

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH: GUWAHATI, 5 (FORM NO. 4)
 ORDER SHEET. (See Rule-42)

Applicant(s) APPLICATION NO. 307/2000
 Sree Naren gogoi

Respondents(s) Union of India and on.

Advocate for Applicant(s) Mr. P. Sharma.

Advocate for Respondent(s) Mr. B. Sinha.
 C.G.S.C.

Notes of the Registry

DATE

ORDER OF THE TRIBUNAL

28.9.00

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

There is no representation on behalf of the applicant.

List on 27.10.2000 for admission.

~~Application is in
 the court in time
 and no objection is
 filed / not 1 C.F.
 for Rs. 5 / deposited
 via. I.N.R. No. 502881
 Dated 22.5.2000~~

Vice-Chairman

Dy. Registrar 1/10/00 pg

27/9/2000

29.9.2000

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

The matter has been mentioned today by Mr. B. Sinha, learned counsel for the applicant for consideration of admission. He has also explained about the cause of his absence yesterday. In the circumstances the matter has been taken up for admission today.

Heard Mr. B. Sinha, learned counsel for the applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C. The application is admitted. Call for the records. List for orders on 29.11.00.

Slips are yet to be
 received to issue
 notice

29/9/00

Notice issued to the lessees.
 No. 1 to 4, and sent to D/S
 for issuing the notice. Date 10
 D/I No. 2308/65/11 dtd 24/10/00

nkm

25
 3/10/2000

Vice-Chairman

19/10/00

① Service report are still awaited.

28/11/2000

29.11.2000

Four weeks time allowed for filing a written statement on the prayer of Mr B.C. Pathak learned Addl. C.G.S.C. List for orders on 2.1.2001.

Vice-Chairman

Notice of service served on respondent No 282
384 are still awaited.
29/11/00

nk m

2.1.2001

List it on 2.2.01 to enable the respondents to file written statement on the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. on behalf of Mr. A. Deb Roy, learned Sr.C.G.S.C. and for further orders.

Vice-Chairman

No. Wts has been filed.

mk

29/11/2001

2/2/2001 List on 27/3/2002

BS

NJ

29.1.2001

No. written statement has been filed.

7.3.01

List on 21.3.01 to enable the respondents to file written statement.

29/3/01

Vice-Chairman

lm

No. written statement has been filed.

21.3.01

List after four week enabling the respondents to file written statement.

Fix it on 16.5.2001 for written statement and further orders.

20.3.01

Vice-Chairman

trd

No. written statement has been filed.

16.5.2001

Three weeks time allowed to the respondents to file the written statement. List for orders on 15.6.01.

14.6.01

Vice-Chairman

nk m

Notes of the Registry	Date	Order of the Tribunal
	15.6.01	Mr. B. E. Pathak, appearing on behalf of the respondents requests for four weeks time for filing of written statement. Request is accepted. List is on 18-7-2001 for orders.
	bb	<i>IC Usha</i> Member (A)
	18.7.01	On behalf of Mr. B. C. Pathak, Addl. C.G.S.C. , Mr. A. Deb Roy, Sr.C.G.S.C. requests for time to file written statement. List on 22.8.01 for orders.
	lm	<i>IC Usha</i> Member
<u>17.8.2001</u>	22.8.01	None present for the applicant. Written statement has been filed. List the matter for hearing on 28.9.2001.
<i>W/S has been submitted by Mr. Respondent 1, 2 ad 4.</i>	trd	<i>IC Usha</i> Member
<i>Re</i>	28.9.2001	The matter is posted for hearing today. In course of hearing the learned counsel for the applicant stated that the written statement filed by the respondents has been served on him today and he wants to go through the same and file a rejoinder against it. The case is accordingly adjourned. List it again for hearing on 16.1.01 to enable the applicant to file rejoinder or take any other appropriate steps.
<i>W/S has been filed.</i> <i>Ex- 28.9.01</i>		
<i>No. rejoinder has been filed.</i> <i>Ex- 15.11.01</i>	nkm	<i>Vice-Chairman</i>

Notes of the Registry	Date	Order of the Tribunal
	16.11.00	Mr. S.Sarma, learned counsel for the applicant prays for a direction to the respondents for production of relevant records. Prayer allowed. Accordingly respondents are directed to produce the relevant records on the next date of hearing. List on 5.12.2001 for hearing.
		Member
1) W/s have been filed in R-1,2 & 4.	16.11.01	Sri B.C.Pathak, learned Addl.C.G.S.C. submits that he would like to support the written statement by producing records regarding the absence of the applicant. He therefore prays for short adjournment. Prayer allowed. List on 5.12.2001 for hearing.
2) NO Reply has been filed by the Counsel for the applicant.		I.C.Usha
NS 6/12/01		Member
No. respondent has been filed.	5.12.01	There is no representation on behalf of the applicant though the matter has been listed for hearing on a number of occasions. List on 11.1.2002 for hearing.
7.2.2002 Copy of the Judgment has been sent to the Office for record the same to the applicant as well as to B.C. G.S.C. as well as to the Respondents.	pg	Member (J) I.C.Usha Member (A)
Preliminary 6/12/02	11.1.2002	Heard Mr B.C. Pathak, learned Addl. C.G.S.C. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./~~XXX~~ No. 307 of 2000

DATE OF DECISION 11.1.2002

Shri Naren Gogoi

PETITIONER(S)

Mr P. Sarma and Mr B. Sinha

ADVOCATE FOR THE
PETITIONER(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

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

Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.307 of 2000

Date of decision: This the 11th day January 2002

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

Shri Naren Gogoi,
S/o Late Dhaniram Gogoi,
Village- Fadupara Bakalgaon,
P.O.- Nazira, District- Sibsagar,
Assam.

