

100

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

(DESTRUCTION OF RECORD RULES, 1990)

**INDEX**

CP 26/04 under page 6 to 2 Abnised  
9/11/04

3

O.A/T.A No. 166/2003  
R.A/C.P No. 26/04  
E.P/M.A No.....

1. Orders Sheet..... O.A..... Pg..... to.....  
2. Judgment/Order dtd. 23/12/2003 Pg. 1..... to 2.....  
3. Judgment & Order dtd..... Received from H.C/Supreme Court  
4. O.A..... 166/03..... Pg. 1..... to 29.....  
5. E.P/M.P..... Pg..... to.....  
6. R.A/C.P..... 26/04..... Pg. 1..... to 19.....  
7. W.S..... Pg. 1..... to 21.....  
8. Rejoinder..... Pg..... to.....  
9. Reply to the C.P. 26/04..... Pg. 1..... to 8.....  
10. Any other Papers..... Pg..... to.....  
11. Memo of Appearance.....  
12. Additional Affidavit.....  
13. Written Arguments.....  
14. Amendment Reply by Respondents.....  
15. Amendment Reply filed by the Applicant.....  
16. Counter Reply.....

SECTION OFFICER (Judl.)

FROM No. 4  
(SEE RULE 42).

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 166/03

Misc Petition No: /

Contempt Petition No: /

Review Application No: /

Applicants: S. B. Hazarika

Respondents: UOI & others

Advocate for the Applicants: In Person

Advocate for the Respondents: C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
Application is in but not in time Information Petition is d/ filed C.P. Rs. 50/- deposited IPO/BD No. 964/32 Dated 21/7/03	23.7.2003	List on 26.8.2003 alongwith M.P. 79/2003 for admission.
<i>Deb Roy</i> <i>By Register</i>	26.8.2003	Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. K.V. Prahaladan Member (A).
Steps Taken: <i>Writ Petition 22/7/03</i>		Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents prays for time for filing written statement. Also, heard Mr. S.B. Hazarika, the applicant in person.
		Considering the prayer, the case is adjourned and posted for admission on 22.9.2003. Endeavour shall be made to dispose of same at the admission stage.
	<i>mb</i>	<i>K. Prahaladan</i> Member
		<i>Vice-Chairman</i>

22.09.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

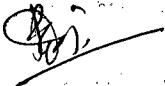
The Hon'ble Sri K.V. Prahaladan Administrative Member.

Heard Mr. S.B. Hazarika, the applicant in person. and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the Respondents.

The Respondents have filed Written statement. We also perused the written statement. The application is admitted. List the matter for hearing on 30.10.2003. No further notice need to be issued. The applicant may file rejoinder, if any, within two weeks from today.

22.9.03

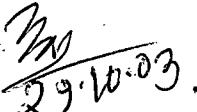
W.P. submitted  
by the Respondents.

  
K.V. Prahaladan  
Member

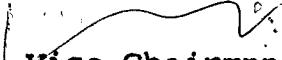
  
Vice-Chairman

No. rejoinder has  
been filed.

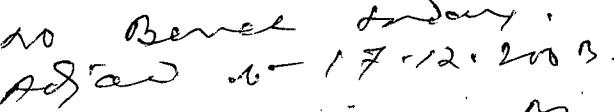
30.10.2003 NO Division Bench available today.  
List the case on 25.11.2003 for hearing

  
29.10.03.

bb

  
Vice-Chairman

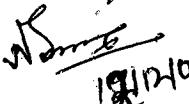
25.11.03

  
No Bench today.  
Adjudged on 17.12.2003.

1870  
6.

17.12.03

NO Division Bench today.  
The case will be listed  
on 23/12/03.

  
19.12.03

23.12.2003 Present: Hon'ble Mr Justice B. Panigrahi, Vice-Chairman

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

Heard the learned counsel for the parties. Hearing concluded. Orders passed separately.

  
K.V. Prahaladan  
Member

  
Vice-Chairman

nkm

copy of the judgment has  
been sent to the Office  
for issuing the same to  
the applicant as well  
as to the Sr. C.G.S.C.  
and to the Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./RXX. No. 1111 166 of 2003

DATE OF DECISION 23.12.2003

Shri S.B. Hazarika

.....APPLICANT(S).

In person

.....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS-

The Union of India and others

.....RESPONDENT(S)

Mr. A. Deb Roy, Sr. C.G.S.C.

.....ADVOCATE FOR THE  
RESPONDENT(S).

THE HON'BLE MR. JUSTICE B. PANIGRAHI, VICE-CHAIRMAN

THE HON'BLE MR. K.V. PRAHALADAN, 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 Member Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.166 of 2003

Date of decision: This the 23rd day of December 2003

The Hon'ble Mr Justice B. Panigrahi, Vice-Chairman

The Hon'ble Mr K.V. Prahaladan, Administrative Member

Shri S.B. Hazarika  
C.I. (Postal)  
Divisional Office,  
Kohima, Nagaland.

.....Applicant

The applicant appears in person

- versus -

1. The Union of India, represented by  
The Secretary (Posts)  
Dak Bhawan, New Delhi.
2. The Member (Personnel),  
Postal Services Board,  
Dak Bhawan,  
New Delhi.
3. The Postmaster General,  
N.E. Circle,  
Shillong.
4. The Director of Postal Services,  
Nagaland, Kohima.
5. The Postmaster,  
Kohima, Nagaland.

.....Respondents

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

.....

O R D E R (ORAL)

PANIGRAHI. J. (V.C.)

Heard the applicant in person and also Mr A. Deb Roy, learned Sr. C.G.S.C.

2. In this case the applicant has challenged the order passed by the authorities whereby his prayer for enhancement of subsistence allowance from 50% to 75% has

been negatived. The fact situation emerging to this application is as follows:

The applicant was placed under suspension since he was in custody on 8.11.1999 over a period of fortyeight hours. It is also on the ground that there was embezzlement of Government fund. In the meanwhile, departmental proceedings have been initiated against the applicant for misappropriation of Rs.65,400/- and Rs.10,000/-. Since the departmental proceedings is not yet finalised we abstain ourselves from making a thorough discussion regarding the merits of such departmental proceedings. But, be it stated that the applicant has been facing grave charges of misappropriation. During the pendency of the disciplinary proceedings, the applicant was given 50% of his salary as subsistence allowance. The disciplinary proceeding is still pending, awaiting final disposal.

3. From the submissions of the applicant it is ascertained that the applicant has been already reinstated in service. But, he has claimed the subsistence allowance to the tune of 75% during the period of suspension as it could not be completed within the normal period of six months from the date of initiation of the proceedings. Mr A. Deb Roy, learned Sr. C.G.S.C. has stated that such delay can be attributed to the applicant, inasmuch as he did not cooperate with the Inquiry Officer, as a result, it could not be completed in time. Since the applicant has been reinstated in service, the further question with regard to the payment of subsistence allowance at an enhanced rate <sup>and not</sup> ~~earner~~ it shall be addressed at the time of conclusion of the departmental proceedings. It is

premature.....

X

: 3 :

premature to deal with that matter at this stage. The Disciplinary Authority is hereby asked to deal with the aspect of payment of the subsistence allowance at the enhanced rate or not at the time of finalisation of the disciplinary proceedings. Since the disciplinary proceedings is pending for quite sometime, we hope and trust the Disciplinary Authority shall expedite and finalise the disciplinary proceedings within four months, provided the applicant cooperates with them.

The application is accordingly disposed of. No order as to costs.

*K V Prahaladan*

( K. V. PRAHALADAN )  
ADMINISTRATIVE MEMBER

*B Panigrahi*

( B. PANIGRAHI )  
VICE-CHAIRMAN

nkm

FORM-1  
See Rule - 4)

APPLICATION UNDER SECTION 19 OF THE  
CENTRAL ADMINISTRATIVE TRIBUNAL, ACT of 1985.

Title of the Case :- S.B.Hazarika,

v/s

Union of India & Others.

Shanti Bhurkan Hazarika

INDEX

Sl.No.	Description of the documents relied upon	Page No.
1.	Original Application	1-11
1A.	Annexure. A-1A Suspension order Dt. 11-11-99	11-A
2.	Annexure A-1 Copy of orders of initial grant of subsistence allowance std. 3-12-99	12
3.	" A-2 Copy of the Impugned orders of the Director of postal services, Kohima dated 17-2-2000.	13
4.	" A-3 Copy of appeal preferred by the (i-ix) applicant dated 20-3-2000.	14 - 22
5.	" A-4 Copy of the appellate orders of (i-iii) the Postmaster General, Shillong dated 20-11-2000.	23 - 25
6.	" A-5 Copy of the Revision Petition (i-viii) submitted by the applicant dated 06-02-2001.	26 - 33

C.P.(ii)

(ii)

Sl. No. Description of the documents relied upon Page No.

7. Annexure A-6 Copies of Postal receipt & Ack. Due  
& Received back showing delivery of  
Annexure A-7 Revision petition on 13-2-2001 to  
the Revisionary authority. 34

8. Annexure A-8 Copy of revocation of Suspension  
order of the Director of Postal  
Services, Nagaland, Kohima dated  
12-7-2001. 35

Date :-

Place :- Guwahati-5



SIGNATURE OF THE APPLICANT

FOR USE IN TRIBUNALS OFFICE.

Date of filing :-

Date of receipt by Post :-

Registration No. :-

Signature  
For Dy. Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BRANCH : GUWAHATI-5.

OA 166/03

vs.

C.P.2

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

  - (i) Impugned orders of the Director of postal services Nagaland, Kohima Memo No.F3/VII-01/99-2000 dtd. 17-2-2000 denying to increase the subsistence allowances by 50% of the initial grant of subsistence allowances after the expiry of first 3(three)months of suspension.
  - (ii) Appellate orders of the Postmaster General, N.E.Circle, Shillong (Appellate Authority) Memo No. Staff/109-8/2000 dtd. 20-11-2000 rejecting the appeal in totality.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject-matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. LIMITATION :

The applicant further declares that the application is not within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

For condonation of delay, the applicant filed a separate application supported by an affidavit vide Misc.

Case No. 79/03 on \_\_\_\_\_

and the permission was granted by this Hon'ble Tribunal vide orders dtd. \_\_\_\_\_ a copy of which is enclosed for perusal and admission of the application.

Shanti Nehru from Nagaland

**4. FACTS OF THE CASE :**

4.1 That, the applicant, while working as C.I. (Postal) in the office of the Resp. No. 4, was deemed to have been placed under suspension by an order of the Resp. No. 4 dtd. 11-11-99 w.e.f. 8-11-99 following his detention in custody on 8-11-99 exceeding 48 Hrs.

4.2 That, the applicant was granted subsistence allowance (hereinafter referred to as S.A.) at an amount equal to leave salary as admissible under FR-53(1) by an order of the Resp. No. 4 dtd. 3-12-99.

A copy of the above order of S.A. issued on 3-12-99 is annexed herewith and marked as Annexure, A-1.

4.3 That, the applicant requested for review and increase of subsistence allowance by 50 % of the initial amount granted as the period of first 3(three)months of suspension was to expire on 7-2-00 under the provisions of FR-53(I)(ii)(a)(i) owing to prolongness of suspension for reasons not directly attributable to the applicant.

4.4 That, the Resp. No. 4 by his order dtd. 17-2-2000 ordered vide paras 3rd and 4th of his orders that the S.A. granted to the applicant initially needed not to be altered and would remain the same.

A copy of the orders dtd. 17-2-2000 keeping the allowances same is annexed herewith and marked as Annexure A-2.

4.5 That, the applicant preferred an appeal against the orders of the Resp.No.4 to the Postmaster General, N.E.Circle, Shillong(Resp.No.3), the Appellate Authority on 28-3-2000 urging to revoke the order of suspension or to increase the S.A. by 50% of the initial grant of S.A. from the day following the day on which the period of first 3 months expired.

A copy of the appeal preferred on 28-3-2000 is annexed herewith and marked as

Annexure- A-3.

4.6 That, the appellate authority i.e. the Resp.No.3 after taking about 8(eight)month's time for disposal of the appeal rejected the appeal in the long run on 20-11-00 either to revoke the suspension or to increase the S.A.

A copy of the appellate orders dated 20-11-2000 either to revoke the suspension order or to increase the S.A is annexed herewith and marked as

Annexure, A-4.

