

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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13
 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. -----

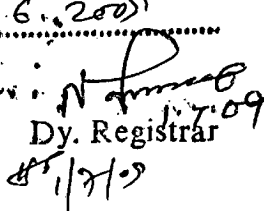
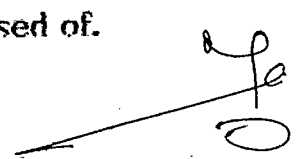
Applicant (S) : Md. Eakin Ali Sikdar

Respondent (S) : Union of India & ops.

Advocate for the : Mr. S. Sarmah

{Applicant (S)} Mr. H.K. Das

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

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>394/2009</u> Dated <u>18.6.2009</u>  Dy. Registrar <u>1/7/09</u></p> <p><u>1.7.2009</u> 4 (Four) copies of Application with envelopes received for issue notices to the Respondents No 1 to 4. Copy served. <u>HS</u> <u>1.7.09</u></p> <p>Received free copy of the Order dtd. 02.07.09. <u>H.M.</u> <u>02.07.09.</u></p>	<p><u>02.07.2009</u></p> <p style="text-align: center;">nkm</p>	<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. For the reasons recorded separately, this O.A. is disposed of.</p> <p style="text-align: right;"> (M.R. Mohanty) Vice-Chairman</p>

3.7.09

Copy of the order
of 2.7.09 along with
Copy of the Application
sent to the Office
to come to the
Residence No. 1 and 9
by Repd Post and
to the Residence No.
2 and 3 by Spl.
Messenger and copy
to the Applicant by Post
and free copy to
Mrs H. Das, Adv. Sec.
Copy handed over to
Mr. 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-781 301, 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-781 335. Respondents

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



O.A.No.127/2009

ORDER (ORAL)

02.07.2009

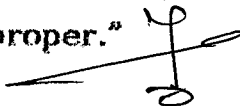
M.R. MOHANTY, VICE-CHAIRMAN

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.

202/07/09
(M. R. MOHANTY)
VICE-CHAIRMAN

nkmm

NOTICE

23

To,

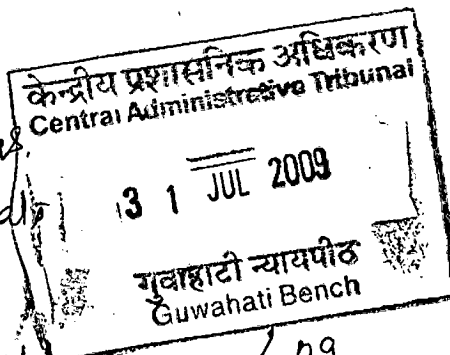
Mr. G. Baidya.

Sr. C.G.S.C. CAT.

From,

Mr. H.K. Das.

Advocate



Sub:

Misc. Case No. / 09

in O.A. No. 127 / 09.

[Md. Faruk Ali Sindat - vs - U.O. 1 & 2 Ms.]

Sir,

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

Thanking you.

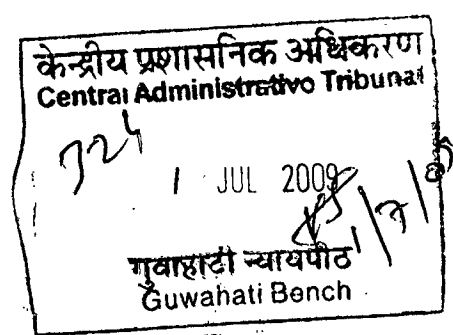
Received Copy.
for Mrs. M. Das
P. K. Zannat
31.7.09

[Signature]

Sincerely yours.

[Signature]
31.07.09

I hereby undertake to
serve copy upon Mr. G. Baidya.
Sr. C.G.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

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Filed by

Haridip K. Das
01.07.09.

