

3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A./TA/ NO...127....2009
✓ R.A./CP/NO.....2015
✓ E.P./M.P./NO....73....2009

1. Order Sheets.....1.....page.....1.....to 01 ✓
MP. — do — 2 page 1 to 3 ✓
2. Judgment/ order dtd. 02.7.2009.page.....1.....to.....4/✓
MP. — do — 24.8.2009
3. Judgment & Order dtd.....received from H.C. /Supreme Court.
4. O.A. 127/2009page.....1.....to.....20/✓
5. E.P./M.P. ✓ 73/2009page.....1.....to.....16/✓
6. R.A./C.P.page.....to.....
7. W.S.Page.....to.....
8. Rejoinder.....page.....to.....
9. Replypage.....to.....
10. Any other paperspage.....to.....
11. Memo of appearance P/01 —

B
07/07/2015
SECTION OFFICER (JUDL.)

✓ 2-2-2015

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

1. ORIGINAL APPLICATION No : 127 / 2009
2. Transfer Application No : -----/2009 in O.A. No.-----
3. Misc. Petition No : -----/2009 in O.A. No.-----
4. Contempt Petition No : -----/2009 in O.A. No.-----
5. Review Application No : -----/2009 in O.A. No.-----
6. Execution Petition No : -----/2009 in O.A. No.-----

Applicant (S) : Md. Eakin Ali Sikdar

Respondent (S) : Union of India & Ors.

Advocate for the : Mr. S. Sarmas
{Applicant (S)}

Mr. H.K. Das

Advocate for the : C.G.S.C
{Respondent (S)}

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 50/- deposited vide IPO/BD No. <u>394407779</u> Dated <u>18.6.2009</u></p> <p><i>N. Mohanty</i> Dy. Registrar <u>1/7/09</u></p>	02.07.2009	<p>Heard Mr H.K. Das, learned Counsel for the Applicant and Mrs M. Das, learned Addl. Standing Counsel for the Union of India (to whom a copy of this O.A. has already been supplied) and perused the materials placed on record.</p> <p>For the reasons recorded separately, this O.A. is disposed of.</p> <p><i>M.R. Mohanty</i> (M.R. Mohanty) Vice-Chairman</p>
<p><u>1.7.2009</u></p> <p>4 (Four) copies of application with envelope received for issue notices to the Respondents no 1 to 4. Copy served.</p> <p><i>HS</i> <u>1.7.09</u></p> <p>Received copy of the Order dtd. 02.07.09.</p> <p><i>H. Das</i> <u>03.07.09</u></p>	nkm	

3.7.09

Copy of the order
to 2.7.09 along with
Copy of the Application
Send to the Office
to issue to the
Reps Nos. 1 and 9
by Reps Post and
to the Reps No.

2 and 3. by Spl.

Message and copy
to the Appointee by Post
and free copy to
the H.K. das, Adv.

Copy handed over to
H.K. das, Adv.

3/8/09

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.127 of 2009

Date of Order: This the 2nd day of July 2009

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

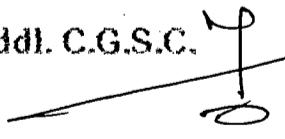
Md. Eakin Ali Sikdar,
S/o Hazi Hazrat Ali,
Postal Assistant (under suspension),
Barpeta H.O., resident of North Barpeta,
Near Petrol Pump, P.O. & District- Barpeta,
Pin-781301, Assam. Applicant

By Advocates Mr S. Sarma and Mr H.K. Das.

- versus -

1. The Union of India, represented by the Secretary, Ministry of Communication, Department of Posts, New Delhi-1.
2. The Chief Postmaster General, Assam Circle, Panbazar, Guwahati-1.
3. The Director of Postal Services (HQ & M), O/o the Chief Postmaster General, Assam Circle, Panbazar, Guwahati-1.
4. The Superintendent of Post Offices, Nalbari Barpeta Division, Nalbari-781335. Respondents

By Advocate Mrs M. Das, Addl. C.G.S.C.



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O.A.No.127/2009

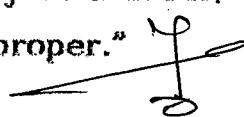
O R D E R (ORAL)

02.07.2009

M.R. MOHANTY, VICE-CHAIRMAN

Applicant, a Postal Assistant, has claimed that he is continuing to be under suspension since 08.03.2004; he was granted 'subsistence allowance', long after three and half years, by an order dated 19.07.2007; by an order dated 17.06.2009 the amount of 'subsistence allowance' has been reduced by 50% in gross violation of the principles of natural justice (for no reason has been given for the said action nor any opportunity were given to him/Applicant to have his say in the matter, before passing of the order dated 17.06.2009) and Fundamental Rule 53 (1)(ii)(a)(ii) of Government of India and that despite his Appeal dated 23.06.2009 (filed under Rule 23 of the CCS (CCA) Rules, 1965) no relief has yet been granted to him. In the said premises, the Applicant has approached this Tribunal with the present Original Application filed (on 01.07.2009) under Section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed as under:-

- "8.1 To set aside and quash the impugned order under Memo No.F1-Stt/Suspension/Review/Monthly/04 dated 17.06.09 issued by the 4th respondent.
- 8.2 Cost of the application
- 8.3 pass any such order/orders as Your Lordships may deem fit and proper."



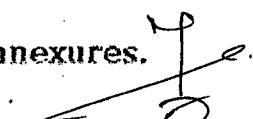
2. Heard Mr H.K. Das, learned Counsel appearing for the Applicant and Mrs M. Das, learned Addl. Standing Counsel for the Government of India (to whom a copy of this O.A. has already been supplied) and perused the materials placed on record.

3. Since it is the positive case of the Applicant that he has preferred an Appeal only on last 23.06.2009, this case is remitted to the Chief Postmaster General (Respondent No.2) for taking an expeditious decision on the Appeal dated 23.06.2009. The Superintendent of Post Offices (Respondent No.4) should, therefore, transmit his comments (on the Appeal Petition dated 23.06.2009/Annexure-7 to this O.A.) and the connected records to the Chief Postmaster General (Respondent No.2) by end of July 2009; so that the Appeal dated 23.06.2009 of the Applicant can be disposed of expeditiously by the Chief Postmaster General (Respondent No.2) immediately after receipt of the comments and records from the Respondent No.4/by end of September 2009.

