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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 130/2000

OF 199

Applicant(s) *Md. Akhtar Hussain.*Respondent(s) *Union of Indn workers.*Advocate for Applicant(s) *Mr. M. Chanda,
Mrs. N. D. Goswami*Advocate for Respondent(s) *Mr. G. V. Sanyal,
C. J. S.*

Notes of the Registry	Date	Order of the Tribunal
<p> <i>This application is in form and within time. (E. F. of Rs. 100/- deposited vide IPO BD.NS. 452/03 Dated 2.4.2000)</i> <i>18-4-2000</i> <i>Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A/D vide D.Nos 1450 to 1452 Dtd. 19-4-2000</i> </p>	<p>11.4.00</p> <p>1m</p> <p>11/4/2000</p>	<p>Heard Mr.M.Chanda learned counsel for the applicant and Mr.A. Deb Roy, Sr.C.G.S.C. for the respondents.</p> <p>Perused the application. Application is admitted. Issue notice on the respondents by registered post.</p> <p>List on 12.5.00 for written statement and further orders.</p> <p><i>Member</i></p>
	12.5.00	<p>Mrs N.D.Goswami, learned counsel for the applicant present. 3 weeks time allowed for filing of written statement on the prayer of Mr A.Deb Roy, learned Sr.C.G.S.C.</p> <p>List on 5.6.00 for written statement and further orders.</p> <p><i>Member(J)</i></p>

Notes of the Registry	Date	Order of the Tribunal
<p><u>16-5-2000</u></p> <p>Notice duly served on R.No. 1 and 3.</p> <p><u>11-5-00</u></p> <p>No W/S has been filed.</p> <p><u>2/6/00</u></p> <p>W/statement has not been filed.</p> <p><u>12-7-2000</u></p> <p>W/statement has not been filed.</p> <p><u>16-11-2000</u></p> <p>(1) Notice duly served on R. No. 1 & 3. Respondant No-2 are still admitted.</p> <p><u>24-11-2000</u></p> <p>No written statement has been filed by the respondents.</p>	<p>5.6.00</p> <p>16-6-00</p> <p>13.7.00</p> <p>4.8.00</p> <p>13.9.00</p> <p>17.11.00</p>	<p>Mr. M.Chanda, learned counsel for the applicant and Mr. A. Deb Roy, learned Sr.C.G.S.C. for the respondents.</p> <p>Mr. Deb Roy requests for two weeks time to file written statement. Prayer allowed. List on 19.6.2000 for written statement and further orders.</p> <p>Member(J)</p> <p>There is no Bench today. Adj'd to 13.7-00.</p> <p>Present : The Hon'ble sri S.Biswas, Administrative Member.</p> <p>Mr M.Chanda, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents present. At the request of Mr Deb Roy the case is adjourned and posted on 4.8.00.</p> <p>Member(A)</p> <p>There is no Bench. Adj'd to 13.9-00.</p> <p>No Bench. To be list on 17-11-00.</p> <p>10 days time is granted to the respon- dents to file written statement on the prayer of Mr A.Deb Roy, learned Sr.C.G. S.C.</p> <p>List on 27.11.2000 for order.</p> <p>Vice-Chairman</p>

Notes of the Registry

Date

Order of the Tribunal

27.11.00

Written statement has been filed.
List before the next available Division Bench for hearing.

[Signature]
Vice-Chairman

pg

17/1/01

The case was wrongly listed for orders it should have been listed for hearing.

List on 30.1.2001 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

trd

30.1.01

On the prayer of learned counsel for the applicant case is adjourned to 20.2.01 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

lm

20.2.01

Adjourned on the prayer of the counsel for both the parties.

List again on 22.3.2001 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

pg

223

Adjourned to 24.4.2001

[Signature]
223

[Signature]
223

24.4.01

List on 2.5.01 for hearing.

[Signature]
h

2.5.

Passed over to 22.5.2001.

[Signature]
2.5.

[Signature]
12.1.2001

[Signature]
16.1.2001

[Signature]
29.1.2001

[Signature]
19.2.01

21-3-01

Rejoinder to written statement filed.

The case is ready for hearing.

[Signature]
23.4.01

OA 130/2000

(4)

Notes of the Registry	Date	Order of the Tribunal
	22-5-01	Adjourned to 14-6-2001. B/o NB.
The Case is ready for hearing as regards w/s and rejoinder. 29.6.01	14.6.01	Mr. A. Deb Roy, learned counsel for the respondents, submits that this case has been shown in the Supplementary List which has been received just today and he is not able to argue the case. Accordingly, the case is adjourned to 25-6-2001 for hearing. K C Chatterjee Member bb 2-7- There is no D/O today. The case is adjourned to 12-07-2001. M/o A.R. 27. 27.
	12.7.01	List for to-morrow on 13.7.01. By Order lm 13.7.01
31.7.2001 Copy of the Judgm ^t has been sent to the Office for issuing the same to the L/O. for the Respondent and as well as to the applicant by post. trd	13.7.01	Heard learned counsel for the parties. Hearing concluded. Judgement delivered in the open court, kept in separate sheets. The application is allowed to the extent indicated in the order. No order as to costs. K C Chatterjee Member Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 130 of 2000 of

DATE OF DECISION 13.7.2001

Md. Akhtar Hussain

APPLICANT(S)

Mr. M. Chanda

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE Mr. Justice D.N.Chowdhury, Vice-Chairman.

THE HON'BLE Mr. K.K.Sharma, Member (A).

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.



X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 130 of 2000.

Date of decision : This the 13th day of July, 2001.

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

Hon'ble Mr. K.K. Sharma, Member (A).

Md. Akhtar Hussain
Son of Late Md. Maknur Ali
Resident of Japorigog High School Road,
Sundarpur, P.P. Dispur,
Guwahati-781005.

...Applicant

By Advocate Mr. M. Chanda.

-versus-

1. Union of India
Through the Secretary,
Ministry of Labour
New Delhi-110001.
2. The Director General
E.S.I. Corporation
Kotla Road,
Panchadeep Bhawan,
New Delhi-110001.
3. The Regional Director,
E.S.I. Corporation,
N.E. Region,
P.O. Bamunimaidan
Guwahati-781021

....Respondents

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

O R D E R (ORAL)

CHOWDHURY J. (V.C.). :

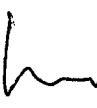
The sole controversy raised in this application is pertaining to payment of salaries for the period the applicant was kept under suspension. Pursuant to a criminal case in which the applicant was arraigned under section 290/325 IPC, he was placed under suspension in exercise of the powers conferred by sub rule (1) of Rule 10 of Employees' State Insurance Corporation. The criminal trial came to an end and the applicant was finally acquitted from the charges in G.R. Case No. 1658/94.

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2. From the conspectus of facts mentioned above the applicant was placed under suspension in view of a criminal proceeding and on his acquittal the applicant should get the full salary for the period of suspension. Provisions to this effect are made in F.R. 54.

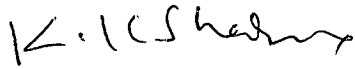
3. Mr. A. Deb Roy, learned Sr. C.G.S.C. submitted that an employee should get full pay and allowances only when he is fully exonerated from the charge. The applicant was only acquitted on benefit of doubt and therefore he cannot claim the benefit of full pay and allowance for the period of suspension.

4. We have gone through the judgement and order passed in G.R. Case No. 1658/94 dated 2.1.1997. The prosecution failed to establish and prove the charges in the criminal proceeding. Since the prosecution failed to prove and establish the case, the applicant was acquitted. Therefore there is no question of acquittal on the ground of benefit of doubt. The applicant was fully exonerated from the criminal charges in the instant case.

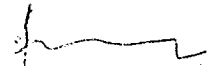
5. In these circumstances there is no justification for refusing the full salary to the applicant for the period of the applicant was placed under suspension. It has been stated that the applicant was placed under suspension with effect from 14.2.1995 and he was reinstated in service only on 26.8.1999. Accordingly we direct the respondents to pay fully pay and allowances to the applicant for the period the applicant was placed under suspension i.e. from 14.2.1995 to 25.8.1999. The respondents are further directed to pay the pay the benefit of revised pay scale to the applicant for the aforesaid period. The above exercise shall be completed within a period of three months from the date of receipt of a  certified copy of this order.

Contd...

4. The application is allowed to the extent indicated above. There shall however, be no order as to costs.



(K.K.SHARMA)
Member



(D.N.CHOWDHURY)
Vice-Chairman

trd

Central Administrative Tribunal

312 10 APR 2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
GUWAHATI BENCH

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

Title of the Case : O.A. No. 130/2000
Md. Akthar Hussain : Applicant
-versus-
Union of India & Ors. : Respondents

I N D E X

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Date 10.4.2000

Filed by
N.D. Goswami
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

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

Original Application No. 180/2000

BETWEEN

Md. Akhtar Hussain

Son of Late Md. Maknur Ali

Resident of Japorigog High School Road

Sundarpur, P.O. Dispur,

Guwahati-781005

..... Applicant

-AND-

1. Union of India
Through the Secretary
Ministry of Labour
New Delhi-110001
2. The Director General
E.S.I. Corporation
Kotla Road
Panchadeep Bhawan
New Delhi-110000
3. The Regional Director,
E.S.I. Corporation,
N.E. Region,
P.O. Bamunimaidan
Guwahati-781021

..... Respondents

Md. Akhtar Hussain

1. Particulars of Orders against which this Application is made.

This application is made praying for a direction to the respondents to treat the period of absence with effect from 14.2.1995 to 26.8.99 as on duty for all purposes and also praying for a direction for payment of full pay and allowances including payment of Dearness Allowance arrears ~~for~~ the entire period of suspension and also against the impugned order issued by the Regional Director bearing letter No. 43-A.20/11/16/73-Estt. dated 8.3.2000 whereby representation of the applicant for payment of full pay and allowances for the period of suspension has been rejected arbitrarily without assigning any reason.

2. Jurisdiction

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

3. Limitation

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

4. Facts of the Case.

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

Contd...

Md Ashtar Husbani

year 1970 and thereafter was promoted to the post of Upper Division Clerk. He however, was promoted to the post of Head Clerk and was posted at Tinsukia at the relevant time while vide an order dated 14.2.1995 he was placed under suspension.

4.2 That the applicant states that on 30.12.94, one Sri S.K. Sasmal, Manager, Tinsukia Office, E.S.I. Corporation, lodged an ejhar with Tinsukia Police Station alleging that on the same day at about 09.20 A.M. the applicant had assaulted him heavily and caused grievous injuries on his person. On receiving that information, the Police registered a case being Tinsukia P.S. Case No. SSS/94 U/S 290/325 I.P.C., started investigation into the matter and arrested the applicant on 9.1.1995 in connection with the aforesaid case in consequence whereof the Respondent No.3 issued an order on 14.2.1995 placing the applicant under suspension with immediate effect. It is stated that the suspension order was so issued as a case against the applicant in respect of original offence was under investigation by the Tinsukia Police.

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

4.3 That after investigation, the Police forwarded the case to the Court of Chief Judicial Magistrate, Tinsukia for trial and a case being G.R. Case No.1658/94 under Section 290/323/506 I.P.C. was registered. The applicant stood trial and pleaded not guilty. The Chief Judicial Magistrate considered the evidence and

Md. Akhtar Hussain

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

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

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

4.5 That the applicant states that even after submission of the aforementioned representations neither the suspension order dated 14.2.1995 was withdrawn/revoked nor he was reinstated in service and he was continued to be paid subsistence allowance as before. Under such a situation, suddenly the then respondent No.3 issued a memorandum of charge vide No. 43-S.11/18/95-Vig(AH) dated 12.6.1997 and proposed to hold an

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Md Akhtar Hussain

inquiry against the applicant in respect of the charge of alleged misconduct allegedly committed on 30.12.1994 at about 10.30 A.M. It was alleged in the article of charge that the applicant man handled/physically assaulted Sri S.K. Sasmal, the then Manager, Local Office, Tinsukia in the office during office hours on 30.12.1994 at about 10.30.A.M. With this memorandum, the respondent No.3 also enclosed the article of charge; statement of imputation of misconduct/misbehaviour in support of article of charge; a list of documents by which and a list of witnesses by whom the article of charge was proposed to be sustained. It is stated that the charge levelled against the applicant under this memorandum relates to the state incident that occurred on 30.12.1994 in respect which a criminal case being G.R. Case No. 1658/94 was instituted in the Court of Chief Judicial Magistrate, Tinsukia which ended in acquittal of the applicant vide judgement dated 2.1.1997.

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

4.6 That the applicant states that immediately after receipt of the memorandum of charge dated 12.6.97, he submitted his reply to the respondent No.3 on 7.7.97 and denied the charge of physically assaulting Sri S.K. Sasmal on 30.12.1994. In his reply the applicant stated that in respect of the alleged incident on 30.12.94, ~~In his reply the applicant stated that in respect~~ Sri Sasmal lodged an ejahar with Tinsukia Police Station whereupon a case being G.R. Case No. 1658/94 was

Md. Akhtar Hussain

registered in the Court of Judicial Magistrate, Tinsukia. The applicant further stated that the aforesaid case ended up in acquittal of the applicant as the charge of physically assaulting Sri Sasmal could not be proved. However, after receipt of this reply dated 7.7.1997, the respondent No.3 vide order dated 8.7.1997 appointed a Presenting Officer to present the case in support of the Article of charge and an Inquiring Authority to inquire into the charge sheet against the applicant and the inquiry thus commenced on 2.11.1997.

4.7 That your applicant begs to state that in view of the judgement and order dated 2.1.1997 passed in G.R. case No. 1658/94 the applicant was acquitted from the charge of physical assault of Sri S.K. Sasmal on 30.12.1994. It is stated that the applicant was placed under suspension vide order dated 14.2.1995 with immediate effect on the ground that there is a case against the applicant in respect of criminal offence which was under investigation by the Tinsukia Police at the relevant time. The relevant portion of the order dated 14.2.1995 is quoted below :

" O R D E R "

Whereas a case against Md. A. Hussain, Head Clerk, Local Office, Tinsukia in respect of criminal offence is under investigation by the Tinsukia Police Authorities as per letter No. TSK/T/95 dated 12.1.95 and arrested on 9.1.95 U/S 290/325 IPC.

Contd...

Md. Akhtar Hussain

Now, therefore, the undersigned in exercise the powers conferred by sub-rule (1) of Rule 10 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, hereby places Md. A. Hussain, Head Clerk, Local Office, Tinsukia under suspension with immediate effect.

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

From the above order it is quite clear that the applicant was placed under suspension on the ground that an investigation in respect of criminal offence is being conducted by the Tinsukia Police authorities, however a criminal proceeding was instituted and a case was registered being numbered as GR case No. 1658/94 which was ended in view of the acquittal of the petitioner following the judgement and order dated 2.1.1997 passed by the Chief Judicial Magistrate, Tinsukia. It is relevant to mention here that there was no proceeding pending at the relevant time against the applicant when the said criminal case was instituted through G.R. case No. 1658/94. As such in view of the judgement and order dated 2.1.1997 the petitioner was exonerated from the criminal charges which was levelled against the applicant. It is also relevant to mention here that the

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Md. Akhtar Hussain

appropriate authority also did not prefer any appeal or revision in High Court against the acquittal of the applicant in G.R. case No.1658/94. In this connection it is stated that there was no proposal from the respondents side to continue the applicant under suspension even after acquittal of the applicant ~~and~~ on the criminal charge as stated above. But surprisingly the respondents did not pass any order revoking the order of suspension dated 14.2.95 after long lapse of time say after five months. Surprisingly a departmental proceeding was instituted through memorandum of charge dated 12.6.97 on the same allegation which was the subject matter of the criminal proceeding where the applicant was exonerated by the Learned Chief Judicial Magistrate, Tinsukia by his judgement and order dated 2.1.1997. But even then there was no decision on the part of the respondents to continue the applicant under suspension after his acquittal in the criminal proceeding. In this connection the applicant begs to refer Rule 14 of chapter 2 which dealt with the provision relating to suspension wherein sub section (iii) of Section(b) of Rule 14 it is stated that if any Government employee is acquitted in trial court or if any appeal/revision in higher court against the conviction succeeds and the employee concerned is ultimately acquitted and when there is no proposal to continue him under suspension even though departmental proceeding may be initiated against him. The order of suspension deemed to have been revoked by the competent authority but in the instant case the respondents parti-

Ma. Rukhwar Hussaini

cularly the Regional Director who is the competent authority for revocation of order of suspension made a clear departure from the established rule and in total violation of the rules laid down by the Government of India in force the applicant to continue under suspension even after acquittal from the allegation of criminal offence by a court of law. The relevant portion of Rule 14 of CCS(CCA) Rule regarding revocation of suspension is quoted below :

" 14. Revoking of suspension

1. Under Rule 10(5) (c) an order of suspension made or deemed to have been made may, at any time, be revoked by the competent authority. This is done in the following circumstances :-

(a) Departmental Proceedings -

(i) If it is decided that no formal proceedings need be drawn up with a view to impose a penalty of dismissal, removal or compulsory retirement, or reduction in rank.

(ii) Where the final order passed is other than dismissal, removal or compulsory retirement.

(iii) Where the Government servant is exonerated of the charges against him.

(iv) In appeal or revision, the order is modified into one other than dismissal, removal or compulsory retirement and no further enquiry is ordered to be held.