Advocate

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

I

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,

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

H. K. Das,
01.07.09.

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

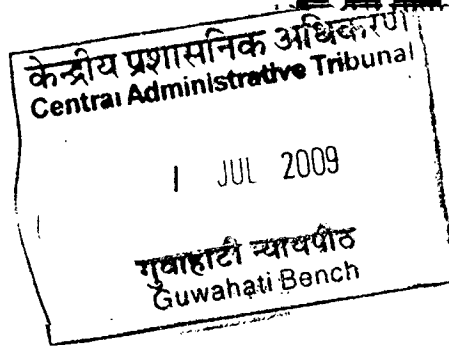
GUWAHATI BENCH :: GUWAHATI

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
H. K. D. M.
Advocate
01.07.09



Filed by
The Applicant
through
Hd. Dy. Secy. Pas.
Admission
01.07.09
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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. ✓

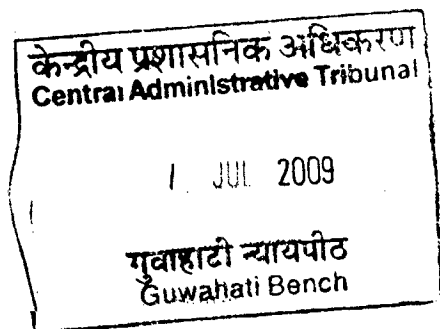
APPLICANT

-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 Sikdar.



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 Drabhangra 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

Enam Ali Sirdar.

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 ½ 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/-

Eakin Ali Sikder.

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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. Fl-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

Eakin Ali Sarker.

1 JUL 2009

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Guwahati Bench

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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, 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.

Eakin Ali Sindere.

1 JUL 2009

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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.

Eamkin Ali Sirdar.

1 JUL 2009

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Guwahati Bench

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

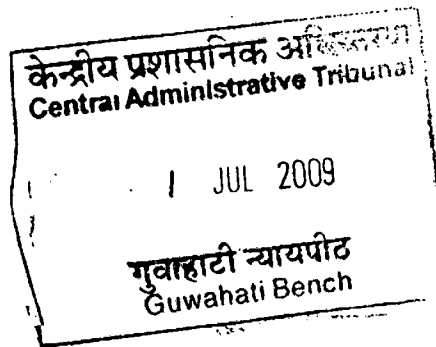
A copy of the appeal dated 23.06.09 is annexed herewith and marked as **ANNEXURE- 7**.

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

Eamin Ali Sirdar.



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.

Eakin Ali Sindere,

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.

Eamkhu Ali Sirkder,

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

10

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

Eakin Ali Sindere.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

1 JUL 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 Sikdere

APPLICANT

ANNEXURE - 1.

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

Hemo 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, Kamrup Division in the time scale of pay M.260-8-300-EB-8-340-10-360-12-420 EB-12-480/- P.M. plus usual allowances as admissible from 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 Fakin Ali Siddar, out-sider trainee at Darbhanga will join as T.S. Clerk, Sarupeta relieving Shri Sa Jay Kr. Das, H.O who on relief will remain attached at Sribhor S.O.
2. Shri Hemon Kumar Nath, out-sider trainee at Darbhanga will join as T. Clerk, Sarthebari S.O relieving Shri Chandra Kanta Das who on relief will join as clerk, Gauhati H.O vice vacant post.
3. Shri Bari Kanta Rabha, out-sider trainee at Darbhanga will join as T. Clerk, Barpeta 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 HO.
3. The Postmaster, Barpeta HO.
4. B.S.P.Ms, Sarupeta/Sribhor/Sarthebari.
- ✓ 9. Shri Fakin Ali Siddar, Trainee at Darbhanga.
C/O Principal, P.T.C, Darbhanga.
10. Shri Hemon Kr. Nath, Trainee at Darbhanga.
C/O Principal, P.T.C, Darbhanga.
11. Shri Bari Kanta Rabha, Trainee, at Darbhanga.
C/O Principal, P.T.C, Darbhanga.
12. Shri Sa Jay Kr. Das, H/C at Sarupeta.
13. Shri Chandra Kanta Das, clerk, Sarthebari.
- 14-15) Spare.

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

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2009

गुवाहाटी न्यायपीठ
Guwahati Bench

A.C. 61 INDIAN POSTS AND TELEGRAPHS DEPARTMENT

(देखिए नियम 267, डाक-तार वित्त पुस्तिका, 1991 (द्वितीय संस्करण))

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

चार्ज की बदली पर चार्ज लिमिट और नकदी और मोहरों की रकम

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

प्रमाणित किया जाता है कि

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

वहाँ (नाम) ने

was made over by (name) Sri Sanjay Kumar Das

(कर्म) की

(name) Mr. Eorcin Ali Sikdar

स्थान

at (place) Sarenpeta

तारीख को पूर्वाह्न में



on the (date) 1.3.79 fore noon in accordance with memo

क्र.सं.

