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**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

*Bahir*  
20/12/17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

SUWAHATI BENCH: SUWAHATI, 5 (FORM NO. 4)

ORDER SHEET. (See Rule-42)

APPLICATION NO. 286/2000

Applicant(s) Md: Akhtar Hossain.

Respondents(s) Goria J. Dossia and others.

Advocate for Applicant(s) Ab. J. L. Sarker  
Ab. M. Chanda, Mrs. N. D. Goswami.

Advocate for Respondent(s)

Notes of the Registry

DATE

ORDER OF THE TRIBUNAL

26.9.00

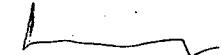
Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.

List on 30.10.2000 for admission on the prayer of Mr M.Chanda, learned counsel for the applicant.

  
Vice-Chairman

30.10.00

Application is incomplete. It seems that the office to scrutinise the documents. D.R. to explain and report.

  
Vice-Chairman

14.11.00

Heard Mr M.Chanda, learned counsel for the applicant. Application is admitted. Issue notice to the respondents. Call for the records. Mr A.Deb Roy is present for the respondents.

List on 1.1.2001 for written statement and further orders.

  
Vice-Chairman

pg

1.1.2001 No written statement has so far been filed. Further three weeks time is allowed to the respondents to file written statement.

List on 23.1.01 for written statement and further orders.

No written statement has been filed.

By

22.1.2001

mk

Vice-Chairman

23.1.01 NO written statement so far filed. List on 14.2.01 to enable the respondents to file written statement,

No written statement has been filed.

IC Ushan  
Member

Vice-Chairman

14.2.01 List on 19.3.01 to enable the respondents to file written statement.

IC Ushan  
Member

Vice-Chairman

lm

16-3-01  
19.3.01

No written statement has been filed. List on 26.4.01 to enable the respondents to file written statement.

1a -

IC Ushan  
Member

Vice-Chairman

No written statement has been filed.

pg

By  
25.4.01

26.4.01 List on 30.5.01 to enable the respondents to file written statement.

IC Ushan  
Member

Vice-Chairman

No written statement has been filed.

lm

30.5.01

List on 4-7-2001 to enable the respondents to file written statement.

3-7-01

Received copy of order  
against application  
in my O.A & M.P.  
M/s  
13/7/2001  
11/8/01

Vice-Chairman

bb

DNo-25/17 W2513

dd 13/7/01

Notes of the Registry	Date	Order of the Tribunal
No. written statement has been filed.	4.7.01 1m <i>By 9.8.01</i>	No written statement so far filed. List for hearing on 10.8.01. <del>fax</del> In the meantime the respondents may file written statement. IC Usha Member
	10.8.01 pg <i>3.9.2001</i>	Prayer has been made by Mr A.Deb Roy, learned Sr.C.G.S.C for a short adjournment of the case. Prayer allowed. List on 3.9.2001 for hearing. IC Usha Member
<u>17.8.2001</u> WPS submitted by the Respondents.	8.10.01 <i>BB</i>	There's no division bench today. The case is adjourned to 8.10.2001. List the case again on 11.10.2001 for hearing. IC Usha Member
<u>27.8.2001</u> Respondent submitted by the applicant against the W/S.	11.10.2001 <i>nk m</i>	Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs. IC Usha Member
The case is ready for hearing as regard wts and responde.		
<i>By 5.10.01</i>		

Notes of the Registry	Date	Order of the Tribunal
<p>30.10.2011</p> <p>Copy. of the Judgement has been sent to the Office. for being sent over to the appellants as well as to the ADD. C.G.S.C for the RespoDr.</p> <p>SS</p>		

CENTRAL ADMINISTRATIVE TRIBUNAL ::  
GUWAHATI BENCH.

O.A./XXX No. 286 of 2000

DATE OF DECISION 11.10.2001 .....

Md. Akhtar Hussain

APPLICANT(S)

Mr J.L. Sarkar, Mr M. Chanda and

Mrs N.D. Goswami

ADVOCATE FOR THE APPLICANT(S)

-- VERSUS --

The Union of India and others

RESPONDENT(S)

Mr B.C. Pathak, Addl. C.G.S.C.

ADVOCATE FOR THE  
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, 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 ?

5. Judgment delivered by Hon'ble Vice-Chairman



N

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.286 of 2000

Date of decision: This the 11th day of October 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Md. Akhtar Hussain,  
Resident of Japorigog High School Road,  
Sundarpur, P.O. Dispur,  
Guwahati.

.....Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda and  
Ms N.D. Goswami.

- versus -

1. The Union of India, through the  
Secretary to the Government of India,  
Ministry of Labour,  
New Delhi.

2. The Director General,  
Employees State Insurance Corporation,  
New Delhi.

3. The Regional Director,  
Employees State Insurance Corporation,  
North Eastern Region,  
P.O. Bumunimaidan, Guwahati.

.....Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 20.10.1999 passed by the Regional Director, Employees' State Insurance Corporation, North Eastern Region, Guwahati imposing the penalty of dismissal from service as well as the appellate order dated 3.3.2000 passed by the Additional Commissioner (P&A), Employees' State Insurance Corporation, New Delhi upholding the order of punishment. The relevant facts necessary for adjudication of the application are mentioned below:

The applicant, while working as Head Clerk in the local office, Tinsukia in the establishment of the Employees' State Insurance Corporation,

was placed under suspension in exercise of powers conferred under Sub-rule (i) of Rule 10 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959. In due course the respondents initiated disciplinary proceeding against the applicant under Regulation 14 para 3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and Conditions of Services) Regulations, 1959, and the imputation of misconduct or misbehaviour was served upon the applicant. An enquiry was held and the Inquiry Officer submitted his report holding the applicant guilty of the misconduct. The Regional Director by his order dated 20.10.1999, on considering the enquiry report and other relevant facts, imposed the penalty of dismissal from on the applicant. The applicant thereafter preferred an appeal before the Appellate Authority and the Appellate Authority also rejected his appeal. Hence this application assailing the legality and validity of the order of dismissal as well as the appellate order.

2. The respondents contested the case and submitted their written statement denying and disputing the claim of the applicant.

3. Mr M. Chanda, learned counsel for the applicant, in the course of his arguments, submitted that a criminal case was lodged against the applicant and after a full length trial the applicant was acquitted. Mr Chanda submitted that on the same charge a departmental enquiry was initiated and conducted and whereas on the same allegation/charge a full length criminal trial was conducted in a competent criminal court. The learned counsel referring to the materials on record pointed out that in the criminal trial four witnesses including the Medical Officer were examined, but the prosecution failed to establish the essential ingredients of the alleged offence of assault and the applicant as an accused was acquitted from the charge.

4. We have examined the materials on record and it appears that the learned Trial Court acquitted the accused on the benefit of doubt. Needless to state that in a criminal trial the prosecution is required to prove the case beyond reasonable doubt. In a criminal trial all the

technicalities and nuances of the Evidence Act is fully applicable, whereas in departmental enquiry even evidence on materials which are not admissible under the Evidence Act are admissible and the same can be acted upon on mere preponderance of probability. Mere acquittal in a criminal trial from the charges of criminal offence will not, ipso facto, deny the right of the Disciplinary Authority to hold an enquiry as the misconduct pertaining to discipline of the establishment. One relates to criminal offence dealing with public peace and order and the other deals with office discipline. Mr Chanda next submitted that even otherwise the materials produced by the Disciplinary Authority did not prove and establish the alleged misconduct. The learned counsel also submitted that the applicant was denied proper opportunity to defend his case.

5. We have gone through the materials on record and we are not impressed with the contention that the applicant was denied fair and adequate opportunity to defend his case. The Disciplinary Authority examined three witnesses in presence of the delinquent official and the delinquent official was provided with every opportunity to crossexamine them. Considering the findings reached by the Inquiry Officer and the materials on record it cannot be said that the findings were vitiated by any perversity. The Disciplinary Authority considered the case on merit and found the applicant guilty of the offence.

6. We have also heard Mr B.C. Pathak, learned Addl. C.G.S.C. On consideration of the materials, we find that that the findings of the Disciplinary Authority cannot be flawed. Mr Chanda finally argued that the punishment imposed on the applicant was severe and the respondent authority, considering the materials on record failed to take note of the relevant facts. Mr Chanda submitted that the applicant rendered about twenty nine years of service in the Department and this is the only instance that the applicant was found to have faltered in his discipline. According to Mr Chanda for one isolated incident the applicant should not have been imposed the penalty of dismissal from service. Mr Pathak, on the other hand, submitted that the respondent authority considering the facts and

circumstances.....

circumstances of the case and the gravity of the offence decided to impose the extreme punishment of dismissal from service.

7. We have given our anxious consideration in the matter. The materials on record did not indicate any other past misconduct of the applicant in his entire career. The respondent authority, while imposing the penalty failed to take into consideration the long meritorious service of the applicant, who was also provided with the benefit of promotions from time to time. Considering all the aspects of the matter we are of the opinion that the imposition of penalty of dismissal from service is extremely disproportional and not in conformity with Article 14 of the Constitution.

8. Upon hearing the learned counsel for the parties, we are of the opinion that this is a fit case in which the order of penalty requires to be modified. We accordingly set aside the impugned order dated 20.10.1999 imposing the penalty of dismissal from service and direct the respondents to consider the case for imposing any other penalty provided by law other than the penalty prescribed in Clauses (vi) to (ix) under Regulation 11 of the Regulations of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959. It is expected that the respondents shall complete the exercise as early as possible, preferably within two months from the date of receipt of the order.

9. Subject to the observations made above the application is allowed. There shall, however, be no order as to costs.

*K. K. Sharma*

( K. K. SHARMA )  
ADMINISTRATIVE MEMBER

*D. N. Chowdhury*

( D. N. CHOWDHURY )  
VICE-CHAIRMAN

COMING IN THE GENERAL ADMINISTRATIVE TRIBUNAL

600 22 SEP 2000 GUWAHATI BENCH

An Application under Section 19 of the Administrative  
Guwahati Bench Tribunals Act, 1985).

Title of the Case : O.A. No. 286 /2000

Md. Akhtar Hussain : Applicant

-versus-

Union of India & Ors. : Respondents

I N D E X

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6	4	Memorandum dt. 12. 6.97	35-40
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8	6	Reply dated 7.7.1997	48- 49

Date : 13.9.2K

Filed by

N.D. Goswami

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

Original Application No. 286 /2000

BETWEEN

Md. Akhtar Hussain

Son of Late Md. Maknur Ali

Resident of Japorigog High School Road

Sundarpur, P.O. Dispur,

Guwahati-781005

..... Applicant

-AND-

1. Union of India

Through the Secretary to the

Government of India, Ministry of

Labour, New Delhi-110001.

2. The Director General

Employees State Insurance Corporation

Kotla Road

Panchadeep Bhawan,

New Delhi-110001.

3. The Regional Director,

Employees State Insurance Corporation,

North Eastern Region,

P.O. Bamunimaidan

Guwahati-781021

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Guwahati Bench

..... Respondents

Md Akhtar Hussain

**DETAILS OF APPLICATION.**

**1. Particulars of orders against which this Application is made.**

This application is made against the order of dismissal from service issued under letter No. 43-S.11/18/95-Vig (AH) dated 20.10.1999 in pursuant to the disciplinary proceeding initiated under Memorandum of Chargesheet dated 12.6.1997 and also against the Appellate Order issued under letter No. C-16/14/25/99-Vig dated 3.3.2000 whereby appeal of the applicant has been rejected and the penalty was imposed by the Disciplinary Authority has been confirmed and also praying for a direction to the respondents to reinstate the service of the applicant with all consequential service benefits including monetary benefits.

**2. Jurisdiction**

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

**3. Limitation**

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

**4. Facts of the Case.**

4.1 That the applicant ~~is~~ was working as Head Clerk (dismissed from service) under the respondents. He was initially appointed as Lower Division Clerk in the

Contd..

*Md Akbar Hussain*

year 1970 and thereafter was promoted to the post of Upper Division Clerk and at the relevant time he was posted at Tinsukia while by order dated 14.12.1995 he was placed under suspension.

4.2 That the applicant states that on 30.12.1994 one Sri S.K.Sasmal, Manager, Tinsukia office, E.S.I. Corporation, lodged an ejhar with Tinsukia Police Station alleging that on the same day at about 09-20 A.M. the applicant had assaulted him heavily and caused grievous injuries on his person. On receiving that information, the Police registered a case being Tinsukia P.S. Case No. SSS/94 U/S 290/325 I.P.C., started investigation into the matter and arrested the applicant on 9.1.1995 in connection with the aforesaid case in consequence whereof the Respondent No.3 issued an order on 14.2.95 placing the applicant under suspension with immediate effect. It is stated that the suspension order was so issued as a case against the applicant in respect of criminal offence was under investigation by the Tinsukia Police.

A copy of the aforesaid order dated 14.2.1995 is annexed herewith as Annexure-1.

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That after investigation, the Police forwarded the case to the Court of Chief Judicial Magistrate, Tinsukia for trial and a case being G.R. Case No. 1658/95 under Section 290/323/506 I.P.C. was registered. The applicant stood trial and pleaded not guilty. The Chief Judicial Magistrate considered the evidence and other materials

Md. Akhtaruzzaman

on record. The learned Magistrate took into consideration the material contradictions and discrepancies of the prosecution case and upon hearing the parties thus acquitted the applicant vide judgement and order dated 2.1.1997.

4.4 That thereafter, the applicant submitted a representation to the respondent No.3 on 2.1.1997 intimating his acquittal and prayed for his reinstatement in service upon revocation/withdrawal of suspension order dated 14.2.1995. With his representation dated 2.1.1997 he also enclosed a certificate from his Advocate intimating ~~xxxxxxxxxxxxxxedxxxxxxcertificatexxxxxxxAdvocatexxxxxxintima~~ his acquittal for ready reference of the respondents as the certified copy of the judgement dated 2.1.1997 could not be obtained on that very day. The applicant however submitted certified copy of the judgement and order dated 2.1.1997 to the respondents/authorities vide his representation dated 31.1.1997 reiterating his prayer for withdrawal of suspension and reinstatement in service.

Copy of the representations dated 2.1.1997 and 31.1.1997 are annexed as Annexure-2 and 3 respectively.

4.5 That the applicant states that even after submission of the aforesaid representations neither the suspension order dated 14.2.1995 was withdrawn/revoked nor he was reinstated in service and he was continued to be paid subsistence allowance as before. Under such a situation, suddenly the then respondent No.3 issued a Memorandum of chargesheet vide No. 43-S.11/18/95-Vig (AH)

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Md. Akhter Hussain

dated 12.6.1997 and proposed to be hold an inquiry against the applicant in respect of the charge of alleged misconduct allegedly committed on 30.12.1994 at about 10-30 A.M. It was alleged in the Article of Charge that the applicant man handled/physically assaulted Sri S.K.Sasmal, the then Manager, Local Office, Tinsukia in the office during office hours on 30.12.1994 at about 10-30 A.M. With this Memorandum, the respondent No.3 also enclosed the Article of Charge; statement of imputation of misconduct/misbehaviour in support of Article of charge; a list of documents by which and a list of witnesses by whom the article of charge was proposed to be sustained. It is stated that the charge levelled against the applicant under this memorandum ralates to the said incident ~~that~~ occurred on 30.12.1994 in respect of which a criminal case being G.R. Case No. 1658/94 was instituted in the Court of Chief Judicial Magistrate, Tinsukia which ended in acquittal of the applicant vide judgement dated 2.1.1997.

A copy of the aforesaid Memorandum dated 12.6.97  
is annexed as Annexure-4.

4.6 That the applicant states that immediately after receipt of the memorandum of charge dated 12.6.1997 he submitted his reply to the respondent No.3 on 7.7.97 and denied the charge of physically assaulting Sri S.K. Sasmal on 30.12.1994. In his reply the applicant stated that in respect of the alleged incident on 30.12.1994, Sri Sasmal lodged an ejhar with Tinsukia Police Station whereupon a case being G.R. Case No. 1658/94 was registered in the court of Judicial Magistrate, Tinsukia.

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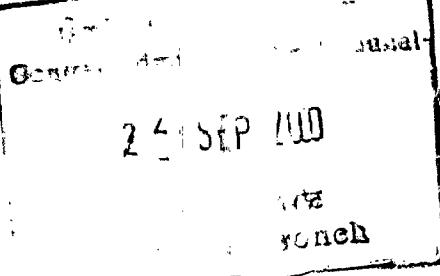
Md. Akhter Hussain

The applicant further states that the aforesaid case was ended up in acquittal of the applicant as the charge of physically assaulting Sri Sasmal could not be proved. However, after receipt of this reply dated 7.7.1997, the respondent No.3 vider order dated 8.7.97 appointed a Presenting Officer to present the case in support of the Article of charge and an Inquiring Authority to inquire into the chargesheet against the applicant and the inquiry thus commenced on 2.11.1997.

4.7 That it is stated that the criminal proceeding which was instituted through G.R. Case No. 1658/94 (State of Assam Vs. Md. A. Hussain) under section 290/323/506 of Indian Penal Code before the learned Chief Judicial Magistrate, Tinsukia. In the said Criminal proceeding the brief case of the prosecution is as follows. The relevant portion of the judgement and order dated 2.1.1997 is quoted below :

"This prosecution case may briefly be stated as follows :

Mr. S.K.Sasmal lodged FIR with C/o Tinsukia police station stating interalia that he is the manager of E.S.I. Corporation, Tinsukia. On 30.12.1994 he came to his office and handed over a letter to the accused through D.K.Sarma (PW1), Peon. The accused being the Head-Assistant of the establishment. In stead of accepting the letter he started some altercation. Thereafter, the accused caused hurt to S.K.Sasmal by means of a wooden roll causing some minor injuries to his person



Md. Akhtare Hussain

and he had undertook treatment. Police on receipt of the FIR registered a case and took up investigation and upon completion of investigation submitted chargesheet u/s 290/323/506 I.P.C. against the accused Akhtar Hussain."

The aforesaid allegation has been examined by the learned court of Chief Judicial Magistrate, Tinsukia in details. The learned Chief Judicial Magistrate examined in as much as 4 witnesses ~~xxxxx~~ from the prosecution side & other evidences relating to the alleged incident which ~~took~~ place on 30.12.1994. The learned Chief Judicial Magistrate thereafter came to the conclusion that the prosecution has failed to establish the charges against the accused applicant and accordingly acquitted the applicant from the aforesaid criminal proceeding by judgement and order dated 2.1.1997. The relevant portion of the judgement and order dated 2.1.1997 passed in G.R. case No. 1658/94 is reproduced below :

" I have considered the injury report also in this regard. Injury report also goes to show that one S.K.Sashpaul was examined by the doctor on 30.12.1994. From the evidence of the doctor it is also doubtful who was the real injured. The advocate for the accused admitted that the alleged occurrence took place on 30.12.1996 at about 09.20 a.m. whereas the F.I.R. was lodged on the same day at about 5.30 p.m., the delay in lodging the F.I.R. has not been explained by the prosecution and on this ground the prosecution case fails. I find

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Guwahati Bench

Md Akhtar Hussain

substance in the submission. As it appears, the informant sustained some minor injuries, so he could have very well lodged the F.I.R. immediately after the occurrence. But instead of doing so, he lodged the FIR at a belated stage. So, I feel that the so-called FIR can be viewed with suspicion. Had it been a case that the informant sustained grievous injuries then it would be presumed ~~xxxthe~~ that the informant and others had to remain busy for the treatment. But this is not the case here. Admittedly other employees were also present in the office at the time of occurrence, so any one of them could have lodged the FIR narrating the incident. In my considered view I hold that delay in lodging the FIR is also fatal to the prosecution.

In view of my decisions and discussions in the foregoing paragraphs I am of the view that the prosecution suffers from doubt. The prosecution failed to produce the seized materials during trial. Non-submission of seized material also casts a serious reflection on the genuineness of the prosecution version. I find huge area of doubt looming over the prosecution story and the accused is entitled to get benefit of doubt, which I hereby do.

In the result, the accused is acquitted on benefit of doubt. The seized materials, if any be destroyed in due course in accordance with law.

Contd...

*Md Akhtar Hussain*

The judgement is delivered under the  
the seal of the court on this 2nd day of  
January, 1997."

The learned Chief Judicial Magistrate, Tinsukia  
acquitted the applicant after examining of the prose-  
cution witnesses and evidences laid by the prosecution  
side and came to the conclusion that the applicant is  
entitled to be acquitted and accordingly the applicant  
had been acquitted from the aforesaid criminal charge.

A copy of the judgement and order dated 2.1.97  
referred to above is annexed as Annexure-5.

4.8 That your applicant begs to state that the present  
applicant was placed under suspension way back on 14.2.  
1995 in connection with investigation relating to the  
incident took place on 30.12.1994 and also on the  
ground that he was arrested in connection with the  
aforesaid incident. However the suspension order is  
continued for a long period since 14.2.1995 even after  
the acquittal on 2.1.1997 in the aforesaid G.R. case  
No. 1658/94 by the learned Chief Judicial Magistrate.

It is also relevant to mention here that although there  
was no departmental proceeding pending at the relevant  
time against the applicant when the said criminal

proceeding was instituted through G.R. Case No. 1658/94  
as such in view of the judgement and order dated 2.1.97  
the applicant was exonerated from the criminal charge  
which was levelled against him. It is also relevant to  
mention here that the appropriate authority did not  
prefer any appeal or revision in any higher court against

*Md Akbar Hussain*

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Guaranteed Search

the acquittal of applicant in G.R. Case No. 1658/94. In this connection it is further stated that there was no proposal from the respondents side to continue the applicant under suspension even after acquittal of the applicant from the criminal charge as stated above. But surprisingly the respondent did not pass any order revoking the order of suspension dated 14.2.1995 even after long lapse of time say after 5 months from the date of acquittal of the applicant from the criminal charge. But surprisingly a departmental proceeding was instituted through Memorandum of Charge dated 12.6.97 on the allegation which was the subject matter of the criminal proceeding where the applicant was exonerated by the learned Chief Judicial Magistrate, Tinsukia by its judgement and order dated 2.1.97. But even then there was no decision on the part of the respondents to continue the applicant under suspension after his acquittal in criminal proceeding. But in the instant case respondents particularly the Regional Director, who is competent authority for revocation of the order of suspension made a clear departure from the established rule and in total violation of rules laid down by the Government of India in force. The applicant was forced to continue under suspension even after acquittal from the allegation of criminal offence by a court of law. This fact of suspension has been stated to apprise the Hon'ble Tribunal how the applicant is treated with judicial treatment in the eye of Regional Director, ESI.

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High Court of  
Gujarat Bench

4.9 That your applicant begs to state that in the departmental proceeding which was initiated through

Md Akhter Hussain

charge sheet

issued under letter No. 43-S.11/18/95-Vig (AH) dated 12.6.97 on the same and identical set of charges which was in fact brought in the criminal proceeding instituted under G.R. case No. 1658/94. The relevant portion of the Article of charge is quoted below :

**" Article-I**

Md. Akthar Hussain, Head Clerk, while posted at Tinsukia Local Office, E.SII Corporation, N.E. Region, on 30.12.1994 attended office at 9.15 AM and signed on the Attendance Register. Then he was requested by Sri D.K. Sarmah, Peon to receive two letters meant for him from the Peon Book. At this, Md. A. Hussain became furious and attacked Sri S.K. Sasmal, Manager, Local Office, Tinsukia in the office during office hours at about 10.30 AM on 30.12.1994 and man-handled/ physically assaulted with a wooden roller on his fore-head as a result of which Sri S.K. Sasmal, Manager had to be admitted into Civil Hospital, Tinsukia on 30.12.1994 for head injury vide Hospital Slip No. 546 and discharged on 1.1.1995, FIR was also lodged in the Trinukis Police Station on 30.12.1994 for the incident vide C/No.555/94. Md. A. Hussain, Head Clerk physically assaulted Sri S.K. Sasmal, Manager, Local Office Tinsukia without any reason in the office in front of all the office staff members and also subverted the discipline of the office.

Md. A. Hussain, Head Clerk has been suspended for the above- mis-behaviour from 14.2.1995 vide Memo No. 43-A 20/1//13/95-Estt dated 14.2.1995.

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Guwahati 35

Md Akthar Hussain

Md. A. Hussain, Head Clerk has thus committed gross mis-behaviour/mis-conduct and displayed utter lack of integrity, devotion to office duty and in subordination which is unbecoming of a Corporation employee and violated Rule 3(I) (i) (ii) (iii) of the CCS (Conduct) Rules, 1964 to be read with Regulation 23 of E.S.I. (Staff and conditions of servicees) Regulations, 1959 as amended."

The aforesaid Article of Charges is proposed to be sustained by the following four witnesses mentioned in Annexure IV to the Memorandum of chargesheet dated 12.6.97. The relevant portion of the Annexure IV is reproduced below :

"LIST OF WITNESS BY WHOM THE ARTICLE OF CHARGE FRAMED AGAINST MD. AKHTAR HUSSAIN, HEAD CLERK, E.S.I. CORPORATION, N.E. REGION ARE PROPOSED TO BE SUSTAINED.

1. Sri S.K. Sasmal, Ex-Manager, Local Office, Tinsukia now posted in Calcutta, E.S.I. Corporation.
2. Sri P. Sutradhar, Manager, Local Office, Tinsukia, N.E. Region.
3. Sri B.C. Das, UDC-Cashier, Local Office, Tezpur, E.S.I. Corporation, N.E. Region.
4. Sri D.K. Sarmah, Peon, Regional Office, Guwahati, E.S.I. Corporation, N.E. Region.

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N.L. BENCH  
Guwahati Bench

Sd/- D.N. Pegeo, 12.6.97  
Regional Director"

It is relevant to mention here that the prosecution side also relied upon the same set of witness which was also relied upon by the departmental side in the depart-

Md. Akhtar Hussain

mental proceeding initiated under memorandum of charge-sheet dated 12.6.1997. In fact the charges and witnesses brought under the criminal proceeding as well as the departmental proceeding are same and identical. All the above witnesses and evidences of the prosecution side has been examined by a competent court of law i.e. court of Chief Judicial Magistrate, Tinsukia and thereafter the present applicant was acquitted by the learned Chief Judicial Magistrate categorically holding that there is huge area of doubt looming over the prosecution story and the accused is entitled to get benefit of doubt and accordingly the applicant is acquitted by the learned Chief Judicial Magistrate vide its judgement and order dated 2.1.1997 passed in G.R. Case No. 1658/94.

4.10 That it is stated that the respondents therefore conducted the departmental proceeding even after submission of his reply to the memorandum of charge dated 12.6.1997 denying the charge. The enquiry officer submitted his report alleging that charges under Article I against the applicant are proved. It is pertinent to mention here that the departmental authority in the memorandum of Article of charge dated 12.6.1997 relied upon 4 (four) witness namely,

1. Sri S.K.Sasmal, Ex-Manager, Local Office, Tinsukia now posted in Calcutta, E.S.I. Corporation.
2. Sri P.Sutradhar, Manager, Local Office, Tinsukia, N.E. Region.
3. Sri B.C.Das, UDC-Cashier, Local Office, Tezpur, E.S.I., Corporation, N.E.Region.

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MD AKHAR HUSSAIN

4. Sri D.K.Sarmah, Peon, Regional Office, Guwahati, E.S.I.Corporation, N.E.Region.

But while conducting the enquiry they have also relied upon the witnesses who were not relied in the memorandum of charge dated 12.6.1997. As such it is established beyond all doubts that the respondents violated the relevant CCS rules while conducting the enquiry against the charge framed against the applicant on the basis of ~~the~~ that illegal findings of the enquiry officer. The disciplinary authority as well as the Appellate authority impose punishment of dismissal of the applicant from service. Therefore it appears that the departmental enquiry has been conducted in total violation of the relevant CCS (CCA) Conduct Rules 1965 with an ulterior motive to victimise the service career of the applicant. As such on that ground alone the departmental proceeding is liable to be set aside and quashed.

4.11 That your applicant begs to state that immediately after receipt of memorandum of chargesheet dated 12.6.97 he had submitted his reply vide letter dated 7.7.97. In the said reply the applicant interalia stated that on the same charge he had already faced the trial and the learned Chief Judicial Magistrate acquitted him from all those charges vide its judgement and order dated 2.1.1997 in G.R. Case No. 1658/94. The applicant also pointed out in his reply dated 7.7.1997 that on the same allegation an FIR was lodged on 30.12.1994 by Sri S.K.Sasmal, the then Manager, Local office, Tinsukia against the applicant and the charges levelled against the applicant has been cleared by the learned Chief Judicial Magistrate by

Md. Arif Hossain

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acquitting him in the G.R. case No. 1658/94. The applicant categorically stated ~~xxxx~~ in his reply dated 7.7.1997 that in view of the decision of the learned Chief Judicial Magistrate passed in G.R. Case No. 1658/94 there is no scope to proceed further against the same/identical charges by initiating a departmental proceeding. He has also categorically denied the charges levelled against him by the memorandum of chargesheet dated 12.6.97 but even thereafter when considered the reply dated 7.7.97 the respondents proceeded with the fresh enquiry in terms of memorandum of charge dated 12.6.1997.

A copy of the reply dated 7.7.1997 is annexed as Annexure-6.

4.12 That your applicant further begs to state that the enquiry officer has no jurisdiction to rely upon the statement of the witnesses in violation of the CCS(CCA) Rules 1965. It is admitted by the enquiry officer in his report that the charged official participated in the enquiry proceeding from beginning to end throughout the enquiry proceeding held on 21.11.97, 24.2.98, 26.10.98, 4.1.99, 3.5.99 and 4.5.99. It appears from the enquiry report that there are lot of discrepancies as regard the time and occurrences of assaulting as alleged in the

departmental proceeding against the applicant and in the criminal proceeding and the version of the four common witnesses who were examined in the criminal proceeding appears to be different in the departmental proceeding although statements of Sri T. Hazarika, Record sorter and

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C.R.Paul, Ex-Assistant, Regional Director cannot be relied upon by the enquiry officer as per alw laid down in the CCS(CCA) Rules 1965. Therefore when the learned Chief Judicial Magistrate examined the four common witnesses in the same facts in the criminal proceeding instituted under G.R. Case No. 1658/94, therefore enquiry officer or the disciplinary authority has no jurisdiction to further proceed with the departmental proceeding on the same charge when the applicant has already been qcquitted from the criminal charge after examining the witness and evidences. On that score alone the departmental proceeding as well as the penalty imposed by the disciplinary authority are liable to be set aside and quashed. In the said enquiry report the enquiry officer also examined the nature of weapon used by the accused applicant during the incident occured on 30.12.1994 and the defende statement of the applicant while conducting the enquiry. A mere reading of the enquiry report it would be evident that there are lot of contradiction in the report of the enquiry officer and the conclusion arrived at by the enquiry officer just in a mechanical manner without application of mind. In the enquiry report the enquiry officer gave it-s finding that on the basis of documentary and oral evidence adduced before him he was of the view that the charges under Article I against the applicant has been proved. In this connection it may be stated that the enquiry officer has no jurisdiction to proceed with on the similar and same charge in a departmental proceeding especially when the same set of charges have already

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Gurahati 30.12.94

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been examined by a competent court of law in G.R. Case No. 1658/94. If the departmental proceeding is allowed or confirmed in that case it would lead to a serious consequence and conflict. Therefore the <sup>authority</sup> disciplinary has no jurisdiction to start a fresh proceeding on the same set of charge against the applicant when the applicant have already been acquitted from criminal charge by a competent court of law in criminal proceeding under G.R. case No. 1658/94. On that score alone the impugned memorandum of chargesheet dated 12.6.1997 and the order of penalty dated 20.10.99 and the appellate order dated 3.3.2000 are liable to be set aside and quashed.

