engaged during the relevant period and names of most of the casual mazdoors regularized in 1996 were indicated in the rough register of casual labourers which was exhibited as Exhibit 2 (i) and (ii) during the enquiry proceedings. The disciplinary authority failed to appreciate that the enquiry officer had specifically held that the charge against the applicant herein was not reasonable.

5.5 That it is humbly submitted that the disciplinary authority had failed to appreciate that the enquiry officer had come to a finding that the prosecuting officer could not establish that the causal labourers were not engaged during the relevant period

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and also a finding that the prosecuting officer could not establish that payment was not made to the engaged casual labourers during the relevant period. The contention of the disciplinary authority in his memorandum disagreeing with the enquiry report that the onus of proof continued to burden the applicant herein is wholly uncalled for.

5.6 That it is humbly submitted that the disciplinary authority had failed to consider the fact that the applicant herein was not the mustering authority for casual labourers and as such he would not be in a position to produce records regarding the engagement of such labour.

5.7 That it is humbly submitted that the disciplinary authority had failed to appreciate that the Selection Committee had recommended the grant of Temporary Status mazdoors to the mazdoors under consideration after proper verification of records and documents placed before the Committee. The applicant herein had neither forwarded nor caused to be forwarded the experience certificates to the selection committee or any other authority at any point of time.

5.8 That it is humbly submitted that in absence of any evidence on the part of the department to show that either the

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mazdoors in question were not working at the relevant point of time or no payments were made to the mazdoors at the relevant point of time, the charge against the applicant herein for countersigning fake or false experience certificates could not stand. The relevant documents being in the custody of the respondents, which were reportedly untraceable, and the applicant herein having nothing to do with the same, the onus of proving the charges against the applicant herein lay on the department. However, the disciplinary Authority without due application of mind, has unreasonably formed an opinion that the applicant herein was to prove that he had countersigned the certificates in issue after due verification. It is humbly submitted that since in the absence of the relevant documents, the department failed to prove the charges, conversely the burden of proof could not have been shifted to the applicant herein in the absence of the said documents.

5.9 That it is humbly submitted that the disciplinary authority had committed error in law and on facts when he has in the impugned order held that the applicant herein has tried to shift the responsibility on the TDE, Accounts Officer and the Selection Committee and also when he held that the applicant herein had tried to mix up the issue of making payments through ACG-17 and countersigning the experience

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certificates. It is humbly submitted that the fact as to whether the concerned mazdoors had in fact worked in the department during the relevant time could only have been ascertained from the records maintained in the ACG 17 and other relevant payment vouchers and as such the issue of making payments and verification of the experience certificates were interdependent on each other. The disciplinary authority had proceeded on a wrong note when he held that the applicant herein had not bothered to satisfy himself with the relevant records. It is humbly submitted that the question as to whether the experience certificates were in accordance with the records could have been only decided by producing the relevant documents, which the department failed to produce.

5.10 That it is submitted that the disciplinary authority erred in law and on facts when it disagreed with the enquiry report only on the ground that it was the burden of the petitioner to prove that he had verified records before countersigning the certificates. It is humbly submitted that when the relevant records were not produced by the department, though the same was in their custody, the burden could not have been shifted to the petitioner.

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5.11 That it is submitted that the officers who were served with similar charges have been exonerated and as such the applicant herein was also entitled to be similarly treated. However, the disciplinary authority has levied the penalty on the applicant herein without proving the charges against him and has thus violated the principles of administrative fairplay.

5.12 That it is humbly submitted that the enquiry officer had specifically recorded the failure of the presenting officer to prove the charges levied against the petitioner. The disciplinary authority has acted without jurisdiction and without reason when he disagreed with the enquiry report without giving reasons and arbitrarily shifted the burden of proof on the petitioner. It is submitted that in the total absence of evidence against the petitioner, the disciplinary authority acted illegally and arbitrarily in asking the applicant herein to prove his innocence.

5.13 That it is humbly submitted that the Hon'ble High Court in the criminal proceedings has acquitted the concerned SI and LI who had in fact issued the certificates in question, with the observation that the prosecution had utterly failed to prove the case against the accused. In such circumstances, the punishment imposed on the applicant herein based on

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those certificates is wholly unacceptable and unreasonable. It is submitted that since the certificates could not be proved to have issued falsely before either the enquiry authority and even in the criminal proceedings in this regard, the punishment dealt out on the applicant herein cannot sustain the scrutiny of law and is liable to be set aside and quashed.

5.14 That it is humbly submitted that the Appellate Authority had erred in law and on facts when it framed an issue as to whether the applicant herein could be exonerated from the charges leveled against him on the basis of judgment delivered by the Hon'ble Gauhati High Court in favor of the 25 casual laborers whereas he never approached the Hon'ble High Court. It is submitted that such an issue was never raised by the applicant herein. The applicant herein had attempted to focus on the issue that, in view of the judgment delivered by the Hon'ble Court, could it still be held that the certificates in issue were forged or fabricated. It is submitted that the appellate authority had apparently proceeded on wrong premises by bringing ^{into} consideration question which were never issued before it.

5.15 That it is humbly submitted that the Appellate Authority had erred in law and on facts when it failed to appreciate that

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since the Hon'ble High Court had come to a finding that there was no evidence that the certificates were fake or fabricated, which view the enquiry authority had also expressed, the orders of the disciplinary authority deserved to be reviewed and quashed.

5.16 That it is submitted that the Appellate Authority had erred in law and on facts when it referred to and relied upon the case filed by the Central Bureau of Investigation in the Court of the Special Judge, Guwahati, even as the decision of the Ld. Special Judge, Guwahati was set aside and reversed by the Hon'ble High Court while sitting in Appeal. It is submitted that the orders passed by the Appellate Authority was not based on material and relevant considerations and hence the same cannot sustain the scrutiny of law.

5.17 That it is submitted that the Appellate Authority had failed to appreciate that the applicant herein had raised several grounds in the appeal preferred against the order passed by the Disciplinary Authority. the Appellate Authority restricted his reasoning only to his understanding of the grounds taken in the Rejoinder to the appeal and failed to apply due and impartial mind to the issues raised by the applicant herein.

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Guwahati Bench6. DETAILS OF THE REMEDIES EXHAUSTED:

There is no remedy under the prevalent rules. The departmental appeal preferred by the applicant has been dismissed by the Appellate Authority on 1-9-2008 and a copy of the order was served on the applicant on 12-1-2009. There is no other remedy prescribed by the rules in force.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT/TRIBUNAL :

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

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances of the case, applicant pray for the following reliefs:-

8.1 That this Hon'ble Tribunal would be pleased to set aside and quash the order dated 23-02-2004 passed by the Advisor, Telecom Department by which a punishment of reduction by one stage in the time scale of pay for a period of one year was

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imposed on the applicant and it was stated that the applicant would not earn increments of pay during the period and further, on expiry of the period, the reduction would have the effect of postponing his future increments of pay was imposed upon the applicant.

8.2 That this Hon'ble Tribunal would be pleased to set aside and quash the order dated 1-9-2008 passed by the Director (Human Resource Development), Bharat Sanchar Nigam Limited, who is the appellate authority, whereby the appeal preferred by the applicant herein was dismissed.

8.3 Any other relief that the Hon'ble Tribunal deem fit and proper;

8.4 Costs of the Application.

The above reliefs are prayed for on the grounds stated in paragraph 5 stated above.

9. INTERIM RELIEF PRAYED FOR:

During the pendency of this application applicant prays for the following interim orders:-

9.1 That the operation of the impugned orders dated 23-2-2004 passed by the Disciplinary authority and the order dated

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1-9-2008 passed by the Appellate authority be stayed during the pendency of the application.

The above interim reliefs are prayed on the grounds stated in paragraph 5 stated above.

10. The application has been filed through Advocate

11. PARTICULARS OF THE POSTAL ORDER :

- (i) IPO NO. ३९६, ३९८७०२
- (ii) Date of Issue 26th Feb. 09
- (iii) Issued from G. P. O.
- (iv) Payable at Guwahati

12. PARTICULARS OF THE ENCLOSURES :

- 1. True copy of the memorandum dated 31-7-2000 along with its annexure **Annexure A1**
- 2. True copy of the reply filed by the applicant **Annexure B A2**
- 3. Copy of the Enquiry report **Annexure C A3**
- 4. True copies of the memorandum dated 30-10-2003 **Annexure D A4**
- 5. The advice of the Central Vigilance Commission **Annexure E A5**
- 6. True copy of the representation dated 8/12/2003 **Annexure F A6**
- 7. Copy of the order dated 23-2-2004 **Annexure G A7**
- 8. Copy of the appeal filed by the applicant **Annexure H A8**
- 9. Copy of the order dated 14-3-2007 **Annexure I A9**
- 10. Copy of rejoinder dated 6/3/2008 **Annexure J A10**
- 11. Copy of the order dated 1-9-2008 **Annexure K A11**

Pramod Kr. Datta

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VERIFICATION

I, Sri Pramod Kumar Pathak, s/o Late Jogenrda Nath Pathak, aged about 43 years, working as Sub-Divisional Engineer (Phones), Bharat Sancahr Nigam Limited, Biswanath Chariali resident of Milanpur, Biswanath Chariali, Sonitpur, do verify that the contents of paragraphs 2, 3, 4.1, 4.2, 4.10, 4.14, 6, 7, 10..... are true to my personal knowledge and paragraphs 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.11, 4.12, 4.13, 11, 12..... believed to be true to on legal advice and that I have not suppressed any material fact.

Date : 08/02/2009

Place : Guwahati

Pramod Kr. Pathak

Signature of the applicant

20 MAR 2009

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ANNEXURE A 1

CONFIDENTIAL

GOVT. OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE TELECOM. DISTRICT MANAGER, TEZPUR.

To,

SRI P. PATHAK,
J.T.O., Biswanath Chariali.

No. A-2002/DIS/P.PATHAK/2000-2001/2 Dated at Tezpur, the
7-8-2000.

Sub:- Charge sheets under Rule 14 of CCS(CCA)
Rules 1965 - case of SRI P.PATHAK, JT.O.

The memorandum received from the CGMT/GH memo No.
Vig/Assam/Diso-III/2000-2001/6 dtd. 31-7-2000 alongwith the
annexure under File mark No. Vig/Assam/Diso-III/4 dtd. 31-7-2000
on the subject against you.

Please acknowledge the receipt of the following
documents, with the following enclosure.

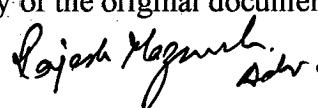
Encle:- 1) Memorandum alongwith the (in origine)
Annexure-I to 1V in respect
of you.

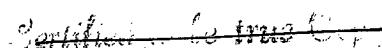
2) One format of acknowledgement should be
returned after duly signed with date.

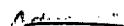


(P. Basu),
Divisional Engineer(P&A),
O/o the T.D.M., Tezpur-784001.

(this is a true copy of the original document.)


Sohr.


Certified to be true.


Adm.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

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No. Vig/Assam/DISC-III/2000-01/4

Government of India
Dept. Of Telecommunications,
O/O the Chief General Manager,
Assam Telecom Circle, Ulubari,
Guwahati- 781007.

Dated the 20th July 2000

31st

MEMORANDUM

The President/undersigned proposes to hold an inquiry against Shri P.Pathak JTO under SDE(P) Biswanath Chariali under Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehavior 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 misbehavior in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III and IV).

2. Sri P.Pathak JTO is directed to submit within 10 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, specially admit or deny each articles of charge.

4. Sri P.Pathak JTO 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 provision of Rule-14 of the CCS(CCA) Rules 1965, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Sri P.Pathak JTO is invited to Rule 20 of the Central Civil Services (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 interest 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 Sri P.Pathak JTO 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. The receipt of the Momorandum may be acknowledged.

(By order and in the name of the President)

(J.K.CHHABRA)
Chief General Manager Telecom
Guwahati-781007

Encl: a:a

To
Sri P.Pathak JTO ,

Certified to be true Copy.

Rajesh Bhagwani
Attala

20 MAR 2009

Guwahati-781007

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Guwahati Bench

ANNEXURE - I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST Sri P.PATHAK
JTO, UNDER SDE(PHONES), BISWANATH CHARAILI, SONITPUR, ASSAM.

While Shri P.Pathak JTO was posted and functioning as JTO under SDE(P), Biswanath Charali during the year 1996 failed to maintain absolute integrity and devotion to duty as much as he had countersigned 13 Nos. of false and fabricated experience certificates issued by S/sh Rajendra Rai, Sub-Inspector, Lambodar Jha, Sub-Inspector Rambilash Rai, line Inspector, Sakaldeo Singh, Sub-Inspector Deonath Rai, Sub-Inspector in favour of S/Sh Prabhat Sarma, Biren Das, Biren Bora, Pranjal Kataki, Maina Bora, Dharmendra Kr. Rai, Ambika Barman, Basanta Bhuyan, Prabhat Kalita, Dwipen Bhuyan, Kishore Kr. Pathak, Cheniram Sarma and Govinda Bora without going through any documentary evidence and verification and on the basis of his countersignature, the TDE Tezpur has regularized all the 13 persons vide order No. X-1/CMPT/96-97/Con-7 dtd. 27/5/96 as Temporary Status Mazdoors and thereby the above acts, he contravened the provision of Rule 3(1) and (2) of CCS(Conduct) Rule, 1964.

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Ch. Gen. Manager, Airtel
M.L. न्यायपीठ, गुवाहाटी-7
Airtel Telecom, Assam, Phy-7

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Rajesh Majumder
Advocate

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**STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR
IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST Sri. P
PATHAK, JTO UNDER SDE (PHONES) BISWANATH CHARIALI,
SONITPUR, TEZPUR, ASSAM**

Sh. P. Pathak was posted and functioning as JTO under Sub-Divisional Engineer(Phones), Biswanath Chariali, Sonitpur, Assam during the year 1996.

It is alleged that the DoT had banned the engagement of casual labourers in project circles/electrification circles by a circular/letter No. 270/6/84-STN, New Delhi dt. 30/3/85 of S. Krishnan, Director(STN) Posts and Telegraph.

It is alleged that a circular/letter vide No. 269/4/93-STN-II dt. 17/12/93 was issued by the Asstt. Director General(STN), Depl. of Telecom, New Delhi in the subject matter of " Casual labourers(grant of temporary status and regularisation) Scheme, 1989 engaged in circles after 30/3/85 and upto 22/6/88." This circular/letter extending the temporary status to all those casual mazdoors who were engaged by the project circles/electrification circles during the period from 31/3/85 to 22/6/88 and who are still continuing for such works where they were initially engaged by violating banning order dt. 30/3/85 and who are not absent for more than 365 days counting from the date of issue of this order be brought under this scheme.

It is alleged that incorporating all the conditions in circular/letter dt. 17/12/93 of DoT S/Sh. Rajendra Rai, Sub-Inspector, Lambodar Jha, Sub-Inspector, Rambilash Rai, Lines Inspector, Radharam Deka, Lines Inspector, Deonath Rai, Sub Inspector all under SDE(P), Biswanath Chariali had issued 27 Nos. false and fabricated experience certificates in favour of 27 persons wherein they have been shown Casual Labours and working from 1988 to 1996(February) continuously and No. of days they worked shown in the said certificates.

It is alleged that Sh. Rajendra Rai had issued 7 Nos. of false and fabricated certificates to 7 persons, they are :

- 1) Sh. Pawan Kataki, S/o Loknath Kataki of Biswanath Chariali.
- 2) Ms. Juri Sarma, D/o Golap Ch. Sarma, Biswanath Chariali.
- 3) Sh. Jilu Sarma alias Ratul Sarma, S/o Late Rabiram Sarma, Bongaon, Biswanath Chariali.
- 4) Sh. Gagan Bhuyan, S/o Late Phuleswar Bhuyan of Barobhuyan, Biswanath Chariali.
- 5) Sml. Tunmoni Saikia, D/o Late Rabi Saikia, Kashgaon, Biswanath Chariali.
- 6) Sh. Maina Bora, S/o Late Laburam Bora of Rangamall, -do-
- 7) Sh. Dharmendra Kr. Rai, S/o Sh. Rajendra Kr. Rai, -do-

- 2) Sh. Lambodar Jha, the then S.I. had issued 6 Nos. of false and fabricated certificate in favour of 6 persons. They are :-
 - 1) Sh. Prabhal Sarma, S/O Late Gargeswar Sarma of Sootea,
 - 2) Sh. Biren Bora, S/O Lokeswar Bora of Sootea,
 - 3) Sh. Basanta Bhuyan, S/O Late Dhaloram Bhuyan of Gopalpur, Sonitpur.
 - 4) Sh. Prabhal Kalita, S/o Late Dhiradutta Kalita of Naharani, Sonitpur,
 - 5) Sh. Dwipen Bhuyan, S/o Sh. Sandhan Bhuyan of Barochuk,
 - 6) Sh. Cheniram Sarma, S/O Late Nareswar Sarma of Naharani.

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Rajesh Bhagat
Advocate

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Sh. Ram Bilash Ray had issued 4 Nos. of false and fabricated certificate in favour of 4 persons. They are :-

- 1) Sh. Abani Baruah, S/O Late Bhola Baruah, of Baruachuburi, Soolea.
- 2) Sh. Govinda Bhuyan, S/o Late Tarini Bhuyan of Bamungaon, Biswanath Chariali.
- 3) Sh. Ambika Barman, S/o Late Praneswar Barman, Milonpur, Biswanath Chariali and
- 4) Sh. Kishore Kr. Pathak, S/O late Jogendra Nath Pathak of Milanpur, Biswanath Chariali.

4) Sh. Radharam Deka , Line Inspector had issued 2 Nos. of false and fabricated certificates in favour of the following 2 persons :-

- 1) Sh. Jiten Sarma, S/O Late Nilyananda Sarma of Borbhogia, Jamugurihat,
- 2) Sh. Ramji Bhagat, S/O late Juri Bhagal of Jamugurihat, Sonitpur.

5) Sh. Sakaldeo Singh had issued 7 Nos of false and fabricated certificates in favour of the following 7 persons :-

- 1) Sh. Biren Das, S/O Dolon Das, Geruabari, Sonitpur.
- 2) Sh. Pranjal Kataki, S/O Jogen Kataki, of Pallarchuk, Jamugurihat.
- 3) Sh. Dhanpad Swargiary, S/O Bholaram Swargiary, Bheleuguri, Soolea
- 4) Sh. Jhotiprasad Saikia, S/O Sh. Jewram Saikia, Dagaon, Biswanath Chariali.
- 5) Sh. Tilak Bora, S/O Laburam Bora of Bongaon, Biswanath Chariali.
- 6) Sh. Babul Saikia, S/O Dambaru Saikia of Dagaon, Biswanath Chariali,
- 7) Sh. Pulin Bora, S/O Puma Bora, Mazgaon, Tezpur.

6) Sh. Deonath Ray, the then S.I had issued one false and fabricated certificate in favour of Sh. Gavinda Bora, S/o Late Sivanta bora of Telecom Colony, Biswanath Chariali.

It is alleged that Sh.P. Pathak, the then JTO had countersigned 13 Nos. of false and fabricated certificates as a token of correctness without going through any documentary evidence and verification and sent these certificates to the TDE, Tezpur for regularisation as Temporary Status Mazdoor(TSM) to the said 13 persons on the basis of his certification, the TDE, Tezpur had awarded the Temporary Status to all 13 persons vide letter No. X-1/CMPT/96-97/Con-7 dtd. 27/5/96 with immediate effect and all the 13 persons had joined as TSM and drawing salary/wages etc. till date. The person in whose favour the said certificates were countersigned are as under :

- 1) Sh. Prabhat Sarma,✓
- 2) Sh. Biren Bora,✓
- 3) Sh. Biren Das,✓
- 4) Sh. Pranjal Kataki,✓
- 5) Sh. Maina Bora,✓
- 6) Sh. Dharmendra Kr. Rai,✓
- 7) Sh. Ambika Barman,✓
- 8) Sh. Basanta Bhuyan,✓
- 9) Sh. Prabhat Kalita,✓
- 10) Sh. Dwepen Bhuyan,✓
- 11) Sh. Kishore Kr. Pathak,✓
- 12) Sh. Cheniram Sarma and ✓
- 13) Sh. Govinda Bora.✓

Contd.....

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Rajiv Bhaguria
Advocate

केन्द्रीय प्रशासनिक अधिकारण
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On the basis of his certification, the TDE, Tezpur had awarded the Temporary Status to all 13 persons vide letter No. X-1/CMPT/96-97/Con-7 dtd. 27/5/96 with immediate effect and all the 13 persons had joined as TSM and drawing salary/wages etc. till date.

Thereby all the above acts of Sh. P. Pathak contravened the provision of rule 3 (1) and (2) of CCS (Conduct) Rule, 1964.

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Rajiv Mehta
Advocate

Contd.....

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ANNEXURE-III

Calendar of evidences (List of Documents)

- 1) Letter No. G-1/Genl corr/95-96 dt 12-03-96 of Sri. G.S Mathur, SDE (Phones) (Grps) Biswanath Chariali addressed to Telecom District Engineer, Tezpur in r/o forwarding of 27 nos. of Certificates issued in favour of 27 nos Casual labourers /Mazdoors
- 2) List of 27 casual labourers recommended by selection committee for conferring Temporary Status (Total 7(seven) sheets)
- 3) Certificate dated 10-03-96 issued in favour of. Prabhat Sarma S/o Late Gargeswar Sarma by Sri. Lambodar Jha S I
- 4) Certificate dated 09-03-96 issued in favour of. Biren Bora S/o Lokeshwar Bora i by Sri. Lambodar Jha S I
- 5) Certificate dated 09-03-96 issued in favour of. Biren Das S/o Dolon Das by Sri. Sakaldeo Singh S I
- 6) Certificate dated 09-03-96 issued in favour of. Pranjal Kataki S/o Jogen Katoki by Sri. Sakaldeo Singh S I
- 7) Certificate dated 08-03-96 issued in favour of. Maina Bora S/o Late Laburam Bora by Sri. Rajendra Rai S I
- 8) Certificate dated 08-03-96 issued in favour of. Dharmendra Kr. Rai S/o Rajendra Kr. Rai by Sri. Rajendra Rai S I
- 9) Certificate dated 08-03-96 issued in favour of. Ambika Barman S/o Late Praneswar Barman by Sri. Ram Bilash Ray L I
- 10) Certificate dated 08-03-96 issued in favour of. Basanta Bhuyan S/o Late Dhatrum Bhuyan by Sri. Lambodar Jha S I
- 11) Certificate dated 08-03-96 issued in favour of. Prabhat Kalita S/o Late Dhiradutta Kalita by Sri. Lambodar Jha S I
- 12) Certificate dated 08-03-96 issued in favour of. Dwipen Bhuyan S/o Sandhan Bhuyan by Sri. Lambodar Jha S I
- 13) Certificate dated 08-03-96 issued in favour of. Kishore Kr. Pathak S/o Late Jogendra Nath Pathak by Sri. Ram Bilash Ray L I
- 14) Certificate dated 08-03-96 issued in favour of. Cheniram Sarma S/o Late Nareswar Sarma by Sri. Lambodar Jha S I
- 15) Certificate dated issued in favour of. Govinda Bora S/o Late Sivanta Bora by Sri. Deonath Ray S.I
- 16) Letter No : X-1/RMPT/96-97/CON-7 dtd 27-3-96 of TDE/Tezpur i.r.o regularization of casual labourers as TSM (Total sheets 7 Nos relevant page at 03).
- 17) Attested photocopy of B.A. Part-II passed certificate passed in 1992.
- 18) Attested photocopy of B.A. Part-II passed mark sheet in the year 1992.
- 19) Attested photocopy of Higher Secondary passed certificate dtd 7-7-90 of Chatia H.S. School passed in 1990.
- 20) Attested copy of certificate No.16 dtd 3-8-93 issued in favour of Sri Dharmendra Kr.Ray, S/O Rajendra Ray who passed HSLC Examination in 1993 and ADMIT CARD.
- 21) Attested photocopy of pass certificate of Dakshin Kolabari H.E. School, Sonapur issued in favour of Sri Dipen Bhuyan, S/O Debeswar Bhuyan who passed HSLC Exam in 1992.

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Advocate

22) Attested photocopy of H.S Exam passed certificate of Sri Basanta Bhuyan, S/O Dhaturam Bhuyan, who passed in 1992.

23) Joining Report dtd 30-5-96 of Sh. Kishore Kr. Pathak as TSM.

24) Joining Report dtd 30-5-96 of Sri Khargeswar Borah as TSM(Maina Bora).

25) Joining Report dtd 30-5-96 of Sri Biren Das as TSM.

26) Joining Report dtd 30-5-96 of Sri Gobinda Borah as TSM.

27) Joining Report dtd 30-5-96 of Sri Cheniram Sarma as TSM.

28) Joining Report dtd 30-5-96 of Sri Prabhat Sarma as TSM.

29) Joining Report dtd 30-5-96 of Sri Pranjal Kataki as TSM.

30) Joining Report dtd 30-5-96 of Sri Biren Borah as TSM.

31) Joining Report dtd 30-5-96 of Basanta Bhuyan as TSM.

32) Joining Report dtd 30-5-96 of Dharmendra Kr. Ray as TSM.

33) Joining Report dtd 30-5-96 of Sri Ambika Barman as TSM.

34) Joining Report dtd 30-5-96 of Sri Prabhat Kalita as TSM.

35) Joining Report dtd 30-5-96 of Sri Dwipen Bhuyan as TSM.

36) Letter No.E-198/OTBP/93-94/197 dtd 15-5-93 of TDE/Tezpur i.r.o Promotion order as LM-II of Sri Sakaldeo Singh w.e.f. 29-1-92.

37) Letter No. 210/BCR/Scheme/93-94 /108 dtd 5-5-93 of TDE,Tezpur i.r.o. promotion of Sri Ram Bilash Ray, Lineman-III/Line. Insp.. w.e.f. 1-7-92.

38) Promotion order as Lineman of Sri Lambodar Jha w.e.f. 27-2-86 vide No.E-198/OTBP/88-89/149 dtd 20-7-88 of TDE/Tezpur.

39) Promotion order as Sub-Insp. Of Sri Rajendra Ray (at Sl. No. 29) vide L/No E-198/OTBP/90-91/15 dtd 7-6-90.

40) Forwarding letter (Carbon copy) of Sri G.S.Mathur, SDE(P) , Biswanath Charali addressed to TDE/Tezpur with proforma of 27 Casual Mazdoors and attested copies of documents of all 27 candidates vide L/No. E-20/CM/CLI/96-97/2 dtd 13-5-96. (Total 03 sheets).

41) Gradation List of 27 Casual labourers of Biswanath Charali Sub-Divn.(Telecom) with recommendation for regularization of casual labourers as TSM of Selection Committee. (Total-02 sheets)

42) Letter No. E-38/CMPT/Vol-II/96-97/15 dtd 30-3-96 of TDE/Tezpur addressed to Dy. G.M.(Admn), O/O the CGMT/Guwahati regarding engagement of casual labourers (no casual labour was engaged in the division). (File No. X-1/CMPT/Tz/Confld,1996,relevant page-72.Original in case No. RC-10(A)/97-SHG at Sl. No. 24)

43) Letter No. X-1/CMPT/Tz/95-96/Confld/1 dtd 25-3-96 of TDE/Tezpur i.r.o. constitution of Selection Committee for confirming casual labours to TSM(File No. X-1/CMPT/Tz./Confld/1996 relevant page15 original in case No. RC-10(A)/97-SHG at listed document Sl. No. 26)

44) Letter No: I /CMPT/94-95/168 dtd 17-2-95 of TDE/Tezpur addressed to Asstt. Director Telecom(E&R), O/O the CGMT/Guwahati i.r.o. NIL report of Casual Mazdoors w.e.f. 31-12-93 onwards(File No. Rectt-3/10(Part Loose,Rectt-3/10/part-III of o/o the CGMT/Guwahati relevant page-117,original in RC-10(A)/97-SHG at listed document Sl. No.28)

45) Letter No. E-38/CMPT/Vol-II/123 dtd 7-12-93 of TDE/Tezpur addressed to Asstt. Director Telecom(E&R), O/O the CGMT/Guwahati i.r.o. NIL Report of recruitment of Casual Labours after 31-3-1985. (File No. Rectt-3/10(Part-II)/Loose,Rectt-3/10/part-III, o/o the CGMT,Guwahati relevant page - 76, original in RC-10(A)/97-SHG at listed document Sl. No. 29)

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Advocate

46) Original letter No. 269-4/93-STN-II dtd 17-12-93 of Asstt. Director General(STN) ,NewDelhi i.r.o. regularization of casual labourers engaged in Circles after 30-3-1985 and upto 22-6-88.(File No. Recrt-3/10/Part-II)/Loose,Recrt-3/10/part-III of O/o the CGMT,Guwahati,relevant page-35. Original in RC-10(A)/97-SHG. Document listed Sl. No. 30)

47) Letter No. 289-8/93-STN dated 27-7-93 of Asst Director Genl (STN), New Delhi (original in case no RC-10(A)/97-SHG, document listed sl no .3 i).

48) Letter No. Recrt-3/10/part-III/3 dtd 26-8-93 of ADT(E&R), o/o the CGMT,Guwahati addressed to TDE/Tezpur (Original in case No. RC-10(A)/97-SHG Sl. No. 32) Sl no 47 & 48 are relevant with Sl. No. 45 above).

49) Letter No. E-38/CMPT/Vol-III/96-97/15 dtd 30-8-96 of TDE,Tezpur addressed to Dy. GM(Admn), o/o the CGMT,Guwahati i.r.o. engagement of casual labours (NIL report) (File No. Recrt-3/10/Part-V of CGMT/Guwahati relevant page-4, original in RC-10(A)/97-SHG documentlistedSl. No.33)

50) Joining report dtd 12-2-95 of Ram Bilash Ray as LI addressed to SDE,Biswanath Charali.

51) Joining report dtd 26-3-95 of Sri Lambodar Jha, as SI addressed to SDE(Gp),Charali.

52) Joining report dtd 18-6-95 of Sri Sakaldeo Singh as SI(O) addressed to SDE(G),B/Charali.

53) Joining report dtd 3-3-95 of Sri Rajendra Ray-II as SI addressed to SDE(G), B/Charali.

54) Seizure Memo dtd 11-9-98.

55) Seizure Memo dtd 29-8-98

56) Seizure Memo dtd 21-4-98.

57) Seizure Memo dtd 01-8-97.

58) Seizure Memo dtd 1-8-97 in RC-10(A)/97-SHG.

