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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 31/2007

R.A/C.P No.

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SECTION OFFICER (Judl.)

Kahla
21.9.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 31/07
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(S) B. N. Barman VS Union of India & Ors

Advocate for the Applicant(S) Mr A.K. Sikkam, J.A. Azad and
Mr K.M. Holo

Advocate for the Respondent(S) Mr. C.A.S.C. G. Baishya

Notes of the Registry	Date	Order of the Tribunal
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13.2.07

Issue involved in this case is whether the pensionary benefits is entitled to the applicant or not. Earlier the applicant has filed this O.A. in O.A.No.15 of 06 before this Tribunal. This Tribunal has directed the respondent to dispose of the representation dated 17.12.05. Accordingly, vide Annexure 7 dated 27th Oct, 2006 the respondent has disposed of the representation by passing the following order:

- ii) The service rendered by the petitioner from the date of appointment as Class IV up to the date of his last day of regular service i.e. from 01.04.64 to 31.03.80 comes to 16 years for which pension is not admissible. As per rules

This form is filed on _____
Date 22.2.07

9/500
Dy. Registrar

Copy of application has been filed on Respondent's -

N.S.M.
7.2.07

123.2.07

departmental Govt. servant is granted pensionary benefits on rendering 20 years of continuous service"

The service rendered by the applicant to the date of his last day of regular service from 01.04.64 to 31.03.80 comes to 16 years continuous service for which the pension is not admissible. Counsel for the applicant has submitted that as per Rules the Central Government employees is entitled to get the Pensionary benefits after rendering 10 years of service.

Considering the facts and circumstances the application has to be admitted.

Application is admitted. Issue notice on the respondents. Post the matter on 28.3.07.

Vice-Chairman

lm

28.3.2007

No reply statement filed. Three weeks further time is granted for the same. Post on 26.4.2007.

Vice-Chairman

/bb/

26.4.07

Mr. G. Baishya, learned Sr.C.G.S.C. counsel for the respondents has sought for time to file written statement. Four weeks time is granted to file written statement. Post the matter on 30.5.07.

Member(A)

Member(J)

Notice & order
Sent to D/Section
for issuing to
R-1 to 6 by regd.
A/D, post.

28/2/07. D/No-252 to 257
Dt-5/3/07.

① Service report
awaited.

27.3.07.

Notice duly Served
on R-6.

3/4/07.

No Wks hrs been
billed.

25.4.07.

Notice duly Served
on R-1, G.

27/4/07.

No Wks hrs been
Wked.

30.5.2007

Mr.G.Baishya, learned Sr.C.G.S.C. submitted that as a matter of last chance further four weeks time may be granted to file reply statement which is at vetting stage. Four weeks' time is granted as a last opportunity.
Post on 22.06.2007.

No Wls filed,
21.6.07.

Vice-Chairman

/bb/

22.6.2007

Mr.G.Baishya, learned Sr.C.G.S.C. for the Respondents sought for further four weeks' time to file reply statement. Four weeks time is allowed.
Post on 25.7.2007.

Wls not filed.
24.7.07.

Vice-Chairman

/bb/

26.7.07
Wls submitted by the Respondents. page 1 to 10. Copy served.

25.7.07 Three weeks further time is granted to the respondents to file written statement. Post the matter on 14.8.07.

21.9.07

Vice-Chairman

Rejoinder filed by the Applicant. Copy served.

29.11.2007

Mr.A.R.Sikdar, learned counsel for the Applicant is present. On the request of Mr.G.Baishya, learned Sr.C.G.S.C. for the Respondents, the case is adjourned to be taken up on 06.12.2007.

There was no court on 14.8.07. In the meantime the OA is ready for hearing. Therefore, the OA is posted for hearing on 29.11.07.

(Khushiram)
Member (A)


bm /bb/

The case is ready for hearing. 28.11.07.

-4- OA 31/07

06.12.2007


Heard Mr A.R. Sikdar, learned Counsel for the Applicant and Mr G. Baishya, learned Sr. Standing Counsel for the Union of India and perused the materials placed on record. For the reasons recorded separately this Application stands dismissed. No order as to costs.



(Khushiram) -
Member (A)


(M. R. Mohanty)
Vice-Chairman

nkmm

The case is ready
for hearing.


5.12.07.


31.12.07

18.3.08

Judgment issued
vide D/Nos 1982
to 1987 etc
28.12.07.
nkmm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.31/2007

DATE OF DECISION : 06-12-2007

Birendra Narayan Barman

.....Applicant/s

Mr A. K. Sikdar

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Mr G. Baishya, Sr.C.G.S.C.

.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the judgment? Yes/~~No~~
2. Whether to be referred to the Reporter or not? Yes/~~No~~
3. Whether their Lordships wish to see the fair copy of the judgment? Yes/~~No~~.

Vice Chairman/Mamber(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 31 of 2007.

Date of Order : This the 6th Day of December, 2007.

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Birendra Narayan Barman
Son of Late Ketoram Barman
Village Parthama para
(Kulamua), P.O. Joyram Kuchi,
Dist. Goalpara, Assam

.....Applicant

By Advocate Shri A.K.Sikdar

Versus –

1. The Union of India,
Through the Secretary to the Govt. of India,
Ministry of Communication,
New Delhi-110001.
2. The Director of Postal Services (HQ)
Meghalaya Circle, Shillong.
3. The Chief Postmaster General,
North East Circle,
Shillong-1, Meghalaya.
4. The Inspector of Post Offices,
Shillong, Meghalaya.
5. The Senior Superintendent of Post Offices,
Shillong-793001, Meghalaya.
6. The Sub Postmaster,
Laban Sub Post Office,
Laban, Shillong, Meghalaya.

.....Respondents

By Advocate Shri G. Baishya, Sr.C.G.S.C

ORDER

KHUSHIRAM, MEMBER(A)



The Applicant claimed to have appointed, in april 1964, as Postman of Laban Sub Post Office, at, Shillong, in the State of Meghalaya; 1964 where he continued to work upto March 1983. It has been claimed that he proceeded on leave on medical ground; after which he went to rejoin his duties but he was not allowed to do so. On attaining the age of superannuation, it has been alleged, he applied for retirement benefit but the same were rejected. The Applicant filed O.A. 15/06 before this Tribunal praying for a direction to the Department to grant him pension. On the direction of the Tribunal, he filed a representation (dated 17.12.2005) which was considered (by the Respondents) and the following order was passed on 27.10.2006 :

"The service rendered by the petitioner from the date of appointment as Class IV up to the date of his last day of regular service i.e. from 01.04.64 to 31.03.80 comes to 16 years for which pension is not admissible. As per rules departmental Govt. servant is granted pensionary benefits on rendering 20 years of continuous service."

Aggrieved by this decision, the Applicant has filed this O.A under Section 19 of the Administrative Tribunals Act, 1985. In the instant O.A he has sought the reliefs as under :-

"To quash the order dated 27.10.2006 issued by the Department of Posts rejecting his claim for pensionary benefits by passing a speaking order and meanwhile, as an interim relief he wanted a direction to be issued for granting provisional pension in the interest of justice."

