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**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

**INDEX**

O.A/T.A No. 165/2004  
R.A/C.P No. ....  
E.P/M.A No. ....

1. Orders Sheet..... Pg. 1..... to 2.....

2. Judgment/Order dtd 9.11.2004 Pg. 1..... to 10. Separate order  
Decm'04

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... Pg. 1..... to 4.8.....

5. E.P/M.P..... Pg..... to.....

6. R.A/C.P..... Pg..... to.....

7. W.S..... Pg..... to.....

8. Rejoinder..... Pg..... to.....

9. Reply..... Pg..... to.....

10. Any other Papers..... Pg..... to.....

11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judl.)

*Farhiz*  
10.11.17

FORM NO. 4  
(SEE RULE 42 )  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

ORDER SHEET

Org. App/ Misc. Petn/Gent. Petn/ Rev. App. 165/04

In O.A.

Name of the Applicant(S) S. Basumatary

Name of the Respondent(S) W.O.I. Tons.

Advocate for the Applicant P. Goyari

Counsel for the Railway/ G.C.S.C. Adv. S. Sensupala,  
Reply Counsel.

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
The application is in form is filed/C.P. for Rs 50/- d. posited v/s P. BD No. 116440924	28.7.2004	Heard Mr. P. Goyari, learned counsel for the applicant and also Mr. M.C. Sarma, learned counsel for the railway.
Dated...19.7.04  1/1e N. D. N. D. Dy. Register  P.G.	27/7/04	Issue notice to show cause as to why the application shall not be ad- mitted.

List on 27.8.2004 for admission

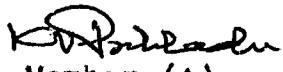
Steps taken with  
envelopes.

  
Member (A)

  
Notice & order dt. 28/7/04  
Sent to D/Section for  
issuing to resp. Nos.  
1, 2, 3, by regd. with  
A/D post.

  
9/8/04

mb  
27.8.2004 Present: The Hon'ble Shri D.C. Verma  
Vice-Chairman (J).  
The Hon'ble Shri K.V. Prahladan-  
Member (A).  
Mr. P. Goyari, learned counsel for the  
applicant and Dr. M.C. Sharma, learned  
counsel for the Railways were present.  
Dr. Sharma seeks and is allowed four  
weeks time to file reply. List on  
30.9.2004 for admission.

  
Member (A)

  
Vice-Chairman

08.10.2004

Mr. S. Sengupta, learned counsel for the Railways was present. S.O. to 9.11.2004.

~~Service report~~  
duly serv

(1) Notice duly

Served on resp.  
Nos. 1 and 2.

bb

By Order

(2) Service report  
awaited from  
resp. No. 2;

9.11.2004 present: The Hon'ble Mr. Justice R.K. Batta, Vice-Chairman.

The Hon'ble Mr. K.V. Prahledan,  
Administrative Tribunal

None is present for the applicant.

The matter is, therefore, liable to be dismissed in default. However, we find that application is hopelessly barred by laches.

The applicant was removed from service vide order dated 26.12.1988. According to the applicant, he was personally pursuing the settlement of the dispute pertaining to modification of the order of removal from service <sup>that of</sup> to voluntary/compulsory retirement since 18.1.1990. However, no materials whatsoever was placed on record in support of the said contention. It appears that the applicant filed representation only on 5.2.02 i.e. to say after about fourteen years of his dismissal. No materials has been placed on record in respect of any action taken by the applicant from the date of his removal i.e. to say 26.12.1988 till he ~~fixed~~ filed representation on 5.2.02.

In view of this, the application, in question, cannot even be entertained on merits. The application is accordingly dismissed.

*K.V. Prahledan*  
Member

*R*  
Vice-Chairman

bb

*Received  
C.M. Order  
9.11.2004  
S.P.R.A.T.*

10.11.04  
Copy of the order  
has been sent to the  
Officer for issuing  
the same to the  
applicant.

*gth*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :::  
NORTH EAST BENCH :::: GUWAHATI.

o.A.(C)NO. 165/2004.

Sri Sambaru Basumatary,  
Ex- Constable, RPF,

..... Applicant.

- Vs -

Union of India & Others,

..... Respondents.

RESUME OF THE CASE.

- 1) On 03.7.1986 the applicant was directed to proceed to Fakiragram out post, RPF for drawal of salary for the month of June/86 by 14 DN Train for which a movement order was also issued.
- 2) On 24.3.87 the charge sheet was framed against the applicant by the Divisional Security Commissioner, RPF, Alipurduar Junction.
- 3) On 25.9.87 Sri D. Sharma, Inspector, RPF / RNY was appointed as Enquiry officer by the Divisional Security Commissioner, RPF, Alipurduar Junction.
- 4) On 24.3.88 Sri D. Sharma, Enquiry officer had intimated the applicant to name a defence Counsel.

5) On 10.7.88 Sri D. Sharmah, Enquiry officer had intimated the applicant about Ex-parte hearing on 01.8.88.

6) On 20.8.88 Sri Sharmah, Enquiry officer submitted his report to the Divisional Security Commissioner, Alipurduar junction.

7) On 12.10.88 the Divisional Security Commissioner, had served show cause notice to the applicant with the proposal for removal of applicant from service.

8) On 26.12.88 the Divisional Commissioner, passed the order of removal of the applicant from service.

9) On 06.2.2000 the applicant had submitted his last representation to the disciplinary authority namely the Divisional Security Commissioner.

*Service of any*

10) On 03.12.2003 the applicant filed an appeal to the Additional Chief Security Commissioner RPF, N.F. Railway, Maligaon, Guwahati.

*RSPW Advocates  
27/7/04*

27 JUL 2004

The Central Administrative Tribunal,  
North East Branch, Guwahati.

O.A.(C) No. 165/2004

Sri Sambaru Basumatary,  
Ex-Constable, RPF, - Applicant.

-Vs-

Union of India & others - Respondents

INDEX SHEET

Sl.No.	Particulars	Page No.
0.	Application	1-19
1.	Affidavit	20-21
2.	Annexure - 1, (1(1) & 1(2))-Charges/charge sheets	22-24
3.	Annexure - 2- appoint of Enquiry officer.	25
4.	Annexure 3- Show cause notice for defence counsel.	26
5.	Annexure 4 - Fixing date of hearing.	27
6.	Annexure 5 - Repot of the Enquiry officer.	28-34
7.	Annexure 6 - Show cause for removal.	35-36
8.	Annexure 7 - Order of removal.	37
9.	Annexure 8 - Representation to the Divisional Security officer	38-40
10.	Annexure 9 - Appeal to the Addl Chief Security officer.	41-48

Sambaru Basumatary

for Gyan 27/7/2004  
Mr. P. Goyati  
Advocate, Kokrajhar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, NORTH EAST BENCH

GUWAHATI

Sambabu Basumatary

D.A. (C) NO. OF 2004.

To,

The Hon'ble Vice-Chairman,  
Central Administrative Tribunal,  
North East Bench, Guwahati.

IN THE MATTER OF :

An application under Section 19, Administrative  
Tribunal Act, 1985.

-: AND :-

Sri Sambabu Basumatary,  
Ex. RPF/RPAN (Constable),  
N.F. Railways,  
S/O, Late Landai Basumatary,  
residing at Duligaon Village,  
P.O. - Sidli, P.S. - Sidli,  
Dist. - Chirang (Kokrajhar), Assam.

— — — APPLICANT.

-: AND :-

- 1) The Union of India.  
Represented by the General Manager,  
N.F. Railways, Maligaon,  
Guwahati.
- 2) The Additional Chief Security Officer,  
R.P.F., N.F. Railways,  
Maligaon, Guwahati.
- 3) The Divisional Security Commissioner,  
R.P.F., N.F. Railways,  
Alipurduar Junction,  
Dist. - Jalpaiguri (West Bengal).

— — — RESPONDENTS.

Gurhans Kumar

(1) DETAILS OF APPLICATION :

Particulars of the Orders against which the application is made :-

Order No. AP/Pro-22/87(44) dated - 26/12/88 passed by the Divisional Security Commissioner, Railways Protection Force, Alipurduar Junction, P.O. - Alipurduar Junction, P.S. & Dist. - Jalpaiguri (West Bengal).

--- (ANNEXURE - 'A').

(2) JURISDICTION OF THE TRIBUNAL :

The Applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of North East Bench, Guwahati.

(3) LIMITATION :

The Applicant further declares that the application is within the limitation period under Section 21, Administrative Tribunal Act read with Proviso to Sub-Section (2) of Section - 9, Railway Protection Force Act, 1957. The period of limitation of this application runs from 3rd day of December/2003 on which the appeal was made last to the Superior authority of the Railway Administration namely the Additional Chief Security Commissioner, R.P.F., N.F. Railways, Maligaon, Guwahati.

--- (ANNEXURE - 9).

(4) FACTS OF THE CASE :

(A) The Applicant was one of the lowly paid Constable of R.P.F., N.F. Railway under the control and supervision of the Divisional Security Commissioner, R.P.F., Alipurduar Junction, Guwahati Division. The Applicant had the privilege of serving the disciplined Force continuously for the last 23 (twenty three) years without

garnishee to be

any record and blemish during the entire period of service.

(B) On 03/07/1986 as usual practice I was detailed to proceed to Fakiragram Out Post, R.P.F. for drawal of my salary and disbursement of the same to my family stationed at Duligaon village, P.S. - Sidli, Dist. - Kokrajhar (Chirang) not far away from Fakiragram Out Post.