59) Seizure Memo dtd 6-11-98.

60) Attendance Register of TSM under SDE(P),Gr.B/Charali from June/1996 to March/1998(Charali Incharge)

61) Attendance Register of TSM from June'96 to Jan'98.

62) --do-- of TSM from March'97 to Dec'97.

63) --do-- of TSM under JTO Gr. (West) Pavoi from June'96 to Dec'97.

64) Attendance Register of TSM of Sootea Ezchange from june to Dec'97.

65) Attendence Register of TSM under Gohpur telephone Exchange from June'96 to April'98.

66) Attendence Register of TSM under GHG Exchange from june'96 to April'98

67) Attendence Register of TSM of o/o SDE(P), B/Charali from June'96 to March'98.

68) Attendence Register of TSM of Bargang Exchange from July'96 to April'98.

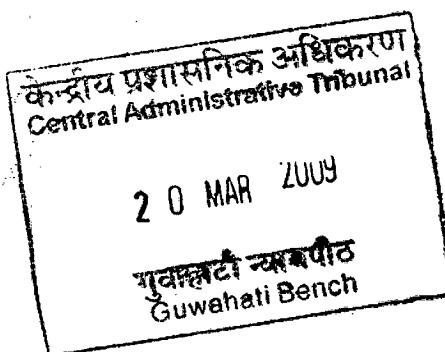
69) --do-- of TSM of Bedeli Telephone Exchange from June'96 to April'98.

70) --do-- of TSM of Jamuguri Exchange from June'96 to Dec'97.

71) FIR of Case No. RC 11(A)/97-SHG.

72) Letter No. TDM/Tez/1005/CBI dtd 11-898 of Sri B.K.Goswami, TDM/Tezpur i.r.o. non-availability of ACG-17 with enclosure (two sheets) (original in RC-10(A)/97-SHG. Document listed Sl. No. 58)

73) Rule 11 (Part-III of CCS Rules) i.r.o. sanctioning authority of Prosecution Sanction Order.



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Advocate

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Calender of evidence (Oral)

- 1) Sri B.K.Goswami,TDM/Tezpur R/O 100/, Jessore Road, DumDum,Bhagabati Park, Calcutta-700074.---He will prove that no ACG-17 (Payment voucher of casual labourers) are available in his division which communicated vide document listed Sl. No. 102).
- 2) Md. Islam Ahmed, S/O Late Basiruddin Ahmed, Chief Accounts Officer, o/o the TDM,Tezpur---He will prove that payment are made to casual labours, if engaged on ACG-17 farm and AO (Cash) is the custodian of the same. He will also prove that ACG-17 are not available for the period from 1988 to 1996(Feb). He will also prove documents seized from him vide seizure memo dtd 11-9-98.
- 3) Sri Sandhan Ch. Deka, Sr. TSO under SDE(P),Biswanath Charali R/O Nabapur, Biswanath Charali ,Dist: Sonitpur(Assam)(Primary witness)—He will identify the signatures of Sri G.S.Mathur,SDE(P),RPChakrabarty, the then JTO, P.Pathak,JTO, Rajendra Rai, Lambodar Jha, Sakaldeo Singh all Sub-Insp. , Ram Bilash Ray, Radha Ram Deka both Line Insp. And Deonath Ray ,Sl on certificates issued in favour of 27 persons now TSMs, wrking under SDE(P),B/Charali; Sri Deka will also prove documents seized from him on 29-8-98.
- 4) Sri Girish Saikia,JTO under SDE(P),B/Charali R/O Nabapur ,B/Charali, Dist: Sonitpur(Assam) (Primary witness)—He will prove the same fact as will prove by witness at Sl. No.3 above.
- 5) Sri Upen Swargiary, Sr. Accts. Officer,o/o the TDM,Tezpur R/O Indira Nagar, Tezpur, Dist:Sonitpur(Assam).
- 6) Sri Ajit Kr. Sarkar, the then SDE(HRD),now SDOT/Tezpur R/O Vill & P.O.:Dhekiajuli, Ward No.6 Dist:Sonitpur (Assam)
- 7) Sri Dharmeswar Payeng , the then SDO(P),Tezpur now DE(Phones),Jorhat R/O Town Bantu, North Lakhimpur, Ward No.14 Dist:Lakhimpur(Assam)—Sl No. 5,6&7 will prove that they were the members of selection committee for conferring temporary status to casual mazdoors/labours, constituted b Sri M.K.Gogoi, the then TDE,Tezpur and they had recommended to 27 Nos. casual labourers for TSM.
- 8) Sri H.S. Debnath, JAO,o/o the TDM/Tezpur(seizure witness,not examined) seizure memo dtd 1-8-97.
- 9) Sri B.C.Pal,Asstt.Director Telecom(E&R),o/o the CGMT/Guwahati(seizure witness ,not examined)
- 10) Sri Anil Ch. Dutta, Phone Mechanic under SDE(P), B/Charali(not examined)--- He will prove the documents seized vide seizure memo dtd 21-4-98.
- 11) Sri Barman, Inspector, CBI,Guwahati(I.O. of the case).

Want to be true Cst:

Rajesh Majumdar
Advocate

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Guwahati Bench

To,
the D.O.(P&A)
O/O the TDM/Tezpur

Dated at Chariali, the 17.8.2K.

Re:-- No.X-2002/Disc/P.K.Pathak/2000-2001/2

Dated at Tezpur, the 7.8.2000.

Sub:- Written statement of defence against the charge sheet
under Rule-14 of CCA (CCA) rule 1965.

SIR,

With reference to the subject and letter No.
cited above from your office kindly find the enclosed
reply of the memo No Vig/Assam/Disc-III/2000-2001/4
dtd. 31.7.2000 received from CGMT/Ch for your kind
information and onward transmission to the CGMT/Ch.
It may kindly be acknowledged.

Yours faithfully,

(P.K.PATHAK)
I.T.O.(I/D)-Chariali.

Received
S.Bans 2000
24/8/2000

It may be true.

Kapil Majumdar

To,

The Chief General Manager,
Assam Telecom Circle, Guwahati -781007
Dated at Biswanath Chariali, the 17.8.2000

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Guwahati Bench

Sub: Denial of charges framed under rule 14 of CCS(CCA) Rules 1965
Ref: Your memo no vig /Assam /DISC- III/2000-0.1/4 Dated the 31-7-2000

Sir,

With due respect and humble submission I beg to intimate you that the charges framed against me vide your memo. under reference is totally denied. The charges, that I have countersigned 13 nos of false and fabricated experienced certificates issued by S1/L1 working under me are without any proper/valid evidence.

In this regard I would like to mention here that I had joined in the department in February 1991 and after my joining I never came across any such letter from DOT regarding conferring temporary status to casual mazdoors engaged before 22/6/88.

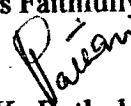
That sir, after joining in the department as per departmental norms I was entrusted to carry out certain works like maintenance and construction of L & W works, laying of U/G cables, erection of D.P.Boxes, installation of new exchanges and so on. For these types of works detailed estimates were prepared keeping provision of engagement of labour which were approved by the competent authority. Accordingly mazdoors were engaged for the jobs entrusted on me and as soon as the work was over they were terminated. The period of engagement of mazdoors was specified on the basis of work load and the payments were made through the LI/SI from time to time from the temporary advance received against the approved work.

In fact I could remember that during my period I have countersigned certain certificates issued by some SI/LI after proper verification and right now of course I cannot remember how many certificates were countersigned by me after a lapse of 4 years which I can well confirm after going through the original certificates. But I am sure that those certificates were never forwarded to any kind of authority for appointment under any reference.

Moreover in this regard I would like to bring to your kind notice that in annexure IV of the charge sheet some oral witnesses are included and through some of the state witnesses the prosecution wanted to prove that no ACG-17 (payment vouchers of casual labours) are available in Tezpur Division. In this situation it is not possible to justify how the prosecution will prove the case of countersigning false and fabricated certificates by the charged officials. Hence I cannot understand that during the preliminary inquiry the officers conducting the events in question whether made proper verification to ascertain the reason of non-availability of account particulars which were to be with the Account section of the department. The charge thus framed against me may vitiate natural justice for me.

Sir, in this circumstance considering all the facts mentioned above I would like to request you to kindly drop the charge framed against me to avoid any wastage of departmental mandays and to relieve me from further anxiety

Yours Faithfully



(P. K. Pathak)

J.T.O., Biswanath Chariali

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Rajiv Bhagat
- Advocate

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Guwahati Bench

ANNEXURE A3

CONFIDENTIAL

No : DE (DI) / Disc-4 / PP / 2001-02

Dated at Guwahati , the 17-12-2002

INQUIRY REPORT

PRESENT : Shri Binode Pegu , D.E.(D.I.) , o/o the CGMT , Assam Circle ,
Guwahati , the Inquiry Officer.

PRESENTING
OFFICER : Shri Sankar Ch. Das , ADT (Legal) , O/o the CGMT, Assam
Circle , Guwahati-7

DEFENCE
ASSISTANT : Shri S.K. Sikidar , SDE (Survey) , O/o the DE (Survey) , Guwahati

**DISCIPLINARY PROCEEDING UNDER RULE - 14 OF CCS (CCA) RULES , 1965
AGAINST SHRI PRAMOD KR PATHAK , J.T.O. , BISWANATH CHARIALI , UNDER S.D.E. (P) ,
BISWANATH CHARIALI.**

The aforesaid Suspected Public Servant , Shri Pramod Kr. Pathak , JTO(hereinafter referred to as SPS) was charge sheeted vide Memo No:Vig/Assam/Disc-III/2000-01/4 dated 31-07-2000 , issued by the Chief General Manager Telecom , Assam Circle , Guwahati-7 (hereinafter referred to as Disciplinary Authority).

Shri P.D. Sonowal , D.E. , the then DE (DI) was appointed earlier as Inquiring Authority to inquire into the charges against the said SPS vide No. Vig/Assam/Disc-III/00-01/33 dtd 08-11-2001 of the Disciplinary Authority .

Subsequently , the undersigned was appointed as Inquiring Authority vide No. Vig/Assam/Disc-III/2000-2001/43 dtd 11-01-2002 of the Disciplinary Authority to inquire into the charges against the SPS in place of Shri P.D. Sonowal , D.E.

Shri Sankar Ch. Das , the then ADT (Rectt.) , presently working as ADT (Legal) was appointed as the Presenting Officer (herein after referred to as P.O.) vide No Vig/Assam/Disc-III/32 dtd 08-11-2001 of the Disciplinary Authority to present the charges before the Inquiring Authority on behalf of the Disciplinary Authority .

The SPS nominated Shri S.K. Sikidar , the then SDE (Survey) , O/o the DE (Survey), Guwahati-3 presently working as DE (T/F) , Dimapur , as his Defence Assistant (herein after referred to as D. A.) on behalf of the SPS along with declaration that he has got not more than 3 (three) pending departmental cases in hand. The I.O. permitted him to work as D.A. on behalf of the SPS.

b. P. m
1.0
The sitting started with its Preliminary Hearing on 07-03-2002, when the SPS categorically denied the charges levelled against him in the Charge Sheet and preferred to be heard in person. In consequence , the P.O. was directed to proceed with the presentation of the case against the SPS and to begin with , the P.O. got examined and inspected by the SPS all the documentary evidences as mentioned in Annexure - III of the Charge Sheet. The SPS was also provided Xerox copies of all the listed documents along with the Xerox copies of the earlier statements of listed witnesses by the P.O. Simultaneously , the SPS was directed to submit a list of additional documents , if any , required by

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Guwahati Bench

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him for preparing his defence. He was further directed to submit a list of defence witnesses, if any, which he wanted to produce and examine in support of his defence case.

The D.A. submitted his requisition for 6(six) additional documents which were allowed by the I.O. But the SPS / DA of SPS did not file requisition for any defence witness. The additional documents were discovered from its custodian. Only 3(three) additional documents were discovered from the custodian authority and got inspected by the SPS with his defence assistant and Xerox copies of which were also handed over to the SPS.

On completion of Preliminary Hearing, the Regular Hearing was started and held on 7th, 8th, 9th, 10th and 23rd of May' 2002. On the 1st day of Regular Hearing i.e. on 07-05-2002, the P.O. adduced all the listed documents as per Annexure-III of the Charge sheet and all such documents have been taken on record as State Exhibits as under:

<u>Sl. No.</u>	<u>Particulars</u>	<u>Exhibit No.</u>
		(No. of pages)
1.	Letter No. G-1/ Genl Corr./95-96 dtd 12-03-96 of Sri G.S. Mathur, SDE(P), Biswanath Chariali to TDM, Tezpur regarding certificates For 27 Nos. casual labourers.	Ex-S-1 (1)
2.	List of 27 Casual Labourers recommended by Selection Committee conferring for Temporary Status.	Ex-S-2 (7)
3.	Certificate dtd 10-03-96 of Sri Prabhat Sarma issued by Sri Lambodar Jha, S.I.	Ex-S-3 (1)
4.	Certificate dtd 09-03-96 of Sri Biren Bora issued by Sri Lambodar Jha, S.I.	Ex-S-4 (1)
5.	Certificate dtd 09-03-96 of Sri Biren Das issued by Sri Sakaldeo Singh, S.I.	Ex-S-5 (1)
6.	Certificate dtd 09-03-96 Pranjal Kakati issued by Sri Sakaldeo Singh, S.I.	Ex-S-6 (1)
7.	Certificate dtd. 08-03-96 of Sri Moina Bora issued by Sri Rajendra Ray, S.I.	Ex-S-7 (1)
8.	Certificate dtd 08-03-96 of Sri Dharmendra Kr. Roy issued by Sri Rajendra Roy, S.I.	Ex-S-8 (1)
9.	Certificate dtd 08-03-96 of Sri Ambika Barman issued by Sri Ram Bilash Roy, L.I.	Ex-S-9 (1)
10.	Certificate dtd 08-03-96 of Sri Basanta Bhuyan issued by Sri Lambodar Jha, S.I.	Ex-S-10 (1)
11.	Certificate dtd 08-03-96 of Sri Prabhat Kalita issued by Sri Lambodar Jha, S.I.	Ex-S-11 (1)
12.	Certificate dtd 08-03-96 of Sri Dwipen Bhuyan issued by Sri Lambodar Jha, S.I.	Ex-S-12 (1)
13.	Certificate dtd 08-03-96 of Sri Kishore Kr. Pathak issued by Sri Ram Bilash Roy, L.I.	Ex-S-13 (1)
14.	Certificate dtd 08-03-96 of Sri Cheniram Sarma, issued by Sri Lambodar Jha, S.I.	Ex-S-14 (1)
15.	Certificate dtd Nil of Sri Govinda Bora issued by Sri Deonath Ray, S.I.	Ex-S-15 (1)
16.	Letter No. X-1/CMPT/96-97/Con-7 dtd 27-05-96 of TDE, Tezpur i.r.o. regularization of casual mazdobs as TSM.	Ex-S-16 (7)
17.	Attested copy of B.A. Part-II passed certificate.	Ex-S-17 (1)
18.	Attested copy of B.A. Part-II passed mark sheet.	Ex-S-18 (1)

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Advocate

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19.	Attested copy of Higher Secondary Pass Certificate of Sri Gagan Bhuyan.	Ex-S-19 (1)
20.	Attested copy of HSLC examination pass certificate of Sri Dharmendra Kr. Rai and admit card.	Ex-S-20 (1)
21.	Attested copy of HSLC examination pass certificate of Sri Dwipen Bhuyan.	Ex-S-21 (1)
22.	Attested copy of H.S. examination pass certificate and admit card of Sri Basanta Bhuyan.	Ex-S-22 (2)
23.	Joining Report dtd 30-05-96 of Sri Kishore Kr. Pathak as TSM	Ex-S-23 (1)
24.	Joining Report dtd 30-05-96 of Sri Khargeswar Borah (Moina Borah) as TSM.	Ex-S-24 (1)
25.	Joining Report dtd 30-05-96 of Sri Biren Das as TSM	Ex-S-25 (1)
26.	Joining Report dtd 30-05-96 of Sri Govinda Borah as TSM	Ex-S-26 (1)
27.	Joining Report dtd 30-05-96 of Sri Cheniram Sarma as TSM	Ex-S-27 (1)
28.	Joining Report dtd 30-05-96 of Sri Prabhat Sarma as TSM	Ex-S-28 (1)
29.	Joining Report dtd 30-05-96 of Sri Pranjal Kataki as TSM	Ex-S-29 (1)
30.	Joining Report dtd 30-05-96 of Sri Biren Bora as TSM	Ex-S-30 (1)
31.	Joining Report dtd 30-05-96 of Sri Basanta Bhuyan as TSM	Ex-S-31 (1)
32.	Joining Report dtd 30-05-96 of Sri Dharmendra Kr. Ray as TSM	Ex-S-32 (1)
33.	Joining Report dtd 30-05-96 of Sri Ambika Barman as TSM	Ex-S-33 (1)
34.	Joining Report dtd 30-05-96 of Sri Prabhat Kalita as TSM	Ex-S-34 (1)
35.	Joining Report dtd 30-05-96 of Sri Dwipen Bhuyan as TSM	Ex-S-35 (1)
36.	Letter No. E-198/OTBP/93-94/197 dtd 15-05-93 of TDE, Tezpur i.r.o. promotion order as LM-II of Sri Sakaldeo Singh w.e.f. 29-01-92	Ex-S-36 (1)
37.	Letter No. 210/BCR/Scheme/93-94/108 dtd 05-05-93 of TDE/Tezpur i.r.o promotion of Sri Ram Bilash Ray, LM-III/Line Inspector w.e.f. 01-07-92	Ex-S-37 (1)
38.	Promotion order as Lineman of Sri Lambodhar Jha w.e.f. 27-02-86 vide letter No. E-198/OTBP/88-89/149 dtd 20-07-88 of TDE, Tezpur	Ex-S-38 (1)
39.	Promotion order as Sub-Inspector of Sri Rajendra Ray vide letter No. E-198/OTBP/90-91/15 dtd 07-06-90.	Ex-S-39 (2)
40.	Forwarding letter of Sri Sri G.S. Mathur, SDE(P), B. Chariali to TDE, Tezpur along with the documents of 27 candidates.	Ex-S-40 (3)
41.	Gradation List of 27 casual labourers of B. Chariali	Ex-S-41 (2)
42.	Letter No. E-38/CMPT/Vol-II/96-97/15 dtd 30-03-96 from TDE / Tz to DGM (Admn), O/o the CGMT, Assam Circle, Guwahati regarding engagement of casual labourers.	Ex-S-42 (1)
43.	Letter No. X-1/CMPT/TZ/95-96/Confld./1 dtd 25-03-96 of TDE/Tz i.r.o constitution of selection committee for conferring Casual Labourers to TSM.	Ex-S-43 (1)
44.	Letter No. E-38/CMPT/94-95/168 dtd 17-02-95 of TDE, Tezpur to ADT (E&R), C.O., i.r.o nil report of casual mazdoors w.e.f. 31-12-93 Onwards.	Ex-S-44 (1)
45.	Letter No. E-38/CMPT/Vol-II/123 dtd 07-12-93	Ex-S-45 (1)
46.	Letter No. 269-4/93-STN-II dtd 17-12-93 from ADG (STN), New Delhi, i.r.o regularization of casual labourers engaged in Circle After 30-03-85 and upto 22-06-88.	Ex-S-46 (2)
47.	Letter No. 289-8/93-STN dtd 27-07-93 from ADG (STN), New Delhi	Ex-S-47 (3)
48.	No. RECTT-3/10/Part-III/3 dtd 26-08-93	Ex-S-48 (1)
49.	No. E-38/CMPT/Vol-III/96-97/15 dtd 20-08-96 of TDE, Tz to DGM (Admn), C.O. i.r.o. engagement of casual labourers.	Ex-S-49 (1)

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1. O. 46.

to be true
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50.	J/Reports of Sri Ram Bilash Ray as L.I.	Ex-S-50 (1)
51.	J/Reports of Sri Lambodar Jha as S.I.	Ex-S-51 (1)
52.	J/Reports of Sri Sakaldeo Singh as S.I (O)	Ex-S-52 (1)
53.	J/Reports of Sri Rajendra Ray - II as S.I.	Ex-S-53 (1)
54.	Seizure Memo dtd 11-09-98	Ex-S-54 (1)
55.	Seizure Memo dtd 29-08-98	Ex-S-55 (1)
56.	Seizure Memo dtd 21-04-98	Ex-S-56 (2)
57.	Seizure Memo dtd 01-08-97	Ex-S-57 (1)
58.	Seizure Memo dtd 01-08-97 (Not produced)	
59.	Seizure Memo dtd 06-11-98 (Not produced)	
60.	A / Register of TSM of GHG Exchange from June'96 to April'98	Ex-S-60 (24)
61.	A / Register of TSM of Dhalaibil Exge. From June'96 to Feb'97	Ex-S-61 (8)
62.	A / Register of TSM of Dhalaibil Exge from Mar'97 to Dec'97	Ex-S-62 (6)
63.	A / Register of TSM of Pavoi (W) from June'96 to Dec'97	Ex-S-63 (19)
64.	A / Register of TSM of Sotea Exge from June'96 to Dec'97	Ex-S-64 (20)
65.	A / Register of TSM of Gahpur Exge from June'96 to April'98	Ex-S-65 (23)
66.	See Sl. No. 60.	
67.	A / Register of TSM of B. Chariali from June'96 to March'98	Ex-S-67 (24)
68.	A / Register of TSM of Bargang Exge from July'96 to April'98.	Ex-S-68 (23)
69.	A / Register of TSM of Bedeli Exge from July'96 to April'98	Ex-S-69 (24)
70.	A / Register of TSM of Jamuguri Exge from June'96 to Dec'97	Ex-S-70 (20)
71.	FIR of case No. RC 11 (A) / 97-SHG	Ex-S-71 (21)
72.	No. TDM/Tez/1005/CBI dtd 11-08-98 of TDM , Tezpur i.r.o.	Ex-S-72 (1)
	non availability of ACG-17	
73.	Not produced.	

Also in course of Regular Hearing , the P.O. produced only 9 (nine) witnesses out of 11 (eleven) listed witnesses as per Annexure-IV of the charge sheet, who were examined-in-chief by the P.O. and cross-examined by the D.A. They are as under :

1. SW-1 Sri Binay Krishna Goswami , the then TDM , Tezpur.
2. SW-2 Md. Islam Ahmed , CAO , O/o the TDM , Nagaon.
3. SW-3 Sri Sandhan Ch. Deka , Sr. TSO, O/o the SDE (P) , Grp. , Biswanath Charali
4. SW-4 Sri Girish Saikia, the then JTO under SDE (P) (Grp) , Biswanath Charali
5. SW-5 Sri Upen Swargiary, the then SR. A.O. , O/o the TDE , Tezpur.
6. SW-6 Sri Ajit Kr. Sarkar, the then SDE (HRD) , O/o the TDE , Tezpur.
7. SW-7 Sri Dharmeswar Payeng, the then SDOP , Tezpur.
8. SW-10 Sri Anil Ch. Dufta, P/M under SDE(P), (Grp) , Biswanath Charali.
9. SW-11 Sri K. Barman , Inspector, CBI , ACB , Guwahati.

b.l.m
On the conclusion of the prosecution case, the SPS filed statement of defence under CCS (CCA) , Rules-14 (16) with a copy endorsed to the P.O. dtd 11-05-2002 which was received on 13-05-2002

In the statement of defence , the defence claimed that the prosecution could not prove the charges beyond reasonable doubt and to the hilt. The prosecution produced all total 9 (nine) state witnesses out of 11 (eleven) listed witnesses . Most of the witnesses were irrelevant in the case and thus reflects the incompetence of the prosecution.

That the prosecution could not prove through its documentary and oral documents that the charged officer made the counter signature without verification. SW-3 in his reply to D.A.'s

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Q.No.3. categorically mentioned that he had seen them working in the sub-division but could not tell when they were working and when they (Mazdoors in question) were kept idle. From this remark of the SW-3, it could be construed that the casual labourers were working in the sub-division since long.

Last but not least the meaning of counter signature is "add confirming signature to" justifies the counter-signature of charged officer to confirm the signature of the SI / LI.

In this context it is concluded that the alleged charges are not proved substantially and the prosecution was not able to sustain the charges.

On commencement of the defence case the SPS adduced the following defence documents which were taken on records as under :

1. Letter No. X-1/CMPT/96-97/Con. 7 dtd 20-10-97 ----- Ex-D-1
2. Attendance Register of DRM (Two Nos.)
(i) ----- Ex-D-2 (i)
(ii) ----- Ex-D-2 (ii)
3. Absentee statement (Total 4 Nos.)
(i) Period from 11-11-93 to 11-12-93 ----- Ex-D-3 (i)
(ii) " 11-02-94 to 10-03-94 ----- Ex-D-3 (ii)
(iii) " 11-02-95 to 10-03-95 ----- Ex-D-3 (iii)
(iv) " 11-03-96 to 10-04-96 ----- Ex-D-3 (iv)
4. Name of Telephone Exchange under SDO(P), Grp-B, ----- Ex-D-4
Biswanath Chariali.
5. Sanctioned Estimate Register w.e.f. 1992 to 1996 (one No.) ----- Ex-D-5

No witness was produced by the SPS and hence no oral evidence was recorded.

The SPS was then questioned by the LO under Rule-14 (18) of CCS (CCA) Rules 1965 which was recorded.

At the end of Oral Hearing, both the parties were directed to submit their respective briefs within stipulated time. The prosecution brief of the P.O. dtd 12-06-2002 was received on 19-06-2002 and the defence brief of the SPS dtd 26-07-2002 was received on the same day, i.e., 26-07-2002.

Thus all the documentary evidences adduced and submissions made were thoroughly examined. At the same time both the parties (i.e. Prosecution and the Defence) were afforded full and reasonable opportunity which they availed to the best of their satisfaction and at the same time there was absolutely no complaint in this regard from either side.

b. P. Pathak
1.01

The following Article of Charges were framed against Sri Pramod Kr. Pathak, the SPS, as contained in Annexure-I and Annexure-II to the Memorandum of charge sheet.

Annexure - I

Statement of Article of Charge : framed against Sri P. Pathak, JTO, the SPS.

While Sri P. Pathak, JTO was posted and functioning as JTO under SDE (P), Biswanath Chariali during the year 1996, failed to maintain absolute integrity and devotion to duty as much he had counter signed 13 Nos. of false and fabricated experience certificate issued by S/Sh Rajendra

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Rajendra Pathak
Advocate

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Rai , Sub-Inspector , Lambodar Jha , Sub-Inspector , Rambilash Rai , Line Inspector , Sakaldeo Singh , Sub-Inspector , Deonath Rai , Sub-Inspector in favour of Sri Pravat Sarma , Biren Das, Biren Bora , Pranjal Kakati , Maina Bora , Dharmendra Kr. Rai , Ambika Barman , Basanta Bhuyan , Prabhat Kalita , Dwipen Bhuyan , Kishore Kr. Pathak , Cheniram Sarma and Govinda Bora without going through any documentary evidence and verification and on the basis of his counter signature , the TDE , Tezpur has regularized all the 13 persons vide order No. X-1/CMPT/96-97/Con. 7 dtd 27-05-96 as Temporary Status Mazdoors and thereby the above acts , he contravened the provision of Rule 3(1) and (2) of CCS (Conduct) Rule , 1964.

Annexure - II

Statement of imputation of misconduct or misbehaviour in support of the Article of Charges framed against Sri P. Pathak , JTO , the SPS.

Sri P. Pathak was posted and functioning as JTO under Sub-Divisional Engineer (Phones) , Biswanath Chariali , Sonitpur , Assam during the year 1996.

It is alleged that the DOT had banned the engagement of casual labourers in Project Circles / Electrification Circles by a circular / letter No. 270/6/84-STN , New Delhi dtd 30-03-85 of S. Krishnan , Director (STN) , Posts and Telegraph.

It is alleged that a circular / letter No. 269/4/93-STN-II dtd 17-12-93 was issued by the Asstt. Director General (STN) , Deptt of Telecom , New Delhi in the subject matter of "Casual labourers (grant of temporary status and regularization) scheme , 1989 engaged in circles after 30-03-85 and upto 22-06-88". This circular / letter extending the temporary status to all those casual mazdoors who were engaged by the Project Circles / Electrification Circles during the period from 31-03-85 to 22-06-88 and who are still continuing for such works where they were initially engaged by violating banning order dtd 30-03-85 and who are not absent for more than 365 days counting from the date of issue of this order be brought under this scheme.

It is alleged that incorporating all the conditions in circular / letter dtd 17-12-93 of DOT , S/Sh Rajendra Rai , Sub-Inspector , Lambodar Jha , Sub-Inspector , Rambilash Rai , Line Inspector , Radharam Deka , Line Inspector , Deonath Rai , Sub Inspector all under SDE(P) , Biswanath Chariali has issued 27 Nos. false and fabricated experience certificate in favour of 27 persons wherein they have been shown casual labours and working from 1988 to 1996 (February) continuously and No. of days they worked shown in the said certificate.

It is alleged that (1) Sri Rajendra Rai had issued 7 Nos. of false and fabricated certificates to 7 persons they are :

1. Sri Pawan Kataki , S/o Loknath Kakati of B. Chariali.
2. Ms. Juri Sarma , D/o Golap Ch. Sarma , B. Chariali.
3. Sri Jitu Sarma alias Ratul Sarma , S/o Lt. Rabiram Sama , Bogaon , B. Chariali
4. Sri Gagan Bhuyan , S/o Lt. Phuleswar Bhuyan of Barobhuyan , B. Chariali.
5. Smt. Tunmoni Saikia , D/o Lt. Rabi Saikia , Kashgaon , B. Chariali.
6. Sri Moina Bora , S/o Lt. Laburam Bora of Rangamati , B. Chariali.
7. Sri Dharmendra Kr. Rai , S/o Sri Rajendra Kr. Rai , B. Chariali.

(2) Sri Lambodar Jha , the then S.I. had issued 6 Nos. of false and fabricated certificate in favour of 6 persons . They are :

- (i) Sri Prabhat Sharma , S/o Lt. Gargeswar Sharma , of Sootea.
- (ii) Sri Biren Bora , S/o Lokeswar Bora pf Sootea.
- (iii) Sri Basanta Bhuyan , S/o Lt. Dhaturam Bhuyan of Gopalpur , Sonitpur.

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- (iv) Sri Prabhat Kalita , S/o Lt Dhiradutta Kalita of Naharani , Sonitpur.
- (v) Sri Dwipen Bhuyan , S/o Sri Sadhan Bhuyan of Barochuk.
- (vi) Sri Cheniram Sharma , S/o Lt. Nareswar Sharma of Naharani.