2. The Respondents have filed a written statement stating that the O.A is not maintainable in its present form as it is time barred. The Applicant having preferred his present claim for



retirement benefit, after a gap of 25 years; the Respondents have branded his claim to be time barred. The Respondents have also denied that the Applicant was appointed as Postman in Class IV category, as there is no category of Postman in Class IV establishment of the department. The Postman category belongs to Group C i.e. Class III category. It has been stated in the written statement, that the allegation in the O.A. that the Applicant Shri Birendra Narayan Barman, ED Messenger Laitumkhrah was appointed in April 1964 to be not correct. In fact the Applicant has simply mentioned the month and year of his appointment and has even failed to furnish the exact date of his appointment or intentionally suppressed these facts from the Court. The fact that Applicant was in service till March 1983 has also been denied in the written statement. The Respondents stated that the Applicant was in service upto 31.3.1980 and thereafter he deserted his duty without any permission or information of/to any authority and remained absent unauthorisedly. Even he had not submitted any documentary evidence to substantiate that he approached the Superintendent of Post Offices for any relief. The Applicant had stated that he had submitted a medical certificate on 7.8.93 but as per his own statement he had gone to join in his duty in the year 1991. In the Annexures submitted with the O.A in support of his claim it is stated that he was on medical leave and after getting recovery from the illness he went to join in his duty but he was not allowed to do so. He did not approach any departmental authorities for redressal of his grievances and has approached the Court of Law without explaining the reasons



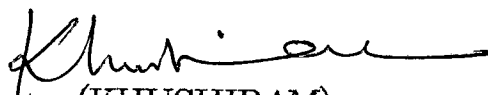
for not having approached the departmental authorities for relief. When he went to join in the department in August 1993 and was not allowed to do so; he remained silent upto 2005. He submitted his representation on 17.12.2005 i.e. after a gap of 12 years. The Respondents have stated that the orders passed by the Tribunal in O.A.15/06 on 22.6.2006 has been fully complied with issuance of the impugned order dated 27.10.06. It has been stated in written statement that the Applicant did not approach any higher authority nor submitted any representation against the impugned order and, thus, he did not avail of the remedies available to him under the service rules. It has been admitted in the written statement that on 4.4.05, he Applicant submitted his first representation for retirement benefit and that the Applicant was not entitled to any retirement benefit.

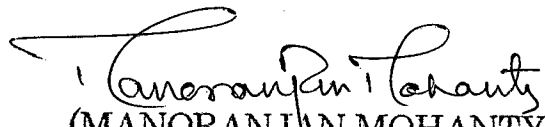
3. We have heard Mr A.K. Sikdar, learned counsel appearing for the Applicant and Mr G. Baishya, learned Addl. Central Govt. Standing for Union of India and perused the materials placed on record. The learned counsel for the applicant has tried to make out a case in favour of the applicant. Learned counsel for the Respondents argued that the Applicant was in service since 31.3.1980 and thereafter deserted his duty without any permission and that the Applicant filed his first representation on 4.4.2005 i.e. 25 years after deserting the service and that the speaking order passed by the Respondents, on 27.10.06, makes it clear that the Applicant was appointed as a Class IV staff from 01.04.1964 to 31.03.1980 which comes to only 16 years and does not qualify him for pensionary benefits.

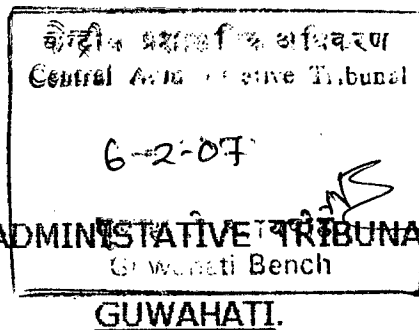


4. We have considered the rival contentions of both the parties and the materials placed on record. From the records submitted it is clear that the service of the Applicant has been verified only from 01.04.1964 to 31.03.1980 and that the Applicant has failed to support his claim by any documentary evidence. The Repondents have passed a speaking order (as directed by the Tribunal in O.A.15/06, by an order dated 22.6.06) which goes to show that the Applicant had abandoned the service after serving for only 16 years; which does not qualify him for pensionary benefits. Secondly, he has not represented/challenged the order passed by the Department (on 27.10.06) before any Appellate Authority; which remedy was available to him departmentally and is required under Section 20(1) of the Administrative Tribunals Act 1985. Under the circumstances, in the facts of the matter, this case is not maintainable. Besides the claim of the Applicant is hopelessly barred by limitation, as he has raised the claim after a lapse of almost 25 years from the date he ceased to discharge his duties with the department.

5. In pursuance of the above discussion the Applicant's case suffers from delay and latches; barred by limitation and procedural infirmities. The case is, therefore, ——— dismissed, without any order as to costs.


(KHUSHIRAM)
ADMINISTRATIVE MEMBER


(MANORANJAN MOHANTY)
VICE CHAIRMAN 6/12/07



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH:
GUWAHATI.

(An appellation under Section- 19 of the Central Administrative Tribunal Act, 1985)

Title of the case OA No. 31.../2007

Sri Birendra Narayan Barman Applicant.

-Versus-

The Union of India & ors. Respondents.

: SYNOPSIS:

Applicant was appointed as Postman and Posted as Sub-Post Office, Laban at Shillong, Meghalaya in the month of April, 1964. The applicant's service was confirmed w.e.f. 01.01.1967 and continuously serving without any break till March, 1983. Thereafter he took leave on medical ground and after getting recovery went to join in the Office but his joining was not allowed. The applicant on attaining the age of Superannuation, applied for retirement benefit. But not considered. The applicant filed OA.No.15/06 praying for a direction to grant his Pension and this Hon'ble Tribunal disposed of the same by order dated 22.6.06 with a direction to dispose of his representation dated 17.12.05. But his prayer was rejected by order dated 27.10.06. Hence this fresh application.

Prepared by

Date of filing:

A.R. S. Udaan

Advocate.

Sri Birendra Narayan Barman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI

BENCH: GUWAHATI.

(An application under section-19 of the Central Administrative
Tribunal Act, 1985)

Title of the Case OA No. 31 /2006.

Sri Birendra Nayayan Barman ... Applicant.

-Vs-

The Union of India & ors. ... Respondents.

: I N D E X :

Sl.No.	Annexure	Particulars.	Page
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2.	1	Copy of the service/confirmation letter.	17
3.	2, 2(A)	Arbitration Notice dtd.8.1.1987.	18-19
4.	3	Representation dated 4.4.2005.	20
5.	4	Forwarding/reference letter dated 2.12.2005.	21
6.	5	Representation dated 17.12.05.	22
7.	6	Photo copy of the order dated 22.6.06.... passed in OA No.15/06.	23-24
8.	7	Photo coy of the impugned order dated 27.10.2006.	25-26

Date-

Filed by
A. R. Sikdar
(Advocate).

Birendra Nayayan Barman
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LIST OF DATES.

