

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : _____
Misc. Petition No. _____
✓ Contempt Petition No. 7/2003 / in CA 460/2001.
Review Application No. _____

Applicant(s): Shree N.D. Bhuyan,

- Vs. -

Respondent(s): Mrs. Banchar, I.A.S. HRA. & ORS.

Advocate for the Applicant(s): Mr. S. Ali. Sr. Adv.

Advocate for the Respondent(s): _____

Notes of the Registry	Date	Order of the Tribunal
<p>This Contempt Petition has been filed by the Comand. for the applicant praying for wilful and deliberate violation of Judgment and order dtd. 18-7-2002 passed by the Hon'ble Tribunal in CA 460/2001.</p> <p>Laide before the Hon'ble Court for further orders.</p> <p><i>W. B. B. 27/1/03</i> Section Officer.</p>	27.01.2003	<p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. S.K. Hajra Administrative Member.</p> <p>Heard Mr. S. Ali, learned Sr. counsel for the applicant.</p> <p>Issue notice to show cause as to why the contempt proceeding shall not be initiated.</p> <p>List on 27.2.2003 for orders.</p> <p><i>Sm</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p>Slips & Encl's taken. Notice prepared and sent to D/s for issuing the respondent No 1 & 2. by Regd. A.D. <i>Dr 31/1/03</i></p> <p><i>D/No 1</i> <i>dtd 3/2/03</i></p>	27.2.2003	<p>Put up the matter on 24.3.2003 in presence of Mr. S. Ali, learned Sr. counsel for the applicant.</p> <p><i>[Signature]</i> Vice-Chairman</p>

An application has been filed ^{mb} for dropping the Contempt proceeding at page 25 to 31.

MB
26/2/03

C.P. 7/2003

24.3.03 present : The Hon'ble Mr Justice D.N.Chowdhury,
Vice-Chairman
The Hon'ble Mr S.Biswas, Admn.Member

perused the application submitted by
the party respondents and also the order
passed by the Hon'ble High Court in Writ
petition(C) No.7634/2002 dated 29.11.02.
Considering the facts and the order of the
High Court the contempt proceeding stands
dropped.

if comply

JS
25/3/03

Member

Vice-Chairman

pg

26.3.2003

Copy of the order
has been sent to the
Office for being the
sent to the parties
by post.
JL

327 JAN 2003

गुवाहाटी न्यायपीठ
Guwahati Bench

Filed by the
petitioner's
counsel
Ms. Gulab Singh
Advocate
24.1.03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GAUHAATI BENCH
AT GUWAHATI.

Contempt Petition No. 7 / 2003

(In O.A. No.460/2001).

IN THE MATTER OF :-

A contempt petition under section
12 of the Contempt of Courts Act.

-AND-

IN THE MATTER OF :-

Wilful and deliberate violation
of judgment and order dt. 11.7.02
passed by the Hon'ble Central
Administrative Tribunal, Gauhati
in O.A. No.460/2001.

-AND-

IN THE MATTER OF :-

Shri N.D. Bhuyan, retired
Principal, Kendriya Vidyalay,
Digaru, resident of Khanapara
near Siva Mandir, P.O. Khanapara
Guwahati, Dist. Kamrup, Assam.

..... Petitioner.

-VRS-

1. Mrs. Banchal, I.A.S., H.R.A.
Additional Secretary to the
Govt. of India and Vice Chairman,
Kendriya Vidyalaya Sangathan,
Sastri Bhawan, New Delhi-11000.

Contd.....2

2. Shri H.M. Caire, IAS,
Commissioner, Kendriya Vidyalaya
Sangathan, 18 Institutional Area,
Sahid Jeet Singh Marg, New
Delhi-110016.

..... Contemners.

The humble petition of the petitioner
above-named,

MOST RESPECTFULLY SHEWETH:-

1. That your petitioner was an Principal of Kendriya Vidyalaya, Digaru. He was dismissed from service w.e.f. 21.4.2001 in a departmental proceedings drawn against him. He was to retire from service w.e.f. 31.10.2001 i.e. after rendering service of 35 years.

2. That being highly aggrieved and dissatisfied with the order of dismissal from service the petitioner filed an appeal before the competent authority i.e. Contemner No.1 the Additional Secretary to the Govt. of India, Ministry of HRD and Vice Chairman, Kendriya Vidyalaya Sangathan, New Delhi who is the appellate authority. The appellate authority after considering the ground of appeal and other connected records of service of the petitioner and after hearing the petitioner/appellant in person allowed the appeal and set aside the order of the disciplinary authority and imposed penalty upon the petitioner giving compulsory retirement from the date of dismissal of service vide order dated 19.9.2001.

Annexure-1 is the photocopy of the said order dated 19.9.2001 issued by the Contemner No.1.

3. That the petitioner being highly aggrieved by and dissatisfied with the order of the appellate authority at Annexure-1 filed O.A. No.460/2001 before the Hon'ble Central Administrative Tribunal, Gauhati Bench at Guwahati. The Hon'ble Central Administrative Tribunal after hearing both parties in details set aside the appellate order with a direction to implement the judgment within a period of 3(three) months.

Annexure-2 is the photocopy of the judgment and order dated 11.7.2002 passed by the Hon'ble Tribunal in O.A. No.460/2001.

4. That in the meantime the petitioner filed a representation on 28.11.2002 requesting the contemnors to implement the judgment and order at Annexure-2 of the Central Administrative Tribunal as per direction given by this Hon'ble Tribunal.

Annexure-3 is the photocopy of the representation dated 28.11.2002 submitted by the petitioner to the contemnors.

5. That even after receipt of the representation at Annexure-3 alongwith copy of the judgment passed in O.A. No.460/01 the contemnors deliberately and intentionally disobeyed the order of the Hon'ble Tribunal and hence the

petitioner has been compelled to file this contempt petition against the contemnors before this Hon'ble Tribunal.

6. That your petitioner begs to state that the contemnors knowingly well that the Hon'ble Tribunal has given direction to implement the judgement and order dated 11.7.2002 passed by this Hon'ble Tribunal within a period of 3 months from the date of receipt of the judgment but unfortunately instead of implement the judgment the contemnors deliberately and intentionally violated the order of the Hon'ble Tribunal and thereby they committed serious offence of Contempt of Courts Act and hence they are liable to be punished as per provision of Contempt of Courts Act.