On the basis of his certification , the TDE , Tezpur had awarded the Temporary Status to all 13 persons vide letter No. X-1/CMPT/96-97/Con-7 dtd 27-05-96 with immediate effect and all the 13 persons had joined as TSM and drawing salary / wages till date .

Thereby all the acts of Sri P.K. Pathak contravened the provision of Rule 3(1) & (2) of CCS (Conduct) Rule , 1964.

DISCUSSION :

The crux of the charge is that while Sri Pramod Kr. Pathak , JTO was posted and functioning under SDE (P) , Grp. , Biswanath Chariali during 1996 failed to maintain absolute integrity and devotion to duty as much as he had countersigned 13 Nos. of false and fabricated experience certificates issued by Sri Rajendra Rai , S.I and Sri Lambodar Jha , S.I in favour of Sri Pawan Kataki , M/s Juri Sarma , Sri Jitu Srama, Sri Gagan Bhuyan , Smt Tunmoni Saikia , Sri Moina Bora , Sri Dharmendra Kr. Roy, Sri Prabhat Sarma, Sri Biren Bora, Sri Basanta Bhuyan, Sri Prabhat Kalita, Sri Dwipen Bhuyan and Sri Cheniram Sarma respectively without going through any documents and verification. On the basis of his certification / counter signature the TDE , Tezpur had awarded Temporary Status to all 13 persons vide letter No. X-1/CMPT/96-97/Con.7 dtd 27-05-96 with immediate effect and all the 13 persons had joined as TSM and drawing salary / wages etc. till date.

The P.O. produced all the listed documents except Sl. Nos. 58, 59 & 73 which are seizure memos dtd 01-08-97, 06-11-98 and Rule11 (Part-III of CCS Rules, respectively. Ex-S-1 (i) is the letter No. G-1/Genl. Corr./95-96 dtd 12-03-96 of Sri G.S. Mathur , the then SDE (P), Biswanath Chariali and Ex-S-2 are the list of 27 Casual Labourers recommended by the Selection Committee. From Ex-S-3 to Ex-S-15 are the certificates issued by the Said Sri Rajendra Rai , SI and Sri Lambodar Jha , SI in favour of the said 13 (thirteen) casual labourers . Ex-S-16 is the letter by which the Casual Mazdoors were regularized. From Ex-S-17 to Ex-S-22 are the attested copies of H.S.L.C. and H.S. passed certificates and mark sheet.

From Ex-S-23 to Ex-S-35 are only the joining report of the said casual mazdoors as TSM. From Ex-S-36 to Ex-S-39 are promotion order of L.M / S.I. Excepting Ex-S-1 to Ex-S-24 , all other listed documents are not relevant to the case. In all the certificates issued to the said 13 (thirteen) casual labourers it is proved that the said certificates were issued by Sri Rajendra Rai, S.I and Sri Lambodar Jha , SI respectively and countersigned by Sri P.K. Pathak, JTO and Sri G.S. Mathur , SDE (P), Biswanath Chariali, respectively, the signatures of which were identified by SW-3 & SW-4 respectively. In all 9 (nine) state witnesses were produced by the state in support of the charges framed against the SPS. However, none of the state witnesses were deposed either in support of the charges or against the SPS.

B. P. A.

As regard to the engagement of casual mazdoors during the relevant period , i.e. , from 1988 to 96 it is evident from the Defence Exhibit-5 , the register of Sanctioned Estimates that there was tremendous expansion works in the sub-division , which necessitated engagement of casual mazdoors by the officials working there, such as L.I , S.I , L.M , P. M etc. From Ex-D-3 (i), (ii), (iii) & (iv) which are the absentee statement of the SDE (P) , Grp. , Biswanath Chariali shows that there was one JTO at Biswanath Chariali under whom so many staff were working such as TTA , PI , Tech , LI , SI , LM , PM etc. during the years 1993, 1994 and 1995. Also Ex-D-4 shows that there

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were so many exchanges under SDE(P) Grp. Biswanath Chariali such as S.B.M. C-DOT, 128P C-DOT and MARR during the relevant period. Therefore, for estimated expansion works and day to day maintenance work there was every possibility of engagement of casual labourers on temporary basis, though it was banned by the DOT. So, it is quite possible that the casual mazdoors who were later regularized as TSM were working on casual basis in the relevant period from 1988 to 1996. As DOT banned for engagement of casual labourers after 30th March / 1985, hence record was not shown as casual labourer working at that period and that may be the reason why the concerned TDE gave their report as NIL Engagement Report of casual mazdoors though actually there was some engagement of casual mazdoors for estimated project works and day to day maintenance works for the Division, the payment of which were made on ACG-17. Therefore, it is quite evident that there was an engagement of casual labourers in the relevant period due to the work load as expansion work in Assam Circle was in fact started from 1986 after the Assam Accord. Defence Exhibit 2 (i) & (ii), which is rough register of casual labourers for the years 1991 and 1992 respectively, indicate the names of most of the casual mazdoors regularized in 1996. SW-3, Sri Sandhan Ch. Deka, the then Sr. TOA, O/o the SDOP, Grp. Biswanath Chariali, stated in reply to Q.No.2. of D.A. that he can identify the mazdoors because they were working in the sub-division in question. Hence, the allegation that false and fabricated experience certificates issued by Sri Rajendra Rai, S.I., and Sri Lambodar Jha, S.I. were counter signed by the SPS without verification of documents is not reasonable.

As regard payment documents of casual labourers, i.e., ACG-17, ACE-2 & ACE-3 vouchers, SW-1, Sri B.K. Goswami, the then TDM, Tezpur stated that the ACG-17 (Payment vouchers) are not available / traceable in the O/O the TDM / Tezpur during 1998. In this connection the statement given by the SW-2, Md. Islam Ahmed, the then AO (Cash), O/o the TDM Tezpur on 03-07-98, which was agreed by SW-2 during the Inquiry stated that all the bills and vouchers submitted by SDOs / SDEs on temporary advances are kept under the custody of AO (Cash) till audit and after audit normally handed over to Administration headed by TDM / TDE for preserving records and that there was no circular / order regarding period for preservation of bills and vouchers on Temporary Advances, from the Administration. Generally after audit, AO (Cash) has handed over such documents to Administration for preservation. He has no idea whether ACG-17 with ACE-2 and ACE-3 are in the store room but definitely these should be there if officially not destroyed. Therefore, it is evident that the said documents should be there if not officially destroyed in the O/o the TDM, Tezpur which, of course could not be traced out by the DE (P&A), O/o the TDM, Tezpur. These payment vouchers are vital documents without which the fact cannot be ascertained.

B. P. J.

SW-11, stated that the SPS countersigned the certificates issued by S.I.s as a token of correctness but he did not specify whether the token of correctness is for certificates issued or for the correctness of signature of the officials who have issued the said certificates. In the OXFORD ENGLISH MINI DICTIONARY it is given the meaning of countersign as "add a confirming signature to". Also in the CONCISE OXFORD ENGLISH DICTIONARY the meaning of COUNTERSIGN is given "Add signature to (Document already signed) ratify". Hence, as per dictionary meaning, the SPS had countersigned the certificates as a token of correctness of signature of the said issuing officials. The statement given by SW-11 that since documents regarding engagement of casual labourers and payment vouchers were not traceable / available in the TDM, Tezpur office and so it was confirmed about non-verification of the relevant documents. It seems the conclusion of SW-11, the Preliminary Investigation CBI officer is hypothetical only. It is not judicious to conclude any matter hypothetically. The P.O. on behalf of the prosecution, could not produce any documentary evidence as well as oral evidence that the SPS countersigned 13 (thirteen) Nos. of experience certificates issued by Sri Rajendra Rai, S.I. and Sri Lambodar Jha, S.I. in favour of the said 13 (thirteen) casual mazdoors in question, without going

*De : 10-09-2009**Rajendra Rai*

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through any documentary evidence and verification. In this connection, the statement given earlier by SW-2 is worth mentioning. SW-2 stated on 03-07-98 that temporary advances are drawn by SDOs / SDEs of Sub-division from concerned TDM / TDE for (1) Capital Works & (2) Maintenance Works. Capital Works, i.e., Circle estimated project works and Maintenance Works includes the engagement of mazdoors, payment of electricity bill and other contingency of works. This temporary advances were for monthly basis and after the end of the month, the SDOs / SDEs have submitted detailed bills in the form of ACE-2 & ACE-3. SW-2 also stated that regarding engagement of labourers in maintenance works, payments are made to such labourers by SDOs / SDEs through their JTOs / LIs / SIs / L.M. etc and receipt signatures are obtained in ACG-17 from the labourers. At the end of the month, JTOs have submitted detailed bills including ACG-17 to concerned SDOs / SDEs / and SDOs / SDEs after compiling all the relevant bills, submitted their bills in the form of ACE-2 and ACE-3 to concerned TDM / TDE. Thereafter, TDM / TDE send all the bills to Accounts Section headed by Accounts Officer (Cash) for checking and proper accounting. AO (Cash) then checked all the bills and vouchers and after passing of ACGs by TDM / TDE, AO(Cash) has passed Pay Order and charged in the Cash Book for adjustment of Temporary advances. This is an enough proof that how a division runs day to day and hence ACE-2, ACE-3 & ACG-17, the payment vouchers should be there in the TDM, Tezpur office. The P.O. could not establish that casual laborers were not engaged during the relevant period and also that payment was not made to the engaged casual labourers during the relevant period.

During cross-examination in reply to Q.No.1. of the D.A., SW-11 stated that the certificates issued and countersigned by the JTO and SDE were not engagement document for service record. But it is alleged in Annexure-I, i.e., Statement of Article of charges, that the SPS countersigned false and fabricated certificates issued by Sri Rajendra Rai, S.I. and Sri Lambodar Jha, S.I. in favour of casual mazdoors and Sri P. K. Pathak, JTO countersigned the said certificates without going through any documentary evidence and verification and on the basis of his countersignature, the TDE, Tezpur has regularized all the 13 (thirteen) persons vide order No. X-1/CMPT/96-97/Con-7 dtd 27-05-96 as Temporary Status Mazdoors. As per the evidence given by SW-11, the investigating CBI Officer, if the certificates issued by the said S.I.s and countersigned by the JTO, Mr. P.K. Pathak, the SPS, were not engagement documents and then how the authority, i.e., Selection Committee and the TDE / Tezpur relied upon the said certificates for approving these casual mazdoors concerned and given them the status of TSM. Hence, so long the documentary evidences, i.e., payment vouchers like ACE-2 and ACE-3 including ACG-17 are not produced, the fact cannot be ascertained fully. SW-5, Sri Upen Swargiary, one of the members of the Selection Committee, stated in reply to Q.No.2. of the D.A. that in the department no such order to keep the service record engaged by the field staff. The records are kept by the officials / officers under whom they are working and on the basis of that the department is regularizing the mazdoors as per orders received from the DOT from time to time.

B. Perm

SW-6, Sri A.K. Sarkar, another member of the Selection Committee stated in reply to Q.No.4 of the D.A., that he had recommended the case after checking all available documents / certificates supplied and placed on the table of the Selection Committee. In reply to Q.No.4. of I.O., SW-6 also stated that the available documents means the certificates issued by the respective S.I.s / L.I.s / P.I. etc. and countersigned by the respective JTOs / SDEs.

Sw-7, Sri Dharmeswar Payeng, also one of the Selection Committee Member, in reply to Q.No.2. of the P.O. particularly when asked that what are the evidences required to be recommended by the Selection Committee for conferring TSM from casual mazdoor stated that actually from time to time department issues guidelines regarding criteria for conferring the TSM such as minimum period of working days in a year, continuous permissible absence, etc. On the

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Rajesh Payeng.

- Advocate -

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basis of that after getting records from the Sub-division, the Selection Committee recommended the names of casual mazdoors for conferring TSM. Sw-7 also stated that actually they have (Selection Committee) been supplied some documents by the TDE, Tezpur office regarding engagement particulars, age and qualification particulars and also the certificates issued by S.I./ L.I./ P.I. etc., countersigned by JTOs / SDEs with No. of working days, on the basis of that Selection Committee checked and verified.

None of the state witnesses, i.e., SW-5, SW-6 and SW-7, who were also the member of the said Selection Committee for conferring TSM to the casual labourers did not raise any question that the said experience certificates issued by various S.I.s, P.I.s, L.I.s etc. and countersigned by the JTOs / SDEs were false and fabricated certificates. If the Selection Committee members have any doubt regarding genuineness of the said certificates, issued and countersigned by the respective officials / officers, they could have given note for further verification of the relevant documents to discover the facts. But the Selection Committee accepted the said experience certificates and recommended for conferring TSM to them and accordingly the then TDE, Tezpur conferred the said casual mazdoors in the status of TSM. Hence, the SPS, have no concern about the conferring of TSM to the said casual mazdoors and therefore, the allegation that on the basis of his (the SPS) countersignature, all the 13 (thirteen) casual mazdoors were regularized by the TDE, Tezpur as TSM is not correct. The P.O. argued nothing to establish charges framed against the SPS instead he is simply repeating the charges framed against the SPS in his Prosecution Brief.

Lastly, it is to be mentioned that in Annexure-II of the Charge Sheet Memo, it is alleged that on the basis of his (the SPS) certification, the TDE, Tezpur had awarded the Temporary Status to all 13 (thirteen) persons vide letter No. X-1/CMPT/96-97/Con-7 dtd 27-05-96 with immediate effect and all the 13 (thirteen) persons had joined as TSM and drawing salary / wages etc. till date. It is improper on the part of the Disciplinary Authority to allege the SPS as certifying officer because he had only countersigned the certificates issued by Sri Rajendra Rai, S.I. and Sri Lambodar Jha, S.I.

CONCLUSION

The Presenting Officer could not establish fully the charges levelled against the SPS, Sri Pramod Kr. Pathak, J.T.O. with the help of documentary and oral evidences produced.

Thus, in view of the aforesaid discussion and considering the facts, circumstances and evidences on record, I am of the opinion that PREPONDERANCE OF PROBABILITY goes in favour of the SPS, Sri Pramod Kr. Pathak, J.T.O. under SDE (P), Grp., Biswanath Chariali.

Accordingly, I hold that the Article of Charges framed against the SPS, under Annexure - I & II to the Memorandum of charges, could not be substantiated.

In other words, the levelled Charges against Sri Pramod Kr. Pathak, J.T.O., the SPS, stands NOT PROVED.

B. PEGU
17-12-2009

(B. PEGU)
Inquiry Officer

D. I. O.
O/o the CGMT
Assam Circle, Guwa

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Rajesh Majumdar
Advocate -

केन्द्रीय प्रशासनिक अधिकारण
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No. 8-135/2003-Vig.-II

Government of India

Ministry of Communications & Information Technology

Department of Telecommunications

(Vigilance II Section)

West Block 1, Wing 2,
R.K. Puram, New Delhi-66

Dated: 30.10.2003

MEMORANDUM

A copy of the Inquiry Report given by Shri B. Pegu, Inquiry Officer and D.I.O. O/o the CGMT, Assam Circle, Guwahati, in connection with inquiry under Rule, 14 of CCS (CCA) Rules, 1965 against Shri P. Pathak, JTO, Assam Circle, Guwahati, is enclosed. The Disciplinary Authority disagrees with the I.O.'s report to the following extent :-

"It is a fact that the mazdoors were given the temporary status on the basis of the certificate issued by the Charge Officer (C.O.) who was the mustering officer for the casual mazdoors. The office copy of engagement of mazdoors should be with the C.O. as per the rules. The question of making payment through ACG 17 for the casual labourers who are subsequently given the temporary status of regular mazdoor does not arise; this scheme is applicable to those casual labourers mustered in the field and work continuously and drew their wages through muster roll. Now, the C.O. has to prove that he has issued a certificate/Countersigned the certificates on the basis of the documents i.e. engagement of laborers for more than 240 days in a years. Thus, the charge against the C.O. has been proved".

If, Shri P. Pathak, JTO, wishes to make any representation or submission, he may do so in writing to the Disciplinary Authority within 15 days of receipt of this Memorandum, failing which it will be presumed that he has no representation to make and further proceedings against him are liable to be held ex-parte by the Disciplinary Authority.

A copy of the advice of the Central Vigilance Commission (CVC) in their I.D. Note No. 99/P&T/101 dated 25.9.2003, is enclosed.

The receipt of this Memorandum shall be acknowledged by Shri P. Pathak, JTO.

Encls. : 1. Inquiry Report
2. CVC advice dated 25.9.2003

*Ans
29/10/2003*
(B. B. SINGH)
Adviser (HRD),
Telecom Commission

Shri P. Pathak, JTO,
Assam Telecom Circle,
GUWAHATI.

(Through the CGMT, BSNL, Assam Telecom Circle, Guwahati)

Certified to be true copy

Rajesh Mehta
- Advocate -

A9

ANNEXURE A-5

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

CONFIDENTIAL

CENTRAL VIGILANCE COMMISSION

Sub :- Major penalty proceedings under Rule 14 CCA (CCA) Rules 1964
against Shri P. Pathak, JTO, Assam Circle.

DOT ref :- No. 8-135/2003-Vig-II, dated 07.7.2003.

The Commission, in agreement with the Department of Telecom
advises imposition of a suitable major penalty on Shri P.K. Pathak, JTO.

All the documents of the case received in the Commission are
returned herewith in entirety.


(PURAN SINGH)
DY. SECRETARY

✓ Department of Telecom (Shri G.S. Grover, Sr. DDG (V), New Delhi,
CVC I.D Note No. 99/P&T/101 dated

25 SEP 2003

Director (VP)
By. No. 1327
Date
25/9/03

Certified to be true copy

(Ramu S/N)

Rajesh Majumdar
- Advocate -

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2004

गुवाहाटी न्यायालय
Guwahati Bench

To

The Adviser (HRD), Telecom Commission.
West Block 1, Wing 2, R.K. Puram, New Delhi-66

Through proper channel.

Dated at Biswanath Chariali, the 8/12/2003.

Ref: No.8-135/2003-Vig-ii Dated 30.10.2003.

Sub: Representation from P.Pathak, JTO, Assam Circle with reference to disagreement with I.O.'s report relating to the disciplinary proceedings against P. Pathak.

Sir,

With due respect and humble submission I would like to lay before you the following few lines for favour of your kind information and sympathetic consideration please.

- (i) That the charges brought against me was denied in total since I have never issued any certificate to any casual labourer. Of course I have countersigned the experience certificates of some of the casual labourers as a token of correctness issued by my subordinates viz.LI/SI/CS etc, after due verification. Moreover I am not a mustering officer for the casual labourers as alleged in the memorandum. For casual labourers LI/SI/CS are the mustering official who execute their different works in the field entrusted to them through their casual labourer. Annexure 1(a),(b),(c) are the photostat copy regarding the duties of cable splicer and Line staff is enclosed for your kind reference.
- (ii) That sir, the casual mazdoors were never directly engaged by me, the question of keeping office copy of the engagement particulars by me does not arise. As per rules all the official documents of a subdivision should be available in the subdivision office. At that time being a subordinate Group-C non-gazetted officer under SDE(P) I was not the custodian of any documents relating to the engagement of casual mazdoors. Moreover during inquiry, the defence through Presenting Officer recovered attendance register and some other records and submitted as defence exhibit before the inquiry. From the defence documents it is clear that the casual mazdoor in question were working in the sub-division.
- (iii) That sir, as the fresh recruitment of mazdoor through muster roll was already banned in 1985 all the developmental activities such as laying of U/G cable, erection of L&W, installation of new switches as well as other maintenance works etc. had to be performed in the field by engaging casual labourers. The casual mazdoors being engaged by LI/SI/CS were paid only in the form of A.C.G.-17 from the advance received by them as there was no ban on payment in ACG-17. In P&T manual Vol-III-Part-I, Rule-154, it is mentioned that payment in such cases is to be accounted for in

P.T.O.

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Rajesh Majumdar.

- Advocate

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Guwahati Bench

Form ACE-3 and supported by sub-vouchers. Annexure 1(d) is a photocopy of the P&T manual Vol-III-Part-I, Rule-154.

(iv) That sir, Detail Estimates were prepared keeping full provision of labourers for different kinds of expansion such as laying of U.G. cable, erection of L&W works etc. Temporary advance received from S.D.E.(P) against the sanctioned estimated works were given to the L.I./S.I./C.S. etc for execution of the work and make necessary payment to the casual labourers on A.C.G.-17. Subsequently A.C.E.-3 bills were prepared by the concerned L.I./S.I./C.S. where A.C.G.-17 were enclosed as vouchers. I have prepared A.C.E.-2 account where the A.C.E.-3 bills submitted by L.I./S.I./C.S. is used as vouchers and finally A.C.E.-2 account is submitted to the S.D.E.(P) for onward submission to the T.D.E. office. Hence copy of the A.C.E.-2 account for the relevant period should be available under the custody of the T.D.E. office which may be verified if necessary. Annexure 2(a), (b) are the Photostat copy of a few of the sanctioned estimates and 3(a), (b), (c) are the Photostat copy of some of the sanction memo of funds under different estimates and maintenance works.

(v) That sir, in Tezpur SSA the provision of execution of works through contractors such as laying of U.G. cables, erection of L&W works etc. were introduced only in the year of 1998 as per instruction of circle office. Prior to that all works were executed by the department through casual labourer only.

(vi) That sir, the "OFFICE MEMO" which were circulated to restrict payment to casual labourer through A.C.G.-17 except in certain special cases which itself reveals the existence of casual labourer in field. Annexure-4 is a Photostat copy of the letter No.CAO/MANAGEMENT/97-98/ dated at Guwahati, the 13th May'1998 from Director (F&A), Assam Circle.

(vii) Apart from this, in Para 4. (B)(i) of annexure of the letter No.269-10/89-STN New Delhi 7.11.89 issued from New Delhi, it is clearly mentioned under the headings "CASUAL LABOURERS (GRANT OF TEMPORARY STATUS AND REGULATION) SCHEME." the temporary status would be conferred to those casual labourers who have even rendered continuous service for 240 days in a year. Hence the casual labourer is not necessarily be a member of the muster roll party to acquire temporary status which contradicts with the charges brought against me. Apart from this in the entire Assam Circle temporary status has been conferred to many other casual mazdoors in the same procedure which might be verified if and when necessary. Hence under the circumstances I am rather confused why I have been only charged by the Disciplinary Authority. A Photostat copy of the relevant letter is enclosed for your kind reference.

(viii) The question of keeping documents by me regarding engagement of labourer does not arise since the casual labourers were never directly working under me. The casual mazdoors were engaged by the LI/SI/CS who kept their records and issued the experience certificates to the casual mazdoors. I have countersigned the experience certificates issued by them after going through all the records available with them as well as the documents available in the office of the SDE(P). I have also seen them working in the field during inspection of various field works. Moreover certificates under question were not even forwarded to any authority for appointment under any reference. One DPC was

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Rajesh Bhagwani

- Advocate -

20 MAR 2009

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Guwahati Bench

formed under the direction of the then T.D.E /Tezpur for necessary verification of documents before conferring temporary status to the casual labourers. Hence the certificates under question must have satisfied the necessary criteria of the DPC for conferring temporary status to the casual labourers. A Photostat copy of the DPC members is furnished for your reference.

Under the above facts and circumstances I would like to request you to kindly review the matter and drop the charges brought against me so that I can work for the Department being free from all mental anxiety.

WITH REGARDS.

Yours faithfully

[Signature]
(P. Pathak)
J.T.O., Biswanath charali.
Assam circle , BSNL.

Enclosures:

- (i) Photostat copy regarding nature of duty of cable splicers & line staffs published as per DG P&T No.10-20/76-WS-1 dt.8.8.77
- (ii) Photostat copy of the sanctioned estimates and sanction memo of funds to S.D.E.(P), B. Charali.
- (iii) Photostat copy of the letter No.CAO/MANAGEMENT/97-98 dated at Guwahati, the 13th May '98.
- (iv) Photostat copy of the letter No.269-10/89-STN New Delhi. 7-11-89.
- (v) Photostat copy of the DPC letter.

Certified to be true copy

Rajesh Bhagwani

- Advocate -

ATTN G.S.MATHUR

0145/242100

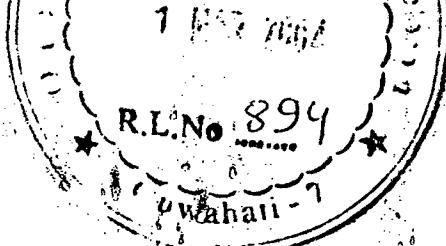
No. 8-135/2003-Vig.II

Government of India

Ministry of Communications & Information Technology

Department of Telecommunications

(Vigilance II Section)

West Block 1, Wing 2,
R.K. Puram, New Delhi-110 0661157 AM
R.L.No 894
Wahali-7ORDER

Shri P. Pathak, JTO, (DOB - 01.5.1965), Assam Circle, Guwahati, was proceeded against under Rule, 14 of the CCS (CCA) Rule, 1965 by the then Disciplinary Authority vide Memo No. Vig./Assam/DISC-III/2000-01/14 dated 31st July 2000, on the following Articles of charge:-

ARTICLE - I

While Shri P. Pathak JTO was posted and functioning as JTO under SDE (P), Biswanath Charali during the year 1996 failed to maintain absolute integrity and devotion to duty as much as he had countersigned 13 Nos. of false and fabricated experience certificates issued by S/Sh. Rajendra Rai, Sub-Inspector, Lambodar Jha, Sub-Inspector Rambilash Rai, Line Inspector, Sakaldeo Singh, Sub-Inspector Deonath Rai, Sub-Inspector in favour of S/Sh. Prabhat Sarma, Biren Das, Biren Bora, Pranjal Kataki, Maina Bora, Dharminendra Kr. Rai, Ambika Barman, Basanta Bhuyan, Prabhat Kalita, Dwipen Bhuyan, Kishore Kr. Pathak, Cheniram Sarma and Govinda Bora without going though any documentary evidence and verification and on the basis of his countersignature, the TDE Tezpur has regularized all the 13 persons vide Order No. X-1/CMPT/96-97/Con-7/Con dtd. 26/5/96 as Temporary Status Mazdoors and by the above acts, he contravened the provisions of Rule 3 (1) and (2) of CCS (Conduct) Rule, 1964.

On denial of the charges by the C.O., Shri Binode Pegu, DE(DL), O/o CGMT, Assam Circle, Guwahati and Shri Sakar Ch. Das, ADT (Legal), O/o CGMT, Assam Circle, Guwahati, were appointed as Inquiring Authority and Presenting Officer.

The Inquiry Officer has submitted his Inquiry Report on 17.12.2002. The I.O. in his findings has concluded that on the basis of documentary and oral evidence adduced in the case before him and in the view of the reasons discussed in the Inquiry Report, in his opinion that PREPONDERANCE OF PROBABILITY goes in favour of Shri P. Pathak, JTO. Accordingly, he held that the Article of Charges framed against Shri P. Pathak, JTO, under the above said Memo stands **NOT PROVED**.

The Disciplinary Authority disagreed with the I.O.'s report to the following extent :-

"It is a fact that the mazdoors were given the temporary status on the basis of the certificate issued by the Charge Officer (C.O.) who was the mustering officer for the casual mazdoors. The office copy of engagement of mazdoors should be with the C.O. as per the rules. The question of making payment through ACG-17, for the casual labourers who were subsequently given the temporary status of regular mazdoor does not arise; this scheme is applicable to those casual labourers mustered in the field and work continuously and drew their

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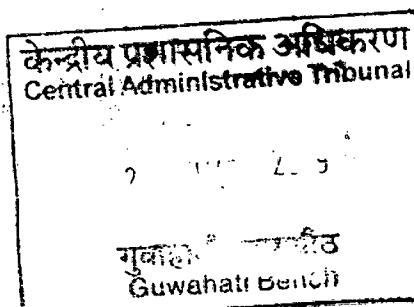
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25/3/04

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Rajesh Bhagat

Advocate -



20 MAR 2009

गुवाहाटी न्यायपाठ
Guwahati Bench

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wages through muster roll. The C.O. was to prove that he has issued a certificate/countersigned the certificates on the basis of the documents i.e. engagement of laborers for more than 240 days in a years. Thus, the charge against the C.O. has been proved".

The case was referred to the Central Vigilance Commission (CVC) for their advice and their advice is contained in I.D. Note No. 99/P&T/101 dated 25.09.2003.

A copy of the Inquiry Report alongwith a copy of CVC advice were forwarded to Shri P. Pathak, JTO, vide Memo No. 8-135/2003-Vig.II dated 30.10.2003 in order to give him an opportunity to make a representation on the Inquiry Report.

The C.O. has submitted his representation dated 18.12.2003 on the Inquiry Report. The representation submitted by the C.O. has been considered carefully by the Disciplinary Authority.

The C.O. has tried to shift entire responsibility on the TDE, Accounts Officer and the Selection Committee, which regularized the Casual Mazdoor on the basis of the experience certificates, countersigned by the C.O. He has tried to mix up the issue of making payments to mazdoors through the ACG-17 and countersigning the experience certificates for them. It is more than obvious that while countersigning the experience certificates of the casual mazdoors he did not bother to satisfy himself with the relevant records. Even if there were only single copies of ACG-17 on which the payments were made, he could always call for them from the accounts/records section to ascertain the actual experience put in by the mazdoors before certifying for the same. The Selection Committee regularized those mazdoors mainly based on his certificate.

Shri P. Pathak, JTO, (DOB - 01.5.1965), has failed to give convincing reply to refute the charges leveled against him.

Taking into account the findings of the Inquiring Authority, the records of the case and on an objective assessment of the facts and overall circumstances of the case in its entirety, I, J.M. Mishra, Adviser, Telecom Commission, hereby impose the penalty of reduction by one stage in the time scale of pay for a period of one year with immediate effect on Shri P. Pathak, JTO, (DOB - 01.5.1965), Assam Circle, Guwahati. It is further directed that Shri P. Pathak, JTO, will not earn increments of pay during the period of such reduction and on expiry of this period the reduction will have the effect of postponing his future increments of pay.

The receipt of this Order shall be acknowledged by Shri P. Pathak, JTO, (DOB - 01.5.1965), Assam Circle, Guwahati.

J. M. MISHRA
ADVISER
TELECOM COMMISSION

Shri P. Pathak,
JTO, (DOB - 01.5.1965),
Assam Telecom Circle,
GUWAHATI.

(Through the CGMT, BSNL, Assam Telecom Circle, Guwahati)

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Rajesh Majumdar.

