

50/100
X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-190/98 order sheet Pg-1 to 2 INDEX

Disposed Date- 18/2/99

O.A/T.A No. 216/96.....

M.P-143/96 order sheet Pg-1 to 5

R.A/C.P No.....

Allowed Date- 18/2/99

E.P/M.A No. 190/98.....

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2. Judgment/Order dtd. 18/02/99..... Pg. 1 to 4 Allowed

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... 216/96..... Pg. 1 to 77

5. E.P/M.P..... 190/98..... Pg. 1 to 4

6. R.A/C.P..... M.P-143/96..... Pg. 1 to 6

7. W.S..... Pg. 1 to 9

8. Rejoinder M.P-24/99 order sheet Pg. 1 to 1

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M.P-220/98 order sheet Pg-1 to 2

Disposed Date- 24/11/98

Petition Copy Pg-1 to 4

SECTION OFFICER (Judl.)

CA No. 216196

S. K. Bose

Applicant(s)

VS

Union of India vs.

Respondent(s)

Mr. S. C. Chakraborty

Advocates for the applicant(s)

Mr. G. Sonoma & CSE

Advocates for the Respondent(s)

Office Notes

Date

Courts' Orders

This application is in
form and within time
C. F. of Rs. 50/-
deposited vide
IPO 2D No 444330
Dated 25.9.96

16.10.96

Mr. S.C.Chakraborty for the
applicants.

Mr. S.Ali, Sr. C.G.S.C. for the
respondents.

Heard Mr. Chakraborty for
admission and perused the contents of
the application and reliefs sought.
Application is admitted subject to
consideration of limitation at the time
of final hearing. Issue notice on the
respondents by registered post. Written
statement within six weeks.

List for written statement
further order on 28.11.1996.

Heard Mr. Chakraborty on interim
relief prayer. Pendency of this
application shall not be a bar for the
respondents to dispose of the appeal of
the applicants.

Member

Notice issued to the
concerned parties vide
D. No. B781 Df 15.11.96

trd

N
17/10/

28.11.96

Mr. S.C. Chakraborty for the
applicant.

Written statement has not been
submitted.

List for written statement and
further orders on 20.12.96.

Member

1) w/ Statement has not yet filed.
2) Notice duly served on
Respt. No - L

trd

N
20/11/

20.12.96

Mr S.C.Chakraborty for the applicant.

Written statement has not been submitted by the respondents. List for written statement and further orders on 17.1.97.

6
Member

pg
M
23/12

17.1.97

Mr S.C.Chakraborty for the applicant. Mr S.Ali, Sr.C.G.S.C for the respondents submits that he may be allowed one month time to submit written statement.

List for written statement and further orders on 13.2.1997.

6
Member

pg
M
13/2

13-2-97

Adjourned for orders on 13-3-97.

6
Member

JK
Vice-Chairman

1m

M
13/2

13-3-97

Written statement has not been submitted. List for written statement and further order on 20-3-97.

6
Member

1m
M
13/3

Statement has not been filed.

11

Notice duly served on
R- No - 1.

Memo ab appearance
not been filed
by Mr. S. Ali, Sr.C.G.S.C
Statement has not been

12-3-97

Notice duly served
on R- No - 1
written statement
has not been submitted.

14-3-97

NTS on off or Records
G.A.D.

- 1) Notice duty Service
on O.P. No. 1
- 2) Service Reports on
O.P. Nos. 2-7 are
still awaited.
- 3) W/ statement - his sum
billed.
- 4) No appearance his sum
billed in S.C.G.S.C.

20.3.97

Written statement has been filed,
Case is ready for hearing.

List on 1.5.1997 for hearing.


Member


Vice-Chairman

19/3

1.5.97

Learned counsel for the applicant
submits that he is suffering from eye
trouble and therefore he prays for one
weeks adjournment. Prayer allowed.

List on 8.5.97 for hearing.


Member


Vice-Chairman

20/4

pg


215

8.5.97

Left over. List on 3.7.97 for
hearing.


Member


Vice-Chairman

21/5

pg


215

3.7.97

Mr-S. Ali, learned Sr. C.G.S.C., appears on
behalf of the respondents and prays for an adjournment.
List it on 29.7.97.


Member


Vice-Chairman

nkm


217

22/5

29.7.97

Mr S. Ali, learned Sr.

C.G.S.C., submits that the records of the case will be necessary. However, the records are not available with him today. Therefore, he prays for a short adjournment. Accordingly the case is adjourned till 4.9.97.

6
MemberJ.S.
Vice-Chairman

W/S has been filed.

nkm

5
30/7

4.9.97

Leftover. List on 8.12.97.

By arr.

17.2.98

8-12-97

Case is ready for hearing.

Let this case be listed for hearing on 16-2-98.

13

6
MemberJ.S.
Vice-Chairman

lm

18.2.98

14

The case is otherwise ready for hearing. List it for hearing on 27.5.98.

6
MemberJ.S.
Vice-Chairman

nkm

27-5-98

15

On the prayer of Mr.S.C.Chakraborty learned counsel for the applicant case is adjourned till 31-7-98.

6
MemberJ.S.
Vice-Chairman

lm

28.5.98

Mr B.P. Kataki, learned Government Advocate, Tripura, informs that the State Government has since received the records, but due to certain difficulties the records could not be produced today. Therefore, he prays for a short adjournment. List it on 13.7.98.

Notes of the Registry

Date

Order of the Tribunal

1.7.98

16

On the prayer of Mr S.C. Chakraborty, learned counsel for the applicant the case is adjourned till 12.8.98.

Member


Vice-Chairman

nkm

2/3
3-8-98

17

Let this case be listed for hearing on 13-8-98 alongwith M.P. 180/98.

Member


Vice-Chairman

1m

5/8

12.8.98

There is no representation on behalf of the applicant. The applicant is also not found on call. Mr S. Ali, learned Sr. C.G.S.C. is present. The application is dismissed for default.

Member


Vice-Chairman

nkm

9/8
18/8

14.8.98 Present: Hon'ble Mr Justice D.N. Baruah
Vice-Chairman

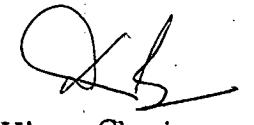
Hon'ble Mr G.L. Sanglyine,
Administrative Member

In view of the order passed today in Misc. Petition No.222/98 the original application No.216/96 is restored to file and is fixed for hearing on 1.2.1999.

Member


Vice-Chairman

nkm

Notes of the Registry	Date	Order of the Tribunal
4 <u>8-2-99</u> Written statement has been filed <u>8/2/99</u>	<u>2x2.</u> 1.2.99 pg	Division Bench is not available. List on 9.2.99 for hearing.  Member
<u>16-2-99</u> Written statement has been filed <u>16/2/99</u>	<u>9.2.99</u> <u>17.2.99</u>	There was a reference Adm to 18.2.99. By Mr. Heard in part. passed on in day. By Mr.
	18.2.99 pg	In view of the order passed in M.P.143/996 the application is deemed to be within time.  Member
<u>19.3.99</u> Copies of the Judgment have been sent to the D/Sec. for issuing the same to the parties through Regd. with A.P.O.  Member	18.2.99 pg	Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is allowed. No costs  Vice-Chairman
<u>issues vide Despatch</u> No. 924 to 931 dt. 23-3-99 <u>26.3.99</u>		

8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::GUWAHATI-5.

O.A.No. 216 of 1996.

18-2-1999.
DATE OF DECISION.....

Sri Subir Kumar Bose

(PETITIONER(S))

Sri S.C.Chakraborty.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, S.r.C.G.S.C

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 216 of 1996.

Date of Order : This the 18th Day of February, 1999.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Shri Subir Kumar Bose,
Ex.Electrician under G.E.Narengi)
C/O Samir Bose,
Quarter No. C-65,
P.O. Satgaon, Jorabat,
Guwahati-27.

... Applicant.

By Advocate Shri S.C.Chakraborty.

- Versus -

1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi.
2. Engineer-in-Chief,
Kashmir House, Army Headquarters,
D.H.Q.,
New Delhi-110011.
3. The Chief Engineer,
Eastern Command, Fort William,
Calcutta-21.
4. The Chief Engineer,
Shillong Zone,
Shillong.
5. Commander Works Engineer,
Spread Eagle Falls,
Shillong-11.
6. Garrison Engineer,
Narengi, Guwahati-27.
7. Commander Works Engineer,
A.T.Road, Santipur, Guwahati-9. . . . Respondents

By Advocate Shri A.Deb Roy, Sr.C.G.S.C.

O R D E R

BARUAH J.(V.C)

This application has been filed by applicant challenging the Annexure-P order of dismissal dated 18.1.1995 and the disciplinary proceedings. The case of the applicant is that at the material time he was Electrician working in the office of the Garrison Engineer, Narengi. On certain allegations he was charged sheeted and the article of charges

2

with a statements of imputation were served on him. On receipt of the show cause notice, the applicant duly replied to it. However, the disciplinary authority not being satisfied with the cause shown appointed Lt Col L.K.Mahajan as Enquiry Officer to proceed with the enquiry. Shri A.K. Dutta, Assistant Garrison Engineer, Narengi was appointed Presenting Officer. In due course the enquiry was held. However in the enquiry no witness was examined as required under the rule. Only the statement of the charged employee was taken and thereafter the Enquiry Officer submitted his report holding the applicant guilty of all the charges and the disciplinary authority agreeing with the findings of the Enquiry Officer dismissed the applicant from his service. A copy of the report was also forwarded. Being aggrieved by the order of dismissal the applicant preferred an appeal. The appeal is not yet disposed of. Hence the present application.

2. We have heard Mr S.C.Chakraborty, learned counsel appearing on behalf of the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents. The admitted facts are that the disciplinary proceeding was initiated as per the provision of Rule 14 of the CCS(CCA) Rules 1955. In due course the respondents have entered appearance and filed written statement. Mr Chakraborty submits that there was a utter violation of the provision of Rule 14 of the CCS(CCA) Rules which are mandatory provision and non compliance of such mandatory provision has vitiated the entire proceeding and no penal action could be taken on the basis of such enquiry. Mr Chakraborty further submits that not a single witness was examined. No documents was duly proved. In spite of repeated requests by the applicant, the authority did not supply any

RZ.

contd...3

documents nor any statement of witness examined by the authority. The disciplinary authority decided to initiate a disciplinary proceeding. Principles of natural justice had also been violated. Mr Deb Roy very fairly submits that the provisions of Rule 14 of CCS(CCA) Rules had not been complied with during the enquiry. He also concedes that no witness was examined and documentary evidence were not brought proved as required under the rules. In para 14 of the application the applicant has stated that he was denied the right of cross examining the witness. The mandatory provisions of Rule 14 had been totally ignored. The statements made in para 14 has been replied in the written statement in para 13. In para 13 the respondents have stated as follows :-

".....the respondents beg to state that the contents of the applicant are not agreeable since he was duly examined by both Inquiry Officer and Presenting Officer giving him every chance to speak for his defence. All reasonable opportunities to defend the case was given to the applicant."

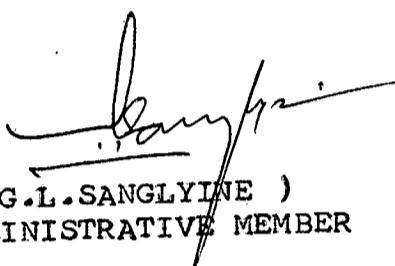
From this para it appears that only the applicant was asked to make statement but there is no mention about the examination of any witness from the side of the disciplinary authority. It is a settled law that the provisions of Rule 14 of the CCS(CCA) Rules is mandatory and non compliance of such provision will vitiate the enquiry. On perusal of the record we find that the provisions of Rule 14 had not been complied with and on the basis of such enquiry no penalty can be imposed.

3. Aggrieved by the order imposing penalty, the applicant preferred an appeal. The authority however has not yet been disposed of the appeal. Considering the entire facts and circumstances of the case we have no hesitation to hold that the enquiry was conducted in utter violation

DR

of the provisions of Rule 14 of the CCS(CCA) Rules 1965. Accordingly the impugned order imposing penalty cannot sustain in law. In view of the above we set aside the Annexure-P order of dismissal dated 18.1.1995 and the disciplinary proceeding. The applicant shall be deemed to be in service.

The application is allowed. No order as to costs.



(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER



(D.N.BARUAH)
VICE, CHAIRMAN

In the Central Administrative Tribunal, Guwahati Bench

Case No. G.A. 216 /96

Sri Subir Kumar Bose - Applicant

-Vs-

Union of India and others - Respondents

List of dates on behalf of the applicant is given below :

Sl No.	Date	Particulars	Para No.	Page No
--------	------	-------------	----------	---------

1. 29.8.84 The applicant being 1 2

sponsored by employment
for the post of switch
Board Attendant in Military
Engineer service was called
for interview.

2. 29.8.1984 The applicant was advised 2 3-4

to bring alongwith him
necessary certificates but
as the technical qualifi-
cation certificate was not
necessary and mandatory for the
said post. The applicant did not
submit the technical qualifi-
cation certificates.