4.13 It is stated that a mere reading in the enquiry report will lead to the conclusion that the enquiry officer acted in a very arbitrary manner and with the pre-determination to impose penalty upon the applicant started proceeding from very beginning and with this motive he has entertained the request of the Regional Director to examined the two other witnesses namely, Shri T.Hazarika ~~xxx~~ Record sorter, Local office, Tinsukia and Sri C.R.Paul, ~~xxx~~ ex-Assistant Regional Director, ESI Corporation, Guwahati made through his letter bearing No. 43-S.11/18/95-Gig (AH) dated 24.2.98 i.e. during the pendency of the proceeding these two witnesses have been included in the enquiry proceeding in total violation of relevant rule of CCS(CCA) 1965. It is evident from the order sheet dated 24.2.98 that the presenting officer has verbally pleaded the relevancy of the above two witnesses

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namely, T.Hazarika and Sri C.R. Paul in the disciplinary proceeding against the applicant. The enquiry officer further stated that he has considered the ~~please~~ made by the presenting officer in this regard and ~~the~~ letter the inclusion of two witnesses in the departmental proceeding. It has further stated in the order sheet dated 24.2.98 that the letter addressed to the enquiry officer by the Regional Director, where some errors were there, therefore the retyped copy of Annexure-III of the chargesheet was also enclosed subsequently to the chargesheet and the revised Annexure-III and IV to the chargesheet have been taken on record. A copy of the letter dated 24.2.98 of the Regional Director i.e. Annexure-III and Annexure-IV also have provided to the charged official i.e. the present applicant. It is also stated in the ordersheet dated 24.2.98 that the statement of Shri T. Hazarika also submitted to the Police Authority while the Tinsukia Police investigated alleged criminal case including the Police Investigation report. Therefore statement of Shri T. Hazarika was also a part of the criminal proceeding. As such inclusion of statement of T. Hazarika in the departmental proceeding is also common witness both in the criminal proceeding as well as in the departmental proceeding. It is stated that C.R.Paul was Ex-Assistant Regional Director, E.S.I. Corporation was in fact entrusted with the duty of investigation by the Regional Director to the incident alleged to have been occurred on 30.12.94. As such he cannot be treated as witness of the incidence occurred on 30.12.1994. Therefore it appears that the evidence and the witnessed both the in the criminal

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proceeding as well as in the departmental proceeding are common and specially when a competent court, the learned Chief Judicial Magistrate, Tinsukia after detailed examination of all witnesses and evidences being fully satisfied with the prosecution was totally failed to establish the charges brought against the accused applicant and finally acquitted the present applicant from the criminal charges, therefore similar charge on the basis of common witnesses and on similar set of evidences the departmental authority has no jurisdiction to initiate a fresh proceeding on the same set of charges. As such Memorandum of chargesheet dated 12.6.97, penalty order dated 20.10.99 and appellate order dated 3.3.2000 are liable to be set aside and quashed.

4.14 That your applicant further begs to state that he was placed under suspension on 14.2.95 in connection with the investigation of alleged incidence took place on 30.12.94 and he was forced to retain under suspension for a very long period. It is relevant to mention here even after acquittal from the criminal charge brought against the applicant through GR case No. 1658/94, the applicant was not reinstated in service but forced to retain under suspension in total violation of rules till he approached the learned Central Administrative Tribunal by way of filing Original Application under Section 19 of the Administrative Tribunals Act, 1985 for revocation of suspension order dated 14.2.1995. Thereafter following the order of the learned Tribunal dated 14.7.99 the applicant was reinstated in service. Thereafter the

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authority reinstated the applicant in service i.e. after a lapse of more than four and half years. Therefore the applicant has undergone a tremendous mental anxiety for all those days and also faced trial before the learned court of Chief Judicial Magistrate, Tinsukia in connection with G.R. case No. 1658/94 where he was finally acquitted from the criminal charges following the judgement and order passed by the Chief Judicial Magistrate, as such conducting/~~or~~ initiation of a fresh departmental proceeding on the same set of charge and on the same set of witnesses against the established procedure of law is a kind of harassment and especially when the disciplinary authority imposed penalty on the basis of the same set of statement and evidences laid before the enquiry officer which was identical with the criminal proceeding and ultimately imposed the penalty by the disciplinary authority dismissing the applicant from service. It is pertinent to mention here that the penalty of dismissal from service imposed on the applicant by the disciplinary authority is disproportionate considering the gravity of the offence as well as considering the facts and circumstances of the instant case. On that score alone the impugned order of penalty dated 20.10.1999 and the appellate order dated 3.3.2000 are liable to be set aside and quashed.

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4.15 That your applicant begs to state that he was acquitted from criminal charge by the learned Judicial Magistrate, Tinsukia on merits after detail examination of evidence and witnesses as such further initiation of departmental proceeding on the same set of charge is not permissible under the law as because it will likely to create chaos and confusion. As such action of the respondents is amount to dishonour the verdict of the learned trial court. On that score alone the impugned order of penalty and appellate order confirming the said penalty of dismissal from service are liable to be set aside and quashed.

4.16 That it is stated that impugned order of penalty dated 20.10.99 passed by the disciplinary authority is cryptic, mechanical and arbitrary. It does not contain any reason more particularly there is no discussion about the grounds raised by the applicant in his representation dated submitted before the disciplinary authority against the enquiry report. It is mandatory obligation on the part of the disciplinary authority to discuss the grounds raised by the accused applicant in his defence statement i.e. reply to the enquiry report. It is categorically stated that the applicant categorically submitted in his representation against the enquiry report dated

that he was exonerated by the learned Chief Judicial Magistrate, Tinsukia that same set of charge in G.R. Case No. 1658/94, as such initiation of departmental proceeding on the same set of charge have his acquittal from criminal

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authority on the basis of same set of allegation is a clear violation of law laid down by the Apex Court. A mere reading of the perusal of the records pertaining to disciplinary proceedings as well as the enquiry report will lead to the conclusion that the disciplinary authority was pre-determined to impose penalty upon the applicant and with this view of intention they have initiated disciplinary proceedings as because the respondents failed in the court proceedings.

It is further stated that the appellate authority also confirmed the order of penalty of dismissal imposed by the disciplinary authority in a most arbitrary and mechanical manner without application of mind without recording reasons which is obligatory on the part of the appellate authority. The appellate authority in total violation of Rule 27(2) confirming the order of penalty of dismissal from service without applicant of mind. It is categorically stated in Rule 27 (2) as follows :

% 2. In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

- a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

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Abdul Akbar Hussain

- c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders -
- i) confirming, enhancing, reducing, or setting aside the penalty or
- ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority will such direction as it may deem fit in the circumstances of these cases; provided that -
- i) the commission shall be consulted in all cases where such consultation is necessary;
- ii) if such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an Inquiry under Rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit.
- iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an enquiry under Rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable

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*Md. Akbar Hussain*

opportunity of making a representation against the proposed penalty; and

iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty."

But in the instant case the appellate authority violated the provision laid down in sub section (a) (b) (c) of the said rule 27. In sub section (a) of sub rule (2) of Rule 27 it is stated that whether a procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice. In this connection it is relevant to state that the disciplinary authority has violated sub section (ii) of sub rule 8 of Rule 19 of CCS(CCA) Rules 1965 wherein it is categorically stated that if the facts or allegations had come to be examined by a Court of competent jurisdiction and the court has given a finding that the allegations are not true, then it is not permissible to hold a departmental enquiry in respect of charge based on the same facts or allegations. In terms of the sub section (ii), sub rule 8 of Rule 19 the very initiation of the departmental proceeding is contrary to the aforesaid rule, as such on that score

22 SEP 2000 alone the Memorandum of Chargesheet dated 12.6.97, order of penalty, dated 20.10.1999 and appellate order dated 3.3.2000 are liable to be set aside and quashed. Similarly, the appellate authority failed to consider the sub-section (b) (c) of sub rule (2) of Rule 27 while confirming the

*Md. Arshad Hussain*

penalty of dismissal imposed by the disciplinary authority and on that score alone the impugned memorandum of charge sheet dated 12.6.97 and penalty order dated 20.10.99 and the appellate order dated 3.3.2000 are liable to be set aside and quashed.

4.17 That your applicant begs to state that in the instant case the applicant while the respondents conducted the departmental proceedings, after acquittal of the applicant from the criminal proceeding on the same set of allegations on the ground that the prosecution side totally failed to prove the guilt and the whole case of the prosecution was thrown out and the applicant was acquitted, in the subsequent departmental proceeding which was instituted against the applicant on the same set of facts the disciplinary authority could not presented any better prove evidences for witness as stated above in the proceeding paragraphs. It is pertinent to mention here that in the subsequent departmental proceeding although three additional witnesses have been examined namely (i) Sri E.R. Paul (ii) Sri P. Sutradhar and (iii) Sri B.C. Das but none of them are eye witness of the alleged incident while took place on 30.12.1994. It is stated that Sri C.R. Paul was an officer of the E.S.I. establishment and at the time of alleged incident he was asked by the Director E.S.I. Corporation, Guwahati to hand over a letter of the Director to the Superintendent of Police, Tinsukia in connection with the incident took place on 30.12.94 and the role of Sri C.R. Paul witness is confined to the extent of handing over a letter to the S.P., Tinsukia. As revealed from the order

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daily sheet of the Departmental Proceeding as such, role of Sri C.R.Paul is not much significant as witness in the departmental proceedings. Moreover Sri C.R. Paul admitted that he is not an eye witness in the alleged incident which took place on 30.12.94.

It is further stated that for the additional witness Sri P. Sutradhar is concerned it is pertinent to mention here that Sri P. Sutradhar is also not an eye witness of the alleged incident which took place on 30.12.94 as revealed from the statement of Sri P. Sutradhar made in the departmental proceeding on 20.6.98. He has admitted he is not any eye witness of the alleged incident, as such, Sri P. Sutradhar cannot be termed as a better witness.

Again the statement of Sri B.C.Das an employee of Tinsukia Local Office also cannot be termed as better witness as because the statement of Sri B.C. Das made during the police investigation before the police authority and his subsequent statement in the Departmental proceeding are quite contradictory which is evident from the records. Moreover even the statement of B.C.Das in the departmental proceeding as revealed from ordersheet dated 4.1.99 is also self contradictory, as such, Sri B.C. Das also cannot be termed as a better witness. Therefore, initiation of a departmental proceeding where there is no better proof evicence of witness made available before the departmental proceeding, as such, the findings of the Departmental proceeding after acquittal of the applicant from the criminal charges on the basis of same set of allegation are liable to be set aside and quashed.

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*Md. Achtar Hussain*

4.18 That this application is made bona fide and for the ends of justice.

5. Grounds for relief with legal provisions :

5.1 For that the very initiation of departmental proceeding against the applicant on the same set of charge/allegations after acquittal from criminal proceeding on 2.1.1997 is contrary to sub section 2 of Section 8 of Rule 19 of the CCS (CCA) Rule, 1965.

5.2 For that the learned Chief Judicial Magistrate Tinsukia in G.R. Case No. 1658/94 acquitted the applicant after examining in detail the evidences and witnesses produced by the prosecution side vide judgement and order dated 2.1.1997 passed in G.R. case No. 1658/94.

5.3 For that institution of a departmental proceeding against the applicant after his acquittal from criminal charges is barred by law.

5.4 For that the punishment imposed upon the applicant by the disciplinary authority in the departmental proceeding is disproportionate considering the facts that the applicant was placed under suspension for a prolonged period of more than half years and also on consideration of fact that the applicant was acquitted by the learned Chief Judicial Magistrate, Tinsukia from the same set of allegations.

5.5 For that after acquittal of the applicant from the criminal proceeding the respondents could

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Md. Akhtar Hossaini

not produce any better proof evidence or witness in the departmental proceeding.

5.6 For that there was no discussion of the grounds raised by the applicant in his representation against the enquiry report or in the findings of the disciplinary authority in the impugned order of penalty dated 20.10.99 as is required under the rule.

5.7 For that the impugned order of appellate authority dated 3.3.2000 has passed mechanically without any ~~juristic~~ discussion and also without considering the fact that the very institution of departmental proceeding is in violation of subsection 2 of section 8 of Rule 19 of the CCS (CCA) Rule 1965.

5.8 For that the applicant was retained under suspension for a period of more than two and half years even after his acquittal from the criminal charges.

5.9 For that the impugned order of penalty has been issued against the applicant in total violation of relevant rules and laws.

6. Details of remedy exhausted.

The applicant begs to state that there is no other alternate remedy under any rule than to file this application.

Matters not pending before any other court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which the application has

Guwahati 22 SEP 2000

*Md. Akhtar Hussain*

been filed before any court of law or any other authority or any other Bench of the Tribunal and/or any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for :

Under the facts and circumstances of the case the applicant prays that Your Lordship would be pleased to issue notice to the respondents to show cause as to why the relief sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause of causes that may be shown, be pleased to grant the following relief(s) :

- 8.1 That the impugned memorandum of charge sheet issued under letter No. 43.A.11/18/95-Vig (AH) dt. 12.6.97 and impugned order of penalty issued under letter No. 43.S 11/18/95-Vig (AH) dt. 20.10.99 and impugned appellate order issued under letter No. C-16/14/25-Vig dated 3.3.2000 ~~xxx~~ be set aside and quashed.
- 8.2 That the respondents be directed to reinstate the applicant in service with immediate effect with all consequential service benefit including monetary benefit.
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Guwahati Bench  
8.3 Costs of the application.
- 8.4 Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

*Md Akhtar Hussain*

9. Interim order prayed for :

9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned order of penalty dated 20.10.1999 and the impugned appellate order dated 3.3.2000 till final disposal of this original application.

10. ....

This application has been filed through advocate.

11. Particulars of the Postal Order.

i. I.P.O. No. : 06 49 54 76  
ii. Date of Issue : 21.9.2K  
iii. Issued from : G.P.O., Guwahati.  
iv. Payable at : G.P.O., Guwahati.

12. Particulars of Enclosures :

As stated in the Index.

*Md. Arifur Hussain*  
....Verification

22 SEP 2000

Guwahati Bench

*Md. Arifur Hussain*

VERIFICATION

I, Shri Md. Akhtar Hussain, son of late Md. Maknur Ali, resident of Japorigog High School Road, Sundarpur, P.O. Dispur, Guwahati-5, applicant in the above case do hereby declare and verify that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice which I believe to be true and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on the 21<sup>st</sup> day of September, 2000 at Guwahati.

*Md Akhtar Hussain*  
Signature

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1 Bench

/CONFIDENTIAL/

Annexure-1

EMPLOYEES' STATE INSURANCE CORPORATION  
REGIONAL OFFICE : NORTH EASTERN REGION  
BAMUNIMAIDAN : GUWAHATI-21

No. 43-A.20/11/13/95-Estt. Date : Feb, 14th 1995.

O R D E R

Whereas a case against Md. A. Hussain, Head Clerk, Local Office, Tinsukia in respect of Criminal offence is under investigation by the Tinsukia Police Authorities as per their letter No. TSK/T/95 dated 12.1.1995 and arrested on 9.1.95 U/s 290/325 IPC.

Now, therefore, the undersigned in exercise the powers conferred by sub-rule (i) of Rule 10 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, hereby placed Md. A. Hussain under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the Headquarters of Md. Hussain should be Tinsukia and the said Shri Hussain shall not leave the Headquarters without obtaining previous permission of the undersigned.

Sd/-

( T.K.BHATTACHARYYA)  
REGIONAL DIRECTOR

Copy to Md. A. Hussain, Head Clerk, Local office, Tinsukia, C/o The Manager, ESI, Corporation, Local Office, Tinsukia (Order regarding subsistence allowance admissible to him during the period of his suspension will be issued separately).  
Copy to Md. A. Hussain (Home Address), Near Sunderpur Namghar, Dispur, Guwahati-5.

Annexure-2

To

The Regional Director,  
E.S.I. Corporation  
Guwahati

Date : 2.1.1997

(Through the Manager, Local Office ESIC, Tinsukia).

Sir,

Kindly refer to R.O., Guwahati Order No. 43-A 20/11/13/95-Estt dated 14.2.1995 whereby I have been placed under suspension from the post of Head Clerk, L.O., Tinsukia.

In this connection, I have to inform you that I have been acquitted in the said G.R. Case No. 1658/94 by the learned Chief Judicial Magistrate, Tinsukia vide his judgement dated 2.1.1997. In this connection, a certificate dated 2.1.97 issued by the Advocate, Tinsukia (Sri P.K. Dutta) and also copy of 'application for judgement copy' applied to the Chief Judicial Magistrate, Tinsukia are enclosed herewith for your necessary action. It is further informed that the judgement copy is stated to be issued to me within 20/30 days as stated by the Advocate.

I, therefore, request your honour to withdraw my suspension order and allow me to join in the E.S.I. Corporation, N.E. Region with immediate effect in the post of Manager Gr. II/Insurance Inspector as my promotion to the post of Manager Gr. II/I.I. is eligible from the post.

Yours faithfully,

Sd/- 2.1.97

(Md. A. Hussain)

H.C., L.O., Tinsukia

To:

The Regional Director,  
E.S.I. Corporation  
Bamunimaidan  
Guwahati-21

Through the Manager, Local Office, E.S.I., Corporation,  
Tinsukia.

Subject : Withdrawal of Suspension and request for order  
to join in the Corporation in the due post.

Sir,

In continuation to my letter dated 2.1.1997, I  
have to request your honour to allow me to join in the  
Corporation in due post immediately as I have already  
been acquitted from the case filed by the then Manager,  
Sri S.K. Sasmal.

Further, I have to submit herewith original  
judgement copy dt. 2.1.97 received from the Chief Judicial  
Magistrate, Tinsukia for your doing the needful.

Yours faithfully,

Enclo : As above

Sd/- 31.1.97

(Md. A HUSSAIN)  
H.C., L.O., Tinsukia

REGISTERED  
CONFIDENTIAL

EMPLOYEES' STATE INSURANCE CORPORATION  
REGIONAL OFFICE : NORTH EASTERN REGION  
GUWAHATI-21

No. 43-S.11/18/95-Sig. (AH)

Dated 12.6.1997

MEMORANDUM

The undersigned proposes to hold an inquiry against Md. Akhtar Hussain, Head Clerk (now under suspension), Local Office, Tinsukia, Employees State Insurance Corporation N.E.Region under Regulation 14 para 3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and conditions of services) Regulations, 1959 as amended. The substance of imputation of misconduct or misbehaviour in support of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). The statement of imputation of mis-behaviour/misconduct in support of Article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom the Article of charge is proposed to be sustained are also enclosed (Annexure-III and Annexure-IV).

2. Md. A. Hussain, Head Clerk is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and to state whether he desires to be heard in person.
3. He is informed that the inquiry will be held only respect of those articles of charge as are not admitted. He should, therefore specifically admit or deny each article of charges.
4. He 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 refused to comply with the provisions of Regulation 14 read with para 3 of the Third schedule of the Employees' State Insurance Corporation (Staff and conditions of Services) Regulations, 1959 or the order/directions issued in pursuance of

Contd...

*Ans for  
P. S. D.  
P. S. D.*

Annexure-4 (Contd.)

the said Regulations, the Inquiring Authority may hold inquiry against him ex-parte.

5. Attention of Md. Akhtar Hussain, Head Clerk (under suspension) is invited to Rule 29 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring in political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his services 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 Md. A. Hussain 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 which is applicable to the Corporation employees by virtue of Regulation 23 of the Employees' State Insurance Corporation (Staff and Conditions of Services) Regulations, 1959 as amended.

6. Receipt of this Memorandum may be acknowledged.

Enclo : As above

Sd/- illegible

12.6.97

(D.N. Pegoo)  
Regional Director

To

Md. Akthar Hussain,  
Head Clerk (Under Suspension),  
C/o Local Office,  
E.S.I. Corporation  
Insukia

*Rees J. C. D.  
D. S. J. D.*

ANNEXURE-I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST MD. AKHTAR HUSSAIN, HEAD CLERK, EMPLOYEES' STATE INSURANCE CORPORATION, NORTH EASTERN REGION.

Article-I

Md. Akhtar Hussain, while functioning as Head Clerk in Tinsukia Local Office, E.S.I., Corporation during the period from 5.6.1991 onwards, committed gross mis-behaviour/mis conduct as much as he man-handled/physically assaulted Sri S.K. Sasmal, the then Manager, Local Office, Tinsukia in the office during office hours at about 10.30 AM on 30.12.1994 without any reason and inflicted injury with a wooden roller to Sri Sasmal on his fore-head as a result of which Sri S.K. Sasmal, Manager Local Office had to be admitted into Civil Hospital, Tinsukia on 30.12.1994 and was discharged on 1.1.1995. FIR has also been lodged in the Police Station, Tinsukia on 30.12.1994.

Md. A. Hussain, Head Clerk, Local Office, Tinsukia who is now under suspension from 14.2.1995 vide Memo No. 43-A 20/11/13/95-Estt. dated 14.2.1995 in connection with the above incident has thus exhibited utter lack of integrity, devotion to duty and in subordination which is unbecoming of a Corporation employee and thus violated Rule 3(1) (i) (ii) (iii) of the CCS(Conduct) Rules, 1964 to be read with Regulation 23 of the Employees' State Insurance Corporation (Staff and Conditions of Services) Regulations, 1959 as amended.

Sd/- 12.6.97

(D.N.PEGOO)  
REGIONAL DIRECTOR

Sd/-  
D.N.PEGOO  
Regional Director

ANNEXURE-II

STATEMENT OF IMPUTATION OF MIS-BEHAVIOUR/MIS-CONDUCT IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST MD. AKHTAR HUSSAIN, HEAD CLERK, EMPLOYEES' STATE INSURANCE CORPORATION, NORTH EASTERN REGION.

Article-I

Md. Akhtar Hussain, Head Clerk, while posted at Tinsukia Local Office, E.S.I., Corporation, N.E.Region, on 30.12.1994 attended office at 9.15 AM and signed on the Attendance Register. Then he was requested by Shri D.K. Sarmah, Peon to receive two letters meant for him from the Peon Book. At this, Md. A. Hussain became furious and attacked Sri S.K.Sasmal, Manager, Local Office, Tinsukia in the office during office hours at about 10.30 A.M. on 30.12.1994 and man-handled/physically assaulted with a wooden roller on his fore-head as a result of which Sri S. K. Sasmal, Manager had to be admitted into Civil Hospital, Tinsukia on 30.12.1994 for head injury vide Hospital Slip No. 546 and discharged on 1.1.1995. FIR was also lodged in the Tinsukia Police Station on 30.12.1994 for the incident vide C/No. 555/94. Md. A. Hussain Head Clerk physically assaulted Sri S.K.Sasmal, Manager, Local Office Tinsukia without any reason in the office in front of all the office staff members and also subverted the discipline of the office.

Md. A. Hussain, Head Clerk has been suspended for the above mis-behaviour from 14.2.1995 vide Memo No. 43-A.20/11/13/95-Estt dated 14.2.1995.

Md. A. Hussain, Head Clerk has thus committed gross mis-behaviour/misconduct and displayed utter lack of integrity devotion to office duty and in subordination which is unbecoming of a Corporation employee and violated Rule 3(1) (i) (ii) (iii) of the CCS(Conduct) Rules 1964 to be read with Regulations 23 of E.S.I. (Staff and conditions of services) Regulations, 1959 as amended.

Sd/- 12.6.97

(D.N.PEGOO)

REGIONAL DIRECTOR

*Pls. let out  
P. D. S. A.*

ANNEXURE-III

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST MD. AKHTAR HUSSAIN, HEAD CLERK OF E.S.I. CORPORATION N.E. REGION IS PROPOSED TO BE SUSTAINED.

1. Letter No. 43-RD/MISC/2/93 dated 30.12.1994 addressed to the Superintendent of Police, Tinsukia.
2. Investigation Report of Sri C.R.Paul, Assistant Regional Director, Regional Office, Guwahati.
3. Letter dated 3.1.1995 from Sri S.K.Sasmal, Manager, Local Office, Tinsukia.
4. Statement dated 3.1.1995 of Sri P.Sutradhar, Insurance Inspector, Tinsukia.
5. Statement dated 2.1.1995 of Sri D.K.Sarmah, Peon, Local Office, Tinsukia.
6. Statement dated 2.1.1995 of Sri T.Hazarika, Record Sorter, Local Office, Tinsukia.
7. Statement dated 2.1.1995 of Sri B.C. Das, UDC, Local Office, Tinsukia.
8. Civil Hospital Tinsukia, Discharge Slip dated 1.1.1995.
9. Application for FIR dated 30.12.1994 from Local Office, Tinsukia staff.
10. Letter of Local Office, Tinsukia dated 30.12.1994 to Tinsukia Police Station.
11. Letter No. TSK/V/95 dated 12.1.1995 from Tinsukia Police Station.
12. Letter No. 43-TSK/Mgr./Admn/91 dated 12.1.1995 of Local Office, Tinsukia.

Sd/- 12.6.95

(D.N.PEGOO)  
REGIONAL DIRECTOR

*D.N. Pegoo  
Regional Director*

ANNEXURE 4IV

LIST OF WITNESS BY WHOM THE ARTICLE OF CHARGE FRAMED AGAINST MD. AKHTAR HUSSAIN, HEAD CLERK, E.S.I., CORPORATION, N.E. REGION ARE PROPOSED TO BE SUSTAINED.

6

1. Sri S.K.Sasmal, Ex-Manager, Local Office, Tinsukia now posted in Calcutta, E.S.I. Corporation.
2. Sri P.Sutradhar, Manager, Local Office, Tinsukia, N. E. Region.
3. Sri B.C. Das, UDC-Cashier, Local Office, Tezpur, E.S.I. Corporation, N.E.Region.
4. Sri D.K.Sarmah, Peon, Regional Office, Guwahati, E.S.I. Corporation, N.E.Region.

Sd/- 12.6.97

(D.N.PEGOO)  
REGIONAL DIRECTOR

*D.N. Pegoo  
Regional Director*

Date of application for the copy.	Date of delivery of the requisite stamps and folios	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.
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2.1.97	7.1.97	9.1.97	9.1.97
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certified copy of the judgement.

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,  
TINSUKIA.

Present - Sri D.K. Deb Roy, M.A., LL.B, Chief Judicial Magistrate, Tinsukia.

G.R. Case No. 1658/94

State of Assam

-versus-

Md. Akthar Hussain

u/s 290/323/506 I.P.C. ----- Accused

Date of recording evidence - 3.1.96, 3.2.96, 4.3.96

Date of argument - 18.12.96

Date of Judgement - 2.1.97

JUDGEMENT

This prosecution case may briefly be stated as follows :

Mr. S.K. Sasmal lodged FIR with O/c Tinsukia Police Station stating inter alia that he is the Manager of E.S.I. Corporation, Tinsukia. On 30.12.1994 he came to his office and handed over a letter to the accused through D.K. Sarma (PW 1) Peon. The accused being the Head Asstt. of the establishment, instead of accepting the letter he

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started some altercation. Thereafter, the accused caused hurt to S.K.Sasmal by means of a wooden roll causing some minor injuries to his person and he had undertook treatment. Police on receipt of the FIR registered a case and took up investigation and upon completion of investigation submitted chargesheet u/s 290/323/506 I.P.C. against the accused Akhtar Hussain. Accused duly appeared in the court, necessary copies were furnished to him and particulars of accusations u/s 290/323/506 I.P.C. were duly read over, explained and interacted to the accused to which he pleaded not guilty and claimed to stand trial. The defence case is a complete denial.

Point for determination -

Whether the accused person caused simple hurt to the informant and also intimidated him as alleged?

Altogether four witnesses including the I/o and the Medical Officer have been examined in this case so far. The informant as well as the injured could not be brought in the witness box in spite of repeated attempts. It is also seen that, in the mean time he has been transferred somewhere else. Ultimately, upon hearing both sides, the prosecution was closed and the statement of the accused person was also recorded u/s 313 Cr. P.C. wherein he denied the charge.

Decisions and reasons thereof.

In a criminal trial it is incumbent on the part of the prosecution to bring home the charge beyond all

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reasonable doubts. Now let us consider the evidence on record in its proper perspective.

At the very outset let me discuss the evidence of PW1 Sri D.K. Sarmah. This witness has stated that the informant was the Manager of his office in the year 1994. That on 30.12.1994 at around 9.20 A.M. the informant sent a letter to the accused through a Peon Book. The accused refused to accept the letter. In the meantime the informant came and an altercation took place and the accused had assaulted the informant by means of a scale. In the meantime another employee, T. Hazarika (P.W.2) intervened in the matter. The informant sustained some injuries over his fore head. In cross-examination this witness has specifically stated that some altercation took place between the accused and the informant and there was a scuffling. The defence suggested this witness that the accused never assaulted the informant and he is deposing falsely at the instance of his officer the informant through the witness answered in negative. Like-wise PW-2 has stated that on 30.12.1994 at around 9.15 A.M. he was in the office and an altercation took place between the informant and the accused and the accused all on a sudden assaulted the informant by means of a scale. Police during investigation seized the scale vide Ex-I whereupon Ex-1(1) is the signature. In cross examination he has stated that the contents of the seizure list were not read over to him. The defence suggested this witness that, no occurrence took place

Contd...

Annexure-5 (Contd.)

as alleged though the witness answered in negative.

PW3 is the doctor who has stated that on 30.12.94 at around 10.15 A.M. he examined S.K.Sashpal in the civil Hospital and found one haemotomo in the right perital region. PW 2 is the injury report whereupon Ex-2 (1) is his signature. In cross examination he was stated that the injury report was given on the basis of the injury register maintained in the hospital. He has again admitted that the original injury register has not been submitted in the court. PW-4 is the I/o who has stated that on 30.12.94 he was attached to Tinsukia Police Station and on that day Mr. I. Senapati was the officiating In-charge of the Police Station. On that day, the informant S.K. Sasmal lodged the FIR Ex-3, Ex-3(1) is the signature of the then O/c. On completion of investigation he submitted chargesheet. During investigation he seized a wooden roll vide Ex.1 Ex.1(2) is the signature. While he visited the scene of crime, he could not meet the injured, because in the meantime he was removed to the hospital. During investigation he collected the injury report. During ~~cross examination~~ cross Examination he was stated that, the FIR was receipt on 30.12.94 at around 5.30 P.M. and he rushed to the E.S.I. office and found the office closed. So on 31.12.94 he went to the office again and seized the roll. The defence suggested this witness that on 31.12.94 the the office was closed because of Saturday.

