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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./TA/ NO. 167/2009
R.A./CP/NO..... 2015
E.P./M.P./NO..... 2015

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P.D. 09/07/15
SECTION OFFICER (JUDL.)

9.7.2015

FORM NO. 4
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

1. ORIGINAL APPLICATION No : 167 / 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) : Sri Prafulla Ch. Sarma
Union of India & Ors.

Respondent (S) : D.P. J.L. Sarkar,
Advocate for the
{Applicant (S)}
H.P. S.N. Tamuli

Advocate for the : -----
(Respondent (S)) Mr. M.K. Boro, Addl. CSC for Reppn. No. 1.

Advocate for the : -----
(Respondent (S)) ICAR

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed C.F. & Rs. 50/- deposited under P.D./BD No. <u>396 4186/1</u> Dated <u>13-8-09</u>	<u>25.08.2009</u>	Heard Dr. J.L. Sarkar, learned counsel appearing for the Applicant and Mr. M.K. Boro, learned Addl. Standing Counsel for Govt. of India (to whom a copy of this O.A. has already been supplied) and perused the materials placed on record.
<u>26.8.09</u> <u>Three copies of</u> <u>application with</u> <u>envelops received for</u> <u>Issue notices to the</u> <u>Respondents No 1 to 3.</u> <u>Copies served to the Addl.</u> <u>CSC but filed this</u> <u>O.A. to-day without</u> <u>fixing date.</u> <u>26/8/09</u>		Issue notice to the Respondents requiring them to file their written statement by 09.10.2009.

(M.K. Chaturvedi)
Member(A)

(M.R. Mohanty)
Vice-Chairman

K.Das
Issue notice to the
Respondents.

26/8/09

Copies of no. es
along with order dated 09.10.2009
25/8/09 send to
D/Sec for issuing
to respondents by
post regd. A/D post.

①/No-9963-9964
31/9/09. Dt. 3.9.09

Mr. M.K. Boro, Addl.
C.G.S.C. & C.W. Memo
of Appearance on
behalf of Respondent.

3/9/09

8.10.09

Service Report awaited.

on

K. Das
Send copy of this
order to the Applicant
and the Respondent

D/S
12/10/09

/bb/

Copies of order
dated 9/10/2009
Send to D/Sec.
for issuing to
the applicant and
the respondents by
post. D/No-12875-12378

①/No-4-11-2009
27/10/09.

Dr.J.L.Sarkar, learned counsel for
the Applicant is present. Mr.M.K.Boro,
learned Addl. Standing counsel
representing the Government of India is
also present.

Despite notice, no written
statement has yet been filed by the
Respondents.

Subject to legal pleas and question
of limitation to be examined at the final
hearing, this case is admitted.

Liberty is, hereby, granted to the
Respondents to file their written
statement by 30.11.2009.

Call this matter on 30.11.2009.

Send copies of this order to the
Applicant and the Respondents in the
address given in the O.A.

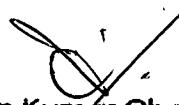
(M.R.Mohanty)
Vice-Chairman

27.11.09
No AD is filed

30.11.2009

Learned counsel for the Respondents seeks further time to file reply. We noticed that a criminal case has been initiated against the Applicant and he was suspended in the year 1988. Criminal case had been disposed of on 20.11.2003, yet he has not been allowed the consequential relief. Applicant is being paid Subsistence Allowance at the rate of 75 % of salary since 12th August 1988. It appears that the Respondents are facilitating him directly and indirectly. Let Respondent No.2 appear in person on the next date of hearing to explain as why he is kept under suspension for more than two decades further why he has not been allowed to join duties.

List on 16.12.2009.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/lm/

16.12.2009

Pursuant to order passed by this Tribunal on 30.11.2009 Director of Indian Council for Agricultural Research (ICAR), NEH Region appears in person and states that applicant's suspension has been revoked vide order 2nd September 2009, and pursuant thereto he has joined duties in the office i.e K.V.K., Tura on 10th December, 2009. In this view of the matter principal relief claimed in present O.A. stands satisfied.

Further Sri S.N. Tamuly, learned counsel appearing for applicant states that his another prayer namely treatment of suspension period as on duty for all intents & purpose, arrear salary and consequential benefits remains to be complied with.

Contd/-

Copy of order dated
16/12/09
S.N. Tamuly
24/12/09

O.A. No. 167-2009

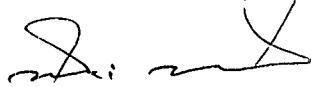
Contd/-
16.12.2009

We have heard both sides. Since suspension order has been revoked, necessary claim noticed hereinabove will be accordingly regulated in terms of Rules as well as law on the subject. Accordingly the respondents are directed to pass necessary speaking order on said aspect within a period of two weeks, as prayed by the respondents. Copies of order dated 2nd September, 2009 as well as joining report dated 10th December, 2009 have been taken on record.

Final Order dated 16.12.2009
16/12/09 prepared and
Sent to the Despatch
Section for issuing all
the respondents by Post
vide No. 42 to 44
dated 04-01-2010

O.A. is disposed of. No costs.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

16/12/09 O.A. dated 16.12.2009 /PB/km

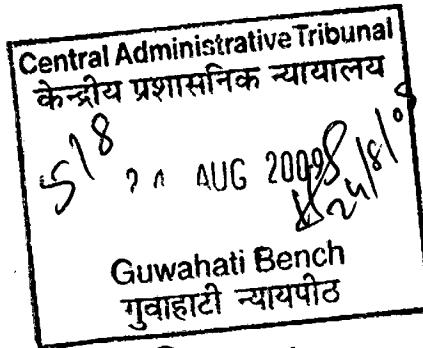
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

(An application under Section 19 of The A.T.Act,1985)

O.A. NO. 167/2009

En
Sri Prafulla Sarma
-v-

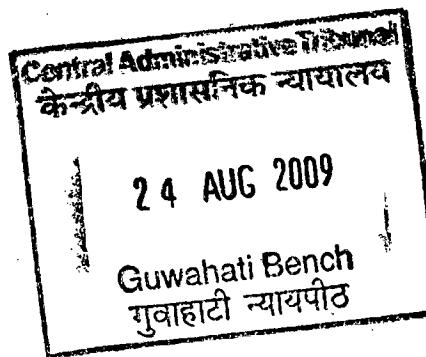
U.O.I. & Ors.



Synopsis

The applicant joined Indian Council for Agricultural Research (ICAR in short) as fieldman (T2) in the year 1978 and successfully served the organization. He received appreciation from the higher authorities for his good work from time to time. In the year 1988 applicant was arrested by police basing on a complaint lodged by the then Director, Dr. R. N. Prasad on a false case. He was immediately released on personal bond within a hour of his arrest. The aforesaid complain was false and lodged out of personal enmity of the applicant with the then Director Sri R.N. Prasad, misusing his official power. Applicant was put under suspension on 12/5/1998 and a memorandum of charges dated 9/8/1988 was issued against the applicant. Applicant submitted reply to the above memorandum of charges denying the charges leveled against him vide letter dated 22/8/1988. In the meantime subsistence allowance was granted to him initially @ 50% which was subsequently enhanced to 75% vide order dated 6/12/1988. Applicant submitted several representations and also approached the authorities both at Tura and Shillong for revocation of the suspension order dated 12/5/1998, but his case was ignored. Respondents misconstrued his case as a case of suspension under Rule 10 (1) (b) though it was a case under Rule 10 (1) (a). Criminal case lodged by the Director, ICAR Research Complex for NEH Region (GR case No. 145/1988 State -v- Prafulla Sarma) was disposed vide order dated 20.11.2003 by the Deputy Commissioner, West Garo Hills District, Tura, Meghalaya as per the guidelines issued in WP (C) No. 1128/1986. It is stated that inspite of repeated summons neither complainant (i.e. then Director Sri S. N. Prasad) nor any of the P.Ws turned out to give evidence against the applicant because of the fact that entire

complain was based on a concocted story. Applicant submitted a copy of the judgment dated 20/11/2003 along with prayer to allow him to join duty. Department made correspondence with the Program- Coordinator, K V K, Tura on 23/3/2008 and on 5/12/2008 regarding Applicant's ^{case} but applicant is not put back in duty till today. Applicant served pleaders notice dated 10/11/2008 and 3/4/2009 but is not allowed to join. Being aggrieved applicant files this original application praying for revocation of his suspension order and treat the suspensions period as on duty and be paid the arrear salary.



Filed by

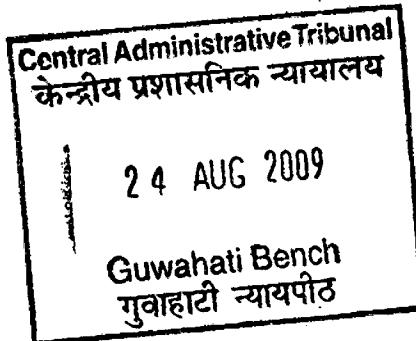

S. N. Tamuli

Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

(An application under Section 19 of The A.T.Act,1985)



O.A. NO. 167/2009

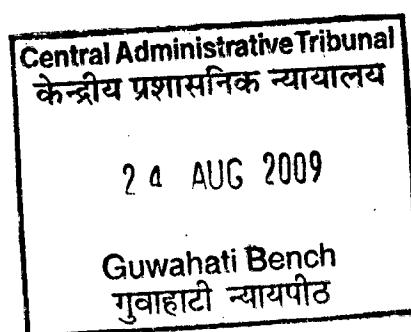
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Sri Prafulla Sarma
-V-
U.O.I. & Ors.

