

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 138/2003

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SECTION OFFICER (Judl.)

Sahita

16.11.17

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 138/03

Misc Petition No:

Contempt Petition No:

Review Application No:

Applicants: - J. C. Bezboruah

Respondants: - H.O.I. Jais

Advocate for the Applicants: - Mr. N. Baruah, Mr. Z. Alam
Mr. A. Deb Roy,

Advocate for the Respondants: - Sr. C. A. S.

| Notes of the Registry | Date | Order of the Tribunal |
|---|--|--|
| <p>This application is in form but not in time. Condonation Petition is filed / not filed C.F. for Rs. 500 deposited vide IPO/B/No 86/488/25 Dated 23.6.03</p> <p><i>1/e Dr. Registrar 24/6/03</i></p> <p><i>Steps taken alongwith envelope.</i></p> <p><i>Prs.</i></p> <p><i>fd. comply order dated 30/6/03</i></p> <p><i>Notice heard & short 15/6/03 for the respondents - No 1 to 7 by Regd. A.D. D/Nc 14/10 to 14/16 Dtd 7/7/03</i></p> <p><i>3/7</i></p> | <p>30.6.2003</p> <p>mb</p> <p>1.8.2003</p> <p>mb</p> | <p>Heard Mr. N. Baruah, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted. List again on 1.8.2003 for admission.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>Heard Mr. N. Baruah, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records. No further notice need to be issued.</p> <p>The respondents may file written statement, if any.</p> <p>List on 5.9.2003 for orders.</p> <p><i>[Signature]</i> Vice-Chairman</p> |

(2)

O.A.No.138/2003

5.9.2003 Put up again on 26.9.2003 to enable the respondents to file written statement.

Vice-Chairman

26.9.03

On the prayer of Mr.A. Deb Roy, S.C.G.S.C. four weeks time is allowed for filing of written statement. List on 7.11.03 for orders.

Vice-Chairman

7.11.03 M Bench today. Adjourn to 4.12.03.

Mo
12

19.12.2003

Written statement has been filed. List the case for hearing on 5.2.2004. In the meantime, the applicant may file rejoinder, if any.

Member (A)

mb

25.2.2004

Present: Hon'ble Shri Shanker Raju, Judicial Member

As the O.A. has become infructuous the learned counsel for the applicant requests for withdrawal of the application. The O.A. is dismissed on withdrawal.

Member(J)

nkm

No written statement has been filed.

20
4.9.03

No W/s has been filed.

20
25.9.03

W/s has been filed on behalf of the respondents.

WJ
19/12/03

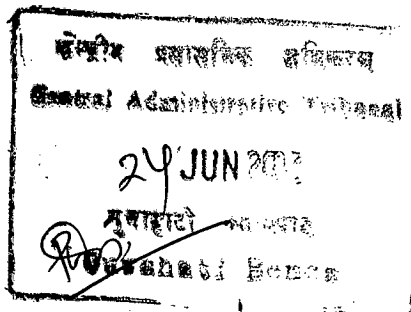
No rejoinder has been filed.

20
24.2.04

8.3.04

Copy of the order has been sent to the office for carrying the same to the 4th floor for the parking.

At any 11/3



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BRANCH,
GUWAHATI.

(An application under Section 19 of the
Administrative Tribunal Act' 1985)

O.A 138/03

Sri Jadov Chandra Bezbaruah. Petitioner.

- Versus -

Union of India & Ors. Respondents.

I N D E X

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Filed by :-

Pranab Kumar
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BRANCH,
GUWAHATI.

Original Application No. ¹³⁸ of 2003.

Sri Jadav Ch. Bezbaruah.

..... Applicant.

- Versus -

Union of India & Others.

..... Respondents.

LIST OF DATES/SYNOPSIS

09.04.1990 - Applicant who was posted as Sub Post Master, D.N.G.C. Colony Branch, Sibsagar was placed under suspension pending initiation of disciplinary proceeding.

04.07.1991 - Memorandum of charges issued by the Superintendent of Post Offices, Sibsagar Division. The applicant submitted his written statement of defence denying the charges levelled against him.

Departmental Enquiry initiated against the applicant wherein the applicant participated.

19.02.1993 - While the departmental enquiry was in progress the applicant attained the age of Superannuation on 28.02.1993. Accordingly

Contd...p/

vide memo dated 19.02.1993 the suspension of the applicant the revoked and he was allowed to resume duties on 27.02.1993 and retired from service on 28.02.1993.

22.04.1993 - Superintendent of Post Offices, Sibsagar Division vide memo dated 22.04.1993 communicated the enquiry report to the applicant and asked him to *file* comments if any before the disciplinary authority.

12.05.1993 - Applicant submitted a representation before the Superintendent of Post Offices Sibsagar Division but, till today no final order has been passed as a result of which the apperant is deprived of his regular pension and other post retirement benefits.

23.06.1993 - Provisional Pension @ Rs.800/- per month sanctioned for a period of six months. The same is still being paid after sanction by the competent authority.

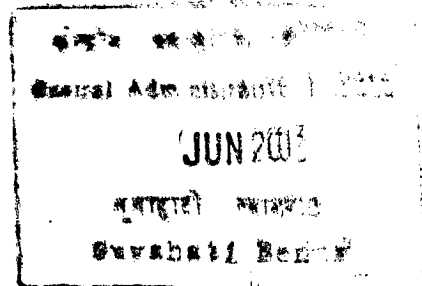
20.06.2001 - The Court of Judicial Magistrate (1st Class) sibsagar by Judgment dated 20.06.2001 acquitted the applicant in the Criminal Case being G.r. Case No.489/1990 under Section 409 of Indian Penal Code.

Contd...p/

There~~after~~^{after}, the applicant submitted various representations before the authority for finalisation of the departmental enquiry and for regularisation of the pension and payment of his post retirement benefits.

11.04.2003 - Applicant through his advocate served a notice to the Superintendent of Post Offices, Sibsagar Division requesting him to clear the outstanding dues of the applicant.

28.04.2003 - The Superintendent of Post Offices, Sibsagar Division repli~~ed~~^{ied} to the notice of the applicant's Counsel.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BRANCH,
GUWAHATI.

(An application under Section 19 of the
Administrative Tribunal Act' 1985)

Original Application No. ¹³⁸ of 2003.