Md. Akhtar Hussain

(b) Criminal Offence -

- (i) In arrest and detention cases, it is decided not to proceed further against the Government servant by filing a charge sheet in the court.
- (ii) If appeal/revision against acquittal in higher court fails.
- (iii) If acquitted in trial court or if an appeal/revision in higher court against the conviction succeeds and he is ultimately acquitted and when it is not proposed to continue him under suspension, even though departmental proceedings may be initiated against him.

2. An order of revocation of suspension will take effect from the date of issue. However, where it is not practicable to reinstate with immediate effect the order of revocation should be expressed as taking effect from a date to be specified.

3. An order of revocation should be made in the form prescribed."

In view of the provision of the rule, the order of suspension deemed to have been revoked although no formal order was issued by the respondents particularly the respondent No.3 on extraneous consideration in total violation of the statutory provision of the rule.

In the circumstances stated above, Hon'ble Tribunal be pleased to direct the direct the respondents to treat the applicant in service on completion of 90

Mr. Akhtar Hussain

days from the date of initial order of suspension dated 14.2.1995 or alternatively to treat the applicant in service with effect from 2.1.1997 i.e. from the date of judgement and order passed in G.R. case No. 1658/94 by the Learned Chief Judicial Magistrate Tinsukia acquitting the applicant from the charge of criminal offence.

4.8 That your applicant begs to state that the order of suspension was passed in respect of the applicant by the Regional Director through his order bearing letter No. 43-A.20/11/13/95-Estt dated 14.2.95. As per Rule 13 regarding suspension it is a statutory obligation on the part of the respondents to review periodically the case of government servant under suspension ~~and~~ in which charge has been served/filed to see what steps can be taken to expedite the progress of a ~~xxxxx~~ court of trial/departmental proceedings and revoke the order permitting the government servant to resume duty at the same station or at a different station, when in his view the continuance of suspension is not justified having regard to the circumstances of the case at any particular stage. The first review has been prescribed to be undertaken at the end of three months from the date of suspension. It is also observed in sub rule (2) that the concerned authorities should scrupulously observe the time limits laid down and review the cases of suspension, in the interest of public service as well, to see whether continued suspension in each case is really necessary. It is further observed to consider whether suspension order should be

Md. Arifur Rahman

revoked and the officer concerned should be ^{permitted} ~~discontinued~~ to resume duty, if the investigation is likely to take more time.

But surprisingly in the instant case of the applicant no such review was made in respect of suspension of the applicant and no fresh order was passed by the authority concerned regarding continuance of his suspension as required under the law. In the circumstances it should be presumed that there was no order of suspension issued by the authority after completion of 90 days from the date of initial order of suspension. The relevant portion of sub rule (1) of Rule 13 is quoted below :

" 13. Review of suspension

1. It is in the inherent powers of the disciplinary authority and also mandatory to review periodically the case of a Government servant under suspension in which charge sheet has been served/filed to see what steps could be taken to expedite the progress of the court trial/departmental proceedings and revoke the order permitting the Government servant to resume duty at the same station or at a different station, when in his view the continuance of suspension is not justified having regard to the circumstances of the case at any particular stage. The first review has been prescribed to be undertaken at the end of three months from the date of suspension."

Md. Akhtar Hussain

In view of the above provision the respondents particularly respondent No.3 ought to have been reviewed the case of the applicant after 90 days from the date of initial order of suspension but the respondent No.3 in total violation of the above provision of rule forced the applicant to continue under suspension without passing any fresh order as required under the rule for continuing him under suspension. In this circumstances Hon'ble Tribunal be pleased to direct the respondents to treat the applicant in service on completion of 90 days (three months) from the date of initial order of suspension and further be pleased to declare that the applicant is entitled all consequential service benefits including arrear pay and allowances.

4.9 That it is stated that in the instant case of the applicant no rule is at all followed by the respondent No.3 particularly the provision made available under rule 8,11,12,13,14 and 21 of the CCS(CCA) Rule relating to suspension, but forced the applicant to continue under suspension without any valid reason. Moreover the judgement and order passed by the Learned Chief Judicial Magistrate, Tinsukia on 2.1.97 the applicant approached the authority particularly the Regional Director, respondent No.3 through his representation dated 2.1.1997 and 31.1.1997 requesting the authority to revoke the order of suspension and ~~also~~ also prayed for reinstatement in service but no order was passed by the authority revoking the order of suspension and respondent No.3 without passing any order on the

Md. Bakkar Bhasdani

representation submitted by the applicant, rather issued a memorandum of charge sheet dated 12.6.1997 on the same allegation which was the subject matter in the criminal proceeding as stated above. But it is categorically laid down in the rule that in the event of acquittal against a criminal charge the government employee is liable to be reinstated and the order of suspension is deemed to have been revoked un sub section (iii) of rule 14 relating revocation of the order of suspension in chapter 2 of CCS(CCA) Rules, 1965. Therefore Hon'ble Tribunal be pleased to direct the respondents particularly the respondent No.3 to treat the applicant in cervice either from completion of three months from the date of initial order of suspension or ~~from~~ at least from the date of judgement and order i.e. dated 2.1.97 passed by the Learned Chief Judicial Magistrate, Tinsukia acquitting the applicant from the criminal charges.

It is categorically stated that no fresh order of suspension was issued after passing of the initial order dated 14.2.1995 on completion of three months from the initial date of suspension and no decision was taken by the competent authority to continue the applicant under suspension even though departmental proceeding was initiated after a lapse of five months i.e. on 12.6.1997. Therefore in these circumstances Hon'ble Tribunal be pleased to declare that the applicant is deemed to be in service on completion of 90 days from the date of initial order of suspension or at least from the date of judgement and order passed by the Learned Chief

Md. Akhtar Hussain

Judicial Magistrate i.e. on 2.1.1997 whereby the applicant was acquitted from the criminal charges and further be pleased to declare that the applicant is entitled to all consequential service benefits including monetary and arrear pay and allowances for the period for which the applicant was wrongly kept under suspension without any valid reason on his part.

4.10 That your applicant begs to state that after the order of suspension was issued on 14.2.95 the applicant was not paid dearness allowance as required under the rule alongwith subsistence allowance. In this connection it is ought to be mentioned here that the applicant is entitled to receive dearness allowance even while under suspension on the basis of subsistence allowance paid to him from time to time. It is stated that he has not been paid dearness allowance with effect from 1.7.1997. The dearness allowance has been granted in four phases being on 1.7.1997, 1.1.1998, 1.7.1998 and 1.1.99. The applicant further states that the Government of India, Ministry of Finance vide O.M. No. 13011/1/E.II(B)/76 dated 21.11.1977 has issued necessary instruction regarding payment of dearness allowance to a government servant under suspension on the basis of subsistence allowance paid to him from time to time. But this instruction has not been followed in the matter of payment of dearness allowance to the applicant and the same has not been paid to him in colourable exercise of power by the respondents which is violative of principles of equity.

Md. Akhtar Hussain

The applicant craves leave of the Hon'ble Tribunal to refer and rely upon the same O.e. G.M. dated 21.11.1977 at the time of hearing if necessary.

4.11 That the applicant states that he has been made to suffer unreasonably and unjustifiably at the illegal and discriminatory action of the respondents. The applicant has been meted out with hostile discrimination in the matter of non-payment of his dearness allowance, non-revocation of his suspension order dated 14.2.1995 and his reinstatement in service. It is stated that he has been forced by the illegal action of the respondents to continue under suspension in deprivation of his legitimate rights without any acceptable, just and proper reason.

4.12 That your applicant further begs to state that as per the provision of the law laid down in the office memorandum No.109/3/80-AVD-I, dated 27.7.1980 wherein, it is stated quoting the reference of Rule 10(5)(C) of the CCS(CCA) Rules, 1965. That whenever an official is under suspension, and any other case is initiated against him and the concerned authority considers it necessary that the official should remain under suspension in connection with that case also, then the competent authority should pass another order to this effect in accordance with the Rule so that in the event of reinstatement of the Govt. servant, the facts of the latter case taken into account while regulating the period of his suspension. But surprisingly in the instant case no fresh order of suspension was passed

Md Arifur Hussain

in respect of the applicant after his acquittal in the criminal proceeding i.e. in the G.R. Case No.1658/94, therefore, treating the applicant under suspension after his acquittal in the criminal case is contrary to Rule 10(5) (6) of the CCS(CCA) Rules 1965 and Department of Personnel Office Memorandum dated 21.7.80.

Therefore, the applicant is entitled to be treated as on duty from the date of the pronouncement of the judgement in the criminal case referred to above till the date of reinstatement with fully pay and allowances alongwith all consequential service benefit. It is further stated that the applicant is also entitled to full pay and allowances from the date of initial order of suspension i.e. with effect from 14.2.1995 till the date of reinstatement and more so on the ground that the applicant is honourably exonerated from the charge in the criminal proceeding.

4.13 That it is stated that as per the Govt. of India, Ministry of Home Affairs O.M. No. 221/18/65-AVD dated 7.9.1965 in the cases of officers under suspension, the investigation should be completed and a chargesheet filed in a court of competent jurisdiction in cases of prosecution or served on the officers in cases of departmental proceedings within 6 months as a rule. If the investigation is likely to take more time it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the present of the officer is considered detrimental to the collection of evidence etc. or if he is likely to tamper with the evidence, he may be transferred on revocation

Md. Akhtar Hussain

of the suspension order. But in the instant case no action was initiated for revocation of the suspension order of the applicant and no review for revocation of suspension order is made by the authority in terms of the instructions contained in office memorandum dated 7.9.1965 and O.M. dated 18.3.1978. It is further stated after acquittal of the applicant in the criminal case stated above no action was initiated in terms of Rule 10(4) of CCS(CCA) Rules 1965. As such the applicant is entitled for reinstatement in service with all consequential service benefit including his entitlement in promotion with 18% interest on the arrear pay and allowances.

4.14 That it is stated that the applicant approached the Hon'ble Central Administrative Tribunal through O.A. No. 198/99 praying inter alia for declaration that the impugned order of suspension order dated 14.2.95 is non existent and inoperative and for a direction to the respondents to revoke the order of suspension dated 14.2.1995 and also to reinstate the applicant in service and also prayed for a direction to the respondents for payment of full pay and allowances including all other service benefits with effect from 2.1.1997. However, the Hon'ble Tribunal disposed of the said O.A. at the admission stage on 14.7.1999 with the following directions :

" We have heard counsel for both sides. Mr. Chanda, learned counsel for the applicant submits that the continuance of order of suspension is bad in law in as much as there

Mr. Ankitar Hussain

was no review as required under the provision of law. His second contention is that the order of suspension is continuing more than the time prescribed. Mr. Pathak, learned Addl. C.G.S.C. submits that the order of suspension ~~is continuing~~ was reviewed from time to time on several occasions. Therefore, according to him, the submission of the learned counsel for the applicant has no force. However, Mr. Pathak agrees that the order of suspension is continuing more than the period prescribed. He also agrees that the continuance of order of suspension beyond the period prescribed will not be in accordance with the law. On hearing counsel for the parties we find that the submission of Mr. Chanda that there was no review has no force. However, there is sufficient force in his second submission is continuing beyond the period prescribed and therefore, the order of suspension is liable to be set aside. Accordingly the order of suspension is revoked. Regarding the payment of Dearness Allowance and recovery, Mr. Pathak submits that it is true that the amount was recovered but later on the authority found that it ~~is~~ was contrary to Rule and had returned the amount. He also submits that payment of dearness allowance is under progress.

In view of the above the application is disposed of by revoking the order of suspension. No order as to costs."

Md. Akbar Hussain

It is quite clear from the above ~~decision~~ of the Hon'ble Tribunal that the order of suspension is continued beyond the period prescribed and on that ground Hon'ble Tribunal was pleased to set aside the order of suspension. As such the applicant is entitled to all consequential service benefits including full pay and allowances on completion of 90 days from the initial order of suspension.

A copy of the order of the Hon'ble Tribunal dated 14.7.99 is annexed as Annexure- 5

4.15 That your applicant immediately after receipt of the order dated 14.7.99 submitted a representation dated 18.8.99 alongwith the copy of the Hon'ble Tribunal dated 14.7.99 passed in O.A. No. 198/99 to the Regional Director, ESI Corporation, praying inter alia to pay full pay and allowance with 18% interest including all other consequential service benefits including monetary benefit for the period under suspension since 14.2.1995.

A copy of the representation dated 18.8.99 is annexed as Annexure- 6

4.16 That the Regional Director after receipt of the representation dated 18.8.99 issued the order revoking the order of suspension vide order bearing letter No. 43-S-II/18/95-Vig (A.H) dated 26.8.99. In this connection it is relevant to mention here that since the order of suspension dated 14.2.95 is set aside by the Hon'ble Tribunal vide its order dated 14.7.95, the revocation of suspension order appears to have no force. Moreover,

Mr. Arshad Hussain

in view of the order dated 14.7.99 whereby the Hon'ble Tribunal set aside the impugned order of suspension dated 14.2.95 thereby it is abundantly clear that there is no order of suspension. The Hon'ble Tribunal observed that the suspension order has been continued without reviewing the same ~~xxx~~ beyond the prescribed period. As such the applicant is entitled to all the service benefits including full pay and allowances and the entire period of suspension is liable to be counted as on duty.

It is stated that the Regional Director vide his memorandum bearing No. 43-A.II/20/94-Estt dated 27.8.99 directed the applicant to perform his duty with immediate effect whereas the Learned Tribunal set aside the order of suspension on 14.7.99 and the applicant submitted representation on 18.8.99. However the applicant reported for duty in terms of the order of the Regional Director immediately thereafter.

A copy of the memorandum dated 27.8.99 is annexed as Annexure- 7.

4.17 That your applicant begs to state that finding no response regarding his pay and allowances for the entire period of suspension he has served a Lower Notice through his counsel on 19.10.99 requesting the authority to arrange for payment of full pay and allowances to the applicant with effect from 14.2.1995 till the date of reinstatement and also requested to pay arrear D.A. with effect from 1.7.1999 which is due to the applicant.

4.18 Most surprisingly, the Regional Director issued a show cause notice to the applicant vide letter No. 43-S

Md. Akhtar Hossain

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. II/18/95-Vig (A-H) dated 21.10.99 proposing to treat the entire period of suspension from 14.2.1995 to 26.8.99 as non-duty for all purposes and not to pay anything more than what has been paid as subsistence allowance. It is also stated in the show cause notice that in terms of 54 B(5) an opportunity to represent such proposal is given to the applicant and if he desires to submit any representation the same may be submitted within a period of 15 days from the date of communication of the notice, failing which it would be presumed that he has got no representation to submit in this regard and appropriate order would be passed ex-parte. The applicant immediately after receipt of the show cause notice submitted his reply on 26.10.99 wherein the applicant inter alia stated that in the instant case of suspension no procedure or rule is followed by the authority and unreasonable. The applicant was kept under suspension for a period of more than 4 years and the entire case of the suspension has been dealt in a most arbitrary manner in total violation of Rule of suspension laid down by the Government of India. The applicant also stated that he was acquitted from the criminal charge by the learned Chief Judicial Magistrate, Tinsukia vide his Judgement and order dated 2.1.97 in connection with G.R. Case No. 1658/94 for which the applicant was placed under suspension. Therefore he is entitled to full pay and allowances for the period of suspension with effect from 14.2.1995 to 26.8.99 and also requested to arrange payment of full

Md. Arshad Hussain

pay and allowances with immediate effect. The applicant also referred the decision of the Learned Tribunal dated 14.7.99 passed in O.A. No. 198/99.

It is relevant to mention here that in the said show cause notice the Regional Director also stated that as the applicant has been awarded punishment with dismissal from service in the serious charge on assaulting to his superior officer, therefore decision to treat the entire period of suspension i.e. from 14.2.95 to 26.8.99 as non-duty for all purpose and not to pay anything more than what has been received/paid as subsistence allowance. The relevant portion of the show cause notice dated 21.10.99 is quoted below :

" As Shri/Md A. Hussain was placed under suspension and has been punished with dismissal for the serious charge of assaulting to his superior officer, it is proposed to treat the entire period of suspension from 14.2.95 to 26.8.99 as non-duty for all purposes and not to pay anything more than what has already received as subsistence allowance."

From above, it is quite clear that the Regional Director submitted the proposal to treat the entire period of suspension as non-duty only on the ground that as the applicant was awarded penalty of dismissal from service. This decision of the Regional Director is highly arbitrary, unfair as because the applicant was suspended by order dated 14.2.1995 only on the ground that a criminal offence is under investigation and there is no link with his suspension to the order of dismissal

Md. Anwar Hussain

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which is awarded to the applicant in a departmental proceeding on the same subject matter on which the applicant was acquitted in the criminal proceeding by the Learned Chief Judicial Magistrate, Tinsukia.

