

30/10/00
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 294/2000

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet..... OA Pg. 1 to 3 Period 2.11.2000
MP 22/6/2000 order Pg 1 to 2 Period 2.11.2000

2. Judgment/Order dtd. 13.6.2001 Pg. 1 to 11. O.A.

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

4. O.A. 294/2000 Pg. 1 to 39

5. E.P/M.P. 22/8/2000 Pg. 1 to 4
MP 115/2000 Pg 1 to 2

6. R.A/C.P. Pg. to

7. W.S. Pg. 1 to 8

8. Rejoinder..... Pg. to

9. Reply..... Pg. to

10. Any other Papers..... Pg. to

11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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

ORDER SHEET. (See Rule-42)

APPLICATION NO. 294/2000

Applicant(s) *Nakayon Chaudhuri Sarkar.*

Respondents(s) *Union of India and others.*

Advocate for Applicant(s) *Mr. A. Roy, Ms. P. Chatterjee.*

Advocate for Respondent(s) *Rly. Advocate.*

Notes of the Registry

DATE

ORDER OF THE TRIBUNAL

27.9.00

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

List on 23.10.2000 for admission along with M.P.228/2000.

[Signature]
Vice-Chairman

pg

23.10.00 Let this case be listed alongwith M.P.No.228 of 2000 on 1.11.00 for orders.

[Signature]
Vice-Chairman

1m

1.11.00

No representation, list again on 2-11-2000.

[Signature]
By order,

2.11.00

Vide order passed in M.P.228/2000 the prayer of condonation of delay is allowed.

Heard Mr A.Roy, learned counsel for the applicant. Application is admitted. Issue usual notice.

List on 4.12.2000 for written statement and further orders.

[Signature]
Vice-Chairman

pg

[Signature]
3/11/2000

Notice prepared and sent to DLS for issuing the Reschedulment No. 1 to 6 vide D/L No. 2251/1556 dated 23/10/00

[Signature]
Notice duly served on A No. 3, 5 & other areas with

[Signature]
1/12/00

Mr. S. Seagupta. 4.12.00
 Rly. Advocate has
 been filed by "Varkala name"
 on behalf of respondents.

On the prayer of Mr. S. Sarma or
 behalf of the Railway counsel the case is
 adjourned to 4.1.2001 for filing of written
 statement.

List on 4.1.2001 for written
 statement and further orders.


 Vice-Chairman

No written statement trd
 has been filed.

W.H. There was a reference - 19.1.2001

Zy
 3.1.2001

19.1.01
 No W.S has been filed.

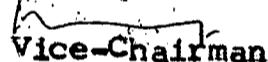
Zy
 18.1.2001

Heard Mrs P. Chakraborty, learned
 counsel for the applicant and Mr J.L.
 Sarkar, learned Railway standing counsel

List again on 16.2.01 for order
 and to file written statement.

U. Ushan

Member


 Vice-Chairman

No written statement
 has been filed pg

Zy
 15.2.01

16-3rd/
 No W.S has been filed
 by

25. 4. 2001 1m

X/S has been
 intimated for and
 on behalf of the
 respondents.

16.2.01. No written statement has been
 filed. Mr. S. Sarma learned counsel for
 the respondents again prays for
 adjournment. Ms. P. Chakraborty learned
 counsel for the applicant opposes the
 prayer. List on 19.3.01 for orders
 as a last chance, failing which the
 case will proceed ex parte.

U. Ushan
 Member


 Vice-Chairman

19.3.01

List for hearing on 14.5.01. In
 the meantime the parties may exchange
 written statement and rejoinder, if any.

U. Ushan
 Member


 Vice-Chairman

pg

PG

Notes of the Registry	Date	Order of the Tribunal
Written statement has been filed.	14.5.01 bb <i>By 11.6.01</i>	On the prayer of learned counsel for the applicant the case is adjourned to 12.6.2001 for hearing. I C I Sharma Member
		<i>Vice-Chairman</i>
		Panned over for the day, list on 13.6.2001 for hearing. <i>DR</i> <i>PPD</i>
<u>12.7.2001</u> <i>Copy of the Judgment has been sent to the Dpecc. for issuing the same to the applicant as well as to Mr. A. Roy, C.G.S.C. for the respondent.</i> <i>48</i>	13.6.2001 nkm	Present: Hon'ble Mr Justice R.R.K. Trivedi, Vice-Chairman Hon'ble Mr K.K. Sharma, Administrative Member. Heard Mr A. Roy, learned counsel for the applicant and Mr S. Sengupta, learned Railway Counsel. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs. I C I Sharma Member
		<i>Vice-Chairman</i>

16008 90-1428-4-2

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXXX NO. 294 of 2000

DATE OF DECISION 13.6.2001

Shri Narayan Chandra Saha

APPLICANT(S)

Mr A. Roy and Ms P. Chakraborty ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

Mr S. Sengupta, Railway Counsel ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE R.R.K. TRIVEDI, 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



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.294 of 2000

Date of decision: This the 13th day of June 2001

The Hon'ble Mr Justice R.R.K. Trivedi, Vice-Chairman

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

Shri Narayan Chandra Saha,
Resident of Tarapur, P.O.- Tarapur,
Silchar, District- Cachar, Assam.Applicant
By Advocates Mr A. Roy, Ms P. Chakraborty.

- versus -

1. The Union of India, represented by
The Secretary,
Department of Railways,
New Delhi.
2. The General Manager,
N.F. Railway, Maligaon,
Guwahati, Assam.
3. The Deputy Regional Manager,
Lumding, Nagaon District,
Assam.
4. The Senior Divisional Commercial Manager,
Lumding, Assam.
5. The Station Superintendent,
Silchar, District- Cachar,
Assam.
6. The Divisional Railway Manager,
N.F. Railway, Silchar,
District- Cachar, Assam.Respondents

By Advocate Mr S. Sengupta, Railway Counsel.

.....
O R D E R (ORAL)

TRIVEDI.J. (V.C.)

By this application under Section 19 of the
Administrative Tribunals Act, 1985 the applicant has
prayed for a declaration that the impugned order of
removal from service dated 24.1.1995, is illegal,
unconstitutional and violative of the statutory
provisions. He has also prayed for his reinstatement in



service with all consequential benefits.

2. The facts, in short, giving rise to this application are ~~that~~ _____

~~That~~ The applicant was serving as Goods Clerk in N.F. Railway, Silchar. He was involved in a criminal case. On 27.2.1985 a First Information Report was lodged against the applicant under Section 5(2) read with Section 5(1)(c) of the Prevention of Corruption Act, 1947. The allegation against the applicant was that he possessed property disproportionate to his known ~~sources~~ ^{of} income. On the basis of the First Information Report a chargesheet was submitted and the Trial Court by order dated 11.12.1990 convicted and sentenced the applicant for Rigorous Imprisonment for three years and fine of Rs.20,000/- and in default of payment he was to undergo Rigorous Imprisonment of another three months.

3. On the basis of the conviction of the applicant by the Trial Court a show cause notice was served on the applicant on 28.12.1994 as to why he may not be removed from service as he has been convicted by the Criminal Court. The applicant filed his explanation. However, the Disciplinary Authority by the impugned order dated 24.1.1995 removed him from service under Rule 14(1) of the Railway Servant (Discipline and Appeal) Rules, 1968.

4. It is noteworthy at this place that no disciplinary proceedings were initiated against the applicant during all this period, though he was placed under suspension with effect from 24.8.1986. But, the suspension order was revoked on 26.9.1989. The applicant preferred appeal against his conviction and sentence by the Trial Court, which was registered as Criminal Appeal

No.5 of 1991 before the Hon'ble Gauhati High Court. The appeal was allowed by Judgment and Order dated 16.2.1999. The conviction and sentence passed against the applicant was set aside and the applicant was acquitted of the charges. After the Judgment in Appeal, the applicant made representations before the respondents, copies of which have been filed as Annexures 7, 8, 9 and 10. The grievance of the applicant is that though more than two years have lapsed the respondents could not take any decision on the representations filed by the applicant.

5. Mr S. Sengupta, learned Railway Counsel, has submitted that the representations filed by the applicant could not be decided as the respondent authorities were trying to ascertain from the Prosecuting Agency whether they intended to file any appeal against the Judgment and Order of the High Court acquitting the applicant. The learned counsel for the applicant, on the other hand, submitted that two years period is long enough to make up the mind for filing appeal and it is just an excuse on the part of the respondents not to pass any order on the representations of the applicant.