4. Until disposal of the Appeal (dated 23.06.2009) by the Chief Postmaster General (Respondent No.2), the impugned order dated 17.06.2009 shall remain stayed.

5. With the above observations and directions, this case hereby stands disposed of.

6. Send copies of this order by Registered Post to the Respondent Nos. 1 and 4 and by Special Messenger to the Respondent Nos.2 and 3 alongwith copies of this Original Application and Annexures.



7. Free copies of this order be also supplied to the Applicant
and the Advocates appearing for the parties.

*Fee for
02/10/09*
(M. R. MOHANTY)
VICE-CHAIRMAN

nmk

NOTICE

29

To,

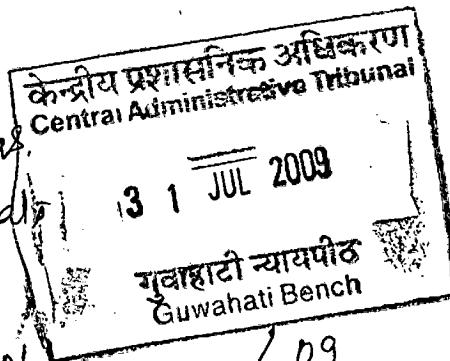
Mr. M. Basu

Sr. C.G.S.C. C.A.T.

From,

Mr. H. K. Das

Advocate



Sub:

Misc. Case No. / 09

in O.A. No. 127 / 09,

[Md. Faruk Ali Sindar - vs - U.O.I & Ors.]

Sir,

Please find enclosed herewith a copy of misc. case being filed today.
Kindly acknowledge the receipt of this mail.

Thanking you.

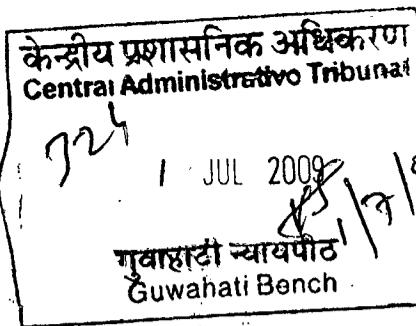
Received copy,
for Mrs. M. Das
P. K. Banerjee
31.7.09

Sincerely yours,

H. K. Das
31.07.09

H. K. Das

I hereby undertake to
serve copy upon Mr. M. Basu.
S. C. S. C.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

OA No. 127 of 2009

Md. Eakin Ali Sikdar.

...APPLICANT

- Vs -

Union of India & Ors.

...RESPONDENTS

INDEX

Sl. No.	Particulars	Page Nos.
1.	Synopsis	I to II
2.	List of dates	III
3.	Original Application	1 to 10.
4.	Verification	11.
5.	Annexure- 1 (Order dated 15.02.79)	12.
6.	Annexure- 2 (Charge report dated 01.03.79).....	13.
7.	Annexure- 3 (Order of suspension dated 08.03.04).....	14.
8.	Annexure- 4 (Order granting subsistence allowance dated 19.07.07).....	15.
9.	Annexure- 5 (Impugned order reducing Subsistence allowance by 50% dated 17.06.09).....	16.
10.	Annexure- 6 (Rule 53 of the Fundamental Rule)...	17 - 18.
11.	Annexure- 7 (Appeal submitted by the applicant dated 23.06.09).....	19 - 20.

Filed by

Hindupur D.
01.07.09.

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

OA No. 127 of 2009

Md. Eakin Ali Sikdar.

...APPLICANT

- Vs -

Union of India & Ors.

...RESPONDENTS

S Y N O P S I S

That the applicant is a Postal Assistant (under suspension) in the Barpeta H.O. under the Nalbari- Barpeta Division of Department of posts. The applicant joined the service under the respondents on 15.02.1979.

That the applicant while working as Postal Assistant in the Barpeta H.O. was served with an order dated 08.03.2004 by which the applicant was placed under suspension with immediate effect. However, for long 3 ½ years no subsistence allowance was granted to the applicant. After several representations and continuous persuasion the respondents finally issued the order dated 19.07.07 by which subsistence allowance equal to the amount of leave salary which he would have drawn had he been on half average pay i.e. 50% of the basic pay along with other admissible allowances was granted to the applicant.

That while the applicant was drawing subsistence allowance as per the order dated 19.07.07, the 4th respondent issued an order under Memo No. F1-Stt/Suspension/Review/Monthly/04 dated 17.06.09 **[ANNEXURE- 5]** by which the subsistence allowance has been reduced by 50% of the existing subsistence allowance granted to the applicant vide order dated 19.07.07 **[ANNEXURE- 4]**. The **Rule 53 (1) (ii) (a) (ii)** of the Fundamental Rule provides for reduction of subsistence allowance. The **Rule 53 (1) (ii) (a) (ii) provides that the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during [the period of the first three months], if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant.** The applicant states that there is no such attribution on the part of the applicant in the

11/11/2009

गुवाहाटी न्यायपीठ
Guwahati Bench

prolonged suspension. The suspension is delayed only at the behest of the respondents.

However, the respondents without recording any reason and without giving any opportunity of hearing to the applicant passed the impugned order dated 17.06.09 in clear violation of the statutory provisions of Rule 53 of the Fundamental Rule. The applicant submitted the appeal dated 23.06.09 under Rule 23 of the CCS (CCA) Rules, 1965, however nothing has been done for redressal of the grievance of the applicant and having no other alternative the applicant have approached this Hon'ble Tribunal praying for justice.

Hence the present original application.