LIST OF DATES

Sl. No	Dates	Particulars	Anne xure	Page No.
1.	9/8/1978	Applicant was appointed as field man Gr. 'C' post in ICAR, ICAR Research Complex for NEH Region Shillong vide office order dated 9/8/1978	1 Page No16	Para 4.1
2.	15/7/1978	Applicant joined ICAR Research Complex, Nagaland Centre on 15.07.1978 as field man.		Para 4.1
3.	18/7/1985	Farm Manager ICAR, Nagaland Centre, Jharnapani issued certificate dated 18/7/1985 highly appreciating the work of the applicant	2 Page No17	Para 4.1
4.	1988	Director ICAR, ICAR Research Complex Shillong lodged complain against the applicant and a case was registered against him. The case was based on a false complain and was filed only to harass the applicant due to his personal enmity with the then Director, Sri R.N. Prasad. Subsequently case was numbered as GR. Case No. 145/1988, U/S 448/332/323 IPC. Applicant surrendered before police and was immediately released on personal bond on the same day by the O.C. Police Station .		
5.	12/5/1988	Applicant was put under suspension under Sub Rule (1) of Rule 10 of CCS (CCA) Rules- 1965 vide order dated 12/5/1988 issued by the Director ICAR Research Complex for NEH Region.	3 Page No18	Para 4.3

6.	4/6/1988	Vide order dated 4/6/1988 issued from the office of the Director ICAR Research Complex for NEH Region subsistence allowance was granted to the applicant @ 50% leave salary on half pay.	4 Page No19	Para 4.4
7.	30/7/1988	Applicant produced non employment certificate dated 30/7/1988	5 Page No20	Para 4.4
8.	9/8/1988	Memorandum of charges dated 9/8/1988 was issued against the applicant by the Director, ICAR Shillong proposing to take action under Rule 16 of CCS (CCA) Rules 1965. Article of charges mentioned there are vagues and not correct.	6 Page No21	Para 4.5
9.	22/8/1988	Applicant submitted reply to the above charge sheet dated 9/8/1988 denying the charges leveled against him to the Director, ICAR Research Complex for NEH Region, Shillong vide his reply dated 22/8/1988.		Para 4.5
10	6/12/1988	Case of the applicant was reviewed and rate of subsistence allowance was enhanced from 50% to 75% w.e.f. 12/8/1988. Subsequently periodical review as required under the rules was not done afterwards which is illegal and against the existing Rules.	7 Page No23	Para 4.6 & 4.8.
11	1988-2003	Applicant requested the authority concern verbally and submitted several applications to revoke the order of suspension against him. But inaction of authority concern ultimately led the applicant to suffer in these years for no fault of him.		Para 4.10
12	1/5/1996	Hon'ble Apex Court in WP (C) No.1128/1986 issued guidelines for disposing criminal cases pending for long time in criminal courts throughout India.	8 Page No 24	Para 4.11
13	20/11/2003	Following the above judgment Deputy Commissioner, West Garo Hills District, Meghalaya disposed of the criminal case against the applicant (i.e. G.R. case No. 145/88, State - v- Prafulla Sarma) as per the guidelines issued by the Hon'ble Supreme Court in WP(C) No.1128/1986. It is stated here that in the above case neither the complainant nor the	9 Page No29	Para. 4.11
Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय 24 AUG 2009 Guwahati Bench गुवाहाटी न्यायपोर्ट				

		witnesses mentioned there turned out to give evidence against the applicant inspite of repeated summons issued by the Hon'ble Court.		
14	April 2004	Applicant submitted a copy of the above judgment to the Director ICAR, ICAR Research Complex for NEH Region, Shillong.		Para. 4.12
15	12/10/04	Applicant submitted reminder to the Director ICAR, Shillong reminding him about his case.	10 Page no31	Para 4.13
16	11/2/08	Applicant submitted another representation to the Director ICAR, Shillong reminding him about the in action of the department regarding his suspension.	11 Page no33	Para 4.13
17	22/3/2008	Vide letter dated 22/3/2008 issued by Sr. Administrative Officer, ICAR addressed to the Programme-Coordinator, Programme Coordinator was asked to furnish a copy of the judgment dated 20/11/2003 passed by D.C., West Garo Hills disposing the G R Case No. 145/1988 (State v. Prafulla Sarma)	12 Page No34	Para 4.14
18	10.11.2008	Applicant served pleaders notice to the Director, ICAR asking put back the applicant in duty and stating problems faced by him.	13 Page No35	Para 4.16
19	5/12/2008	Vide letter dated 5/12/2008 Administrative Officer ICAR, Shillong asked the Programme Coordinator, KVK Tura to produced copy of the judgment of the Hon'ble Supreme Court in WP (C) No. 1128/1986. In this letter it was observed that "This may be treated as a matter of top priority, as it may lead to civil jurisprudence case in future"	14 Page No37	Para 4.17
18	3/4/2009	Applicant served another pleaders notice to the Director asking the respondents to allow him to join duty immediately.	15 Page No38	Para 4.18

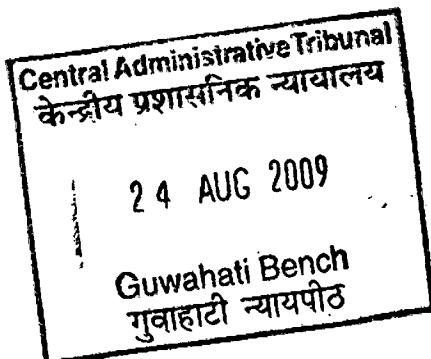


Filed by

 S.N. Tamuli
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

(An application under Section 19 of The A.T.Act,1985)



O.A. NO. 167/2009

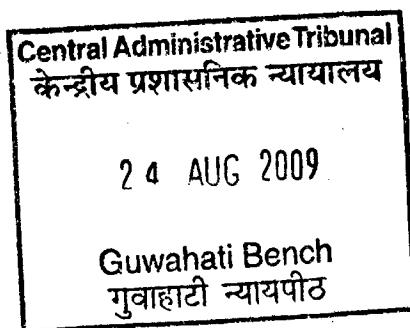
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Sri Prafulla Sarma
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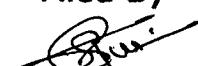
U.O.I. & Ors.

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SL NO.	Particulars	Page No	Ann exu re
1.	Original Application		
2.	Verification		
3.	Appointment letter dated issued by the Director ICAR, ICAR Research Complex for NEH Region	16	1
4.	Letter of appreciation issued by Farm Manager, ICAR Research Complex for NEH Region, Nagaland Centre	17	2
5.	Order No. RC(E) 8/88 dated 12/5/1988 issued by the Director ICAR, ICAR Research Complex for NEH Region, Shillong, suspending the applicant.	18	3
6.	Office order dated 4/6/1988 issued from the office of the Director ICAR, Shillong granting subsistence allowance to the applicant @ 50%	19	4
7.	Non employment certificate produce by the applicant dated 30/7/1988	20	5
8.	Memorandum of charges issued by the Director, ICAR, Shillong proposing to take against the applicant dated 9/8/1998.	21	6
9.	Order dated 6/12/1988 enhancing the subsistence allowance of the applicant from 50% to 75%	23	7

10.	Copies of the Judgment in WP (C) No. 1128/1986 as reported in 1996 (4) SCC 33.	24	8
11.	Copy of the order dated 20/11/2003 passed by the Deputy Commissioner, West Garo Hills District, Meghalaya disposing GR case No. 145/88 (State - v- Prafulla Sarma as per the guidelines in WP (C) No.1128/1986 along with day to day order sheet and Type copy of the same.	29	9
12	Copy of the reminder submitted by the applicant to the Director ICAR, Shillong dated 12/10/04.	31	10
13	Copy of the representation submitted by the applicant to the Director ICAR, Shillong dated 11/2/08.	33	11
14.	Copy of the letter dated 22/3/08 written by Sr. Administrative Officer ICAR, Research Complex for NEH Region to the Programme Coordinator KVK Tura.	34	12
15.	Copy of the notice submitted by the Applicant's Advocate dated 10/11/08 to the	35	13
16.	Copy of the letter dated 5/12/08 written by Administrative Officer, ICAR, Research Complex for NEH Region Shillong to Programme Coordinator KVK Tura.	37	14
17.	Copy of the pleaders notice dated 3/4/09 addressed to the Director, ICAR Shillong.	38	15



Filed By

 S.N.Tamuli
 Advocate

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI**

**(An application under Section 19 of the Administrative Tribunals Act,
1985)**

O.A. No. 167 /2009

Shri Prafulla Chandra Sarma
Field man (T-2) (now under
suspension)

Indian Council for Agricultural
Research, Krishi Vigyan Kendra
Tura
Sangsanggiri
Dobasi Para
West Garo Hills
Meghalaya, Pin- 794005.

A permanent resident of
Vill. Sarbaibandha
P.O. Jorhat
Dist. Jorhat
Assam, Pin 785001.