.....Applicant

By Advocates Mr P. Sarma and Mr B. Sinha (absent).

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Communication, New Delhi.
2. The General Manager, MTCE, Tax Building, Top Floor, CTO Compound, Shillong.
3. The General Manager, Assam Telecom Circle, Ulubari, Guwahati.
4. The Divisional Engineer, Phones, Sibsagar, Assam.

.....Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The applicant was first appointed as a casual Mazdoor under the establishment of the Sub-Divisional Officer, Department of Telecom, Dibrugarh. On completion of seven years of service as Casual Mazdoor as on 1.3.1987, the applicant alongwith six others was appointed as regular Mazdoors in the scale of pay of Rs.750-12-870-EB-12-940 per month plus usual allowances as admissible with effect from 1.2.1989. The applicant was thereafter transferred to the Sibsagar Telephone Exchange vide letter dated 26.11.1992. It was stated in the application that the applicant was suffering from Enteric Fever since 20.2.1993 and was undergoing treatment, and therefore, he could not attend office. During this period the applicant

was served with notice dated 10.2.1994 asking him as to reasons for his absence. He was asked for explanation within seven days as to why his service was not to be terminated. According to the applicant he informed the authority about his ailment. The respondents in the written statement, however, stated that no such information was received and therefore, a number of notices were issued from 1994 onwards including the notice dated 10.2.1994. By communication dated 4.3.1994 the applicant was served with a charge of imputation which is reproduced below:

"Please refer to the letter No.G-1/SBS/93-94 Dated 10-2-94 from JT0 regarding unauthorised absence from duty. It is reported by the JT0(O/D), Sibsagar that you have neither given any written reply nor report your duty till date.

As such the following charges brought against you and request you to furnish your reply within 7 days on receipt of this letter failure which necessary action will be taken as admissible under CES Rule against you.

Charges of Imputation

1. Unauthorised absence from duty for a long period.
2. Negligence towards duty.
3. Habituated of going frequent leave without prior approval of competent authority."

2. It is apparent that the applicant was a regular Mazdoor which is akin to a person of temporary status. The authority was aware of this aspect and accordingly issued him the notice. A purported disciplinary proceeding was initiated and charges were brought against him. Subsequently by the impugned order the applicant was terminated from service for alleged unauthorised absence without holding any enquiry. The order dated 30.3.1994 itself did not indicate as to whether the Disciplinary Authority found him guilty of the charges. Though there is no finding that the applicant was on unauthorised absence for a long period, on the other hand the applicant was granted medical leave from 3.2.1993 to 26.2.1993 and he joined duty on 27.2.1997. The respondents also indicated that the applicant was on medical leave from 9.3.1993 to 30.3.1993 and he joined service on 31.3.1993. The applicant was also granted medical leave from 10.5.1993 to 28.6.1993 and he rejoined service on 29.6.1993. As per their records the respondents also granted medical leave to the applicant from 2.9.1993 to 23.11.1993 and the applicant joined service on 24.11.1993.

The.....

The charge memo also did not indicate as to from which date the applicant was on unauthorised absence. No particulars were also mentioned as to the negligence of duty. Admittedly, the order of termination was passed as a measure of punishment without giving any opportunity to the applicant. The order of termination, therefore, is patently arbitrary and unjustified.

3. Mr B.C. Pathak, learned Addl. C.G.S.C., submitted that the application was barred by limitation, so much so that the applicant was removed from service on 30.3.1994 and the applicant only moved this Tribunal in the year 2000. In the application the applicant contended that he submitted a number of representations, which was, however, not admitted by the respondents. In my opinion the application cannot be thrown as time barred, more so when the applicant was serving as a Mazdoor and he was terminated from service illegally. Therefore, the plea of limitation is rejected. The learned Addl. C.G.S.C. further submitted that the medical certificates dated 21.10.1993 and 6.7.1994 furnished by the applicant are full of discrepancies and therefore, those are not acceptable. The discrepancies in the medical certificates will not legitimize the impugned order passed by the respondents in dereliction of the statutory provisions. The impugned order of termination dated 30.3.1994 is accordingly set aside and the respondents are directed to reinstate the applicant forthwith without any back wages. The seniority of the applicant shall, however, be restored for all purposes and also for pension purpose.

4. The application is allowed. No order as to costs.


(D. N. CHOWDHURY)
VICE-CHAIRMAN

Central Administrative Tribunal

26 SEP 2000

गुवाहाटी बायपार
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION No. 302 of 2000.

Shri Naren Gogoi - Applicant.

-Versus-

Union of India & others.

■ Respondents.

I N D E X

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Filed by

D. Sarma
Advocate.

2
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: GUWAHATI.
(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985)
ORIGINAL APPLICATION No. 307 of 2000.
BETWEEN
1) Sri Naren Gogoi,
Son of Late Dhaniram Gogoi,
Vill- Fadupara Bakalgaon,
P.O.- Nazira,
Dist.- Sibsagar, Assam.
Applicant#.
- Versus -
1) Union of India, represented by
the Secretary to Government of
India, Ministry of Communica-
tions, New Delhi.
2) The General Manager, MTCE,
Tax Building, Top Floor,
CTO Compound, Shillong-1.
3) The General Manager,
Assam Telecom Circle,
Ulubari, Guwahati-7.
4) The Divisional Engineer, Phones,
Sibsagar, Assam.
- Respondents.
25 SEP 2000
Guwahati Bench

22/9/2000

Sri Naren Ch. Gogoi

DETAILS OF THE APPLICATION:

1) PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is made against the impugned action of the Respondents and failure to reinstate the applicant in service as the regular Mazdoor.

