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5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 145/2001.....

R.A/C.P No.....

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SECTION OFFICER (Judl.)

FORM NO.4
(See Rule 42)

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

ORDER SHEET
APPLICATION NO 145/2001 OF 200

Applicant (s) Sri Mohendra Chandra Borra

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. H.K. Baisya

Advocate for Respondent(s) Ms. J.M. Sarma

C.G.S.C.

Notes of the Registry Date Order of the Tribunal

11.4.01

Heard learned counsel for the parties.

Application is admitted. Call for records. Returnable by 4 weeks List on 16.5.01 for orders. Pendency of this application shall not be a bar for the respondents to consider the case of the applicant as per law.

Vice-Chairman

This application is in form but not in form of Petition as provided vide M.P. No. 792/87 for Rs. 1000/- vide IPO/BJ Dated 11-04-01

42 Dy. Registrar. 11/4/01

Requisite filed.

1m

Borra

MS 11/4/01

19-4-01

16.5.01

List on 22.6.2001 to enable the respondents to file written statement

Vice-Chairman

Service of notice issued to the respondents vide D.No. 1412 to 1414 dt. 23/4/01

1m

22.6.01

List on 27.7.01 to enable the respondents to file written statement. Interim order shall continue.

Vice-Chairman

Borra

① Service report are still awaited.

1m

21/6/01

Orders dtd 22/6/01
Communicated to the
Party Counsel. vide
DINo _____ dtd _____

OA. 145 of 2001

23/6/01

27.7.01

Service report is still awaited.
Office to take steps to complete the
service. List on 22.8.01 for orders.

No. written statement
has been filed.

24
26.7.01

lm

K. Ushay
Member

22.8.01

On the prayer of Mr. B.C. Pathak,
learned Addl. C.G.S.C. four weeks time
is allowed to enable the respondents for
filing of written statement. List on
21.9.2001 for written statement and
further orders.

No. written statement
has been filed.

24
20.9.01

K. Ushay
Member

trd

21.9.01

Written statement has been filed. The applicant may
file rejoinder, if any, within 10 days.
List on 17/10/01 for hearing.

Vice-Chairman

24.9.2001

nb

17.10.01

None is present for the applicant. List
the case on 14.12.2001 for hearing.

D/S on
behalf of Applicant.
No. 1, 2 & 3. has
been filed.

K. Ushay
Member

bb

14.12.01

Sri S.K. Baishya, learned counsel for
the applicant submits that he has received
written statement today and wants for time.
List on 23.1.02 for hearing.

K. Ushay
Member

mb

9

3

Notes of the Registry	Date	Order of the Tribunal
	23.1.02	<p>At the request of Ms. J. Sharma learned counsel for the applicant case is adjourned to 1.3.02 for hearing.</p> <p style="text-align: right;"><i>[Signature]</i> Member</p>
<p>26.3.2002</p> <p>Copy of the judgment has been sent to the office for stamp the same to the applicant as well as to the Addl. C.S.C. for the Respondent</p> <p><i>[Signature]</i> B. S. Prasad 27/3/02</p>	<p>lm</p> <p>1.3.02</p> <p>trd</p>	<p>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.</p> <p style="text-align: right;"><i>[Signature]</i> Vice-Chairman</p>

M

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 145/2001 of

DATE OF DECISION 01.03.2002

Shri. Mohendra Chandra Bora

APPLICANT(S)

Mr. H.K. Baishya.

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

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

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE

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

Judgment delivered by Hon'ble Vice-Chairman.

No

4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 145 of 2001.

Date of decision : This the 1st day of March, 2002.

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

Shri Mohendra Chandra Bora,
S/o Shri Punou Bora,
Kamalabora Gaon, Gorokhia Doll,
District : Jorhat,
Assam.

...Applicant

By Advocate Mr. H.K.Baishya.

-vs-

1. Union of India,
represented by the Secretary to the
Government of India, Ministry
of Commuication, New Delhi.
2. Chief General Manager,
Telecommunication,
Assam Telecom Circle,
Guwahati.
3. Sub-Divisional Officer (Phones),
Jorhat

...Respondents

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

—
O R D E R (ORAL)

CHOWDHURY J.(V.C.).

This application has arisen and is directed against the order dated 19.11.1999 passed by the Sub Divisional Engineer, E-10B Exchange, Jorhat treating the period of absence of the applicant from 25.04.94 to 15.04.99 as Dies Non. The applicant was working as casual labour under the respondents. He was granted temporary status with effect from 1.10.1989 vide order dated 23.03.1991. He was

arrested in connection with a criminal case. He was subsequently discharged from the criminal charges. The grievance of the applicant was that though he was released on bail and subsequently discharged from the criminal charges brought against him the respondent authority unlawfully did not allow him to join his duty. Finally he moved this Bench and the Tribunal by its order dated 24.3.1999 in OA. No. 117/1997 directed the respondents to allow the applicant to resume his duty. It was also ordered that he shall continue to be a casual employee with temporary status till his service is regularised. Pursuant to the order of this Bench he was allowed to join and accordingly he joined the duty on 21.6.1999 and he was paid his salary accordingly. He, however for the period from 25.7.1994 to 20.6.1999 was not paid his salary without any fault of his. The respondent on his joining issued a show cause notice asking him to explain why the entire period of absence from 25.04.1994 to 15.4.1999 would not be treated as dies non. He submitted his explanation. The respondents did not accept his explanation and finally by the impugned order the aforesaid period treated as dies non. Hence this application.