It is relevant to mention here that the order of suspension dated 14.2.1995 has already been set aside by the Hon'ble Tribunal vide its order dated 14.7.1999 in O.A. No. 198/99. Therefore the Regional Director has no jurisdiction whatsoever to treat the entire period of suspension as non-duty rather the decision of the Regional Director is amount to contempt of court as because the learned Tribunal already declared that the order of suspension is irregular, unjustified as the applicant is kept under suspension beyond prescribed period. Therefore this arbitrary decision of the Regional Director to treat the entire period of suspension as non-duty only on the ground that the applicant was awarded serious punishment of dismissal in a departmental proceeding is self sufficient to quash the impugned show cause notice dated 21.10.99. Moreover, the Regional Director has no jurisdiction to issue such show cause notice after the decision of the Learned Tribunal passed in O.A. No. 198/99. If the Regional Director is at all aggrieved to the decision of the Learned Tribunal in that event he could have preferred appeal against the decision of the Learned Tribunal in any appropriate court of law. Therefore impugned show cause notice dated 21.10.99 is liable to be set aside and quashed.

Md AR Hossain

The applicant thereafter ~~xxxx~~ submitted a ~~xxxxxxx~~ representation dated 14.12.1999 for payment of full pay and allowances and finding no response submitted another representation dated 10.1.2000 addressed to the Director General, ESI, Corporation, New Delhi.

Copy of the show cause notice dt. 21.10.99 and reply dated 26.10.99 and representations dated 14.12.99 and 10.1.2000 are annexed as Annexures- 8, 9, 10 and II respectively.

4.18 That the Regional Director vide his letter bearing No. 43-A.20/11/16775 - Estt dated 8.3.2000 whereby it is informed the applicant that regrading admissibility of dearness allowance he would get a decision soon and it is also stated regarding entitlement of arrear subsistence allowance the applicant may get a decision from the Headquarter Office, New Delhi as the same is under consideration. It is also stated that regarding treatment of suspension period as duty period it is informed that the order of suspension dated 14.2.95 was issued a a criminal offence which was under investigation by the Police. The said criminal case was filed by the police in the court of Chief Judicial Magistrate, Tinsukia which ultimately resulted acquittal on 2.1.1997. Subsequently the chargesheet dated 12.6.1997 was issued which ultimately resulted dismissal from service on 20.10.1999. As such the suspension was not done as a result of criminal case but as a result of the investigation of a criminal offence has been treated as non-duty period for all

Md. Akhtar Hussaini

purposes as such no payment should be allowed other than what has already been paid to the applicant as subsistence allowance. It is also stated that the appeal preferred by the applicant against dismissal is under consideration at headquarter office and the decision of the Appellate Authority as and when passed would be intimated to him. The contention of the Regional Director is contrary to law and also contrary to the order passed by the Hon'ble Tribunal in O.A. No. 198/99 and also on the ground as stated above. As such the impugned order dated 8.3.2000 is liable to be set aside and quashed to the extent it is decided that the applicant is not entitled to pay and allowances except what has already been paid to him as subsistence allowance.

A copy of the impugned letter dated 8.3.2000 is annexed hereto as Annexure- 12

4.19 That your applicant begs to state that following the office order No. 72/99 bearing letter No. 43-A.27/17/97-Estt. dt. 13.10.99 the Regional Director issued necessary order for refixation of pay and allowances of the Assistants/Head clerks serving in ESI Corporation following the decision of a Court Case, whereby it is directed to fix the scale of pay of the Assistants in the scale of Rs. 1640-60-2600-75-2900 (Pre revised)/ Rs.5500-175-9000 (revised) as indicated in the enclosed annexure to the said office order dated 13.10.99. It appears in the annexure that pay of the applicant during suspension period had been refixed and the arrear pay had been

Md. Arkhate Hussain

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calculated with effect from 14.2.1995 till 27.8.1999. But surprisingly the respondents particularly the respondent No.3 - Regional Director did not pay the arrear pay and allowances which is refixed at the rate of 75% of the subsistence allowance although the applicant is entitled to full pay and allowances in respect of 75% subsistence allowance. But even then the amount which is calculated and sanctioned has not been paid except for the year 1995. This illegal action of the respondents particularly the respondent No.3 cannot be sustained in the eye of law. This action of the respondents further establishes that they have discriminated the applicant even in the matter of payment of arrear pay and allowances which is due to the applicant following a judgement and order of the Learned Tribunal and which is accepted by the respondents/departments in the case of other similarly situated Assistants and Head Clerks. This has been done at the instance of respondent No.3 with the view of intention to harass the applicant denying his legitimate claim of arrear pay and allowances. Therefore the Hon'ble Tribunal be pleased to direct the respondents to pay the arrear pay and allowances which is due to the applicant in terms of office order No. 72/99 dated 13.10.1999.

A copy of the office order dated 13.10.99 is annexed hereto and marked as Annexure- 13

4.20 That this application is made bona fide and for the cause of justice.

5. Grounds for relief(s) with legal provisions
- 5.1 For that the impugned memorandum dated 14.2.1995 has already been set aside by the Learned Tribunal vide order dated 14.7.99 in O.A. No. 198/99, as such the applicant is entitled full pay and allowances for the entire period of suspension.
- 5.2 For that non-payment of arrear pay and allowance in terms of Office order dated 13.10.1999 is violative of Article 14 and 16 of the Constitution of India.
- 5.3 For that the decision of non-payment of full pay and allowance is contrary to the order passed in O.A. No. 198/99 on 14.7.99 by the Learned Tribunal.
- 5.4 For that the applicant honourably exonerated from the criminal offence which was brought against him through a G.R. Case No. 1658/94 by the learned judicial Magistrate, Tinsukia.
- 5.5 For that no payment of dearness allowance to the applicant on the basis of his subsistence allowance from time to time is unreasonable and contrary to the provisions of law.
- 5.6 For that the order of acquittal of the applicant from a Court of law from the charges renders the order of suspension non existent and in-operative.
- 5.7 For that the applicant is entitled to full pay and allowances for the suspension period in view of the fact that he has been acquitted from the case of

criminal offence in relation to which the impugned order of suspension dated 14.2.95 was issued.

- 5.6 For that in view of the fact that the order of suspension dated 14.2.95 has not been extended by subsequent order, the action of the respondents in keeping/treating the applicant under suspension for a prolonged period of more than 4 years without any just and cogent reason is violative of Article 14 and 16 of the Constitution of India as well as Principles of Natural Justice.
- 5.7 For that the respondents have acted in a wholly unjust and unfair manner and on extraneous consideration to harass the applicant.
- 5.8 For that, in any view of the matter the action/inaction of the respondents are bad in law and cannot be allowed to sustain in the eye of law.

6. Details of Remedies Exhausted :

The applicant declares that he has no other alternative or efficacious remedy except by way of filing this application before the Hon'ble Tribunal.

7. Matters not previously filed or pending before any other Court.

The applicant declares that he had filed an Original Application No. 198/99 before the Hon'ble Tribunal and the same has been disposed of on 14.7.99 setting aside the impugned order 14.2.1995. The applicant further declares that no writ petition or suit regarding

the subject matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal is pending before any of them.

8. Reliefs sought for :

- 8.1 That the impugned order dated 8.3.2000 (Annexure-*12*) be set aside and quashed.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to full pay and allowances for the entire period of suspension i.e. for the period 14.2.1995 to 26.8.1999 with all consequential service benefits.
- 8.3 That the respondents be directed to treat the applicant as on duty with effect from 14.2.95 to 26.8.99 as because the impugned order dated 14.2.1995 has already been set aside and quashed by the Hon'ble Tribunal in O.A. No. 198/99.
- 8.4 That the respondents be directed to pay the applicant his arrear dearness allowance w.e.f. 1.7.97 and other arrear monetary benefits along with interest & 18% w.e.f. 14.2.95 till the date of actual payment.
- 8.5 Cost of the Application.
- 8.6 Any other relief or reliefs to which the applicant is entitled to under the facts and circumstances of the case.

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9. Interim Relief prayed for :

Pending disposal of this application, an observation be made by the Hon'ble Tribunal that pendency shall not be a bar for the respondents to release the arrear pay and allowances including dearness allowance to the applicant.

10.

This application is filed through Advocate.

11. Particulars of the I.P.O.

- | | | |
|------|---------------|---------------------|
| i. | I.P.O. No. | : 06 457103 |
| ii. | Date of issue | : 7-4-2000 |
| iii. | Issued from | : G.P.O., Guwahati. |
| iv. | Payable at | : G.P.O., Guwahati |

12. List of enclosures.

As stated in the Index.

Verification

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V E R I F I C A T I O N

I, Shri Md. Akhtar Hussain, son of late Md. Maknur Ali, resident of Japorigog High School Road, Sunderpur, P.O. Dispur, Guwahati-5, applicant in the above case do hereby declare and verify that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice which I believe to be true and rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 10th the day of April/2000 at Guwahati.

Md. Akhtar Hussain

Signature

Annexure-1

/CONFIDENTIAL/

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

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

O R D E R

Whereas a case against MD. A. Hussain, Head Clerk, Local Office, Tinsukia in respect of criminal offence is under investigation by the Tinsukia Police Authorities as per their letter No. TSK/T/95 dated 12.1.95 and arrested on 9.1.95 U/S 290/325 IPC.

Now, therefore, the undersigned in exercise the powers conferred by sub-rule (1) of Rule 10 of Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, hereby places Md. A. Hussain under suspension with immediate effect.

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

Sd/-

(T.K. BHATTACHARYYA)
REGIONAL DIRECTOR

Copy to Md. A. Hussain, Head Clerk, Local Office, Tinsukia, C/o The Manager, ESI, Corporation, Local Office, Tinsukia (Order regarding subsistence allowance admissible to him during the period of his suspension will be issued separately.

Copy to Md. A. Hussain (Home Address) Near Sunderpur Namghar, Dispur, Guwahati-5.

*Alistered
Law
Advocate*

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

Date : 2.1.1997

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

Sir,

Kindly refer to R.O., Guwahati Order No.43-A.20/11/13/95-Estt dated 14.2.1996 whereby I have been placed under suspension from the post of Head Clerk, L.O., Tinsukia.

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

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

Yours faithfully,

Sd/- 2.1.97

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

*Attested
by
advocate*

To

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

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

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

Sir,

In continuation to my letter dated 2.1.97, I have
to request your honour to allow me to join in the
Corporation in due post immediately as I have already
been acquitted from the case filed by the then Manager,
Sri S.K. Sasmal.

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

Enclo : As above

Yours faithfully, ~~~~~

Sd/- 31.1.97

(M.A.HUSSAIN)
H.C.L.O. Tinsukia

*Alister
Sasmal
Advocate*

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

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

Dated 12.6.1997

MEMORANDUM

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

2. Md. A. Hussain, Head Clerk is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and to state whether he desires to be heard in person.

3. He is informed that the inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore specifically admit or deny each article of charges.

4. He is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Regulation 14 read with para 3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and conditions of services) Regulations, 1959 or the order/directions issued in pursuance of the said Regulations, the Inquiring Authority may hold the inquiry against him ex-parte.

Contd....2

*Attested
J. K.
Advocate*

Annexure-4 (Contd)

5. Attention of Md. Akhtar Hussain, Head Clerk (under suspension) is invited to Rule 29 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring ~~him~~ in political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his services under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Md. A. Hussain is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964 which is applicable to the Corporation employees by virtue of Regulation 23 of the Employees' State Insurance Corporation (Staff and Conditions of Services) Regulations, 1959 as amended.

6. Receipt of this Memorandum may be acknowledged.

Enclo : As above

Sd/- Illegible

12.6.97

(D.N.PEGOO)

Regional Director

To

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

*Attested
Secy
Advisory*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION No. 198/99

Applicant(s) : Md. Akhtar Hussain
Respondent(s) : Union of India and Ors.
Advocate for Applicant : Mr. M. Chanda, Mrs. S. Deka
Mrs. U. Dutta, Mr. G. Chakraborty
Advocate for Respondent(s) : C.G.S.C.

14.7.99

The applicant in this case has challenged the Annexure 1 order dated 14.2.94. The applicant was suspended because a criminal case against him was under investigation. The applicant was arrested on 9.1.95 and he remained under suspension for more than 4 years. The applicant was acquitted of the charge by the Court of the Chief Judicial Magistrate, Tinsukia on 2.1.1997. After the acquittal a departmental proceedings dated 12.6.1997 was initiated along with the applicant. The order of suspension continued. Being aggrieved the applicant submitted several representations and by order dated 25.8.98, Annexure-5, applicant was informed that on review the authority did not find any reason to revoke the suspension.

We have heard counsel for both sides. Mr. Chanda, learned counsel for the applicant submits that the continuance of order of suspension is not in law, inasmuch as there was no review required under the provision of law. His second contention is that the order of suspension is continuing more than the time prescribed. Mr. Pathak, learned Advocate for C.G.S.C. submits that the order of suspension was reviewed from time to time on several occasions. Therefore, according

14.2.93

26.8.99

20.10.99

4 yrs - 6 mos

Subj: ...

- Dismissed

14.2.93

to

26.8.99

2.1.97

Advocate

14.7.99 to him, the submission of the learned counsel for the applicant has no force. However, Mr. Pathak agrees that the order of suspension is continuing more than the period prescribed. He also agrees that the continuance of order of suspension beyond the period prescribed will not be in accordance with the law. On hearing counsel for the parties we find that the submission of Mr. Chanda that there was no review has not force. However, there is sufficient force in his second submission that suspension is continuing beyond the period prescribed and therefore, the order of suspension is liable to be set aside. Accordingly the order of suspension is revoked. Regarding the payment of Dearness Allowance and recovery, Mr. Pathak submits that it is true that the amount was recovered but later on on the authority found that it was contrary to Rule and had returned the amount. He also submits that payment of dearness allowance is under process.

In view of the above the application is disposed of by revoking the order of suspension. No order as to costs.

Sd/- Vice-Chairman

Sd/- Member (A)

Placed
for
Advocate

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

Date : 18.8.1999

Subject : Prayer for immediate implementation of the
Hon'ble Tribunal Order dated 14.7.1999 in
O.A. No. 198/99 (Md. A. Hussain Vs. Union of
India & Others).

Respected Sir,

Enclosed please find herewith a copy of the
Hon'ble Tribunal order dated 14.7.99 passed in O.A. No.
198/99 (Md. A. Hussain Vs. Union of India). It is relevant
to mention here that I have approached the Hon'ble
Tribunal being highly aggrieved for prolong continuation
of suspension order dated 14.2.95 which was passed away
back to 14.2.95 and also for payment of full pay and
allowances with 18% interest as arrear from the date of
14.2.95 as the petitioner was acquitted from the criminal
case No. 1658/94 before the Chief Judicial Magistrate,
Tinsukia. The Hon'ble Tribunal vide order dated 14.7.99
was pleased to set aside and quashed the imposed order
of suspension dated 14.2.95.

Therefore, I may be allowed to join today on 18th
August '99 and I pray to pass necessary order accepting
my joining report with immediate effect.

I further pray that this letter may kindly be
treated as joining report.

A copy of the Hon'ble Tribunal order dated
14.7.99 (certified copy) is enclosed herewith for your
ready reference.

It is further requested that full pay and allowan-
ces with 18% interest including all other consecutive
service and monetary benefits of the period under suspen-
sion since 14.2.95 may kindly be paid to me at your
earliest.

Enclo : Judgement copy
dt. 14.7.99

Yours faithfully,
Sd/- 18.8.99
(MD. A HUSSAIN
K.C.R.O., Guwahati

*Attested
Jee
Guwahati*

Annexure-7

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

No. 43-A.22/20/94-Estt.

Dated 27.8.1999

Subject : Allotment of duty.

As directed by the Regional Director, Md. Hussain,
H.C. Regional Office, Guwahati is hereby advised to
perform his duties in 103-A, Regional Office, Guwahati
with immediate effect.

Sd/- Illegible
27.8.99

DEPUTY DIRECTOR
for Regional Director

To

1. Official concerned (Md. A. Hussain).
2. The Assistant Director, ESIC, R.O., Guwahati.
3. Insurance Br. R.O., Guwahati.
4. The Dy. Director (F), ESIC, R.O., Guwahati.
5. 103-A Br. R.O., Guwahati

*Alleged
New
Aero cati*

CONFIDENTIAL

Annexure-8

- 42 -

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

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

Dated : Oct 21, 1999

SHOW CAUSE NOTICE

Shri/Md. A. Hussain, Ex-head clerk, Employees' State Insurance Corporation, N.E. Region Guwahati was placed under suspension under Order No. 43-A.20/11/13/95-Estt. dated 14.2.95 with immediate effect, as a criminal offence was under investigation by the Police. The suspension had continued upto 26.8.99. During the suspension period, the said ex-official was also issued a major penalty charge sheet on 12.6.97 for assaulting the Shri S.K.Sasmal, then Local Office Manager, Tinsukia on 30.12.94. After following the procedure, he was dismissed from the service vide Regional Office Order of even No. dated 20.10.1999.

As Shri/Md. A. Hussain was placed under suspension and has been punished with dismissal for the serious charge of assaulting to his superior officer, it is proposed to treat the entire period of suspension from 14.2.95 to 26.8.99 as non-duty for all purposes and not to pay anything more than what has already received as subsistence allowance.

In terms of FR 54 B(5), Shri/Md. A. Hussain is hereby given an opportunity to represent against the aforesaid proposal. His representation, if any, should be received by the undersigned within 15 days of receipt of this communication. If no representation is received within the stipulated date, it will be presumed that he has got no representation to submit in this regard and appropriate order will be passed ex-parte.

