

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 67.....
R.A/C.P No.....
E.P/M.A No.....

1. Orders Sheet..... O.A..... Pg. 1..... to 5.....

2. Judgment/Order dtd. 11/12/2007..... Pg. 1..... to 3.....

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

4. O.A..... 67/2007..... Pg. 1..... to 19.....

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

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

✓ 7. W.S..... Pg. 1..... to 24.....

✓ 8. Rejoinder..... Pg. 1..... to 3.....

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

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

11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

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

16. Counter Reply.....

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 67/07
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) Amika Prasad Sauma vs Union of India & Ors

Advocate for the Applicant(s) D. K. Saumah, P. C. Boro
Ms. B. Debi, H. K. Das

Advocate for the Respondent(s) Railway Com. vs. Mrs. Bharati Debi

Notes of the Registry	Date	Order of the Tribunal
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This application is in form
is filed/C. F. for Rs. 50/-
d. posted vide IPO/BB
No. 346651/99

Dated.....8.3.07.....

AM
Dy. Registrar

P.D.

15.3.07

15.3.07

Issue involved in this case is that the applicant who was working as Chief Personal Inspector he was responsible for submission of final settlement dues to different employees but due to non submission of necessary documents in time by the applicant no final settlement dues could be paid to one Shri Babul Rao Pantia, who has taken compulsory retirement and blame has been attributed against him and punishment was imposed upon him by withholding his increment for one year (NC). Aggrieved by certain action of the respondents the applicant has filed this O.A. with a prayer to set aside and quash the impugned orders dated 6.10.05 & 19.12.06 including the statement of allegation dated 13.9.05 and also for a direction to extend the consequential benefit after setting aside those orders.

Petitioners Encls for
new dates with
envelops are not received

P.D.

Notice & order sent to
D/Section for issuing
to R-1, 3, 4 by regd.
A 10 post and ors 2, 5
sent to received by
hand.

D/No- 347 to 350

26/3/07. Dt= 29/3/07.

Heard Mr. D.K.Sarma, learned
counsel for the applicant and Dr
J.L.Sarkar, learned Railway standing
counsel for the respondents. When the
matter came up for consideration the
counsel for the parties submit that notice
may be issued to the respondents at this
stage.

Issue notice to the respondents
returnable by four weeks.

Post on 26.4.07 for admission.

Member(A)

Vice-Chairman

pg

and Mrs. B.Devi
26.4.07. Dr.J.L.Sarkar learned counsel for the
Respondents prays for some more time to file
written statement. Four weeks time is granted to
file written statement. Post the matter on
29.5.07.

Member(A)

Member(J)

①. Service report
Availed from R.No.1,
3, 4 & 5.

25/4/07

lm

Notice duly served 29.5.07.
on R-2, 3.

Counsel for the respondents wanted
time to file written statement. Let it be
done. Post the matter on 20.6.07.

Vice-Chairman

28.5.07

lm

No. 252 has been
billed.

19.6.07.

20.6.07.

Counsel for the applicant wanted time to file rejoinder. Let it be done. Post the matter on 6.7.07.

22.6.07

WTS submitted
by the Respondents.
page No. 1 to 4. copy
not yet
not served.

6.7.2007

Vice-Chairman

Post the case on 17.7.2007 granting further time to the Applicant to file rejoinder.

Rejoinder not
filed.

22
5.7.07.

/bb/

Vice-Chairman

17.7.2007

Rejoinder not filed.

Post on 9.8.07 for order.

Vice-Chairman

pg

21.9.07 The counsel for the applicant submitted that rejoinder is being filed to day. Let it be placed on record. Since the pleadings are complete counsel appearing for the parties pray that the case may listed for hearing.

Post on 9.10.07 for hearing.

Vice-Chairman

pg

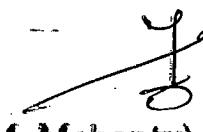
09.10.2007 Mr H.K.Das, learned Counsel for the Applicant and Mrs Bharati Devi, learned Counsel for the Railways are present. In this case written statement has already been filed and Counsel for the parties do agree to set the matter for final hearing on 29.11.2007.

10.10.07
Rejoinder filed
by the Applicant.
Copy served.

Call this matter on 29.11.2007 for hearing. Rejoinder, if any, may be filed in the meantime.

Qn.


(Khusiram)
Member


(M. Mohanty)
Vice-Chairman

The case is ready
for hearing.

Rej.
28.11.07.

nkm

29.11.2007

This is a Division Bench matter. The case is adjourned and listed on 10.12.2007 as prayed by Mr/H.K.Das, learned counsel for the Applicant.


(Khushiram)
Member (A)

/bb/

10.12.2007

On the request made on behalf of learned counsel for the Respondents call this matter on 11.12.2007.


(Gautam Ray)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

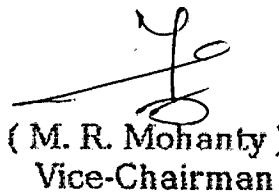
11.12.2007 Heard Mr H.K. Das, learned Counsel for the Applicant and Mrs Bharati Devi, learned Counsel for the Respondents/Railways and perused the materials on record.

For the reasons recorded separately, the O.A. stands disposed of.



(G. Ray)
Member (A)

nkm



(M. R. Mohanty)
Vice-Chairman

Received copy
Hridip K. Ray
Advocate
8.1.08.

18.3.08
Judgment issued
vide O/A No 1947
to 1952 dtd 28.12.07.
JKM

10
X
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.67 of 2007

DATE OF DECISION: 11.12.2007

Shri Ambika Prasad Sarma

.....APPLICANT(S)

Mr D.K. Sarmah, Mr P.C. Boro,
Ms B. Devi and Mr H.K. Das.