2. Heard Mr. H.K.Baishya, learned counsel appearing on behalf of the applicant and Mr. B.C.Pathak, learned Addl.C.G.S.C. for the respondents.


3. The respondents submitted its written statement and stated that the applicant did not hold any regular post. He is a casual labour with temporary status. He absented himself unauthorisedly for the aforesaid period and therefore his period of absence is treated as dies non.

4. Admittedly the applicant is a casual labour with temporary status. In the said circumstances declaring the

Contd..

applicant dies non did not arise. He is eligible all the benefits under the scheme of temporary status but that by itself will not make the applicant entitled for the salary from 25.4.1994 to 15.4.99 as claimed by the applicant. The applicant was eligible for the salary only on joining. The period of absence from duty mentioned above should be counted for all other purposes including seniority so that the said period can be treated in service for consideration of his case for regularisation. Accordingly the respondents are directed to modify the order dated 19.11.1999 in terms of the observations made above.

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



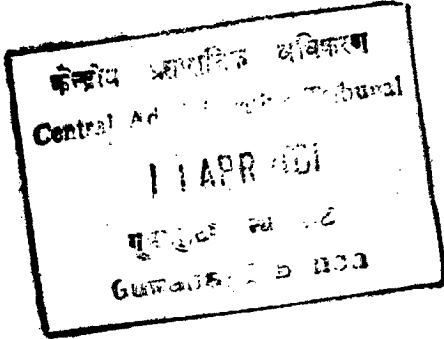
(D.N.CHOWDHURY)
Vice-Chairman

trd

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(An application under Sec.19 of the Administrative Tribunal Act,1985)

O.A. No. _____/2001



BETWEEN

Shri Mahendra Chandra Bora - Applicant

AND

Union of India & ors. - Respondents.

I N D E X.

<u>Sl.No.</u>	<u>Particulars of Documents</u>	<u>Pages</u>
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2.	Verification ...	9
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Filed by -

SC Dutta Roy
4/2/2001
 (S.C. Dutta Roy)
 Advocate.

For office use

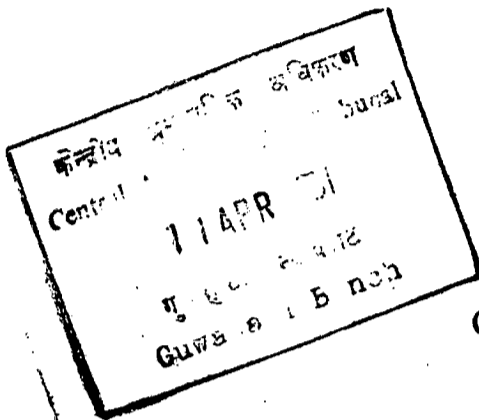
Signature ..	
Date -	

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Filed by -
H.K. Bairbyn
Associate
4/4/2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under Sec. 19 of the Administrative Tribunal Act, 1985)



For use in Tribunal's office

Signature - Date -

O. A. No. _____ of 2001

BETWEEN

Shri Mohendra Chandra Bora,
S/O Shri Punou Bora,
Kamalabora Gaon, Gorokhia Doll,
District: Jorhat (Assam)

.... Applicant

AND

1. Union of India, represented by
the Secretary to the Govt. of India,
Ministry of Communication, New Delhi.
2. Chief General Manager,
Telecommunication,
Assam Telecom Circle,
Guwahati.
3. Sub-Divisional Officer (Phones),
Jorhat.

... Respondents.

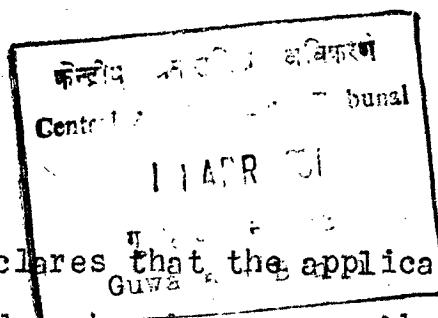
1. Particulars of Orders against which the application is made:

- (i) Letter No. TSM/Leave/MB/99-2000/8 dt. 23.10.99
from the Sub-Divisional Officer, E-10B Exchange,
Jorhat.
- (ii) Letter No. TSM/Leave/MB/99-2000/12 dt. 19.11.99
from the Sub-Divisional Engineer, E-10B Exchange,
Jorhat.
- (iii) Non-payment of arrear salary from 25.04 to
15.04.99 treating the period as ~~Does Non!~~