To
Shri/Md. A. Hussain
Head Clerk
ESI Corporation, Regional
Office, Guwahati-781021

Sd/- Illegible
(D.N.Pegoo)
Regional Director

*Assisted
for
signature*

To

The Regional Director
E.S.I. Corporation
Regional Office
NER, Namunimaidan
Guwahati-21

Date : 26.10.99

Sub : Reply of the Show cause notice dated 21.10.99.

Ref : Your letter No.43-S.11/18/95 viz (AH) dated 21.10.99

Sir,

I have received your show cause notice dated 21.10.99 and carefully gone through the same and understood the content thereof and beg to state that the suspension order dated 14.2.95 was issued following the arrest of the undersigned on 9.1.95 in connection with Tinsukia P.S. Case No.555/94 and a criminal proceeding was started thereafter before the Chief Judicial Magistrate Tinsukia in connection with GR Case No. 1658/94.

It is stated that the order of suspension in my case unreasonably continued for a period more than Four years in total violation of rule of suspension rule i.e. of the time limit and procedure of Duration/End of suspension. Follow up action, REVIEW OF SUSPENSION AND REVOCATION OF SUSPENSION PROCEDURE laid down by the Government of India which is evident from CCS CCA rules 1965, it is stated that in the instant case of my suspension no procedure of rule is followed by the authority and reasonably kept me under suspension for a period of more than four years of service but the entire case of my suspension has been dealt in a most arbitrary manner in total violation of rule of suspension laid down by the Government of India. This fact of unreasonable prolong suspension is evident from the Hon'ble Tribunals order dated 14.7.99 passed in O.A. No. 198/99 (Md. A. Hussain vs union of India & others) relevant portion is quoted below " However there is sufficient force in his second submissions that the period of suspension is continuing beyond the period prescribed and therefore, the order of suspension is liable to be set aside, accordingly the order of suspension is revoked."

*Attested
Advocate*

It is quite clear from above that the prolong suspension is not permissible under the law.

That it is stated that the undersigned was acquitted of the charge by the court of Chief Judicial Magistrate TINSUKIA vide judgement and order dated 2.1.97 in connection with G.R. Case No. 1658/94 for which the undersigned was placed under suspension, therefore, I am entitled to full pay and allowances for the period of suspension i.e. with effect from 14.2.95 to 26.8.99.

It is categorically stated that the undersigned was suspended only in connection with his arrest on 9.1.95 and the criminal charges which was subsequently brought against the undersigned in fact acquitted by the learned CJM TINSUKIA on 2.1.97 there was no other fresh order of continuation of suspension which would be evident from order of suspension dated 14.2.95. Therefore, on the date of acquittal of the undersigned by the learned CJM, TINSUKIA on 2.1.97 the undersigned is entitled to fully pay and allowances in view of my acquittal in the Criminal case.

I further made it clear that in connection & with Departmental proceeding no order of suspension or any order of further continuation of suspension was passed by the appropriate authority as required under instruction laid down in the Government of India office memorandum No. G.I.D.P. & A.R. O.M. No.109/3/80 AW I, dated 21st July 1980. (Available in Swamy's Compilation of CCS CCA rules. Twenty fourth edition 1999. Page 211) therefore - undersigned is entitled to full pay and allowances with all consequential service benefit. The case of the undersigned is covered for payment of full pay and allowances in view of the provision laid down in para 14 under the Head revoking of suspension Swamy's digest 1989. Page 188 and also under the provision laid down in para 11,12,13 and

*Alleged
leave
- Adro call*

the provision laid down in OM dated 21.7.80 makes it abundantly clear that the undersigned is entitled to full pay and allowances for the period of suspension i.e. with effect from 14.2.95 to 26.8.99.

In view of the above factual position and also in view of the settled position of law. You are requested to arrange payment of my full pay and allowances with immediate effect.

Yours sincerely,

sd/- 26.10.99

(Md. A. Hussain)

H/C, R.O., Guwahati

Attested
by
Advocate

To

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

Date - 14.12.99

Sub : Request for treatment ~~of~~ my absence including suspension period from 14.2.95 to 26.8.99 as duty for all purposes and payment of full pay & allowances for the said period and payment of D.A. arrear etc. as per Hon'ble Tribunal order dated 14.7.99 in O.A. No. 198/99 (Md. A. Hussain Vs. Union of India & others).

Sir,

I have to state that the Hon'ble Central Appeal Tribunal Guwahati had passed an order on 14.7.99 in O.A. No. 198/99 (Md. A. Hussain Vs. Union of India & Others) whereby suspension order dated 14.2.95 imposed against me by the Regional Director, ESI, Corporation, N.E. Region, Guwahati had been revoked.

The Hon'ble Central Appeal Tribunal order dated 14.7.99 in O.A. No. 198/99 (Md. A. Hussain Vs. Union of India & others) had been submitted to you on 18.8.99 vide my letter dated 18.8.99.

2. That on receipt of the Hon'ble Tribunal order dated 14.7.99, my suspension order No. 43-S-11/18/95-vig (A.H) dated 26.8.99 and I had been reinstated in the service of the corporation, N.E. Region Guwahati. Further, as per direction of you under R.O. memorandum No. 43-A-22/20/94-Estt. dated 27.8.99, I had reported my duty at R.O., (103-A Branch) on 27.8.99 (A.N.) and continued my service in the Regional office, Guwahati till 21.10.99 (A.N.).

Hence full pay and allowances are to be allowed to me on re-instatement for the entire period of absence including the period of suspension from 14.2.95 to 26.8.99 and the entire period of suspension has to be treated as duly for all purposes as per Swamy's Compilation of C.C.S. C.C.A. Rules chapter-5 (re-instatement-A Digest)- para. 4(1) - Reinstatement as a result of court order and para -5(5) (a) (3)- full pay and allowances when payable (Revoking of suspension during pendency of proceedings).

I, therefore, request your honour to pay me the following arrear pay and allowances D.A. etc. which are

Attested
Advocate

- 47 -

5x

Annexure-10 (Contd.)

payable to me as per rules as early as possible, as my family is about to die on starvation due to financial hardship caused by dismissal of my service on 21.10.99 (A.N), illegally, as under :-

1. The arrear of full pay and allowances for the entire suspension period from 14.2.95 to 26.8.99 and the entire period of suspension may kindly be treated as duty for all purposes as per C.C.S.-CCA rules-chapter-5 (para-4(1) and para - 5(5) (a) (3).
2. The arrear of D.A. payable from 1.7.97 onwards till 26.8.99 as per Hon'ble Central Appeal Tribunal order dated 14.7.99 in O.A. No. 198/99 (Md. A. Hussain Vs. Union of India & others).
3. The arrear of subsistence allowances on enhanced scale to H/C/Asstt. allowed from 1993 at 50% and 75% for the suspension period from 14.2.1995 to 26.8.99. (Arrear payment has been made to me from 1993 to 13.2.95 only by R.O) subsistence allowance on revised pay at 50% % 75% has already been sanctioned vide R.O.O/O No. 72 of 1999 dated 13.10.99.
4. The arrear of subsistence allowances on revised 5th pay scale at 75% payable from 1.1.96 to 26.8.99 (suspension period) which has not yet been paid to me. (Subsistence allowance on revised pay at 75% has already been sanctioned vide R.O.O./O No. 72 of 1999 dt. 13.10.99.

Yours faithfully,

Sd/- 14.12.99

(Md. A. Hussain)
H/C, R.O., Guwahati

Attested
Jeev
Advocate

Annexure-11

To

The Director General
(Appellate Authority)
Employees State Insurance Corporation
ESIC Bhavan
Kotla Road
NEW DELHI-1.

Dated :- 10.1.2000

Through the Regional Director, ESI Corporation, N.E.
Region, Guwahati.

Respected Sir,

I have the honour to state that the Hon'ble Central Administrative Tribunal (CAT), Guwahati had passed an order on 14.7.99 in O.A. No. 198/99 (Md. A. Hussain Vs. Union of India & others) (copy enclosed) whereby suspension order dated 14.2.95 issued against me by the Regional Director, ESIC, Guwahati had been revoked.

That on receipt of the Hon'ble Tribunal order dated 14.7.99, the suspension order dated 14.2.95 was revoked by the Regional Director, ESIC, Guwahati vide Regional Office order No. 43-S.11/18/95-vig(AH) dated 26.8.99 and I had been reinstated in the service of the corporation, N.E. Region, Guwahati and I had reported for my duty at 103-A Branch, R.O., Guwahati on 27.8.99 and continued my service in the corporation till 21.10.99 (i.e. till unjustified dismissal order of my service from the Corporation) for which a separate appeal has already been made to your honour to set aside the unjustified dismissal order).

NOW

3. As per Swamy's Compilation of C.C.S.-C.C.A. rules under chapter-5 (reinstatement-A Digest) para-2 (Nature of orders to be passed as under :-

- i. When a Government servant is reinstated in service, the authority competent to order the reinstatement has to make a specific order-
- (a) regarding the pay and allowances to be paid to the Govt. servant for the period of his absence from duty viz period of unemployment and suspension, if any, and

Respected
Sir
Advocate

- (b) whether or not the said period shall be treated as a period spent on duty.

Although I had been reinstated in the service of the corporation at Region Office, Guwahati on 27.8.99 as a result of Hon'ble Court order/Hon'ble Administrative Tribunal order on the merit of the case O.A. No. 198/99 on 14.7.99 (Md. A. Hussain Vs. Union of India & others), the above mentioned procedure as laid down in the Swamy's Compilation of CCS-CCA.

Rules under chapter-5-para-2 is NOT FOLLOWED by - the Regional Director, ESI Corporation, N.E. Region, Guwahati and the Regional Director unreasonably kept the said NATURE OF ORDER/UNPASSED till date even after reinstatement in the service of me as a result of Hon'ble Court order, and even after 5 months over which is UNJUSTIFIED AND ILLEGAL.

AGAIN

4. As per Swamy's compilation of CCS-CCA rules under chapter-5-para-4 (Reinstatement as a result of Court order)

- (a) full pay and allowances are to be allowed to the Govt. servant on reinstatement for the entire period of absence including the period of suspension and
(ii) the entire period has to be treated as duty for all purposes.

Although I had been reinstated in the service of the Corporation at Regional Office, Guwahati on 27.8.99 as a result of Hon'ble Administrative Tribunal order passed on 14.7.99, the above mentioned procedure as laid down in the Swamy's Compilation of CCS-CCA rules under chapter 5 para 4 is NOT FOLLOWED by the Regional Director, EST Corporation, Guwahati and the Regional Director unreasonably kept the said order UNPASSED till date as a result of which my family is about to die on starvation due to non-receipt of monetary benefits and others of the suspension period even after 5 (five) months over from the date of reinstatement of me in the service which is UNJUSTIFIED and illegal.

The Regional Director, ESI Corporation, N.E. Region, Guwahati has been being requested to make payment of my monetary benefits etc. of my suspension period from 14.2.95

Assisted
by Advocate

Annexure-11 (Contd.)

to 26.8.99 vide my letter dated 16.10.99, 26.10.99, 14.12.99 (copy enclosed) besides several verbal requests but no fruit.

In view of the above, I request your honour to consider my above request under the procedure of the Swamy's compilation of CCS-CCA rules under chapter-5-para-2 and 4 and pass an order for immediate payment of the monetary benefit of the suspension period to save my family from starvation.

Enclo : As above

Yours faithfully,

Sd/-

(MD. A HUSSAIN)

H/C R.O. ESIC, Guwahati

*Attest
Secy
Advocate*

Annexure-12

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE : ESIC BUILDING : GUWAHATI

No.43-A.20/11/16/75-Estt

Dated the 8th March, 2000

To

Md. A. Hussain, Ex. H.C.,
(Dismissed)

Sundarpur,
Japorigog High School Road
Dispur, Guwahati-5

Sub : Request for treatment of absence including suspension period from 14.2.95 to 26.8.99 as duty for all purposes and payment of full pay & allowances for the said period and payment of D.A. arrear etc. as per Hon'ble Tribunal Order dt. 14.2.99 in O.A. No. 198/99 (Md. A. Hussain Vs. Union of India and others).

Sir,

Please refer to your letter No. nil dt. 14.12.99 on the subject noted above.

The matter has been examined and it is informed as under :

1. Regarding admissibility of D.A., you will get a decision soon.
2. ✓ Regarding entitlement of arrear subsistence allowance you may wait for a decision from our Hqrs. office, New Delhi as the same is under consideration at there.
3. Regarding treatment of suspension period as duty period, it is informed that the order of suspension dt. 14.2.95 was issued as a criminal offence which was under investigation by the police. The criminal case was filed by police in the court of Chief Judicial Magistrate, Tinsukia which ultimately resulted in acquittal on 2.1.97. Subsequently major penalty charge sheet dt. 12.6.97 was issued which ultimately resulted in your dismissal from service on 20.10.99.

As the suspension was not done as a result of criminal case but as a result of the investigation of a criminal offence has been treated as Non-duty period for all purposed and as such no payment shall be allowed other than what had already been paid to you as subsistence allowance.

Further, it is informed that your appeal against dismissal is under consideration at Hqrs. office and decision of the appellate order, as and when passed, will be intimated to you.

Yours faithfully,
Sd/-

(D.N. PEGOO)
REGIONAL DIRECTOR

*Attested
D. N. Pegoo*

Annexure-13

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE : N.E. REGION, GUWAHATI-21

No. 43-A.27/17/97-Estt

Dated 13.10.99

OFFICE ORDER NO. 72 of 1999

Subject : Applicability of pay scale of Assistants and
Personal Assistants in ESI Corporation as per
C.A.T. Orders - Re-fixation of pay.

In pursuance of Hqrs. Office Memo No. A-27/17/97-E. III dated 15.9.99 and in compliance with the CAT, Principal Bench, New Delhi Orders dated 17.3.99 in O.A. No. 981/94, the pay of the Assistants/Personal Assistants who were in service as on 26.4.94 or promoted as Assistants thereafter has/ been re-fixed provisionally in the pay scale of Rs.1640-60-2600-75-2900/- (Pre revised)/Rs.5500-175-9000/- (Revised) as indicated in the enclosed annexure to this office order subject to pending final disposal of the writ petition filed before the Delhi High Court challenging the order of the CAT.

The arrears pursuant to the orders shall limited to one year prior to the date of filing of the O.A. i.e. 26.4.94 (date of O.A.). The arrears shall be paid to all the Assistants/personal Assistants after obtaining an undertaking from each in the enclosed format. The undertaking thus obtained from employees should be sent the R.O., Cash Branch for keeping the same under safe custody.

If, as a result of implementation of the orders of the Tribunals, any employees become ineligible for PLB during a particular year in which the PLB has already been paid to him, the excess amount thus paid shall be recovered /adjusted/ from the total arrears payable to the employee.

It is further stated that consequent upon implementation of the order of the Tribunal, both the posts of Assistants and Insurance Inspectors of this organisation would be in the same scale of pay i.e. Rs.1640-2900/- (Pre-revised) w.e.f. 1.1.86 Rs.5500-9000 (Revised w.e.f. 1.1.96 and hence no fixation benefit under FR 22 (1) (a) (1) would be admissible, if any to the Assistants who have been promoted to the post of Insurance Inspector on any date after 1.1.86 pending final outcome of the decision of Writ petition No. 3844/99.

The Bill for arrear of pay and allowance as a result of above provisional fixation of pay should be drawn by the office where from the original pay bill for the relevant period was drawn without waiting for LPC.

On receipt of this order, action for drawal and disbursement of arrears should be completed by the concerned Drawing and Disbursement Officer immediately.

In authorising the arrears, Income Tax/Professional Tax as due may also be deducted in accordance with the instruction on the subject.

Sd/- C.R.Paul
Deputy Director
for Regional Director

Copy to :

1...
7. Person concerned, Md. A.Hussain, R.O., Ghy.

*Alles Steel
Advocate*

Annexure-13 (Contd.)

Sl.No.	Name	As per IVth Pay Commission. Existing scale-1400-2300 Revised " -1640-2900	As per Vth Pay Commission Existing scale 4500-7000 Revised scale 5500-9000	Remarks
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Pay fixed at/ D.N.I Pay fixed at Pay fixed on HC/Astt. Pay fixed on HC/Asstt. at at

1	2	3	4	5.	6.	7.
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- 1.
- 2.
- 3.
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- 7.

28-

28. Md.A.Hussain	1640/-	1.10.86	1.10.87	6550/-	
	1.1.86	1700/-	1760	1.1.96	
	1.10.88	1.10.89	Admissibility	=F.E.264.93	
	1820/-	1880/-	during period	Reduced by	
	1.10.90	1.10.91	from 1.1.96-	two set	
	1940/-	2000/-	to 26.8.99	from Rs.2120/-	
	1.10.92	1.10.93	1.1.96=75% of	to 2000/- in	
	2060/-	2120	6550/-	the time scale	
	2.5.94	2000/-	2.5.96 =75%	Rs.1640-60-	
	1.10.94	(Penalty	of 6550/-	2600-EB-75-	
	13.2.94	period)	27.8.99=Rs.6550	2900 for the	
				period from	
				2.5.94 to 1.5.96.	