Dates	Particulars.
April, 1964.	Initial engagement/ appointment of the applicant on temporary basis.
1.1.1967.	Date of effect of service confirmation.
9.9.68.	Date of communication of order giving effect of service confirmation.
March, 1983	Medical leave.
8.1.1987	Arbitration Notice.
4.4.2003.	Representation made before Post Master General, North East Circle.
2.12.2005.	Forwarding/ Reference letter on behalf of the Chief Post Master General.
17.12.05.	Last representation made by the petitioner.
22.6.2006	Order passed in O.A.No.15/06.
27.10.2006	Impugned Order of the Sr. Supdt. of Post Offices in OA No.15/06.

Given after Manager's signature

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BENCH: GUWAHATI.

Original Application.....31...../ 2006.

-Versus-

Details of the applicant.

2. Designation. : Post man.

3. Particulars of the Respondents. : 1. The Union of India,
Through the Secretary,
Ministry of Communication
Govt. of India.
New Delhi-110001.

2. The Director of Postal
Services (HQ), Meghalaya,
Circle Shillong.

3. The Chief Post Master
General, North East Circle,
Shillong-1, Meghalaya.
4. The Inspector of Post Offices,
Shillong, Meghalaya.
5. The Senior Superintendent of
Post Offices, Shillong-793001,
Meghalaya.
6. The Sub-Post Master,
Laban Sub-Post Office,
Laban, Shillong, Meghalaya.

**PARTICULARS OF ORDER AGAINST WHICH THE APPLICATION IS
MADE:-**

1. Against the impugned order dated 27.10.06 made by A.K. Deori, Sr. Superintendent of Post Offices, Meghalaya Division, Shillong-783001.
2. **JURISDICTION OF THE TRIBUNAL:-**
The applicant declares that the cause of action has arisen within the jurisdiction of this Hon'ble Tribunal.
3. **LIMITATION:-**
The applicant declares that the application is filed before this Hon'ble Tribunal within the time limit prescribed under section - 21 of the Administrative Tribunal Act, 1985.

4. FACTS IF THE CASE:

4.1. That the applicant is a citizen of India being the permanent resident of Vill.- Prathama para(Kulama), P.O.-Joyramkuchi, District-Goalpara, Assam and as such he is entitled to the rights, privileges available to a citizen of India guaranteed by the Constitution and other settled Laws of the land.

4.2 That the applicant begs to state that considering the necessity of the respondent authority and having eligibility the applicant was appointed as Postman (Class-IV category) and was posted as Sub-Post Office at Shillong, Meghalaya in the month of April, 1964. The service of the applicant initially was on temporary basis and his services were confirmed w.e.f. 1.1.1967. This confirmation was communicated vide Memo No.BI-Rectt/Class-IV dated Shillong the 9.9.68 issued under the signature of J.C. Chakraborty, the then Inspector of Post Office, South Su-Division, Shillong.

A copy of the service confirmation letter vide Memo No.BI-Rectt/Class-IV dated Shillong the 9.9.68 is annexed as Annexure No.1.

4.3 That the applicant begs to state that he had been continuing in his aforesaid service without any break till March, 1983. Therefore, the applicant was on Medical leave because of his serious ailment. Immediately after getting recovery, the

16 June

✓ J. C. Chakraborty - Goalpara

applicant went to the Office for joining but he was not allowed to join. The Superintendent of Post Office told the applicant to submit Medical papers which he submitted in time. The applicant was once served arbitration notice. Thereafter the applicant was neither served any order/ letter as regards his service status. The applicant was repeatedly approaching for his rejoining but no response was given to him.

A photocopy as well as typed copy of the arbitration notice vide Memo No.BI/Co-operative dated Shillong the 8th January, 1987 are annexed as Annexure No.2 & 2(A) respectively.

- 4.4. That the applicant begs to state that even if the authority did not allow him to continue his service w.e.f. March, 1983 and he had completed about 20 years of service. The applicant is now in the age of superannuation and therefore he is entitled to get pension benefit. The applicant in this connection approached the authority praying for retirement benefit considering his qualified service period about 20 years. The applicant submitted his representation dated 4.4.2005 seeking his retirement benefit. The said representation was placed before the senior Superintendent of Post Office vide letter dated 2.12.05 for taking necessary action.

A copy of the representation dated 4.4.2003 is annexed as Annexure No.3.

Given by Narayana

A copy of the reference letter dated 2.12.05 issued on behalf of Chief Post Master General, North East Circle, Shillong to Senior Superintendent of Post Offices, Meghalaya Division, Shillong-1 is annexed as Annexure No.4.

- 4.5. That the applicant begs to state that he has approached the senior Superintendent of Post Office, Meghalaya Division in reference of the aforesaid letter vide Annexure-4 and by submitting a prayer petition dated 17.12.05 requested for taking necessary action in granting pension benefit with medical leave for the period 1983 to 1993. But it is regretted that no action has been taken in this connection.

A copy of the representation dated 17.12.05 is annexes as Annexure No. 5.

- 4.6. That the applicant begs to state that he being aggrieved with the inaction of the respondent has filed a case being OA No.15/06 before this Hon'ble Tribunal. After hearing the parties, the Hon'ble Tribunal disposed of the said case by its order dated 22.06.06 with direction to the respondent No.5 or any other competent authority to consider and disposed of the representation dated 17.12.06 and pass appropriate order and communicate the same to the applicant within a time frame of two months from the date of the receipt copy of the Tribunal's order.

Direndro Narayan Barua

A photo copy of the order dated 22.06.2006 passed in OA No.15/06 is annexed as Annexure-6.

4.7. That the applicant begs to state that in pursuance of the order dated 22.06.06 the respondent No.5 i.e. the Superintendent of Post Offices, Meghalaya Division, Shillong-793001 passed an order dated 27.10.06 alleging inter alia that the applicant is not entitled to get his pensionary benefits and the representation dated 17.12.05 is not maintainable on the following grounds-

i) The petitioner was infact appointed as Extra Department Messenger at Laitumkhrach Post Office and he was appointed in Class IV post with effect from 01.04.1964. No any other record is available or could be produced by the petitioner to show that he was ever appointed/confirmed in a Postman or in PA cadre as mentioned in the CTA order *ibid*.

ii) The Service rendered by the petitioner from the date of appointment as Class-IV up to the date of his last day of regular service i.e. from 01.04.64 to 31.03.80 comes to 16 years for which pension is not admissible. As per rules Departmental Govt. service is granted pensionary benefits on rendering 20 years of continuous service.

iii) As stated in the representation in question and the OA, the petitioner himself has admitted the fact that

For record from New Office Buzan

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Birendra Nath Singh

he remained absent from duty for long 10 years (from 1983 to 1993) that too without information to the authority. His prayer for regularization of the period by granting medical leave after a gap of 10 years is not justified in the eye of law and not admissible by rules as well. As per codified rules, a Government servant remaining absent from duty beyond five years at a stretch shall cease to be a Govt. servant unless the President of India considers it in extra ordinary and genuine grounds. In the instant case of the petitioner no such situation exists nor the petitioner could produce any evidence / documents which merit consideration of his case.

iv) For the fact that the petitioner was not retired in normal course under authority of the competent authority as required by rules, payment of other retired benefits also does not arise.

A photo copy of the impugned order dated 27.10.2006 is annexed as Annexure-7.