2. Jurisdiction of the Tribunal:

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

Mcb



3. Limitation:

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

4. FACTS OF THE CASE:

i) That the applicant is a citizen of India by birth and permanent resident of village Kamalabari gaon , P.O. Gorukhia Doll in the district of Jorhat, Assam. He joined service in the office of the S.D.O., Phones, Jorhat in 1986 as a casual labour. He was, however, granted temporary status as Grade 'D' staff with effect from 1.10.1989 vide Order No.E-24/C.M./90-91/17 dated 23.3.1991 issued by the Sub-Divisional Officer, Phones, Jorhat.

ii) That, ever since his joining service in the said office of S.D.O. Phones, Jorhat he has been working as Chowkidar and has been discharging his duties with utmost sincerity, devotion and honesty and there was no complaint either against his performance or against his conduct.

iii) That, the applicant applied for four days leave from 20.7.94 to 24.7.'94 on medical ground which was duly sanctioned by the authorities.

iv) That, while the applicant was on medical leave the telephone authorities detected theft of two drums of copper energy cable from staircase of ground floor of the Telephone Exchange where the applicant was on night duty as Chowkidar and an ejahar was lodged with the local police Station, and the applicant was arrested by police while he was on leave. He was, however, subsequently released on bail and a criminal case was instituted against him and another employee of the Telephone Exchange, in the Court of the Addl. Chief Judicial Magistrate, Jorhat and the case was registered as G.R.Case No. 760/94 under Sec.379 I.P.C.

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Guwahati B No. 1
11/11/96
13

v) That, on his release from the jail hajat on bail the applicant went to the office to resume his duties but he was not allowed to do so during the pendency of the criminal case against him.

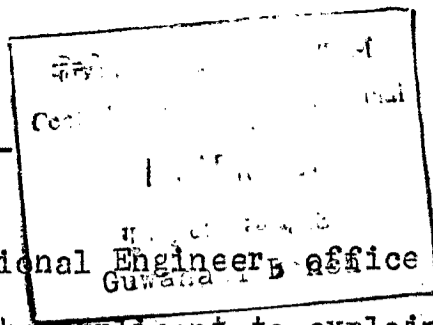
vi) That, on 20.5.1996 the learned Addl. Chief Judicial Magistrate, Jorhat by his order in the aforesaid G.R. Case No.760/94 discharged the applicant from the charge of theft and his bail bond cancelled as the learned Magistrate found no material against him and no witness had implicated him either directly or indirectly in the said theft case.

vii) That, immediately on receipt of the certified copy of the orders dated 20.5.'96 in G.R. Case No.760/94 passed by the learned Addl. Chief Judicial Magistrate, Jorhat, the applicant submitted a representation to the Asstt. Engineer (D-Tax), Department of Telecommunication, Jorhat on 30.5.96 enclosing therewith a copy of the aforesaid orders and praying for allowing the applicant to resume his duties, but he was not allowed to do so. Thereafter the applicant served a Pleader's notice on the Asstt. Engineer (D-Tax), Jorhat on 9.7.1996 requesting him to allow the applicant to resume his duties as he had been discharged from the theft charge by the Addl. Chief Judicial Magistrate, Jorhat.

viii) That, on 9.7.1996 the Divisional Engineer, D.Tax, Jorhat wrote to the Chief General Manager, Telecommunication, Assam Telecom Circle, Guwahati requesting him to let the D.E. know whether the case of the applicant was to be taken up by the office of D.E., or by the office of Chief General Manager, Telecommunication for early disposal of the case as the applicant had been pressing hard for allowing him to resume his duties.

ix) That, thereafter the applicant was shocked and surprised to receive letter No.Staff/TAX/JRT/96-97/64 dated

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27.2.1997 from the Sub-Divisional Engineering office of the D.E., D.Tax, Jorhat asking the applicant to explain his unauthorised absence from duty from 25.7.1994 onwards without any intimation.

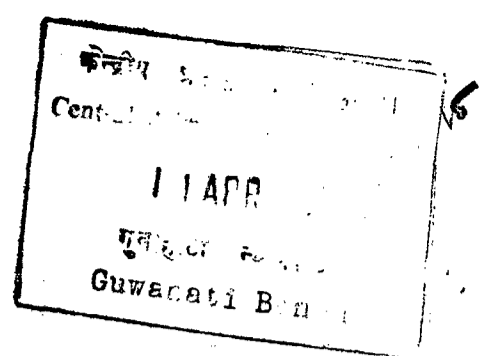
x) That, immediately on receipt of the aforesaid letter dated 27.2.1997 alleging unauthorised absence from duty, the applicant submitted his reply through his lawyer on 1.3.1997, stoutly refuting the allegation of unauthorised absence from duty. Thereafter the authorities were silent and did not take any steps whatsoever in this matter, nor did they suspend the applicant from service or draw any proceedings against him. But at the same time they did not allow the applicant to join his duties despite repeated request by him.

xi) That, having found no alternative the applicant approached this Hon'ble Tribunal in O.A. No.117 of 1997 praying for a direction to the respondents to allow the applicant to join his duties and also to pay him all his back wages.

xii) That, the Hon'ble Tribunal, after hearing the Advocates of both the parties were pleased to pass orders on 24th March, 1999 in the aforesaid O.A.No.117 of 1997 directing the respondents to immediately allow the applicant to resume his duty and he shall continue to be a casual employee with temporary status till he is eligible for regularisation.