Admissibility during suspension period from 14.2.95 to 31.12.95

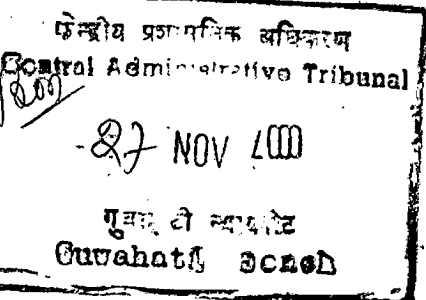
14.2.95 to 13.5.95 = 50% of Rs.2000/-
14.5.95 to 31.12.95 = 75% of Rs.2000/-

Sd/- C.R.Paul
Dy. Director
for Regional Director

*Noted
for
approval*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH



O. A. NO. 130 OF 2000

Sri Md. A. Husain

- VS -

Union of India & others

IN THE MATTER OF :

Written statement submitted by Respondents
1, 2 and 3.

(WRITTEN STATEMENT)

1. That with regard to para 1 the respondents beg to state that the applicant was suspended from the services of Corporation with effect from 14-2-95 as a result of the investigation of a criminal offence and followed by charge-sheet under Major Penalty for his criminal offence under Rule 3(1) (i) (ii) (iii) of the CCS (conduct) Rules, 1964-read with Regulation 23 of the Employees state Insurance Corporation (Staff and condition of service) Regulation, 1959 as amended as the incident has exhibited utter lack of integrity, devotion to duty and in subordination which is unbecoming of a corporation employee.

The charge-sheet was issued under No. 43-S.11/18/95-Vig. (A.H.) dated 12-6-97 which ultimately resulted dismissal of the services of the applicant from 20-11-99.

As the suspension was not done as a result of criminal case but as a result of the investigation of a criminal offence which had resulted dismissal of the service of the applicant, the period of suspension from 14-2-95 to 26-8-99 had been treated as Non-duty period for all purpose and as such no further payment shall be allowed other than what had already been paid to the applicant

Contd..... 2/P

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04
Filed 27/11/2000
(A. DEB ROY)
A. T. Guwahati Bench D. N. Pegoo
Regional Director,
E. S. I Corporation,
N. E. Regional, Guwahati-21

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65
(D. M. Pegoo)
Regional Director
E. S. I. Corporation,
N. E. Regional, Guwahati.

as subsistence allowance as per rule. The position has been intimated to the applicant vide letter No. 43-A.20/11/16/75-Estt. dated 8-3-2000.

Copy of charge sheet dt. 12.6.97 and letter dated 8.3.2000 are annexed hereto and marked as ANNEXURE-I and II respectively.

2. That with regard to para 2, 3 and 4.1 the respondents beg to offer no comment.
3. That with regard to para 4.2 the respondents beg to state that the applicant was suspended as a result of the investigation of criminal offence by the Department of E. S.I. Corporation under which the applicant was working as an employee, but the applicant was not suspended against the case registered by police, Tinsukia P. S. Case No. SSS/94 U/S 290/325 IPC.
4. That with regard to para 4.3 the respondents beg to state that after inquiry of the criminal offence of the applicant by the department of E. S. I. Corporation, the applicant was found guilty and as a result, the applicant was dismissed from the services of the Corporation w.e.f. 20-10-99 vide order issued under No. 43-S.11/18/95-Vig.(A.H.) dated 20-10-99- order dated 20-10-99 enclosed as ANNEXURE III.
5. That with regard to para 4.4 the respondents beg to state that as the applicant was not suspended on the basis of the case registered by Police, Tinsukia P. S. Case No. SSS/94 U/S 290/325/IPC but was suspended as a result of the investigation by the Department, the suspension was not withdrawn as well as the applicant

was not reinstated in the service. The judgement dated 2-1-97 was delivered against the P. S. Case No. SSS/94 U/S 290/325/IPC lodged by Police, Tinsukia G. R. case No. 1658/94 and was not against the order of suspension. The departmental inquiry against the offence was pending at that time. Copy of the judgement dated 2-1-97 enclosed as ANNEXURE IV.

6. That with regard to para 4.5 the respondents beg to state that after investigation of the incident occurred on 30-12-94 at Local Office of the Corporation at Tinsukia, the applicant was found guilty for the incident and therefore, Charge-sheet under Major penalty was issued to the applicant under No. 43-S.11/18/95-Vig.(A.H.) dated 12-6-97 for lack of integrity, devotion to duty and insubordination which was unbecoming of a Corporation employee to make an enquiry by our Departmental inquiry Authority under Regulation 14 para 3 of the Third Schedule of the Employees state Insurance Corporation 9m Staff and condition of service Regulations 1959 as amended that matters are similar to para 4.4 as stated above.

7. That with regard to para 4.6 the respondents beg to state that the charge-sheet was issued against investigation of a criminal offence committee by the applicant, but not against the case registered by Police, Tinsukia P. S. Case No SSS/94 U/S 290/325/IPC and the case registered in the court of Judicial Magistrate, Tinsukia G. R. No. 1658/94 by Tinsukia Police Station. As per office procedure, Departmental Inquiry Officer as well as presenting Officer were appointed to make an enquiry of the imputation of charges against the applicant vide charge-sheet dated 12-6-97.

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(D. N. Pegoo)
Regional Director,
E. S. I. Corporation,
N. E. Regional, Guwahati-21

8. That with regard to para 4.7 the respondents beg to state that the Judgement dated 2-1-97 was passed in G. R. case No. 1658/94 case filed by Police Station. Tinsukia but not by this Department. Although, the departmental proceeding was instituted through Memorandum of Charge dated 12-6-97 against applicant, the case was under investigation before issuing the charge-sheet dated 12-6-97 as well as to complete the departmental procedure. The order of suspension of the applicant could not be revoked on the basis of the order passed by CJM court dated 2-1-97 as the case was not against the order of suspension and the applicant was also not filing any case against his suspension order earlier. The applicant had filed case against his suspension only during the year 1999 in CAT, Guwahati Application No. 198/99.

Further, the Judgement of the CJM Court was not relevant to the disciplinary case as the disciplinary case is quite departmental.

As the order of revocation of suspension of the applicant was not issued by the Departmental authority being reviewed time to time, it stood continue till the date of issue of order of revocation by the Hon'ble CAT.

The Judgement dated 2-1-97 was in G. R. case No. 1658/94 filed by the Police against the applicant but not filed by this Department. Therefore, no appeal/revision against the order was made in the Higher Court by this Department, except a departmental case was followed against the applicant on 12-6-97 after a departmental investigation.

The applicant filed case against his suspension only during the year , 1999 in CAT, Guwahati application No. 198/99 and on the basis of the order of CAT, Guwahati dated 14-7-99, the order of suspension was revoked and

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(D. N. Pegoo)
Regional Director,
E. S. I Corporation,
N. E. Regional, Guwahati-21

the applicant was re-instated in the service vide order No. S. 11/18/95-Vig.(A.H.) dated 26-8-99

Order dated 26.8.99 in annexed hereto and marked as ANNEXURE - V.

9. That with regard to para 4.8 the respondents beg to state that the suspension order was issued on 14.2.95 as a result of investigation of the criminal offence case. A departmental case started on 12-6-97 after due investigation. As such, the suspension was continued with necessary review and the order of CJM court could not be made effective on his suspension as the departmental investigation was already in process which needed continuance of his suspension.

First, review of the case was done after completion of three months of suspension and as a result of review subsistence allowance was enhanced from 50% of his basic pay. Thereafter, the case was reviewed periodically by Hqrs. Office as per our office procedure and due recommendation of continuation of suspension, the same had not been communicated to the applicant. As the order of revocation of suspension was not issued, it cannot be presumed that the order of suspension revoked after 90 days from the date of initial order of suspension.

The period of suspension of the applicant has been treated as non-duty for all purposes as per instruction and therefore, it can not be declared that the applicant is entitled to all consequential service benefits for the period of suspension other than what had already been received by the applicant as subsistence Allowance.

Contd..... 6/P

69 *[Signature]*
(D. N. Pegoo)
Regional Director,
E. S. I Corporation,
N. E. Regional, Guwahati.

10. That with regard to para 4.9 the respondents beg to state that the applicant was kept under suspension continuously as the case was under departmental investigation/inquiry. But the applicant has not been kept under suspension continuously by force as stated by the applicant.

The Judgement and order passed by the learned Chief Judicial Magistrate, Tinsukia on 2-1-97 on the case filed by Tinsukia Police Station against the applicant case No. G.R. No. 1658/94 but the case was not against the order of suspension. As the Departmental investigation/inquiry was running against the applicant, hence the order of suspension could not be revoked.

Although no fresh order of suspension was issued, the case was reviewed periodically and decision has also been taken by competent authority to continue the applicant under suspension. As a result of first review after three months, subsistence allowance has been enhanced from 50% to 75% basis pay and accordingly, the payment was made. Thereafter, decision has been taken to continue the suspension of the applicant. As the earlier decision had not been altered by subsequent reviews, hence it was not felt to intimate the same decision again and again to the applicant by this office.

11. That with regard to para 4.10 the respondents beg to state that after the order of suspension was issued on 14-2-95, Dearness Allowance was paid to the applicant alongwith subsistence Allowance.

The Dearness Allowance has been granted in four phases on 1-7-97, 1-1-98, 1-7-98 and 1-1-99 on the

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(D. N. Pegoo)
Regional Director,
E. S. I. Corporation,
N. E. Regional, Guwahati.

basis of old pay structure as per the report of 5th Central pay commission's report , 1997.

As per Govt. of India, Notification dated 30-9-97, Central Civil service (Revised pay) Rules, 1997, para-7 Note 3, in case of Governement servant under suspension he shall continue to draw subsistence allowance based on ~~xxx~~ existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings.

As the applicant was under suspension and disciplinary proceedings was also pending, the pay of the applicant was not fixed under the 5th pay Commission's report. Accordingly, the Dearness Allowance which was granted in the old pay structure was paying regularly alongwith subsistence Allowances as detailed under.

<u>Date/Period</u>	<u>Subsistence Allowance</u>	<u>D. A. paid</u>	<u>D.A Old - New</u>	<u>Difference</u>
1/96 to 6/96	Rs. 1290/-	148%	148% + 0%	-
7/96 to 12/96	Rs. 1290/-	159%	148% + 4%=152%	(Excess 7%
1/97 to 6/97	Rs. 1290/-	170%	148% + 8%=156%	14% Exess
7/97 to 12/97	Rs. 1290/-	170%	148% + 13%=161%	9% Exces.
1/98 to 6/98	Rs. 1290/-	170%	148% + 18%=166%	4% Excess
7/98 to 12/98	Rs. 1290/-	170%	148% + 22%=170%	-
1/99 to 6/99	Rs. 1290/-	170%	148% + 32%=180%	10% less.
7/99 to .	Rs. 1290/-	170%	148% + 37%=185%	15% less

From the above, it may be seen that he has already been paid excess D. A and no further amount is payable to him during the period of suspension for the period from 1/96 to 26-8-99.

12. That with regard to para 4.11 the respondents beg to state that no illegal and discriminatory action has been

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(D. N. Pegoo)
Regional Director,
E. S. I. Corporation,
N. E. Regional, Guwahati,

taken against the applicant by this office. Regarding payment of D. A as already stated above at para 4.10, all the action taken against the applicant as per rules/instructions. There was no force of illegal action.

13. That with regard to para 4.12 the respondents state that the applicant was suspended as a result of investigation of a criminal case against him followed by Departmental proceeding for departmental action for the same cause of criminal offence. Therefore, it was not considered that a separate suspension order was to be issued except to continue it.

Further, as per the Departmental Enquiry, the applicant was found guilty and he was dismissed from service under Major penalty as per rule and hence the period of suspension could not be treated as duty. Therefore, the applicant is not entitled to more than the subsistence allowance already granted to him as per rule.

14. That with regard to para 4.13 the respondents state that suspension case of the applicant was reviewed six monthly by our Hqrs. Office regularly till revocation on 26-8-99 and decided not to revoke the suspension during the period due to the gravisous nature of the case which was under departmental investigation/inquiry.

15. That with regard to para 4.14 the respondents state that the suspension of the applicant was revoked on 26-8-99 as per judgement and order of the Hon'ble CAT dated 14-7-99. Since, suspension was revoked as per CAT order and subsequently he was dismissed from services of the Corporation as a result of disciplinary proceeding, the period of suspension was treated as

non-duty period for which the applicant was not entitled to get any consequential benefits more than what had already been paid to the applicant as subsistence allowance. This was done considering the detailed facts of his case.

Copy of the Hon'ble CAT's order dated 14.7.99 is annexed hereto and marked as ANNEXURE - VI.

16. That with regard to para 4.15 and 4.16 the respondents state that the Hon'ble CAT vide order dated 14-7-99 has not set aside the impugned order of suspension dated 14-2-95 but revoked only. Other matters are similar to statement made in para 4.14.

17. That with regard to para 4.17 the matter is similar to para 4.10.

18. That with regard to para 4.18 the respondents state that the suspension order was followed by the Departmental proceedings for the same cause of action against the applicant. Suspension order although continued for a long period was due to pending departmental proceeding which was revoked subsequently on 26-8-99. Suspension was ordered as a result of investigation of a criminal case of the applicant. It was followed by departmental proceeding on the same ground. As such, the order of suspension had linked with the Departmental proceeding. As such treatment of six suspension period as non-duty period considering all facts of the case after the result of the departmental proceeding was in order.

Further, as stated by the applicant, the suspension order was not set aside by CAT but revoked only for which the suspension period was taken into account for a decision whether it is to be treated as duty period or non-duty period.

Contd..... 10/P

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(D. M. Pegoo)
Regional Director
E. S. I. Corporation,
N. E. Regional, Guwahati-2

19. That with regard to para 4.18 the respondents state that regarding admissibility of DA, as the period of suspension has been treated as non-duty period for all purposes and as such, no further payment shall be allowed other than what had already been paid to the applicant as subsistence allowance as per rule. However, the position showing excess payment of DA has already been stated in para 4.10.

Regarding appeal against dismissal of services, the decision has been intimated to the applicant vide letter No. 43-RD/PA CELL/^{99/MISC} dated 13.3.2000

^{13.3.2000} copy of the letter dated is enclosed as ANNEXURE VII.

20. That with regard to para 4.19 the respondents state that the suspension of the applicant was revoked w.e.f. 26-8-99 honouring the decision of the Hon'ble CAT dated 14-7-99. The pay of all H.C/Assistant was due to refix on the basis of court case O. A. No. 981/94 including the applicant w.e.f. 26.4.93 in the scale of Rs. 1640-60-2600-75-2900. The applicant was suspended w.e.f. 14.2.95 and as such the period prior to suspension i.e. 26-4-93 to 13-2-95 the applicant was entitled the pay in the scale as mentioned above and accordingly paid.

Further, the pay in respect of the applicant w.e.f. 27-8-99 i.e. revocation of suspension order to the date of dismissal of service was also entitled and paid. Accordingly, the pay of the applicant was fixed provisionally(pre-audit) vide R.O. order No. 72 of 1999 dated 13-10-99 alongwith others. Although the fixation of pay of the applicant was shown in the order, the payment during the suspension period to him was not made effective/not allowed. He was paid admissible amount for the period from 26-4-93 to 13-2-95 and 27-8-99 to

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(D. P. Pegoo)
Regional Director,
E. S. I. Corporation
N. E. Regional, Guwahati

20-10-99 being regular pay. Subsequently with the issue of dismissal order dated 20-10-99 following a departmental proceeding against the applicant and treatment of suspension period as non-duty period vide order dated 20-10-99, he was not allowed any more payment except the amount what was already received by the applicant as subsistence allowance during the period of suspension.

The final fixation order of pay under No. 28 of 2000 dated 8-5-2000 was issued after due audit. This order has shown some rectification resulting excess payment to the applicant while issuing regular pay w.e.f. 26.4.93 on the basis of provisional fixation.

Pay order dt. 8-5-2000 enclosed as ANNEXURE VIII

21. That with regard to para 5.1 the respondents state that the Judgement of Hon'ble CAT, Guwahati vide order dated 14-7-99 in O. A No. 198/99 has not set aside the order of suspension dated 14-2-95 but revoked.
22. That with regard to para 5.2 the respondents state that admissible amount for the suspension period against order dated 13-10-99 has been paid to the applicant except the amount for the period of suspension which is not admissible for treating the same as non-duty period for all purposes.
23. That with regard to para 5.3 the respondents state that the order of Hon'ble CAT dated 14-7-99 was followed by revoking the suspension order of the applicant.
24. That with regard to para 5.4 the respondents state that suspension was done as a result of investigation of a criminal offence committed by the applicant not as a result of the criminal case already mentioned above.

25. 5.5 - Already explained in para 4.10.
26. 5.6 - Already stated in para 5.4.
27. 5.7 - Already stated in para 5.4
28. 5.8 (Not 5.6) - Already stated in para 4.9
29. 5.9 (Not 5.7) - There is no unjust and unfair manner and extraneous consideration to harrass the applicant.
30. That with regard to paras 5.10 (not 5.8), 6, 7 and 8.1 to 9 the respondents beg to offer no comment.

V E R I F I C A T I O N

I Shri D. N. Pegoo, Regional Director, E. S. I. Corporation, N. E. Region, Guwahati - 781021 being authorised do hereby solmenly declare that the statements made in the written statement are true to my knowledge, information and believe. No material fact has been supressed.

And I sign this verification on this 27th day of Nov 2000.