4.7 That, the applicant submitted a Revision Petition under Rule 29 of the CC8(CC&A)Rules,1965 to the Resp.No.2(Revisionary Authority)against the appellate orders on 06-02-02,which was received by the Resp.No.2 on 13-2-01 as per Ack, Due received back by the applicant, but the orders disposing of the Revision Petition is yet to be received by the applicant.

A copy of the Revision Petition dt'd. 06-02-01 is annexed herewith and marked as Annexure- A-5.

Postal Repl.annexed &	"	"	A-6
" Accl. Due "	"	"	A-7

Shanti Bhattacharya  
Mangareko

4.8 That, in the meantime the Resp. No. 4 suo-moto revoked the order of Suspension under sub-rule(5)(c) of Rule 10 of the CCS(CC&A)Rules, 1965 vide his Memo No. F3/VII-01/2000/II dtd. 12-7-01 with immediate effect and the applicant resumed duties on 10-8-01.

A copy of the order of revocation of suspension order is annexed herewith and marked as Annexure A-8.

4.9 That, the applicant was under suspension for a total period of 1 year and 9 months (from 8-11-99 to 9-8-01) and during this period he was paid subsistence allowance at the rate of 50% whereas he was entitled to 50% for the first period of 3(three) months of suspension and at the rate of 75% for the remaining period of 1 year and 6 months of suspension which was denied. The applicant was denied the protection of FR-53(I)(ii)(a), and hence this application has been moved.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 THE ENHANCEMENT OF SUBSISTENCE ALLOWANCE IS PERMISSIBLE AND ADVISABLE IF SUSPENSION PROLONGS FOR REASONS NOT DIRECTLY ATTRIBUTABLE TO THE GOVT. SERVANT : - The FR-53-(I)(ii)(a) provides as follows :

" The amount of subsistence allowance may be increased by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of first 3 months if in the opinion of the said authority the period of suspension has been prolonged for reasons

✓  
Shanti Bhawan  
Almora

to be recorded in writing not directly  
attributable to the Govt. servant."

The above position of the Rule clearly means that there is no objection to the increase of S.A. after 3 months by 50% of the initial grant if the Govt. servant is not responsible for the prolongness of the suspension period. The increase is linked solely to the fact whether the Govt. servant is responsible for prolongivity of suspension beyond 3 months and not for any other reason whatsoever it may be as contemplated in FR-53(I)(ii)(a)(i) which is salutary and recommendatory. No foreign grounds can interfere in review of the subsistence allowance.

**5.2 THE REVIEW ORDERS OF SUBSISTENCE ALLOWANCE DTD NOT SAY THAT APPLICANT WAS RESPONSIBLE FOR PROLONGNESS OF SUSPENSION :-**

In the review orders of S.A. dated 17-2-2000 passed by the resp.No.4 it was not said that in the opinion of Resp.No.4 the period of suspension prolonged for reasons directly attributable to the applicant for reasons of adopting dilatory tactics etc. which stood in the way of increasing the S.A. The Resp.No.4, therefore, willfully and deliberately departed from the duty cast by FR-53(I)(ii)(a)(i) and impeded the foreign terms & conditions namely "facts and circumstances of the case" which is not contemplated in the above statutory provisions and has, therefore, nothing to do with the increase the S.A. The orders of the Resp.No.4 has therefore, no legs to stand and, therefore, collapse like a house without its pillar to support. The order dated 17-2-00 is liable to be set aside for being an arbitrary one.

Slanted *Phyllocladus* flagellaris

### 5.3 THE REASONS OF DENIAL OF INCREASE OF S.A. ARE VAGUE, FANCIFUL AND COOKED ONES :-

The reasons putforwarded by the Resp.No.4 in his orders dated 17-2-99 in support of his denial to increase the allowance are despotic to FR-53(I)(ii) (a)(i) and are arbitrary, filmsy, fanciful, vague, whimsical, capricious and cooked ones and not guided by the sound principles of law. The reasons shown are not consonant to what has been contemplated in FR-53(I)(ii)(a)(i). The Resp.No.4, therefore, while denying to increase the S.A.exercised his powers as if sky is the limit of his powers. More mention of a Court case and departmental major penslty proceeding on the same charge does not unfold the facts and circumstances of the case which does not justify the stand taken by the Resp. No.4. The decision of the Resp.No.4 was, therefore, based on extraneous grounds and irrelevant matters and when an authority decides a question on the basis of both the relevant and irrelevant matters it is very difficult to assess to what estent the mind of that authority was influenced by the irrelevant matters used by him. The order of the resp.No.4 dtd. 17-2-00 is malafide and had in law which deserved to be brushed aside.

## 5.4 APPELLATE ORDERS WERE BUT THE MECHANICAL ONES

The appellate orders passed by the Resp. No.3 is not a self-explanatory, self-speaking and reasoned one. The points raised by the applicant in the appeal were not at all discussed logically point by point why the please of the applicant were not acceptable to the appellate authority and why the pleas of the Resp. No.4 were more acceptable to him. The appellate orders of the Resp. No.3 yes, therefore a MECHANICAL order.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has availed of all the remedies available to him under the relevant service Rules, etc.

(1) On 28-3-2000 :- The applicant preferred appeal against the impugned order dated 20-11-2000 of the Resp.No.4 to the Resp.No.3 but the said appeal was rejected vide Memo. No.Staff/109-S/2000 dated 20-11-2000.

(Annexure :-A-4)

(2) On 06-02-01 :- The applicant submitted a Revision petition U/R of the CCS (CCA) Rules, 1965 to the Resp.No.2 against the appellate orders of the Resp.No.3 but no orders disposing of the Revision petition has so far been received from the Revisionary Authority till date.

(Annexure. A-5)

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY COURT :

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

Shanti Bhushan Nagarkar

8. RELIEF(s) SOUGHT :

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

The impugned orders of the Resp.No.4 dated 17-2-2000 and orders dated 20-11-2000 of the Resp.No.3 may be quashed and the applicant may be allowed subsistence allowance at the rate of 75% of pay for the period after the expiry of first 3 months of suspension.

LEGAL PROVISIONS RELIED UPON

The impugned orders and the appellate orders are violative of Article 21 of the Constitution of India which provides that no man shall be deprived of his life except by way as provided by law. The term "life" used in the Article means and includes the right to live with dignity and honour and not like just above the animals, Deprivation of lawful subsistence allowance to a Govt. servant under suspension, Which is intended for the proper subsistence of the Govt. servant and his family members, tantamounts to deprivation of life which violates and offends the provisions of Article 21 of the Constitution. This conception of Article 21 has been approved by the Supreme Court of India in a good number cases which will cited during hearing of the application.

9. INTERIM ORDER, IF ANY, PRAYED FOR :

Not prayed for

10. IN THE EVENT OF APPLICATION BEING SENT BY POST :

Submitted in person.

Santosh Nandan Nagarkar

11. PARTICULARS OF BANK DRAFT/POSTAL ORDER FILED IN  
RESPECT OF APPLICATION FEE :

U.C.O, Bank Draft No:- 964132 for Rs.50/-  
(i) No. of Postal order :- 7G 376769 FOR RS.50/- (Fifty)  
(ii) Date of issue :- 28-02-2002 to 21-7-03  
(iii) Office of Issue :- KOHIMA HPO, U.C.O, Bank,  
Rajpara Bench  
(iv) Name and address :- Deputy Registrar,  
of the payee. Central Administrative Tribunal,  
Guwahati Bench, Guwahati-5.

12. LIST OF ENCLOSURES :

(i) Index.

(ii) Annexures A-1 to A-6  
Bank Draft No. 964132 & 21/7/03 for Rs.50/-  
(iii) P.P.O. No. 7G 376769 issued by Kohima HPO  
dated 20-2-2000 for Rs.50/- P/T D. Registrar,  
C.A.T., Guwahati Bench, Guwahati-5.

C.P. 11.

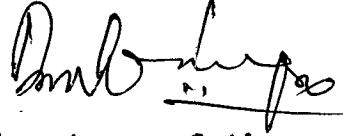
Shanti Dolkhan (Signature)

: VERIFICATION :

I, Shri S.B.Hazarika, S/O Lt. Khargeswar Hazarika, Age approx 52 yrs, working as C.I.(Postal) in the office of the Director of Postal Services, Nagaland, Kmt Kohima do hereby verify that the contents of paras 1 to 4, 9, 6, 7 are true to my personal knowledge and paras 5.1 to 5.4 believe to be true on legal advice and that I have not suppressed any material facts.

Date :- 10.7.03

Place :- Guwahati-5



Signature of the applicant

To

The Deputy Registrar,  
Central Administrative Tribunal,  
Guwahati Bench, Guwahati-5.  
PIN - 781 005.

DEPARTMENT OF POSTS:INDIA  
OFFICE OF THE DIRECTOR OF POSTAL SERVICES  
NAGALAND ; KOHIMA-797001

No. F3/VII-01/99-2000

Dated Kohima the 11-11-99

Whereas a case against Shri. Shanti Bhusan Hazarika, Complaint Inspector, Divisional Office, Kohima in respect of a Criminal offence is under investigation.

And the said Shri. Shanti Bhusan Hazarika was detained in the custody on 8-11-99 for a period exceeding 48 (fourty eight) hours.

Now therefore the said Shri. Shanti Bhusan Hazarika is deemed to have been suspended with effect from 8-11-99 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.

S/ff (F. P. Solo)

Director of Postal Services  
Nagaland ; Kohima-797001

Copy to:-

- 1) The Chief PMG. N.E. Circle, Shillong w.r.t. CO's letter no. INV/X/GM-1/99-2000 dated 27-10-99.
- 2) Shri. S.B. Hazarika, C.I, Divisional Office, Kohima. Orders regarding subsistence allowance admissible to him during Suspension period will be issued seperately.
- 3) The Postmaster, Kohima H.O, for n/a.
- 4) The DA(P) Calcutta for information and n/a.
- 5) P/T of the official.
- 6) Sparc.

Q.P.  
11/11/99  
(F. P. Solo)

Director of Postal Services  
Nagaland ; Kohima-797001

all set  
9/11/99  
APB

*Annexure: A- 1*

12  
2

DEPARTMENT OF POSTS: INDIA  
OFFICE OF THE DIRECTOR OF POSTAL SERVICES  
NAGALAND: KOHIMA: 797001.

Memo NO.F3/VII-01/99-2000

Dated at Kohima the 3.12.99.

Shri.S.B.Hazarika, C.I, Divisional Office, Kohima was deemed to have been placed under suspension vide this office Memo of even no. dated 11.11.99, with effect from 8.11.99.

He is granted a subsistence allowance at an amount equal to leave salary of the Govt. servant which he would have drawn if he had been on leave on half pay and in addition dearness allowance if admissible from time to time on basis of such leave salary subject to the fulfillment of other conditions laid down for the drawl of allowance, and other compensatory allowances from time to time on basis of pay which the Govt. servant was in receipt on the date of suspension subject to fulfillment of other conditions laid down for the drawl of such allowances.

No such payment shall be made unless the Govt. servant furnishes a certificate to the effect that he is not engaged in other employment, business profession or vocation.

*RP Solo*  
(R.P.Solo)

Director of Postal Services  
Nagaland, Kohima-797001

Copy to:

1. The Postmaster, Kohima HO. He will pay subsistence allowance to the official after obtaining certificate as required under FR 53 (2) from the suspended official as reproduced below.

1. Shri. \_\_\_\_\_ having suspended by order no. F3/VII-01/99-2000, dtd. 11.11.99 while holding the post of C.I, Divl. Office, Kohima, do hereby certify that I have not been employed in any profession or vocation or any other employment for profit/ remuneration/ salary.

Dated:

Place:

Signature of the official  
Address:

2. The DA (P) Calcutta.
3. The official concerned.
4. P/P of the official.
5. Spare.

*RP Solo*  
(R.P.Solo)  
Director of Postal Services  
Nagaland, Kohima-797001

*Alfred*  
*D*  
*9/11/02*  
*AFP*

File No. 51  
21/2/00  
R/o. 28702/00  
13

Address - A-2

PARTMENT OF POSTS, INDIA  
OFFICE OF THE DIRECTOR OF POSTAL SERVICES  
NAGALAND: KOHIMA-797001

No. F3/VII-01/99-2000

Dated Kohima the 17.2.2000

Whereas Shri. S.B.Hazarika C.I.Divisional office Kohima was placed under suspension vide this office Memo of even no Dtd. 11.11.99. He was granted subsistence allowance vide this office memo of even No. Dtd. 3.12.99.