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I have considered the entire evidence on record and also heard the learned advocates for the parties. From the FIR it is seen that the informant was allegedly beaten up by the accused by means of wooden roll whereas PW 1 and PW2 have specifically stated that the accused has assaulted the informant by means of a scale. So, we are getting two discrepant stores in regard to the nature of the weapon in fact used in the alleged crime. Learned advocate for the accused during the course of arguments submitted that roll and scale are two different things and they cannot be combined together. His contention is that, when the nature of weapon is disputed, the entire prosecution case becomes doubtful. I ~~find~~ find considerable force in the submission the Advocate for the accused again submitted that the injured who happened to be most material witness in this case has not been examined, as such, no evidence should be placed on the prosecution version. I find some force in the submission. According to PW4 he seized the wooden roll on 31.12.94 vide Ext-1. I have considered the seizure list which goes to show that the seizure was made on 30.12.94. If we consider the statement of PW 4 and the seizure list we are getting two contradictory statement in regard to the actual date of seizure. The contradictory statements in regard to the date of seizure lends some doubt on the prosecution version. The advocate for the defence has again emphatically submitted that Ex 2 the injury report shows that the doctor examined one Mr. S.K.Sashpaul, but

Contd...

Annexure-5 (Contd.)

the alleged injured was Mr. S.K.Sashmal, so, according to him the injured (informant) was not in fact examined by the doctor. I have considered the injury report also in this regard. Injury report also goes to show that one S.K.Sashpaul was examined by the doctor on 30.12.94.

From the evidence of the doctor it is also doubtful who was the real injured. The advocate for the accused admittedly that the alleged occurrence took place on 30.12.95 at about 9.20 a.m. whereas the F.I.R. was lodged on the same day at about 5.30 P.M., the delay in lodging the F.I.R. has not been explained by the prosecution and on this ground the prosecution case fails. I find substance in the submission. As it appears the informant sustained some minor injuries, so he could have very well lodged the FIR immediately after the occurrence. But instead of doing so, he lodged the FIR at a belated stage. So, I feel that the so called FIR can be viewed with suspicion. Had it been a case that the informant sustained grievous injuries then it would be presumed that the informant and others had to remain busy for the treatment. But this is not the case here.

Admittedly other employees were also present in the office at the time of occurrence, so any one of them could have lodged the FIR narrating the incident. In my considered view I hold that delay in lodging the FIR is also fatal to the prosecution.

In view of my decisions and discussions in the foregoing paragraphs I am of the view that the prosecution suffers from doubt. The prosecution failed to produce the seized materials during trial. Non-submission of seized

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material also casts a serious reflection on the genuineness of the prosecution version. I find huge area of doubt looming over the prosecution story and the accused is entitled to get benefit of doubt, which I hereby do.

In the result, the accused is acquitted on benefit of doubt. The seized materials, if any be destroyed in due course in accordance with law.

The judgement is delivered under the seal of the court on this 2nd day of January, 1997.

Sd/- D.K. Deb Roy

2.1.97  
(D.K. Deb Roy)

(D.K. Deb Roy  
Chief Judicial Magistrate  
Tinsukia

Transcribed by

Sd/- A. Borah

2.1.97  
(A. Borah)

Dictated and corrected by me

Sd/- D.K. Deb Roy  
Chief Judicial Magistrate  
Tinsukia

/ SEAL/

To

The Regional Director  
E.S.I. Corporation  
N.E. Region  
Bamunimaidan  
Guwahati-21

Subject : Reply against alleged charges vide R.O. Memo No. 43-S.11/18/95-Vig (AH) dt 12.6.97 in respect of M.A. Hussain, Head Clerk, L.O. Tinsukia.

Sir,

Kindly refer to R.O. Memo No. 43-A.11/18/95-Vig (AH) dated 12.6.1997 received on 30.6.97, whereby charge-sheet for the same alleged charges which have already been decided by the Chief Judicial Magistrate, Tinsukia Court on 2.1.97, have again been issued to me.

In this connection, I have to furnish herewith replying against the alleged charges as under :

1. Statement of alleged charge No. I under Annexure-I.

Reply : The above alleged charge has already been DENIED before the Chief Judicial Magistrate, Tinsukia Court, in question (against case No. GR-1658/94 framed by the Police Station, Tinsukia on the basis of FIR dated 30.12.94 submitted by Sri S.K. Sasmal, the then Manager, Local Office, Tinsukia) on the basis of which the case has already been decided by the Chief Judicial Magistrate, Tinsukia Court in favour of the (M.A. Hussain) and acquitted me on 2.1.97 vide C.J.M., Tinsukia Court Judgement dated 2.1.97, the original judgement copy dated 2.1.97 has already been submitted to R.O., Guwahati vide my letter dated 31.1.1997.

Hence there is no scope to proceed further again for departmental proceeding for the same reason/ charge which has already been decided by the Court as I believe. However, the above alleged charge has again been DENIED.

2. Statement of alleged imputation of mis-behaviour/  
misconduct of article No. I vide Annexure-II.

Reply : The above alleged charge has been DENIED before, the Chief Judicial Magistrate, Tinsukia Court in question (against Case No. G.R. - 1658/94 by framed by the Police Station, Tinsukia on the basis of FIR dt. 30.12.94 submitted by Sri S.K. Sasmal, the then Manager, Local Office, Tinsukia) on the basis of which the case has already been decided by the Chief Judicial Magistrate, Tinsukia Court in favour of me (M.A. Hussain) and acquitted me on 2.1.97 vide Chief Judicial Magistrate, Tinsukia Court judgement dated 2.1.1997, the original judgement copy dated 2.1.97 has already been submitted to R.O., Guwahati vide my letter dated 31.1.97.

However, there is no scope to proceed further again for departmental proceeding for the same reason/charge, which has already been decided by the court, as I believe. However the above alleged charge has again been DENIED.

Yours faithfully,

Sd/- 7.7.97.  
(M.A. HUSSAIN)  
H/C, L.O., Tinsukia.

4-50 AIR MAIL CONFIDENTIAL/गोपनीय 6

EMPLOYEES' STATE INSURANCE CORPORATION  
REGIONAL OFFICE : NORTH EASTERN REGION  
BAMUNIMAIDAN, :::: GUWAHATI-21.

NO. 43-S. 11/18/95-Vig. (AH) Dated : Oct. 20, 1999.

O R D E R

Md. A. Hussain, Head clerk, Employees' State Insurance Corporation, Regional Office, N.E. Region, Guwahati was issued a major penalty charge sheet under No. 43-S. 11/18/95-Vig. (AH) dated 12.6.97 for the following charges :

" Md. A. Hussain, while functioning as Head Clerk in Tinsukia Local Office, ESI Corporation during the period from 5.6.1991 onwards committed grossly wrong / mis-behaviour / mis-conduct inasmuch as he man-handled / physically assaulted Shri S. K. Sasmal, the then manager local office, Tinsukia in the office during office hours at about 10-30 AM on 30.12.94 without any reason and inflicted injury with a wooden Roller to Shri Sasmal on his forehead as a result of which Shri S. K. Sasmal, manager local office had to be admitted into Civil Hospital, Tinsukia on 30.12.94 and was discharged on 1.1.95. FIR has also been lodged in the Police Station, Tinsukia on 31.12.94.

2/9  
21/10/99 at 10.30 AM  
" Md. A. Hussain, Head clerk, Local Office, Tinsukia who is now under suspension from 14.2.95 vide 2nd and 3rd memo No. 43-A. 20/11/13/95-Estt. dated 14.2.95 in connection with the above incident has thus exhibited utter lack of integrity, devotion to duty and in subordination which is unbecoming of the said ESI Corporation employee and thus violated Rule-3 (1)(i)(ii)(iii) of the CCS ( Conduct ) Rules, 1964. In the case to be read with Regulation 23 of the Employees' State Insurance Corporation ( Staff and Conditions of Service ) Regulations, 1959, as amended by

" The inquiry in the case was initially conducted by Shri R. K. Shukla, then Jt. Director, DE/EZ, Calcutta and subsequently his successor Shri R. N. Manna continued and completed the inquiry. In his inquiry report dated 28.7.99, the inquiry officer has held that the charges against the aforesaid charged official have been proved.

" A copy of the inquiry report was supplied to the charged official vide Regional Office communication dated 19.8.99 and in response, Md. A. Hussain has submitted a representation dated 26.8.99.

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Part of  
File  
No.

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In the aforesaid representation, the charged official has first stated that S/Shri P. Sutradhar, II, C. R. Paul, ARD and B. C. Das were not the eye witnesses and, therefore, he has no comments to make.

*Shri S. K. Sasamal*

From the evidence given by Shri P. Sutradhar, II before the Inquiry Officer on 26.10.98, it is seen that he was not an eye-witness of the incidence of assault by the charged official. In his deposition, he has mentioned that when he was on inspection duty, he got a telephone call from Shri B. C. Das, UDC of the Local Office, Tinsukia about the incidence. According to him, he first visited the Local Office and then the Civil Hospital, Tinsukia to see Shri S. K. Sasamal, LOM, Tinsukia. Shri Sutradhar has stated before the Inquiry Officer that he found the said Shri S. K. Sasamal lying in the bed in the hospital senselessly and, subsequently, he reported the matter to the Regional Director over telephone on the same day. The actual position about the assault was ascertained by him from the officials of the Local Office.

Shri C. R. Paul, then ARD in his deposition dated 4.5.99 has stated that as per the order of the then Regional Director, he carried out the preliminary investigation on 2nd and 3rd Jan. '95 regarding the assault on Shri S. K. Sasamal by Md. A. Hussain. Thus, Shri Paul is not an eye-witness but an Officer who conducted the preliminary investigation in the case. His report dated 12.1.95 has been marked as P-EX-2 in the case.

Shri B. C. Das, UDC has tendered evidence before the Inquiry Officer on 4.1.99 wherein he has stated that when he returned to the Local Office after attempting to contact the Regional Director through a PCO, he heard a loud sound from Md. A. Hussain. According to Shri Das, the charged official was telling that "I will finish the manager Shri S. K. Sasamal". In his deposition Shri Das has further stated as under :

" I tried to make saperate them. In the meantime, Mr. Sasamal, LOM became senseless and then I brought an Ambassador Car from M/S National Plywood Ltd. and took the manager to the Civil Hospital, Tinsukia. Thereafter, I lodged an FIR after ascertaining the exact situation happened in the Local Office. FIR was lodged between 12 noon to 1 PM".

Therefore, Shri DAS is a witness to the later part of the mis-conduct by Md. A. Hussain.

Moreover, these witnesses are relevant to the case and their deposition confirm the charges levelled against the charged official.

The next contention of the charged official is that Dr. S. K. Sarma, Sr. Medical & Health Officer, Civil Hospital, Tinsukia has not appeared before the Inquiry Officer to establish the genuineness of the discharge slip dated 1.1.95 issued to Shri S. K. Sasmal, manager under treatment etc. were stated to have been provided to Shri S. K. Sasmal. Therefore, the said discharge slip dated 1.1.95 can not be taken on record, Md. Hussain has argued.

Dr. S. K. Sarma, Sr. Medical & Health Officer, Civil Hospital, Tinsukia is a prosecution witness. It is evident from the Annexure IV of the charge sheet. The evidence of the following witnesses clearly shows that there was assault by the charged official on Shri S. K. Sasmal, manager on 30.12.94.

1. Shri P. Sutradhar, II (PW-1)
2. " S. K. Sasmal, then manager, LOM, Tinsukia (PW-2)
3. " B. C. Das, UDC ( PW-3 )
4. " D. K. Sarma, Peon ( PW-4 )
5. " C. R. Paul, then ARD, who investigated and submitted the report dated 12.1.95 ( P-EX-2 )

The cause of the provocation was that the said Shri S. K. Sasmal issued two Memos and the Peon ( PW-4 ) attempted to deliver the same to the charged official at about 9-10 AM on 30.12.94.

<sup>3</sup> PW was the person who had admitted the manager ( PW-2 ) in the hospital on 30.12.94. In the evidence dated 26.10.98 by Shri S. K. Sasmal and also preliminary investigation report dated 12.1.95 it has been clearly mentioned that Shri S.K. Sasmal was admitted on 30.12.94 and discharged on 1.1.95. In the preliminary investigation report dated 12.1.95, Shri C. R. Paul has also stated that PW-2 was admitted in the Civil Hospital on 30.12.94 under Registration No. 546 and was subsequently discharged from the said hospital on 1.1.95. The said discharge slip ( P-EX-8 ) is an Annexure to the said preliminary inquiry report. As Shri Paul has testified before the Inquiry Officer and the

genuineness of the discharge slip is otherwise evident, there is nothing to reject this ( P-EX-8 ) piece of evidence. If the charge official is of the view that the evidence of Dr. S. K. Sarma would be in his favour he could have produced him as a Defence witness. In the absence of any such act, the charged official can not now question the authenticity of the said document.

The charged official has then disputed the findings of the Inquiring Authority on the ground that on account of the following discrepancies in the evidence given by Shri D. K. Sharma, Peon ( PW-4 ) the testimony of PW-4 should be rejected :

1. In the criminal case pending before the Court of CJM, Tinsukia PW-4 had stated that Md. A. Hussain assaulted Shri S. K. Sasmal by means of a Scale. However, in the departmental inquiry he had testified that the assault was done by a Wooden Ruler.
2. In the criminal case the time of assault was given by PW-4 as 9-20 AM on 30.12.94. However, in the departmental inquiry the time of assault has been stated by him as 9-15 AM on 30.12.94.

From the Judgement dated 2.1.97 of the CJM, Tinsukia and GR case No. 1658/94 it is seen that Shri D. K. Sharma ( PW-4 ) had stated before the Court that weapon used for the assault was a Scale. However, in his statement dated 2.11.95, he has clearly mentioned that the weapon used was a Wooden Ruler. The Wooden Ruler is mainly used for the purpose of putting ruling. Even the Scale is also mainly used for the same purpose only. Because of this, PW-4 might have confused while tendering evidence before the Court. However, in the disciplinary case the evidence given by him and other witnesses un-mistakably show that the instrument used for assault was a Wooden Ruler, which was on the table of Shri T. Hazarika, Record-Sorter.

As regards, the timings it is seen that Shri D. K. Sharma, Peon has stated before the Court that at around 9-20 AM on 30.12.94, Shri S. K. Sasmal, manager sent a letter to the accused through a Peon Book. The use of the word 'around' signifies that the timings given was approximate as nobody witnessing a violent act would look in to watch to note down the time. The re-action of the person concerned would be to prevent the violence and help the injured.

In view of the above, the contention of the charged official could not be agreed to. As regards the evidence of Shri T. Hazarika, R/S, the charged official has alleged the following discrepancies :

" Before the Inquiry Officer, this witness has given time of assault at about 9-25 AM on 30.12.94 whereas in the criminal Court this timings was given by him at around 9-15 AM on 30.12.94 ".

As has been stated earlier, when there is physical violence, the immediate reaction of the eye-witness would be to attempt to stop the assault and to help the victim. As nobody would be looking into to watch to note down the exact timings of the happening, there is nothing to find fault with the evidence of Shri Hazarika.

In this connection, it must be stated that there are little variations about the timing of assault. This is quite natural when witnesses are not tutored. Shri T. Hazarika, Record Sorter has stated that the assault took place at about 9-25 AM. Shri D. K. Sharma, Peon stated that he attempted to deliver the Memos to the charged official after the latter came to the Local Office at 9-15 AM. The same witness has also testified that Shri B. C. Das (PW-3) came to the office after 9-15 AM. According to PW-3, when he returned to the Local Office he " heard a loud sound from Mr. A. Hussain, Head Clerk who was saying that I will finish the Manager Shri S. K. Sasmal ". These pieces of evidence show that the assault occurred at about 9-25 AM and not at 10-30 AM as mentioned in the charge sheet on 30.12.94.

Shri/Md. A. Hussain has found fault with the findings of the Inquiry Officer as Shri S. K. Sasmal (PW-2) had indirectly admitted ( in reply to the last but one question put by the Defence ) the Judgement of the CJM, Tinsukia.

The relevant question of the defence put on 26.10.98 to PW-2 was whether he denied the decision of the Judgement dated 2.1.97 given by the Court. In reply, the PW-2 has stated " I do not like to offer any comment on the question ". This reply does not tantamounts to

his admission of the Judgement. However, there is no denying fact that the criminal court has acquitted the charged official on benefit of doubt but it must be mentioned here that as has been mentioned in the Judgement (page-5) that in the criminal trial it is incumbent on the part of the prosecution to bring home the charge beyond all reasonable doubts. In the disciplinary case however, the standard of proof required is pre-ponderance of probability. Thus, the Judgement of the Court is not relevant to the disciplinary case as the disciplinary case is to be decided on the basis of the evidence tendered / produced in the departmental case.

In view of the foregoing, I do not find any force in the contentions of the charged official. The Inquiry Officer has given findings holding the charges proved for good and sufficient reason and, therefore, I agree with the findings.

The commonest form of disabling conduct which is considered very serious is ' violence '. The violence may be against co-employees while they are actually engaged in work or it may be against the superior officers or the employer. The reason is that if the violence is permitted or ignored then it might create a situation when it might become impossible or hazardous for co-employees or superior officers to work or in any case, discharge their duties in a satisfactory manner. This may make the smooth functioning of an organization well nigh impossible. If assault on co-employees in work premises is considered serious, the assault on superior officers is still more serious.

Contd... 7/-

- 16 -  
56  
:: 7 ::

In view of the serious nature of the charges against Md. A. Hussain, I consider that he is not a fit person to be retained in the service. I, therefore, in exercise of powers conferred upon me by regulations 12 (2) read with 5th Schedule of the Employees' State Insurance Corporation ( Staff and Conditions of Service ) Regulations, 1959, do hereby impose the penalty of Dismissal from service on Shri Md. A. Hussain, Head Clerk with immediate effect.

G. G.  
29/X/55  
( D. H. // PEGOO )  
REGIONAL DIRECTOR.

To

✓ Shri/ Md. Akhtar Hussain,  
Head Clerk,  
Employees' State Insurance Corporation,  
Regional Office, N. E. Region,  
Guwahati-781021.

\*\*\*\*\*

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57 / 001 -

Annexure of Sums.

To,  
The Director General  
E.S.I. Corporation  
Panchadeep Bhawan.  
Kotla Road,  
New Delhi 1

Date : 01.11.99

Through the Regional Director, ESIC, N.E. Region,  
Guwahati - 21.

Sub :- An appeal against Regional Director Guwahati  
dismissal order No.43-S.11/18/95-Vig (AH)  
dt.20.10.99 to Md. A. Hussain, Head Clerk,  
R.O. Guwahati.

Respected Sir,

I have to refer herewith RD's Guwahati dismissal order No.43-S.11/18/95- Vig. (AH) dt.20.10.99 against Md. A. Hussain H/C and to submit herewith an appeal against the RD's dismissal order dt.20.10.99 AS UNDER with the request to kindly take decision in the light of my complain dt.20.12.94 against the Manager - Sri S.K. Sasmal and UDC Cashier of Local office, Tinsukia which has personally been handed over to the Vigilence officer - E.S.I. Corporation, Calcutta at Local office Tinsukia on 26.10.94 and the copy of the same to the Regional Director, ESIC, Guwahati on 2.1.95 for not acceptance of the Insured Person's complain in the SIKAYAT ADALAT of Local office, Tinsukia by the Manager Sri S. K. Sasmal (My complain letter dt.20.12.94 enclosed which is self explanatory)

- Received from page 1  
to Faber with enclosures  
on duplicate*
2. That the FIR dt.30.12.94 submitted by Sri S. K. Sasmal, Manager, Local office, Tinsukia and the complain dt.30.12.94 submitted by the Regional

*11/11/99*  
Contd....p/2

*11/11/99*  
Mr. Ass't. Director  
E.S.I. CORPORATION  
Guwahati - 21

Director, ESIC, Guwahati to the Police Authority of Tinsukia Police Station, the time of the alleged incidence is at about 9.20 A.M. on 30.12.94.

WHEREAS

- i) The charge of the Regional Director, Guwahati to Md. A. Hussain, Head Clerk vide Regional Director, Guwahati charge sheet No.43 - S.11/18/ 95-vig. (AH) dated 12.6.97 which is after more than two years of the alleged incidence and also after judgement of the court under Police case No.555/94 and G.R. Case No.1658/94 is that Md. A. Hussain Head Clerk has physically assaulted Sri S. K. Sasmal, Manager, Local Office, ESIC, Tinsukia in the Office on 30.12.94 at about 10.30 A.M.

AGAIN

- ii) The charge of the Regional Director ESIC, Guwahati has been confirmed as PROVED by the inquiring Authority with his findings of the inquiry that Sri D.K. Sarma, Peon and Sri T. Hazarika, R/S have confirmed their eye witness of the physical assault to Sri S. K. Sasmal, Manager by Md. A. Hussain H/C on 30.12.94 at about 9.15 A.M. for witness statements before the inquiring Authority which is not correct as evident from the witness statement dt.3.5.99 of Sri T. Hazarika (copy enclosed)

WHEREAS

The Police Investigating Officer of Tinsukia Police Station under Police case No.555/94 had stated vide

*1/11/97*  
1/11/97  
Contd.....p/3

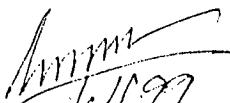
his Investigation report dt.29.1.95 that Sri S. K. Sasmal, Manager was physically assaulted by Md. A. Hussain at about 9.30 A.M. on 30.12.94 with a roller.

And hence, the findings of the inquiring Authority is CONTRADICTORY to the Police Investigation Report (copy enclosed) . And accordingly, the dismissal order No.43 - S.11/18/95- vig. (AH) dt.20.10.99 of the Regional Director, ESIC, Guwahati, against Md. A. Hussain, Head Clerk is UNJUSTIFIED AND ILLEGAL.

2.i) The FIR and the Police Investigation Report are very important documents which can not be IGNORED in the LAW of JUSTICE as the FIR is a document for seeking judgement from the Hon'ble Court through the Police under the Law of justice.

AGAIN

ii) It is also true that on the basis of FIR dt.30.12.94 of the Local Office Manager, Tinsukia and on the basis of the complain dated 30.12.94 of the Regional Director, ESIC, Guwahati and also on the basis of the witness statements obtained by the Tinsukia Police from Sri D. K. Sarma, Peon, Sri T. Hazarika, R/S Sri B. C. Das, UDC of Local office, Tinsukia staff and also from the Medical & Health Officer,

  
Contd.....p/4

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- 4 -

Tinsukia Civil Hospital, Md. A. Hussain Head clerk, Local Office, Tinsukia was ARRESTED on 9.1.95 by the police of Tinsukia Police Station under Police case No.555/94.

AGAIN

iii) The Police charge sheet supported by the witness statements under Polcie Case No.555/94 was made trial under G.R. case No. 1658/94 by the Hon'ble CJM, Tinsukia Court and Md. A. Hussain Head clerk was ACQUITTED by the Hon'ble CJM, Tinsukia vide JUDGEMENT dated 2.1.97.

AND honco, DENIAL to Hon'ble Chief Judicial Magistrate, Tinsukia Court judgement dt.2.1.97 by the Regional Director, E.S.I. Corporation, N.E. Region, Guwahati is UNJUSTIFIED AND ILLEGAL under the Law of justice as the Regional Director can not DENY his responsibility of lodging FIR and complain 30.12.94 by the Manager Local Office, Tinsukia and also by the Regional Director, ESIC, Guwahati against Md. A. Hussain Head Clerk to the police Authority of Tinsukia Police Station on the basis of which Md. A. Hussain was arrested on 9.1.95 by the Tinsukia Police.

3.i) The Medical report is a very important document for any physical assultation caused by alleged crime which can not be IGNORED for decision under the LAW OF JUSTICE.

1/11/99  
contd...p/5

The discharge Slip dt.1.1.95 issued to Sri S. K. Sasmal, Monongor by the Medical and Health Officer, Civil Hospital, Tinsukia for injury to Sri S. K. Sasmal had not been confirmed the genuineness of the issue of the said discharge slip to Sri S. K. Sasmal through the Medical and health Office, Civil Hospital Tinsukia by the inquiring Authority on 4.5. 99 as date fixed, M&H.O, Civil Hospital, Tinsukia did not attended on 4.5.99.

And hence, the discharge slip dt.1.1.95 shown issued to Sri S. K. Sasmal for his injury on 30.12.94 can not be considered as GENUINE.

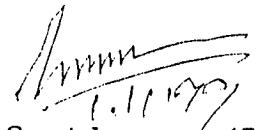
And hence, the dismissal order dt.20.10.99 against Md. A. Hussain, H/C by the Regional Director, ESIC, Guwahati without taking confirmation of the GENUINENESS of issue of the said DISCHARGE SLIP dt.1.1.95 from the Medical and Health Officer, Civil Hospital, Tinsukia through the inquiring Authority is UNJUSTIFIED AND ILLEGAL.

In view of the above, I request your honour to accept the Judgement dt.2.1.97 of the Hon'ble Chief Judicial Magistrate, Tinsukia Court as a perfect decision against the FIR dt.30.12.94 of the Regional Director, ESIC, Guwahati lodged to Police Station, Tinsukia under Police case No.555/94 and G.R. Case No.1658/94 of the Hon'ble CJM, Tinsukia, Court and to kindly set aside the dismissal order dated 20.10.99 of the Regional Director ESIC, Guwahati and I may kindly be re-instated in the service of the corporation immediately.

1/7/99  
Contd....p/6

The undermentioned documents are enclosed for favour of your kind reference.

1. Copy of Complain letter dt.20.12.94 to vigilance officer Calcutta & Regional Director, ESIC, Guwahati with acknowledgement dt.2.1.95 (Annex - 1&2)
2. FIR dt.30.12.94 of Sri S. K. Sasmal, Manager, L.O. Tinsukia (Annex - 3)
3. Complain letter dt.30.12.94 of R.D., ESIC, Guwahati addressed to the Supdt. of Police, Tinsukia and copy to the officer-in-charge, Police Station, Tinsukia (Annex - 4)
4. Arrest to Md. A. Hussain letter dt.12.1.95 from Supdt. of Police Tinsukia to RD, Guwahati (Annex - 5).
5. Police Investigation complete Report under G.R. No. 1658/94 (Annex - 6)
6. Hon'ble CJM, Tinsukia, Court judgement copy dt.2.1.97 (Annex - 7 )
7. R.D.'s charge sheet dt.12.6.97 (annex - 8)
8. Reply dt.7.7.97 from Md. A. Hussain to R. D's charge sheet dt.12.6.97 (Annex - 9)
9. Witness statement 3.5.99 of Sri T. Hazarika (annex- 10)
10. R.D's memo dt.19.8.99 and inquiry Report dt.28.7.99 (Annex - 11 & 12)
11. Reply dt.26.8.99 of Md. A. Hussain, H/C to Inquiry report (Annex - 13)
12. R.D's dismissal order dt.20.10.99 (Annex - 14)

  
1.11.99  
Contd....p/7

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- 7 -

Yours faithfully,

  
(MD. A. HUSSAIN)  
Head Clerk, R.O. Guwahati.

Residential Address -

Md. Akhtar Hussain,  
Japorigog High School Road,  
Sundarpur,  
P.O. Dispur,  
Guwahati - 5 (Assam)

Advance copy to -

1. The Director General, E.S.I. Corporation, Panchadeep Bhawan, Katla Road, New Delhi - 1 with enclosure from Annexure - 1 - 14 Only letter dt 20.12.94 with acknowledgement dt 2/1/95 is enclosed. Other files through R.D. Guwahati
2. The Hon'ble Labour Minister, (Chairman of Standing Committee of the E.S.I. Corporation) Govt. of India, New Delhi with enclosure from Annexure - 1 to 14 for information and necessary action. Letter dt 20/12/94 with acknowledgement dt 2/1/95 is enclosed. Enclosure which will enlighten the complete fact and conspiracy. Other enclosures will be sent, if your honourable desire so.



Labor Minister  
Govt of India  
R/MP 10922 dt 1.1.95

DG E.S.I.C. Head Clerk  
4/100, Panbazar  
Riupn. 10922 dt 1.1.95

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64, Annexure 6  
189  
R.P.Banerjee  
11  
11  
HEADQUARTERS' OFFICE  
EMPLOYEES' STATE INSURANCE CORPORATION  
PANCHDEEP BHAWAN: KOTLA ROAD: NEW DELHI

No.C-16/14/25/99-Via.

Dated : 3.3.2000. R.O. (Signature)

~~ORIGINATOR~~

Sri Md. A. Hussain, Ex-Head Clerk, ESI Corporation, Regional Office, N.E.Region, Guwahati has submitted an appeal dated 1.11.99 against the order dated 20.10.99 passed by the Regional Director, Guwahati imposing the penalty of dismissal from service with immediate effect.

From the case records, it is seen that Md.A.Hussain was charge sheeted by the Regional Director, Guwahati on 12.6.97 for violation of Rule-3 of the C.C.S (Conduct) Rules,1964 read with Regulation-23 of the ESIC (Staff and Conditions of Service) Regulation, 1959. The actual charge framed against Md.A.Hussain was,-

Md. A. Hussain, while functioning as Head Clerk in Tinsukia Local Office, ESI Corporation, during the period from 5.6.91 onwards committed gross mis-behaviour/misconduct inasmuch as he man-handled/physically assaulted Sri S.K. Sasmal, the then Manager, Local Office, Tinsukia in the office during office hours--at about 10.30A.M. on 30.12.94 and inflicted injury with a wooden roller to Sri Sasmal on his forehead as a result of which Sri S.K.Sasmal, Manager, Local Office had to be admitted in the Civil Hospital, Tinsukia on 30.12.94 and was discharged on 1.1.95.

A departmental inquiry was ordered by the disciplinary authority and, after a duly conducted inquiry, Sri R.N.Manna, Jt.Director(DE)EZ, Calcutta submitted an inquiry report dated 28.7.99 holding the charge as proved. The order appealed against was passed by the disciplinary authority after considering the representation dated 26.8.99 submitted by the Charged Official.

The present appeal submitted by Sri Hussain is almost a repetition of the same grounds advanced earlier by him before the disciplinary authority.

The first contention of the appellant is that his complaint dated 20.12.94 against the Manager and UDC-Cashier of the Local Office submitted to the Vigilance Officer, ESIC, Calcutta at Local Office, Tinsukia on 26.12.94 was not considered at all.

In the said complaint dated 20.12.94, the complainant had alleged misappropriation of two benefit payments by Sh. A.K.Baruah, UDC-Cashier of Local Office, Tinsukia and in-action on the part of the Local Office Manager against the cashier. The complainant had signed as 'one citizen of India' whereas the endorsement copy is seen signed by the appellant.

Contd...2

either this point was raised before the Inquiry Officer nor did he justify its relevancy to the present appeal. The plea is not related to the case and has been taken up belatedly.

The appellant has then contended that the time of assault mentioned in the charge Memo dated 12.6.97 was about 10.30 a.m. on 30.12.94 whereas in the FIR and in the complaint submitted to the Police Authority, the incidence was alleged to have taken place at about 9.20 a.m. The next contention of Sri Hussain is that the findings of the inquiry authority and the (C)lassical order of the disciplinary authority is unjustified and illegal as the time of assault mentioned by the two witnesses, Sri D.K.Sarma, Peon and Sri T. and Hazarika, Record shorter differs from the report dated 29.1.95 submitted by the Police Investigating Officer of Tinsukia Police Station under case No.555/94 stating that Sri S.K.Sasmal, Manager was physically assaulted by Md. A.Hussain at about 9.30 a.m. on 30.12.94 with a roller.