DECLARANT

(D. N. Pegoo)
Regional Director,
E. S. I. Corporation,
N. E. Regional, Guwahati-21

13
Annexure F

REGISTERED
CONFIDENTIAL

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

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

Dated 12-6-1997

MEMORANDUM

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

2. Md. A. Hussain, Head Clerk is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and to state whether he desires to be heard in person.

3. He is informed that the inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore specifically admit or deny each & article of charges.

4. He is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority, or otherwise fails or refuses to comply with the provisions of Regulation 14 read with para-3 of the Third Schedule of the Employees' State Insurance Corporation (Staff and conditions of services) Regulations, 1959 or the order/directions issued in pursuance of the said Regulations, the Inquiring Authority may hold the inquiry against him ex-parte.

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5. Attention of Md. Akhtar Hussain, Head Clerk (under suspension) is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring in political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his services under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Md. A. Hussain is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964 which is applicable to the Corporation employees by virtue of Regulation 23 of the Employees' State Insurance Corporation (Staff and Conditions of services) Regulations, 1959 as amended.

6. Receipt of this Memorandum may be acknowledged.

Encl. as above

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(D.N. 2300)
REGIONAL DIRECTOR

To

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

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

Article -I.

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

Mr. A. Hussain, Head Clerk, Local Office, Tinsukia who is now under suspension from 14.2.1995 vide Memo.No.43-A.20/11/-13/95-Estt. dated 14-2-1995 in connection with the above incident has thus exhibited utter lack of integrity, devotion to duty and in subordination which is unbecoming of a Corporation employee and thus violated Rule 3(1)(1)(11)(111) of the CCS(Conduct) Rules, 1964 to be read with Regulation 23 of the Employees' State Insurance Corporation (Staff and Conditions of Services) Regulations, 1959 as amended.

(D.N. PEGOO)
REGIONAL DIRECTOR

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

Article-I

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

Md. A. Hussain, Head Clerk has been suspended for the above mis-behaviour from 14-2-1995 vide Memo. No. 43-A.20/11/-13/95-Estt dated 14.2.1995.

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

(D.N. P. E. 200)
72/6/57
REGIONAL DIRECTOR

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

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

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

(18)

ANNEXURE - I

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

(D.N. PEKOO)
REGIONAL DIRECTOR

19 - - - ANNEXURE-II 82

EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE: ESIC BUILDING: GUWAHATI

NO. 43-4/11/16/75-Estt.

Dated the 8th March, 2000

To
Ed. A. Hissain, Ex-H.C.,
(Dismissed)
Sundarpur,
Japorigog High School Road,
Dispur, Guwahati-5.

Sub. Request for treatment of absence including suspension period from 14.2.95 to 26.8.99 as duty for all purposes and payment of full pay & allowances for the said period and payment of D.A. arrears etc. as per Hon'ble Tribunal Order dt. 14.7.99 in O.A. No. 198/99 (Md. A. Hissain Vs. Union of India and others.)

Sir,

Please refer to your letter No. nil dt. 14.12.99 on the subject noted above.

The matter has been examined and it is informed as under:

1. Regarding admissibility of D.A., you will get a decision soon.
2. Regarding entitlement of arrears subsistence allowance you may wait for a decision from our Hqs. office, New Delhi as the same is under consideration at there.
3. Regarding treatment of suspension period as duty period, it is informed that the order of suspension dt. 14.2.95 was issued as a criminal offence which was under investigation by the police. The criminal case was filed by police in the court of Chief Judicial Magistrate, Tinsukia which ultimately resulted in acquittal on 2.1.97. Subsequently major penalty charge sheet dt. 12.6.97 was issued which ultimately resulted in ~~the~~ your dismissal from service on 20.10.99.

As ~~xxxxx~~ the suspension was not done as a result of criminal case but as a result of the investigation of a criminal offence has been treated as Non-duty period for all purposes and as such payment shall be allowed other than what had already been paid to you as subsistence allowance.

Further, it is informed that your appeal against dismissal is under consideration at Hqs. office and decision of the appellate order, as and when passed, will be intimated to you.

Yours faithfully,

(D. N. PECO)
REGIONAL DIRECTOR.

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

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

Dated : Oct. 20, 1999.

O R D E R

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

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

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

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

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

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

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

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

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

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

Contd.. 3/-

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

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

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

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

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

The cause of the provocation was that the said Shri S. K. Sasmal issued two Memos and the Peon (PW-4) attempted to deliver the same to the charged official at about 9-20 AM on 30.12.94.

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

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

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

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

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

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

Contd..5/-

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

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

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

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

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

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

Contd...6/-

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

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

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

Contd... 7/-

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

(D. H. PEGOO)
REGIONAL DIRECTOR.

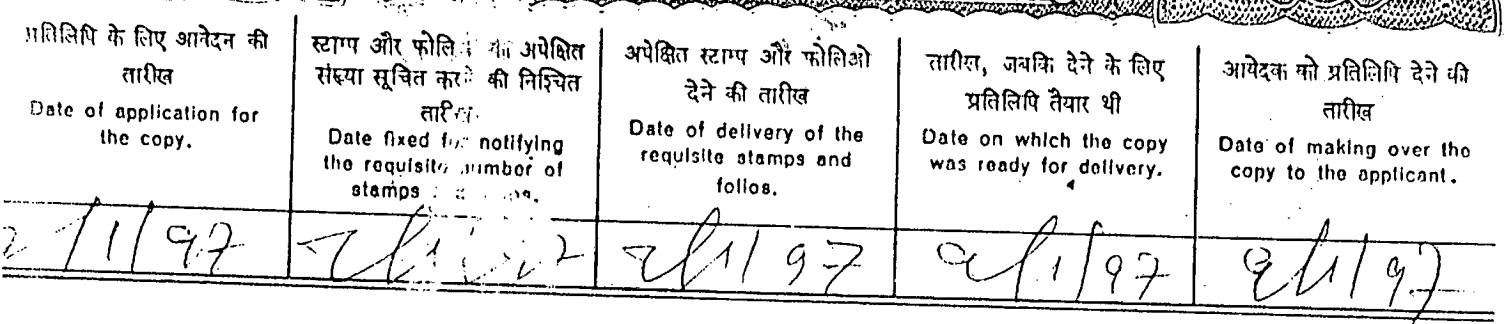
To

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

Copy to

1. The Director General, Vig. ESI Corporation, Hqs. Office, New Delhi-2.
2. The Financial Commissioner, A/CS. IV, ESI Corporation, Hqs. Office, New Delhi-2.
3. The Jt. Director, Vig. (EZ), P-4, Raja Raj Krishna Street, Calcutta-6.
4. The Dy. Director, Fin. ESI Corporation, Regional Office, Guwahati-21.
5. CR Dossiers File.
6. Personal File.

REGIONAL DIRECTOR.



The prosecution case may briefly be stated as follows -

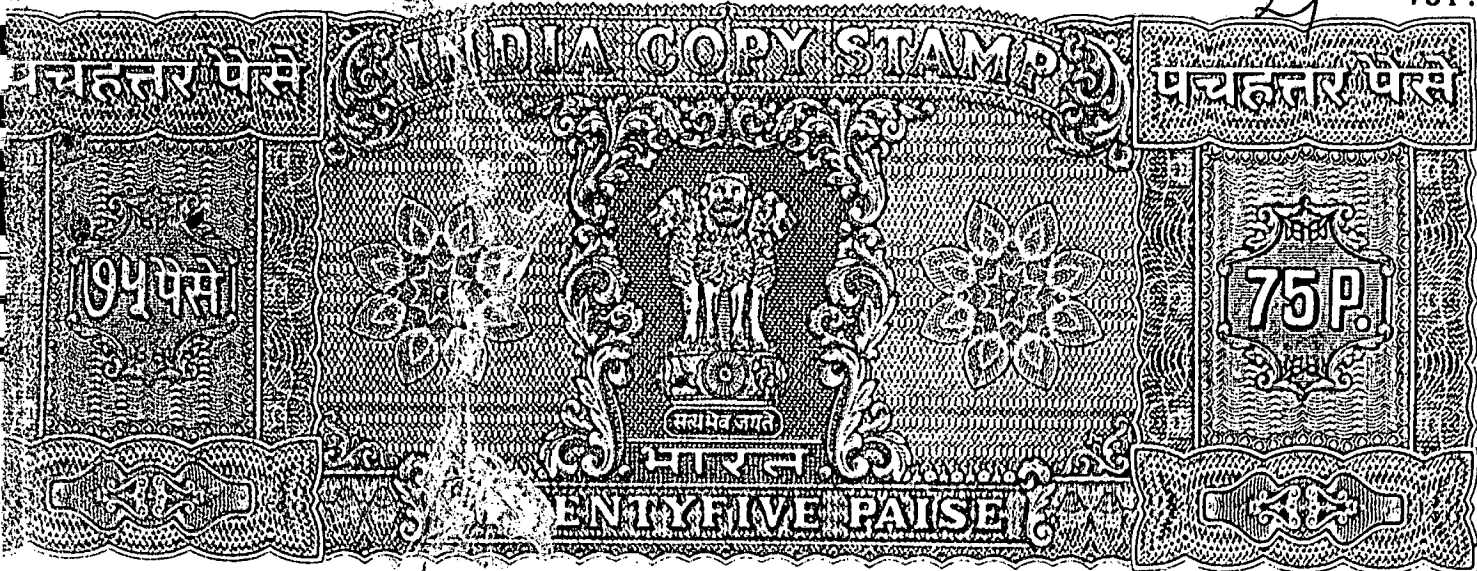


प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि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

(2)

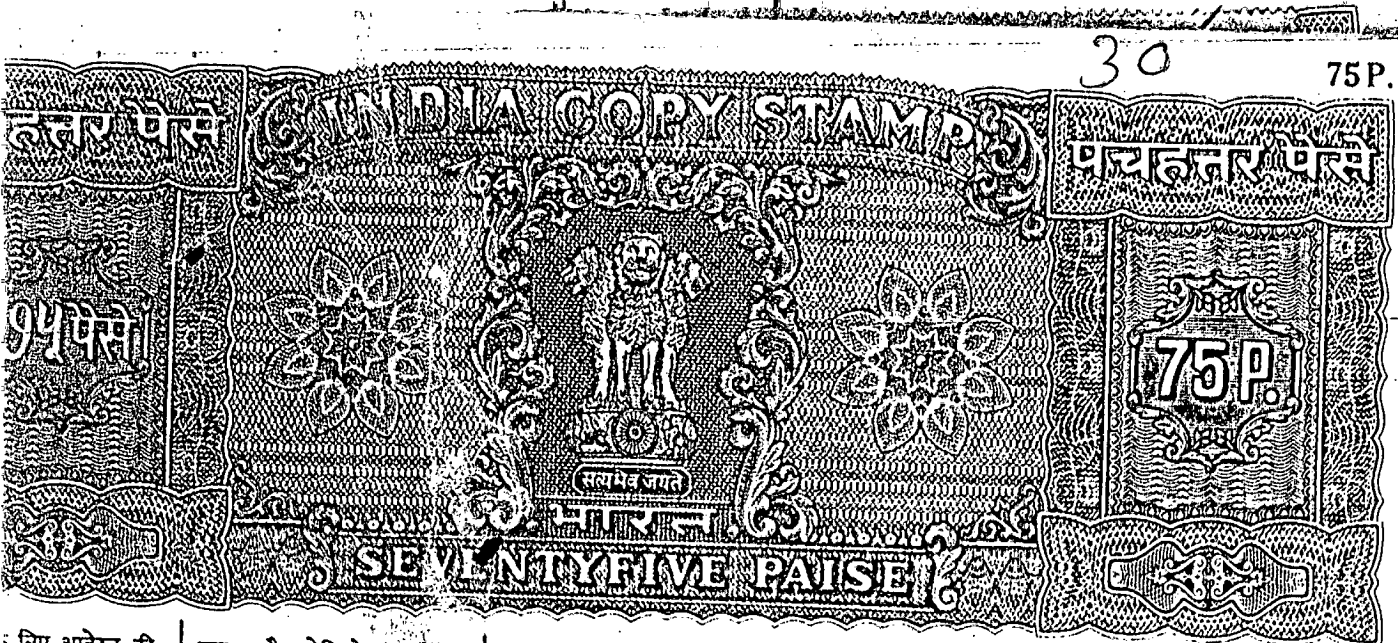
Mr. S. K. Sasmal lodged FIR with
o/c Tinsukia police station stating
inter alia that he is the manager
of E.S.I Corporation, Tinsukia.

On 30.12.94 he came to his
office and handed over a letter
to the accused through D. K.
Sarma (PW1) peon. The accused
being the Head - Asstt. of the
establishment in stead of
accepting the letter he star-
ted some altercation. There
after the accused caused hurt
to S. K. Sasmal by means of a
wooden roll causing some
minor injuries to his person
and he had undertaken treatment
police on receipt of the FIR.



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

(3)
registered a case and took-up
investigation and upon comple-
tion of investigation submitted
charge sheet u/s. 290/323/504
I.P.C. against the accused Akhtar
Hussain. Accused duly appeared
in the court, necessary copies
were furnished to him and
particulars of accusations u/s.
290/323/504 I.P.C. were duly
read over, explained and inter-
preted to the accused to which
he pleaded not guilty and
claimed to stand trial. The
defence case is a complete denial
print for determination—
whether the accused person
caused simple hurt to the infor-



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

mant and also intimidated him,
as alleged?

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



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

(5)
Decisions and reasons thereon

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

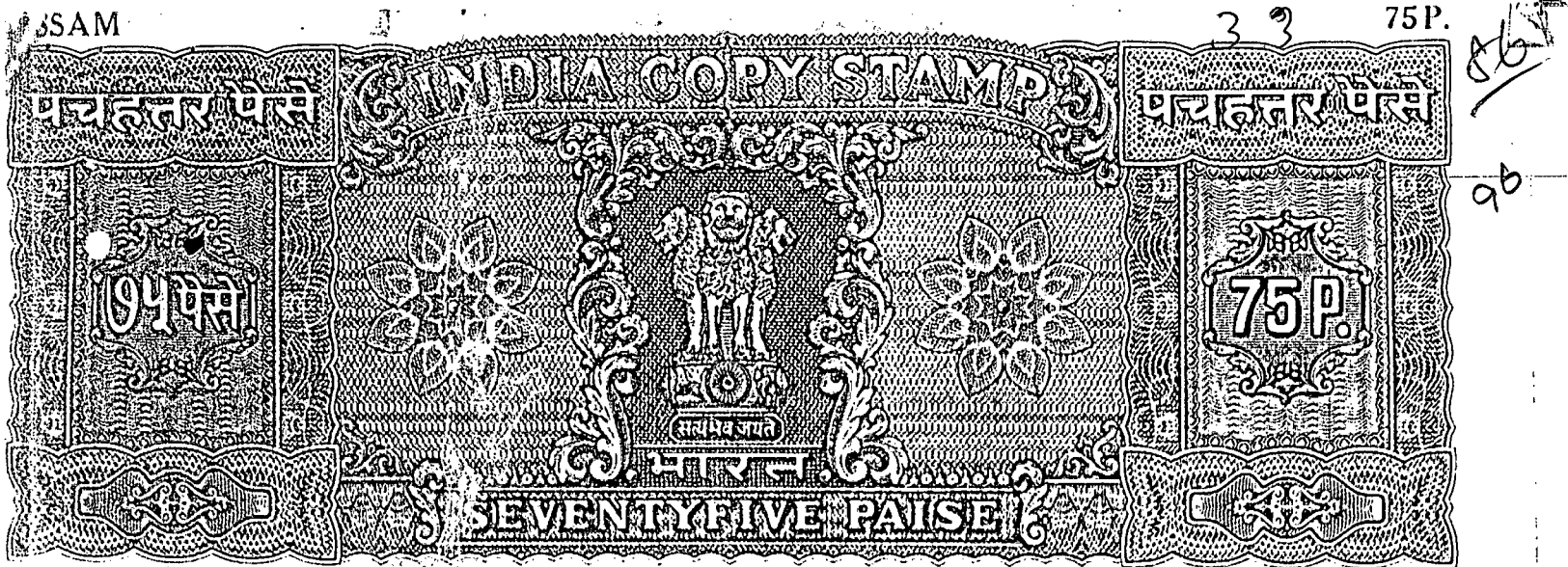
At the very out-set let
me discuss the evidence of
Sri D.K. Sarma. This witness
had stated that the informant
was the manager of his office
in the year 1994. That on
30.12.94 at around 9.20 a.m.
the informant sent a letter
to the accused through a
peon book. The accused received



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
7/1/97	22/1/97	22/1/97	22/1/97	9/1/97

(6)

