

30/100  
**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 147/2000

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SECTION OFFICER (Judl.)

Salita  
18.12.17

## FORM NO. 4

(See Rule 42)

**In The Central Administrative Tribunal**

GUWAHATI BENCH : GUWAHATI

## ORDER SHEET

APPLICATION NO. 147/2000 OF 199

Applicant(s)

Ghansara Kaata Dagarika.

Respondent(s)

Cmiss of Deka and others.

Advocate for Applicant(s)

Ab. J. L. Sarkar  
Ab. S. Deka

Advocate for Respondent(s)

C. G. S. L.

Notes of the Registry	Date	Order of the Tribunal
the application is in form and within the sum of Rs 50/- deposited via IPOBD No. 493955 Dated 23/4/2000 Signature 23/4/2000	25.4.00 mk 23/4/2000	Application is admitted. Issue notice on the respondents. List for written statement and further orders on 29.5.00. Member
Wali-Maksoor Case	29.5.00	There is no Bank today Adjourn. to 9.6.00 BMO In
Pl. cause		

101  
2-5-00

Notes of the Registry	Date	Order of the Tribunal
5 - 5 - 2000 Service of notice prepared and sent to D. Section 70B issuing of the same to the respondents through Regd. post with A/D. 2/1/2000 vide D.N.O.S. 1343 to 1345 dtg. 9-5-2000 trd.	9.6.00	Mr. A. Deb Roy, learned Sr. C.G.S.C. seeks three weeks further time for filing of written statement. Prayer allowed. List on 4.7.2000 for written statement and further orders.
8 - 6 - 2000 ① Service report are still awaited. ② No. written statement has been filed.	4.7.00	Present : Hon'ble Sri S.Biswas, Member(A). At the request of the learned counsel for the respondents time is granted for filing of written statement. List on 26.7.2000 for written statement and further order.
3 - 7 - 2000 ① Service report are still awaited. ② No. written statement has been filed.	26.7.00 11.8.00	There is no Banc. Adm. at 11.8.00. 8/7/00 b - There is no Banc. Adm. at 6.9.00. 8/7/00 b
17/7/00 Notice duly served on respondents No 1 to 3. 17/7/00	6.9.00 18.9.2000	10. bancs. To be listed on 18.9.00. 8/7/00 b Present: Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman Two weeks further time allowed for filing of written statement on the prayer of Mr A. Deb Roy, learned Sr. C.G.S.C. List on 23.10.00 for orders.
15 - 9 - 00 No W/S has been filed. 1/10/00 1) Notice duly served on R - 1 to 3. 2) No W/S has been filed. 18/10/2000	nkm	Vice-Chairman

## Notes of the Registry

## Date

## Order of the Tribunal

<p><i>6/11/2000</i></p> <p>No. written statement has been filed by the respondents.</p> <p><i>Re: 10</i></p>	23.10.00	<p>Present: Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman</p> <p>Mr J.L. Sarkar, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. are present. Mr Deb Roy prays for two weeks further time to file written statement. Prayer allowed. List it on 7.11.00 for orders.</p> <p><i>h</i></p> <p>Vice-Chairman</p>
	7.11.00	<p>Four weeks further 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 5.12.2000 for order.</p> <p><i>h</i></p> <p>Vice-Chairman</p>
<p><i>8/4/12-2000</i></p> <p>No. written statement has been filed.</p> <p><i>By 4/12/2000</i></p>	pg	
	5.12.2000	<p>List the matter for hearing on 22.1.2001. The respondents may file written statement within four weeks from today.</p> <p><i>h</i></p> <p>Vice-Chairman</p>
<p>No. written statement has been filed.</p> <p><i>By 23/1/2001</i></p>	<p>nkm</p> <p>23/1.</p> <p>24/1.</p> <p>15/2.</p>	<p>M.S.B. Adjourned to 24.1.2001. M/s A.K.S.</p> <p>Left over to 15.2.2001. M/s A.K.S. 24/1.</p> <p>M.S.B. Adjourned to 5.3.2001. M/s A.K.S. 15/2.</p>

Notes of the Registry	Date	Order of the Tribunal
<p><u>30.3.2001</u></p> <p>Copy of the Judgment has been sent to the D.P.C.C. for issuing the same to the applicant as well as to the Dr. C.G.S. for the Respondent.</p> <p>1/5</p>	5.3.01	<p>Heard learned counsel for the parties. Hearing concluded. Judgement delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.</p> <p>Vice-Chairman</p>

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CENTRAL ADMINISTRATIVE TRIBUNAL ::  
GUWAHATI BENCH.