- 4.8. That the applicant begs to state that in his OA No.15/06 he all along stated that he was appointed as Post Man and the relevant documents also reveals that he is appointed as Post man. For some Clerical mistake it is shown in the order dated 22.06.06 passed by this Hon'ble Tribunal that the applicant is a Postal Assistant. After all the applicant was appointed as

Post man or Grade-IV employee For some clerical mistake I the said order the authority can not deny his pensionary benefit on the ground that the applicant has not been appointed as Postal Assistant. The respondent authority admitted in his order dated 27.10.06 that the applicant was appointed as Grade-IV post w.e.f. 01.04.1964 and completed 16 years of continuous service.

- 4.9. That the applicant begs to state that he has completed about 20 years regular service. According to Rule 1, 2 of the C.C.S. (Pension) Rules, 1972 a Govt. Servant who have completed 10 years regular service is entitled for pensionary benefit. Respondent authority by the order dated 27.10.06 admitted that the applicant have completed 16 years regular service. So the applicant has a legal right for pensionary benefit and the respondent authority can not deny his legitimate right.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:-

- I) For that the learned authority has committed grave error of law and facts in not granting pensionary benefit as prayed for.
- II) For that the action of the learned authority in keeping silence over the claim of the applicant as regards the pension benefit has amounted to be violation of principles of natural justice.

Bisendra Narayan Bisara
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(III) For that the applicant has rendered about 20 years of service including temporary service and about 16 years of service on regular basis after being confirmed w.e.f. 1.1.1967. The applicant took Medical leave w.e.f. March, 1983 and immediately on being recovered he approached the authority for rejoining. Even if the applicant declare unfit, he is entitled to receive pension benefit for his service period. The fact of his ailment is known to the authority. He should not be treated unqualified for granting pension benefit.

IV) For that even the temporary/quasi permanent Government servants are entitled to get pensionary benefits as per Rule-1, 2 of the Central Civil Services (Pension) Rules, 1972 Rule-1 of the said Rules reads as follows:-

"(1) Grant pensionary benefits to temporary Government servants retiring on superannuation/invalidation on completion of twenty years (now ten years)'.

Rule-2 of the said Rules reads as follows:-

"(2) Grant of pensionary benefits to temporary/quasi permanent Government servants: - The undersigned is directed to State that in pursuance of Government decisions on the recommendations of the fourth Central Pay Commission announced

in the department's Resolution No.2.13.87 PIC, dated 18th March, 1987, the President and quasi permanent Government servants shall be modified as follows:-

2. Terminal benefits. (1) In partial modification Department of Personnel and Administrative Reforms Office Memorandum No.38(16)- Pension Unit 80, dated, the 30th December, 1989, quasi-permanent and temporary employees, who retire on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than 10 years, shall be eligible for grant of superannuation/ invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent employees under the C.C.S. (Pension) Rules, 1972."

The aforesaid provisions of law it is clearly established that the claim of the applicant for pensionary benefit is rightful and denial of the same is illegal, arbitrary and not only violation of the CCS (Pension) Rules, 1972 but also serious injustice to the applicant.

- (V) For that the applicant begs to submit that the Hon'ble Apex Court in the case of Deokinandan Parsad -Vs- State of Bihar reported as 1971 Supp. SCR 634 opined that pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting in a Government servant. the Court also held that the right to receive pension is a property under Article 31(e) and under Article 19(f) and it is not saved by sub-Article (5) of Article 19. Though right to property is not longer in vague as a fundamental right, the validity of the right to pension is well established.
- (VI) For that the respondent authority has not considered the law and facts involved in the case and wrongly rejected the claim of the applicant. The illness of the applicant was well within the knowledge of the respondent authority. Therefore, the respondent authority ought to have declared medically invalid granting him invalid pension in the event of rejecting non considering Medical leave. Moreover he was neither dismissed from service nor any proceeding was initiated against him. Even a dismissed employed is entitled to receive a Compassionate allowance under Rule-41 of the CCS(Pension) Rules, 1972.
- (VII) For that in any view of the matter, the impugned order dated 27.10.2006 of he respondent authority denying pensionary benefit to the applicant is not proper causing

injustice to the applicant and maintainable in law and liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED.

The humble applicant submitted his representation earlier which is rejected.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT/ TRIBUNAL:-

The applicant declares that he has filed application, earlier regarding the present matter in this Court directing to disposed of representation but the said representation has not been considered.

8. RELIEF PRAYED FOR:-

Under the circumstances stated above the humble applicant most respectfully prays for following relief:-

- (i) That this Hon'ble Tribunal Court may kindly be pleased to pass an order setting aside and quashing the impugned order No.B-2/Case of Sri B.N. Barman dated 27.10.2006 issued under the signature of senior Superintendent of Post Offices of Meghalaya Division, Shillong and to grant pension benefit to the petitioner in the interest of justice.

Biswamohan Narayan Barman

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- (ii) To pass any other order or orders as deemed fit and proper by the Hon'ble Tribunal in the interest of justice.

9. INTERIM RELIEF PRAYED FOR:-

In the interim the applicant prayed for-

an order staying the impugned No.B2/Case of Shri B.N. Barman dated 27.10.2006 and a direction for granting provisional pension in the interest of justice.

10. DETAILS OF POSTAL ORDER-

Postal Order NO. 983942
Date of Issue : 22.1.07.
Issued from : Guwahati.

Payable at: Guwahati.

VERIFICATION:

I, Sri Birendra Narayan Barman, S/O. Late Ketoram Barman, resident of Village Prathama para (Kulamua), P.O. Jayramkuchi, P.S. Goalpara, Assam do hereby verify that the contents in paragraphs.....1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 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1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 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1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153,

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Annexure - 1

28

INDIAN POSTS AND TELEGRAPHS DEPARTMENT
Office of the Inspector of Post Offices, South Sub Division

Memo No. Bl-Rectt/Class IV.
Dated, Shillong the 9.9.68.
confirmed

The following Class IV officials are/xxxxxx against the dates noted against each of them :-

1. Shri Rolenton	Runner, Nahadeo	1.1.67.
2. Shri Kodshon Blah	Mail, Neon B/Valley	1.1.67.
3. Shri Paniraj Gowda	Night Guard, Laitumkhrak	1.1.67.
4. Shri Gen Akrok	Factor, U/Shillong	1.1.67.
5. Shri Samuel Aibor	Factor, Laitumkhrak	1.1.67.
6. Shri Kshitish Bhattacharjee	- do -	1.1.67.
7. Shri Dipak Dutta	- B. Messenger, Laitumkhrak	1.1.67.
8. Shri Ganesh Das	- do -	1.1.67.
9. Shri Birendra Mr. Borah	- do -	1.1.67.
10. Shri Satish Chandra Das	Messenger, Laitumkhrak	1.1.67.
11. Shri Dilip Ghosh	EO Messenger, Parabazar	1.1.67.
12. Shri Ratish Ch Kar Turkeyestha	- do - , Laban	1.1.67.
13. Shri Ram Swarup Ram	- do - , Laban	1.1.67.
14. Shri Ranadhir Bhattacharjee	Night Guard, Dawki	19.6.68.

XXXXXXXXXXXX

SC/- J.C. Chakrabarty,
Inspector of Post Offices,
South Sub Division, Shillong

XXXXXXXXXX

This memo is subject to any revision if deemed necessary. This does not contemplate movement of officials and they will continue in the in which they are working now.

