

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 142/02

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SECTION OFFICER (Judl.)

FORM NO. 4  
 (See Rule 42 )  
 CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.  
 GUWAHATI.

ORDER SHEET

Orginal No. 142/2002  
 Misc.Petition No. \_\_\_\_\_  
 Contempt Petition No. \_\_\_\_\_  
 Review Application No. \_\_\_\_\_

Applicant(s) Ghana Kanta Hazarika

Respondent(s) N. O. T. Toms

Advocate for Applicant(s) J. L. Sankar, Mrs. S. Deka

Mr A. Deb Roy,

Advocate for Respondent(s) Sr. C.G.S.C.

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
	<u>8.5.02</u>	Pass over for the day. List on <u>17.5.2002.</u> for <del>of</del> admission.
<u>17654969/1</u>		<u>Vice-Chairman</u>
<u>3.4.02</u>	<u>1m</u>	
<u>17.5.02</u>		Heard Mrs. S. Deka, learned counsel for the Applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. For the Respondents.
		The application is admitted. Call for the records.
		List on 14.6.2002 for orders.
<u>D/No 153/10 33</u>	<u>mb</u>	<u>I C Ushan</u>
<u>Dtd - 20/5/02</u>	<u>14.6.02</u>	Mr. A. Deb Roy, Sr. C.G.S.C. prays for adjournment to file written statement. Prayer is allowed. List on 19.7.02 for orders.
<u>① Service report      were still awaited</u>	<u>1m</u>	<u>I C Ushan</u>
	<u>13.6.02</u>	Member

No. written statement  
has been filed.

19.7.02

List on 23.8.02 to enable the  
respondents to file written statement.

By  
18.7.02

No. WLS has been  
filed.

By  
22.8.02

lm

23.8.2002

At the request made by Mr. A. Deb Roy, learned Sr. C.G.S.C. four weeks time is allowed to the respondents to file written statement.

List the case for order on 20.9.

2002.

IC Usha  
Member

No. WLS has been  
filed.

By  
19.9.02

20.9.02

The respondents are yet to file written statement. Further four weeks time is allowed to the respondents to file written statement on the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents as a last chance.

List on 8.11.2002 for orders.

No. WLS has been  
filed.

By  
17.11.02

mb

8.11.02

Further four weeks time is allowed to the respondents to file written statement, if any. List on 13.12.2002 for orders.

Pendency of this application shall not stand in the way of the respondents in computing the pensionary benefits in the light of the order passed by the respondents vide dated 10.8.2002.

Vice-Chairman

No. WLS has been  
filed.

By  
12.12.02

mb.

13.12.2002

None appears for the applicant. List on 16.12.02 for orders. Attempt will be made to dispose of the case on that day.

Vice-Chairman

nkm

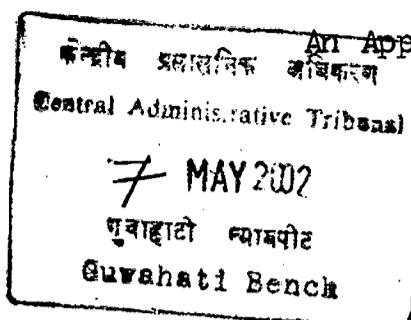
Vice-Chairman

Note of the Registry	Date	Order of the Tribunal
<p>20.12.2002</p> <p>Copy of the order has been sent to the Office for taking the case to the applicant as well as to the DSSC for the Registry.</p> <p>LS</p>	16.12.02	<p>By this application the applicant sought for direction for fixation his pay and subsequent pension benefit at the revised rate in terms of the 5th Pay Commission recommendation.</p> <p>Mr. A. Deb Roy, learned Sr. C.G.S.C. appearing on behalf of the respondents stated that by communication dated 10.12.2002, the respondents authority has revised the pay of the applicant as per 5th Pay Commission recommendation vide LPC No.II.11012/02-34/EST (Bill) dated 5.12.2002. Mrs. S. Deka, learned counsel appearing on behalf of the applicant stated that she is yet to take necessary information from the applicant Sri. G.K. Hazarika. However, in view of the communication and LPC mentioned above, the matter has become infructuous since the applicant has obtained relief. Accordingly, the application is dismissed as infructuous.</p> <p>A copy of the communication dated 10.12.2002 is placed on records.</p> <p style="text-align: right;">Vice-Chairman</p>

mb



In the Central Administrative Tribunal : Guwahati Bench



An Application under Section 19 of the Administra -  
tive Tribunal Act, 1985.

Q.A. No. 142/2000.

Sri Ghana Kanta Hazarika

..... Applicant

-Versus-

Union of India & Others.

..... Respondents

I N D E X

Sl.No.	Annexure	Particulars	Pages
1.	4	Application	1 - 5
2.	-	Verification	6
3.	1	Copy of the judgment and order dt. 5.3.2001.	7 - 10
4.	2	Copy of the order dt. 10.8.2001	11
5.	3	Copy of the letter dt. 14.2.2002.	12 - 13.

Filed by:

S. Deen a  
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. - 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.

DETAILS OF APPLICATION

1.