- Advocate -

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केन्द्रीय प्रशासनिक अधिकारी ट्रिब्यूनल
Central Administrative Tribunal

20 MAR 2009

गुवाहाटी बाष्पीठ
Guwahati Bench

To

The Member Services (Appellate Authority)
Telecom Commission, New Delhi-1.

Through proper channel.

Dated at Biswanath Chariali the 28-4-2004.

Sub: Appeal petition under rule 23 of CCS (CCA) Rules 1965.

Sir,

I beg to prefer this appeal petition before your good self against the order No.8-135/2003-Vig II dated 23.02.2004. (Copy enclosed as Annexure-I A) issued by the Adviser (HRD), Telecom Commission, New Delhi which was received by me on 25.3.2004.

That I beg to state that a charge sheet was issued against me under Rule 14 of CCS (CCA) Rules 1965 that while functioning as JTO under SDE (P) Biswanath Chariali during the year 1996 failed to maintain absolute integrity and devotion to duty as much as the applicant countersigned 13 No of false and fabricated experience certificate issued by S/Sh . Rajendra Rai, SI, Lambodar Jha, SI, Rambilash Rai, LI, Sakaldeo Singh, SI and Deonath Rai, SI without going through any documentary evidence and verification and on the basis of countersignature the TDE Tezpur regularized all the 13 persons as Temporary status Mazdoors.

That an inquiry was conducted as per Rule 14 of CCS (CCA) Rules 1965. The Inquiry Officer submitted his report vide letter No DE (DI)/Disc-4/PP/2001-02 dated 17-12-2002 (Copy enclosed as Annexure-I B) to the Disciplinary Authority with his clear opinion that the charges are not proved . However the Disciplinary Authority disagreed with the findings of the Inquiry Authority vide order No. 8-135/2003-Vig. II dated 30/10/2003.(Copy enclosed as annexure-I C) The point of disagreement was, “ It is a fact that the mazdoors were given the temporary status on the basis of the certificate issued by the charged officer (C.O.) who was the mustering officer for the casual mazdoors. The office copy of engagement of mazdoors should be with the C.O. as per the rules. The question of making payment through ACG-17 for casual labourers who were subsequently given the temporary status of regular mazdoors does not arise; this scheme is applicable to those casual labourers mustered in the field and work continuously and drew their wages through muster roll. The C.O. was to prove that he has issued a certificate / countersigned the certificates on the basis of the documents i.e. engagement of labourers for more than 240 days in a year. Thus the charge against the C.O. has been proved.”

That I have submitted representation to the Adviser (HRD) on 11-12-2003 in respect of his point of disagreement. In his view temporary status was to be given to those casual labourers mustered in the field and drew their wages through muster roll. But it was not mentioned in DOT's letter No. 269-4/93-STN-II dated 17-12-1993 (Copy enclosed as Annexure-I D) that the temporary status was only to be given to those casual labourers engaged through muster roll. In Para 2 of DOT's letter No.269-4/93-STN-II dated 17-12-1993 it read, “ The matter has further been examined in this office and it is decided that all those casual mazdoors who were engaged by the Circles during the period from 31-3-85 to 22-6-88 and who are still continuing for such works in the Circles where they were

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Rajesh Majumdar

- Advocate -

20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the above said scheme."

That the DOT's order of conferring temporary status was clear, distinct and unambiguous. There is no scope for any misinterpretation. The casual labourers in question were given temporary status by TDE / Tezpur on recommendation of a selection committee who had verified the records in account section and SDE (P) office. Moreover in Telephone exchanges attendance register were maintained for making payments, which were also brought to record during inquiry. The contention that the JTOs are mustering officer is not correct. SDO/SDEs are issuing muster roll in the name of LI/SI
(Copy enclosed as Annexure II & III).

That the selection committee has verified the records as well as guidelines issued by DOT in respect of eligibility of casual labour grant of Temporary Status. If there were any instruction to confer temporary status only to those casual labour working on muster roll the selection committee would not have recommended the cases. Moreover the department has exonerated one selection committee member against whom charge sheet was issued for any lapses during the verification of records and whether terms and conditions of eligibility strictly followed during selection process. (Copy enclosed as Annexure-IVA). Apart from this one of my colleagues working in a neighbouring subdivision who has also countersigned the experience certificates of casual labourers working under him was charge sheeted and subsequently exonerated by the department. (Copy enclosed as Annexure IV B). However, there are also other evidences available in TDE office for example ACE-2 bill objection of A.E. Phones (Group) Biswanath Chariali against ACE-2 A/C No. 2 of 1991-92 for the period ending 2/7/91 for Rs.99, 988.66 wherein in page-2 Para 5 there was objection for making payment in ACG-17 which proves that there were casual labourers working in the field. There are also other A/C's objection letters issued from TDE office to A.E. Phones (Group) Biswanath Chariali which are also enclosed for ready reference. (Annexure V, VI, VII)

That nowhere in DOT's letter for conferring Temporary Status it was mentioned that temporary status was to be given only to those casual labour who were working on muster roll. The contention of Disciplinary Authority in this matter is not conforming to DOT's letter dated 17/12/1993.

In the circumstances I beg to appeal to your benign authority to exonerate from the punishment imposed on me, as decision of the Disciplinary Authority was not based on the guidelines of DOT. I further request your honour to allow me to submit the case before you in person along with my defence assistant Sri S.K. Sikidar, DE (SCP) Task Force Guwahati at your earliest convenience.

Enclo: As above.

Yours faithfully.

(P.K. Pathak.)
JTO/Biswanath Chariali

Copy to:
The Adviser (HRD).
Telecom Commission.
New Delhi.

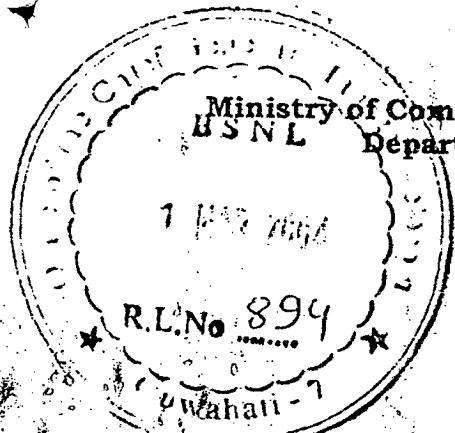
(P.K. Pathak.)
JTO/Biswanath Chariali.

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Loyd Mezam
Advocate

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ATTN G.S.MATHUR

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Ministry of Commun
B S N L Department of Telecommunications
(Vigilance II Section)

Information Technology
West Block 1, Wing 2,
R.K. Puram, New Delhi-110 066

Dated: 23.02.2004

ORDER

Shri P. Pathak, JTO, (DOB - 01.5.1965), Assam Circle, Guwahati, was proceeded against under Rule, 14 of the CCS (CCA) Rule, 1965 by the then Disciplinary Authority vide Memo No. Vig./Assam/DISC-III/2000-01/14 dated 31st July 2000, on the following Articles of charge:-

ARTICLE - I

While Shri P. Pathak JTO was posted and functioning as JTO under SDE (P), Biswanath Charali during the year 1996 failed to maintain absolute integrity and devotion to duty as much as he had countersigned 13 Nos. of false and fabricated experience certificates issued by S/Sh. Rajendra Rai, Sub-Inspector, Lambodar Jha, Sub-Inspector Rambilash Rai, Line Inspector, Sakaldeo Singh, Sub-Inspector Deonath Rai, Sub-Inspector in favour of S/Sh. Prabhat Sarma, Biren Das, Biren Bora, Pranjal Kataki, Maina Bora, Dharmendra Kr. Rai, Ambika Barman, Basanta Bhuyan, Prabhat Kalita, Dwipen Bhuyan, Kishore Kr. Pathak, Cheniram Sarma and Govinda Bora without going through any documentary evidence and verification and on the basis of his countersignature, the TDE Tezpur has regularized all the 13 persons vide Order No. X. 1/CMPT/96-97/Con-7/Con dtd. 26/5/96 as Temporary Status Mazdoors and by the above acts, he contravened the provisions of Rule 3 (1) and (2) of CCS (Conduct) Rule, 1964.

On denial of the charges by the C.O., Shri Binode Pegu, DE(DI), O/o CGMT, Assam Circle, Guwahati and Shri Sakar Ch. Das, ADT (Legal), O/o CGMT, Assam Circle, Guwahati, were appointed as Inquiring Authority and Presenting Officer.

The Inquiry Officer has submitted his Inquiry Report on 17.12.2002. The I.O. in his findings has concluded that on the basis of documentary and oral evidence adduced in the case before him and in the view of the reasons discussed in the Inquiry Report, in his opinion that PREPONDERANCE OF PROBABILITY goes in favour of Shri P. Pathak, JTO. Accordingly, he held that the Article of Charges framed against Shri P. Pathak, JTO, under the above said Memo stands **NOT PROVED**.

The Disciplinary Authority disagreed with the I.O.'s report to the following extent:-

"It is a fact that the mazdoors were given the temporary status on the basis of the certificate issued by the Charge Officer (C.O.) who was the mustering officer for the casual mazdoors. The office copy of engagement of mazdoors should be with the C.O. as per the rules. The question of making payment through ACG-17, for the casual labourers who were subsequently given the temporary status of regular mazdoor does not arise; this scheme is applicable to those casual labourers mustered in the field and work continuously and drew their

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Rajesh Rayana
Advocate

Central Administrative Tribunal
20 MAR 2009
Guwahati Bench

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wages through muster roll. The C.O. was to prove that he has issued a certificate/countersigned the certificates on the basis of the documents i.e. engagement of laborers for more than 240 days in a years. Thus, the charge against the C.O. has been proved".

The case was referred to the Central Vigilance Commission (CVC) for their advice and their advice is contained in I.D. Note No. 99/P&T/101 dated 25.09.2003.

A copy of the Inquiry Report alongwith a copy of CVC advice were forwarded to Shri P. Pathak, JTO, vide Memo No. 8-135/2003-Vig.II dated 30.10.2003 in order to give him an opportunity to make a representation on the Inquiry Report.

The C.O. has submitted his representation dated 18.12.2003 on the Inquiry Report. The representation submitted by the C.O. has been considered carefully by the Disciplinary Authority.

The C.O. has tried to shift entire responsibility on the TDE, Accounts Officer and the Selection Committee, which regularized the Casual Mazdoor on the basis of the experience certificates, countersigned by the C.O. He has tried to mix up the issue of making payments to mazdoors through the ACG-17 and countersigning the experience certificates for them. It is more than obvious that while countersigning the experience certificates of the casual mazdoors he did not bother to satisfy himself with the relevant records. Even if there were only single copies of ACG-17 on which the payments were made, he could always call for them from the accounts/records section to ascertain the actual experience put in by the mazdoors before certifying for the same. The Selection Committee regularized those mazdoors mainly based on his certificate.

Shri P. Pathak, JTO, (DOB - 01.5.1965), has failed to give convincing reply to refute the charges leveled against him.

Taking into account the findings of the Inquiring Authority, the records of the case and on an objective assessment of the facts and overall circumstances of the case in its entirety, I, J.M. Mishra, Adviser, Telecom Commission, hereby impose the penalty of reduction by one stage in the time scale of pay for a period of one year with immediate effect on Shri P. Pathak, JTO, (DOB - 01.5.1965), Assam Circle, Guwahati. It is further directed that Shri P. Pathak, JTO, will not earn increments of pay during the period of such reduction and on expiry of this period the reduction will have the effect of postponing his future increments of pay.

The receipt of this Order shall be acknowledged by Shri P. Pathak, JTO, (DOB - 01.5.1965), Assam Circle, Guwahati.

(J. M. MISHRA)
ADVISER
TELECOM COMMISSION

Shri P. Pathak,
JTO, (DOB - 01.5.1965),
Assam Telecom Circle,
GUWAHATI.

(Through the CGMT, BSNL, Assam Telecom Circle, Guwahati)

Certified to be true copy

Rajiv Deyguru
- Advocate -

केन्द्रीय प्राधानिक अधिकारण Central Administrative Tribunal
20 MAR 2009
गुवाहाटी न्यायालय Guwahati Bench

CONFIDENTIAL

No : DE (DI) / Disc-4 / PP / 2001-02

Dated at Guwahati , the 17-12-2002

INQUIRY REPORT

PRESENT : Shri Binode Pegu , D.E.(D.I) , o/o the CGMT , Assam Circle , Guwahati , the Inquiry Officer.

PRESENTING OFFICER : Shri Sankar Ch. Das , ADT (Legal) , O/o the CGMT, Assam Circle , Guwahati-7

DEFENCE ASSISTANT : Shri S.K. Sikidar , SDE (Survey) , O/o the DE (Survey) ,Guwahati

**DISCIPLINARY PROCEEDING UNDER RULE - 14 OF CCS (CCA) RULES , 1965
AGAINST SHRI PRAMOD KR. PATHAK , J.T.O. , BISWANATH CHARIALI , UNDER S.D.E. (P) , BISWANATH CHARIALI.**

The aforesaid Suspected Public Servant , Shri Pramod Kr. Pathak , JTO(hereinafter referred to as SPS) was charge sheeted vide Memo No:Vig/Assam/Disc-III/2000-01/4 dated 31-07-2000 , issued by the Chief General Manager Telecom , Assam Circle , Guwahati-7 (hereinafter referred to as Disciplinary Authority).

Shri P.D. Sonowal , D.E., the then DE (DI) was appointed earlier as Inquiring Authority to inquire into the charges against the said SPS vide No. Vig/Assam/Disc-III/00-01/33 dtd 08-11-2001 of the Disciplinary Authority .

Subsequently , the undersigned was appointed as Inquiring Authority vide No. Vig/Assam/Disc-III/2000-2001/43 dtd 11-01-2002 of the Disciplinary Authority to inquire into the charges against the SPS in place of Shri P.D. Sonowal , D.E.

Shri Sankar Ch. Das , the then ADT (Rectt.) , presently working as ADT (Legal) was appointed as the Presenting Officer (herein after referred to as P.O.) vide No Vig/Assam/Disc-III/32 dtd 08-11-2001 of the Disciplinary Authority to present the charges before the Inquiring Authority on behalf of the Disciplinary Authority ..

The SPS nominated Shri S.K. Sikidar , the then SDE (Survey) , O/o the DE (Survey), Guwahati-3 presently working as DE (T/F) , Dimapur , as his Defence Assistant (herein after referred to as D. A.) on behalf of the SPS along with declaration that he has got not more than 3 (three) pending departmental cases in hand. The I.O. permitted him to work as D.A. on behalf of the SPS.

The sitting started with its Preliminary Hearing on 07-03-2002, when the SPS categorically denied the charges levelled against him in the Charge Sheet and preferred to be heard in person. In consequence , the P.O. was directed to proceed with the presentation of the case against the SPS and to begin with , the P.O. got examined and inspected by the SPS all the documentary evidences as mentioned in Annexure – III of the Charge Sheet. The SPS was also provided Xerox copies of all the listed documents along with the Xerox copies of the earlier statements of listed witnesses by the P.O. Simultaneously , the SPS was directed to submit a list of additional documents if any required by

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- Advocate -

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him for preparing his defence. He was further directed to submit a list of defence witnesses, if any, which he wanted to produce and examine in support of his defence case.

The D.A. submitted his requisition for 6(six) additional documents which were allowed by the I.O. But the SPS / DA of SPS did not file requisition for any defence witness. The additional documents were discovered from its custodian. Only 3(three) additional documents were discovered from the custodian authority and got inspected by the SPS with his defence assistant and Xerox copies of which were also handed over to the SPS.

On completion of Preliminary Hearing, the Regular Hearing was started and held on 7th, 8th, 9th, 10th and 23rd of May'2002. On the 1st day of Regular Hearing i.e. on 07-05-2002, the P.O. adduced all the listed documents as per Annexure-III of the Charge sheet and all such documents have been taken on record as State Exhibits as under:

<u>Sl. No.</u>	<u>Particulars</u>	<u>Exhibit No.</u> (No. of pages)
1.	Letter No. G-1/ Genl Corr./95-96 dtd 12-03-96 of Sri G.S. Mathur, SDE(P), Biswanath Chariali to TDM, Tezpur regarding certificates For 27 Nos. casual labourers.	Ex-S-1 (1)
2.	List of 27 Casual Labourers recommended by Selection Committee conferring for Temporary Status.	Ex-S-2 (7)
3.	Certificate dtd 10-03-96 of Sri Prabhat Sarma issued by Sri Lambodar Jha, S.I.	Ex-S-3 (1)
4.	Certificate dtd 09-03-96 of Sri Biren Bora issued by Sri Lambodar Jha, S.I.	Ex-S-4 (1)
5.	Certificate dtd 09-03-96 of Sri Biren Das issued by Sri Sakaldeo Singh, S.I.	Ex-S-5 (1)
6.	Certificate dtd 09-03-96 Pranjal Kakati issued by Sri Sakaldeo Singh, S.I.	Ex-S-6 (1)
7.	Certificate dtd. 08-03-96 of Sri Moina Bora issued by Sri Rajendra Ray, S.I.	Ex-S-7 (1)
8.	Certificate dtd 08-03-96 of Sri Dharmendra Kr. Roy issued by Sri Rajendra Roy, S.I.	Ex-S-8 (1)
9.	Certificate dtd 08-03-96 of Sri Ambika Barman issued by Sri Ram Bilash Roy, L.I.	Ex-S-9 (1)
10.	Certificate dtd 08-03-96 of Sri Basanta Bhuyan issued by Sri Lambodar Jha, S.I.	Ex-S-10 (1)
11.	Certificate dtd 08-03-96 of Sri Prabhat Kalita issued by Sri Lambodar Jha, S.I.	Ex-S-11 (1)
12.	Certificate dtd 08-03-96 of Sri Dwipen Bhuyan issued by Sri Lambodar Jha, S.I.	Ex-S-12 (1)
13.	Certificate dtd 08-03-96 of Sri Kishore Kr. Pathak issued by Sri Ram Bilash Roy, L.I.	Ex-S-13 (1)
14.	Certificate dtd 08-03-96 of Sri Cheniram Sarma, issued by Sri Lambodar Jha, S.I.	Ex-S-14 (1)
15.	Certificate dtd Nil of Sri Govinda Bora issued by Sri Deonath Ray, S.I.	Ex-S-15 (1)
16.	Letter No. X-1/CMPT/96-97/Con-7 dtd 27-05-96 of TDE, Tezpur i.r.o. regularization of casual mazdobs as TSM.	Ex-S-16 (7)
17.	Attested copy of B.A. Part-II passed certificate.	Ex-S-17 (1)
18.	Attested copy of B.A. Part-II passed mark sheet.	Ex-S-18 (1)

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Rajesh Majhi

Advocate

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19.	Attested copy of Higher Secondary Pass Certificate of Sri Gagan Bhuyan.	Ex-S-19 (1)
20.	Attested copy of HSLC examination pass certificate of Sri Dharmendra Kr. Rai and admit card.	Ex-S-20 (1)
21.	Attested copy of HSLC examination pass certificate of Sri Dwipen Bhuyan.	Ex-S-21 (1)
22.	Attested copy of H.S. examination pass certificate and admit card of Sri Basanta Bhuyan.	Ex-S-22 (2)
23.	Joining Report dtd 30-05-96 of Sri Kishore Kr. Pathak as TSM	Ex-S-23 (1)
24.	Joining Report dtd 30-05-96 of Sri Khargeswar Borah (Moina Borah) as TSM.	Ex-S-24 (1)
25.	Joining Report dtd 30-05-96 of Sri Biren Das as TSM	Ex-S-25 (1)
26.	Joining Report dtd 30-05-96 of Sri Govinda Borah as TSM	Ex-S-26 (1)
27.	Joining Report dtd 30-05-96 of Sri Cheniram Sarma as TSM	Ex-S-27 (1)
28.	Joining Report dtd 30-05-96 of Sri Prabhat Sarma as TSM	Ex-S-28 (1)
29.	Joining Report dtd 30-05-96 of Sri Pranjal Kataki as TSM	Ex-S-29 (1)
30.	Joining Report dtd 30-05-96 of Sri Biren Bora as TSM	Ex-S-30 (1)
31.	Joining Report dtd 30-05-96 of Sri Basanta Bhuyan as TSM	Ex-S-31 (1)
32.	Joining Report dtd 30-05-96 of Sri Dharmendra Kr. Ray as TSM	Ex-S-32 (1)
33.	Joining Report dtd 30-05-96 of Sri Ambika Barman as TSM	Ex-S-33 (1)
34.	Joining Report dtd 30-05-96 of Sri Prabhat Kalita as TSM	Ex-S-34 (1)
35.	Joining Report dtd 30-05-96 of Sri Dwipen Bhuyan as TSM	Ex-S-35 (1)
36.	Letter No. E-198/OTBP/93-94/197 dtd 15-05-93 of TDE , Tezpur i.r.o. promotion order as LM-II of Sri Sakaldeo Singh w.e.f. 29-01-92	Ex-S-36 (1)
37.	Letter No: 210/BCR/Scheme/93-94/108 dtd 05-05-93 of TDE/Tezpur i.r.o promotion of Sri Ram Bilash Ray, LM-III/Line Inspector w.e.f. 01-07-92	Ex-S-37 (1)
38.	Promotion order as Lineman of Sri Lambodhar Jha w.e.f. 27-02-86 vide letter No. E-198/OTBP/88-89/149 dtd 20-07-88 of TDE , Tezpur	Ex-S-38 (1)
39.	Promotion order as Sub-Inspector of Sri Rajendra Ray vide letter No. E-198/OTBP/90-91/15 dtd 07-06-90.	Ex-S-39 (2)
40.	Forwarding letter of Sri Sri G.S. Mathur , SDE(P) , B. Chariali to TDE, Tezpur along with the documents of 27 candidates.	Ex-S-40 (3)
41.	Gradation List of 27 casual labourers of B. Chariali	Ex-S-41 (2)
42.	Letter No. E-38/CMPT/Vol-II/96-97/15 dtd 30-03-96 from TDE / Tz to DGM (Admn) , O/o the CGMT , Assam Circle , Guwahati regarding engagement of casual labourers.	Ex-S-42 (1)
43.	Letter No. X-1/CMPT/TZ/95-96/Confld./1 dtd 25-03-96 of TDE/Tz i.r.o constitution of selection committee for conferring Casual Labourers to TSM.	Ex-S-43 (1)
44.	Letter No. E-38/CMPT/94-95/168 dtd 17-02-95 of TDE, Tezpur to ADT (E&R) , C.O. , i.r.o nil report of casual mazdoors w.e.f. 31-12-93 Onwards.	Ex-S-44 (1)
45.	Letter No. E-38/CMPT/Vol-II/123 dtd 07-12-93	Ex-S-45 (1)
46.	Letter No. 269-4/93-STN-II dtd 17-12-93 from ADG (STN), New Delhi , i.r.o. regularization of casual labourers engaged in Circle After 30-03-85 and upto 22-06-88.	Ex-S-46 (2)
47.	Letter No. 289-8/93-STN dtd 27-07-93 from ADG (STN), New Delhi	Ex-S-47 (3)
48.	No. RECTT-3/10/Part-III/3 dtd 26-08-93	Ex-S-48 (1)
49.	No. E-38/CMPT/Vol-III/96-97/15 dtd 20-08-96 of TDE , Tz to DGM (Admn) , C.O. i.r.o. engagement of casual labourers.	Ex-S-49 (1)

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Rajiv Bhagat

- Advocate -

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50.	J/Reports of Sri Ram Bilash Ray as L.I. :-	Ex-S-50 (1)
51.	J/Reports of Sri Lambodar Jha as S.I.	Ex-S-51 (1)
52.	J/Reports of Sri Sakaldeo Singh as S.I. (O)	Ex-S-52 (1)
53.	J/Reports of Sri Rajendra Ray - II as S.I.	Ex-S-53 (1)
54.	Seizure Memo dtd 11-09-98	Ex-S-54 (1)
55.	Seizure Memo dtd 29-08-98	Ex-S-55 (1)
56.	Seizure Memo dtd 21-04-98	Ex-S-56 (2)
57.	Seizure Memo dtd 01-08-97	Ex-S-57 (1)
58	Seizure Memo dtd 01-08-97 (Not produced)	
59	Seizure Memo dtd 06-11-98 (Not produced)	
60	A / Register of TSM of GHG Exchange from June'96 to April'98	Ex-S-60 (24)
61	A / Register of TSM of Dhalaibil Exge. From June'96 to Feb'97	Ex-S-61 (8)
62	A / Register of TSM of Dhalaibil Exge from Mar'97 to Dec'97	Ex-S-62 (6)
63	A / Register of TSM of Pavoi (W) from June'96 to Dec'97	Ex-S-63 (19)
64	A / Register of TSM of Sotea Exge from June'96 to Dec'97	Ex-S-64 (20)
65	A / Register of TSM of Gahpur Exge from June'96 to April'98	Ex-S-65 (23)
66	See Sl. No. 60.	
67	A / Register of TSM of B. Chariali from June'96 to March'98	Ex-S-67 (24)
68	A / Register of TSM of Bargang Exge from July'96 to April'98.	Ex-S-68 (23)
69	A / Register of TSM of Bedeli Exge from July'96 to April'98	Ex-S-69 (24)
70	A / Register of TSM of Jamuguri Exge from June'96 to Dec'97	Ex-S-70 (20)
71	FIR of case No. RC 11 (A) / 97-SHG	Ex-S-71 (21)
72	No. TDM/Tez/1005/CBI dtd 11-08-98 of TDM, Tezpur i.r.o.	Ex-S-72 (1)
	non availability of ACG-17	
73	Not produced.	

Also in course of Regular Hearing, the P.O. produced only 9 (nine) witnesses out of 11 (eleven) listed witnesses as per Annexure-IV of the charge sheet, who were examined-in-chief by the P.O. and cross-examined by the D.A. They are as under :

1. SW-1 Sri Binay Krishna Goswami, the then TDM, Tezpur.
2. SW-2 Md. Islam Ahmed, CAO, O/o the TDM, Nagaon.
3. SW-3 Sri Sandhan Ch. Deka, Sr. TSO, O/o the SDE (P), Grp., Biswanath Chariali
4. SW-4 Sri Girish Saikia, the then JTO under SDE (P) (Grp), Biswanath Chariali
5. SW-5 Sri Upen Swargiary, the then SR. A.O., O/o the TDE, Tezpur.
6. SW-6 Sri Ajit Kr. Sarkar, the then SDE (HRD), O/o the TDE, Tezpur.
7. SW-7 Sri Dharmeswar Payeng, the then SDOP, Tezpur.
8. SW-10 Sri Anil Ch. Dutta, P/M under SDE(P), (Grp), Biswanath Chariali.
9. SW-11 Sri K. Barman, Inspector, CBI, ACB, Guwahati.

b. P. m.
1.0. On the conclusion of the prosecution case, the SPS filed statement of defence under CCS (CCA), Rules-14 (16) with a copy endorsed to the P.O. dtd 11-05-2002 which was received on 13-05-2002

In the statement of defence, the defence claimed that the prosecution could not prove the charges beyond reasonable doubt and to the hilt. The prosecution produced all total 9 (nine) state witnesses out of 11 (eleven) listed witnesses. Most of the witnesses were irrelevant in the case and thus reflects the incompetence of the prosecution.

That the prosecution could not prove through its documentary and oral documents that the charged officer made the counter signature without verification. SW-3 in his reply to D.A.'s

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Advocate

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Q.No.3. categorically mentioned that he had seen them working in the sub-division but could not tell when they were working and when they (Mazdoors in question) were kept idle. From this remark of the SW-3, it could be construed that the casual labourers were working in the sub-division since long.

Last but not least the meaning of counter signature is "add confirming signature to" justifies the counter-signature of charged officer to confirm the signature of the SI / LI.

In this context it is concluded that the alleged charges are not proved substantially and the prosecution was not able to sustain the charges.

On commencement of the defence case the SPS adduced the following defence documents which were taken on records as under :

1.	Letter No. X-1/CMPT/96-97/Con. 7 dtd 20-10-97	-----	Ex-D-1
2.	Attendance Register of DRM (Two Nos.)		
	(i)	-----	Ex-D-2 (i)
	(ii)	-----	Ex-D-2 (ii)
3.	Absentee statement (Total 4 Nos.)		
	(i) Period from 11-11-93 to 11-12-93	-----	Ex-D-3 (i)
	(ii) " " 11-02-94 to 10-03-94	-----	Ex-D-3 (ii)
	(iii) " " 11-02-95 to 10-03-95	-----	Ex-D-3 (iii)
	(iv) " " 11-03-96 to 10-04-96	-----	Ex-D-3 (iv)
4.	Name of Telephone Exchange under SDO(P), Grp-B, -----	Ex-D-4	
	Biswanath Chariali.		
5.	Sanctioned Estimate Register w.e.f. 1992 to 1996 (one No.)	-----	Ex-D-5

No witness was produced by the SPS and hence no oral evidence was recorded.

The SPS was then questioned by the I.O. under Rule-14 (18) of CCS (CCA) Rules 1965 which was recorded.

At the end of Oral Hearing, both the parties were directed to submit their respective briefs within stipulated time. The prosecution brief of the P.O. dtd 12-06-2002 was received on 19-06-2002 and the defence brief of the SPS dtd 26-07-2002 was received on the same day, i.e., 26-07-2002.

Thus all the documentary evidences adduced and submissions made were thoroughly examined. At the same time both the parties (i.e. Prosecution and the Defence) were afforded full and reasonable opportunity which they availed to the best of their satisfaction and at the same time there was absolutely no complaint in this regard from either side.

B. Pathak
1.01

The following Article of Charges were framed against Sri Pramod Kr. Pathak, the SPS, as contained in Annexure-I and Annexure-II to the Memorandum of charge sheet.

Annexure - I

Statement of Article of Charge : framed against Sri P. Pathak, JTO, the SPS.

While Sri P. Pathak, JTO was posted and functioning as JTO under SDE (P), Biswanath Chariali during the year 1996, failed to maintain absolute integrity and devotion to duty as much he had counter signed 13 Nos. of false and fabricated experience certificate issued by S/Sh Rajendra

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- Advocate -

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Rai , Sub-Inspector , Lambodar Jha , Sub-Inspector , Rambilash Rai , Line Inspector , Sakaldeo Singh , Sub-Inspector , Deonath Rai, Sub-Inspector in favour of Sri Pravat Sarma , Biren Das, Biren Bora , Pranjal Kakati , Maina Bora , Dharmendra Kr. Rai, Ambika Barman, Basanta Bhuyan , Prabhat Kalita , Dwipen Bhuyan , Kishore Kr. Pathak, Cheniram Sarma and Govinda Bora without going through any documentary evidence and verification and on the basis of his counter signature , the TDE , Tezpur has regularized all the 13 persons vide order No. X-1/CMPT/96-97/Con.7 dtd 27-05-96 as Temporary Status Mazdoors and thereby the above acts , he contravened the provision of Rule 3(1) and (2) of CCS (Conduct) Rule , 1964.