(C) On 24/03/87 the Commandant/Divisional Security Commissioner, R.P.F., Alipurduar Junction, N.F. Railways charged sheeted the Applicant which would be as under :

CHARGE - 1.

" He is absenting himself from duty from 03/04-07-86 without any authority

CHARGE - 2.

Statement of allegations on the basis of which charges are framed against Sri Sambu Basumatary/Con/RPF/RPAN.

ALLEGATION REGARDING CHARGE - 1.

He was directed to draw his salary for the month of June/86 from FKM (OP) by 14 DN of 03/04-07-86 but he did not report back to his Head Quarter and absenting himself from duty from 03/04-07-86 without any authority. "

--- ANNEXURE - 1, 1(1), 1(2).

(D) Accordingly one Sri D. Sharmah, IPF/RNY was appointed as enquiry officer under Rule - 33(4) in exercise of Rule - 44(4), RPF Rules by the Divisional Security Commissioner, R.P.F., N.F. Railways, Alipurduar Junction vide Order No. AP/Pro-22/87/44 dated - 25/09/87. The said disciplinary authority stated in the order.

" Since the Party charged failed to submit his defence as yet I take ex-parte decision and order for

Summons issued  
10/07/88

departmental enquiry nominating Sri D. Sharmah/IPF/RNY as E.O. and submit findings within 30 (thirty) days."

- - - ANNEXURE - 2.

(E) On 24/03/88 the Enquiry Officer, Sri D. Sharmah, stated above served the order No. RPPF/DAR-3/87 dated 24/3/88 to the Applicant which might be reproduced in verbatim hereto below :-

" Sub :- DAR.

I was ordered by DSC/APDJ vide Order No. AP/Pro/12/87(44) dated 25/9/87 to hold DAR against you for your absenting from duty unauthorisedly."

You are therefore, directed to submit the name of your defence Council and witnesses if any within seven days of receipt of this letter, as that the DAR against you may be fixed.

Ex-parte decision will be taken in case of failure to submit the same/no response from your end."

- - - ANNEXURE - 3.

(F) On 10/07/88 the said Enquiry Officer again passed an order addressing to the Applicant which would be reproduced as under :-

" You were directed to submit the name of your council and witness vide my letter No. of even dated - 24/03/88 which were send under registered post No. 1732 dated - 31/3/88 through DSC/APDJ. So far no response received from your end."

As such the date of DAR against you have been fixed on 01/08/88 from this end and you are directed to attend the said DAR at this post at 10-00 Hours along with your defence Council/witness if any. Ex-parte decision will be taken in case of your failure to attend the said DAR on the date, time and place fixed."

- - - ANNEXURE - 4.  
Contd.../5

(G) On 20/08/88 the Enquiry Officer, Sri D. Sharmah, IPF/RNY had submitted his DAR enquiry report against the Applicant to the Divisional Security Commissioner, R.P.F., N.F. Railways, Alipurduar Junction, in compliance to the order No. AP/Pro-22/87(44) dated 25/07/88. The last para of the said report may be reproduced in verbatim as under :

" The basis of the charge levelled against Const./RPF/TZTB Sri Sambaru Basumatary was that he was absenting himself from duty with effect from 03/04-07-87 without any authority. During my enquiry, I found that there were no information from the party charged about his absence since the day of his leaving Head Quarters with effect from 04/07/86. Movement order No. 1087/12 dated 03/07/86 onward was duly received by him on the over-leap of ICCON foil but not yet returned by him. His leaving of Head Quarters was proved by DL. No. 13 dated 03/07/86 (Exhibit - 2), SI/RPF/TZTB/DR, Knowar submitted through his statement (Exhibit - 1) that the party charged Sambaru Basumatary was absent from 03/04-07-86 without ~~an~~ authority which were found relevant to the fact.

Findings of Enquiry : Charge proved. "

- - - ANNEXURE - 5.

(H) On 12/10/88 the Disciplinary authority, the Divisional Security Officer, R.P.F., N.F. Railways, Alipurduar Junction, on receipt of the report of the Enquiry Officer stated above show caused the Applicant of which contents would be as under :

Sub :- Show Cause Notice.

I am enclosing herewith a Show Cause notice, you are directed to submit your representation within 14 (fourteen) days on receipt of the same failing which it will be presumed that Sri Sambu Basumatary has nothing to represent and ex-parte decision will be taken from

Contd..../6

this end ", vide order No. AP/Pro-29/87(44) dated - 12/10/88 supported by order of even No. dated 12/10/88.  
- - - ANNEXURE - 6, 6(1).

( I ) On 26/12/88 the Divisional Security Officer, R.P.F., N.F. Railways, Alipurduar Junction had passed an order of removal of the Applicant Sri Sambu Basumatary from his substantive post vide order No. AP/Pro-22/87(44) dated 26/12/88.

O R D E R

Sri Sambu Basumatary, Constable, R.P.F./RPAN was issued with a charge sheet under Rule 44 of RPF Rules 1959 on the following charge vide No. AP/Pro-22/87(44) dated 24/3/87.

C H A R G E.

" He is absenting himself from 03/04-07-86 without any authority. "

The above mentioned charge sheet was sent to his home address with registered post with A.D. but the delinquent did neither submit his statement of defence within the stipulated period nor report back for resumption of duty. Accordingly DAR enquiry was ordered by nominating Sri D. Sharmah, IPF/RNY as E.O. on ex-parte decision on 25/09/87.

The E.O. has conducted the DAR enquiry by affording all reasonable facilities as per RPF Rules, 1959 and submitted his findings holding the delinquent Sri S. Basumatary, Constable/RPF/RPAN as guilty of this charge.

Agreeing to the findings of the Enquiry Officer a show cause notice, proposing his removal from service issued on him vide No. AP/Pro-22/87(44) dated 12/10/88 to his home address with registered post with A.D. The

delinquent Basumatary was allowed 14 (fourteen) days time to submit his representation against the said Show-cause notice if any.

The delinquent Constable S. Basumatary has acknowledged the said Show-cause notice on 16/11/88 but till date he has not submitted any representation which conclusively proves that the delinquent Constable has nothing to represent as well as he has no desire to serve under this establishment under the above circumstances, it is conclusive that the delinquent Constable Sambaru Basumatary will not be worthy person to be retained discipline force any more.

I, therefore, take ex-parte decision and order that Sri Sambaru Basumatary, Constable/RPF/RPAN be removed from service with immediate effect. "

(J) The Applicant may like to draw the attention to the endorsement on the body of the said order recorded on 18/01/1990 by the Head Clerk, Estt., DSC, APDJ which are as under :

- (a) Advised to deposit all Govt. properties including uniform etc. and submit Clearance certificate list. He is supplied with three P.I.-16 forms. "
- (b) " He should attend office in C/W P.S. duties. "

— — — ANNEXURE - 7.

(K) The Applicant had been removed from the Cadre of Constable with immediate effect by the order of the Divisional Security Officer, RPF, N.F. Railways, Alipurduar Junction vide the order No. AP/Pro-22/87(44) dated 26/12/88 referred to above with the observation in the last part of para 8 of the order as under :-

" Under the above circumstances, it is conclusive that the delinquent Constable, Sri Sambaru Basumatary

C. S. S.

will not be worthy person to be retained in discipline force any more. "

( 5 )  GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

( A ) The disciplinary authority namely the Divisional Security Commissioner, R.P.F., N.F. Railways, Alipurduar Junction initiated the proceeding on 24/03/87 under Section - 9 (2)(i) read with Rule - 44, of Railway Protection Force Act, 1957 and Rules, 1959 respectively. The said Act, 1957 was amended in 1985 and the Rules of 1959 was repeated on 3rd December/1987 with the Railway Protection Force Rules, 1987. There does not exist any proviso for imposing punishment of removal from service under Section - 9(2)(i) of the Act which may reproduced here under :

"9. Dismissal, removal etc. of members of the Force.

( 1 ) Subject to the provisions of Article - 311 of the Constitution and to such rules as the Central Government may make under this Act any Superior Officer may --

( i ) dismiss, suspend or reduce in rank any enrolled member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; or

( ii ) award any one or more punishments to any enrolled member of the Force who discharges his duty in a careless and negligent manner; or who by any act of his own renders himself unfit for the discharge thereof, namely :

( a ) fine to any amount not exceeding seven days pay, or reduction in pay scale.

( b ) confinement to quarters for a period not exceeding fourteen days with or without punishment, drill, extra guard, fatigue or other duty.

(c) removal from any office of the distinction  
- - deprivation of any special emolument.

(2) Any enrolled member of the Force aggrieved by an order under Sub-Section (1) may, within thirty days from the date on which the order is communicated to him prefer an appeal against the order to such authority as may be prescribed :

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(3) In disposing the appeal the prescribed authority shall follow such procedure as may be prescribed :

Provided that no order imposing an enhanced penalty ~~and~~ under Sub-Section (2) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.

(B) That your Lordship may be graciously pleased to notice to the fact that there does not exist any proviso for removal any enrolled member of the Force from service under Section - 9(2)(i) of the RPF Act, 1957.

(C) That Rule - 44 of the amended Rule, 1987, RPF Rules, 1957 reads as under :

44. Search - For purposes of Section - 13 of the Act, if any Railway property reasonably suspected of having been stolen or unlawfully obtained is found during any search of a person or his belongings that person shall be arrested and dealt with under the provisions of the Railway property (unlawful possession) Act,

Some laws

1966 or sent to the Police along with the property thus recovered as the circumstances of the case may warrant.