Annexure - A is interviewed(first)
call letter (21)

3. 20.3.1987 Without any fresh advertisement
again the applicant was asked
for interview for the post of

4

4-5

Sl No.	Date	Particulars	Para No.	Page No.
		S.B.A .Only original H.S.L.C. A certificate ,Admit card and experience certificate were checked and verified by the authority and therea fter the applicant got appointment letter Annexure-B is the telegraphic interview call letter.		4, 5
4.	8.4.87	The applicant getting the appointment letter,joined the post on 8.4.87 ,Annexure-C is the appointment letter.	4	5
5.		The applicant for his diligent and honest service was promoted to skilled Electricians.	5	5
6.	27.6.90	All on a sudden, the applicant was served with a notice of termination U/R 5(1) of C.C.S. Rules, Annexure-D is the notice of the termination.	6.	5
7.	19.9.91	* Hon'ble Central Administrative on the application of the applicant passed order amongst others to reinstate the applicant. Annexure-E is the order passed by the Hon'ble Tribunal.	8 7	6

Sl No.	Date	Particulars	Para No.	Page No
8.	7.4.92	The applicant as per the order of the Hon'ble Tribunal was reinstated on minimum salary. Annexure- 'F' is the letter for reinstatement.	8	6
9.	19.5.92	The applicant by a letter dtd. 19.5.92 was directed to report the office alongwith the original certificate of I.T.I.	9	6
10.	4.6.92	The applicant categorically explained the matter denying the submission of I.T.I certificate Annexure-G is the said letter.	9	6
11.	7.9.92	The applicant was asked to show cause as to why disciplinary action should not be initiated against the applicant and the applicant submitted his show cause accordingly. Annexure-H is the reply to the show cause.	10.	7
12.	22.1.93	Departmental proceeding was initiated and the applicant was served with a copy of Memorandum . Annexure- -1.	11.	7

Sl No.	Date	Particulars	Para No.	Page No.
13.	22.1.93	The applicant submitted his show cause praying for producing defence witnesses and cross examination in spite of the fact that he was not furnished with the copy of the statements and extracts of documents. Annexure- 9 is the copy of the show cause.	12.	7
14.	16.10.93	The applicant in course of departmental enquiry submitted his statement of defence as he was not favoured with any the assistance of any Govt. servant and or legal practitioner. He was also neither supplied with the copies of the statements of the witnesses nor he was allowed to look into the documents including C.P.I report Annexure- K is the statement of defence.	13	8
15.	16.10.93	The applicant prayed for allowing him to take assistance of legal practitioner as no listed witnesses was examined. No document was provided The applicant was denied of his right of cross examination .Annexure-K(K) is the copy of the prayer for legal assistance.	4	9

Sl No.	Date	Particulars	Para No.	Page No.
16	19.7.94	As the Departmental Enquiry is based on no legal evidence. The applicant in reply to the letter dtd. 6.7.94. Explained the facts and circumstances which made the enquiry report improper and inoperative by a letter dtd. 19.7.94 Annexure- L is the said letter submitted by the applicant.	15	9
17. 9.5 94		The applicant made his defence clear in respect of the charges by a letter in reply. to the brief made by the presenting officer.	16	9
18. 6-5-94		The presenting officer sent the Brief in respect of the charge and annexure N is the copy of the brief.	16.	9
19. 19.7.94		The applicant made his position clear by a representation in reply to the Inquiry report. The annexure O is the copy of the said representation.	17.	10
20. 18.1.95		The applicant was served with the order of punishment alongwith the inquiry report Annexure-P is the copy of the order of punishment and annexure P (1) is the copy of the inquiry report.	18	10

Sl No.	Date	Particulars	Para No.	Page No.
21.	13.3.95	The applicant thereafter preferred an appeal before the Appellate authority registered post on 13.3.95 but no nothing was heard from the appellate authority & even after expiry of six months (Annexure Q is the copy of the appeal and Annexure R is the registered receipt.	20	10
22.	10.9.96	The applicant fell ill, he was available to file application within time limit U/s 19 of the Administrative Tribunal Act. Annexure 'S' is the copy of the Medical Certificate.	21	11
23		The order was passed arbitrarily without on any independant material. No witnesses was examined and no document was proved.	23	11
24.		The entire procedure of enquiry was conducted in perfunctory manner. The non maintenance of the order sheet of the disciplinary proceeding has made the order inoperative and illegal.	25 (b)(c)(d) (f)	12
			25(g)(h)	13

25. The denial of the right of inspection
of documents has made the order
illegal

25 (h) 13

26. As no order sheet showing the various
orders passed from time to time and as
no copy of the day to day proceedings
during enquiry was furnished, the
procedure is bad and illegal.

25 (1) 14

27. Order notice and other process made
or issued were not served on
Govt. servant.

25.(m) 15

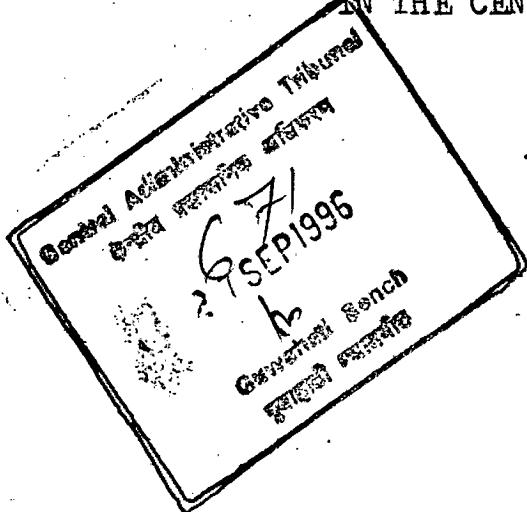
28. The order is arbitrary, illegal as the
applicant has been picked arbitrarily
amongst other..

25 (n) 16

DISTRICT : KAMRUP (Assam)

File No. 216
96-6-4
Received by
S.C. Court
24-6-96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :GUWAHATI BENCH



Case No. O.A. 216 196

-BETWEEN -

Sri Subir Kumar Bose

(Ex.Electrician under G.E. Narengi)

aged about 32 yrs S/o Monoranjan Bose

C/o Samir Bose Q.No. C-65

P.O - Satgaon,Jorabat, P.S -

Noonmati,Guwahati-27, Dist.Kamrup

... Applicant

- AND -

Union of India and others

... Respondents

1. Details of application :

- i. Name of the applicant : Subir Bose
- ii. Name of Father : Late Monoranjan Bose
- iii. Designation and office in which employed : Ex.Electrician under G.E. Narengi, Satgaon,Guwahati-27
- iv. Address for service of : Satgaon ,P.O Satgaon, all notices Guwahati-27.

Received
Copy
S. C. S. C. 7/10/96
2. Particulars of the Respondents :

- (1) Union of India through the ~~Ministry~~ ^{Secretary} of Defence, New-Delhi.
- (2) Engineer -in-Chief, Kashmir House, Army Head Quarters D.H.Q, P.O New-Delhi- 110011.
- (3) The Chief Engineer,Eastern Commandant ,Fort William Calcutta- 21.

(4) The Chief Engineer, Shillong Zone, Shillong

(5) Commander Works Engineers, Spread Eagle
Falls, Shillong - 793011

(6) Garrison Engineer, Narengi, Guwahati-27

(7) Commandar works Engineer,
A.T Road, Santipur, Guwahati-9.

3. Particulars of the order : Order dt. 18th January, 1995
against which application Vide No. 1970/GEN/346/EIC
is made. from Commander works

Engineer, Spread Eagle
Falls, Shillong - 793011

i) Order No : No. 1970/Gen/346/EIC
passed by the Commander
Works Engineers, Spread
Eagle Falls, Shillong -
793011, Communicated
through G.E. Narengi,
Satgaon, Guwahati-27.

ii) Date : 18th January, 1995

iii) Passed by : Commander Works Engineer
Spread Eagle Falls,
Shillong and Communicated

iv) Subject in brief : Dismissal from service
(by order and in the name of my President)
which shall ordinarily
be a disqualification for
future employment under
the Government Under Rule
15 of CCS(CC &A), Rules-1965.

4. Jurisdiction of the : The applicant declares that
Tribunal the subject matter of the
order against which he wants
redressal is within Guwahati.
5. Limitation : The applicant further declares
that the application is ^{although not} within
the limitation prescribed in
Section 21 of the Administrative
Tribunal Act, 1985, <sup>Condonation
petition lies 5 of the Limitation Act
has been made</sup>
6. Facts of the case :
1) That the humble applicant being sponsored by the
employment Exchange, Guwahati for the post of Switch
Board attendant to in Military Engineer service was
called for interview/test vide letter No. 1016/4184/
E INB and accordingly the applicant sat for interview
on 29th August, 1984.
2) That the applicant for the said post of S B A
in Military Engineer service was also advised to bring
alongwith him on the date of interview i.e. 29th
August, '84 the original certificates in support of his
educational qualification, age proof, Employment
Exchange Card and Experience certificate. But as the
technical qualification certificate was not at all
necessary and mandatory for the said post of switch
Board attendant the humble appellant had no reason to
produce technical qualification certificate for the
said post of S.B.A Besides as the applicant did never

acquire technical qualification, the question of production of technical qualification certificate (I.T.I) did not arise at all. The Photostat copy of the said interview call letter has been enclosed herewith and marked as ANNEXURE-A'.

3. That the humble applicant begs to submit that neither the advertisement notice nor the Employment Exchange nor the interview letter dt. 14.8.84 mentioned specifically that I.T.I certificate for the post of S.B.A was essential and compulsory. Naturally the Employment Exchange, sponsored the name of the applicant for the post of S.B. A despite the fact that the applicant had no I.T.I certificate. Besides the applicant was neither asked for submitting I.T.I certificate nor he was informed that the said I.T.I certificate was necessary for the said post. Consequently, the applicant was not at all aware of the requirement, if any, of I.T.I Certificate for the post of S.B.A.

4. That the humble petitioner begs to submit that ~~the applicant~~ although his interview for the post of S.B.A on 29.8.84 was above satisfaction, heard nothing as to his appointment from the authority. Suddenly by a telegram dt. 20th March, 87 the applicant was asked to appear again for an interview on 28.3.87. The applicant accordingly entered his personal appearance before the authority on 28.3.87, but no written interview was taken on 28.3.87 only the original

H.S.L.C. certificate, Admit Card and experience certificate were checked and varified, subsequently the applicant having received the appointment letter on 5.4.87, joined the post on 8.4.87. The said appointment letter also did not speak of any I.T.I certificate, So the applicant was quite ignorant of the fact that I.T.I certificate was a compulsory one for the said post.

The photostat copies of the Telegram for interview and the appointment letter have been enclosed herewith and marked as Annexure 'B' and 'C' respectively.

5. That the humble applicant after joining the post had been discharging his duties quite satisfactorily honestly and diligently having his character roll excellant and unblemished, maintaining absolute integrity and devotion to his duty. And the applicant after some times was categorised as Skilled Electricians.

6. That the humble applicant begs to state that he to his great surprise and shock all on a sudden was served with a notice of termination of services issued U/r 5(1) of the Central Civil services (Temporary services) Rules 1965 on 27.6.90. The Photostat copy of the said notice is enclosed herewith and marked as ANNEXURE 'D'.

7. That the humble applicant thereafter being aggrieved at ~~and~~ by the said termination order went in for remedy before the Central Administrative Tribunal, Guwahati Bench and the Hon'ble Tribunal, after enquiry and hearing ,was pleased to hold that the impugned order of termination could not be sustained and passed order,amongst others to reinstate the applicant.

Photostate copy of the said order/Judgement dtd.

19.9.91 has been enclosed and marked as ANNEXURE - 'E'.

8- That the applicant ,thereafter as per the order of the Hon'ble Tribunal was reinstated after a long period in spite of his sincere effort by a letter dtd. 07.4.92 on minimum salary .The photostat copy of the said letter is enclosed herewith and marked as Annexure- 'F'.

9. That the applicant thereupon by a letter No. 1007/6/D/723/EID dt. 19.5.92 was directed to report the office alongwith the original Certificate of I.T.I with details. The applicant thereafter by a letter dtd. 4.6.92 categorically explained the matter and unequivocally admitted that he had no ITI certificate.

The copy of the said letter dtd. 4.6.92 has been enclosed herewith and marked as Annexure- 'G'.

10. That the applicant again vide letter No.1970/Con/92/ BIC dt. 7.9.92 was asked to show cause as to why disciplinary action should not be initiated against him for the production of false ITI certificate to secure employment. The applicant without delay, submitted his show cause in reply thereof. The Photostat copy of the said show cause has been enclosed herewith and marked as ANNEXURE- H'.

11. That the applicant begs to submit that the department, in spite of submitting the show cause against the charges by the applicant had chosen to hold a departmental inquiry and accordingly departmental enquiry U/R 14 of the central Civil Services (Classifications, Control and appeal Rules 1965 was initiated. The applicant was served with a copy of Memorandum vide letter No.1970 Con/172/HIC dt.22.1.93. The Photostat copy of the said memorandum has been enclosed herewith and marked as ANNEXURE - I.

12. That in the said Memorandum the applicant was denied of his right to have the copies of the listed documents and the statements of the witness. The applicant in spite of these shortcomings, crept into the Memorandum, submitted his show cause/written statement denying, the imputation of misconduct and gross indiscipline and prayed for producing defence witnesses

and cross examining the listed witnesses. The Photostat copy of the said show cause has been enclosed herewith and marked as ANNEXURE 'J'.

13. That the humble applicant appeared in person before the inquiring authority. But it is a matter of poignant regret to submit that the poor applicant, in spite of his humble prayer was not favoured with the assistance of any other government servant and/or legal practitioner to present the case on his behalf. The applicant was, in flagrant violation of principles of justice and provision of service rules, deprived of being furnished with the copy of the statements of witness mentioned in the list and he was also not been permitted to look ~~xx~~ into all the documents mentioned in the memorandum particularly, some of the important documents such as C.B.I report dt.31.10.89 etc. had not at all produced before the applicant. The said enquiry was not also based on important relevant documents, such as the reply of the applicant against the show cause notice. The applicant in the course of the inquiry also submitted in writing his statement of defence vide petition dt.16.10.93.

The Photostat copy of the said application is enclosed herewith and marked as ANNEXURE 'E'

14. That the Inquiry was held without any listed witnesses in spite of the prayer of the applicant. The only listed witness, 2/Lt.H.S Brar.then ACCWE

Guwahati was neither produced nor his statements was recorded, Besides the applicant in spite of his prayer was denied of his right of Cross examining the witnesses. The documents were also not properly and legally examined proved and exhibited. The mandatory procedures required under the service rule have not been followed and complied with. The reasonable opportunity has not been given to the applicant in the matter of his defence. The applicant was not allowed to take legal practitioner despite his prayer. The copy of the prayer has been enclosed herewith and marked as Annexure K(K)

15. That as the inquiry is based on no legal evidence, the inquiry report on such materials is not at all applicable on the applicant. The humble applicant categorically in reply to the letter dt. 6th July, 94 explained the facts and circumstances which made the inquiry report improper and inoperative. The photostat copy of the said letter dt. 19.7.94 has been enclosed and marked as ANNEXURE - 'L'.

16. That the applicant begs to submit that ~~the~~ he made his defence clear in respect of the charge by a letter dt. 9.5.94 in reply to the 'brief' made by the presenting officer on 6th May '94. The photostat copy of the said reply of the 'Brief' dt. 9.5.94 and the copy of the 'Brief' send by the presently officer dt. 6th May '94 have been enclosed herewith. and marked as ANNEXURE - M 'N'

17. That the humble applicant also made his position clear, certain and specified by his representation dt. 19th July, 94 in reply to the inquiry report sent to the applicant on 6.3.94. The photostat copy of the said representation is enclosed herewith and marked as ANNEXURE - 'O'.
18. That it is a matter of poignant regret to submit that order of the punishment order, without observing the mandatory procedures and rules, was communicated to the applicant vide letter dt. 18th January, 95 which the applicant received on 3.2.95. The photostat copy of the said order has been enclosed herewith and marked as ' ANNEXURE 'P'. And ^{1 copy of} ~~the Inquiry Report has been~~ enclosed herewith and marked as Annexure P (1)
19. That the humble applicant, thereupon being extremely shocked and aggrieved had preferred an appeal before the Appellate Authority U/R 23 of C.C.S (Classification, control and Appeal) Rules, against the order of dismissal U/R 11 of C.C.S (Classification, Control and Appeal) Rules made on 18.1.95. The copy of the said appeal has been enclosed herewith and marked as ANNEXURE 'Q'.
20. That the said Memorandum of appeal being addressed to Engineer-in-Chief (Appellate Authority) Kashmir House, Army Head Quarter, D.H.Q, New-Delhi was registered and posted on 13-3-95. The copy of the registered receipt has been enclosed herewith and marked as ANNEXURE 'R'.