6. We have carefully considered the submissions of the learned counsel for the parties. The legal position is well settled that the Disciplinary Authority has to decide the representation of the applicant in the changed circumstances, in which the very basis for passing the order of removal on 24.1.1995 had become non-existent. In our opinion they have already taken a long time.

7. Considering the entire facts and circumstances of the case, we dispose of this application with a direction to the Senior Divisional Commercial Manager, N.F. Railway,

 Lumding.....

Lumding- respondent No.4 to decide the representation of the applicant within two months from the date a copy of this order is received by them. The order shall be passed after hearing the applicant and it shall be a reasoned order.

No order as to costs.

KS (Chavne)
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

R. R. K. Trivedi
(R. R. K. TRIVEDI)
VICE-CHAIRMAN

nkm

607 25 SEP 2000
Guwahati Bench
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::
AT GUWAHATI.

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

ORIGINAL APPLICATION NO. 294 /2000

Shri Narayan Chandra Saha ... Applicant.

- Versus -

Union of India and Others, ... Respondents.

I N D E X

Sl. No.	Description of Documents.	Pages
1.	Application Verification	1 - 13
2.	Annexure - 1.	14 - 21
3.	Annexure - 2.	22
4.	Annexure - 3.	23 - 24
5.	Annexure - 4.	25
6.	Annexure - 5.	26 - 27
7.	Annexure - 6.	28
8.	Annexure - 7.	29 - 30
9.	Annexure - 8.	31 - 34
10.	Annexure - 9.	35 - 36
11.	Annexure - 10.	37
12.	Annexure - 11.	38 - 39

Date of Filing :-

Filed by -

Ms- Paria Chakraborty

Registration No.:-

Advocate

Registrar

Filed by Shri
Narayan Ch. Saha
through Ms. Paria
Chakrabarty
12 Shrocali
25-9-00

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

ORIGINAL APPLICATION NO. 294 /2000

Shri Narayan Chandra Saha
S/O Late Narendra Kr. Saha
Resident of Tarapur, P.O. - Tarapur,
Silchar, District - Cachar, Assam.

.... Applicant.

- Versus -

1) The Union of India

Represented by the Secretary,
Department of Railways,
New Delhi.

2) The General Manager,

N.F. Railway, Maligaon,
Guwahati - Assam.

3) Deputy Regional Manager,

Lumding, Nagaon District,
Assam.

4) Senior Divisional Commercial
Manager, Lumding, Assam.

5) Station Superintendent,

Silchar, District - Cachar,
Assam.

6) Divisional Railway Manager,
N.F. Railway, Silchar,
District - Cachar, Assam.

.... Respondents.

DETAILS OF APPLICATION :

1. Particulars of Orders against which the application is made :

The application is made against the Order of removal from service dated 24.1.1995 passed by Respondent No. 4, the Senior Divisional Commercial Manager in exercise of power conferred under Section 14(1) of the Railway Servant (Discipline and Appeal (Rule, 1968 on the basis of the applicants conviction in the Special Case No. 8 of 1986.

2. Jurisdiction of the Tribunal :

The Applicant declare that the subject matter of the Order against which the Applicant want redressal is within the jurisdiction of the Tribunal.

3. Limitation :

Appropriate application has been filed along with this application.

contd... p 3.

N. Ch. Saha

4. Facts of the Case :

(i) That the Applicant is a citizen of India and is a permanent resident of Tarapur, Silchar in the district of Cachar, Assam.

(ii) That the Applicant has been serving as a Goods Clerk in N.F. Railway at Lumding and Silchar. All on a sudden on 27.2.1985 a First Information Report was lodged by the Superintendent of Police, SPE/CBI, Silchar against the Applicant under Section 5(2) read with Section 5(1)(c) of the Prevention of Corruption Act, 1947 alleging that the Applicant was found in possession of pecuniary resources/property disproportionate to his known source of income.

(iii) That it was alleged in the said F.I.R. that the Applicant while functioning as ~~Goods~~ Goods Clerk in N.F. Railway at Lumding, Badarpur and Silchar during 1.1.1982 to 28.2.1985 acquired and possessed property worth Rs. 1,02,894.84 (Rupees One lakh two thousand eight hundred ninety four and paise eighty four) disproportionate to his known sources of income which he could not account satisfactorily and hence had committed the offence under the Prevention of Corruption Act, 1947.

(iv) That on the basis of the said F.I.R., special Case No. 8 of 1986 was registered against him in the Court of Special Judge, Assam Guwahati ~~WA~~ and he was committed to trial. The said Special Case was decided against the

Applicant. The Applicant was convicted and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs. 20,000/- and in default to pay the fine to undergo a further period of Rigosous Imprisonment for three months under Section 5(2) read with Section 5(1)(c) of the Prevention of Corruption Act, 1947.

(v) That the Applicant being aggrieved by the aforesaid order of the Special Judge, Guwahati dated 11.12.1990 preferred an appeal before this Hon'ble Court being numbered as Criminal Appeal No. 5 of 1991. This Hon'ble Court was pleased to grant bail to the Applicant and suspended the realisation of the fine till disposal of the said Criminal Appeal.

(vi) That thereafter on 16.2.1999 the aforesaid Criminal Appeal was allowed by this Hin'ble Court setting aside the conviction and sentence so passed by the learned Special Judge, Assam, Guwahati in Special Case No. 8/96 and the applicant was acquitted of the charge.

A copy of the said Judgement dated 16.2.1999 is annexed herewith and marked as Annexure - 1.

(vii) That the Applicant states that the Respondent No. 5, the Station Superintendent, N.F. Railway, Silchar had placed the Applicant under suspension vide his letter dated 23.8.1986 without assigning any reason for such

contd...

M.C. Saha

action. As per the said letter, the Applicant was placed under Suspension with effect from 24.8.1986.

A copy of the said letter dated 23.8.86 is annexed herewith and marked as Annexure - 2.

(viii) That the Applicant made several representations before the Respondents for revocation of the said suspension order being illegal and violative of the Rules, as the Respondents neither did assign any reason for suspension nor furnished any material regarding the charges levelled against the Applicant. Finally the Respondent No. 4, the Senior Divisional Commercial Manager, Lumding vide his letter No. C/CON/IMG/MISC/NCB-OC-SIL) dated 26.9.1989 revoked the earlier suspension order with immediate effect.

A copy of the said letter of revocation dated 26.9.1989 is annexed herewith and is marked as Annexure - 3.

(ix) That thereafter the Respondent No. 4, the Senior Divisional Commercial Manager, Lumding vide his letter dated 23.12.1994 issued a show cause notice to the Applicant intimating him that the Respondents proposes to impose upon him the penalty of removal from service under Rule 14(1) of the Railway Servent (Discipline and Appeal) Rules, 1968 following ~~the~~ his conviction order dated 11.12.1990 passed by the learned Special Judge,

N. Ch. Saha

contd....

Kamrup, Guwahati, Assam in the Special Case No. 8 of 1986. The Applicant vide that show cause notice was directed to reply within a week against the proposed imposition of penalty upon him.

A copy of the said show cause notice dated 28.12.1994 is annexed herewith and is marked as Annexure - 4.

(x) That the Applicant states that ~~u~~ soon after receipt of the aforesaid show cause notice the Applicant filed his representation dated 3.1.1995 before the Respondent No. 4, the Senior Divisional Commercial Manager, Lumding stating that he had moved the Hon'ble High Court in appeal against the Judgement and Order of the Special Judge dated 11.12.1990 and that the said Criminal Appeal No. 5 of 1991 was admitted by the Hon'ble Court and also stated that the appeal was to come up for hearing within a short time and that he had strong belief that he would be acquitted in the said appeal. He therefore, prayed to the Respondent No. 4 to keep the proposed order of penalty under Rule 14(1) of the Railway Service (Discipline and Appeal) Rule, 1968 in abeyance till disposal of the Criminal Appeal by the Hon'ble Court.

Copy of the said representation dated 3.1.1995 is annexed herewith and is marked as Annexure - 5.

(xi) That the Respondent No. 4 however, without

considering the Applicant's show cause arbitrarily and hastily passed the impugned order of discharge vide his order dated 24.1.1995. The Respondent No. 4 passed the said Order on the basis of Applicant's conviction in the Special Case No. 8 of 1986 in exercise of the powers conferred under Section 14(1) of the Railway Servant (Discipline and Appeal) Rule, 1968.

A copy of the said letter of removal from service is annexed herewith and is marked as Annexure - 6.

(xii) That the Applicant states that soon after the disposal of the Criminal Appeal as aforesaid and his acquittal, he made a prayer before the Respondent No. 4 dated 24.2.1999 for his reinstatement and for review of the impugned order dated 24.1.1995 as well.