Filed by

Hridip K. Das
01.07.09

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

OA No. 127 of 2009

LIST OF DATES

15.02.79 The applicant joined the Kamrup Division of the department of posts. [ANNEXURE- 1] [Page- 12]

01.03.79 The applicant joined as T.S. Clerk in the Sarupeta Division. [ANNEXURE- 2] [Page- 13]

08.03.04 Order under Memo No. F1-01/KVP/BPHO/03-04 by which the applicant was placed under suspension with immediate effect under Rule 10(1) of CCS (CCA) Rule, 1965 in contemplation of a departmental proceeding. [ANNEXURE- 3] [Page- 14]

19.07.07 Order under No. F1-01/KVP/BPHO/E.A. Sikdar/03-04 dated 19.07.07 by which the respondents granted the subsistence allowance equal to the amount of leave salary which he would have drawn had he been on half average pay i.e. 50% of the basic pay along with other admissible allowances. [ANNEXURE- 4] [Page- 15]

17.06.09 Order under Memo No. F1-Stt/Suspension/Review/Monthly/04 by which the subsistence allowance has been reduced by 50% of the existing subsistence allowance granted to the applicant vide order dated 19.07.07. The respondents without recording any reason with regard to the prolonged suspension and without giving any opportunity of hearing to the applicant reduced the subsistence allowance in clear violation of the statutory provisions of the F.R. 53 (1) (ii) (a)(ii). [ANNEXURE- 5] [Page- 16]

23.06.09 The applicant preferred an appeal under Rule 23 of the CCA (CCA) Rule, 1965 for revocation of the order dated 17.06.09 on the ground of non adherence to the F.R. 53. [ANNEXURE- 7] [Page- 19]

Filed by

Hukip K. D. M.
01.07.09
Advocate

1 JUL 2009

गुवाहाटी बैचिंग
Guwahati Bench

Filed by
The Applicant
through
Harip K. Das
01.07.09
33

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

OA No. 127 of 2009

BETWEEN

Eakin Ali Sikdar,

Son of Hazi Hazrat Ali,

Postal Assistant (under suspension),
Barpeta H.O., resident of North Barpeta,
Near Petrol Pump, P.O & District-
Barpeta, Pin- 781301, Assam.

APPLICANT

-Versus-

1. The Union of India

Represented by its Secretary,

Ministry of communication, Department of
Posts, New Delhi-1.

2. The Chief Postmaster General, Assam
Circle, Panbazar, Guwahati- 1.

3. The Director of Postal Services,
(HQ & M), O/o the Chief Postmaster
General, Assam Circle, Panbazar,
Guwahati- 1.

4. The Superintendent of Post Offices,
Nalbari Barpeta Division, Nalbari-
781335.

RESPONDENTS

Eakin Ali Sikder.

1 JUL 2009

गुवाहाटी न्यायपाठ
Guwahati Bench

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER(S) AGAINST WHICH THE APPLICATION IS MADE:

The present application is directed against the order under Memo No. F1-Stt/Suspension/Review/Monthly/04 dated 17.06.09 issued by the 4th respondent. **[ANNEXURE- 5]**

2. JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION:

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is the Postal Assistant (under suspension) in Barpeta H.O., under the Nalbari Barpeta Division.

4.2 That the applicant after training at Drabhanga joined the Kamrup Division of the department of posts vide order dated 15.02.1979 in the pay scale of Rs. 260-8-300-EB-8-340-10-360-12-420-EB-12-480/- p.m. plus usual allowances. Thereafter, pursuant to an order dated 15.02.1979 the applicant joined as T.S. Clerk, Sarupeta Division on 01.03.1979.

A copy of the order dated 15.02.1979 and charge report dated 01.03.1979 is annexed herewith and marked as **ANNEXURE- 1 and 2**.

4.3 That the applicant while was working as Postal Assistant, Barpeta H.O. was served with an order under Memo No. F1-01/KVP/BPHO/03-04 dated 08.03.2004 by which the applicant was placed under suspension with immediate effect under Rule 10(1) of

Fakir Ali Sikder.

1 JUI 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

CCS (CCA) Rule, 1965 in contemplation of a departmental proceeding.

A copy of the order dated 08.03.2004 is annexed herewith and marked as **ANNEXURE- 3.**

4.4 That the applicant begs to state that the order dated 08.03.04 was very clear with regard to the granting of subsistence allowance and it stated that order granting the subsistence allowance will be issued separately. However in spite of there being several representations submitted by the applicant the respondents did not grant the subsistence allowance for long 3 $\frac{1}{2}$ years which clearly establishes the arbitrariness on the part of the respondents.

4.5 That the applicant begs to state that after long persuasion and continuous representation the respondents issued an order under No. F1-01/KVP/BPHO/E.A. Sikdar/03-04 dated 19.07.07 by which the respondents granted the subsistence allowance equal to the amount of leave salary which he would have drawn had he been on half average pay i.e. 50% of the basic pay along with other admissible allowances. The respondents also released the arrears of subsistence allowances w.e.f. 08.03.04. It is worthwhile to mention here that on the date of suspension the applicant was drawing Rs. 5,625/- as basic pay. The break up of the subsistence allowance granted to the applicant pursuant to the order dated 19.07.07 is given below for ready reference:-

<u>PARTICULARS</u>	<u>AMOUNT (in Rs.)</u>
Basic pay (50% of Rs. 5,625)	2,813/-
(+) Dearness pay	1,407/-
(+) Dearness Allowances (47%)	1,983/-
(+) Special compensatory allowance	160/-
Total	6,363/-
(-) Group Insurance Scheme	30/-
Total Subsistence Allowance	6,333/-

Eakun Ali Sikder,

1 JUL 2009

गुवाहाटी न्यायपोठ
Guwahati Bench

A copy of the order dated 19.07.07 is annexed herewith and marked as **ANNEXURE- 4**.

4.6 That the applicant begs to state that since 19.07.07 the applicant has been drawing Rs. 6,333/- as subsistence allowance and the respondents time and again are extending the period of suspension of the applicant by issuing several orders and prolonged the period of suspension without an reason.

4.7 That the applicant begs to state that during the suspension of the applicant the 4th respondent issued an order under Memo No. F1-Stt/Suspension/Review/Monthly/04 dated 17.06.09 by which the subsistence allowance has been reduced by 50% of the existing subsistence allowance granted to the applicant vide order dated 19.07.07.