21. That all hopes and aspirations of the applicant have sank into the abyss of despair and frustration as the applicant heard nothing from the Appellate authority even after the expiry of six months.
22. That the unfortunate applicant, thereafter, being put in a piquant position, finding no way out takes shelter U/S 19 of ^{Administrative Tribunals Act} ~~Section 19 of~~ ~~Administrative Tribunals Act~~.
23. That your humble applicant had taken all steps to put up this application within prescribed time, but ironically, the applicant fell prey to ~~incompetence~~ ^{incompetence} on 10.9.96 and suffered from the disease for long 20 (twenty) days i.e. from 10.9.96 to 26.9.96 . on account of which it was delayed by 16 days to file this application. The copy of the medical certificate has been enclosed and marked as Annexre - 'S'.
24. That the applicant fervently prays that the delay may kindly be condoned for the ends of justice.
25. That the applicant now being aggrieved begs to submit this petition on the following grounds amongst others -

G R O U N D S

- (a) For that neither the departmental inquiry nor the order of punishment was passed by the appropriate authority. Besides the required copies, statements reasons, copy of advice of any given by the commission have not been furnished to the applicant as required

under Rule 17 of C.C.S (Classification, Control and Appeal) Rules. Over and above, the order was not communicated under the signature of the officer who had recorded the findings.

- (b) For that the applicant has been totally denied of the benefit of special procedures as embodied in Rule 19 of the Central Service Rule.
- (c) For that gross injustice has been meted out to the applicant in as much as Memo of charge sheet was not served on the applicant separately by the disciplinary authority resulting in confusion in the matter of submission of reply.
- (d) For that the order is arbitrary and passed in violation of principles of natural justice in view of the fact that reasonable opportunity was denied to the applicant .The applicant was totally denied of the opportunity to cross examine the witnesses .And as such the entire disciplinary proceeding is arbitrary and is vitiated by violation of the mandatory provision of C.C.S.C.C.A Rules as well as principles of natural justice and as such the impugned order can not be sustained in law and are liable to be set aside and the applicant be reinstated in service with full back wages etc.
- (e) For that the impugned order is not sustainable in fact and law in as much as documents collected behind the back of the appellant were relied upon

without presenting the same in the enquiry proceedings. Besides, the inquiry officer did not examine any witness of the disciplinary Authority in the presence of the applicant.

(f) For that the impugned order is not maintainable in law in as much as the procedures laid down in rule 14 of the C.C.S.C.C.A Rules 1965 had not been complied with. The non ~~xx~~ maintenance of order sheet of the disciplinary proceeding had made the order inoperative and illegal only crushing confusion and doubt to the applicant.

(g) For that the procedures adopted by the Inquiry officer were not in conformity with the Principles of natural justice. The entire procedure of enquiry was conducted in perfunctory manner in total violation of the principles of natural justice, justice should not only be done but most appear to have been done.

(h) That the applicant has been highly prejudiced for non compliance with the 14(1) of C.C.S.C.C.A rules. The enquiry was not made in the manner provided in the Rule 14 and Rule 15 of C.C.S.C.C.A. The enquiry officer did not also adjourn the case as required in Sub-Rule (II) and as such it can not be said that the applicant had a reasonable opportunity. Date was not adjourned to a later date for the purpose of preparing his defence, inspect the documents. The applicant was not offered the right of inspection of the documents etc. And the denial of this right of inspection is a serious infirmity, fatal, to the entire proceedings.

- (i) For that the procedure as laid down in the rules warrants the maintenance of an order sheet showing the various orders passed by the enquiry officer from time to time. Besides supply of a copy of day to day proceedings during enquiry should be furnished to the applicant by the inquiry officer at the close of the day's proceedings. But the said procedures has totally lost sight of and as such the applicant has been denied of the great safe guard against arbitrariness and injustice.
- (j) That the impugned order is not maintainable in law in as much as the applicant was not given notice of inspection of documents relied upon by the Enquiry officer. The record of the proceedings completely go against the Rule 16 and particularly Rule 16(2) of C.C.S.C.O.A.
- (k) For that the evidence donot give rise to pre-ponderance of probability by any strecth of imagination and as such it is not sustainable in law. The impugned order is not based on reasons and application of law to the facts found order without recording reasons becomes the result of caprice, whom tancy and expidency.
- (l) For that the disciplinary proceedings being initiated against the applicant had been closed without sending an intimation to that effect to the appellicant.

(m) For that the dismissal order is void in as much as neither the dismissal order was passed by the appointing authority nor by authority equal in rank to appointing authority, Besides Rule 30 and Rule 32 of C.C.S.C.C.A have not been complied with.

(n) For that neither the departmental enquiry was started nor the penalty specified in Rule -II .was imposed by the disciplinary Authority specifies in C.C.S.C.C.A Rules Rule 12 of C.C.S.C.C.A. had been absolutely given good bye . And as such, the impugned order is not sustainable in law.

(o) For that the show cause and representations made by the appellant have not been considered as such the applicant has been highly prejudiced.

(p) For that the impugned order is malafide, arbitrary punitive and illegal and as such violative of article 14,16,19 and 21 of the Constitution of India.

(q) For that the impugned order is liable to be set aside in as much as the applicant has not been offered the benefits and safe guards guaranteed to him by the relevant service rules, procedures, policies and the provision of Article 21 and 311 of the constitution of India.

(r) For that the applicant being grossly discriminated has been arbitrarily picked up, while several employees of some qualification, have been retained undisturbed. And the illegal, arbitrary decision has visited the applicant with economic death sentence of dismissal only.

(s) For that the impugned order is otherwise bad in law and as such it is liable to be set aside.

Relief sought :

In view of the facts in para above the applicant prays for the following reliefs :-

(i) Quashing of the impugned order of dismissal dtd. 18.1.95 vide No. 1970/GEN/346/

EIC passed by Commander Works Engineer
Spread Eagle Fort, Shillong, E

(ii) Setting aside the departmental inquiry

U/R 14 of the Central Civil Services

(classifications, Control and Appeal

Rules, 1965 alongwith the Memorandum

Vide letter No. 1970 /Cen/172/EIC dt.

22 Jan, 93.

iii) Setting aside the brief of the charge
vide Letter dt. 6.5.94.

(iv) Order to reinstate the applicant.

Gupta K. B. 3/10/2018

(v) Order for regulation of the applicants service/appointment.

(vi) Full service benefits of pay allowances, seniority retrospectively .

(vii) Costs.

(viii) Any other relief/reliefs.

8. Interim order ,if prayed for :

Pending final decision, the operation of the impugned order of dismissal be stayed and the applicant may be allowed to continue in service with full benefits.

9. Details of the remedies exhausted :-

The applicant begs to state that an appeal U/R 23 of C.C.S (Classification,Control and Appeal) Rules had been preferred, but nothing was heard within the stipulated period, So, an urgent interim relief/order, if not passed, the applicant will suffer irreparable loss and injury.

10. Matter not pending with any other court. The applicant further declares that the matter regarding which this application has been made is not pending before any Court of Law or any other Bench of the Tribunal.

11. Particulars of the Indian Postal Order,

i.) No. of I.P.O : 11 444330

(ii) Name of Issuing Authority

P.O - Guwahati

(iii) Date of Issue I.P.O : 25-9-96

(iv) P.O at which payable

Guwahati

12. Details of Index :

An index in duplicate containing the documents to be relied upon enclosed.

13. List of enclosures :

1) Interview letter dt. 24.8.84 - Annexure- A

2) Telegraphic Interview letter - Annexure- B
dtd. 20.3.87

3) Appointment letter - Annexure-C
dtd. 30.3.87

4) Notice of termination of - Annexure-D
service dtd. 27.6.90.

5) Copy of the order / Judgment - Annexure-E
dtd. 19.9.91

6) Copy of the letter dt. - Annexure-F
17.4.92

7) Copy of the reply dtd. 4.6.92 - Annexure-G
to A.G.E (T) Garrison
Engineer, Narangi.

8) Copy of the show cause - Annexure-H
submitted on 27.10.92

9. Copy of the Memorandum - Annexure- I
containing chartes vide
letter No. 1970/GEN/172/EIC
dt. 22.Jan,93

Annexure - (a)
Annexure - (b)
Annexure - (c)
Annexure - (d)
Annexure - (e)

10. Copy of the show cause submitted against the charges on 22.1.93 Annexure- 'J'
11. Copy of the letter dtd. 16.10.93 submitted to Garrison Engineer in defence. Annexure. K , K(k)
12. Copy of the letter dtd. 19.7.94 submitted in reply to letter dtd. 6.7.94 Annexure L
13. Copy of the letter dtd. 9.5.94 submitted to Inquiry officer Annexure- M
14. Copy of the Brief dtd. 6.5.94 Annexure- N
15. Copy of the representation dtd. 19.7.94 submitted to commandar work Engineers, Shillong. Annexure-O
16. Copy of dismissal order dated 18 Jan, 95. Annexure- P
17. Copy of the appeal U/R 23 of C.C.S. Annexure-Q
18. Copy of the registration receipt Annexure-R

Verification

I, Sri Subir Kumar Bose son of late
Monoranjan Bose, aged about 32 years Ex- S.B.A.
under Garrison Engineer, Narengi, Resident of Satgaon,
P.S Noonmati, Guwahati, the petitioner do hereby
declare /verify that the statements made in paragraphs
1 to 3 above are true to my knowledge, belief and infor-
mation. And I sign this verification on this 27 th
day of September, 1996.

Subir K. Bose
Signature

Telephone. 31613

Under Certificate of Posting

Commander Nirman Engincor
Commander Works Engineers
AT Road Santipur
Gauhati 781009

1016/ 4/84 /EINB

14/8/84

Shri SUBIR K. BOSE

Vill- SATGAON

Post- SATGAON

GAUHATI- 87

Distr- KAMRUP

RECRUITMENT OF
ENGINEER SERVICES

S.B.A. IN MILITARY

1. It is to inform you that your name has been sponsored by the District Employment Exchange/Employment Exchange-for-Unskilled-applicants/ in the State Boarding a candidate for interview/test for the above appointment.
2. You are, therefore, advised to appear at 0800 hours on 21/8/84 at CME Gauhati with all original certificates in support of educational/technical qualification, age proof, Employment Exchange Card, caste certificate/discharge certificate (for Ex-servicemen only) etc. In case you are not in possession of original certificates in support of above, you need not attend the interview.
3. It may be noted that attending the interview/test will not confer you any right for the appointment in the department.
4. No TA/DA is admissible for attending the interview.

Affected by me
S. Chakrabarty
Parrot

Thambiraj

(S. Thambiraj)
Lt
Adm Officer
Commander Works Engineers

'B'

22

B

IN LIEU OF TELEGRAM FORM

STATE : MILY

DEBIT : ARMY

SH SUBIR KUMAR BOSE

C-65 Jorabhat

Narangi

EMPLOYMENT IN MES NYA PLEASE REPORT TO CWE GAUHATI
AT 0800 HRS ON 28 MAR 87 WITH ORIGINAL CERTIFICATE
IN SUPPORT OF YOUR EDUCATIONAL/TECHNICAL QUALIFICATION
COMMA COMMA EMPLOYMENT EXCHANGE CARD COMMA CASTE
CERTIFICATE AAA PLEASE NOTE NO TA/DA ADMISSIBLE FOR
ATTENDING INTERVIEW

COMMANDOR GAUHATI

(NOT TO BE TELEGRAPHED)

Sd/- (HS BRAR)

2/Lt

Adm Offr

Commandor Works Engineers

1010/Ey/EINB

20 Mar 87

*Attest by me
S. Chakrabarty
Parrot*

Telefono 31513

REGISTERED

COMMANDER IN CHIEF ENGINEERS
COMMANDER IN CHIEF ENGINEERS
AT HEAD - SANTIAGO
GRADUATE 2000

1015/4 H.H. ELN Bank
Shri. Subir Kumar Bose
Vill. - Satgaon
Post - Satgaon
Gauhati - 27

30 Mar 37

APPOINTMENT AS B.B.A

1. Reference your interview held in this office on 30 Oct 84.
 2. You are hereby offered the appointment of S.B.A in the scale of Rs. 950-20-1150-EB-25-1500 and other allowances as admissible from time to time. It may also be noted that your appointment will be subject to the conditions laid down in Appendix 'A' attached.
 3. If you accept the offer, you are hereby directed to report to the office of ~~Myself~~ ^{myself} ~~for~~ ^{on} ~~before~~ ^{on or before} 10.11.84 with requisite certificates/documents for verification/record.
 4. No TA/DA is admissible for joining the duty.
 5. If you are not joining duty by the above date, it will be assumed that you are no longer interested for the offer and this offer will automatically stand cancelled.

Attest to the above and
I am
Frank Raberly
Adm'r

John Brian

(HS Brar)

2/Lt

Adm Cffr
Comptroller

Enclosure 8

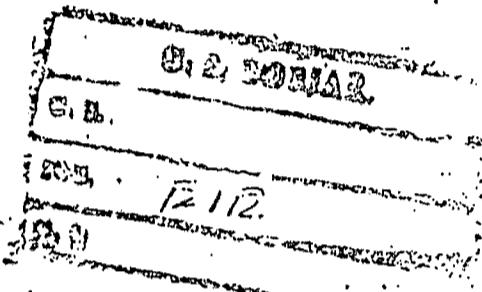
Copy to:

Employment Exchange/ Kajya/Zilla Sainik Board

- for info wrt their letter No

2. GEN/AGE (L) Kangayya

1/1/51
Bor/Jan



- 2 -

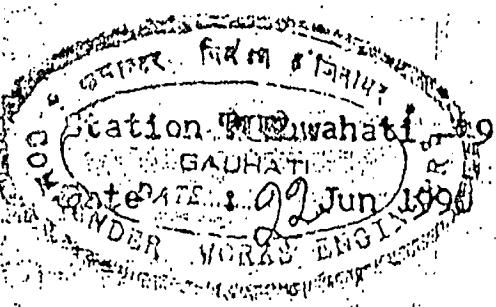
1. The above individual has been posted to your Division against existing vacancy and will be taken on strength. Please ensure that all the original documents with regard to age/qualification/caste verified before taking the individual on strength. Character verification form in respect of the individual is enclosed duly verified by the Police authorities.