The suspension of Shri. S.B.Hazarika has been reviewed and whereas a criminal case has been registered and a major penalty proceedings initiated against Shri. S.B.Hazarika, it is felt that continuation of the suspension of Shri. S.B.Hazarika is justified.

And having regard to the facts and circumstances of the case it is considered that the subsistence allowance granted to Shri. S.B.Hazarika vide this office memo of even no. Dtd. 3.12.99 need not be altered.

Now therefore in exercise of the powers conferred under FR 53 (1) (ii) (a), it is hereby ordered that the rate of subsistence allowance of Shri. S.B.Hazarika will remain at the same rate which was granted to him vide this office memo of even no. Dtd. 3.12.99.

Shri. S.B.Hazarika will be entitled to compensatory allowances admissible from time to time on the basis of pay of which he was in receipt on the date of his suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.

No payment shall be made unless he furnishes a certificate under FR 53 that he is not engaged in any other employment, business, profession or vocation.

The Headquarters of Shri. S.B.Hazarika will continue to be Kohima and he shall not leave the Headquarters without the prior permission of the competent authority.

Sd/-

(F.P.Solo)

Director of Postal Services  
Nagaland: Kohima-797001.

Copy to:-

1. The Postmaster Kohima HO for info.
2. The D.M.P.C. (Office of Director the Postmaster Kohima)
3. Shri. S.B.Hazarika C.I.Divl. office Kohima (At Sabroom, Agartala 799145)
4. The CPMG.NE Circle for information.
5. The P.F. of the official
6. O.C.

18(2)(c)  
(F.P.Solo)

Director of Postal Services  
Nagaland: Kohima-797001.

Address  
D  
9/DPD/ASL

APPEAL

APPEAL

APPEAL

To

The Chief Postmaster General,  
N.E. Circle, SHILLONG.  
793 001.

Sub:-Appeal U/R-23(v)(d) of the CCS(CC&A)Rules,1965 against

(1) the arbitrary orders of the DPS,Nagaland denying the  
increase of subsistence allowance by 50% of the initial  
grant on review on expiry of first three months;

AND

(2) Appeal U/R-23(IV) of the CCS(CC&A)Rules,1965 against  
the ~~favorable~~ orders of the DPS,Nagaland justifying the  
continuance of suspension on review on expiry of 3 months  
of suspension.

Ref :- DPS,Nagaland,Kohima's Memo.No.F3/Vii-01/99-2000

dated 17.02.00(common ~~disagree~~ orders in respect of  
both the above two decisions) - received by the  
appellant on 28.02.00.

Sir,

#### INTRODUCTION & INVOCATION.

Most humbly and respectfully the appellant begs to draw your kind attention to the following untold story of suspension on an Inspector of Post Offices how he has been harassed and subjected to despotism in the hands of the Director of Postal Services,Nagaland,Kohima who denied the benefits & protection admissible to the appellant after the expiry of 3 months of suspension in total disregard of statutory rules and orders of the Govt. issued from time to time in that regard - and to give redress to the victimised appellant.

#### BRIEF HISTORY OF THE CASE

That, on 30.9.99 the DPS,Nagaland verified the cash and stamp balances of the Kohima H.O. and found that a sum of Rs.65,400/- was taken under receipt as advance by the appellant and the amount was lying as a part of cash in the cash balance of Kohima H.O. The amount was taken for treatment and major operation of his uncle Shri Umesh Hazarika at Assam Medical College Hospital,Dibrugarh with promise to return and adjust the same .The DPS,Nagaland asked the

affidavit

9/2/03  
APP

Contd. on page 2.

25

appellant to return the money and the appellant immediately returned Rs.10,400/- on the very day i.e. 30.9.99 and requested the DPS, Nagaland to give the appellant two month's time so that he could return the money by that time. The appellant, for arrangement of the money, proceeded on leave for 30 days on M/C. As the appellant had no E/L at his credit he had to go on Leave-not-Due /E.O.L. for which he was compelled to proceed on M/C. The appellant returned to duty on 08.11.99 after extension of some days more. On that day i.e. 08.11.99 the DPS wanted a written statement from the appellant admitting the receipt of the money and the time by which the appellant could return the money and accordingly, the appellant complied with. But after some hours about at 1400Hrs. the appellant was apprehended by police from the office on the ground that the DPS, Kohima filed a FIR against the appellant for taking money from the Kohima H.O. and some other S.Os. The appellant was detained in custody exceeding 48 hours which resulted in deemed suspension of the appellant from 08.11.99. The appellant, however, did not submit any appeal against the order of deemed suspension of the DPS/Kohima though the DPS, Kohima was not empowered to issue orders of Deemed suspension as he was not the appointing authority. As per Rule-10(2) of the CCS(CC&A)Rules, 1965 only the appointing authority can issue an orders of deemed suspension and not by any authority as empowered to place an official under suspension under Rule-10(1) of the CCS(CC&A)rules, 1965. The appellant, therefore, without agitating the orders of deemed suspension awaited calmly the expiry of three months of suspension expecting that the DPS, Nagaland would revoke the orders of deemed suspension on review on expiry of 3 months in terms of provisions of G.I. Min. of Per & Trg., O.M., No. 11012/16/85-Est. (A) dated 10.7.86 r/w GI, MHA, OM. No. 221/18/65-AVD dated 7.9.65 & DG, PT, Letter No. 201/43/76-Disc. II dated 13.7.76 ; but nothing turned up nor the DPS took steps to review the suspension of the appellant till the appellant had to remind the DPS, Nagaland through his representation dated 10.2.00, to review the suspension and also to review the subsistence allowance admissible to the appellant in terms of HI-53(1)(ii) (a)(i).

The DPS, Nagaland passed an order of review on 17.2.00 in respect of both the suspension and subsistence allowance vide his Memo. No. F3/VII/01/99-200 dated 17.2.00 in which it was ordered that as a criminal case is registered and a major penalty proceeding was instituted against the appellant hence the continuation of suspension after 3 months was found justified and as regards the enhancement of subsistence allowance after 3 months there was no justification to enhance the subsistence allowance having regard to the facts and circumstances of the case and so the subsistence allowance would remain the same.

As the orders of the DPS, Nagaland is not a speaking order but a product of despotism hence this appeal in respect of both the decisions has been submitted and it is hoped that the facts and circumstances of the case would be examined with application of mind in the light of rules and regulations on the subject and set aside the orders of the DPS, Nagaland.

contd. at p/3.

Attended  
D  
9/10/03  
Aff

-(3)-

GROUNDS OF APPEAL

Appeal No.(1) : This appeal No.(1) as mentioned in the subject above relates to denial of increase of subsistence allowance by 50 % of the initial grant after the expiry of 3 months of suspension.

(1) ENHANCEMENT OF SUBSISTENCE ALLOWANCE IS PERMISSIBLE AND ADVISABLE IF SUSPENSION PROLONGS FOR REASONS NOT DIRECTLY ATTRIBUTABLE TO THE GOVT. SERVANT :- The FR-53(I)(ii)(a)(i) provides as follows;

"The amount of subsistence allowance may be increased by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of first 3 months if in the opinion of the said authority the period of suspension has been prolonged for reasons to be recorded in writing not directly attributable to the Govt. servant."

The above position of the rule clearly means that there is no objection to the increase of subsistence allowance after 3 months by 50% of the initial grant if the govt. servant is not responsible for the prolongation of the period of suspension. The increase is linked solely to the fact whether the Govt. servant is responsible for prolongivity of suspension beyond 3 months and not for any other reasons so far FR-53(I)(ii)(a)(i) is concerned, which is statutory and recommendatory.

(ii) THE REVIEW ORDERS SAY THAT IN THE OPINION OF THE SUSPENDING AUTHORITY THE PERIOD OF SUSPENSION PROLONGED FOR REASONS DIRECTLY ATTRIBUTABLE TO THE APPELLANT:-

In the review orders passed by the DPS, Nagaland it has not been said that in the opinion of the DPS, Nagaland the period of suspension prolonged for reasons directly attributable to the appellant for reasons of adoption of dilatory tactics etc.etc. which is the only point of determination. DPS, Nagaland, therefore, has willfully and deliberately departed from the duty cast by FR-53(I)(ii)(a)(i) and imposed

the term "facts and circumstances of the case" which has nothing to do to deny the increase of the allowances. The orders of the DPS, Nagaland has, therefore, no legs to stand.

Contd at p/4.

QHed

9/7/03  
AGP

-(4)-

X  
V

**(iii) THE REASONS OF DENIAL OF INCREASE OF S.A. ARE ARBITRARY, VAGUE, FANCIFUL AND FULL OF CAPRICE:**

The reasons put forwarded by the DPS, Nagaland in denying the increase of the S.A.i.e. subsistence allowance are despotic to FR-23(I) (ii)(a)(i) and are arbitrary, filmsy, fanciful, vague, whimsical and full of caprice as those are not guided by the sound principles, as those are not consonant to FR-53 ibid. The DPS, Nagaland, therefore, while denying the increase of the S.A. exercised his powers in a manner as if the sky is the limit of his powers. It has been said in the orders that having regard to the facts and circumstances of the case the S.A. needed not to be altered but the facts and circumstances for which the DPS, Nagaland had regards for not altering the S.A. were not spoken in the order. The decision of the DPS, Nagaland was, therefore, was based on extraneous grounds and irrelevant matters and when an authority decides a question on the basis of both relevant and irrelevant matters it is very difficult to assess to what extent the mind of the deciding authority was influenced by the irrelevant matters.

**(iv) SUSPENSION PROLONGS BECAUSE OF PENDENCY OF THE COURT CASE FOR WHICH THE APPELLANT IS NOT RESPONSIBLE:**

The suspension of the appellant has been prolonged because of the pendency of the Court case against him for which the appellant is not at all responsible. Hence, the condition for increase of 50% of the initial grant of S.A. is satisfied in favour of the appellant and as such the suspending authority has no discretion to deny the same.

The appellant is, therefore, entitled to get an increase of 50% of initial grant subsistence allowance w.e.f. 08.02.00 i.e. the day following the expiry of first 3 months of suspension in terms of provisions of FR-53(I)(ii)(a)ii) which is statutory and absolute.

**APPEAL NO. (2):**

The appeal No. (2) relates to the continuation of suspension of the appellant after 3 months as ordered in the review orders of the DPS, Nagaland dated 17.2.00.

**( GROUNDS)**

**(1) REASONS JUSTIFYING SUSPENSION BEYOND THREE MONTHS ARE LUMP-SUM AND HIDDEN:**

QHd

9/3/03  
APP

Contd. at pg - 5.

-(5)-

In the review orders of the DPS, Nagaland it has been mentioned that as a criminal case has been registered and a major penalty proceeding has been instituted against the appellant the continuation of suspension after 3 months was justified. the reasons assigned by the DPS, Nagaland are lump sum and not objective in nature. Registration of a criminal case and institution of a major penalty proceeding may justify for taking recourse to suspension but cannot justify for continuation of suspension for more than 3 months. Every case has got its own merits and the case of the appellant does not merit or justify the continuation of suspension beyond the barest minimum period of 3 months, which has been discussed in the preceding para. The actual reason continuing suspension is hidden.

**(ii) APPELLANT'S CASE JUSTIFIES NEITHER PROSECUTION NOR SUSPENSION :**

The merits of the case of the appellant does not justify even suspension not to speak of continuation of suspension. The criminal case was filed by the DPS, Nagaland against the appellant when he found that a sum of Rs. 65,400/- was taken by the appellant from the treasury of Kohima H.O. & some other S.O.s. The appellant refunded Rs. 10,400/- on the day of verification of cash and stamp balances of Kohima H.O. on 30.9.99 and promised to refund the balance within 2 months. The appellant proceeded on leave on M/C for arrangement of the money. The appellant had to proceed on M/C as he had to leave on Leave-Not-Due/E.C.L. as he had no E/L at his credit. The appellant returned to duty on 08.11.99 on which the DPS, Kohima asked him to give a written statement admitting the receipt of the amount and promising the date of refund of the amount. The appellant accordingly, complied with. But to utter surprise of the appellant the DPS/Kohima made a report to the police and after some hours the appellant was apprehended from the office around 14 Hrs as a result of which the appellant was detained in custody exceeding 48 Hrs for which the appellant was deemed to have been placed under suspension. As the appellant did not deny the receipt of the amount, started refund of the amount by adjusting Rs. 10,400/- on the very day of verification of cash balance, gave written statement admitting the receipt of the amount and promised to return the money within a stipulated period and the appellant returned to duty after leave and the amount could be recovered from his pay in default of his refund (having more than 10 yrs service)

Contd. P/6

Affidavit

9/10/00

- (6) -

29

there was no ground or justification for reporting the case to the police as it was not a fit case for reporting to police investigation as no offender was beyond the investigation of the department. Had the case been not reported to police unnecessarily the appellants deemed suspension was forthcoming. The merits of the case of the appellant, therefore, justifies neither prosecution nor suspension.

