

100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 188/2004

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SECTION OFFICER (Judl.)

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI BENCH

ORDER SHEET

Org. App/Misc. Ptn/Cont. Ptn/Rev. Appl.

In O.A. 188 85 2004

Name of the Applicant(s) Pranab Das

Name of the Respondent(s) U.O.I & Ors.

Advocate for the Applicant Mr. J. L. Sarkar, & Mr. A. Chakraborty, Mr. K. Dutta

B.C. Pathak, D. Borwah
B. Pathak for Resptt No. 3 & 4.

Counsel for the Railway/C.G.S.C. C.G.S.C

OFFICE NOTE DATE ORDER OF THE TRIBUNAL

26.8.04.

Presents Hon'ble Mr. D. C. Verma, Vice-Chairman.

Hon'ble Mr. K. V. Prahladan, Administrative Member.

Heard Mr. J. L. Sarkar, learned counsel for the applicant and Mr. A. K. Choudhury, Addl. C.G.S.C. for the Respondent No. 3 and 4. The learned counsel for the applicant has been heard at length.

The submission of learned counsel for the applicant is that the applicant was suspended vide order dated 9th January 2003 and review of this order has been made on 11th May 2004 whereas it is required to be done on schedule. With reference to sub Rule (6) and (7) of Rule 10 of CCA & CCS Rules 1965 and the decision of the Apex Court in the case of O.P. Gupta, Vs. U.O.I & Others, AIR 1987 SCC 2257 and P. Tulsi Das, Vs. Govt of A.P. & Ors, 2003(1) SLJ/SC 164, the learned counsel for the applicant submitted that the order of suspension is invalid.

contd/-

This application is in form
is filed/C. F. for Rs. 50/-
deposited vide I.P.C/BD
No. 203 113 982

Dated 25/8/04

Abey
Dy. Registrar

Slips later on 25/8/04
17/8/04

N.S.
17/8/04

26.8.04.

Notice & order
sent to D/Section
for issuing to
resp. Nos 1 to 4, by
regd. A/D post.

22/9/04.

After the learned counsel has been heard and perusal of the documents, we are of the view that the other party is required to be heard to bring the details facts ^{on} and record before interim relief is granted. We therefore, direct for issue of notice to the Respondents in respect of O.A. and also the interim relief.

Mr. A.K. Choudhury, Addl. C.G.S.C. has no objection in granting of 75% of Subsistence Allowance. The Respondents may consider the same and release that amount within 15 days.

List on 7.10.04 for orders.

Icr. P. Bhattacharya
Member

Vice-Chairman

6.10.04

lm

Service report
await.

07.10.2004

List on 17.11.2004 for orders.

By Order

bb

22.11.2004

List on 3.12.2004 for orders.

2-12-04

1/ 5/2 -awaited.
2/ 40 -cr/s ha-seen filed.

Icr. P. Bhattacharya
Member (A) min

mb

Notice duly served on
Respondents No. 4

Copy

3.12.04. Mr. B.C. Pathak, learned Addl. C.G.S.C. pleads for time to file written statement. Four weeks time is granted to file written statement. Stand over to 19.1.05.

K. D. Patel
Member

R.

Vice-Chairman

19.1.05

① no file demand on R. no 1 & 2. 1m

19.1.05.

The written statement has already been filed by the Respondents No. 3 & 4. It appears that the service for Respondents No. 1 & 2 is awaited. Awaiting service/fresh steps for service in case the applicant so desires. Stand over to 21st Feb, 2005.

K. D. Patel
Member

R.

Vice-Chairman

20. 1. 05

1m

W/S filed by the Respondents.

RD

21.02.2005

Written statement has been filed by the Respondents. List on 31.3.2005 for hearing. Meanwhile, the applicant may file rejoinder, if any.

1) W/S has been filed on R. NO 3 & 4.

2) S/R awaited by

R. 1 & 2.

NZ
18.2.05

mb

31.3.2005

Mr. M. Chanda, learned counsel appearing on behalf of Mr. J.L. Sarkar, learned counsel for the applicant submits that he has some personal difficulties. Post on 6.5.2005.

K. D. Patel
Member (A)

30.3.05
no rejoinder - hence

35/0

RD

D. J. Chanda

Vice-Chairman

5-5-05

mb

no rejoinder - hence
35/0

RD

06.05.2005

Mr. J.L. Sarkar, learned counsel for the applicant is ready to urge the matter. But on behalf of Mr. B.C. Pathak, learned counsel for the Respondents his junior made representation that ~~as~~ his Sr. counsel is not well. Hence, Adjournded to 12.5.2005.

K. D. Patel
Member

D. J. Chanda
Vice-Chairman

12.5.2005 Mr. J.L. Sarkar, learned counsel for the applicant seeks adjournment on personal grounds. Post on 17.5.2005 for hearing.

CANCELED

Member

Vice-Chairman

mb

12.5.2005 Counsel for the parties seek adjournment. Post on 17.5.2005.

K. D. Pathak
Member

Vice-Chairman

mb

17.5.2005

At the request of Mr. J.L. Sarkar, learned counsel for the applicant the case is adjourned to 3.6.05 for hearing.

K. D. Pathak
Member

Vice-Chairman

nkm

3.6.05.