तारीख

को अनुसार दे दिया

No. B/A-28/Darebhangal-15.2.79

from SS P/GH

भारमुक्त अधिकारी
Relieved Officer

1/3/79

भारमुक्ति अधिकारी
Relieving Officer

(हो पं २०)
(P. 4 O.)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Accepted

Has

Admitted

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

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

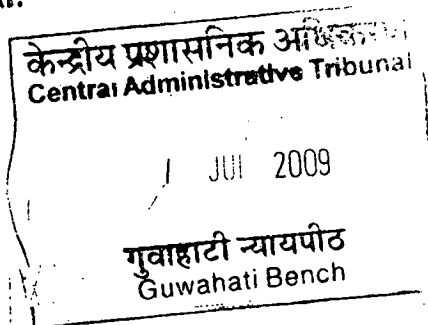
Date :: 8.3.04

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(CCA) 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.



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

Copy to:-

1. Md. Eakin Ali Sikdar, PA, Barpeta HO for information. Orders 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

Assesd

Has.

Abroento

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. FI-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. FI-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.

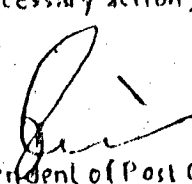
He will also draw the compensatory and other allowances as may be admissible under the provision of rules as on the day of suspension.

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 PDO 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 आयोग
Central Administrative Tribunal

1 JUL 2009

गुवाहाटी न्यायपीठ
Guwahati Bench





Advocate

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-Stt/Suspension/Review/Monthly/04

Dated at Nalbari the 17.06.2009

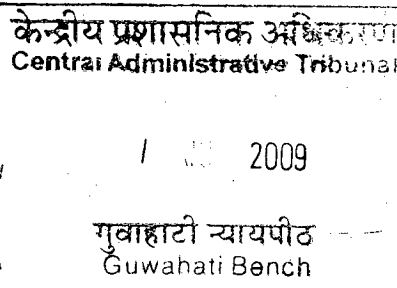
Sub : Review of suspension of Government servants

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



Attended

Has

Advocate

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 suspension¹ [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 Employ 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 of² [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 the² [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 during² 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 during² the period

1. Inserted by G.I., M.F., Notification No. F. 1 (14)-E. 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 आयोग
Central Administrative Tribunal

Agreed

Admitted

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.

¹(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:

²Provided 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.F., Notification No. F. 1 (11)-E. IV (A)/64 (V), dated the 12th July, 1966.

2. Inserted by G.I., M.F., Notification No. F. 1 (2)-E. IV (A)/63 IV, dated the 29th August, 1965.

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

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

गुवाहाटी संयंत्र
Guwahati Bench

1 JUL 2009

Date: 23.06.09

10

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

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

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

Sir,
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 Drabhangra joined the Kalirup 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.

2. That while I was serving as Postal Assistant, Barpeta H.O., an order was served upon me under Memo No. FI-01/KVP/BPHO/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.

3. 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 3 1/2 year no subsistence allowance was granted to me causing serious hardship to me.

4. 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.

5. That sir at the time of suspension I was drawing a basic pay of Rs. 5625/- 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.L.S - Rs. 20.

6. 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.L.S - Rs. 20.

7. 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

Attended
H. Bar.
Advocate

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.

10. 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.

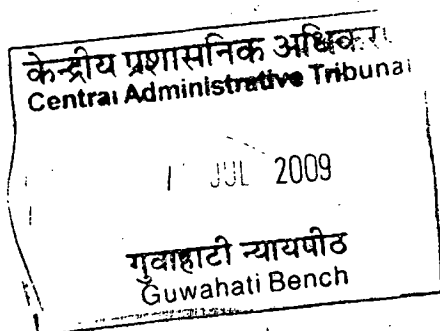
11. That sir in the instant case the Superintendent of Post office, Nalbari-Barpeta Division while issuing the order dated 17.06.09 failed to record any reason for prolonged suspension and also failed to record whether the suspension has been prolonged at my attribution. Moreover, it is categorically 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 F.R. 53 and arbitrary in nature.