(iii) THE ACTION OF THE DPS/NAGALAND IS IN TOTAL DISREGARD OF DG. PT. LETTER NO. 6/67/64-DISC DATED 13.7.67 R/WDEPTT. OF POSTS LETTER NO. 15/70-VIG-III DTD 16.1.89 :

That, it was not a case of bribery, corruption or other criminal misconduct involving loss of substantial funds just like Bofor's scandal justifying prosecution which should precede departmental action. It was actually a case involving less serious offence or malpractice of a departmental nature for which only departmental action is to be taken and the question of prosecution does not arise as per instructions of the DG as mentioned above. But the DPS, Nagaland had no regards to the above mentioned orders of the DG and acted in a manner not contemplated in the above orders.

(iv) LOSS WAS NOT CAUSED BY THE APPELLANT BUT BY THE DPS/NAGALAND :

The substantial loss alleged to have been caused by the appellant was actually caused by the DPS, Nagaland and not by the appellant. The appellant took the money under receipt as a part of cash of Kohima H.O. treasury pending and promising the return of the same. The loss was caused by the DPS, Kohima as the amount was charged as un-classified payment on 30.9.99 by the DPS, Kohima, without giving time even for a single day to the appellant for return of the amount, though the appellant started refund of the amount by adjusting Rs. 10,400/- immediately on being asked by the DPS, Kohima on the very day of verification of cash balance of Treasury of Kohima H.O. Had DPS, Kohima given the appellant two months time to refund the amount and had the appellant not been apprehended by police on being reported by the DPS, Kohima, the amount would have been refunded in a reasonable time and the question of substantial loss did not arise. Hence, loss was caused by the DPS, Kohima for breach of orders of the Govt. and not by the appellant by taking the amount as advance under receipt which was refundable and adjustable without any complication.

contd. at page 7.

Atul

b  
9/10/03  
Atul

-(7)-

30

## (V) ADMINISTRATIVE MISBEHAVIOUR OF DPS, NAGALAND:

The action of the DPS, Nagaland in reporting the case to the police was unjust, unfair and unwarranted by the facts and circumstances of the case as there was no denial of the receipt of the money by the appellant. The DPS, Kohima took himself much on the case and acted in excess of administrative requirement which transmuted to administrative misbehaviour.

## (VI) PENNY-WISE POUND-FOOLISH POLICY OF THE DPS/KOHIMA:

The DPS, Nagaland served a memo of charges U/R 14 of the CCS(CCA)Rules, 1965 vide his No. #XXXXX F3/VII-02/99-2000 dated 06.01.2000 to the appellant on 14.01.2000 on the same charges of substantial loss and the appellant admitted the receipt of the amount shown in ~~xxxxxx~~ Articles-I to IV without any ambiguity and requested the DPS, Kohima to recover the amount from the pay of the appellant on re-instatement vide his written statement of defence dated 29.01.00. In the reply to the charge-sheet the appellant expressed his desire to be heard in person in the case and accordingly he heard the case from the DPS, Kohima on 09.2.00.

During the hearing in person of the case the appellant substantially admitted the receipt of the money and requested for revocation of the suspension order and recovering the amount from his pay on re-instatement. The appellant also apprised the DPS, Kohima of his view that he has no objection to his transfer to any other station if his re-posting at Kohima was considered detrimental to the collection of evidence or if the appellant was likely to tamper with the evidence. But the DPS, Kohima did not agree to the proposal and went on insisting on refund of the amount after which only the question of re-instatement could be considered. But in as much as the the Court Case is still pending it was not found proper to refund the amount at this stage. Had he been re-instated in service the amount could be recovered from his pay; but the DPS preferred to keep the appellant under suspension for an indefinite period making the possibility of making good the loss amount remote till the disposal of the court case. The policy of the DPS, Nagaland is, therefore, but penny-wise and pound-foolish.

## (vii) THE REVIEW ORDERS DID NOT SAY THAT THE CONTINUATION OF SUSPENSION WAS ABSOLUTELY NECESSARY EVEN AFTER RELEASE FROM DETENTION FROM INVESTIGATION POINT OF VIEW :

Officer

D  
9/10/03  
AER

Contd. at P/8.

-(8)-

3

The DPS, Nagaland in his review orders did not say that the continuation of suspension of the appellant is absolutely necessary even after his release from detention in custody as re-instatement of the appellant would involve administrative and investigative problem or would paralyse the investigation of the case or cause impediment to the conduct of disciplinary proceeding pending against him. The DPS, Kohima could not show any strong and believable ground justifying the suspension of the appellant in excess of the period of 3 months.

**(VIII) DEEMED SUSPENSION FOLLOWING WRONGFUL DETENTION IN POLICE CUSTODY COMES TO AN END WHEN THE APPELLANT IS RELEASED FROM DETENTION. -**

As the reporting of the case to the police by the DPS, Kohima was a wrongful one, hence detention by police on the basis of such report was also wrongful one and, therefore, deemed suspension following such detention also comes to the end as soon as the appellant was released from custody. Continuation of suspension beyond 3 months even after release of the appellant from detention (wrongful) is wholly unjustified and runs counter to what has been instructed by the Govt. to limit the period of suspension to the barest minimum, vide GI, Min. of Per. & Trg. O.M. No. 11012/16/85-Est (A) dtd. 10.1.1986. The DPS, Kohima, therefore, has acted otherwise than expected by the above orders of the Govt. resulting in denial of condition of service to the advantage of the appellant.

The orders of the DPS, Kohima, therefore, is very bad and dishonest, which deserves to be struck down.

contd.... P/9.

Attended

9/10/83  
APP

Agarwala. A-3P (ix).

-(9)-

PRAYER.

In totality of the above facts and circumstances of the case and the grounds put-forwarded in favour of the orders of the DPS, Kohima being set aside you are, earnestly prayed that :-

(a) the orders of the DPS, Kohima justifying the continuation of suspension of the appellant beyond 3 months and denying the increase of subsistence allowance by 50 % of the initial grant may kindly be brushed aside ;

(b) the appellant may be re-instated in service and transferred to another station if his presence in the same post and same place is considered detrimental to the collection of evidence or the appellant is likely to tamper with the evidence; and

(c) the subsistence allowance of the appellant may be increased by 50 % of the initial grant w.e.f 08.02.00 (i.e. the day following the day of expiry of 3 months of suspension) till he resumes his duty on re-instatement.

Thanking you.

Enclo:- Copy of Order No .  
F3/VII-OI/99-2000  
Dt.17.2.00.

Date:- 28.03.00.

Yours faithfully,  
D. B. Hazarika  
APPELLANT.

( S.B.Hazarika )  
C.I., Nagaland, Kohima  
797 001.

Copy to :-

The Director of Postal Services, Nagaland,  
Kohima w/r to his Memo. No. F3/VII-OI/99-2000 dated 17.2.00  
for information and necessary action U/H -26(3) of the  
CCS(CC&A)Rules, 1965.

Attached

10/10/03  
A.P.

APPELLANT.

Annexure. A-4/(1)

DEPARTMENT OF POSTS  
OFFICE OF THE POSTMASTER GENERAL, N.E. REGION, SHILLONG.

NO. STAFF/109-8/2000,

Dated at Shillong, the 20.11.2000. 23

This is regarding appeal of Shri S.B. Hazarika, IPO (Complaint), Kohima dated 28.3.2000 against the order of DPS, Kohima placing him under suspension w.e.f. 8.11.99 under DPS, Kohima's memo No.F3/vii-01/99-2000 dated 11.11.99.

The case in brief is as follows. Shri S.B. Hazarika, while functioning as Complaint Inspector, Divl. Office, Kohima during the period from 03.02.99 to 7.11.99, allegedly have taken a sum of Rs.65,400/- from the treasury of Kohima H.O. on 29.7.99, a sum of Rs. 7000/- from Wokha S.O. on 29.7.99 through the SPM, Wokha and Rs.3000/- on 22.9.99 from Dayang S.O. through the SPM by using the influence of his official capacity unauthorisedly for his personal use without the knowledge of the competent authority.

DPS, Kohima detected the unauthorised taking of Rs.65,400/- by Shri Hazarika from the treasury of Kohima H.O. during verification of Cash and Stamp of the H.O. on 30.9.99. It was further found that he deposited a sum of Rs.10,400/- on 30.9.2000 against that amount. The case therefore was reported to Police and the Police registered a case under Kohima North P/S case No.198/99 U/S 420 IPC. Shri Hazarika was arrested by the police on 8.11.99 and detained him in police custody upto 2.12.99 and released him on bail on 03.12.99. Since Shri Hazarika was detained in police custody for more than 48 hrs., DPS, Kohima placed him under suspension w.e.f. the date of arrest. Shri Hazarika is continuing to be under suspension since then.

Shri S.B. Hazarika has appealed for (1) enhancement of his subsistence allowance by 50% of the initial grant after expiry of 3 months. And (2) He should be reinstated in service.

Shri Hazarika put forward the following points in support of his appeals.

- i. For increase of subsistence allowances w.e.f. the date following the date of completion of first 3 months of his suspension amount not exceeding 50% as provided in FR-53(I)(II)(a).
- ii. DPS, Nagaland has wilfully deviated from the above mentioned provision and imported the terms "facts and circumstances of the case" which has nothing to do to deny the increase of allowances.
- iii. DPS, Nagaland did not speak regarding the facts and circumstances for which he did not find justification for altering the subsistence allowances.

1

Alphred  
Dorlo Lami  
9/11/03  
AGP

- iv. That the suspension is being prolonged for pendency of court case for which the appellant is not responsible.
- v. The merit of the case against the appellant does not justify the continuation of his suspension beyond 3 months.
- vi. That his case neither justify prosecution nor suspension.
- vii. That his was not a case of bribery, corruption or other criminal misconduct involving loss of substantial funds like Bofors scandal justifying prosecution. It was involving less serious offence or malpractice of a departmental nature for which only departmental action is to be taken and the question of prosecution does not arise as per instruction of DG(P) vide letter No.6/67/64-Disc dtd. 13.7.67 and 15/70-vig-iii dtd. 16.1.89.
- viii. That the loss was not caused by the appellant but by the DPS, Nagaland by charging the amount as UCP instead of giving any time to the appellant to refund the amount. He actually started refunding the amount by adjusting Rs.10,400/- on the day of verification of cash by DPS on being asked by the DPS. He further stated that had the DPS given him two more months time and had the appellant not been apprehended by the police the amount would have been refunded within a reasonable time.
- ix. That the action of the DPS, Nagaland in reporting the case to Police was unjust, unfair and unwarranted.
- x. That the appellant admitted the charges brought against him and requested DPS, Nagaland for his reinstatement and recover the amount from his pay.
- xi. That the review order did not say that continuation of suspension was absolutely necessary even after release from detention from the investigation point of view.
- xii. That the reporting of the case to police was a wrongful one and therefore his detention by police was also wrongful. Therefore, continuation of his suspension beyond three months even after release from detention is unjustified and against the instructions contained in GI Min of Per. & Trg. OM No./11012/16/85-EST(A) dtd. 10.1.86.

I have gone through the appeal and concerned records thoroughly and considered the arguments advanced by the appellant in his support and found that :-

*Att. D. S. S.  
S. P. D. O. 3  
ASR*

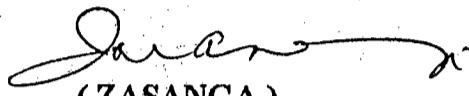
Appendix: A-4 (iii)

305

1. The Disciplinary Authority duly reviewed the suspension and subsistence allowances and did not find any justification to revoke and increase it. The undersigned therefore does not find any reason to intercede in the decision taken by the Disciplinary Authority i.e. DPS, Kohima.