Copy to :-

- 1) The Postmaster, Shillong.
- 2) The Sub Postmasters: Cherapunji/Laury Valley, Laitumkhrak, Drier Shillong/Bera Bazar/Labon/Labli
- 3) The officials concerned.
- 4) Personal files of the officials.
- 5) Gradation list file.
- 6) I.A.P.S. Records, Gauhati.

(J.C. Chakrabarty)
Inspector of Post Offices,
South Sub Division.

with G.P.F

Date of joining April 1964.

Date of leave with report - Feb - 1983, released with medical

1991 to 1993 Aug 16/17

Attested by
J. A. Azad
Adv.

To
Sri Harendra Kr. Barman
(Post man)
Vill. Brathanopara
P.O. Tikrikilla

West Garo Hills, Meghalaya.

No. BI-/Co-operative dated at Shillong the 8.1.87

Subj:- 1st show cause notice against defaulting members
under in 88(1) Assam Act, 1980.

Arbitration notice (in duplicate) received from the
honorary Secy. N.E. Circle /petal -Co-operative society Ltd.
cases No. 482/86 of Sri Harendra Kr. Barman is sent herewith
for your information. A copy of the same may please be
returned to this office after putting your signature on the
backside of the notice in token of hearing received the
notice.

cc/-illegible

Sr. Superintendent Officer

Meghalaya Division

Shillong

Enclo: (2)

Attested by
Jr. A. A200
Adv

19

ANNEXURE 2(A) 3

Segk-30
1980

Shri Surendra K. Barmam
(Postman)

Vill - Prathnapara

P.O. Tikeikilla

West Garo Hills, Meghalaya

NO. B1-1/CO- operative dated at Shillong the 8-1-87
Sub:- 1st show cause notice against defaulting
members under C in 88(V) Assam Act-10
of 1980.

Arbitration Notice (In duplicate) received
from the Honorary Secy. N.E. Circle / Postal - Co -
operative Society Ltd Cases NO 482/86 of
Shri Surendra K. Barmam is sent herewith
for your information. A copy of the same
may please be returned to this office after
putting your signature on the backside of
the notice in token of having received
the Notice.

Enc - (2)

Shillong 7/1/87

Attested by
J. A. Azad
Adv.

- 20 -

Annexure - 3

To

The Post Master General Shillong, Meghalaya

Date 04/04/2005

Subject:- Prayer for granting Retirement Benefit

Sir,

With reference to the subject cited above it is most humbly beg to state and submit that I was appointed as post man (class - iv category) and was posted at sub post office, laban at shillong Meghalaya in the month of April / 1964. My service was confirmed w.e.f 01/01/1967 as a class - iv official. I was serving as such continuously with out any break till March 1983. Because of my serious ailment I was in medical leave. After getting recovery from my illness I went to join in my office in the year 1991 but my rejoining is not allowed, I approach the S.P Shillong submitting all documents relating to my ailment and medical leave application in the month of August / 1993. I again approach for rejoining but my joining was not allowed. Now I am in the age of Superannuation. I have completed about 20 years of service for the period March 1983 from my joining in the month of march 1964 and as such I am entitled to get retirement benefit.

There fore it is humbly prayed that your honour would be kind enough to do the needful and be pleased to pass an order to grant me retirement benefit and thus obliged.

Yours Faithfully

Sherindra Pragna Barman

Post man

Vill - Prathama Para (Kulamn)

P.o - joyramkuchi

Dist - Goalpara

Assam

*Accepted
G.A. Aze
Aze*

- 21

Annexure 4

32

NO. AP/46/MISC/CORR./2002.
DEPARTMENT OF POSTS: INDIA.
OFFICE OF THE CHIEF POSTMASTER GENERAL,
NORTH EAST CIRCLE, SHILLONG-793 001.

Dated at Shillong the 2nd December'2005.


To

The Sr. Superintendent of Pos,
Meghalaya Division,
Shillong-793 001.

Subject:- Representation for retirement Benefit- Case of Sri. Birendra Narayan Barman, Ex-Postman, Meghalaya Division.

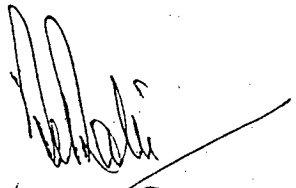
Enclosed, kindly find herewith representation in original of Sri Birendra Narayan Barman, Ex- Postman, Meghalaya Division dated 04-04-2005 for taking necessary action at your end.

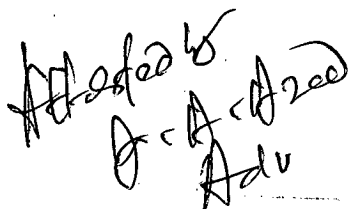
Encl:- As above.


(R.C.Rath)
Accounts Officer (A/Cs).

Copy for information to:

✓ Sri. Birendra Narayan Barman, Vill. Prathama Para (kulamn),
Po: Joyramkuchi, Dist:- Goalpara (Assam). He is requested to make
future correspondences with the Sr. Supdt. of Pos, Meghalaya
Division, Shillong instead of this office.


For Chief Postmaster General,
North East Circle, Shillong.


Adv

- 22 -

Annexure - 5

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To,

The Senior Superintendent of Posts,
Meghalaya Division, Shillong -- 793 001.

Dated, Kulamua (Prathamapara) the 17th December/05

Sub : Prayer for retirement benefit with Medical leave.

Ref: Chief Post Master General, North East Circle, Shillong dated the 2nd December, 2005.

Sir,

Respectful submission is that as per instruction of your honour (Sr. Superintendent of Posts), I have sent all my Medical Certificate on 7.8.93 to you through post after long suffering from illness and on 15.9.93 I was personally present in your office and a file was prepared and put up before the Inspector of Post Offices, Shillong on 20.9.93. But the officials of the said office demanded money for granting Medical ^{leave}, I failed to pay the said money and continued to pursue the authority for about 15/16 days by staying at Shillong and thereafter I again become ill and I was advised to remain at rest. As a result my application for grant of Medical leave was lying pending in the office of the Inspector of Post Offices, at Shillong.

Therefore, it is humbly prayed that your honour would be kind enough I may be granted retirement benefit with medical leave for the period 1983 to 1993 on account of physical illness and thus obliged.

Yours faithfully,

Bisendranarayan Barman

Accepted by
for A-20
Adv

ORDER SHEET

Original Application No. 15/2006

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) B. N. Barman

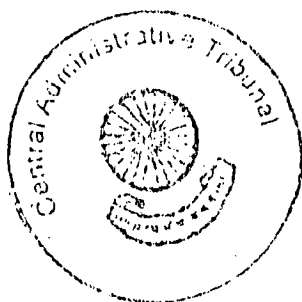
Respondent(s) Govt. of Assam

Advocate for the Applicants A.R. Sikkandar and J.A. Azad.

Advocate for the Respondent(s) Mr. G. B. Borthakur, Sr. CGSC
Rly. St. Counsel

Notes of the Registry Date 22.06.2006 Order of the Tribunal

Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.