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

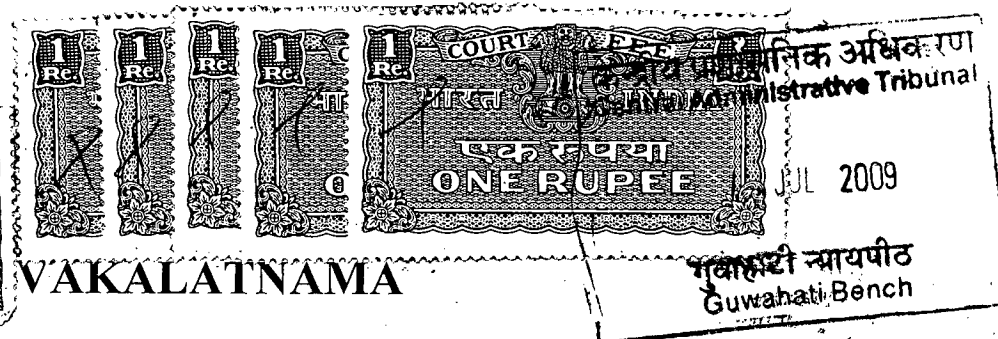
13. That in the premises aforesaid I beg to pray before Your Honor to recall/ cancel/ revoke the order dated 17.06.09 issued by the Superintendent of Post Offices, Nalbari- Barpeta Division on the aforesaid grounds granting me the subsistence allowance as per the order dated 19.07.07.

Thanking you

Sincerely Yours



Md. Eakin Ali sikdar
Postal Assistant (under suspension),
Barpeta H.O., Nalbari-Barpeta Div.



O.A./R.A./ C.P./M.A./ P.T./ ...O.A...NO...127...OF 2009

Md. Eakin Ali Sindar

Appellant (S)

VERSUS

Union of India to Dr.

Respondent (S)

I, Ud. Eanin Ab. Sindar Applicant No. 901e /Respondent No.

in the above application/ Petition do hereby appoint and Shri S. Sarma, H.K.P.O.
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 :- Gumsathi

Date :- 30.6.09

Emkin Ali Sindere

Signature of the Parties.
"Accepted"

Nishant 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

54

From,

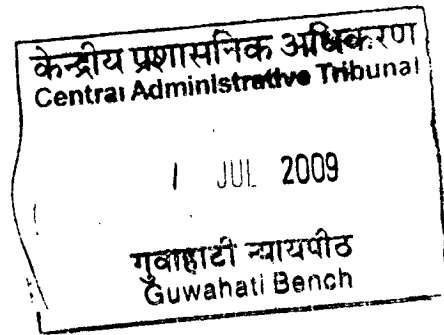
H.K. Das.

Assault

To,

Mr. J. Baishya.

Ex. C.G.S.C. CAT.



Sub: O.A. No. 109.

(Md. Eakin Ali Sirdar - vs - U.O. 1 & Rs.)

Sir,

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

Thanking you.

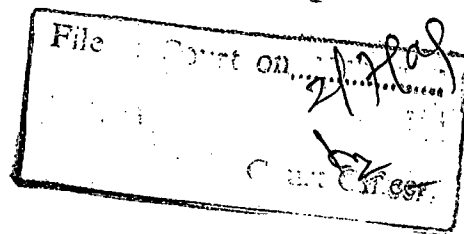
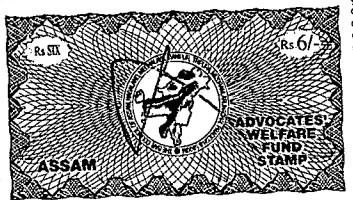
Received copy.

MD
1/7/09

Assault

Sincerely yours.

Hidip Mr. Das
01.07.09.



FORM NO. 1

(See Rule 62)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

✓ O.A./W.A./C.P./M.A./P.T. 127 / 2009

Md. Fakir Ali Sikdar Applicant(s)

-Vs-

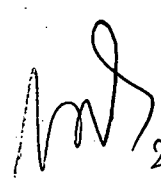
Union of India & ors. Respondent(s)

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 Honble Tribunal and I hereby appear for the Respondents No. 1/-4/..... and undertake to plead and act for them in all matters in the aforesaid case.

Place: Guwahati

Date: 2.7.09


2.7.09
Central Government Counsel
Union of India
Central Administrative Tribunal
Guwahati Bench