2. Please ensure that documents listed below are obtained from the individual and kept in record. The date of reporting of the individual will be intimated to this office within 24 hours from the occurrence of casualty :-

- (a) Certificate of fitness from Civil Surgeon or Staff Surgeon of a Military Hospital.
- (b) Medical Certificate under Art 49 C.R.
- (c) Declaration of Marriage.

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

In pursuance of sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I hereby give notice to MES-NYA Shri Subir Kumar Bose, SBA, of GE Naranji that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.



(K. P. Dingley)

Col.

(Signature of the appointing authority)

ACKNOWLEDGEMENT

I hereby acknowledge the receipt on this day of the notice of termination from service.

Place :

Date 92 Jun 90

Signature of the individual,
(Designation)

Subir Kumar Bose
Advocate
A. H. S. Mukherjee, Advocate

Annexure 'E'

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17
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No.118 of 1990

Date of decision: The 19th day of September, 1991.

Shri Subir Kumar Bose, son of Late
Manoranjan Bose, aged about 27 years,
resident of Satgaon, P.O. Satgaon,
District Kamrup, Guwahati

.....Applicant

-Versus-

1. Union of India, through the Secretary,
Ministry of Defence, New Delhi

2. Commander Works Engineer, A.T. Road,
Shantipur, Guwahati-9

3. Garrison Engineer, Narangi, Guwahati

..... Respondents



For the applicant

: Mr. R.P. Sarma,
Mr. T.N. Srinivasan &
Mr. S.C. Chakraborty, Advocates

For the respondents

: Mr. S. Ali, Sr. C.G.S.C. &
Mr. G. Sarma, Addl. C.G.S.C.

C O R A M:

THE HON'BLE SHRI J.C. ROY, ADMINISTRATIVE MEMBER
AND

THE HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether Their Lordships wish to see the fair copy of the judgment?

Attest,
by
S. Chakraborty
Advocate

JUDGMENT

SHARMA, J.

The applicant, a Switch Board Attendant, was issued an appointment letter dated 30.3.1987 (Annexure 'C') and he joined with the respondent in the same capacity on 8.4.1987. After seven months the applicant was categorised as Skilled Electrician. After the applicant many other persons were appointed as Switch Board Attendant and they are still working under the Garrison Engineer, Narangi. According to the applicant since he has completed three years service as per Rule 3 of the CCS(TS) Rules, 1965, he acquires quasi-permanent status.

However, by the order dated 22.6.1990 (Annexure 'D') the services of the applicant were terminated without assigning any reasons. It is said that the order is bad in law and discriminatory since juniors to the applicant have been retained and still there is a vacancy in the post.

2. The applicant made representation, but to no effect and he filed this application under Section 19 of the Administrative Tribunals Act, 1985, in July, 1990, praying for the following reliefs:

- i) Quashing of the impugned order of termination dated 22.6.1990
- ii) Order for regularisation of the applicant's service/appointment
- iii) Full service benefits of pay, allowances, seniority retrospectively.

3. The respondents contested the application and it has been pointed out that alongwith the appointment

letter of 30.3.1987 an annexure was attached which the applicant has omitted to file alongwith the record in Annexure 'A'. It is further stated that provision of Rules of CCS(TS) Rules, 1965, does not enable the employee to be granted quasi-permanent status because the status can only be granted if the appointing authority is satisfied on the quality and conduct and character of the applicant and his suitability for employment. Further it has been pointed out that a CBI enquiry was conducted under RC No.22(A)/08 following a complaint to CBI stating that the ITI certificate produced at the time of employment was bogus. CBI has come to the finding that the said certificate is bogus. In view of this fact the services of the applicant were terminated and in lieu of that one months notice was given. It is said by the respondents that in the order of termination no stigma is attached to the applicant and that is a simple order of termination passed under Rule 5(1) of CCS(TS) Rules 1965.

We have heard the learned counsel for the parties at length and have gone through the record of the case. The department has also produced the file of the applicant which also contains the findings of the CBI and the opinion of the Ministry of Law.

5. The termination of the services of the applicant have been done under Rule 5(1) of the CCS(TS) Rules 1965. Normally Article 311(2) of the Constitution of India is not attracted. At the same time court can leave the wheel and find out the real purpose of terminating the service in the event when the juniors are still working against the principle of, 'last come first go'. The respondents have admitted that those who were appointed subsequent to the applicant are still working. In Babulal -Vs- State of Haryana, 1991(A) SLJ 222 SC, it has been held that court can leave the wheel of the termination order of finding

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out the notice of the order, again in State of U.P. and
rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, para 5(16)(c) provides
that the State Government shall be entitled to terminate the services of
Temporary employees in the State of U.P. hold that the
services of regular and temporary employees can be terminated
under U.P. Temporary Government Servant (TS) Rules 1975 on
the principle of 'first come first go'. This principle
applies to the termination of a regular or the services of
the temporary employees. In the present case the impugned
order does not reflect any rigour in the character of the
applicant. The impugned order runs as follows:

"In pursuance of sub-rule (i) of
Rule 5 of the Central Civil Services
(Temporary Service) Rules, 1965, I
hereby give notice to MES-NYA
Shri Subit Kapoor Doss, SBA, of PE
Narengi that his services shall stand
terminated with effect from the date
of expiry of a period of one month
from the date on which this notice is
served on or, as the case may be,
transferred to him."

6. On the face of it there is no mention of any
filing of bogus certificate of ITI by the applicants to
get employment with the respondents. However, the reply
filed by the respondents indicate that there was a
complaint to the CBI stating that the applicant's ITI
certificate is bogus. In fact the departmental file on
perusal makes it clear that the department has sought the
opinion of the Ministry of Law also. The applicant also
has been interviewed in the investigation. Thus the order
of termination though on the face of it is a simpliciter
order of termination, but, infact, it has been passed
because of furnishing the alleged bogus ITI certificate
for getting the employment with the respondents. The
respondents in paragraph 10 stated 'as a case against the
applicant for furnishing bogus ITI certificate was under
enquiry by the CBI no action could be taken to make the
employee....'

of natural justice also demands that when a person is condemned then he should be given an opportunity of being heard as a principle of audi alteram partem, which lays down that no person shall be condemned unheard. Thus on this account also the impugned order cannot be sustained.

7. If the applicant has filed a bogus certificate to get employment at one time and he is simply discharged from service under CCS(TS) Rules, 1965, then he can after getting his certificate of experience of the earlier service again use the same alleged bogus ITI certificate for procuring an employment elsewhere even under Government, Central or State and thus there will be no end in the matter. If there is an allegation that cheating or fraud has been committed for procuring an employment then in that case, an opportunity should be given to the delinquent and he should be chargesheeted and if it is found that actually the allegations levelled against him are correct then he should be punished accordingly.

8. In view of the above facts and circumstances we are of opinion that the impugned order cannot be sustained. The application is, therefore, disposed of in the following manner;

- The applicant shall be reinstated in service within three months from the date of receipt of a copy of this order,
- The applicant shall be given a minimum salary of scale from the date of his reinstatement, but shall not be paid any back wages,
- The respondents shall be free to hold departmental enquiry against the applicant regarding furnishing

of.....

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employee 'quasi-permanent.' When this has been the real notice behind terminating the services of the applicant then it cannot be said that the order of termination is a simple order of termination. It is only in the cases where the services of the applicant are terminated because of unsuitability, as in Kaushal Kishore Shukla (Supra), the order can be said to be an order of simpliciter termination, otherwise not. The respondents have also admitted in paragraph 17 the contents of paragraph 16 of the application wherein the applicant has stated that he has been maintaining full efficiency in the services and nothing adverse was known against him and rather it has been stated by the respondents in the same paragraph that no comments are being made because it is predicament of the individual. It is, therefore, evident that the applicant was not in any way unsuitable or unfit in the performance of his duties as Switch Board Attendant. It is also admitted by the respondent in paragraph 13 of the written reply that the other individuals junior to the applicant are not affected because they have not furnished bogus ITI certificates, while in the case of the applicant the certificate of ITI was found bogus. In view of the above discussion there is no doubt now left that the order of termination attaches a stigma on the applicant's character to the effect that he has filed a bogus certificate of ITI and so instead of proceeding departmentally against him a short cut method was adopted to dispense with his services under CCS(TS) Rules, 1965. The moment this is done the provision of Article 311(2) are attracted meaning thereby that the applicant has to be given an opportunity against the allegations levelled against him. The principles

of....

: 6 :

of alleged bogus ITI certificate for procuring employment as Switch Board Attendant on the basis of which the appointment letter in March, 1987, Annexure 'C', was issued and after the result of the enquiry pass the order according to law after giving full opportunity to the applicant of presenting his case in defence.

In case the applicant is exonerated the respondents shall also pass order regarding his period from his discharge from his service to the date of his reinstatement by virtue of this order regarding accounting of his service for the purpose of his salary and pension etc.

9. In the above circumstances the parties shall bear their own costs.

Sd/- J. C. Roy
19.9.91
Member (A)

Sd/- J. P. Sharma
19.9.91
Member (S)

Certified to be true Copy

183 2-4-1-92
Deputy Registrar (Judicial),
Central Administrative Tribunal
Guwahati Bench.
John 24/1/92

Tele Mily 316

Regd. AD.

Commander Nirman Engineer,
Commander Works Engineers,
A.T.Road, Santipur,
Gauhati-781009

1016/Court/SKB/55/EINB

07 Apr 92.

Sri Subir Kr. Bose,
C/O L. Bose,
2 Coy F Composigs. Regt
C/O 99 APO

RE-INSTAMENT INTO SERVICE CONSEQUENT
ON CAT GAUHATI JUDGEMENT ON OA NO
118(G)/90 DATED 19 SEP 91

1. Consequent on the decision of CAT Gauhati Judgement on the above case, you are hereby ordered to be re-instated into the service with immediate effect. Your date of reporting for duty will be your date of re-instatement.

2. It is also intimated that you shall be given a minimum salary of scale from the date of re-instatement; but shall not be paid any back wages.

Attest by one
S. Chakrabarty
Barman

(A. K. Kalra)

Col

Commander Works Engineers.

To : A.G.E.(T), Garrison Engineer,
Narangi Division, Satgaon,
G U W A H A T I : 27.

Sir,

In reply to the letter dt. 19th May '92, I beg to submit the following facts for your kind information.

That Sir, in response to an advertisement for the Post of Switch Board Attendant, I applied for one of the posts in the year 1984. As per the necessary condition for the said post, I produced H.S.L.C. Passed, Type Writting Diploma Holder (in English) passed Certificate and the experience Certificate in the line of electrical knowledge. But as the production of I.T.I. passed Certificate was not a necessary condition, the question of I.T.I. passed Certificate did not arise at all. I as per the direction of the appropriate authority, had submitted H.S.L.C. Passed Certificate and my experience Certificate in the line of electric knowledge.

That I being interviewed before the appropriate authority was selected for the post of switch Board Attendant along with others namely (1) Sri Debnarata Chakraborty (2) Sri Parimal Paul (3) Saidur Rahaman (4) Sri Umesh Baishya (5) Sri M. Deka (6) Sri B.C. Dutta (7) Sri Ranjit Roy and (8) Sri Shivasagar Roy who were also selected on the basis of the same qualification on as I possess and the other appointees also far as my information goes, did not pass I.T.I.

That an appointment letter was issued to me on 30-3-87 for the post of switch Board Attendant and I accordingly joined in the same capacity on 8/4/87 of course other candidates named above also being issued appointment letters except in Shiva Sagar Roy, Ranjit Roy joined in the same capacity and being are still working.

That the appointing authority being fully satisfied on my quality conduct, character, skill suitability and efficiency was pleased to categorise me as skilled electrician no stigma is left on my service career during my service life.

*After 2 years
S. Chakraborty
A.C.A.*

11 2 11

Under the circumstances I fervantly appeal to your grace to consider my case sympathetically in view of the above facts & circumstances for the ends of Justice and equity.

And for this act of kindness, I shall as in duty bound ever pray.

Yours Faithfully,

Subir Kr. Bose

(SUBIR KR. BOSE)

S. B. A.

M. E. S. NYA.

Dated : 14th June 1992

The Commander WORKS Engineers

Dated : 27th October/1992.

The humble petitioner begs to submit the shaw cause to the Notice /Letter dated 7th September, 1992.

- 1) That humble petitioner being called for interview/test vide Letter No. 1016/4184/E INB for the post of S.B.A in Military Engineer Service set for interview on 29th August '84 and as he was advised to appeal on 29.8.84 along with the original certificates in support of his educational qualification age proof, Employment Exchange Card, he produced these certificates. But as the technical qualification Certificate was not at all compulsory for the aforesaid post, the petitioner did not produce technical qualification certificate. Besides as the petitioner did never acquire technical qualification the question of production of technical qualification certificate did not arise at the time of interview held on 29.8.84 for the post of S.B.A. The photostate copy of the said interview call letter has been enclosed herewith.
- 2) That the petitioner after the aforesaid interview held on 29.8.84 was selected for the post of S.B.A and accordingly he was asked to fill in the form, sent up by the authority on 19/10/84 and accordingly the petitioner in anticipation of getting appointment filled in their duplicate ~~form~~ ^{form} enclosed with the letter NO. c - 1016/ 4257/EIN B dt. 19.10.84. But as ill luck would have it the petitioner in spite of complying with all the procedure ~~recd~~ ^{received} no appointment letter for the said post in the year 1984.

Contd : 2/p

Attestd. by me
S. Chakrabarty
P.S.C.

It is therefore prayed that your ~~Yours~~ ~~Yours~~
would be pleased to consider the case
of the petition sympathetically for the
ends of justice & equity.

And for this act of kindness the
petitioner as in duty bound shall ever
P R A Y .

Your's Faithfully,

S. B. K. BOSE

(S. B. K. BOSE)

S. B. A.

M. E. S. Nya.

CONFIDENTIAL

Tele Mily: 3292.

Commander Works Engineers
Spread Eagle Falls
Shillong -793011

1970/Gen/172/EIC

22 Jan 93

MEMORANDUM

1. The undersigned proposes to hold an inquiry against Shri Subir Kumar Bose , Electrician under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules-1965. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-1) . A statement of imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which , and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures-III and IV).
2. Shri Subir Kumar Bose, Electrician 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, specifically admit or deny each article of charge.
4. Shri Subir Kumar Bose , Electrician is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above , or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS(CC & A)Rules-1965 or the orders/directions issued in pursuance of the said rules, the inquiring authority may hold the inquiry against him ex parte.
5. Attention of Shri Subir Kumar Bose , Elec 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 the matters pertaining to his service under the Government . If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Subir Kumar Bose , Electrician 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.

