

FORM NO. 4.
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. _____

Misc. Petition No. _____

Contempt Petition No. 23 / 05 in O.A. 175/03

Review Application No. _____

Applicant(S): Chitra Ranjan Deb

Respondant(S): U. O. I. Jers

Advocate for the Applicant(S):- M. Chanda, S. Nath

Advocate for the Respondant(S):- Case

Notes of the Registry	Date	Order of the Tribunal
This Contempt petition has been filed by the counsel for the petitioner praying for initiation of a Contempt proceeding against the alleged Contemner for non-compliance of the order dated 27.08.04 passed in O.A. by this Honble Tribunal.	1.8.2005	List on 02.08.2005.
mb	1.8.2005	Member Vice-Chairman
Laid before Honble Court for further order.		The applicant has filed this contempt and petition alleging that the respondents deliberately and willfully did not take any action for implementation of the Judgment and Order dated 27.08.2004 passed by this Tribunal in O.A. No. 175/2003 which amounts to contempt of court.
		We have perused the direction contained in the order O.A. The direction is as follows :
		"In view of the above discussions the impugned orders are quashed. It will, however, be open to the respondents/the appropriate authority to issue a show cause or afford the applicant an opportunity of hearing and then to refix the pay/pension."
		We do not find any positive direction in the above so that it is to be stated there is any contempt. At the most the applicant can request the

Contd/-

Contd/-

01.08.2005

the respondents to expedite the fixation of pay for which a show cause notice has already been issued. This is a fresh cause of action.. Without prejudice to the right to the applicant, ~~may~~ initiate fresh proceedings in case the respondents have not expedited the matter.

Hence, the U.P. is dismissed.

[Signature]
Member

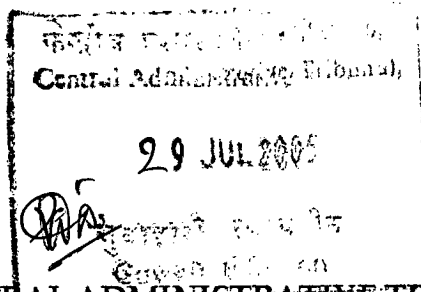
[Signature]
Vice-Chairman

mb

29.8.05

Copy of the order has been sent to the D/Secy, for issuing the rule to the applicant's Advocate.

[Signature]



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 17 of the Administrative Tribunals Act, 1985)

Contempt petition No. 23 /2005

In O.A No. 175 of 2003.

In the matter of:

Sri Chitta Ranjan Deb.

--- Petitioner.

-Versus -

Union of India and Others.

----- Alleged Contemnors.

-And -

In the matter of:

An application under Section 17 of the
Administrative Tribunals Act, 1985
praying for initiation of a Contempt
proceeding against the alleged
contemnors for non-compliance of the
order dated 27.08.2004 passed in
O.A.No.175/2003.

-And -

In the matter of:

Sri Chitta Ranjan Deb.
Retired Superintendent,
RMS Division, Silchar,
Link Road, Lane No. 1-A,
Silchar, Assam.

... Petitioner.

-Versus-

1. Sri R. Ganesan,
Director General,
Department of Posts,

3¹
Filed by the petitioner
through: Subrata X. Chh.
Advocate
29.07.05

Dak Bhawan,
Sansad Marg
New Delhi.

2. Shri S.K. Das,
Chief Postmaster General
Assam Circle,
Guwahati-1.
3. Shri K.N.D Kachari,
Postmaster General,
Dibrugarh Region,
P.O- Dibrugarh, Assam.
4. Shri B. Prasad,
Director of Accounts (Postal),
Chenikuthi,
Guwahati.

... Alleged Contemnors.

The humble petitioner above named-

Most respectfully sheweths: -

1. That your petitioner approached this Hon'ble Tribunal through O.A. No. 175/2003 against the impugned orders of reduction in pay and subsequent reduction in all terminal benefits like pension, DCRC, Commutation of pension, Leave encashment, CGIS etc. as well as against the order of recovery.
2. That the Hon'ble Tribunal after hearing the contentions of the parties was pleased to dispose of the Original Application No.175 of 2003 on 27.08.2004, directing the respondents as follows: -

"----- In view of the above discussions the impugned orders are quashed. It will, however, be open to the respondents/the appropriate authority to issue a show cause or afford the applicant an opportunity of hearing and then to refix the pay/pension. The O.A. stands allowed accordingly.