It is categorically stated that by the said order dated 17.06.09 the respondents reduced the subsistence allowance to 25% of his basic pay which he was drawing on the date of suspension. The break up of the subsistence allowance granted to the applicant pursuant to the order dated 17.06.09 is given below for ready reference:-

<u>PARTICULARS</u>	<u>AMOUNT (in Rs.)</u>
Basic pay (50% of Rs. 2,813)	1,407/-
(+) Dearness pay (50% of Rs. 1,407)	703/-
(+) Dearness Allowances (47%)	991/-
(+) Special compensatory allowance	160/-
Total	3,261/-
(-) Group Insurance Scheme	20/-
Total Subsistence Allowance	3,241/-

A copy of the impugned order dated 17.06.09 is annexed herewith and marked as **ANNEXURE- 5**.

4.8 That the applicant begs to state that the statutory provisions of F.R. 53 (1) (ii) provides for the entitlement of subsistence and other allowances of a Government servant under suspension and increase and decrease in the subsistence

Eakiu Ali Sikder.

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

5

38

allowance. The relevant portion of the F.R. 53(1) (ii) is quoted below for ready reference:-

".....F.R. 53. (1) A Government servant under suspension [or deemed to have been placed under suspension by an order of the appointing authority] shall be entitled to the following payments, namely:-

(i).....

(ii) in case of any other Government servant-

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary:

Provided that where the period of [suspension exceeds three months,] the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the [first three months] as follows:-

(i) the amount of subsistence allowance may be increased by a suitable amount, no exceeding 50 per cent of the subsistence allowance admissible during [the period of the first three months,] if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during [the period of the first three months], if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

Eakiu Ali Sikdere.

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

A copy of the provisions of F.R. 53 is annexed herewith and marked as **ANNEXURE- 6.**

4.9 That the applicant begs to state that as per F.R. 53 (1)(ii)(a)(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of the 1st three months, if in the opinion of the appointing authority, the period of suspension has been prolonged due to reasons directly attributable to the Government servant which has to be recorded in writing. Therefore, the appointing authority may reduce the subsistence allowance not exceeding 50% of the first three months allowance only on the ground if the suspension is prolonged due to the reasons directly attributable to the Government servant and while reducing the subsistence allowance for the aforesaid reason the appointing authority has to record the reasons in writing giving an opportunity of hearing to the servant. Hence the impugned order dated 17.06.09 failed to record any reason for such reduction of the subsistence allowance which is mandatory for reduction in the subsistence allowance.

4.10 That the applicant begs to state that making a grievance against the impugned order dated 17.06.09, the applicant preferred an appeal dated 23.06.09 under Rule 23 of the CCS(CCA) Rules, 1965 for redressal of his grievances. The applicant in the aforesaid appeal categorically stated that without there being any attribution on the part of the applicant towards the prolonged suspension, the respondents can not reduce the subsistence allowance. Therefore, while passing the order of reduction of subsistence allowance the reason has to be specifically recorded. The applicant stated that impugned order dated 17.06.09 issued by the 4th respondent does not record any reason for the reduction in the existing subsistence allowance and the order dated 17.06.09 is illegal and accordingly the applicant made a prayer for revocation of the said order. However, the respondents failed to give an eye on the grievance.

Eamini Ali Sirkder,

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

raised by the applicant and till date nothing has been done for ventilating the grievance of applicant.

A copy of the appeal dated 23.06.09 is annexed herewith and marked as **ANNEXURE- 7.**

4.11 That the applicant begs to state that the suspension of the applicant has been prolonged at the behest of the respondents. There was never any attempt on the part of the applicant to prolong the suspension. Moreover, the F.R. 53 (1) (ii)(a)(ii) very clearly states that while reducing the subsistence allowance the appropriate authority has to record reasons for such reduction. In the instant case the respondents while reducing the subsistence allowance by 50% of the existing subsistence allowance failed to record any reasons for such reduction which is clear violation of the Article 14 and 16 of the Constitution of India. The respondents vide order dated 17.06.09 on one hand unnecessarily prolonged the suspension of the applicant and on the other hand reduced the subsistence allowance of the applicant to 50% of the existing subsistence allowance without assigning any reason which is per-se illegal and liable to be interfered with by this Hon'ble Tribunal.

4.12 That the applicant begs to state that as per F.R. 53 (1)(ii)(a)(ii) the appointing authority can reduce the subsistence allowance by 50% only after recording reasons of prolonged suspension which is directly attributable to the Government servant. However, in the instant case the respondents without assigning any reason and without giving any opportunity of hearing to the applicant reduced the subsistence allowance to 50% of the existing subsistence allowance which is in clear violation of the principles of natural justice and liable to be set aside and quashed.

4.13 That from the facts and circumstances of the case it is clear that the respondents resorting to gross illegalities and without recording any reasons of reduction of subsistence allowance and without giving any opportunity to the applicant to

Eakim Ali Sikder

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

place is say in the matter have issued the impugned order dated 17.06.09. Hence the present case is a fit case wherein the Hon'ble Tribunal may be pleased to pass an interim order staying the effect and operation of the impugned order dated 17.06.09 pending disposal of the instant original application with a further direction to grant subsistence allowance as extended by the order dated 19.07.07. The applicant has made out a prima facie case of illegality and arbitrariness on the part of the respondents. The balance of convenience is in favour of the applicant for such an interim order. He would also suffer irreparable loss and injury if the interim order sought for is not passed by the Hon'ble Tribunal.

4.14 That the applicant files this application bonafide for securing the ends of justice.

5. GROUNDS FOR RELIEF(S) WITH LEGAL PROVISIONS:

5.1. Because the F.R. 53 (1)(ii)(a)(ii) very clearly states that the subsistence allowance of a Government servant may be reduced by the appointing authority if the suspension is prolonged for the reasons directly attributable to the Government servant and while reducing the subsistence allowance the authority has to record the reasons. However, in the instant case the applicant never attributed in any manner to the prolonged suspension. Hence, the impugned order dated 17.06.09 is illegal, arbitrary and is liable to be set aside and quashed.