2. Regarding the question of his reinstatement, I find that the reason for which he was suspended is still continuing and inquiry into the matter has not been completed yet. And at this stage the matter of revocation of his suspension cannot be considered on administrative reasons.

In view of the facts and circumstances mentioned above, I find no sufficient reason to alter the decision of the Disciplinary Authority. The appeal of Shri S.B. Hazarika, therefore, is rejected.

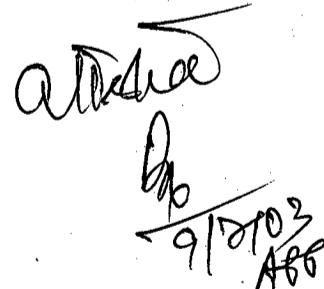
  
(ZASANGA)  
Postmaster General,  
N.E. Region, Shillong-793 001.

Shri S.B. Hazarika  
Complaint Inspector (U/S)  
C/O DPS, Nagaland Division,  
Kohima.

Copy to:-

1-2.  The Director Postal Services, Nagaland Division, Kohima.  
3. Office.

3

  
9/10/03  
AFB

26

Agreement-A-S/1

REVISION PETITION

To

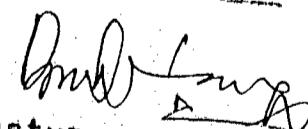
The Member (Personnel),  
Postal Services Board,  
Dok Bhawon,  
NE. 4/DE/LBH-110 001

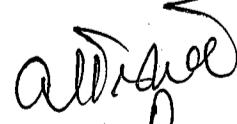
Sub:-Prayer for revision of the appellate orders of the Postmaster General, N.E. Region, Shillong upholding the orders of deemed suspension passed by the Director of Postal Services, Nagaland, Kohima.

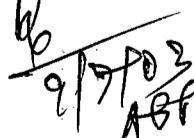
INDEX

Sl. No.	Description of documents.	Pages.
1.	Revision Petition.	1-7
2.	Appellate Orders of PMG, Shillong.	8-10
3.	Appeal of the petitioner.	11-13
4.	Review orders of the DPS, Kohima.	20
5.	Suspension orders of the DPS, Kohima.	21
6.	Ruling on speedy follow-up action in suspension cases & time-limit.	22-23
7.	Ruling on limiting number of officials under suspension and period of suspension to the barest minimum.	24-
8.	Ruling on thorough examination of appeal and issue of self-contained, succinct and reasoned order.	25-26
9.	Ruling on time-limit for disposal of appeal.	27-28

Date: 06/02/2018

  
Signature of Petitioner

  
Addressee

  
9/9/03  
ABP

## REVISION

## PETITION

To

The Member (Personnel),  
 Postal Services Board,  
 Dak Bhawan, New-Delhi  
110 001.

Sub:-Prayer for revision of appellate orders passed by the Postmaster General, N.E. Region, Shillong upholding the orders of deemed suspension passed by the Director of Postal Services, Nagaland, Kohima.

Refs:- (1) Deemed suspension order No. F3/VII-01/99-2000 dated 11.11.99 passed by the DPS, Kohima.

(2) Review orders of suspension & subsistence allowances No. F3/VII-01/99-2000 dated 16.2.00 passed by the DPS, Kohima.

(3) Appellate orders No. Staff/109-8/2000 dated 20.11.00 passed by the Postmaster General, N.E. Region, Shillong.

Sir,

I bow in reverence to state that following few facts for favour of your consideration in the interest of justice and equity :-

2. That, the petitioner preferred a two-in-one appeal on 28.3.00 to the Postmaster General, N.E. Region, Shillong, against the orders of review of DPS, Kohima -

(i) denying to enhance the subsistence allowances by 50% of the initial grant after 3 months under FII-53(1)(ii)(a)(i),

AND

(2) justifying the continuance of deemed suspension after three months,

vide his joint order No. F3/VII-01/99-2000 dt. 16.2.00.

3. The facts and circumstances of the case leading to deemed suspension of the petitioner have already been told in the Appeal and briefly narrated in the Appellate orders and hence these have not been retold in this petition.

4. That, the Appellate Authority i.e. the Postmaster General, N.E. Region, Shillong rejected the appeal on 20.11.00 implying the confirmation of the orders passed by the Disciplinary Authority after about 8 months.

contd/2.

Allahabad

9/10/03  
APR

5. That, being not satisfied and aggrieved by the appellate orders the petitioner has, therefore, moved this REVISION PETITION expecting equity and justice.

### GROUNDS OF REVISION

#### 6. TIME-LIMIT FOR DISPOSAL OF APPEAL CROSSED BADLY :-

The appeal was preferred on 28.3.00 which was disposed of by the appellate authority on 20.11.00 i.e. after a period of about 8 months. As per para 3 of GI.CS, (Dept. of Per.) O.M. No. 29/42/70-Ests (A) dt. 15th May, 1971 an appeal should as far as possible be disposed of within a month, and where it is not possible to adhere to this time-limit the reasons for which the appeal could not be decided within a month should be reported to the next higher authority indicating the further time likely to be taken for disposal of such appeal and the appeal should be decided without further delay.

But in the instant case the appellate authority took about 8 months to decide the appeal prolonging the period of suspension beyond 1 year whereas the appellate authority should ensure that suspension should in no case exceed 6 months. The delayed disposal of the appeal has rather been worse than the orders of the disciplinary authority.

#### 7. APPEAL DECIDED ON VAGUE GROUNDS :-

In reason 1 of the appellate and re the appellate authority has has assigned reasons for rejecting the appeal as follows:

"1. The Disciplinary Authority duly reviewed the suspension and subsistence allowances and did not find any justification to revoke and increase it. The undersigned, therefore, does not find any reason to interfere in the decision taken by the Disciplinary authority i.e. DPS, Kohima."

7.1 That, the reasons for not enhancing the subsistence allowances shown by the appellate authority is not correct. The petitioner was deemed to have been placed under suspension w.e.f. 8.11.99 and the first review after suspension was made by the DPS, Kohima on 17.2.00 vide his Memo. No. F3/VII-67/99-2000 dt. 17.2.00. The petitioner preferred appeal against the said review orders on 28.3.00. The subsequent review fell due in May, 2000. But in as much as an appeal was filed against the review orders on 28.3.00 the DPS, Kohima i.e. the Disciplinary authority was precluded from reviewing the case as the matter was pending with the higher authority. The appeal was decided on 20.11.00 which took about 8 months time. During this period of pendency of the appeal 3 reviews fell due -- one in May/00, another in August/00 and the last in Nov/00; but the reviews could not be made by the disciplinary authority owing to pendency of the appeal with the appellate authority.

contd. p/3 \*

Alleged

9/10/07  
Ref

As the appeal was decided on 20.11.00 i.e. in Nov/00, no scope was left to the Disciplinary authority to make further review in the case. This fact was lost sight of the appellate authority while assigning reasons and disposing the appeal. Hence the reason shown by the appellate authority that, "the Disciplinary authority duly reviewed the suspension and subsistence allowances and did not find justification to revoke and increase it" is not correct in view of the position of the case narrated above.

7.2 Again, increase of subsistence allowances under FR-53(1)(ii)(a)(i) is determined by the sole fact as it appears from the reading of the said rule "if in the opinion of the said authority the period of suspension has been prolonged, for reasons to be recorded in writing, not directly attributable to the Govt. servant." The suspension has been prolonged beyond 7 months owing to Court proceedings and not directly attributable to the petitioner. The Disciplinary authority also did not say in its review order is that the suspension has been prolonged for default of the petitioner. Likewise, the appellate authority also did not say like this in ~~xxx~~ its order.

As regards the Departmental inquiry dated 06.1.00 the petitioner admitted the charges on 29.1.00 in reply to the charge-sheet but it was not accepted by the Disciplinary authority. Hence there was no element of direct attribution on the part of the petitioner for prolongation of suspension though it is not linked with the suspension. This point was put up at length in the appeal which was acknowledged and summarised in the appellate order but it was not at all discussed, not to speak of logically discussed, as required, while rejecting the order in the order of the disciplinary authority. The reasons, therefore, assigned by the appellate authority in rejecting the appeal No. (1) for increasing the subsistence allowances are vague and fakr.

8. In reason 8.2 in the appellate order rejecting the appeal for re-instatement, the appellate authority has assigned reasons as follows:

"Regarding the question of his reinstatement I find that the reason for which he was suspended is still continuing and inquiry into the matter has not been completed yet. And at this stage the matter of revocation of his suspension cannot be considered as administrative ~~remedies~~."

8.1 The reasons for which the petitioner was suspended was for detention in police custody exceeding 48 hrs in connection with the investigation of a criminal case vide Kehima (N) P.S. case No. 190/99 U/S 420 IPC and not for departmental inquiry. The order of suspension was on order of

contd.p/4.

Alleged

9/DP/3  
AFP

domed suspension under Rule 10(2) of the CCS(CCA)rules, 1965 and not for departmental inquiry under Rule 10(1) of the said Rules. The petitioner was released on bail on 3.12.99 and charge-sheet in the case was filed in the month of July/2000 and the Govt. framed formal charges on 1.9.00. As the charge-sheet has been submitted in the court case it implies that the investigation of the case has been completed. It is not understood what inquiry into the matter has not been completed as referred to by the appellate authority. If the appellate authority has referred to the departmental inquiry dated 6.1.00 then it is a mere r. f. c. In so, the petitioner was not deemed to have been placed under suspension for the departmental inquiry. Hence the departmental inquiry which was instituted on 6.1.00 after 3 months of suspension has nothing to do with the revocation of suspension order.

8.2 That, the need for limiting the period of suspension has not been paid heed. As per para(d) of DG., P.T.'s letter no. 201/4/76-Dte. II dtd. 1. th 3.1.1976 (extract) when a Govt. servant is deemed to have been placed under suspension under sub-rule(2) of Rule 10 of the CCS(CCA) Rules, 1965, the competent authority shall consider whether it is really necessary to keep the official under suspension as soon as he is released from police custody.

The Govt. has reiterated time and again for limiting the period of suspension to the barest minimum of 3 months and as the period of review of suspension allowances has been reduced to 3 months from 6 months in FR-53 accordingly. For limiting the period of suspension the revocation of suspension order need not wait till the completion/conclusion of departmental inquiry/Court case. What is emphasized, is that charge-sheet should be served within 3 months in departmental case and efforts should be made to have charge-sheet filed in the court case. Time in excess of 3 months in exceptional case is allowed only for serving/filing charge-sheet in departmental/Court case and not for deferring revocation of suspension order till completion/conclusion of the departmental/court case.

In as much as, in the instant case Charge-sheet in the departmental case has since been filed on 24.1.00 and charge-sheet in the court case has since been filed in July/2000, there cannot be any valid reason not to revoke the suspension order, and if it is not revoked, it is of no use to lay stress on limiting number of officials under suspension and limiting the period of suspension to the barest minimum of 3 months as it will never be possible to implement the orders. Hence, the observance of the appellate authority that "inquiry into the matter has not been completed yet" is an imparted restriction.

The reason, therefore, shown by the appellate authority is not consistent with the Govt. order's on limiting suspension period to the barest minimum.

contd. P/5.

AlD/Ad

9/7/03  
AP

8.3 NO SPEEDY FOLLOW-UP ACTION :- The DG., P&T, in his letter No. 201/43/76/Disc.II dtd. 15th July, 1976 has expressed his utter displeasure over reports of continued suspension of officials and has ordered to :

- (a) see whether continued suspension of an official is absolutely necessary or suspension should be revoked by transferring the official to another post or office,
- (b) revoke the suspension of the officials for more than 6 months, and
- (c) take serious notice when an appellate authority finds that an official has remained under suspension for more than six months the appellate authority should also take serious notice of the lapses on the part of the suspending authority and consider making adverse remarks in the ACR of the of such authorities.

But in the instant case, to the contrary, the suspension has exceeded six months in the hands of the appellate authority itself during the pendency of the disposal of the appeal not to speak of taking serious notice of the lapses on the part of the suspending authority i.e. the DPS, Kohima. Such faulty disposal as well as delayed disposal of appeal on the part of the appellate authority has deleterious effects on the CCS(CCA)RULES, 1965 and other connected rules or orders governing the speedy follow-up action in suspension cases. If it is called departmental law, it is not known what is ~~mak~~ called departmental law.