7. That the petitioner has suffered a lot ~~for~~ non-implementation of the judgment and order passed by this Hon'ble Tribunal and hence it is necessary to give appropriate punishment to the contemnors under the provision of content of Courts Act.

8. That the petitioner begs to state that it is a fit case for imposing appropriate punishment on the contemnors having failed to implement the judgment of the Hon'ble Tribunal deliberately and hence they are liable to be punished accordingly.

9. That the petitioner submits that it is a fit case for imposing appropriate punishment on the contemnors for non-implementing the judgement of the Hon'ble Central Administrative Tribunal.

It is therefore respectfully prayed
that the Hon'ble Tribunal may be pleased
to admit this petition issuing notice to
the Contemners and after hearing the parties
impose appropriate punishment on the Contemners
for deliberate and intentional violation of
Hon'ble Central Administrative Tribunal's
judgment and order dated 11.7.2001 passed
in O.A. No.460/2001.

And for this act of kindness, the petitioner as in duty
bound shall ever pray.

Affidavit.....



A F F I D A V I T

I, Shri N.D. Bhuyan Son of
aged about years, retired Principal, Kendirya Vidyalaya
Digaru, resident of Khanapara near Siva Mandir, P.O. -
Khanapara, Guwahati, Dist. Kamrup, Assam, do hereby solemnly
affirm and state as follows:-

1. That I am the petitioner of the accompanying
contempt petition and as such am well conversant with
the facts and circumstances of the case.
2. That the statements made in this affidavit and
in paragraphs 1,2,4,5,6,7, are true to my
knowledge and those made in paragraphs 3,
being matter of records are true to my knowledge and
information derived therefrom which I believe to be true
and the rests are my humble submissions made before this
Hon'ble Court. And I sign this affidavit on this the 25th
day of January, 2008 at Guwahati.

Neha Dhar Bhuyan

Deponent.

Solemnly affirmed and declared
before me by the deponent
who is known to me.

Shamshul Islam
ADVOCATE.

74 65 7 Annexure-5 (2)

BY REGD. POST.

KENDRIYA VIDYALAYA SANGATHAN
18, INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI 110 016.

F.No.9-55/2001-KVS (Vig.)

Dated: 19-09-2001

ORDER

WHEREAS the penalty of 'Dismissal' from the services of Kendriya Vidyalaya Sangathan was imposed upon Shri N.D.Bhuyan, Ex-Principal Kendriya Vidyalaya, A.F.S., Digaru by the Commissioner, K.V.S., being the Disciplinary Authority, vide Order No. F.8-61/98-KVS[VIG.] dated 18-04-2001.

WHEREAS the said Shri N.D.Bhuyan filed an appeal against the aforesaid order of the Disciplinary Authority to the under-signed, being the Appellate Authority. The Appellant has also been heard in person on 23-08-2001.

AND WHEREAS based on the consideration of facts and circumstances of the case on record, the contents in the appeal including the grounds adduced by the Appellant, and the additional documents produced during the personal hearing, the undersigned has come to the conclusion that in the Inquiry Report, the Inquiry Officer has not been explicit about each charge of admission irregularity and has held them proved arbitrarily. To this extent benefit of doubt is given to the Appellant. However, the charge against the Appellant under Article-4 where he dissolved the existing Committee for operation of Pupil's Fund and appointment of Head Clerk as the Convener in violation of the Accounts Code for Kendriya Vidyalayas is a serious charge and cannot be condoned. Considering the years of service the Appellant has already put in for the Sangathan, and also considering that he is from the North-Eastern Region where Officers work under certain difficult and compelling circumstances compared to others, the undersigned feels that the ends of justice would be served by a penalty of Compulsory Retirement from service and accordingly order the same from the date he was dismissed from the service by the Disciplinary Authority.

NOW, THEREFORE, the undersigned, being the Appellate Authority, disposes of the appeal of Shri N.D.Bhuyan, ex-Principal accordingly.

Attested
Miss Jyoti Barua
Advocate

h i u

(K.S.SARMA)
ADDL.SECRETARY, M/o H.R.D.
&
VICE-CHAIRMAN, K.V.S.

Copy to :-

1. Shri N.D.Bhuyan, ex-Principal, Kendriya Vidyalaya Digaru, Six Mile, Shiva Mandir Khanapara, Guwahati - 781022 Dist Kamrup, Assam.
2. The Assistant Commissioner, KVS Regional Office, GUWAHATI.
3. The Dy Commissioner (Finance), Kendriya Vidyalaya Sangathan [Hqrs], New Delhi for appropriate action
4. Guard file.

ORDERS OF APPEAL doc-6

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 460 of 2001.

Date of Order : This the 11th Day of July, 2002.

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

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

Shri N.D. Bhuyan,
Ex Principal,
Kendriya Vidyalaya, Digaru,
Resident of Sixth Mile near
Siva Mandir, Khanapara,
Guwahati-22.

. . . Applicant.

By Advocate Sri S. Ali.

- Versus -

1. Union of India,
represented by the Addl. Secretary
to Govt. of India,
Ministry of Human Resources
Development and Vice-Chairman,
KVS, New Delhi.
2. The Addl. Secretary, Govt. of India,
Ministry of Human Resources and
Vice-Chairman, K.V.S, Shastri Bhawan,
New Delhi.
3. The Commissioner,
K.V.S., 18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi-16.
4. The Asstt. Commissioner,
K.V.S., Regional Office,
Guwahati Region,
Maligaon, Guwahati-11.
5. The Principal,
K.V. Khanapara,
Guwahati-22.

. . . Respondents.

By Advocate Sri M.K. Mazumdar.

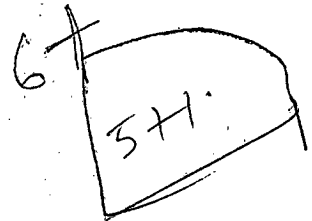
ORDERCHOWDHURY J. (V.C)

This application under Section 19 of the Administrative Tribunals Act 1985 has arisen and is directed against the order dated 19.9.2001 imposing the penalty of compulsory retirement/ of the applicant from service in the following circumstances.