At the request of Mr. B.C. Pathak, learned counsel for the Respondent's case is adjourned to 21.6.05.

K. D. Pathak
Member

Vice-Chairman

lm

21.6.2005

At the request of Mr. B.C. Pathak, learned counsel for the respondents the case is adjourned to 22.7.2005.

K. D. Pathak
Member

Vice-Chairman

bb

22.7.2005

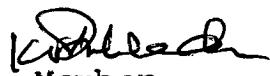
Since Mr. B.C. Pathak, learned counsel for the BSNL is unwell post on 10.8.05.

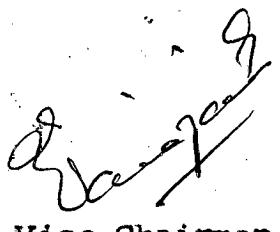
K. D. Pathak
Member

Vice-Chairman

bb

10.8.2005 Post this case on 16.8.2005
at 2.30 P.M.


Member


Vice-Chairman

mb

16.8.05. Mr. B.C. Pathak, learned counsel appearing on behalf of BSNL submits that he is not well and requires time to fully recover. Therefore, all these matters has to be adjourned to another date.

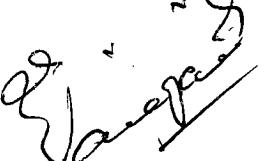
Post the matter on 22.11.05.


Member


Vice-Chairman

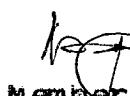
lm

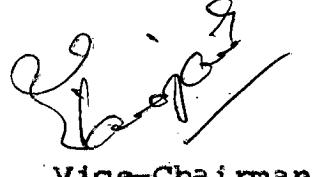
22.11.2005 Post before the next Division Bench.


Vice-Chairman

mb

2.1.2006 Heard learned counsel for the parties. Hearing concluded. Judgement delivered in open Court, kept in separate sheets. The application is disposed of in terms of the order.


Member


Vice-Chairman

mb

17.1.06
Copy of the
order has been
sent to the Office
for issuing the
same to the L/Adm
for the parties.

Sh.

X

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.**

O.A. No. 188/2004

DATE OF DECISION: 02.01.2006.

Sri Pranab Das

APPLICANT(S)

Dr. J.L. Sarkar

ADVOCATE FOR THE
APPLICANT(S)

-VERSUS -

U.O.I. & Others

RESPONDENT(S)

Mr. A.K. Chaudhuri, Addl. C.G.S.C.
Mr. B.C. Pathak

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE Mr. N.D. DAYAL, ADMINISTRATIVE MEMBER.

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

Judgment delivered by Hon'ble Vice-Chairman.

G. Sivaprasad

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 188/2004

Date of Order : This the 2nd day of January 2006.

The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.
The Hon'ble Mr. N.D. Dayal, Administrative Member.

Sri Pranab Das (30 Years)
S/o – Late Ramalal Das
J.T.O., Morigaon
Morigaon Telephone Exchange
Morigaon (Assam)

..... Applicant

By Advocates Mr. J.L. Sarkar, Mr. A. Chakrabarty, Mrs. K. Deka.

- Versus -

1. Union of India represented by
The Chairman
Telecom Commission
Department of Telecommunications
West Block 1, Wing 2
Ground Floor, R.K. Puram
New Delhi – 110 066.
2. Adviser (HRD)
Telecom Commission
Department of Telecommunications
West Block 1, Wing 2
Ground Floor, R.K. Puram
New Delhi – 110 066.
3. Chief General Manager, Assam Circle,
Telecom Ulubari, Guwahati.
4. Telecom District Manager,
Nagaon Telecom District,
Nagaon, Assam.

..... Respondents

By Advocates Mr. A.K. Chaudhuri, Addl. C.G.S.C. for Respondents
No. 1 and 2.
Mr. B.C. Pathak for Respondents No. 3 and 4.

ORDER (ORAL)SIVARAJAN. J. (V.C.)

The applicant is a Junior Telecom Officer initially appointed by the Central Government. While the applicant was on deemed deputation to the Bharat Sanchar Nigam Limited (BSNL for short), the applicant was involved in a criminal case. He was arrested and detained. Based on the involvement in the criminal case the applicant was suspended from service by the BSNL as per order dated 09.01.2003(Annexure - A). Later the Central Government issued an order dated 10.02.2003 (Annexure - B) stating that the applicant is deemed to have been suspended with effect from the date of detention, i.e. 06.01.2003 in terms of sub-rule (2) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and shall remain under suspension until further orders. It is specifically stated in the said order that annexure - A order is superceded. The Central Government subsequently issued an order dated 11.05.2004 (Annexure - C) stating that the suspension order was reviewed and keeping in view that a case involving criminal offence against the applicant is under investigation has decided to extend for a further period of 180 days. The applicant then submitted certain representations (Annexures - D to F) before the authorities seeking for revocation of the suspension order. Since there was no response in the mater, the applicant has filed this Original Application seeking to set aside the suspension order.

[Signature]

2. Dr. J.L. Sarkar, learned counsel for the applicant submits that in Rule 10 of the CCS (CCA) Rules (for short 'the Rules') sub rules 6 and 7 was introduced by way of an amendment to the Rules and notified on 23.12.2003 which clearly provides for review of the suspension order by a duly constituted committee within a period of 90 days from the date of original suspension order has not been strictly complied with. Counsel seeks to rely on a decision of the Hon'ble Gauhati High Court in regard to the scope of this provision in support. Counsel submits that impugned order, not being in conformity with the said Rules, is liable to be set aside and quashed.