O.A./~~XXXX~~ No. 147/2000 of

DATE OF DECISION 5.3.2001

Shri Ghana Kanta Hazarika

PETITIONER(S)

Mr. J.L. Sarkar & Mrs. S. Deka.

ADVOCATE FOR THE  
PETITIONER(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

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

Judgment delivered by Hon'ble Vice-Chairman.



X

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**GUWAHATI BENCH**

Original Application No. 147 of 2000

Date of order : This the 5th day of March, 2001.

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

Shri Ghana Kanta Hazarika  
Son of late Babula Hazarika  
Sixmile, Chasal,  
P.O. Khanapara  
Guwahati-22.

....Applicant

By Advocate Mr. J.L. Sarkar & Mrs. S. Deka.

-versus-

1. Union of India,  
Through the Secretary to the  
Government of India,  
Ministry of Home Affairs,  
New Delhi.
2. The Secretary,  
Ministry of Finance,  
Government of India  
New Delhi.
3. The Director General  
Assam Rifles,  
Shillong-11.

....Respondents

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

**O R D E R**

**CHOWDHURY J. (v.c.).**

The controversy pertains computation of the period of suspension towards the qualifying service and fixation of the retiral benefits on the basis of 5th Central Pay Commission recommendation.

The applicant was working as Assistant in the Assam Rifles as civilian employee with effect from 1.2.1966. While working as Assistant in the Unit Pay and Accounts Office he served with a Memorandum of charges dated 23.2.1994 under the Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965. The

applicant was placed under suspension with effect from 5.4.1995. By the order dated 14.8.1997 penalty of compulsory retirement was imposed on the applicant and he was retired from service with effect from 1.9.1997. It was stated that the pay of the applicant on the date of suspension was Rs.1950/- (before revision of 5th C.P.C.). While calculating pension after his retirement with effect from 1.9.97 his pay was not fixed as per the revised pay scale on the revised scale and his pension had been calculated on the pre-revised scale at Rs. 1950/-. The applicant since he was getting lesser amount of pension every month for not counting the period of suspension towards qualifying service submitted a representation on 18.8.1999 to the respondents praying for counting the period of suspension towards qualifying service. In the representation the applicant also mentioned about the Govt. of India's decision No.1 below Rule 23 of CCS (Pension) Rules 1972 for which proper entries were required to make for counting of period of suspension and accordingly requested the Director General, Assam Rifles to look into the matter and render justice to him by providing benefits on the provisions of the Rule. Failing to get any remedial measures departmentally the applicant moved this application praying for a direction on the respondents to count the period of suspension towards qualifying service including the period of suspension in the absence of any specific entries and also sought for a direction for fixation of his pay as per the 5th Central Pay Commission Recommendation alongwith 18% interest.

2. The Respondents had chosen not to file any written statement despite direction issued. Mr. J.L.Sarker, learned counsel for the applicant submitted that the period of suspension shall be taken into account for counting the qualifying service more so when no order to that effect as such passed. Mr. Sarkar, learned counsel for the applicant

referring to the Rule 23 for counting of periods of suspension submitted that in the absence of any specific entries in the Service Books/Records the applicant was entitled to the period spent on suspension was required to be counted towards qualifying service. Mr. Deb Roy submitted that the applicant is entitled to pay and allowances as admissible under the law and the period of suspension and period of suspension will be counted as per rule. Rule 23 of the Central Civil Services Pension Rules provides counting of periods of suspension as follows :

"23. Counting of periods of suspension.

Time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent as the competent authority may declare."

By Govt of India, Ministry of Finance O.M. No. F.11(3)-E.V(A)/76 dated 28.2.1976 a decision was rendered by the Govt. of India in respect of Rule 23 which reads as follows :

"(1) Need for making proper entries for counting of periods of suspension.