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

.....RESPONDENT(S)

Mrs B. Devi, Railway Standing Counsel

ADVOCATE(S) FOR THE
RESPONDENT(S)

CORAM:

The Hon'ble Mr. M.R. Mohanty, Vice-Chairman

The Hon'ble Shri G. Ray, 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 to be forwarded for including in the Digest Being compiled at Jodhpur Bench and other Benches? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Mo
Vice-Chairman/Member

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.67 of 2007

Date of Order: This the 11th day of December 2007

The Hon'ble Shri M.R. Mohanty, Vice-Chairman

The Hon'ble Shri G. Ray, Administrative Member

Shri Ambika Prasad Sarma,
S/o Late Madhab Chandra Sarma,
At present working as Chief Personnel Inspector,
Guwahati, under A.P.O. Guwahati,
N.F. Railway.

.....Applicant

By Advocates Mr D.K. Sarmah, Mr P.C. Boro,
Ms B. Devi and Mr H.K. Das.

- versus -

1. The Union of India, represented by the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. The Chief Personnel Officer, N.F. Railway, Maligaon, Guwahati-11.
3. The Additional Divisional Railway Manager, N.F. Railway, Lumding.
4. The Divisional Personnel Officer, N.F. Railway, Lumding Division, Lumding.
5. The Assistant Personnel Officer, N.F. Railway, Guwahati, Panbazar, Guwahati-1.

.....Respondents

By Advocate Mrs B. Devi, Railway Standing Counsel.

.....

ORDER (ORAL)

M.R. MOHANTY (VICE-CHAIRMAN)

Heard Mr H.K. Das, learned Counsel appearing for the Applicant and Mrs B. Devi, learned Counsel appearing for the Respondents/Railways and perused the materials placed on record.

2. The Applicant, having faced a punishment in a disciplinary proceeding, preferred an appeal and the Appellate Authority by its order under Annexure-F dated 19.12.2006, disposed of the appeal after giving due consideration in the matter and has reduced the penalty of "stoppage of increment for a period of one year" to the penalty of "stoppage of two sets of passes". Challenging the said Appellate Order dated 19.12.2006, the Applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985. The impugned Appellate Order dated 19.12.2006 reads as under:

"I have read the charges, the representation of the employee, the NIP, the appeal without date forwarded on 03/7/06 that he has not received the NIP, the serving of the NIP & the appeal dated 18/9/06 of C.O.

The employee has not denied the charges. He has given reason why he did not submit the necessary documents. He has not submitted any report either and has not denied the charges also.

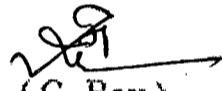
However, the NIP is reduced to stoppage of two sets of passes, which will give justice to the C.O. He may submit petition for review to CPO/NFR/MLG within 45 days time."

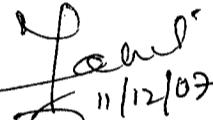
3. The respondents have filed a written statement to this case and the Applicant has also filed a rejoinder thereto.

4. A reading of the Appellate Order dated 19.12.2006, it goes to show that the Applicant did not deny the charges and yet the

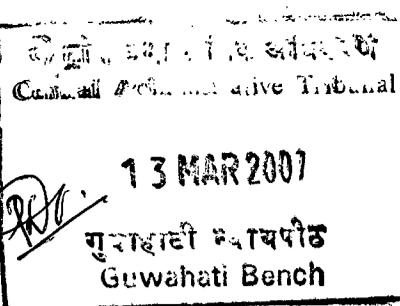
Appellate Authority, by show of grace, have reduced the penalty and also gave opportunity to the Applicant to prefer petition for review within fortyfive days. It appears that, without challenging the Appellate Order Departmentally (for which opportunity was given to him), if he so desired, the Applicant remained satisfied and, after the lapse of time that was granted by the Appellate Authority, the Applicant has preferred the present O.A. on 13.03.2007. The Applicant, at the hearing, has also failed to put up any case challenging the reduced minor penalty order of the Appellate Authority and, in the said premises, this case is disposed of as no merit has been found herein.

5. The O.A., accordingly, stands disposed of.


(G. Ray)
ADMINISTRATIVE MEMBER


11/12/07
(M. R. MOHANTY)
VICE-CHAIRMAN

nkm



13 MAR 2007

गুৱাহাটী বৰায়পৰি
Gewahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH.

O.A. No. 67 of 2007

BETWEEN

Ambika Prasad Sarma, Applicant.

AND

Union of India & ors. Respondents.

SYNOPSIS

The grievance projected by the present applicant in the instant OA is against the impugned order of the Disciplinary authority which was fully/partly upheld by the Appellate Authority holding the applicant to be guilty of the charges. Though the aforesaid impugned order stated to have been issued following the provisions of the rules holding the field and after holding departmental enquiries but in reality no enquiry was held and the authority concerned without following the prescribed procedure closed the proceeding violating the settled proposition of Audi-alterem partem. The applicant ventilated his grievance by exhausting departmental remedies but same yielded no result in positive. Hence this OA.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title Case No.

Q.A NO. 67 /07

BETWEEN

Sri Ambika Prasad Sarma

... Applicant

AND

Union of India & Others

... Respondents

I N D E X

Sl.No.	Particulars	Page No.
1.	Application.....	1 - 8
2.	Verification.....	9
3.	Annexure A & A-1.....	10 - 11
4.	Annexure B.....	12
5.	Annexure C.....	13 - 14
6.	Annexure D & D-1.....	15 - 17
7.	Annexure E.....	18
8.	Annexure F.....	19

Filed By

Regd. No.

Hridip Kr. Das.

Date. 9.3.07

Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under Section 19 of the Central administrative Tribunal Act, 1985)

Q.A. NO. 67 /07

13
Filed by
the Applicant
through
Adv. Dr.
Dridip K. Das.
Advocate
9.3.07

BETWEEN

Sri Ambika Prasad Sarma, Son of- Late Madhav Chandra Sarma, at present working as Chief Personal Inspector, Guwahati, under A.P.O., Guwahati, N.F. Railway.

... Applicant

-AND-

1. The Union of India represented by the General Manager, N.F. Railway, Matigaon, Guwahati- II.
2. The Chief Personal Officer, N.F. Railway, Matigaon, Guwahati- II.
3. The Additional Divisional Railway Manager, N.F. Railway, Laming.
4. The Divisional Personal Officer, N.F. Railway, Laming Division, Laming.
5. Assistant Personal Officer, N.F. Railway, Guwahati, Panbazar, Guwahati-1

... Respondents.