No order as to costs."

(Copy of the Judgment and order dated 27.08.2004 is annexed hereto and marked as Annexure-I).

3. That your petitioners thereafter approached the alleged contemnors through representation dated 10.09.2004, praying for implementation of the Judgment and order dated 27.08.2004 passed in O.A. No. 175/2003, enclosing therewith a copy of the aforesaid judgment and order dated 27.08.04.

(Copy of the representation dated 10.09.04 is annexed hereto and marked as Annexure-II).

4. That the alleged contemnors, thereafter, as per direction passed by this Hon'ble Tribunal in O.A. No. 175/03 issued a show cause notice dated 18.10.2004 to the petitioner asking for his explanation on the notice. Accordingly, the petitioner submitted a detailed reply of the show cause notice on 10.11.04 with a request to refund of all his pensionary benefits which were irregularly deducted from his pensionary benefits and also prayed to regulate his pension.

Copy of the show cause notice dated 18.10.04 and reply dated 10.11.04 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure-III & IV respectively.

5. That it is stated that the alleged contemner/respondent No. 4 is not a party in the original application but he has been impleaded as contemner No. 4 as because he has a vital role in implementing the judgment and order dated 27.08.2004 in O.A. No. 175/2003. Therefore, it is necessary to implead him as contemner No. 4 in the instant contempt petition.
6. That the alleged contemnors after a lapse of more than 8 (eight) months have not intimated the petitioner regarding his show cause reply nor taken any final decision on his show cause reply and also not implemented the

judgment and order dated 27.08.2004 passed in O.A. No. 175/2003 which amounts to contempt of court.

7. That it is stated that the alleged contemnors deliberately and willfully did not initiate any action for implementation of the Judgment and Order dated 27.08.2004 passed by this Hon'ble Tribunal in O.A. No. 175 of 2003 which amounts to Contempt of Court. Therefore, the Hon'ble Tribunal be pleased to initiate a Contempt proceeding against the alleged contemnors for willful violation of the order of the Hon'ble Tribunal dated 27.08.2004 in O.A. No. 175/2003 and further be pleased to impose punishment upon the alleged contemner in accordance with law.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to initiate Contempt proceeding against the Alleged Contemnors for willful non-compliance of the order dated 27.08.2004 in O.A. No. 175/2003 and be pleased to impose punishment upon the alleged contemnors in accordance with law and further be pleased to pass any other order or orders as deemed fit and proper by the Hon'ble Court.

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

AFFIDAVIT

I, Sri Chitta Ranjan Deb, S/o- Late J.C. Deb, aged about 62 years, retired Superintendent, RMS Division, Silchar, resident of Link Road, Lane No. 1-A, Silchar, Assam, petitioner in the instant petition, competent to swear this affidavit, do hereby solemnly declare as follows: -

1. That I am the petitioner in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statement made in para 1 to 6 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench for non-compliance of the Hon'ble Tribunal's order dated 27.08.2004 passed in O.A. No.175/2003.

And I sign this Affidavit on this 29th day of July' 2005.

Chitta Ranjan Deb.
Deponent

Identified by
Surajit Choudhury.
Advocate

The abovesigned deponent
solemnly affirmed and declared
before Shri Subrata Nath, Advocate
on the 29th day of July' 05, who
is identified by Shri Surajit-
Choudhury Advocate.

Subrata Nath.
Advocate
29-07-05 -

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati for initiating a contempt proceeding against the contemnors for willful disobedience and deliberate non-compliance of order of the Hon'ble Tribunal dated 27.08.2004 passed in O.A. No. 175/2003 and to impose punishment upon the alleged contemnor for willful disobedience and deliberate non-compliance of order dated 27.08.2004 of the Hon'ble Tribunal.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 175 of 2003.