A copy of the orders dtd.24.3.1999 in O.A.No.117/1997 is annexed herewith as Annexure A.

xiii) That on receipt of the certified copy of the above orders from the Hon'ble Tribunal the applicant reported for duty in the office of the Sub-Divisional Engineer,



E-10B Exchange, Jorhat.

xiv) That, although the applicant was allowed to resume his duties from the date of his joining on 21st June, '99, and has been paid his salary from the date of his joining, but he has not been paid his salary from 25.7.1994 till 20th June, 1999 during which period he was not allowed to resume his duties by the authorities inspite of repeated approach and request made by the applicant. Thus he was forced remain out of duty by the authorities for no fault of his own.

xv) That, the applicant also sent pleader's notice to the authorities on 21.9.'99 demanding payment of arrear pay from 25.7.1994 to 20th June, 1999 but to no effect.

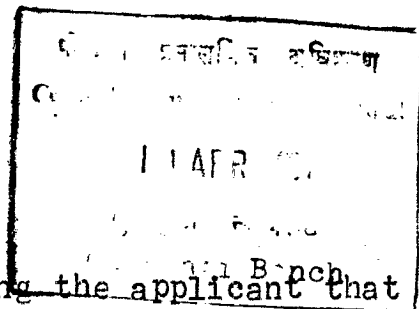
xvi) That, the applicant was surprised to receive letter No.TSM/Leave/MB/99-2000/8 dated 23.10.'99 from the Sub-Divisional Engineer, E.10B Exchange, Jorhat asking the applicant to explain his absence from duty from 25.04.94 to 15.04.99 and why the absence would not be treated as "dies non".

A copy of the said letter dated 20.10.99 from the S.D.E. E-10B Exchange Jorhat is annexed as Annexure B.

xvii) That, on receipt of the aforesaid letter the applicant submitted his written explanation on 1.11.1999 refuting the charge of unauthorised absence from duty which is not borne out by facts and prayed for dropping the charge which is imaginary.

A copy of the applicant's statement of defence dtd. 1.11.1999 is annexed herewith as Annexure C.

xviii) That, after submission of written statement of defence by the applicant, he received letter No.TSM/leave/MB/99-2000/12 dtd. 19.11.99 from the Sub-Divisional Engineer,



E-10B Exchange, Jorhat intimating the applicant that his so called period of unauthorised absence from duty from 25.04.94 to 15.4.99 is treated as "Dies Non" which means that the applicant will not get any salary for the entire period and the said period will not be treated as on duty.

A copy of the impugned letter dtd. 19.11.1999 is annexed herewith as Annexure D.

xix) That, being highly aggrieved by the action of the respondents, the applicant has come up to this Hon'ble Tribunal, praying for redressal of his genuine grievances.

5. GROUND FOR APPEAL:

For that the action of the respondents in issuing orders treating the period of so called absence from duty from 25.4.94 to 15.4.99 as "Dies Non" when, in fact the applicant himself had approached the authorities time without number to allow him to join his duties and having failed to do so he approached the Hon'ble Tribunal praying for a direction to the respondents to allow the applicant to join his duties. The applicant was actually allowed to resume his duties only after the Hon'ble Tribunal passed orders on 24th March, 1999 in O.A. No.117 of 1997 directing the respondents to allow the applicant to resume his duties. The impugned orders treating the period of so called unauthorised absence from duty as "Dies Non" has been passed only to deprive the applicant of his rightful claim to the back wages since he was prevented by the respondents to resume his duties and discharge them.

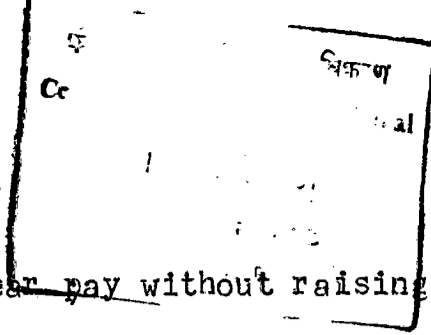
ii) For that, in any view of the matter the action of the respondents is arbitrary, illegal, malafide and violative of all canons of justice.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant has approached the authorities several

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-: 7 :-



times and prayed for his arrear pay without raising the question of so called unauthorised absence from duty when they themselves did not allow the applicant to resume his duties. Therefore, the applicant has no other option than to approach this Hon'ble Tribunal.

7. WHETHER ANY CASE IS PENDING IN ANY COURT/TRIBUNAL ON THE SUBJECT:

The applicant further declares that he has not filed any application or suit with regard to the matter which is agitated in this petition before any Court or any other Bench of this Tribunal, nor any suit or proceeding before any of them.

8. RELIEFS SOUGHT FOR:

Under the facts and circumstances stated above, the applicant prays for the following reliefs :-

- a) To quash the impugned order No.TSM/Leave/MB/99-2000/12 dated 19.11.1999 at Annexure D declaring the period from 25.4.94 to 15.4.99 as "Dies Non".
- b) To direct the respondents to pay the applicant his back wages from 25.4.94 to 15.4.'99 during which period he was not allowed to resume his duties by the respondents for which the applicant had to approach the Hon'ble Tribunal in O.A.No.117 of 1997, and to treat the period as on duty for all purposes.
- c) To grant him any other relief/s as the Hon'ble Tribunal seems fit and proper.
- d) The cost of the proceeding.