.....Applicant

-VERSUS-

(1) Union of India
Represented by The Secretary
Ministry of Agriculture
Krishi Bhawan
New Delhi
Pin- 110001

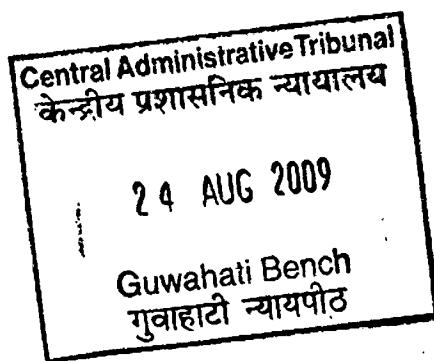
P.C. Senanayake

(2) The Director

Indian Council of Agricultural
Research (ICAR)
ICAR Research Complex for
N.E.H. Region
Umroi Road, Umiam,
Meghalaya, Pin- 793103.

(3) The Programme Coordinator

Krishi Vigyan Kendra (ICAR)
Sangsanggiri
West Garo Hills
Tura, Meghalaya
Pin- 794005.



Respondents

DETAILS OF THE APPLICATION :

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

This application is made against continuing and prolonged suspension by order dated 12/5/1988 (order No RC (E) 8/88) issued by the director Indian Council for Agricultural Research, ICAR Research Complex for N.E.H. Region, Shillong which is still in force.

2. **JURISDICTION OF THE TRIBUNAL :**

The Applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal.

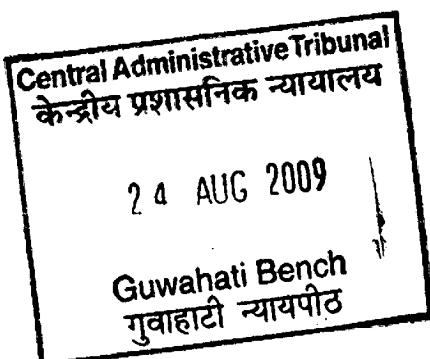
3. **LIMITATION:**

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

P.C. Deonish,

4. FACT OF THE CASE :

4.1 That the applicant was appointed temporarily as Field man in the scale of Rs.200-8-300-EB-8-340-10-380-EB-10-430/- P.M. (Gr. C. post) in Indian Council for Agricultural Research (herein after called ICAR in short) under ICAR Research Complex for N.E.H. Region , Nagaland Centre, Yisemyong vide memo No. RC(P) 40/78/9, dated 9/8/1978 issued from the office of the Director, ICAR,ICAR Research Complex for N.E.H. Region, Shillong. The appointment was initially for a period of two years. Applicant joined ICAR, Nagaland Centre on 15/7/1978. Subsequently his service was regularized. Applicant served in various field Research programmes in different stations of ICAR and his works were highly appreciated by the authorities, while he was working under ICAR, Nagaland Centre, Jharnapani Farm Manager, ICAR there issued certificate dated 18/7/1985 had been issued highly appreciating the works and capabilities of the applicant.



Copies of the appointment letter dated 9/8/78 and certificate dated 18/7/1985 are enclosed as **Annexure 1 and 2** respectively.

4.2 That in the year 1988 Director of ICAR , ICAR research complex for NEH Region lodged a complaint against the applicant before police. Applicant immediately surrendered before police and was arrested and released on personal bond on the same day. A case was registered against the applicant which was subsequently numbered as G.R. Case No. 145/1988 (State v. Prafulla Sarma). It is stated that allegations brought out in the aforesaid complaint are totally baseless and false. Then Director of ICAR lodged the complaint on a concocted story and out of personal enmity with the applicant. Complaint against the applicant was that applicant on 9/5/88 while working as Feldman (T-2) attached to Krishi Vigyan Kendra, herein after called KVK in short, Tura assaulted Dr. R.N. Prasad then Director, ICAR Research Complex for NEH Region- Shillong, and Dr. K.P. Singh, Training Associate (T.S) in the office room of the Scientist -In-Charge now called Programme Coordinator, K.V.K, Tura in presence of some other officials . Applicant humbly submits that the

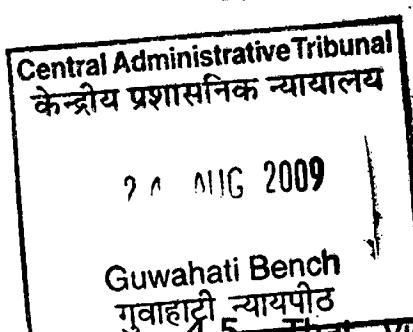
P.C. Sarma

then Director R.N. Prasad lodged the above complaint to the police only to harass the applicant due to his personal enmity with the applicant by misusing his official capacity. He also forced other staff subordinate to him to give evidence against the applicant by taking advantage/misusing of his official position.

4.3 That vide order dated 12/5/1988 order No. RC (E) 8/88 issued by the Director ICAR, ICAR Research for N.E.H Region, Shillong put applicant under suspension, in exercise of the powers conferred by Sub Rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 [herein after called as CCS (CCA) Rules- 1965].. It is further stated that in the aforesaid order it was stated that applicant's H.O. during the period of suspension will be at Jenjal under K.V.K. Tura. It was further directed that applicant should not leave his H.Q. during this period. A copy of the order was supplied to the applicant. It is worthwhile to mention here that above suspension order was also signed by the Director ICAR Research Complex for NEH Region, Shillong.

A copy of the order dated 12/5/1988 is enclosed as **Annexure- 3.**

4.4 That vide office order No. R.C (E) 8/88 dated 4/6/1988 issued from the office of the ICAR Research Complex, Shillong subsistence allowance was granted to the applicant @ of an amount equal to leave salary on half pay, along with appropriate D.A. and compensatory allowance etc. during suspension subject to production of necessary certificate of non employment by him until further orders. Applicant produced non employment certificate dated 30/7/88 to the Scientist-In-Charge Krishi Vigyan Kendra, Sangsanggiri, Tura.



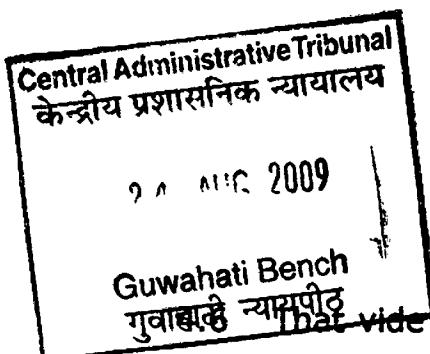
Copies of order dated 4/6/1988 and 30/7/1988 are enclosed as **Annexure 4 and 5** respectively.

4.5 That vide memorandum No. RC (E) 8/88 dated 9/8/1988 a memorandum of charges was issued against the applicant by the Director ICAR Research Complex for NEH Region, Shillong proposing to take action under Rule 16 of CCS (CCA) Rules 1965. A statement of misconduct and

P.C. Sankar

misbehavior on which action is proposed to be taken as mentioned in the memorandum was also enclosed. By the same memorandum dated 9/8/1988 applicant was asked to submit his defence/representation within 10 days. Article of charges, Charge No.7 says that applicant assaulted Dr. R.N. Prasad, Director ICAR Research Complex for NEH Region, Shillong and Dr. K.P. Singh, Training Associate (T-6) on 9/5/1988 in the office room of the Scientist-In-Charge, K.V.K, Tura in presence of Dr. Arun Verma, Scientist (S-3) (A.N.), Shri Viswa Kam, Training Associate (T-6) and some local village headmen who were present among other staff of K.V.K. It is stated that this charge was vague and without any basis. Then Director, ICAR Research Complex Dr. R.N. Prasad, who was having personal enmity with the applicant made out a concocted story and issued charge sheet against the applicant in order to harass the applicant. He also lodged FIR to that extent before police. Second and third charges levelled against the applicant are also vague and baseless.

Applicant submitted his representation of defence dated 22/8/88 to the Director, ICAR Research Complex Shillong alleging misuse of power by the then Director. Applicant also denied the charges levelled against him. After that applicant is not aware of anything about the departmental proceeding as stated above. Applicant has good reasons to believe that same was dropped/no action was taken on the above charge sheet. During this long period of time applicant misplaced his copy of defence submitted to the authorities.



Copy of the memorandum of charge dated 9/8/1988 is enclosed as **Annexure- 6.**

That vide order dated 6/12/1988 applicants case was reviewed and subsistence allowance was enhanced to 75% of the salary w.e.f. 12/8/1988 until further order.

A copy of the order dated 6/12/1988 is enclosed as **Annexure- 7.**

4.7 That above order of suspension was passed in a perfunctory and casual manner and without proper regard to the guiding principles and

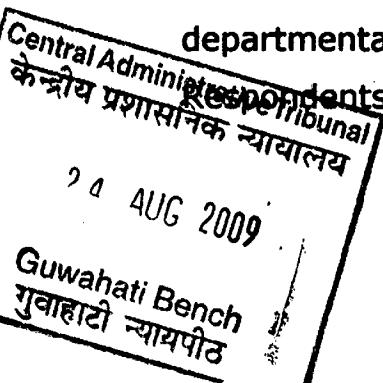
P.C. Singh

was absolutely unnessery. As per the guidelines issued in various office memorandum (herein after called O.M. short) issued by Govt. of India from time to time communicating its decisions states that:

"Even though suspension may not be considered as punishment, it does constitute a very great hardship for a Government servant. In fairness to him, it is essential to ensure that this period is reduced to the barest minimum".