(D) That your Lordship may also graciously be pleased to notice that said Rule stated above does not contemplate any imposition of major punishment like removal from service of the enrolled member of the Force. Hence it is liable to be quashed.

(E) That your Lordship may also graciously be pleased to consider the humble submission of the Petitioner that though the proceeding was initiated in 24/3/87 the order of removal from service was passed on 26/12/88 under the old Rule of 1959 instead of Rule of 1987 which had been in force from 3rd December/1987. The impugned order was passed by the disciplinary authority without application of mind hence it is bad in law and liable to be quashed.

(F) That Rule - 148 to Rule - 210 relating to disciplinary and penal punishments have been incorporated in Chapter - XII of the Rule, 1987 of the Sact RPF Act, 1957 which may reproduced below :

Rule - 148.2 - Major Punishment :

- (a) Dismissal from service which ordinarily be a disqualification for future employment under the Government.
- (b) Removal from service which shall not be a disqualification for future employment under the Government.
- (c) Compulsory retirement from service.
- (d) Reduction in rank in grade.

Curriculum Building

(G) That your Lordship may graciously be pleased to notice to the legal provisions stated above subscribing 4 (four) alternative options to the disciplinary authority pertaining to award of major punishment to the delinquent enrolled member of the Force. This provisions of the Rule was enforced with effect from 3rd December/1987. Therefore, it may stated that the Rule 44, RPF Rules, 1959 had become redundant and absolute ~~waste~~ instead Rule - 148 stated above would be the appropriate Rule applicable to the imposition of punishment to the enrolled member of the Force after 3rd December/1987.

(H) That Rule - 84 of RPF Rules, 1987 empowers the Security Commissioner or of a higher rank recommend to the Chief Security Commissioner that the member of Force be retired from service on the grounds of unsuitability. That your Petitioner was appointed to the permanent post of Constable of the Force and the privilege of serving for last 21 (twenty one) years continuously. That the members of the Force are governed by Railway service Rules in the matter of retirement, gratuity, pensions, medical facilities, passes etc. The Divisional Security Commissioner capriciously over-looked this provision, hence it is bad in law and malafide.

(I) That the Divisional Security Commissioner did not look into the Rule - 153, Rule - 154 and Rule - 155 of RPF Rules, 1987 while dis-proportionate punishment had been imposed upon the Applicant/Petitioner with malice and solely to deprive him of his right to property like gratuity, pensions and other usufructs by virtue of length of service.

(6) DETAILS OF THE REMEDIES EXHAUSTED :

(A) The Applicant begs to state that he personally had been perusing the for settlement of the dispute pertaining to the modification of the order of removal of service to

Guru Nanak Dev

that of voluntary/compulsory retirement since 18/01/1990 with the concerned authority namely the with the establishment of the Divisional Security Commissioner, RPF, N.F. Railways, Alipurduar Junction. The Applicant had been consistently assured by the said establishment in regard to the modification of the order of removal to that compulsory retirement. But it is regretted to state that the said establishment did not take any step for materialising the assurance into a affective order so far.

( B ) That on the Applicant being aggrieved had submitted a representation to the Divisional Security Commissioner, RPF, N.F. Railways, Alipurduar Junction, for redressal of the grievance dated 5th February/2002 which had been duly acknowledged by the said Divisional Security Officer, RPF, Railway Administration on 06/02/2002.

( C ) That on the said representation it was concurrently stated in para 4 and 5 which would be as follows :-

" 4. That it may mentioned here that I served for 25 (twenty five) years and during my long service period I have never violated the rules and regulations as framed in RPF Rules, 1959. I was a sincere, disciplined and obedient Constable during my service period I tried to abide by the rules of RPF. My absence from service was not intentional. I made correspondences. As a result of such unfortunate and unintentional act I have been removed from service ~~without~~ being heard. At present I have been suffering from acute financial hardship.

5. That I do request your Honour to sanction me full pensionary benefit and other allowance as per R.P.F. Rules as I served 25 (twenty five) years. Be it mentioned here that in the event of non-sanction of the above I shall be deprived of getting natural justice. "

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(D) The Applicant begs to state that no positive response was received so far from the said Divisional Security Commissioner, RPF pertaining to the disposal of my representation stated above.

- - - ANNEXURE - 8:

(E) That on 3rd December/2003 your Applicant has submitted an appeal for redressal of the bonafide claim before the Additional Chief Security Officer, RPF, N.F. Railways, Maligaon, Guwahati by a registered A/D. through the ~~post~~ Postal department vide No. RL-AD/8119 dated - 05/12/2003. But it is regretted to state that no communication was transmitted to the Applicant by the said authority about the fate of the representation. The contents of the appeal stated thereat are here under :

" PARA - 14.

That Sir, I respectfully state that my conduct in regard to prolonged absence from the place of duty is certainly against the Rule of the RPF. I have stated hereto above that I was the victim of circumstances who had been forced to suffer silently the acute mental depression as well as the physical and psychological turmoil which had made me unfit to perform my assigned duty as a disciplined member of the Force.

PARA - 15.

That, an application appeal for grant of pension etc. duly submitted above to the appointing authority by me on 05/02/2000 but so far no order had been passed in this regard.

PARA - 16.

That, I am a member of Scheduled Tribe (Plain) belonging to Bodo-Kochari community of Assam State, though there is no special provision for granting pension and gratuity to the member of the Force belonging to

13  
Gurcharan Singh

backward tribe however it can not be denied that such member of the Force does not deserve special consideration on humanitarian ground.

PARA - 17.

Under the circumstances stated above I respectfully pray that my grievances stated above may be considered with humanitarian approach, justice and good conscience. That you may also be pleased to pass an appropriate order for granting pension and gratuity in my favour taking into the account of my posts, service and other relevant factors. "

— — — ANNEXURE - 9.

(F) That your Lordship, the Applicant referred to the provisos of Rule - 84 of RPF Act, 1987 and Rule 40 and Rule 41, Central Civil Services (Pension) Rules, 1972 which to Railway Service (Pension) Rules applicable to the members ~~\*\*~~ of the Force.

(G) That your Applicant duly availed of all the available remedial measures under the provisos of the Railway Protection Force Act, 1987 but could not get any appropriate response from any quarter of the Railway Administration so far. Hence this is an application before the Hon'ble Tribunal for justifiable order and other directions.

(7) MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY COURT.

(A) The Applicant further declares that he has not previously filed any application, Writ Petition or Suit regarding the matter in respect of which his application is made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, Writ Petition or Suit pending before any of them.

(8) RELIEF SOUGHT :

(A) In view of the facts mentioned in para 6 above the Applicant prays for the following relief(s) :

(a) That your Lordship would be pleased to admit this petition, issue notice to the Opposite Party/Parties to show cause as to why the impugned order No. AP/Pro-22/87(44) dated 26/12/88 passed by the Divisional Security Commissioner, R.P.F., N.F., Railway, Alipurduar Junction removing the Applicant from the permanent post of Constable with immediate effect should not be set aside and quashed, call for the records appertaining to the disciplinary proceedings along with the personal file and other relevant service records of the Applicant after hearing case, if any, shown by the Opposite Party/Parties. Your Lordship would be pleased to set aside and quash the impugned order and/or pass such other order/orders as your Lordship deem fit and proper in the light of the Section - 17 of Railway Protection Force Act, 1957 as the said punishment is disproportionate and shocking and against judicial conscience vis-a-vis the continuous 23 (twenty three) years of service.

A N D

(b) It is further prayed that your Lordship would be pleased to issue direction for re-instatement of the Applicant to the substantive post of Constable RPF till to the date of supernuation and also direction to pay consequential pay and allowances according to entitlement but for premature removal from service is contrary to the Rule(s) - 153, 154 and 155 of RPF Rules, 1987.

A N D

(c) It is respectfully prayed that your Lordship would be pleased to pass an order directing the Respondents

Summons / 22

/Opposite Parties namely the Railway Administration, N.F. Railways to modify the order of removal to that of the compulsory retirement in exercise power vested under Rule - 84, RPF Rules, 1987.

(d) It is further prayed that your Lordship would be pleased to set aside and quash the impugned order of removal passed contrary to the law laid down in :-

(i) 2003(2) GLJ 93  
Rakesh Kumar Gaur.  
V.  
Union of India and others.

(ii) (2002)5 SCC 11  
Pradip Kumar Biswas.  
V.  
Indian Institute of Chemical Biology & others.

(iii) 1999(3) GLJ 11  
Ex. Constable Shukvinder Singh.  
V.  
Union of India.

(iv) 1999(1) GLJ 445  
Jogeswar Rahany.  
V.  
Union of India.

(v) AIR 1997 SC 3381  
Union of India.  
V.  
G. Ganayuthan.

(vi) AIR (1997)2 SC 523  
State of Punjab.  
V.  
Prakash Chand.

11 17 11

Scam baww 10/23

(vii) AIR 1987 SC 2386

cc Ranjit Thakur.

V.

Union of India and others.

AND for this act of kindness, the humble Petitioner as in duty bound, shall ever pray for this.

(9)

INTERIM BENEFIT IF ANY. :

No interim order/relief has been prayed for by the Petitioner.