9. INTERIM RELIEF, IF ANY:

The applicant prays that the Hon'ble Tribunal may be pleased to pass an interim order directing the respondents to pay the applicant his arrear pay from 25.4.94 to 15.4.'99.

10. PARTICULARS OF I.P.O.

I.P.O. No. Dated for Rs.50. 00 enclosed.
(Rupees fifty only.)

11. LIST OF ENCLOSURES:

- i) A copy of the judgment and orders dated 24.3.1999 in O.A. No.117 of 1997.
- ii) A copy of letter No.TSM/Leave/MB/99-2000/8 dtd. 23.10.'99 from the Sub-Divisional Engineer, E-10B Exchange, Jorhat.
- iii) Applicant's reply to the Show Cause Notice submitted on November 1, 1999.
- iv) A copy of letter No.TSM/Leave/MB/99-2000/12 dtd. 19.11.1999 from the Sub-Divisional Engineer, E-10B Exchange, Jorhat.

केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal
 11 APR 2001
 गुवाहाटी
 Guwahati

25.7.94 - 20.6.99 - not allowed to join ... 9.
 24.3.99

(10) OA 117/97 -

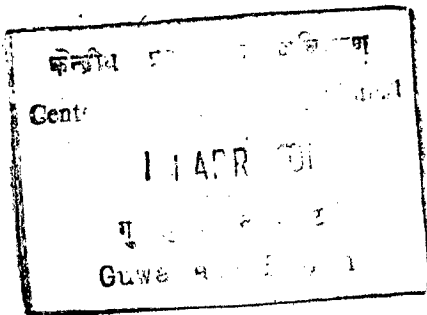
Msb

VERIFICATION.

I, Shri Mahendra Chandra Bora, son of .
 Shri Punou Bora, aged about 35 years, resident
 of village Kamalabora Gaon, P.O. Gorukhia Doll
 in the District of Jorhat, Assam and presently
 working as Chowkidar in the Office of Sub-
 Divisional Engineer, E-10B Exchange, Jorhat
 do hereby solemnly verify that the contents of
 the application from para 1 to xix under item 4
 are true to the best of my knowledge and belief
 and that I have not suppressed any material facts,

20/

And I sign this verification this 14th th
 day of April, 2000 at Guwahati.



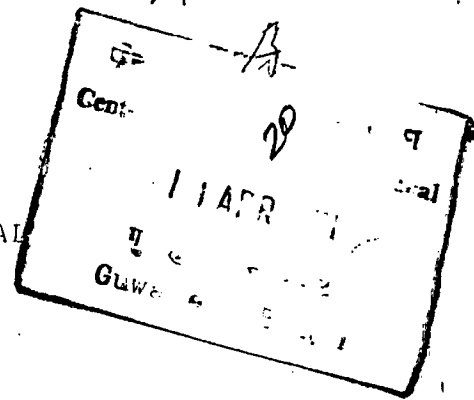
Mab

Shri Mahendra Chandra Bora

Signature of Applicant.

Annexure - A

= 10 =



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.117 of 1997

Date of decision: This the 24th day of March 1999

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

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Mohendra Ch Bora,
Chowkidar,
Office of the Sub Divisional Officer, Phones,
Jorhat.Applicant
Mr R.P. Sarma, Mr S.C. Dutta Roy and
Mr H.K. Baishya.

-versus-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Communication, New Delhi.
 2. The Chief General Manager, Telecommunication, Assam Telecom Circle, Guwahati.
 3. The Sub-Divisional Officer, Phones, Jorhat.Respondents
- By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

ORDER

BARUAH.J. (V.C.)

In this application the applicant has challenged the action of the respondents not allowing him to resume his duty.

2. Facts for the purpose of disposal of this application are:

The applicant was initially appointed Porter in the office of the Sub Divisional Officer, Phones, Jorhat. Subsequently, he was made a Chowkidar. The applicant applied for leave from 20.7.1994 to 24.7.1994 on medical ground. During that period two drums of copper energy cable were

SXB

*Attended
J.M. Sharma
Advocate*



= 13 =

23
Central Administrative Tribunal
Guwahati Bench

"8. Despite conferment of temporary status the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947, on the ground of non-availability of work. A casual labourer with temporary status can quit service by giving one month's notice.

"9. If a labourer with temporary status commits a misconduct and the same is proved in the enquiry after giving him reasonable opportunity (emphasis added), his services will be dispensed with. They will not be entitled to the benefits of encashment of leave on termination of services."

6. There is no material before us to show that such a procedure was adopted in the case of the applicant, inasmuch as even the termination notice was not issued. Therefore, in our opinion the action of the respondents was arbitrary, unreasonable and without any basis.

7. In view of the above we allow the application and direct the respondents to immediately allow the applicant to resume his duty and he shall continue to be a casual employee with temporary status till he is eligible for regularisation.