It was also stated that charge sheet should be filed in court of competent jurisdiction in case of prosecution or served on the officer in case of departmental proceeding "within three months as a rule". But Respondents kept the applicant under suspension for more than 20 years in violation of Rules, guidelines and standing orders. There was no reason to believe that applicant's presence in office will vitiate that departmental proceedings initiated against the applicant or there was any chance of hampering or tempering with evidence. Such long delay in finalizing the departmental proceedings (if not finalized/dropped yet) vitiate the proceeding and suspension order passed in pursuance of such a departmental proceeding is bad in law. Moreover though the applicant was put under suspension for more than a year but his case was never reported to the next higher authority by the Disciplinary authority though it was mandatory.

4.8 That periodical review of the above suspension was not done regularly by the competent authority as required under the rules. Initially order was reviewed once or twice and thereafter it was stopped, which is illegal. It is stated that suspension order dated 12/5/1988 was issued as a disciplinary proceeding against the applicant was contemplated and not because a criminal proceeding was against him. As such it is neither a case of deemed suspension nor a case of suspension for criminal case pending in a court of law but respondents deliberately treated the case of the applicant as a case of deemed suspension and treated the case arbitrarily dehors the rules and procedure. This shows how there was violation of rules/standing orders, and non application of mind is explicit in the case of the applicant. Moreover due to long delay in finalising departmental proceeding put applicant under great financial trouble.



Respondents cause unnecessary delay in revoking the suspension order

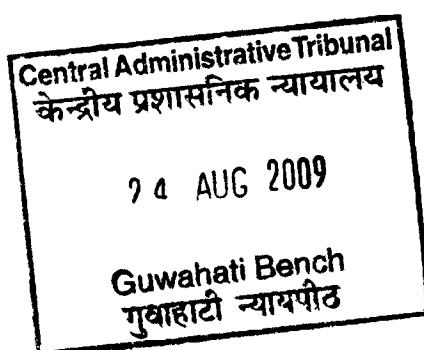
P.C. Saumir

which ultimately affect the applicant adversely both financially and brought a stigma in his social life.

4.9 That after the initial review and grant of 75% subsistence allowance it was not enhanced and applicant is still getting subsistence allowance at the rate of 75%. Applicant is having three school going children and his aged old mother is staying with him. His eldest daughter is now studying in B.A. standard and son passed class XII final examination this year and his youngest daughter is now in class X. Now applicant is finding it very difficult to survive and providing good and proper education to his children and treatment to his age old mother with the above allowance as it was not enhanced for last 20 years. In action of the respondent made applicant to suffer during these years severe financial hardship for no fault of his. But respondents are totally unconcerned about all these. This led to violation of this right to life which includes right to livelihood also, including right to education.

4.10 That applicant submitted several representations both to the Scientist-In-Charge (Now called Programme-Coordinator) and also to the director to revoke his suspension order dated 12/5/1988. Applicant also approached both the offices at Tura and Shillong on several occasions verbally with prayer to allow him to join, but he was informed that he will be allowed to join depending upon the outcome of the criminal case pending before the Sub Divisional Officer, Ampati Sub Division. Applicant humbly states that applicant lost several representation during these years and now not in a position to produce all those representations. It is stated that respondents misconstrued his case as a case of suspension under Rule 10(i)(b) though it was a case of suspension under Rule 10(i)(a). This shows non application of mind and how casually the case of the applicant was dealt with by the respondents. Malice in fact and in law is explicit in this case.

4.11 That GR Case No 145/88 (State-v-Prafulla Sarma) pending in the court of SDO(C) Ampati Sub Division, Tura, West Garo Hills District Meghalaya for more than 10 years and was disposed of by order dated 20/11/03 with the following order:

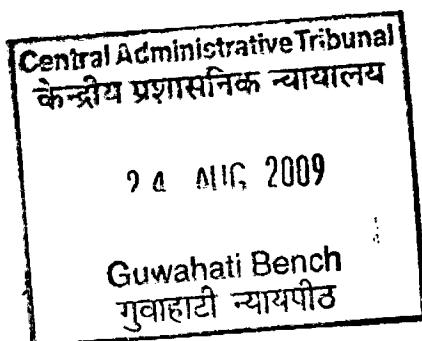


P. C. Sarma.

28

" Case disposed of on the basis of the directions given by the Hon'ble Supreme Court in Writ Petition (Civil) 1128 of 1986."

It is stated that in WP (C) No.1128/86 "Common Cause" a Registered Society -v- UOI & ORS, reported in (1996) 4 SCC 33 . Hon'ble Apex Court issued guidelines and direction for disposal of the cases relating to various types of offences pending in criminal Courts for long periods through out India. It is stated that in the case of the applicant there was long delay of 12 years and inspite of repeated summons issued by the court neither complainant nor any evidence named there turned out to give evidence though applicant was regularly attending the court. Ultimately Deputy Commissioner, West Garo Hills disposed the case of the applicant as per the guidelines issued in the above WP (C) 1128/1986 as stated above:



Copies of the Judgment WP (C) 1128/1986 as reported in 1996 (\$) SCC33 and copy of the order passed by the D.C. Tura disposing the case of the applicant are enclosed as **Annexure- 8 to 9** respectively

4.12 That applicant immediately submitted a copy of the order dated 20/11/03 to the Director ICAR, ICAR research complex for NEH Region, Shillong with a prayer that he may be allowed to join duty with immediate effect. It is stated that during the period of his suspension applicant requested the authority concerned time and again both verbally and through written representations to allow him to join duty but he was informed by the authority concerned that he would be allowed to join duty only after seeing the result of the GR case No. 145/88 (State -vs- Prafulla Sarma) pending before the SDO (C), Ampati Sub Division, Tura as stated above. But after the above order as mentioned in the above para, the authority took no note of the order passed by the Deputy Commissioner, West Garo Hills District, Meghalaya in the above case disposing it as explained above. It is on record of the day to day proceeding of the above case that counsel for the Complainants submitted that complainants did not show any interest in the case. Applicant humbly state that this was because of the fact that entire case

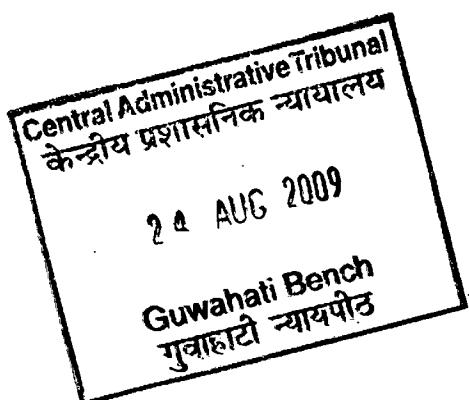
P.C. Saikia

was based on a concocted story of the then Director Sri R.N. Prasad and so called witnesses (PWs) refuse to give evidence as they were forced by the then Director Sri R.N. Prasad to become witness by misusing his official powers. It is also on record that inspite of repeated summons issued by the Hon'ble Court and though large number of witness present in Tura they did not turnout to give evidence against the applicant. Even the Director, Shri R.N. Prasad, Complainant in the criminal case against the applicant did not turnout to give evidence as because of the fact that above case was based on a concocted story and abusing the official power in order to harass the applicant. However after the judgment applicant does not have anything to say on the above judgment as it has attained finality.

4.13 That applicant submitted several representations after that but respondent authorities did not respond to that. On 12/10/04 applicant submitted a reminder to the Director ICAR, ICAR Research Complex for NEH Region, Shillong requesting him to decide the case of the applicant. Subsequently he submitted several representations. Again on 11/2/08 he submitted another representation to the Director ICAR, ICAR Research Complex for NEH Region, Shillong requesting him to give a reply to his representations.

Copies of the reminder and representation dated 12/10/04 & 11/2/08 are enclosed as **Annexure 10 & 11** respectively.

4.14 That vide letter dated 22/3/08 issued by Senior Administrative Officer ICAR Research Complex for NEF Region to the Programme-Coordinator earlier called Scientist-In-Charge Krishi Vigyan Kendra (ICAR), Sangsanggiri, West Garo Hills, Tura, Meghalaya, (with a copy to the applicant) was asked to submit a copy of the final order issued by the Deputy Commissioner, West Garo Hills District- Tura in respect of the applicant and was asked to submit report whether the applicant have been acquitted and submit report.

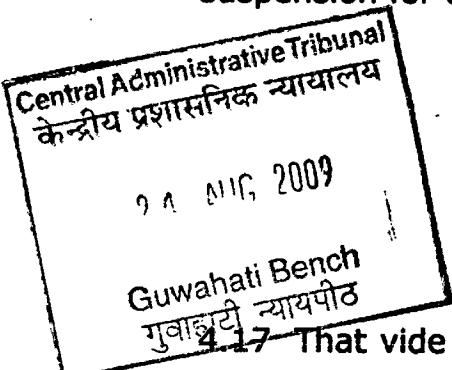


A copy of the letter dated 22/03/08 is enclosed as **Annexure 12**.

P.C. Sarmah.

4.15 That it is stated that applicant repeatedly visited the office and repeatedly requested the authority concern to allow him to join duty. But he was not allowed to join duty in most arbitrary and illegal manner. Applicant humbly states that entire episode of the complaint before the police and initiation of the departmental proceeding and subsequent inaction of the department/Respondents inspite of repeated request demonstrate the malicious on the part of the department/ respondents. Non completion of departmental proceeding in more than 20 years clearly demonstrates the malice intention against the applicant. Entire episode demonstrates inaction on the part of the respondents and for this he was victimized. It is a well settled principle that inordinate delay in finalizing the disciplinary proceeding ultimately vitiates the entire proceeding.