5.2. Because the respondents while issuing the impugned order dated 17.06.09 failed to record any reasons for reducing the subsistence allowance in clear violation of the statutory provisions of F.R. 53 (1) (ii) (a)(ii). Hence, the impugned order is per-se illegal and cryptic and is liable to be set aside and quashed.

Eakim Ali Sarder,

5.3 Because while passing the order of reduction of the subsistence allowance dated 17.06.09, no opportunity was given to the applicant to place his say in the matter. As per F.R. 53 (1)(ii)(a)(ii) for reduction of subsistence allowance by 50% of the existing, a reasoned order has to be passed and which has to be duly communicated to the Government servant under suspension. However, in the instant case the respondents while passing the impugned order dated 17.06.09 have miserably failed to adhere to the principles of natural justice. The respondents failed in totality to record any reason that the prolonged suspension is directly attributable to the applicant and passed the impugned order without giving any opportunity of hearing to the applicant which is in clear violation of the Article 14 and 16 of the Constitution of India and liable to be set aside and quashed.

5.4 Because the impugned order dated 17.06.09 is cryptic and non-speaking and liable to be set aside and quashed.

5.5 Because from the sequence of events it is clear that the respondents have issued the impugned order dated 17.06.09 in clear violation of the F.R. 53 (1) (ii) (a) (ii) without recording any reason and without giving any opportunity of hearing to the applicant which is per se illegal, arbitrary and contrary to the Article 14 and 16 of the Constitution of India and has been done with the sole purpose to make the life of the applicant miserable. Hence on this ground alone the Hon'ble Court can set aside and quash the impugned order dated 17.06.09.

The applicant craves leave of the Hon'ble Court to advance more grounds both legal and factual at the time of hearing of this case.

6. DETAILS OF THE 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.

Fauzia Ali Sikder,

1 JUL 2009

गुवाहाटी न्यायालय
Guwahati Bench

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

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

8. RELIEF(S) SOUGHT FOR:

8.1 To set aside and quash the impugned order under Memo No. F1-Stt/Suspension/Review/Monthly/04 dated 17.06.09 issued by the 4th respondent.

8.2 Cost of the application.

8.3 pass any such order/orders as Your Lordships may deem fit and proper.

9. INTERIM ORDER PAYED FOR:

Pending disposal of the present original application the applicant prays for an interim order of stay of the effect and operation of the impugned order under Memo No. F1-Stt/Suspension/Review/Monthly/04 dated 17.06.09 directing the respondents to grant the subsistence allowance as extended by the order dated 19.07.07.

10. The application is filed through Advocates.

11. PARTICULARS OF THE IPO:

(I) IPO No.	: 396 407399
(II) Date of Issue	: 18.06.09
(III) Issued from	: G.P.O.
(IV) Payable at	: Guwahati

12. LIST OF ENCLOSURES:

As stated in the Index.

...Verification

Eakiu Ali Sikder.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

1 JU 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

VERIFICATION

I, Sri Eakin Ali Sikdar, Son of Hazi Hazrat Ali, aged about 48 years, resident of North Barpeta, Near Petrol Pump, P.O- Barpeta, Dist- Barpeta, Assam- 781301, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 4.1, 4.4, 4.5 (Partly), 4.6, 4.7 (Partly), 4.9, 4.11-4.14 are true to my knowledge, those made in paragraphs 4.2, 4.3, 4.5 (Partly), 4.7 (Partly), 4.8, 4.10 being matters of records are true to my information derived there from and the grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the 30th day of June, 2009 at Guwahati.

Eakin Ali Sikdar

APPLICANT

2

ANNEXURE - 1.

INDIAN POSTS AND TELEGRAMS DEPARTMENT
OFFICE OF THE SR. SUPERINTENDENT OF POST OFFICES
KAMRUP DIVISION: GAUHATI-781001

Home No. B/A-28/Darbhanga

Dated Gauhati the 15-2-79

The following out-sider trainees after completion of theoretical training at Darbhanga will join as temporary clerks in the time scale of pay Rs.260-8-300-EB-8-340-10/- time to time with effect from the date of joining.

The trainees will join as T.S. clerks in the post as shown against each.

The officials will furnish the requisite security as prescribed for P.O clerks and also sign the declaration and other allegiances.

1. Shri Fakir Ali Siqdar, out-sider trainee at Darbhanga will join as T.S. Clerk, Sarupeta reliefing Shri Ba Jay Kr. Das, H.O. who on relief will remain attached at Sribhupur S.O.
2. Shri Hemendra Kumar Nath, out-sider trainee at Darbhanga will join as T.Clerk, Sarthebari S.O reliefing Shri Chandra Kanta Das who on relief will join as clerk, Gauhati H.O vice vacant post.
3. Shri Jari Kanta Ralha, out-sider trainee at Darbhanga will join as T.Clerk, Darpeta H.O.

Sd/- (U. Bhattacharjee.)
Sr. Superintendent of Post Offices
Kamrup Division, Gauhati-781001

Copy to:-

1. The Principal, Postal Trg: Centre, Darbhanga.
2. The Postmaster(G), Gauhati H.O.
3. The Postmaster, Barpeta H.O.
4. M.S.P.Ms, Barupeta/Sribhupur/Sarthebari.
5. Shri Fakir Ali Siqdar, Trainee at Darbhanga.
C/O Principal, P.T.C, Darbhanga.
6. Shri Hemendra Kumar Nath, Trainee at Darbhanga.
C/O Principal, P.T.C, Darbhanga.
7. Shri Bani Kanta Rabha, Trainee, at Darbhanga.
C/O Principal, P.T.C, Darbhanga.
8. Shri Sarjey Kr. Das, R/C at Barpeta.
9. Shri Chandra Kanta Das, clerk, Sarthebari.
- 10-15) Spare.