The variation in the time has already been examined in detail by the disciplinary authority in his order dated 26.10.97 and I find no reasons to disagree with the same.

Another contention of the appellant is that on the basis of the F.I.R. of the P.W.2, he had faced criminal case but he has been acquitted by the Chief Judicial Magistrate, Tinsukia. This cannot be denied by the disciplinary authority.

The judgement dated 2.1.97 acquitting the appellant in the criminal case was one of the defence documents produced in the inquiry. The implication of the said judgement to the present disciplinary case has also been examined in the para at pp 5 & 6 of the penalty order. As has been mentioned therein, the standards of proof required in criminal case and disciplinary case are different and, therefore, the judgement in the criminal case can have no bearing in the disciplinary case.

Sri Hussain has finally contended that the discharge slip dated 1.1.95 issued to Shri S.K. Sasmal, Manager (PW2) for his injury on 30.12.94 cannot be considered as genuine as the Medical and Health Officer, Civil Hospital, Tinsukia did not attend the inquiry on 4.5.99.

From the case records, it is seen that the Medical and Health Officer, Civil Hospital, Tinsukia was called to give evidence in the case. But since he expressed his inability to appear in the departmental proceedings on 4.5.99, his name was dropped by the Inquiry Officer. Moreover, the document under dispute by the appellant is the discharge slip dated 1.1.95 issued by a Govt. Hospital to the PW2 which also bears a Registration number. On careful consideration of the facts, it is thus seen that-

1. the prosecution has clearly proved the assault by the appellant on the PW2 and the latter's admission in the Hospital.

2. the discharge slip had been in respect of the FW2 and the same was issued to him;

3. there is enough tell-tale evidence in the said discharge slip to show that the same was issued by the said Hospital; and

4. attempt was made to summon Dr. S.K. Sarma, Senior Medical Officer of the said Hospital.

As has been held by the CAT, Ernakulam Bench in V. Ramakrishna Pillai Vs. Senior Supdt. of Post Officers and other 1994 (3) SLJ 249 (CAT), in such circumstances the onus of proving that the discharge slip was not a genuine one shifts to the defence. The defence has not proved that the said document was a bogus one.

The entire gamut of the case has been considered earlier by the disciplinary authority and a speaking order dated 20.10.99 has been passed. As has been mentioned in the penultimate para of the order ibid, use of violence in the work place/office is a serious misconduct and any assault on a superior officer is more serious. In the instant case, the appellant indulged in violence against his immediate superior when the latter had performed his lawful duty by issuing two memoranda to the former. Such a misconduct cannot be viewed lightly. Therefore, the penalty awarded in the instant case is justified.

The appeal is hereby rejected.

S.N. Tiwari  
(S.N. TIWARI)  
ADDL. COMMISSIONER(P&A)

Sri Md. A. Hussain,  
Ex. Head Clerk.  
(Through Regional Director, Guwahati).

Copy to:-

1. Regional Director, ESI Corporation, Guwahati.
2. Dy. Director(Fin.), ESI Corporation, Guwahati.
3. Guard file.
4. Spare copy.

DY. DIRECTOR (VIG.)

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

OF 2000

MD IN

Union of India & Ors.

- And -

In the matter of :

Written Statements submitted by  
 the respondents

The respondents beg to submit the written  
 statement as follows :

1. That with regard to para 1, the respondents beg to state that the applicant was charge sheeted under Major penalty under CCS ( Conduct ) Rules, 1964 vide Memo No. 43-S.III/18/95-Vig.(AH) dated 12.6.1997 and as a result of the Enquiry, the applicant found guilty and imposed the penalty of dismissal from service vide order No. 43-S.11/18/95-Vig (AH) dated 20.10.1999 . The applicant appealed against the dismissal from service vide his letter dated 1.11.1999 to H.Qrs. office which has been rejected vide order No. C-16/14/25/99-Vig. dated 3.3.2000 . Therefore, re-instatement in service of the applicant does not arise.
2. That with regard to para 2, 3 and 4.1, the respondents beg to offer no comments.

-2-

3. That with regard to para 4.2, the respondents beg to state that the applicant while functioning as Head - Clerk in Tinsukia Local Office, E.S. I. Corporation during the period from 5.6.1991 onwards committed gross mis-behavior/ mis-conduct as much as he man-handled/physically assaulted Shri S.K. Sasmal, the then Manager, Local Office, Tinsukia in the office during office hour at about 10.30 AM on 30.12.94 without any reason and inflicted injury with a wooden roller to Shri Sasmal on his forehead as a result of which Shri S.K. Sasmal, Manager Local Office had to be admitted into Civil Hospital, Tinsukia on 30.12.1994 and was discharge on 1.1.1995. FIR has also been lodged in the police station, Tinsukia on 30.12.94. Therefore, the applicant was suspended and subsequently departmental enquiry was initiated. For the above incident, the applicant was arrested and forwarded into the custody on 10.1.1995 in connection with the Tinsukia PS Case No.555/94 under section 290/325 IPC intimated vide memo no. TSK/V/95/3449 dated 13.4.1995 by Superintendent of Police, Tinsukia.

4. That with regard to para 4.3, the respondents beg to state that the Police, Tinsukia filed the case in the Court of Chief Judicial Magistrate, Tinsukia G.R. Case No. 1658/94 for trial . The Hon'ble Magistrate Tinsukia vide his judgement dated 2.1.97 has acquitted the applicant on benefit of doubt on the points as mentioned in R.O. Guwahati letter dated 30.12.98.

Copy of letter dated 30.12.98 is enclosed as

Annexure - A.

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5. That with regard to para 4.4, the respondents beg to state that the departmental investigation was going on for the incident occurred on 30.12.1994, the suspension was not revoked so that the investigation is not hampered.

6. That with regard to para 4.5, the respondents beg to state that after completion of investigation, the Charge-sheet was issued vide Mem. No. 43-S.11/95-Vig.(AH) dated 12.6.1997 for his mis-conduct/mis-behaviour which is un-becoming of a Govt. servant. Departmental Enquiry was ordered under the CCS(Conduct) Rules, 1994 but not against the Judgement of the G.R. Case No. 1658/94 in the Court of Chief Judicial Magistrate, Tinsukia. The judgement of the Court is not relevant to the disciplinary case as the disciplinary case is to be decided on the basis of the evidence tendered/produced in the departmental case.

7. That with regard to para 4.6, the respondents beg to state that the departmental Enquiry was ordered for the incident occurred on 30.12.94 as per the CCS (Conduct) Rules, 1964, the Charge-sheet was not withdrawn due to non-completion of departmental enquiry.

8. That with regard to para 4.7, the respondents beg to state that the judgement dated 2.1.97 (copy enclosed) in the case 1658/94 filed by police, Tinsukia under section 290/323/506 IPC and the applicant acquitted on benefit of doubt.

is to be decided on the basis of the evidence tendered/ produced in the disciplinary case. In view of above, charge-sheet/penalty issued to the applicant cannot be set aside.

It may also be mentioned that the applicant was charge sheeted under Rules 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964 but not under rules CCS(CCA) Conduct Rules, 1965.

14. That with regard to para 4.13, the respondents beg to state that the Enquiry Authority was not acted arbitrary manner and was also not pre-determination to imposed the penalty as alleged. Enquiry Authority is appointed only to inquiry into the charges and submit the inquiry report after enquiry.

Regarding inclusion of name of Sri C.R. Paul, Asstt. Regional Director and Sri T. Hazarika, R/S in the list of witness, it was felt that the name of Sri C.R. Paul, Asstt. Regional Director is absolutely required as witness in the case as Sri C.R. Paul, then Asstt. Regional Director investigated the incident occurred on 30.12.94 but his name was left out from the list of witness of the disciplinary proceeding. Therefore, his name was included in the list of witness subsequently and the same intimated to the applicant vide R.O. & Guwahati endorsement letter No. 43x8x11/95xW 43-S.11/18/95-Vig.(AH) dated 24.2.98. Similarly, Sri T. Hazarika, Record Sorter, Local Office, Tinsukia had submitted his statement on the incident. Therefore, his name was included in the list of witness subsequently for confirmation of his statement which was left out from the list of witness of the disciplinary proceeding. This was also intimated to the applicant vide this endorsement letter dated 24.2.98.

15. That with regard to para 4.14, the respondents beg to state that the applicant was not suspended on the basis of the case registered by police, Tinsukia P.S. Case No. 555/94 U/S 290/325/IPC but was suspended as a result of the investigation by the Department, the suspension was not withdrawn as well as the applicant was not re-instated in the service. However, the applicant had been re-instated in service with effect from 26.8.99 vide order No. 43-S-11/18/95-Vig. (AH) dated 26.8.1999 on the basis of judgement dated 14.7.1999 of Hon'ble CAT, Guwahati in the case O.A. No. 198/99 filed by the applicant.

The disciplinary proceeding was initiated against the applicant as per the CCS(Conduct) Rules 1964 as already stated in paras 1, 4, 5, 4.12 etc.

16. That with regard to para 4.15, the respondents beg to submit the comments what have already made against the foregoing paragraph 4.12 above.

Further, as per inquiry, the charge found proved and accordingly, penalty of dismissal from the services of the applicant was imposed as per rule and therefore, the penalty of dismissal from service is not liable to be set aside and quashed.

17. That with regard to para 4.16, the respondents beg to state that the copy of Enquiry report dated 28.7.99 was sent to the applicant vide this office letter No. 43-S.11/18/95-Vig.(AH) and the applicant submitted his reply vide his letter dated 26.8.99 which was considered by the disciplinary authority.

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After due consideration, the disciplinary authority imposed the penalty of dismissal of services vide order No. 43-S.11/18/95-Vig.(AH) dated 20.10.99.

Further, already explained that the case No. 1658/99 filed by police Tinsukia in the Court of Chief Judicial Magistrate, Tinsukia is not relevant in the Departmental disciplinary proceeding.

The disciplinary authority has imposed the penalty on the basis of the findings of the Enquiry Authority under CCS(Conduct) Rules and the appeal dated 1.11.99 submitted by the applicant was considered by the appellate authority and justified the penalty awarded by the Disciplinary Authority vide order No. C-16/14/25/99-Vig. dated 3.3.2000. Therefore, the appellate authority has not violated the provisions as mentioned by the applicant in the application. As such, the charge sheet dated 12.6.98, penalty order dated 20.10.99 and appellate order dated 3.3.2000 are not liable to set aside.

18. That with regard to para 4.17, the respondents beg to state that the witness mentioned in the application were examined by the Enquiry Authority as per listed prosecution witness as already clarified in para 4.13 above.

19. That with regard to para 4.18, the respondents beg to state that the findings of the Enquiry Authority, the charges framed against the applicant was proved and the applicant found guilty. Accordingly, penalty of dismissal of service of the applicant imposed by the Disciplinary Authority is as per rules.

20. That with regard to paras 5.1 and 5.2, / & 5.3 the respondents beg to submit the comments what have already made against the foregoing paragraphs 4.5 and 4.12 above.
21. That with regard to para 5.4, the respondents beg to submit the comments what have already made against the foregoing paragraph 4.4 and 4.8 above.
22. That with regard to para 5.5, the respondents beg to submit the comments what have already made against the foregoing paragraph 4.12 above.
23. That with regard to paras 5.6 and 5.7, the respondents beg to submit the comments what have already made against the foregoing paragraph 4.16 above.
24. That with regard to para 5.8, the respondents beg to submit the comments what have already made against the foregoing paragraph ~~4.4~~ 4.4 and 4.8 above.
25. That with regard to para 5.9, the respondents beg to submit the comments what have already made against the foregoing paragraph 4.12 above.
26. That with regard to para 6 and 7, the respondents beg to offer no comments.
27. That with regard to para 8.1, the respondents beg to submit the comments what have already made against the foregoing paragraph 4.10 above.
28. That with regard to paras 8.2 to 8.4 , 9.1 and 10 to 12, the respondents beg to offer no comments.

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VERIFICATION

I, Shri D. N. Pegoo, Regional Director, ESI Corporation, being authorised do hereby verify and declare that the statements made in this written statement are true to my knowledge, information and believe and I have not suppressed any material fact.

And I sign this verification on this 9 th day of August, 2001, at Guwahati.

*(Signature)*  
3/8/01  
Declarant.  
( D. N. Pegoo )  
Regional Director,  
E. S. I. Corporation,  
N. E. Regional, Guwahati-21

NO. 43-RD/MISC/2/93

Dated : December 30th, 1994.

To

The Superintendent of Police,  
Tinsukia,  
Dist : Tinsukia ( Assam )

Sub:

Assault on Local office manager, Shri S. K.  
Sasmal.

Sir,

I have to inform you that ours is a Social Security Organization under Ministry of Labour, Government of India. We have got a local office at Tinsukia located at Udyognagar, Makum Road (opposite National Flywood). I have been informed over telephone on today i.e. 30th December, 1994 at about 10-30 AM by Shri B. C. Das an employee of our Tinsukia local office that Shri A. Hussain, Head Clerk of the said local office have severely assaulted and grievously injured Shri S. K. Sasmal, Manager local office, Tinsukia. It is also apprehended that Shri A. Hussain may again assault manager as well as other staff members of the local office.

Accordingly, you are requested to please take immediate measures so that office manager as well as life of the member of the staff are saved. You are also requested to take action as per law against Shri A. Hussain, Head Clerk.

The matter may please be treated as most important as it may lend to wide-scale repurcation among the IPs as well as members of the staff causing disturbance and smooth functioning of the said local office which deals with the cash payment of the industrial workers.

Yours, faithfully,

( T. K. BHATT/CHARIYA )  
REGIONAL DIRECTOR.

Copy to : 1. The Officer-in-Charge, Police Station  
Tinsukia.

2. The Manager, Local Office, Tinsukia L.O.  
3. Shri C. R. PAUL, Asstt. Regional Director,  
ESIC, RO, Guwahati. He is hereby directed to collect necessary information from staff members PS & other sources regarding the above incident occurred at local office Tinsukia. On completion, he will proceed to Jonai for spot verification of ARA case of Shri I. N. Pegu, VO, as ~~Manager~~ directed by Hars. office.

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SSAM

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75P.

प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलिओ की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलिओ देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
21/1/97	21/1/97	21/1/97	21/1/97	21/1/97

Certified copy of the judgment

IN THE COURT OF THE CHIEF JUDICIAL  
MAGISTRATE TIN SUKIA.

present — SRI D. K. Deb Roy M.A. LL.B.  
Chief Judicial magistrate  
Tinsukia

G.R. case NO 1658/94

state of Assam

— versus —

MD. Akhter Hussain — — Accused  
H/S 290/323/506 I.P.C.

Dates of recording evidence —

3.1.93, 3.2.96, 4.3.96

Date of argument — 18.12.96

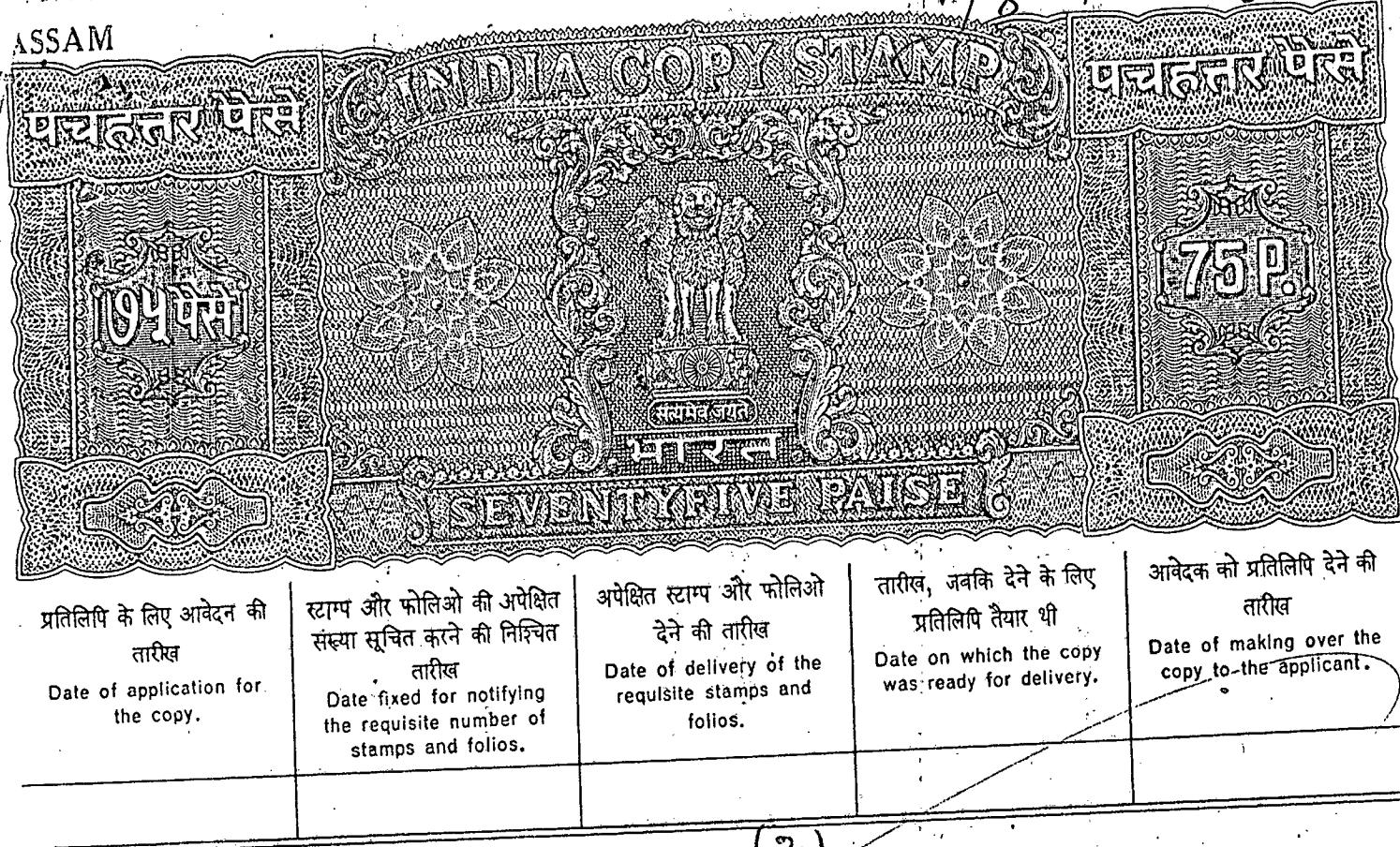
Date of judgment — 2.1.97

### JUDGMENT

This prosecution case may  
briefly be stated as follows —

ASSAM

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प्रतिलिपि के लिए आवेदन की तारीख  
Date of application for the copy.

स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख  
Date fixed for notifying the requisite number of stamps and folios.

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Date on which the copy was ready for delivery.

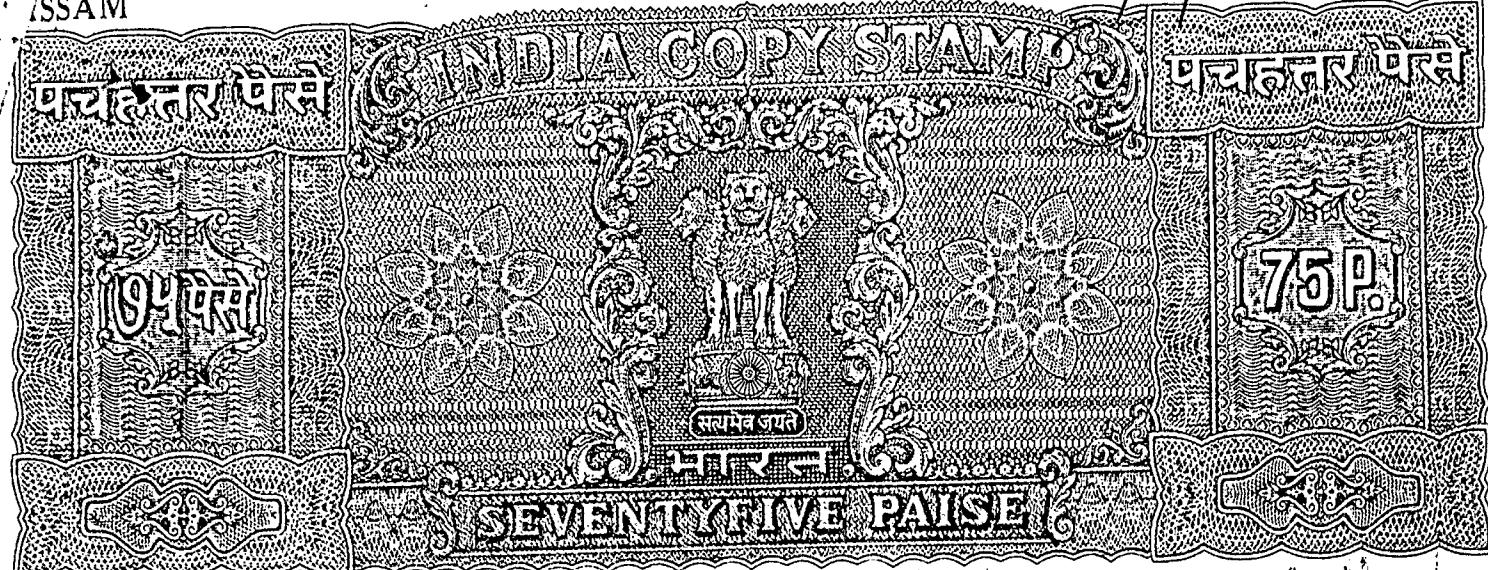
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Date of making over the copy to the applicant.

(2)

Mr. S. K. Sasmal lodged FIR with O/C Tinsukia police station stating inter alia that he is the manager of E.S.I. Corporation, Tinsukia. On 30.12.94 he came to his office and handed over a letter to the accused through D.K. Sarma (P.W.) peon. The accused being the Head-Assstt. of the establishment instead of accepting the letter he started some altercation. Thereafter, the accused caused hurt to S. K. Sasmal by means of a wooden roll causing some minor injuries to his person and he had undertaken treatment police on receipt of the FIR



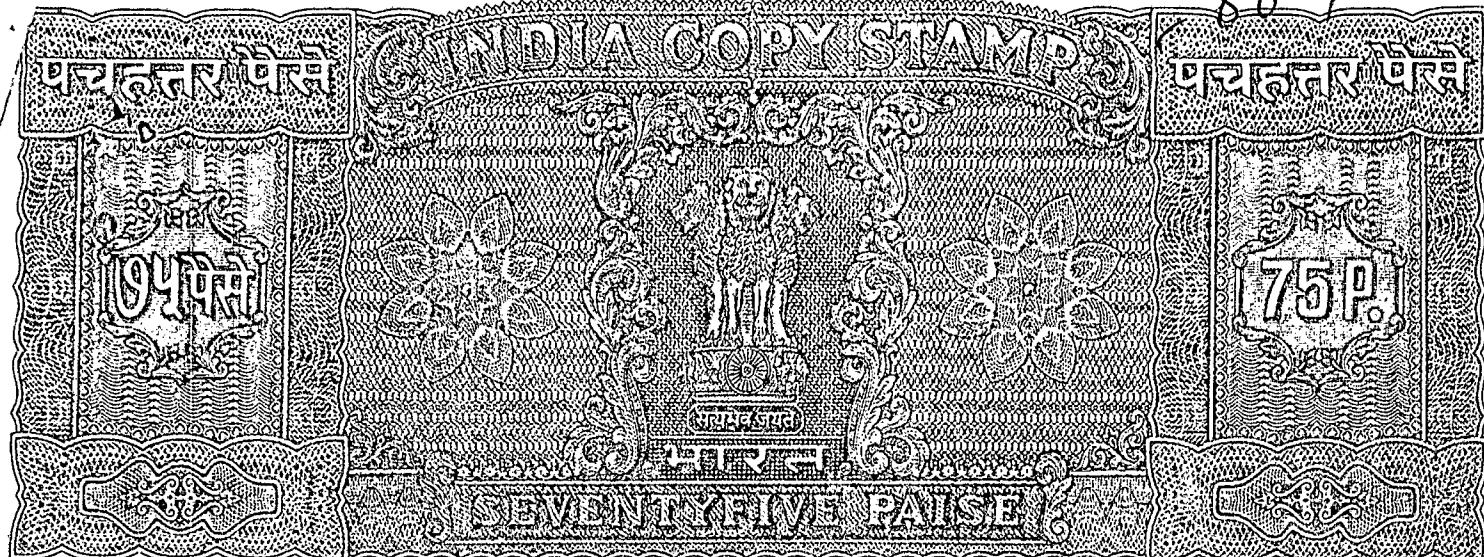
JUL



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलिओ की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलिओ देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.

(3) registered a case and took-up investigation and upon completion of investigation submitted charge sheet u/s. 290/323/506 I.P.C. against the accused Akhter Hussain. Accused duly appeared in the court, necessary copies were furnished to him and particulars of accusations u/s. 290/323/506 I.P.C. were duly read over, explained and interpreted to the accused to which he pleaded not guilty and claimed to stand trial. The defence case is at complete dead-point for determination.

whether the accused person caused simple hurt to the victim.

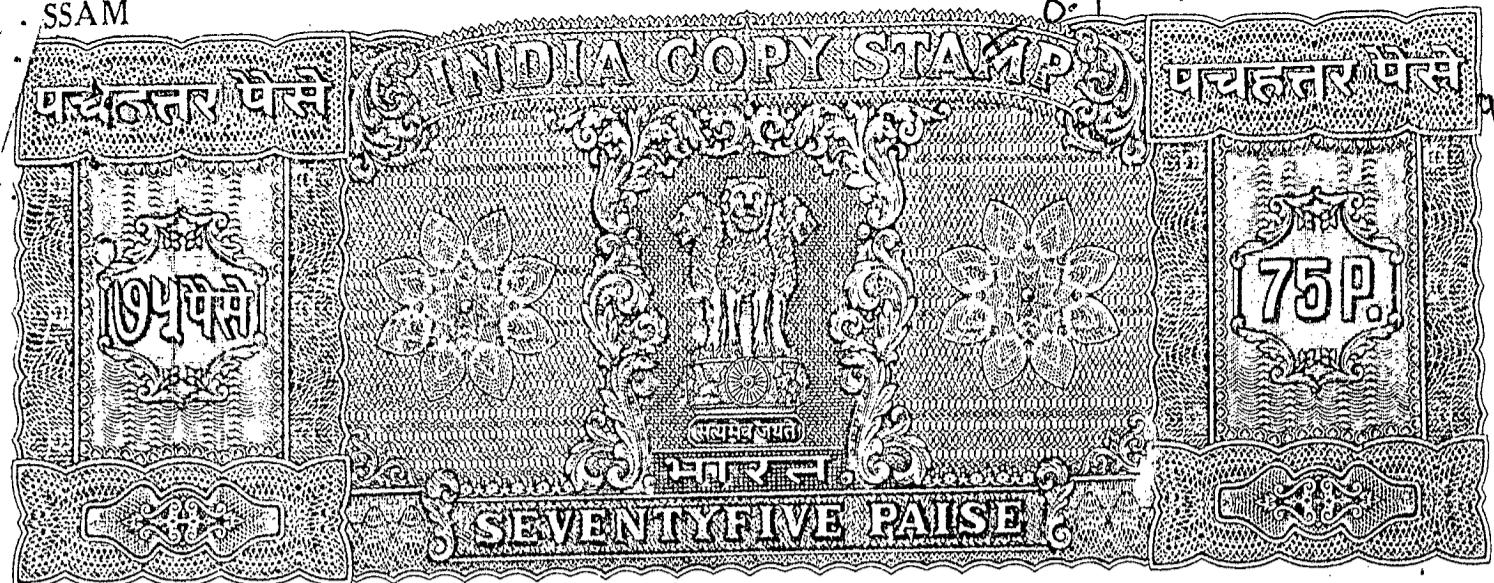


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(4)

man and also intimidated him, as alleged?

Altogether four witnesses including [the] 1/o and the medical officer have been examined in this case so far. The informant as well as the injured could not be brought in the witness box in spite of repeated attempts. It is also seen that in the mean time, he has been transferred somewhere else. Ultimately, upon hearing both sides, the prosecution was closed and the statement of the deceased person was also recorded u/s 362, 212 Cr. P.C. wherein he denied the charge.



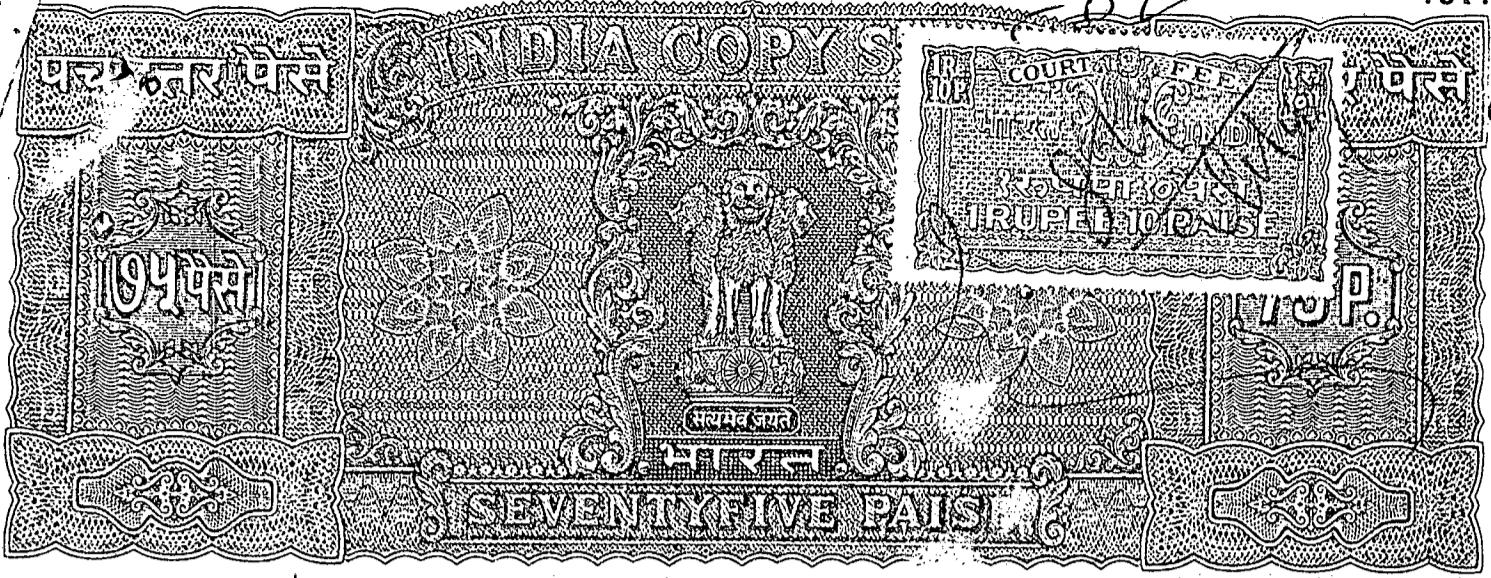
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(5)

### Decisions and reasons thereof

In an criminal trial // it is incumbent on the part of the prosecution to bring home the charge beyond all reasonable doubts. Now let us consider the evidence on record in its proper perspective //

At the very outset let me discuss the evidence of P.W. Sri D.K. Sarmah. This witness has stated that the informant was the manager of his office in the year 1994. That on 30.12.94 at around 11.20 am the informant sent a letter to the acc. d. through a peon to S.K. The acc. recd. ref.