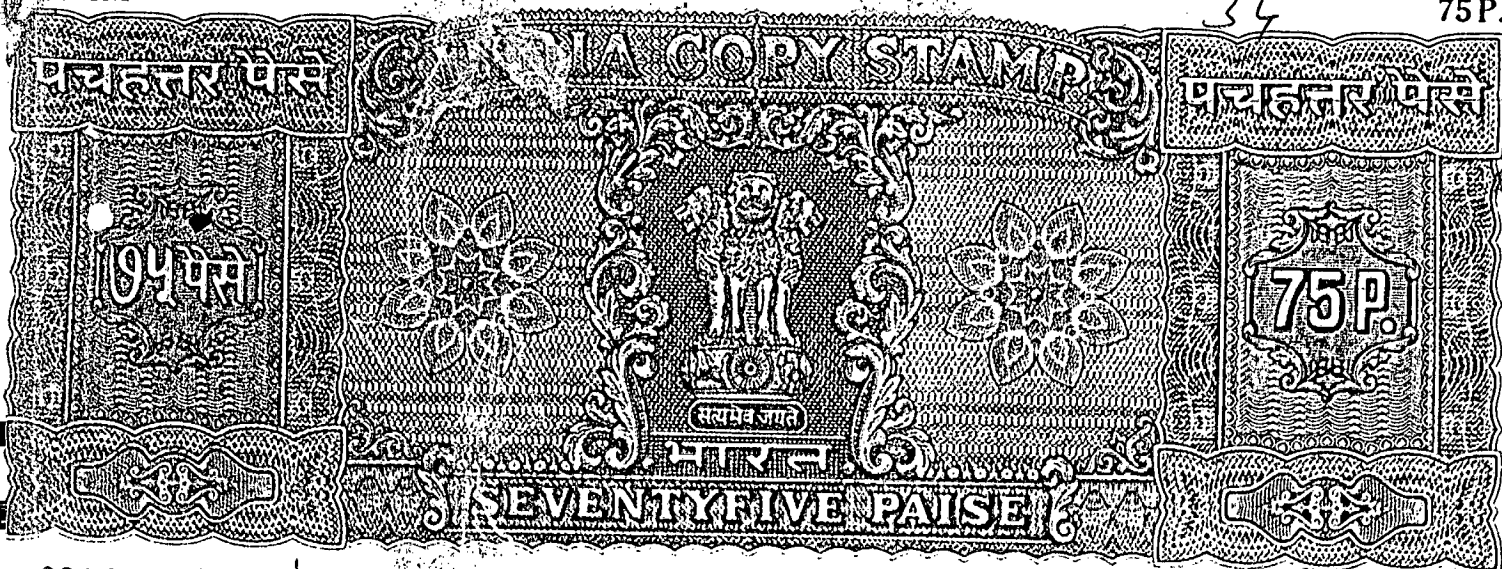
to accept the letter. In the meantime the informant was and an altercation took place and the accused took assault the informant by means of a scale. In the meantime another employee, T. H. Malikar (412) intervened in the matter. The informant sustained some injuries over his forehead. In cross-examination this witness had specifically stated that some altercation took place between the accused and the informant and there was a scuffling. The defence suggested this witness that the accused never assaulted the informant and



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

(7)

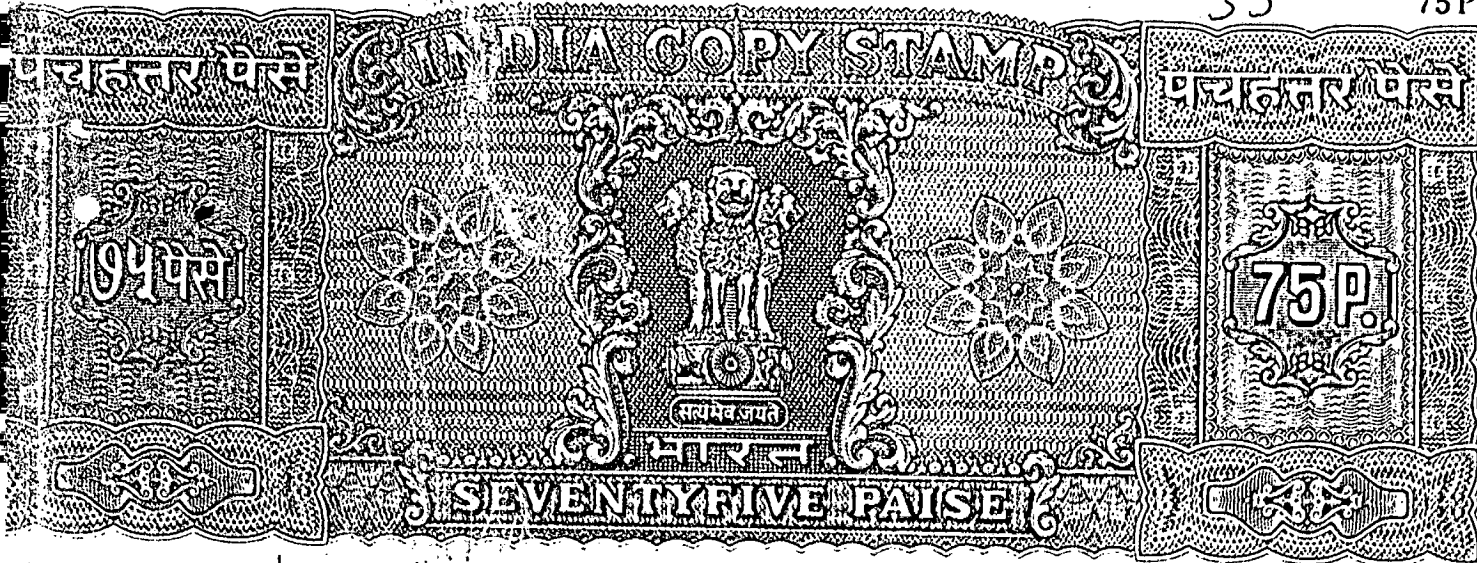
he is deposing- firstly at the instance of his officer- the informant through the witness was correct in negative. Like-wise PW-2 has stated that on 30.12.94 at around 9.15 a.m. he was in the office and an altercation took place between the informant and the accused and the accused all on a sudden assaulted the informant by means of a scale. police during investigation. Seized the scale vide Ex-1 whereupon Ex-1 (1) is the signature. In cross examination he has stated that the contents of the seizure list were not read over to him. The defence



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

(8)

suggested this witness that, the occurrence took place as alleged though the witness answered in negative. PW-3 is the doctor who has stated that on 20/12/04 at around 10:15 am he examined S.K. Sashpal in the Civil Hospital and found one haemotoma in the right parietal region. Ex-2 is the injury report where on Ex-2 (1) is his signature. In cross-examination he has stated that the injury report was given on the basis of the injury registers maintained in the hospital. He has again admitted that the original



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

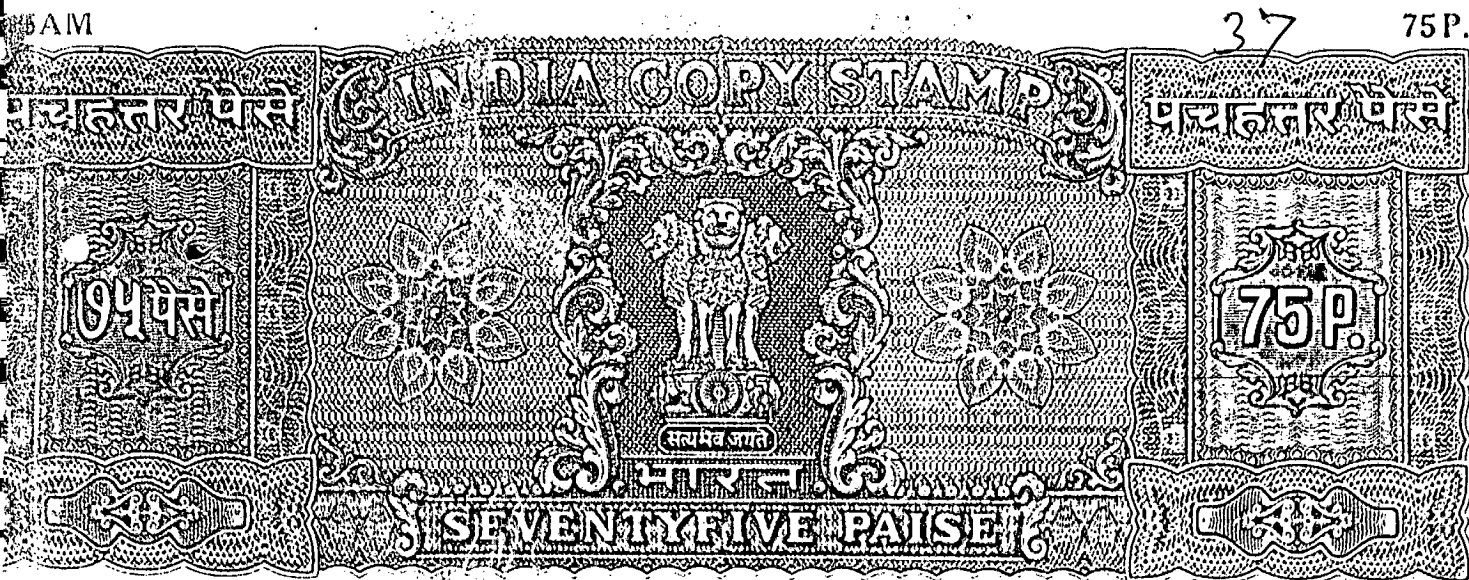
(9)
Injury register has not been submitted in the court. PW-4 is the P.O. who has stated that on 20.12.94 he was attached to Timakia police station and on that day Mr. J. Senapati was the officiating In-charge of the police station. On that day, the informant S.K. Sasmal lodged the F.I.R. Ex-2, Ex 3(1) is the signature of the then o/c. on completion of investigation he submitted charge-sheet. During investigation he seized a wooden roll vide ex-1. Ex 1(2) is the signature. While he visited the scene of crime, he could



लिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
1/1/97	2/1/97	2/1/97	9/1/97	9/1/97

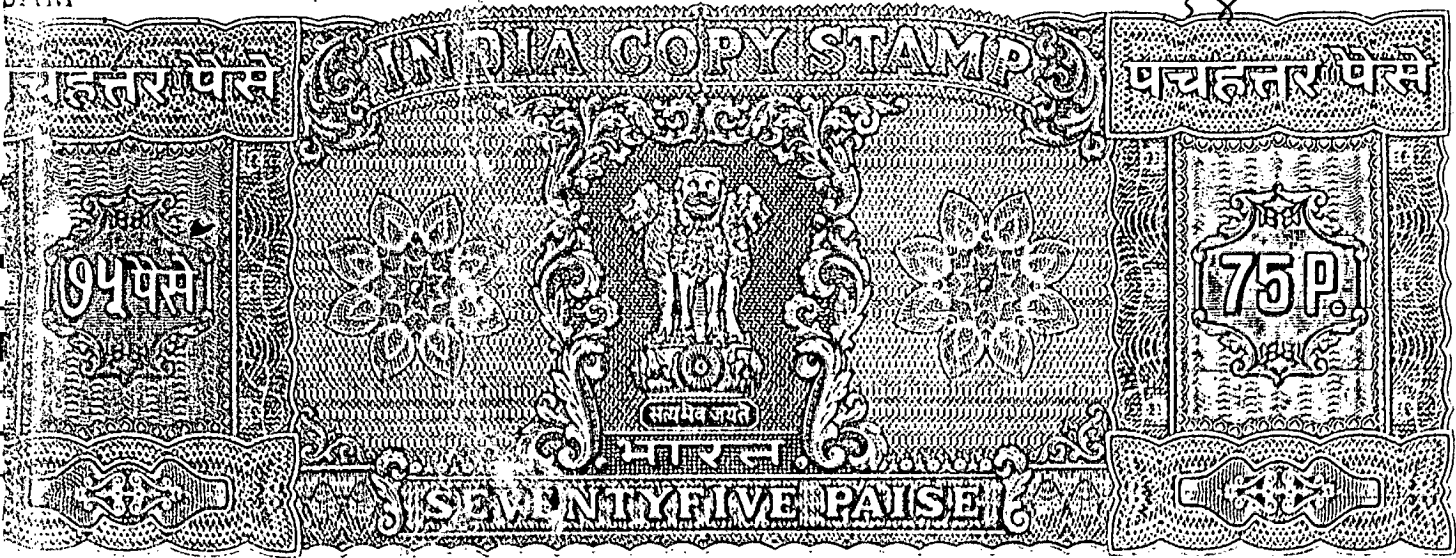
(10)

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



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

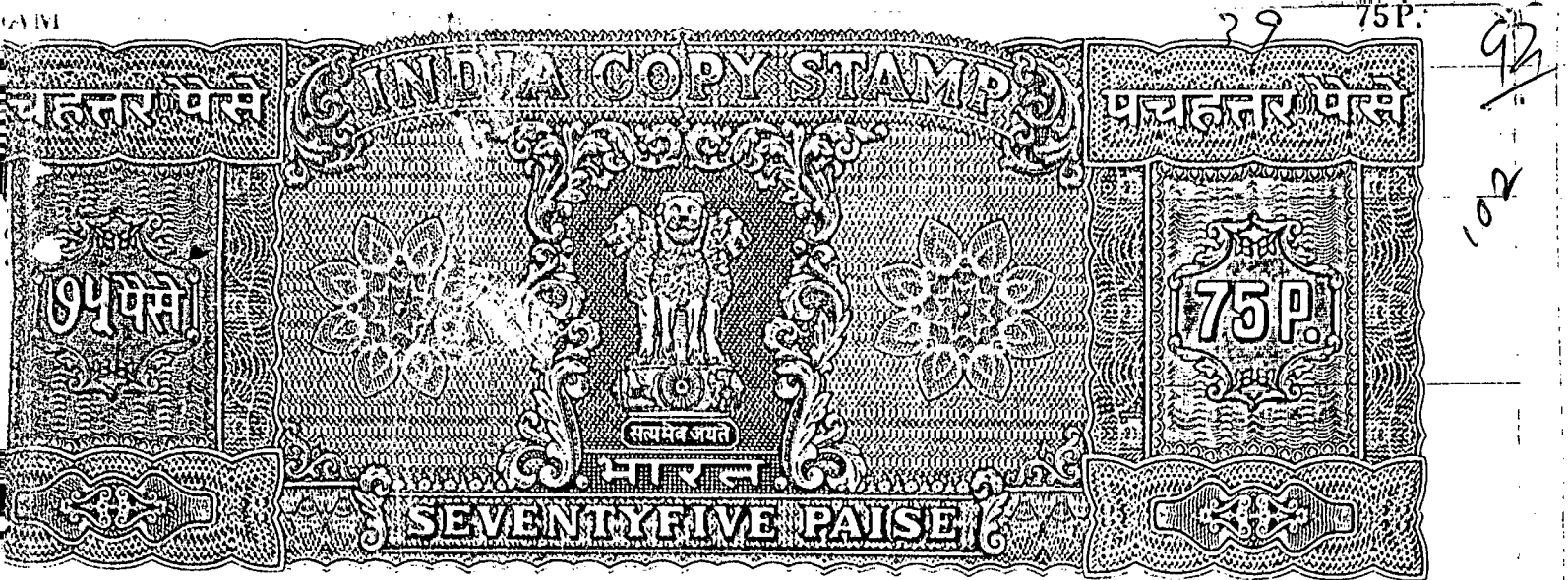
(11)
I have considered the entire evidence on record and also heard the learned advocates for the parties. From the FIR it is seen that the informant was allegedly beaten up by the accused by means of a wooden roll whereas PW1 and PW2 have specifically stated that the accused has assaulted the informant by means of a stick. So, we are getting two discrepant stories in regard to the nature of the weapon in fact used in the alleged crime. Learned advocate for the accused during the course of arguments submitted that-



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

(12)

roll and a lot of things. His contention is that, when the nature of weapon is disputed, the entire prosecution case becomes doubtful. I find considerable force in the submission the Advocate for the accused. Again submitted that the injured who happened to be most material witness in this case has not been examined, as such, no reliance should be placed on the prosecution version. I find some force in the submission. According to PH4 he seized the wooden roll.