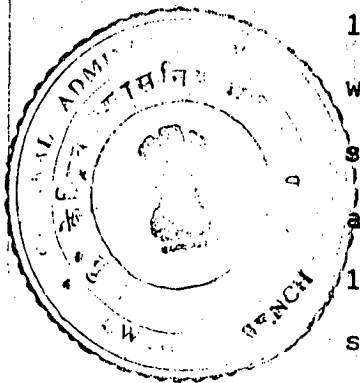
contd..2



*Addressed
to Mr. Justice D.N. Chowdhury
Advocate*



2. On the basis of a selection the applicant was appointed as Post Graduate Teacher (PGT) in Kendriya Vidyalaya Sangathan and he was posted at K.V.Jorhat where he joined on 21.2.66. He was also served as in-charge Principal at KV Silchar upto 1982. In 1982 the Kendriya Vidyalaya, Khanapara was confronted ^{with the} student agitation and the applicant was transferred to Khanapara KV as in-charge Principal ^{to tackle the situation} and he joined there on 22.10.82. In 1983 the applicant was appointed as regular Vice principal at K.V.Guwahati and served there upto 15.4.85. As there was no regular principal the applicant being the senior most was entrusted with the post of in-charge Principal. On completion of training the applicant was appointed as Principal in May 1988 and posted as Grade-I Principal at K.V. N.H.P.C, Laktak, Manipur. Thereafter he was transferred to K.V.CRPF(GC), Nine Mile, Guwahati in April 1992. The applicant was again transferred to K.V.Khanapara on 11.1.97 and he served there upto 15.12.98. Thereafter he was transferred to K.V.Paradip, Orissa on 16.12.98 but subsequently the transfer order was modified and he was allowed to join In K.V.Digaroo and he joined there on 17.2.99. While he was serving as such the applicant was served with the Office Memorandum No.F.8-51/98-KVS(VIZ) dated 22.6.99 informing the decision of the authority for holding an enquiry under Rule 14 of the Central Civil Service (Classification, Control & Appeal) Rules, 1965. The applicant was served with the articles of charges alongwith the imputation of misconduct or misbehaviour. As per the charge memo charges No. 1, 2 and 3 pertains to violation of admission guidelines. Article 4 of the charges reads as follows :



"That Shri N.D.Bhuyan, while working as Principal in Kendriya Vidyalaya, Khanapara during the year 1997-98 made purchases from School Fund and Pupil Fund without following the prescribed procedure laid down in Article-197 & 198 of Accounts Code for Kendriya Vidyalayas.

Thus Shri N.D.Bhuyan, Principal has violated Article 197-198 of Accounts Code for Kendriya Vidyalayas and Rule 3(1) (i) (ii) and (iii) of Central Civil Services (Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangathan."

The statement of imputation against Article IV is also reproduced below :

"That Shri N.D.Bhuyan, Principal during his stay in Kendriya Vidyalaya, Khanapara during the year 1997 to 1999 misused his powers in operation of Pupil Fund. After his joining on 11.01.97 he dissolved all the Committees that were existing in Kendriya Vidyalaya, Khanapara vide his order dated 22.11.97 except Examination Committee and School Bus Committee. Then vide his order number NIL dated NIL he authorised Shri C.D.Rathore, Head Clerk, Kendriya Vidyalaya, Khanapara as convenor of Pupil Fund Committee and to sign the cheque as a Consignatory. He ignored all the P.G.Ts of the school and made purchases from Pupil Fund ignoring the instructions contained in Article-197 and 198 of Accounts Code for Kendriya Vidyalaya Sangathan.

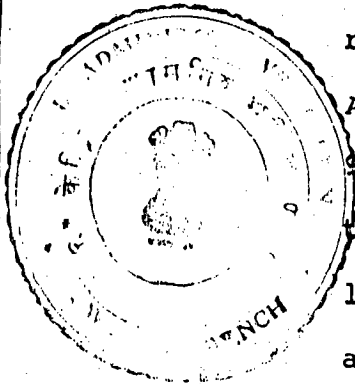
Thus Shri N.D.Bhuyan, principal committed a serious misconduct in violation of Articles-197 and 198 of Accounts Code and Rule-3(1) (i), (ii) and (iii) of Central Civil Services (Conduct) Rules 1964 as extended to the employees of Kendriya Vidyalaya Sangathan."

In Article V the applicant was charged for violation of the procedure of the Accounts Code in purchase of materials.

In Article VI the applicant was charged for incurring conveyance charges without approval from the competent authority. Charge No.VIII was relating to misuse of Government money in violation of the instructions of the KVS authority. Charge No. VIII was relating to appointment of contractual teachers without obtaining 'No objection Certificate' or approval from the Assistant Commissioner.

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In reply to Article of charges IV and V the applicant stated that he acted bonafide and purchased the materials by following the procedure. The applicant in his reply inter alia intimated the backgrounds in which he has to join the institution. The KV in question at the relevant time was almost non functional and most of the classroom doors, windows were went amiss five years since Desks, benches, chairs etc. were dumped in battered condition as sunks. No renovation works were done. All electrical fittings were damaged, removed only 10% electrical fans, light were functioning, A.S.E.B frequently disconnected the line due to non payment of electric bills. He informed the matter to the parents, Assistant Commissioner. In June 1997 the electricals line was disconnected by the ASEB. Mr Srinivaslu, the Principal of the school left the school after 1 1/2 years due to the teachers strike. Mr Asok Saikia, IAS the Chairman of the Vidyalaya Management Committee also resigned due to mismanagement of the K.V.Khanapara. The Assistant Commissioner, Guwahati Region signed the cheques. 90% local teachers being emboldened by the situation refused to co-operate with the Principal Mr M.N.Hazarika. The 4/5 local teachers carried the situation to such a stage that all non local teachers were directly and indirectly threatened not to co-operate the Principal. The applicant after joining on 11.1.97 tried to take every one into confidence, but unfortunately no senior officer of KVS, Headquarter or regional office and internal audit visited the K.V during the period to assess the situation. The so called teachers association never allowed to function the K.V. smoothly. There was no alternative then to dissolve all teachers committees including the Pupils Fund Committee. The full



version of the applicant is re-produced below :