Attest by 6th The receipt of the Memorandum may be acknowledged .

*S. Chakrabarty
P.M.*

Sd/- R.K.Singh
Col

Commander Works Engineers.

MES/NYA Shri Subir Kumar Bose, Electrician
(Through GE Narangi)

CONFIDENTIALANNEXURE - ISTATEMENT OF ARTICLES OR CHARGES FRAMED AGAINST
MES/NYA SHRI SUBIR KUMAR BOSE, ELECTRICIAN OF
GE NARANGIARTICLE - I

That the said MES/NYA Shri-Subir Kumar Bose, while functioning as electrician in the office of GE Narangi during the period from 8.4.87 to-date has committed gross misconduct in that he has failed to produce the original certificate of his tech qualification as called for vide GE Narangi letter No.1007/D/723/EID dated 19 May 92. Thus, the said Shri Subir Kumar Bose, Electrician, has failed to maintain absolute integrity and devotion to duty thereby violated Rule 3(1)(i)&(ii) of CCS(Conduct) Rules-1954.

ARTICLE - II

That during the aforesaid period and while functioning in the aforesaid office, the said MES/NYA Shri Subir Kumar Bose, electrician, has committed gross indiscipline in that he has failed to comply with the instructions as given in GE Narangi letter No 1007/6/D/723/EID dated 19 May 92. Thus the said Shri Subir Kumar Bose, electrician, has acted in a manner unbecoming of a govt servant and thereby violated Rule 3(1)(iii) of CCS(Conduct)Rules-1954.

CONFIDENTIAL

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLE OF CHARGES FRAMED AGAINST MES/NYA SHRI SUBIR KUMAR BOSE , ELECTRICIAN OF GE NARANGI .

ARTICLE -I

1. MES/NYA Shri Subir Kumar Bose , while functioning as electrician in the office lf the GE Narangi during the period from 8.4.87 to-date, has committed gross misconduct in that he has failed to produce his original certificate of tech qualification. The said Sh Subir Kumar Bose was asked vide GE Narangi letter No. 1007/6/D/723/EID dated 19 May 92 to produce his original educational/tech qualification certificate immediately.
2. A reference made to the Principal Industrial Training Institute Jorhat revealed that as per records held by them no one named Subir Kumar Bose has passed the ITI certificate from their Institution and that Sh Subir Kumar Bose was not issued Provisional National Trade Certificate bearing Sri No.932 dt 29.11.83.
3. CBI enquiry was also conducted under RG No.22(A)/88-SHG. CBI has come to the finding that the ITI Certificate produced by MES/NYA Sh Subir Kumar Bose at the time of employment was bogus.
4. The above position gives an inference of intentional suppression of facts by Shri Subir Kumar Bose and also make revolution of attempted production of false certificate of tech qualification by Sh Subir Kumar Bose to secure employment at the time of his recruitment in the MES.
5. The said Shri Subir Kumar Bose ,Elec, was, therefore, called upon to show cause as to why disciplinary action should not be taken against him for such lapses vide CEW Shillong Order No.1970/Gen/92/EIC dated 07 Sep 92. He was asked to submit ~~the~~ his explanation within 15 days of receipt of this office Show-cause notice ibid. In reply, the said Sh Subir Kumar Bose vide his application dated 27-10-92 has not come out with the factual position and has tried to evade the charges framed against him. He has , however, failed to submit the original certificate of tech qualification till date.
6. The above act on the part of said Sh Subir Kumar Bose exhibits gross misconduct and failure to maintain absolute integrity and devotion to duty, thereby, violating Rule 3(1) (i) & (ii) of CCS (Conduct) Rules-1964.

CONFIDENTIAL

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR
IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST
MES/NYA SHRI SUBIR KUMAR BOSE, ELECTRICIAN OF GE NARANGI

ARTICLE - II

1. MES/NYA Shri Subir Kumar Bose , while functioning as electrician in the office of GE Narangi during the period from 8-4-87 to till date has committed gross indiscipline in that he has failed to comply with the instructions as given in GE Narangi letter No. 1007/D/725/EID dated 19 May 92 to produce his original certificate of tech qualification . Inspite of show cause notice issued vide CWE Shillong letter No.1970/Een/92/EIC dated 07 Sep 92, the said Shri Subir Kumar Bose has failed to produce original certificate of tech qualification. Thus Shri Subir Kumar Bose has acted in a manner unbecoming of a govt. servant and thereby violated Rule 3(1)(iii) of CCS(Conduct) Rules-1964.

CONFIDENTIAL

ANNEXURE - III

LIST OF DOCUMENTS BY WHICH THE ARTICLE
OF CHARGES FRAMED AGAINST SHRI SUBIR KUMAR
BOSE , ELEC OF GE NARANGI ARE PROPOSED TO BE
SUSTAINED.

1. Provisional National Trade Certificate bearing Srl. No.982 dated 29-11-83.
2. CWE Gauhati letter No.1016/4/84/EINB dated 14 Aug 84.
3. CWE Gauhati letter No.1016/4300/EINB dated 01.10.85.
4. E-in-C's Br AHQ letter No.90270/89/EIG(1) dt.11.1.85.
5. CWE Gauhati telegram dated 20.3.87.
6. CBI report dated 31-10-89.
7. CWE Shillong show-cause notice bearing No.1970/Gen/92/EIG dated 07.9.92.
8. GE Narangi letter No.1007/6/D/723/EID dated 19 May 92.
9. The Principal Industrial Training Institute Jorhat letter No.JITI/T/19/1770 dated 21-5-88.
10. The Principal Industrial Training Institute Jorhat letter No.JITI/T/19/1738 dated 24.8.92.

ANNEXURE - IV

LIST OF WITNESSES BY WHOM THE ARTICLES
OF CHARGE FRAMED AGAINST M/S/NY A SHAR
SUBIR KUMAR HOSI, ELECTRICIAN OF GE HARAGGI
ARE PROPOSED TO BE SUSTAINED

2/Lt HS Brar, then 40 CHB Gauhati,

CONFIDENTIAL

Sri R.K. Singh.
Colonel.
Commander Works Engineers.

Sub :- Reply to Show Cause Notice dated 22.1.93

Sir,

I have received the Show Cause notice on 2.2.93 issued by you vide No. 1970/ Gen/ 172/ XIC dated 22.1.93.

In reply to the said Show cause I have the honour to state as follows :-

1) That in regard to charges contained in Article - I it may be stated that in receipt of letter No. 1007/G/D/723, EID Dated 19th May 1992 issued by Sri B.C. Chakrabarty AGM (T) I reported before him on 24-5-92 and submitted a written reply, a copy of which is enclosed herewith for your kind perusal. I further state that the statements made in the said reply would be relied upon by me in the proceedings.

After 2nd by S. Chakrabarty
2) That in respect of charges contained in Article II I beg to state that since a written reply was submitted as stated above, No allegation of committing gross indiscipline could be brought against me.

I, therefore deny both the charges of gross misconduct and gross indiscipline levelled against me in Article - I & II attracting violation of Rule - 3 (1) (D) (II) ^{and} (III) of CCS (conduct) Rules -

1964.

- 2 -

I desire to be heard in person and examine the witnesses for my defence and cross-examine the witness mentioned in the Annexure- IV. of the memorandum in the inquiry proceeding.

Yours Faithfully
Subir Kr. Bose
Elect SK
MES - NTA

To ,

The Garrison Engineer ,
583 Engineer Park ,
C/O 99 A.P.O.

Dated : 16th Oct. '93.

Sir ,

Most humbly , I beg to submit that pursuant to the order , I attended before your Honour and during the hearing . I categorically denied of my ~~investment~~ in the matter of producing any technical qualification Certificate . Non-production of the technical qualification is firmly established in view of the fact that neither the interview letter No. 1016/4184 K/NE for the interview on 29th August '84 nor the telegraphic message dt. 20th March '87 for interview , spoke of the requirement of any technical qualification Certificate . Naturally , the question of submission of technical certificate does not arise at all.

That Sir , the appointment for the post as per the advertisement , needed educational Certificate , age proof , Employment Exchange Card and experience Certificate and the Interview letter No. 1016/4184 E/NE was very much clear in this respect . I have explained the facts clearly in reply to the show cause letter dt. 7th Sept. 1992 .

That the allegation of production of I.T.I. certificate is out and out ~~connected~~ motivated and the work of the mischievous hand to secure unlawful gain in prejudice to my interest . And the play of the mischievous hands is well proved from the fact that I have been ~~being~~ charged on the basis of a photostat copy of the I.T.I. Certificate in spite of the fact that the Photostat copy in the absence of original has had no value in the eye of law . It is also not admissible in the evidence Act . And the absence of the original Certificate certainly generates doubt as to the foul play by some one to injure me . And I do believe that it is certainly Mr. H.S. Brar , Adm. Officer Commander Works Engineering will be the fittest person to answer the questions to drop off the veil as I never produced any I.T.I. Certificate . So , who

Contd..... P-2 .

Attestd by me
S. Chakrabarty
Bawali

- 2 -

made the photostat, how it came into the hand of Mr. Brar, why it was made, where the original was, all these questions do need Mr. Brar to answer.

Besides Sir, other persons appointed for the post, along with me namely Sri Debabrata Chakraborty, Sri Parimal Paul, Sri Spidur Rahman, Sri Umesh Baishya, Sri K. Deka, Sri B.C. Dutta, Sri Ranjit Roy and Sri Shivasagar Roy, also so far as my information goes do not have any I.T.I. certificate because the Posts did not invite specifically any I.T.I. Certificate holders. Naturally, neither the post requires nor the candidate possess I.T.I. Certificate. Yet the question of I.T.I. Certificate and the production thereof certainly requires Mr. H.S. Brar to unveil the mystery. And I shall be highly prejudiced unless I find opportunity to cross examine Mr. Brar to get at the truth. Else the truth will remain in the abyss of suspicion, uncertainty and injustice.

Under the circumstances, it is fervently prayed that you would be pleased to summon Mr. H.S. Brar during the hearing for the end of justice and equity.

And for this act of kindness, I shall as in duty bound, ever pray.

Yours faithfully,

Subir Kr. Bose
(SRI SUBIR KR. BOSE).

S.B.A.MES. *Subir*

Annexure-K

To,

The G.E.585 Eng Park
C/O 99 APO

Respected Sir,

In continuation of my application dated 16th Oct '93 I would like to mention that, I may please be allowed to accompany with my legal adviser while attending the court of inquiry for defence my case.

Because, Inquiry has been ordered by the Departmental after the decision of Hon'ble C.A.T., which is too late by the Deptt.

As a result I have lost my confidence with my employer and I am afraid that Departmental is again put me in embarrass position. As such, accompany with my legal adviser is necessary to defence my case. In view of above, you are, requested to kindly accord your permission and oblige.

Yours faithfully

Attested by me
G. Chakrabarty
S.B.A. M.E.S NyA
t.16th Oct '93

Subir kr. Bose
S.B.A. M.E.S NyA
t.16th Oct '93

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To,

Commander Work Engineers,
Speed Eagle Falls,
S I L L O N G - 793011

Dated 19th July, 94

Sir,

In response to the letter dt. 6th July '94, I beg to submit that the inquiry report dt. 24th July '94 is not based on lawful materials & legal evidence. The procedure adopted in conducting the enquiry is not in accordance with the law and as such the charges framed against me by the authority can not be enforced and /or sustained.

That Sir, regarding the observation made in para 2 of the findings, I beg to submit that neither the advertisement notice nor the employment exchange nor the interview letter dt. 14.8.94 mentioned that I.T.I. Certificate was essential & compulsory for the post of S.B.A. naturally, my name for the post of S.B.A. was sponsored by the employment Exchange in spite of the fact that I had not I.T.I. Certificate. Besides I was not informed by the appointing authority that the post of S.B.A. required I.T.I. trade passed qualification. Naturally I was not aware of the requirement of I.T.I. certificate as compulsory one.

That regarding para 3, I beg to submit that even the telegram dt. 20 March, 87 did not specifically mention that I.T.I. Certificate was compulsory for the post. Naturally, the question of my awareness does not arise at all.

Contd...2/p.

- (2) -

That regarding para 5, I beg to submit that I had never submitted photo Copy of I.T.I. Trade passed Certificate as the question of subission of I.T.I. Certificate does not arise at all as I never studied in such institution. As regards the service book, I beg to submit that I being a new entrant was shy and timid. Besides I being a new entrant was quite ignorant about the rules and procedures of the office on account of which I obeyed the order of the Head Clerk and put my signature without any hesitation without going into the details of my service book. So the signature on the service book, cannot by any stretch of imagination establish the fact as to the subission of I.T.I. Certificate.

That regarding para 6, I beg to submit that the photocopy signature cannot be used and proved. It is not at all legally admissible.

That as regards para 7, I beg to submit that by my letter dt. 4 Jan, 92, I emphatically denied of having any I.T.I. Certificate. Naturally, the production of I.T.I. Certificate does not arise at all.

That as regards para 8 & 9, I beg to submit that I was not aware of the requirement of I.T.I. Certificate, naturally, the question of subission of Photo Copy does not arise at all. And as I did not submit the photo-copy of I.T.I. Certificate, I can not be arraigned and/or charged, even if it is found bogus/forged. Thus the charges cannot be sustained against me.

Contd... 3/p.

- (3) -

That Sir, as regards the charges, I beg to rely on the documents, marked as A N N E X U R E

which I am confident, will go long to establish my innocence.

Now Sir, before entering upon the question of inquiry, I beg to submit that penalty has already been imposed on me for no fault of mine. My service was earlier terminated by the authority and again consequent on the decision of C.A.T.I was re-instated but I was allowed a minimum salary. The annexure

enclosed herewith will prove it. The letter marked as A N N E X U R E

has been enclosed herewith to prove the fact.

Now, regarding the procedure adopted in the inquiry was in flagrant violation of the rule framed under C.C.S Rules, 1965. Neither copy of the statements of witnesses nor evidence providing the delivery of the documents here given to me I was also not allowed to take assistance of a legal practitioner in spite of the fact that the case involved legal and factual complications and no member of my department agreed to represent me, on the contrary, I was not in a fit state of mind to defend myself due to my mental agony, ill health resulting from departmental harrassment.

Contd... 4/ P.

- (4) -

That the inquiry was not held in accordance with the procedure laid down in Rule 14. I was neither given any chance to inspect the document, the inquiry based nor copies of statements of witness were furnished to me to defend myself.

No document was proved by or on behalf of the disciplinary authority and no witness was examined by the presenting officer. I was arbitrarily deprived of examining even the listed witness 2/Lt. Hafez Bazar. Reasonable opportunity was not affected to me. And as such the report has not been prepared according to law.