PARTICULARS OF THE APPLICATION

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

This application is directed against the Order dated 6.10.03 passed by the Respondent No. 4 (Disciplinary Authority) imposing minor penalty of withholding increment for a period of 1 year and against the Order dated 19.12.06 passed by the Respondent No. 3 (Appellate Authority) by which the penalty of stoppage of increment has been reduced to stoppage of two sets of passes.

2. LIMITATION :-

The applicant declares that the instant application has been filed within the limitation period prescribed under Section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION :-

The applicant further declares that the subject matter of the case is within the jurisdiction of the Central Administrative Tribunal.

4. FACTS OF THE CASE :-

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, privileges and protections as guaranteed under the constitution of India and laws framed there under.

4.2 That the applicant has been entered in Railway Service way back in the year 26.05.72 as Junior Clerk and he has completed more than 34 years of biemish free Services in different posts and a few years to go for superannuation. More particularly, the Applicant served as a Welfare Inspector sincerely to the utmost satisfaction to all concerned since last 20 years. During the aforesaid period of 34 years, the applicant had never been communicated with a single show- cause notice nor any employee, retired employee or successor of any pre-matured/ death employee have made any complaint against the applicant at any point of time. As such the applicant who has been working as a Chief Personal Inspector without any



blemish since last 34 years till the date of receipt of the statement of allegation vide Memorandum No. EQ/27-A(DAR-Minor)/II dated 13.09.05 served upon him. It is pertinent to mention herein that including the present charge sheet 6 charge sheet have been issued against the applicant during last eight months.

4.3 That the application begs to state that while he has been rendering his duties and responsibilities entrusted to him without any blemish and to the satisfaction of all concerned since last 34 years, be shocked and surprised on receipt of the Memorandum No. EQ/27-A(DAR-Minor)/II dated 13.09.05 along with the statement of allegation from the Divisional Personnel Officer, Lumding, whereby the authority proposed to take action against him under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 and asked the applicant to submit the representation against the proposed action. The allegation against the applicant is that the applicant had not submitted the necessary documents of Sri Babul Rao Pantia Ex- S/Cleaner/Guwahati who was retired compulsorily and thereby negligence of duty and violated the Rule 3.1 (11) of Railway Service Conduct Rules, 1966.

The copy of the aforesaid Memorandum dated 13.09.05
along with the statement of allegation are annexed herewith
and marked as Annexure -A and A1.

4.4 That the applicant on receipt of the said Memorandum along with the statement of allegation dated 13.09.05 submitted his written representations before the Divisional Personnel Officer/IC, Lumding on 23.09.05. In the said representation, the applicant while denying the charge levied against him state that the applicant has not received the order of compulsory retirement of order Sri Babul Rao Pantia, Ex-S/Cleaner/Guwahati and the said staff has also not intimated him about the same. Hence the final settlement papers of Sri Babul Rao Pantia could not be filled up by him. It has also been stated in the said representation that upon receipt of the Memorandum of charges, the applicant enquired into and found that Sri Babul Rao Pantia has not resided at Guwahati area and resided at Lumding. Accordingly, the applicant had requested to the Disciplinary Authority to exonerate him from the charges levelled against him.

A copy of the of the aforesaid Representation dated
23.09.05 is annexed herewith and marked Annexure -B.



4.5 That the Applicant begs to state that after submission of the aforesaid representation dated 23.09.05 (Annexure-B) nothing have been communicated to him by the Disciplinary Authority as such the applicant thought that the charges levelled against him has been dropped on perusal of the reason stated in the representation submitted by him. But the applicant on perusal of the pay slip (or the month of May/2006, found that his increment which was due in the said month has not been given to him. The applicant was under the impression that the said increment has not been incorporated in the Pay slip due to some chemical/typographical/mistake, but on enquiry he came to learn that his increment has been stopped due to imposition of Minor penalty in the DAR Charge sheet in SF II under No. EQ/27-A(DAR Minor/II) dated 13.09.05.

4.6 That the applicant begs to state that when he came to know about the imposition of penalty by which the increment of the applicant has been withheld for a period of one year (NC) without being communicated the notice of imposition of penalties to him and has also given effect to without intimating him about the same, the applicant preferred a representation before the Divisional Personnel Officer, Lumding stating all these irregularities.

A copy of the aforesaid representation dated 03.07.06 is annexed herewith and marked as ANNEXURE-C.

4.7 That the applicant begs to state that on receipt of the aforesaid representation from the applicant, the Divisional Personnel Officer, Lumding vide his letter under bearing Memo No. EQ/27-A 9 DAR-Minor/II dated 09.08.06 stated that a copy of the N.I.P. dated 06.10.05 has been handed over to the applicant on 17.10.05 by Sri R. Bora, Chief OS(P) of APO, Guwahati and another copy of the N.I.P. dated 06.10.05 has been enclosed alone with his said letter dated 09.08.06. It is pertinent to mention herein that the applicant has only received the N.I.P. dated 06.10.05 which was enclosed with the letter dated 09.08.06 only on 24.08.06.

A copy of the letter dated 09.08.06 and the impugned N.I.P. are annexed herewith and marked as ANNEXURE-D & D1.

4.8 That the applicant begs to state that as the Disciplinary Authority has not considered the case of the applicant and the explanation and reason stated in the representation dated 23.09.05 and 03.07.06 has also not been considered, the penalty

Q.D

Which was imposed without communicating the N.I.P. and has been given effect to without intimating has not been withdrawn, the applicant preferred an appeal before the Additional Divisional Railway Manager, Lumding (Appellate Authority) to consider his case stating that the charge leveled against him is baseless as the final settlement papers of Sri Babul Rao Pantia was not filled up by him due to non-receipt of order of compulsory retirement. The responsibility/duty of serving/furnishing the copy of the compulsory retirement solely lies on the D.P.O./IC, Lumding who is the Disciplinary Authority herein, had be served the copy of the compulsory retirement timely, the applicant would have done it. As such, the DPO/ IC, Lumding is solely responsible for delaying in settlement of the case of Sri Babul Rao Pantia. The applicant further stated in his appeal that the penalty of stoppage of increment for 1(one) year has been implemented w.e.f. 01.05.06 before communicating the notice of imposition of penalties. It has also been mentioned in the said appeal dated 18.09.06 that the DPO/IC, LMG has got no power and jurisdiction to impose punishment upon the applicant.