A copy of the said representation dated 24.2.1999 is annexed herewith and is marked as Annexure - 7.

(xiii) That the Applicant states that due to the arbitrary and illegal action of the Respondents he had to loose his only source of earning livelihood. The Respondents dealt with the matter in such a casual and irresponsible manner and did not bother to dispose of his representation even after several months of the

disposal of the criminal appeal and acquittal of the Applicant. The Applicant then filed another representation before the Respondent No. 4 dated 22.8.1999 to review the impugned order of dismissal from service in view of the Judgement passed in the Criminal Appeal No. 5 of 1991.

A copy of the said letter dated 22.8.1999 is annexed herewith and is marked as Annexure - 8.

(xiv) That the Applicant states that the order of his removal was a cryptic one and illegal which led the Applicant along with the members of his family to starve and face indescribable hardships. The Applicant further stated that the inaction of the respondents in reinstating him after his acquittal, arbitrary, discriminatory and malafide. The Applicant vide his representation dated 5.9.1999 and 3.12.1999 made further request to the Respondent No. 2, the General Manager, N.E. Railway, Maligaon to re-instate him revoking the earlier order of removal in light of the acquittal order passed by the Hon'ble High Court but to no avail.

Copies of the said letter dated 5.9.99 and 3.12.1999 are annexed herewith and are marked as Annexures - 9 and 10 respectively.

(xv) That the Applicant thereafter having no other alternative again approached the Respondents vide his

letter dated 1.7.2000 to dispose of his appeal for reinstatement which was lying before them for disposal since last one and half year, but the Respondents did not pay any heed to the successive requests of the Applicant and has led him to lead a life of extreme distress.

A copy of the representation dated 1.7.2000 is annexed herewith and marked as Annexure - 11.

5. Grounds for reliefs with legalprovisions :

(i) For that the impugned order of removal was passed most mechanically without application of mind. While making imposing such a major penalty like removal from service the Respondents ought to have taken into account the fact that the matter was pending before the Hon'ble High Court for disposal and then the impugned order of removal being illegal and arbitrary liable to be set aside and quashed.

(ii) ^{Fall} Further that the impugned order of removal was passed in a haste and was passed without jurisdiction. Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 under which the impugned order of removal was made itself contemplates that imposition of penalty on the basis of the conviction in a criminal case is not to be automatic but should be examined on the merit of the case. It also provides that while making an order under this Rule, the authority must keep \checkmark in mind that

M. Ch. Saha

contd...

the penalty imposed should not be grossly excessive or out of proportion to the offence committed or not warranted by the facts and circumstances of the case. Hence, in this instant case the respondents passed the order of removal completely on extraneous grounds which was not warranted by the circumstances of the case and hence is completely malafide and baseless and as such is liable to be set aside and quashed.

(iii) For that the very basis of the order of removal from service being non-existent after the order of acquittal by the Hon'ble High Court in Criminal Appeal No. 5 of 1991, the impugned order of removal is not sustainable in the eye of law and is liable to be set aside and quashed.

(iv) For that the Rule 25 of the Railway Servants (Discipline and Appeal) Rule, 1968 which lays down the Rule regarding Review and Revision of such order of discharge provides that the power of Review or Revision should be exercised by the authorities within six months from the date of order. Hence in the case in hand the Respondents should have revoked the earlier order of removal from service instantly after the order of acquittal of the Applicant by this Hon'ble Court in exercise of powers conferred under the said Rule. Keeping the Applicant's Appeal for revocation penalty for such a long period is a clear abuse of official power and authority by the Respondents and hence is liable to be set aside and quashed.

(v) For that the respondents acted beyond jurisdiction while passing the disproportionate and such harsh consideration the facts and circumstances of the case and the legal aspect involved in it which resulted in loss of only means of earning of the Applicant. Hence, the impugned order of dismissal is illegal, unconstitutional and is bad in law and hence is liable to be set aside and quashed.

6. Details of the remedies exhausted :

That the applicant states that he has no other alternative and other efficacious remedy than to file the application. The Applicant filed several representation through proper channel for review and revocation of the impugned order of removal after his acquittal in the criminal Appeal No. 5 of 1991. The Applicabt vide his letters dated 22.8.1999, 5.9.1999, 3.12.99, 1.7.2000 (Annexues - 8, 9, 10 and 11) respectively made successive request to the respoedents for revocation of the impugned order of removal as well as for his reinstatement but to no avail.

7. Matter pending with any other Court :

The applicant states that he made his best effort to get justice from the respondents and made several representations but respondents did nothing to dispose of his prayer and hence finding no other alternative the

Applicant approached the Hon'ble High Court by way of Writ Petition being numbered Writ Petition (C) No. 5054 of 2000 as the Tribunal was not sitting during that time. However, as the Hon'ble Tribunal started sitting in the meantime, the Applicant had withdrawn the petition from the Hon'ble High Court.

8. Relief Sought :

In view of the facts and circumstances stated in paragraph 4 above, the Applicant prays for the following reliefs :-

- (a) Declaration that the impugned order of removal from service dated 24.1.95 is illegal, unconstitutional and violative of the statutory provisions laid down in the Railway Service (Discipline and Appeal) Rule, 1968 and therefore, void and inoperative in law.
- (b) Direction to the respondents to reinstate the applicant in service with full service benefits.
- (c) Direction to the Respondents to give the applicant his due seniority and promotion.
- (d) Direct the respondents to pay the applicant his back wages etc.
- (e) Any other relief or reliefs to which the Applicant is entitled to as the Hon'ble Tribunal may deem fit and proper.

M. Ch. Sala

contd....

13.

9. Interim Order prayed :

Pending disposal of this application an observation be made that pendency of this application shall not be a bar for the respondents to re-instate the applicant on service. The Applicant also prays that the instant application be disposed of expeditiously.

10. Particulars of I.P.O. :

(i)	I.P.O. No.	-	262 502912
(ii)	Date	-	25-9-2000
(iii)	Payable at	-	Guwahati.

11. List of enclosures :-

As stated in the index.

N. Ch. Saha

14

-3.

VERIFICATION

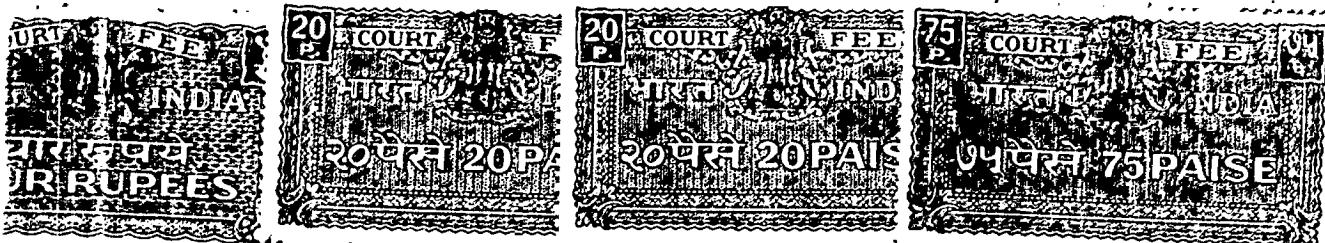
I, Shri Narayan Chandra Saha, Son of Late Narendra Kumar Saha, aged about 55 years, resident of Tarapur, P.O. Tarapur, Silchar in the district of Cachar, Assam, do hereby verify the statements made in paragraphs 1-3 and 4 (i-v), 5-8 are true to my knowledge and those made in paragraphs 4 (vi-xv) are true to my information derived from records and I have not suppressed any material fact.

And I sign this verification on this 25th day of September, 2000 at Guwahati.

Narayan Chandra Saha

SIGNATURE

Date fix for notifying number of stamps and folios.	Date of taking data on which of the requisite stamps and folios.	Date of making over the copy to the applicant
199	22/2/99	22/2/93



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

Criminal Appeal No.5/91.

Annexure-1

Sri Narayan Chandra Saha,
Son of Late Narendra Kumar Saha,
Resident of Tarapur,
P.O. - Tarapur, Silchar-3
in the District of Cachar, Assam. ... APPELLANT.

- Versus -

The State of Assam RESPONDENT.

PRESENT

THE HON'BLE MR JUSTICE A.K. PATNAIK

For the Appellant : Mr. C.R. Dey,

Mr. J.M. Choudhury,

Mr. B.M. Choudhury,

Mr. D. Talukdar,

Mr. P. Kataki, Advocates.

For the Respondent: Mr. D. Das,
Special P.P., C.B.I.

Date of Judgement : 16.2.1999.