8. No order as to costs.



Attested
J.M. Sharma
Advocate

Certified to be true
प्रमाणित प्रतिलिपि

[Signature]
12/4/99

Section Officer (J)
अनुभाग अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati-6
गुवाहाटी बेंच, गुवाहाटी-6

[Signature]
12/4/99

GOVT. OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE S.D.E. E-10B, JORHAT.

TSM/Leave/MR/99-2000/8 Dated 23-10-99
No. QB-40/99-2000/19

To
✓ Sri Mohendra Ch. Bora, T/S/M
Pulibar Telephone Exchange,
Jorhat.

Sub:- Unauthorised absent from duty.

As per records, it is found that you were on leave on medical grounds w.e.f. 20-07-94 for five days, and you were supposed to join your duties on the F/N 25-07-94, but you have not turned up for your duties. Consequently you were served several letters to join your duties but you have not turned up. It is also confirmed that you were arrested by the Jorhat Police Stn. on 26-07-94 and released on bail on 02-08-94, but you failed to report to your authority what ever the reason may be. ✓

On 30-05-96 you had submitted a joining report without medical certificate for extension of leave and fitness certificate with leave application till 15-4-99. You have neither submitted any leave application nor informed your concerned authorities which is a serious offence and warrants disciplinary action against you for your misconduct and negligence in your duties. 5

Hence, the undersigned being the competent authority, you are hereby very liberally allowed to explain why the entire period of absence from 25-04-94 to 15-04-99 would not be treated as "dies non". //

Your explanation in this regard must reach the undersigned within 10 (ten) days from the receipt of this letter, failing which decision would be taken exparte.

A. K. Choudhary
23/10/99
Sub-Divisional Engineer
E-10B Exchange, Jorhat.

Copy to:

1. The D.E. (P&A), O/o the T.D.M. Jorhat for favour, of information with reference to his letter No. E-1/TSM/99-2000/30 dtd. 7/7/99.
2. The D.E., D-TAX, Jorhat for favour of information.
3. O/C.

sd/
Sub-Divisional Engineer
E-10B Exchange, Jorhat.

Attested
J. M. Sharma
Advocate

To
The Sub-Divisional Engineer,
E-10B Exchange, Jorhat.

ANNEXURE C.

Ref: Memo No.TSM/Leave/MB/99-2000/8 dated 23.10.99.

Sub: Unauthorised absence from duty.

Dated, Jorhat, November 1, 1999.

Sir,

This is in acknowledgement of your above cited Memo on the subject, asking me to explain in respect of my alleged unauthorised absence from duty etc., I am detailing the actual facts by way of my explanation as given hereunder:

1. That the averment as made in para 1 in the above Memo is not reflecting the true fact. Actually I was on medical leave for 5 days from 20.7.94 and during the said period, the alleged theft occurred and Mr. M. Dekaboruah, Asstt.Engineer, Branch Dvn. Jorhat lodged F.I.R. and the Jorhat Police brought me from my home and detained in the P.S. and only 26.07.94 shown me arrested and admittedly my bail was granted on 02.08.94 which is best known to the authorities and on 3.8.94 when I appeared before the above official and requested to allow me to join my duty, the said officer did not allow me to do so and thereafter I submitted my joining reports on many occasions but at all times nobody heard me nor allowed me to join. I never come across any notice from the authority concerned as alleged.

2. That the contents in para 2 in the Memo is not correct as I was not demanded any certificate for the purpose nor I was suffering from any disease for which I had to take medical treatment. Only the responsible officer did not allow me to join my duty.

3. That the contents as made in para 3 in the Memo do not arise. The question of misconduct and negligence on my part does not arise and on being fed up/frustrated, I had to approach the CAT, Guwahati. The order passed by the CAT Guwahati shall speak the truth.

I, therefore, humbly submit that your benign goodself be pleased to drop that proposed proceeding against me as I am an innocent and duty bound.

Yours faithfully,

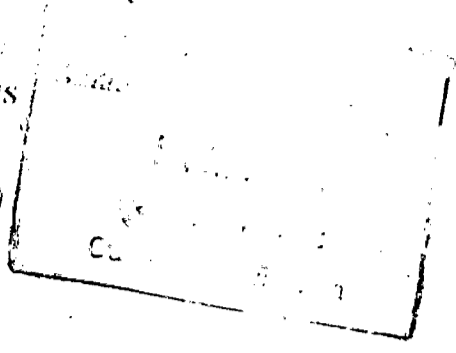
Copy to: 1. E.E.(P&A), O/O TDM Jorhat, Sd/- Mahendra Ch. Bora)
2. D.E.D. Tax Jorhat, for information please.
A copy of Judgment is annexed.

attested
J.M. Sharma
Advocate

= 16 = Annexure - D

Regd A/D
(Confidential)

GOVT. OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE S.D.E., E-10B EXCHANGE
Jorhat-785001



No. TSM/Leave/MB/99-2000/12

Dated 19.11.99

To
Shree Mahendra Nath Bora T.S.M.
C/o Puiihar Telephone Exchange
Jorhat.

Sub :- Disciplinary action.