Annexure-I

Date of Order : This the 27th Day of August, 2004.

The Hon'ble Shri D.C.Verma, Vice-Chairman

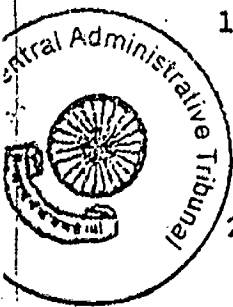
The Hon'ble Shri K.V.Prahladan, Administrative Member.

Sri Chitta Ranjan Deb,
Retired Superintendent,
RMS Division, Silchar,
Link Road, Lane No. 1-A,
Silchar, Assam.

. . . Applicant

By Advocate Sri M.Chanda.

- Versus -

- 
1. Union of India,
represented by the Secretary to the
Government of India,
Department of Post,
Ministry of Communications,
New Delhi.
 2. The Director General,
Department of Posts,
Bak Bhawan,
Sansad Marg, New Delhi.
 3. The Chief Postmaster General,
Assam Circle,
Guwahati.
 4. The Postmaster General,
Dibrugarh Region,
P.O. Dibrugarh,
Assam.
 5. The Deputy Director,
Accounts (postal)
Chenikuthi,
Guwahati.

. . . Respondents.

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

O R D E R

K.V.PRAHLADAN, MEMBER(A)

The applicant joined service as a postal Clerk in the postal Department on 5.3.1963. In 1973 he was promoted as Inspector of post Offices. Then he was promoted as Assistant Superintendent of post Offices. He was temporarily promoted as Deputy post Master on 1.12.1992. He was

contd..

gus
Subscribed for
Silchar

promoted and joined as Superintendent of Post Offices at Silchar on 4.1.1993. The salary of the Assistant Superintendent of Post Offices was Rs.1640-2900/- (pre revised and Rs. 5500-9000 (revised). Salary of the Deputy Post Master was Rs.2000-3200 (pre-revised) and Rs.6500-10500 (revised). Salary of the Superintendent of post Offices was Rs.2000-3500 (pre revised) and Rs.7500-12000 (revised scale). He was promoted as Deputy Divisional Manager in the office of the Chief postmaster General, Assam Circle, Guwahati by order dated 31.3.1998 in the pay scale of Rs.7500-12000/-. He was working as Superintendent, RMS, Silchar when he retired on 31.10.2002 with basic pay of Rs.10,250/-. This Original Application has been filed against the order of the Director of postal Accounts dated 30.08.2002 at Annexure - 6, and the order of the post Master General, Dibrugarh dated 15.1.2003 at Annexure - 7 ordering a recovery of Rs.96,792/- as over-payment made on account of wrong fixation of pay with effect from the date of his promotion as Superintendent of post Offices ^{from} on 4.1.1993 till 1.1.2002.

The respondents say that the applicant was an Assistant Superintendent of post Offices when he was temporarily promoted as Deputy post Master and then as Superintendent. Therefore, his pay as Superintendent should have been fixed taking into consideration his pay in the substantive post of Assistant Superintendent of post Offices ^{and not the scale of Dy. post Master.} His pay was accordingly refixed and re-calculated with effect from 1.1.1993 to 1.1.2002 vide order dated 30.8.2002 at Annexure - 6. An over payment of Rs.96,792/- was calculated and ordered to be recovered from his Leave Encashment amount due to him vide letter dated 15.1.2003 at Annexure-7.