JUDGEMENT AND ORDER

This is an appeal against the judgement dated 11.12.90 passed by the learned Special Judge, Assam, Guwahati in Special Case No.8/86 convicting and sentencing the appellant to undergo rigorous imprisonment for three years and to pay a fine of

Rs.20,000/- and in default to a further period of rigorous imprisonment for three months under Section 5(2) read with Section 5(1)(e) of the prevention of Corruption Act.1947.

2. The facts briefly are that a first information report was lodged by the Superintendent of Police, SPE/CBI, Silchar on 27.2.85 alleging that the appellant who was a Goods Clerk, N.F.Rly, Silchar was in possession of pecuniary resources of property disproportionate to his known sources of income and therefore was guilty of offence under Section 5(2) read with Section 5(1) (e) of the prevention of Corruption Act,1947.Pursuant to the said first information report, investigation was made by the C.B.I. and a charge sheet was filed before the Special Judge, Assam,Guwahati.On 20.1.87 the following charge was framed against the appellant by the learned Special Judge, Assam,Guwahati.

" That you Narayan Chandra Saha while being posted and functioning as Goods Clerk in N.F. Rly at Lumding, Badarpur and Silchar during 1.1.82 to 28.2.85 (Check period) and being a public Servant in the said capacity acquired and in possession of you/or on your behalf disproportionate assets valued Rs.1,02,894.84 for which you cannot satisfactorily account and there by committed offence punishable under section 5(2) read with Section 5(1)(e) of the prevention of Corruption Act(ActII of 1947) and within the cognizance of this Court."

The appellant denied the charge and the trial proceeded. After recording the prosecution and the defence evidence the learned Special Judge, Assam, Guwahati held in the impugned Judgement that the Appellant had assets amounting to Rs.34,978/- on 1.1.82 and Rs.1,13,008/- during the period from 1.1.82 to 31.1.85 and that the assets of the appellant were disproportionate to his known sources of income. The learned Special Judge held the appellant guilty of the offence of possessing assets disproportionate to his known sources of income and convicted him under section 5(2) read with section 5(1) (e) of the prevention of Corruption Act, 1947 and sentenced him to rigorous imprisonment and fine as indicated above.

3. At the hearing, Mr. C.R. Dey and Mr. J.M.- Choudhury learned counsel for the appellant, submitted that the assets found disproportionate to the known sources of income of the appellant as per the charge sheet included the cost of building valued at Rs.2,03,213/- but the appellant led evidence in the trial to show that the valuation of the building was only Rs.1,09,395/- and that the said evidence led by the appellant through D.W.2 in Ext.A was accepted by the learned Special Judge, Assam, Guwahati in the impugned Judgement. Hence, the difference between the valuation of Rs.2,03,213/- made by the prosecution and of Rs.1,09,395/- as given by the defence and accepted by the learned Special Judge, Assam, Guwahati which works out to Rs.93,818/-

has to be deducted from the figure of Rs.1,02,894.84 for the purpose of finding out the assets in possession of the appellant disproportionate to his known sources of income. So, deducted, the amount is reduced to Rs.9076.84 which is less than 10% of the total income of the appellant of Rs.1,03,484.57 during the check period from 1.1.82 to 28.2.85. According to the learned counsel for the appellant an amount of surplus assets is only Rs.9076.80 which was less than the 10% of the total income of the appellant during the check period cannot hold to be disproportionate to the known sources of income of the appellant and therefore the appellant cannot be held guilty of the offence under Section 5(2) read with section 5(1) (e) of the prevention of Corruption Act, 1947. In support of this submission learned counsel for the appellant relied on the decision of the Supreme Court in Krishnanand -Vs- The State of Madhya Pradesh (1977) 1 SCC 816 and on the decision of the Orissa High Court in Hemanta Kumar Mohanty, 1973 (1, SLR 1121).

4. Mr. D. Das, learned counsel for the Respondent, on the other hand, submitted that even after taking the lower valuation of Rs.1,09,395/- as made by D.W.2 in Ext.A and as accepted by the learned Special Judge, Assam,Guwahati surplus assets of Rs.9076.84 is found to be in possession of the appellant.

Contd...5

-5-

5. The case of Krishnanand -Vs- The state of Madhya Pradesh(Supra) was a case under Section 5(3) of the prevention of Corruption Act, 1947 prior to its amendment by Act 40 of 1964. By the said Section 5(3) of the prevention of Corruption Act, 1947 the Court was to draw presumption of the offence of Criminal misconduct against the accused in discharge of his duty if the accused is in possession of pecuniary resources or property for which he cannot satisfactorily account. The Supreme Court held that since the value of the assets possessed by the appellant in excess of the surplus income available to him was less than ten per cent of the total income of the appellant during the check period, it would not be right to hold that the assets found in the possession of the appellant were disproportionate to his known sources of income so as to justify the raising of the presumption under Sub-section 3 of Section 5 of the Act.

6. In Hementa Kumar Mohanty -Vs- State of Orissa(Supra) the accused was charged for the offence under Clause(e) of Section 5(1) of the Prevention of Corruption Act, 1947 as in the present case and the Orissa High Court held;

" To sustain a charge under Clause(e) of Section 5(1) of the Act the prosecution has to show that (i) the appellant is/ was a public servant, (ii) he himself or on his behalf some one else (iii) is possessed or has, at any time during the tenure of his office offence, been in possession of (iv) pecuniary

Contd...6



resources disproportionate to his known sources of income for which he could not satisfactorily account. The legislature has not chosen to indicate what proportion of the income would be considered disproportionate and the Court may take a liberal view of the excess of the assets over the receipts of the known sources of income. It has been held that 'Known sources of income' means 'known sources of income to the prosecution after a thorough investigation' and the onus of satisfactorily accounting for it is not as heavy an onus as is on the prosecution to prove its case beyond all possibility of doubt. This accounting for by the accused has to be liberally construed in favour of the accused and he will not be called upon to prove to the pie any assets to be found disproportionate to his known sources of incomes. It is in this light that I would now proceed to assess the evidence in the case. No doubt, there are several items, but it is not necessary to discuss all of them, particularly the minor ones."

It is thus clear from the aforesaid decision of the Orissa High Court that the legislature has not chosen to indicate what proportion of the pecuniary resources or property found to be in possession of a person can be said to be disproportionate to his known sources of income and that the provision in section 5(1)(e) of the Act has to be liberally construed in favour of the accused public servant and that the public servant cannot be asked to account for assets found to be in his possession with arithmetic precision or pie to pie.

7. In the instant case the charge against the appellant was that during the period from 1.1.82 to 28.2.85 he was in possession of disproportionate assets valued at Rs.1,02,894.84 for which he could not satisfactorily account. The assets in possession of the appellant included a house belonging to his wife valued at Rs.2,03,215/- but the learned Special Judge, Assam, Guwahati in the impugned Judgement rejected the said valuation made by the prosecution and instead accepted the valuation of Sri J.C. Karmakar, Assistant Engineer, Assam Government (Dw-2) in Ext.A at Rs.1,09,395.90. Thus an amount of Rs.93,818.00(2.03,213-1,09,395) has to be deducted from the disproportionate assets valued at Rs.1,02,894.84/- and so deducted, the surplus assets in possession of the appellant's amount to only Rs.9076.84 which is less than the 10% of the total income of Rs.1,03,484.57 of the appellant during the check period from 1.1.82 to 23.2.85. The aforesaid surplus assets of Rs.9,076.84 cannot, in my considered opinion, be held to be disproportionate to the known sources of income of the appellant within the meaning of the Section 5(1)(e) of the prevention of Corruption Act, 1947. The Appellant is entitled to acquittal on this short ground and is not necessary for me to deal with other intentions raised by the appellant.

8. In the result, the impugned judgement and conviction and sentence so passed by the learned Special Judge, Assam, Guwahati are set aside. The appeal is allowed and the appellant is acquitted of the charge.

Sd/- A.K.Patnaik,
Judge.

1. Ent. 3 to be true (Sop.)
1. Singamal Bejorana
1. Sop. 11/11/1981
1. Act. 1/18/1981

ANNEXURE - 2.

OFFICE OF THE STATION SUPERINTENDENT, N.E. RLY. S.I. SILCHAR

NO. F/1/86

Dated 23.8.86.

To

SRI Narayan Ch. Saha,
CC / C.I.

You are placed under suspension w.e.f. 24.8.86
as per D.M. (C) / Lngs XXX No. C/Con/IMC/Misc. (NCS-CC-Sch)
dated 22.8.86 as advised by CVO/MLG.

Sd/- Illegible.