2) JURISDICTION OF THE TRIBUNAL:

The applicants declare that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3) LIMITATIONS:

The applicant further declares that the application is within prescribed period under Section 21 the Central Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and a resident of Sibsagar district who was working under the Respondents in Telecom Department and as such, he is entitled to all the rights and privileges guaranteed under the Constitution of India.

25 SEP 2000

1st Bench

4.2 That the applicant was at first appointed as the Casual Mazdoor under the establishment of the Sub-Divisional Officer, Department of Telecom, Dibrugarh. In course of time the applicant has completed more than 7 years service. The ministry of communications issued Government circular to regularise the services of the casual Mazdoor who has completed 7(seven) years of service in the Department. The applicant being completed 7(seven) years of service as the Casual Mazdoor in Telecom Department was illegible to be considered for regular appointment as the regular Mazdoor on the strength of Government Circular issued in this regard. The Sub-Divisional Officer, Telecom Department, Dibrugarh accordingly on recommendations of the higher authorities and in pursuance to the TDE/Dibrugarh, Memo No. E-176/RM/22 dated 01-02-1989 was pleased to appoint the applicant as the regular Mazdoor in his establishment on a scale of pay Rs. 750-940 p.m. w.e.f. 01-02-1989 and posted the petitioner under Junior Technical Officer (Jr.) at Moran along with other similarly casual Mazdoor as per letter vide Memo No. E-20/RM/2 dated 01-02-1989. The services of the applicant has been regularised along with other 18 numbers of casual Mazdoor and the applicant is placed at Serial No. 7 in the list of names of so called regular Mazdoor.

A copy of the aforesaid letter vide Memo No. E-20/RM/2 dated 01-02-89 is

25 SEP 2000

2000-12
Guwahati Bench

Moran ch. Hoga'

annexed hereto as Annexure-1 of this application.

4.3 That the applicant while working as the regular Mazdoor in the establishment of the Sub-Divisional Officer, Telecom Department was thereafter transferred to the Sibsagar Telephone Exchange in the establishment of the Sub-Divisional Officer, Telecom, Sibsagar as per letter vide No. R-259/CL.4/23 and dated 26-11-92. On being transferred the applicant continued to work as the regular Mazdoor at Sibsagar under the Respondent No. 4.

A copy of the aforesaid letter vide No. R-259/CL.4/23 dated, 26-11-92 is annexed hereto as Annexure-2 of this application.

4.4 That the applicant in the meantime was suffering from Enteric Fever since 20-02-93. He was accordingly undergone treatment under Dr. T.N. Bora who treated him in order to get fitness to continue with his service. The concerned doctor thereafter found to be fit and accordingly issued a Medical Certificate in respect of illness of the applicant. Though the applicant has recovered from his illness he was continued to be suffered from some other diseases and again the applicant had to undergo Medical treatment under the supervision of Dr. N.N. Gogoi who diagnosed the applicant that the illness of the applicant is a case of Malina and he

Nazem ch. Gogoi

accordingly treated the applicant from 02-09-93 to 21-09-93. Unfortunately, the applicant could not recover fully from his illness and the same has been turned to a kind of disease like Kochi's abdomen and Chr. D.U. The applicant was treated by Dr. N.N. Gogoi w.e.f. 11-10-93 to 6-7-94. Under the aforesaid circumstances the applicant could not remain present in his official duty which are beyond his control due to serious illness. The fact remain same that the applicant was suffering from Tuberculosis. The applicant was accordingly under medical treatment in district Tuberculosis Hospital, i.e. Sibsagar Civil Hospital under the supervision of Dr. A.K. Sarma. In course of his treatment the applicant developed panic depression psychosis. The concerned doctor accordingly treated the applicant under his supervision w.e.f 11-10-93 to 06-09-97 and issued a fitness certificate to the applicant regarding his fitness in order to resume his duty from 07-09-97.

A copy each of the aforesaid medical certificate issued in respect of illness of the applicant are annexed hereto as Annexure-3 series of this application.

4.5 That the applicant due to his serious illness w.e.f. 11-10-93 could not remain present in Office and remained absent from duties w.e.f. 11-10-93 to 06-09-97. The aforesaid absence from duties in respect of

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Sup. At. Regd.
Court of
Bench

Warren Ch. Gogoi

the applicant is beyond his control in as much as it was advised by the concerned doctor. The applicant fully recovered from his illness only on 06-09-97. The applicant thereafter submitted an application before the officer-in-charge, i.e. Junior Telecom Officer, Phones, Sibsagar in order to join in his duties. The concerned Officer-in-charge did not response on the application submitted by the applicant in as much as did not allow the applicant to resume in his duties for the reason best known to him. Be that as it may the applicant could not join in his duties for no fault of him.

4.6 That the applicant states that the applicant while undergoing medical treatment under the concerned medical officer due to his illness from Tuberculosis the concerned officer-in-charge of the applicant, i.e. Junior Telecom Officer, Phones issued a letter to the applicant in stating that the applicant failed to reply to letter issued to him nor attended in duties till 10-02-94 and thereby called for explanation within 7 days as to why his service will not be terminated and/or otherwise exparte decision will be taken against the applicant.