3. Mr. B.C. Pathak, learned counsel for the BSNL who has also been impleaded as Respondent in this case, based on various averments made the written statement filed by the BSNL, submits that no orders are sought to against the BSNL as the impugned orders are passed by the Central Government. We have also heard Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for Respondents No. 1 and 2. Standing counsel submits that the respondents No. 1 and 2 have strictly complied with the provisions of the Rules as amended and that if the applicant has got any grievances in the matter certainly he can make a detailed representation with reference to those matters before the 1st & 2nd Respondents and that the same will be duly considered by them.

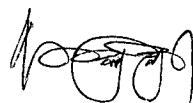
Ap/

4. We have considered the rival submissions. The counsel for the applicant has relied on the amendment to the Rules which incorporated sub rules 6 & 7 to Rule 10 of the Rules, the office memorandum dated 13.03.2004 issued by the Ministry of Personal, Public Grievances and Pension, Department of Personal and Training and also a decision rendered by the Gauhati High Court before us. Prima facie, it would appear that Respondents No. 1 & 2 are reviewing the suspension order in the light of the amended Rules (Annexure - C and Annexure - R1). It is not clear as to whether the review orders are passed by the Review Committee constituted as provided under the Rules. Considering the facts that the applicant has raised relevant matters in this application, we are of the view that an opportunity must be given to the Respondents 1 and 2 to consider all those matters and to pass a reasoned order taking into account the relevant rules and decisions on the point including those relied on by the counsel for the applicant. In the circumstances, we direct the applicant to make a detailed representation containing relevant facts, relevant rules and decisions on the point before the Member (Services), Telecom Commission, Government of India, Ministry of Communications & Information Technology, Department of Telecommunications (the competent authority) within a period of one month from the date of receipt of this order. On receipt of the said representation the said competent authority will dispose of the same in accordance with law and in the light of the

GDP

observations made hereinabove within a period of two months thereafter.

The O.A. is disposed of as above. The applicant will produce this order alongwith the representation to the competent authority for compliance.



(N. D. DAYAL)
ADMINISTRATIVE MEMBER



(G. SIVARAJAN)
VICE CHAIRMAN

/mb/

2,5 AUG 2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. : 188 /2004

BETWEEN :

Sri Pranab Das

..... Applicant

AND :

Union of India & Ors.

..... Respondents

SYNOPSIS

The applicant is working as Junior Telecom Officer, Morigaon, Morigaon Telephone Exchange. He was kept in police custody 6-01-2003 to 3-02-03. He was put under suspension for being in custody beyond 48 hours by order dated 9.01.2003 (Annexure A)/10.2.2003 (Annexure - B)

The suspension of the applicant was not reviewed 3 monthly as per Government of India's instructions but the suspension was continued without following the process of law. Charges have not been framed by the court. There is no departmental charge sheet also.

Filed by
Chakrabarty
25/8/04

The applicant has not been paid due subsistence allowance (75%) after 90 days and is being paid 50% of pay & allowances even today.

The order dated 14.5.2004 extending the suspension is passed after lapse of 90 days as mandated by rule 10 (6 & 7) of the CCS (CCA) Rules, 1965 and as such ^{is} invalid.

The applicant prays for allowing to join^y duty immediately and payment of due subsistence allowance/ salary.

21 AUG 2004
S
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

O.A. No : .../88/2004

BETWEEN :

Sri Pranab Das

..... Applicant

AND :

Union of India & Ors.

..... Respondents.

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Abutha
Filed by M/s. Karabi Dutta, Advocate

Advocate
25/8/04

16
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

(Application under section 19 of the Administrative
Tribunal Act, 1985)

O.A. No 165 /2004

Sri Pranab Das (30 yrs)
S/o Late Ramalal Das
J.T.O. Morigaon
Morigaon Telephone Exchange
Morigaon (Assam).

..... Applicant

AND

(1) Union of India represented by :-

The Chairman,
Telecom Commission
Dept. of Telecommunications
West Block 1, Wing 2
Ground Floor, R.K. Puram
New Delhi - 110 066.

(2) Adviser (HRD)
Telecom Commission
Dept. of Telecommunications
West Block 1, Wing 2
Ground Floor, R.K. Puram
New Delhi - 110 066.

(3) Chief General Manager, Assam Circle,
Telecom Ulubari Guwahati.

(4) Telecom District Manager,
Nagaon Telecom District,
Nagaon, Assam.

Respondents

Filed by Mr. Ashok
Biswajit B. Chakraborty
25/8/03

Pranab Das

Details of the application :

(1) Particulars of the order against which the application is made :

The application is made for the revocation of the suspension order and to increase the subsistence allowance and quashing the order dated 14.5.2004 (Annex.C) issued by the Respondant No. 2

(2) Jurisdiction :-

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

(3) Limitation :-

The applicant declare, that the application is made within the period of limitation under section 21 of the Administrative Tribunal Act 1985.

(4) Facts of the case :-

(4.1) That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the constitution of India.