Rule 23 of the C.C.S (Pension) Rules, 1972 required that in case other than those in which suspension has been held to be wholly unjustified, the competent authority should at the appropriate time declare whether and to what extent the period of suspension will count towards the qualifying service. Specific entries in this regard in the service book/records will be taken note of at the time of reckoning qualifying service. In the absence of any specific entry, period of suspension shall be taken as counting towards the qualifying service."

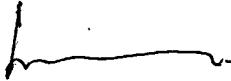
3. The penalty of compulsory retirement was imposed on the applicant vide order dated 14.8.1995. At the appropriate time, the respondents was to pass an order as

Contd..

to the extent period of suspension to be counted to the pension. Specific entries were to be made in service book, records were to be taken note of at the time of reckoning qualifying service. No such materials were cited on behalf of the Respondents.

4. Considering all the aspects of the matter we feel that ends of justice will be met if a direction is issued to the Director General of Assam Rifles - Respondent No.3, to look into the matter and pass a reasoned order on the representation of the applicant dated 18.8.1999 as to the admissibility on his lawful pension and other benefits as per the 5th Central Pay Commission Recommendation. Accordingly the Respondent No.3 is directed to take up the matter and pass an order by counting the period of suspension reckoning qualifying service as per law. In the event of the absence of any specific entry regarding period of suspension the Respondents would <sup>compute</sup> ~~complete~~ the period towards the qualifying period. I am of the view that the applicant since retired, the matter requires to be decided expeditiously. Accordingly respondents are directed to expedite the matter and dispose of the same as early as possible preferably within a period of two months from the date of receipt of a certified copy of this order.

5. With the directions made above, the application is disposed. There shall be however, no order as to costs.

  
(D.N.CHOWDHURY)

Vice-Chairman

trd

In the Central Administrative Tribunal : Guwahati Bench.

326  
An Application under Section 19 of the Administrative  
Tribunal Act, 1985.

O. A. No. 147 /2000.

Sri Ghana Kanta Hazarika

... Applicant

-Versus-

Union of India & Others.

... Respondents

I N D E X

Sl.No.	Annexure	Particulars	Pages
1.	-	Application	1 - 5
2.	-	Verification	6
3.	I	Copy of the representation dt. 18.8.99	7

Filed by :

S. Debnar  
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH

O.A. NO. . . . . /2000

BETWEEN

Sri Ghana Kanta Hazarika

Son of Late Babula Hazarika.

Sixmile, Chasal

P.O. O. Khanapara

Guwahati - 22

. . . . . Applicant

-Versus-

1. Union of India.

Through the Secretary to the  
Government of India,  
Ministry of Home Affairs,  
New Delhi.

2. The Secretary,

Ministry of Finance,  
Government of India  
New Delhi.

3. The Director General,

Assam Rifles, Shillong - II

. . . Respondents

DETAILS OF APPLICATION

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

The application is for correct fixation of Pension taking the correct qualifying service upto 1.9.97 computed on the basis of correct fixation of pay as per the scale after 5th pay Commission recommendation.

12  
Filed by The Applicant  
through : *Guruji Deen A/Advoc*  
*Guruji Deen*  
24.4.2000

*Gangaraj*2. Jurisdiction of the Tribunal :

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

3. Limitation :

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

4. Facts of the Case :

4.1. That the applicant is the citizen of India and is entitled to the rights and privileges guaranteed by the Constitution of India.

4.2. That the applicant was appointed in the Assam Rifles w.e.f. 1.2.66 and is a Civilian. He was working as Assistant in the Unit Pay Accounts Office, from 1989.

4.3. That memorandum of charges was issued on 23.2.94 initiating proceeding under Rule 14 of the Central Civil Services

(Classification, Control and Appeal) Rules 1965. Thereafter the applicant was placed under suspension w.e.f. 5.4.95. The applicant has been paid subsistence allowance and which was later on enhanced as the suspension was prolonged for reasons not attributable to the applicant.