* A copy of the aforesaid letter issued to the applicant by the Junior Telecom Officer, Phones Sibsagar is annexed hereto as Annexure-4 of this petition.

15 SEP 2000

RECORDED
GOURANG BANERJEE

4.7 That the Officer-in-Charge, i.e. Junior Telecom Officer was informed about the illness of the applicant who was undergoing medical treatment under the Supervision of District Tuberculosis Officer, Sibsagar Civil Hospital. Despite of it, the Junior Telecom Officer, Phones, Sibsagar sought explanation from the applicant for cause of his absence from his duties which are beyond control of the applicant. It may be mentioned here that the applicant was not in a position to submit the reply of show-cause as he was seriously ill during that period. Unfortunately, the non-submission of show-cause reply might have been reported before the higher authorities and ex parte decision might have been taken against the applicant which led to termination from service of the applicant. It may further be mentioned here that no such termination order has been communicated to the applicant till date and as a result the applicant did not know that he has been terminated from service.

4.8 That your applicant begs to state that after recovery from illness and after obtaining fitness certificate from the District Tuberculosis Officer, Sibsagar Civil Hospital the applicant has gone to join in his duty and submitted an application dated 07-09-97 alongwith a copy of Medical certificate before his officer-in-charge, i.e., Junior Telecom Officer, Phones, Sibsagar. The applicant got surprised and shocked when he was not

Baren Ch. Gogoi

allowed to continue with his duties by the Respondents.

A copy of the aforesaid application dated 07-09-97 is annexed hereto as Annexure-5- of this application.

4.9 That your applicant begs to state that the Respondent had arbitrarily retrenched the applicant from service without passing any order and to that effect did not communicate such order if any passed against the applicant. In other words it may be mentioned here that the Respondents had sweeped out the applicant from service in colourable exercise of power behind his back and did not allow him to resume his duties. The applicant finding no other alternative had repeatedly approached before the Respondents and in this way they took long time to decide and did not take any initiative measure to sought out the case of the applicant. The applicant accordingly submitted a representation dated 06-11-98 before the Respondent No.4 praying inter-alia to reinstate him in service. But it was without any effect till date.

A copy of the aforesaid representation dated 06-11-98 is annexed hereto as Annexure-6 of this application.

4.10 That the Respondent did not take any action on the representation dated 06-11-98 submitted by the applicant. The applicant being in an extreme hardship had again

submitted another application dated 22-12-99 before the Respondent No. 3 stating inter alia to reinstate him in service. But it was also without any effect till date. Hence the instant application.

A copy of the aforesaid representation dated 22-12-99 is annexed hereto as Annexure-7 of this application.

4.11 That the applicant begs to state that the applicant is a regular Mazdoor under the Respondents and to terminate the applicant from service requires a disciplinary proceeding or any other departmental proceeding in accordance with the CCS Rules. The applicant was not communicated any such action taken against the applicant. As such, the applicant was in complete dark about his termination which are not in accordance with the law.

4.12 That the applicant humbly submits that the Respondents had snatched away the livelihood of the applicant in as much as did not communicate any termination order to the applicant. It is crystal clear that the Respondents did not allow the applicant to resume in his duty due to his prolonged absence in service which are also not tenable in law.

4.13 That the representations made by the applicant has not been disposed of till date

25 SEP 100

Regd

and as such, the applicant had no other alternative remedy other than appearing this Hon'ble Tribunal.

4.14 That this application is filed bona fide and for the ends of justice.

5] GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1 For that the action of the Respondents in not allowing the applicant to resume his duty, in other words ousting the applicant from service without making any communications in this regard in colourable exercise of powers.

5.2 For that there is clear of prescribed procedure and rules as regards genuineness of the claim, the same, must have been settled out way back in the year 1997.

5.3 For that the applicant is a regular Mazdoor and his service has been regularised in accordance with the law. As such the termination of the applicant without providing any reasonable opportunities are not tenable in law.

5.4 For that the Respondents did not allow the applicant to resume in duty on the ground of long absence from duty in as much as the Respondents did not feel like to interfere regarding illness of the applicant which are not vested to them.

Manu Ch. Gogoi

5.5 For that no proceeding had been drawn up against the applicant and without drawing any departmental proceeding as well as without affording any reasonable opportunity to show cause the applicant was whimsically ousted from service.

5.6 For that the impugned action of the Respondent being without any sanction of law and illegal, arbitrary and mala fide on the face of it.

5.7 For that there has been clear violation of Article 14, 19 and 21 of the Constitution of India besides being violation of principles of natural justice and administrative fair play.

5.8 For that in any view of the matter the impugned action of the Respondents are otherwise bad in law and as such these are liable to set aside and quashed.

6.1 DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Tribunal.

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

25 SEP 2000 That the applicant further declares that he has not filed any application, writ

Quashing

9/1
Warren Ch. Gogoi

petition or suit in respect of the subject matter of the instant application before any other Court, authority, nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the applicant prayed that this application be admitted, records be called for and issue notices to the Respondents to show cause as to why the relief sought for in this application shall not be granted and upon hearing the parties and on perusal of records be pleased to grant the following reliefs:

8.1 To direct the Respondents to reinstate the applicant in service as the regular Mazdoor with all service benefits available to him in accordance with the rules.

8.2 To direct the Respondents to release and make payment arrear salaries and allowances to the applicant since 10.11.93 to till date.