(4.2) That the applicant is a permanent resident of Assam having deep roots with ancestral house at Pathsala, Assam. He completed his education in Assam, doing HSC in 1987 (1st Division) from the Secondary Education Board of Assam, Higher Secondary (1st Division) from Higher Secondary Education Council of Assam in 1989, and thereafter having qualified in the Joint Entrance Examination was admitted in The Jorhat Engineering College, Assam and did his B.E. (Electrical) in (1995). Thereafter he was appointed as Junior Telecom Officer in 1998 as a direct recruit under SDE/Group exchange

Morigaon, Assam. The applicant begs to state that his educational and service career has been without any blemish or stigma and there has been no criminal complaint/case against the applicant except the allegation as mentioned in the instant application.

(4.3) That the applicant is an employee under the Central Government. He has opted for absorption in Bharat Sanchar Nigam Limited (for short BSNL) but has not been absorbed yet nor the pay and allowances paid at the enhanced rates of BSNL. He continues to be the Central Government Civilian.

(4.4) That an F.I.R. was filed on 5.1.03 in the Morigaon Police Station in connection with Telephone No. 241701, owner :- Sri Prabin Rajbongshi, suspecting that the telephone was being used by persons which may cause sabotage national properties as well as national securities. The FIR was registered under Morigaon Police Station Case No. 3/03. Accused named Sri Prabin Rajbongshi, Vill - Eragaon, Morigaon. The said telephone No. 241701 was within the official jurisdiction of the ^{applicant} application. The applicant is known to abovenamed Shri Rajbongshi. The police took the applicant in custody on 6.1.2003 for the purpose of investigation of the case.

(4.5) That the period of detention in police custody continued beyond 48 hours, and by an order dated 9.1.2003 issued by the Telecom District Manager (for short TDM) the applicant was placed under suspension w.e.f. 6.1.2003 until further orders.

Copy of the order dated
9.1.2003 is enclosed as
Annexure - A.

(4.6) That the Department of Telecommunications, Government of India under order dated 10.2.2003 reiterated that the order of suspension of the applicant w.e.f. 6.1.2003, on the ground of detention in custody for a period exceeding 48 hours, until further orders. This order

dated 10.2.2003 supercedes the order dated 20.1.2003 issued by the TDM, Nagaon Telecom District.

Copy of the order dated 10.2.2003
is enclosed as Annexure - B.

(4.7) That by an order dated 3.2.2003 The Hon'ble Court of Sessions Judge released the applicant on bail and the applicant has been accordingly released. The applicant is not in any manner associated in any offence, and in the circumstances of the case, being the J.T.O. was taken into custody for the investigation and thereafter released as explained above. The applicant has fully co-operated with the police in the investigation and shall co-operate in future. No charge has been framed by court against the applicant. Applicant states that he is not in any manner involved in any offence in the above criminal case arising out of P.S. case No. 3/2003. He shall fully co-operate in the process of law during investigation by police and process of law in the court, if called for.

(4.8) That he has been under suspension w.e.f. 6.1.2003 and ever then he has been continued in suspension mechanically. He has been paid subsistence allowance at the rate of 50% of pay and allowance. He has been receiving the said allowance and passing his days in financial hardship. At the same time he has been paid the amount without any work though he is available for work in his office. The alleged criminal offence has been ~~prosecuted~~ in due process of law in the courts of law, and that should not, in the humble submission of the applicant, bar his discharge of duties in office.

(4.9) That the Government of India has issued statutory instructions from time to time that the period of suspension shall be reduced to barest minimum. In the Ministry of Home Affairs O.M. No. 11012/7/76-Ets (A) dated 14.9.1978 following are inter-alia laid down :-

"Inspite of the instructions referred to above instances have come to notice in which Government

200
16

Servents continued to be under suspension for unduly long periods. Such unduly long suspension, while putting the employee concerned to undue hardship, involves payment of subsistence allowance without the employee performing any useful service to the Govt. It is, therefore impressed on all the authorities concerned that they should scrupulously observe the time limits in the preceding paragraphs and review the cases of suspension to see whether continued suspension in all cases is really necessary. The authorities superior to the disciplinary authorities should also give appropriate directions to the disciplinary authorities keeping in view the provisions contained above."

The applicant states that he could not collect the whole circular dated 14.9.78 and quoted the above from Swami's compilation of C C S (C C A rules) 2000 edition. The respondents may be asked to produce the letter. It is also stated that the case of suspension of the applicant has never been put to the appropriate authorities, including higher authorities and no review either three monthly or six monthly has ever been conducted as per statutory instructions issued by the Government of India. The applicant has therefore been victim of inaction and arbitrariness of the officials of the department.

(4.10) That D.G., P & T's letter No. 201/43/76-DISC.II dt. 15.7.76 inter-alia contains the following statutory instructions :-

"In order to ensure that above instructions are scrupulously observed by sub-ordinate authorities, all cases of suspension may be reviewed regularly, particularly those where officials are under suspension for more than six months and wherever it is found that the official can be allowed to resume duties by transferring him from his post to another post, order should be issued for

revoking the suspension and allowing the official to resume duties with further direction as may be considered desirable in each individual case (copied from Swami's compilation of C C S (CCA rules) 2000 edition.)