"All parents co-operated me. In the meantime Chairman V.M.C. also suggested me to start all resolution works. I was bund to go ahead with works for the walfare for the students & parents. In a meeting when I named a senior teacher who worked sincerely for the K.V. P.F. convener he was threatend. He did not like to be a member. The " so called leaders of K.V.TA., tried to collaps the administration directly & indirectly. So asked temporarily the H/C clerk to sign the P.F. along with me a notice to all, as I had to conduct Annual sports day. Annual cultural day for 1996-97 in February'97, for sending Scout guides, to clear the Jungle, garbages from the campus, to clear the drainage system, to repair class room, for these needed P.F. expenditure. Previously the Principal did not do it due to above situation. Due to above exeigency, as a Principal it was very urgent to allow the head clerk to sign the cheque under my chairmanship of the committee, with some teacher P.E.T., drawing teacher, music teacher, SUPW and sincere PGT, whom I took in confidence to help me for the immediate and urgent expenditure of Annual day, Sports day, and sending school team for various activities. Money was utilised fully. From above situation I did for the walfare of school, following all procedure challenging non co-operation of " the notorious gang". I determined to go ahead to do positive, unlike the previous principals. Perhaps the enquiring officer did not assess the situation nor could take the witness of the above situation and "proved" the charges without taking the witness on the exhibited document with the charge sheet. Except teacher co-signator as per rule due to above situation, I followed all procedures. So I amy be relieved of the charge after varyfing the above situation in 1997-98. (As I did not like to act as per their whims being local I studied them for in my 3 stincts in K.V. Khanapara."

The authority did not accept his reply and decided to hold an enquiry. The enquiry officer submitted its report holding the applicant guilty of the charge. The applicant was furnished with a copy of the enquiry report. He submitted his reply assailing the enquiry report. The disciplinary authority however imposed penalty of dismissal vide order dated 18.4.2001. The applicant preferred an appeal. The appellate authority on consideration of his appeal and on hearing the applicant did not accept the finding of the

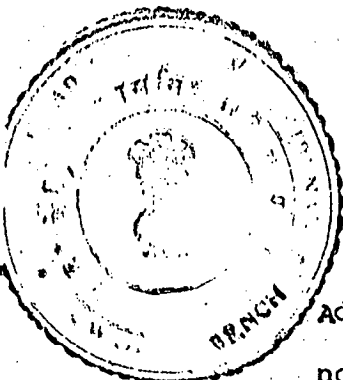
enquiry officer as regards of the articles save and except Article IV. The appellate authority held the applicant guilty of charge IV for violation of Accounts Code of Kendriya Vidyalaya which was termed as serious charge and that could not be condoned. Considering the years of service the applicant has already put in for the Sangathan and also considering that he was from the North Eastern Region where officers had to work under certain difficult and compelling circumstances compared to others the appellate authority felt that the ends of justice would be met if a penalty of Compulsory Retirement from service was imposed. Accordingly he set aside the order of dismissal from service and ordered for compulsory retirement. Hence this application assailing the legality and validity of the order.

3. We have heard Mr S.Ali, learned senior counsel appearing for the applicant. Mr Ali, the learned senior counsel assailing the order of imposition of penalty submitted that there was no material for holding the applicant guilty of the charge. Learned senior counsel also pointed out that the disciplinary proceeding was vitiated by procedural lapses. He lastly submitted that at any rate the materials on record did not prove any misconduct against the applicant. Mr M.K.Mazumdar, learned counsel appearing for the respondents on the other hand contended that the applicant was found to be guilty, in respect of Article IV. Admittedly the applicant as being a Principal violated the letter and spirit of the Accounts Code 197 and 198 and made purchases ignoring the same. The learned counsel further submitted that the materials on record clearly established the guilt of the accused. Mr Mazumdar also referred to the scope of judicial review under Section 19 of the Administrative Tribunals Act and submitted that such review could not be equated to that

of an appeal. The learned counsel in support of his argument referred to the decisions in Union of India vs. Upendra Singh, reported in (1994) 3 SCC 357 and in State of Gujrat and another vs. Suryakant Chunilal Shah, reported in (1999) 1 SCC 529.

4. Before entering into the merit it would be appropriate to refer to the relevant provisions mentioned in Chapter 21/ of the Accounts Code which relates to the Pupils Fund, that is required to be maintained out of collection from the students exclusively for the benefit of the student community. The principal is to act as the "Chief Trustee" of the Fund as envisaged in Rule 197. Rule 198 is reproduced below :

"198. The administration of the fund is to be entrusted to a Committee called the Pupils' Fund Committee consisting of the Principal, a senior P.G.T., a senior T.G.T., a senior primary teacher and one student each belonging to classes IX, X, XI and XII. If classes IX, X, XI and XII do not exist in a school, one student each of the next lower class/classes should be represented on the Committee. The student member should be nominated every academic year."

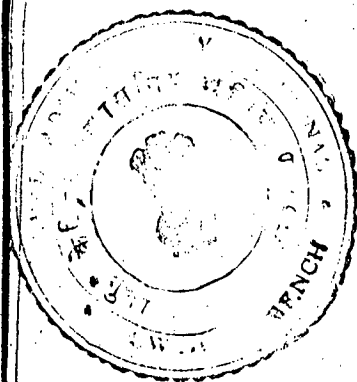


Admittedly no witnesses were examined in this regard. Even no documents were proved nor he was given any opportunity to explain the position. Admittedly the applicant operated the Pupils' Fund. The materials on record clearly indicated that all the committees were disbanded by the applicant in view of the facts mentioned above. The applicant took the responsibility of administering the Pupils' Fund himself in the absence of the Pupils' Fund Committee. As per the Accounts Code the Principal is to act like a Chief Trustee of the Fund. There is no allegation nor any whisper that the Pupils Fund was diverted or utilised for the purpose forbidden by rules. There is no allegation that the Pupils' Fund was not utilised for the purposes specified. The Pupils'