The applicant who was appointed as Postal Assistant and posted at Sub-Post Office, Laban at Shillong, Meghalaya in the month of April, 1964. The applicant's service was confirmed w.e.f. 01.01.1967 and continuously serving without any break till March 1983. Thereafter, he took leave on medical ground and after getting recovery went to join in the office but his joining was not allowed. The applicant on attaining the age of superannuation, applied for retirement benefit, which was not considered. Aggrieved by the said action of the respondents, he has filed this application seeking the following reliefs: -

- i) That this Hon'ble Tribunal may kindly be pleased to pass an order granting pension benefit treating his service period 1983 to 1993 as on Medical leave for which he submitted medical certificates and all other consequential benefit in the interest of justice.

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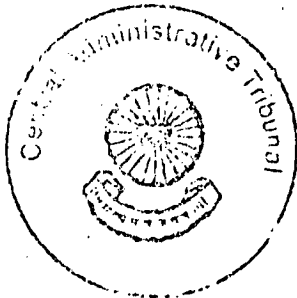
*Admitted by
G.A. 15/2006
Dr.*

- 24 -
Contd/-
22.06.2006

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- ii) To pass any other order or orders as deemed fit and proper by the Hon'ble Tribunal in the interest of justice."

Heard Mr A.R. Sikdar, learned counsel for the applicant and Mr G. Baishya, learned Sr. C.G.S.C. for the respondents.

Counsel for the respondents submitted that he has already filed written statement. At this juncture, learned counsel for the applicant submitted that he will be satisfied if a direction is given to the Respondent No. 5 to dispose of the annexure - 5 representation dated 17.12.2005 and pass appropriate order and communicate the same to the applicant within a time frame. Counsel for the respondents submitted that he has no objection.



In the circumstances, I direct the Respondent No. 5 or any other competent authority to consider and dispose of the annexure - 5 representation dated 17.12.2005 and pass appropriate order and communicate the same to the applicant within a time frame of two months from the date of receipt of copy of this order.

The O.A. is disposed of as above. No order as to costs.

Sd/VICE CHAIRMAN

Memo. No 688

27.10.2006

Copy for information to n/a to:

- 1) Sri Birendra Narayan Barman s/o Late Kekoram Barman, R/o Vell. Pratham Para (Kulamus), P.O Joyram Kuchi P.S. Dist. Goalpara, Assam.
- 2) Mr. G. Baishya, Sr. C.G.S.C, C.A.T, Guwahati Bench.

Section Officer (C).
27/10

-25-
DEPARTMENT OF POSTS
O/P THE SR. SUPDT. OF POST OFFICES :: MEGHALAYA DIVISION
SHILLONG - 793 001.

-7
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No.B2/Case of Shri B. N. Barman,

Dated at Shillong, the 27th Oct. 2006.

Sub : Representation dated 17-12-2005 by Shri Birendra Narayan Barman in the matter of claim for pensionary benefits vis-à-vis CAT, Guwahati Bench Order dated 22-06-2006 in OA No.15 of 2006.

ORDER :

Shri Birendra Narayan Barman of Prathamapara (Kulamua) village, Joyram Kuchi P.O. and Goalpara District (Assam) submitted a representation on 17-12-2005 to the Sr. Supdt. of POs Meghalaya Division, Shillong requesting for granting him retirement benefit with medical leave for the period from 1983 to 1993 on account of physical illness. The request of the petitioner could not be acceded to as being inadmissible by rules.

2. Being aggrieved the petitioner approached the Hon'ble C.A.T., Guwahati Bench by filing an OA No.15 of 2006. After hearing the parties, the Hon'ble Tribunal disposed off the OA vide its order of 22-06-2006 with direction to the Respondent No.5 of the OA i.e. Sr. Supdt. of Post Offices, Meghalaya Division, Shillong to disposed off the above stated representation of the petitioner (Annexure - 5 of the OA) and to pass appropriate order and communicate to the applicant/petitioner within two months from the date of receipt of copy of the Tribunal's order.

3. The order of the Hon'ble Tribunal ibid was received by the Respondent NO.5 on 28/08/2006 through the Circle Office, Shillong. The representation of the petitioner has been carefully examined with reference to available records and considered the same having no merit on the following grounds.

✓ i) The petitioner was infact appointed as Extra Departmental Messenger at Laitumkhrah Post Office and he was appointed in Class IV post with effect from 01-04-1964. No any other record is available or could be produced by the petitioner to show that he was ever appointed/confirmed in a Postman or in PA cadre as mentioned in the CAT order ibid.

ii) The Service rendered by the petitioner from the date of appointment as Class IV up to the date of his last day of regular service i.e. from 01-04-64 to 31-03-80 comes to 16 years for which pension is not admissible. As per rules departmental Govt. servant is granted pensionary benefits on rendering 20 years of continuous service.

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✓

- To, Reydt AD

✓ Shri Birendra Narayan Barman
Vill. – Prathamapara
P.O. – Joyram Kuchi,
Dist. – Goalpara (Assam).

1. The Chief Postmaster General, N. E. Circle, Shillong w.r.t. CO's No.Vig/I.C-5/06 (CAT) dated 24/08/2006.
2. The Sr. Postmaster, Shillong GPO.
3. The Sub-Divl. Inspector (Posts), South Sub Division, Shillong.
4. The Deputy Registrar, CAT, Guwahati Bench at Bhangagarh, Guwahati - 5 for favour of information with reference to OA No.15 of 2006.
5. O/c.

Approved by
J. A. Allen
Adv.

25 JUL 2007

गुवाहाटी न्यायापीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

O.A. NO. 31 OF 2007

Sri Birendra Narayan Barman

...Applicant

-Versus-

Union of India & Ors.

....Respondents

The written statement on behalf of
the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regard to the statement made in paragraph 1 of the application the Respondents beg to state that the impugned order dtd. 27.10.06 was issued by the Sr. Supdt. of P.Os Meghalaya Postal Division, Shillong, being competent and as per provisions under C.C.S. (Pension) Rules, 1972.
2. That with regard to the statement made in paragraph 2 of the application the Respondents beg to offer no comments.
3. That with regard to the statement made in paragraph 3 of the application the Respondents beg to state that the O.A. is not maintainable in its present form and it may be summarily rejected as time barred since the applicant has appeared in the picture and preferred his claim for 'Retirement Benefit' only after

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File

respondents

through

Dr. G. S. C.

25-07-07

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a gap of about 25 years without rendering required service under the Govt.

4. That with regard to the statement made in paragraph 4.1 of the application the Respondents beg to offer no comment.

5. That with regard to the statement made in paragraph 4.2 of the application the Respondents beg to state that the contention of the applicant, that he was appointed as Postman (Class-IV category) is not correct at all. There is no such category of Postman in this Department. In the Department of Posts, India, the Postman category belonging to Group-C i.e. Class-III category. Further, there is the Head Post Office named "Shillong G.P.O." and no Sub Post Office named 'Shillong' was in existence in the year 1964, where the applicant claimed as posted at that time. The genuineness of the document as so called 'Service confirmation letter' annexed by the applicant as Annexure-1 to the O.A. could not be confirmed as the office copy of such a letter is not available on records. Further, in the said document, the name & designation of the applicant under Sl. No.9, is shown as 'Shri Birendra Kumar Barman, ED Messenger, Laitumkhrah'. An ED Messenger of the Department of Posts is not entitled to any Retirement benefit at all. The claim of the applicant that he was appointed as Postman (Class-IV category) and was posted at Sub Post Office at Shillong, Meghalaya in the month of

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Ashish Kumar Deore

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April, 1964 is therefore untrue, concocted, false and baseless. The applicant has simply mentioned month & year of his appointment, he even failed to furnish the exact date of his appointment which clearly suggest that he has intentionally suppressed those facts from the court.