4.16 That finding no other alternative applicant served a pleader's notice dated 10/11/08 to the Director, ICAR, ICAR Research Complex for NEH Region. In the aforesaid notice it was clearly stated that applicant submitted several representation for his reinstatement. It was also stated that applicant is suffering from serious financial problem due to such long suspension without any reason. It was also stated that as per the Concise Oxford Dictionary "Disposed off" means "Dismiss" and as such the case No G.R. 145/88 (State -v- Prafulla Sarma) has already been dismissed and as such there is no legal bar against the applicant for service. It was also stated that applicant should be put in service with all back wages. It is stated that as an employee in welfare state, the applicant sincerely want to earn money by working. Subsistence money with no work as in suspension for unnecessary period period is unwarranted.

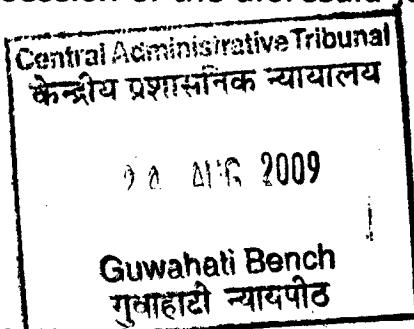


A copy of the notice dated 10/11/08 is enclosed as **Annexure 13.**

4.17 That vide letter dated 5/12/08 issued by the Administrative Officer, ICAR, ICAR Research Complex for NEH Region addressed to the Programme Coordinator, KVK (ICAR), Tura (with a copy to the applicant) Programme Coordinator was asked to pursue with D.C., Tura to obtain a copy of the Judgment given by the Hon'ble Supreme Court in WP (C) No-

P. C. Saha.

1128 of 1986. In the aforesaid letter it was clearly mentioned that "***This may please be treated as matter of top priority, as it may had to civil jurisprudence case in future.***" Applicant is not aware of the action taken on the aforesaid letter but he was not informed of anything thereafter and was not allowed to join also. He was with bonafide belief that Department will allow him to join thereafter though applicant is regularly visiting the office. It is also stated that applicant was also not in possession of the aforesaid judgment of Apex Court at that point of time.



Copy of the letter dated 5/12/08 is enclosed on ***Annexure- 14.***

4.18 That finding no other alternative applicant submitted another notice dated 3/4/09 through his pleader. It was clearly stated in the aforesaid notice that applicant submitted a copy of the aforesaid order dated 20/11/03 to the respondents long back i.e in the month of April 2004. It was stated that applicant is entitled to subsistence allowance @ 90% after 1 year of suspension but it was not given only paid at the rate of 75%. It was also stated that inaction of the respondents to reinstate the applicant even after 20 years of suspension and specially after the fact that case against him was disposed by a court of competent jurisdiction which ultimately attained finality, is arbitrary and illegal. Malice in fact and law is explicit in this case. In action of the respondents caused undue hardship to the applicant.

A copy of the notice dated 3/4/09 is enclosed as ***Annexure- 15.***

5. GROUNDS WITH LEGAL PROVISIONS :

5.1 For that long delay in finalizing disciplinary proceeding the charge sheet dated 9/8/88 became non-est.

5.3 For that suspension order issued in contemplation of the Disciplinary Proceeding against the applicant is bad in law and due to long

P.C. Sengh.

delay had become in fructuous. The order of suspension was issued in perfunctory and casual manner.

5.4 For that suspension order dated 12/5/1988 is bad and against the Government of India's instructions contained in various OMs issued from time to time in this subject.

5.5 For that non review of the suspension order from time to time as per the guidelines of Govt. of India made it bad in law.

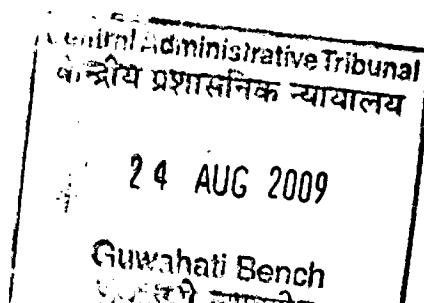
5.5 For that non intimation by the Disciplinary authority about the suspension of the applicant after completion of one year after the suspension was bad. Malice in fact and law is explicit in this case

5.6 For that after the disposal of criminal case pending against the applicant non revocation of the suspension order is bad in law and contrary to the existing policy. In action of the respondents for last more than 4 years demonstrates non application of mind.

5.7 The applicant was not reinstate in service on completion of 1 year of suspension though no charge sheet was filed in the court of law in total violation of the Govt. of India's standing orders.

5.8 For that long suspension and grant of subsistence allowance at the rate of 75% ultimately made the applicant to suffer and led to violation of Article 21 of the Constitution of India as Right to life includes Right to livelihood and Right to Education also.

6. DETAILS OF THE REMEDIES EXHAUSTED:



The applicant declares that he has avail of all the remedies available to him and now this Hon'ble Tribunal is the only remedy left for redressal of his grievances.

P.C. Senik

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

The applicant further declares that he had not previously filed any application, petition regarding the matter in respect of which this application is made, before any Court or any other authority or Court.

8. RELIEF (S) SOUGHT FOR :

Under the circumstances explained above the applicant prays for the following relief (s):

- (8.1) That suspension order dated 12th May, 1988 be set aside and quashed.
- (8.2) That applicant be put back in duty with immediate effect with all consequential monetary benefits.
- (8.3) That his period of suspension should be treated as on duty and all arrear salary and consequential benefits be paid with interest.
- (8.4) That Cost of the case.

The above reliefs are sought on the grounds stated in Para 5 above.

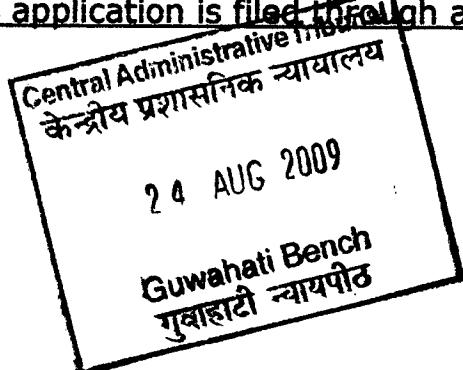
9. INTERIM RELIEF (S) PRAYED FOR :

During the pendency of the case applicant prays for following relief:

- 9.1 That applicant be reinstate in service with immediate effect and be paid arrear salary.

The above reliefs are sought on the grounds stated in Para 5 above.

10. This application is filed through an advocate :



P. C. Saikia

11. Particulars of the IPO :

- (i) IPO No : 39G 418609 11
- (ii) Date of Issue : 13/08/09.
- (iii) Issued from : GPO Guwahati
- (iv) Payable of : GPO Guwahati.

12. List of enclosures : As per the index.

P.C. Senth,

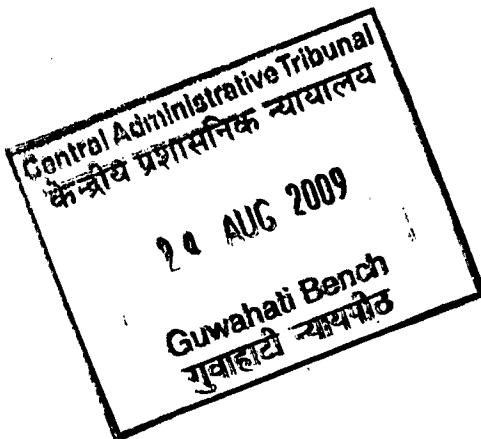
VERIFICATION

I, Shri Prafulla Chandra Sarma, S/o^{husband}.....^{Naresh}.....^{Sarma}....., aged about 55.. years, resident of Village Sarbaibandha, P.O. Jorhat Sadar, P.S. Jorhat, Dist: Jorhat, Assam, Pin. 785001 that I am the applicant in this O.A. and as such I am well acquainted with the facts and circumstances of the instant case. I do hereby verify that the statements made in Para 1, 4, 6 to 12 are true to my knowledge, and those made in Para 2, 3 & 5 are true to my knowledge as per the legal advice and I have not suppressed any material facts.

And I sign this verification on this 21... th day of August, 2009 at Guwahati.

Place : Guwahati

Date:...21/8/09



P.C. Sarma

Signature

ANNEXURE 1

1

INDIA COUNCIL OF AGRICULTURAL RESEARCH
ICAR Research Complex for N.E.H. Region
"Cedar Lodge", Jowai Road, Shillong -3.

No. RC(P) 40/78/9

Dated Shillong, the 9 August, '78.

Shri-Prafulla Chandra Sarmah is appointed temporarily, to the post of Fieldman in the scale of pay Rs.200-8-300-EB-8-340-10-380-EB-10-430/-p.m. plus usual allowances as admissible in ICAR under the ICAR Research Complex for N.E.H. Region, Nagaland Centre, Yisemong on the terms and conditions contained in this Complex Memo No. RC(E) 19/75-Vol.II, dated 6.7.78 with his headquarters at Yisemong with effect from 15.7.78(F.N.).

Shri Sarmah will draw pay at the initial stage of Rs.200/-p.m. in the above time scale with effect from 15.7.78(F.N.)

The appointment is initially for a period of two years in the first instance.

Central Administrative Tribunal
সেন্ট্রাল অডিনিমিট্রেটিভ ট্রায়াল

21 AUG 2009

Sd/- D. A. Borthakur
Director.