Sr. Superintendent of Post Offices
Kamrup Division, Gauhati-781001

Abul

Has

Advocates

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

2039

गुवाहाटी न्यायपीठ
Guwahati Bench

A.C.G.-61 INDIAN POSTS AND TELEGRAPH DEPARTMENT

(देखिए नियम २६७, डाक-तार विभाग प्रृष्ठिका, पृष्ठ ११४) (हिन्दी/संस्कृत)

(See Rule 267, Posts and Telegraphs Financial Handbook, Volume 1) (Second Edition)

चांज की बंबली पर चांज लिपी और नक्की और मीहरी की लिपि

Charge Report and Receipt for cash and stamps on transfer of charge

प्रभावित किया जाता है कि

Certified that the charge of the office of Clerk/Sarenpeta S.O.

पर्याय (नाम) मे.....

was made over by (name) Sri Sanjay Kumar Das.

(जन्म) को

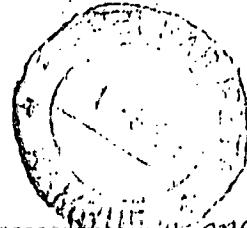
to (name) Mol. Loken Ali Sikdar

स्थान

at (place) Sarenpeta.

पर्याय को पूर्वी मे

अपराह्न मे



on the (date). I. 3. 79. for the noon in accordance with memo.

क्रमा

तारीख

के अनुसार दे दिया

No. ०/A-28/Darbhanga at 15.2.79

Dated

from SS P/GH

भारतीय प्रशासनिक अधिकारी
Relieving Officerभारतीय प्रशासनिक अधिकारी
Relieving Officer(क्र० ४० ३०)
(१. १. ०.)केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

1 JUL 2009

गुवाहाटी न्यायालय
Guwahati Bench

A. A. A.

H. A. A.

Advocati

DEPARTMENT OF POSTS :: INDIA
Office of the Superintendent of Post Offices : Nalbari Barpeta Division
Nalbari-781335

Date :: 8.3.04

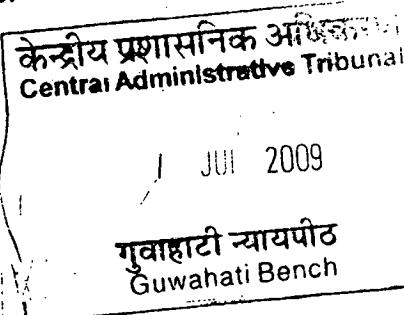
Memo No : F1-01/KVP/BPHO/03-04

ORDER

WHEREAS, a disciplinary proceeding against Md. Eakin Ali Sikdar, PA, Barpeta HO is contemplated.

NOW, therefore, the undersigned, in exercise of the power conferred by the sub rule (1) of Rule 10 of the Central Civil Service(CCS) Rules, 1965, hereby places the said Md. Eakin Ali Sikdar under suspension with immediate effect.

It is further ordered that during the period that order shall remain in force the headquarters of Md. Eakin Ali Sikdar, PA Barpeta HO, should be Barpeta and the said Md. Eakin Ali Sikdar shall not leave the headquarters without obtaining the previous permission of the undersigned.



SS/ (S. DAS)
Superintendent of Post Offices
Nalbari Barpeta Division
Nalbari-781335

Copy to:-

- 1. Md. Eakin Ali Sikdar, PA, Barpeta HO for information. Order regarding subsistence allowance admissible to him during the period of his suspension will be issued separately.
- 2. The PM, Barpeta HO for information and necessary action.
- 3. The SDI(P)/Barpeta/Pathsala for information.
- 4. OC

Attested

Has

Advocate

Superintendent of Post Offices
Nalbari Barpeta Division
Nalbari-781335

DEPARTMENT OF POSTS :: INDIA
Office of the Superintendent of Post Offices Nalbari Barpeta Division
Nalbari-781335

Memo No. F1-01/KVP/BPHO/EA Sikdar/03-04

Date :: 19.7.2009

Md. Eakin Ali Sikdar who had been placed under suspension vide this office memo No. F1-01/KVP/BPHO/03-04 dated 8.3.2004 with effect from 5.8.2004 will draw subsistence allowance equal to the amount of leave salary which he would have drawn had he been on leave on half average pay and dearness allowance admissible on the basis of such leave salary till further order.

He will also draw the compensatory and other allowances as may be admissible under the provision of rules as on the day of suspension.

The official is to stay in the HQ to be eligible for subsistence allowance and he should also furnish a non-employment certificate for the period of suspension to the DDO who will make sure of the condition.

SD/-

(D. Dehingia)

Superintendent of Post Offices
Nalbari Barpeta Division
Nalbari-781335

Copy to -

1. Md. Eakin Ali Sikdar, PA Barpeta HO (u/s) for information.
2. The Postmaster, Barpeta HO for information and necessary action.
3. O/C

Superintendent of Post Offices
Nalbari-Barpeta Division
Nalbari-781335

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Attested

Hab-

Advocati

DEPARTMENT OF POSTS : INDIA
Office of the Superintendent of Post Offices Nalbari Barpeta Division
Nalbari-781335

To

Md. Eakin Ali Sikdar
PA, Barpeta HO(u/s)

No : F1-SII/Suspension/Review/Monthly/04

Dated at Nalbari the 17.06.2009

Sub : Review of suspension of Government servants

The Review Committee for review of suspension cases of this division was held under the Chairmanship of Sri P.K. Singh, DPS(HQ & M), O/O the Chief Postmaster General, Assam Circle, Guwahati on 10.06.2009.

The Review Committee recommends continuation of your suspension for a period of 180 days w.e.f. 22.5.2009. The subsistence allowance admissible during the period will be reduced by 50% of the existing subsistence allowance.

(D. Dehingia)
Superintendent of post offices
Nalbari Barpeta Division
Nalbari-781335

O/C

17/6

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Advocates

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Advocates

Chapter VIII—Dismissal, Removal and Suspension

F.R. 52. The pay and allowances of a Government servant who is dismissed or removed from service cease from the date of such dismissal or removal.