8.4 APPEAL WAS NOT THOROUGHLY EXAMINED AND APPELLATE ORDERS ARE NOT SELF-CONTAINED, SELF-SPEAKING AND REASONED ONE:

The decision of the appellate authority is a mechanical decision of the decision of the suspending authority and not a speaking one. In the appellate orders, the appellate authority summarized some points raised by the appellant in his appeal but these were neither discussed nor discarded by the appellate authority and orders were passed on the basis of the errors of the suspending authority.

The DG., P&T.'s letter No. 101/2/80-Disc.II dtd. 1st October, 1980 laying stress on need for thorough examination of an appeal and issue of speaking order provides that the appellate authority should ensure that an objective assessment is made of the findings of the suspending authority that all the points raised by the appellant are summarized in the order and logically discussed why they are not tenable or acceptable and a detailed order is issued i.e. a speaking order is issued.

In the instant case, though the appellate authority summarized in the order the points raised by the appellant in his appeal, these points were not at all discussed why the points raised by the appellant was not acceptable or ~~was~~ tenable to the appellate authority and why the findings of the suspending authority ~~was~~ acceptable and more acceptable to him. In absence such reasoning, the orders of the appellate authority can never be a self-contained, self-speaking and

contd.p/6

*Alka*

*Yashpal ASB*

reasoned one. The appellate authority has chosen not to disclose the reasons why grounds of appeal were not acceptable to him. The right of exercising the right of appeal would always be futile if the appellate authority chooses not to disclose the grounds in the appellate orders. The appellate authority has no regards towards the GI, MHA, DP&AR, OM. No. 134/1/81-AVD-I dtd. 13th July, 1981 implementing the decision of the Supreme Court vide Case No. AIR 1971 SC 862 on page 864 in which case it was held that the appellate orders should be a self-contained, self-speaking and reasoned one which should attribute a judicial order.

9. In addition to what has been said above, the petitioner begs to submit the following points in favour of his REVISON PETITION which may kindly be given due weightage before disposing of this petition.

- (i) That, the petitioner has been the victim of adverse notice of both the suspending authority and the appellate authority who bears a pre-conceived mind and, therefore, the said authorities did not apply their minds to the case of the petitioner,
- (ii) That, the suspension of the petitioner has been unreasonably prolonged by the suspending authority and by the appellate authority intentionally over 1 yr without giving the benefits of enhanced subsistence allowance out of malice and prejudice though the petitioner did not deserve to be so,
- (iii) That, the petitioner is having two college-going sons and two High School going daughters for which the petitioner is facing acute family hardships which know no bounds,
- (iv) That, if reinstated, the petitioner will take utmost initiatives to credit the amount concurrently with the recovery of the amount from pay without waiting for full recovery from pay.

#### PRAYER

10. In view of the facts and circumstances of the case as explained above, the petitioner here祈 with folded arms and legs that you would be kind and sympathetic enough to set aside the appellate orders of the Postmaster General, N.E. Region, Shillong and reinstate the petitioner in service, if necessary by ordering transfer to another office or post and for this act of your kindness the petitioner shall ever pray.

The only treasure in my life is your kindness to me.

Thanking you.

Contd. P/7.

Althar  
L  
9/10/03  
ASB

Annexure A-5(viii).

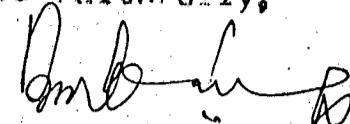
33

43

P/7

Date:- 06/2/01

Yours faithfully,



(S.B. HAZARIKA)

Petitioner.

C.I./Nagaland, Kohima (I/S)

At Anandapura, P.O. SABROOM

(Tripura)-799145

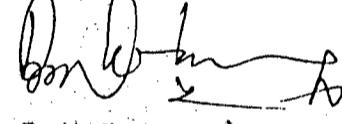
Encle:-

As mentioned in  
the INDEX on the  
top of this petition.

Copy to :-

- (1) The Postmaster General, N.E. Region, Shillong -793 001 for information and necessary action w/r to his No. Staff/109-8/2000 dtd. 20.11.00.
- (2) The DPS, Nagaland, Kohima-797 001 w/r to his No. F3/VII-01/99-2000 dtd. 27.12.00.

(AOUL)

  
(S.B. HAZARIKA)

Petitioner.

  
Allied  
to  
9/1/02  
ABP

Annexure - A - b

बीमा नहीं NOT INSURED

पासे पूरे टाकड़ी का मूल्य  
Amount of Stamps affixed

रामेश्वर  
R.S.P.

Received a Registered Letter/ AD

नाम का नाम

Addressed to The Member

Chowkidar

N. Delhi - 1

क्रमांक  
No.

3144

तारीख पट्टा  
Date Stamp

पात्रात्मक अधिकारी का नाम  
Signature of Recieving Officer

Accepted

9/10/03  
RSP

Annexure - A - c

भारतीय ट्रॉफी (ट्रॉफी) / (S24A) LEDGER

Received a Registered Letter/ Postcard/ Packet/ Parcel

Insured

The Hon'ble Member (Member)

पात्र का नाम

Addressed to (name)

Postal Service Board

धौते का मूल्य (रुपयों)

Insured for Rupees

90/-

दिनांक की तारीख

Date of delivery

दातावानक को काट दिया जा। / Score out the matter not required

प्रत्येक दीमा वस्तुओं के लिए/ For insured articles only

Accepted

9/10/03  
RSP

General Administration Department

21 SEP 2012	Fwd by S. C. G. S. C.
S. C. G. S. C. Guwahati Bench	(A. DEB 20/9/09)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::::: GUWAHATI

O.A. NO. 166 OF 2003

Shri S.B. Hazarika.

..... Applicant.  
- Vs -

Union of India & Ors.

..... Respondents.

- And -

In the matter of :

Written Statement submitted by  
the respondents.

The respondents beg to submit  
brief history of the case, before  
submitting para-wise written  
statements, which may be treated  
as part of the written statement.

( BRIEF HISTORY OF THE CASE )

1 (A) The applicant while functioning as Complaint-  
Inspector 0/0 the Director of Postal Services, Nagaland, Kohima  
during the period from 03.02.1999 to 07.11.1999 took a sum of  
Rs. 65,400/- from the Treasury, Kohima Head Post Office on  
29.07.1999, a sum of Rs. 7000/- on 29.07.1999 from Doyang  
S.O. through the SPM and a sum of Rs. 3000/- on 22.09.1999

Contd.....

-2-

by using his official influence unauthorisedly for his personal use without the knowledge or approval of the competent authority, in contravention of existing rules.

During the verification of cash and stamp balances of Kohima H.P.O. on 30.09.1999 by the DPS, Kohima, it was detected that a sum of Rs. 65,400/- ( Rupees sixty five thousand and four hundred ) only was unauthorisedly taken from the Treasury Kohima H.P.O. by the applicant without the knowledge of the Postmaster, Kohima H.P.O. sum of Rs. 10,400/- was deposited in the H.P.O. on 30.09.1999 by the applicant. The balance amount of Rs. 55,000/- was charged as U.C.P. in the account of Kohima H.P.O. on 30.09.1999 to be adjusted either recovery or otherwise as per provision of the rule.

The applicant left the station after submitting leave application for leave not due with medical certificate for fifteen days in the early morning of 01.10.1999 without prior permission or sanction.

The applicant was placed under suspension w.e.f. 8.11.1999 vide DPS, Kohima memo no. F3/VII-01/99-2000 dated 11.11.1999. Departmental Action was also initiated under Rule 15 of the CCS(CCA) Rules, 1965 on 06.01.2000.

A copy of letter dated 11.11.1999 is enclosed herewith and marked as Annexure - 6.

The case was reported to the police and the case stands registered under Kohima North PS Case No. 198/99/ U/S 420 I.P.C. The applicant was arrested on 8.11.99

-3-

and kept under judicial custody till 02.12.1999. The applicant was released on bail on 03.12.1999. The case is still under trial in the court of DC, Kohima.

Out of the total amount of Rs. 75,400/- ( Rupees Seventy five thousand four hundred ) only illegally taken by the applicant, a sum of Rs. 10,400/- has been credited in to the Govt. Account by the applicant on 30.09.1999. The remaining amount is yet to be adjusted. The applicant gave a written undertaking that the remaining amount would be refunded by him latest by 31.03.2000 but nothing has been refunded by him till date.

The subsistence allowance was reviewed on 16.02.2000 and review order on subsistence allowance was issued vide DPS, Kohima memo dated 17.02.2000.

A copy of the letter dated 17.02.2000 is annexed herewith and marked as Annexure -1.

The applicant preferred an appeal against the review order and the case was disposed off by the PMG, N.E. Circle, Shillong by rejecting the appeal preferred by the applicant.

A copy of the letter dated is annexed herewith and marked as Annexure -2.

The review petition submitted to the Member(P) i.e. Reviewing Authority by the applicant was also disposed of by the Reviewing Authority by rejecting the petition.

A copy of the letter is annexed herewith and marked as Annexure -3.

-4-

The applicant was summoned to appear before the Court of ADC(J) on 21.12.2000. A copy was forwarded to him on 29.11.2000 but he failed to appear before the court. He was again summoned by the court in connection with the above case No. GR 360/1999 to attend on 16.02.2001 but he did not attend the court.

Para-wise Comments:

1. . . That with regard to para 1(i) & (ii), of the application the respondents beg to offer no comments.

A memo no. F3/VII-01/99-2000 dated 17.02.2000 is annexed as Annexure -1.

A memo no. Staff 109-8/2000 dated 20.11.2000 is annexed as Annexure -2.

2. That with regard to the statement made in para 3, of the application the respondents beg to state that the applicant has shought remedy against the orders dated 17.2.2000 as referred to in para 1(i) ibid and dated 20.11.2000 as referred to in para 1(ii) ibid. Both the orders are more than two years old and as such barred by the Law of limitation as prescribed in Section 21 of the Administrative Tribunal Act, 1985.

3. That with regard to para 4.1, of the application the respondents beg to offer no comments.

4. That with regard to the statement made in para 4.2, of the application the respondents beg to state that the applicant was granted subsistence allowance at an amount equal to leave salary to the Govt. servant which he would have drawn.

-5-

if he had been on leave on half pay vide order of the respondent no. 4 dated 03.12.1999.

A copy of the letter dated 3.12.99 is annexed herewith and marked as Annexure-3.

5. That with regard to the statement made in para 4.3, and 4.4, of the application the respondents beg to state that the subsistence allowance of the applicant was reviewed vide order dated 17.2.2000 (Annexure-1) and it had been found on review that the continuation of the suspension was justified and having regards to the facts and circumstances of the case it was also considered that the subsistence allowance need not be altered.

6. That with regard to the statement made in para 4.5 & 4.5, of the application the respondents beg to state that the respondent no.3 after due consideration of the appeal made by the applicant rejected it vide order no. Staff/109-8/2000 dated 20.11.2000 ( Annexure - A4 of O.A. ).

7. That with regard to the statement made in para 4.7, of the application the respondents beg to state that the review petition was rejected by the Reviewing Authority i.e. Memo No. 17013/68/2001-VP dated 13.08.2001.

The contention of the applicant that he has not received the copy of the order dated 13.8.01 of the reviewing authority is baseless and not correct. He was endorsed a copy of the order ~~dx~~ under DPS/ Nagaland Memo No. F3/VII-01/99-00/II dated 17.09.2000 addressed to Sri S.B. Hazarika (C.I. Division Office, Kohima), at Sajiva Central Jail, Imphal, Manipur. (Annexure -5 ).

Copy of memo dated 13.8.2001 is Annexure-4

Copy of memo dated 17.9.2000 is Annexure-5.

8. That with regard to para 4.8, of the application the respondents beg to offer no comments.

9. That with regard to the statement made in para 4.9, of the application the respondents beg to state that the submission made by the applicant is not correct rather mis-representation of the facts. The proviso of F.R 53(ii)(a) clearly stipulates that where the period of (suspension exceeds three months ), the authority which made or deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the (first three months ). The avriation may either(i) increased by a suitable amount not exceeding 50% of the subsistence allowance admissible during the first three months or (ii) may be reduced by suitable amount not exceeding 50% of the subsistence allowance admissible during the first three months. The subsistence allowance of the applicant was reviewed by the respondent no.4 on 17.2.2000 ( Annexure-1 ) and decided to be retained unaltered. The contention of the petitioner to get 75% after first three months is a mere mis-representation of the facts.