6. That with regard to the statement made in paragraph 4.3 of the application the Respondents beg to state that the averments of the applicant that he rendered service till March, 1983 is completely false and baseless. He was in service upto 31.3.1980 and thereafter he deserted his duty without any permission or information of/to any authority and remaining absent from duty unauthorisedly for ever. He argued that he was on self styled medical leave. He also stated that immediately after getting recovery the applicant went to the office for joining but he was not allowed to join. Significantly he did not mention on which date he went to which office and to whom. The contention of the applicant is not correct nor it is supported by any documentary evidence that he approached to the Superintendent of Post Offices for any purpose. He did not respond or react even to the Arbitration Notice forwarded to him by the then Sr. Supdt. of Post Offices, Meghalaya Dn. Shillong vide letter No. B1-/Co-operative dtd. 08.01.87 annexed by the applicant as Annexure-2 to the O.A. In the document annexed to the O.A. by the

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Aswini Kumar Deora

applicant himself, as Annexure-3, he stated that 'I approached the S.P. Shillong submitting all documents relating to my ailment and medical leave application in the month of August, 1993', but in Annexure -5 he himself stated that 'I have sent all my Medical Certificates on 7.8.93 to you through post ...' So, the statements of the Applicant in the documents submitted by himself, are contradictory. As per his own statement in Annexure - 3 he went for his joining in the year 1991 but submitted the so called documents in the month of August, 1993 i.e. after two years. Therefore all these shows that the applicant intentionally mislead the court by contradict statement and all of them are completely false, baseless and cock & bull story.

7. That with regard to the statement made in paragraph 4.4 of the application the Respondents beg to state that the applicant neither turned up nor approached to any authority of the Department for his further duty and kept himself silent up to the month of August, 1993. In Annexure-3 to the Q.A. the applicant stated that 'I was serving as such continuously without any break till March, 1983. Because of my serious ailment I was in medical leave. After getting recovery from my illness I went to in my office in the year 1991 but my rejoining is not allowed. To which office he went and to whom he offered his rejoining, are intentionally not mentioned. Again the applicant stated I approached the

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Ashwin Krenan Deora

S.P., Shillong submitting all documents relating to my ailment and medical leave application in the month of August/1993. There was a gap of about two years between the two happenings. According to his version, he was in service upto March 1983 and went to office in August, 1991. During the period, according to him he was on Medical Leave. He did not mention whether the leave was sanctioned by any authority of the Department and if so, who was the authority. Further, there is no proof that he approached to any authority for his joining or he submitted his so called representation to any authority of the department. If he was not allowed to rejoin by any authority of the Department he could easily approach to the Court of law in the nick of time. He did not do so for the reason best known to him. According to his own version he approached the Department in the month of August, 1993. Thereafter upto 2005 again he was completely silent. He submitted his next representation on 17.12.2005 i.e. again after a gap of 12 years. Therefore, the D.A. is liable to be rejected as time barred under sub section 2(a) of section 21 of the Administrative Tribunal Act, 1985.

B. That with regard to the statement made in paragraph 4.5 of the application the Respondents beg to state that under the circumstances stated in the foregoing the prayer of the applicant vide his letter dtd. 17.12.05 (Annexure-5 to the D.A.), could not be consi-

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Shilong. 17.12.2005

dered by the respondent, SID (2) & (3) below Rule 2 of CCS (Pension) Rules, 1972, say that 'a Govt. servant who in his retirement from service on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Govt. service by the appropriate Medical authority after he has rendered service of not less than ten years shall be brought within the purview of CCS (Pension) Rules, 1972'. The applicant neither retired from service on attaining age of superannuation nor declared to be permanently incapacitated for further Govt. service by the appropriate medical authority, rather he deserted his duty in the year 1980 at his sweet will and therefore, does not fall in any of the two categories of Govt. employees. As such, no relief is admissible to the applicant and the DA is liable to be dismissed.

8. That with regard to the statement made in paragraph 4.6 of the application the Respondents beg to state that the order of the Hon'ble CAT, Guwahati dtd. 22.6.06, in OA No. 15/06 was fully complied with by the competent authority issuing the impugned speaking order vide No. B2/Case of Sri B.N. Barman dtd. 27.10.2006.

10. That with regard to the statement made in paragraph 4.7 of the application the Respondents beg to state that the applicant did not approach any higher authority nor he submitted any representation against

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Ashim Kumar Deka

the impugned order and thus he did not avail of all the remedies available to him under the service rules. Therefore the O.A. is liable to be rejected under sub section (1) of Section 20 of the Administrative Tribunal Act, 1985.

11. That with regard to the statement made in paragraph 4.2 of the application the Respondents beg to state that as per records, the applicant was initially appointed as Extra Departmental Messenger and thereafter as Class-IV official (now termed as Group-D) w.e.f. 01.4.1964 and was in service upto 31.3.1980. Thereafter he deserted his duty at his own accord and remained absent from duty unauthorisedly, as he claimed as self styled Medical Leave in the OA. The applicant deserted his duty w.e.f. 01.4.1980 and remained absent without any information upto 3.4.2005 i.e. for more than 25 years. On 4.4.05 he suddenly appeared with his claim for retiral benefits and submitted his first representation dtd. 4.4.2005 as in Annexure-3 of the O.A. 610 (2) & (3) below Rule 2 of CCS (Pension) Rules, 1972 say that 'a Govt. servant who in his retirement from service on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Govt. service by the appropriate Medical authority after he has rendered service of not less than ten years shall be brought within the purview of CCS (Pension) Rules, 1972'. The applicant neither retired from service on

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Aslihan Kharan Deora

attaining age of superannuation nor declared to be permanently incapacitated for further Govt. service by the appropriate medical authority, rather he deserted his duty in the year 1980 at his sweet will and therefore does not fall in any of the two categories of Govt. employees. As such, no relief is admissible to the applicant and the O.A. is liable to be dismissed.

12. That with regard to the statement made in paragraph 4.9 of the application the Respondents beg to state that the applicant is not entitled to any retiral benefit as he did not retire from service either attaining the age of superannuation or permanently incapacitated by appropriate medical authority on medical ground. After rendering 16 years of service he deserted his service and remained silent for a period about 25 years i.e. 01.4.1980 to 3.4.2005. He did not give any response even to the notice issued to him by the competent authority, on 8.01.1987 vide Annexure - 3 A to the O.A. On 4.4.2005, he suddenly appeared and preferred his claim for retiral benefits.