Sri Jadov Ch. Bezbaruah

Son of Late K. Bezbaruah.

Resident of Amolapatty, Sibsagar,

P.S. & District Sibsagar, Assam.

..... Applicant.

- Versus -

1. Union of India

Represented by the Secretary, to
the Government of India, Ministry

of Communication

New Delhi - 110001.

2. The Director General

Department of Post Offices,

New Delhi.

3. The Director of Accounts (Postal)

Pension Section, Kolkata.

4. The Chief Postmaster General

Assam Circle, Meghdoot Bhawan,

Guwahati.

Contd...p/

Jadov Ch. Bezbaruah
Filed by the Applicant
- through Lion
24/6/03

5. The Post Master General

Office of the Post Master General
Upper Assam Region, Dibrugarh,
P.O., P.S. & District Dibrugarh,
Assam.

6. The Post Master

Sibsagar Division Head Office,
Sibsagar.

7. The Superintendent

Office of the Superintendent of
the Post Office, Sibsagar
Division, Sibsagar.

..... Respondents.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE
APPLICATION IS MADE :-

i) This application is made against non-payment
of Pensionary and other post retirement benefits and
also non regularisation of Pension of the applicant who
retired from the Service on 28.02.1993.

2. JURISDICTION :-

The applicant declares that the cause of
action of this application is within the jurisdiction of
this Hon'ble Tribunal.

Contd...p/

Jadav Ch. Bezbaruah

3. LIMITATION :-

The applicant further declares that the application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act' 1985.

4. FACTS OF THE CASE :-

i) That your humble applicant is a citizen of India and is a permanent resident of Sibsagar in the district of Sibsagar, Assam and, as such, he is entitled to the rights and privileges as guaranteed under the Constitution of India and the laws framed thereunder.

ii) That while your applicant was posted as ~~Saber~~ Post Master, D.N.G.C. Colony Branch, Sibsagar, a Disciplinary Proceeding on the charge of Criminal Mis-appropriation was initiated against him and he was placed under suspension with immediate effect vide office Memo No.E2/J.C. Bezbaruah datd 09.04.1990 issued by the Superintendent of Post Office, Sibsagar Division, Jorhat.

A copy of the said Suspension Order is annexed herewith and marked as Annexure-I.

iii) That your applicant begs to state that thereafter the Superintendent of Post Offices, Sibsagar Division, Jorhat, vide his office letter No. E 4-1/90-91

Contd....p/

10
Jadav Ch. Bezbaruah

dated Jorhat, 04.07.1991 issued a Memorandum of Charges framed against the applicant and directed the applicant to submit a written statement of the defence. Accordingly, your applicant submitted the written statement of defence before the authority denying all the allegation levelled against him.

iv) That the applicant begs to state that thereafter a departmental enquiry was initiated against him and he participated in the said enquiry in defence of the charges levelled against him.

v) That your applicant begs to state that while the departmental enquiry was in progress vide Memo No.B2/J.C. Bezbaruah dated 19.02.1993 the Office of the Superintendent of Post Office, Sibsagar Division, Jorhat, revoked the suspension order of the applicant as the applicant had attained the age of Superannuation. Accordingly on 27.02.1993, the applicant was allowed to resume his duties and on the next day i.e. on 28.02.1993 he was retired from the service as he attained the age of Superannuation and he was released from the service.

A copy of the said memo dated 19.02.1993 is annexed herewith and marked as Annexure-II.

vi) That your applicant begs to state that the Superintendent of Post Offices, Sibsagar Division,

Contd...p/

11
J. C. Bezbaruah

Sibsagar vide its office Memo No. F-4-1 / 90 - 91 dated 22.04.1993 communicated your applicant, the inquiry report and also asked the applicant to file representation if any, before the disciplinary authority. Accordingly on 12.05.1993, your applicant submitted a representation before the Superintendent of Post Offices, Sibsagar Division, Jorhat but, the authority did not pay heed to said the representation and till date the authority has failed to complete the Departmental Proceeding.

Copies of the said Office Memo dated 22.04.1993 and the representation dated 12.05.1993 are annexed herewith and marked as Annexure-III, III-A respectively.

vii) That your applicant begs to state that as your applicant attained the age of superannuation during the pendency of disciplinary proceedings, he was retired from service on 28.2.93. Thereafter as per draft calculation, Provisional Pension @ Rs.800/- per month had been sanctioned to the applicant vide the Office Memo No.CZ/J.C. Bezbaruah dated 23.06.1993 for a period of 6 (six) month upto 31.08.1993.

viii) That your applicant begs to state that thereafter on several occasion the applicant made inquiry about the finalisation of Departmental

Contd...p/

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Jadov ch Bezbaruah

Proceeding and also requested the authority to pay the pensionary benefit and to regularise the pension of the applicant but the authority declined to take any steps on the plea that the Criminal case which was initiated against the applicant being G.R. No.489/1990 under Section 409 of the Indian Penal Code is yet to be disposed of by the Court.

ix) That your applicant begs to state that in the meantime the learned Court of Judicial Magistrate, (1st Class), Sibsagar, by its Judgment dated 20.06.2001 acquitted the applicant of the Criminal Charge on the ground that the prosecution has failed to establish the case beyond reasonable doubt. On being acquitted by the learned Court below, your applicant again submitted a representation before the post Master General, Upper Assam Region, at Dibrugarh on 07.02.2002 praying for immediate action on the part of the authority to pay the gratuity, leave encashment, group insurance and also regularise the Pension at up-to-date Scale and/or all other post retirement benefits of which your applicant is entitled, but surprisingly this time also the authority did not respond to the representation submitted by your applicant and accordingly no retirement benefits has been paid to your applicant which is due since his retirement i.e. 28.02.1993.

A copy of the representation is annexed herewith and marked as Annexure-IV.

Contd...p/

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Jadav Ch. Bezbaruah

x) That your applicant begs to state that as the authority did not respond to the representation filed by the applicant, your applicant sent a reminder to the authority, but without any result. Ultimately on 11.04.2003 the applicant finding no way out approached his Counsel and handed over the relevant documents to him. The Counsel after going through the documents immediately sent Notice by registered post to the Superintendent of Post Offices, Sibsagar Division requesting him to clear the outstanding due to the applicant. The Superintendent of Post Offices, Sibsagar Division on receipt of the said Notice vide his official letter No.C2/J.C. Bezbaruah dated at Jorhat the 28.04.2003 sent a reply to the said notice dated 11.04.2003 which was received by the Counsel at Guwahati on 01.05.2003.