Annexure - II

Statement of imputation of misconduct or misbehaviour in support of the Article of Charges framed against Sri P..Pathak , JTO , the SPS.

Sri P. Pathak was posted and functioning as JTO under Sub-Divisional Engineer (Phones) , Biswanath Chariali , Sonitpur , Assam during the year 1996.

It is alleged that the DOT had banned the engagement of casual labourers in Project Circles / Electrification Circles by a circular / letter No. 270/6/84-STN , New Delhi dtd 30-03-85 of S. Krishnan , Director (STN) , Posts and Telegraph.

It is alleged that a circular / letter No. 269/4/93-STN-II dtd 17-12-93 was issued by the Asstt. Director General (STN) , Deptt of Telecom , New Delhi in the subject matter of "Casual labourers (grant of temporary status and regularization) scheme , 1989 engaged in circles after 30-03-85 and upto 22-06-88" . This circular / letter extending the temporary status to all those casual mazdoors who were engaged by the Project Circles / Electrification Circles during the period from 31-03-85 to 22-06-88 and who are still continuing for such works where they were initially engaged by violating banning order dtd 30-03-85 and who are not absent for more than 365 days counting from the date of issue of this order be brought under this scheme.

It is alleged that incorporating all the conditions in circular / letter dtd 17-12-93 of DOT , S/Sh Rajendra Rai , Sub-Inspector , Lambodar Jha, Sub-Inspector, Rambilash Rai , Line Inspector , Radharam Deka , Line Inspector , Deonath Rai , Sub Inspector all under SDE(P) , Biswanath Chariali has issued 27 Nos. false and fabricated experience certificate in favour of 27 persons wherein they have been shown casual labours and working from 1988 to 1996 (February) continuously and No. of days they worked shown in the said certificate.

It is alleged that (1) Sri Rajendra Rai had issued 7 Nos. of false and fabricated certificates to 7 persons they are :

1. Sri Pawan Kataki , S/o Loknath Kakati of B. Chariali.
 2. Ms. Juri Sarma , D/o Golap Ch. Sarma , B. Chariali.
 3. Sri Jitu Sarma alias Ratul Sarma , S/o Lt. Rabiram Sama, Bogaon , B. Chariali
 4. Sri Gagan Bhuyan , S/o Lt. Phuleswar Bhuyan of Barobhuyan , B. Chariali.
 5. Smt. Tunmoni Saikia, D/o Lt. Rabi Saikia , Kashgaon , B. Chariali.
 6. Sri Moina Bora , S/o Lt. Laburam Bora of Rangamati , B. Chariali.
 7. Sri Dharmendra Kr. Rai, S/o Sri Rajendra Kr. Rai , B. Chariali.

(2) Sri Lambodar Jha , the then S.I. had issued 6 Nos. of false and fabricated certificate in favour of 6 persons . They are :

(i) Sri Prabhat Sharma, S/o Lt. Gargeswar Sharma , of Sootea.
 (ii) Sri Biren Bora , S/o Lokeswar Bora pf Sootea.
 (iii) Sri Basanta Bhuyan , S/o.Lt. Dhaturam Bhuyan of Gopalpur , Sonitpur.

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Advocate

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- (iv) Sri Prabhat Kalita , S/o Lt Dhiradutta Kalita of Naharani , Sonitpur.
- (v) Sri Dwipen Bhuyan , S/o Sri Sadhan Bhuyan of Barochuk.
- (vi) Sri Cheniram Sharma , S/o Lt. Nareswar Sharma of Naharani.

On the basis of his certification , the TDE , Tezpur had awarded the Temporary Status to all 13 persons vide letter No. X-1/CMPT/96-97/Con-7 dtd 27-05-96 with immediate effect and all the 13 persons had joined as TSM and drawing salary / wages till date .

Thereby all the acts of Sri P.K. Pathak contravened the provision of Rule 3(1) & (2) of CCS (Conduct) Rule , 1964.

DISCUSSION :

The crux of the charge is that while Sri Pramod Kr. Pathak , JTO was posted and functioning under SDE (P) , Grp. , Biswanath Chariali during 1996 failed to maintain absolute integrity and devotion to duty as much as he had countersigned 13 Nos. of false and fabricated experience certificates issued by Sri Rajendra Rai , S.I. and Sri Lambodar Jha , S.I in favour of Sri Pawan Kataki , M/s Juri Sarma , Sri Jitu Srama, Sri Gagan Bhuyan , Smt Tunmoni Saikia , Sri Moina Bora , Sri Dharmendra Kr. Roy, Sri Prabhat Sarma, Sri Biren Bora, Sri Basanta Bhuyan, Sri Prabhat Kalita, Sri Dwipen Bhuyan and Sri Cheniram Sarma respectively without going through any documents and verification. On the basis of his certification / counter signature the TDE , Tezpur had awarded Temporary Status to all 13 persons vide letter No. X-1/CMPT/96-97/Con.7 dtd 27-05-96 with immediate effect and all the 13 persons had joined as TSM and drawing salary / wages etc. till date.

The P.O. produced all the listed documents except Sl. Nos. 58, 59 & 73 which are seizure memos dtd 01-08-97, 06-11-98 and Rule 11 (Part-III of CCS Rules, respectively. Ex-S-1 (i) is the letter No. G-1/Genl. Corr./95-96 dtd 12-03-96 of Sri G.S. Mathur , the then SDE (P), Biswanath Chariali and Ex-S-2 are the list of 27 Casual Labourers recommended by the Selection Committee. From Ex-S-3 to Ex-S-15 are the certificates issued by the Said Sri Rajendra Rai , SI and Sri Lambodar Jha , SI in favour of the said 13 (thirteen) casual labourers . Ex-S-16 is the letter by which the Casual Mazdoors were regularized. From Ex-S-17 to Ex-S-22 are the attested copies of H.S.L.C. and H.S. passed certificates and mark sheet.

From Ex-S-23 to Ex-S-35 are only the joining report of the said casual mazdoors as TSM. From Ex-S-36 to Ex-S-39 are promotion order of L.M / S.I. Excepting Ex-S-1 to Ex-S-24 , all other listed documents are not relevant to the case. In all the certificates issued to the said 13 (thirteen) casual labourers it is proved that the said certificates were issued by Sri Rajendra Rai , S.I. and Sri Lambodar Jha , SI respectively and countersigned by Sri P.K. Pathak, JTO and Sri G.S. Mathur , SDE (P), Biswanath Chariali, respectively, the signatures of which were identified by SW-3 & SW-4 respectively. In all 9 (nine) state witnesses were produced by the state in support of the charges framed against the SPS. However, none of the state witnesses were deposed either in support of the charges or against the SPS.

B. Pari

As regard to the engagement of casual mazdoors during the relevant period , i.e. , from 1988 to 96 it is evident from the Defence Exhibit-5 , the register of Sanctioned Estimates that there was tremendous expansion works in the sub-division , which necessitated engagement of casual mazdoors by the officials working there, such as L.I , S.I , L.M , P. M. etc. From Ex-D-3 (i), (ii), (iii) & (iv) which are the absentee statement of the SDE (P) , Grp. , Biswanath Chariali shows that there was one JTO at Biswanath Chariali under whom so many staff were working such as TTA , PI , Tech , LI , SI , LM , PM etc. during the years 1993, 1994 and 1995. Also Ex-D-4 shows that there

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Rajesh Majumdar

- Advocate -

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were so many exchanges under SDE(P) Grp. , Biswanath Chariali such as S.B.M. C-DOT , 128P C-DOT and MARR during the relevant period. Therefore , for estimated expansion works and day to day maintenance work there was every possibility of engagement of casual labourers on temporary basis , though it was banned by the DOT. So , it is quite possible that the casual mazdoors who were later regularized as TSM were working on casual basis in the relevant period from 1988 to 1996. As DOT banned for engagement of casual labourers after 30th March / 1985 , hence record was not shown as casual labourer working at that period and that may be the reason why the concerned TDE gave their report as NIL Engagement Report of casual mazdoors though actually there was some engagement of casual mazdoors for estimated project works and day to day maintenance works for the Division , the payment of which were made on ACG-17. Therefore, it is quite evident that there was an engagement of casual labourers in the relevant period due to the work load as expansion work in Assam Circle was in fact started from 1986 after the Assam Accord. Defence Exhibit 2 (i) & (ii) , which is rough register of casual labourers for the years 1991 and 1992 respectively , indicate the names of most of the casual mazdoors regularized in 1996. SW-3 , Sri Sandhan Ch. Deka , the then Sr. TOA , O/o the SDOP , Grp, Biswanath Chariali , stated in reply to Q.No.2. of D.A. that he can identify the mazdoors because they were working in the sub-division in question. Hence , the allegation that false and fabricated experience certificates issued by Sri Rajendra Rai , S.I , and Sri Lambodar Jha , S.I. were counter signed by the SPS without verification of documents is not reasonable.

As regard payment documents of casual labourers , i.e. , ACG-17 , ACE-2 & ACE-3 vouchers , SW-1 , Sri B.K. Goswami , the then TDM , Tezpur stated that the ACG-17 (Payment vouchers) are not available / traceable in the O/O the TDM / Tezpur during 1998. In this connection the statement given by the SW-2 , Md. Islam Ahmed , the then AO (Cash) , O/o the TDM Tezpur on 03-07-98 , which was agreed by SW-2 during the Inquiry stated that all the bills and vouchers submitted by SDOs / SDEs on temporary advances are kept under the custody of AO (Cash) till audit and after audit normally handed over to Administration headed by TDM / TDE for preserving records and that there was no circular / order regarding period for preservation of bills and vouchers on Temporary Advances , from the Administration. Generally after audit , AO (Cash) has handed over such documents to Administration for preservation. He has no idea whether ACG-17 with ACE-2 and ACE-3 are in the store room but definitely these should be there if officially not destroyed. Therefore , it is evident that the said documents should be there if not officially destroyed in the O/o the TDM , Tezpur which , of course could not be traced out by the DE (P&A) , O/o the TDM , Tezpur . These payment vouchers are vital documents without which the fact cannot be ascertained.

B. P. Dey

SW-11 , stated that the SPS countersigned the certificates issued by S.I.s as a token of correctness but he did not specify whether the token of correctness is for certificates issued or for the correctness of signature of the officials who have issued the said certificates. In the OXFORD ENGLISH MINI DICTIONARY it is given the meaning of countersign as " add a confirming signature to". Also in the CONCISE OXFORD ENGLISH DICTIONARY the meaning of COUNTERSIGN is given " Add signature to (Document already signed) ratify" . Hence , as per dictionary meaning , the SPS had countersigned the certificates as a token of correctness of signature of the said issuing officials. The statement given by SW-11 that since documents regarding engagement of casual labourers and payment vouchers were not traceable / available in the TDM , Tezpur office and so it was confirmed about non-verification of the relevant documents. It seems the conclusion of SW-11 , the Preliminary Investigation CBI officer is hypothetical only. It is not judicious to conclude any matter hypothetically. The P.O. on behalf of the prosecution , could not produce any documentary evidence as well as oral evidence that the SPS countersigned 13 (thirteen) Nos. of experience certificates issued by Sri Rajendra Rai , S.I. and Sri Lambodar Jha , S.I. in favour of the said 13 (thirteen) casual mazdoors in question , without going

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Rajendra Dey,
- Advocate

20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

(Page-9)

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through any documentary evidence and verification. In this connection, the statement given earlier by SW-2 is worth mentioning. SW-2 stated on 03-07-98 that temporary advances are drawn by SDOs / SDEs of Sub-division from concerned TDM / TDE for (1) Capital Works & (2) Maintenance Works. Capital Works, i.e., Circle estimated project works and Maintenance Works includes the engagement of mazdoors, payment of electricity bill and other contingency of works. This temporary advances were for monthly basis and after the end of the month, the SDOs / SDEs have submitted detailed bills in the form of ACE-2 & ACE-3. SW-2 also stated that regarding engagement of labourers in maintenance works, payments are made to such labourers by SDOs / SDEs through their JTOs / LIs / S.I.s / L.M. etc and receipt signatures are obtained in ACG-17 from the labourers. At the end of the month, JTOs have submitted detailed bills including ACG-17 to concerned SDOs / SDEs / and SDOs / SDEs after compiling all the relevant bills, submitted their bills in the form of ACE-2 and ACE-3 to concerned TDM / TDE. Thereafter, TDM / TDE send all the bills to Accounts Section headed by Accounts Officer (Cash) for checking and proper accounting. AO (Cash) then checked all the bills and vouchers and after passing of ACGs by TDM / TDE, AO(Cash) has passed Pay Order and charged in the Cash Book for adjustment of Temporary advances. This is an enough proof that how a division runs day to day and hence ACE-2, ACE-3 & ACG-17, the payment vouchers should be there in the TDM, Tezpur office. The P.O. could not establish that casual laborers were not engaged during the relevant period and also that payment was not made to the engaged casual labourers during the relevant period.

During cross-examination in reply to Q.No.1. of the D.A., SW-11 stated that the certificates issued and countersigned by the JTO and SDE were not engagement document for service record. But it is alleged in Annexure-I, i.e., Statement of Article of charges, that the SPS countersigned false and fabricated certificates issued by Sri Rajendra Rai, S.I and Sri Lambodar Jha, S.I. in favour of casual mazdoors and Sri P. K. Pathak, JTO countersigned the said certificates without going through any documentary evidence and verification and on the basis of his countersignature, the TDE, Tezpur has regularized all the 13 (thirteen) persons vide order No. X-1/CMPT/96-97/Con-7 dtd 27-05-96 as Temporary Status Mazdoors. As per the evidence given by SW-11, the investigating CBI Officer, if the certificates issued by the said S.I.s and countersigned by the JTO, Mr. P.K. Pathak, the SPS, were not engagement documents and then how the authority, i.e., Selection Committee and the TDE / Tezpur relied upon the said certificates for approving these casual mazdoors concerned and given them the status of TSM. Hence, so long the documentary evidences, i.e., payment vouchers like ACE-2 and ACE-3 including ACG-17 are not produced, the fact cannot be ascertained fully. SW-5, Sri Upen Swargiary, one of the members of the Selection Committee, stated in reply to Q.No.2. of the D.A. that in the department no such order to keep the service record engaged by the field staff. The records are kept by the officials / officers under whom they are working and on the basis of that the department is regularizing the mazdoors as per orders received from the DOT from time to time.

B. P. S.

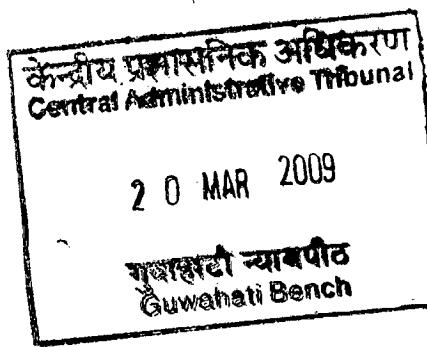
SW-6, Sri A.K. Sarkar, another member of the Selection Committee stated in reply to Q.No.4 of the D.A., that he had recommended the case after checking all available documents / certificates supplied and placed on the table of the Selection Committee. In reply to Q.No.4. of I.O., SW-6 also stated that the available documents means the certificates issued by the respective S.I.s / L.I.s / P.I. etc. and countersigned by the respective JTOs / SDEs.

Sw-7, Sri Dharmeswar Payeng, also one of the Selection Committee Member, in reply to Q.No.2. of the P.O. particularly when asked that what are the evidences required to be recommended by the Selection Committee for conferring TSM from casual mazdoor stated that actually from time to time department issues guidelines regarding criteria for conferring the TSM such as minimum period of working days in a year, continuous permissible absence, etc. On the

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Rajesh Payeng.

- Advocate -



basis of that after getting records from the Sub-division, the Selection Committee recommended the names of casual mazdoors for conferring TSM. SW-7 also stated that actually they have (Selection Committee) been supplied some documents by the TDE, Tezpur office regarding engagement particulars, age and qualification particulars and also the certificates issued by S.I./ L.I./ P.I. etc., countersigned by JTOs / SDEs with No. of working days, on the basis of that Selection Committee checked and verified.

None of the state witnesses, i.e., SW-5, SW-6 and SW-7, who were also the member of the said Selection Committee for conferring TSM to the casual labourers did not raise any question that the said experience certificates issued by various S.I.s, P.I.s, L.I.s etc. and countersigned by the JTOs / SDEs were false and fabricated certificates. If the Selection Committee members have any doubt regarding genuineness of the said certificates, issued and countersigned by the respective officials / officers, they could have given note for further verification of the relevant documents to discover the facts. But the Selection Committee accepted the said experience certificates and recommended for conferring TSM to them and accordingly the then TDE, Tezpur conferred the said casual mazdoors in the status of TSM. Hence, the SPS, have no concern about the conferring of TSM to the said casual mazdoors and therefore, the allegation that on the basis of his (the SPS) countersignature, all the 13 (thirteen) casual mazdoors were regularized by the TDE, Tezpur as TSM is not correct. The P.O. argued nothing to establish charges framed against the SPS instead he is simply repeating the charges framed against the SPS in his Prosecution Brief.

Lastly, it is to be mentioned that in Annexure-II of the Charge Sheet Memo, it is alleged that on the basis of his (the SPS) certification, the TDE, Tezpur had awarded the Temporary Status to all 13 (thirteen) persons vide letter No. X-1/CMPT/96-97/Con-7 dtd 27-05-96 with immediate effect and all the 13 (thirteen) persons had joined as TSM and drawing salary / wages etc. till date. It is improper on the part of the Disciplinary Authority to allege the SPS as certifying officer because he had only countersigned the certificates issued by Sri Rajendra Rai, S.I. and Sri Lambodar Jha, S.I.

CONCLUSION

The Presenting Officer could not establish fully the charges levelled against the SPS, Sri Pramod Kr. Pathak, J.T.O. with the help of documentary and oral evidences produced.

Thus, in view of the aforesaid discussion and considering the facts, circumstances and evidences on record, I am of the opinion that PREPONDERANCE OF PROBABILITY goes in favour of the SPS, Sri Pramod Kr. Pathak, J.T.O. under SDE (P), Grp., Biswanath Chariali.

Accordingly, I hold that the Article of Charges framed against the SPS, under Annexure - I & II to the Memorandum of charges, could not be substantiated.

In other words, the levelled Charges against Sri Pramod Kr. Pathak, J.T.O., the SPS, stands NOT PROVED.

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Rajesh Majumdar.

- Advocate -

B. PEGU
17-12-2009

(B. PEGU)
Inquiry Officer
D. I. O.
O/o the CGMT
Assam Circle, Guwa.

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20 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

No. 8-135/2003-Vig.-II

Government of India

Ministry of Communications & Information Technology

Department of Telecommunications

(Vigilance II Section)

West Block 1, Wing 2,
R.K. Puram, New Delhi-66

Dated: 30.10.2003

MEMORANDUM

A copy of the Inquiry Report given by Shri B. Pegu, Inquiry Officer and D.I.O. O/o the CGMT, Assam Circle, Guwahati, in connection with inquiry under Rule, 14 of CCS (CCA) Rules, 1965 against Shri P. Pathak, JTO, Assam Circle, Guwahati, is enclosed. The Disciplinary Authority disagrees with the I.O.'s report to the following extent :-

"It is a fact that the mazdoors were given the temporary status on the basis of the certificate issued by the Charge Officer (C.O.) who was the mustering officer for the casual mazdoors. The office copy of engagement of mazdoors should be with the C.O. as per the rules. The question of making payment through ACG 17 for the casual labourers who are subsequently given the temporary status of regular mazdoor does not arise; this scheme is applicable to those casual labourers mustered in the field and work continuously and drew their wages through muster roll. Now, the C.O. has to prove that he has issued a certificate/counter-signed the certificates on the basis of the documents i.e. engagement of laborers for more than 240 days in a years. Thus, the charge against the C.O. has been proved".

If, Shri P. Pathak, JTO, wishes to make any representation or submission, he may do so in writing to the Disciplinary Authority within 15 days of receipt of this Memorandum, failing which it will be presumed that he has no representation to make and further proceedings against him are liable to be held ex-parte by the Disciplinary Authority.

A copy of the advice of the Central Vigilance Commission (CVC) in their I.D. Note No. 99/P&T/101 dated 25.9.2003, is enclosed.

The receipt of this Memorandum shall be acknowledged by Shri P. Pathak, JTO.

Encls. : 1. Inquiry Report
2. CVC advice dated 25.9.2003

Ans
(B. B. SINGH)
Adviser (HRD),
Telecom Commission

Shri P. Pathak, JTO,
Assam Telecom Circle,
GUWAHATI.

(Through the CGMT, BSNL, Assam Telecom Circle, Guwahati)

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Rajesh Hazarika

— Advocate

20 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

No 269-4/93-STH
Department of Telecommunications
STN Section

New Delhi

Dated 17-DEC-1993

TO

All Heads of Telecom, Circle/Metro Telecom. Dist

All Heads of other Administrative Offices

All Heads of Ntce. Regions/Project Circles.

Subject: Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989 engaged in Circles after 30.3.85 and upto 22.6.88.

Sir,

I am directed to refer to this office order No. 269-4/93-STH dated 25th June, 1993 wherein orders were issued to extend the temporary status to all those Casual Mazdoors who were engaged by the Project Circles/Electrification Circles, during the period 31.3.85 to 22.6.88 and who were still continuing for such works where they were initially engaged and who were not absent for the last more than 365 days counting from the date of issue of the above said orders.

2. The matter has further been examined in this office and it is decided that all those casual mazdoors who were engaged by the Circles during the period from 31.3.85 to 22.6.88 and who were still continuing for such works where they were initially engaged and who were not absent for the last more than 365 days counting from the date of issue of this order, be brought under the said scheme.

3. The engagement of Casual Mazdoors after 31.3.85 in violation of the instructions of the Head Quarter has been viewed very seriously and it is decided that all past cases wherein recruitment has been made in violation of instructions of the Head Quarter dated 30.3.85 should also be analysed and disciplinary action be initiated against defaulting officers.

4. it has, also been decided that engagement of any casual mazdoor after the issue of this order should be viewed very seriously and

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Rajesh Majumdar

Advocate-

20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

brought to the notice to the appropriate authority for taking prompt and suitable action. This should be the personal responsibility of the Heads of Circles, concerned .../Class II officers and amount paid to such casual mazdoors Wages should be recovered from the person who had recruited/engaged \casual labour in violation of these instructions.

5. It is further stated that the serving casual mazdoors who have not rendered at least 240 days (206 days in the case of Administrative Officers ... 5 days a week) of service in a year on the date of these orders should be terminated after following the conditions as laid down in I.D. Act, 1947 under Section 25....

6. This orders are issued with the concurrence of Member (Finance) vide U.O No. 3811/93-FA-I dated 1.12.93.

Hindi version follows.

Yours faithfully

(SK Dhawan)
ASSISTANT DIRECTOR GENERAL (ST)

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Rajesh Majumdar.

- Advocate

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मंदस इंजीनियर, तार
isional Engineer, Telegraphs

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Rajah Nagara.

- Advocate -

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2009

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

77
FNNL 14 (14)
No. 8-163/2000-Vig-II
Government of India
Ministry of Communication & Information Technology
Department of Telecommunications
(VIGILANCE II SECTION)

लेन्ट्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
20 MAR 2009
गुवाहाटी न्यायालय
Guwahati Bench

West Block No.1, Wing No.2,
Ground Floor, R.K. Puram,
New Delhi - 110 066.

20
Dated the 20th Nov, 2003

ORDER

Shri A.K. Sarkar, SDOT, Assam Circle, has been proceeded against under Rule 14 of the CCS(CCA) Rules, 1965, vide Memorandum No. Vig/Assam/Disc-1/1/2000-01-6 dated 26.12.2000 for the following charge :

ARTICLE

That Shri A.K. Sarkar while working as SDIE, Tezpur failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of his position in as much as he as a member of the selection committee constituted by Sri M.K. Gogoi, the then TDE/Tezpur for regularization of eligible casual labours as Temporary status Mazdoors under TDE/Tezpur during 1996, in collusion with other members of the Selection Committee without verifying the genuineness of recommendation of different JTOS/SDEs and certificates were issued by JTOS/Lineman etc recommended with malafide intention by abusing his official position. The names of 221 Nos. of casual labours under TDE/Tezpur and consequent upon while, Sri M.K. Gogoi, the then TDE/Tezpur issued letter No.X/CMPT/96-97 dtd.27.5.97 regularizing those 221 Nos. of Casual Labours as Temporary Status Mazdoors, although none of them was eligible for such regularization and thereby putting the department to huge financial loss, which he caused by his above acts and abuse of his official position with dishonest intention and thereby contravened Rule 3.1(i), (ii) and (iii) of CCS(Conduct) Rules, 1964.

Shri A.K. Sarkar denied the charge, therefore, an oral inquiry was ordered to be held by Shri B. Pegu, DE(DI) as Inquiring Authority. The Inquiring Authority submitted his report dated 28.8.2003, concluding in his findings that charge is not proved. Copy of which is attached herewith.

Contd....2

Alleged
Dr. Kanizit K. Das
M. & H. O-1
1/c Japnbari N.P.H.C.
Gomitpur, Assam

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Raju Majumdar
Advocate

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: 2 :

The Central Vigilance Commission was consulted who furnished their advice, vide I.D. Note No.000/P&T/070 dated 10th Nov, 2003, copy of which is also attached herewith.

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

The receipt of this order shall be acknowledged by Shri A.K. Sarkar, SDOT.

Encl : 1. Copy of IO's report.
2. CVC's advice dtd.18.3.2003

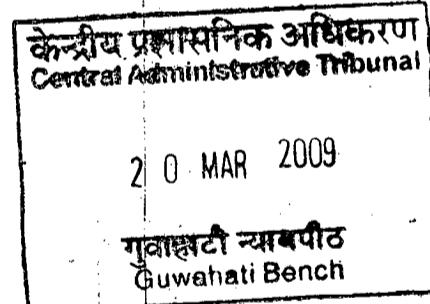
Chanda no(x)(03)
(P.K. CHANDA)
Member(Services)
Telecom Commission

Shri A.K. Sarkar,
SDOT
BSNL, Assam Circle
GUWAHATI.

(Through CGM, BSNL, Assam Circle, Guwahati).

Kind attention to
S C Bissnes
At your

Attested
S. D. S. D. S.
SDE Phones (Grp)
B. Chariali



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Rajya Magistrate

Advocate

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20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

No.8-357/2003-Vig.II

Government of India

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

West Block 1, Wing 2,
R.K. Puram, New Delhi-110 066

Dated: 15.12.2003

ORDER

Shri M. Karki, JTO, O/o the DE (OCB), Tezpur, has been proceeded against under Rule 14 of CCS (CCA) Rules, 1965 by the CGM, Assam Telecom Circle, Guwahati, vide Memo No. Vig./Assam/Disc-IX/00-01/4 dated 27.2.2001 on the following Articles of charge :-

That Shri Manoj Karki, while working as JTO under SDE (P), Tezpur during 1996, failed to maintain absolute integrity and acted in a manner unbecoming of his position in as much as he countersigned to Nos. of certificates issued by :

1. Sri Hemendra Bora, TTA/PRX
2. Sri Sukan Rai, S.I.

In favour of casual mazdoors knowing/or having reasons to believe that the said certificate/certificates issued as aforesaid in favour of the casual mazdoors were bogus as they had never been appointed in the office by SDE (P), Tezpur and thereby contravened Rule 3 (1) (i) (ii) & (iii) of CCS Conduct Rule, 1964.

On denial of the charges by the C.O., Shri B. Pegu, DE (DI), O/o the CGMT, Assam Circle, Guwahati and Shri S. C. Das, ADT (Legal), O/o the CGMT, Assam Circle, Guwahati, were appointed as Inquiry Officer and Presenting Officer, respectively, by the CGMT, Assam Circle, Guwahati.

The Inquiry Officer has submitted his Inquiry Report on 25.7.2003. The I.O. in his findings has concluded that the P.O. failed to establish that the C.O. counter-signed the said certificates issued in favour of those 6 (six) casual laborers without proper verification of the relevant documents through both oral documentary evidence.

He also mentioned in view of the facts, circumstances and evidences on record, he was of the opinion that preponderance of probability goes in favour of the C.O. He further held that the charges leveled against Shri Majoj Kumar Karki, JTO (OCB), Tezpur, the SPS, stands not proved, (copy enclosed).

The case was referred to the Central Vigilance Commission (CVC) for their advice and their advice is contained in I.D. Note No. 000/P&T/069 dated 03.12.2003, (copy enclosed).

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Rajesh Hazarika

- Advocate -

20 MAR 2009

: 2 :

गुवाहाटी न्यायालय
Guwahati Bench

Taking into account the findings of the Inquiring Authority, the records of the case and on an objective assessment of the facts and overall circumstances of the case in its entirety, I, B.B. Singh, Adviser (HRD), Telecom Commission, taking a lenient view of the case hereby order for dropping the charges levelled against Shri M. Karki, JTO, O/o the DE (OCB), Tezpur, and closure of the Case.

The receipt of this Order shall be acknowledged by Shri M. Karki, JTO, O/o the DE (OCB), Tezpur, Assam Telecom Circle, Guwahati.

Encls.: 1) Inquiry Report
2) CVC advice dated 03.12.2003.

✓ 19/3/09
(B. B. SINGH)
ADVISER (HRD)
TELECOM COMMISSION

Shri M. Karki,
JTO, O/o the DE (OCB),
Tezpur,
Assam Telecom Circle,
Guwahati.

(Through the CGMT, BSNL, Assam Telecom Circle, Guwahati)

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Reyek Deyal.

- Advocate

ANNEXURE - V

Dept. of Telecom
Office of the T.D.E. I.C. 29/202

S.

Recd.

Sri J. K. Doley
A.E. Phones (Group)
B. Chawali

No A-37/18/91 CL/191-92/17 dated at Dibrugarh 26/3/92
Sub: Discrepancies in your A.C.C. - 2/91 dated 29/2/92
P.G. 21791 for Rs 99,988 = 66 Rs.

The following irregularities noticed in your
A.C.C. - 2/91 dated 29/2/92 P.G. 21791 may be explained,
rectification intended and omission, be supplied
immediately.