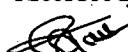
Guwahati Bench

সেন্ট্রাল অডিনিমিট্রেটিভ ট্রায়াল
Shillong, the 9th August, '78.

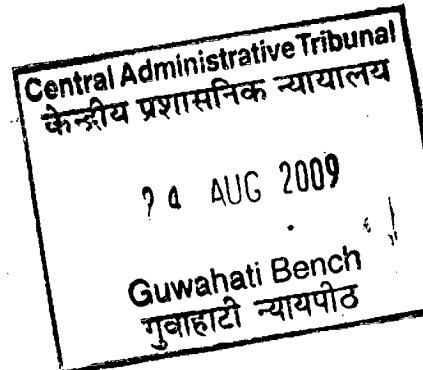
Copy forwarded to :-

- 1) Accounts Officer, ICAR Research Complex for N.E.H. Region, Shillong, together with a copy of joining report and certificate in regard to Shri Sarmah.
- 2) Joint Director, Nagaland Centre, ICAR Research Complex for N.E.H. Region, Chisam, Kohima, Nagaland, 796127, dated 15.7.78, refer.

Attested



Advocate



Gram : AGRICOMPLEX
Phone :
Telex :

भारतीय कृषि अनुसन्धान परिषद उत्तर पूर्वीय पर्वतीय कृषि अनुसन्धान केन्द्र, शिलंग
ICAR RESEARCH COMPLEX FOR N. E. H. REGION, ~~SHILLONG~~
NAGALAND CENTRE : JHARNAPANI

Dated : Jharnapani,
The 18th August, '85.

TO WHOM IT MAY CONCERN

This is to certify that Shri Prafulla Chandra Sharma presently working as Fieldman in ICAR Research Farm, Jharnapani is known to me from his joining on in this station. He has directly worked with me. He is very young energetic, laborious and honest worker. He has assisted me with his keen interest for various developmental programmes of the Research Farm including horticulture discipline. He has also taken keen interest by assisting in farm management including labour management works during this period. He has contributed significantly for the growth of farm specially in horticulture section.

In spite of tremendous limitation to this farm, he has exhibited enough enthusiasm, courage and aptitude in the works assigned to me and for solving various problems of farm during this period.

I have no hesitation to speak for him anywhere for his work. He has also developed sufficient experience in different supervising and managerial works like supervision of casual labours and maintenance of orchard and farm etc.

He is very industrious and trustworthy. I wish him all success in future endeavours.

R. N. Dwivedi
(R. N. DWIVEDI)
FARM MANAGER
Farm Manager
Research Complex for NEH Region
Nagaland Centre
JHARNAPANI
NAGALAND - 797106

3M/-
22.1

Ambedkar

Advocate

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR Research Complex for N.E.H. Region
Cedar Lodge, Jowai Road, Shillong-793003

No. RC(E)8/88

Dated Shillong, the 12th May, 1988

O R D E R

Whereas a disciplinary proceeding against Shri Prafulla Chandra Sarmah, Fieldman (I-2), ICAR Research Complex for NEH Region, K.V.K., Tura is contemplated.

Now, therefore, the undersigned in exercise of the powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, control and appeal) rules, 1965 hereby place the said Shri Prafulla Chandra Sarmah under suspension with immediate effect.

It is, further, ordered that during the period that this order shall remain in force the H.Q. of Shri Prafulla Chandra Sarmah should be Jenjal under K.V.K., Tura, West Garo Hills and the said Shri Sarmah shall not leave the H.Q. without obtaining previous permission of the undersigned.

R.P.
(R. N. Prasad)
Director

Shri P. C. Sarmah,
Fieldman, ICAR Research Complex,
K.V.K. Tura. Orders regarding subsistence allowance
admissible to him during the period of his suspension will
be issued separately.

Copy to :-

Regd. A/D

1. Scientists I/c, ICAR Research Complex, K.V.K., Tura. The enclosed order may please be handed over to Shri P. C. Sarmah and a receipt obtained and forwarded to this office.
2. Accounts Officer, ICAR Research Complex for NEH Region, Shillong.
3. Copy for personal file of Shri P.C. Sarmah.

6/5
we may handover
new letter to Sir
Prof. Sarmah
to inform the acknowledgement
receipt
20/5/88

Attested
Signature
Advocate

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR Research Complex for N.E.H. Region
Cedar Lodge, Jowai Road, Shillong-793003

No. RC(E)8/88

Dated Shillong, the 4th June, '88

O R D E R

In pursuance of this office order No. RC(E)8/88 dated 12.5.88, the Director is pleased to grant subsistence allowance to Shri Prafulla Chandra Sarmah, Fieldman (T-2), K.V.K., Tura @ an amount equal to leave salary on half pay, alongwith appropriate D.A. and compensatory allowance etc. during the period of suspension subject to production of necessary certificates of non-employment by him, until further orders.

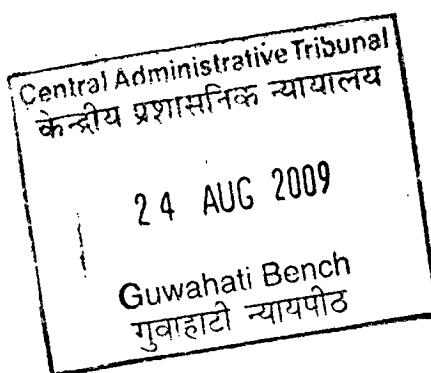
S. Saha

(S. Saha)
Administrative Officer

Copy to :

- ✓ 1. Shri P. C. Sarmah, Fieldman (T-2), K.V.K., Tura.
- 2. Scientist In-charge, K.V.K., Tura.
- 3. Accounts Officer, ICAR Research Complex for NEH Region, Shillong.
- 4. Personal file.

*Pcs
W-13
13/6/88*



ICAR KVK TURA
Dim. No. 183
Do. 13/6/88

Attested
[Signature]
Advocate

To:

The Scientist In-charge,
Krishti Vigyan Kendra,
Sangnabari,
Tens - 794 005.

Sub: Undertaking of Non-Employee.

Sir,

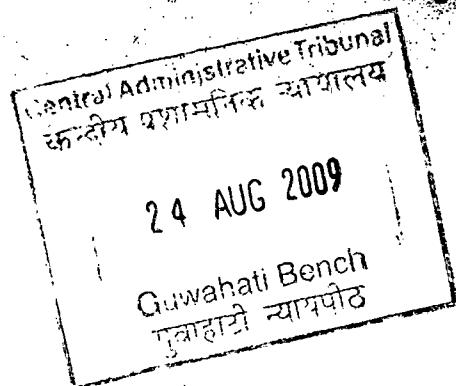
I have to inform you that, I have not been employed in any Govt. or private Agencies during the period of June & July, 1988 and staying at Jengjam during the period June & July, 1988.

Yours faithfully,

R.C.S.R.

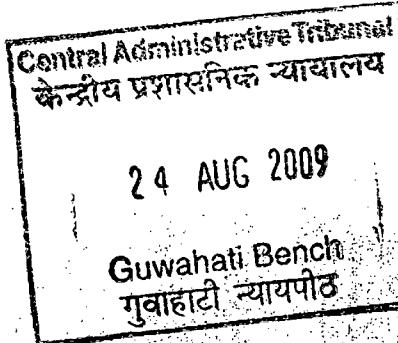
(P.C. Sharma)
T-2 (F) Isidman
O.R.P., Jangjor

Dated: 30.7.88



Attested

Advocate



INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR Research Complex for N.E.H. Region
Cedar Lodge, Jowai Road, Shillong-793003

No. RC(E) 8/88

Dated Shillong, the 9th Aug. '88.

MEMORANDUM

Shri Prafulla Chandra Sarmah, Fieldman (T-2) is hereby informed that it is proposed to take action against him under Rule 16 of CCS(ICA) Rules, 1965. A statement of the imputations of mis-conduct or mis-behaviour on which action is proposed to be taken as mentioned above is enclosed.

2. Shri P. C. Sarmah is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri P. C. Sarmah fails to submit his representation within 10 days of the receipt of this memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri P. C. Sarmah ex-parte.

4. The receipt of this memorandum should be acknowledged by Shri P. C. Sarmah.

(R. N. Prasad)
Director

Shri P. C. Sarmah,
Fieldman (T-2) under suspension,
ICAR Research Complex for NEH Region,
K.V.K., Tura.

Attested
Signature
Advocate

24 AUG 2009

ANNEXURE

Guwahati Bench
गुवाहाटी न्यायपोठ

Statement of imputations of mis-conduct on which action is proposed to be taken against Shri P. C. Sarmah, Fieldman (T-2), K.V.K., Tura.

Article of charge No. 1

Shri P. C. Sarmah, while serving as Fieldman (T-2) attached to K.V.K., Tura violated Rule 3 of CCS (Conduct) Rules, 1964 by way of assaulting Dr. R. N. Prasad, Director, ICAR Research Complex, Shillong and Dr. K. P. Singh, Training Associate (T-6) on 9.5.88 in the office room of the Scientist In-charge, K.V.K., Tura in presence of Dr. Arun Verma, Scientist S-3 (A.N.), Shri Viswakanth, Training Associate (T-6) and some local village headmen who were also present among other staff of K.V.K.

While doing so, Shri P. C. Sarmah by his act and conduct proved that it is unsafe for the employer to retain him in service.