That Sir, the finding taking into consideration the relevant materials, based on conjectures surmises and suspicion can not be sustained.

In short the inquiry is not based on legal proof. My written brief, marked as ANNEXURE will speak of the irregularities crept into the inquiry.

Yours' faithfully

Sabir K. Bokal

ELECT SK
M.E.S - N.Y.A

19 July 84.

To

The Inquiry Officer,
G.E. 523 Eng. Park.

Date : 9-5-94

Sir,

Being extremely shocked and depressed at the 'Brief' presented by Presenting Officer on 6th day of May, 1994, I most respectfully beg to submit the following facts for your kind perusal and sympathetic consideration.

- Attested by me
S. Barar*
1. That Sir, the above noted brief, truly speaking, inanoly fails to reflect the facts responsible for implicating me falsely in spite of my ignorance and innocence as I am, in no way, can be arraigned for any defect, if at all, is crept into my service record.
 2. That Sir, very humbly I beg to submit that I was totally denied of natural justice. Neither I was allowed to engage lawyer nor I was allowed to examine 2/Lt Mr. H. S. Barar who was admittedly the sole officer who initiated and took the procedures in respect of my appointment and he practically, made our entire batch consisting of ten persons appointed.
 3. That Sir, I very humbly beg to submit that the procedures adopted by P. Officer are also in flagrant violation of established Principles of law. The prosecution totally failed to establish the charge and it is the principle of law that the prosecution must establish the charge on its own evidence. Prosecution must stand on its own legs, it can not derive strength from the weakness

- 2 -

of the defence. There is neither any single witness on behalf of the Prosecution nor any document has been proved lawfully to establish the charge.

4. That the flagrant violation of established principles of law, I have been cross-examined by the Presenting Officer . As such, any thing coming from my mouth cannot be admissible and enforceable in the eye of law.

5. That in respect of the para No.3, I beg to submit that the question of production of original provisional National Trade Certificate does not arise at all as I never produced either original or any copy of the said certificate, especially because the said certificate was not a compulsory certificate in view of the advertisement notice and interview letter, I never studied in such institution. So, I am quite in the dark of any such certificate . Further, I beg to submit that in the absence of original certificate (only on the basis of a copy of such certificate) a document cannot be proved and branded as forged document . Over and above as the production of the said copy of Provisional National Trade Certificate , has not been lawfully proved by independent witness on one hand and as I specifically denied of its submission, the said copy of the certificate cannot bear any credibility in the eye of law . The C.B.I. report , if any, is also inadmissible in the eye of law .

- 3 -

6. That Sir, as regards to para 4, I beg to submit that I never admitted the fact that my signature went to match with the signature appeared in the photo copy of the I.T.I. certificate. The photo copy of the signature cannot be used and valid in the eye of law unless it is proved lawfully and I emphatically denied the said signature. Now in respect of my service book, I beg to submit that the details of the service book are written by some one else naturally. I am also not aware of the details entered upon my service book. Of course, I put my signature thereon only, but the details were neither pointed out to me nor I was asked to go through it. Simply I was asked to put my signature thereon. I am confident of the fact that the entire mystery fomenting my accusation would have been brought to light if 2/Lt. Mr. H.S. Barar could have been brought before your Honour and I specifically appealed before Your Honour for the presence of 2/Lt. Mr. H.S. Barar to get at the truth. And it is emphatically stated that the entire batch comprising ten persons who got appointed along with me, had no I.T.I. Certificate.

7) That Sir, I humbly beg to submit that I was asked in the first week of my service, by the Head Clerk to sign in my service book and I did so without any hesitation. It is but natural that I being a new entrant was quite ignorant about the rules and procedures of the office. Besides, I being a fresh candidate was shy and timid on account of which I oblized the instructions without any hesitation and signed accordingly without going through the contents thereof.

- 4 -

8) It is also quite clear from my joining report date 8 April, 1987 that I never produced any I.T.I. Certificate to the Deptt nor I was asked to produce I.T.I. certificate. It was also not compulsory because of which the Deptt. did not ask me for I.T.I. Certificate. It is much surprising to state that on 19th May, 1992 C.E. Narangi vide their letter No. 1007/13/723/EIN asked me to produce original I.T.I. certificate. I, in reply, had already expressed my ignorance about I.T.I. certificate.

9) In view of para 8 above, it is stated that first I was called for interview on ~~29/1/87~~ ^{29/1/87} My interview was above satisfaction. But I heard nothing from C.W.E. Guwahati till Feb'87. Suddenly by a telephone/telegram dated 20th March, 87 I was asked to appear for an interview on 28-3-87. On 28th March, 87, no written interview was taken but checked my H.S.L.C. Certificate, Admit Card, Experience certificate. I clearly remember that I made it clear that I did not possess any I.T.I. qualifications; but in reply 2/Lt H.S. Barar told me verbally that I.T.I. was not compulsory. And I was told by H.S. Barar that he would issue appointment letter if I am selected. And I got my appointment letter on 5th April, 87 and I joined on 8th April, 87. My appointment Order vide C.W.E. Guwahati letter No. 1015/4442/EINB also did not speak regarding any I.T.I. qualification. The above facts may kindly be verified from interview board papers.

10) In fine, I beg to submit that I am quite innocent and I can not be charged for any offence as I am not at all directly or indirectly involved and/or

- 5 -

connected in such offence. I in pursuance of the advertisement applied for the post of and sat for the interview and selected to the post lawfully which is much evident from my service career, I am discharging my duties without any blemish to the satisfaction of the authority. And it is also blatant lie to say that I failed to maintain absolute integrity and devotion to my duty. There is no such material to substantiate the allegation. In short, the entire allegations levelled against me are not based on subjective, objective and legal evidence. On the contrary, it is based solely on conjecture.

It is, therefore, prayed that Your Honour would be pleased to set aside the charge levelled against me for the ends of justice and equity.

And for this act of kindness, I shall, as in duty bound, ever pray.

Yours faithfully,

Subir Kr. BOSE

(SUBIR KR. BOSE)

Elect(S. K.)

M. E. S. N. Y. A. Guwahati-27

BRIEF BY PRESENTING OFFICER

Units Narangi (Gauhati)

Dated : 06 May '94.

1. On receipt of CWE Shillong letter No.1970/Gen/249/EIG dated 30 Jul '93. Appointing me the presenting Officer, the undersigned studied the case in the light of charges framed against the charged Govt. Servant MES/NYA Shri Subir Kr. Bose, Electrician of GE Narangi, and further action taken by the disciplinary authority in this respect. The undersigned also cross-examined the CGS in the Court assembled on 04 May '94.

2. The undersigned felt after studying the case in details and after examining the CGS that sufficient evidence exists to establish the fact that he failed to maintain absolute integrity and devotion to duty.

3. The CGS was asked to produce original provisional National Trade Certificate of Govt. of Assam issued by ITI Jorhat but he failed to do so because he never held a valid certificate. He only produced a forged certificate. This has already been confirmed by the principal, Industrial Training Institute, Jorhat vide letter No.: JITI/T-19/1770 dated 21.5.88 and JITI/T-19/1738 dated 24.8.92 that the CGS never studied in his institution and also no such certificate was issued by the ITI to him. Further, this fact has also been established by the CBI that a forged certificate was produced by the CGS during interview/appointment.

4. While cross examining the C.G.S. it is found that the details given in the photo copy of the ITI Certificate are of the CGS. Please refer to answer Nos. 2 to 4 of the cross examination. The CGS in answer No.5 denied that the signature in the ITI certificate is not of him but the signature in the first joining report after getting appointment when shown to him and were asked to compare it with that of ITI Certificate, he agreed that both the signatures are appearing to match with each other. Please see Ans No.7. One entry in the service book was shown to him where technical qualification was shown as "passed the prescribed trade Test in the trade in the trade of electrician from Govt. of Assam Industrial Training Institute. This has also been acknowledged by the CGS endroosing his signature thereon.

5. It is now clear from the above that the CGS was never in possession of a valid certificate and as such he failed to maintain absolute integrity and devotion to duty.

*Attested by me
S. Chetan Biju
Hawaldar*

(A. K. Datta)
Presenting Officer
AGE B/R(P) Narangi .

06 May 94.

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54
Tele Mily: 7244

Office of the Garrison Engineer,
Narangi Division Post: Satgaon
Gauhati - 781027.

06 May'94

To

Lt Col. V.K.Mahajan 10
GE 583 Engr. Park.

Dear Sir,

I hereby enclose one copy of my brief as asked
for vide daily order sheet No.09 dated 04 May 94.

Yours faithfully,

Sd/- (A. K. Datta)
Presenting Officer,
Station: Narangi (Gauhati) AGE B/R (P) Narangi.

Dated : 06 May'94.

Copy to :-

- 1) Shri Subir Kumar Bose,
Electrician ,
GE Narangi.
- ii) CWE Shillong.

Anandpurse - 'O'

56

A7

To,

Commander Work Engineers,

Spread Eagle Falls,

S H I L L O N G - 793011

Dated 19th July, 94

Sir,

In response to the letter dt. 6th July '94, I beg to submit that the inquiry report dt. 24th July '94 is not based on lawful materials & legal evidence. The procedure adopted in conducting the enquiry is not in accordance with the law and as such the charges framed against me by the authority can not be enforced and /or sustained.

Attested by
S. Anandpurse
B.A.M.

That Sir, regarding the observation made in para 2 of the findings, I beg to submit that neither the advertisement notice nor the employment Exchange nor the interview letter dt. 14.8.84 mentioned that I.T.I. Certificate was essential & compulsory for the post of S.B.A. naturally, my name for the post of S.B.A. was sponsored by the employment Exchange in spite of the fact that I had not I.T.I. Certificate. Besides I was not informed by the appointing authority that the Post of S.B.A. required I.T.I. trade passed qualification. Naturally I was not aware of the requirement of I.T.I. certificate as compulsory one.

That regarding para 3, I beg to submit that even the telegram dt. 20 March, 87 did not specifically mention that I.T.I. Certificate was compulsory for the post. Naturally the question of my awareness does not arise at all.

- (2) -

That regarding para 5, I beg to submit that I had never submitted photo Copy of I.T.I. Trade passed Certificate as the question of submission of I.T.I. Certificate does not arise at all as I never studied in such institution. As regards the service book, I beg to submit that I being a new entrant was shy and timid. Besides I being a new entrant was quite ignorant about the rules and procedures of the office on account of which I obeyed the order of the Head Clerk and put my signature without any hesitation without going into the details of my service book. So the signature on the service book, cannot by any stretch of imagination establish the fact as to the submission of I.T.I. Certificate.

That regarding para 6, I beg to submit that the photocopy signature cannot be used and proved. It is not at all legally admissible.

That as regards para 7, I beg to submit that by my letter dt. 4 Jan, 92, I emphatically denied of having any I.T.I. Certificate. Naturally, the production of I.T.I. Certificate does not arise at all.

That as regards para 8 & 9, I beg to submit that I was not aware of the requirement of I.T.I. Certificate, naturally, the question of submission of Photo Copy does not arise at all. And as I did not submit the photocopy of I.T.I. Certificate, I can not be arraigned and/or charged, even if it is found bogus/forged. Thus the charges cannot be sustained against me.

Contd... 3/p.

- (3) -

That Sir, as regards the charges, I beg to rely on the documents, marked as A N N E X U R E

which I am confident, will go long to establish my innocence.

Now Sir, before entering upon the question of inquiry. I beg to submit that penalty has already been imposed on me for no fault of mine. My service was earlier terminated by the authority and again consequent on the decision of C.A.T.I was re-instated but I was allowed a minimum salary. The annexure

enclosed herewith will prove it. The latter marked as A N N E X U R E has been enclosed herewith to prove the fact.

Now, regarding the procedure adopted in the inquiry was in flagrant violation of the rule framed under C.C.S Rules, 1965. Neither copy of the statements of witnesses nor evidence providing the delivery of the documents here given to me I was also not allowed to take assistance of a legal practitioner in spite of the fact that the case involved legal and factual complications and no member of my department agreed to represent me. On the contrary, I was not in a fit state of mind to defend myself, due to my mental agony, ill health resulting from departmental harrassment.

Contd... 4/5

- (4) -

That the inquiry was not held in accordance with the procedure laid down in Rule 14. I was neither given any chance to inspect the document, the inquiry based nor copies of statements of witness here furnished to me to defend myself.

No document was proved by or on behalf of the disciplinary authority and no witness was examined by the presenting Officer. I was arbitrarily deprived of examining even the listed witness 2/Lt. Hafez Barar. Reasonable opportunity was not affected to me. And as such the report has not been prepared according to law.

That Sir, the finding taking into consideration the relevant materials, based on conjectures surmises and suspicion can not be sustained.

In short the inquiry is not based on legal proof. My written brief, marked as A N N E X U R E _____ will speak of the irregularities

crept into an inquiry.

Yours' faithfully

Subir K. Basu

Efect SK
M.E.B - N.Y.A

19 July 94.

No 1970/Gen/346/E1C
 Commander Works Engineers
 Spread Eagle Falls
 Shillong - 793011

18 Jan 95

ORDER

WHEREAS, disciplinary proceeding for major penalty were instituted against MES/NYA Shri Subir Kumar Bose, Electrician of the office of GE Narangi, under Rule 14 of CCS (CC&A) Rules 1965 vide CWE Shillong Memorandum No 1970/Gen/172/E1C dated 22 Jan 93 on the following charges:-

(i) That MES/NYA Shri Subir Kumar Bose, while functioning as Electrician in the office of GE Narangi during the period from 08 Apr 87 to-date has committed gross misconduct in that he has failed to produce the original certificate of his technical qualification as called for vide GE Narangi letter No 1007/6/D/723/E1D dt 19 May 92. CBI inquiry has also proved that the ITI certificate produced by Shri Subir Kumar at the time of employment was bogus. Thus Shri Subir Kumar Bose has failed to maintain absolute integrity, devotion to duty and has acted in a manner unbecoming of a Govt Servant and thereby violated Rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rules 1964.

AND WHEREAS, MES/NYA Shri Subir Kumar Bose submitted a defence statement dated 08 Feb 93 in which he denied the charges and desired to be heard in person.

AND WHEREAS, an oral inquiry was held as per the provisions of Rule 14 of CCS (CC&A) Rules 1965, which was conducted and statements recorded during the inquiry, the Inquiry Officer has concluded that the charges framed are sustained.

AND WHEREAS, a copy of inquiry report was sent by Registered Post on 06 Jul 94 to Shri Subir Kumar Bose for obtaining his observation, if any. Shri Subir Kumar Bose has submitted his representation dt 10 Jul 94 denying the charges.