A copy of the Notice dated 11.04.2003 and reply comment dated 28.04.2003 is annexed herewith and marked as Annexure-V & V-A respectively.

xi) That your applicant begs to state that Superintendent of post Offices, Sibsagar Division in his reply to paragraph 3 of the Notice has admitted that the Inquiry Report along with Original file of the case has been sent to Circle Office, Guwahati on 23.06.1993 for finalisation of disciplinary action but till date no action has yet been take by the authority.

Contd...p/

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Jadon Ch Bezbaruah

xii) That your applicant begs to state that it will not be out of context to mention herein that earlier your applicant filed a representation before the Superintendent of Post Offices, Sibsagar Division for regularisation of his pension and to extend the provisional pension. The Superintendent of Post Offices, Sibsagar Division forwarded the said representation along with a forwarding letter No.C2 / J.C. Bezbaruah dated at Jorhat the 06.10.1993 to the Director of Accounts (Postal) Pension Section, Kolkata, wherein in the said forwarding letter it has also been mentioned that the pension case of the applicant could not be forwarded to Audit Office in time in absence of the Service Book which was been sent to Circle Office.

A copy of the said letter is annexed herewith and marked as Annexure-VI.

xiii) That your applicant begs to state that your applicant is eligible and he is entitled to the post retirement benefits and all other financial benefits and for that he has filed various representation to the authority to consider his case but the authority has neglected in doing so and thus the applicant has been illegally deprived of his legitimate due.

xiv) That your applicant has availed all the opportunity available to him by submitting various representations, and also a pleaders notice and there is

Contd...p/

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Jador ch. Bezbaruah.

no alternative and efficacious remedy available to him but to file this application / petition before this Hon'ble Court.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :-

- I. For that, your humble applicant is entitled to regular pension and other post retirement benefits as per the Service Rules as he has completed his full period of service. As such, a direction may be issued directing the respondent authorities to regularise the pension of the applicant and also pay him the post retirement benefits.
- II. For that, the action of respondent authorities in not regularising the pension of the applicant and not releasing the post retirement benefits due to him is highly illegal, arbitrary, unjust and improper and, as such, appropriate directions may be issued directing the respondent authorities to regularise the pension of the applicant and also release his post retirement benefits.
- III. For that, the non finalisation of the departmental proceeding cannot be a ground for withholding the pension and other post retirement benefits of the applicant inasmuch

Contd...p/

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Gadav Ch. Bezbarau

as the applicant had extended his full co-operation in the enquiry and there is no negligence or leaches on his part.

IV. For that, the learned Trial Court has already exonerated the applicant from the criminal charge after a complete criminal trial. Yet the applicant has been illegally deprived of from getting his legal dues which he is entitled to as a matter of right.

V. For that, your applicant has served the department for 36 years and as such he is entitled for all the post retirement benefits and it has been repeatedly reminded to the authority and your applicant has submitted several representation for payment of his legitimate dues but the authority has deliberately neglected to take any steps to clear the due and also to regularise the pension.

VI. For that, in any view of the matter the action of the respondents in depriving the applicant from his legitimate due and also regularisation of pension is illegal arbitrary and unjustified.

Contd...p/

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Jator Ch. Bezbaruah.

6. DETAILS OF REMEDY EXHAUSTED :-

There is no other remedy except filing this application before this Hon'ble Tribunal.

7. MATTER NOT PENDING IN ANY OTHER COURT/TRIBUNAL :-

That the applicant declare that he has not that he has not filed any other application before any Court/Tribunal.

8. RELIEF PRAYED FOR :-

It is, therefore, prayed that Your Lordships may be pleased to admit this application, issue a show cause notice upon the respondents and after hearing the respondents may issue a direction to the respondents to regularise the pension of the applicant and also to pay the post retirement benefits which is due to him and the period of suspension may be deemed as on service for the purpose of pension and/or pass such further and other order as Your Lordships may deem fit and proper.

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

9. INTERIM ORDER, IF ANY PRAYED FOR :-

Contd...p/

Jadev ch. Bezbarhan

Jadon Ch. Bezbaruah

10. PARTICULARS OF THE POSTAL ORDER :-

Postal Order NO. :- 86 488 J 25
Date of issue :- 23-6-2002
Issued from :- G.P.O. Guwahati
Payable at Guwahati.

11. DETAILS OF INDEX :-

An index showing the particulars of the documents is enclosed.

12. LIST OF ENCLOSURES :-

As state in the Index.

- | | | |
|----|----------------|--------------------------------|
| 1. | Annexure-I | Suspension Order |
| 2. | Annexure-II | Memorandum dated 19.02.1993 |
| 3. | Annexure-III | Office Memo dated 22.04.1993 |
| 4. | Annexure-III-A | Representation dtd 12.05.1993 |
| 5. | Annexure-IV | Representation |
| 6. | Annexure-V | Notice dated 11.04.2002 |
| 7. | Annexure-V-A | Reply comment dated 28.04.2003 |
| 8. | Annexure-VI | Forwarding letter |

VERIFICATION

I, Sri Jadov Chandra Bezbaruah, son of Late K. Bezbaruah, aged about 68 years, resident of Amolapatty, Sibsagar, P.S. & District Sibsagar, Assam, do hereby verify and declare that the statements made in this foregoing paragraphs are true to my knowledge and belief.

And I sign this verification on this the 24th day of June, 2003 at Guwahati.

Jadov Ch Bezbaruah
SIGNATURE.

Annexure- I

STANDARD FORM OF ORDER OF SUSPENSION

(RULE 10(1), CCS (CCA) RULES)

(READ CAREFULLY INSTRUCTION (II) BELOW RULE 10 BEFORE
COMMENCING TO USE THIS FORM).

MEMO NO.BZ/JC BEZBARUAH

Date :- 09.04.1990.

GOVERNMENT OF INDIA

MINISTRY OF THE SUPERINTENDENT OF POST OFFICE

SIBSAGAR DIVISION, JORHAT.