प्रतिलिपि के लिए आवेदन की तारीख

Date of application for the copy.

स्टाम्प और फोलिओ की आवश्यक संख्या सूचित करने की निश्चित तारीख

Date fixed for notifying the requisite number of stamps and folios.

आवश्यक स्टाम्प और फोलिओ देने की तारीख

Date of delivery of the requisite stamps and folios.

तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी

Date on which the copy was ready for delivery.

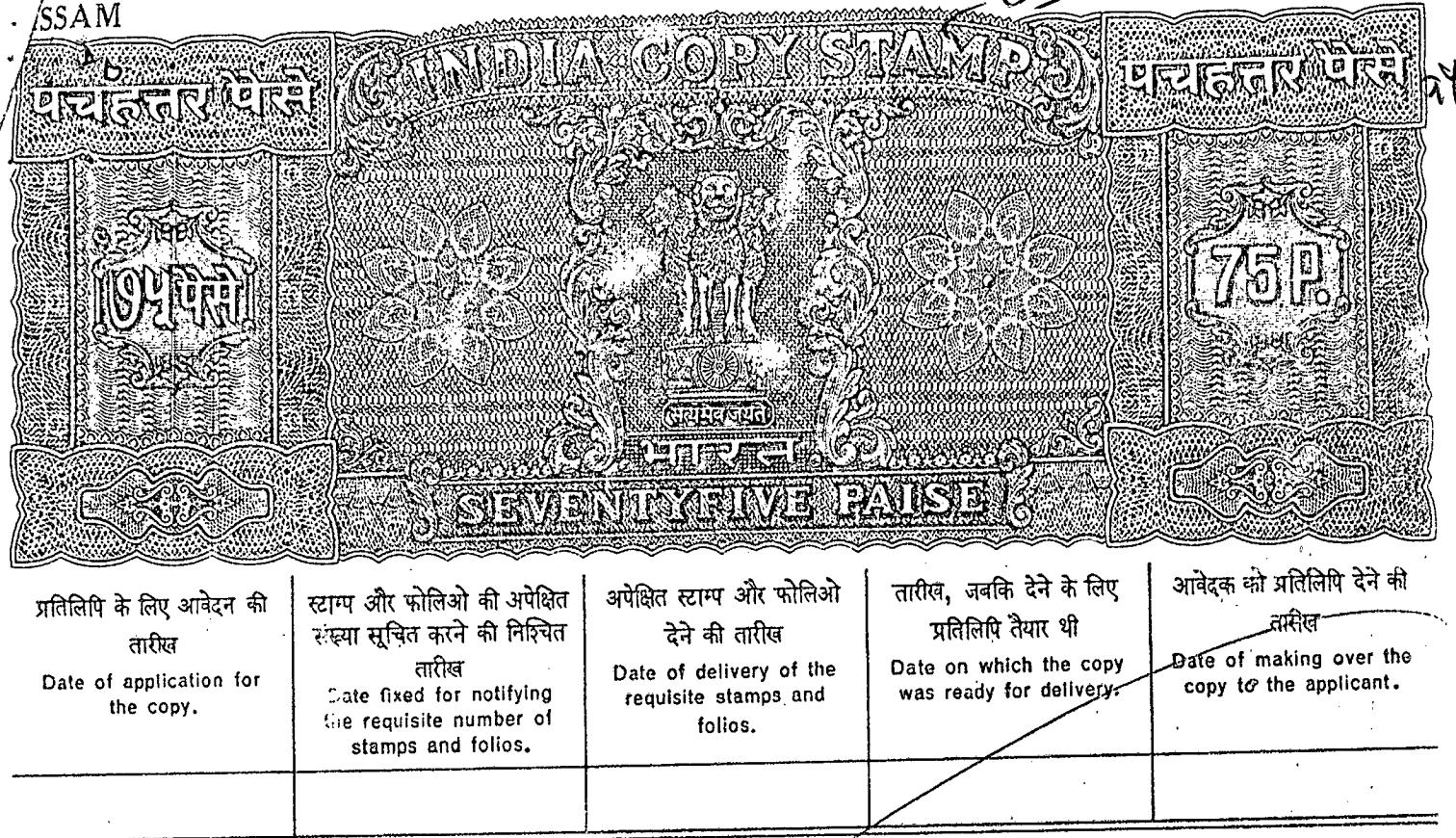
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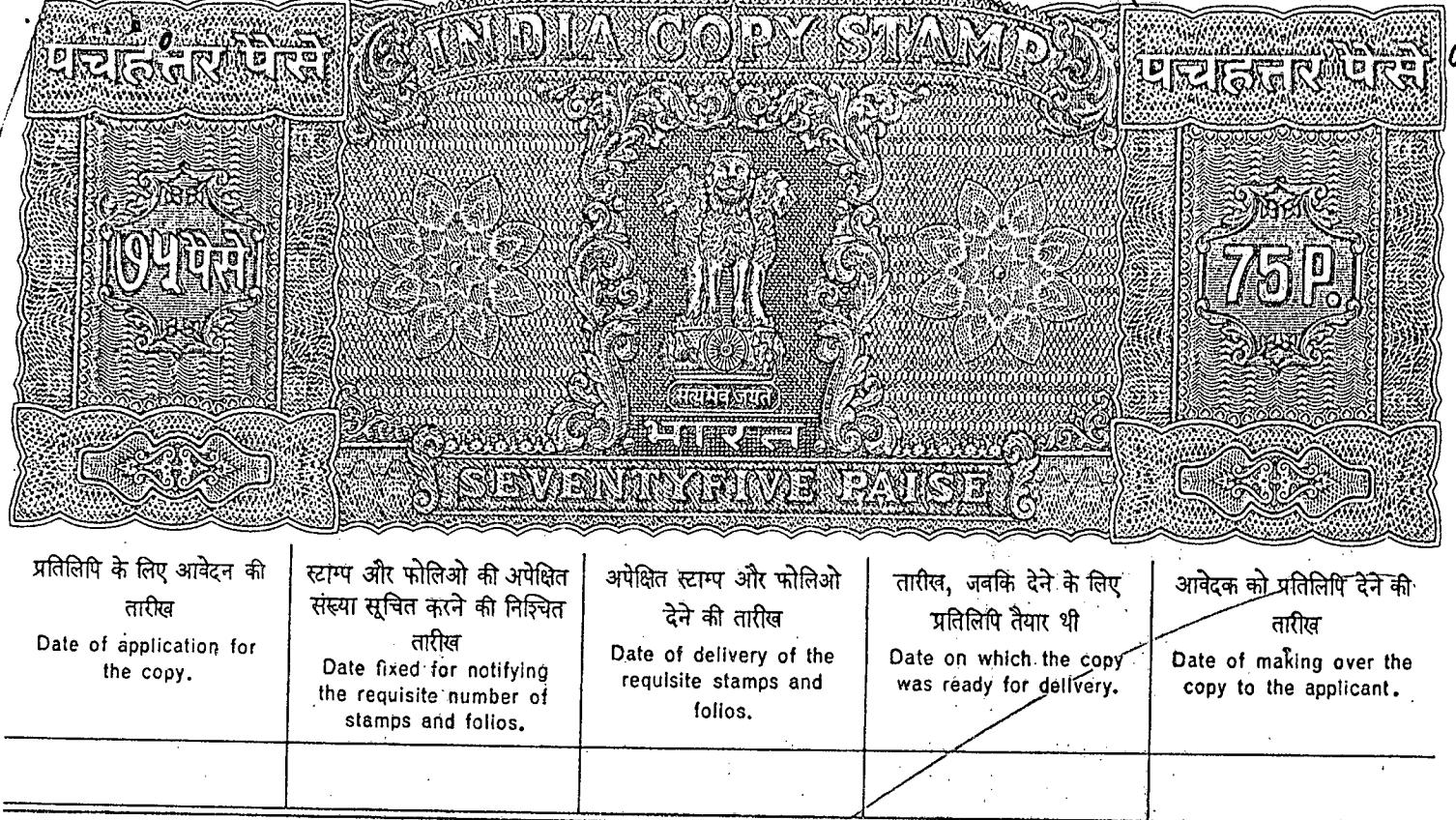
to accept the letter. In the meantime the informant came and an altercation took place and the accused had assaulted the informant by means of a scale. In the meantime another employee T. Harshika (PW2) intervened in the matter. The informant sustained some injuries over his forehead. In cross-examination this witness had specifically stated that some altercation took place between the accused and the informant and there was a scuffling. The defence suggested this witness that the accused never assaulted the informant and



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(7) *he is depositing falsely at the instance of his officer the informant, through the witness answered in negative. Likewise PW-2 has stated that on 30.12.94 at around 9.15 a.m. he was in the office and an altercation took place between the informant and the accused and the accused on a sudden assaulted the informant by means of a scale.*

*police during investigation seized the scale vide Ex-I whereupon Ex-1(C) is the sign twice in cross examination he has stated that the contents of the seizure list were not read over to him. T. - defence*



Suggested this witness that, no occurrence took place as alleged though the witness answered in negative. PW 3 is the doctor who has stated that on 30.12.94 at around 10.15 am he examined S.K. Sashpal in the civil Hospital and found one haemotoma in the right perital region.

Ex-2 is the injury report where upon Ex-2 (1) is his signature. In cross-examination he has stated that the injury report was given on the basis of the injury register maintained in the hospital. He has again admitted that the original

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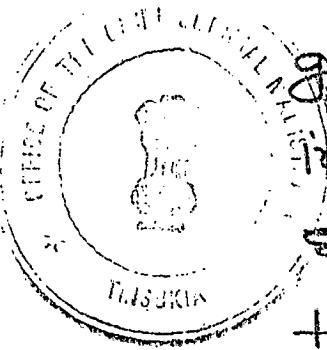
Injury register has not been submitted in the court. PW-4 is the 110 who has stated that on 30.12.94, he was attached to Tinsukia police station and on that day Mr. J. Senapati was the officiating in-charge of the police station. On that day, the informant S.K. Sasmal lodged the F.I.R. Ex-3, Ex.3(1) is the signature of the then O/C. On completion of investigation he submitted charge sheet. During investigation he seized a wooden scroll vide Ex-1. Ex 1(2) is the signature. While he visited the scene of crime, he could



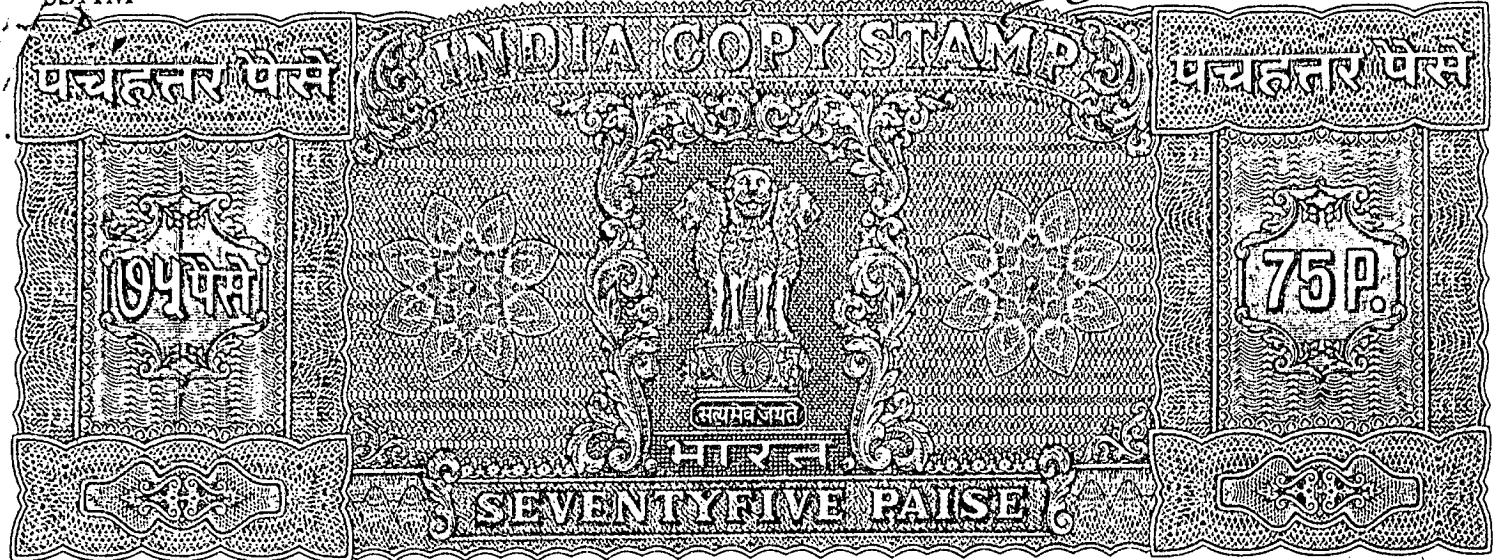
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(10)

not meet the injured, because in the meantime he was removed to the hospital. During investigation he collected the injury report. During investigation he collected the injury report. During cross-examination he has stated that, the FIR was receipt on 30.12.94 at around 5.30 P.M and he rushed to the E.S.I office and found the office closed. So on 31.12.94 he went to the office again and seized the row. The defence suggested this witness that on 31.12.94 the office was closed because of Saturday.



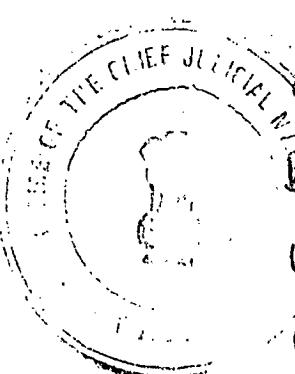
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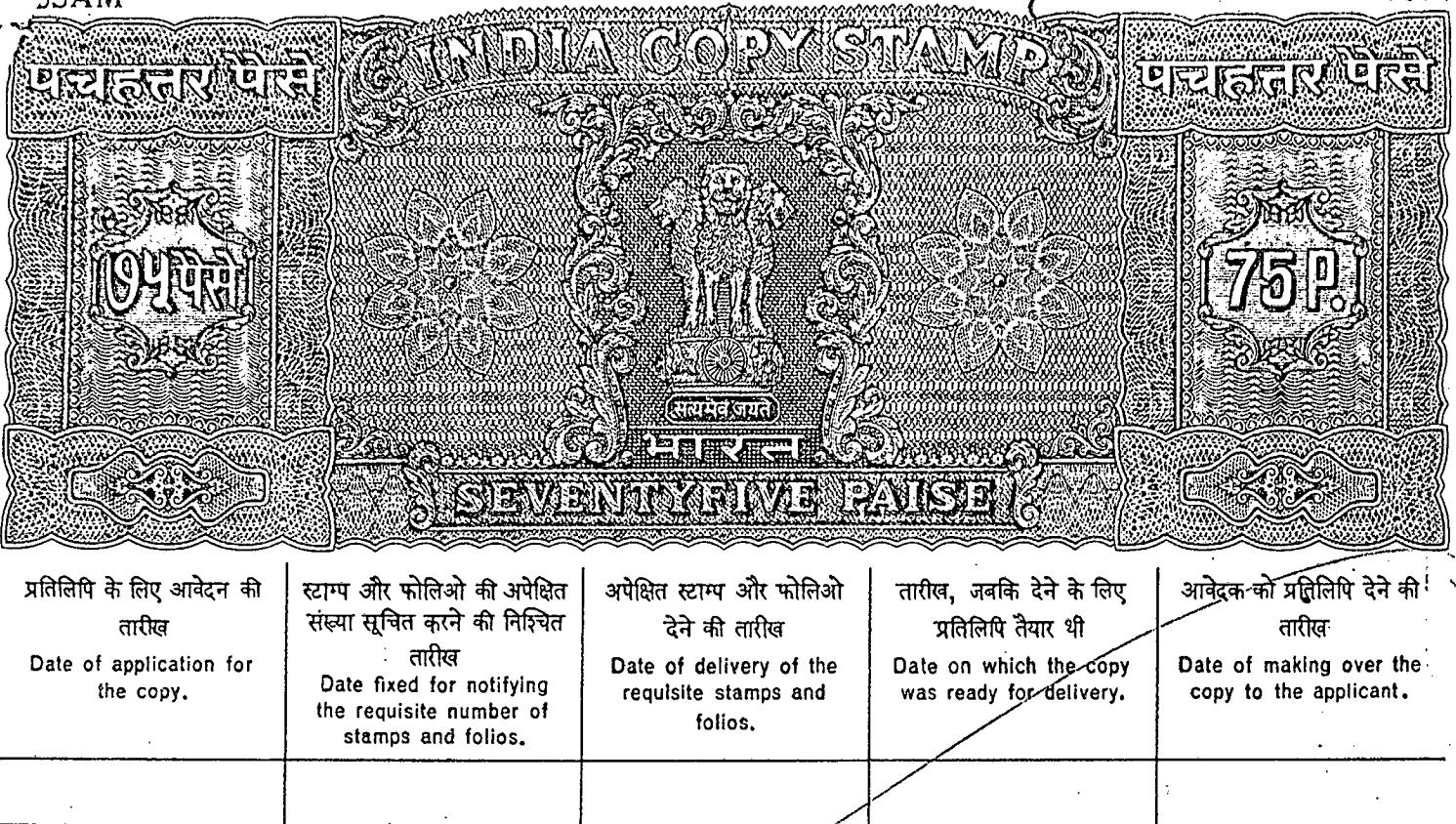
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(11)

I have considered the entire evidence on record and also heard the learned advocates for the parties. From the FIR it is seen that the informant was allegedly beaten up by the accused by means of wooden roll whereas PW1 and PW2 have specifically stated that the accused has assaulted the informant by means of a scale. So, we are getting two discrepant stories in regard to the nature of the weapon in fact used in the alleged crime. Learned advocate for the accused during the course of arguments submitted that

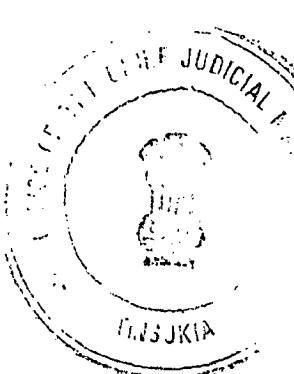


*JDR*

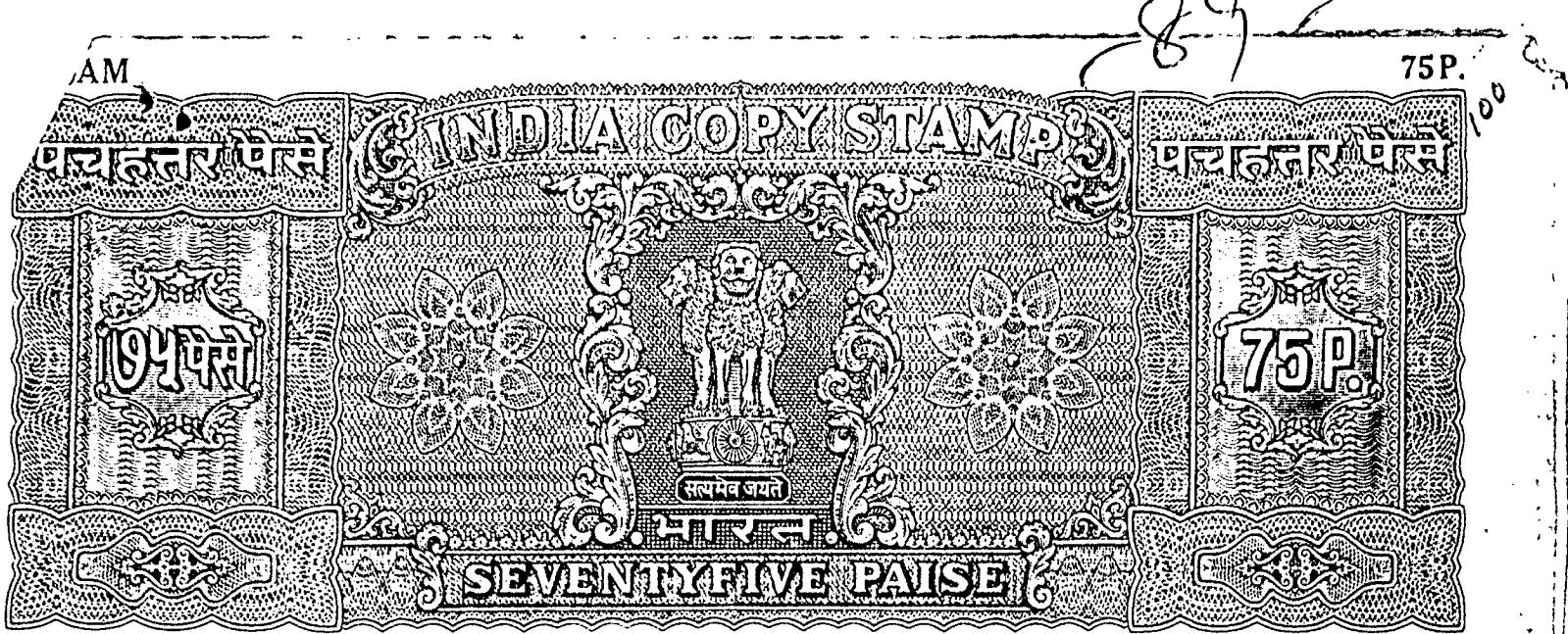


(12)

scroll and seals are two different things and they cannot be combined together. His contention is that, when the nature of weapon is disputed, the entire prosecution case becomes doubtful. I find considerable force in the submission the Advocate for the accused again submitted that the injured who happened to be most material witness in this case has not been examined, as such, no reliance should be placed on the prosecution version. I find some force in the submission. According to PW4 he seized the wooden scroll



*for*

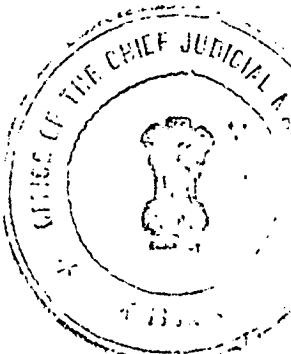


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(13)

on 31.12.94 vide Ext-1, I have considered the seizure list which goes to show that the seizure was made on 30.12.94.

If we consider the statement of PW4 and the seizure list we are getting two contradictory statement in regard to the actual date of seizure. The contradictory statements in regard to the date of seizure lends some doubt on the prosecution version. The advocate for the defence has again emphatically submitted that Ex. 2 the injury report shows that the doctor examined one Mr. S. K. Sashpaul, but the alleged



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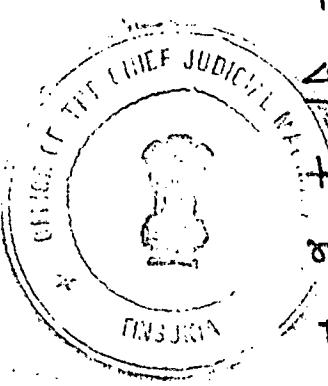
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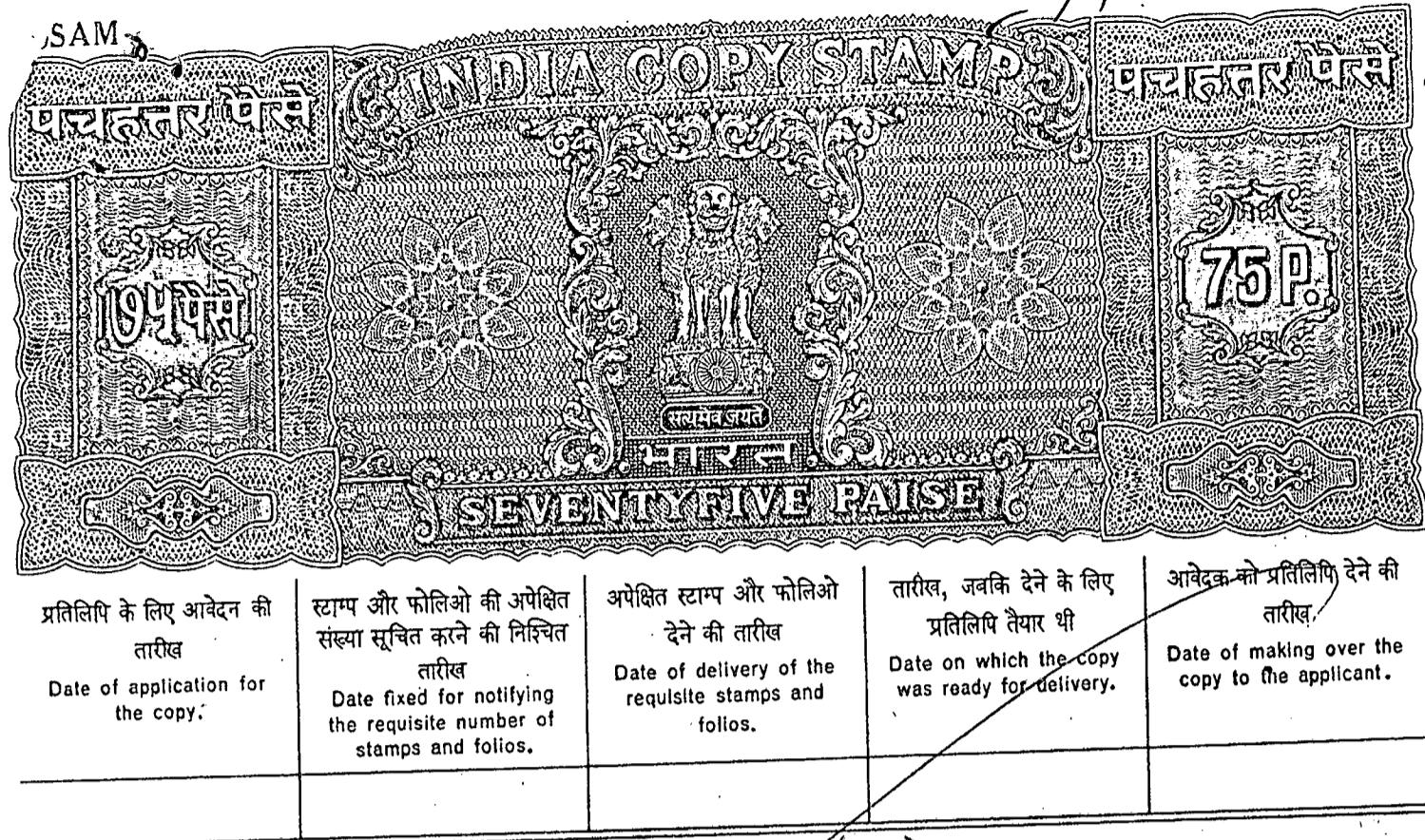
(14)

injured was Mr. S. K. Sashmal, so according to him the injured (informant) was not in fact examined by the doctor. I have considered the injury report also in this regard.

Injury report also goes to show that one S. K. Sashpaul was examined by the doctor on 30.12.96.

From the evidence of the doctor it is also doubtful who was the real injured. The advocate for the accused admittedly that the alleged occurrence took place on 30.12.96 at about 9.20 a.m. whereas the F.I.R. was lodged on the same day at about 5.30 p.m., the delay in lodging the F.I.R. has not



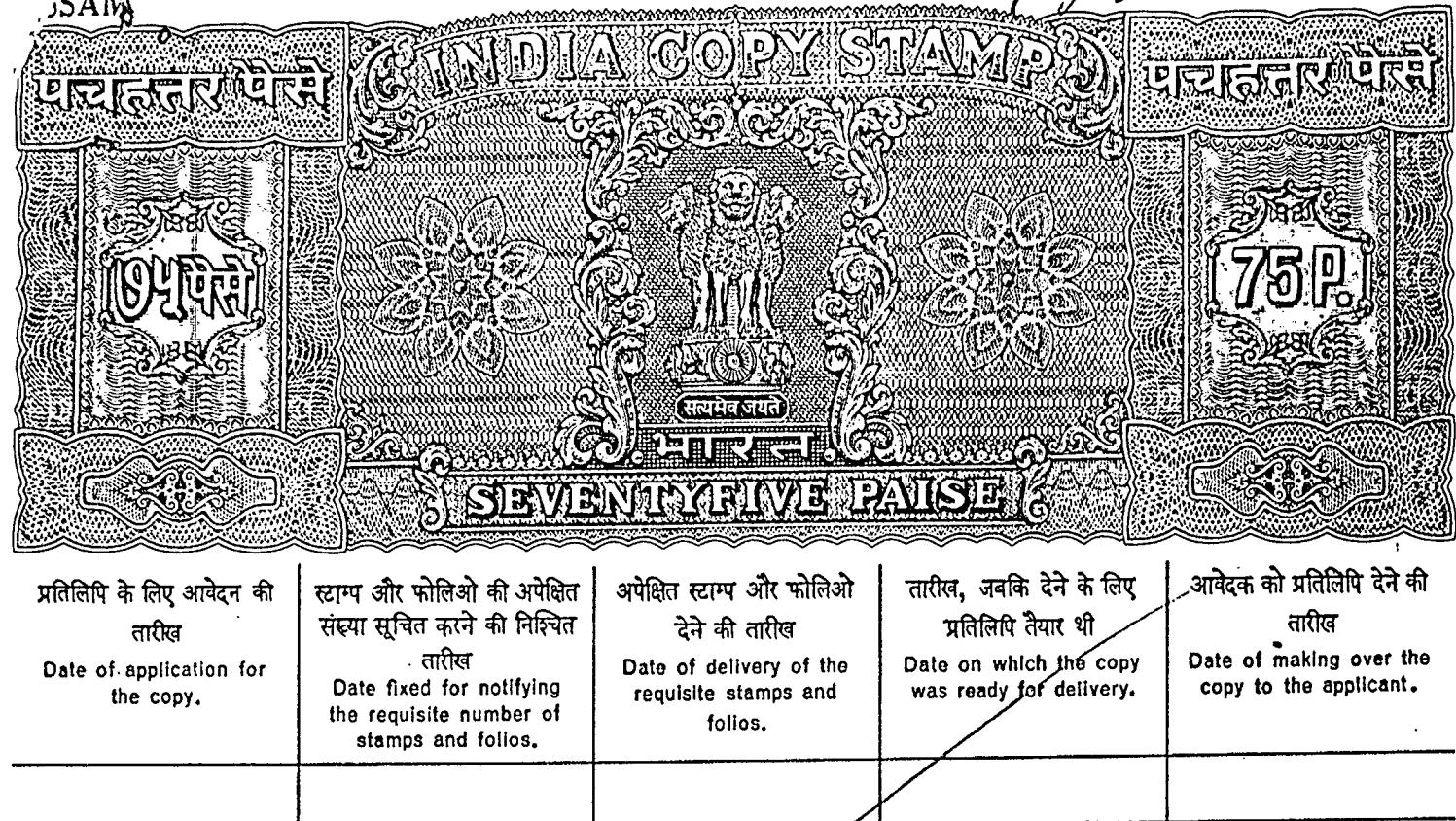


(15)

been explained by the prosecution and on this ground the prosecution case fails. I find substance in the submission. As it appears, the informant sustained some minor injuries, so he could have very well lodged the FIR immediately after the occurrence. But instead of doing so, he lodged the FIR at a belated stage. So, I feel that the so-called FIR can be viewed with suspicion. Had it been a case that the informant sustained grievous injuries then it could be presumed that the informant and others had to remain away for the



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treatment. But this is not the case here. Admittedly other employees were also present in the office at the time of occurrence, so any one of them could have lodged the FIR narrating the incident. In my considered view I hold that delay in lodging the FIR is also fatal to the prosecution.