A copy of the aforesaid appeal dated 18/09/06 is annexed herewith and marked as Annexure-F.

4.9. That the Applicant begs to state that, as like the Disciplinary Authority also did not like to exonerate the applicant from the charges although the Appellate Authority was convinced that the applicant has no fault of his own. The reason behind non-consideration of the case of the applicant is that if the applicant is being exonerated from the charges, the whole responsibility would turn to the DPO/IC, LMG and the necessary action is required to be taken up against the DPO/IC, LMG who is the Disciplinary Authority herein. However the appellate authority instead of exonerating the applicant from the charges leveled against him has reduced the penalty of stoppage of increment for a period of 1 year and instead of that the penalty of stoppage of 2 sets of passes has been imposed vide order under Memo No. EQ/27-A(DAR-Minor)/II dated 19.12.06.

A copy of the aforesaid order dated 19.12.06 is annexed herewith and marked as Annexure-F.

4.10. That the applicant begs to state that both the Disciplinary and Appellate Authority failed to consider the case of the applicant and the impugned order of

W.D.

imposition of Minor penalty has been issued for no fault of the applicant. Hence this application is preferred before this Hon'ble Tribunal seeking an appropriate direction considering the facts and circumstances narrated above.

4.11. That the applicant begs to state that the respondents have acted without any jurisdiction and have acted beyond jurisdiction. Apart from that the respondents have failed to provide the reasonable opportunity of hearing to the applicant in every stage of the proceeding and the procedure for recording the evidence and records have not been followed. The findings arrived at by the I/O was perverse and without any materials. It is under this fact situation of the case the findings arrived at by the I/O as well as the impugned orders are not at all sustainable and liable to be set aside.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action on the part of the Respondents for not considering the case of the applicant to exonerate him is per-se illegal, arbitrary, discriminatory and violation of the principle of Natural Justice and Administrative Fair play.

5.2. For that the imposition of penalty upon the applicant is required to be set aside and quashed as the same has been imposed upon him for no fault on his part. The applicant is not responsible for non-payment of final settlement dues to Sri Babul Rao Pantia because the order of compulsory retirement of Sri Babul Rao Pantia has not been communicated to the applicant. The applicant came to know about the order of compulsory retirement only on receipt of the Memorandum of Charge sheet. As such, it was not possible to fill up the final settlement papers of Sri Babul Rao Pantia without receiving the order of compulsory retirement.

5.3. For that the Respondent Authority cannot implement the impugned order of imposition of penalty i.e. stoppage of increment for a period of 1 year without communicating the notice of imposition of penalties and without giving any opportunity for the applicant to file any appeal before the Appellate Authority. As such, the impugned order dated 06.10.05 and the statement of allegation against the applicant is liable to be set aside and quashed.

5.4. For that, the Divisional Personnel Officer/IC, Lumding has got no jurisdiction to impose punishment to the applicant having regard to his present pay and post. More so, when the responsibility of serving/furnishing a copy of the order of



compulsory retirement lies on the DPO/IC, LMG (Disciplinary Authority) and there is counter allegation made by the applicant that the delay for payment of final settlement dues had occurred due to no serving the copy of the compulsory retirement to the applicant for which the DPO/IC/LMG is solely responsible. As such, the DPO/OC, LMG is directly involved in the proceedings and he should not have passed the impugned order of imposition of penalty dated 06.10.05.

5.5. For that the Authority should have considered the case of the applicant as there was no single allegation/complaint against the applicant during his last 34 years of service. More particularly, when he rendered 20 years of continuous service as welfare inspector.

5.6. For that in any view of the matter both the impugned orders dated 06.10.05 and 19.12.06 including the statements of Allegation passed by the Disciplinary Authority and Appellate Authority respectively are not sustainable in the eye of law and liable to be set aside and quashed.

5.7. For that, in any of the matter, the impugned action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED

That the applicant declares that he has exhausted all the remedies available to him and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT

The applicant further declares that he has not filed any applicant, writ petition or suit regarding the grievances in respect of which this applicant is made before any other court or any other Bench of this Tribunal or any other Authority nor any such applicant, writ petition pursued and pending before any of them.



8. RELIEF SOUGHT FOR

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application being admitted, records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following relieves to the applicant.

- 8.1. To set aside and quashed the impugned order dated 06.10.05 and 19.12.06 (Annexure-D/1 and F) passed by the Respondent No. 4 and 3 respectively including the Statements of Allegation communicated vide Memorandum dated 13.09.05 (Annexure-A).
- 8.2. To direct the respondents to extend the consequential benefits after setting aside the aforesaid orders.
- 8.3. Any other relief/relieves to which the applicant is entitled under the facts and circumstances of the case and deem fit and proper.

9. INTERIM ORDER PRAYED FOR

Under the facts and circumstances of the case the applicant does not pray for any Interim order at this state.

10. This application has been filed through Advocates

11. PARTICULARS OF THE I.P.O.

- (I) I.P.O. NO. : 34 G 651499
- (II) Date : 8.3. 2007
- (III) Payable at : Guwahati.

12. LIST OF ENCLOSURE:

As stated in the Index.



VERIFICATION

I Shri Ambika Prasad Sarma, aged about 56 years, son of Late Madhav Chandra Sarma, resident of Maligaon, Guwahati-II, Kamrup, Assam do hereby solemnly affirm and verified that the statements made in paragraphs 2,3, 4.5, 4.8, 4.9, & 6 to 8 are true to my knowledge and those made in paragraphs 1, 4.1 to 4.4, 4.6, 4.7, & 5 are also true to my legal advise and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material fact of the case.

AND I sign this verification on this 9th day of March /2007 at Guwahati.