F.R. 53. (1) A Government servant under suspension [or deemed to have been placed under suspension by an order of the appointing authority] shall be entitled to the following payments, namely:—

(i) in the case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil Employment who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment;

(ii) in the case of any other Government servant—

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay, and in addition, dearness allowance, if admissible on the basis of such leave salary;

Provided that where the period of [suspension] exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the [first three months] as follows:—

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during [the period of the first three months]; if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during [the period

1. Inserted by G.I., M.P. Notification No. F. 1 (14)-P. IV (A)/63, dated the 14th May, 1971. This takes effect from the 22nd May, 1971.

2. Substituted for the words "six months" by G.I., M.H.A., Dept. of Personnel & A.R., Notification No. 16012/1/79-LU, dated the 24th January, 1981.

केन्द्रीय प्रशासनिक अदिक्षिण
Central Administrative Tribunal

Alfred

Jan

Adviser

of the first three months], if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub-rule (3) or sub-rule (4) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

GOVERNMENT OF INDIA'S ORDERS

(1) Extension of temporary post of a Government servant under suspension.—The question whether it is necessary to extend the terms of the post held by an officer who is placed under suspension pending enquiry into his conduct, if he is in temporary service has been engaging the attention of the Government of India for some time past. This question will arise only if it is decided to pursue the enquiry against the suspended officer to its logical conclusion, instead of terminating his services under the C.C.S. (T.S.) Rules. Where an individual is due to be discharged from service on account of the expiry of the sanction of the post held by him,

1. Substituted by G.I., M.R., Notification No. E. 1 (1)-E. IV (A)/64 (v), dated the 12th July, 1966.

2. Inserted by G.I., M.R., Notification No. E. 1 (2)-E. IV (A)/63 IV, dated the 29th August, 1963.

*cf. sub-rules (3) and (4) of Rule 10 of C.C.S. (C.C.A.) Rules, 1965.

केन्द्रीय प्रशासनिक अदायक
Central Administrative Tribunal

1 JUL 2009

Date: 23.06.09

10

The Chief Postmaster General,
Assam Circle, Panbazar,
Guwahati - 1.

गोवाटी सायर्परठ
Guwahati Bench

Sub:- An appeal under Rule 23 of the CCS (CCA) Rules, 1965.

501

With due deference and profound submission, I be to lay the following few lines for your kind consideration and necessary action thereof:

1. That after training at Drabhanga joined the Kaliurup Division of the department of posts vide order dated 15.02.1979 in the pay scale of Rs. 260-8-300-EB-8-340-10-360-12-420-EB-12-480/-p.m. plus usual allowances. Thereafter, pursuant to an order dated 15.02.1979 the applicant joined as T.S. Clerk, Sarupeta Division on 01.03.1979.

That while I was serving as Postal Assistant, Barpeta I.L.O., an order was served upon me under Memo No. FI-OI/KVP/3P10/03-04 dated 08.03.2004 by which I was placed under suspension with immediate effect under Rule 10(1) of CCS (CCA) Rule, 1965 in contemplation of a departmental proceeding.

That though the order of suspension dated 08.03.04 was very clear that the order granting the subsistence allowance will be issued separately, however for a period of long 3½ year no subsistence allowance was granted to me causing serious hardship to me.

That sir after long persuasion I was granted the subsistence allowance vide order dated 19.07.07 to an amount equal to the half average pay in leave salary i.e. 50% of the basic along with admissible allowances.

That sir at the time of suspension I was drawing a basic pay of Rs. 5,625/- p.m. along with other allowances. Pursuant to the order dated 19.07.07 I was drawing an amount of Rs. 6,333/- p.m. as subsistence allowance along with other admissible allowances. The break up of subsistence allowance granted vide order dated 19.07.07 is like - Basic pay (50% of Rs. 5,625 i.e. Rs. 2,813 plus D.P. - Rs. 1,407 plus D.A (47%)- Rs. 1,983 plus Special Compensatory Allowance- Rs. 160 minus G.I.S - Rs. 10

That sir while I was continuously drawing the aforesaid amount of Rs. 6,333/- as subsistence allowance the Superintendent of Post Offices, Nalbari- Barpeta Division issued an order dated 17.06.09 by which my subsistence allowance has been reduced to an extent of 50% of the existing subsistence allowance granted vide order dated 19.07.07. The break up of reduced subsistence allowance to Rs. 3,241/- granted vide order dated 17.06.09 is like - Basic pay (50% of Rs. 2,813 i.e. Rs. 1,407 plus D.P.(50% of 1,407)- Rs. 703 plus D.A (47%)- Rs. 991 plus Special Compensatory Allowance- Rs. 160 minus G.I.S - Rs. 20.

That sir the reduction of subsistence allowance vide order dated 17.06.09 is wholly illegal and arbitrary. The payment and regulation of the subsistence allowance is guided by the statutory provisions enumerated in F.R. 53. The relevant portion of the F.R. 53(1) (ii) is quoted below for ready reference:-

.....F.R. 53. (1) A Government servant under suspension [or deemed to have been placed under suspension by an order of the appointing authority] shall be entitled to the following payments, namely:-

(i).....

(ii) in case of any other Government servant-

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance. If admissible on the basis of such leave salary:

Provided that where the period of [suspension exceeds three months,] the authority which made or is deemed to have made the order of suspension shall

Atticus

Das

Advocates

be competent to vary the amount of subsistence allowance for any period subsequent to the period of the [first three months] as follows:-

- (i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during [the period of the first three months], if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;
- (ii) the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during [the period of the first three months], if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;
- (iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

9. That sir as per 53 (1) (ii) (a) (ii) the appointing authority may reduce the subsistence allowance not exceeding 50% of the first three months allowance only on the ground if the suspension is prolonged due to the reasons directly attributable to the Government servant and while reducing the subsistence allowance for the aforesaid reason the appointing authority has to record the reasons in writing giving an opportunity of hearing to the servant. Hence the impugned order dated 17.06.09 failed to record any reason for such reduction of the subsistence allowance which is mandatory for reduction in the subsistence allowance along with the opportunity of hearing.