Particulars of the Order against which the  
Application is made :-

The application is made 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

Contd .. 2/-

Filed by The Applicant  
through. Gouri Debi  
Advocate  
6.5.02.

Ghagarkhelia

scale after 5th pay Commission recommendation.

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 a citizen of India and as such 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 a memorandum of charges was issued on 23.2.94. Thereafter, he was placed under suspension w.e.f. 5.4.95. 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. Though he was retired after the implementation of 5th Pay Commission recommendation, his pay was not fixed according to the new scales. His pension was fixed on pre-revised pay, cf. Rs. 1950 (4% P.C.). ~~Rs.~~

4.4. That the applicant filed an original application before the Hon'ble Central Administrative Tribunal, Guwahati Bench which was registered as O.A. No. 147/2000 for correct fixation of

the pension and other pensionary benefits as per 5th Pay Commission recommendation accepted by Union of India and for treating the suspension period as a qualifying service period. The Hon'ble CAT, was pleased to deliver the judgment on 5.3.2001 directing the Respondent No. 3 to look into the matter and pass a reasoned order on the representation of the applicant dated 18.8.99 as to the admissibility on his lawful pension and other benefits as per the 5th Central Pay Commission Recommendations.

*Copy enclosed*

The copy of the judgment and order dt. 5.3.2001 in O.A. 147/2000 is enclosed as Annexure - 1.

4.5. That the service of the applicant during the suspension period has been treated as qualifying service vide order I.12015/33/97-Discp/210 dated 10.8.2001 and he has received Rs. 10,892/- as adjustment/regularisation of Pay/substenance allowance for the period of suspension. But unfortunately his last pay drawn has not been fixed in the 5th Pay Commission Scale, and pension has been calculated on prrevised pay of 1995.

The copy of the order dt. 10.8.01 is enclosed as Annexure - 2.

4.6. That the correct fixation of pension and other pensionary benefits has not yet been made, as a result he is suffering loss towards monthly pension including arrears, commutation, D.C.R.G. etc. The applicant requested the respondent No. 3 through letter dated 14.2.02 for giving the aforesaid reliefs within 30 days from the date of the receipt of the said letter. But till date no information has been received by the applicant, Neither the last pay drawn nor the has been revised and fixed as per 5th Pay Commission.

nor the period of suspension now treated as on duty has been counted as qualifying service.

*The copy of the Lawyer's letter*

*dated 14.2.02 as enclosed as Annexure - 3.*

4.7. That delay in the fixation of the last pay drawn, and pension is causing irreparable loss to the applicant.

5.

Grounds for Relief :-

5.1. For that the pay of the applicant should be fixed correctly as per Hon'ble Central Administrative Tribunal's order dt. 5.3.01. His last pay drawn should be fixed in the 5th Pay Commission scale ~~not 4th Pay Commission scale.~~

5.2. For that due to non-fixation of correct pay, the applicant has been denied the correct pension and other pensionary benefit including areas, commutation, D.C.R.G. etc. As such he is receiving less pension, with loss of other retires benefits.

5.3. For that non-payment of the correct pension and pensionary benefit is violative of Article 14 and 21 of the Constitution of India.

5.4. For that the non-compliance of the Judgment and order dt. 5.3.01. of this Hon'ble CAT, lies a contempt proceeding against the respondent No. 3.

5.5. For that after the ~~treating~~ of the earstwhile period of suspension as duty, his pay should be refixed with consequent enhancement of pension and other retires benefit.

6. Details of Remedy Exhausted :-

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

7. Particulars of previous application filed if any :-

The applicant submits that he had filed an Original Application before this Hon'ble Tribunal which was regd. as O.A.147/2000 and disposed of on . S. 3. C1. and there is no other application pending before any tribunal or Court.

8. Relief Sought :-

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

1. The pay on 1.9.97 should be fixed correctly in the ~~5th~~ 5th Pay Commission Scale and the period of suspension now treated as duty, should be taken as qualifying service and monthly pension and pensionary benefit should be fixed as per 5th Pay Commission recommendation.

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

3. Any other relief the Hon'ble Tribunal may be pleased to grant including cost of the case.

9. Interim Relief :-

Nil.

10. Particulars of Application fees :-

Indian Postal Order No. : 7 G 549691

Dated : 3.4.02.

Payable at : Guwahati.

11. List of Enclosures :

As in the Index.

✓

VERIFICATION

I, Sri Ghana Kanta Hazarika, son of Late Babula Hazarika, aged about 58 years residing in Sixmile, Chasal, Guwahati - 22, do hereby verify that the statement made in paragraphs 1, 4, 6, 7, 10 and 11 are true to my knowledge and those in paragraphs 2, 3, 5, 8 & 9 are true to my 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 20<sup>th</sup> day of April, 2002, at Guwahati.

Date: 20<sup>th</sup> April /02.

Place : Guwahati

Ghana Kanta Hazarika

SIGNATURE

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 Ghan Kanta Hazarika  
Son of Late Bhubon Hazarika  
Nimolia, Chhail,  
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.

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 under 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 be 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 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.