(10)

PARTICULARS OF BANK DRAFT/POSTAL ORDER IN RESPECT OF THE APPLICATION FEE

No. 11 G 440924

dt. 19.7.2004

Kokrajhar

Rs. 50/-

(11)

LIST OF ENCLOSURES. :

(a) Memorandum No. AP/Pro-22/87(44) dated 24/3/87, Comdt./RPF/Alipurduar Junction (Charge sheet).

- - - ANNEXURE - 1/1(1)/1(2).

(b) Order No. AP/Pro-22/87(44) dated 25/9/87, Divisional Security Commissioner, Alipurduar Junction, pertaining to the appointment of Sri D. Sharmah, IPF/RNY as Enquiry Officer.

- - - ANNEXURE - 2.

Contd. 1/18

Summons issued

(c) No. RPPF/DAR-3/87 dated 24/3/88 of Sri D. Sharmah, Insp/RPF/RNY, Enquiry Officer causing notice for naming defence council.

- - - ANNEXURE - 3.

(d) No. RPPF/DAR-3/88 dated 10/7/88 of Sri D. Sharmah, Insp/RPF/RNY, Enquiry Officer causing notice about the date of hearing on 01/08/88 at 10 hours.

- - - ANNEXURE - 4.

(e) Enquiry Report of Sri D. Sharmah, Enquiry Officer dated 20/08/88 (with typed copy).

- - - ANNEXURE - 5.

(f) Order No. AP/Pro-29/87(44) dated 12/10/88 of the Divisional Security Commissioner, R.P.F. Alipurduar Junction showing cause for imposing punishment of removal from service.

- - - ANNEXURE - 6 and 6(1).

(g) Order No. AP/Pro-22/87(44) dated 26/12/88 of Divisional Security Commissioner, Alipurduar Junction RPF imposing punishment of removal with immediate effect.

- - - ANNEXURE - 7.

(h) Representation of the Applicant dated 05/02/2000 acknowledged on 06/02/2000 addressed to the Divisional Security Commissioner, Alipurduar Junction.

- - - ANNEXURE - 8.

(i) Appeal of the Applicant dated 03/12/2003 addressed to the Additional Chief Security Commissioner, R.P.F., N.F. Railway, Maligaon, Guwahati.

- - - ANNEXURE - 9.

11 19 11

VERIFICATION

I, Shri Sambaru Basumatary S/O. Late Landai Ram Basumatary, Ex. Constable, RPF/RPAN, N.F. Railway, resident of Duligaon village, P.O.-Sidli, P.S. Sidli, Dist. - Bongaigaon (Chirang), B.T.A.D. Assam do hereby verify that the contents of para 1 to 7 are true to my personal knowledge and para 8 to 11 believed to be true on legal advice and that I have not suppressed any material fact.

Date :- 25/7/2004 (25/7/2004)

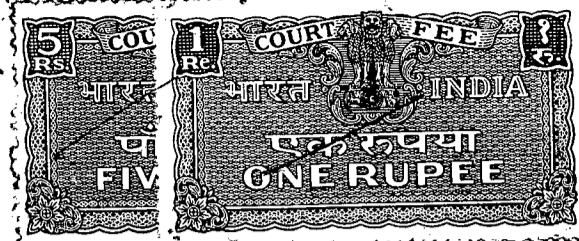
Place :- Kokrajhar, B.T.A.D., Assam.

*Sambaru Basumatary*  
Signature of Deponent.

FILED BY -

*P. Gayari*  
P. Gayari, 27/7/2004  
Advocate for the Applicant.

CENTRAL ADMINISTRATIVE TRIBUNAL, NORTH EAST BENCH : GUWAHATI.



Sambaru Basumatary

O. A. (C) NO. OF. 2004.

Sri Sambaru Basumatary,

— — — APPLICANT.

- VERSUS -

Union of India, represented by  
the General Manager, N.F. Railways — Respondent(1).  
& others.

A F F I D A V I I

I, Shri Sambaru Basumatary, Ex. Constable, RPF, N.F. Railway, aged about 60 years, son of Late Landai Basumatary, residing at Duligaon village, P.O. - Sidli, Dist. - Chirang (Kokrajhar), B.T.A.D., Assam do. hereby solemnly affirm and declare as follows : -

- 1) THAT, I am the Applicant in this case and conversant with all facts stated in the plaint.
- 2) THAT, I was recruited in the Cadre of Constable, RPF, N.F. Railway during the year 1967-68. I rendered about 23 (twenty three) years continuous service in the Force till to the date of removal from service dated 26/12/88. That I am deprived of my right to avail the pensionary benefit and other usufructs inspite of long service in the Force.
- 3) THAT, I approached the Railway Administration the employer on many occasions personally both verbally and with written representation/appeal for the modification of the Order No. AP/Pro-22/87(44) dated 26/12/88 passed by the Divisional Security Commissioner, RPF, Alipurduar Junction removing from service as well as release of pecuniary benefits like pension/gratuity etc. as a right to property by virtue of rendering continuous service of 23 (twenty three) years.
- 4) THAT, I was negligent in submitting my representation/appeal to the concerned authorities of the N.F. Railway latest

- 21 -  
11211

X  
Y

on 05/02/2002 and 03/12/2003 stated in the application.

5) THAT, I was the victim of circumstances namely mass movement the Bodo people spear headed by All Bodo Students' Union and other organisations had adversely affected my service career. Besides, I was intimidated/debarred by all concerned about my resumption of duties in the Force. The chaotic and violent atmosphere then prevailing in around my locality since 1986 had also prevented me from joining the duty in the Force.

6) THAT, I am an old person now without any ways and means of livelihood as I shall be immensely benefited provided the gratuity/pension and other pensionary usufructs are allowed to draw.

7) THAT, I am a member of the scheduled tribe (P) belonging to the Bodo Community of Assam State.

Contents of paragraph - 1 to 7 are within my personal knowledge which I believe the same to be true.

*Sambaru Basumatary*

D E P O N E N T

solemnly affirm and declared before me  
by the deponent, Sri Sambaru Basumatary,

on this 19<sup>th</sup> July, 2004  
(day of July/04) at Kokrajhar.

*Ran Goyari*  
*M. D. Goyari 19/7/04*  
*Advocate, Kokrajhar.*

N

VAKALATNAMA  
( Rule - 67 )  
Central Administrative Tribunal.

O.A. ( c ) No. of 2004.

Sri Sambaru Basumatary. — Applicant.  
S/O. Sri Lendai Basumatary  
Vill. Dhaligaoon,  
P.O. Sidli. P.S. Sidli.  
Dist. Chirang  
(Kokrajhar ), B.T.A.D., Assam.

- Vs -

Union of India & others. Respondant(s).

I, Shri. Sambaru Basumatary, applicant in the above application do hereby appoint and retain Shri Ponendre Goyari, Advocate, to appear, plead and act for me in the above application and to conduct and prosecute all proceedings that may be taken in respect thereof in contempt of Court, petitions and Review applications arising therefrom and applications for return of documents, enter into compromise and to draw any money payable to me / use in said proceeding.

Place :- KOKRAJHAR  
Date :- 19/7/2004

Sambaru Basumatary  
Signature of the Party

Name and Address of the Advocate for service.

ACCEPTED

Mr. P. Goyari, Advocate,  
Kokrajhar Bar Library.  
P.O. Kokrajhar 783370.  
Dist. Kokrajhar.

for Goyari 19/7/2004  
Mr. P. Goyari  
Advocate, Kokrajhar.

Sri Sambaree Basumatary, Con RPF/RPA,  
of the Member of the Force) is hereby charged with remissness/negligence  
negligence in the discharge of duty unfitness for duty in that  
while he functioning as Con RPF during the period from 3/4/86 to 3/7/86

CHARGE - I

He is absenting himself from duty  
from 3/4-7-86 without any authority

CHARGE - II

Statement of allegations on the basis of which charges are  
framed against Sri Sambaree Basumatary, Con RPF/RPA,  
Designation and badge No. of the member of the Force

ALLEGATIONS REGARDING CHARGE - I

He was directed to draw his salary  
for the month of June/86 from P.M. (Op)  
by 14th inst. of 3/4-7-86 but he did not  
report back to his H.Q. and  
absenting himself from duty from  
3/4-7-86 without any authority.

Record checked upon.

Inspl. Con RPF-RPA's  
report no: RPPF/E-3/86  
dt: 25.7.86.

24/3/82

कमान्डेन्ट/रिहो सुरक्षा बल  
१० सी० रेलवे शीलपुरद्वार ज.  
Commandant/R.P.F.  
N. F. Ply/Alipurduar Jn.

Regd. Post with t/o

To Sri Sambaree Basumatary  
Con RPF/RPA

sp. Lendai Basumatary,  
vill:- Duliagon.

P.O. SIDLI, P.S. Sidli.

Dist:- Goalpara.

Assam

Certified to be true,

A. J. John  
Advocate. 19/7/89

Regd. Post with A/D

Office of the Commandant  
R.P.F./Alipurduar Jn.

Dated: 24. 3. 87

R. P. F. No: 131/30-22/57 (M)

Q/41/30/12/1987

Shri Sambaran Basumatary,  
Con/QPF/IR PAN. J.

Sp: Lendai Basumatary,  
vill. Duligaon,  
Post: Siddle, Csi. Siddle,  
Dist: Goalpara, Assam.

Sab: Charge Sheet under rule 44

In enclosing herewith a Charge  
Sheet under rule 44, you are directed  
to submit your statement of defence  
within 14 days on receipt of the said  
charge sheet, failing which ex parte  
decision will be taken from this end.