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Fund Committee was disbanded in absence of a Pupils' Fund Committee, the applicant spent the money and utilization certificate was given. At any rate there is no allegation of misuse of the fund. Mr Mazumdar, the learned counsel for the respondents referred to the Code of conduct and submitted that a Headmaster should have absolute integrity and anything should not be done which is unbecoming of a Government servant. The Enquiry Officer while considering his appeal as the disbursement of Pupils' Fund money held that whatever and however important and urgent work was to be done, when money was involved there should have been observation of laid down rules and procedures for it. For constituting the Pupils fund irregularly and spending the money through this irregular committee was a serious misconduct under CCS(Conduct) Rules, therefore it was a grave misconduct, according to the Enquiry Officer. The disciplinary authority mechanically adopted the view of the Enquiry Officer. The Appellate authority did not act differently. It casually embraced the view of the above two authorities without applying its mind. In the observation of the appellate authority, the applicant was found responsible for dissolving the existing committee in violation of the Accounts code was also a serious charge which cannot be condoned. A mere violation of the Accounts Code cannot ipsofacto be termed as a misconduct. Dereliction of duty, unlawful behaviour, improper and wrong exercise of power must refer to delinquency or impropriety. It must contain a corrupt motive. Misconduct must show some conduct which is blameworthy as a Principal or a teacher. According to Stroud's judicial dictionary the expression "misconduct" means misconduct arisen from

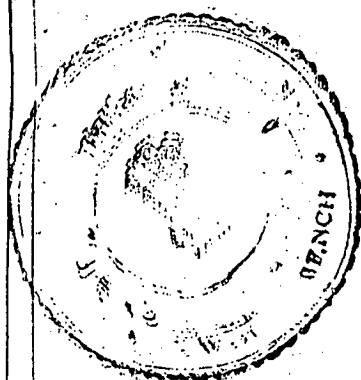
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ill motive, acts of negligence, errors of judgment or innocent mistake, do not constitute such misconduct."

In this context it would be appropriate to refer to the following passages from the Supreme Court judgment in Union of India vs. J.Ahmed, reported in (1979) 2 SCC 286 :

"In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Utkal Machinery Ltd., v. Workmen, Miss Shanti Patnaik, in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S.Govinda Menon v. Union of India, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H.Kalyani v. Air France, Calcutta, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through,

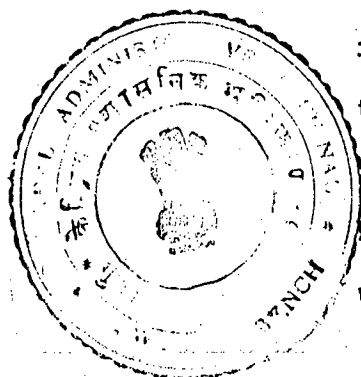


There are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing head-on-collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah vs. Manager, Ahmedabad Co-op. Department Stores Ltd.). But in any case failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

There is no allegation of misuse of fund or improper conduct of the applicant. In the absence of the Committee the applicant took the responsibility as a Trustee and he discharged his duty, there is also no hint to the effect that the applicant committed any breach of the trust.

5. As alluded earlier mere breach of procedural or formal rules by itself is not unlawful. It depends on the facts situation and also the nature of departure from the statute. Some of the statutory violation can be treated as mere irregularity rather than illegality while the breach is of trivial nature. Similarly where no substantial prejudice has been suffered by those for whose benefit the statutory requirements were entrusted (R. vs. Liverpool City Council, (1975) WLR 701).

6. The applicant was found guilty of charge mentioned in Article IV for contravention of Article 197 and 198 of Accounts Code. He was accordingly charged for violation of Rule 197 and 198 of the Accounts Code and Rule 3(i) (ii) (iii) of the Conduct Rules. As per Conduct Rules every Government servant is to (i) maintain absolute integrity, (ii) maintain devotion to duty and (iii) do nothing which is unbecoming of a Government servant. In the instant

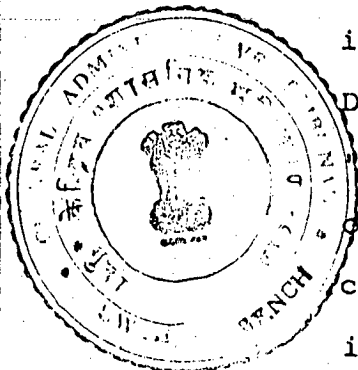


case the only allegation proved was that the applicant contravened Rule 197 and 198. Admittedly on the own showing of the respondents the Pupils' Fund Committee was dissolved at the relevant time. In view of the prevailing situation. For want of the Committee one cannot hold the applicant guilty of violation of 197. There is no materials to show and establish that the applicant failed to act as a Chief Trustee of the Fund. He discharged the confidence reposed on him. Admittedly the Pupils' Fund Committee was dissolved. One can do what is lawful. When there was no Pupils' Fund question of complying Rule 198 did not arise. "Id possumus quod de jure possumus," the applicant in the given circumstances acted bonafide and in the interest of the school. The law only intends that one should act what is reasonable. Law also take into account the natural order. One cannot expect to do what is impossible, "Lex non cogit ad impossibilia", the law does not compel anyone to do impossible things. The situation was extraordinary. In those situation he administered the institution and took the necessary steps in the given circumstances. The respondents authority failed to show and establish that the applicant committed any illegality or contravene any statutory provisions in managing the affairs of the school by running the administration in the absence of the Pupils' Fund Committee. All these are presumed to be done correctly and duly till there is proof to the contrary "Omnia praesumuntur rite et solenniter esse acta donec probetur in contrarium".

7. Mr M.K.Mazumdar, learned counsel for the respondents contended that the respondents exercised its discretion bonafide and imposed the punishment in view of the infringement of Rule 3(i) read with Rule 197 and

21

198 of the Accounts Code. Materials did not indicate that the respondents can specify any act which could be held to be an act making the applicant responsible for not maintaining absolute integrity. The term integrity means soundless or moral character. A mere infringement of Rule 197 and 198 cannot be said to be an act affecting the probity, honesty and uprightness of the applicant nor such act can be said to be an act lacking devotion of duty. The alleged violation of Rule 197 and 198 also cannot be said to an act which was unbecoming of a Government servant. The expression unbecoming means unsuitable, detracting from ones appearance, character or reputation. Materials on record did not disclose any alleged misconduct or contravention of Rule 3(1). On perusal of the materials on record it clearly demonstrates that the respondents in exercising its discretion failed to take note of the relevant facts and emphasised on irrelevant facts. Exercise of discretion in a democratic polity must be informed with reason.