23.8.86
CC/SCL
Station Superintendent,
N.E. Rly. SILCHAR - 3.

N. F. RAILWAY.

Annexure - 3

STANDARD FORM NO. 4.

STANDARD FORM OF ORDER OF REVOCATION OF SUSPENSION ORDER
(RULE 5(5) of RS (D & A) Rules, 1968.)

No. C/Con/LMG/Misc(NCB-GC-SCL) Dated 26/9/89.

Name of the Railway N.F.Railway.

N.F.R.R.

Whereas an order placed in Smt. Narayan Chandra Saha
(Name and designation of the Rly. servant) under suspension made/was
deemed to have been made by DCS/LMG on 22/3/86.

Now, therefore, the undersigned (the authority) which made or
is deemed to have made the order of suspension of any other authority
to which that authority is subordinate) in exercise of the power
conferred by clause (C) of Sub-rule(5) of Rule 5 of the RS(D&A)
Rules, 1968, hereby revoked the said order of suspension with immediate
effect.

(R. S Meena) 6/9

Sr. Divl. Commr. 3/10

Designation of the authority
making this order.

Copy to:-

- 1) Shri Narayan Chandra Saha, GC/SCL Thru' SS/SCL for information.
- 2) ET/Cadre of RRI(p)/LMG's office ET/Bill, ET/III & ET/IV for information and necessary action.
- 3) SS/SCL for information. He is hereby advised that Shri Saha, GC/SCL should not be utilised for dealing public. He should be utilised for preparing returns and other jobs like record maintenance.

(R. S Meena) 9
Sr. Divl. Commr. 3/10
N. F. R. L. D. B.Recd
11/10/89

OFFICER IN CHARGE

Sd/ 23/91

35

As per discussion with Sr.DCS/IMG at SCL on 3-8-'91 on the local problems, Sr.DCS/IMG passed the following orders:-

1. TC Staff to be utilised in reservation works in case of emergency to avoid any hitch or public complaint.
2. In case of any emergency, staff can be booked for extra duty on STA to manage the daily works when relief is not available.
3. Shri N.C.Saha GC/SCL can be utilised for all commercial works except cash handling.
4. Meal break at Reservation Office may made for one Hour and working hours for public in Reservation Counter will be for seven (7) Hours only.
5. Extra one Fan to be provided in Booking Office for working facilities to be arranged by EF/SCL as per advice from DRMCS/IMG at SC. A direct reference to be made from SS to EF/SCL in this respect.
6. Uniform(s) for the Lady W/Room Bearers will be supplied from Office Store/Lumding.

Sd/ 5/91

Station Supdt.

Station Line Attendant
Station Clerk
Station Guard
Station Cleaner

Copy to CTI/SCL for compliance

Copy to CGS/SCL for compliance

Copy to EF/SCL. He is hereby requested to please arrange one Fan for booking Office as desired by Sr.DCS/IMG at SCL immediately.

Copy to Duta(C)/IMG for office record.

Sd/ 5/91

Station Supdt.

C. S. C.

25

Annexure - 4

25

N.F.Railway.

No.C/Cen/LM/Misc/89(NCB-JRCC-SCL).

Office of the
Divl.Railway Manager(C)
Lumding.

Dated 28-12-94.

26.

SHOW CAUSE NOTICE FOR IMPOSING OF THE
PENALTY OF REMOVAL FROM SERVICE UNDER
RULE 14(1) OF DISCIPLINE AND APPEAL)
RULES-1968.

To
Shri Narayan Chandra Saha,
Jr.GC/Silchar.
(Through SS/Silchar).

The undersigned proposes to impose upon you
the penalty of removal from service under Rule 14(1)
of Railway servants (Discipline and Appeal) Rules-1968
following your conviction orders dated 11-12-90 passed
by the Hon'ble Special Judge, Assam, Guwahati against
the case No. RC/2-85/SIC registered by SPE/CBI/Silchar.

You are, therefore, directed to make representation/Submission if any against the proposed action
so as to reach the undersigned within 7 days of the
receipt of this Show Cause Notice.

Sr.Divl.Comml.Manager
Lumding.

Copy to:- 1) DRM(P)/Lumding.
2) Area Manager/Barapukur.
3) SS/SCL. He is requested to personally
hand-over the above Show Cause Notice to
Shri N.C.Saha, Jr.GC/SCL obtaining ack. and send
this office for record.

Sr.Divl.Comml.Manager
Lumding.

44

Annexure -5

c/e

To

The Senior Divisional Commercial Manager,
Lumding, Assam.
(Thengar, SS/SCL)

Ref : Your Memo No. C/Com/LM/M1 nc/89 (NCB-J ROC-SCL) dated-
28.12.94.

Sub : Show cause notice for imposing of the penalty of
removal from service under Rule 14 (1) of Discipline
and Appeal Rule 1968.

Sir,

With reference to the above I have the honour to
state that against the order of conviction and sentence
passed by Special Judge, Assam Gauhati in Special Case No.
8/86 dated 11.12.90, I preferred an appeal before the Hon'ble
Gauhati High Court which was registered and numbered as
Crl. Appeal No. 5 of 1991.

The Hon'ble Gauhati High Court admitted the appeal
and allowed me to continue on bail on furnishing a bond of
Rs. 10,000/- and one surety of the like amount to the
satisfaction of the learned Special Judge, Assam Gauhati
and accordingly the undersigned furnished the bond and the
learned Justice Shri S.K. Nom Choudhury by his order dated
31.1.91 made the interim order passed on 11.1.91 absolutely
his order dated 31.1.91.

That it is reliably learnt that the appeal is listed
for hearing and it will be heard soon and there is every
chance of acquittal in the appeal.

- 2 -

That since the matter is subjudice and pending before Hon'ble High Court for the last 5 years, it is submitted that the proposed action may be kept in abeyance till the disposal of the appeal, otherwise your petitioner will suffer irreparable loss.

It is therefore prayed that your honour would be kind enough not to take any action for the time being in view of the pendency of appeal against the judgment and order of conviction and sentence.

And for this act of kindness the petitioner shall ever pray.

Yours faithfully,

Enclosure :-

1. Xerox copy of order
dt. 11.1.91 & 31.1.91.
passed by Hon'ble High-
Court in Crl. Appeal 5/91.
— 3 sheet.

Copy to :-

1. DDM(P) Lumding.
2. Area Manager/Indrapur
for information.

Narayanchandra Saha.
Tr. G.C.S.C.

dt 3/1/95

Forwarded
3/1/95
Sister 2000/1000
31.12.1994
12. January 1995
12. January 1995

Notice of imposing of penalty dispensing with the services of a Railway Servant under Rule- 14(1) of Discipline and Appeal Rules-1968.

WHEREAS Shri Narayan Chandra Saha, Jr. Goods Clerk /Silchar has been convicted vide orders dated 11-12-80 passed by the Hon'ble Special Judge, Assam, Guwahati against case No. SC/2-35/SIC Registered by SP/GMI/ Silchar.

AND WHEREAS it is considered that the conduct of the said Shri Narayan Ch. Saha, Junior Goods Clerk / Silchar which had led to his conviction to such as to render his further retention in the public service undesirable.

NOW THEREFORE, in exercise of the powers conferred by Rule 14(1) of the Railway Servant (Discipline and Appeal) Rules-1968, the undersigned hereby dismiss/ remove the said Shri Narayan Ch. Saha, Jr. Goods Clerk/Silchar from service with immediate effect.

AC
Disciplinary Authority.

Station: Dungding.

Dated 24-01-85.

q. o. t. / Malignon

Sr. Div. Commr. Manager

M.C. M.V. / Dungding

No. C/Cen/LM/Miso/85 (NCS-JRGC-SC L) Dated 24-01-85.

Copy to:- DRM(P)/LMG for information and necessary action please.

" Dy.G.V.O(T)/Malignon for information. This in reference to his letter No. 4/vig/94/2/2/85 dated 3/4/84 and 30-8-84.

" Sr/Silchar for information. He will please serve the above letter to Shri Narayan Ch. Saha, Jr. Goods Clerk/SC L, and he must ensure that he will not be allowed to work from the date of receipt of this letter.

" Area Manager/BPB for information please.

" GM(P)/Malignon for information. This is in reference to his letter No. E/D & N/84/Cen(T) dated 30-11-84.

Shri Narayan Ch. Saha, Jr. SC/SC L thro: SS/SC L.

AC
Certified to
be true copy
Ms. Partha Chakraborty
Advocate

ACM Officer (Malignon)
q. o. t. / Malignon
Sr. Div. Commr. Manager
M.C. M.V. / Dungding

To

The Divisional Rly Manager(Commercial),
N.F.Railway,
P.O. Lumding, Assam.