Ref. This office even No. dt. 23.10.99

With reference to your application dt. 21.09.99, I am hereby much regretted to let you know that your explanation stated therein is far from satisfactory and not to the answer queried.

As per rule conferred upon, I have no any alternative but to order the unauthorised period of absence from duty with effect from 25.04.94 to 15.04.99 is treated as "DIES NON".

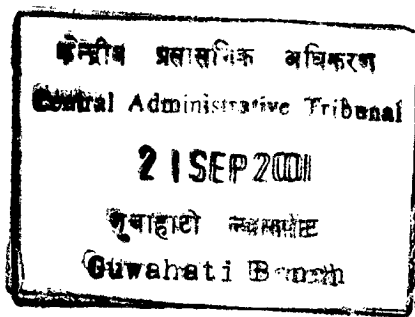
[Signature]
19/11/99
Sub-divisional Engineer
E-10B Exchange, Jorhat.

Copy forwarded for favour of information and necessary action to :-

1. The D.E. (P&X) O/o the T.D.M. Jorhat. This has a reference to his letter No. E-10B/TSM/99-2000 dt. 26.10.99 and *and dated 11-11-99.*
2. The D.E., D-TAX, E-10B Exchange Jorhat.

[Signature]
Sub-divisional Engineer
E-10B Exchange, Jorhat

attested
J.M. Sharma
Advocate



Filed by: *RA*
Prof. *Prof. J. J. J.*
Addl. C.A. *21/9/01*
C.A.T. *C.A.T. C.A.T.*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI

O.A. NO. 145/2001.

Shri Mahendra Chandra Bora.

..... Applicant

- Vs -

Union of India and Ors.

..... Respondents.

(Written Statements on behalf of the respondents
No. 1, 2 and 3).

The Written Statements of the above mentioned
respondents are as follows :

1. That a copy of the O.A. No.145/2001 (referred
to the "application") has been served on the respondents.
The respondents have gone through the same and understood
the contents thereof. The interest of all the respondents
being similar the respondents have filed this written state-
ments as common for all of them.

2. That the statements made in the application,
which are not specifically admitted, are hereby denied by the
respondents.

3. That with regard to the statements made in para 1
of the application, the respondents state that the matter of
misconduct, discipline leave, payment of wage/salary etc. of

Casual Labourer (TS) are regulated as per circulars and schemes and not by the Central Civil Service Rules. Hence these orders are not covered by such rules and the application filed by the applicant has no basis as all action are done in accordance with the legal provisions as applicable to the Casual Labourers (T.S.). Moreover, the present application is not maintainable and liable to be dismissed under the doctrine of res-judicate.

4. That the respondents have no comments to offer to the statements made in para 2 and 3 of the application.

5. That with regard to the statements made in para 4.1, the respondents, state that the applicant is not a regular employee of the Department and does not hold any regular/sanction post. He has been a casual labourer with Temporary Status and subjected to No Work, No. Pay principle. The provisions of CCS (Leave) Rules, Conduct Rules and CCS (CCA) Rules do not apply to the applicant .

6. That with regard to the statements made in para 4.II, the respondents state that there has been dereliction and negligence of duty on the part of the applicant. He has abstained from duty without permission/sanction and exceeded the limit of abstention.

7. That with regard to the statements made in para 4.III & 4IV, the respondents state that the applicant was put on duty to guard the Power Room of E.10 B Exchange Jorhat from 15.7.94 to 22.7.94. He abruptly reported sick and proceeded on leave on Medical ground for 5(five) days from 20.7.94.

-3-

After the applicant proceeded on leave it was detected that costly cable drum are missing from the exchange premises. The matter was reported to local police on 20.7.94 and the police arrested the applicant and taken to custody on 26.08.94 and registered a criminal case against the applicant and other. The applicant did not report to the authority about his arrest and remaining in custody for exceeding 48 hours, even after his release on bail.

8. That with regard to the statements made in para 4.8, the respondents state that the applicant did not report for duty on expiry of the leave period nor made any request for extension of leave. The applicant had proceeded on leave on Medical ground. He should have reported to the authority with Medical Certificate declaring him fit with request to allow to resume duty. He abstained from duty on expiry of leave and there was no intimation from the applicant. The JTO, attached to the exchange, directed him in writings on 26.07.94 to report for duty. This was followed by communication No. TSM/Leave/UB/94-95/4 dated 06.08.94 wherein it was made clear that unless he report for duty the entire period of absence would be treated as 'Dies-non'. The applicant did not respond to the communications and remained absent ~~th~~ thus inviting the invocation of principle of 'No Work No Pay' through imposition of 'Dies-non'.

9. That with regard to the statements made in para 4.VI, the respondents state that the learned Addl. Chief Judicial Magistrate, Jorhat discharged the applicant from the

charge of theft vide his order dated 20.05.96. This, however, does not absolve him of the negligence of duty. The fact remains that the costly Departmental stores were lost from the Departmental building while the applicant was on duty to guard the premises. The applicant failed to detect the loss and did not report the incident to the Departmental authority. Instead he immediately proceeded on leave without formally handing over the charge. The applicant did not report for duty on expiry of leave period and also did not report his arrest and custodial detention. This amounts to gross negligence of duty and grave misconduct.