8.3 Cost of the application:

8.4 Any other relief or reliefs to which the applicant is entitled to.

9. INTERIM ORDER PRAYED FOR

23 SEP 2000

Guar. Bench

Mr. Ch. Gogoi

Under the circumstances the applicant prayed that it shall not be a bar to the authority to consider the case of the applicant during pendency of this application before this Hon'ble Tribunal.

10. This application filed through Advocates.
 11. PARTICULARS OF THE I.P.O.:

I. I.P.O. No. 2G 502881

II. Date 22-9-2000

III. Payable at ---- Guwahati.

12. LIST OF ENCLOSURES:

As stated in index.

...Verification,

C

20 SEP 2000

Guwahati

23

Baruah Ch. Hoga

VERIFICATION

I, Sri Naren Chandra Gogoi, Son of Dhaniram Gogoi, ex-RM, Sub-Divisional Officer, phones Sibsagar, aged about 42 years do hereby solemnly affirm and verify that the statements made in 1 to 3, 4.1 to 4.4

— accompanying — this application are true to my knowledge and those made in para — 4.6, 4.8, 4.9 & 4.10 are the matters of record and rest are submissions before this Hon'ble Tribunal.

And I sign this verification this
22nd day of September, 2000 at Guwahati.

Sri Naren Ch. Gogoi
DECLARANT.

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GOVT. OF INDIA
 DEPARTMENT OF TELECOMMUNICATIONS
 OFFICE OF THE SUB-DIVISIONAL OFFICER TELECOMM.
 DIBRUGARH.

Memo No. E-20/RM/2 Dated at Dibrugarh the
 1st Feb. 1989.

In pursuance of TDE/Dibrugarh Memo No. E-176/RM/22 dated 1-2-89, the following Casual Mazdoor, who have completed 7(seven) years of Service as on 01-03-87 are appointed as Regular Mazdoors on purely temporary basis in the scale of Rs. 750-12-870-EB-12-940/-P.M. plus usual allowances as admissible with effect from the date ad posted at the station shown against each.

Name	Station	Date of appointment as R/M
1) Sri Padma Ravi	MRN Under JTDP (GR)/ MRN	1-2-89
2) Sri Kamal Gogoi	DMK Under JTDP (GR)/ DKM	1-2-89
3) Sri Sukhen Gogoi	CHB.. Under JTDP/CHB	1-2-89
** *** ***	*** *****	*****
7) Sri Naren Gogoi-I	SPN. Under JTDP(GR)/MRN.	1-2-89
*** *** ***	*** *** ***	*****
18) Sri Naren	Gogoi-II MRN Under JTPO (GR)/MRN	1-2-89

The above officials regularised against the posts of R/M will perform all the works being

done by Casual Mazdoors such as Cable Laying, Digging of Trench, Construction of Line, fitting of Subscribers premises etc. including any other works assigned to them by the controlling officers.

The terms and conditions of appointment
are as under:-

A decorative horizontal line consisting of a series of stylized floral or star-like motifs, evenly spaced along the bottom of the page.

Certified to be true (C.P.)
Sarah
Advocate

Annexure-2

DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE TELECOM DISTRICT ENGINEER
DIBRUGARH.

No: E-259/C1. IV/23

Dated Dibrugarh the 26.11.92.

In pursuance of the Area Director Telecom, Dibrugarh letter No. STD/DT.DR/TER-16 /.../134 dated 30.1. Sri Naren Chandra Gogoi-I.MR o/o The THE/DR has been struck from the strength of this Division on the A/S of 30.11.92 to report for duty to the SDOT/SBS under T.D.E./Jorhat.

His transfer case is considered under rule # 38 of P & T Man.Vol.IV and will not be entitled for TA/DA and joining time.

Sd/- Illegible,

Asstt. Engineer (TEL)

O/o The Telecom District
Engineer, Dibrugarh.

Copy to:-

1. The AMT/DM for information.
2. The SDOT/Sibsagar for information.
3. Tiahe T.D.E./Jorhat for information.
4. Official Concerned.
5. P/file of the official.
6. The JAO(B) for n/a.
7. The Staff for n/a.
8. E-9/61.
9. E-17/stt.

Sd/- Illegible,
Asstt. Engineer (TEL)
O/o The Telecom District
Engineer, Dibrugarh.

(entitled to be true (WP))
Bhamali
Advocate

Medical Certificate:

This is to certify that Shri Naren Gogoi had been suffering from enteric fever since 20th Feb. 1993. He was under my treatment 27th Feb. 1993 Now he is cured and fit to consume his duty.

Dr. T.N.Bora,
M.B.B.S.
R. No. 8900

Seal

Sd/- Illegible,
1.3.93.

Certified to be true (cp)
Harish
Advocate

29
-20-

ANNEXURE - 3 Series

Naren Gogoi.

Dr. N.N.Gogoi,
MBBS (Dibr) FCGP (Delhi), FIAMS M A I M S
Sr. M. & H.O. I Galaxy P H. C

Regd. No. 4539

Date: 21.10.93.

To whom it may concern.

This is to certify that Shri Naren Ch. Gogoi
was under my treatment for Ch. D.K. Malaria from
2.9.93 to 21.10.93. I advised him rest for three
days. Now he is fit to resume his duty.

Sd/- Illegible,
21.10.93

(Seal)

Certified to be true (sp)
Dharmak
Advocate

..
M-
Lini

-21-

ANNEXURE - 3 Series

Dr. N.N.Gogoi,
M.B.B.S., F.C.G.P., FIAMS, MAIMS
S.D.M & H.O.
Galskey P.H.C.

Date : 6.7.94.

To whom it may concern.