Sub: Prayer for implementation of the Hon'ble
Gauhati High Court's Judgment and Order
dated 16/2/99 passed in Criminal Appeal
No. 5 of 1991.

Respected Sir,

I would like to draw your kind attention to the fact that, the Superintendent of Police, SPE/CBI, Silchar lodged an P.I.R. on 27.2.85 to the C.B.I. against me relating to my disproportionate assets. After having been received the said P.I.R from the Superintendent of Police, SPE/CBI, Silchar, the C.B.I. filed a case bearing Case No. RC/2-85/SCL dated 27.2.85 against me before the learned Special Judge, Assam, Guwahati on 20.1.87. Thereafter, I have been suspended from the service by the Station Superintendent, N.F.Rly, Silchar vide his Order No.E/1/86 dated 23.8.86 as per DRM(C)/LMG'S XXR No.C/Con/LMG/Misc (NCS-GC-SCL) dated 22.8.86. Subsequently, I have been allowed again to join in my duty by the Station Superintendent, N.F.Rly, Silchar vide his letter No.E/1/89 dated 29.9.89 pursuant to DRM(C) LMG'S XXR No.C/Con/LMG/MISC/NCS/GC/SCL dated 26.9.89. Accordingly I had joined in my duty and was continuing as such.

Later on the learned Special Judge, Assam, Guwahati vide his order dated 11/12/90 passed in Special Case No.8/86 convicted me under section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947. Aggrieved against the aforesaid Order dated 11/12/90 of the learned Special Judge, Assam, Guwahati, I filed an appeal bearing Criminal Appeal No.5/91 before the Hon'ble Gauhati High Court praying for bail and for appropriate adjudication. The Hon'ble Gauhati High Court was pleased

11/12/90
24/12/99
CS to DCM

cont.. 2

cont.... 2

to grant me bail vide its Order dated 11/1/91. During the pendency of my aforesaid Criminal Appeal No.5/91, suddenly I have been removed from the service by the Station Superintendent, N.F.Rly, Silchar vide his Order No.S/1/95 dated 27.1.95 as per Sr.DCM/LMG'S letter No.C/Con/LM/Misc/89(NCS-Jr-OC-SCL) dated 24/1/95 and since then I was out of employment.

However, the Hon'ble Gauhati High Court was pleased to pass a final Judgment and Order dated 16/2/99 in Criminal Appeal No.5/91 against the Order dated 11/12/90 of the learned Special Judge, Assam, Guwahati in which I have been acquitted of the charge and allowed my aforesaid Criminal Appeal No.5/91. (A photocopy of the Judgment and Order dated 16/2/99 of the Hon'ble Gauhati High Court is enclosed herewith for your ready reference).

In view of above, I would request you, I may please be allowed to join in my duty in terms of the Judgment and Order dated 16/2/99 of the Hon'ble Gauhati High Court passed in Criminal Appeal No.5/91 with all consequential benefits.

Your necessary action in this respect is highly solicited.

And for this act of your kindness, I shall remain ever grateful.

Yours faithfully,

Narayan Chander Saha,
(N. C. SAHA)

Goods Clerk, N.F.Railway, Silchar.

Date: 24/2/99

Encls: as above.

Reqd. With A/D.

To

The Disciplinary Authority,
Senior Divisional Commercial Manager,
N.F.Railway, Lumding, Assam.

Dated, Silchar the 23rd August, 99.

In the matter of reminder submitted by Sri Narayan Chandra Saha, Jr.G/C, Silchar resident of Tarapur, P.O., Tarapur, Silchar-3, Dist. Cachar, Assam to review the Order dated 24.1.95 by revoking the same in view of the Judgement passed by the Hon'ble High Court on 16.2.99 in Criminal Appeal No.5/91.

Most Respectfully Sheweth :-

That Sir, one false and illegal Special Case No.8/86 was started against me in the Court of the learned Special Judge, Gaubati without any cause or reason with ulterior motive behind it. But during the period of trial suddenly the Disciplinary Authority placed me under suspension through the Station Superintendent, N.F.Rly, Silchar-3 vide his letter dated 23.8.86 though there was no legal force in the matter and hence the Authority was pleased to revoke the suspension Order and allowed me to work in my duties. Accordingly I continued to my work upto 26.1.95 ^{but} though I did not get my previous claim due from 24.8.86 to 28.9.89.

That Sir, when I was on Govt. duty suddenly I received again one Show Cause Notice on 1.1.95 on the same same ground vide No.C/Com/LM/Misc/89 (NCB-JRGC-SCL) dated 28.12.94 (Copy enclosed) without any reason as

contd.p/2.

- 2 -

the Special Case No.8/86 was disposed of on long ago (Copy enclosed) and at that time I was on bail as per Order dated 11.1.91 of the Hon'ble High Court in Criminal Appeal No.5 of 1991 (Copy enclosed). But ignoring the Order of the Hon'ble High Court the Authority removed me from my service illegally vide letter No.C/Con/LM/Misc/89 (NCB-JRGC-SCL) dated 24.1.95 (Copy enclosed) which may be treated as dishonour to the Hon'ble High Court. Moreover the then learned Disciplinary Authority already revoked the suspension Order in respect of Departmental Proceeding (Copy enclosed). Accordingly the said removal Order in respect of Departmental Proceeding again and again is wrong, illegal and not tenable in law in view of the same proceedings repeatedly started one after another on the same ground against the same person, as the said illegal proceeding already closed by the then learned Disciplinary Authority being found without having its merit. The present Disciplinary Authority may wait upto the final decision from the final authority because the learned Special Judge is not the final authority whose decision would be made final from the Hon'ble High Court. So I honourably acquitted from the charges vide Criminal Appeal No.5/91 of the Hon'ble High Court (Copy enclosed) setting aside the decision of the Judgement passed by the learned Special Judge, Gauhati in

Contd.p/3.

- 3 -

in Special Case No.8/86. Therefore in no way I am liable for any of the offence and very illegally the penalty imposed on me without any Cause. I along with my family members are suffering too much every now and then in these days of crisis without any fault of mine and also passing our days sometimes through starvation from the year 1995.

That Sir, on receipt of the final result from the Hon'ble High Court I already placed my submission before your goodself to revoke the removal Order forthwith but no reply has yet been received from your end. So I once again placed my submission before your goodself to review the matter by considering that " The Railway Servants (Discipline of Appeal) Rules 1968 is not at all applicable in this particular Case and Rule 14(i) imposed upon me very illegally without maintaining procedure as stated in the said Act. Now if your goodself fails to do the needful sympathetically I have no other alternative to get shelter from the Court of Law through I have no means to proceed further to seek help according to law.

In view of the above facts and circumstances, I pray that your goodself would be kind enough to revoke the said illegal removal Order under Rule 5(c) of the said Rules immediately.

And for which act of kindness I shall remain
ever grateful.

Enclo :-

Yours faithfully,

1. Copy of Show Cause
Notice dt 28.12.94 1 Sheet.

2. Copy of Judg. in (NARAYAN CHANDRA SAHA
spl. Case 8/86 = 29 Sheets. (Jr. G.C) Scl

3. Copy of order dt 11.1.
91 of H.C. in Ex. (M.R.Ly.)

4. M. No. 5/91 = 3 "

5. Copy of record
Order dt 24.1.95 = 2 "

6. Copy of revoking
Order dt 26.9.89 = 3 "

7. Copy of final Judg.
of H.C. in Col. = 1 "

8. A. M. No. 5/91 = 7 "

Total :- = 45 Sheets.

From: Sri Narayan Chandra Saha
(Ex. Goods Clerk)
Sri Durga Sarani, Tarapur
Silchar - 788003.Cachar Assam.

To
The General Manager.
N.F.Railway
Maligaon.

Dated. 15 Sep 99.

(Through proper channel to Station Superintendent NF Rly Silchar)
Hon'ble Sir,

I have the honour to submit the following for your kind information & favourable sympathetic reinstatement please.

That Sir, I was serving in NF Rly Silchar as goods clerk and was falsely implicated on a charge of having disproportionate assets. A case was filed on behalf of C.B.I. against me bearing no. RC/2-85/SCL dt. 27.2.85 in the court of learned special Judge, Assam Guwahati.

Subsequently I was suspended by the Station Supdt. NF Rly Silchar vide his order no. E/1/86 dt. 23.8.86 as per DRM(C)/IMG'S XXR No.C/Con/IMG/Misc(NCS-OC-SCL) dt. 22.8.86. But I was allowed again to join my service by Station Supdt. NF Rly Silchar vide his letter no. E/1/89 dt. 29.9.89 in pursuance of DRM(C) IMG'S XXR No.C/Con/IMG/MISC/NCS/CC/SCL dt. 26.9.89. Accordingly I joined my duty and was continuing as such.