10. That with regard to the statements made in para 4.VIII, the respondents state that the applicant had proceeded on 5(five) days leave on medical ground and remained untraced and absent for nearly 2(two) year. The applicant has been a casual labourer with Temporary Status, he does not hold lien against any sanctioned post. He could not be allowed to join duty as he reappeared after nearly 2(two) years and that too without enquiring into his character and antecedent during the period of his disappearance.

The applicant was also required to produce the Medical Certificate declaration from him to have fully recovered from the illness and medically fit to join duty. The applicant failed to produce the required Medical Certificate of fitness even after he was called upon to submit the certificate.

11. That with regard to the statements made in para 4.VIII, the respondents state that the cases like that of the applicant need not be referred to Head of Telecom Circle. The local TBS 'B' Officer (in the rank of SDE) is fully competent to decide such cases on merit. The local officer has engaged the applicant and also utilized his service as per local need and suitability of the labourer, the applicant being a casual labourers and being ~~judix~~ guided by the rules of scheme of casual labourers.

12 . That with regard to the statements made in para 4.IX, the respondents state that the applicant abstained from duty for nearly two years without intimation/permission. He also did not respond to the official correspondence directing him to report for duty. He deserted duty immediately after costly departmental stores were stolen from the exchange premises without even reporting the loss/thefting of the stores during his duty period. His conduct is not above suspicion and he ~~was~~^{could} give an explanation to his employer for his misconduct and negligence of duty.

13. That with regard to the statements made in para 4,X, the respondents state that the applicants reply to the notice was untenable and unsatisfactory as already stated in foregoing paras. The applicant is not regular employee of the Department and the provision of CCS(CCA) rules (suspension and disciplinary proceedings) does not apply to the applicant .

14. That with regard to the statements made in para 4.XI, 4.XII and 4.XIII, the respondents state that the

applicant was allowed to join duty on the basis of judgement and order dated 24.3.99 passed by the Hon'ble Tribunal in O.A. No. 117 of 1997. In their order the Hon'ble Tribunal was pleased to direct the Respondents Department to allow the applicant to join duty and also made clear that the applicant shall continue to be a casual employee with Temporary Status till he is eligible for regularization. The Respondents Department has fully complied with the CAT's order.

15. That with regard to the resp statements made in para 4.XIV, the respondents state that the applicant has not performed any duty during the period from 24.07.04 to 20.06.99. He is not entitled for the wages for the period. The applicant has abstained from duty without intimation/permission. He has also shown utter negligence of duty amounting to grave misconduct and failed to produce the Medical Certificate of fitness essential for resumption duty after availing leave on Medical Ground followed by unauthorized absence. The applicant is not a regular employee of the Department and he does not hold any lien against any sanctioned post. During his absence, the respondents Department had to utilize the service of other employee/labourer to perform the duty of the applicant and incur expenditure in the shape of wage to the substitute labourer.

16. That with regard to the statements made in para 4.XV and 4.XVI, the respondents state that the applicant is not entitled for any remuneration/wage for the service not actually rendered to the Department. He cannot demand what

he does not rightfully earn. The applicant owes an explanation to his employer for his misconduct and abstention from duty without any intimation.

17. That with regard to the statements made in para 4.XVII and 4.XVIII, the respondents state that the applicant's explanation is not tenable as he failed to give satisfactory explanation of his conduct and abstention. Accordingly, the period of absence has been declared as 'Dies non' which means that he will not receive any remuneration/wage for the period as he did not perform duty.

18. That with regard to the statements made in para 4.XIX, the respondents state that the 'Dies non' is not a punishment in the present case. The casual labourers are engaged for performance of duty which cannot be managed by regular employees. Such labourers get the wage at the fixed rate for each day of duty. No wages become payable unless the full day's is satisfactorily performed by the labourer for any reason.

19. That with regard to the statements made in para 5.1 and 5.II, the respondents state that in view of the facts of the case, the grounds shown in the case, can not sustain in law and hence the application is liable to be dismissed with cost.

20. That with regard to the statements made in para 6 and 7, the respondents state that the applicant has made the statements in para 7 by suppressing material facts and hence the application is liable to be dismissed with cost.

21. That with regard to the statements made in para 8(a), 8(b), 8(c), 8(d) and 9 of the application, the respondents state that under the facts and circumstances of the case and more particularly in compliance with the order dated 24.3.99 passed in O.A. No.117/97, the applicant is not entitled to get any such relief as prayed for and hence the application is liable to be dismissed as res-judicate and being devoid of any merit.

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

Verification.....

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

I Shri Ganesh chandra Sarma , presently
working as Asst. Director Telecom. (Legal) , being
duly authorised and competent to sign this verification ,
do hereby solemnly affirm and state that the statements made
in para 1 to 21 are true to my knowledge
and belief, those made in para _____ being
matter of records, are true to my information derived there-
from and the rest are my humble submission before this Hon'ble
Tribunal. I have not suppressed any material facts.

And I sign this verification on this 20 th day of
September, 2001, at Guwahati.


Deponent.

Asst. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007