The above mentioned circular dt. 15.7.76 also stipulates actions by the competent authorities and the appellate authorities for inaction to review such cases. The applicant begs to state that in his case no action has been taken by review of the case and no orders have been passed. The injustice in being continued and adverse effects of suspension has been continued, by non compliance of the statutory instructions. Neither the competent authority nor the appellate authority has taken any action as required under the law for review of three monthly/six monthly review of suspension.

(4.11) That by an order dated 14th May, 2004 the Advisor (HRD) reviewed the suspension and decided to extend the suspension for a further period of 180 days. It is stated that the said order dated 14.5.2004 is non-est and not within the scope of any rules.

Copy of the order dated 14.5.2004
is enclosed as Annexure - C.

(4.12) That the Central Civil services (classification, control and Appeal) Rules, 1965, as amended, stipulates in Rule 10(7) as under :

"Notwithstanding anything contained in sub-rule 5, an order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rules shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days."

The applicant begs to state that no review in the manner mandated by the said C C S (C C A) rules has been made. No review was made before expiry of ninety days. There is as such no valid order of suspension of the applicant.

in
hand
for
Ans

(4.13) That the applicant begs to state that Government of India, Ministry of Home Affairs (D.P. & A.R.) by office memorandum No. 16012/1/79-L.U., dated 23.8.1979 decided as under :

"I..... it has been decided that a review of the subsistence allowance should be made at the end of three months from the date of suspension instead of the present practice of varying the subsistence allowance after six months. This would give an opportunity to the concerned authority to review not merely the subsistence allowance but also the substantive question of suspension."

(4.14) That the applicant states that his case is being dealt with very casually and in a sloth shod manner particularly in the matter of review of the substantive question of suspension and payment of subsistence allowance. No review has been made by any review committee as regards the question of suspension. His amount of subsistence allowance has not also been reviewed.

(4.15) That the applicant has been entitled to increase of subsistence allowance by 50% of the initial subsistence allowance after 3 months of suspension. Therefore w.e.f. 6.4.2003 he is entitled to 75% of pay and allowances as his subsistence allowance, but he has been paid only 50% instead of 75%. This has caused him undue hardship. It is stated that charge sheet has not been issued by the court nor is there any charge sheet issued by the Department.

(4.16) That the applicant is suffering humiliation and social stigma due to the continuing suspension. This has also been causing immense financial hardship to the applicant and the members of his family. The applicant begs to state that he is undergoing the sufferings even though he is in no manner associated with the allegations mentioned above in the criminal case.

(4.17) That the applicant submitted representation dated 22.10.03, 17.02.04 and 12.05.04 in which he has requested to increase the subsistence allowance and revoke the suspension

order to save him from unbearable mental agony and further mental torture.

Copies of the representation dated
22.10.03, 17.02.04 and 12.05.04
is enclosed as Annexure D, E, F
respectively.

(5) Grounds for relief :-

(5.1) For that the welfare state of India has through the Government instructions declared that unduly long suspension of employees is a burden on State Exchequer without the employee performing any useful service to the Government.

(5.2) For that under the instructions of the Ministry of Home Affairs, the concerned authorities shall have to scrupulously observe the prescribed time limits of reviewing the suspension order of employees.

(5.3) For that under the instructions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended, the order of suspension, if not reviewed, shall not be valid after a period of ninety days.

(5.4) For that suspension for such a long period in the name of criminal allegation is not supported by procedure established by law.

(5.5) For that the suspension is non-est. by operation of law in view of non-review under the statutory instructions, and also by operation of rule 10(7) of the CCS (CCA) Rules, 1965, amended up to date.

(5.6) For that denial of 75% of pay & allowances as subsistence allowance is arbitrary and manifest malice-in-law and as such the suspension is bad in law and deserves to be set aside and quashed and the applicant should be paid full salary.

(5.7) For that the continuing suspension and denial of due subsistence allowance is arbitrary and violative of articles 14, 16 and 21 of the Constitution of India.

(6) Details of remedies exhausted :-

The applicant exhausted remedy by submitting number of representations to the Authority as explained in the facts.

(7) Matter not previously filed before any court/tribunal :-

The applicant declares that no other application/case has been filed in any other court/tribunal on the subject-matter.

(8) Reliefs sought for :-

Under the facts and circumstances of the case, the applicant prays for the following relief.

(8.1) The order dated 14.05.2004 (Annexure - C) be set aside and quashed.

(8.2) The applicant be allowed to put on duty immediately.

(8.3) The applicant shall be treated as on duty w.e.f. the date after lapse of 90 (ninety) days of suspension under rule 10(7) of CCS (CCA) Rules, 1965.

(8.4) The applicant shall also be treated as on duty with full pay after expiry of the first 90 days of suspension continuation of which has been illegal due to non-review and non-payment of due subsistence allowance.

(8.5) The applicant be paid the amount calculated on the difference of amounts as a result of para (8.3) and (8.4) above, and the subsistence allowance paid, with interest on such amount.

(8.6) Any other relief/reliefs the Hon'ble Tribunal may consider fit.

(8.7) Cost of the case.

(9) Interim relief prayed for :-

In the circumstances explained above, the applicant prays for the following interim reliefs :-

- (i)** The order dated 14.05.2004 (Annexure - C) be stayed/suspended.
- (ii)** The applicants be allowed to join duty.