Ambika Prasad Sarma.

SIGNATURE

STANDARD FORM NO. 11.

STANDARD FORM OF MEMORANDUM OF CHARGE FOR IMPOSING
MINOR PENAULTIES RULES 11 OF NO. (1) & (2) RULES 1968.

N. F. RAILWAY.

Place of issue :- DRM(P)/LIG.

Date :- [3/01/01]

MEMORANDUM.

No. EQ/27-A (DAR-Minor)/11

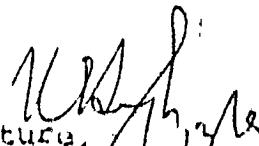
Shri A. P. Sarma Designation CP9

(Office in which working) CHY is hereby informed that the undersigned propose(s) to take action against him under Rule-II of the Rly. Servants (Discipline and Appeal) Rules, 1968. A statement of the imputations, misconduct or misbehaviour on which action is proposed to be taken as mentioned above is enclosed/ appended.

2. Shri A. P. Sarma is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any should be submitted to the undersigned within 10 days on receipt of the Memorandum.

3. Shri A. P. Sarma fails to submit his representation with the period specified in para-2, will be presumed that he has no representation to make any will be liable to be passed against Shri A. P. Sarma ex parte.

4. The receipt of this Memorandum should be acknowledged by Shri A. P. Sarma.


Signature,
Name & Designation of the Com-
petent Authority. (K. P. Singh)
DPO/IC/DR
Disciplinary Authority

To Shri A. P. Sarma

CP9/CHY Thru' APO/CHY
(Name & Designation of the Rly. Servant)

STATEMENT OF ALLEGATION. (Enclosed)

copy to P/case,

Attested



Advocate.

Shri Babul Rao Pantia Ex S/Cleaner/GUY under Sr CDO/GUY was retired compulsory as a measure of penalty w.e.f 29.12.04, but no final settlement dues has yet been paid only for non submission necessary documents by shri A.P.Sharma concerning PI.

Shri Sharma did not make any effort to submit the documents. Neither he submitted any report regarding action taken by him in helping the party comply with all formalities.

This act on his part tantamount to a serious negligence and negligence of duty and violated rule 3.1(ii) of Rly. Service conduct Rule/1966.


DPO/IC/ MG

Advocate



Advoc.

To
The Divisional Personnel Officer/IC
N.F. Rly. Lumsding

Sub:- Representation against SF II

Ref:- Your Memorandum of Charges

NO E&I/27-A (DAR-Minor)/II dt 13.9.05

In terms of your letter under reference
dated 13.9.05 against SF II I would like to
bring your notice the following few lines for
kind consideration Please.

Dear Sir, Balbir Rao Pantia, Ex-Sp. Assm.
Under SSE (C Law)/GNY was retired Comptroller
wef 29.12.04, but till today neither I have
received any order of Compulsory Retirement
nor the staff has intimated to me So,
the F.I.S. papers Com't not be killed up. However
after getting the Memorandum of Charges,
I have enquired and found that Sri Balbir
Rao Pantia is not resided at Guwahati area.
He is resided at Lumsding on the following
address..

Vill: Hatalongbar, Lant Colony

P.O: Lumsding

Dist: Nagaland (Assam)

That Sir, in my Service life as Welfare Inspector
I have never showed lack of elevation for any body.

In view of the above circumstances
I fervently requested you to look into the matter
sympathetically and to exonerated me from the
charges as indicated the Memorandum for this
time.

For this act of kindness I shall ever
grateful to you and oblige thereby.

Attest

Bar.

Advocate

Yours faithfully
Anubika Prasad Sarma
P.S. D. 05
11/11/05

To D.P.O/IC/LMS

N.F. Railway, Lumding

Dated Guwahati the 30th June/2006

3.7.06

Sir,

Sub:- Non inclusion of increment for the year 2006 begining in May/2006 in the Salary Slip. Rectification and /or withdrawal of stoppage of increment etc.

I have the honour to place the following for your kind consideration and favourable orders Please.

That while perusing the Monthly Pay Slip for the month of May/2006, I have found that my increment due in the month of May every year has not been given to me.

That I took it as an clerical omission and expected it to be corrected routinely, but however I later on further query learnt that my increment has been stopped as a matter of "Minor Penalty" in the DAR Chargesheet in S.F II under NO EQ/27-A (DAR minor)/II dt 13.9.05 of which I was surprised for the utter lack of Procedural regularity in the NIP handed in against my name.

That I therefore bring out the relevant facts here below.

(1) That I sufficiently explain the facts and circumstances relevant to the Memorandum of Charges NO EQ/27-A (DAR - Minor)/II dt 13.9.05 issued by D.P.O/IC/LMS

Attested
S.
Advocate.

and offered my cogent defence against
the charge through my representation at 23.9.05

(ii) That thereafter no communication
has been made to me by the D.A. about the
disposal of my representation in defence.

(iii) That before imposition of the Penalty
of N.I.P. the D.A. made nothing express which
he framed against me in the imposition
of the misconduct and defence of mine
against that; and

(iv) That no official order of the imposition
of the Penalty was ever served on me or ever
received by me but yet the stoppage of the
increment was effected.

I submit that this is very
discouraging and highly violative of the
existing rules regarding imposition of
minor Penalty.

I therefore beg your good
offices to withdraw the said stoppage of
increment and allow the increments
every month with the wherein of the month
of May 2006 till the present representation
is disposed of at your end Please.

yours faithfully.

Mambika Prasad Saran

Northeast Frontier Railway

No.EQ/27-A9DAR-Minor)/II

Office of the
DRM (P)/LMG
Date : 09.8.2006

To,
Shri A.P. Sarma,
CPI/GHY.

Sub: Non-inclusion of increment for the year 2006.
Ref: Your application dated nil forwarded by APO/GHY on 03.07.2006.

With reference to the above, it is to inform you that as a result of minor disciplinary proceedings initiated against you, a penalty of stoppage of increment for one year (NC) imposed on you after consideration of your defence vide NIP No.EQ/27-A (DAR-Minor)/II dated 06.10.2005 and the same had been handover to you on 17.10.2005 by Shri R. Bora, Ch.OS(P) of APO/GHY's office as confirmed by him vide his letter No.E/GHY/14/Personnel matter dated 28.7.2006.