DA/MS stated.

W-24/3/87  
भारतीय सुरक्षा बल  
कमान्डेंट श्री पुराण  
Commandant/R.P.F.  
N. F. Bly/Alipurduar Jn.

Copy to: Insp. QPF. PAN: In enclosing  
herewith a copy of the aforesaid  
C/S, you are directed to paste  
it on the notice board  
keeping diary and witness and  
send the D/Attacht. in office  
for record.

DA/MS stated.

Certified to be True Copy

f/Jan/  
Date: 19/1/87

भारतीय सुरक्षा बल  
कमान्डेंट, R.P.F.  
N. F. Bly/Alipurduar Jn.

FORM NO. RPF/E 16(C)

## CHARGE SHEET

(Under Section 9(2)(1) of the RPF Act 1957  
read with Rule 44 of RPF Rules 1959).  
N. F. Railway (Railway Protection Force).

NO. AP/Pro - 22/87 (44)

Commdt./RPF/APDJ's office  
dated 24-3-87

## MEMORANDUM

Sri Sambare Basematare Con/RPF/RPAn and designation of the member of the Force) is hereby informed that it is proposed to hold an enquiry against him under Rule 44 of Railway Protection Force Rules 1959. The allegations on which the enquiry is proposed to be held are sent out in the enclosed statement of allegations and the charge framed on the basis of the said allegations are specified in the enclosed statement of charges.

Sri S. Basematare Con/RPF is hereby required to submit to the undersigned a written statement of his defence not later than 14 days (indicates date allowing at most clear two weeks) and also: (a) to state whether he desires to be heard in persons (b) to furnish the name and addresses of the ~~name and~~ witnesses, if any, whom he wishes to call in support of his defence and (c) to furnish a list of documents, if any, which he wishes to produce in support of his defence.

Sri S. Basematare Con/RPF is further informed that if for the purpose of preparing his defence he wishes to inspect and take extracts from any official records, he should furnish a list of such records to the undersigned not later than 7 days (indicate date allowing atleast clear one week) so that arrangement may be made to provide facilities for the purpose. He should, however, note that if in the opinion of the undersigned such records are not relevant for the purpose or it is against the public interest to allow him access to such records, he will not be permitted to inspect or to take extract from such records.

Sri S. Basematare Con/RPF is further informed that if the written statement of his defence is not received on or before the date specified above, the enquiry is liable to be held expare.

The attention of Sri S. Basematare Con/RPF is invited to Rule 62 of the RPF Rules 1959 under which members of the Force are forbidden from bringing or attempting to bring any political or other outside influences to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Govt. If any representation is received on his behalf from any other person in respect of any matter dealt with in these proceedings, it will be presumed that Sri Sambare Basematare Con/RPF is aware of such a representation and that it has been made at his instance, and action will be taken against him for violation of Rule 1962 of RPF Rules 59.

Sri S. Basematare Con/RPF should acknowledge receipt of this charge sheet on the date it is presented to him by giving his signature or thumb impression of the acknowledgement form.

30/3/87  
कान्दिन/रेत सुप्रभा था

1. श्री रेत श्रीलपुरदार जा.

Commandant/R.P.F.

N. F. Rly/Alipurduar Ja.

Certified to be True Copy

P. G. Joshi  
Advocate. 19/7/87

## FORM NO. RPF/E-16(E)

## RAILWAY PROTECTION FORCE

Place of issue APDJSOMMDT./RPF/APDJ's office  
Scaled CoverNo. AP/Pro- 22/87 (44)Dated 25/9/87O R D E R  
(See Rule 38 (4))

Whereas an enquiry under Rule 44 of the Railway Protection Force Rules 1959 is being held against  
Sri Sambaru Basumatry/Com/RPF/RPAN (Name and designation of the Force)

And whereas the undersigned considers that a Board of Enquiry Officer should be appointed to enquire into the charges framed against him.

Now, therefore, the undersigned in exercise of the powers conferred by Rule 44(4) of RPF Rules, hereby appoints:-

A Board of enquiry consisting of:

OR

Sri D. Sharma/Insp./RPF/RNY (Name and designation of Enquiry Officer) as enquiry Officer in the charges against Sri Sambaru Basumatry/Com/RPF/RPAN

Self

महाराष्ट्र शायक

Signature of the Discipline Officer or Authority and Designation Security Commissioner

Copy to Sri Sambaru Basumatry/Com/RPF/RPAN N. F. Rly. Alipurduar Jn. and designation of the member of the Force)

*Rept. A/P* S/o Lendai Basumatry. Vill: DULIGAON P.O. SIDLI P.S. SIDLI

Dist. GOALPARA (Assam)

Copy to Sri D. Sharma/IPE/RPAN RNY (Name and designation of the members of the Board of Enquiry/Enquiry officer).

Proceeding case file is sent herewith.  
 Since the party charged failed to submit his defense as yet I take ex parte decision and order for enquiry by nominating Sri D. Sharma/IPE/RNY as E.O. and submit findings within 30 days.

DA/One Pro. Case file.

*WB* 25.9.87

महाराष्ट्र शायक  
 श्री. सी. रेलवे; अधीक्षित अधिकारी  
 Security Commissioner  
 N. F. Rly. Alipurduar Jn.

Certified to be True Copy

*PKan*  
M. M. M.  
14/11/87

NO. RPPF/DAR-3/87  
Dated 24-3-88

Office of the  
Insp/ RPF/RPM

From : - S/o D. Saranah  
Insp/ RPF/RPM, now at RPM-

To : - S/o Samlechua Barumataty  
Constable/RPF/RPM-  
S/o Lendai Barumataty  
Vill - Duligan  
PS. 8 P.O - Siall  
Dist - Goalpara

Sub : - DAR

It was ordered by DSC/ADP  
vide Order no. AD/770/22/87 (44)  
dated 25/9/87 to hold DAR  
against you for your absenting  
from duty. On another side if  
you are therefore directed  
to submit the name of force  
~~defence~~ ~~Colonial~~ and in case  
of any other 5 days  
receipt of this letter in that  
the date of DAR against you  
may be fixed.

Ex-Parte procedure will be  
taken in case you fail to  
submit the same/no response  
from you send DSC/ADP

26/3/88  
Insp/ RPF/RPM  
In Charge. Copy/RPM

Copy to the DSC/ADP  
for action - ~~for action~~  
and a/c P.P.I.

Insp/ RPF/RPM

Certified to be True Copy

By  
Date  
9/7/04

NY Regd 10/1/88-27- ANNEXURE - 4

NO. RRP/ DAR-3/88  
Dated 10/7/88

Office of the  
Insp/ RPF/  
RPAW-

To : S/o : S/o D. Sarmah  
Insp/ RPF/ RPAW-

To : S/o Sambucus Basumatary  
Constable/ RPF/ RPAW-  
S/o. Leangdai Basumatary  
vill. Dreligaon  
PS & PO - Sidli  
Dist - Goalpara.

The name of your defence Council and witness ride my letter no of even dated 24-3-88, which were send under registered post no. 1732 dt 31/3/88 though received so far no response from your end.

As such the date of DAR against you on 1-8-88 from this end and you are directed to attend the said DAR at this post at 10.10 hrs along with your defence Council/Advocate if any fix party decision will be taken in case of your failure to appear in said DAR on the date time and place fixed.

10/7/88  
Reported.

Super In-Charge/P. Coy/RPAW

N.F. Railway.

Copy to the DSC/APD for further information please

Insp/ RPF/ RPAW

Certified to be True Copy

10/7/88  
9/7/88

DAR: legal notice against SRI  
Sambatukh Baruhatary, Comt/RPF/TZTB  
in connection with his absent-  
from duty w.e.f. 3/4-7-86

By SRI D. Sarath  
Inp/RPF/RPAW

### Brief history of the case

On 3-7-86 Comt/RPF/TZTB in  
Sambatukh Baruhatary was directed  
by S1/RPF/TZTB to draw his salary  
from IPF/EMR ride TZTB EP Dated  
entry no. 13 at 1635 hrs dated 3/7/86  
and Command Certificate no.  
1087/12 dated 3/7/86 was also issued  
to the staff concerned to proceed by  
14 DAU-CR 4/7/86. But the staff  
concerned did not report back  
after drawing of his salary and  
remained absent from duty with  
information about his whereabouts.

### Action

On receipt of information  
from S1/RPF/TZTB ride his letter no.  
TZPF/E-1/86 dated 24-7-86, Inp  
RPF/RPAW- ICC passed the case to  
Commandant/RPF/APD9 ride 1448  
10. RPPF/E-3/86 dated 25/7/86.

On the basis of the report submitted  
by S1/RPF/TZTB Commandant-  
RPF/APD9 issued charge sheet  
under A4 of RPF Rules, 1959 to  
SRI Sambatukh Baruhatary,  
Comt/RPF/TZTB at his home  
address ride 1448 no AP/PD9-221  
87 (44) dated 24-3-87. On the charge-  
sheet - "He is absconding himself  
from duty from 3/4-7-86  
without any authority".

P.T.O.

Certified to be True Copy

AKM  
19/7/87

36  
on the basis of following  
Statement of allegation:-

"He was directed to draw his  
salary for the month of June '86  
from FKM (OP) by 14 DA- EF 3/4 -  
7-86 but he did not receipt  
(back to his HAC and returning  
his duty from 3/4-7-86  
without any authority".