(1) The Account was not
properly causing in delay
in submission, wrong account
of revenue and disbursements
on 17-3-92
resulting in extreme
delay in disposal of the
Account.

(2) Heads of A/c's have not
been indicated against
Estimate Nos. in the
Allocation sheet

(3) Expenditure of Rs 6604-50
for payment to Casual labour
on A.C.C. - 2/91 for Metee work
through A.C.C. - 3 est. Bills
of Subordinate Staff is
in violation of instructions
for stoppage of such engagements

Con'td page 2

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Rajesh Majumdar

- Advocate -

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

Accounts officer (Cash)
010/6/1/2009
Total 1,000/-

Page-2

(4) Temporary Advances have been paid to Subordinate Staff beyond sanctioned limit of Rs 100/- for total of Rs 7912/- w/o prior approval or timely intimation.

(5) Rs. 41 to 55, 64 to 26, 79 to 93
96 to 104, 106 to 122, 123 to 128

70. ~~Rs~~ No 86-17 paid Rs for total of Rs 59446/- relating payment to General Labourers for Capital work have directly been charged in your BCE-2 Ac violating instructions contained in Rule - 153 and 154 of P.S.T F.I.B Volume III. Moreover, clear witness for these payments authority to look after the work and work diary are wanting.

(6) Rs 120/- 9236 ~~1208182~~
 Dates of work and address of Payee is wanting.

(7) Rs 20/- Particulars re whether quotation were called or not and name of office of use are

Contd page 3

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Rajesh Hazarika

Advocate

केन्द्रीय प्रशासनिक अधिकारण
 Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायपीठ
 Guwahati Bench

Alleged
 Dr. Ranjit Das
 M. & H. O.I
 I/o Japubari N.P.B.C.
 Sonitpur, Assam

21/03/2009
 Accountant (Cash)
 010 G/ 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 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item 7 Contd—

Wearings in the Furniture
Bill dtd 11-6-91 for Rs 860/-
from Gopal Furniture,
Chorali.

(8) Rs. 58/-

Rs. 58/- Bricks Supply
Bill dtd 24-6-91 for Rs 1350/-
from Sonitpur Brick Industry
B. Chorali. The
following particulars are
Wearings—
(a) Challan for delivery
of the Bricks at worksite
with signature of the
receiving official
(b) Circumstances under
which quotation could
not be called for.

(9) Rs. 56/-

~~Temporary Allowance~~
ACG & ARC no 7/91/92
PE. 21-6-91 for Rs. 4780-80

The particulars regarding
payment of Temporary Allowance
to Mr. D.T. and Secretary
of Passes of the A/C of
G.T. and Reinforcement etc
Contd Page 4

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Rajesh Majumdar

— Advocate

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Page 4

item (9) contd —

are all contradictory
In Receipt side of my Accts
per J to Sri P. K. Bhattacharjee —

(195) 073 on 195 = Rs 3.00.

Rs. Balance of 17th Nov.

18.6 = 2.00/- = Rs 4.00 =

17.6.91 = 17th Nov. = Rs 4.39/-

Total = Rs 4.80/-

Now, as per your ACC — 2 Accts.

Teng. Advance paid on 17.6.91 Rs 4800/-

Accts of Main Receipt for Rs 4.780 = 80/-

Paid the component of Rs 400/-

and adjusted Teng Advance

of Rs 4380 = 80 paid on 21.6.91

It is not understood

how the above affairs

are possible. This may

be explained with

Clarification.

Telecom District Engineer
Guwahati

Guwahati

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Rajesh Bhagwati

— Advocate —

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2004

गुवाहाटी न्यायालय
Guwahati Bench

Self-Reflection

Mr. J. K. Wadley
A-E-Pnone (or any) Chord

NO A-37421 (1) C 1918 1927 Dated at Reids 28th 1952

Surbiton, Surrey, England, 1874. A. Stev. & Co.

MC 5791-92 DE. 36-9-31

The following inequalities are derived

in your P.E. - 2 REC and 5991-92 P.E. 309.91
may be explained, reclassification, substituted
and omission, be supplied immediately.

11 Your Accounts were not maintained properly causing a delay in submission of your accounting statement for the year 18-29 and resulting in extreme delay in disposal.

② The Total in the expenditure side has been shown as Rs 226,997=04, against the actual Total of Rs. 226,998=46 due to total mistake at page No. 2. It is, and understood how the cash balance was agreed on.

③ Signature for cash balance
Signature in writing

(A) Heads of AEs - have not
been indicated against
each individual -
especially - need in the Allocation
table

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Ustad
Dr. Ranjit Singh
M. & H. O. I.
H/o Japouberi, N.P.H.C.
Qutipur, Agra

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Rajesh Mehta
Advocate

Page 2

(4) Temporary Advances have been paid to Subordinate Staff beyond sanctioned limit of Rs 100/- per total of Rs 2521.2/- Morever no approval or any intimation of Temporary Advances so paid also have been adjusted on the same date of payment against Act 3/ ACE-2 Bills relating to earlier periods.

Exo P. K. Pathak Jt. C. S. was paid Temp. Advances of Rs 100/- on 7-9-91, Rs 500/- on 13-9-91 and Rs 500/- on 28-9-91, but there is no record of the payments on different dates in your account. Moreover in the

(5) Ac PE 30-9-91 of exo P. K. Pathak Jt. C. S. for Rs 6872.55 Debitized under V. No. 302. Reconciliation has been shown for Rs 400/- and the adjustment of T. A. Dr. for only Rs 6472.55. This may be explained with clarifications.

Contd page

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

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Rajesh Nagarkar

- Advocate -

Page 3

⑤ Expenditure of Rs 17,386/- for payment to casual labourers on Actu-17 under Mitteilead through Act-37 etc. Bills of Subordinate Staff is in violation of instructions for stoppage of such engagement.

⑥ Vos. 27 to 37, 56 to 64, 130 to 145, 180 to 194 and 204 to 297 :- 145 NOS

Actu-17 paid Vos. - for total of Rs. 112,680/- relating payment to casual labourers for Capital works have directly been charged under the above mentioned numbers violating the instructions contained in Rule 153 and 154 of P&T Act Volume III,

⑦ Vos. 37 :- Actu-17 Paid Vos. for Rs 4,68/- for, been charged (Rs. 3,250/-) (1303 2(2) S-52) It is not understood how the cash balance was agreed.

⑧ Vos. 42 :- Bricks supply Bill for Rs 3,250/- → The following are wanting particulars -
 a) Deliv. number with signature of person receiving official letter
 b) Name of contractor
 c) Signature

Date in 10/03/2009
 10/03/2009

908-233911

केन्द्रीय प्रशासनिक अधिकारण
 Central Administrative Tribunal

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 Guwahati Bench

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Rajesh Nagarkar

Advocate -

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

No. 8-173/2001-Vlg.II
Government of India
Ministry of Communications & IT
Department of Telecommunications

20 Ashoka Road
Sanchar Bhawan, New Delhi

Dated the 2nd May, 2006

ORDER

Shri Sallendra Swargiary, SDE, Office of DE(Mobile), Tezpur, the then JTO, Office of SDE(P), Udaguri, was proceeded against under Rule 14 of CCS(CCA) Rules, 1965 vide Memo No. VIG/Assam/Disc.-XIV/4 dated 28th December, 01 for the following charge:-

Article

That the said Shri Sallendra Swargiary while functioning as JTO, Udaguri in the Office of the SDE(P), Udaguri committed serious irregularities in as much as he issued the false and fabricated experience certificates in favour of one casual labor and countersigned 11 Nos. of false and fabricated experience certificates issued by field staff and got them appointed as Temporary Status Mazdoors although none of them was eligible for such appointment and thus getting the Department to a huge financial loss.

Thus by his above acts, the said Shri Sallendra Swargiary failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant thereby contravening the provisions of rule 3(1)(i), (ii) & (iii) of CCS(CCA) Conduct Rules, 1964.

2. On denial of charge, an oral Inquiry was ordered to be held by Shri Binod Pegu, DE(DI), Office of CGMT, Assam Telecom Circle, Gauhati as inquiring authority. IO submitted his report dated 14th July, 2005 concluding therein that charge against the CO stands not proved.

3. CVC have been consulted vide their ID Note No. 001/P&T/126/10456 dated 17th November, 2005.

4. A Memorandum dated 30th November, 05 was issued to the charged Officer forwarding IO's report alongwith CVC advice for making representation, if any. CO submitted his representation dated 18th February, 2006. In his representation, CO stated that charges framed against him are

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Rajah Hazarika

- Advocate -

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totally wrong and false. He requested that he may be exonerated from the charges.

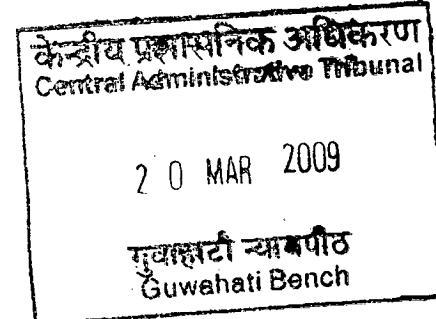
4. Taking into account the findings of the Inquiring authority, records of the case and on an objective assessment of the facts and circumstances of the case in its entirety, I, A K Saxena, Member(Services), Telecom Commission, hereby order to drop the charges levelled against Shri Sailendra Swargiary, SDE, vide Memo No. VIG/Assam/Disc.-XIV/4 DATED 28TH December, 2001.

Receipt of this Order shall be acknowledged by Shri Sailendra Swargiary, SDE.


(A K SAXENA)
Member(Services)
Telecom Commission

✓ Shri Sailendra Swargiary
SDE(Computer & CCN)
Office of DE(Mobile)
BSNL, Tejpur

(Through CGM, Assam Telecom Circle, Gauhati)



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— Advocate —

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IN THE GAUHATI HIGH COURT
 (THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA;
 MANIPUR; TRIPURA; MIZORAM AND ARUNACHAL PRADESH)

✓ 1. Criminal Appeal No. 268 of 2003

- ✓ 1. Sri Rajendra Rai
- 2. Sri Lambodhar Jha
- 3. Sri Sokaldeo Singh
- 4. Sri Rambilash Rai
- 5. Sri Radharam Deka
- 6. Sri Deonath Rai

Appellants

Versus

✓ Central Bureau of Investigation (CBI) Respondent

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

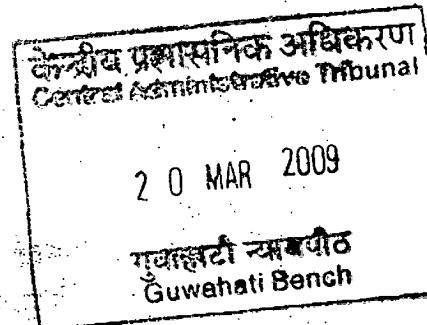
Mr. T.J. Mahanta, Mr. M. Khataniar

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

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

2. Criminal Appeal No. 269 of 2003

- 1. Sri Jitu Sarma
- 2. Sri Jyoti Prasad Saikia
- 3. Sri Dhanpat Swargiary
- 4. Miss Juri Sarma
- 5. Sri Kishore Kr. Pathak
- 6. Sri Maina Bora
- 7. Sri Pawan Kataki
- 8. Sri Gobinda Bhuyan
- 9. Sri Biran Das
- 10. Sri Gagan Bhuyan
- 11. Sri Jitlen Sarma
- 12. Smti. Tunmoni Saikia
- 13. Sri Gobinda Bora
- 14. Sri Krunje Bhagat



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Rajni Majumdar

- Advocate

15. Sri Tilok Bora
16. Sri Pranjal Kalaki
17. Sri Abani Baruah
18. Sri Biren Bora
19. Sri Basanta Bhuyan
20. Sri Dharmendra Kurnar Rai
21. Sri Aribika Barman
22. Sri Prabhat Kalita
23. Sri Dipen Bhuyan
24. Sri Pulin Borah
25. Sri Prabhat Sarma

Appellants

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Versus

Central Bureau of Investigation (CBI)

Respondent

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

Mr. T.J. Mahanta, Ms. P. Bhattacharyya,

Mr. N. Bora, Advocates

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

3. Criminal Appeal No. 277 of 2003

1. Babul Saikia

2. Choniram Sharma

Appellants

Versus

Central Bureau of Investigation (CBI)

Respondent

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

Mr. T.J. Mahanta,

Mr. N. Bora, Advocates

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

PRESENT

THE HONOURABLE MR. JUSTICE P.G. AGARWAL

Date of Hearing : 13.3.2009

Date of Judgment : 14.3.2009

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- Advocate

20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

3

JUDGMENT AND ORDER

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

2. Heard the learned counsel for both sides.

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

4. During trial, the prosecution examined as many as 14 witnesses. The defence plea as seen from the trend of examination is that accused A-7 to A-33 were working as casual Mazdoors and no such, accused A-1 to A-6 issued experience certificates and those were counter signed by A-1 on verification.

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

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Rajit Bhagat

Advocate

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

4

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

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

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

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

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

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Rajesh Bhagat

Advocate -

केन्द्रीय प्रशासनिक अधिकारपा
Central Administrative Tribunal

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Guwahati Bench

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10. Thus, we find that so far the selection committee consisting of A-1 to A-6 are concerned, was constituted by the competent authority to select and recommend the names of persons for conferment of the status of TSM and out of 32 candidates, the committee recommended the names of 27 candidates. The selection committee considered the experience certificates issued by A-1 to A-6. Md. I. Ahmed (PW 2) has deposed about the payment which is not under challenge in this case. Prosecution witness has deposed about the circular banning appointment of casual workers after 31.03.95. The said circular is not relevant for our purpose. Rajib Yadav (PW 4) had granted sanction for prosecution and we find that the said sanction is not under challenge.

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

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

13. As stated above, none of the prosecution witnesses has come forward to depose that although they were working under the TDM, Tezpur during the period 1985 to 1986, they never saw these accused persons A-7 to A-33 serving or working as casual Mazdoors in the capacity of Sub Inspector, Cable Splicer etc. and they have issued the experience certificates and they are before us as accused.

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Rajib Bhuyan

- Advocate

केन्द्रीय प्रशासनिक अधिकार परिषद
Central Administrative Tribunal

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Guwahati Bench

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

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

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Rajesh Bhagat

- Advocate -

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Guwahati Bench

15. The evidence of PW 8 has been reiterated by PW 9, the Asstt. Director, Establishment, Telecom Department.

16. In the present case, the prosecution has not produced the vouchers ACG 17 for the relevant period to show that in these vouchers, the names of the present accused appellants-A-7 to A-33 do not appear. These documents were vital documents to support the prosecution that no such payment was made to the accused persons during the relevant period as casual Mazdoors.

17. On the other hand, the prosecution has led evidence to show that the vouchers under ACG 17 were not available. Although no evidence has been led as to the reasons of non availability, the prosecution argued that although the Accounts under ACG 17 are not available showing the names of the accused persons, it must be presumed that the names of the accused persons do not appear in these accounts and the inference may be drawn against the accused persons. The trial court also accepted the above and held that when ACG 17 forms are not available in respect of A-7 to A-33, it must be deemed to have not worked as casual workers. We are unable to comprehend such a situation in a criminal trial. The burden is on the prosecution to establish the guilt and the prosecution may either lead direct evidence or indirect evidence. Moreover, there is no evidence on record to show that the accounts books/ vouchers under ACG 17 were kept in the custody of the accused persons or that they were responsible for their safe custody and they have destroyed the same to screen out the evidence of criminal offence.

18. From the evidence of the prosecution witnesses, we find that there is another aspect of the matter also. The vouchers under ACG 17 are entered into ACE 3 forms and thereafter the amount is incorporated in ACE 2 accounts and finally adjusted in the cash book. Admittedly, the cash books from 1983 onwards are available and the prosecution could have produced these cash books or ACE 2 accounts to show that during the relevant period, no payment was

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Rejith Meiyar

- Advocate

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

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गुवाहाटी न्यायालयीठ
Guwahati Bench

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

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

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

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

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Rajesh Bhagat

- Advocate

केंद्रीय प्रशासनिक अधिकारण Central Administrative Tribunal

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Guwahati Bench

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

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

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

24. In the present case, we find that there is no reliable evidence to hold that accused A-7 to A-33 were not working as casual workers during 1985-86 or the experience certificates-Ext. 1 to Ext. 27 issued by the accused A-1 to A-6 and counter signed by accused A-1 are forged documents. As the very foundation of the prosecution allegation is missing, we hold that this is a case of no evidence and the accused persons are entitled to acquittal.

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

26. Send down the records.

Self-Teaching

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Rajeev Mehta

- Advocate

99.

केन्द्रीय प्रशासनिक आदानप्रदान
Central Administrative Tribunal

20 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

To

The GMTD, BSNL.
Tezpur-784001

Dated at B.Charali the 010/03/2008.

Sub: -Rejoinder to the Appeal petition dated 28-4-2004 submitted against order No.8-135/2003-Vig II dated 23.02.2004 issued by Adviser, Telecom Commission, NDL, in connection to the Disciplinary Proceedings.

Sir,

With reference to the subject cited above, kindly find here with the rejoinder letter NO. PKP/VIG/05 DTD BCLI 06/03/2008 to the Appeal petition as quoted above addressed to The Director (HRD), BSNL, New Delhi the Appellate Authority in triplicate copies as stated below for onward submission to the concerned authority.

With Regards.

Receipt of this letter may kindly be acknowledged.

Enclosures:

1. Set-I, Copy for the Director (HRD), BSNL, NDL,-- Rejoinder application along with Certified Copy of High Court & C.B.I. Special Court Judgments Order of Special Case No.9(C) 2000.
2. Set-II, Copy for the Circle Office, BSNL, Assam Circle,-- Rejoinder application along with Xerox Copy of High Court & C.B.I. Special Court Judgments Order of Special Case No. .9(C) 2000.
3. Set-III, Copy for the GMTD Office, BSNL, Tezpur SSA,-- Rejoinder application along with Xerox Copy of High Court & C.B.I. Special Court Judgments Order of Special Case No. .9(C) 2000.

Yours faithfully

P.K. Pathak
10/3/08

(P. K. Pathak)
Sub-Divisional Engineer Phones.
Biswanath Chariali-784176.

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Rajesh Majumdar,

- Advocate -

100
NO. PKP/VIG/05

DTD BCLI 06/03/2008.

केन्द्रीय प्रशासनिक अधिकारपा
Central Administrative Tribunal

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गुवाहाटी बाबपीठ
Guwahati Bench

To
The Director (HRD),
BSNL Corporate Office,
Statesman House,
B-148 Barakhamba Road,
New Delhi-110001.

Through Proper Channel.

Sub: Rejoinder to my appeal petition dated 28-4-2004 submitted against order
No.8-135/2003-Vig II dated 23.02.2004 issued by Shri J.M. Mishra, Adviser, Telecom
Commission , Sanchar Bhawan , 20 Ashoka Road, New Delhi-01.

Sir,

With due respect and humble submission I beg to state that I am working as
SDEP in Tezpur SSA of Assam Telecom Circle. That Sir, my appeal against the
punishment order quoted above is lying, pending decision by the appropriate appellate
authority till date.

That Sir, I may kindly be permitted to draw your further attention and lay stress
over my defence arguments submitted in my appeal, which inter-alia relates to the
episode of the case, wherein I had also been ruthlessly implicated by the administration,
on the charges of counter signing false and fabricated experience certificates of casual
labourers , initially issued by S.I./L.I. of the Deptt who were later prosecuted and
sentenced by the C.B.I. Trial Court Special Judge Assam, Guwahati on dated 28/7/2003
along with the casual labourers on charges of fabrication and forgery as per court's
verdicts pronounced on date.

That Sir, since I was functioning as J.T.O. Biswanath Chariali, Charges was also
framed against me under Rule-14 of CCS (CCA) Rules 1965.

During the Departmental Inquiry Proceedings and after its completion no charges
could be proved against me, as per exhaustive and detailed Inquiry report submitted by
the Inquiry Authority into the case to the Disciplinary Authority.

That Sir, In spite of my repeated submissions to the Disciplinary Authority that
the prosecution had totally failed to produce even a single evidence against me to hold

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Rajiv Bhagat
— Advocate

the charge as proved, the Disciplinary Authority Shri J.M. Mishra, Adviser, Telecom Commission, New Delhi, awarded me the penalty of reducing the pay by one stage in the time scale of pay for a period of one year with cumulative effect to come into force immediately.

That Sir, since the C.B.I. also simultaneously proceeded with, against the other accused in the C.B.I. trial Court Assam, Guwahati and the C.B.I. awarded them sentences at his end having been found them guilty U/S 13(2) r/w section 13(1)(d) of prevention of corruption Act, 1988 and as such the accuseds were convicted and sentenced accordingly.

That Sir, in consequences of their conviction by C.B.I. trial Court, the accuseds officials A1 to A6 and the casual labourers A7 to A33 approached the honourable High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh and cases were registered under criminal appeals No.268 of 2003, criminal appeal No. 269 of 2003 and criminal appeal No. 277 of 2003, (Certified Judgment copy of Hon. High Court is enclosed) for perusal please.

Some of the accused officials working under me as specified in criminal appeals viz. A1 to A4 & A6 and among the casual labourers viz. A11, A12,A15,A19,A22, A24 to A29,A31 & A33 are the same persons as detailed in my Rule -14 charge sheet against whom false and fabricated certificates were alleged to have been countersigned by the undersigned, resulting in disciplinary proceedings against me also.

The Honourable Justice P.G. Agarwal, of High Court in his Judgement dated 14/03/2007, after hearing the appellants & the respondents along with examining the prosecution witnesses in the appeal cases cited above, disposed of the appeals by holding that the prosecution had utterly failed to establish the guilt against the accused officials, in the absence of either direct and indirect evidences.

Another aspect of the matter as described in the judgement was that vouchers under ACG-17 are entered in ACE-3 forms & thereafter amounts are incorporated in ACE-2 accounts and finally adjusted in cash books. But the cash books were also not produced by the prosecution in support of their contention that no payments were made to mazdoors.

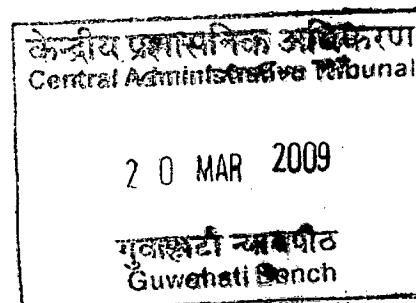
The prosecution utterly failed to trace out ACG-17 vouchers & produce the same before the court.

That Sir, the honourable judge held that the casual labourers as mentioned above were actually engaged during the relevant period as per evidences of Shri G.S. Mathur (PW-12) and Shri Pramod Kumar Pathak (PW-13), and as such the charge levelled

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Rajiv Mehta

- Advocate -



against me to countersign false & fabricated experience certificates are not at all sustainable or established, as inferred by the Disciplinary Authority and penalty awarded to me.

That Sir, the honourable High Court further held that there was no evidence with prosecution to hold that the accused mazdoors were not working as casual labourers during 1985-88 and as such the experience certificates cannot be regarded as forged ones.

The judgement verdicts is read as under:

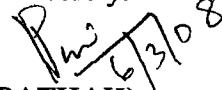
"The impugned order of conviction and sentence is set aside and the accused appellants are acquitted and set at liberty forthwith".

My contention here is that, when even the Honourable High Court has concluded in its judgement, after exhaustive analysis and study of the arguments and depositions put forth by the prosecution and the appellants during hearing before it that the casual mazdoors actually worked in the Deptt. no charges of any kind are sustainable against me as levelled by the Disciplinary Authority and my appeal under perusal and consideration may kindly be decided in view and light of the conclusions derived by the Honourable High Court.

Therefore, I may kindly be totally exonerated from the charges initiated against me and the punishment awarded to me by the Disciplinary Authority may also be set aside with consequential benefits admissible to me, by virtue of my honourable acquittal please.

WITH REGARDS.

Yours Sincerely.



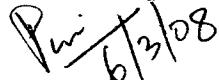
(P. K. PATHAK)

SDEP, Biswanath Chariali.

Tezpur SSA, Assam Circle.

Copy to:

(i) Advance Copy to the Director (HRD), BSNL Corporate Office, New Delhi for his kind perusal and requesting him for early decision into the matter please.



(P. K. PATHAK)

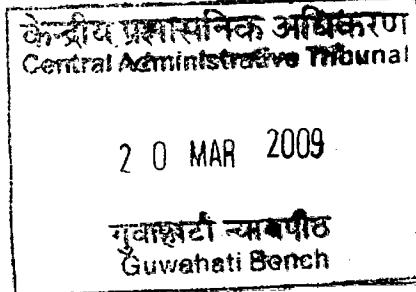
SDEP, Biswanath Chariali.

Tezpur SSA, Assam Circle.

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— Advocate



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

No.X-2002/Disc/PKP /TZ/08-09/19

Dated the 08-01-2009

To

Sri P K Pathak
 SDEP, B CLI

Sub: Order in respect of Sri P K Pathak, the the JTO now SDE

Ref: No. Vig/Assam/Disc III/Part-I/40 dated the 07-01-2009

Please find enclosed herewith the Order No.202-54-06-VM-V dated 01-09-2008 issued by the Director (HRD), BSNL, ND in connection to your appeal petition dated 09-04-2007.

This is as per approval of GMTD, Tezpur.

Please acknowledge the receipt.

GW-6(16)
 SDE (VIG)

O/o the GMTD, Tezpur.

केंद्रीय प्रशासनिक अधिकाराण
 Central Administrative Tribunal

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 Guwahati Bench

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Rajesh Nagarkar

Advocate



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BHARAT SANCHAR NIGAM LIMITED

O/o Chief Vigilance Officer
4th Floor, A Wing, Statesman House, B-148, Barakhamba Road, New Delhi-1
Phones: 23037555, 23705676, 23766816, and 23766820, Fax: 23766818
F.No. 202-54-06-VM-V Dated: the 1st September, 2008.

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গুৱাহাটী ন্যাবোৰ্ড
Guwahati Bench

ORDER

Sh. Pramod Kumar Pathak, JTO, Assam Telecom Circle Guwahati was served Charged sheet under Rule 14 of CCS(CCA) Rule 1965 by the then Disciplinary Authority vide Memo No. Vig/Assam/DISC-III/2000-01/14 dated 31st July 2000 on the following Article of Charge:-

While Shri P. K. Pathak was posted and functioning as JTO under SDE (P), Biswanath Charali during the year 1996 failed to maintain absolute integrity and devotion to duty as much as he had countersigned 13 Nos. of false and fabricated experience certificates issued by S/Sh. Rajendra Rai, Sub-Inspector, Lanbodar Jha, Sub- Inspector, Rambilash Rai, Line Inspector, Sakaldeo Singh, Sub-Inspector, Deonath Rai, Sub-Inspector in favour of S/Sh. Prabhat Sarma, Biren Das, Biren Bora, Pranjal Kataki, Maina Bora, Dharmendra Kumar. Rai, Ambika Barman, Basanta Bhuyan, Prabhat Kalita, Dwipen Bhuyan, Kishore Kr. Pathak, Chaniram Sarma and Govinda Bora without going though any documentary evidence and verification and on the basis of his countersignature, the TDE Tezpur has regularized all the 13 persons vide Order No. X-1/CMPT/96-97/Con-7/Con dtd. 20/5/96 as Temporary Status Mazdoors and by the above acts, he contravened the provisions of Rule 3 (1) and (2) of CCS (Conduct) Rule, 1964.

On denial of the charges by the C.O., Shri Binode Pegu, DE(DI) O/o CGMT, Assam Circle, Guwahati, was appointed as Inquiring Authority. The Inquiry Officer submitted his Inquiry Report on 17.12.2002. Accordingly, he held that the Article of Charges framed against Shri P. K. Pathak, JTO, under the above said Memo stands NOT PROVED.

Taking into account the findings of the Inquiring Authority, the records of the case and on an objective assessment of the facts and overall circumstances of the case in its entirety, Sh. J. M. Mishra, Advisor Telecom Commission, DoT imposed the penalty of reduction by one stage in the time scale of pay for a period of one year with immediate effect on Shri. P. K. Pathak, JTO, Assam Circle, Guwahati. It was

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*Rajesh Ma. jah.
- Advocate -*

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Guwahati Bench

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further directed that Shri P. K. Pathak, JTO, will not earn increments of pay during the period of such reduction and on expiry of this period the reduction will have the effect of postponing his future increments of pay.

Aggrieved with the above punishment Order Shri P.K.Pathak JTO/Biswanath Chariali O/o GMTD Assam Telecom Circle, Guwahati, has preferred Appeal under Rule 23 of CCS (CCA) Rules 1965 against the order No. 8-135/2003-Vig. II dated 23.02.2004, issued by the Adviser (HRD) Telecom Commission, New Delhi. In his defense, he has stated as follows:-

- That a charge sheet was issued to him alleging that he countersigned 13 Nos. of false and fabricated experience certificates issued by S/Sh. Rajendra Rai, SI Lambodar Jha, SI, Rambilash Rai, LI Sakaldeo Singh, SI and Deonath Rai, SI without going through any documentary evidence and verification. and on the basis of countersignature the TDE Tezpur regularized all the 13 persons as Temporary status Mazdoors.

That an inquiry was conducted as per Rule 14 of CCS (CCA) Rules 1965. The Inquiry Officer submitted his report vide letter No. DE (DI)/ Disc-4/pp/2001-02 dated 17-12-2002 to the Disciplinary Authority with his clear opinion that the charges are not proved. However the Disciplinary Authority disagreed with the findings of the Inquiry Authority vide order No. 8-135/2003-Vig. II. The point of disagreement was, "it is a fact that the mazdoors were given the temporary status on the basis of the certificate issued by the charged officer (C.O.) who was the mustering officer for the casual mazdoors. The office copy of engagement of mazdoors should be with the C.O. as per the rules. The question of making payment through ACG-17 for casual labourers who were subsequently given the temporary status of regular mazdoors does not arise; this scheme is applicable to those casual labourers who mustered in the field and work continuously and drew their wages through muster roll. The C.O. was to prove that he has issued a certificate/countersigned the certificates on the basis of the documents i.e. engagement of labourers for more than 240 days in a year. Thus, the charge against the C.O. has been proved."

That he submitted his representation to the Adviser (HRD) on 11-12-2003 in respect of his point of disagreement. In his view, temporary status was to be given to those casual labourers mustered in the field and drew their wages through muster roll. But it was not mentioned in DOT's letter No. 269-4/93-STN-II dated 17-12-1993 that the temporary status was only to be given to those casual labourers engaged through muster roll. In para 2 of DOT's letter No. 269-4/93-STN-II dated 17-12-1993 it read, "the matter has further been examined in this office and it is decided that all those casual mazdoors who were engaged by the Circles during the period from 31-3-1985 to 22-6-1988 and who are still continuing for such works in the Circles where they were initially engaged and who are not absent for the last more

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Rajn Mejpal

- Advocate -

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Guwahati Bench

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than 365 days counting from the date of issue of the order, be brought under the above scheme."