(Place of issue Jorhat)

Dated :-

O R D E R

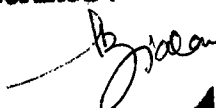
(Whereas a disciplinary proceeding against Sri Jadav Chandra Bezbaruah, Senior Post Master, O.N.G.C. Colony, (name and designation of the Govt. Servant) is contemplated / pending.

Now, therefore, the President/the undersigned (the appointing authority or a authority to which it is subordinated or any other authority empowered by the President in that behalf), in exercise of the powers conferred by Sub-Section (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal, 1965, hereby places the said Sri Jadav Chandra Bezbaruah, Senior Post Master, O.N.G.C. Colony under suspension with immediate effect.

It is, further ordered that during the period that this order shall remain in force the Head Quarters

Certified to be true

Contd...p/


Advocate.

of Sri Jadav Chandra Bezbaruah, Senior Post Master, O.N.G.C. Colony (name and designation of Government Servant) should be Sibsagar (name & place) and the said Sri Jadav Chandra Bezbaruah shall not leave the Head Quarter without obtaining the previous permission of the undersigned.

Sd/- A. BEHARA

(By order and in the name of the President)

Signature

Name and Designation of the Suspending Authority

1. Copy to Sri Jadav Chandra Bezbaruah, SPM, ONGC Colony (name and designation of the suspended officer). Orders regarding subsistence allowance admission to him during the period of his suspension will issue separately.
2. Copy to the Post Master of Sibsagar (name and designation of authority) for information.
3. Copy to Director of Accounts (Postal) Calcutta (Name and designation on the lending authority) for information. (Through the Post Master, Sibsagar.
4. P/F of the Suspended Official.
5. Punishment Registrar.
6. D.C.

Sd/- Illegible

09.11.1990

Superintendent Post Office,

Sibsagar Division, Jorhat.

Contd...p/

Annexure-II.

DEPARTMENT OF POSTS INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES, SIBSAGAR
DIVISION, JORHAT.

Memo No.B2/J.C.Bezbaruah

Dated Jorhat, 19.02.1993.

O R D E R

Whereas an order placing Shri Jadav Chandra Bezbaruah the Senior Post Master, O.N.G.C. Colony, under suspension was made on 09.04.1990.

Now, therefore, the undersigned, in exercise of the powers conferred by Clause (C) of Sub-Rule (5) of Rule 10 of the Central Civil Services (Classification, Central and Appeal) Rule, 1965 hereby revoke the said order of suspension with immediate effect.


Sd/- Ganga Saran
Superintendent of Post Offices
Sibsagar Division, Jorhat.

Copy to :-

1. Shri Jadav Chandra Bezbaruah, Amalapatty, Sibsagar.
2. The Post Master, Sibsagar.
3. Punishment Registrar.
4. Staff Branch, Divisional Office.
5. C.R. File of the official.
- 6-8. Spare.

Sd/- Ganga Saran
Superintendent of Post Offices
Sibsagar Division, Jorhat.

Certified to be true Copy.


Advocate.

Contd...p/

Annexure-III.

DEPARTMENT OF POSTS INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES, SIBSAGAR
DIVISION, JORHAT - 785001.

Memo No.F4-1/90-91

Dated Jorhat, 22.04.1993.

An inquiry was held against Shri Jadav Chandra Bezbaruah, the then Senior Post Master, O.N.G.C. Colony, Sibsagar (Now retired) under Rule 14 of CCS (CCA) Rules, 1965.

The report of the Inquiry Officer is enclosed. The Disciplinary Authority will take a suitable decision after considering the report. If you wish to make any representation on submission you may do so in writing to the disciplinary authority within 15 days on receipt of this letter.

Encl :- 13 sheets.

Sd/- Ganga Sharan

Superintendent of Post Offices
Sibsagar Division, Jorhat.

Regd. A/D :-

To Shri Jadav Chandra Bezbaruah, the then Senior Post Master, O.N.G.C. Colony (now retired), Amolapatty, P.O. Sibsagar.

Certified to be true Copy.


Advocate.

To

The Superintendent of Post Offices
Sibsagar Division, Jorhat

Date :- 12.05.1993.

Sub :- Rule 14 case against Sri JC Bezbaruah then Senior
Post Master, O.N.G.C. S.O.


Ref :- Your F4-1/90-91, dated 22.04.1993.

Sir,

with reference to your memo cited above I beg to submit my representation as called on by Your Honour, hereunder for favour of your kind perusal & to have a lenient justifiable view in decisions the fate of the undersigned who served in the department for more than 36 years with utmost devotion & dedication.

As per imputations charge against me in Art-I may kindly be read with the statements of imputation, I beg to state that I could not exactly remember anything about the transaction referred therein, after such a long & distance date. I could not also recollect whether Smti. Kusum Kumari Gupta, N.S.C. agent at all handed over the amount to me or not. During the peak hour of office duties, I always used to remain carefully busy with multifarious works & as per system prevailing over there in at O.N.G.C. So, since long the certificates used to be written by the agents themselves & thereafter

Certified to be true Copy.


Advocate.

they obtained my signature thereon. So, it is not possible that if any one escaped our notice during this busy working hours of the certificates had been delivered without realising the amount. Besides, this the prosecution side utterly failed to cause appearance of Smti. Kusum Kumari Gupta before the enquiry for giving her deposition despite repeated request from the defence side. As per rule no evidence which is not tendered before the enquiry officer in presence of the accused can be taken as a valid evidence. But here in this instant case it is seen that the statement of Smti. Kusum Kumari Gupta has been relied upon. Though not given before the enquiry.

Article-II :- Regarding 2nd Count i.e. double payment of four matured R.D. & 2 C.T.D. A/C I have already stated in details in my written brief duly submitted which may kindly be consulted.

Article-III :- As per 3rd Count I beg to state that I have stated in details in this regard which may kindly be referred to.

Lastly I beg to state that the departmental enquiry is not an empty formality, it is a serious proceedings intended to give officer concerned a chance to meet the charge & to prove his innocence. In the absence of any such enquiry it would be highly unjust & unfair to strain the facts against the official.

Further, it may be stated that procedure in proceedings must continue to principals of natural justice, procedure cannot be short circuited on consideration of expediency.