We have heard Mr.M.Chanda, learned counsel for the applicant and also Mr.A.Deb Roy, learned Sr.C.G.S.C. for the

respondents. The respondents want to re-fix the pay of the applicant after he has been drawing his pay in various scales right from 1993 to 2002. The Department with its internal check, internal audit and administrative verification failed to notice any anomaly in the pay drawn by the applicant. At the far end of his career the applicant is directed to refund a huge amount. In this connection, the Hon'ble Supreme Court in Bhagwan Shukla -vs- Union of India & Others reported in (1994) 6 SSC 154 has given the following judgment;

"2. The controversy in this appeal lies in a very narrow compass. The appellant who had joined the Railways as a Trains Clerk w.e.f. 18.12.1955 was promoted as Guard, Grade-C w.e.f. 18.12.1970 by an order dated 27.10.1970. The basic pay of the appellant was fixed at Rs.190 p.m. w.e.f. 18.12.1970 in a running pay scale. By an order dated 25.7.1991, the pay scale of the appellant was sought to be re-fixed and during the re-fixation of his basic pay was reduced to Rs.181 p.m. from Rs.190 p.m. w.e.f. 18.12.1970. The appellant questioned the order reducing his basic pay with retrospective effect from 18.12.1970 before the Central Administrative Tribunal, Patna Bench. The justification furnished by the respondents for reducing his basic pay was that the same had been 'wrongly' fixed initially and that the position had continued due to 'administrative lapses' for about twenty years, when it was decided to rectify the mistake. The petition filed by the appellant ~~was~~ was dismissed by the Tribunal on 19.9.1993.

3. We have heard learned counsel for the parties. That the petitioners' basic pay had been fixed in since 1970 at Rs.190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181 p.m. from Rs.190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant was obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been flagrant violation of the principle of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative



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Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant from Rs.190 to Rs.181 w.e.f. 18.12.1970."

In the case of N.Mandal vs. Union of India (CAT Calcutta) reported in 1989 (3) SLR 148 it was observed that :

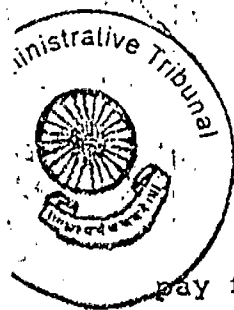
"The applicant was promoted in a post in higher scale which was not in existence. By mistake or clerical error, his pay was later noticed and his pay was fixed in the lower scale. Meanwhile, the employee retired and expired. The excess amount already paid not to be deducted from the retirement benefits."

The Himachal High Court in 1997 (5) SLR 237 in the case of Mahavir Singh vs. Union of India and others held that :

"Reducing the scale of pay from the date of initial appointment and ordering excess recovery amount without affording any opportunity to the petitioner to make representation - order is violative of Rules of natural justice."

From what has been discussed above it is clear that the pay fixation cannot be revised to the disadvantage of the employee without affording him opportunity of hearing. In this case there is nothing to show that any show cause notice was given to the applicant before re-fixation of pay. The applicant has now retired so re-fixation of pay would reduce the pay last drawn consequently pension amount would also get reduced. It would thus be a recurring loss to the applicant. Such an action of the respondents, without affording opportunity, cannot be sustained.

In view of the above discussions the impugned orders are quashed. It will, however, be open to the respondents/ the appropriate authority to issue a show cause or afford the applicant an opportunity of hearing and then to re-fix



the pay/pension. The O.A. stands allowed accordingly.

No order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)



Notified to be true Cop
प्रमाणित प्रतिलिपि

Section Officer (J)
C.A.T. GUWAHATI BRANCH
Guwahati-781005

31/8

To

The Post Master General,
Dibrugarh Region
P.O- Dibrugarh,
Assam.

Sub: - Judgment and order dated 27.08.2004 in O.A No.175 of 2003
passed by the CAT, Guwahati Bench.

Sir,

Most respectfully I am enclosing herewith a copy of the judgment and order dated 27.08.2004 passed by the Hon'ble CAT, Guwahati Bench in O.A. No. 175/2003 pertaining to wrong fixation of my pay and recovery thereof. The judgment is self-contained, and in this context I beg to emphasis that the Hon'ble CAT vide its judgment aforesaid has quashed the impugned orders. As such all the impugned orders issued under Nos. (1) PN-58/2002-2003/478 dated 30.08.2002, (2) COM-43/2002-03/PN-58/2002-03/D- dated 03.10.2002, (3) AP/RP/3-172/02 dated 11.10.02, (4) AP/RP/3-172/02 dated 09.12.2002, (5) AP/RP/3-172/2000 dated 15.01.03, (6) Staff/11-14/89 dated 26.02.03 and (7) GPF/2-37/GHY/2000-01/394 dated 01.04.03 have been quashed and thereby the Hon'ble Tribunal has restored me to my original position i.e. the position where I was prior to the issuance of the impugned orders aforesaid.