10. That sir in the instant case the Superintendent of Post office, Nalbari-Barpeta Division while issuing the order dated 17.06.09 failed to record any reason for prolonged suspension and also failed to record whether the suspension has been prolonged at my attribution. Moreover, it is categorically stated that there is nothing on record to conclude that I made any attempt to prolong the period of suspension and involved myself in any dilatory tactics. Hence, the order dated 17.06.09 is in clear violation of the statutory provisions of the P.R. 53 and arbitrary in nature.

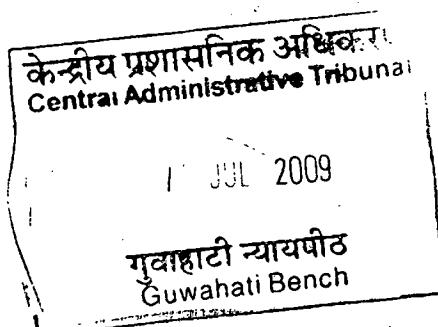
11. That sir the Sr. Superintendent of Post offices, Nalbari- Barpeta Division while issuing the order dated 17.06.09 did not give my any opportunity of hearing.

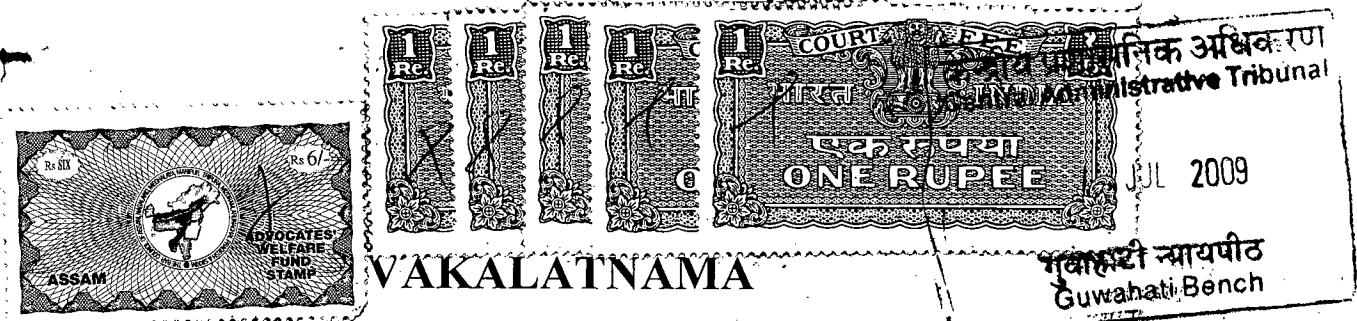
12. That in the premises aforesaid I beg to pray before Your Honor to recall/ cancel/ revoke the order dated 17.06.09 issued by the Superintendent of Post Offices, Nalbari- Barpeta Division on the aforesaid grounds granting me the subsistence allowance as per the order dated 19.07.07.

Thanking you

Sincerely Yours

Md. Ejakin Ali Sikdar
Postal Assistant (under suspension),
Barpeta I.O., Nalbari-Barpeta Div.





IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A./R.A./ C.P./M.A./ P.T./ ...O.A... NO.../27... OF 2009

Md. Eakin Ali Sardar

Appellant (S)

VERSUS

Union of India vs.

Respondent (S)

1. Md. Eakin Ali Sardar..... Applicant No. / Respondent No.

in the above application/ Petition do hereby appoint and Shri ... E. Sarma, ... H. K. Das

Advocate/s to appear, plead and act for me/ us in the above application / petition and to conduct and prosecute all proceedings that may be taken in respect thereof including Contempt of court petitions and Review applications arising there from and applications, for return of documents, enter into compromise and to draw any moneys payable to me/ us in the said proceeding.

Place :- Guwahati

Eakin Ali Sardar

Signature of the Parties.
"Accepted"

Rishabh Kumar

Hridip Kr. Das

Signature with date
(Name of the Advocate)

Executed in my presence,
* Signature with date
(Name and Designation)

Name and address of the
Advocate for Service

* The following Certification to be given when the party is unacquainted with the language of the Vakalath or is blind or illiterate:

The contents of the Vakalatnama were truly and audibly read over/translated into _____ language known to the party executing the Vakalatnama and he seems to have understood the same.

Signature with date
(Name and Designation)

NOTICE

From,

H.K. Das.

Advocate

To,

Mr. G. Basu

Ex. C.B.S.C. GAT.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Sub: O. A. No. 109.

(Md. Eamim Ali Sikdar - vs - V.O.I & Ors.)

Sir,

Please find enclosed herewith a copy of original application being filed today. Kindly acknowledge the receipt of the same.

Trusting you.

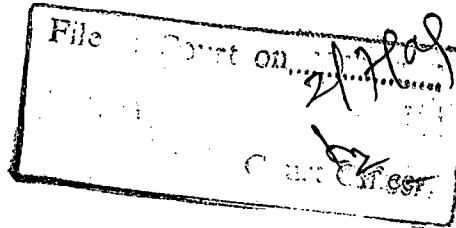
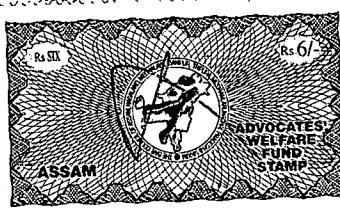
Received copy.

1/7/09

Advocate.

Sincerely yours.

Hidip K. Das
01.07.09.



FORM NO.1

(See Rule 62)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A./C.P./M.A./P.T. 127 / 2009

..... Md. Eakim Ali Sikdar Applicant(s)

-Vs-

..... Union of India & ors Respondent(s)

MEMO OF APPEARANCE

I, Smti Manjula Das, having been authorized by the Law Secretary, Government of India to appear and conduct the Central Government's cases before this Hon'ble Tribunal and I hereby appear for the Respondents No. and undertake to plead and act for them in all matters in the aforesaid case.



2.7.09

Place: Guwahati

Date: 2.7.09

Central Government Counsel
Union of India
Central Administrative Tribunal
Guwahati Bench