That it may kindly be assessed from the processing of this Rule 14 Enquiry case that how hurriedly it has been concluded without giving breathing time to the defence side only to shirk the responsibilities of the I/O by submitting his preconcluded enquiry report to the disciplinary authority from this it may kindly be inferred that the enquiry authority is under pressure from unknown force for quick conclusion of the formalizing of Rule 14 case by hook & crook within a short period and to submit his report to disciplinary authority for quick disposal of the case.

Further the enquiry authority when preparing his reports did not taken into consideration the written brief submitted by me on 01.03.1993 by Regd. Post through Sibsagar Post Office vide receipt No.1828 on the plea that submission of the Brief was delayed and not reach him before submission of this report dated nil. That I have already intimated to the I/O that I am not in a position to submit my brief within the date specified by you due to my wife's illness and requesting him to grant me at lest 10 (ten) more days for submitting my brief. From his enquiry report it also seen that he did not take by brief into consideration as

my wife's illness was not authenticated by any medical certificate, and he stated that it is a mere plea which is baseless. At this stage it may be argued that the I/O was in full liberty to ask me to submit M/C in support of my wife's illness. But he did not respond.

Besides his contention in this regard is contradictory. In one place he stated that my brief could not be taken into consideration due to non receipt of it before submission of this report.

In another place he stated that the brief was not taken in consideration as my wife's illness was not authenticated by M/C. So, I am in a state of confusion which one is to be regarded as genuine.

Such decision of the I/O reflects hostile and apathetic attitude which is against principle of natural justice.

In view of the facts narrated above it may kindly be deduced that I am in no way responsible for negligent for the charges framed against me and request you to have a lenient and sympathetic view in deciding the fate of the case.

Yours faithfully,

Sd/- Jadav Ch. Bezbaruah,

Ex. Senior Post Master, ONGC,

S.O., Now retired.

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Annexure-IV.

From :- Sri J.C. Bezbaruah

S.M.P. (Retired), ONGC Colony Branch, Sibsagar

H.C.B. Road, Amolapatty, Sibsagar

P.S. & District - Sibsagar, Assam

To

The Post Master General

Office of the Post Master General

Upper Assam Region, Dibrugarh

P.O., P.S. & District - Dibrugarh, Assam

Date:- 07.02.2002.

Sub :- Prayer for getting after retirement and
suspension period benefit.


Ref :- Memo No.B2/JC Bezbaruah dated 19.02.1993 issued
by Superintendent of Post Offices, Sibsagar
Division, Jorhat.

Sir,

With due respect I want to bring to your kind
notice the following few lines for favour of your kind
consideration and necessary action.

That Sir, I was working as Senior Post
Master, ONGC Colony Branch, Sibsagar and was placed
under suspension from my services w.e.f. 09.04.1990
on charges of criminal misappropriation pending
departmental proceedings.

Certified to be true Copy.


Advocate.

That vide Memo No.B2/JC Bezbaruah dated 19.02.1993 of the Office of the Superintendent of Post Offices, Sibsagar Division, Jorhat (copy enclosed) my suspension order was revoked, considering my date of superannuation, i.e. 28.02.1993 dueing continuance of departmental proceedings. Accordingly, I resumed my duties on 27.02.1993 and took retirement on 28.02.1993.

That Sir, though I was innocent, the departmental proceedings found me guilty of offence of criminal misappropriation and a criminal case registered against me under Section 409 of Indian Penal Code in the year 1990 being G.R. Case No.589/1990 under Section 409 I.P.C.

That Sir, after more than eleven years of Trial the aforesaid case has been disposed of on 20.06.2001 in my favour. After taking so many evidences against me and after hearing both the sides the learned trying Magistrate holds that I was not guilty of offences under Section 409 I.P.C. and set me at liberty forthwith (an attest photo copy of the judgment is attached herewith for your perusal).

That Sir, during this long period of more than eleven years I have been suffering a lot both mentally and financially beyond imagination for no-fault of me.

That Sir, I have not even got all the retirement / suspension period benefits from the department till date, except the pension at the old scale.

Under the above facts and circumstances I would like to request you kindly to look into the matter seriously and to expediate action to sanction the amounts of gratuity leave encashment, group insurance and the pension at the upto date scale with retrospective effect and any/or all other after retirement benefits and any/or all other outstanding payments/benefits for which I am entitled to for the suspension period to me for which I shall ever pray.

Thanking you,

Enclosures :-

Yours faithfully,

1. Memo No.B2/JC Bezbaruah
dtd. 19.02.1993

Sd/- Jadav Ch. Bezbaruah.

2. Photo copy of the Court
Judgment

3. Chief Post Master General
Meghdoot Bhawan, Guwahati

4. The Superintendent of Post
Offices, Jorhat, Sibsagar
Division.

Annexure-V.

Ziaul Alam
Advocate
Gauhati High Court

Chamber :-
Hatigaon Road
Behind Rajdhani Masjid
Dispur - 6

Date :- 11.04.2003

N O T I C E

To

The Superintendent of Post Offices
Sibsagar Division, Jorhat - 1

Sub :- Non-regularisation & Non-payment of Pensionary
benefits.

Sir,

Under instruction and upon the authority from
my client Sri Jadav Chandra Bezbaruah, Senior Post
Master (Retired), ONGC Colony Branch, Sibsagar, I do
hereby issue this notices to you to the following
effect :-

1. That my client Sri J.C. Bezbaruah ws an
employee of your department and while my client was
working as Senior Post Master in the ONGC Colony Branch,
Sibsagar, he was put under suspension, vide Office Memo
No.B2/JC Bezbaruah on 09.04.1990 with immediate effect.
2. That a departmental proceeding was initiated
against my client for alleged official misconduct.

Certified to be true Copy.


Advocate.

During continuance of departmental proceedings my client was allowed to resume duty on 27.02.1993 and immediately on the next date i.e. 28.02.1993, my client was retired from the service considering his dte of superannuation.

3. That after the conclusion of the Departmental Inquiry, the Inquiry Officer submitted the inquiry Report before the Disciplinary Authority for necessary action. But till date, Disciplinary authority failed/ neglected to pass any order of punishment against my client.

4. That it will not be out of context to mention herein that the Criminal Case No.G.R. No.589/1990 under Section 409 I.P.C. which was pending against my client has already been disposed of and the learned Judicial Magistrate, 1st Class vide its judgment dated 20.06.2001 was pleased to acquit my client.