You are therefore requested to implement the order of the Hon'ble CAT within the earliest restoring my pay to my original position i.e. the pay which I was drawing prior to re-fixation/reduction of my pay and refund me the difference of pay occasioned by the impugned reduction including the entire amount of Rs. 96,792/- which has been recovered from me on account of so called over payment. Further, my pay and other retiral benefits should be fixed giving stage-to-stage fitments benefit by fixing my last basic pay at Rs. 10,250/- at the time of retirement and my pension be fixed accordingly with all terminal benefits consequential thereto.

This is for your kind early action.

Encl: - Copy of judgment dated 27.08.04.

Yours faithfully

Date: 10.9.04

Chitta Ranjan Deb
(CHITTA RANJAN DEB)
Retired Superintendent,
RMS Division, Silchar,
Link Road, Lane No.1-A,
Silchar, Assam.

*Attested
for
the
signature*

Spd. P. 10/4/94
EE-85-3776569 IV
Annexure - III

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE POSTMASTER GENERAL
DIBRUGARH REGION, DIBRUGARH

No. AP RP 3-172/02

Dated 11-11-2002

To
Sri Chitta Ranjan Deb.
(Retired SRM, Silchar)
Link Road, Lane No. 1-A, Silchar-6.

It is seen from entries in your Service Book that you were posted as HSG-I on temporary and adhoc basis and posted as DPM, GH-GI vide CO-GH memo No. staff 11-14 89 dt. 1-12-92 which was also confirmed by CPNIG, No. 117/21, Silchar vide CO-GH memo No. staff 11-14 89 dt. 21-5-93. You had been working as HSG-I during the period from 4-12-92 to 19-12-92. Your pay in HSG-I was fixed at Rs. 2450/- In the meantime you were promoted to PSS group 'B' on regular basis and posted as Supdt. PSD, Silchar and assumed the charge of Supdt. PSD, Silchar on 1-1-93. As per your PSS group 'B' your pay was fixed w.e.f. your pay in HSG-I which is not a regular promotion to HSG-I cadre was not regular. Your pay should have been fixed as per pay in ASPCO cadre (Regular post) under FR-22(i)(a)(i).

The revised fixation of your pay is shown below:-

Date	Pay required to be fixed	Pay fixed as shown in Service Book
4-1-93	2450	2600
1-1-94	2525	2675
1-1-95	2600	2750
1-1-96	8000	8750
1-1-97	8250	9000
1-1-98	8500	9250
1-1-99	8750	9500
1-1-00	9000	9750
1-1-01	9250	10000
1-1-02	9500	10250

From the above discussion it is observed that the pay fixed by DA(P)GHY was in order i.e. 2450/- on 4-1-93.

Now I am directed to ask you as to why your pay will not be revised on the light of above noted circumstances and why excess amount paid will not be recovered from you? Your explanation should be received this office within Ten days of receipt of this communication, otherwise case will be decided ex-parte.

(A.K. Dewari)
For Postmaster General
Dibrugarh Region, Dibrugarh.

Attested
for
signature

To
The Postmaster General,
Dibrugarh Region,
Dibrugarh: 786001.

Sub: Issue of show cause Notice for – Irregular re-fixation of pay of Shri
C.R. Deb, Retired SRM 'S' RMS Divn. Silchar.
Ref: PMG Dibrugarh letter No.AP/RP/3-172/02 dated 18.10.04.

Sir,

In reply to your office letter cited above, I have the honour to inform you that the proposal sent under your letter cited above is misconceived of ruling provision of the Department of Posts and denial of justice. I, therefore, disagree with your proposal on the following ground:-

That I would like to mention that every promotion and employment in a particular post/grade at the first instance is made on temporary/adhoc basis followed by confirmation had the incumbent of the post is allowed to continue in that promotional post.