As per order dt. 11.12.90 to the learned special Judge, Assam Guwahati, I was convicted in that case which aggrieved me and against the order I filed an appeal against before the honourable Gauhati High Court praying for bail and for appropriate adjudication.

During the pendency of my appeal, I was removed from service by Stn. Supdt. NF Rly Silchar by his order no. D/1/95 dt. 7.1.95 as per Gr. DCM/IMO'S letter no. G/Con/IM/Misc/89(NCS-Jr-go-SCL) dt. 24.1.95.

The Hon'ble Gauhati High Court was pleased to pass the final judgement & order dt. 16.2.99 against the order of the learned Judge (Spl), Assam, Guwahati dt. 11.12.90, and acquitted me of the charges & allowed the appeal (Zerox copy of the judgement of Hon'ble Gauhati High Court is attached herewith for your ready reference pl).

Accordingly, I applied for reinstatement for imple-

mentation of the order & judgement of Hon'ble Gauhati High Court to the Divisional Railway Manager (Commercial) NE Railway Lumding Assam on 24.2.99. But after a prolonged delay of about six (6) months, Divl. Rly Manager (C), Lumding vide his letter no. C/Con/IM/Misc/89(NCS-JRGC-SCL) dt.23.8.99 (but registered on 2/9/99) advised me to address my appeal for ~~in~~ reinstatement in my service to your honour.

Therefore, most humbly I pray to your honour to consider my case of reinstatement in light of the Hon'ble Gauhati High Court's judgement and order and favour me with necessary action in this regard at an early date & oblige.

Thanking your honour in anticipation.

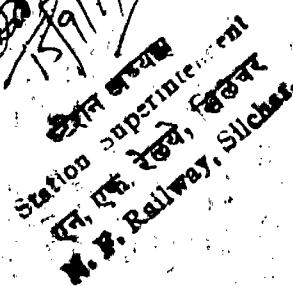
Yours faithfully,

Narayan Chandra Saha,
(Narayan Chandra Saha)

CCSCL.

Enclo:-

1. Zerox copy of the Judgement & order of Hon'ble Gauhati High Court.
2. Zerox copy of my application dt. 24.2.99.
3. Zerox copy of the letter of Divl. Rly. Manager (C) Lumding dt. 23.8.99.



37 (4)

Attachment-10

FROM: Sri Narayan Chandra Saha
(Ex. Goods Clerk : SCL)
Sri Durga Sarani, Tarapur
Silchar-788003 Cachar Assam
Dee.

Dated: 3 Nov/99

To
The General Manager.
N.T. Railway
Maligaon.

(Through proper channel to Stn. Superintendent NF Rly Silchar)

Hon'ble Sir,

Reference is made to the letters of Sri Karmendu Bhattacharjee, M.P. (Rajya Sabha) dt. 26.8.99; Divisional Rly. Manager (P) Lumding letter no. 28/GC (N) Loose dt. 07.09.99; NF Rly Employees' Union Convenor letter no. LU/KDG/CONVR/High Court Judgement/99 dt. 03.11.99 & my application to Divl. Rly. Manager (C), Lumding dt. 24.2.99 and on his advise, my application to your honour dt. 15.9.99 (All zerox copies are attached for your perusal) respectively but so far no intimation about the progress of my reinstatement or finalisation was received from your end.

I am really getting worried about the fate of mine as inspite of the favourable Judgement delivered by the hon'ble Gauhati High Court, it is seem to be exploited, otherwise why it could take six months after my initial application in this regard to be informed to apply to your honour.

I, therefore, most humbly request your honour to take personal interest in my case to avoid further delay in order to get justice to your subordinate and to uphold the honour of the Esteem Gauhati High Court & oblige.

Thanking your honour in anticipation.

Enclo: As stated.

Yours faithfully,

Copy for info. & necy. action Pl to:-

Narayan Chandra Saha
(Narayan Chandra Saha)
GC/SCL

1. Hon'ble Sri Karmendu Bhattacharjee.
M.P. (Rajya Sabha) Stn. Silchar.
2. Divl. Rly. Manager, NF Rly. Lumding.
3. Convenor, NF Rly Employees' Union.
Silchar Branch, Silchar.

3/12/99.

TO,
The Divisional Rly Manager,
N. F. Railway / Lumding.

(Through Proper Channel).

Sub:- Prayer for reinstatement in service in connection with
SPE/CBI Case No.RC-2/85, Spl.Case No.8/86 and Cr.Appeal/
5/91.

Ref:- Appeal submitted to the Railway Administration's
authority concerned on 24.2.99, 23.8.99, 15.9.99 &
3.12.99.

Sir,

Most humbly, I beg to state that I was illegally involved in a CBI case. After conducting a trial by the learned Spl.Court, I was convicted by the Spl.Court,Guwahati,Assam. Then and there I appealed to the Honourable High Court,Guwahati, Assam, in time for proper judgement. The Honourable High Court, Guwahati, Assam, granted my appeal and ordered to keep in obeyance the judgement passed by the spl.Court. But the disciplinary authority removed me from service illegally ignoring the order passed by the Honourable High Court.

The Honourable High Court, Guwahati, Assam, acquitted me from all charges framed by the learned Spl/Court,Guwahati, Assam.

On receipt of Honourable High Court's final judgement, I appealed to the authority concerned to reinstate me in my service on 24.2.99.

Sir, Since then, many a times communications were held with you for my reinstatement and on every occasion your honour had assured me to have your kind sympathy over the matter. But even after a lapse of more than 16 months, no initiative is taken to reinstatement in service.

Sir, Such an indifferent step adopted by the administration only help me and my family members to lead a strayed life and befall us in a certain ruin. We have to pass on our days with much hardship and deplorable manner.

I therefore, fervently pray forth your honour to take immediate steps in my reinstatement in service in the light of the judgement of the Honourable High Court,Guwahati, Assam, being superior to the learned Spl.Judge Court,Guwahati,Assam, and for which act of your kind action. I and my family remain owe to you.

Copies of all relevant documents were submitted with my previous applications.

Dated- Silchar.
The 1st July /2000.

Yours faithfully,
Narayan Chandra Saha.
(NARAYAN CHANDRA SAHA)
EX.JR.GOODS CLERK/BCL
N. F. RAILWAY.
(SRI DURGA CHARANI)
P.C. TARAPUR, SILCHAR-B.
DIST: CACHAR, ASSAM.

Copy to :-

- 1. Branch Secretary/NPREU/BCL. For information & necessary
- 2. Divisional Secy/NPREU/LMG. action please.
- 3. General Secy/NPREU/MLG.
- 4. DRM(P)/LMG.
- 5. GM(P)/MLG (N.F.Rly).

संघ सरकार की सेवा
Central Administrative Tribunal

23 APRIL 2001

संघ सरकार

BEFORE THE CENTRAL ADMINISTRATIVE

TRIBUNAL AT GUWAHATI,

GUWAHATI BENCH.

GUWAHATI.

File No. 17, 3, 2001
Civil Case
23/04/2001
Date of hearing
10.00 A.M.

IN THE MATTER OF :

O.A. No.294/2001

Shri N.C.Saha ...

Applicant.

- VS -

Union of India and

others

Respondents

- A N D -

IN THE MATTER OF :

Written statement for and on behalf of the
respondents.

Receiving a copy of petition.

1. That, the answering respondents have gone through the application filed by the applicant and have understood the contents thereof.
2. That the application suffers for want of valid cause of action for filing the application.
3. That, the application is not maintainable in its present form and is fit one to be dismissed in limine.
4. That, the application is premature. That the case suffers from misconception and mis-interpretation of extant rules on the subject and is a vexatious one and is not maintainable either on fact or on law.
- 5.. That, for the sake of brevity, the respondents do hereby abstain from resorting to make specific and meticulous denial of each and every statement in each paragraph of the application.

under

6. That, the application is barred under the law of limitation and section -21 of the Central Administrative Tribunal Act-1935.

7. That, save and except those statements of the applicant which are either borne on records or are specifically admitted hereunder, all other averments/ allegations of the applicant are emphatically denied herewith and the applicant is put to strictest proof of same.

8. that, all the actions taken in the case are quite in consonance to the extant rules and procedures on the subject and all actions are quite valid, legal and proper and have been taken by the Railway authorities after due application of mind and investigation into the case and also as the merit and fact of the case demanded and there has been no irregularity, illegality, discrepancy or arbitrariness in the case as alleged.