In view of my decisions and discussions in the foregoing paragraphs, I am of the view that the prosecution suffers from doubt. The prosecution failed to produce the seized materials during trial. Non-submission of seized material





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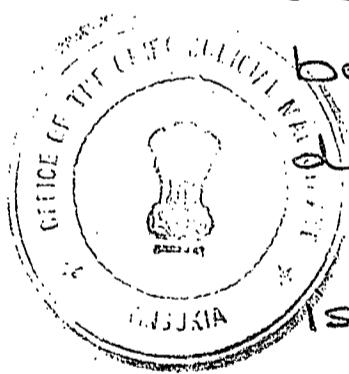
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21/1/97	21/1/97	21/1/97	21/1/97	21/1/97
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also casts a serious reflection on the genuineness of the prosecution version. A final huge area of doubt looming over the prosecution story and the accused is entitled to get benefit of doubt, which I hereby do.

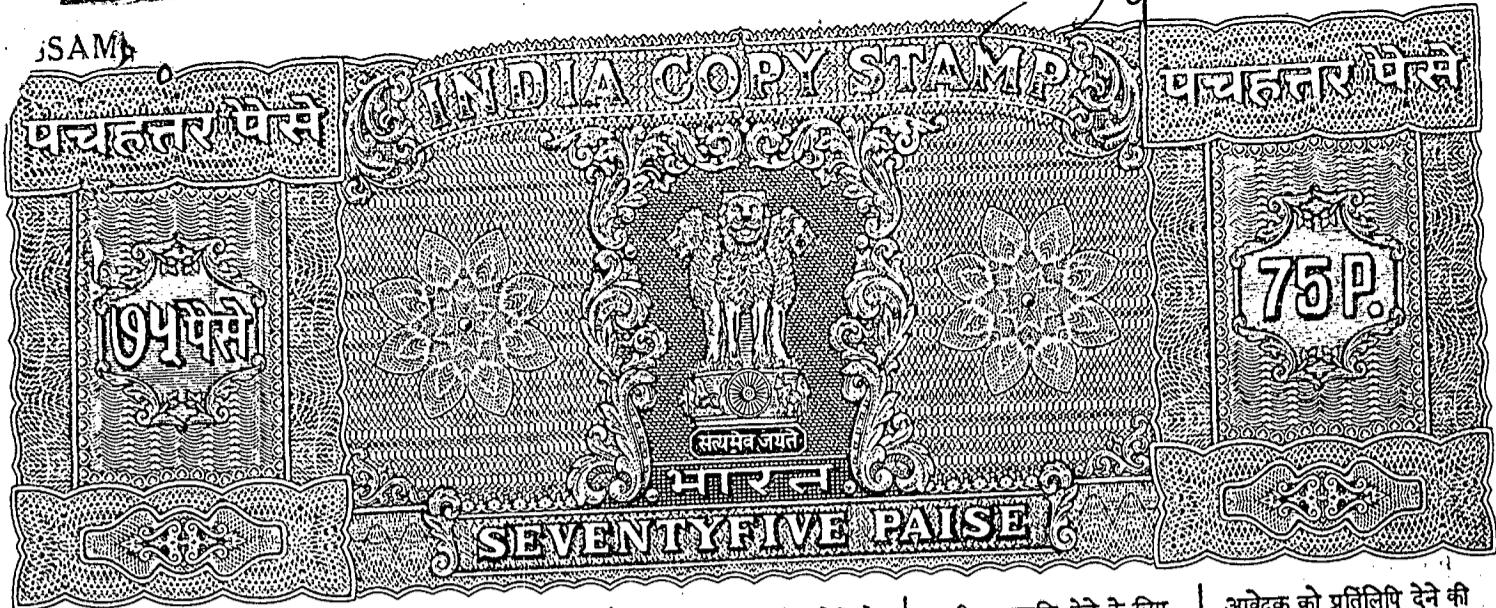


In the result, the accused is acquitted on benefit of doubt. The seized materials, if any, be destroyed in due course in accordance with law.

The judgment is delivered under the seal of the court on this 2nd day of January, 1997.

Sd/- D. K. Deb Roy

21/1/97  
(D. K. Deb Roy)



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Date of application for the copy.

स्टाम्प और फोलिओ की अपेक्षित संख्या सूचित करने की निश्चित तारीख  
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(8)

(D. K. Deb Roy)

chief judicial magistrate  
Tinsukia.

Transcribed by -

sd/- A. Bosrah

2/1/97

(A. Bosrah)

Dictated and corrected by me

sd/- D. K. Deb Roy

chief judicial magistrate  
Tinsukia



Copied by —

H. P. Devi  
8/1/97

Compared by —

P. Goswami  
8/1/97

J. C. Devi  
9/1/97

95  
Parakure-12  
106

INQUIRY REPORT  
ON  
THE DEPARTMENTAL INQUIRY HELD AGAINST  
MD. AKHTAR HUSSAIN, HEAD CLERK, E.S.I.  
CORPORATION, NORTH EASTERN REGION, GUWAHATI.

Office of the Joint  
Director(DE), East  
Zone, 124, A.P.C.Road,  
Calcutta-700 006.

I. LIST OF DOCUMENTS EXHIBITED :-

1. S-1 : Letter No.43-RD/MISC/2/93 dated 30.12.94 addressed to the Supdt. of Police, Tinsukia.
2. S-2 : Investigation Report of Sri C.R. Paul, Assistant Regional Director, Regional Office, Guwahati.
3. S-3 : Letter dt.3.1.95 from Sri S.K. Sasmal, Manager, Local Office Tinsukia.
4. S-4 : Statement dt.3.1.95 of Sri P.Sutradhar, Insurance Inspector, Tinsukia.
5. S-5 : Statement dt.21.1.95 of Sri D.K. Sarma, Peon, Local Office Tinsukia.
6. S-6 : Statement dt.21.1.95 of Sri T.Mazarika, Record Sorter, Local Office Tinsukia.
7. S-7 : Statement dt.21.1.95 of Sri B.C. Das, U.D.C., Local Office Tinsukia.
8. S-8 : Civil Hospital, Tinsukia, Discharge slip dt.1.1.95.
9. S-9 : Application for FIR dt.30.12.94 from Local Office Tinsukia staff.
10. S-10: Letter of Local Office, Tinsukia dt.30.12.94 to Tinsukia Police Station.
11. S-11: Letter No.TSK/V/95 dt.12.1.95 from Tinsukia Police Station.
12. S-12: Letter No.43-TSK/Imm./Adm/91 dt.12.1.95 of Local Office Tinsukia.

Conversed  
26/8/99  
M. Hafiz  
II. LIST OF WITNESSES EXAMINED :-

1. Sri P. Sutradhar, Manager, Local Office Tinsukia, North Eastern Region (PW-1).
2. Sri S.K. Sasmal, Ex-Manager, Local Office Tinsukia now posted in Calcutta, E.S.I. Corporation (PW-2).

Contd..... P/2

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OK

- 3) Sri B.C. Das, UDC-Cashier, Local Office ~~Patharkata~~ Tinsukia, E.S.I. Corporation, North Eastern Region, (PW-3).
- 4) Sri D.K. Sarmah, Peon, Regional Office, E.S.I. Corp., Guwahati, N.E. Region (PW-4).
- 5) Sri T. Hazarika, Record Sorter, Local Office Tinsukia, E.S.I. Corporation, N.C. Region (PW-5).
- 6) Sri C.R. Paul, Dy.Director, Regional Office, E.S.I.C., Calcutta (PW-6).

*Completed  
(3) 26/8/98  
A.M. Kalita*

INQUIRY REPORT in the case against Md. Akhtar Hussain, Head Clerk, E.S.I.C. North Eastern Region.
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Under Sub para (1) of para (3) of the Third Schedule of the E.S.I. Corporation (Staff and Conditions of Service) Regulations, 1959, Shri R.K. Shukla, Jt. Director (DE), East Zone was initially appointed as the Inquiring Authority by the Regional Director, E.S.I. Corporation, North Eastern Region vide Order No.43-S-11/18/95-Vig( ) dated 8.7.97. Subsequent of my posting as Jt. Director (DE), East Zone vice Shri Shukla I was appointed by the Regional Director, N.E. Region as the Inquiring Authority to inquire into the charges framed against Md. Akhtar Hussain vide Order No.43.S.11/18/95-Vig. (A) dated 14.8.98. Shri K.C. Ghosh, Asstt. Director was appointed as the Presenting Officer by the Regional Director, N.R. Region. I have since completed the inquiry and on the basis of documentary and oral evidences adduced before me, prepared my Inquiry Report as under :-

PARTICIPATION OF THE CHARGED OFFICER AND THE DEFENCE ASSISTANT AVAILABLE TO HIM.

The Charged Official participated in the proceedings from beginning to end without Defence Asstt. through out the enquiry proceedings held on 11.97, 24.2.98, 26.10.98, 4.1.99, 3.5.99 and 4.5.99.

ARTICLE OF CHARGE AND STATEMENT OF IMPUTATION OF MISCONDUCT

The following is Article of Charge framed against Md. Akhtar Hussain, Head Clerk, E.S.I. Corporation, North Eastern Region.

Contd....P/3.

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ARTICLE-I.

Md. Akhtar Hussain, while functioning as Head Clerk in Tinsukia Local Office, E.S.I. Corporation during the period from 5.6.1991 onwards, committed gross mis-behaviour/misconduct as much as he man-handled/physically assaulted Sri S.K. Sasmal, the then Manager, Local Office, Tinsukia in the office during office hours at about 10-30 A.M. without any reason on 30.12.94 without any reason and inflicted injury with a wooden roller to Sri Sasmal on his fore-head as a result of which Sri S.K. Sasmal, Manager Local Office had to be admitted into Civil Hospital Tinsukia on 30.12.94 and was discharged on 1.1.95. FIR has also been lodged in the Police Station, Tinsukia on 30.12.1994.

~~dated 14.3.1995~~  
Md. A. Hussain, Head Clerk, Local Office, Tinsukia who is now under suspension from 14.2.1995 vide Memo No.43-A.20/11-13/95-Estt. dated 14.3.1995 in connection with the above incident has thus exhibited utter lack of integrity, devotion to duty and in subordination which is unbecoming of a Corp. employee and thus violated Rule 3(1) (i) (ii) & (iii) of the C.C.S. (Conduct) Rules, 1964 to be read with Regulation 23 of the Employees' State Insurance Corporation (Staff & Conditions of Service) Regulations, 1959 as amended.

According to the statement of imputation of misconduct, Md. Akhtar Hussain, Head Clerk, while posted at Tinsukia Local Office, E.S.I. Corporation, North-Eastern Region on 30.12.1994 attended office at 9-15 A.M. and signed on the Attendance Register. Then he was requested by Sri D.K. Sarmah, Peon to receive two letters meant for him from the Peon Book. At this, Md. A. Hussain became furious and attacked Sri S.K. Sasmal, Manager, Local Office, Tinsukia in the office during office hours at about 10-30 a.m. on 30.12.1994 and man-handled/physically assaulted with a wooden roller on his fore-head as a result of which Sri S.K. Sasmal, Manager had to be admitted into Civil Hospital, Tinsukia on 30.12.1994 for head injury vide Hospital Slip No.546 and discharged on 1.1.1995. FIR was also lodged in the Tinsukia Police Station on 30.12.1994 for this incident vide C/No.555/94. Md. A. Hussain, Head Clerk physically assaulted Sri S.K. Sasmal, Manager, Local Office, Tinsukia without any reason in the office in front of all the office staff members and also subverted the discipline of the office.

Contd....P/4.

Md. A. Hussain, Head Clerk has been suspended for the above mis-behaviour from 14.2.1995 vide Memo No.43-A.29/11/13/95-Estt dated 14.2.1995.

Md. A. Hussain, Head Clerk has thus committed gross mis-conduct/mis-behaviour and displayed utter lack of integrity, devotion to office duty and in subordination which is unbecoming of a Corporation employee and violated Rule 3(1) (i) (ii) & (iii) of the C.C.S. (Conduct) Rules, 1964 to be read with & Regulation 23 of E.S.I. (Staff and Conditions of Service) Regulations, 1959 as amended.

4. CASE OF THE DISCIPLINARY AUTHORITY.

The Charge in Brief :-

*(N. H. Hussain 26/8/99  
(N. H. Hussain)*

Md. A. Hussain while functioning as Head Clerk in Tinsukia Local Office, E.S.I. Corporation during the period from 5.6.1991 onwards committed gross mis-behaviour/misconduct as much as he man-handled/physically assaulted Sri S.K. Sasmal, the then Manager Local Office, Tinsukia in the office during office hours on 30.12.94 without any <sup>reason</sup> subverting the discipline of the office and inflicted injury with a wooden scale to Sri S.K. Sasmal on his fore-head as a result of which Sri S. K. Sasmal had to be admitted into Civil Hospital Tinsukia on 30.12.94 for head injury vide Hospital Discharge Slip No.516 and ~~was~~ discharged on 1.1.95. FIR was also lodged in the Tinsukia Police Station on 30.12.94 for the incident vide No.C/No.559/94. Md. A. Hussain, Head Clerk was arrested by the Police on 9.1.95 in connection with the incident vide Memo No.TSK/V/95 dated 12.1.95 from the Superintendent of Police Tinsukia. Md. A. Hussain, Head Clerk has been suspended by the Regional Director, Guwahati for the above misbehaviour from 14.2.95 vide Memo No.43-A.20/11/13/95-Estt dated 14.2.95.

Md. A. Hussain, Head Clerk (under suspension), E.S.I. Corporation, N.E. Region was thus Charge Sheeted with violation of Rule-3 of the C.C.S. (Conduct) Rules, 1964 read with Regulation-23 of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 for gross mis-behaviour/misconduct and utter lack of integrity which

is unbecoming of a Corporation employee vide Memo No.43-S. 11/18/95-Vig(AII) dated 12.6.97. As such a departmental proceeding was ordered by the Competent Authority to be held against Md. A. Hussain for his mis-behaviour/misconduct. A formal departmental inquiry was accordingly held by the Joint Director(DE)(EZ), E.S.I. Corporation, Calcutta in which I was appointed as Prescnting Officer on behalf of the Disciplinary Authority vide Order No.43-S.11/18/95-Vig(AII) dated 8.7.97.

*Complaint  
(3/2 & 8/99)  
(M. Faheem)*  
The preliminary hearing in the case was held on 21.11.97 followed by regular hearing on 24.2.98, 26.10.98, 4.1.99, 3.5.99 and 4.5.99.

In course of regular hearing the Prosecution Witnesses cited in the Charge Sheet were Examined and Cross-examined and thus confirmed the listed documents produced as exhibits in the proceedings, as under :-

Sri S.K. Sasmal, Ex-Manager, Local Office Tinsukia, E.S.I.Corporation now posted in Calcutta during ~~from~~ his depositions as Prosecution Witnesses on 26.10.98 stated that on 30.12.94 he served two Memos. to Md. A. Hussain, Head Clerk in the Peon Book through Sri D.K. Sarmah, Peon as Md. A. Hussain was obstructing normal office functioning of the Local Office Tinsukia prior to 30.12.94. At this Md. Hussain was shouting very much and he told Md. Hussain if he had any to say anything, he could come to his room and expressed his grievances. Just saying this he turned back to his room immediately he heard a sound from the other room that Md. A. Hussain was going to hit ~~at~~ him. Spontaneously he turned his face and Md. Hussain hit him on his fore-head with a wooden office scale in front of Sri T. Hazarika, Record Sorter and Sri D.K. Sasmal, Peon who obstructed Md. Hussain from further hitting and in the meantime Sri B.C. Das, U.D.C. who was sent by the Manager outside for some official work, returned to Local Office seperated them. Sri S.K. Sasmal was seriously injured and admitted in the Civil Hospital Tinsukia with head injury for treatment on 30.12.94 and ~~was~~ discharged on 1.1.95 vide Hospital Discharge Slip dated 1.1.95 (P.Ex-8). F.I.R. was lodged in the Tinsukia Police Station on the same day by the office staff as he was under treatment in the Hospital.

Contd.....P/6.

Sri P. Sutradhar, Insurance Inspector, Tinsukia, N.E. Region during his deposition as Prosecution Witness on 26.10.98 confirmed the document marked as P.Ex-4.

Sri B.C. Das, U.D.C., Local Office Tinsukia during his deposition on 4.1.99 as Prosecution Witness confirmed the document marked as P.Ex-7.

Sri D.K. Sarinali, Peon, Local Office Tinsukia during his deposition on 4.1.99 as Prosecution Witness corroborated the incident and confirmed the document marked as P.Ex-5.

Sri T. Hazarika, Record Sorter, Local Office Tinsukia during his deposition on 3.5.99 as ~~Prosecution~~ Prosecution Witness corroborated the incident and confirmed the document marked as P.Ex-6.

*Concluded  
on 26/8/99  
M. Kalita*  
Sri C.R. Paul, Ex-Assstt. Regional Director, S.S.I.Corpn., Guwahati and now posted as Dy. Director (Trg.), S.S.I.Corporation Calcutta has conducted investigation of the above case as directed by the Regional Director, Regional Office, Guwahati. During his depositions on 4.5.99, he stated that he carried out preliminary investigation on 2nd and 3rd January, 1995 regarding physical assault on Sri S.K. Sasmal, Ex-Manager, Local Office, Tinsukia by Md. A. Hussain, Head Clerk on 30.12.94 and confirmed his Report dated 12.1.95 (P.Ex-2). In his report, Sri C.R. Paul has also stated that by attempting and doing physical attack on Sri S.K. Sasmal, Manager, Md. Hussain being a Govt. employee not only committed serious offence but also created a sense of terror not only among the office staff members of Local Office but also among Insured Persons/women and by this wrongful act of Md. A. Hussain, the dignity of the Local Office has been lowered down before the beneficiaries.

Dr. S.K. Sarmah, Senior Medical & Health Officer, Civil Hospital Tinsukia who medically examined the patient Sri S. K. Sasmal in the Hospital on 30.12.94 was requested to adduce evidence on 4.5.99, but Dr. Sarmah has shown his inability to appear before the departmental proceedings and accordingly his name has been dropped from the list of witnesses by the Inquiring Authority on 4.5.99. But it is confirmed that ...

Sri S.K. Sasmal, Ex-Manager, Local Office Tinsukia who admitted into the Civil Hospital, Tinsukia with head injury on 30.12.94 for treatment and was discharged on 1.1.95 was examined by the Medical Officer vide Hospital Discharge Slip No.546 dated 1.1.95 (P.Ex-8).

~~REASON~~ Md. A. Hussain, Head Clerk (under suspension), Charged Official did not produce any witness in defence of his case.

POINT IN ESTABLISHING THE CHARGE

*Complaint 26/8/95*  
*M. Kalita*  
Md. A. Hussain, Head Clerk (under suspension), Local Office, Tinsukia, E.S.I. Corporation, N.E. Region man-handled/physically assaulted Sri S.K. Sasmal, Manager, Local Office Tinsukia during office hours on 30.12.94 in front of the office staff members with a office wooden scale on his fore-head without any reason and subverted the discipline of the office. Sri S.K. Sasmal, Manager had to be admitted into the Civil Hospital Tinsukia with head injury on 30.12.94 for treatment and discharged on 1.1.95 vide Discharge Slip No.546 dated 1.1.95 (P.Ex-8). F.I.R. was lodged in the Tinsukia Police Station on 30.12.94 vide No.C/No.554/94. Md. A. Hussain was also arrested by the Police on 9.1.95 in connection with the incident vide Memo No.TSK/V/95 dt.12.1.95 (P.Ex-11) and he has been suspended for the above misbehaviour from 14.2.95 by the Regional Director, Guwahati.

Thus, the above observation and other facts disclosed while examining the cited documents in support of the Charge ~~REASON~~ and the evidence adduced by the Prosecution Witnesses corroborating the facts and circumstances of the case during the course of hearing, it has been established beyond reasonable doubt that Md. A. Hussain, Head Clerk (under suspension) physically assaulted his superior officer, Sri S.K. Sasmal, Ex-Manager, Local Office Tinsukia during office hours on 30.12.94 in front of the office staff members with a office wooden scale on his fore-head without any reason and subverted the discipline in this office.

Thus, Md. A. Hussain, Head Clerk (under suspension), E.S.I. Corporation, N.E. Region has committed gross misconduct/misbehaviour and displayed utter lack of integrity/indiscipline and in subordination which is unbecoming of a Corp.

employee and violated Rule-3 of the C.C.S. (Conduct) Rules, 1964 to be read with Regulation-23 of the Employees' State Insurance (Staff and Conditions of Service) Regulations, 1959 as amended and as imputed in the charge.

5. CASE OF THE DEFENDANT.

Md. Akhtar Hussain submitted his statement of Written Brief as under :

PARA-1 "The Charge in brief" of the Presenting Officer

REPLY - Defence Statement of the Charged Official (Md. A. A. Hussain) against "the charge in brief".

*(Signed) A. Hussain (M. Kalita)*  
The charge of the Regional Director, ESIC, Guwahati vide Charge Sheet No. 43-S.11/18/95-Vig(AII) dt. 12.6.97 is that :-

Annexure-I. Md. A. Hussain, while functioning as E.S.I. Corporation during the period from 1991 in Tinsukia Local Office, committed gross mis-behaviour/misconduct as much as he man-handled/physically assaulted Sri S.K. Sasmal, the then Manager, Local Office, Tinsukia in the office during office hours at about 10-30 a.m. on 30.12.94 without any reason and inflicted injury with a WOODEN ROLLER to Sri Sasmal on his fore-head as a result of which Sri S.K. Sasmal, Manager, Local Office had to be admitted into Civil Hospital, Tinsukia on 30.12.94 and was discharged on 1.1.95. FIR has also been lodged in the Police Station, Tinsukia on 30.12.94.

Annexure-II. As same as in Annexure-I.

WHEREAS the Presenting Officer, ESIC, R.O., Guwahati has stated in his "the charge in brief" that -

1. The nature of weapon is a WOODEN SCALE whereas the nature of weapon has been stated as WOODEN ROLLER by the Regional Director, ESIC, Guwahati vide his Charge Sheet dated 12.6.97.

2. The Presenting Officer has not stated the time of the incidence of the alleged physical assault on 30.12.94 WHEREAS the Regional Director, ESIC, Guwahati has stated the time of the alleged Physical Assultation is at about 10-30 a.m. on 30.12.94.

3. Md. A. Hussain, Head Clerk had already been ~~under examination~~ ACQUITTED from the charge of FIR dated 30.12.94 under Police Case No.555/94 followed by G.R. Case No.1658/94 by the Hon'ble Chief Judicial Magistrate, Tinsukia Court vide Judgement dt. 2.1.97 (Certified Judgement copy dt.2.1.97 had already been submitted to the Regional Director, ESIC, Guwahati vide my letter dt. 31.1.97) but the Regional Director, ESIC, Guwahati had again issued Charge Sheet against me (Md. A. Hussain, H.C.) vide Regional Director, Charge Sheet dt.12.6.97 with a FRESH CHARGE but the Presenting Officer, ESIC, R.O., Guwahati has not stated this fact in his "The charge in brief".

*Opposed  
CJM  
M. Hussain  
B1/26/98*  
Md. A. Hussain, Head Clerk had already submitted/produced documentary evidences/documentary witnesses before the Inquiring Authority under his Order Sheet No.32-S.11/18/AII/De/CAL/97 dt.26.10.98 in support of my (Md. Hussain) defence in the case viz. (i) Certified Judgement copy dt.2.1.97 of the Hon'ble Tinsukia Court under Police Case No.555/94 followed by G.R. Case No.1658/94 (Photo copy of the Judgement dt.2.1.97 is enclosed again for ready reference) (ii) Authenticated copy of the Police Investigating Officer, Tinsukia P.S. Report including the witness statements of the case under Police Case No.555/94.

WHEREAS the Presenting Officer, ESIC, Guwahati has stated in his "the charge in brief" that Md. A. Hussain, Head Clerk, Charged Official did not produce any witness in defence of his case.

PARA-2 "Point in establishing the charge" of the P.O.

REPLY - Defence statement of the Charged Official (Md. Hussain) against the charge of the Presenting Officer and against the charge of the Regional Director, ESIC, Guwahati establishing the CHARGE as FALSE.

B.

POINTS ESTABLISHING THE REGIONAL DIRECTOR & P.O's CHARGE AS FALSE.

1. The charge vide FIR dt. 30.12.94 submitted by Sri S.K. Sasmal, Manager, Local Office, Tinsukia wherein Sri S.K. Sasmal had alleged that he was physically assaulted by Md. A. Hussain in the office on 30.12.94 at about 9-20 a.m. under Tinsukia Police Case No. 555/94 followed by G.R. case No. 1658/94 had already been settled by the Hon'ble CJM, Tinsukia Court vide Judgement dt. 2.1.97 whereby Md. A. Hussain, Head Clerk had already been **ACQUITTED** on 2.1.97 from the charge of the FIR dt. 30.12.94 under Tinsukia Police Case No. 555/94 followed by G.R. Case No. 1658/94.

Hence, the charge of the FIR dt. 30.12.94 under Tinsukia Police Case No. 555/94 of Sri S.K. Sasmal, Manager, Local Office, Tinsukia vide his FIR dt. 30.12.94 is established to be **DISPOSED OFF**. (Judgement copy enclosed)

*(M.T. 26/10/97)*  
Points ~~mentioning~~ establishing the charge of the Regional Director, ESIC, Guwahati as **FALSE**.

- a. The nature of weapon has been stated as **WOODEN ROLLER** by the Regional Director, ESIC, Guwahati vide his Charge sheet No. 43. S-11/18/95-Vig (AH) dt. 12.6.97 WHEREAS the Presenting Officer, has stated the nature of weapon as **WOODEN KNIFE SCALE**.

Hence, the nature of weapon stated by the Regional Director as **WOODEN KNIFE ROLLER** is **CONTRADICTORY** to the statement of Presenting Officer who has stated the nature of weapon as **WOODEN SCALE**.

And, hence the charge of the Regional Director, ESIC, Guwahati is doubtful and **NOT PROVED**.

- b. The time of the incident of physical assault to Sri S.K. Sasmal, Manager, has been stated as at about 10-30 a.m. on 30.12.94 under Regional Director, ESIC, Guwahati Charge Sheet No. 43-S.11/18/95-Vig (AH) dt. 12.6.97 WHEREAS the Presenting Officer has not stated the actual time of incidence on 30.12.94 intentionally, which has been stated by the Prosecution Witnesses as at about 9.20/9.25 a.m. on 30.12.94.

Hence, the charge of the R.D., ESIC, Guwahati is **CONTRADICTORY** to the statement of the Prosecution Witnesses and hence the charge of the R.D., ESIC, Guwahati is not proved and therefore, the charge of the R.D., Guwahati against Md. A. Hussain is established as **FALSE**.

The above points are established from the examination and cross-examination of the Prosecution Witnesses on the basis of the hearing before the Inquiring Authority on 26.10.98, 4.1.99, 3.5.99 and 4.5.99 as under :-

I. Dr. S.K. Sarmah, Sr. Medical and Health Officer, Civil Hospital, Tinsukia has failed to attend on 4.5.99 as called for before the Inquiring Authority to tender his evidence and also to confirm regarding any treatment provided to Sri S.K. Sasmal, Manager by the said doctor on 30.12.94 in support of the DOCUMENT "Civil Hospital Tinsukia Discharge Slip dt. 1.1.95" mentioned under Annexure-III, Sl. No. 8 of the Regional Director, ESIC, Guwahati Charge Sheet dated 12.6.97.

And hence, the DOCUMENT of the Civil Hospital, Tinsukia Discharge Slip dt. 1.1.95 as produced by the Regional Director, ESIC, Guwahati in support of the injury of Sri S.K. Sasmal, Manager is NOT PROVED and hence doubtful.

II. Sri B.C. Das, UDC and Sri T. Hazarika, R/S have admitted before the Inquiring Authority on 4.1.99 and 3.5.99 respectively that Md. A. Hussain had physically assaulted Sri S.K. Sasmal, Manager in the office on 30.12.94 by a WOODEN SCALE whereas the R.D., ESIC, Guwahati vide his charge sheet dt. 12.6.97 has stated that Md. A. Hussain has physically assaulted Sri S.K. Sasmal, Manager on 30.12.94 at about 10-30 a.m. by a WOODEN ROLLER. FIR dt. 30.12.94 also states as WOODEN ROLLER.

Hence, the nature of weapon as WOODEN ROLLER as stated by the R.D., ESIC, Guwahati vide his charge sheet dt. 12.6.97 is CONTRADICTORY to the statement of the Prosecution Witnesses (viz. Sri B.C. Das, UDC and Sri T. Hazarika, R/S) and also to the statement of the Presenting Officer who has also ~~stated~~ stated the nature of weapon as WOODEN SCALE in his "the charge in brief".

And hence the charge of the R.D., ESIC, Guwahati is doubtful and not proved and therefore, the R.D.'s charge is established as FALSE.

I. (a) Sri P. Sutradhar, I.I., Sri B.C. Das, UDC and Sri C.R. Paul, Ex-ARD have admitted before the Inquiring Authority on 26.10.98, 4.1.99 and 4.5.99 respectively that they (said P.Ws.) are NOT EYE-WITNESSES of the alleged physical assault to Sri S.K.

Sasmal, the then Manager, Local Office Tinsukia in the office by Md. A.Hussain on 30.12.94 at about 10-30 a.m. WHEREAS THE R.D. has produced them as PROSECUTION WITNESSES in his charge.

III. (b) Sri S.K. Sasmal, Manager, Sri D.K. Sarma, Peon and Sri T. Hazarika, R/S have admitted before the Inquiring Authority on 26.10.98, 4.1.99 and 3.5.99 respectively that the alleged physical ~~■~~ assaultation to Sri S.K. Sasmal, Manager by Md.A. Hussain took place in the office at about 9.20/9.25 a.m. on 30.12.94 WHEREAS the R.D., ESIC, Guwahati has stated in his charge sheet dt.12.6.97 that Md. A.Hussain had physically assaulted Sri S.K.Sasmal in the office on 30.12.94 at about 10-30 a.m.