Hence, your representation for non-consideration of your defence and non-receipt of NIP is baseless. However, a copy of the said NIP dated 06.10.2005 enclosed herewith further. Please acknowledge receipt.

DA : As above,


(K.P. Singh)
DPO/IC/LMG

Attested


Advocate.

NFG-17011

NORTHEAST FRONTIER RAILWAY

Notice of imposition of penalties under items (i), (ii) & (iii) of Rule 1707 (1) and items (i) and (ii) of Rule 1707 (2) – RI (Ref. SR – 0 under Rule 1716 – RI)

NO. 18127-A (PAR. MINOR) 11

Dated: 06. / 10. / 2005

From ... DPO/IC/24th (D.A)

To ... Sri. A.P. Saibaba

..... 289.1 hH4

With reference to your explanation to the Charge Sheet
No. EG/27-A (DAR-Mian) II dated 13/9/05

You are hereby informed that your explanation is not considered satisfactory.

that the D.P.O. / I.C. / L.M.A. (P.A.) has passed the necessary orders. I have gone through the charges and the written defense submitted by the charged official. It is not desirable for an Personnel Inspector to take a passive role in handling his case. Had the PI been proactive, this delay would not have happened. His increment is withheld for a period of one year (me).

Copy for P/CC-2C

K. P. Singh, D.P.E. / C / L.M.A.
Signature & Designation of the
Disciplinary Authority
Mylalgaon, 20th April, 1996.

"When the notice is signed by the authority other than the Disciplinary Authority, here quote the authority passing the order. S. 5. Standing.

"Here quote the acceptance or rejection of explanation and the penalty imposed.
N.B.: Please see instructions on the reverse.

THE RIVER AND THE RIVER BANKS ON THE RIVER SIDE.

(The portion must be detached, signed and returned to the office of issue.)

ACKNOWLEDGEMENT

To

I hereby acknowledge the force of your police No.

Dated covering the orders passed on my explanation to the Chair
Sheet No. 11

Station ...

Date _____

Signature or Thumb impression
De signum

Attestation

100

Advocacy.

INSTRUCTIONS

Any orders issued at these orders lies to A.D.R.M.I.U.M.H.
(not immediate superior to the authority passing the orders)


K. P. Singh
(DPO / I.C. U.M.H.)
Signatory of D.P.O. (I.C.)
Divisional Head and
Dispersal Control Authority
C. P. M. U. M. H.

The Additional Divisional Railway Manager
N.E. Railway, Lumding

Dated : 18.9.2006

Sub: Appeal against N.I.P. vide DPO/IC/Lumding Memorandum No. EQ/27-A(DAR-Minor)/II dated 06.10.2005.

Sir,

With due respect I beg to represent the following in connection with imposition of Minor Penalty (Increment is withheld for one year N.C) by DPO/IC/Lumding (Disciplinary authority) issued Memorandum No.EQ/27-A(DAR-Minor)/II dated 06.10/2005 which is considered to be injustice to me as I feel in view of my explanation of the circumstances in favour of my innocence.

Sri Babul Rao Pantia, Ex S/cleaner, Ghy was compulsory retired w.e.f. 29/12/2005. Compulsory retirement imposed on the employee as a punishment. But the Retirement on superannuation is on the date of birth after completion of 60 yrs. service. The settlement papers of Babul Rao Pantia was not filled up due to none receipt of order of compulsory retirement. Without the order copy of compulsory retirement, no settlement papers can be filled up. This was already reflected in my representation dated 23/09/2005. The responsibility of serving/furnishing copy of the compulsory retirement lies on the DPO/IC/Lumding. Had he served me the copy timely, I would have done it. So, rather DPO/IC/Lumding is solely responsible for Delay in the settlement case. DPO/IC/Lumding issued N.I.P. vide no. EQ/27-A(DAR-Minor)/II dated 06/10/2005 for increment withheld for a period of one year (N.C.) My increment due on 01/05/2006, but the increment was not adjusted. I have submitted representation for non inclusion of my increment. D.P.O./IC/Lumding vide his letter no. EQ/27-A(DAR-Minor)/II dated 09/08/2006 intimated that a penalty of stoppage of increment for one year (N.C.) imposed on me and the same had been handed over to me on 17/10/2005 by Sri R. Bora, C/OS (P) of APO/Ghy and hence my representation for non receipt of N.I.P. was not considered stated as baseless. That Sir, Under DAR rule N.I.P. is to be handed over to the employee under clear signature. But in my case why N.I.P. was not acknowledge by me with clear signature. N.I.P. was not issued in the name of Sri R. Bora, C/OS (P) under APO/Ghy. So, if it is true, I request you kindly to send a copy of my acknowledgement of receipt. D.P.O./IC/Lumding himself has violated the rule as the N.I.P. acknowledged by me under clear signature on 24/08/2006, but the same was implemented w.e.f. 01/05/2006 i.e. increment stoppage already implemented. So, his baseless word against my representation is not justified.

That Sir, D.P.O./IC/Lumding has imposed Punishment for a stoppage of one year increment (N.C.) upon me is quite intentional and same has caused injustice and likewise he had brought charges against me to condemn my earlier. As per schedule of power the DPO/IC/Lumding has got no jurisdiction to imposed punishment on me having regard to my present pay and post. The fact of I am being harassed by the DPO/IC/Lumding can be revealed from the fact that during last about 8 months, 6 DAR case has been registered with 4 N.I.P.s. It was during my last 34 yrs. of service under Railway, apart from the above all along it was without any blemish.

Therefore, the imposition of penalty on the above suggest is an injustice to me which may please be reconsider by your Singularity and exonerate me from the aforesaid charges.

I shall be grateful to you.