AND WHEREAS, the undersigned has considered the inquiry report and agrees with the findings of the Inquiry Officer.

Attested
S. Chakrabarty
Adm. Officer

NOW THEREFORE, the undersigned, in exercise of the powers conferred upon him under Rule 15 of CCS (CC&A) Rules-1965, hereby impose the penalty 'Dismissal from service which shall ordinarily be a disqualification for future employment under the Government', on the said MES/NYA Shri Subir Kumar Bose.

By order and in the name
of the President

(H R Khan)

SE,
Commander Works Engineers

To

MES/NYA
Shri Subir Kumar Bose
Electrician
(Through GE Narangi)

CONFIDENTIAL

Tele Mly : 3292

1970/Gen/161/EIC

REGISTERED POSTCommander Works Engineers
Spread Eagle Falls
Shillong - 793011

Ok July 94

MES/NYA

Sh Subir Kumar Bose, Electrician(SK)
(Through GE Narangi)INQUIRY UNDER RULE 14 OF CCS (CCA) RULES
1965 AGAINST MES/NYA SHRI SUBIR KUMAR BOSE
ELECTRICIAN(SK)

1. Reference this office Orders No 1970/Gen/219/EIC and 1970/Gen250/EIC both dated 30 July 93.
2. WHEREAS disciplinary proceedings under Rule 14 of CCS (CC&A) Rules 1965 were initiated against MES/NYA Sh Subir Kumar Bose, Elec(SK) vide this office Charge Sheet Memo bearing No 1970/Gen/172/EIC dt 22 Jan 93 for his misconduct in non production of original certificate of his tech qualification till date as called for vide GE Narangi letter No 1007/D/723/EID dated 19 May 93.
3. AND WHEREAS MES/NYA Sh Subir Kumar Bose has denied the charges vide CWE Shillong Memo referred above, the inquiry officer to inquire into the charges was appointed vide CWE Shillong Order cited at reference.
4. A copy of the inquiry report submitted by the inquiry officer is enclosed herewith. You are hereby called upon to forward your observations, if any, so as to reach this office by 20 July 94 before taking final decision in the matter.


(H R Khan)

SE

Encls : 2 Sheets

Commander Works Engineers

Copy to

GE Narangi

- Alongwith a copy of the inquiry report. Please forward your recommendation through a statement of case so as to reach this office by 20 July 94.CONFIDENTIAL

to

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FINDINGS ON EACH ARTICLES OF CHARGES AND THE REASONS
THEREFORE

1. It is seen from the documentary evidence that an interview for the appt of SBA was conducted by CWE Guwahati on 29 Aug 1984. But no appointment was made during 1994 was due to ban on recruitment imposed by Central Govt. (Ref CWE Guwahati letter No 1016/4300/EINB dt 01 Oct 85, exhibited as Annexure II).

2. The aforesaid interview Board Proceedings was cancelled consequent to E-in-C's Br letter No 90270/87/EIC dated 11 Jan 85 wherein it is mentioned that ITI trade passed qualification is essential for the post of SBA.

3. On 20 Mar 87 CWE Guwahati had issued a telegram vide No 1016/4414/EINB dt 20 Mar 87 to Shri Subir Kumar Bose directing him to appear before an interview board at CWE Guwahati on 28 Mar 87 for the recruitment of SBA, alongwith original educational/technical qualification/ITI certificate. Therefore, it is clear that ITI trade passed qualification was compulsory for the post. Sh Subir Kumar Bose was also aware regarding requirement of ITI trade passed certificate.

4. Consequent to interview on 28 Mar 87, Sh Subir Kr Bose was issued appointment letter vide CWE Guwahati letter No 1016/4442/EINB dt 30 Mar 87.

5. Sh Subir Kr Bose joined the service on 08 Apr 87 in GE (AF) Borjar. Sh Subir Kr Bose had submitted the following documents to GE (AF) Borjar on his appointment:-

- (a) Medical Fitness Certificate
- (b) Photo copy of HSLC Passed Certificate
- (c) Photo copy of ITI trade passed certificate.

The above facts have been evidenced from page 3 of Service Book in respect of Sh Subir Kumar Bose, Elec, wherein the indv has authenticated attestation of entries by putting his signature (Refer Service Book Part I, Page 3 of Sh Subir Kumar Bose and Q & Ans No 8 of Daily Order Sheet No 9 dated 04 May 94).

6. Signatures appeared on photo copy of provisional ITI qualification certificate seems to be the signature of Sh Subir Kumar Bose, since signature of ITI trade certificate & signature on the joining report of Sh Subir Kumar Bose are appears the same. (Ref Q & Ans No 7 of Daily Order Sheet No 9 dt 04 May 94).

7. GE Narangi vide their letter No 1007/6/D/723 dated 19 May 92 directed Sh Subir Kr Bose to produce the following documents :-

- (a) Roll No, Year & Name of the Institution from which he had passed ITI Examination,
- (b) Original educational/ITI qualification certificate alongwith the two CTCs of each certificate.

Sh SK Bose had submitted his reply on 04 Jun 92 in response to GE Narangi ibid letter but he failed to submit the original ITI trade passed certificate.

8. It is of the opinion of the inquiry officer that Sh Subir Kumar Bose is fully aware of the requirement of ITI trade qualification certificate and also production of the photo copy of the same to the department. But as per ITI Jorhat letter No JITI/T-19/1770 dt 21 May 88 and JITI/T-19/1730 dt 24 Aug 92, it is established that Shri Subir Kumar Bose was not a student of their institute at any time and hence the indiv secured employment in NES department by producing bogus/forged ITI trade certificate, thus he has cheated the department.

9. Thus the charges framed in Article I and Article II by Disciplinary Authority vide CPE Shillong Memo No 1970/Gen/172/EIC dated 22 Jan 93 are sustained.

Sd/- x x x x x x x x
(E K Mahajan)
Lt Col
GE 583 Engr Park
Inquiry Officer

Dated : 24 May 94

COPY /

Annexure 'B'

Block 3, B.M.C. - 11 - 1984 (1984-85 DATED AUTHORITY)
Kamal Nath Roy, M.L.A. (MILITARY ENGINEER SERVICE, D.H.)
P.O. KEN LANE - 710011.

(Through : Proper Channel)

IN THE MATTER OF :

An appeal U/R 23 of C.C.S.

(Classification, Control and

Appeal) Rules, against the
order of dismissal u/r 11 of

C.C.S (Classification, Control

and Appeal) Rules made on 18/1/95... .

by the disciplinary authority.

A N D

IN THE MATTER OF :

Srii Subir Kumar Bose (Ex. Electrician
under C.E. Norangi)

C/O. Subir Bose, S. No. C - 65

P.O. Satgaon, Jorhat

Guwahati - 27.

----- Appellant

The humble Petition of appeal of the appellant

MOST RESPECTFULLY SHEWETH :

1. That the humble appellant being sponsored by the
Employment Exchange, Guwahati for the post of Switch
Boyard, attendant to in Military Engineer Service was
called for interview / test vide letter No. 1016/4184/
E I.M.B and accordingly the appellant sat for interview
on 29th August, 1984.

Attached
S. Mukherjee
Baruwa

Contd. on 2/p.

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- (2) -

2. That the appellant, for the said post of S.B.A in military engineer service was also advised to bring along with him on the date of interview i.e. 22nd August '84 the original Certificates in support of his educational qualification, e.g. Proof of Employment Exchange Card and Experience Certificate. But as the technical qualification Certificate was not at all necessary and mandatory for the said post of switch Board attendant the humble appellant had no reason to produce technical qualification Certificate for the said post of S.B.A. Besides as the appellant did never acquire technical qualification, the question of production of technical qualification Certificate (I.T.I) did not arise at all. The Photostat Copy of the said interview call letter has been enclosed herewith and marked as ANNEXURE - B.
3. That the appellant, theronfter, being selected for the post of S.B.A. was asked to fill in the form sent up by the authority on 19/10/84 and accordingly the appellant in anticipation of getting appointment filled in the duplicate form enclosed with the letter No. 01016/4257/ S.I.N.B dt. 19.10.84. But as ill luck would have it, the appellant inspite of complying with all the procedures, received no appointment letter for the post in the year 1984.
4. That the humble appellant begs to submit that neither the advertisement notice nor the employment Exchange nor the interview letter dt. 14.8.84 mentioned specifically

Confidential/P.

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- (3) -

that I.T.I Certificate for the post of S.B.A was essential & compulsory. Naturally the Employment Exchange, sponsored the name of the appellant for the post of S.B.A despite the fact that the appellant had no I.T.I Certificate. Besides the appellant was neither asked for submitting I.T.I Certificate nor he was informed that the said I.T.I Certificate was necessary for the said post. Consequently, the appellant was not at all aware of the requirements, if any, of I.T.I Certificate for the post of S.B.A.

5. That the humble petitioner begs to submit that the appellant although his interview for the post of S.B.A on 29-3-84 was above satisfaction, heard nothing as to his appointment from the authority. Suddenly by a telegram dt. 20th March, '87 the appellant was asked ^{again} to appear for an interview on 28-3-87. The appellant, accordingly entered his personal appearance before the authority on 28.3.87, but no written interview was taken on 28.3.87 only the original I.S.L.S Certificate. Admit Card and experience Certificate were only checked and verified, subsequently the appellant having received the appointment letter on 5-4-87, joined the post on 8-4-87. The said appointment letter also did not speak of any I.T.I certificate, so the appellant was quite ignorant of the fact that I.T.I Certificate was a compulsory one for the said post.

6. The Photostate Copy of the telegram for interview and the appointment letter have been enclosed herewith and marked as ANNEXURE 'B' & 'C' respectively.

contd.... 4/p

- (4) -

6. That the humble appellant, after joining the post, had been discharging his duties quite satisfactorily, honestly and diligently having his character, roll excellent and unblemished, maintaining absolute integrity and devotion to his duty. And the appellant, after sometimes was categorised as " Skilled Electrician".
7. That the humble appellant begs to state that he to his great surprise and shock all on a sudden was served with a notice of termination of service issued U/s 5(1) of the Central Civil Service (Temporary services) Rules 1965 on 27-5-90. The photocstate Copy of the said notice is enclosed herewith and annexed as ANNEXURE "D".
8. That the humble appellant, thereafter being aggrieved at and by the said termination order went in for remedy before the central administrative Tribunal, Guwahati Bench and the Hon'ble Tribunal, after enquiry and hearing, was pleased to hold that the impugned order of termination could not be sustained and passed order, ¹ ~~whereby~~ other to reinstate the appellant. photocstate Copy of the said order/Judgment dt. 49-9-91 and marked as ANNEXURE "E".
9. That the appellant, thereafter as per the order of the Hon'ble Tribunal was reinstated after a long period in spite of my sincere effort by a letter dt. 07-4-92 on a minimum salary of scale. The Photostate Copy of the said letter is enclosed herewith and marked as ANNEXURE - "F".

- (5) -

10. That the Appellant, thereupon by a letter No. 1007/6/D/723/ E I D dt. 19-5-92 was directed to report the office along with the original Certificate of I T I with details. The appellant, thereafter by a letter dt. 4/6/92 categorically explained the matter and unequivocally admitted that he had no I T I Certificate.
- The copy of the said letter dt. 4-6-92 has been enclosed herewith and marked as Annexure 'G'.
11. That the appellant, again, vide letter No. 1970/Gen/92/E I C dt. 7-9-92 ^{asked} to show cause as to why disciplinary action should not be initiated against him for the production of false I T I certificate to secure employment. The appellant without delay, submitted his show cause in reply thereof. The photostate copy of the said show cause has been enclosed herewith and marked as ANNEXURE 'H'.
12. That the appellant begs to submit that the department, in spite of submitting the show cause against the charges by the appellant had chosen to hold a departmental inquiry and accordingly departmental inquiry U/R 14 of the central Civil services (Classifications, Control and Appeal Rules 1965 was initiated the appellant was served with a Copy of Memorandum vide letter no. 1970/Gen/ 172/EIC dt. 22 Jan 93. The photostate copy of the said memorandum has been enclosed herewith and marked as ANNEXURE 'I'.

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13. That in the said memorandum the appellant was denied of his right to have the copies of the listed documents and the statements of the witnesses. The appellant in spite of these shortcomings crept into the Memorandum, submitted his show cause/ written statement denying the imputation of misconduct and gross indiscipline and prayed for producing defence witnesses and cross examining the listed witness. The photostat copy of the said show cause has been enclosed herewith and marked as

ANNEXURE 'J'.

14. That the humble appellant appeared in person before the inquiring authority. But it is a matter of poignant regret to submit that the poor appellant, in spite of his humble prayer was not favoured with the assistance of any other government servant and/or legal practitioner to present the case on his behalf. The appellant was in flagrant violation of principles of justice and provision of service rules, deprived of being furnished with the copy of the statements of witness mentioned in the list and he was also not been permitted to look into all the documents mentioned in the memorandum. Particularly, some of the important documents such as C B I report dt. 31.10.99 etc. had not at all produced before the appellant. The said inquiry was also based ^{over} without other important relevant documents such as the reply of the appellant against the show cause notice. The appellant in the course of the inquiry also submitted in writing his statement of defence vide petitions dt. 16-10-93.

Contd... 6/p.

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The Photostat copy of the said application is enclosed herewith and marked as ANNEXURE 11.

15. That the Inquiry was held without any listed witness in spite of the prayer of the appellant. The only listed witness, 2/Lt. H.S. Baru, then A.C.C.W.B. Guwahati was neither produced nor his statements was recorded. Besides the appellant in spite of his prayer was denied of his right of Cross examination. The documents were also not properly & legally examined proved and exhibited. The mandatory procedures required under the service rule have not been followed and complied with. The reasonable opportunity has not been given to the appellant in the matter of his defence.
16. That as the Inquiry based on no legal evidence the Inquiry report on such materials is not at all applicable on the appellant. The humble appellant categorically in reply to the letter dt. 6th July '94, explained the facts & circumstances which made the Inquiry report improper and inoperative. The photostat copy of the said letter dt. 19-7-94 has been enclosed and marked as ANNEXURE 11.
17. That the appellant begs to submit that he made his defence clear in respect of the charge by a letter dt. 9-5-94 in reply to the 'Brief' made by the presenting officer on 6th May '94. The Photostat copy of the said reply of the 'Brief' dt. 9-5-94 and the copy of the 'Brief' send by the presenting officer dt. 6th May '94 have been enclosed herewith and marked as ANNEXURE 11 & 11 respectively.

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- (8) -

and marked as ANNEXURE 'M' & 'N' respectively.