(iii) The applicant be paid subsistence allowance @ 75% of pay & allowances from the date after 90 days of suspension.

(10) The application is being filed through Advocate.

(11) Particulars of postal order :-

i) I.P.O. No. & Date	:- 20/11/3982
ii) Issued from	:- Guwahati
iii) Payable at	:- Guwahati

(12) Particulars of the enclosures :-

As stated in the index.

VERIFICATION

I, Sri Pranab Das, son of Late Ramalal Das, aged about 30 years, resident of ... Morigaon, dist. Morigaon Assam, do hereby verify that the statements made in paras 1, 4, 6 and 7 are true to personal knowledge and those made in paras 2, 3 and 5 are true to my legal advice and rests are my humble submission before the Hon'ble Tribunal and that I have not suppressed any material facts.

Dated :- 25/8/04.

Pranab Das.
signature

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भारत संचार निगम लिमिटेड
BIHAR SANCHAR NIGAM LIMITED
(भारत सरकार द्वारा संचार)
(A GOVT. OF INDIA ENTERPRISE)
दूरध्वार निला प्रबंधक कार्यालय
OFFICE OF THE TELECOM DISTRICT MANAGER
नगाँव - 782 001 (ASSAM)
NAGAON - 782 001 (ASSAM)

No: TDM/NGG/MEMO/P.Das,JTO/02-03/03

Dated at Nagaon, the 9th January, 2003

SUSPENSION ORDER

WHEREAS A case against Sri. Pranab Das, JTO/Morigaon under SDE(GX)/Morigaon in respect of a criminal offence is under investigation & also a disciplinary proceeding is contemplated/pending.

AND WHEREAS, the said Sri. Pranab Das, JTO under SDE(GX)/Morigaon was detained in custody on 06-01-2003 for a period exceeding 48 (forty eight) hours.

NOW, THEREFORE, the said Sri. Pranab Das, JTO/Morigaon has been placed under suspension with effect from the date of detention, i.e, the 06-01-2003 in terms of sub-rule (1) & (2) of Rule 10 of the Central Civil Services (CCS) Rules, 1965, and shall remain under suspension until further orders

Sd/-

(P. Das)
Telecom District Manager
Nagaon Telecom District

Copy to :

Sri. Pranab Das, JTO/Morigaon

(P. Das)
Telecom District Manager
Nagaon Telecom District

Accepted
Writto
P.W.

No.9-9/2003-Vig.I
Government of India
Ministry of Communications & Information Technology
Department of Telecommunications

West Block # 1, Wing # 2
Ground Floor, R K Puram
New Delhi - 110 066

Dated the 16th February, 2003.

ORDER

Whereas a case against Shri Pranab Das, JTO, Morigaon^{ut} respect of a criminal offence is under investigation.

And whereas the said Shri Pranab Das was detained in custody on 06.01.03 for a period exceeding forty-eight hours.

Now, therefore, the said Shri Pranab Das is deemed to have been suspended with effect from the date of detention i.e. 06.01.03 in terms of sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and shall remain under suspension until further orders.

This order supersedes order No.Vig/Assam/80/3 dated 20th January, 2003 issued by TDM, Nagaland Telecom District.

Chanda
(P K CHANDA)
ADVISOR(HRD)
TELECOM. COMMISSION

1.

✓ Shri Pranab Das
JTO
Morigaon
Assam Telecom. Circle.

(Through Chief General Manager, BSNL, Assam Telecom. Circle, Guwahati)

*Attested
K. G. Bhattacharya*

No. 9-9/2003-Vig.I
Government of India
Ministry of Communications & Information Technology
Department of Telecommunication
Vigilance-I Section

West Block #1, Wing #2,
Ground Floor, R.K.Puram,
New Delhi-110 066

Dated 11 April 2004.

ORDER

WHEREAS, a case against Shri Pranab Das, JTO, Morigaon, in respect of a criminal offence, is under investigation and he is deemed to be under suspension w.e.f. 06.01.2003 vide this office order of even number dated 10.02.2003.

NOW, THEREFORE, the undersigned, being the competent authority, has reviewed the suspension of Shri Das, and keeping in view that a case involving criminal offence against him, is under investigation, has decided to extend the suspension of Shri Pranab Das, JTO, for a further period of 180 days.

Receipt of this order should be acknowledged.



(K.L. JAIN)
ADVISOR(HRD)
Telecom Commission

Shri Pranab Das,
JTO, BSNL
Morigaon
Assam Telecom District.

(Through CGM, BSNL Assam Telecom. Circle, Guwahati).



ANNEXURE : D

To

The Telecom District Manager,
Nagaon.

Sub : Application for increment of subsistence
allowance under FR-53(I) (ii) (a).

Sir,

I Sri Pranab Das J.T.O. Morigaon is under
suspension since 06.01.2003 vide letter No. 9-9/2003 v/g/
dated 10.02.2003.

I beg to state that it is ten months running
that I am remain under suspension and charge sheet have
not been issued yet. Therefore I request you kindly to
increase my subsistence allowance as early as possible.

Yours faithfully,

Pranab Das.

Pranab Das
22/x/03

Pranab
Das

To,

The Advisor (HRD)
Dept. of Telecom
West Block -1, Wing -2
Ground Floor, R.K. Puram
New Delhi-110066.