Yours faithfully

Ambika Prasad Sarma

Chief Personnel Inspector
Guwahati

Attest



Advocate

NO. - EQ/27 -A(DAR-Minor)/II

Office Of the
DRM(P) /LMG
Dt. 19/12/06

TO

✓ Shri A. P. Sarma
PI / I/GHY
under APO/GHY

Sub - Order of Appellate Authority,

Ref - Your appeal dated 18/9/06 against
NIP bearing no. EQ/27-A(DAR-Minor)/II
dtd 6/10/2005,

Your appeal dtd 18/9/06, against the NIP under reference,
was submitted to the Appellate Authority(ADRM/LMG) who has passed
the following Order, -

Order of Appellate Authority

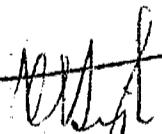
" Speaking Order of A.A -

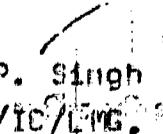
I have read the charges, the representation of the employee
the NIP, the appeal without date forwarded on 03/7/06 that he has
not received the NIP, the serving of the NIP & the appeal dated -
18/9/06 of C.O,

The employee has not denied the charges. He has given reason
why he did not submit the necessary documents. He has not submitted
any report either and has not denied the charges also.

However, the NIP is reduced to stoppage of two sets of Peasue,
which will give justice to the C.O. He may submit petition for review
to CPO/NFR/MLG within 45 days time. "

Copy to - 1. APO/GHY for information &
Naction Pl.
2. IC/DAR Cell,

(K. P. Singh)
CPO/IC/ENG.
Division: P.M.L.M.L.
Disciplinary Authority
H. F. RLY. / LMG.


(K. P. Singh)
CPO/IC/ENG.
Division: P.M.L.M.L.
H. F. RLY. / LMG.


Attested



Advocate

केन्द्रीय अधिकारी बोर्ड
Central Administrative Board

22 JUN 2007

गुवाहाटी बैठक
Guwahati Bench

DIST. - KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH AT GUWAHATI

O.A. No. 67 of 2007

Shri Ambika Prasad Sarma.....Applicant
-Vs-

Union of India & others..... Respondents.

WRITTEN STATEMENTS ON BEHALF OF THE
RESPONDENTS.

The Written statements of the Respondents are as
follows :-

1. That a copy of the Original Application No. 67/07 (herein after referred to as the "application" has been served upon the respondents. The respondents have gone through the same and understood the contents thereof.
2. That save and except the statements which are specifically admitted by the respondents, the rest of the statements made in the application may be treated as denied.
3. That the statements made in paragraph 4.1 to the application the answering respondent has no comment unless contrary to the records.
4. That in regard to the statements made in paragraph 4.2 & 4.3 to the application the answering respondent begs to state that it is a fact that the applicant was appointed as Jr. Clerk/w.e.f. 26.05.72 and promoted to the post of Personnel Inspector /Guwahati w.e.f. 20.10.86 and thereafter promoted as Senior Personnel Inspector w.e.f. 18.08.89 and next to the post of Chief Personnel Inspector w.e.f. 10.05.98 as per seniority of service. But regarding rendering of his duties and responsibilities as entrusted to him without any blemish is completely false and baseless. The memorandum (SF/11) No. EQ/27A (DAR-Minor)II dated 13.9.05 was served upon the applicant for delaying the final settlement of the case of Sri Babul Rao Pantia, x.S/Cleaner/GHY under Sr. CDO/GHY who was compulsorily retired w.e.f. 29.12.04.

Guvi Kanta Mukherjee
Filed by

DIVT. Personnel Officer
N. F. Lly. Guwahati-1
20/6/07/2

The following charge sheets were issued to the applicant (Sri A. Sarma) from time to time during his service period till date due to negligence of his duty :-

- (i). SF/11 bearing No. EQ/27 a (DAR-Minor) dated 10.05.05
- (ii). SF/ 11 bearing No. EQ/27 A (DAR-Minor)I dated 13.9.05
- (iii). SF/11 bearing No. EQ/27 A (DAR-Minor)II dated 13.9.05
- (iv). SF/11 bearing No. EQ/27 A (DAR-Minor)III dated 13.9.05
- (v). SF/11 bearing No. E/74/GHY/APS dated 14.12.05
- (vi). SF/11 bearing No. Minor-1/06(P) dated 11.7.06

5. That in regard to the statements made in paragraph 4.4 , 4.5 , 4.6 & 4.7 to the application the answering respondent begs to state that the matter of NIP in respect of stoppage of increment for one year (NC) was communicated with due consideration of his defense. , vide NIP No. EQ/27 A (DAR-Minor)II dated 6.10.05 and the same had been handed over to Sri A.P. Sarma, the instant applicant on 17.10.05 by Sri R.Bora Ch. OS(P) GHY, Office, of the APO/GHY as confirmed vide his letter No. E/GHY/14/Personnel dated 28.07.2006 . When the applicant denied the acceptance of the NIP bearing No. EQ/27-A(DAR-Minor)II dtd.6.10.05 as issued earlier, a second copy of the said NIP was further sent to him and the applicant acknowledged the same. As such the allegations set forth by the applicant are untrue allegations and not acceptable at all.

6. That the statements of allegation made in paragraph 4.8 to the application are not admitted by the deponent. The applicant was given all the reasonable opportunities for submitting his defense, otherwise he could not have preferred appeal to the Additional Divisional Railway Manager/LMG on 18.9.06. It may be pointed out that the DPO/IC/LMG is an authorised person and he has jurisdiction to adjudicate the same and to impose punishment as per law.

7. That in regard to the statements made in paragraphs 4.9 to the application the answering respondent begs to state that the applicant did not deny the charges leveled against him in his appeal dated 18.09.06 submitted before the Additional Divisional Railway Manager, Lumding (ADRM/LMG). The ADRM/LMG ,however, on appeal reduced the penalty of Stoppage of

D.V.L.
S.F. Lij., Guwahati-1

Gauri Kanta Manati

one year increment to the penalty of stoppage of two sets of passes vide his order dated 19.12.06.