13. That with regard to the statement made in paragraph 5 of the application the Respondents beg to state that the applicant never approached any authority for grant of leave nor he opted for pension on medical ground but deserted his duty and remained absent unauthorisedly for long 25 years. Now he is claiming that he

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Ashwin Kumar Dhole

was on medical leave which is self styled and not granted by any authority of the Department. The applicant neither retired from service on attaining age of superannuation nor declared to be permanently incapacitated for further Govt. service by the appropriate medical authority, rather he deserted his duty in the year 1980 at his sweet will and therefore does not fall in any of the two categories of Govt. employees. As such, no relief is admissible to the applicant and the O.A. is liable to be dismissed.

13. That with regard to the statement made in paragraph 6 of the application the Respondents beg to state that the applicant did not approach any higher authority nor he submitted any representation against the impugned order and thus he did not avail of all the remedies available to him under the service rules. Therefore, the O.A. is liable to be rejected under subsection (1) of Section 20 of the Administrative Tribunal Act, 1985.

15. That with regard to the statement made in paragraph 7 of the application the Respondents beg to state that the applicant filed DA No. 15/2006 before Hon'ble CAT, Guwahati, on the same matter and the Hon'ble CAT disposed the DA passing the order dtd. 22.6.2006. The competent authority also complied with the order of Hon'ble CAT issuing the impugned order dtd. 27.10.2006.

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Aslior Kheran Deora

But the applicant did not approach any higher authority nor he submitted any representation against the impugned order and thus he did not avail of all the remedies available to him under the service rules.

16. That with regard to the statement made in paragraph 8 of the application the Respondents beg to state that the applicant did not approach any higher authority nor he submitted any representation against the impugned order and thus he did not avail of all the remedies available to him under the service rules. Therefore the OA is liable to be rejected under subsection (1) of Section 20 of the Administrative Tribunal Act, 1985.

17. That with regard to the statement made in paragraph 9 of the application the Respondents beg to state that the applicant is not entitled to any provisional pension or retiral benefit for the reasons mentioned above and for these reasons the OA is liable to be dismissed.

18. That the respondents beg to submit that in view of the facts and circumstances as stated above the instant application is not tenable in law as well as on facts and the applicant is not entitled to get any relief or interim reliefs as prayed for and the instant application is liable to be dismissed.

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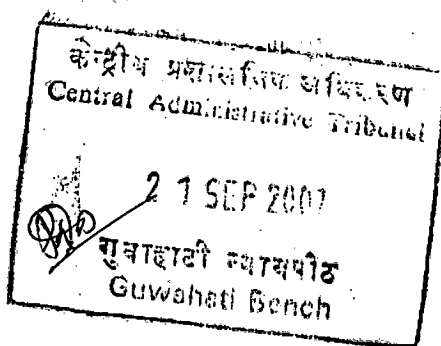
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VERIFICATION

I, Shri. Ashwin Kumar Das, Late Pranil Ch. Debn
aged about 59 years, R/o Oakland Shillong
District and competent officer of the
answering respondents, do hereby verify that the state-
ment made in paras 1 are true
to my knowledge and those made in paras
being matters of record are true to my information
derived therefrom which I believe to be true and the
rests are my humble submission before this Hon'ble
Tribunal.

And I sign this verification on this 20th day
of July, 2007 at Guwahati.


Signature



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BRANCH, GUWAHATI

An Application u/s 19 of the Central Administrative Tribunal Act,
1985.

O.A. No. 31/07

Sri Birendra Narayan Barman... Applicant

-Vs-

Union of India & Ors. ... Respondents

In the Matter of :-

A rejoinder filed in O.A. No. 31/07 on
behalf of the applicant.

A Rejoinder :-

1. That the applicant filed the above noted application seeking a direction to set aside and quashing the impugned order No. B-2/case of Sri B.N. Barman dated 27.10.06 issued under the signature of Senior Superintendent of Post Offices of Meghalaya Division, Shillong and to grant pensionary benefit to the applicant.

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Filed by
Birendra Narayan Barman
Through
Jalindar Barman
Adv.

Dr. B. N. Barman

2. That it is begged to state that written statement has been filed on behalf of the respondents and a copy of the same has been served upon the applicant through his counsel. He has gone through it and have understood the contents thereof. All the statements made in the said written statement are denied by the applicant except those are specifically admitted to be true and which are not inconsistent to the records.
3. That the applicant begs to state that in filing the rejoinder he reiterated and reaffirmed the statement already made in the main case O.A. No.31/07.
4. That as regards the statement made in paragraph 5 to the written statement of the respondent / the deponent- applicant begs to state that the respondent authority raised question as regards the genuineness of Annexure No.1 to the O.A. No.31/07 and on raising such question pleaded that the applicant is not entitled to get retirement benefit.

In this connection deponent/applicant like to put a question in reply to the respondent as to whether they belief their own version made in order No.B-2/Case of Sri B.N. Barman dated 27.10.06 issued under the signature of

Sri A.K. Deori, Sr. Superintendent of Post Offices, Meghalaya Division. The said order has been annexed as Annexure No.7 to the O.A. No.31/07 wherein the said authority in paragraph 3(I) stated that the applicant was appointed Extra Department Messenger Laitumukhrah Post office and he was appointed in Class IV post w.e.f. 1.4.1964. In paragraph 3(II) it is admitted that the applicant has completed 16 years of regular service w.e.f. 1.4.1964 to 31.3.1980. If the said order vide Annexure-7 to the O.A. No.31/07 is genuine then the respondent authority ought not to make such unnecessary question raising the genuineness of the order vide Annexure 1 to the O.A. No.31/07. The said order vide Annexure 1 to the O.A. No.31/07 was issued by Sri J.C. Chakraborty, the Inspector of Post Offices, South Sub-Division, Shillong which fact is on record and considering all this fact the respondent has made a frivolous statement.

5. That the deponent/applicant begs to state that the present application has been filed essentially challenging the order dated 27.10.06 vide Annexure 7 to the O.A. No. 31/07 whereby the respondent authority denied to grant pension taking a plea that the deponent/applicant has completed the 16 years of regular service not 20 years. The present pension Rule provides that 10 years continuous service is enough to get pensionary benefit. Therefore, the order

dated 27.10.06 rejecting the pensionary benefit is bad in law and liable to set aside and quashed.

6. That the deponent/applicant begs to state that all other statements made in the written statement are not based on facts and law rather those are frivolous and made on argument sake and not for the ends of justice.
7. That this rejoinder may be treated as a part of the O.A. No.31/07 and the rejoinder petition is filed bonafide in the interest of justice.
8. That all the statements made hereinabove paragraphs are true to the knowledge and belief and hence I sign this rejoinder on the 13th day of August/07 at Guwahati.

Birendra Narayan Barman

DEPONENT

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V E R I F I C A T I O N

I, Sri Birendra Narayan Barman, son of late Ketoram Barman, resident of Village Prathama para (Kalamua), P.O. Jayramkhuchi, P.S. Goalpara, Assam, do hereby verify that the contents in paragraphs 1,2,3,4, 5,6 and 7 are true to my knowledge and paragraphs are believed to be true as legal advice and I have not suppressed any material fact.

And I sign this verification on this 20th day of Sept, 2007 at Guwahati.

Date : 20.09.07

Place: Guwahati

Birendra Narayan Barman
Signature of Applicant.