*Forward  
07/26/97  
M. Kalita*  
Hence, the time of incidence stated by the R.D., ESIC, Guwahati as at about 10-30 a.m. on 30.12.94 is CONTRADICTORY to the statements of the ~~■■■■■~~ aforesaid P.Ws who have stated the time of the alleged incidence as at about 9.20/9.25 a.m. on 30.12.94.

From the above as shown in III(a) & III(b) it is established that all the P.Ws viz. (i) Sri P. Sutradhar, I.I., (ii) Sri B. C. Das, UDC, (iii) Sri C.R. Paul, Ex-ARD, (iv) Sri S.K.Sasmal, Manager, (v) Sri D.K. Sarman, Peon and (vi) Sri T.Hazarika, R/S are ~~■~~ NOT EYE-WITNESSES of the alleged charge of the R.D., ESIC, Guwahati that Md.A.Hussain had physically assaulted Sri S.K. Sasmal, Manager in the office on 30.12.94 at about 10-30 a.m.

AND HENCE, the charge of the R.D., ESIC, Guwahati vide his Charge Sheet dt.12.6.97 is NOT PROVED had therefore, the charge of the R.D., ESIC, Guwahati is established as FALSE.

Thus, Md. A.Hussain, Head Clerk has NOT committed any gross misconduct/misbehaviour and displayed any utter lack of integrity/indiscipline and in-subordination ~~■■■■■~~ which will lead Md. A.Hussain, Head Clerk of unbecoming of a Corporation employee as Md. A.Hussain had not violated the Rule-3 of the C.C.S. (Conduct) Rule 1964.

## 6. ANALYSIS AND ASSESSMENT OF EVIDENCE.

S-1, shows that the matter regarding assault on Local Office Manager, Shri S.K. Sasmal was reported to the Supdt. of Police, Tinsukia, Assam by the Regional Director Sri T.K. Bhattacharya on 30.12.94. S-2, a report of Sri C.R. Paul, Asstt. Regional Director, Regional Office, E.S.I. Corporation, North Eastern Region, Guwahati recommended that Md. A. Hussain, Head Clerk physically assaulted Sri S.K. Sasmal, Local Office Manager, Tinsukia and also subverted discipline in the Local Office, Tinsukia. S-3, shows a report from L.O. Manager, Tinsukia to the Regional Director, N.E. Region, E.S.I. Corporation, Guwahati sent on 3.1.95 through Asstt. Regional Director, R.O., Guwahati in connection with hitting on the head of Sri S.K. Sasmal, L.O. Manager by Md. Akhtar Hussain, Head Clerk. S-4, is a letter dated 3.1.95 from Sri P. Sutradhar, I.I., Tinsukia to the Regional Director, N.E. Region, Guwahati confirming the correctness of the fact of physical assault on L.O. Manager, Tinsukia by Md. A. Hussain on 30.12.94. S-5, is a letter dated 2.1.95 from Sri Deepak Kr. Sarma, Peon, L.O. Tinsukia to the R.D., Guwahati in connection with the incident in which Sri Sarma was one of the eye witness narrating the sequence of the happenings of incidence of hitting by Md. A. Hussain on the head of Sri S.K. Sasmal, L.O. Manager. S-6, is a letter dated 2.1.95 from Sri Tankeswar Hazarika, Record Sorter, L.O. Tinsukia another eye witness of the incident to the Regional Director in connection hitting on the head of L.O. Manager by means of a wooden scale by Md. A. Hussain. S-7, is also a letter dated 2.1.95 from Sri Bapan Kr. Das, UDC of Tinsukia Local Office confirming about senselessness of the Manager, who received hit on head and about the admission of Sri S.K. Sasmal, L.O. Manager, Tinsukia Civil Hospital, Tinsukia. S-8, (a Discharge Slip) from Civil Hospital Tinsukia shows that Sri S.K. Sasmal, aged 43 years was admitted on 30.12.94 and discharged on 1.1.95 vide Regn. No.546 issued by the Medical Officer, Tinsukia Civil Hospital on 1.1.95. S-9, shows a letter dated 30.12.94 written by Sri Bapan Kr. Das, U.D.C., Tinsukia Local Office to the officer in-charge Tinsukia Police Station, Tinsukia regarding incidence of hitting by a wooden scale (big size) on the head of the Manager and requesting officer in-charge Tinsukia Police Station to inquire into the matter, copy to R.D. Assam. S-10, letter dated 30.12.94 from Sri S.K. Sasmal, L.O. Manager, Tinsukia to the officer in-charge,

Tinsukia Police Station, Tinsukia to lodge F.I.R. against Md. A. Hussain, Head Clerk, L.O. Tinsukia for attempt to murder to Sri S.K. Sasmal showing therein Diary No.TSK.PS.C/ No.-555/94-u/s 290/325 IPC. S-11, a memo No.TSK/V/95/481-82 dated TSK 12.1.95 from Supt. of Police, Tinsukia, Mukun Road in connection with arrest Md. Akhtar Hussain, Head Clerk of S.I. Local Office Tinsukia on 9.1.95 and forwarded into the Tinsukia Court on the same day on finding sufficient evidence against Md. A. Hussain. S-12, shows a request dated 12.1.95 from L.O. Manager, Tinsukia before the R.D., I.E., Region, Guwahati for taking disciplinary action for various offences against Md. A. Hussain, Head Clerk, L.O. Tinsukia.

~~Empanelled~~  
S-12/6/95  
M. Vali

Additional documents submitted by Md. A. Hussain vide his letter dated 26.10.98 provides evidence of incidence of hitting in Local Office Tinsukia on 30.12.94.

Evidence of PW-1 provides that incident happened in Local Office on 30.12.94 and L.O. Manager was injured and he was admitted in Tinsukia Civil Hospital, which is in conformity with the information contained in the document marked S-8 i.e. Discharge Slip of Civil Hospital, Tinsukia. Evidence of Sri S.K. Sasmal, PW-2 provides happenings of incidence in L.O., Tinsukia on 30.12.94 morning, cause of occurrence of the incidence followed by lodging of F.I.R. at Police Station in the 30th December evening, matter of FIR written by Sri P. Sutradhar, I.I. and signed by injured Sri S.K. Sasmal. Evidence of Sri B.C. Das, UDC, PW-3 confirmed happening of the incidence i.e. hitting on the head of L.O. Manager by Md. Akhtar Hussain. Evidence of Sri D.K. Sarma, Peon and Sri T. Hazarika, R.S., L.O. Tinsukia both eye witnesses of the incident confirmed that Md. Akhtar Hussain hit on the head of Sri S.K. Sasmal, L.O. Manager in the L.O. Tinsukia premises on 30.12.94 at about 9-15 a.m. by a wooden rod having 4 edges. Evidence of Sri C.R. Paul (Ex-ARDR, Assam), Dy. Director, Training, Calcutta, who investigated into the matter confirms his submission vide report marked S-2.

Examination of the documentary evidence and evidence adduced during the proceedings I found that there are ample evidences that incidence viz. Sri S.K. Sasmal, Local Office Manager, Tinsukia received serious blow on his head from strong object resulting he had to be got admitted in Tinsukia

Civil Hospital, Tinsukia. Records and evidence of witnesses especially evidences from Sri D.K. Sarma, Peon and Sri R. Hazarika, R.S. both eye witnesses confirmed that Md.A.Hussain hit on the head of Sri S.K. Sasmal in the L.O. Tinsukia. Further, the additional documents viz. certified copy of the judgement dated 9.1.97 submitted by Md. Akhtar Hussain also provides evidence that incident of hitting took place in the L.O. Tinsukia on 30.12.94. These confirms that Md. A.Hussain, Head Clerk, Tinsukia Local Office hit Sri S.K. Sasmal, Local Office Manager, Tinsukia causing grave injury to his life.

7. FINDINGS :-

*Complaint  
B/26/819  
M. Kalita*  
On the basis of documentary and oral evidences adduced before me and in view of the reasons given above, I hold that charges under Article-I against Md. Akhtar Hussain, Head Clerk are proved.

*J. H. M.*  
(R.D. NAMIA)  
INQUIRING AUTHORITY

EMPLOYEES' STATE INSURANCE CORPORATION  
REGIONAL OFFICE: NORTH EASTERN REGION  
GUWAHATI-21

No.43-S.11/18/95-Vig.(AH)

Dated 12-6-1997

MEMORANDUM

The undersigned proposes to hold an inquiry against Md. Akhtar Hussain, Head Clerk (now under suspension), Local Office, Tinsukia, Employees' State Insurance Corporation, N.E. Region under Regulation 14 and para 3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and conditions of services) Regulations, 1959 as amended. The substance of imputation of mis-conduct or mis-behaviour in support of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). The statement of imputation of mis-behaviour/ mis-conduct in support of Article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom the Article of charge is proposed to be sustained are also enclosed (Annexure-III and Annexure-IV).

2. Md. A. Hussain, Head Clerk is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and to state whether he desires to be heard in person.
3. He is informed that the 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 charges.
4. He 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 Regulation 14 read with para-3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and conditions of services) Regulations, 1959 or the order/directions issued in pursuance of the said Regulations, the Inquiring Authority may hold the inquiry against him ex-parte.

Contd....2.

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5. Attention of Md. Akhtar Hussain, Head Clerk (under suspension) is invited to Rule 29 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring in political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his services 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 Md. A. Hussain 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 29 of the CCS (Conduct) Rules, 1964 which is applicable to the Corporation employees by virtue of Regulation 23 of the Employees' State Insurance Corporation (Staff and Conditions of services) Regulations, 1959 as amended.

6. Receipt of this Memorandum may be acknowledged.

Enclo. as above

60  
T/6/57  
( D.N. # 2300 )  
REGIONAL DIRECTOR

To

Md. Akhtar Hussain,  
Head Clerk (Under Suspension),  
C/O Local Office,  
E.S.I. Corporation,  
Tinsukia.

## STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST MD. AKHTAR HUSSAIN, HEAD CLERK, EMPLOYEES' STATE INSURANCE CORPORATION, NORTH EASTERN REGION.

Article -I.

Md. Akhtar Hussain, while functioning as Head Clerk in Tinsukia Local Office, E.S.I.Corporation during the period from 5.6.1991 onwards, committed gross mis-behaviour/mis-conduct as much as he man-handled/physically assaulted Sri S.K.Sasmal, the then Manager, Local Office, Tinsukia in the office during office hours at about 10.30 AM ~~without any reason~~ on 30.12.1994 without any reason and inflicted injury with a wooden roller to Sri Sasmal on his fore-head as a result of which Sri S.K. Sasmal, Manager Local Office had <sup>been</sup> admitted into Civil Hospital, Tinsukia on 30.12.1994 and was discharged on 1.1.1995. FIR has also been lodged in the Police Station, Tinsukia on 30.12.1994.

Md. A. Hussain, Head Clerk, Local Office, Tinsukia who is now under suspension from 14.2.1995 vide Memo. No. 43-A. 20/11/-13/95-Estt. dated 14-2-1995 in connection with the above incident has thus exhibited utter lack of integrity, devotion to duty and in subordination which is unbecoming of a Corporation employee and thus violated Rule 3(1)(i)(ii)(iii) of the CCS(Conduct) Rules, 1964 to be read with Regulation 23 of the Employees' State Insurance Corporation(Staff and Conditions of Services) Regulations, 1959 as amended.

6/1/95  
( D.N. PGCO )

REGIONAL DIRECTOR

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STATEMENT OF IMPUTATION OF MIS-BEHAVIOUR/MIS-CONDUCT IN SUPPORT  
OF THE ARTICLE OF CHARGE FRAMED AGAINST MD. AKHTAR HUSSAIN,  
HEAD CLERK, EMPLOYEES' STATE INSURANCE CORPORATION, NORTH EASTERN  
REGION.

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Article-I

Md. Akhtar Hussain, Head Clerk, while posted at Tinsukia Local Office, E.S.I. Corporation, N.E. Region, on 30.12.1994 attended office at 9.15 AM and signed on the Attendance Register. Then he was requested by Sri D.K. Sarmah, Peon to receive two letters meant for him from the Peon Book. At this, Md. A. Hussain became furious and attacked Sri S.K. Sagmal, Manager, Local Office, Tinsukia in the office during office hours at about 10.30 AM on 30.12.1994 and man-handled /physically assaulted with a wooden roller on his fore-head as a result of which Sri S.K. Sagmal, Manager had to be admitted into Civil Hospital, Tinsukia on 30.12.1994 for head injury vide Hospital Slip No. 546 and discharged on 1.1.1995. FIR was also lodged in the Tinsukia Police Station on 30.12.1994 for this incident vide C/No. 555/94. Md. A. Hussain, Head Clerk physically assaulted Sri S.K. Sagmal, Manager, Local Office Tinsukia without any reason in the office in front of all the office staff members and also subverted the discipline of the office.

Md. A. Hussain, Head Clerk has been suspended for the above mis-behaviour from 14-2-1995 vide Memo. No. 43-A. 20/11/-13/95-Estt dated 14-2-1995.

Md. A. Hussain, Head Clerk has thus committed gross mis-behaviour/mis-conduct and displayed utter lack of integrity, devotion to office duty and in subordination which is unbecoming of a Corporation employee and violated Rule 3(1)(1)(ii)(iii) of the CCS(Conduct) Rules, 1964 to be read with Regulation 23 of E.S.I. ( Staff and conditions of services) Regulations, 1959 as amended.

( D.N. SEGOO )  
72/6752  
REGIONAL DIRECTOR

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LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST MD. AKHTAR HUSSAIN, HEAD CLERK OF E.S.I.CORPORATION, N.E, REGION IS PROPOSED TO BE SUSTAINED..

1. Letter No. 43-RD/MI SC/2/93 dated 30-12-1994 addressed to the Superintendent of Police, Tinsukia.
  2. Investigation Report of Sri C.R.Paul, Assistant Regional Director, Regional Office, Guwahati.
  3. Letter dated 3-1-1995 from Sri S.K.Sasmal, Manager, Local Office, Tinsukia.
  4. Statement dated 3-1-1995 of Sri P.Sutradhar, Insurance Inspector, Tinsukia.
  5. Statement dated 2-1-1995 of Sri P.K.Sarmah, Peon Local Office, Tinsukia.
  6. Statement dated 2-1-1995 of Sri T.Hazari, Record Sorter, Local Office, Tinsukia.
  7. Statement dated 2-1-1995 of Sri B.C.Das, WDC, Local Office, Tinsukia.
  8. Civil Hospital Tinsukia, Discharge Slip dated 1-1-1995.
  9. Application for FIR dated 30-12-1994 from Local Office, Tinsukia staff.
  10. Letter of Local Office, Tinsukia dated 30-12-1994 to Tinsukia Police Station.
  11. Letter No. TSK/V/95 dated 12-1-1995 from Tinsukia Police Station.
  12. Letter No. 43-TSK/Mgr./Adm/91 dated 12-1-1995 of Local Office, Tinsukia.
- 145  
S. Sengupta

LIST OF WITNESS BY WHOM THE ARTICLE OF CHARGE FRAMED AGAINST  
MD. AKHTAR HUSSAIN, HEAD CLERK, E.S.I.CORPORATION, N.E.REGION  
ARE PROPOSED TO BE SUSTAINED.

1. Sri S.K.Sagmal, Ex-Manager, Local Office, Tinsukia now posted in Calcutta, E.S.I.Corporation.
2. Sri P.Sutradhar, Manager, Local Office, Tinsukia, N.E.Region.
3. Sri B.C.Das, VDC-Cashier, Local Office, Tezpur, E.S.I.Corporation, N.E.Region.
4. Sri D.K.Sarmah, Peon, Regional Office, Guwahati, E.S.I.Corporation, N.E.Region.

*Gow*  
1/16/58  
( D.N.PEGOO )  
REGIONAL DIRECTOR

116  
Anonewie-13

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Date : 26.8.1999

To,  
The Regional Director,  
E.S.I. Corporation,  
Bamunimaidan,  
Guwahati -21.

Sub : Inquiry Report in the disciplinary proceeding case  
against Md. A. Hussain, H.C. (under suspension) R.O.  
E.S.I. Corporation, N.E. Region, Guwahati.

Respected Sir,

I beg to refer to your memorandum No. 43-S.11/18/95-Vig(AH) dt. 19-08-99 forwarding therewith a copy of inquiry Report dated 28-07-99 for resubmission of the said Inquiry Report alongwith my comments/replies against the findings of the Inquiring Authority, if any.

In this connection, I have to return back the said Inquiry Report dt. 28-07-99 alongwith my comments/replies against the findings of the Inquiring Authority as under :-

1. As per witness statement dated 26-10-98 of Sri P. Sutradhar, I.I., given before the Inquiring Authority -

Sri P. Sutradhar has admitted that he is not NOT EYE-WITNESS of the alleged incidence of the charge under Article-I of the Regional Director, Guwahati.

And hence no comment.

2. As per witness statement dt. 04-05-99 of Sri C.R. Paul, ARD given before the Inquiring Authority -

Sri C.R. Paul has admitted that he is NOT-EYE WITNESS of the alleged incidence of the charge under Article-I, of the Regional Director.

And hence no comment.

3. As per witness statement dt. 04-01-99 of Sri B.C. Das, U.D.C. given before the Inquiring Authority -

Contd.....2/p.

O/C

Md. Akhter Hussain

Sri B.C. Das has admitted that he is NOT EYE-WITNESS of the alleged incidence of the charge under Article-I of the Regional Director.

And hence no comment.

4. As per order sheet dt. 04-05-99 of the Inquiring Authority -

Dr. S.K. Sarma, Sr. Medical & Health Officer, Civil Hospital, Tinsukia has not attended before the Inquiring Authority on 04-05-99 to establish the genuineness of the discharge slip dt. 01-01-95 issued to Sri S.K. Sasmal, Manager, Local Office, Tinsukia under which treatment etc. were stated to have been provided to Sri. S.K. Sasmal and also to establish the issue of the said produced documents by the doctor himself.

And hence, I can not agree with the finding of the Inquiring Authority for taking as evidence of the discharge Slip dt. 01-01-95 as genuine to prove the charge under Article-I against Md. A. Hussain.

5/(a)(1) As per witness statement dt. 04-01-99 of Sri D.K. Sarma, Peon given before the Inquiring Authority -

Sri D.K. Sarma is EYE-WITNESS that Md. A. Hussain Physically assaulted Sri S.K. Sasmal in the Office on 30-12-94 by a wooden Roller.

AND

(a)(ii) As per witness statement of Sri D.K. Sarma, Peon given before the Hon'ble C.G.M., Tinsukia Court vide CJM Judgement copy dt. 02-01-97 under page-6(Six) (Certified Judgement copy dt. 02-01-97 has already been submitted to Inquiring Authority) -

Sri D.K. Sarma is EYE-WITNESS that on 30-12-94 at around 9:20 A.M. Md. A. Hussain physically assaulted Sri S.K. Sasmal by means of a scale.

Contd..... 3/p.

So, the ~~same~~ same person- Sri D.K. Sarma, Peon had given two different/variation statements once as (i) Wooden Roller before the Inquiring Authority and another once (ii) as scale before the Hon'ble CJM, Tinsukia Court.

And hence the above EYE-WITNESS statements of Sri D.K. Sarma before two Hon'ble Officers are contradictory, and hence false.

5/(b)(i) As per witness statement dt. 04-01-99 of Sri D.K. Sarma, Peon before the Inquiring Authority -

Sri D.K. Sarma is EYE-WITNESS of physically assault by Md. A. Hussain to Sri S.K. Sasmal on 30-12-94 at about 9:15 A.M.

AND

(b)(ii)- As per witness statement of Sri D.K. Sarma, Peon given before the Hon'ble CJM, Tinsukia vide CJM, Tinsukia Judgement copy dtd. 2-1-97 under page-5 -

Sri D.K. Sarma is EYE-WITNESS that Md. A. Hussain physically assaulted Sri S.K. Sasmal on 30-12-94 at around 9:20 AM.

So, the same person - Sri D.K. Sarma, Peon had given two different/variation statements once (i) the time of incident is stated before the Inquiring Authority as 9:15 A.M. on 30-12-94, and again in another once before the Hon'ble CJM, Tinsukia (ii) as at 9:20 A.M. for the same day on 30-12-94.

And hence, the above EYE-WITNESS statements of Sri D.K. Sarma before ~~the~~ two Hon'ble Officers are contradictory, and hence false.

Therefore, I can not agree with the findings of the Inquiring Authority for taking as evidence of EYE-WITNESS of Sri D.K. Sarma, Peon as TRUE to prove the charge under Article-I against Md. A. Hussain.

6/(i) As per witness statement dtd. 03-05-99 of Sri T. Hazarika, R/S given before the Inquiring Authority -

Sri T. Hazarika, R/S has admitted that he is EYE-WITNESS of the physical assault by Md. A. Hussain to Sri S.K. Sasmal at about 9:25 AM on 30/12/94.

AND

(ii) As per witness statement of Sri T. Hazarika, R/S given before the Hon'ble CJM, Tinsukia vide CJM, Tinsukia Judement copy dtd. 02-01-97 under page-7.-

Sri T. Hazarika is EYE-WITNESS that Md. A. Hussai physically assaulted Sri S.K. Sasmal at around 9:15 AM. on 30-2-94.

So, the same person - Sri T. Hazarika, R/S had given two different/ variation statements (i) Once- the time of incidence is stated before the Inquiring Authority as at about 9:25 AM. on 30-12-94, and again, in another once (ii) the time of incidence is stated before the Hon'ble CJM, Tinsukia as at around 9:15 AM on 30-12-94.

And hence the above EYE-WITNESS statements of Sri T. Hazarika before two Hon'ble Officers are contradictory, and hence false.

Therefore, I can not agree with the findings of the Inquiring Authority for taking as the evidence of the EYE-WITNESS of Sri T. Hazarika as TRUE to prove the charge under Article-I against Md. A. Hussain.

7. As per witness statement dt. 26-10-98 of Sri S.K. Sasmal, Manager, Local Office, Tinsukia (Complainant) given before the Inquiring Authority -

Sri S.K. Sasmal on cross examination as " do you deny (deny) the decision of the Judgement dt. 02-01-97 given by the Chief Judicial Magistrate of Tinsukia against the Police Case No.555/94 u/s-290/323/506 IPC after cross-examining the doctor's injury report and registers etc. including the doctor in person and Sri D.K. Sarma, Peon, L.O, Tinsukia and Sri T. Hazarika R/S,

Contd..... 5/p.

L.O. Tinsukia ?

Sri S.K. Sasmal replied as - " I do not like to offer any comment on the question." Which indirectly express the meaning of admitting the decision of the judgement of the Hon'ble CJM, Tinsukia vide judgement dtd. 02-01-97 (certified judgement copy dtd. 02-01-97 has already been submitted) as he (Sri S.K. Sasmal) has not denied the CJM judgement specifically.

And hence, I do not agree with the findings of the Inquiring Authority to the effect that the charge under Article-I (Charge as Md. A. Hussain physically assaulted Sri S.K. Sasmal with a Wooden Roller on 30-12-94 at about 10.30 AM etc.) against Md. A. Hussain, H.C. are proved.

In view of the above, I can not agree with the findings of the Inquiring Authority based <sup>on</sup> as

1. Records and evidence of witnesses especially evidences from Sri D.K. Sarma, Peon and Sri T. Hazarika, R/S both EYE WITNESSES of the incidence confirmed that Md. Akhtar Hussain hit on the head of Sri S.K. Sasmal in the L.O, Tinsukia premises on 30-12-94 at about 9.15 A.M. by a wooden rod having 4 edge under para-14 and 15 of the Inquiry Report (which is ~~seen~~ seen and signed by me) as :-

i) I have disputed here the time of the incidence - as under :-

It has already been established under Sl. No.5 & 6 above that the evidences of Sri D.K. Sarma, Peon and Sri T. Hazarika R/S are two different/variations EYE WITNESSES statements regarding the time of incidence

(i) Once before the Hon'ble CJM, Tinsukia, and  
(ii) another once before the Inquiring Authority.

Md. Akhtar Hussain 131

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2. The Inquiring Authority has stated under page-14  
in his report that Sri D.K. Sarma, Peon and Sri T.Hazarika  
R/S both EYE WITNESSES of the incidence on 30-12-94 at about  
9.15 A.M. which (if) I have disputed as under :-

Sri T. Hazarika, R/S has never given EYE WITNESS  
statement stating the time of incidence on 30-12-94 as at  
about 9.15 A.M. before the Inquiring Authority vide Sri T.  
Hazarika's witness statement dtd. 03-05-99.

Yours faithfully,

Enclo :- Inquiry Report  
Dtd. 28-07-99.

*MD. A. HUSSAIN*  
( MD. A. HUSSAIN )  
H.C. R.O. HSIC, GUWAHATI.

*26/8/99.*

Despatched / Despatcher, Received  
क्र० रा० वीमा निगम  
E.S.I. CORPORATION, Regional Office,  
पूर्वी धैर, गुवाहाटी-21 B. S. I. Corporation  
E. I. Region, Guwahati-21 Date... 26/8/99

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EMPLOYEES' STATE INSURANCE CORPORATION  
REGIONAL OFFICE : NORTH EASTERN REGION  
BAMUNIMAI DAN :: GUWAHATI-21.

NO.43-S.11/18/95-Vig.(AH)

Dated : Oct. 20, 1999.

O R D E R

Md. A. Hussain, Head clerk, Employees' State Insurance Corporation, Regional Office, N.E. Region, Guwahati was issued a major penalty charge sheet under No. 43-S.11/18/95-Vig.(AH) dated 12.6.97 for the following charges :

" Md. A. Hussain, while functioning as Head Clerk in Tinsukia Local Office, ESI Corporation during the period from 5.6.1991 onwards committed gross mis-behaviour/ mis-conduct inasmuch as he man-handled / physically assaulted Shri S.K. Sasmal, the then manager local office, Tinsukia in the office during office hours at about 10-30 AM on 30.12.94 without any reason and inflicted injury with a wooden Roller to Shri Sasmal on his forehead as a result of which Shri S. K. Sasmal, manager local office had to be admitted into Civil Hospital, Tinsukia on 30.12.94 and was discharged on 1.1.95. FIR has also been lodged in the Police Station, Tinsukia on 31.12.94.

*Received  
Ans  
21/10/99 at 10:30 AM*  
Md. A. Hussain, Head clerk, Local Office, Tinsukia who is now under suspension from 14.2.95 vide memo No. 43-A.20/11/13/95-Estt. dated 14.2.95 in connection with the above incident has thus exhibited utter lack of integrity, devotion to duty and in subordination which is unbecoming of a Corporation employee and thus violated Rule-3 (1)(i)(ii)(iii) of the CCS ( Conduct ) Rules, 1964 to be read with Regulation 23 of the Employees' State Insurance Corporation ( Staff and Conditions of Service ) Regulations, 1959, as amended.

The inquiry in the case was initially conducted by Shri R. K. Shukla, then Jt. Director, DE/EZ, Calcutta and subsequently his successor Shri R. N. Mania continued and completed the inquiry. In his inquiry report dated 28.7.99, the inquiry officer has held that the charges against the aforesaid charged official have been proved.

A copy of the inquiry report was supplied to the charged official vide Regional Office communication dated 19.8.99 and in response, Md. A. Hussain has submitted a representation dated 26.8.99.

Contd... 2/-

In the aforesaid representation, the charged official has first stated that S/Shri P. Sutradhar, II, C. R. Paul, ARD and B. C. Das were not the eye witnesses and, therefore, he has no comments to make.

From the evidence given by Shri P. Sutradhar, II before the Inquiry Officer on 26.10.98, it is seen that he was not an eye-witness of the incidence of assault by the charged official. In his deposition, he has mentioned that when he was on inspection duty, he got a telephone call from Shri B. C. Das, UDC of the Local Office, Tinsukia about the incidence. According to him, he first visited the Local Office and then the Civil Hospital, Tinsukia to see Shri S.K. Sasmal, LOM, Tinsukia. Shri Sutradhar has stated before the Inquiry Officer that he found the said Shri S. K. Sasmal lying in the bed in the hospital senselessly and, subsequently, he reported the matter to the Regional Director over telephone on the same day. The actual position about the assault was ascertained by him from the officials of the Local Office.

Shri C. R. Paul, then ARD in his deposition dated 4.5.99 has stated that as per the order of the then Regional Director, he carried out the preliminary investigation on 2nd and 3rd Jan. '95 regarding the assault on Shri S. K. Sasmal by Md. A. Hussain. Thus, Shri Paul is not an eye-witness but an Officer who conducted the preliminary investigation in the case. His report dated 12.1.95 has been marked as P-EX-2 in the case.

Shri B. C. Das, UDC has tendered evidence before the Inquiry Officer on 4.1.99 wherein he has stated that when he returned to the Local Office after attempting to contact the Regional Director through a PCO, he heard a loud sound from Md. A. Hussain. According to Shri Das, the charged official was telling that "I will finish the manager Shri S. K. Sasmal". In his deposition Shri Das has further stated as under :

" I tried to make separate them. In the meantime, Mr. Sasmal, LOM became senseless and then I brought an Ambassador Car from M/S National Plywood Ltd. and took the manager to the Civil Hospital, Tinsukia. Thereafter, I lodged an FIR after ascertaining the exact situation happened in the Local Office. FIR was lodged between 12 noon to 1 PM".

Therefore, Shri DAS is a witness to the later part of the mis-conduct by Md. A. Hussain.

Moreover, these witnesses are relevant to the case and their deposition confirm the charges levelled against the charged official.

The next contention of the charged official is that Dr. S. K. Sarma, Sr. Medical & Health Officer, Civil Hospital, Tinsukia has not appeared before the Inquiry Officer to establish the genuineness of the discharge slip dated 1.1.95 issued to Shri S. K. Sasmal, manager under treatment etc. were stated to have been provided to Shri S. K. Sasmal. Therefore, the said discharge slip dated 1.1.95 can not be taken on record, Md. Hussain has argued.

Dr. S. K. Sarma, Sr. Medical & Health Officer, Civil Hospital, Tinsukia is a prosecution witness. It is evident from the Annexure IV of the charge sheet. The evidence of the following witnesses clearly shows that there was assault by the charged official on Shri S. K. Sasmal, manager on 30.12.94.

1. Shri P. Sutradhar, II (PW-1)
2. " S. K. Sasmal, then manager, LOM, Tinsukia (PW-2)
3. " B. C. Das, UDC ( PW-3 )
4. " D. K. Sarma, Peon ( PW-4 )
5. " C. R. Paul, then AED, who investigated and submitted the report dated 12.1.95 (P-EX-2 )

The cause of the provocation was that the said Shri S. K. Sasmal issued two Memos and the Peon (PW-4) attempted to deliver the same to the charged official at about 9-10 AM on 30.12.94.

<sup>3</sup> PW was the person who had admitted the manager (PW-2) in the hospital on 30.12.94. In the evidence dated 26.10.98 by Shri S. K. Sasmal and also preliminary investigation report dated 12.1.95 it has been clearly mentioned that Shri S.K. Sasmal was admitted on 30.12.94 and discharged on 1.1.95. In the preliminary investigation report dated 12.1.95, Shri C. R. Paul has also stated that PW-2 was admitted in the Civil Hospital on 30.12.94 under Registration No. 546 and was subsequently discharged from the said hospital on 1.1.95. The said discharge slip (P-EX-8) is an Annexure to the said preliminary inquiry report. As Shri Paul has testified before the Inquiry Officer and the

genuineness of the discharge slip is otherwise evident, there is nothing to reject this ("P-EX-8") piece of evidence. If the charge official is of the view that the evidence of Dr. S. K. Sarma would be in his favour he could have produced him as a Defence witness. In the absence of any such act, the charged official can not now question the authenticity of the said document.