SD/VICE CHAIRMAN

**TRUE COPY**

सत्यप्रिय

Section Officer (L)

अधिकारी अधिकारी (सेक्शन ऑफिसर)

Central Administrative Tribunal

दिल्ली प्रांत

Guwahati Bench, Assam

पूर्णाधीन अधिकारी

trd

6/3/2001  
X/25

IX

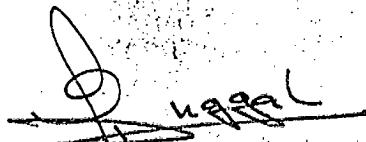
MAHANIDESHALAYA ASSAM RIFLES  
DIRECTORATE GENERAL ASSAM RIFLES : SHILLONG

O R D E R

I.12015/33/97-Discp/210

Dated, Shillong, the 10 Aug 2001

Further to this Directorate Order No I.12015/33/97-Discp/197 dated 14 Aug 1997 and in pursuance to the Judgement and order dated 05 Mar 2001 in O.A No 147/2000 Shri Ghana Kanta Hazarika Vs Union of India and Others, the undersigned hereby directs to count the suspension period of two years four months and twenty six days wef 05 Apr 1995 to 31 Aug 1997 of Shri Ghana Kanta Hazarika towards reckoning qualifying service to meet the ends of justice.

  
 (GK Duggal)

Lieutenant General  
 Director General  
 Assam Rifles

Shri GK Hazarika  
 Ex. Assistant  
 Son of Late Babula Hazarika  
 Six Miles, Chasai  
 PO Khanpara  
 Guwahati - 22

Memo No. I.12015/33/97-Discp/210 Dated Shillong, the 10 Aug 2001

Copy forward to :-

1. Pay and Accounts Office, Assam Rifles  
 Laitumkhrah, Shillong - 793003
2. Establishment Branch,  
 DGAR, Shillong - 793011
3. Record Branch (NE),  
 DGAR, Shillong - 793011
4. Legal Branch  
 DGAR, Shillong - 793011
5. Office Copy.

Mrs. Sugata Deka, B.Sc. (Hons) LL.M  
ADVOCATE  
GUWAHATI HIGH COURT

Residence :  
BUKMINIORAON  
OPP. TANCHA SATEK  
GUWAHATI-781023  
Phone : 865593, 865982

To.

The Lieutenant General,  
Director General,  
Assam Rifles,  
Shillong - II.

Sub :- Payment and fixation of pension and other benefits  
as per 5th Central Pay Commission and as per  
Hon'ble CAT. Judgment dated 5.3.2001 in OA. 147/  
2000, Sri G.K. Hazarika - v - U.O.I. & Ors.

Sir,

Under the instruction of my client Sri Ghana Kanta Hazarika,  
Assistant (Retd.), I bring the following facts to your notice for  
necessary action.

1. That my said client was appointed as Assistant w.e.f.  
1.2.66 and a memorandum of charges was issued on 23.2.94. Thereafter  
he was placed under suspension w.e.f. 5.4.95. 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.

2. That my said client filed an original application before  
Hon'ble Central Administrative Tribunal, Guwahati Bench which was  
regd. as OA 147/2000 for correct fixation of the pension and other  
pensionary benefits as per 5th Pay Commission and for treating the  
suspension period as a qualifying service period. The Hon'ble CAT  
delivered the judgment on 5.3.2001 with the following direction  
" . . . to look into the matter and pass a reasoned order on the  
representation of the applicant dated 18.8.99 as to the admissibility  
on his lawful pension and other benefits as per the 5th Central Pay  
Commission recommendation . . . ";

3. That the said client has informed me that vide I-12015/  
33/97 - Discp/210 dated 10.8.2001, the necessary order has been

Contd . . 2/-

Mrs. Stuti Deka, B.Sc. (Hons) LL.M  
ADVOCATE  
GAUHATI HIGH COURT

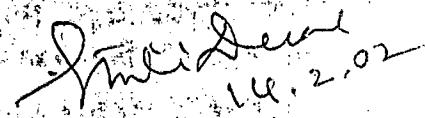
Residence :  
RUKMINIGAON  
OPP. TANGRA SATRA  
GUWAHATI-781022  
Phone : 5655931, 565982

(2)

passed to treat the period of suspension as qualifying service and he has received Rs. 10,892/- as adjustment/regularisation of pay/subsistence allowance for the period of suspension. But the correct fixation of pension and other pensionary benefit has been not yet been made and as a result he is suffering loss towards monthly pension, including arrears, commutation, D.C.R.G. etc.

Under instructions of my aforesaid client I would request you kindly to refix his pension taking correct qualifying service and pay (under fifth pay commission Scale), and make payment of current revised pension and arrear pension, commutation and D.C.R.G., with interest @ 18% p.a. within 30 days from the date of receipt of this notice and kindly take notice that if my said client does not receive the aforesaid reliefs I am under instruction to file cases in appropriate courts of laws for damages and other reliefs including contempt of the Hon'ble Central Administrative Tribunal.

Yours sincerely,

  
14.2.02  
(Stuti Deka)