The said chargesheet was  
served to the Party charged  
Sri Sambath Basumatary at his  
home address (to Sri Sambath  
Basumatary, Cm/RPF/TZTB S/o  
Leogolai Basumatary, Vill. Duliaganj  
P.O. Sidi P.S. Sidi Dist. Goalpara  
Assam) by Royal Post with AD  
from Cm/RPF/APD.

1st copy of the aforesaid chargesheet  
was also sent to Jnsp/RPF/  
RPAN - Vida (D/RPF/APD) 14 AD  
A.P./BZ-22/87 (44) dated 24-3-87  
for disposal on the meeting Board  
of RPF/PDF/RPAN. SPF/RPAN  
complied the order on 31/3/87  
in presence of H/RPF S.C. DAS &  
MK K.C. Saiketary, K.K. Das and  
Cm/RPF C.J. Borwaria and  
cancel diary entry No. 17 dated  
31-3-87.

Since the Party charged failed  
to submit his defense upto  
21/3/87 (Cm/RPF/OPD) 14 AD  
(Commandant) RPF/APD took  
the post decision and ordered  
for conducting DAR separately  
nominating Dr. D. Sarma (P.F.I.  
ENP 1970) and E.O. C.I.  
the case.

Before holding the enquiry against the delinquent, myself wrote cross-branches with him at his duty-place vide my letter no. RPPF/DAR-3/87 dated 28/10/87, but no response was received from him. Again on 24/3/88, Party charged was ~~not~~ to submit the same to defence council and witness vide my letter no. RPPF/DAR-3/87 dated 24/3/88 through Regd Post but no reply was received. Finally on 10/7/88 party charged was informed about the fixation of D.R. date of his trial vide my letter no. RPPF/DAR-3/88 dt 10/7/88 but no response was received. Hence ex-Party enquiry was conducted by me.

### Evidence

During enquiry, the following witness and records were called on -

(1) Exhibit - 1 = Statement of SAC D. R. RAO, Kurnool, SI/RPF/TZTB

(2) Exhibit - 2 = True Copy of D/E no. 13 dated 3/7/86 at 1635 hrs counter signed by S. Environment himself at TZTB.

(3) Exhibit no. - Record book of N/O no. 1087/12 signed by SAC D. R. RAO, Kurnool

(4) Exhibit no. - Abnormal record of CB S. Environment counter signed by SI/RPF/TZTB vide no. TZPF/L-1/86 dated 24/7/86

P. T. O.

Certified to be true copy

Rao  
19/7/89

Discussion of evidence to prove the fact : -

The basis of charge levelled against Com/RPF/TZ/2 Sri Sambaran Balanmatory was not Re was absconding himself from duty on 7-86 effect from 3/4-7/86 without any authority. During the course of I found that the notice no information from the Party charged about his leave & Grants since the day 9-6-86 to leaving HCL PS we from 4/7/86 Party charged who Rained are in Mysore order no. 1087/12 dt 3/7/86 and was duty received by him on the overlength of 10 days but not yet received by him. His leaving of HCL PS was missed by RPF on 13 dt 3/7/86 (Exhibit - 2). 31/ RPF/TZ/2 D. R. Kavindra. admitted through his statement (Exhibit - 1) that the Party charged Sri Sambaran Balanmatory was absent from 3/4-7-86 without authority which notice found relevant to the fact.

Findings of Enquiry - Charge proved

~~31/7/86~~  
Proceeds of RPF/RPA

Submitted to the DCI/RPF/APD in Compliance to the order no. AP/PA 22/87 (44) dated 25/7/88 for Kavindra appeal.

~~Chennai 20/8/88~~  
RPF/RPA

Typed copy of the Enquiry Report (Annexure - 1 - E)

DAR enquiry report against Sri Sambaru Basumatary, Const/RPF/TZTB in connection with his absenting from duty w.e.f. 3/4.7.86.

By- Sri D.Sarmah,  
Insp/RPF/RPAN.

Brief history of the case

On 3.7.86 Const/RPF/TZTB Sri Sambaru Basumatary was directed by SI/RPF/TZTB to draw his salary from IPF/FKM/Vide TZTB OP diary entry No.13 at 16.35 hrs dated 3.7.86 and command Certificate No.1087/12 dated 3.7.86 was also issued to the Staff concerned to proceed by 14 DN on 4.7.86. But the staff concerned did not report back after drawal of his salary and remained absent from duty without information about his whereabouts.

Action.

On receipt of information from SI/RPF/TZTB vide his letter No.TZPF/E-1/86 dated 24.7.86 Inspector/RPF/E-1/86 dated 24.7.86 Inspector/RPF/RPAN reported the case to commandant/RPF/APDJ vide letter No.RPF/E-3/86 dated 25.7.86. On the basis of the report submitted by IPT/RPAN, Commandant RPF/APDJ issued charge sheet under 44 of RPF Rules, 1959 to Sri Sambaru Basumatary Const/RPF/TZTB at his home address vide letter No. AP/Pro-22/87 (44) dated 24.3.87 on the charge that "He is absenting himself from duty from 3/4-7-86 without any authority".

The said charge was brought to him on the basis of following statement of allegation.

"He was directed to draw his salary for the month of June '86 from FKM(OP) by 14 DN of 3/4-7-86 but he did not report back to his HQs and absenting himself from

*Certified to be True Copy from 3/4-7-86 without any authority.*

*R.P. Sarmah  
Advocate  
9/7/87*

contd.....2

(2)

The charge sheet was served to the party charged Sri Sambaru Basumatary at his home address ( to Sri Sambaru Basumatary , Const/RPF/TZTB S/O Landai Basumatary, vill. Duligaon P.O. Sidli P.S. Sidli Dist. Goalpara (Assam) by Regd Post with AD From CO/RPF/APDJ.

A copy of the aforesaid charge sheet was also send to Insp;/RPF/RPAN vide CO/RPF/APDJ letter No.AP/Pro-22/87(44) dated 24.3.87 for display on the notice Board of RPF. post/ RPAN. Insp/RPF complied the order on 31.3.87 in presence of HC /RPF S.C. Das (2) NK K.C. Sargiary, K.K.Das and Const/RPF C.D. Knowar and caused diary entry No.17 dated 31.3.87.

Since the party charge sheeted failed to submit his defence upto 24.9.87 Security Commissioner (Commandant) RPF/APDJ took ex-parte decision and ordered for conducting DAR enquiry nominating me (D.Sarmah , IPTpRNY now at RPAN) as E.O. of the case.

Before holding the enquiry against the delingent, myself made corespondance with him at his duty place vide my letter No.RNPF/DAR-3/87 dated 28,10.87 but no response was received from him . Again on 24.3.88 party charged was asked to submit the name of defence council and witness vide my letter No.RPF/DAR-3/87 dated 24.3.88 through Regd post but no reply was received . Finally on 10.7.88 party charged was informed about the fixation of DAR date against him vide my letter No.RNPF/DAR-3/88 st.10.7.88 but no response was received . Hence ex-parte enquiry was conducted by me.

#### Enquiry.

During enquiry following witness and records were relied on -

- (1) Exhibit - 1. Statement of Sri Dehiram Konwar, SI, RPFpTZTB.

(3)

(2) Exhibit-2. True copy of D/E No.13 dated 3.7.86 at 16.35 Hrs caused by S.Basumatary himself at TZTB O.P.

(3) Exhibit No. Record foil of N/O No.1087/12 signed by D.R. Konwar.

(4) Exhibit No. Absent report of CB S.Basumatary submitted by SI/RPFpTZTB vide No.TZPF/L-1/86 dated 24.7.86.

Discussion of evidence to issue that the facts:

The basis of charge levelled against Const/RPF/TZTB Sri Sambaru Basumatary was that he was absenting himself from duty with effect from 3/3.7.86 without any authority. During my enquiry I found that there were no information from the party charged about his whereabouts since the day of his leaving the Hqrs w.e.f. 4.7.86 .Party charged was handed with movement order No.1087/12 dt.3.7.86 and was duly received by him on the over leap of receipt foil but not yet returned by him. His leaving of HQRS was proved of D/F No.13 dt. 3.7.86 (Exhibit-2). SI/RPF/TZTB ER D.R. Konwar admitted through his statement (Exhibit-1) that the party charged Sambaru Basumatary was absent from 3/4.7.86 without authority which were found relevant to the fact.

Finding of Enquiry - Charged proved.

Sd/- D.Sarmah  
20/8 X  
Inspector /RPF/RPAN.

Submitted to the DSC/RPF/APDJ in compliance to his order No.AP/Pro-22/87 (44) dated 25.3.88 for kind disposal.

Sd/- D.Sarmah  
20/8  
Insp/RPF/RPAN

SHOW CAUSE NOTICE

NO. AP/Pro. 29/88 (44)

Form - RPF/E-16(F)1.

Place of issue Alipurduar Jn.

MEMORANDUM

Date: 12.10.88.

Sri Sambalwar Basumatry / Con/ QPO/ QPAN -  
(Name and designation of the member of the Force) (under suspension) is informed that the Enquiry Officer/Board-of-Enquiry appointed to inquire into the charge(s) framed against him has/have submitted his report of the Enquiry Office.