8. That the statements that averred in paragraphs 4.10 & 4.11 and the submissions made in the ground portions are not admitted by the deponent. The answering respondent further submits that on appeal being preferred by the applicant, the Appellate Authority however, reduced the penalty as stated above. As such there is no illegality & infirmity in passing the order of penalty to the applicant which is just, proper and reasonable and the same is sustainable law. The competent authority passed the order of penalty with due care applying judicial mind hence the question of violation of natural justice is out of tune. The answering respondent further begs to state that the applicant has not exhausted all the forums of law for redressal available to him. As per DAR rules, there is provision for filing revision/review petition. The applicant has not availed/exhausted all the avenues as such the application is not maintainable at all and liable to be dismissed.

9. That from the facts and circumstances quoted above, no arbitrary and discriminatory exercise of power committed by the Railway Authority and there is no violation of fundamental rights as alleged by the applicant. The applicant has no *prima facie* case at all.

10. That the application filed by the applicant is baseless and devoid of merit and as such not tenable in the eye of law and liable to be dismissed.

11. That in any view of the matter raised in the application and the reasons set forth thereon, there cannot be any cause of action against the respondents at all and the application is liable to be dismissed with cost.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to peruse the records and after hearing the parties be pleased to dismiss the application with cost. And pass such other orders/orders as to the Hon'ble Court may deem fit and proper considering the facts and circumstances of the case and for the ends of justice.

And for this the humble respondent as in duty bond shall ever pray.

1/1. 22/5
N. F. L. 1000-1
Bawali Kanthal

VERIFICATION

I, Shri Gauri Kanta Kakati ... Son of Late Lobhit Ch. Kakati ... resident of Guwahati
 at present working as the Divl. Personnel Officer
N.F. Railway, Guwahati Guwahati being
 competent and duly authorized to sign this verification do hereby
 solemnly affirm and state that the statements made in paragraph
 1 to 10 & 13 are true to my knowledge and belief, and the rests
 are my humble submission before this Hon'ble Tribunal. I have
 not suppressed any material fact.

And I sign this verification on this ... 20/6 day of
 June, 2007 at Guwahati.

Gauri Kanta Kakati
 DIVL. Personnel Officer
 F.L.O. Guwahati-1
DEPONENT

10 OCT

गुवाहाटी बैठकाल
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

36
Filed by
The Applicant
through
Advocate
Hridip No. 700
21/10/07

O.A. NO. 67/07

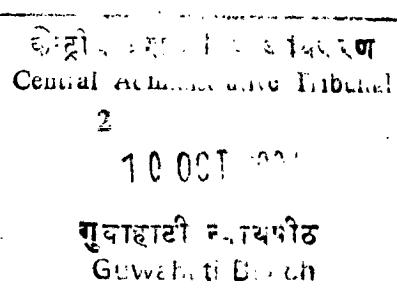
Sri Ambika Prasad Sarma

-VRESUS-

Union of India and Others.

REJOINDER TO THE WRITTEN STATEMENT FILED BY THE RESPONDENT:-

1. That the applicant has gone through the copy of the Written Statement submitted by the Respondent and has understood the contents thereof. Save and except the statements, which are specifically admitted herein below. Other statements made in the written Statements are categorically denied. Further the statements which are not born on records are also denied and the respondents are put to the strictest proof thereof.
2. That with regards to the statements made in paragraphs 1, 2 & 3 of the Written Statements, the applicant has no comment to offer.
3. That with regard to the statement made in paragraph 4 of the Written Statement, the applicant while denying the contentions made therein begs to state that the respondents have categorically admitted the past services rendered by the applicant without any blemish as in the Written statement filed by the respondent nothing has been mentioned about any adverse remark during his last 34 years of services rendered by him. But it is stated that during the period of 8 months only, 6 numbers of Charge sheets were issued to the applicant, which clearly proved the malafide intention of the authority towards the applicant.
4. That with regards to the statements made in paragraph 5 of the written statement, the applicant while denying the statement made therein, begs to state that the applicant reiterates and reaffirms the statements and averments made in paragraph 4.4, 4.5, 4.6 & 4.7 of the Original Application, the applicant further states that although the respondents stated that the applicant had acknowledged the impugned NIP; but failed to show even an annexure of the so called acknowledgment.
5. That with regards to the statements made in paragraph 6 of the written statement, the applicant while denying the contentions made therein begs to state that the respondent authority did not controvert or deny the fact that the penalty imposed upon him has been given



effect to before communicating the notice of imposition of penalties. That the NIP has only been communicated to the applicant only on receipt of the representation from the applicant as stated in paragraph 4.7 of the O.A. As such, it is liable to be set aside and quashed on this score alone.

6. That with regards to the statement made in paragraph 7 of the written statement, the applicant while denying the contentions made therein begs to state that at no point of time the applicant admitted the charges leveled against him, infact categorically denied the same which aspect of the matter has also been appreciated by the Appellate Authority; but only to save guard the interest of the DPO/IC, LMG, the applicant has not been exonerate from the charges leveled against the Disciplinary Authority, an enquiry should have been conducted by appointing an Inquiry Officer.

7. That with regards to the statement made in paragraph 8 of the written statement, the applicant while denying the contentions made therein begs to state that the respondents in the Written Statement did not deny or controvert about not providing the reasonable opportunity of hearing to the applicant in the proceeding and as such, it is deemed to be admitted.

8. That the applicant begs to state that in view of the contentions and averments made herein above, it is a fit case wherein this Hon'ble Court may be pleased to interfere in the matter and be set aside and quashed the impugned order directing the respondents to extend all the consequential benefit with costs.

38
केन्द्रीय अधिकारी बोर्ड
Central Administrative Board

10 OCT 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

VERIFICATION

I Shri Ambika Prasad Sarma, aged about 56 years, son of Late Madhav Chandra Sarma, resident of Maligaon, Guwahati-11, Kamrup, Assam do hereby solemnly affirm and verified that the statements made in paragraphs.....4, 5, 7.....are true to my knowledge and those made in paragraphs.....3, 5..... are also true to my legal advise and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material fact of the case.

AND I sign this verification on this 24th day of ~~March~~^{Dep.} 2007 at Guwahati.

Ambika Prasad Sarma

SIGNATURE