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Dated at Morigaon the 17.02.2004.

(Through proper channel)

Sub: Appeal for revocation of Suspension order.

Ref. : Order No. 9-9/2003 -Vig -I Dated - 10.2.2003.

Sir,

I was placed under suspension because of a criminal case registered by State Police under section 120 (B) IPC, and Telegraph Act 27 for revenue loss with effect from 07-01-2003. But after a lapse of one year the State Police till today could not submit charge sheet before the court and it is not known when it will be submitted or may not submit the charge sheet at all as there is no *prima facie* evidence available to sustain the charges made in the FIR with ulterior motive.

In view of the above I beg to request your benign authority to revoke the suspension order to save me from unbearable mental agony.

Yours faithfully,

Pranab Das.

(PRANAB DAS)
J.T.O. (under Suspension)
Morigaon Telephone Exchange,
Morigaon, Assam.

COPY TO -

Adviser's copy to C.G.M.T. Gauahari,
Assam circle for kind information
and necessary action to be taken.

Pranab Das

To,

The Chief General Manager,
Telecom. Circle, Assam
Guwahati-7.

(Through proper channel).

Dated Nagaon, the 12th May 2004.

Sub: Request for revocation of suspension order.

Ref.: Order No. 9-9/2003-vig-I dated 10/02/2003.

Sir,

I beg to state that I was placed under suspension vide order under reference because of a criminal case registered by state police under section 120 (B) IPC and Telegraph Act 27 with effect from 06.01.2003. But after a lapse of more than one year the state police could not submit charge sheet before the court and it is not known when they will submit the charge sheet or whether they will submit the charge sheet at all as there is no prima-facie evidence available to sustain the charges made in the F.I.R. with ulterior motive.

In the circumstances I beg most respectfully your benign authority to revoke the suspension order to save me from further mental torture.

Yours faithfully,

Pranab Das
(PRANAB DAS)
J.T.O. (Under Suspension)
Morigaon (Assam).

Attested/
Pranab Das

Central Administrative Tribunal
Guwahati Bench

20 JAN 2005
Guwahati Bench

filed by
Brijendra
Advocate
BSNL
18/10/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

O.A. NO.188/2004

Sri Pranab Das ... Applicant

-VS-

Union of India & Another ... Respondents

(Written statements filed by the respondent No. 3 and 4)

The written statements of the respondents are as follows:

1. That a copy of the Original Application No. 188/2004 (hereinafter referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof.
2. That save and except those statements made in the application, which are specifically admitted, all other statements are hereby denied.
3. That the present application is not maintainable against the Bharat Sanchar Nigam Ltd. (referred to as "BSNL") and the authorities under it. This Hon'ble Tribunal cannot exercise jurisdiction over the BSNL as no notification so far has been issued by the government to confer such jurisdiction upon the Tribunal as required under Section 14(2) of the Central

Administrative Tribunal Act, 1985 (hereinafter referred to as the "Act").

4. That with regard to this statement made in the para 1 of the application the answering respondents state that the applicant has not shown any such ground which may justify the revocation of the order of suspension as in Annexure A and B and also the order of extension of suspension as in Annexure C. the enhancement of the subsistence allowance also cannot be considered as it is apparent on the face of the record that the reason for delay in completing the departmental Proceeding and extension of suspension in connection thereto is not any fault on the part of the department. The reason for extension of the suspension is due to the delay in the progress of the criminal proceeding in which the applicant is involved. The law is also well settled that in case of suspension due to criminal proceeding the normal rate of subsistence allowance only is to be paid to the employee. Hence, the application has been filed without any merit and the same is liable to be dismissed.
5. That the answering respondents have no comment to offer to the statement made in para 2, 3 and 4.1 of the application.
6. That with regard to the statement made in para 4.2 of the application, the answering respondents state that those being matter of records, nothing is admitted which are not supported by such records.
7. That with regard to the statements made in para 4.3 the answering respondent No. 3 and 4 reiterate here again that

5 the applicant has wrongly implicated these answering respondents in the instant application in the absence of any notification as required under Section 14(2) of the Act conferring such jurisdiction over the BSNL. Therefore, these answering respondents respectfully submit that they may be struck of as party respondent No. 2 and 4 as the application cannot be proceeded against them.

8. That with regard to the statements made in para 4.4, 4.5, 4.6, 4.7, 4.8, 4.9 and 4.10, the answering respondents state that when the criminal proceeding is under the process of trial and the same is subjudiced, the answering respondents have nothing to comment on it except exercising their statutory duties as provided under Rule 10 of CCS(CCA) Rules, 1965. This action was initiated as the applicant was to be treated as an employee of the BSNL on deemed deputation. The conduct of the departmental enquiry and the punishment to be inflicted, if any, shall be regulated as per law as applicable for such deputationist as provided under Rule 20 of the CCS(CCA) Rules, 1965. As stated hereinabove, this Hon'ble Tribunal may not interfere with the aforesaid order of suspension and the proceeding being imitated against the delinquent applicant. The only jurisdiction that could be proceeded under the application is the subsistence allowance; that too against the respondent No. 1 and 2 only and not against the Respondent No. 3 and 4. However, the answering respondents once again reassert the foregoing statements and state that the applicant is entitled to the normal rate of subsistence allowance and no enhancement is required to be made as provided under the rules as the delay, if any, has not been caused for any reason on the part of the Government/ Department.