Discretion is not unfettered, it impose a duty to act fairly, candid, unprejudice, non arbitrary, capricious or bias." In interpreting the rule ^{one is} not to act in a way calculated ^{to} frustrate the policy of the rule. In the instant case the respondents authority while holding the applicant guilty of the alleged charges failed to take into account the spirit of Rule 197 and 198 and acted in a way calculated to frustrate the policy of the rules. The authority failed to take into account individual merit. In the decision making process it faltered in genuinely addressing the relevant facts. In its decision making process the respondents took upon the ^{extraneous} consideration ignoring the relevant consideration. The impugned decision

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of imposing penalty on the applicant is supported by inadequate or unsupported reason. A decision is arbitrary and unreasonable where it lacked ostensible logic or comprehensible justification. The respondents authority admittedly fell into obvious error in its decision making process.

8. For all the reasons stated above the impugned Order No. 9-55/2001-KVS (Vig) dated 19.9.2001 is liable to be set aside and the order is accordingly set aside. The applicant shall be deemed to be in service till he attained the age of superannuation. The respondents are accordingly directed to give all the consequential benefits to the applicant within three months from the date of receipt of this order.

The application is accordingly allowed. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN
Sd/ MEMBER (Adm)

Certified to be true Copy

23/7/02

Section Officer (Adm)
Section Officer (Adm)
Section Officer (Adm)
Section Officer (Adm)
Section Officer (Adm)
Section Officer (Adm)
Section Officer (Adm)
Section Officer (Adm)
Section Officer (Adm)
Section Officer (Adm)

the 11th Day of July, 2002.

20 24-3-5 21

23

189975 RECEIPT

EE84279935 9IN

TE 2/12/02

No. 189975 TIME

To	Sender
H.M. Caird	N.D. Blugan
K. vidyalek	K.V. D. M. V.
S. J. Singh May	Speed Post Charges
N. Delu-16	Rs. 50/-

DATE STAMP OFFICER INCHARGE

189975 RECEIPT

EE84279928 8IN

No. 189975 DATE 2/12/02 TIME

To	Sender
The Addition	N.D. Blugan
Seq. Govt. J.	K.V. D. M. V.
K.V.S. S. Blugan	Speed Post Charges
N. Delu-01	Rs. 50/-

TE STAMP OFFICER INCHARGE

Attended
Kees Julliyu Begun
Advocate

Date- 28.11.2002

To,

The Additional Secretary, Govt. of India, Ministry of H.R.D. and Vice
Chairman, K.V.S. New Delhi (The appellate authority of the K.V.S.
Principals) Shastri Bhawan. New Delhi 110001

Subject: Case no. 460 of 2001 in the Central Administrative Tribunal, Rajgarh
Road GUWAHATI and its judgement in the case 460/2001 – N. D.
Bhuyan, Ex-Principal, K.V. Digaru Air Force Station, Sonapur, Assam
Versus

1. The Additional Secretary Govt. of India, Ministry of H.R.D. and Vice
Chairman and appellate authority K.V.S. New Delhi- 1
2. Vs. The Commissioner, K.V.S. 18 Institutional Area. Saheed Singh Marg,
New Delhi 16 Etc.

Respected Sir,

With reference to the judgement of the Hon'ble Mr. Justice D. N.
Choudhury, Vice Chairman

And

The Hon'ble Mr. K. K. Sarma, Administrative member in the case 460/2001
represented by learned Sr. Advocate Md. S. Ali in the C.A.T. Guwahati, Assam.
Filed by me (Netra Dhar Bhuyan) as mentioned above which was delivered on
11th day of July 2002 and despatched the 13 paged judgement in favour of me on
25th July 2002 by speed post to the concerned appellate authority and
disciplinary authority of the Sangathan ordering to implement the judgement
within three months from the date of receipt by the K.V.S. New Delhi 16, I am to
humbly state-

- (1) That sir, in brief I am to inform you that I am a Sangathan employee
serving 35 yrs 10 months as P.G.T. and Principals in different states and

was dismissed from the service w.e. from 21.4.2001 on 4 (four) charges in which I being highly dissatisfied filed an appeal petition to the Vice Chairman K.V.S. New Delhi, who is an Additional Secy., and an appellate authority took the decision on my representation and personal hearing and he set aside the dismissal order and imposed penalty of compulsory retirement w.e. from 21.4.2001 only on one charge condoning the other 3 (three) charges of the disciplinary authority.

- (2) That sir, again being completely shocked and dissatisfied with the decision of the vice chairman and appellate authority to impose the penalty of compulsory retirement only on insignificant charge no. 4 (four) condoning the other three (3) similar charges. I filed the case in the Hon'ble Central Ad. Trib. Guwahati to give me full justice as the arbitrary decision of the appellate authority failed to give full justice to the very senior and experienced and innocent Principal like me.
- (3) That sir, with these above information's I am hereby attaching the full judgement of 13 (thirteen) pages passed by the Hon'ble Mr. Justice and the vice chairman of the C.A.T. Mr. D. N. Chaudhury etc on the 11th day of July 2002 in which the details of the case and judgement are recorded with order to implement the judgement within three months from the date of the receipt of the judgement by the Kendriya Vidyalaya Sangathan New Delhi.
- (4) That sir, the Hon'ble C.A.T. set aside the compulsory retirement imposed on me by the appellate authority of K.V.S. and ordered full retirement benefits upto the date of superannuation 31.10.2001.
- (5) That sir, I am very much shocked that the K.V.S. New Delhi still today very much silent to implement the judgement of C.A.T. to pay the full benefits of retirement to me upto 31.10.2001 as ordered by the C.A.T. Though already four months have passed from the last date fixed by the Hon'ble C.A.T. Guwahati.

Therefore I am to request the vice-chairman H.R.D. and the Commissioner, Kendriya Vidyalaya Sangathan kindly to implement immediately the order of the C.A.T. as recorded without harassing me mentally and physically further, to save me and my family from the financial hardships of the retirement age.

If the K.V.S. Authority fails to implement the order of the Hon'ble C.A.T. within one week from the receipt of this petition I will be bound to file a case of CONTEMPT OF COURT against the Kendriya Vidyalaya Sangathan.