This is to certify that Shri Naren Gogoi was under my treatment for Kock's also and Clor. D. 0. from 11.10.93 to 6.17.94. I advised him complet rest for the said perried for his complet recovery. Now he fit.

Sd/- Illegible,
6.7.94.

(Certified to be true (GP))
Jnanab
Advocate

Annexure-4

INDIAN TELECOM DEPARTMENT

From: Junior Telecom Officer
Phones(O/D)
Sibsagar-785640.

To: Sri Naren Ch. Gogoi, R/M ses
Hudupara,
Villi-Bakul Gaon,
P.O.-Phukan Pukhuri, Nazira.

No. G-1/SBS/93-94, Dtd SBS 10-2-94.

Sub: Unauthorized absent from duty.

Mr. Gogoi,

With reference to this Office letter No. G-1/SBS/93-94 dtd. 11-10-93, it is observed that you have given neither any reply to my letter in due time nor attend to duty till today the 10th Feb. '94. Give explanation within 7 days from the receipt of this letter, why your service will not be terminated; otherwise ex-parte decision will be taken against you as final.

Sd/- illegible
Junior Telecom Officer
Phones(O/D)
Sibsagar-785640.

Copy to:-

SDOZ Sibsagar for favour of information and necessary action.

certified to be true copy
DSwarup
Advocate

3

- 23 -

Annexure- 5

To,

The Divisional Engineer,
Telecom Department,
Sibsagar.

(Through J.T.O., Sibsagar)

Sub: Joining in duty.

Sir,

With reference to the above the District Tuberculosis Officer, Sibsagar declared me as fit to resume in my duty and accordingly I submit this application along with medical Certificate for favour of your information and necessary action.

Yours faithfully,

Sd/- Naren Ch. Gogoi
Sibsagar.

Date- 7.9.97

Enclosures:

1. Medical Certificate.

*(Certified to be true (c/o)
Dwirup
Advocate)*

3
Annexure-6

To,

The Divisional Engineer,
Phones, Sigsagar.

Sub: Prayer for reinstatement of service in
favour of Sri Naren Gogoi, Regular
Mazdoor.

Sir,

With due respect I beg to lay the
following few lines before you for favour of
your kind consideration and sympathetic order.

That Sir, I worked as regular Mazdoor
at Sibsagar Telephone Exchange since 26th November, 1992 as per transfer order No. R-
259/CL. IV/23 dated Dibrugarh, the 26.11.1992.
But unfortunately I fell sick on 11.10.93 and
doctor declared me a T.B. patient. The Doctor
advised to take proper treatment and to take
rest to cure my disease. Since then I could
not attend my duty as well as I could not
submit my Medical Certificate in time. I had
to undergo prolonged treatment from 11.10.93
to 6.9.97 for which I submitted proper Medical
Certificate to consider my case.

Now it is understood that my service
was terminated. But I am facing a lots of
trouble to maintain my poor family comprising
seven members including my old mother and
small children. I am the only earning member
in my poor family. Therefore, I request your
honour kindly to reinstate me in service so
that the members of my family may saved from
starvation.

Yours faithfully,
Sd/- Sri Naren Gogoi

Dated 6th November, 1998.

(Certified to be true copy)
Dawah
Advocate

Annexure-7.

To,

The General Manager,
Assam Telecom Circle,
Guwahati-7.

Sub: Prayer for reinstatement of my
husband in service.

Respected Sir,

With due respect I beg to lay before
you the following few lines for favour of your
kind consideration and favourable order.

That Sir, my husband Sri Naren Gogoi
worked as Regular Mazdoor at Sibsagar Tele-
phone Exchange. He fell sick on 11.10.93 and
Doctor declared him a T.B. patient. Since then
he could not attend his duties. Moreover he
developed mental depression due to which he
could not submit medical certificate in time.
He had to undergo prolonged treatment from
11.10.93 to 6.9.97.

Now it is understood that his service
was terminated. Ours is a very poor family
comprising 7 members and he was the only
earning member. Under the above circumstances
I pray your honour kindly to re-instate him in
service so that our family is saved from
starvation.

Date : 22.12.99.

Yours faithfully,

Sd/-Illegible,

W/o Naren Ch. Gogoi.

Mazdoor.

Certified to be true (WP)
Boruah
Advocate

40314	Central	Guwahati
17 AUG 2001		File No. 618/2001
Guwahati Bench		

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

(B. C. Pathak
Addl. Central Govt. S. Officer
Central Administrative Tribunal
Guwahati Bench)

O.A. NO. 307 OF 2000

Shri Naren Gogoi

..... Applicant
- Vs -

Union of India and Others.

..... Respondents.

(Written Statements filed by the Respondents
No. 1, 2 and 4)

The Written Statements of the abovenoted respondents
are as follows :-

1. That a copy of the O.A. No. 307/2000 (referred to as the "application") has been served on the respondents . The respondents have gone through the said application and understood, the contents thereof. The interest of all the answering respondents being common and similar, common written statements are filed for all of them.
2. That the statements made in the application which are not specifically admitted, are hereby denied by the respondents.
3. That the application is filed by misconception of provisions of rules relating to the Casual Labourers and hence the same is liable to be dismissed the applicant has no right to file this application.