2. On a careful consideration of the report and in respect of charge(s) framed against Shri S. Basumatry (Con/ QPO) (name of the member of the Force) the undersigned agrees with findings of the Enquiry Officer/Boards-of-enquiry holds that the charge(s) is/are proved. The undersigned has therefore, provisionally come to the conclusion that -

Sri Sambalwar Basumatry Con/ QPO/ QPAN (name of the member of the Force) is not fit person to be retained in service and so the undersigned propose to impose on him the penalty of dismissed from service/removal from service/compulsory retirement.

Or

Sri \_\_\_\_\_ (Name of the member of the Force) is not fit person to be retained as (Designation of the post which the member of the Force holds) and that he should be reduced in rank to that of \_\_\_\_\_ (Designation of the post).

Or

The penalty of reduction to the lower stage at Rs. \_\_\_\_\_ in the time scale of pay of Rs. \_\_\_\_\_ may be imposed on Sri \_\_\_\_\_ for a period of \_\_\_\_\_ (here state the period).

3. Sri Sambalwar Basumatry Con/ QPO/ QPAN (Name of the member of the Force) is hereby given an opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during the enquiry. Any representation which he may wish to make on the penalty proposed will be considered by the undersigned such as to each the " \_\_\_\_\_ not later than 14 days.

4. The receipt of this Memorandum should be acknowledged.

To Sri Sambalwar Basumatry  
Con/ QPO/ QPAN

WB - 12.10.88  
DSC/ACJ  
1. C. S. Commissioner  
Civil Security Commissioner  
N. P. Bldg. Alipurduar Jn.

Certified to be True Copy

*Ranu*  
*Advocate*  
*1978/9*

Argel, Argel, Argel  
Argel, Argel, Argel

Alzey

85

Bei Sambucus <sup>Prunus</sup> comosa,  
Cerasus <sup>Malus</sup> cerasifera,  
Scleranthus <sup>Prunus</sup> comosa,  
will. Deliquever,  
Fruct. Siccii, P.S. Siccii,  
Fruct. Galapacensis siccii.

✓ S. G. Sher. Fairvar N.Y. 100

On enclosing herewith a short  
Circular Letter, you are requested to  
submit your representation within  
15 days on receipt of the same, failing  
which it will be presumed that  
Sri Basumatry has nothing to oppose  
and ex parte decision will be taken from  
this end.

116-12:10:88

~~3.50~~ ~~4.00~~

Drafts stated

Certified to be True Copy

~~8/6/01~~  
9/7/01

ORDER

Sri Sambaru Basumatry, Constable/RPF/RPAN was issued with a charge sheet under Rule 44 of RPF Rules 1959 on the following charge vide No. AP/Pro-22/87(44) dated 24/3/87.

Charge.

" He is absenting himself from duty from 3/4-7-88 without any authority."

The above mentioned charge sheet was sent to his home address with registered Post with A/D but the delinquent did neither submit his statement of Defence within the stipulated period nor report back for resumption to his duty. Accordingly DAR enquiry was ordered by nominating Sri D. Sharma, IPF/RNY as E.O. on ex parte decision on 25/9/87.

The E.O. has conducted the DAR enquiry by affording all reasonable facilities as per RPF Rules 1959 and submitted his findings holding the delinquent Sri S. Basumatry, Constable/RPF/RPAN as guilty of the charge.

Agreeing to the findings of the E.O. a Show Cause Notice, proposing his removal from service was issued on him vide No. AP/Pro-22/87(44) dt. 12/10/88 to his home address with Regd. Post with A/D. The delinquent Basumatry was allowed 14 days time to submit his representation against the said Show Cause Notice if any.

*Good advice  
and from the  
delinquent  
and not to  
allow him  
to be retained  
in service  
for any  
more.*

The delinquent Constable S. Basumatry has acknowledged the said Show Cause Notice on 16/11/88 but till date he has not submitted any representation which conclusively proves that the delinquent Constable has nothing to represent as well as he has no desire to serve under this establishment. Under the above circumstances it is conclusive that the delinquent Constable Sambaru Basumatry will not be a worthy person to be retained in discipline force any more.

I, therefore, take ex parte decision and order that Sri Sambaru Basumatry, Constable/RPF/RPAN be removed from service with immediate effect.

*Sd/-*  
Divl. Security Commissioner,  
N. F. Fly/Alipurduar Jn.

No. AP/Pro-22/87(44)

Dated: 26.12.88

Copy of the above is forwarded for information and necessary action to:-

Regd. with A/Ds

- 1) Sri Sambaru Basumatry, Constable/RPF S/O Lendai Basumatry, Vill. Duligaon, P.O. Sidli, P.S. Sidli, Dist. Goalpara, Assam. *He should attend office*
- 2) IPF/RPAN. He is advised to paste one copy of this order on the Notice Board keeping Diary Entry and send the Diary extract to DSC/APU's office for record.
- 3) E/Bill, 4) P/case, 5) D. O. Book.
- 6) OS/Estt. section at office.

*26.12.88*  
Divl. Security Commissioner,  
N. F. Fly/Alipurduar Junctions

*Certified to be True Copy*

*P. G. Roy  
Advocate  
27/1/89*

To,

The Divisional Security Commissioner,  
N.F. Railway,  
Alipurduar Junction,  
P.O. Alipurduar Junction,  
Dist. Jalpaiguri (West Bengal).

Dated, the 5th day of February/2002.

Sub :- Reply of your letter dt. 26/12/08.

Ref :- Your letter No. AP/Pro-22/87(44) dt. 26/12/88.

Sir,

With reference to the above I have the honour to state the following facts for your kind attention and necessary consideration into the matter :-

1. That, I was the Constable/RPF/RPAN, N.F.Rly and I have been removed from service on 26/12/88.
2. That, regarding the issuance of 'Charge Sheet Letter' to me, I would like to submit that the said letter did not reach to me. As a result of which I could not reciprocate the said letter by way of giving my statement and due to non-reply of the said letter, an ex-parte decision was made on 25/9/87 against me.
3. That, thereafter the show cause notice for removing me from service served to me. But due to my illness I could not reply the same within the stipulated 14 days time. But I sent a letter addressing you thereafter under certificate of posting and the non-receipt of the same is regretted.
4. That it may be mentioned here that I served for 25 years and during my long service period I have never violated the rules and regulations as framed in R.P.I. Rules, 1959. I was a sincere, disciplined and obedient <sup>constable</sup> ~~constable~~ during my service period. I tried to abide by the rules of R.P.I. My absence from my service was not intentional. I made correspondances. As a result of such unfortunate and unintentional act I have been removed from the service without being heard. At present I have been suffering from acute financial hardship.

Contd.....P/2.

*Certified to be True Copy*

*Pranay*  
Advocate. 19/1/09

( 2 )

5. That I do request Your Honour to sanction me full Pensionary benefit and other allowances as per R.P.F. Rules as I served for 25 years. Be it mentioned here that in the event of non-sanction of the above I shall be deprived of getting natural Justice.

In view of the above facts and circumstances I, therefore, pray Your Honour to act upon and consider the matter so that I may be saved from acute financial hardship and thus oblige.

Yours faithfully,

(Sri Sambaru Basumatary)  
S/o, Landai Ram Basumatary,  
Ex-Constable, R.P.F., N.F.Rly.,  
Village - Luligaon,  
P.O. Sidli, Dt. Bongaigaon,  
(Assam).

- 40 -

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आर. शी. - 54	भारतीय डाक-विभाग/भारतीय डाक विभाग DEPARTMENT OF POSTS, INDIA	तारीख - दिनांक -
आर. शी. - 68	प्रेषक द्वारा दी गया - मोल/पत्रांक/प्राप्तवार्ता नम्बर इत्यत्र N. No. (Stamp) of office of posting	
१९६४	Date Stamp	
भेजनेवाले का नाम/वारास्ता नाम विवर/Gender's address Sambari Basumatary, S/o, Landai Ram Basumatary, Ex-Constable, RPF, N.F.Rly, Vill. Duiigaon, P.C. SIDDI, Dt. Bongaigaon(Assam)/Pin		मुद्रित क्रमांक Numbered Box

प्राप्तवार्ता द्वारा/MGIP(FU), Smt. Postm.

प्राप्ति-स्वीकृति (रसीद)/अंकित/ACKNOWLEDGEMENT

★ एक रुपये की पुस्तक/पोस्टकार्ड/पैकेट/पारालं प्राप्त हुआ	मुद्रांक
★ देविष्टीकृत/वीकार्त्तना/प्रेषित कार्ड/पारालं/पार्टिशन वाला नाम	मात्र -
★ Received on <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Mailed <input type="checkbox"/> Letter/Postcard/Parcel/Parcel	No.
The Divisional Security Commissioner, N.F. Railway, Alipurduar Junction, P.O. Alipurduar Junction, Dist. Jalpaiguri (West Bengal).	
★ यांत्रे का मुल्य (रुपयों में)	
★ दीपाक चतुर्वेद अधिकारी	
★ Insured for Rupees	
वितरण तारीख	
विभिन्न अंकित	
Date of delivery	19
यांत्रे के इसाध्य प्राप्त नाम पर अंकित करें। Signature of addressee.	
★ अनावश्यक की काट दिया जाने/अनावश्यक अंक प्राप्त करने निष्पत्री की काट दिया जाने/Score out the matter, not required.	
★ अनावश्यक प्राप्ति की काट दिया जाने/अनावश्यक अंक प्राप्त करने/For Insured articles only.	

प्राप्ति-स्वीकृति (रसीद)/अंकित/ACKNOWLEDGEMENT

Certified to be True Copy.

Advocate.