5. That, although my client retired from service on 28.02.1993 but till date his pension has not been regularised, nor he has been paid the pensionary benefits like Gratuity, Group Insurance Benefits, Leave Encashment etc.

6. That, although my client approached you for making necessary arrangement to regularise the pension of my client and also to pay the other benefits due to my said client but no proper and adequate action has

been taken from your end to meet up the genuine grievances of my client.

7. That my client has no other source of income and he is suffering from different old age related ailments. Under such circumstances, you are hereby requested on behalf of my client to kindly make necessary arrangement for payment of outstanding due to my client.

You are further requested to treat the matter as urgent.

Thanking you,

Yours faithfully,

Sd/- Ziaul Alam

Advocate.

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES, SIBSAGAR
DIVISION, JORHAT - 785001.

To

Sri Ziaul Alam, Advocate

Gauhati High Court

No.C2/JC Bezbaruah dated at Jorhat, the 28.04.1993.

Sub :- Non regularisation and non-payment of pensionary
benefits.

Ref :- Gauhati High Court notice dated 11.04.2003.

Sir,

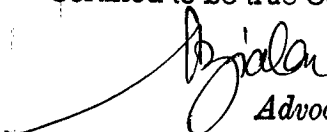
Kindly refer your notice cited above on the
above mentioned subject. Parawise comments on the above
notice are furnished below for your kind information.

Para 1 :- No comments.

Para 2 :- No comments.

Para 3 :- Inquiry Officer's report including original
file of the case has been sent to Co on
23.06.1993 for finalisation of disciplinary
action. But the same is yet to be received
from Cos end.

Certified to be true Copy.


Advocate.

Para 4 :- Court case is still subjudiced at Gauhati High Court.

Para 5 :- Rule-9 case against the Sri Jadav Chandra Bezbaruah is still pending with Cos Guwahati. Hence, his prayer cannot be considered now.

Para 6 :- Untill finalisation of Rule-9 case, pension case cannot be sent to AO and regularised. S/Book was sent to Director (Vig), N. Delhi by the Vig. Section of Cos on 21.12.2003 for necessary approval under Rule-9 of CCs (Pen) Rule, 1972, as informed by Co. The case is still pending in date.

Para 7 :- No comments.

Yours faithfully,

Sd/- B.K. Marak

Superintendent of Post Offices
Sibsagar Division, Jorhat-1.

Copy to :-

1. The PMG, Dibrugarh Region, Dibrugarh for information.
2. The PMG, Assam Circle, Guwahati for information.

Sd/- B.K. Marak

Superintendent of Post Offices
Sibsagar Division, Jorhat-1.

Annexure-VI.

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES, SIBSAGAR
DIVISION, JORHAT - 785001.

NO.C2/JC Bezbaruah Dated Jorhat, the 06.10.1993.

To

The Director of Accounts (Postal)

Pension Section, Calcutta

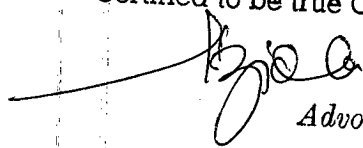
Sub :- Extension of Provisional Pension - case of
Sri Jadav Ch. Bezbaruah, Ex-SPM, ONGC Colony,
pending settlement of Disciplinary case under
Rule 9 of CCS (Pension) Rules.

The aforesaid official was placed under
suspension on 09.04.1990 but before completion of the
departmental proceedings under Rule 14 of CCS (CCA)
Rules, 1965 the official attained superannuation on
28.02.1993. Accordingly, as per draft calculation,
provisional pension of even No. dated 23.06.1993 for a
period of 6 months upto 31.08.1993.

Now Sri Bezbaruah has applied for
regularisation of his pension and to extend the
provisional pension. His application in original is sent
herewith for disposal.

In this connection it is to mention that
pension case of the official could not be forwarded to

Certified to be true Copy.


Advocate.

Audit office in time in absence of the Service Book which has been sent to Circle Office in connection with the Rule-9 case.

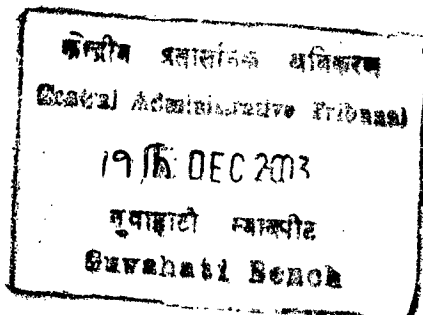
Enclo :- 1(one).

Sd/- P.V. Sugunan
Supdt. of Post Offices,
Sibsagar Division, Jorhat.

Copy to :-

1. Sri J.C. Bezbaruah, Ex-PA, Sibsagar H.O.
2. The Chief Post Master General, Assam Circle, Guwahati
with reference to Cos No.Vig 4/6/85.

Sd/- P.V. Sugunan
Supdt. of Post Offices,
Sibsagar Division, Jorhat.



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Filed by
C.A. T. Guwahati Bench
39
(A. DEB ROY)
S. C. T. E.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI

O.A. NO. 138 OF 2003

Shri J.C. Bezbaruah.

- Vs - Applicant.

Union of India & Ors.

..... Respondents.

-And -

In the matter of :

Written Statement submitted by
the respondents.

The respondents beg to submit
a brief history of the case which
may be treated as a part of the
written statement.

(BRIEF HISTORY OF THE CASE)

1(A). The applicant while functioning as Sub-Postmaster
(SPM) ONGC Colony Sub Post Office (S.O.) under Sibsagar Head
Post Office (H.P.O.) during the period from 19.6.87 to 9.4.90
had shown withdrawals of matured amounts of the following ONGC
Colony S.O. 10 years CTD accounts twice as mentioned against them.

Contd.....

-2-

| Sl. No. | A/C No. | Name of depositor | Date of Ist withdrawal | Amount | Date of 2nd withdrawal | Amount |
|---------|---------|-------------------|------------------------|--------|------------------------|--------|
| 1. | 46081 | Sri Jailal Mishra | 6.9.89 | 8250/- | 22.11.89 | 8250/- |
| 2. | 46105 | Sri Mina Ram Bora | 5.9.89 | 9900/- | 21.10.89 | 9900/- |

The first withdrawals were the actual withdrawals, which were admitted by the depositors whereas they denied 2nd withdrawals. There cannot be also 2nd withdrawals as per the following procedure now being followed at the post office.