4. That before traversing the various para of the of the application, the answering respondents begs to give a brief history of the case as under :-

a. That the applicant was appointed as R.M. on 1.2.89 under the SDOT, Dibrugarh. The applicant was transferred under Rule 38 to Sibsagar under this SSA and accordingly he joined on 1.12.92 vide TDE, Dibrugarh order No. E-250/CL-IV/23 dated 26.11.92. The applicant was posted under the J.T.O. (O/D) Sibsagar. But there he was very irregular in his duties. He did not perform his duty well and in time. Further it became his regular habit to keep himself unauthorisedly absent from his duty for long period. When his pay was held up, he submitted leave application with medical certificate for his period of absence. Leave on medical ground was granted ~~xxx~~ as follows :-

i. Medical leave from 3.2.93 to 26.2.93 (24 days) for treatment of Peptic Ulcer Syndrome certified by Dr. Deben Chutia, Simaluguri. He joined in service on 27.2.97.

ii. Medical leave 9.3.93 to 30.3.93 (22 days) for treatment of Peptic Ulcer Syndrome and certificate was given by Dr. Deben Chutia, He joined in service on 31.3.93.

iii. Medical leave from 10.5.93 to 28.6.93 (50 days for treatment of Peptic Ulcer Syndrome Certificate was issued by Dr. Debem Chutia, rejoined in service on 29.6.93.

iv. Medical leave from 2.9.93 to 23.11.93 certified by Dr. B. Duarah, Geleky P.H.E. for PUS and malina, joined in service on 24.11.93.

In this way, the applicant continued upto January, 1994. But he kept himself absent from duty from 1.2.94 again without any intimation or leave application. At this stage, the S.D.O. Telegraph vide his letter No. QN-9/SBS/93-94/13 dated 9.2.94 sought a report from the J.T.O.(O/D) Sibsagar about the unauthorised absence of the applicant. The JTO (O/D) Sibsagar, vide his letter No. G-1/SBS/93-94 dated 10.2.94 issued a letter to the applicant with copy to the SDOT Sibsagar, thereby asking explanation for his unauthorised absence from duty and as to why his service would not be terminated. But the applicant did not submit any explanation and continued to remain absent from duty. On that the SDOT Sibsagar drew up a disciplinary proceeding and directed the applicant to submit his reply. This was done vide order dated 4.3.94. But the applicant did not submit any reply and remained silent. On this, the competent authority issued the termination order vide letter No. QN-9/SBS/93-94/16 dated 30.3.94 with effect from 31.3.94.

After a prolong silence from 1.2.94 the applicant instead of approaching the department, has filed the instant

application which is hopelessly barred by limitation and is liable to be dismissed on that ground alone.

The copies of the letter dated 9.2.94, 10.2.94, 4.3.94 and 30.3.94 are annexed as Annexure - R₁, R₂, R₃ and R₄ respectively.

5. That with regard to the statements made in para 1 of the application, the respondents state that the applicant is deliberately trying to conceal the matter facts of the case and without making any mention about the so called impugned action of the respondents, has filed this application. The applicant has intentionally avoided to make mention all about the letters issued to him (as in Annexure - R₂, R₃ and R₄) and hence the application is liable to be dismissed.

6. That with regard to the statements made in para 2 and 3 of the application the respondents state that the application is hopelessly barred by limitation and hence this Hon'ble Tribunal shall not exercise jurisdiction to hear the application. The application is liable to be dismissed with cost.

7. That with regard to the statements made in para 4.1 to 4.3 of the application, the respondents have no comments those being matter of records. The respondents also crave the leave of this Hon'ble Tribunal to direct the applicant to produce all such original documents as annexed to his application at the time of hearing.

6. That with regard to the statements made in para 4.4 of the application, the respondents state that the statements are concocted and not based on records. As stated hereinabove, the applicant availed leave on different ground upto 23.11.93 and remained absent authorisedly from 1.2.94 continuously till the date of filing the present application. The applicant made no communication after 1.2.94 with the respondents nor he reported for duty on any day thereafter. Therefore, the respondents put the applicant to strict proof thereof the show as to for what he fell side and what steps he took to inform the respondents about his inability to work by resuming duty after 1.2.94 . The respondents deny the correctness of the statements as nothing was informed to them by the applicant.

9. That with regard to the statements made in para 4.5, 4.6 and 4.7 of the application, the respondents state that as stated hereinabove, the applicant did not respond to the show cause dated 10.2.94 and continued to remain absent from duty without any leave or without any intimation given to the respondents and for which he was terminated from service with due notice to him. It is also denied that the applicant had ever submitted any application to the J.T.O. Sibsagar as alleged.

10. That with regard to the statements made in para 4.8 of the application, the respondents state that those statements are incorrect, false and not based on records. The records as in Annexure-5 is a manufactured

one and was never served on the respondents (including the JTO, Sibsagar) at any point of time.

11. That with regard to the statements made in para 4.9 and 4.10 of the application, the respondents state that the applicant had never submitted any such representation to the respondents at any point of time. The respondents categorically states that the applicant is trying make out his case by manufacturing false evidences which were never existed. The respondents deny these statements.

12. That with regard to the statements made in para 4.11 of the application, the respondents state that the applicant is a Casual Labourer and hence his case is not covered by the CCS(CCA) Rules and he does not hold a Civil Post. His case is regulated by the scheme of casual labourers and conditions of service as laid down there.

13. That with regard to the statements made in para 4.12 of the application, the respondents state that as stated hereinabove, the applicant had to suffer for his own action/omission . The respondents also state that the applicant has indirectly admitted his lapses.

14. That with regard to the statements made in para 4.13 and 4.14 of the application, the respondents state that the applicant had never submitted any such representation to the respondents, hence question of disposal of such representation does not arise. The applicant is trying to mis-lead the Court with the ulterior motive to justify his

re-instatement in service and to cover up his illegal and unauthorised absence from duty.