9. That with regard to averments at paragraphs 4(i), 4(ii), 4(iii), 4(iv), 4(vii) and 4(viii) of the application it is stated that except those which are borne on records or are specifically admitted here-

under all other statements/allegations are denied herewith.

It is to state herein that Superintendent of Police/Special Police Establishment/Silchar (in short) SP/SPE/Silchar) was investigating a case bearing No. RC/2/35/SIC against the applicant Shri N.C.Saha, Goods Clerk, Silchar ~~xxx xxxxxx xxx xxxxxx xxx~~ on the alleged ground of his being in possession of pecuniary resources/Property disproportionate to his

Subrata Chakraborty
Subrata Chakraborty
Div. Commercial Manager
Smt. D. K. Mitra
S. R. Railway/Landia

known source of income. The applicant was put under suspension with effect from 24.3.1936 as per advice of the Chief Vigilance Officer of the Railways (in short C.V.O) which was intimated to the applicant. Thereafter a Criminal case bearing No.8 of 1936 was also filed by the State of Assam before the Special Judge, Guwahati, Assam for his trial under section 5(2) read with section 5(1)(C) of the Prevention of Corruption Act-1947, and hence no departmental action was initiated, or considered necessary. However, the suspension of Shri N.C.Saha, the Applicant, was revoked under order No.C/Con/IM/Misc/NCS-CC-SCL dated 26-9-39 as will reveal from Annexure 3 to the Application.

In the said special case, the Hon'ble special Judge Assam, the accused (i.e. Sri N.C.Saha, the applicant in this O.A) was sentenced to rigorous imprisonment for three years and to a fine of Rs. 20,000/- and in default to a further period of rigorous imprisonment for 3(three) months vide order of the Special Judge Assam Guwahati dated 11-12-90. Following the conviction orders as mentioned above, a Show Cause Notice was issued to Shri N.C.Saha, Goods Clerk, vide No.C/Con/IM/Misc/39(NCS-CC-SCL) dated 23-12-94, asking him to make representation/ submission if any against the proposed action for imposition of penalty of removal from service under rule 14(1) of the Railway Servant (Discipline and Appeal) Rules, 1968, a copy of which has already been annexed to the application as Annexure- 4.

52
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S. R. R.

10. That, with regard to averments at paragraphs (v), (vi), (x) and (xi) of the application, it is to state that, considering all aspects and as no stay order etc. appeared to have been issued by the Hon'ble High Court, the Disciplinary Authority decided to remove Shri N.G.Saha, Jr. G.C/Silchar from service as he was convicted in the court of Law and passed the order for removal from service under Rule - 14(1) of the Railway Servant (Discipline and Appeal) Rules-1968 vide order dated 24-1-1995. A copy of such removal order has already been annexed by the Applicant as Annexure 6 to the Application.

11. That, with regard to averments at paragraphs 4 XII, 4 XIII and 4 XIV of the application, it is submitted that the allegations of the applicant are not admitted. It is emphatically denied that the removal order was a cryptic one or illegal one or there was any deliberate in-action of re-instating the applicant, or, there was any malafide, arbitrary, or discriminatory action etc. as alleged.

12. That, with regard to averments at paragraph XV of the application, it is to submit that the appeal of the applicant could not be disposed of by issuing any fresh order for his re-instatement etc. as prayed by him, as the matter is under correspondence with the SP/SPE/CBI/Silchar as to know whether they have preferred any appeal against the acquittal order of the Honourable High Court etc. and, if so, the decision if any from the High Court etc. or, if any other action are contemplated by them, since the removal order had to be passed

in consideration of the order for conviction by the Hon'ble Special Judge in the case processed by SP/SPE/Silchar. The reply from the SP/SPE/Silchar is still awaited which debars the respondents in taking any decision in the case for proper disposal of his appeal especially when nothing has been heard from the SP/SPE/Silchar whether the case has been treated as closed. All necessary steps have been taken with due diligence to arrive at a decision for disposal of the case and as to what further steps are to be taken in the case. All allegations of the applicant regarding dealing the matter in a casual and irresponsible manner etc. are denied.

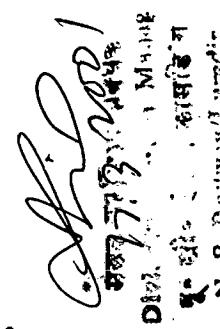
A copy of the letter No.C/Con/IMG/Misc(NCS-CC-SCL) dated 8-8-2000 written by Senior Divisional Personnel officer, Lumding is annexed hereto as Annexure-'A'.

13. That, with regard to grounds for relief etc. as stated at paragraph 5 and 8 of the application it is to submit that in view of what have been submitted in the foregoing paragraphs of the written statement, none of the grounds as put forward by the applicant are sustainable. The relief as prayed for in paragraphs 8 and 9 of the application are also not admissible under fact of the case.

It is reiterated that.

(1) The Disciplinary Authority after considering the judgement of the Special Judge, Assam dated 11-12-90 passed ^{orders} for removal from service of the applicant Shri N.C.Saha.

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56
JULY 2001
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(2) The order was passed on the basis of the special Judge, Assam, Guwahati's order and therefore, there is no scope to set aside or quash the order or pass any order without getting further particulars about the disposal of the case or decision taken in the case regarding appeal, if any, by the SP/SPE/Silchar.

(3) The matter is pending only due to non-receipt of proper reply or decision etc. from SP/SPE/Silchar. ~~As whose request the case was postponed.~~

(4) The case will be decided immediately on receipt of Clarification sought from SP/SPE/ACB Silchar by DRM(P)/Lumding vide his letter No. C/Con/LM/Misc(NCS-CC-SCL) dated 3-8-2000.

14. That, the answering respondents crave leave of the Hon'ble Tribunal to permit it to file additional written statement in future, in case the same is found to be necessary for the ends of Justice.

15. That, under the facts and circumstances of the case as stated above, the instant application is not maintainable and is also liable to be dismissed.

SK

VERIFICATION.

I, Shri SRI LAKHESWAR SAIKIA/O TILESWAR.
SAIKIA aged about 32 years by occupation
Railway service, at present working as Div. Commr. Manager
of the N.F. Railway at Lumding Division, do hereby
solemnly affirm and state that the statements made
at paragraphs 1 is true to my knowledge
and those made at paragraphs 9, 10, 11 and 12 are
true to my information as gathered from records
which I believe to be true and the rest are
my humble submissions before the Hon'ble Tribunal.


17/3/2001
Divl. Commercial Manager
N.F. Railway, Lumding,
for and on behalf of the
Answering respondents.

स्वीकृत दस्ता
Sri Lakheswar Saitia
प.र. सं. १०
स. न. नं. १०

Recd on 16/3/2001
Till 20/3/2001
Till 20/3/2001 open

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Annexure - A

CONFIDENTIAL

52

NORTHEAST FRONTIER RAILWAY

Office of the
Divisional Rly. Manager (P).
Lumding, Distt. Nagaon,
Assam.

No. C/Com/LMG/Misc.(NCS-GC-SCL)

Date: 8.8.2000.

To,

**Superintendent of Police,
SPE / CBI / Silchar,
Assam.**

Sir,

Sub: RC-2/85/SLC against Shri Narayan Ch. Saha, Ex. Goods Clerk/ Silchar/NF Rly.

Ref: Your L/No.8/3/3/2/85-SLC dtd. 11.02.1994 addressed to Chief Vigilance Officer,
NFR Railway, Maligaon, Guwahati (Assam).

Your kind attention is invited to the judgement and order passed by the Hon'ble High Court, Guwahati in the Criminal Appeal No. 5/91 dtd. 16/02/99 in the case of Shri N.C. Saha VS The State of Assam, as per which the earlier sentence of conviction passed by the Special Judge/Guwahati has been set aside and the appellant, Shri N.C.Saha, has been acquitted of the charges of possession of assets disproportionate to the known sources of income.

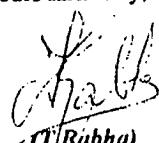
You are now requested to kindly let this office know –

- whether you have decided to appeal against this order of acquittal passed by the Hon'ble High Court, Guwahati, or
- whether an appeal is being contemplated in the near future, or
- no appeal is being preferred and the case has been treated as closed at your end.

This information is urgently required by this office in order to arrive at a final decision regarding the departmental proceedings against Shri N.C. Saha. An early reply is solicited please.

Thanking you,

Yours faithfully,


(T. Rabha)

Sr. Divn. Personnel Officer


Q/C

... reinstatement for imple-