PROCEDURE :- When a 10 years CTD account matured, the depositor will present the pass book along with an application for withdrawal (SB-7) in the Post Office, where his account stands. The SPM and the counter clerk will verify the specimen signature of the depositor in the withdrawal form with the signature available in specimen signature book available in the office. After verifying the signature and balance of pass book, that will be sent to Head Post Office for final passing with entry in the Invoice. The pass book along with the withdrawal form will be returned by the Head Pffoce with entry in SB slip after calculating the maturity amount on the pass book and withdrawal form in the red Ink affixing date stamp of the H.O. on both, on receipt of the same by the SO, the payment will be made to the depositor after obtaining his signature on the application for withdrawal acknowledging receipt payment of the amount. The pass book will be returned to the depositor after ~~making~~ making entry in final amount of withdrawal with signature of the clerk and the SPM and office date stamp in the pass book

-3-

duly marked as "account closed ". The applications for withdrawals will be sent to the H.O. duly entered in the list of transaction after making necessary note about closure in the specimen signature book and Index register and after noting the particulars of withdrawals in the Long book and CTD jornal.

On receipt of the application for withdrawals at the H.O., posting of transactions will be made against the account in the ledger binder and the vouchers will be sent to Saving Bank Control Organisation (SBCO) for checking.

The Saving Bank Control Organisation will check the withdrawal vouchers (SB-7) with reference to the ledger Binder and after that the vouchers will be preserved there.

From the above it is clear that when a CTD account of ONGC Colony SO matured, the depositor had to deposit his pass book along with application for withdrawal at ONGC colony S.O. first for sending it to H.O. for final passing. Had it been done the noting of earlier withdrawals in the pass - book as well as in specimen signature could have been detected and 2nd withdrawals could have been averted.

In view of the above there cannot be second withdrawal as the pass books already returned to the depositors after the first withdrawal noting the particulars as above. Therefore, Sri Jadav Ch. Bezbaruah, SPM, ONGC Coloney S.O. was held responsible for such 2nd withdrawals and misappropriation of Govt. money Rs. 18,150/-.

The fact remains that due to shortage of staff at Sibsagar H.O. there was no ledger posting of CTD accounts at that time. The SB Branch send the vouchers (withdrawals forms,

Deposit forms and list of transaction etc.) to SBCO for checking at their end. ~~The~~ Shri Topeswar Das, UDC, SBCO was entrusted checking of vouchers of ONGC Colony S.O. He had seen that the transactions were not posted in the ledger. So he blindly signed in the withdrawal forms as checking by him and send the vouchers for preservation. He did not raise any objection for it. Taking such advantage of non-posting, he managed to prepare some withdrawal forms, by affixing office date stamp and rubber stamp of Asstt. Postmaster and also affixing rubber stamp of the Group Leader without his knowledge and supplied to the applicant, SPM, ONGC Colony S.O. signing himself or got signing by somebody as depositor, APM etc, and shared such fraudulent withdrawal amount between themselves. Thus both of them managed to do such mischief in seferal CTD and RD accounts, and misappropriated a sum of Rs. 2,52,444.90 .

When the said vouchers were received by Sibsagar H.O. those were sent to SBCO for checking and Sri Topeswar Das being in the SBCO, took the advantage of showing checked the said vouchers with his signature by misleading his supervisor and filed in the bundle.

As there was no personal claim for such withdrawal the case remained in dark for years.

The case was detected by Sri Bongshidhar Das another UDC of SBCO when he was doing the ledger agreement work as the balance were not tallied as per vouchers. Then the entire episode came to light.

Contd.....

Then the Inquiry started and on inquiry another case of misappropriation of sale proceeds of KVP/IVP came to light. On verification of the stock of KVP/NSC/IVP with applicant the SPM, ONGC Colony S.O. by the Supdt. of Post Offices, Jorhat following KVP/IVP found short as per the balance noted by the applicant in his stock register.

| <u>K.V.P.</u> <u>Deno.</u> | <u>Sl.No. of Certificates</u> | <u>Total no.</u> | <u>Amount</u> |
|-------------------------------|-------------------------------|------------------|---------------------|
| Rs. 1000/- | 13AA 006786 | 1 | Rs. 1000.00 |
| Rs. 5000/- | 00BB 763968 - 75 | 8 | Rs. 40000.00 |
| Rs.10,000/- | 04CC 751602 - 06 | 5 | Rs. 50000.00 |
| | | <u>Total-14</u> | <u>Rs. 91000.00</u> |

I.V.P.

| | | | | |
|------------|---------------------|-------------|---|---|
| Rs. 2500/- | 5000 <u>C</u> 10 | 739951 - 52 | 2 | Rs. 5000.00 (Date of sale 12.2.90). |
|------------|---------------------|-------------|---|---|

Later on it could be find out that the above certificates were sold by the applicant to the public obtaining required amount for the same but he did not credit the amount to the Govt. account and the amount was misappropriated.

The applicant was asked to credit the amounts misappropriated by him. Then he credited Rs. 18,150/- being the double withdrawn amount of 2 CTD accounts on 2.4.90 cunningly showing as recovery from the depositors, although the depositors flatly denied such double withdrawals and he did not credit the rest amounts.

Therefore the case was reported to Sibsagar Police-Station on 9.4.90 and 30.4.90 and accordingly case was registered under P.S. Case no. 167/90 U/S 409 IPC. Later the case was Investigated by the Inspector CBI.

After Investigation the Police submitted chargesheet against the accuseds u/s 409/468/201/34 IPC to Sibsagar Court which was Registered there as GR Case no. 589/90 u/s 409 IPC in the court of Judicial Magistrate (Ist Class) Sibsagar.

A copy of judgement was received by this office from the applicant, the accused on 13.8.2001 along with his application for consideration. Then the case was taken up for appeal.

Para-wise comments :

1. That with regard to paras 1, 2, 3 and 4(i), of the application the respondents beg to offer no comments.

2. That with regard to the statement made in para 4(ii), of the application the respondents beg to state that the applicant, while working as a SPM, ONGC of coloney SO from 2.6.87 to 9.4.90 had committed the fraud whereas the disciplinary proceeding against him contemplated/pending, therefore he was placed under suspension with immediate effect vide this office memo no. B2/J.C. Bezbaruah dated 9.4.90.