Article of charge No. 2

By his above act, Shri P. C. Sarmah disturbed peace at the place of his employment as normal official work was completely disturbed because of this riotous behaviour on 9.5.88 in the room of the Scientist In-charge, KVK, Tura.

Shri P. C. Sarmah by his above act has contravened Rule 3 of CCS (Conduct) Rules, 1964.

Article of charge No. 3

Shri P. C. Sarmah's act and conduct on 9.5.88 in the office room of the Scientist In-charge, K.V.K., Tura showed that he was insulting and insubordinate to such a degree as to be incompetent with the continuance of the relations of employer and employee. This kind of mis-conduct of Shri P. C. Sarmah is completely unbecoming of a Council's employee, thereby contravening Rule 3 of the CCS (Conduct) Rules, 1964.

Attested

Advocate

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR RESEARCH COMPLEX FOR N.E.H. REGION
CEDAR LODGE, JOWAI ROAD, SHILLONG - 793003.

REGISTERED.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

24 AUG 2009

No. RC(E) 8/88

Dated Shillong, the 6th December, 1988. Bench

Guwahati न्यायपीठ

O R D E R

Whereas a subsistence allowance of an amount equal to leave salary on half pay was granted to Shri P.C. Sharma, Fieldman(T-2), KVK, Tura, ICAR Research Complex for NEH Region, who is under suspension vide Order No. RC(E) 8/88 dated 12.5.88.

Now, the undersigned in exercise of the powers conferred under FR 53(1) and the Central Civil Services (Classification, Control and Appeal) Rules, 1965 after reviewing the case order that the quantum of the subsistence allowance be increased to 75% of the salary with effect from 12.8.88 until further orders - subject to production of necessary certificates of non-employment by him.

Sd/- R.N. PRASAD,
Director.

Memo No. RC(E) 8/88

Dated Shillong, the 6th December, 1988.

Copy to :-

1. ✓ Shri P.C. Sharma, Fieldman(T-2) (Under Suspension), ICAR Research Complex for NEH Region, K.V.K., Tura, West Garo Hills, Meghalaya.
2. The Scientist In-charge, K.V.K., ICAR Research Complex for NEH Region, Tura, West Garo Hills, Meghalaya.
3. The Accounts Officer, ICAR Research Complex for NEH Region, Shillong.
4. Personal File.

S. Saha

(S. Saha)
Administrative Officer.

PES
mm
16/12

Attested

[Signature]

Advocate

ICAR KVK TURA
Diary No. 865
Date. 16/12/88

u/s

(1996) 4 Supreme Court Cases 33
(BEFORE B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJS.)
"COMMON CAUSE" A REGISTERED
SOCIETY THROUGH ITS DIRECTOR .. Petitioner;
Versus .. Respondents.

g Writ Petition (C) No. 1128 of 1986[†], decided on May 1, 1996

h Constitution of India — Arts. 21 and 32 — Speedy trial — Cases relating to various types of offences pending in criminal courts for long periods — Undertrials languishing in jail for long periods directed to be released on conditions laid down in the order — Guidelines and directions for disposal of other category of cases, whether instituted on police report or private complaint, also issued — These directions shall be valid for all the States and

[†] Under Article 32 of the Constitution of India

Central Administrative Tribunal
केन्द्रीय न्यायालय

24 AUG 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

Attested
[Signature]
Advocate

cases — However, they are not applicable to certain class of cases mentioned in the order — But they should be tried on a priority basis — Courts trying criminal cases directed to take appropriate action without any delay — CrPC, 1973, Ss. 436, 437, 440, 441 and 442

S-M/ATM/16220/CR

Advocates who appeared in this case :

Petitioner in person.

A.N. Jayaram, Additional Solicitor General (Ms Binu Tamta, Ms A. Subhashini, R.K. Mehta, C. Balasubramaniam, K. Ramkumar, Dilip Sinha, J.R. Das, M. Veerappa, Ms Manjula Kulkarni, A. Mariappuham, B. Chahar, Ashok Mathur, I.S. Goyal and Ms Indu Malhotra, Advocates, with him) for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J.—“Common Cause”, a registered society espousing public causes has asked for certain general directions in this writ petition, preferred under Article 32 of the Constitution of India, with respect to cases pending in criminal courts all over the country. The directions asked for are:

(a) quashing of all proceedings against persons accused of offences under the Motor Vehicles Act where the proceedings were initiated more than one year ago and are still pending in any court in the country;

(b) to direct the unconditional release of the accused and dismissal of all proceedings pending in criminal courts with respect to offences under the Indian Penal Code or other penal statutes which have been pending for more than three years from the date of their institution and for which offences the maximum sentence provided under law is not more than six months — with or without fine. This direction is sought in respect of all prosecutions whether lodged by police, other governmental agency or by a private complainant;

(c) directing the unconditional release of all the accused and dismissal of criminal proceedings against persons who have been in police or judicial custody for a period of more than three years from the date of their arrest or remand to such custody, where the offences alleged are not punishable with more than seven years — with or without fine; and

(d) directing the unconditional release of the accused and dismissal of proceedings against persons accused of offences under Section 309 of the Indian Penal Code (IPC) where the proceedings have been pending in any court for more than one year from the date of their institution.

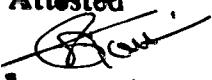
2. The petitioner has requested that the aforesaid directions should apply not only to cases pending in courts on the date of the passing of the order but also to cases executed hereinafter.

3. Notices were directed to the Union of India and the State Governments of Uttar Pradesh and Bihar and to the Delhi Administration. Counters have also been filed by them.

General Administrative Tribunal
कानूनी प्रशासनिक न्यायालय

24 AUG 2009

e Guwahati Bench
गुवाहाटी न्यायपीठ

Attested

 Advocate

a the criminal justice system. They deserve serious consideration by this Court and the High Courts in the country. It is a matter of common experience that in many cases where the persons are accused of minor offences punishable for not more than three years — or even less — with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one b to bail them out or because there is no one to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression. Quite often, the private complainants institute these proceedings out of oblique motives. Even in case of offences punishable for seven years or less — with or without fine — the prosecutions are kept pending for years and years together in criminal courts. In a majority of c these cases, whether instituted by police or private complainants, the accused belong to the poorer sections of the society, who are unable to afford competent legal advice. Instances have also come before courts where the accused, who are in jail, are not brought to the court on every date of hearing and for that reason also the cases undergo several adjournments. It appears d essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution. It is also necessary to ensure that these criminal prosecutions do not operate as engines of oppression. Accordingly, the following directions are made which shall be valid not only for the States of Uttar Pradesh, Bihar and Delhi but for all the States and the Union Territories:

e 1. (a) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding three years with or without fine and if trials for such offences are pending for one year or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Criminal Procedure Code (CrPC).

g (b) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding five years, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 CrPC.

h (c) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

24 AUG 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

Attested

Advocate

for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of one year or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to imposing of suitable conditions, if any, in the light of Section 437 CrPC.

2. (a) Where criminal proceedings are pending regarding traffic offences in any criminal court for more than two years on account of non-serving summons to the accused or for any other reason whatsoever, the court may discharge the accused and close the cases.

(b) Where the cases pending in criminal courts for more than two years under IPC or any other law for the time being in force are compoundable with permission of the court and if in such cases trials have still not commenced, the criminal court shall, after hearing the public prosecutor and other parties represented before it or their advocates, discharge or acquit the accused, as the case may be, and close such cases.

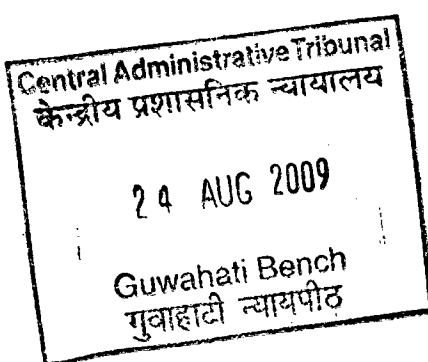
(c) Where the cases pending in criminal courts under IPC or any other law for the time being in force pertain to offences which are non-cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

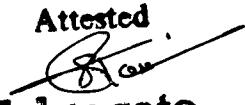
(d) Where the cases pending in criminal courts under IPC or any other law for the time being in force are pending in connection with offences which are punishable with fine only and are not of recurring nature, and if such pendency is for more than one year and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

(e) Where the cases pending in criminal courts under IPC or any other law for the time being in force are punishable with imprisonment up to one year, with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

(f) Where the cases pending in criminal courts under IPC or any other law for the time being in force are punishable with imprisonment up to three years, with or without fine, and if such pendency is for more than two years and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

3. For the purpose of directions contained in clauses (1) and (2) above, the period of pendency of criminal cases shall be calculated from the date the accused are summoned to appear in the court.



Attested

Advocate

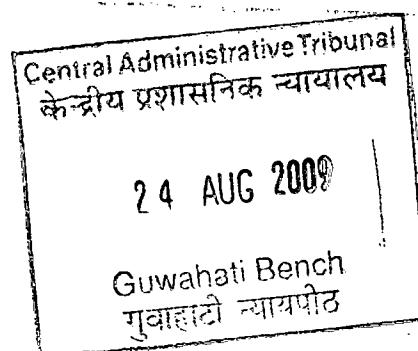
a cheating, whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, (c) Essential Commodities Act, 1955, Food Adulteration Act, Acts dealing with environment or any other economic offences, (d) offences under the Arms Act, 1959, Explosive Substances Act, 1908, Terrorists and Disruptive Activities Act, 1987, (e) offences relating to the Army, Navy and Air Force, (f) offences against public tranquillity, (g) offences relating to public servants, (h) offences relating to coins and government stamp, (i) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice, (k) any other type of offences against the State, (l) offences under the taxing enactments and (m) offences of defamation as defined in Section 499 IPC.