4.4. That the enquiry was conducted and by an order dt. 14.8.97 penalty of compulsory retirement was imposed and he was compulsorily retired from service w.e.f. 1.9.97. ✓

4.5. That the pay of the applicant on the date of suspension order i.e. 5.4.95 was Rs. 1950.00 (before revision of 5th P.C.). While calculating the pension after his retirement w.e.f. 1.9.97 his pay was not fixed as per the revised pay scale of 5th pay Commission and his pension has been calculated on the basis of the pre revised scale at Rs. 1950/-

4.6. That the service of the applicant during the suspension period has also not been taken into account as qualifying service.

4.7. That as a result of the aforesaid wrong calculation of pension the applicant has been getting less pension every month. He submitted representation dt. 18.8.99 to the respondent No.3 But no reply has been received as yet. But the applicant is being paid less pension every month.

Copy of the representation dt. 18.8.99 is enclosed as Annexure - A.

5. Grounds for Relief :-

5.1. For that the pay of the applicant should be fixed correctly according to the 5th pay Commission Scale and pension

revised accordingly.

5.2. For that the period of suspension should be treated as qualifying service.

5.3. For that payment of less pension is arbitrary and discriminatory and is violative of Article 14 and 16 of the constitution of India.

6. Details of remedy exhausted :

That the applicant states that he has no other alternative and other efficacious remedy than to file this application before this Hon'ble Tribunal.

7. Particulars of previous application filed if any :

The application submits that he has not filed any application/Suit/Writ petition before any Tribunal/Court in the subject matter and nor any such application is pending before any Tribunal or Court.

8. Relief Sought :

In the facts and circumstances of the case the applicant prays for the following reliefs:

1. The pension of the applicant should be refixed after fixing his correct pay on 31.8.97 in the revised scale (5th Pay Commission) and taking the suspension period ~~as~~ as qualifying service.

2. Interest at the rate of 18% per annum on the amounts paid less from month to month due to wrong calculation of pension.

3. Cost of the case.

(5)

16

Geetanjali

9. Interim Relief :

Nil.

10. Particulars of Application fees :

Indian Postal Order No. : OG 493995

Dated : 18.3.2000

Payable at : Guwahati.

11. List of enclosures :

As stated in the Index.

Verificatin . . . . .

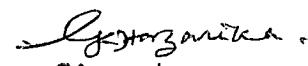
VERIFICATION

I, Sri Ghana Kanta Hazarika, son of Late Babula Hazarika, aged about 57 years residing in Sixmile, Chasal, Guwahati - 22, do hereby verify that the statement made in paragraphs 1, 4, 6, 7, 8, 9, 10, 11 are true to my knowledge and those in paragraphs 2, 3 and 5 are true to my <sup>legal Advice</sup> ~~information~~ which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal and I have not suppressed any material facts.

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

Date : 21.4.2000

Place : Guwahati

  
Signature

To

The Directorate General  
Assam Rifles  
Shillong-11.

COUNTING OF THE PERIOD OF SUSPENSION  
TOWARDS QUALIFYING SERVICE.

Sir,

1. I have proceeded on compulsory pension w.e.f. 1.9.97  
vide DGAR order No. Civ./DGAR-569/NE II dated 1-12-97.

2. That Sir, I am now drawing pension at old rate and  
my service w.e.f. 5.4.95 to 31.8.97 (period of suspension)  
has been treated as non qualifying service as a result of  
which I am drawing less pension.

3. As per Govt. of India's decision No. 1 below Rule  
23 of CCS (pension) Rule 1972 I am entitled to get full  
benefit of service i.e. period under suspension from 5.4.95  
31.8.97 should have been counted as qualifying service.

4. In view of the above, I request your honour kindly  
to look into the matter so that I can get full Justice  
and draw my pension and other benefits under the provision  
of the existing rule.

*Indra*  
T-5.4 (b) 1 (b) Yours faithfully

*Gogoi K. 18-8-99*  
(Ghans Kanta Hazarika)

Sixmiles Ghasal  
P.O. Khanapara  
Guwahati-22

Copy to

Pay & Account office  
(Assam Rifles)

Laitumkrah

Shillong-3

Copy submitted directly to

1. Pension Branch on 4.1.2000

2. AD(D&V) on 31-1-2000.