In this connection, the respondents state that the applicant has been involved in an illegal racket offering ISD Services by providing unauthorized telephone connection, unauthorized parallel extension of service telecom connections and unauthorized conference facilities in some telephones causing huge revenue loss to BSNL/Department. The further departmental action is therefore dependant on the outcome of the result of the criminal case initiated by the police authorities. During the suspension, the applicant has been granted subsistence allowance in accordance with the rules. The subsistence allowance has been enhanced by 50% of the initial sum paid to the applicant exceeding first three months and until further order, that is to say the maximum amount which can be paid to a Public servant as provided under order No. 9-9/2003-Viz.I dated 15.9.2004. It is also submitted that the allegations of the applicant are totally lopsided. The order of suspension has been reviewed and the extended by the competent authority from time to time as per rules. During the review, the competent authority found that in view of the serious nature of misconduct and the matter being under investigation, the revocation of the order of suspension of the applicant at this stage was not justified.

The copy of the order-dated 15.9.2004 is enclosed hereto as Annexure R1.

9. That with regard to the statements made in para 4.11, the answering respondents state that the allegations are not correct. The respondents did not issue any such order on 14.5.2004 as alleged. However, the order of suspension was extension vide order of review as in Annexure C of the OA.

10. That with regard to the statements made in para 4.12, 4.13, 4.14, 4.15, 4.16 and 4.17, the answering respondents reiterate and reassert the foregoing statements and state that the order of suspension was reviewed from time to time and the same has been extended for the reasons as explained above. All these exercises were made as per provisions of law. Hence, any action taken by the answering respondents therefore does not suffer from any infirmity or illegality.
11. That with regard to the statements made in para 5.1 to 5.7, the respondent state that the grounds shown to justify the interference by the Hon'ble Tribunal are not tenable in law. Under the facts and circumstances of the case and the settled position of law, the applicant is not entitled to any relief, whatsoever, and the application is liable to be dismissed with cost. The maximum benefit of subsistence allowance has already been granted to the applicant. Hence, the order of suspension does not warrant revocation at this stage of the case. That being the settled position, the action of the respondents cannot be said to be vitiated by any illegality or arbitrariness and such action may not be held to be violative of provisions of Article 14, 16 and 21 of the Constitution of India.
12. That the answering respondents have no comment to offer to the statements made in para 6 and 7 of the application.
13. That with regard to the statements made in para 8.1 to 8.7 and 9.1 to 9.3, the answering respondents state that in any view of the matter and under the provisions of law, the application is liable to be dismissed with cost and the order of this Hon'ble Tribunal dated 26.8.2004 is liable to be recalled/altered/modified, and/or vacated and the Hon'ble

Tribunal shall not interfere with the order of suspension as the facts and circumstances of the case are different from the facts and circumstances of the cases in which the Hon'ble Supreme Court laid the ratio relating to the order of suspension.

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

Verification

I, Shri Sankar Chandra Das, at present working as the Assistant Director (Legal) in the office of the Chief General Manager, Bharat Sanchar Nigam Ltd., Assam Circle, Guwahati, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para ..1 to 7, 11, 12 & 13..... are true to my knowledge and belief, those made in para ..8, 9 & 10..... being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 8th day of January, 2005 at Guwahati.

Sankar Chandra Das

DEPONENT

Assistant Director Telecom (Legal)
O/o the Chief General Manager
Assam Telecom Circle, Guwahati-7

No. 9-9/2003-VIG-I
 Government of India
 Ministry of Communications & Information Technology
 Department of Telecommunications

R. L. No 754

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1112, Sanchar Bhawan,
 20, Ashok Road,
 New Delhi-110001.

Dated the Sept. 15th, 2004.ORDER

WHEREAS, a case against Shri Pranab Das, JTO, Morigaon, Assam, in respect of a criminal offence is under investigation and he is under suspension with effect from 06.01.2003 vide this office order of even number dated 10.02.2003.

NOW, THEREFORE, the undersigned, being the competent authority, has carefully considered the case and decided to extend the suspension of Shri Pranab Das, JTO for a further period of 180 days in continuation of the order dated 17.05.2004. Further, the subsistence allowance payable to Shri Pranab Das may be enhanced by 50% of the initial sum being paid to him for the period exceeding first Three months of his suspension and until further order.

AK SAXENA
 (A K SAXENA)
 MEMBER(SERVICES)
 TELECOM COMMISSION

Shri Pranab Das, JTO,
 Morigaon,
 Assam.

(Through the CGM, BSNL, Assam Telecom Circle, Guwahati)

Copy to:-

1. The CGM, BSNL, Assam Telecom Circle, Guwahati. The enclosed order may be delivered to Shri Pranab Das and his dated acknowledgement be obtained and sent to this office for record.
2. The SrDDG(Pers), BSNL, Statesman House, New Delhi, for information.
3. The DDG(Estt/Staff), DoT, New Delhi, for information.
4. The Statement File.

(D P Saini)

Deputy Secretary to the Govt of India

*DEM (VGP)**10/22/04**1115*