That, it is fact that under CPMG/GH memo No. Staff/11-14/89 dated 1.12.92, I was promoted and posted in the vacant Post of DPM (HSG-I) lying vacant in GPO, Guwahati. In your above letter, the word "VACANT" was not discussed which is the crucial deciding factor of my future continuity in the post of DPM (HSG-I) (promotional post) had I not been further promoted in the PSS. Group B cadre in continuation of my officiating in the Post of Dy.PM (HSG-I) in GPO, Guwahati. Thus to substantiate my statement that I was posted on promotion in a vacant post, I am annexing a xerox copy of CPMG/GH letter dated 1.12.02 for your kind perusal & consideration.

That after my relieve from the post of Dy.PM GPO/GH, my junior staff namely Sukleswar Das, ASPOs was ordered by the CPMG/GH vide his memo No. Staff/11-14/89 dated 8.7.93 to officiate in the resultant vacant post of Dy. PM. Guwahati GPO. In addition, some more junior staff of general line namely (1) Shri J.C.Laskar, LSG was ordered to work as Dy. PM, GPO/GH immediately after my relief on promotion in PSS Group B cadre. In support of my statement, I am annexing the xerox copy of the charge report dtd. 19.11.92 for your kind consideration.

It is also a point to add that Shri Sukleswar Das (Respondent No. 3 of OA 175 of 2003) a junior staff of mine was also ordered by the CPMG/GH under his memo No.Staff/11-14/89 dated 8.7.93 as discussed above and posted as HSG-I Dy. PM GPO, Guwahati. In support of my statement that Shri S. Das is junior to

Attested
by
A. Chowdhury

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ne, a xerox copy of CPMG/GH Memo No.Staff/2-29/91 dated 19.11.94 is annexed for your kind perusal. Above all, it was rightly mentioned in your above letter that the CPMG, N.E.Circle, Shillong was confirmed under CPMG/GH memo No. Staff/11-14/89 dated 21.5.93 that I would have continued in the post of Dy. PM GPO Guwahati/had I not been promoted to PSS Group 'B' cadre (Xerox copy annexed).

All these above points fully justify that your proposal sent to me under your letter dated 18.10.04 is a total misconceived of ruling provision of the Department of Posts. I would further remind you that my appointing authority for the post of HSG-I Dy. PM is the Head of the Circle. In my case, the Head of the Circle clearly confirmed to the CPMG N.E.Circle, Shillong about my continuity in the post of Dy. PM (HSG-I) GPO/GH vide his letter dated 21.5.93 discussed above.

It is also an another point to bring it to your notice that the Authority competent to issue my annual pay slip used to issue correct Pay-slips annually and vide his last Memo No. ADM/1-237/2001-2002/98 dated 07.1.2002; at his own accord issued my annual pay slip showing my scale of pay as Rs.10,250/- from 01.1.2002 with all other allowances without any objection. Then how on later stage the same authority irregularly stepped down my scale of pay from Rs.10,250/- to Rs.9500/- all on a sudden on 1.1.02 mentioned in your above letter which is the subject matter of the objection raised in DDA(P)/Guwahati Memo No.PN-58/2002-2003/178 dated 30.8.2002 just before 2(two) months of my retirement.

That I would like to remind you that your letter/show cause noticed dated 18.10.04 was issued as per judgement and order of the Hon'ble CAT/GH in OA No.175 of 2003 where there was nothing mention that reply to the show cause should be given within 10 days, otherwise the case will be decided exparte. Thus may I presume that the issue of show cause notice with such a warning is nothing but an act of injustice to the retired Officer who served the Department for ~~For 10~~ 10 Years with full devotion/dedication.

Lastly, I once again inform you that I disagree with your proposal sent to me and request you to take action for refund of all my pensionary benefits which were irregularly deducted from my pensionary dues. *I regulate my pension*

Yours faithfully,



(C.R. Deb)
Retired SRM 'S' RMS Divn.
Silchar,

Encl: As above

Dr. 10-11-04