3. That with regard to the statement made in para 4(iii), of the application the respondents beg to state that the charges were framed against Sri G.C. Bezbaruah vide SPOs, Jorhat memo no. F4-1/90-91 dated 4.7.91 on the basis of documentary evidence and

he was directed to submit a written statement of the defence. Accordingly he submitted the written statement of defence before the authority denying all the charges framed against him.

4. That with regard to the statement made in para 4(iv), of the application the respondents beg to state that on receipt of the said statement, the case was entrusted to Sri B.B. Chaudhury ASPOs(E), Guwahati appointing him as Inquiry Authority under Sub rule (2) of Rule 14 of CCS(CCA) Rules 1965 vide SPOs Jorhat memo no. F4-1/90-91 dated 4.7.91 and Sri P. Mozumdar, ASPOs, Jorhat as presenting officer under sub rule (5)(c) of said Rule vide memo of even no. dated 1.11.91.

5. That with regard to the statement made in para 4(v), of the application, the respondents beg to state that the Disciplinary authority has gone through the inquiry reports of the Inquiry Authority and the representation submitted by the applicant and noted the observation and assessment in the order of revoke under powers confirmed by clause(c) of sub rule(5) of Rule 10 of the Central Civil Services (classification control and appeal) Rules, 1965 vide memo no. B2/J.C. Bezbaruah dated 19.2.93.

6. That with regard to the statement made in para 4(vi), of the application the respondents beg to state that the copy of the said inquiry report were sent to the applicant vide memo no. F4-1/90-91 dated 22.4.93 for submission of representation if any before the disciplinary Authority within 15 days. Accordingly on 12.5.93 he submitted a representation. As the official already attained the age of superannuation on 28.2.93 the

the Departmental proceeding of disciplinary action dropped.

7. That with regard to the statement made in para 4(vii), of the application the respondents beg to state that as the disciplinary proceeding had been dropped, a provisional pension Rs.800/- per month for a period of 6 months had been sanctioned vide SPOs. Jorhat memo no. G2/J.C. Bezbaruah dated 23.6.93.

8. That with regard to the statement made in para 4(viii) of the application the respondents beg to state that the applicant was asked to credit the amounts of misappropriated, but due to non credit of the said amount the case was reported to police. The police submitted charge sheet to court. The judgement of the GR case no. 589/90 was delivered on 20.6.01 without the knowledge of this Deptt. for which the further course of action for regularisation of pensionary benefit etc.

9. That with regard to para 4(ix), of the application the respondents beg to offer no comments.

10. That with regard to the statement made in para 4(x), of the application the respondents beg to state that the application for extension of provisional pension received from the applicant already been forwarded to the DA(P) vide this office letter of even no. dated 6.10.03, under intimation to applicant. The notice from Sri A Z. Alam, Advocate, Guwahati High Court a parawise reply of the said notice already been forwarded to the Advocate vide this office letter of even no. dated 28.4.03.

11. That with regard to the statement made in para 4(xi), of the application the respondents beg to state that in the reply of the notice it was intimated that the Inquiry Report alongwith the original file of the case has been sent to Circle Office, Guwahati vide SPOs, Jorhat letter of even no. dated 23.6.93 for finalisation of Rule-9 case. But the report yet to be received.

12. That with regard to the statement made in para 4(xii), of the application the respondents beg to state that the representation submitted by the applicant regarding regularisation of pensionary benefit already been forwarded to the DA(P), Kolkata vide letter of SPOs, Jorhat no. C2/J.C. Bezbaruah dated 6.10.93. But the pension case of his could not be forwarded in time due to absence of the service book which were sent to Circle office for finalisation of Rule-9 disciplinary case against him.

13. That with regard to the statement made in para 4(xiii), of the application the respondents beg to state that since the adjustment of loss, pending of Rule-9 disciplinary case and judgement of the GR case no. 589/90 as cryptic and actual evidence was not properly discussed therein, the question of pensionary benefit does not arise.

14. That with regard to para 4(xiv), of the application the respondents beg to offer no comments.

15. That with regard to the statement made in para 5(i), of the application the respondents beg to state that Rule-9 enquiry case still pending at Circle Office, Guwahati and the pension case of the official will be finalised after completion of Rule-9

enquiry case.

16. That with regard to the statement made in para 5(ii), of the application the respondents beg to state that for initiation of disciplinary action under Rule-9 case already forwarded to Co as per Rule on the subject and there was no lacuna in it.

17. That with regard to the statement made in para 5(iii), of the application the respondents beg to state that as discussed above, the learned judicial Magistrate Ist Class committed error of law by acquitting the accused person Sri Jadav Ch. Bezbarua by his impugned judgement and hence an appeal has been filled by the Deptt. against the said impugned judgement the Guwahati High Court vide Criminal Appeal no. 424/2001. The said appeal case is still pending against the accused.

18. That with regard to the statement made in para 5(iv), of the application the respondents beg to state that his provisional pension, Rs. 800/- per month has been sanctioned regularly and he is able to get only the said pension amount per month. Other benefits are still pending due to non finalisation of Rule-9 case.

19. That with regard to the statement made in para 5(v), of the application the respondents beg to state that he takes payment of the pension regularly as mentioned above .

20. That with regard to paras 6 & 7, of the application the respondents beg to offer no comments.

Contd.....

21. That with regard to the statement made in para 8, of the application the respondents beg to state that as he filing the appeal in Hon'ble Tribunal and the disciplinary case is now pending at Circle Office, the question of payment of other pensionary benefit does not arise.

22. That with regard to paras 9 & 10, of the application the respondents beg to offer no comments.

23. That with regard to the statement made in para 11 , of the application the respondents beg to state that all the statements of the appealant Sri Jadav Ch. Bezbaruah are not based on facts and untenable by law and liable to be dismissed out right.

Verification.....

VERIFICATION

I, Shw. B. K. Marale, presently
working as Supdt of Post Office, Sub Post Office, Jodhpur, being duly
authorised and competent to sign this verification, do hereby
solemnly affirm and state that the statements made in paragraphs
1(A) to 23 are true to my knowledge and belief
and those made in paragraphs 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 th day
of September, 2003.

B. K. Marale
Deponent.