10. That with regard to the statement made in para 5.1, of the application the respondents beg to state that the applicant has merely interpreted F.R. 53(1)(ii)(a)(i) in his own way. This may not necessarily be the guiding principle and as such the respondent no.4 does not like to offer any comment.

-7-

11. That with regard to the statement made in para 5.2, of the application the respondents beg to state that the respondent no.4 after due consideration of the facts and circumstances of the case decided to keep the applicant under suspension and also the subsistence allowance unaltered. It is not necessary that the order should invariably include the words or sentence like, "directly attributable to the Govt. Servant etc. etc. or directly not attributable to the Govt. Servant etc." In F.R. 53(1)Xii)(a) only empowered the authority to review the subsistence allowance after the first three months and further empowered that the authority by Sub-rule (i) and (ii) of F.R. 53(1)Xii Xa) may increase or decrease the subsistence allowance after the first three months. The authority may also keep the subsistence allowance unaltered on review. The authority on review found that the subsistence allowance should be kept unaltered and as such it was kept unaltered on review. The applicant has stated that the respondent no.4 "has not said that the period of suspension prolonged for reasons directly attributable to the applicant". For better understanding details of the case is furnished below for better appreciation of the reasons for prolonged suspension.

as The applicant was found responsible for embezzlement of Govt. cash by misusing his official power for personal gain. In fact he was found to have taken Rs. 65,400/- from Kohima H.O. Rs. 7000/- from Doyang Sub Post Office and Rs. 3000/- from Wokha Sub Post Office. When it came to the notice of the authority,

-8-

he credited Rs. 10,400/- on 30.9.99 in Kohima H. P.O. and the remaining amount is yet to be credited. The case was therefore, reported to the Police and the Police arrested him. He was released on bail. So, the applicant cannot claim that the suspension has not been prolonged for reasons not directly attributable to him. The respondent no.4 had reviewed the suspension in its entirety and keeping in view the facts and circumstances of the case, decided to keep the subsistence allowance unaltered.

12. That with regard to the statement made in para 5.3(i), of the application the respondents beg to state that the F.I.R. was submitted to the Police for embezzlement of Govt. cash for misuse of his official power by the applicant.

13. That with regard to the statement made in para 5.3(ii), of the application the respondents beg to state that the police registered a case against the applicant under Kohima North P/S case no. 198/99 u/s 420 I.P.C.

14. That with regard to the statement made in para 5.3(iii), of the application the respondents beg to state that the police arrested the applicant on 8.11.99 and was kept under judicial custody till 2.12.99. He was released on bail on 3.12.99. The case is under trial in the court of ADC(J).

15. That with regard to the statement made in para 5.3(iv) of the application the respondents beg to state that the applicant voluntarily credited Rs. 10,400/- on 30.9.99. Remaining amount is yet to be credited.

-9-

16. That with regard to the statement made in para 5.3(v), of the application the respondents beg to state that the applicant is ignoring summons of the court and thereby the court case is being delayed.

17. That with regard to paras 5.3 and 5.4, of the application the respondents beg to state that the applicant was put under suspension under provision of Rule 10(2) of CCS(CCA) Rules, 1965 for his detention in police custody exceeding 48 hrs. His suspension was not related to Departmental proceedings. The court case is not progressing for his deliberate failure of appearance before the court and ignoring the summons of the departmental inquiry are the causes which are directly attributable to him for delay in finalisation of the cases.

Under the above circumstances and facts, upward revision of the subsistence allowance was considered not desirable by the competent authority and as such the allegation leveled by the applicant against the order dated 17.2.2000 of the respondent No.4 is baseless and malicious.

Submission made by the applicant in para 5.4 is not correct. The appellate authority has examined all the points raised by the applicant and disposed of the appeal with full application of mind considering the circumstances and facts of the case. The applicant based his appeal merely on interpretation of FR-53 but not on the circumstances and facts of the case and his dilatoriness

51

-10-

in appearance in the court and departmental inquiry commission. He did not explain the facts and circumstances ~~in~~ of the case for which he was remanded under custody and the reason of proliferation of suspension. He also did not explain his level of Co-operation with the police case and departmental enquiry. The appellate authority has considered the case in its entirety and passed reasoned order. So the allegation of the applicant in the para is not sustainable and tenable.

18. That with regard to the statement made in para 6, of the application the respondents beg to state that delay in disposal of his appeal was not directly attributable to the appellate authority because appeal of the applicant dated 28.3.2000 was received by the office of the appellate authority on 4.4.2000 direct which was required to be sent to the appellate authority through his controlling and disciplinary authority stationed at Kohima. As the appeal was received direct so it was necessary to send the appeal to his controlling and disciplinary authority for related records and parawise comment of the appeal. Accordingly the appeal was sent to Kohima on 19.4.2000 received back by the office of the appellate authority on 23.6.2000 with parawise comment and the relative records but the service book of the official was left to be enclosed. The service book was called for on 30.6.2000, received and put up to the appellate authority on 4.8.2000. The appeal was decided on 20.11.2000. So the delay in deciding the appeal was not intentional but for procedural compulsion of the Department.

-11-

19. That with regard to para 6(1) of the application the respondents beg to ~~offer~~ state that no comment. His appeal was considered by the appellate authority and was rejected for the reason narrated above.

20. That with regard to the statement made in para 6(2) of the application the respondents beg to state that the review petition of the applicant was duly considered by the reviewing authority i.e. Member ( I &FS ), Postal Service Board, New Delhi examining all the points raised by the applicant in his review petition . Contents of order of the Member, on review petition are detailed and reasoned and considering all his points in review petition with reference to the facts and circumstances of the case the reviewing authority has passed a reasoned order on 13.8.2001 disposing the petition ( annexure-4 ) and the same was endorsed to him vide letter dated 17.9.2002 ( annexure-4 ) through Jail authority.

21. That with regard to para 7, of the application the respondents beg to offer no comments.

21. <sup>regard</sup> That with regard to the statement made in para 8, of the application the respondents beg to state that the applicant was not entitled to get subsistence allowance at the enhanced rate. The reviewing authority did not find any justification to increase the subsistence allowance vide order dated 17.2.2000 and kept the subsistence allowance unaltered. Further he has not showed any co-operative attitude either towards police case

-12-

or the departmental enquiry and is delaying the same by not appearing in the court or the departmental enquiry on appointed day.

The applicant was in receipt of the subsistence allowance throughout the period he was placed under suspension and his subsistence allowance was reviewed in time. As such his submission that the impugned order and appellate orders are violative of Article 21 of the Constitution is misplaced and baseless.

23. That with regard to paras 9, 10.11 and 12 of the application the respondents beg to offer no comments.

Verification.....

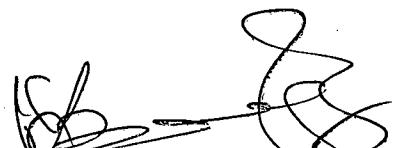
SK

-13-

### VERIFICATION

I, P. Chakraborty, Dy. Supdt. of Post Offices, Nagaland Kohima, being duly authorised and competent to sign this verification do hereby solemnly affirm and state that the statements made in paragraphs 2, 3 and 8 to 23 of the application are true to my knowledge and belief, those made in paragraphs 1(A), 1, 4 to 7 being matter of record and true to my information derived there from and those made in the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this      th day of August, 2003.



Deponent.

**Annexure**

14) 48

DEPARTMENT OF POSTS:INDIA  
OFFICE OF THE DIRECTOR OF POSTAL SERVICES  
NAGALAND : KOHIMA-797001

No. F3/VII-01.99-2000

Dated Kohima the 17.2.2000

Whereas Shri. S.B.Hazarika C.I.Divisional office Kohima was placed under suspension vide this office Memo of even no Dtd. 11.11.99. He was granted a subsistence allowance vide this office memo of even No. Dtd. 3.12.99.

The suspension of Shri.S.B.Hazarika has been reviewed and whereas a criminal case has been registered and a major penalty proceeding, initiated against Shri.S.B.Hazarika, it is felt that continuation of the suspension of Shri. S.B.Hazarika is justified.

And having regard to the facts and circumstances of the case it is considered that the subsistence allowance granted to Shri S.B.Hazarika vide this office memo of even no. Dtd 3.12.99 need not be altered.

Now therefore in exercise of the powers conferred under FR 53 (1) (ii) (a).it is hereby ordered that the rate of subsistence allowance of Shri.S.B.Hazarika will remain at the same ratio which was granted to him vide this office memo of even no Dtd.3.12.99

Shri. S.B.hazarika will be entitled to compensatory allowances admissible from time to time on the basis of pay of which he was in receipt on the date of his suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.

No payment shall be made unless he furnishes a certificate under FR 53 that he is not engaged in any other employment ,business,profession or vocation.

The Headquarters of Shri.S.B.Hazarika will continue to be Kohima and he shall not leave the Headquarters without the prior permission of the competent authority.

18/2/00  
(D.P.S.)

Director of Postal Services  
Nagaland:Kohima-797001.

Copy to:-

1. The Postmaster Kohima HO for info.
2. The D.A.P.Y Calcutta ( Through the Postmaster Kohima)
3. Shri. S.B.Hazarika C.I.Divl. office Kohima (At Sabroom, Agartala 799145)
4. The CPMG, NE.Circle for information.
5. The "F" of the official
6. O/C

18/2/00  
(P.P.Solo)

Director of Postal Services  
Nagaland:Kohima-797001.

Annexure 2  
15  
23  
49  
S

DEPARTMENT OF POSTS  
OFFICE OF THE POSTMASTER GENERAL, N.E. REGION, SHILLONG.

NO. STAFF/109-8/2000,

Dated at Shillong, the 20.11.2000.

This is regarding appeal of Shri S.B. Hazarika, IPO (Complaint), Kohima dated 28.3.2000 against the order of DPS, Kohima placing him under suspension w.e.f. 8.11.99 under DPS, Kohima's memo No. F3/vii-01/99-2000 dated 11.11.99.

The case in brief is as follows. Shri S.B. Hazarika, while functioning as Complaint Inspector, Divl. Office, Kohima during the period from 03.02.99 to 7.11.99, allegedly have taken a sum of Rs.65,400/- from the treasury of Kohima ILO on 29.7.99, a sum of Rs.17000/- from Wokha S.O. on 29.7.99 through the SPM, Wokha and Rs.3000/- on 22.9.99 from Doyang S.O. through the SPM by using the influence of his official capacity unauthorisedly for his personal use without the knowledge of the competent authority.

DPS, Kohima detected the unauthorised taking of Rs.65,400/- by Shri Hazarika from the treasury of Kohima ILO, during verification of Cash and Stamp of the ILO on 30.9.99. It was further found that he deposited a sum of Rs.10,400/- on 30.9.2000 against that amount. The case therefore was reported to Police and the Police registered a case under Kohima North P/S case No. 198/99 U/S 420 IPC. Shri Hazarika was arrested by the police on 8.11.99 and detained him in police custody upto 2.12.99 and released him on bail on 03.12.99. Since Shri Hazarika was detained in police custody for more than 48 hrs., DPS, Kohima placed him under suspension w.e.f. the date of arrest. Shri Hazarika is continuing to be under suspension since then.

Shri S.B. Hazarika has appealed for (1) enhancement of his subsistence allowance by 50% of the initial grant after expiry of 3 months. And (2) He should be reinstated in service.

Shri Hazarika put forward the following points in support of his appeals..

- i. For increase of subsistence allowances w.e.f. the date following the date of completion of first 3 months of his suspension amount not exceeding 50% as provided in FR-53(D)(II)(a).
- ii. DPS, Nagaland has wilfully deviated from the above mentioned provision and imported the terms "facts and circumstances of the case" which has nothing to do to deny the increase of allowances.
- iii. DPS, Nagaland did not speak regarding the facts and circumstances for which he did not find justification for altering the subsistence allowances.