That the DOT's order of conferring temporary status was clear, distinct and unambiguous, there is no scope for any misinterpretation. The casual labourers in question were given temporary status by TDE/Tezpur on recommendation of a selection committee who had verified the records in account section and SDE (P) office. Moreover in Telephone exchanges, attendance register were maintained for making payments, which were also brought to record during inquiry. The contention that the JTO's are mustering officer is not correct. SDO/SDEs are issuing muster roll in the name of LI/SI.

That the selection committee has verified the records as well as guidelines issued by DOT in respect of eligibility of casual labour, grant of Temporary Status and if there were any instruction to confer temporary status only to those casual labour working on muster roll, the selection committee would not have recommended the cases.

That no-where in DOT's letter for conferring Temporary Status it was mentioned that temporary status was to be given only to those casual labourers who were working on muster roll. The contention of Disciplinary Authority in this matter is not conforming to DOT's letter dated 17/12/1993.

Now, Shri P.K. Pathak vide his Rejoinder dated 6.3.08 has forwarded the copy of judgement dated 14.3.2007 delivered by Hon'ble Justice Shri P.G. Agarwal, (The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) in the matter of 25 Casual labourers, wherein it has been observed by the Hon'ble justice as under:-

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

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

Thus, Shri P.K. Pathak, the then JTO wants to avail the benefit of the judgment delivered by the Hon'ble High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh on the

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Rajn. Meenal
- Advocate -

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Guwahati Bench

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ground that there is no reliable evidence to hold that Accused A-7 to A-33 were not working as casual workers during 1985-88 or the experience certificates Ext. 1 to Ext. 27 issued by the Accusod A-1 to A-6 and counter signed by Accused A-1 are forged documents as the very foundation of the prosecution allegation is missing.

~~A~~ On perusal of the facts and records of the case, it is observed that the acquittal of Appellants by Hon'ble High Court, Guwahati in respect of Criminal Appeal Nos. 258 of 2005, 269 & 277 of 2003, it is observed that out of the three cases, the two cases namely 258 of 2005 and 277 of 2003 is related to the acquittals of some officials like LI, SI, LM and casual labourers and not related to Shri Pramod Kr. Pathak, the then JTO or any other JTO. Therefore, these two cases have no relevance and cannot be taken into consideration for deciding the appeal petition of Shri Pramod Kr. Pathak, SDEP, Biswanath Charili. The case No. 269 of 2003 in which the Officials like LI, SI and casual laborers were acquitted. In this case, the casual labourers who were acquitted are S/Shri Prabhat Sarma, Biren Das, Biren Bora, Pranjal Kataki, Maina Bora, Dharmendra Kr. Rai, Ambika Barman, Basanta Bhuyan, Prabhat Kalita, Dwipen Bhyan, Kishore Kr. Pathak, Cheniram Sarma and Gobinda Bora. Shri Pramod Kumar Pathak, the then JTO of Biswanath Chariali, countersigned the certificates in respect of those thirteen casual labourers. The Hon'ble High Court observed that the prosecution could not establish the offence beyond all reasonable doubt. Distance between the accused 'May be guilty' and 'Must be guilty' must be traveled by the prosecution and no conviction can be based on surmises and conjectures. ~~A~~

Here it may be mentioned that after issue of false and fabricated Experience Certificates by the JTOs, the CBI, Guwahati also registered the case and filed in the Court of the Special Judge, Guwahati. The Hon'ble Special Judge, CBI, in his judgment dated 28.7.2003 punished the penalty of sentence and conviction as well as penalty of fine to all the 33 casual labourers in the following manner:-

"From the evidence as discussed above, it is, thus, seen that A-1 to A-6 had entered into a conspiracy with A-7 to A-33 and accordingly they are found guilty U/S 120 B,IPC. It is also seen that A-1 to A-6 fraudulently used the forged documents as genuine, though, they knew these are forged documents. Consequently, A-1 to A-6 are found guilty u/s 471 of the IPC. The evidence also transpires that A-1 to A-6 being the public servants by corrupt or illegal means abused their position as public servants and issued false and fabricated experience certificates to other accused for pecuniary advantage and they are, thus, found guilty u/s

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Rajiv Raynal
- Advocate -

20 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

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13(2) read with section 13(l)(d) of the Prevention of Corruption Act, 1988. A-1 to A-6 are, thus, convicted accordingly.

Hearing in the point of sentence

"Heard A-1, A-2, A-3, A-5 and A-6 in the matter of sentence. They have stated before me that they are sole earning members of their families and they may be leniently dealt with. A-4 is found absent with step son and represented by his learned advocate. The learned advocate is heard on behalf of the accused who has submitted that the accused is a poor employee and sole earning member of the family. Considering all, I feel that they may be leniently dealt with. A-1 to A-6 are, thus, sentenced to undergo simple imprisonment for 2 years u/s 471 of the IPC and to pay a fine of Rs. 1000/- i/d to SI for 6 months u/s 13(l)(d) of the Prevention of Corruption Act. However, the sentences shall run concurrently.

Heard A-7 to 33 in the matter of sentence. They have stated before me that they are poor employees and sole bread earners of their families and they may be leniently dealt with. In the interest of justice, I feel that a lenient view can be taken against the accused. A-7 to 33 are, thus sentenced to undergo SI for 6 months U/s 120B of IPC. They are further sentenced to undergo SI for 2 years and to pay a fine of Rs. 1000/- i/d to SI for another 3 months u/s 420 IPC. However, the sentences shall run concurrently. The seized documents, if any, shall be returned from whom seized in due course of law in accordance with law".

Thus, all the 25 casual labourers approached the Hon'ble High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh against the decision of the Special Judge, CBI, Guwahati and the Hon'ble High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh delivered its judgment in favour of the Casual Labourers on the ground that A-7 to A-33 were not working as casual workers during 1985-88 or the experience certificates Ext. 1 to Ext. 27 issued by the accused A-1 to A-6 and counter signed by Accused A-1 are forged documents. As the very foundation of the prosecution allegation is missing, we hold that this is a case of no evidence and the accused persons are entitled to acquittal."

Now the question arises whether Shri P.K. Pathak can be exonerated from the charges leveled against him on the basis of judgment delivered by the Hon'ble High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh, in favour of

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Rajiv Majumdar,
- Advocate -

20 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

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25 casual labourers whereas he never approached the Hon'ble High Court against the decision of the Special Judge, CBI, Guwahati.

As per my view, the benefit of judgment delivered by Hon'ble High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh cannot go in favour of Shri Pramod Kr. Pathak.

Besides, from the facts and circumstances of the case, it is also observed that the charged officer verified the experience certificates and he could not produce any proof that he had requisitioned the ACE-2 and ACG-17 records from the AO concerned for verification before countersigning the certificates. He is shouldering his responsibility on Selection Committee Members. Besides, he is not the Administrative Authority to countersign the Work Experience Certificates. The Head of concerned SSA is empowered to issue such work experience certificates after verifying from the record.

Therefore, taking into account an objective assessment of the facts, circumstances of the case in its entirety and keeping in view the findings of Inquiry Authority, I, Gopal Das, Director(HRD), Bharat Sanchar Nigam Ltd., New Delhi, hereby REJECT the Appeal dated 09.04.2007 preferred by Shri Pramod Kr. Pathak, JTO, O/o GMTD, Assam Telecom Circle, Guwahati.

The Orders be acknowledged by Shri Pramod Kr. Pathak, JTO.


(Gopal Das)
Director(HRD),
BSNL, New Delhi.

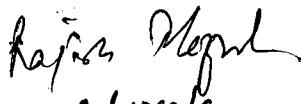
To

O/C

Shri Promod Kr. Pathak, JTO,
O/o GMTD, Assam Telecom Circle,
Guwahati.

(Through CGMT, Assam Telecom Circle, Guwahati)

Certified to be true Copy


- Advocate -

File in Court on..... 29/5/09

Court Officer.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. NO. 51 OF 2009

Sri P.K. Pathak

...Applicant

-Versus-

Union of India & Ors.

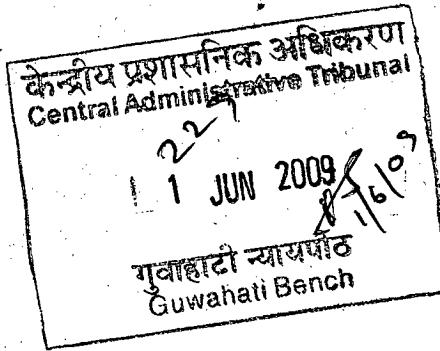
....Respondents

The written statement on behalf of
the Respondent No.5 and 3-

MOST RESPECTFULLY SHEWETH:

1. That a copy of the original application has been served upon the deponent and the deponent after going through the same has understood the content thereof.
2. That the deponent begs to state that the statements which are not specifically admitted by the deponent are deem to be denied by them.
3. That with regard to the statement made in paragraph 1 of the original application, the deponent begs to state that those are matter of records and the answering deponent has no comment to offer and the deponent do not admit anything which are not borne out of record.

Contd... P/-



Filed by
Tridib Charchit
Comm. Accounts Officer
O/o the C.C.A.
Assam Telecom Circle
Guwahati-781001
Through facsimile
30.05.09

1 JUN 2009

गुवाहाटी न्यायालय
Guwahati Bench

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4. That with regard to the statement made in paragraphs 2 and 3 of the original application, the deponent has no comment to offer as those are within the specific knowledge of the applicant and the answering deponent neither admit or denies the same.

5. That with regard to the statement made in paragraphs 4.1 to 4.3 of the original application, the deponent begs to offer no comment as those are matter of records and the deponent do not admit anything which are not borne out of records.

6. That with regard to the statement made in paragraph 4.4 of the original application, the deponent begs to state that the contention of the application is not correct and are denied by the deponent. It is further stated by the deponent that as per Rule 151 of Financial Hand Book Vol.III Part-I the work orders authorising the number of mazdoors, head mazdoors, carts etc. to be engaged for each party and giving a description of work to be done should be issued in Form A.C.E. 13-A by a Gazetted Officer, not below the rank of Sub Divisional Officer or an Attached Officer. The forms which are, bound in a book form should be machine numbered and kept under the personal custody of the issuing Officer. The work orders should be prepared in triplicate, the original of which should be retained by the issuing officer as his office record, the second

Contd... 2/-

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

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

1 JUN 2009

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गुवाहाटी न्यायालय
Guwahati Bench

the SPS (applicant) was not found correct by him and disagreed with the findings of the Inquiry Officer to the following extant:-

'It is a fact that the mazdoors were given the temporary status on the basis of the certificate issued by the applicant who was the mustering officer for the casual mazdoors. The office copy of engagement of mazdoors should be with the applicant as per the rules. The question of making payment through ACG-17 for the casual labours who were subsequently given the status of regular mazdoor does not arise; this scheme is applicable to those casual labours mustered in the field and worked continuously and drew their wages through muster roll. The applicant had to prove that he has issued a certificate/courter signed certificate on the basis of the documents i.e. engagement of labourers for more than 240 days in a year. Thus the charges against the C.O. has been proved".

The contention of the applicant to shift entire responsibility on the Selection Committee, Sub Divisional Office, TDE Office etc. who regularised casual mazdoors for whom he counter signed the false experience certificates and his contention of mixing up the issue of making payments to mazdoors through the ACG-17 and countersigning the experience certificate for them is not correct and denied. While countersigning the experience certificate of the casual mazdoors he did not bother to satisfy himself with the relevant records.

Contd... P/-

Surjip Chawabori
Comm. Accounts Officer,

1 JUN 2009

[5]

गुवाहाटी न्यायालय
Guwahati Bench

8. That with regard to the statement made in paragraph 4.8 of the original application, the deponent has no comment to offer as those are matter of records and the respondent do not admit anything which are not borne out of records.

9. That with regard to the statement made in paragraph 4.9 and 4.13 of the original application, the deponent has no comments as the contention made in these paragraphs are matter to be dealt by the respondent No.1 i.e. the BSNL.

10. That with regard to the statement made in paragraph 4.10 to 4.12 of the original application, the deponent begs to state that on the basis of learned Special Judge, Assam judgment dated 14.3.2001 in case No. 9/2000, relief sought by the applicant cannot be granted as he was not an appellant in the case. He himself has stated in the petition that he was not the accused in the said criminal case. The relief sought by the applicant in this para may be rejected outright.

11. That with regard to para 4.14 the deponent begs to state that the prayer made in instant paragraph may be rejected in vide of the facts laid down by the deponent in the preceding paragraphs.

Contd... F/-

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

1 JUN 2009

गुवाहाटी बांड
Guwahati Bench

12. That the grounds laid down by the applicant in paragraphs 5.1 to 5.13 are not good grounds which are neither tenable in law nor on fact and are liable to be rejected in view of the actual fact placed before this Hon'ble Tribunal by the deponent in the foregoing paragraphs of this written statement.

13. That with regard to the statement made in paragraphs 5.14 to 5.17 are matters dealt in by deponent No.1 and answering deponent has no comment to offer.

14. That with regard to the statement made in paragraphs 6 and 7 of the original application, the deponent begs to offer no comment as those are within the specific knowledge of the applicant and answering respondent has no comments.

15. That the reliefs sought for and the interim relief prayed for in paragraph 8 and 9 respectively may not be granted in view of the facts laid down by the answering deponents in the foregoing paragraphs.

16. That with regard to the statement made in paragraphs 8, 10 and 11 of the original application, the deponents has no comment to offer.

Contd... P/-

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

1 JUN. 2009

गुवाहाटी न्यायालय
Guwahati Bench

VERIFICATION

I. Tridip Chawabori.../o. I.C.C. Chawabori
aged about 48 years, h/o (17/B) B. Panpara 3rd Lane (W) Talpukur, 24 Pgr(n)
District 24 Pgr(n), W.B. 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 - 16

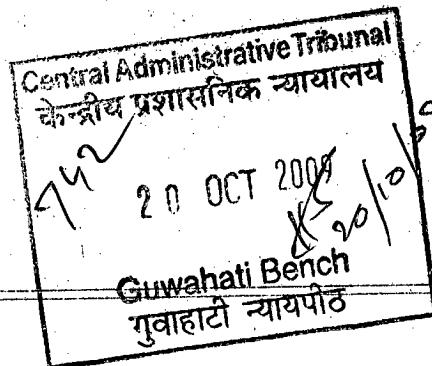
— are true to my knowledge and
those made in paras —

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 28th day
of May 2009 at Guwahati.

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

Kankan Das B.A., LL.B.
Advocate, Guwahati High Court



vibhagaya

Residence: Near Balika
Rukminigaon, Guwahati - 22
Cell No.: 98640-38451
H/No - 15

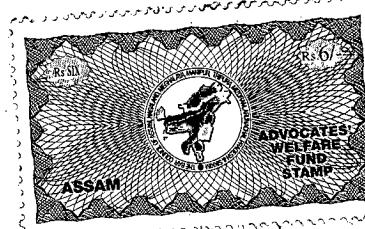
Ref.

Date:

MEMORANDUM OF APPEARANCE

To

The Registrar,
Central Administrative Tribunal
Bhangagarh, Rajgarh Road,
Guwahati - 5.



In the Matter of:
O.A. No. 51 of 2009

sri Promod kr pathak

..... Applicant

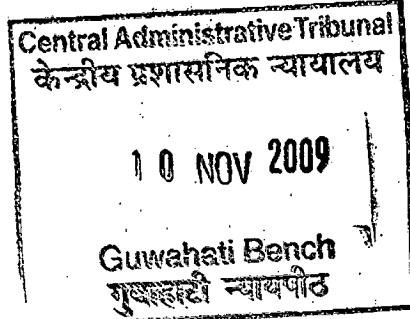
- Versus -

Union of India & Others
..... Respondents

I Sri Kankan Das, Additional Standing Govt. Counsel, in CAT, Guwahati bench hereby enter Appearance of behalf of the Union of India & Respondents No. 1 in the above case, my name may kindly be noted as Counsel and shown as Counsel for the Respondents.

Kankan Das
19-10-09
Kankan Das
Additional Standing Govt. Counsel,
in CAT, Guwahati Bench, Ghy -5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH: AT GUWAHATI



O.A. No.51/2009

Sri Pramod Kumar Pathak

...Applicant

-vs-

Bharat Sanchar Nigam Ltd. & others ... Respondents

(Written statements filed by the respondent No.1, 2 and 4)

The written statements of the above noted respondents are as follows:

1. That the copies of the O.A. No.51/2009 (hereinafter referred to as the "application") have been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of the respondent No. 1, 2 and 4 are same. Hence this written statements has been filed as a common to all of them.
2. That the statements made in the application, which are not specifically admitted, the same are hereby denied by the respondents.
3. That before traversing the various statements made in different paragraphs of the application, the respondents feel it expedient and necessary to bring in the following information for proper adjudication of the matter:
 - A. That the Government of India pursuant to the New Telecom Policy, 1999, decided to set up a company under the name and style as Bharat Sanchar Nigam Limited (hereinafter referred to as the 'BSNL'). The said BSNL has been registered and incorporated under the Companies Act, 1956 on 15.9.2000. The date of Certificate of Incorporation of the said BSNL and the commencement of business is 15.9.2000. The said BSNL is a Govt. Company under Section 617 of

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Guwahati Bench
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the Companies Act, 1956 and is a body corporate. The BSNL is a State within the meaning of Article 12 of the Constitution of India as the Central Government has its deep and pervasive control in the affairs of the said company.

The copies of Certificate of Incorporation and the Commencement of Business are filed as ANNEXURE No. R1 & R2 respectively.

B. That as a matter of policy, the Government of India decided to transfer all the assets and liabilities of the Department of Telecommunications (referred to as the 'DOT') to the said newly set up BSNL with effect from 1.10.2000. This was done vide Govt. of India Office Memorandum No. 2-31/2000-Resig dated 30.9.2000. Amongst other, it was provided by the said OM that the matter relating to personnel (Government servants) pending before various Administrative Tribunals, High Courts and Supreme Court, the company will defend as assigns and successor in interest as per existing rules till the time employees are on deemed deputation with the company. It has also been provided that any judgment / order / award delivered by an authority / Tribunal / Court / Arbitrator in respect of all the matters described there, shall be implemented in letter and spirit by the company, in accordance with rules, regulations, directions and statutes.

A copy of the said OM dated 30.9.2000 is filed as ANNEXURE No. R3.

C. That the aforesaid change over / transformation started with effect from 1.10.2000 as a process. Although this change took place, the personnel (both the officers in the Group A & B and the employees in the Group C & D) remained the same under the same roof and the same set up having the same functions. The change took place by fiction of law only for the purpose of determination of legal status regulating the rights and duties and in order to achieve the purpose of the New Telecom Policy, 1999. The said officers and the employees are / were the same in their official hierarchy as they were in the erstwhile DOT and then in BSNL after 1.10.2000. However, all of them were considered to be employees of the DOT on deemed deputation with effect from 1.10.2000 till they were finally absorbed in BSNL. As a process of absorption of employees of erstwhile DOT,

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the DOT offered opportunities to the employees / officers to exercise option for absorption in BSNL. The applicant in this case also exercised his option for absorption in BSNL. The DOT accepted his option for absorption in BSNL and accordingly the applicant was absorbed as BSNL employee vide Presidential Order No.Estt-22/PO/BSNL-ASM/08040 dated 26.10.2004 and accordingly he stood transferred to BSNL from the date of absorption.

The copy of the said Presidential Order dated 26.10.2004 is annexed as ANNEXURE: R4.

4. That the CCS (CCA) Rules, 1965 and the CCS (Conduct) Rules, 1964 as applicable to the employees of the Central Govt. including the DOT continued to apply for the disciplinary actions of the employees of the erstwhile DOT on deemed deputation to BSNL and even after absorption after 1.10.2000 till 10.10.2006 when the BSNL introduced a new set of rules, namely, the "Bharat Sanchar Nigam Limited (BSNL) Conduct, Discipline and Appeal Rules, 2006" (hereinafter referred to as the 'BSNL Rules') with effect from 10.10.2006. However, by the provisions of Rule 58 of the said BSNL Rules, the action already taken or pending under the repealed rules were saved and / or permitted to be allowed to be action taken or being taken under the said BSNL Rules. The provisions of Rule 58 are quoted below:

"(i) Any rules corresponding to these rules in force immediately before the commencement of these rules and applicable to the employees to whom rules apply, are hereby repealed, provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules, provided further that such repeal shall not affect the previous operation of the rules so repealed and contravention of any of the said rules shall be punishable as if it were a contravention of these rules

"(ii) An appeal pending at the commencement of these rules against an order made before the commencement of these Rules shall be considered and orders thereon shall be made in accordance with these Rules

Sub-Divisional Engineer (Legal)
Office of the GMTD, BSNL
Tezpur - 784001

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गुवाहाटी न्यायपीठ

(iii) The proceedings pending at the commencement of the Rules shall be contained and disposed, as far as may be, in accordance with the provisions of these Rules, as if such proceedings were proceedings under these Rules

(iv) Any misconduct, committed prior to the issue of these Rules, which was misconduct under the superseded Rules, shall be deemed to be misconduct under these Rules."

5. That with regard to the statements made in **para 1 and 3** of the application, the answering respondents state that the order of punishment was issued on 23.2.2004 and the same is allegedly served on the applicant on 23.3.2004 as stated in his memo of appeal and the appeal has been preferred on 28.4.2004 (9.4.2007) and the same has been rejected vide order dated 1.9.2008. If this allegation is true then the appeal preferred by the applicant is itself barred by limitation as provided under Rule 25 of the CCS (CCA) Rules, 1965 and Rule 47 of the BSNL Conduct, Discipline & Appeal Rules, 2006.

6. That with regard to the statements made in **para 2, 4.1 and 4.2**, the respondents state that except the point of jurisdiction, all other matter pertains to matter of records. The respondents admit nothing, which are either contrary or inconsistent with such records.

7. That with regard to the statements made in **para 4.3 and 4.4**, the respondents say that at the relevant point of time, i.e., 31.7.2000, the rules, namely, the CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965 were in vogue and any disciplinary action was to be taken under these two rules. The charge memo was issued to the applicant for violation of provisions of Rule 3(1) and (2) of the CCS (Conduct) Rules, 1964 as he countersigned as many as 13 numbers of false and fabricated experience certificates to some alleged casual labourers without going through the veracity of such evidence and without verification resulting in conferment of temporary status to all such ineligible casual labourers by the authority by putting reliance on his counter signature. These certificates were proved to be false. For the sake of brevity, the respondents crave the leave of this Hon'ble Tribunal to rely upon and refer to the contents of the said charge memo as in Annexure: A1 with the Statement of Article of Charge and the Statement of Imputations of Misconduct etc. as annexed to the OA.

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Guwahati Bench
गुवाहाटी न्यायपीठ

The contentions of the applicant in these paragraphs are not correct and denied. As per Rule 151 of Financial Hand Book Vol.III, Part – 1 the work orders authorizing the number of mazdoors (casual labourer), head mazdoors, carts etc. to be engaged for each party and giving a description for work to be done should be issued in Form A.C.E. 13 – A by a Gazetted Officer not below the rank of Sub-Divisional Officer or an Attached Officer. The Forms, which are bound in a book form should be machine numbered and kept under the personal custody of the issuing officer. The work orders should be prepared in triplicate, the original of which should be retained by the issuing officer as his office record, the second copy made over to the mustering officer as authority for incurring expenditure and the third copy submitted to the Divisional Office for verification and record. The mustering officer's copy should be attached to the relevant muster roll when it is handed over for payment and should be retained as a permanent record, attached to the muster-roll, or the last muster roll if the work order covers more than one.

It is a fact that the mazdoors were given the temporary status on the basis of the certificates issued by the applicant who was the mustering officer for the casual mazdoors. The office copy of engagement of mazdoors should be with the applicant as per the rules. The question of making payment through ACG – 17 for the casual labourers who were subsequently given the status of regular mazdoor does not arise; this scheme is applicable to those casual labourers mustered in the field and worked continuously and drew their wages through muster roll. The applicant has failed to prove that he has issued a certificate / countersigned the certificate on the basis of the documents, i.e., engagement of labourers for more than 240 days in a year and also he failed to observe / verify the aforesaid requirement of law under Rule 151 of the Financial Handbook, Vo.III before putting his counter signature. The applicant in his reply to the charge memo, expressed his ignorance about the number of casual labourers, while he admitted the fact that he countersigned such certificates. He has also indirectly admitted that the above requirements of Financial Rules were not followed.

8. That with regard to the statements made in **para 4.5 to 4.7**, the respondents say that being dissatisfied by the reply filed by the applicant, the disciplinary authority

OM

Sub-Divisional Engineer (Legal)
Office of the GMTO, BSNL
Tezpur - 784001

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Guwahati Bench
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initiated the enquiry under Rule 14 of the CCS (CCA) Rules by appointing the Inquiry authority (IO) and Presenting Officer (PO). The contentions of the applicant in these paragraphs are also not correct and denied. The disciplinary authority had carefully considered the enquiry report. The conclusion of the enquiry officer that the preponderance of probability goes in favour of the applicant was not found correct by him and disagreed with findings of the inquiry officer to the following extent: -

"It is a fact that the copy of engagement of mazdoors should be with the applicant as per the rules. The question of making payment through ACG 17 for the casual labourers who were subsequently given the status of regular mazdoor does not arise; this scheme is applicable to those casual labourers mustered in the field and worked continuously and drew their wages through muster roll. The applicant had to prove that he has issued a certificate / counter signed certificate on the basis of the documents, i.e., engagement of labourers for more than 240 days in a year. Thus, the charges against the C.O. has been proved"

The contention of the applicant to shift entire responsibility on the Selection Committee, Sub-Divisional Office, TDE Office, etc. who regularized casual mazdoors for whom he countersigned the false experience certificates and his contention of mixing up the issue of making payments to mazdoors through ACG 17 and countersigning the experience certificate for them, is not correct and denied. While countersigning the experience certificate of the casual mazdoors he did not bother to satisfy himself with the relevant records.

9. That with regard to the statements made in **para 4.8** the answering respondents state that by holding an inquiry and observing the due process of law, considering the facts and circumstances of the case and on the available evidence, the disciplinary authority passed the order of punishment as authorized by law. The findings and the said order of punishment has been made within the parameters of law and the same do not suffer from any legal defect or infirmity.
10. That with regard to the statements made in **para 4.9 to 4.13** the answering respondents state that the Special Case No.9(C) of 2000 and order dated 14.3.2007 passed in the said criminal proceeding by the Special Judge, Assam, Guwahati, is an independent and unconnected proceeding in so far as the

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Guwahati Bench
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present applicant is concerned. Even when the charges against an employee relates to some criminal offence and a criminal proceeding is initiated before a criminal court, there is no bar in law to prevent the departmental authority from holding a departmental proceeding under such other law and rules. The disciplinary proceeding and the criminal proceeding in the court are independent, either of the two or the both could be proceeded with differently or parallelly. The law in this respect is well settled. It is also settled law that findings of the criminal court not necessarily be adopted in disciplinary proceedings held under such service rules. The technicalities of criminal law will not apply with the same rigour in disciplinary proceeding. The provisions of Evidence Act do not apply in disciplinary proceeding, but the charges must be proved with some evidence. The rules followed in criminal trial to hold evidence beyond reasonable doubt also does not apply in disciplinary proceeding. These settled provisions of law relate to cases where the accused is proceeded with in both such proceedings. But in the instant case, the applicant was never an accused in the aforesaid Special Case nor in the appeal finally disposed of by the Hon'ble Gauhati High Court. Therefore, even if the subject matter / offence is relatable to be a set of events, the applicant cannot take the plea as guilty or not guilty as the case may be in those criminal proceedings. The law is also well settled that in case of punishment, the concept of co-accused does not exist and any punishment so given cannot be termed as discriminatory and unequal within the meaning of Article 14 of the Constitution of India. The applicant himself has stated in the application that he was not the accused in the said criminal case.

11. That with regard to the statements made in **para 4.14 and 5.1 to 5.17** the answering respondents state that the grounds apparently attempted to be set up by the applicant are no grounds at all as nothing is supported by any law, rules or any cogent and irrefutable facts and evidence. A case filed challenging the order of the disciplinary proceeding / findings / appellate order is a case of judicial review as provided by law. But the principle of law is well settled that a judicial review is not against the decision but against the decision making process, if such decision making process is vitiated by any illegality. In the instant case, there has been no allegation of procedural irregularity / illegality nor there has been any proven case of violation of principle of natural justice. Hence the application is filed without any legally sustainable ground and the same is therefore liable to be dismissed with cost as devoid of any merit.

Am
S/o Divisional Engineer (Legal)
Office of the GMTD, BSNL
Tenzir - 784001

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12. That with regard to the statements made in para 6 and 7 of the OA, the answering respondents have no comment to offer.

13. That with regard to the statements made in para 8, 8.1, 8.2, 8.3, 8.4, 9 and 9.1 the answering respondents respectfully submit that under the facts and circumstances of the case, relevant laws and rules and the evidence on records and the statements made hereinabove answering the various allegations made by the applicant and rebutting the grounds, the applicant is not entitled to any relief whatsoever and the relief sought for being untenable in the eye of law; the application is liable to be dismissed with cost by holding it as devoid of any merit.

14. That the answering respondents crave the leave of this Hon'ble Tribunal to allow them to refer to and rely upon the various records of the case including the records of day to day proceeding and the deposition / evidence of witnesses during the course of hearing of the matter. The respondents also crave the leave of the Hon'ble Tribunal to allow them to file additional written statements, if so warranted, for proper adjudication of the matter.

In the premises aforesaid, it is therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall also be pleased to dismiss the application with cost.

Verification.....