I am sure, the Hon'ble Commissioner and the disciplinary authority will be very much kind enough to go through the judgement and the Hon'ble C.A.T.'s order sympathetically.

Yours
Neha Dhar Bhuyan

Ex- Principal

K.V. Digaru

Resident

Near Siva Mandir

P. O. KHANAPARA

GUWAHATI

781022

Neha Dhar Bhuyan

N. D. BHUYAN

EX-PRINCIPAL

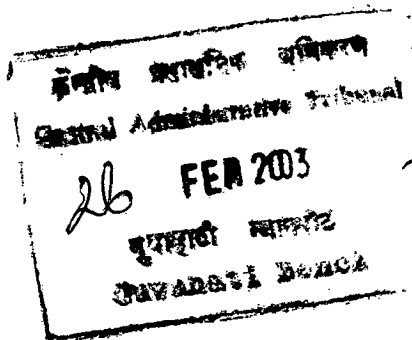
29/11/2002

Copy to

(1) The commissioner
Kendriya Vidyalaya
Sangathan 18 Institutional Area.
Swaheed Jeet Sing Marg
New Delhi 110016
(He is requested to implement the C.A.T.'s
judgement. A 13 paged judgement copy has
been attached herewith)

(2) To
The Assistant Commissioner
K.V.S. (G.R. Maligaon, Guwahati).
(For his information only)

N.B. A 13 page judgement of the C.A.T. Guwahati
Dated 11.7.2002



27
Filed by the Respondent
Through Mr. Majumdar
Advocate
26-2-03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

Contempt petition No. 7/2003.
(In O.A. No. 460/2001).

N. D. Bhuyan.

vs.

K. Bansal & anr.

In the matter of -

An application for dropping the
contempt proceeding filed by the
petitioner.

-And-

In the matter of -

W.P. (C) No. 7634/2002.

BETWEEN -

The Commissioner, Kendriya Vidyalaya
and ors.

-versus-

Sri N. D. Bhuyan.

-And-

In the matter of -

Order dated 2.11.2002 passed by the
Division Bench of Guwahati High Court
in the W.P. (C) No. 7634/2002 suspending

the.....

the impugned judgement and order dated
11.7.2002 passed by the Central Adminis-
trative Tribunal, Guwahati Bench in
O.A. No. 460/2001.

-And-

In the matter of -

1. H.M.Cairae,
Commissioner, Kendriya Vidyalaya
sangathan, 18-Institutional Area,
Shaheed Jeeb Singh Marg, New Delhi.
 2. Kumud Bansal,
Additional Secretary,
Ministry of H.R.D., Govt. of India,
Dept of Secondary & Higher Education.
C-wing, Shastri Bhawan, New Delhi.
- Petitioners.

The humble petition of the
abovenamed petitioners, -

Most Respectfully sheweth :-

1. That the petitioners being made party to this
contempt petition, a copy of the same was served upon them.
The petitioners have gone through the petition and under-
stood the contents thereof.

2.....

2. That the petitioner states that before controverting the facts as alleged in the petition it is necessary to bring to the knowledge of this Hon'ble Tribunal that the petitioner on being aggrieved by the judgement and order have approached the Hon'ble Gauhati High Court by filing a writ petition which is registered as W.P.(C) 7634/02.

3. That the petitioner states that the said writ petition came up for consideration on 29.17.2002 before the Division Bench and the Hon'ble Court was pleased to issue rule calling upon the respondent to show cause. Rule is made returnable on 3.1.2003. The Hon'ble High Court considering the nature of the case and ~~is~~ also after proper application of mind passed an interim order suspending the order dated 11.7.2002 passed in the O.A. No.No. 460/2001 with a liberty to the respondent for notification, alteration or cancellation of the order.

A copy of the order dated 29.11.02 is annexed herewith.

4. That the petitioner submit that since the whole matter is sub-judice before the appellate court and interim direction is also issued by the Hon'ble High Court and as such, this contempt petition may be dropped till the final adjudication of the writ petition.

5.....

VERIFICATION

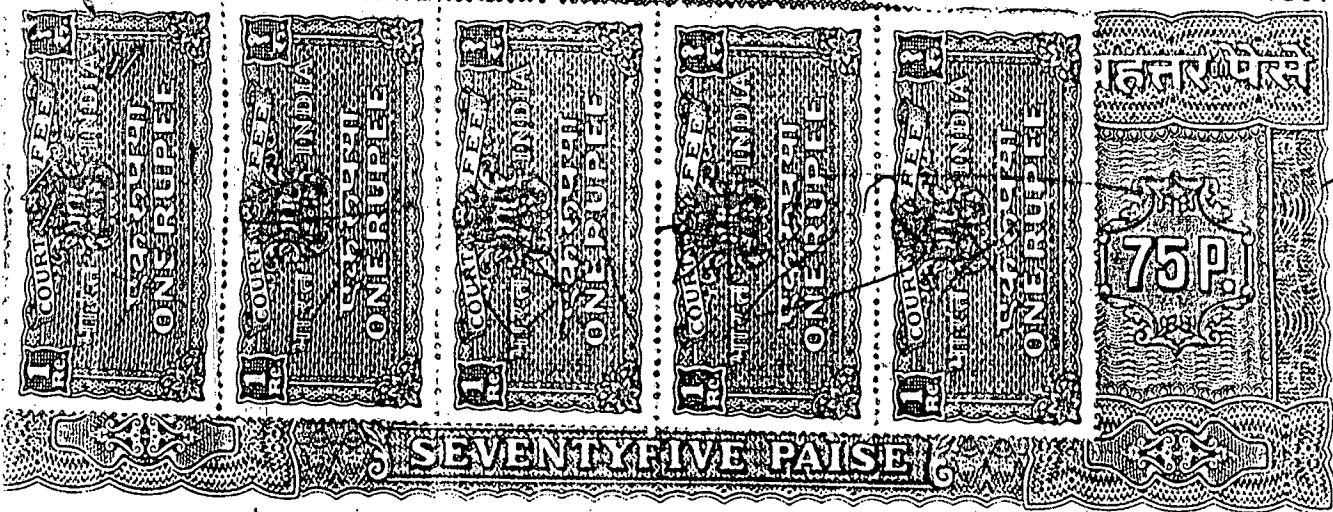
I, Sunder Singh Sehrawat, S/o Shri Harish Chander, Age about 52 years, presently working as the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region, Maligaon Chariali, Guwahati-12, being authorised, verify that the statement made in paragraphs 1, 2 and 3 are true to my knowledge and those made in paragraphs 3 is are based on records.