Ans  
Q  
9/12/02  
ABP

- iv. That the suspension is being prolonged for pendency of court case for which the appellant is not responsible.
- v. The merit of the case against the appellant does not justify the continuation of his suspension beyond 3 months.
- vi. That his case neither justify prosecution nor suspension.
- vii. That his was not a case of bribery, corruption or other criminal misconduct involving loss of substantial funds like Bofors scandal justifying prosecution. It was involving less serious offence or malpractice of a departmental nature for which only departmental action is to be taken and the question of prosecution does not arise as per instruction of DG(P) vide letter No.6/67/64-Disc dtd. 13.7.67 and 15/70-vig-iii dtd. 16.1.89.
- viii. That the loss was not caused by the appellant but by the DPS, Nagaland by charging the amount as UCP instead of giving any time to the appellant to refund the amount. He actually started refunding the amount by adjusting Rs.10,400/- on the day of verification of cash by DPS on being asked by the DPS. He further stated that had the DPS given him two more months time and had the appellant not been apprehended by the police the amount would have been refunded within a reasonable time.
- ix. That the action of the DPS, Nagaland in reporting the case to Police was unjust, unfair and unwarranted.
- x. That the appellant admitted the charges brought against him and requested DPS, Nagaland for his reinstatement and recover the amount from his pay.
- xi. That the review order did not say that continuation of suspension was absolutely necessary even after release from detention from the investigation point of view.
- xii. That the reporting of the case to police was a wrongful one and therefore his detention by police was also wrongful. Therefore, continuation of his suspension beyond three months even after release from detention is unjustified and against the instructions contained in GI Min of Per. & Trg. OM No.11012/16/85-EST(A) dtd. 10.1.86.

I have gone through the appeal and concerned records thoroughly and considered the arguments advanced by the appellant in his support and found that :-

Attn'd  
b  
9/3/03  
AGP

Agaveace. A - 4 (iii)

१५

1. 5  
The Disciplinary Authority duly reviewed the suspension and subsistence allowances and did not find any justification to revoke and increase it. The undersigned therefore does not find any reason to intercede in the decision taken by the Disciplinary Authority i.e. DPS, Kohima.

2. Regarding the question of his reinstatement, I find that the reason for which he was suspended is still continuing and inquiry into the matter has not been completed yet. And at this stage the matter of revocation of his suspension cannot be considered on administrative reasons.

In view of the facts and circumstances mentioned above, I find no sufficient reason to alter the decision of the Disciplinary Authority. The appeal of Shri S.B. Nazarjan, therefore, is rejected.

*Jarao*  
(ΖΑΣΑΝΓΑ)  
Postmaster General,  
N.E. Region, Shillong-793 001

**Shri S.B. Hazarika  
Complaint Inspector (U/S)  
C/O DPS, Nagaland Division,  
Kohima.**

**Copy to:-**

**The Director Postal Services, Nagaland Division, Kohima.  
Office.**

Alfredo  
B  
9/10/02 APP

20/c  
17  
51  
62

**DEPARTMENT OF POSTS: INDIA**  
**OFFICE OF THE DIRECTOR OF POSTAL SERVICES**  
**NAGALAND: KOHIMA: 797001.**

Memo NO.F3/VII-01/99-2000

Dated at Kohima the 3.12.99.

Shri.S.B.Hazarika, C.I, Divisional Office, Kohima was deemed to have been placed under suspension vide this office Memo of even no. dated 11.11.99, with effect from 8.11.99.

He is granted a subsistence allowance at an amount equal to leave salary of the Govt. servant which he would have drawn if he had been on leave on half pay and in addition dearness allowance if admissible from time to time on basis of such leave salary subject to the fulfillment of other conditions laid down for the drawl of allowance, and other compensatory allowances from time to time on basis of pay which the Govt. servant was in receipt on the date of suspension subject to fulfillment of other conditions laid down for the drawl of such allowances.

No such payment shall be made unless the Govt. servant furnishes a certificate to the effect that he is not engaged in other employment, business profession or vocation.

3/12/99  
(F.P.Solo)  
Director of Postal Services  
Nagaland, Kohima-797001

Copy to:-

1. The Postmaster, Kohima HO. He will pay subsistence allowance to the official after obtaining certificate as required under FR 53 (2) from the suspended official as reproduced below.

I, Shri. \_\_\_\_\_ having suspended by order no. F3/VII-01/99-2000, dtd. 11.11.99 while holding the post of C.I, Divl. Office, Kohima, do hereby certify that I have not been employed in any profession or vocation or any other employment for profit/ remuneration/ salary.

Dated:

Place:

2. The DA (P) Calcutta.  
 3. The official concerned.  
 4. P/F of the official.  
 5. Spare.

Signature of the official  
Address:

(F.P.Solo)  
Director of Postal Services  
Nagaland, Kohima-797001

Annexure - 4

18

No.C-17013/68/2001-VP  
Government of India  
Ministry of Communications  
Department of Post

New Delhi - 110001

ORDER

3 AUG 2000

1. Shri S.B. Hazarika, Complaint Inspector, Kohima (U/G) has submitted a petition dated 6.2.2001 against continuation of his suspension w.e.f. 8.11.99 ordered by the DPS, Nagaland vide memo dated 11.11.99 and upheld by the PMG, NE Region, Shillong vide memo dated 20.11.2000.

2. The petitioner was detained in custody on 8.11.99 for a period exceeding 48 hours in respect of a criminal offence relating to cheating and misappropriation of govt. money amounting to Rs.65,400/- U/S 420 IPC. Accordingly, orders were issued on 11.11.99 treating him as under deemed suspension in terms of Rule 10(2) of CCS (CCA) Rules 1965. He was granted subsistence allowance vide memo dated 3.12.99. The suspension of Shri Hazarika was reviewed and vide memo dated 17.2.2001, continuation of his suspension was held as justified and subsistence allowance was ordered to be continued at the same rate granted to him vide memo dated 3.12.99. The petitioner submitted an appeal against the above, which was considered and rejected by the PMG, Shillong vide memo dated 20.11.2000.

3. In the present petition against orders of the appellate authority, the petitioner has put forth the following points for consideration.

- (i) The appeal was preferred on 28.3.2000 which was disposed of by the appellate authority on 20.11.2000 after a period of about 8 months. The delayed disposal of the appeal has caused serious injustice to him. During pendency of the appeal, 3 reviews became due in May, August and November, 2000 but the reviews could not be made by the disciplinary authority as the appeal was pending.
- (ii) The suspension has been prolonged beyond three months owing to Court proceedings and not for

reasons directly attributable to the petitioner. Thus, continuation of suspension and subsistence allowance was not justified.

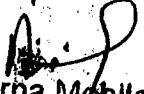
- (iii) As regards the departmental inquiry, the petitioner admitted the charges on 29.1.2000 in reply to the charge sheet but it was not accepted by the disciplinary authority. The petitioner cannot, therefore, be held responsible for delay in finalisation of the departmental proceedings.
- (iv) The charge sheet has been filed in the criminal case against him on 1.8.2000 which implies that investigation into the case has been completed. The departmental inquiry which was initiated on 6.1.00 after 3 months of suspension has nothing to do with revocation of the suspension order.
- (v) The revocation of suspension order need not wait till completion/conclusion of the depttl. Inquiry/Court case.
- (vi) The departmental charge-sheet has been served on 24.1.2000 and charge sheet in the Court case file in July/00. There is, therefore, no valid reason for continuation of the suspension as the govt. orders prescribe that suspension should be limited to the barest minimum.
- (vii) The appellate authority has not passed a self-contained reasoned and speaking order, as the grounds raised in the appeal have not been discussed.
- (viii) The suspension of the petitioner has been unnecessarily prolonged by the disciplinary and appellate authority intentionally over 1 year without giving benefits of enhanced subsistence allowance out of malice and prejudice.
- (ix) He is facing acute financial hardship on account of his continued suspension.
- (x) If reinstated, he will credit the amount without waiting for recovery from pay.

4. The petition has been considered carefully along with relevant records of the case. A perusal of the records of the case reveals that investigation in the criminal case has been completed and charge sheet filed in the court. The case is still pending trial before the Court. It also appears from the facts and records of the case that the petitioner was summoned to appear before the court of ADC(J) Kohima on 21.12.2000 and again on 16.2.01 but he failed to put up appearance on these dates. The delay in conclusion of the criminal proceedings is, therefore, directly attributable to the petitioner. As regards the departmental proceedings, the inquiry is in progress. The petitioner was put under deemed suspension w.e.f. 8.11.99 under provisions of Rule 10(2) as he was detained in custody for more than 48 hours. His suspension is not related to the ongoing departmental proceedings.

5. The petitioner has stated that he had admitted the departmental charges leveled against him on 29.1.2000 in reply to the charge sheet. He further contends that on reinstatement he would credit the amount without waiting for full recovery from his pay. These statements are clear pointers to the serious charges of misappropriation of govt. money by the petitioner. The criminal charge and the departmental imputations are very grave involving moral turpitude on his part. Considering the gravity of criminal offence which is likely to end in conviction and continuation of the departmental proceedings in tandem, revocation of his suspension at this stage is not desirable.

6. To sum up, the petitioner has been placed under suspension under Rule 10(2) of CCS (CCA) Rules, 1965 w.e.f. 8.11.99 on a criminal offence relating to misappropriation of govt. money amounting to Rs.65,400/- and granted subsistence allowance equal to leave salary on half pay. His suspension was reviewed by the competent authority on 17.2.2000 and suspension ordered to be continued and subsistence allowance remained unaltered. The criminal case is under trial. Having regard to the entire facts and circumstances and keeping in view the gravity of criminal charges, revocation of his suspension is not appropriate at this stage. There is also no valid justification for any upward revision in the amount of subsistence allowance. The appellate order being reasoned one deserves to be upheld. The suspension will continue until the final outcome of the criminal case, on receipt of which, the competent authority will undertake a review and pass appropriate orders.

66  
7. In view of the above discussion and in exercise of powers conferred vide Rule 29 of CCS (CCA) Rules 1965 I hereby reject the petition.

  
(Aparna Mohile)  
Member (&FS)  
Postal Services Board

S.B. Hazarika,  
C.O. Kohima (U/S)

(Through the CPMG, N.E. Circle, Shillong 1 )

DEPARTMENT OF POSTS : INDIA  
OFFICE OF THE DIRECTOR OF POSTAL SERVICES  
NAGALAND : KOHIMA - 797 001

b9

No. F3/VII-01/99-200/II

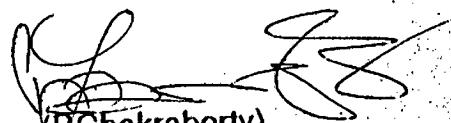
Dated, Kohima the 17.09.2002

To,

Shri. S.B.Hazarika  
( C.I.Divsional Office, Kohima )  
At Sajiva Central Jail,  
Imphal : Manipur

Please find enclosed herewith a copy of Dte's L/No.C-17013/68/2001-VP  
Dtd. 13-8-2002 in connection with your petition Dtd. 6-2-2001 for favour of your information.

Enclosed : As above.



(P.Chakraborty)  
Supdt. of Posts Offices (HO)  
For Director of Postal Services  
Nagaland, Kohima : 797001.

**DEPARTMENT OF POSTS:INDIA**  
**OFFICE OF THE DIRECTOR OF POSTAL SERVICES**  
**NAGALAND ; KOHIMA-797001**

No. F3/VII-01/99-2000

Dated Kohima the 11-11-99

Whereas a case against Shri. Shanti Bhusan Hazarika, Complaint Inspector, Divisional Office, Kohima in respect of a Criminal offence is under investigation.

And the said Shri. Shanti Bhusan Hazarika was detained in the custody on 8-11-99 for a period exceeding 48 (fourty eight) hours.

Now therefore the said Shri. Shanti Bhusan Hazarika is deemed to have been suspended with effect from 8-11-99 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.

  
 (F. P. Solo)

Director of Postal Services  
 Nagaland ; Kohima-797001

## Copy to:-

- 1) The Chief PMG. N.E. Circle, Shillong w.r.t. CO's letter no. INV/X/GM-1/99-2000 dated 27-10-99.
- 2) Shri. S.B. Hazarika, C.I, Divisional Office, Kohima. Orders regarding subsistence allowance admissible to him during Suspension period will be issued seperately.
- 3) The Postmaster, Kohima H.O, for n/a.
- 4) The DA(P) Calcutta for information and n/a.
- 5) P/F of the official.
- 6) Spare.

  
 (F. P. Solo)  
 Director of Postal Services  
 Nagaland ; Kohima-797001

*D/C*