MM
Sub-Divisional Engineer (Legal)
Office of the GMTD, BSNL
Tezpur - 784001

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Verification

I, Shri Uttam Ch. Sarma, Son of late K K Sarma, aged about 56 years, resident of Tezpur, Nizamuddin Sarra at present working as the SDE (Legal) in the office of the General Manager Telecom District, Bharat Sanchar Nigam Ltd., Tezpur, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para 1, 2, 4 to 14 — are true to my knowledge and belief, those made in para 3A, 3B, 3C — being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

7
And I sign this verification on this 6th day of November, 2009 at Guwahati.



DEPONENT

Sub-Divisional Engineer (Legal)
Office of the GMTO, BSNL
Tezpur - 784001

Central Administrative Tribunal
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प्रारूप एक

Form 1

निगमन का प्राप्ताण पत्र

Certificate of Incorporation

रांगो 55-107739 राम्रा 19 22

No. 55-107739 of 2000-2001

मेरे प्रत्येक द्वारा दिया गया है कि आज, मात्रा, राजार, निम्न लिखित

कम्पनी अधिनियम 1956 (1956 का 1) को अधीन नियमित की गई है और यह कम्पनी परिसीमित है।

I hereby Certify that BHARAT SANCHAR NIGAM LIMITED

is this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the Company is limited.

मेरे हस्ताक्षर से आज तांत्र 24 अक्टूबर, 1922 को दिया गया।

Given under my hand at NEW DELHI this FIFTEENTH day of SEPTEMBER Two Thousand.....

(रामेश्वर चन्द्र)

कम्पनी रजिस्ट्रार

Registrar of Companies

R. R. धोत्र दिल्ली एवं हरियाणा
N.C.T. of Delhi & Haryana

Certified to be true Copy.

Hemant Kr. Gogoi
Advocate

COMPANY NO. 52-107732



Certificate for Commencement of Business

આપાર પ્રારંભ કરને કા પ્રમાણ-પત્ર

Pursuant to section 149 (3) of the Companies Act, 1956

દાખલી કાર્યક્રમ 1956 નું નાંન 149 (3) ને અનુયાન ની

Thereby certify that the BHARAT SANCHAY NIGAM LIMITED

ને હાલ કાય પ્રમાણિત કરાય નું હૈ..... નામ નામ નામ નામ

which was incorporated under the Companies Act, 1956 on

દાખલ કાર્યક્રમ અધિકારી, 1956 ને અનુયાન કરીની રીતનાં ... 24. MAY. 1922

the FIFTEENTH day of SEPTEMBER 2000

and which has filed duly verified declaration in the

ઓર લિસ્ટ ને કી દાખલ નિર્ધારિત પ્રપત્ર મેં રાલ્યોન્સ ખોલણ પત્ર પ્રકૃતિ

prescribed form that the conditions of section

કર દિયા હૈ કી તુલ ને ધારા 149 (2) (ા) રી. (૩)

149 (2) (ા) રી. (૩) of the said Act. have been complied with is entitled

કો રાલ્યો શરીર કો અનુષ્ઠાન કર દિયા હૈ, અથ: આપાર આરમા કાને કા

to commence business

અધિકારી હૈ।

Given under my hand at NEW DELHI

ભરત દુસ્તાર ને આજ દિનાંક 28. MAY. 1922

this NINETEENTH day of SEPTEMBER

THOUSAND

કો જાંસી નિયમ કરાય

(ટો.શી. શર્મા)

ઉપ કામની રજિસ્ટર

By. Registrar of Companies

ન. પ. રોડ દિલ્હી એંડ હરિયાણા

N.C.T. of Delhi & Haryana

Central Administrative Tribunal
કેન્દ્રીય પ્રણાસનિક ન્યાયાલય

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Certified to be true Copy.

Hemanta Kr. Gogoi
Advocate

New Delhi, the 30th September, 2000.OFFICE MEMORANDUM

Subject:- Transfer and assigning of existing and subsisting contracts, agreements and Memoranda of Understanding of the Department of Telecommunications, Department of Telecom. Services and Department of Telecom. Operations to Bharat Sanchar Nigam Limited.

In pursuance of New Telecom Policy 1999, the Government of India has decided to corporatise the service provision functions of Department of Telecommunications (DoT). Accordingly, the undersigned is directed to state that the Government of India has decided to transfer the business of providing telecom services in the country currently run and entrusted with the Department of Telecom Services(DTS) and the Department of Telecom Operations(DTO) as was provided earlier by the Department of Telecommunications to the newly formed Company viz., Bharat Sanchar Nigam Limited (the Company) with effect from 1st October 2000. The Company has been incorporated as a company with limited liability by shares under the Companies Act, 1956 with its registered and corporate office in New Delhi.

2. The Department of Telecom. Services and Department of Telecom. Operations concerned with providing telecom services in the country and maintaining the telecom network/telecom factories were separated and carved out of the Department of Telecommunications as a precursor to corporatisation. It is proposed to transfer the business of providing telecom. services and running the telecom factories to the newly set up Company, viz., Bharat Sanchar Nigam Limited w.e.f. 1st October 2000. The Government has decided to retain the functions of policy formulation, licencing, wireless spectrum management, administrative control of PSUs, standarisation & validation of equipment and R & D etc. These would be responsibility of Department of Telecommunications (DoT) and Telecom Commission.

3. Government of India has decided to transfer all assets and liabilities, (except certain assets which will be retained by Department of Telecommunications required for the units and offices under control of DoT, to be worked out later on), to the Company with effect from 1st October 2000. All the existing contracts, agreements and MoUs entered into by Department of Telecommunications, Department of Telecom Services and the Department of Telecom Operations with various suppliers, contractors, vendors, companies and

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Certified to be true Copy.

Hemanta K. Gogoi
Advocate

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individuals in respect of supply of apparatus and plants, materials, purchase of land and buildings and supply of services, subsisting on date of transfer of business and/or required for operations of the Company and with subscribers of all types of services to be provided by the Company and with subscribers of and assigned to the Company with effect from 1st October, 2000. The Company will be solely responsible for honouring these contracts, agreements and MoUs for their due performance and in case of disputes to sue and be sued as the successor/assignee under the contract, agreement and MoU.

4. The Company, Bharat Sanchar Nigam Limited will file suitable required appearances/memos in all pending cases before the Courts, Tribunals, Arbitrators, Adjudicators in all matters except issues of licensing; and policymaking which are with the Department of Telecommunications. The Company may get substituted or become an additional party as the case may be, or just conduct the cases as assigns or successor in interest of the Government/Department of Telecommunications, as permissible. This may, in so far practicable, be completed by 31st December 2000.

5. In respect of matters relating to personnel (Government servants) pending before various Administrative Tribunals, High Courts and Supreme Court the Company will defend as assigns or successor in interest as per existing rules till the time employees are on deemed deputation with the Company.

6. Any judgement/order/award delivered by an Authority/Tribunal/Court/Arbitrator in respect of all the matters described there shall be implemented in letter and spirit by the Company, in accordance with rules, regulations, directions and statutes.

7. These instructions will come into force with effect from 1st October 2000.

Vinod Vaish
(VINOD VAISH)
Secretary to the Government of India

To

To

The Secretary DoT and Chairman Telecom Commission.

1. The Secretary DoT and Chairman Telecom Commission.
2. The Secretary, DTS.
3. The Secretary, DTO and Member(Prodn.) Telecom Commission.
4. Member(Finance) Telecom Commission.
5. Member(Services) Telecom Commission.
6. Member(Technology), Telecom Commission.
7. Additional Secretary(T) and Secretary Telecom Commission
8. Joint Secretary(T), DoT.

Central Administrative Tribunal
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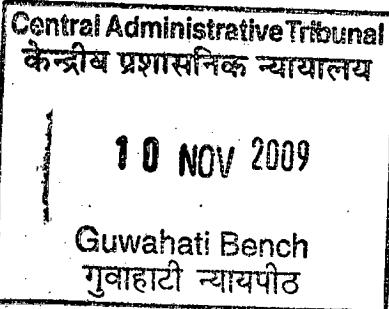
9. Joint Secretary(A), DoT.
10. OSD Corporatisation (DoT) with request to bring it to the notice of the
11. Board of Directors of Bharat Sanchar Nigam Limited.
11. All Chief General Managers of Telecom Circles, Metro Districts, Project Circles, Maintenance Regions, Telecom Stores, Railway Electrification Projects with request to communicate these orders to all units working under their administrative control.
12. All Principal Chief Engineers / Chief Engineers - Civil and Electrical Wings, with request to communicate these orders to all units working under their administrative control.
13. Chief Architects - C. E. i.e., Calcutta and Mumbai, with request to communicate these orders to all units working under their administrative control.
14. All Chief General Managers - Telecom Factories, with request to communicate these orders to all units working under their administrative control.
15. Sr.DDG(TEC)
16. Sr.DDsG- (BW)/(ARCH.)/(ELECT.)
17. Sr.DDG(ML) - with request to communicate these orders to all PSUs working under their administrative control.
18. Sr.DDG(IC & A)
19. Executive Director, C-DOT.
20. Sr.DDG(Vigilance), DoT
20. DDG(Pers.)

Copy to:-

1. PS to Minister of Communications
2. PS to Minister of State for Communications
3. All Advisers, DoT.

Copy also to:-

1. Bharat Sanchar Nigam Limited



Government of India
Department of Telecommunications

No. Estt -22/PO/BSNL-ASM/ 08040

Dated at GH, the 26th Oct '2004.

ORDER

Sub :- Permanent absorption of **Shri/Smt/Kumari PRAMOD KR. PATHAK**
Designation **JTO**. Staff No. _____ in Bharat Sanchar Nigam Limited.

1. Pursuance to letter no. BSNL/II/SR/2003 dated 02.09.2003 on the above subject and in accordance with the provisions of Rule 37-A of CCS (Pension) Rules, as amended from time to time sanction of the President is hereby conveyed to the permanent absorption of **Shri/Smt/Kumari PRAMOD KR. PATHAK** a permanent/temporary employee of the Department of Telecommunications, in BSNL with effect from the date and under the terms and condition as indicated below.
2. **Date of effect :-** The permanent absorption shall take effect from 01.10.2000 forenoon.
3. **Pension/Gratuity :-** **Shri/Smt/Kumari PRAMOD KR. PATHAK** shall be eligible for pensionary benefits including gratuity as per the provisions of Rule 37-A of the CCS (Pension) Rules, as amended from time to time.
4. **Family Pension :-** The family of **Shri/Smt/Kumari PRAMOD KR. PATHAK** shall be eligible for family pension as per provisions of Rule 37-A read with Rule 54 (13-B) of CCS (Pension) Rules, 1972 as amended from time to time.
5. **Regulation of Pay on absorption :-** To be regulated in terms of Para 4 of DOP&PW O.M No. 4/18/87-P&PW (D) dated 05.07.1989.
6. **Leave :-** The Earned Leave and Half Pay Leave at the credit of **Shri/Smt/Kumari PRAMOD KR. PATHAK** stands transferred to BSNL on the date of absorption as provided for under sub-rule 24(b) of Rule 37-A of the CCS (Pension) Rules.
7. **Provident Fund :-** The amount of subscription together with interest there on standing to the credit of **Shri/Smt/Kumari PRAMOD KR. PATHAK** in the General Provident Fund account will be transferred to his /her new Provident Fund account under the BSNL as provided for under Sub-rule 24(a) of Rule 37-A of the CCS (Pension) Rules as amended from time to time.

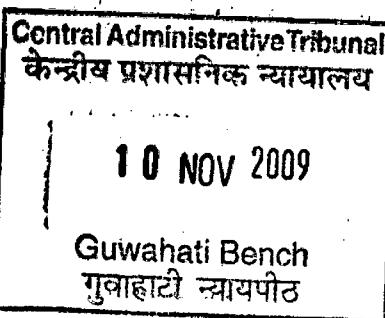
(A. K. Sahu)
Director (Estt), DOT.

To,

The Chairman and Managing Director,
Bharat Sanchar Nigam Ltd.
New Delhi -110 001.

Copy to :-

1. The GM/TDM/AO TEZPUR, Officer in charge for maintaining the service book for keeping this order in the service book along with suitable entries.
2. **Shri/Smt/Kumari PRAMOD KR. PATHAK**
3. The CGM, BSNL, Assam Circle, Guwahati - 781 001.
4. The Cadre Controlling Authority, DOT, New Delhi.



Certified to be true Copy.

Hemanta Kr. Gogoi
Advocate

10 NOV 2009

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Annexure-V

Revised Option Form for absorption in BSNL/MTNL by Group "B" officers of DOT

To

The Secretary,
Department of Telecommunications, Sanchar Bhawan,
New Delhi-1.

Reference: DOT Office Memorandum No. 400-11/98-STG-III dated 8.5.2000 and BSNL/DO
OM No. BSNL/11/STR-2001 dated 14.1.2002 & subsequent clarifications.

Sir

With reference to aforesaid O.M.s, I am to state that :-

1. I have carefully gone through the terms and conditions of permanent absorption in the regular services of MTNL/BSNL and have understood them.
2. My particulars given in the attached proforma are correct to the best of my knowledge.
3. I hereby opt for permanent absorption in BSNL/MTNL in the following order of preference:

A. I) BSNL
II) MTNL

OR

B. I want to continue in Government service.

4. I understand that if I could not be absorbed according to my first choice, I shall be absorbed according to second choice in that order. I also understand that optees for Government service are liable to be placed at the disposal of Redeployment & Training Division, DOP&T, as per rules.

Date 14/10/03

Pathak Yours faithfully,
Signature... Paramed Kumar Pathak
Name & Designation... JTC
Staff No. 102343
Present Office, Bishwanath Chali
Unit of Posting, Tezpur Telecom District
Circle... Assam...

Note:-

- i) This option form is to be filled in quadruplicate.
 - One copy for employee concerned.
 - One copy to be kept in the Service Book of employee concerned in the unit.
 - One copy to be sent to DOT, Sanchar Bhawan, New Delhi
 - One copy to be retained by the CGM concerned.
- ii) Conditional options shall not be accepted.

(TO BE FILLED BY THE CONTROLLING OFFICER)

No. E-276/Option/6-B/03-04/32 dated 14/10/03

The above Option Form, duly completed and signed by the above named employee is forwarded for onward transmission to concerned Staff Branch, DOT, Sanchar Bhawan, New Delhi for further needful. Acknowledgement receipt has been given to the above employee.

Date 14/10/03

To

Department of Telecommunications,
Sanchar Bhawan, New Delhi.

**To be addressed/sent to the concerned cadre controlling authority.

D. S. Pathak 14/10/03
Signature ...
Name ...
Designation ...
Office/Unit ...
Dy. General Manager
Dy. GM I.D. Tezpur
Tezpur-784001

FORM SHOWING THE SERVICE PARTICULAR OF OPTEES

1. NAME IN FULL : PRAMOD KUMAR PATHAK
 2. M/F/E/FEMALE : MALE
 3. FATHER'S NAME : Late Jagendra Nath Pathak
 4. STAFF NO : 108343
 5. DATE OF BIRTH : 01.05.1965
 6. DATE OF SUPERANNUATION : 01.05.2025
 7. EDUCATIONAL QUALIFICATION : B.E
 8. DATE OF FIRST APPOINTMENT & NAME OF THE POST/GRADE : 18.6.1996 / JTO / 'C'
 7-2-91
 9. NAME OF POST/GRADE PRESENTLY HELD : JTO / 'B'
 A) ON ADHOC OR LOCAL OFFICIATING BASIS : No
 B) ON REGULAR BASIS : Yes
 10. NAME/GRADE OF POST HELD AS ON 30.9.2000 : JTO / 'B'
 A) ON REGULAR BASIS
 B) ON ADHOC/LOCAL OFFICIATING

Signature.....
 Name PRAMOD KUMAR PATHAK
 Staff No. 108343

Designation JTO
 Circle/SSA/Place Assam/Tezpur/Biswanath
 Charin

Countersigned by controlling Officer.....

Signature.....

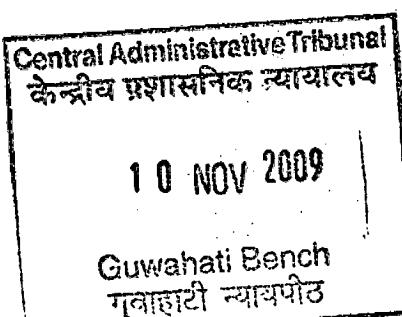
Name B.K. Nayanak

Designation Dy. General Manager

Date 01/0 GMTD Tezpur
Tezpur-784001

Verified by AO(Pay)

Certified that the particulars given by the employees concerned have been verified from the Service Book and found correct.



10

Signature.....
 Name P. Bora
 Accounts Officer (Cash)
 O/O GMTD Tezpur
Tezpur-784001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

ORIGINAL APPLICATION NO. 51/2009

Sri Pramod Kumar Pathak

....Applicant

Vs

Bharat Sanchar Nigam Limited and others.

...Respondents.

**REJOINDER ON BEHALF OF THE APPLICANT IN RESPONSE TO
THE WRITTEN STATEMENT FILED BY RESPONDENT NO 1,2 AND 4.**

In response to the written statement filed by the respondent no 1, 2 and 4 to the original application filed by the applicant, the applicant herein submits the present rejoinder to the following effects:

1. That the applicant does not offer any comments on the contents of paragraph 1 and 2 of the written statement.
2. That with regard to the contents of paragraph 3 of the written statement and the connected sub-paragraphs, the applicant most humbly states that they are matter of records and as such, are not being commented upon, save and except that, during appreciation of any point of law based on the contents of the said paragraphs, the applicant may be heard by this Hon'ble Tribunal.
3. That with regard to the contents of paragraph 4 of the written statement and the connected sub-paragraphs, the applicant submits that the respondents have stated provisions of the Bharat Sanchar Nigam Limited ((BSNL) Conduct, Discipline and Appeal Rules, 2006. The applicant however, begs to be heard in case the respondents, at the

Pramod Kumar Pathak

17 DEC 2011

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hearing, refer to any interpretation of the Rules quoted by them in the said paragraphs or any other provision of law.

4. That with regard to the contents of paragraph 5 of the written statement under consideration, the applicant most humbly states that the respondents have made wrong, false and incorrect statements in the said paragraph. It is stated that as per the appeal dated 28-4-2004, the applicant had stated that he was served a copy of the order dated 23.2.2004 on 25.3.2004. It is beyond comprehension as to from where the respondents have mentioned the date 23.3.2004. It is stated that the respondents have again wrongly stated that the appeal was barred by limitation, as the appeal was within limitation as per Rule 25 of the CCS (CCA) Rules 1965. Since the appeal was filed in 2004, it is again beyond comprehension as to how the BSNL Conduct, Discipline and Appeal Rules 2006, which came into force on 10.10.2006, would apply to the present case. in fact the respondents have conveniently ignored the fact that the appeal was kept pending, without being considered for a period of nearly four and a half years and the concerned authority is directly and the respondents herein, being saddled with legal obligations to pursue grievances of its employees, but having utterly failed to do so, are liable for intentional delay and laches.

5. That the applicant does not offer any comments on the contents of paragraph 6 of the written statement under consideration.

6. That with regard to the contents of paragraph 7 of the written statement under consideration, it is stated that the applicant had

Framod Ar. Pathak

17 DEC 1999

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stated only matters of records and contents of the memo of charge and his reply thereto in the relevant paragraphs no 4.3 and 4.4 of the application. It is stated that mere allegations made in a charge sheet do not stand to prove the charges. It is noteworthy that though the respondents have stated that the certificates were proved to be false, even the Hon'ble High Court has held otherwise. It is further submitted that the applicant had not issued any certificates but had only countersigned certificates issued by LI and SI as token of recognition of the signatures of the LI and SI. It is further stated that even per the statements of the respondents, a Gazetted Officer not below the rank of Sub-Divisional Officer or an attached officer would be responsible to issue ACE 13 A Forms, and also that the copies of work orders should be retained by the issuing officer, the mustering officer and one is submitted to the Divisional Office. The applicant being a non Gazetted Junior Telecom Officer was neither the issuing officer nor the mustering officer. Apparent attempts have been made in the written statement in issue to give a false impression of the facts of the case. It is stated that only casual labourers are paid on ACG 17 Forms by the LI and SI from the temporary advance received by them from the concerned JTO against the work done under maintenance heads to capital estimate. It is clarified that the persons taking payment through muster roll are temporary mazdoors and not casual labourers. It is also relevant to state here that the custodian of the ACG-17 Forms, which are a part of ACE-3 accounts, is the Telecom Divisional Office. Ironically, the said concerned office could not produce any documents during the enquiry, and as such, in an effort to hide lapses, the petitioner has been made a scapegoat. It is stated that during the enquiry, rough

Pramod K. Pathak

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copies of attendance registers were discovered which were produced during the enquiry. A bare perusal of the documents would put the entire allegations and contentions of the respondents to fault. It is also to be noted that the respondents are making self-contradictory statements when on the one hand they admit that the applicant had countersigned the certificates, there on the other hand, they state that mazdoors were given temporary status on the basis of certificates issued by the applicant.

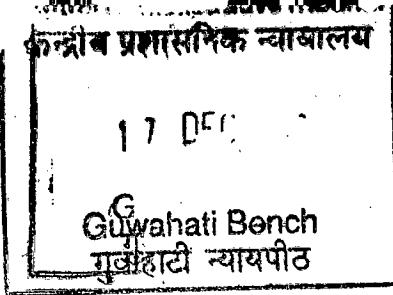
7. That with regard to the contents of paragraph 8 of the written statement in issue, the applicant reiterates and reaffirms his statements made in the corresponding paragraphs 4.5 to 4.7 of the application. It is stated that the applicant had not tried to shift entire responsibility on the Selection Committee etc. The applicant had only tried to demonstrate that the allegations leveled against him were without foundation or basis since all the records regarding the issue, which would prove the engagement of the casual laborers would be available in the official records which are kept under the safe custody of the Divisional Office. It is further stated that the respondents have deliberately failed to accept that the applicant had ~~not~~ certified the correctness of the certificates but had countersigned the signatures of the persons who had issued the certificates.

8. That with regard to the contents of paragraph 9 of the written statement, the applicant states that he has challenged the imposition of the penalty imposed by disciplinary authority and the grounds for the challenge would be addressed to at the time of hearing of the application.

Pramod Kr. Pathak

9. That with regard to the contents of paragraph 10 of the written statement under consideration, the applicant states that the issue in the criminal proceedings and the departmental proceedings were based on the same allegation to the effect that persons were afforded Temporary Status on the basis of the false and fake experience certificates. The attempt of the respondents to make two issues out of the same allegations is wholly misconceived, more so in light of the allegations leveled against the applicant and findings of the Hon'ble Courts of law regarding the issue. It is relevant to point out here that the callous and perfunctory attitude of the respondents is evident from the fact that in the paragraph under consideration, they have referred to order dated 14.3.2007 passed in the "said" (i.e. Special Case no 9(c)/2000), when no such orders exist. It would also be relevant to point out here that admittedly, the level of proof in a criminal proceeding being more rigorous, the findings of a Court of Criminal law would bear some relevance in deciding the fate of the disciplinary proceedings based on the same allegations and the same facts. It would be relevant to state here that the criminal appeal was not decided on the basis that the charges could not be proved beyond doubt, but was decided on the basis that the department had failed to show that the casual laborers did not work at the relevant point of time and also on the fact that the department had failed to produce relevant documents which could have decided the fate of the issues involved. In such circumstances, it is unreasonable on the part of the respondents to require the applicant to produce those documents, which were admittedly in the custody of the divisional offices of the respondents. It is further stated that the plea of the respondents that the applicant was not an accused in the criminal

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proceedings speaks volumes about the true facts and circumstances, since the applicant was a departmental witness. It is relevant to point out here that the appeal of the appellant filed before the concerned authority was not only on the basis of the orders passed by the Hon'ble High Court, but the said orders were brought to the notice of the Appellate authority by way of a rejoinder so that the findings of a Court of Law could also be considered by the said authority. It however appears that in its haste to condemn the applicant, the appellate authority apparently failed to consider all the other grounds taken by the applicant.

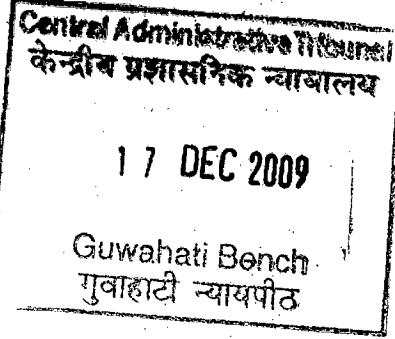
10. That with regards to the contents of paragraph 11 of the written statement in issue, the applicant states that the grounds taken by the applicant are good grounds for grant of the relief prayed for. The respondents have not been able to bring on record any material to show that the allegations leveled against the applicant are sustainable to any minimal extent even. The respondents have clearly avoided making any statements regarding specific issues raised by the applicant in the application and as such, apparently the applicant is entitled to be granted the relief/s prayed for in the application.

11. That with regard to the contents of paragraph 12 of the written statement, the applicant reiterates and reaffirms the contents of paragraph 6 and 7 of the application.

12. That with regard to the contents of paragraph 13, 14 and the prayer clause of the written statement under consideration, the applicant reiterates and reaffirms that in the facts and circumstances of the case, he is entitled to all the relief/s as prayed for in the application.

Verification

Ramod Kr. Pathak



Verification

I, Sri Pramod Kumar Pathak, s/o late Jogendra Nath Pathak, aged about 43 years, working as a Sub-Divisional Engineer (phones), Bharat Sanchar Nigam Limited, Bishwanath Charialli, resident of Milanpur, Bishwanath Charialli, Sonitpur, verify that the contents of paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12 are true to my personal knowledge and the contents of paragraph 3 are believed to be true on legal advice and that I have not suppressed any material fact.

Date: 12-12-09

Place: Guwahati:

Pramod K. Pathak

Signature of the Applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

ORIGINAL APPLICATION NO. 51/2009

Sri Pramod Kumar Pathak

....Applicant

Vs

Bharat Sanchar Nigam Limited and others.

...Respondents.

REJOINDER ON BEHALF OF THE APPLICANT IN RESPONSE TO
THE WRITTEN STATEMENT FILED BY RESPONDENT NO 3 and 5.

In response to the written statement filed on behalf of the respondent no 3 and 5 to the original application filed by the applicant, the applicant herein submits the present rejoinder to the following effects:

1. That the applicant does not offer any comments on the contents of paragraph 1, 2, 3, 4 and 5 of the written statement, save and except reaffirm and reiterate the contents of the original application.
2. That with regard to the contents of paragraph 6 of the written statement under consideration, it is stated that the applicant had stated only matters of records and contents of the memo of charge and his reply thereto in the relevant paragraph no 4.4 of the application. It is stated that mere allegations made in a charge sheet do not stand to prove the charges. It is noteworthy that though the respondents have stated that the certificates were proved to be false, even the Hon'ble High Court has held otherwise. It is further submitted that the applicant had not issued any certificates but had only countersigned certificates issued by LI and SI as token of

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recognition of the signatures of the LI and SI. It is further stated that even per the statements of the respondents, a Gazetted Officer not below the rank of Sub-Divisional Officer or an attached officer would be responsible to issue ACE 13 A Forms, and also that the copies of work orders should be retained by the issuing officer, the mustering officer and one is submitted to the Divisional Office. The applicant being a non Gazetted Junior Telecom Officer was neither the issuing officer nor the mustering officer. Apparent attempts have been in the written statement in issue to give a false impression of the facts of the case. It is stated that only casual labourers are paid on ACG 17 Forms by the LI and SI from the temporary advance received by them from the concerned JTO against the work done under maintenance heads to capital estimate. It is clarified that the persons taking payment through muster roll are temporary mazdoors and not casual labourers. It is also relevant to state here that the custodian of the ACG-17 Forms, which are a part of ACE-3 accounts, is the Telecom Divisional Office. Ironically, the said concerned office could not produce any documents during the enquiry, and as such, in an effort to hide lapses, the petitioner has been made a scapegoat. It is stated that during the enquiry, rough copies of attendance registers were discovered which were produced during the enquiry. A bare perusal of the documents would put the entire allegations, and contentions of the respondents to fault. It is also to be noted that the respondents are making self-contradictory statements when on the one hand they admit that the applicant had countersigned the certificates, there on the other hand, they state that mazdoors were given temporary status on the basis of certificates issued by the applicant.

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3. That with regard to the contents of paragraph 7 of the written statement in issue, the applicant reiterates and reaffirms his statements made in the corresponding paragraphs 4.5 to 4.7 of the application. It is stated that the applicant had not tried to shift entire responsibility on the Selection Committee etc. The applicant had only tried to demonstrate that the allegations leveled against him were without foundation or basis since all the records regarding the issue, which would prove the engagement of the casual laborers would be available in the official records which are kept under the safe custody of the Divisional Office. It is further stated that the respondents have deliberately failed to accept that the applicant had not certified the correctness of the certificates but had countersigned the signatures of the persons who had issued the certificates.

4. That with regard to the contents of paragraph 8 of the written statement, the applicant states that he has challenged the imposition of the penalty imposed by disciplinary authority and the grounds for the challenge would be addressed to at the time of hearing of the application.

5. That with regard to the contents of paragraphs 9 and 10 of the written statement, the applicant reiterates and reaffirms the contents of paragraph 4.9 to 4.13 of the original application. It is stated that the contentions of the respondent/BSNL in their written statement to the aforesaid paragraphs have been dealt with in the rejoinder filed by the applicant to their written statement and the applicant prays the leave of this Hon'ble Court to refer to and rely upon the same.

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6. That with regard to the contents of paragraph 11 and 12 of the written statement filed for and on behalf of the respondents 3 and 5, the applicant states that the grounds taken by the applicant are good grounds for grant of the relief prayed for. The respondents have not been able to bring on record any material to show that the allegations leveled against the applicant are sustainable to any minimal extent even. The respondents have clearly avoided making any statements regarding specific issues raised by the applicant in the application and as such, apparently the applicant is entitled to be granted the relief/s prayed for in the application.

7. That with regard to the contents of paragraph 13 of the written statement, the applicant states that he has challenged the imposition of the penalty imposed by disciplinary authority and the grounds for the challenge would be addressed to at the time of hearing of the application.

8. That with regard to the contents of paragraph 14 of the written statement, the applicant reiterates and reaffirms the contents of paragraph 6 and 7 of the application.

9. That with regard to the contents of paragraph 15 and the prayer clause of the written statement under consideration, the applicant reiterates and reaffirms that in the facts and circumstances of the case, he is entitled to all the relief/s as prayed for in the application.

Verification

Pramod Kr. Pathak

17 DEC

Guwahati Bench

Verification

I, Sri Pramod Kumar Pathak, s/o late Jogendra Nath Pathak, aged about 43 years, working as a Sub-Divisional Engineer (phones), Bharat Sanchar Nigam Limited, Bishwanath Charialli, resident of Milanpur, Bishwanath Charialli, Sonitpur, verify that the contents of paragraphs are true to my personal knowledge and the contents of paragraph are believed to be true on legal advice and that I have not suppressed any material fact.

Date:

Pramod Kr. Pathak

Place:

Signature of the Applicant.