18. That the humble appellant also made his position clear, certain and specific by his representation dt. 19th July '94 in reply to the Inquiry report sent to the appellant on 6-3-94. The Photostate copy of the said representation is enclosed herewith and marked as ANNEXURE 'O'.
19. That it is a matter of poignant regret to submit that order of the punishment order, without observing the mandatory procedures & rules, was communicated to the appellant vide letter dt. 18January, 95 which the appellant received on 3/2/95. The photostate copy of the said order has been enclosed herewith and marked as ANNEXURE 'P'.
20. That the appellant begs to submit that neither the department-Inquiry nor the order of punishment was passed by the appropriate authority. Besides the required copies, statements persons copy of advice of any given by the commission have not been furnished to the appellant as required under rule 17 of C.G.S. (Classification Control and Appeal) Rules. Over and above, the order was not communicated under the signature of the officer who had recorded the findings.
21. That the appellant begs to state that the appellant has been totally denied of the benefit of special procedures as embodied in rule 19 of the central service rule.

Contd....9/p.

22. That gross injustice has been meted out to the appellant in as much as none of charge sheet who not served on the appellant separately by the disciplinary authority resulting in confusion in the matter of submission of reply.
23. That the order is arbitrary and passed in violation of principles of natural justice in view of the fact that reasonable opportunity was denied to the appellant. The appellant was totally denied of the opportunity to cross examine the witness. And as such the entire disciplinary proceeding is arbitrary and is vitiated by violation of the mandatory provision of C.C.S.C.C.A Rules as well as principles of natural justice and as such the impugned order can not be sustained in law and are liable to be set aside and the appellant be reinstated in service with full back wages etc.
24. That the impugned order is not sustainable in fact and law in as much as documents collected behind the back of the appellant were relied upon without presenting the same in the enquiry proceedings. Besides, the enquiry officer did not examine any witness of the disciplinary authority in the presence of the appellant.
25. That the impugned order is not maintainable in law in as much as the procedures laid down in rule 14 of the G.C.S.C.C.A rules 1965 had not been complied with. The non-maintenance of order sheet of the disciplinary proceeding had made the order imperitive and illegal only causing confusion and doubt to the appellant.

Contd... 10/p.

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26. That the procedures adopted by the Inquiry officer were not in conformity with the principles of natural justice. The entire procedure of enquiry was conducted in perfunctory manner in total violation of the principles of natural justice. Justice should not only be done but must appear to have been done.
27. That the appellant very reasonably begs to submit that the appellant has been highly prejudiced for non compliance with the 14(1) of C.C.S.C.C. A Rules. The enquiry was not made in the manner provided in the rule 14 and rule 15 of C.C.S.C.C. A. The enquiry officer did not also adjourn the case as required in sub rule (1) and as such it can not be said that the appellant had a reasonable opportunity. Date was not adjourned to a later date for the purpose of preparing his defence. Inspect the documents. The appellant was not offered the right of inspection of the documents etc. And the denial of this right of inspection is a serious infirmity fatal to the entire proceedings.
28. That the procedure as laid down in the rules warrants the maintenance of an order sheet showing the various orders passed by the enquiry officer from time to time. Besides, supply of a copy of day to day proceedings during enquiry should be furnished to the appellant by the inquiry officer at the close of the day's proceedings. But the said procedures has totally lost sight of and as such the appellant has been denied of the great safeguard against arbitrariness and injustice.

Contd.... J.D.P.

29. That the impugned order is not maintainable in law in as much as the appellant was not given notice of inspection of documents relied upon by the Enquiry officer. The record of the proceedings completely go against Rule 16 and particularly Rule 16(2) of C.C.S.C.C.A.
30. That the evidence did not give rise to preponderance of probability by any stretch of imagination and as such it is not sustainable in law. The impugned order is not based on reasons and application of law to the facts found Order without recording reasons becomes the result of caprice, whimsy and expediency.
31. That the disciplinary proceedings being initiated against the appellant had been closed without sending an intimation to that effect to the appellant.
32. That the dismissal order is void in as much as neither the dismissal order was passed by the appointing authority nor by authority equal in rank to appointing authority. Besides Rule 30 and Rule 32 of C.C.S.C.C.A have not been complied with.
33. That neither the departmental enquiry was started nor the penalty specified in Rule 11, was imposed by the disciplinary Authority specified in C.C.S.C.C.A Rules. Rule 12 of C.C.S.C.C.A had been absolutely given goad by. And as such, the impugned order is not sustainable in law.
34. That the show cause and representations made by the appellant have not been considered as such the appellant has been highly prejudiced.

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- (12) -

35. That the appellant begs to state that the impugned order is malafide , arbitrary , punitive and illegal and as such violative of articles 14,16,19 and 21 of the constitution of India.
36. That the impugned order is liable to be set aside in as much as the appellant has not been offered the benefits and safe guards guaranteed to him by the relevant service rules, procedures, policies and the provision of Article 21 and 311 of the constitution of India.
37. That the appellant being grossly discriminated has been arbitrarily picked up, while several ^{other} employees of same qualifications have been retained undisturbed. And the illegal , arbitrary decision has visited the appellant with economic death sentence of dismissal only.
38. That the impugned order is otherwise bad in law and as such it is liable to be set aside.

Under the circumstances, it is fervently prayed that your honour would be pleased to consider this appeal and also be pleased to reinstate the appellant in service by a setting aside the impugned order dt. 18th. Jan 99 by H.R. Khan, S.E. Commander Works Engineers And for this act of kindness, the appellant as in duty bound, shall ever pray.

Dtd... 13.3.99

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Annexure-R

G.P.O. GUWAHATI

REG. AD/A 32448/149387168

TO : ENG IN CHIEFARMY HD QR

N. DELHI-11

DATE : 13-03-95

Gms: 242/Rs.20.00/Ins:0

STAMP AFFIXED Rs.0.00

Attested by me
S. Chakrabarty,
Parrot

DR. SUBRATA BOSE
MBBSMS
EYE SPECIALIST

571057
571019



VISITING HOURS

MORNING : 10 TO 12 NOON (Except Sunday)
EVENING : 5 TO 7 PM (Except Saturday & Sunday)

To whom it may concern.

Certified that Shri Subrata Bose,
S/o Shri (I) Monoranjan Bose, was
suffering from ac. iridocyclitis (B/ep.)
and was under my treatment
from 10/9/96 to 26/9/96. I
advised him complete rest for
the period mentioned.

Attested by me
S. Chatterjee
BDSM

D

(Dr. Subrata Bose)

Reg. No. 8528 MM.

324
13 MAR 1997
by
Sudhir Kumar Bose
Sri. Sudhir Kumar Bose

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH GUWAHATI.

13/3/97
Sr. CGSC

Filed by
Sudhir Kumar Bose

O.A. No. 216/96

Sri Sudhir Kumar Bose

-Versus-

Union of India & others.

- AND -

IN THE MATTER OF:

Written Statements submitted by
the Respondents No. 1,2,3,4,5,6,& 7.

(WRITTEN STATEMENT)

The humble Respondents beg to
submit their Written Statements
as follows :

- 1) That, with regard to the statements made in paragraphs 1, 2, 3, 4 & 5 of the application the Respondents have no comments.
- 2) That, with regard to the statements made in paragraphs 6.1 of the application the Respondents have no comments.
- 3) That, with regard to the statements made in paragraphs 6.2 & 6.3 the Respondents beg to state that, the same is not correct and hence

(Contd.)

denied . The Respondents further beg to state that, it has been clearly mentioned in the interview call letter issued by CWE Guwahati vide letter No. 1016/4184/E1NB dated 14 August, 1984 to appear with all original certificates in support of educational, technical qualifications, age proof, employment exchange card, caste certificate, discharge certificate (for ex-servicemen only) etc. Thus it is clear that technical qualification was necessary and mandatory for the post . Copy of interview call letter is enclosed as Annexure- R/1 .

4) That, with regard to the statements made in paragraph 6.4 of the application the Respondents beg to state that, the interview was conducted on 9-8-84, but due to ban on recruitment no appointment was made. While the ban lifted in 1987, the applicant was again called to report to CWE Guwahati with original certificate of educational/technical qualification vide telegram dated 20th March , 1987 (copy enclosed as Annexure- R- 2). Therefore, ignorance of the applicant regarding technical qualification is not at all agreeable . In this appointment letter No. 1016/4442/E1NB dt 30Mar 87 (copy enclosed as Annexure- R/3)) he was directed to report to G.E. (AF) Borjor with requisite certificates/documents for verification/record. Therefore it was clear that the

(Contd.)

applicant submitted certificate for technical qualification .

5) That ,with regard to the statements made in paragraph 6.5 of the application the Respondents have no comments.

6) That, with regard to the statements made in paragraph 6.6 of the application the Respondents beg to state that, it is a fact that the applicant was served with a termination notice issued by the CWE (Commander Works Engineer,Guwahati) on 22-1-90.

7) That with regard to the statements made in paragraph 6.7 of the application the Respondents beg to state that, the applicant being aggrieved approached for remedy before the Hon'ble Central Administrative Tribunal ,Guwahati Bench against the termination notice. The Hon'ble tribunal disposed of the application on 19-9-91 with the following orders:

(a) The applicant shall be reinstated in service within three months from the date of receipt of a copy of this order.

9b) The applicant shall be given a minimum salary of scale from the date of his reinstatement, but shall not be paid any back-wages.

(Contd.)

- 4 -

- (c) The respondents shall be free to hold departmental enquiry against the applicant regarding furnishing of alleged bogus ITI certificate for producing employment as Switch Board Attendant on the basis of which the appointment letter in March, 1987, Annexure-xx8-R/3 was issued and after the result of the enquiry pass the order according to law after giving full opportunity to the applicant of presenting his case in defence.
- (d) In case the applicant is exonerated the respondents shall also pass order regarding his period from his discharge from his service to the date of his reinstatement by virtue of this order regarding accounting of his service for the purpose of his salary and pension etc.
- 8) That with regard to the statements made in paragraph 6.8 of the application the Respondents beg to state that, with regards to Hon'ble Tribunal judgment dated 19-9-91, the applicant was reinstated in the service and proceeded for departmental action against the individual as per the judgment and recommendation of CBI report dated 31-10-89 . Copy of conclusion and final recommendation of CBI report dated 31-10-89 is enclosed as Annexure R/4 .
- 9) That, with regard to the statements made in

paragraph 6.9 of the application the Respondents beg to state that, the applicant was asked to submit the original copy of Provisional National Trade Certificate bearing Serial No. 982 issued by ITI Jorhat, but the applicant failed to submit the same. This office has requested ITI Jorhat to verify their records and confirm whether the ITI certificate No. 982 issued to the individual by them is correct or not. ITI Jorhat confirmed that Shri Subir Kumar Bose was not a student of their Institute at any time and hence the individual secured employment in MES department by producing bogus/forged ITI trade certificate, thus he has cheated the department. In this connection ITI Jorhat letter No. JITI/T-19/1770 dtd. 21 May 88 and JITI/T-19/1770 dt 21 May 88 and JITI/T-19/1730 dt 24 Aug 92 are enclosed as Annexure -R/5.

- 10) That with regard to the statements made in paragraph 6.10 of the application the Respondents beg to state that, thereafter the applicant was asked to show cause why disciplinary action should not be initiated against him for the production of a fake ITI certificate to secure the employment unlawfully.
- 11) That, with regard to the statements made in paragraph 6.11 of the application the Respondents beg to state that, the applicant was issued Charge

Sheet by CWE Shillong (being the appropriate disciplinary authority of the applicant) under Rule 14 of CCS (CC & A) Rules 1965 vide Memo No. 1970/Con/172/E1C dt 22 Jan 93 and asked to submit his Defence Statement.

12) That, with regard to the statements made in paragraph 6.1.2 of the application the Respondents beg to state that, the applicant submitted his defence statement by denying all the charges. Therefore, an oral inquiry was held as per the provision of Rule 14 of CCS (CC & A) Rules 1965 to give full opportunity to the applicant for presenting his case in defence. The inquiry officer has conducted the inquiry and recommended his findings. Copy of inquiry report is enclosed as Annexure- R/6 .

13) That with regard to the statements made in paragraphs 6.13, 6.14, 6.15, 6.16 & 6.17 of the application the Respondents beg to state that, the contents of the applicant are not agreeable since he was duly examined by both Inquiry Officer and Presenting Officer giving him every chance to speak for his defence. All reasonable opportunities to defend the case was given to the applicants.

14) That, with regard to the statements made in paragraph 6.18 of the application the Respondents beg to state that, after careful examination of defence statement of the applicant and the Inquiry report, the disciplinary authority i.e. CWE

Shillong has imposed the penalty "Dismissed from the Service" vide order bearing No. 1970/ Gen/ 346/EIC dated 18 Jan 95 (copy enclosed as Annexure- R-7 for his misconduct.

- 15) That ~~is~~ with regard to the statements made in paragraphs/ 6.19 & 6.20 of the application the Respondents have no comments the same being matters of record.
- 16) That with regard to the statements made in paragraph 6.21 of the application the Respondents beg to state that, the applicant is habitual of producing bogus certificate so there is no question of frustration .
- 17) That , with regard to the statements made in paragraph 6.22 of the application the Respondents beg to state that, the applicant is habituated to go to Court for the mistakes committed by him and takes always shelter of the Court.
- 18) That, with regard to the statements made in paragraph 6.23 of the application the Respondents beg to state that, the same is not correct and hence denied. Further the Respondent applicant is put to ~~strict~~ strict prove of it.
- 19) That with regard to the statements made in paragraphs 24 of the application the Respondent beg to state that, the delay is intentional due to negligence on the part of the applicant .

There is no justification in condonation of delay in filing the application .

- 20) That with regard to the statements made in paragraph 6.25 of the application regarding grounds of the application the Respondents beg to state that, none of the grounds is maintainable in law as well as in facts and as such the same is liable to be dismissed .
- 21) That , ~~with~~ with regard to the statements made in paragraph 8 of the application regarding grounds of interim relief prayed for there is no justification in granting interim relief to the applicants .
- 22) That with regard to the statements made in paragraphs 9 & 10 of the application the Respondents have no comments .
- 23) That, with regard to the statements made in paragraphs 12 & 13 of the application the Respondents have no comments .
- 24) That the Respondents beg to submit that , the application has no merit and as such the same is liable to be dismissed .

VERIFICATION

I, Sri Sunil Yadav, Major, Garrison Engineer, the Respondent No.6 being competent do hereby solemnly declare that the statements made in this written statement and in paragraphs 1, 2, 5, 22, 23 are true to my knowledge, those made in paragraphs 4, 6, to 21 & 24 are true to my information and those made in the rest are my humble submissions before this Hon'ble Tribunal.

And , I sign this verification today on 28 day of February , 1997 at Guwahati .


(Sunil Yadav)
Major
D e Garrison Engineer .