The charged official has then disputed the findings of the Inquiring Authority on the ground that on account of the following discrepancies in the evidence given by Shri D. K. Sharma, Peon (PW-4) the testimony of PW-4 should be rejected, attempt to stop the assault.

As nobody would be looking down the criminal case pending before the Court of CJM, Tinsukia PW-4 had stated that Md. A. Hussain assaulted Shri S. K. Sasmal by means of a Scale. However, in the departmental inquiry he had testified that the assault was done by a Wooden Ruler.

There are little variations about the timing of assault.

2. In the criminal case the time of assault was given by PW-4 is 9-20 AM on 30.12.94. However, Hazarika, in the departmental inquiry the time of assault has been stated by him as 9-15 AM on 30.12.94.

It is seen from the Judgement dated 2.1.97 of the CJM, Tinsukia and GR case No. 1658/94 it is seen that Shri D. K. Sharma (PW-4) had stated before the Court that weapon used for the assault was a Scale. However, in his statement dated 2.11.95, he has clearly mentioned that the weapon used was a Wooden Ruler. The Wooden Ruler is mainly used for the purpose of putting ruling. Even the Scale is also mainly used for the same purpose only. Because of this, PW-4 might have confused while tendering evidence before the Court. However, in the disciplinary case the evidence given by him and other witnesses un-mistakably show that the instrument used for assault was a Wooden Ruler, which was on the table of Shri T. Hazarika, Record-Sorter.

As regards, the timings it is seen that Shri D. K. Sharma, Peon has stated before the Court that at around 9-20 AM on 30.12.94, Shri S. K. Sasmal, manager sent a letter to the accused through a Peon Book. The use of the word 'around' signifies that the timings given was approximate as nobody witnessing a violent act would look in to watch to note down the time. The re-action of the person concerned would be to prevent the violence and help the injured.

In view of the above, the contention of the charged official could not be agreed to. As regards the evidence of Shri T. Hazarika, R/S, the charged official has alleged the following discrepancies :

" Before the Inquiry Officer, this witness has given time of assault at about 9-25 AM on 30.12.94 whereas in the criminal Court this timings was given by him at around 9-15 AM on 30.12.94 ".

As has been stated earlier, when there is physical violence, the immediate reaction of the eye-witness would be to attempt to stop the assault and to help the victim. As nobody would be looking into to watch to note down the exact timings of the happening, there is nothing to find fault with the evidence of Shri Hazarika.

In this connection, it must be stated that there are little variations about the timing of assault. This is quite natural when witnesses are not tutored. Shri T. Hazarika, Record Sorter has stated that the assault took place at about 9-25 AM. Shri D. K. Sharma, Poon stated that he attempted to deliver the Memos to the charged official after the latter came to the Local Office at 9-15 AM. The same witness has also testified that Shri B. C. Dc (PW-3) came to the office after 9-15 AM. According to PW-3, when he returned to the Local Office he " heard a loud sound from Md. A. Hussain, Head Clerk who was saying that I will finish the Manager Shri S. K. Sesmal". These pieces of evidences show that the assault occurred at about 9-25 AM and not at 10-30 AM as mentioned in the charge sheet on 30.12.94.

Shri/Md. A. Hussain has found fault with the findings of the Inquiry Officer as Shri S. K. Sesmal (PW-2) had indirectly admitted ( in reply to the last but one question put by the Defence ) the Judgement of the CJM, Tinsukia.

The relevant question of the defence put on 26.10.98 to PW-2 was whether he denied the decision of the Judgement dated 2.1.97 given by the Court. In reply, the PW-2 has stated " I do not like to offer any comment on the question ". This reply does not tantamounts to

his admission of the Judgement. However, there is no denying fact that the criminal court has acquitted the charged official on benefit of doubt but it must be mentioned here that as has been mentioned in the Judgement (page-5) that in the criminal trial it is incumbent on the part of the prosecution to bring home the charge beyond all reasonable doubts. In the disciplinary case however, the standard of proof required is pre-ponderance of probability. Thus, the Judgement of the Court is not relevant to the disciplinary case as the disciplinary case is to be decided on the basis of the evidence tendered / produced in the departmental case.

In view of the fore-going, I do not find any force in the contentions of the charged official. The Inquiry Officer has given findings holding the charges proved for good and sufficient reason and, therefore, I agree with the findings.

The commonest form of disabling conduct which is considered very serious is ' violence '. The violence may be against co-employees while they are actually engaged in work or it may be against the superior officers or the employer. The reason is that if the violence is permitted or ignored then it might create a situation when it might become impossible or hazardous for co-employees or superior officers to work or in any case, discharge their duties in a satisfactory manner. This may make the smooth functioning of an organization well nigh impossible. If assault on co-employees in work premises is considered serious, the assault on superior officers is still more serious.

Contd... 7/-

In view of the serious nature of the charges against Md. A. Hussain, I consider that he is not a fit person to be retained in the service. I, therefore, in exercise of powers conferred upon me by regulations 12 (2) read with 5th Schedule of the Employees' State Insurance Corporation ( Staff and Conditions of Service ) Regulations, 1959, do hereby impose the penalty of ' Dismissal from service ' on Shri Md. A. Hussain, Head Clerk with immediate effect.

GGA  
20/X/55  
( D. N. PEGOO )  
REGIONAL DIRECTOR.

To

✓ Shri/ Md. Akhtar Hussain,  
Head Clerk,  
Employees' State Insurance Corporation,  
Regional Office, N. E. Region,  
Guwahati-781021.

\*\*\*\*\*

11 January-95/1995

44

140

OFFICE OF THE SUPERINTENDENT OF POLICE :::: TINSUKIA DISTRICT,  
TINSUKIA, ASSAM  
MEMO NO.18K/V/95/ D.D. TINSUKIA THE 11 JAN/95.

To

The Manager of E.S.I.  
Local Office, Tinsukia  
Mukum Road.

Subject : Arrest of Mr. Akhtar Hussain, Head Clerk of

E.S.I. Local Office on 9/1/95.

Reference : Tinsukia P.S. Case No.555/94, u/s.290/325 IPC.

Sir,

I am forwarding herewith a letter submitted by S.I. J.H. Borbuiyan of Tinsukia P.S. and I/O of the above referred case which is self explanatory.

Mr. Akhtar Hussain an employee of your office was arrested on 9/1/95 in connection with the above referred case.

This is for your kind information and necessary action.

Yours faithfully,

Superintendent of Police,  
Tinsukia, Assam.

Memo No.18K/V/95/481-82 Dtd. Tinsukia the 12 th Jan/95.

Copy to : 1) I/O S.I. J.H. Borbuiyan of Tinsukia P.S. through O/C. Tinsukia P.S. for information.

2) Smt. Tapan Kumar Bhattacharyya, Regional Director, N.E. Region, E.S.I. Corporation, P.O. - Bannimaidan, Guwahati-21, (Assam) for favour of information and necessary action.

Superintendent of Police,  
Tinsukia, Assam.

0-0-0

30  
14/11/95  
(COPY)

10

The Manager of E.S.I. Local Office,  
Tinsukia, Makum Road.

Dtd.

Through Superintendent of Police, Tinsukia.

Sub:- Arrest of accused Mr. Akhtar Hussain Head Clerk  
of E.S.I. Local Office, Tinsukia.

Ref:- Tinsukia P.S. Case No.553/94 U/S.290/325 IPC.

Sir,

With reference to the above, I have the honour  
to report that below noted person was arrested on 9/1/95 and  
forwarded into the Tinsukia Court on the same day as sufficient  
evidence found against him. This is for favour of your kind information and  
necessary action.

Name of the accd. person

Mr. Akhtar Hussain  
S/O.L.t. Makmur Ali  
Head Clerk of E.S.I.  
Local Office Tinsukia  
P.S. Tinsukia  
Dist. Tinsukia.

Yours faithfully,

Sd/-

Jainul Haque Borhaniyan  
S.I. of Police, Tinsukia

P.S. Tinsukia

10-1-95

0-0-0

Dated : 29th May 3, 1999.

STATEMENT OF SHRI TANKESWAR HAZARIKA, RECORD SORTER TINSUKIA LOCAL OFFICE, BSI CORPORATION, N.E. REGION, ASSAM IN THE DISCIPLINARY PROCEEDINGS AGAINST MD. A. MUSSAIN, HEAD CLERK ( UNDER SUSPENSION ) OF N. E. REGION, GUWAHATI-21.

Depositions of Shri T. Hazarika aged 55 yo, re son of Late Golok Ch. Hazarika resident of Chingmai Poon, Tinsukia.

In Shri Tankeswar Hazarika presently working as Record Sorter in the local office Workat Assam state that I confirm my statement dated 2.4.95 submitted to the Regional Director through Asstt. Regional Director Shri C. R. Paul. I also confirm my signature on the statement on the document marked as Expt Ex-6. I further state that I was present at local office Tinsukia at 9-00 AM on 30.12.94. Md. A. Hussain, Head clerk arrived at 9-15 AM and asked for Attendance Register through Shri Dipak Sarma, Poon. Md. Hussain signed in the Attendance Register and returned to Manager. After that Dipak Sarma went to Md. Hussain to deliver two letters through the Poon Book to Md. Hussain. He did not receive the letters but asked for the Attendance Register again. He immediately took a Wooden scrol of four edges kept on my table and proceed in his drawer. And said " I will murder ". He shouted that I will not receive the letter, and made hue and cry. The manager appeared and enquired about the fact. Then Manager and Md. Hussain argued each other. Md. Hussain left his sort and suddenly he stuck with the Wooden scrol on the hand of the manager, Shri S. K. Sonowal. Then we hurriedly tried to separate them while Shri Bapan Das arrived and snatched away the Wooden scrol from Md. Hussain. Then manager became unconscious and Shri Bapan Das took the manager to the Tinsukia Civil Hospital.

Examination in Chief concluded :

Cross Examination of Shri T. Hazarika, R/S by Md. A. Hussain, Charged Officer.

Q: T. Can you tell the exact time when Md. Hussain physically assaulted Shri S. K. Sonowal on 30.12.94 as alleged by you ?

Ans : He assaulted at about 9-25 AM on 30.12.94.

5/1/95  
31/5/95

131  
31/5/95

Contd.. 2/-

Q. 2. Mr. Hazarika the charged friend by the Regional Director Gauhati is that Mr. A. Hussain committed gross misbehaviour misconduct as much as he neglected / physically assaulted Shri S. K. Samal the then manager local office Tinsukia in the office during office hours at about 10-30 AM on 30.12.94 for which you have been produced as witness before the Inquiring Authority today for tendering evidence. Are you witness that Mr. A. Hussain physically assaulted Shri S. K. Samal on 30.12.94 at about 10-30 AM ?

Ans: I confirmed vide my earlier reply that the incident took place at about 9-25 AM on 30.12.95. 1994.

Q. 3. Mr. Hazarika, you have stated that Mr. A. Hussain physically assaulted Shri S. K. Samal on 30.12.94 at about 9-25 AM. Whether Mr. A. Hussain physically assaulted further Shri Samal after 9-25 AM ?

Ans: No.

CROSS EXAMINATION CLOSED :

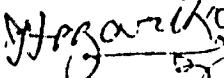
Question put by the Inquiring Authority :

Q. 1. Mr. Hazarika, are you the eye-witness of the whole incident happened in the local office on 30.12.94 ?

Ans: Yes, I witnessed the incident happened in the local office on 30.12.94.

Q. 2. Can you tell the exact nature of Wooden Scro used to hit by Mr. Hussain on the head of Shri S. K. Samal ?

Ans: This Wooden Scro is of the type of Wooden Rod having four sides and four edges.

  
 ( TUKESWAR HAZARIKA )  
 RECORD SEPTER,  
 PW. No. 5.

( R. N. MAITRA )  
 JT. DIRECTOR (DE )  
INQUIRING AUTHORITY,

To : Answerd 133 'A-13  
The Vigilance Officer Date: 20.12.94  
E.S.I. Corporation  
P-4, Rajarajkishore Street  
Calcutta - 6.

At present at Tinsukia local office

Copy putting Sir,

110 Belpara

The undermentioned benefit  
payments are misappropriated by Mr  
Owner of A.K. Baruah, U.O.C - Cashier of local office  
except Tinsukia L as the concerned insured persons  
payment have lodged complaint to the manager  
verbally and in writing but the manager  
Sri. Sasmal instead of taking it  
as complaint for action under the Sikyad  
person Adalat Court, he has assisted the Cashier  
recovering the amount of benefit  
shown paid to the insured persons by the  
Cashier by illegal means and otherwise.

S.L No name and period of date of amount  
insurance No payment payment

No.1:	Murti Mahato	21.10.93 to 17.3.94 Rs 105/-
	43-342604	27.10.93
2.	R.K. Prashad	11.6.94 to } 43-238666 15.6.94 } and 23.6.94 to } 13.7.94 Rs 180/- 29.6.94

payment recovered under E.P.R. S.L. No-  
49 dt- 24.10.94 by the manager inten-  
tinally on 11.11.94

yours faithfully.

50/-  
one citizen of India.

Copy to the Regional Director, E.C.C.  
Gauhati for necessary action

H.E.L. 11, T.S. (M. H. Nasarwanji)

ANTRI WZ-3  
SRI S.K. Sasmal  
Manager  
Local Office,  
E.S.I. Corporation  
Tinsukia.

134/5  
TSK/PS G/No. 555/94  
sys 290/3251PC

145

Dated the 30th December 1944

To  
The Officer in-charge,  
Tinsukia Police Station  
Tinsukia.

Subject:- Request to lodge F.I.R. against M.A. Hussain,  
Head Clerk, E.S.I. Corp. T.S.L. for attempt to  
Murder to the undersigned in his office premises.

SIR:

I have the honour to report- that- at about 9:30 A.M to day after opening of the office, I handed over to 2 (Two) Office Memos to Sri D.K. Sharma, from asking him to deliver those memos to M.A. Hussain, Head Clerk of this office. That said M.A. Hussain instead of accepting those memos from Sri Sharma he hurriedly came forward towards me and started uttering filthy language aiming at me and assaulted me heavily on my forehead with a heavy wooden rule, as a result whereof I sustained previous injury and fell senseless. Thereafter I was rescued by Civil Hospital, Tinsukia by the members of my staff where I regained my senses. That I am still under medical treatment at the said hospital.

I therefore request you to please take necessary steps against the said M.A. Hussain to punish him according to law.

Yours faithfully,

*A. S. Sasmal*  
(S. K. SASMAL)  
MANAGER.

## Answer - 2

135

Received a copy of  
dated 29/12/94 addressed to  
the Vigilance officer, E.S.I. Compa-  
nion, P-4, Raja Rajkishan street  
Calcutta - 6 (at present at  
Tinsukia local office) handed  
over by M.A. Hussain one  
citizen of India at R.D.  
E.S.C. Guwahati.

1. *Leucania* *luteola* (Hufnagel)  
2. *Leucania* *luteola* (Hufnagel)  
3. *Leucania* *luteola* (Hufnagel)  
4. *Leucania* *luteola* (Hufnagel)

6-1155809

India

Annexure - A

136

147

NO.43-RD/MISC/2/93  
Dated: December 30th, 1994.

To

The Superintendent of Police,  
Tinsukia,  
Dist: Tinsukia ( Assam )

Sub: Assault on Local office manager, Shri S. K.  
Sasmal.

Sir,

I have to inform you that ours is a Social Security Organization under Ministry of Labour, Government of India. We have got a local office at Tinsukia located at Udyognagar, Nakum Road (opposite National Plywood). I have been informed over telephone on today i.e. 30th December, 1994 at about 10-30 AM by Shri B. C. Das an employee of our Tinsukia local office that Shri A. Hussain, Head Clerk of the said local office have severely assaulted and grievously injured Shri S. K. Sasmal, Manager, local office, Tinsukia. It is also apprehended that Shri A. Hussain may again assault manager as well as other staff members of the local office.

Accordingly, you are requested to please take immediate measures so that office ~~not~~box as well as life of the member of the staff are saved. You are also requested to take action as per law against Shri A. Hussain, Head Clerk.

The matter may please be treated as most important as it may lend to wide-scale repurcation among the IPs as well as members of the staff causing disturbance and smooth functioning of the said local office which deals with the cash payment of the industrial workers.

Yours faithfully,

( T. K. BHATTACHARYA )  
REGIONAL DIRECTOR,

Copy to: 1. The Officer-in-Charge, Police Station  
Tinsukia.

2. The Manager, Local Office, Tinsukia L.O.  
3. Shri C. R. Paul, Asstt. Regional Director,  
ESIC, RO, Guwahati. He is hereby directed to collect necessary information from staff members PS & other sources regarding the above incident occurred at local office Tinsukia. On completion, he will proceed to Jonai for spot verification of IBA case of Shri D.N. Pegu, VO, as ~~Maxx~~ directed by Hars. office.

REGIONAL DIRECTOR.

Copy sent  
21/12/94  
S.S. Office, Tinsukia  
S.S. Commissioner

REASON OF ACTION

Arrears 6/13/1948

Q.R. No. 1658/94.

Tinsukia P.S. Case No. 888/94 S.S.S.P.

W/S 290/323/50610

Name of Acc'd - M. A. Hussain

Copy of FIR

To

The Officer in Charge Tinsukia  
Police Station Tinsukia

Request - To lodge T.I.R  
against - M. A. Hussain Head  
Clock T.S.I. Corporation T.S.I.  
for attempt to murder  
to the master signed in  
the officer premises.

To have the honor to  
report that at about 9 A.M.  
on

10 days after opening  
the office is handed over to  
the master to be

Office messes to S.I. D.K. Bhattacharya  
to deliver those messes

Comptd.

Subj. of  
Govt. Guwahati  
S.I. Bhattacharya

Geo  
27/10/58  
General Director  
A.I. Corporation  
about 2h

office that said M.A. Hussain instead of accepting these memos from him Shamma hurriedly came forward towards me and started uttering filthy languages asking at me and assaulted me heavily on my forehead with a heavy wooden mallet, as a result where of I mentioned grivous injury and full senseless thereafter I was admitted to Civil Hospital Tirupur by the member of my staff where I am regaining the power that I am still under medical treatment at the said hospital.

Therefore I request you to please take necessary steps against the said M.A. Hussain to punish him according to law.

Received & regd. T.S.C.P. 5.12.1971  
 Case No. 555/71 U.S. 270/325/71 S/ S.K. Samal,  
 Manager  
 dt. 30.12.1971  
 S/ J.M. Senapati 30.12.1971  
 S/ T.R. 30.12.1971

envelope on 2020 9/22/2020

6270 - 200 - 202 (51510)

प्रतिवार - ओरा गुरु - शुक्र  
वार्षि गुरु - 20°

—x—

### Scizme list.

J. S. 1. 27. 17. : Ban shyam of  
P.S. do here. by Scizme. The  
following articles which are  
used by the accd. person  
Com. with the above. not id.  
Ex. in presence of the under  
witnesses,

Description of the signed articles

1) 2 ताल - अंडिका - (गरुड-  
वेल्स)

2) 52/ Bapam ch: फारा

2, 52/ Tanikeswar Hazarika

52/ J. W. B.

—x—

51

52

## Injury report

To the O/C Tinsukia P.S  
Sub = medical examination report  
in respect of Mr. S.K. Sarmah

S.D.A.

Please brief me with  
medical examination report in  
respect of the above named  
Person for your needful please.

Yours,

S.K. Sarmah

15.1.95

~~14/12/98~~  
Name - Mr. S. K. Sarmah

Age - 42 yrs

Sex - male

Date of examination - 30.12.94 at  
10.45 A.M.

Place of examination - Tinsukia Civil  
Hospital

### Description of injury

1) One naimaloma of 2" x 1" size  
normal sharp with downward in its  
middle & bleeding over the right

S/A to Chief Judicial  
Magistrate, Tinsukia

26/12  
Regional Director  
B.S.I. Corporation  
Guwahati - 21

Comptd.

Sup  
26/12  
Sup

153

mission 142

Type of weapon Blunt

Nature of injury = Simple.

SD/ Eligible

(S.K. Sammoh)

S. S. May 17. 05

Civil Hospital

TSK P.R.

~~SD~~

3m/ 3m - 3m - 3m - 3m -

Sri Subrah K. Sammoh =

33 - 33 - 33 - 33 - 33 -

33 - 33 - 33 - 33 - 33 -

33 - 33 - 33 - 33 - 33 -

33 - 33 - 33 - 33 - 33 -

33 - 33 - 33 - 33 - 33 -

33 - 33 - 33 - 33 - 33 -

33 - 33 - 33 - 33 - 33 -



603'0 - ପରିମ୍ବ - ଲକ୍ଷ ହେଲି - ପାରା, ମ

ପରିମ୍ବାରି - (m) ଅମ୍ବ - 637'0

ଅନ୍ତର୍ଦ୍ଵା - ପରି - 263'0 - 212'W

ପରି - ପରି - ଅଳ - m - 63m0 - 348'

ଅନ୍ତର୍ଦ୍ଵା - ପରି - 263'0 - 316'W

221' - 221' - ଅନ୍ତର୍ଦ୍ଵା - ପରି

ଅନ୍ତର୍ଦ୍ଵା - 22' - ପରି - 263' - 163'W

ପରି - 3-182'0 - ଅନ୍ତର୍ଦ୍ଵା - 157'0

ପରି - 221'0 - ପରି - ଅନ୍ତର୍ଦ୍ଵା - ପରି

ପରି - 221'0 - ଅନ୍ତର୍ଦ୍ଵା - ପରି

ପରି - 221'0 - 63m0 - 205' - ଅନ୍ତର୍ଦ୍ଵା

221'0 - 63m0 - 3m0 - 163'0 - ଅନ୍ତର୍ଦ୍ଵା

ପରି - 3-182'0 - ପରି - ଅନ୍ତର୍ଦ୍ଵା -

ପରି - 221'0 - 63m0 - 163'0

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221'0 - 63m0 - 205' - 163'0

ପରି - 3-182'0 - ପରି - 205' - 163'0

ପରି - 221'0 - 163'0 - 163'0

ଅନ୍ତର୍ଦ୍ଵା - ପରି - ଅନ୍ତର୍ଦ୍ଵା - 205' - 163'0

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Mr. Dipak K. Saikia =

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B/A/T/C  
Chief Judicial  
Magistrate, Tinsukia

Regional Director  
B.I. Corporation  
Gauhati

Executive  
B.I. Corporation  
Gauhati

Sup. No. 2730 - 07/11 - ১০৩(১০৫) - ১০৩(১০৫)

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ଶ୍ରେଣୀବର୍ଷ - ବିନ୍ଦୁ 6୩୮୦ - ୩୨(ହା)

ପର୍ଦ୍ଦିତ - (୨) - attendance Register

ବିନ୍ଦୁ - ୩୧/୨ - ଦିନାଖର - ବିନ୍ଦୁଜୀ -

କାନ୍ଦା - ଲେଖ - ୩୧ - ବିନ୍ଦୁ - ବିନ୍ଦୁ ହିବା

ପର୍ଦ୍ଦିତ - 6୩୮୦ - ୩୨(ହା) - ବିନ୍ଦୁ ହିବା

ବିନ୍ଦୁ - ୩୧/୨ - ଅନ୍ତର୍ବିନ୍ଦୁ - ବିନ୍ଦୁ

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ଫର୍ମିଲୀ - ବିନ୍ଦୁ - କାନ୍ଦା - 6୩୮୦ - କାନ୍ଦାବିନ୍ଦୁ

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1/1 to Child Justice  
Magistrate, Hosur  
National Dispute  
B.B.C. Corporation  
Court No. 21

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ग्राम - ग्राम - ग्राम वर्ष - ३१८ -

attendance Report - अ - absent - नाही

६३१ - ३१८ - फ्रूट - अपॉर्ट - attendance

२२१ - अल्लूरी - ~~कृष्ण~~ - ३१२२१ -

२२१३ - ग्रामवासी - अवश्यक - ६३१० -

६३१० - २१२२१ - कृष्ण - वृन्द - ०१८ -

६३१० - २१२२१ - ग्राम - २१२२१० -

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ଦେବତାକର୍ତ୍ତରୀ" ଅନ୍ତି- ୨୨୮୧୦-୫୮୭୫

Game - ୩୭୨୨୩ - ରତ୍ନ- କାଳି ଅନ୍ତି

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Bapam Ch. Das

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କାଳି - ୨୩୮୨ - Game - ଉତ୍ତର - କାଳି

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27 AUG 2001

गुवाहाटी बैठक

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : GUWAHATI

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Filed by the applicant  
Guwahati N. O.  
27/8/01  
27/8/01

In the matter of :

O.A. No.286/2000

Md. Akhtar Hussain

-Vs.-

Union of India & others

-AND-

In the matter of :

Rejoinder submitted by the applicant

against the written statement filed by the  
respondents.

That your applicant most humbly and respectfully beg to state as under :

1. That he has gone through the written statement and has understood the contents thereof.
2. That your applicant categorically denies the statements made in Paragraph 1, 3 5, 6, 7 and 9 of the written statement and further begs to stated that it is not correct that the applicant was found guilty in the departmental proceeding as because the imposition of penalty in the departmental proceeding is contrary to law and the same has been done in total violation of the procedure laid down in CCS (CCA) Rule 1965. The allegation of gross misbehaviour/misconduct and physically assault could not be proved in the criminal proceeding before the C.J.M. Tinsukia as such the initiation of departmental proceeding is permissible as per the extant rule and procedure laid down in the

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Case No. 1658/94. The same set of facts and witnesses as such imposition of penalty in the departmental proceeding cannot be sustained in the eye of law. It is further submitted that non-vocation of suspension order of the applicant even after his acquittal in the criminal proceeding is deliberate and contrary to rule and this arbitrary action of the respondents is established the mala fide intention of the respondents. It is not permissible to initiate a departmental proceeding on the same set of facts, more particularly when the applicant is acquitted in the criminal proceeding after the examination of same set of witnesses and evidences by the C.J.M. Tinsukia vide Judgment & Order dated 2.1.1997 in the G.R.Case No. 1658/94. The statement that "the suspension was not done as a result of criminal case but as a result of the investigation of a criminal offence" is misleading. It is abundantly clear from the Order No.43-A.20/11/13/95-Estt. Dated 14.02.95 of the Respondent (Regional Director, ESI) that the very basis of suspension of the applicant was the letter No.TSK/T/95 dated 12.01.95 of the Police authorities, Tinsukia and the arrest of the applicant by the Police which directly relates to the Police Case No.SSS/94U/S-290/325 IPC. When the Respondents relied on the letter of the Police authority for placing the applicant under suspension, they can not now deny the factum of the relevant Police case since the letter No.TSK/T/95 dated 12.01.95 of the Police authority can not be looked in isolation from the Police SSS/94U/S-290/325 IPC and also the subsequent acquittal of the applicant by the relevant court for the reason that all these three facts constitute one single chain of events. Obviously, the respondents, for their own convenience, can not just act only on the letter dated 12.01.95 of the Police authorities for inflicting suspension on the applicant but

ignore the subsequent actions of the police i.e. the relevant Police Case No. SSS/94U/S-290/325 IPC and the consequential judgment by the CJM, Tinsukia against case No.G.R 1658/94.

2. That as regards para 8 of the W/S, the contention that the G.R. Case No.1658/94 was filed by the Police Station and not by the respondents fails to take into account that alleged suspension of the applicant by the respondents was also initiated on the letter of the same Police authority which filed the said G.R. Case No.1658/94 on the same facts and case and hence the judgment of the case was binding on the respondents for the purpose of revocation/withdrawal of suspension.

That the statement that "the applicant had filed case against his suspension only during the year 1999 in CAT" is misleading to the fact that the applicant had already submitted his application earlier on 2.1.97 to the respondent informing the respondents of his acquittal by the court and prayed for revocation of his suspension and the question of failing case in 1999 in CAT arose subsequently only due to the inaction of the respondents on the prayer of the applicant.

4. That, with regards to Para 9 and 10 of the W/S, your petitioner begs to state that the periodical review of the continuation or otherwise of the suspension was not made by the respondents in accordance with the settled law. The respondents at no point of time passed any order mentioning the continuation of suspension after the initial period of 90 days nor the decision of continuation of suspension if any, was communicated to the applicant. The respondents simply attempted to justify in their written statement the fact of review in terms of enhancement of subsistence

allowance which is altogether a different matter and does not amount to an order of continuation of suspension of the applicant.

Therefore, the respondents, in violation of the settled principles for review of suspension and in the pretext of departmental investigation, can not presume to continue the suspension for an unspecified tenure without any express order and subsequently treat such period as non-duty period at their sweet will. This aspect was thoroughly examined by the Hon'ble CAT in the instant case and in its judgment dtd. 14.7.99 in O.A. No.198/99 it was clearly expressed that the suspension of the applicant continued beyond the period prescribed under law.

5. That in reply to the statements made in para 12, 13, 14, 15 and 18 your applicant begs to submit that the respondents took illegal and discriminatory action although against the applicant. In spite of the fact that although a competent court of law adjudicated upon the same charges against the applicant as alleged in the departmental proceedings and with the same set of evidences in G.R. Case No.1658/99 and found not guilty, surprisingly, the respondents, ignoring the judgment of the CJM, Tinsukia conducted a departmental proceedings in a biased and tutored manner and held him guilty and inflicted punishment of dismissal without slightest regards to the principles of natural justice and cannons of law.
6. That regarding para 16 & 21 of the W/S, your applicant begs to state that while revoking the suspension order, the Hon'ble CAT in its judgment & order dated 14.7.99 in OA No.198/99 unequivocally expressed that "the suspension is liable to be set aside" which by itself speaks of the spirit of the judgment.

7 That with regards to Para 19, 20, & 22 of the W/S, the applicant begs to submit that since the very suspension of the applicant has been set aside by the Hon'ble CAT vide its judgment and order dtd. 14.7.99, the decision of the respondents to treat the period of suspension as non-duty period and non-payment of admissible Pay and D.A. etc. to the applicant is bitter violation of law and amounts to contempt of court.

Under the facts and circumstances as above, it is abundantly clear that the respondents were determined to frame some preplanned charges against the applicant and to inflict a major punishment on the applicant by any means whatsoever, no matter what the court of law or the CAT decides.

8. That in the facts and circumstances, the applicant humbly submits that he is entitled to the relief prayed for and the O.A. deserves to be allowed with cost.

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VERIFICATION

I, Md. Akhtar Hussain, S/o late Md. Makuar Ali, resident of Japorigog High School Road, Sundarpur, P.O. Dispur, Guwahati do hereby verify that the statements made in Paragraph 1 to 7 are true to my knowledge and the rest is my humble submission before the Hon'ble Tribunal.

And I sign this verification on this the 24<sup>th</sup> day of August, 2001 at Guwahati.



Signature