9/7/09



Wt: 100 grams

Rs: 45.00, Amt: 0.00, 05/12/2003, 11:55:34

SAT HIND

To

The Additional Chief Security Commissioner,  
Railway Protection Force,  
N.F. Railways,  
Maligaon, Guwahati, Assam.

Sub :- An appeal/application for grant of pension and  
pensionary benefits in respect of Sri Sambaru  
Basumatary, Constable, RPF/RPAN, N.F. Railways,  
Alipurduar Jn. (Since removed from service).

Ref :- (i) order of removal from service Vide No. AP/Pre-  
22/87(44) dated 26-12-88, Divisional Security  
Commissioner, RPF, Alipurduar Jn.

(ii) An application/representation in respect  
of Sri Sambaru Basumatary, Const. RPF/RPAN, add-  
ressed to the Divisional Security Commissioner  
for grant of Pension/gratuity dtd. 5-2-2002.

Dated Kokrajhar the 3rd December/2003.

Sir,

Most respectfully I do hereby approach your  
benign authority and submit the following for favour  
of your kind and sympathetic consideration.

That, the delay for filling this appeal before  
your authority is quite inordinate and contrary to the  
relevant Rules of the Railway Protection Force, 1957.  
However, I humbly submit that this delay/ laches may  
not be attributed to my negligent act alone but also  
to certain contributory factors of the departmental office  
itself. Hence, I respectfully pray that your benign aut-  
hority may be pleased to condone the delay on humana-  
tarian ground.

Certified to be True Copy

P. Gohar 9/7/04  
Advocate.

Contd.

11 2 11

3. That, I was recruited as constable during the year 1961/62 in the establishment of the RPF, N.F.Railways as such I had the opportunity to serve the organisation for a continuous period of about 27/28 years of service with devotion and sincerely till to the date of my removal from service. Besides, the establishment under whom I had been serving was pleased to confirm me to the substantive post of constable only after considering my performances and service records.

4. That, on 3/7/86 I was directed to proceed to Fakiragram O.P. for drawal of my salary by my superior officer concerned. As ill luck would have it I had to proceed to my native home on receipt of some unfortunate news pertaining to my family. This fact of my forced absence from duties was availed of by submitting an application for leave to my superior officer on bona fide ground. However, I could not return to my place of duty due to certain unavoidable circumstances which were beyond my control.

5. That, the Divisional Security Commissioner, concerned had action his own reasoning and in exercise of the delegated power under the Railway Protection Force Act, 1957. However the section 9 of the RPF Act, 1957 was amended in 1985 vide Act 60 of 1985. The amended section reads as under :-

- 1) Dismissal, removal, etc. of members of the force.  
(I) Subject to the provisions of Art. 311 of the constitution and to such rules as the central Govt. may make under this Act, any superior officer may -
  - (i) dismiss, suspend or reduce in rank any enrolled member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same, or

(xx)xxxxxxxxxxxxxxxxxxxxxx

contd. p/3

(ii) award any or more of the following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof namely :

- a) fine to any amount not exceeding seven days pay or reduction in pay scale ;
- b) confinement to quarters for a period not exceeding fourteen days, with or without punishment, drill, extra guard, fatigue or other duty ;
- c) removal from any office of distinction or deprivation of any special emolument.

Sub-section (2) of section 9 of the Act has already been substituted as under :-

2) Any enrolled member of the Force aggrieved by an order made under sub-section (I) may within 30 days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed.

Provided that the prescribed authority may entertain the appeal after the expiry of the said 30 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

6. From above it stated that the impugned order passed by the Divisional Security Commissioner is rather a harsh one vis-a-vis the article of charge .

11 4 11

7. The article of charge against me emanates from the fact that I was absent from duty without any leave vide No. AP/Pro-22/87(44) dated 24-3-87.

Charge-I

He is absconding himself from duty from 3/4 -7-86 without any authority.

Allegation regarding charge-I.

He was directed to draw his salary for the month of june/86 from FKM(OP) by 14 Dn of 3/4-7-86 but he did not report back to his Ad. Qrs and absconding himself from duty from 3/4-7-86 without any authority.

(Xerox copy enclosed As Annexure-I, Annexure-2 and Annexure-3.).

8. That, the charges framed against me referred to above may be interprised as violation of discipline other than the grave misconduct or breach of discipline which may invite ~~xx~~ minor penalty/punishment whatsoever instead of major punishment like removal from service which amounts to forfeiture of post services and deprivation of legal rights to the member of the Force. The order of the removal passed by the Divisional Security Commissioner vide No. AP/Pro-22/87(44) dtc. 26.12.88 speaks in para-4 and 5 as under :-

"The delinquent constable S. Basumatary has acknowledged the said show cause notice on 16-11-88 but till date he has not submitted any representation which conclusively proves that the delinquent constable has nothing to represent as well he has no desire to some under this establishment.

Under the above circumstances it is conclusive that the delinquent constable Sambaru Basumatary will not be worthy person to be retained in discipline Force any more.

// 5 //

I, therefore, take ex parte decision and order that Sri Sambaru Basumatary, constable RPF/RPAN be removed from service with immediate effect".

It may be seen in the body of the order the endorsement made by the Head Clerk (Estt. DSC's office, APD) dated 18/1/90 which records as follows :-

"Advised to deposit all Govt. properties including uniform etc. and submit clearance certificate first. He is supplied with three P. 9-16 forms".

Again there is an endorsement made against the name (S1.I) which may be reproduced here :-

"He should attend office in C/D P.S. duties".

9. It may be analysed from above that the order of removal from service did not have effect even after 18.1.90 well beyond 2 years and 22 days from the date of passing the order referred hereto before.

10. That, I have hardly any motive to contest the findings of the Enquiry officer, D. Sharma, Inspector, RPF. who submitted the report in compliance to the direction of the disciplinary authority dated. 20-8-88.

(Xerox copy of the report is enclosed as Annexure-5).

11. That, I, on many occasions expressed my sincere willingness orally before my immediate senior officers about the voluntary retirement from service as I had already put about 26/27 years qualifying service for pensionary benefits. However, I was not able to yet appropriate encouragement and feed back in this regard from any officer both executive and ministerial of the establishment. Hence I was totally frustrated and demoralised I was forced to suffer acute mental depression which rendered me meet both psychologically and physically.

// 6 //

12. That, I was made to understand that the removal from service should not effect my right to claim pensionary benefits for my post 26/27 period of service in the RPF. Therefore, with this bonafide conviction I had been shuttling the office of my employer for the last 15 years but so far nothing is materialised. In fact I am told that the removal from service means automatic forfeiture of post services which would make me ineligible for pension and other benefits.

13. That, I have confided with some of my well wishers in regard to the entitlement of pension and other benefits taking into account of my long 26/27 years service in the RPF. establishment. They had advised me to invite your attention to Rule-84, RPF Act, 1957 (as ammended) which would read as under :-

Rule -84, Retirement on grounds of unsuitability.

84.1 Whenever a security Commissioner or an officer of a higher rank is of the opinion that a member of the Force (being an armed force of the union) is unfit to be retained in service because of a steep fall in his competence, efficiency, effectiveness or otherwise and where action under Chapter-XII is not feasible, he may recommend to the Chief Security Commissioner concerned that the member be retired from service.

84.2 The said Chief Security Commissioner or as the case may be, the said appointing authority may on receipt of such recommendations and after giving the member of the Force an opportunity to explain his case, pass such order as he or it may deem fit.

Provided that the Chief Security Commissioner or the Central Government, as the case may be, is of opinion that it will not be in the interest of the security of the state to give an opportunity to the member of the Force to explain his case, he or it may pass orders as aforesaid without giving such an opportunity.

Further, Rule 40 and Rule-41, Central Civil Services (Pension)Rules, 1972 may also be referred to :-

Rule 40. Compulsory retirement.

Pension.

(1) A Government servant compulsory retired from service as a penalty may be granted by the authority competent to impose such penalty pension or gratuity or both at a rate not less than two - thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

Rule-41 Compensation allowance.

(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity.

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two thirds of pension or gratuity or both which would have been admissible to him if he had retired or compensation pension.

14. That Sir, I respectfully state that my conduct in regard to prolonged absence from the place duty is certainly against the rule of the RPF. I have stated hereto above that I was the victim of circumstance who had been forced to suffer silently the acute mental depression as well as the physical and psychological turmoil which had made me unfit to perform my assigned duty as a disciplined member of the Force.

15. That, an application/~~xxxxxxxxxx~~ appeal for grant of pension etc. was duly submitted above to the appointing authority by me on 5-2-2002 but so far no order had been passed in this regard.

(Xerox copy enclosed as Annexure-6).

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16. That, I am a member of Scheduled Tribe (Plain)belonging to Bodo - Kachary Community of Assam State, though there is no special provision for granting pension and gratuity to the member of the Force belonging to backward tribe however, it can not be denied that such member of the Force do not deserve special consideration on humanitarian ground.

17. Under the circumstances stated above I respectfully pray that my grievances stated above may be considered with humanitarian approach, justice and good conscience. That you may also be pleased to pass an appropriate order of granting pension and gratuity in my favour taking into account of my post service and other relevant factors.

I shall be ever grateful for act of kindness.

Yours faithfully,

*Dr. Sambaru Basumatary*

( Sambaru Basumatary )

3/12/2003

C/o, Mr. P.Goyari,  
Advocate,

Bar Library, Kokrajhar-783370.