15. That with regard to the statements made in para 5.1 to 5.8 of the application, the respondents state that the grounds shown are no grounds in the eye of law particularly in the instant case and hence the application is liable to be dismissed with cost.

16. That with regard to the statements made in para 6 and 7 of the application the respondents state that the applicant had never approached to the respondents after 1.2.94 and hence the statements are false as he did exhaust the alternative remedies available to him.

17. That with regard to the statements in para 8.1 to 8.4 and 9 of the application, the respondents state that under the above facts, provisions of law and rules, the applicant is not entitled to any relief whatsoever as prayed for and hence the application is liable to be dismissed with cost as devoid of any merit.

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

Verification.....

VERIFICATION

I, Shri Ganesh Chandra Sarma, presently working as Asst. Director Telecom. (Legal), being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para 1, 2, 3, 5 to 17 are true to my knowledge and belief., those made in para -4- being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed /concealed any material fact.

And I sign this verification on this 6th day of August, 2001 at Guwahati.

Ganesh C. Sarma,
Deponent.

—9— Indian Telecom Department —9—
Indian Telecom Dep't. Annexure-R1
To the SDOT/SBS

To
The J.T.O (O/D) Sibsagar.

Ref no:- QN-9/SBS/93.94/18. Dated = 9-2-94.

Sub:- Unauthorised absence.

It is observed that Sri Noror
Ch. Gogoi R/M, Sibsagar is absenting
himself since long without any info-
mation to the authority concerned.

Please let this office know the
action taken by you against this
official for his unauthorised absence
from duty for a prolong period.

I am constrained to take
disciplinary action against the official
for his unauthorised absence. Please
submit your report early.

Subhankar

S. D. O: Telegraphs,
Sibsagar - 785 640 (Assam)

From

Junior Telecom Office
Phones (O/D)
Sibsagar-785640

To

Sri Naren Ch. Gogoi, R/M
SBS
Hudupara
Vill. Bakul Gaon
P.O. Phukan Pukhuri, Nazir

No. G.-1/SBS/93-94; dtd SBS 10-2-94

Sub: Unauthorized absent from duty

Mr. Gogoi,

With ref. to this office letter No. G-1/SBS/93-94 dtd 11-10-93, it is observed that you have given neither any reply to my letter in due time nor attend to duty till today, the 10th Feb '94. Give explanation within 7 days from the receipt of this letter, why your service will not be terminated; Otherwise ex-party decision will be taken against you as final.

sd/-
Junior Telecom Office
Phones (O/D)
Sibsagar-785640

Copy To:

S. O. O. S. Sibsagar for favour of information and necessary action.

4
Junior Telecom Office
Phones (O/D)
Sibsagar-785640

Department of Telecommunications.

Office

वोमा नहीं NOT INSURED

सार्वे पाये छाक टिक्कों का मूल्य ५० प्र०

Amount of Stamps affixed Rs. P.

एक रजिस्ट्रेड..... प्राप्त करा

Received a Registered.....

पानीवाले का नाम..... N/C 2

Addressed to.....

पानीवाले अधिकारी के दस्तावेज़

Signature of Receiving Officer.

No. QII-97/15.

Dated at Sibsagar the 04-03-94

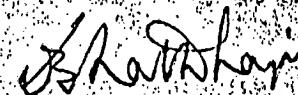
Sub:- Unauthorised absent from duty.

Please refer to the letter No. G-1/SES/93-94 Dated 10-02-94 from JTO regarding unauthorised absence from duty. It is reported by the JTO(O/D) Sibsagar that you have neither given any written reply nor report your duty till date.

As such the following charges brought against you and request you to furnish your reply within 7 days on receipt of this letter failure which necessary action will be taken as admissible under CES Rule against you.

Charges of Imputation.

1. Unauthorised absence from duty for a long period.
2. Negligence towards duty.
3. Habituated of going frequent leave without prior approval of competent authority.



Sub-Divisional-Officer
Telegraphs, Sibsagar.

Copy to :-

1. The Telecom District Engineer, Jorhat for information.
2. JTO (O/D) Sibsagar for information.
3. E-82 File.



Sub-Divisional-Officer
Telegraphs, Sibsagar.

12
 Indian Telecommunications Department
 Office of The Sub-Divisional Officer Telegraphs: SBS.

To

Shri Noren Ch. Gogoi, R/M, Sibsagar
 Telephone Exchange.

Hudupara, Village-Bakul Gaon.

P.O- Phukan Pukhuri, Nazira.

Sl no. QN-9/SBS/93-94/16

Dated 30-3-94.

Sub:- Termination from Service.

Please refer to this office letter no. QN-9/SBS/94/15 dtd. 4-3-94 regarding submission of your reply for unauthorized absence from duty. Since you have failed to furnish any reply in your defence within stipulated time to the undersigned Sri D. Bhattacharjee SDOT/Sibsagar being appointing authority have decided to terminate your service from the strength of the establishment of this Sub-Division under central civil service Temp. Service conduct rule 1965.

The date of termination of your service will take effect from 31-3-94.

D. Bhattacharjee 5/3
 Sub-Divisional Officer

Telegraphs, Sibsagar.

Copy to:

- (1) The Telecom. Dist Engineer/Jerkat for information and necessary action.
- (2) The J.T.O. (O/D) Sibsagar for information Please.

D. Bhattacharjee 2/3
 Sub-Divisional Officer

Telegraphs, Sibsagar.

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30/3*