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

(13)

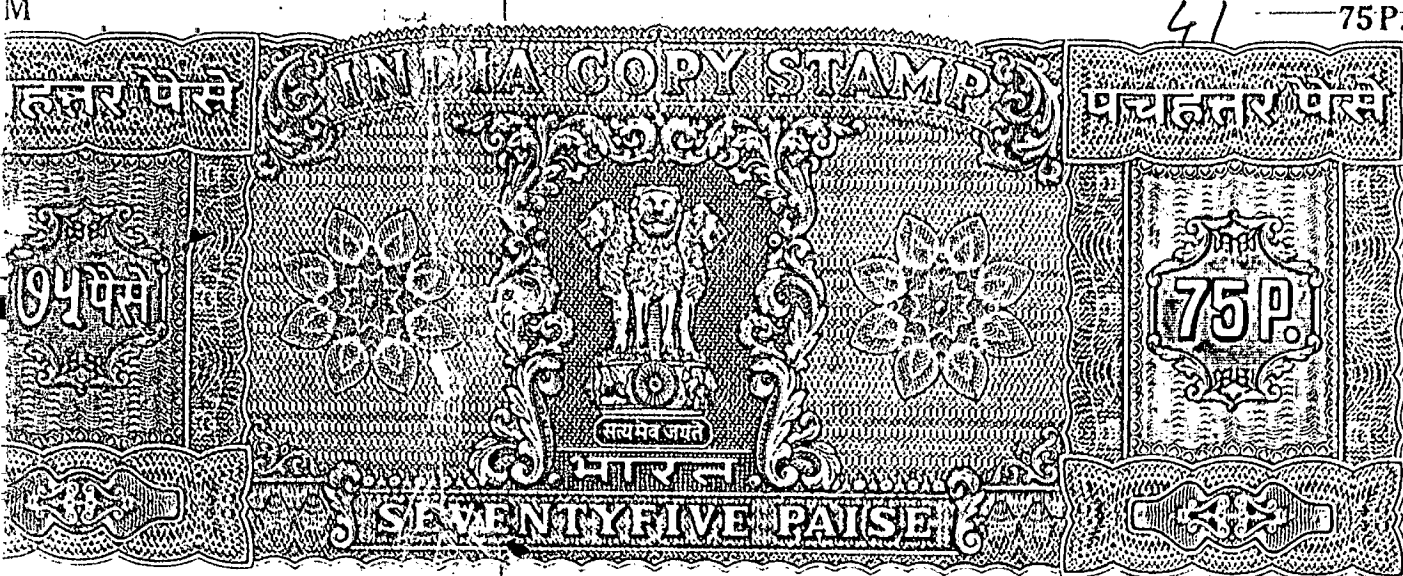
on 30.12.94 vide Ext-1, I have considered the seizure list which goes to show that the seizure was made on 30.12.94. If we consider the statement of PW4 and the seizure list we are getting two contradictory statements in regard to the actual date of seizure. The contradictory statements in regard to the date of seizure lends some doubt on the prosecution version. The advocate for the defence has again emphatically submitted that Ex.2 the injury report shows that the doctor examined one Mr. S. K. Sanyal, but the alleged



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की तिथि Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
11/97	20/1/97	20/1/97	20/1/97	20/1/97

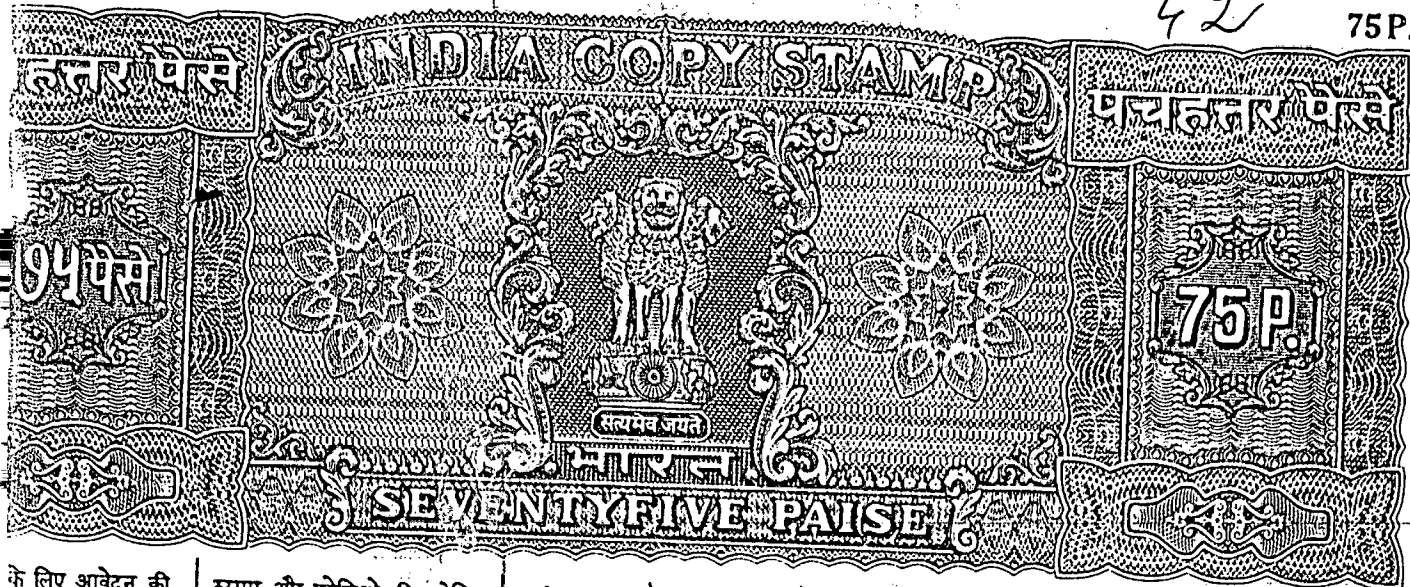
(14)

injured was Mr. S. K. Sashmal, so according to him the injured (informant) was not in fact examined by the doctor. I have considered the injury report also in this regard. Injury report also goes to show that one S. K. Sashmal was examined by the doctor on 30.12.94. From the evidence of the doctor it is also doubtful who was the real injured. The advocate for the accused admittedly that the alleged occurrence took place on 30.12.96 at about 9.20 a.m. whereas the F.I.R. was lodged on the same day at about 5.30 p.m., the delay in lodging the F.I.R. has not



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

(15)
been explained by the prosecution
and on this ground the prose-
cution case fails. I find subs-
tance in the submission. As it
appeared, the informant sustained
some minor injuries, so he could
have very well lodged the
F.I.R. immediately after the occu-
rence. But in stead of doing
so, he, lodged the FIR at a
belated stage, so, I feel that
the so-called FIR can be viewed
with suspicion. Had it been
a case that the informant
sustained grievous injuries
then it could be presumed
that the informant and others
had to remain busy for the



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

(16)

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

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



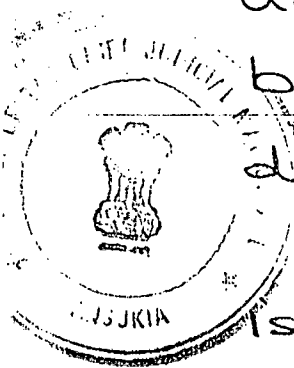
प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की संख्या सूचित करने की तिथि Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
1/1/97	26/1/97	26/1/97	26/1/97	26/1/97

(17)
also casts a serious reflection on the genuineness of the prosecution version. A final huge area of doubt looming over the prosecution story and the accused is entitled to get benefit of doubt, which I hereby do.

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

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

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





प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की तिथि Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
1/1/97	2/1/97	2/1/97	9/1/97	9/1/97

(18)
(D. K. Deb Roy)

Chief Judicial Magistrate
Tinsukia.

Transcribed by:-

sd/- A. Bosaiah

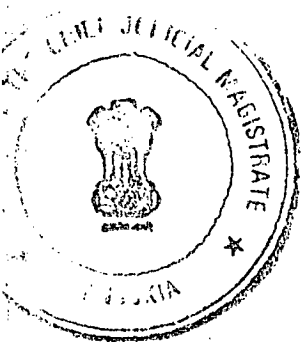
2/1/97

(A. Bosaiah)

Dictated and corrected by me

sd/- D. K. Deb Roy

Chief Judicial Magistrate
Tinsukia



Copied by

Compared by

J. Dev.
8/1/97

P. Goswami
8/1/97

9/1/97

45
ANNEXURE-V
98
108
EMPLOYEES' STATE INSURANCE CORPORATION
REGIONAL OFFICE, NORTH EASTERN REGION
GUWAHATI-21

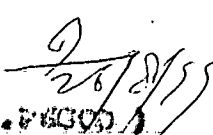
No. 43-S. 14/13/95-Vig. (A.H.)

Dated 26-3-1999

ORDER

Whereas an order placing Mr. A. Hussain, Head Clerk under suspension was made by the Regional Director on 14-2-1995.

Now, therefore, the undersigned in exercise of the powers conferred by clause (c) of sub-rule (8) of Rule 10 of the Central Civil Services (Classification, control and Appeal) Rules, 1965, hereby revoke the said order of suspension with immediate effect.


(D.H. PEGG)
REGIONAL DIRECTOR

1. Copy to Mr. A. Hussain, Head Clerk, Regional Office, E.S.I. Corporation, Guwahati-21.
2. Copy to the Director General (Vig.), E.S.I. Corporation, Kotla Road, New Delhi-110002.
3. Copy to the Director General (Estt. I.A.), E.S.I. Corporation, Kotla Road, New Delhi-110002.
4. Copy to the Dy. Director (Finance), E.S.I. Corporation, Guwahati-21.
5. The reason for revoking the suspension -
Suspension revoked as per telephonic order from Hqs. office.

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27/8/99

The Central Administrative Tribunal
GUWAHATI BENCH GUWAHATI

ORDER SHEET
APPLICATION NO. 198/99 OF 199

nt(s) Md. Akbar Hossain

dent(s) Union of India and ors.


te. for Applicant(s) Mr. M. Chanda, Mrs. S. Deka
Mrs. C. Dutta, Mr. G. W. Chakraborty.

te. for Respondent(s)

C.G.S.C.

14-7-99

The applicant in this case has challenged the Annexure 1 order dated 14-2-95. The applicant was suspended because of a criminal case against him was pending investigation. The applicant was arrested on 9-1-95 and he remained under suspension for more than 4 years. The applicant was acquitted of the charge by the Court of the Chief Judicial Magistrate, Tinsukia on 2-1-1997. After the acquittal a departmental proceedings dated 12-6-1997 was initiated against the applicant. The order of suspension continued. Being aggrieved the applicant submitted several representations and by order dated 23-8-98, Annexure 9, the applicant was informed that on review the authority did not find any reason to revoke the suspension. We have heard counsel for both sides. Mr. Chanda, learned counsel for the applicant submits that the continuance of order of suspension is bad in law in as much as there was no review as required under the provision of law. His second contention is that the order of suspension is continuing more than the time prescribed. Mr. Pathak, learned counsel for the respondent submits that the order of suspension was reviewed from time to time on several occasions. Therefore, according to him, the submission of the learned counsel for the applicant has no force. However, Mr. Pathak agrees that the order of suspension is continuing more than the period prescribed. He also agrees that continuance of order of suspension beyond the period prescribed will not be in accordance with the law. On hearing counsel for the parties we find that the submission of Mr. Chanda that there was no review has no force. However, there is sufficient force in his second submi-

Notes of the Registry	Date	Order of the Tribunal
	14-7-99	<p>is continuing beyond the period prescribed and therefore, the order of suspension is liable to be set aside. Accordingly the order of suspension is revoked. Regarding the payment of Dearness Allowance and recovery, Mr. Pathak submits that it is true that the amount was recovered but later on the authority found that it was contrary to Rule and had returned the amount. He also submits that payment of dearness allowance is under process.</p> <p>In view of the above the application is disposed of by revoking the order of suspension. No order as to costs.</p>
		<p>SD/- VICE-CHAIRMAN</p> <p>SD/- MEMBER (A)</p>

Certified to be true Copy
प्रमाणित प्रतिलिपि

Signature
17/8/99
Deputy Registrar (G)
Central Administrative Tribunal
Guwahati Bench

Signature
17/8/99

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ANNEXURE- VI 100

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

NO.43-RD/PA CELL/99/MISC

Dated : March 13, 2000.

To

Smt/Mr. A. Hussain,
Ex-IST
ESI Corporation,
Guwahati-21.

Sub: Copy of Order dated 3.3.2000. issued vide No.
C-16/14/25/99-Vig. from Hqs. Office, New Delhi.

Sir,

I am to forward herewith letter No. C.16/14/
25/99-Vig. dated 3.3.2000 of Hqs. office, New Delhi
with reference to his submission of appeal dated
1.11.99.

Rd/P

Encls : As above.

Yours faithfully,

(RK K . C. GHOSH)
ASST. DIRECTOR
FOR REGIONAL DIRECTOR

de

Shri
Ex-IST
ESI
Guwa

Copy
16/14/25/99-Vig.

16/14/25/99-Vig.

16/14/25/99-Vig.

16/14/25/99-Vig.

Rd/P

As

Shri
Ex-IST
ESI
Guwa

Copy

16/14/25/99-Vig.

101
12

49

189
13/3/2000

HEADQUARTERS' OFFICE
EMPLOYEES' STATE INSURANCE CORPORATION
RANCHDEEP BHAWAN: KOTLA ROAD: NEW DELHI

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

Dated : 3.3.2000

O R D E R

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

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

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

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

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

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

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

Contd...2

50 102
113

:2:

Neither this point was raised before the Inquiry Officer nor did he justify its relevancy to the present appeal. The plea is not related to the case and has been taken up belatedly.

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

The variation in the time has already been examined in detail by the disciplinary authority in his order dated 28.10.99 and I find no reasons to disagree with the same.

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

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

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

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

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

Contd....3

2. the discharge slip had been in respect of the FW2 and the same was issued to him;
3. there is enough tell-tale evidence in the said discharge slip to show that the same was issued by the said Hospital; and
4. attempt was made to summon Dr. S.L. Sarma, Senior Medical Officer of the said Hospital.

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

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

The appeal is hereby rejected.

sd/-
(S.N. TIWARI)
ADDL. COMMISSIONER (P&A)

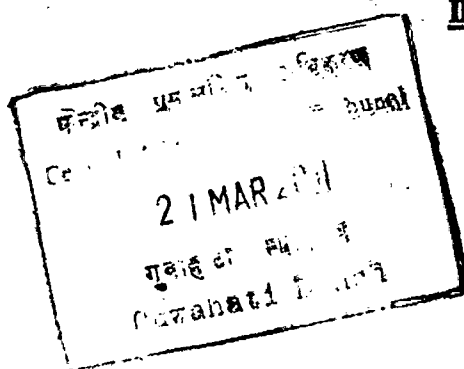
Sri Md. A. Hussain,
Ex. Head Clerk
(Through Regional Director, Guwahati).

Copy to:-

1. ✓ Regional Director, ESI Corporation, Guwahati.
2. Dy. Director (F&H), ESI Corporation, Guwahati.
3. Guard file.
4. Spare copy.

mmip
DY. DIRECTOR (VIG.)

(P. DEBATHI SWAMY)
3. (P&H) (VIG.)
4. (P&H) (VIG.)
कोटला कलकत्ता-2



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

In the matter of :

O.A. No.130/2000

Md. Akhtar Hussain

-Vs.-

Union of India & others

-AND-

In the matter of :

Rejoinder submitted by the applicant

against the written statement filed by the respondents.

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

1. That he has gone through the written statement and has understood the contents thereof.

2. That your applicant categorically denies the statements made in Paragraph 1, 3, 4, 5, 6, 7 and

24 of the written statement. The statement that "the suspension was not done as a result of criminal case but as a result of the investigation of a criminal offence" is misleading. It is

abundantly clear from the Order No.43-A.20/11/13/95-Estt. Dtd. 14.02.95 of the Respondent

(Regional Director, ESI) that the very basis of suspension of the applicant was the letter

No.TSK/T/95 dtd. 12.01.95 of the Police authorities, Tinsukia and the arrest of the applicant by

the Police which directly relates to the Police Case No.SSS/94U/S-290/325 IPC. When the

Respondents relied on the letter of the Police authority for placing the applicant under

suspension, they can not now deny the factum of the relevant Police case since the letter

No.TSK/T/95 dtd. 12.01.95 of the Police authority can not be looked in isolation from the

Police SSS/94U/S-290/325 IPC and also the subsequent acquittal of the applicant by the

relevant court for the reason that all these three facts constitute one single chain of events.

115
Filed by me applicant
Jyoti N. D. Goswami
Dehra do. 21/3/01

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Obviously, the respondents, for their own convenience, can not just act only on the letter dtd. 12.01.95 of the Police authorities for inflicting suspension on the applicant but ignore the subsequent actions of the police i.e. the relevant Police Case No. SSS/94U/S-290/325 IPC and the consequential judgement by the CJM, Tinsukia against case No. GR 1658/94. Therefore, the suspension of the applicant and the aforesaid Police case and the judgement of the court leading to acquittal of the applicant all converge to one and the same case and are inseparable. Therefore the statement of the respondents attempting to show the cause the cause of suspension as other than the Police case is not only misleading but is contradictory and can not stand on its own legs. Since the cause of action for suspension was the initial letter/action of the Police authority, Tinsukia (as evident from the order of suspension dtd. 14.2.95), the revocation/withdrawal of suspension also ought to have been made on the basis of the Police case when, in the instant case led to the acquittal of the applicant by a competent court of law vide its judgement dtd. 2.1.97.

Hence, with the acquittal of the applicant from the charges framed by the police which formed the basis of the suspension of the applicant, the order of suspension issued by the respondents lost its edge absolutely and the decision of the respondents treating the period of illegal and forced suspension of the applicant from 14.2.95 to 26.8.99 is arbitrary, capricious and devoid of the principles of natural justice.

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

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

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

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

5. That in reply to the statements made in para 12, 13, 14, 15 and 18 your applicant begs to submit that the respondents took illegal and discriminatory action although against the applicant. In spite of the fact that although a competent court of law adjudicated upon the same charges against the applicant as alleged in the departmental proceedings and with the same set

of evidences in G.R. Case No.1658/99 and found not guilty, surprisingly, the respondents, ignoring the judgement of the CJM, Tinsukia conducted a departmental proceedings in a biased and tutored manner and held him guilty and inflicted punishment of dismissal without slightest regards to the principles of natural justice and canons of law.

6. That regarding para 16 & 21 of the W/S, your applicant begs to state that while revoking the suspension order, the Hon'ble CAT in its judgement & order dtd. 14.7.99 in OA No.198/99 unequivocally expressed that "the suspension is liable to be set aside" which by itself speaks of the spirit of the judgement.

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

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

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

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VERIFICATION

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

And I sign this verification onday of March, 2001 at Guwahati.

Md. Akhtar Hussain