And I sign this verification on this 21st the day of February 2003 at Guwahati.

Place : Guwahati

A.S. Sehrawat
DEPONENT

Date : 21-02-03



28-81

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.
19/2/03	19/2/03	19/2/03	19/2/03	19/2/03

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM: NAGLAND: MEGHALAYA: MANIPUR: TRIPURA:

MIZORAM AND ARUNACHAL PRADESH)

W.P.C. NO. 7634/2002.

1. The Commissioner, Kendriya Vidyalaya Sangathan
18 Institutional Area Bhaheed Jeet Singh Marg, New
Delhi- 110016.
2. The Asstt. Commissioner Kendriya Vidyalaya Sangathan
Regional office Maligaon. Ghy
3. The Principal Kendriya Vidyalaya. Khanapara .Ghy-22
...Petitioners.

-Vs-

Shri N.D. Bhuyan, Ex- principal ,
Kendriya Vidyalaya , Digaru, Resident of Sixth Mile
Khanapara, Ghy- 781002 Assam.

..Respondents.

::PRESENT::

THE HON'BLE MR. JUSTICE N.S. SINGH

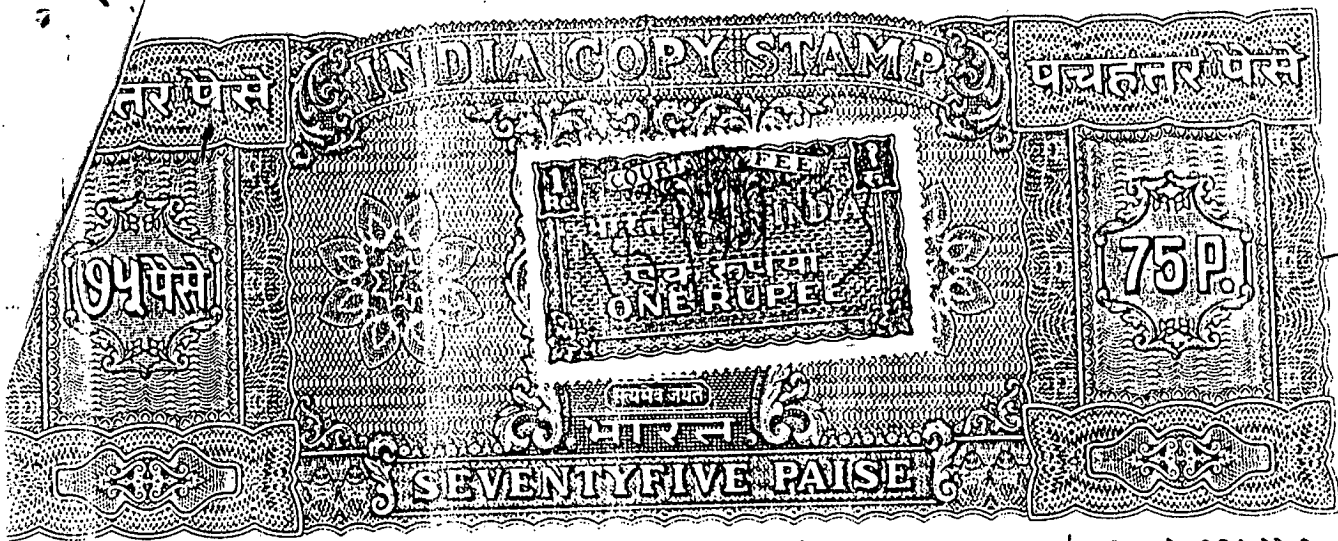
THE HON'BLE MR. JUSTICE B.B. DEW,

For the petitioner :-^vr. KN Choudhury, Mrs. N. Morai

Ms. A. Baruah

For the respondent :-

...2/-



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.
28/11/02				18/12/03

-2-

Date:-29.11.2002. ORDER

Heard Mr. K.N. Choudhury, learned Sr. counsel assisted
by Ms. Boruah learned counsel for the petitioners.

Call for the record.

Let a rule issue calling upon the Respondent to show
cause as to why an appropriate writ should not be issued as
prayed for or as to why such other or further order or orders
should not be passed as to this court may seem fit and proper.

Rule is made returnable on 3.1.03.

Considering the nature of the case and also after proper
application of our mind in this matter, we are of the view
that petitioners could make out ^{a prima} facie case and accordingly
this court made the following and interim order.

The impugned Judgment and order dated 11.7.02 passed
by the learned central Administrative Tribunal, Guwahati in
Original application No. 460/2001, shall remain suspended



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-30-

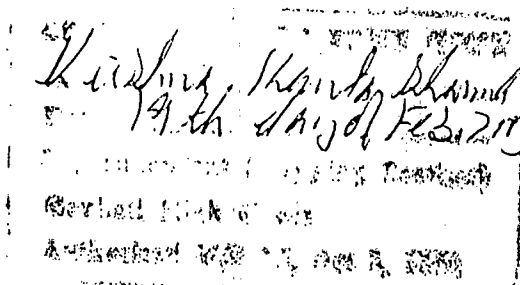
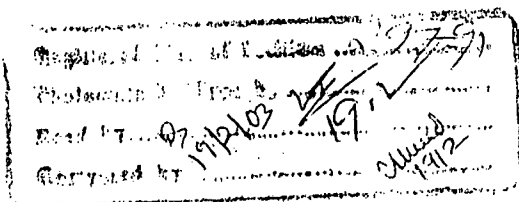
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				18/2/03

-3-

until further orders of this court. However it is made clear that as this interim order is passed in the absence of the Respondent liberty is granted to the Respondent to approach this court for modification/ alteration or cancellation of this order if so advised.

Sd/-B.B. DEV,
JUDGE.

Sd/-N.S. SINGH
JUDGE.



Called
19/2/03