5. The criminal courts shall try the offences mentioned in para (4) above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision.

d 6. The criminal courts and all the courts trying criminal cases shall take appropriate action in accordance with the above directions. These directions are applicable not only to the cases pending on this day but also to cases which may be instituted hereafter. As and when, a particular case gets covered by one or the other direction mentioned in Directions (1) and (2) read with Direction (4) above, appropriate orders shall be passed by the court concerned without any delay.

e 5. The writ petition is disposed of with the above directions.

6. No costs.



Attested

Advocate

TYPE COPY OF THE ORDER DATED 20/11/03

IN THE COURT OF SDO (C) AMPATI SUB-DIVISION

AT TURA COURT, WEST GARO HILLS THE

GR. NO 145/88

STATE

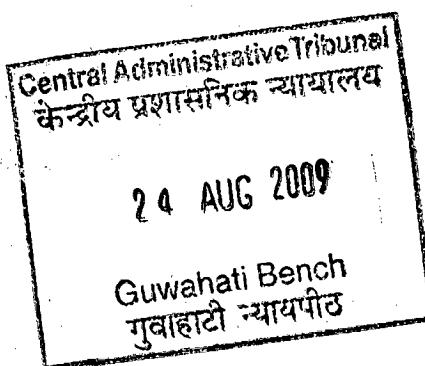
-VS-

SHRI PRAFULLA CH. SHARMA

COPY OF THE FINISH ORDER

DATE:-

20.11/03:- Case disposed off on the basis of the directions given by the Hon'ble Supreme Court in Writ Petition (Civil) 1128 of 1986.



Signed by

Sd/- S. Jagannathan

D.C. Tura

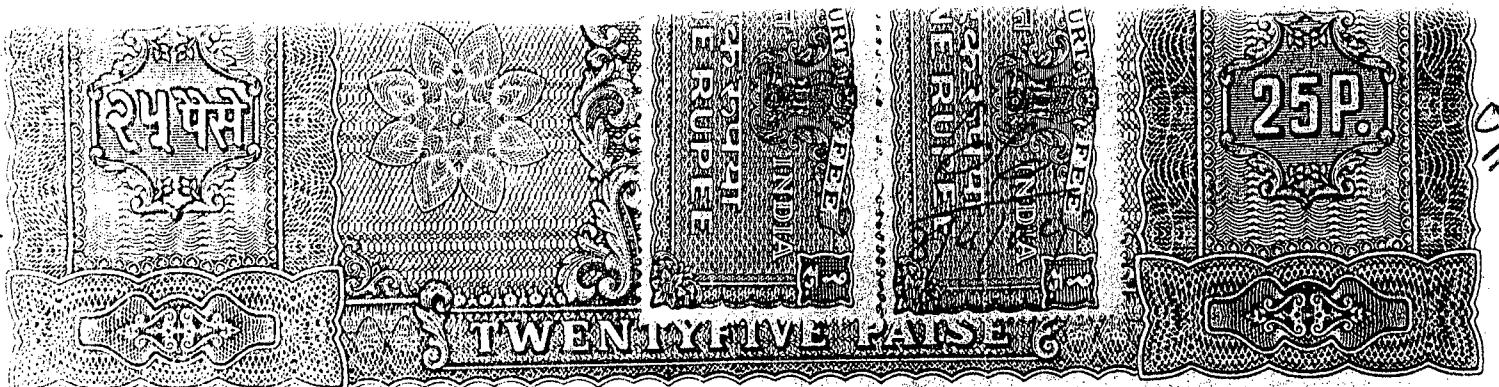
West Garo Hills

Meghalaya

Dt 20/11/03

Attested

Advocate



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	रायपत्र और फोलिओ की अपेक्षित रकम का सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलिओ देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
1. 4. 04	—	—	7. 4. 04	— do —

AT THE COURT OF 590 (C) IMPATI SUB-DIVN.
AT TURA COURT, WEST GARO HILLS TUR
C.R. NO. 145788

STATE

VS -
SHRI PRAFUL HO CH. SHARMA

COPY 01² PINAKA OKOK

1) PTA -
20.11.05 : - Case disposed of on the
basis of the directions given by the hon
Supreme Court in writ petition C Civil
1128 of 1986.

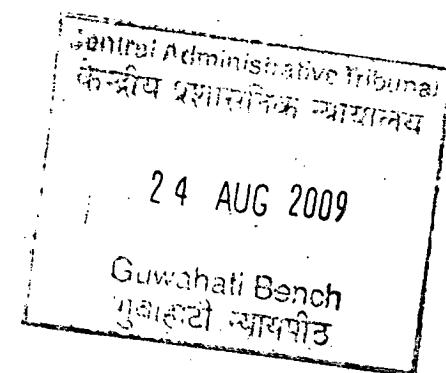
Signed by
S/ S. Jagannathan
D. C. Tuna.

West Garo Hills
Meghalaya
21.10.10/03

Attested
Signature
Date: 20.10.2003
Name: Advocate

To,

The Director,
ICAR for NEB Region
Umiam - Shillong, Meghalaya.



Dated : 12-10-04

Sub.: Remaider on submission of final Report case No. CR 145/03

Sir,

With respectfully I stated that, I submitted my Final Report Case No CR - 145/03 in the month of April 2004, but still I have not get a information from Head Office about my submission. Therefore, I request you for your honorable consideration.

It is for your kind consideration and necessary action.

Yours faithfully,

Copy to:-

P.C. Sen,

- 1) Director, ICAR, Umiam
- 2) Senior Administrative Officer, ICAR, Umiam
- 3) R/C(Administration)
- 4) Personal copy.

P.C. Sen,

Yours faithfully,

(Purna Ch. Sarmah)

Attested

Advocate

ICAR RESEARCH COMPLEX FOR N.E.H. REGION,
KRISHI VIGYAN KENDRA, SANGSANGGIRI, TURA,
WEST GARO HILLS, MEGHALAYA – 794 005.

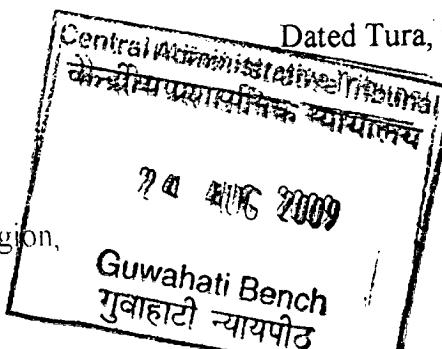
No. KVK/TU/ESTT/37/87/307

Dated Tura, the 10TH December, 2007.

30th January 08

T₀,

The Director,
ICAR Research Complex for NEH Region
Umiam, Umroi Road,
Meghalaya – 793 103.



Sub: - Forwarding of representation dated 04-10-2007 in r/o Shri Purna Chandra Sharma, T-2 (U/S)
KVK (ICAR), Tura.

Sir,

SIR,
I am forwarding herewith a representation dated 04-10-2007, which is self-explanatory received from Shri Profulla Chandra Sharma, T-2 (U/S), KVK, ICAR, Tura for further necessary action at your end.

Encl.: - As stated above.

Yours faithfully,

(A. S. SINGH)
PROGRAMME COORDINATOR
KVK (ICAR), TURA.

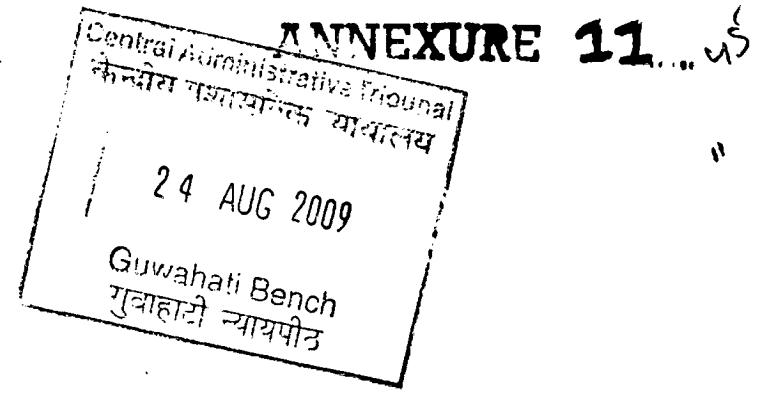
Copy for information to :-

1. Shri Profulla Ch. Sharma, T-2, Fieldman (U/S), KVK, ICAR, Tura.

(A.S. SINGH)
PROGRAMME COORDINATOR
KVK (ICAR), TURA.

Attested

Locate



To
the Director
ICAR Desi Complex for NEH Region

Union Shillong, Meghalaya

Dtd - 11-2-2008

(Through the Internee

ICAR KVK Tura, Tura, Seng Sengjiri)

Sub - No replay from your side against
my Submission.

Sir :

Respectfully I herewith inform you
that, I submitted few letters to you
through the Internee KVK Tura Seng Sengjiri
clarify my final case report (No 145/88)

But is (Case No AR 145 / 88)

But I have not get any replay
from your side. Therefore, I request
you for your honorable advice
with a replay that I move to
High Court or not.

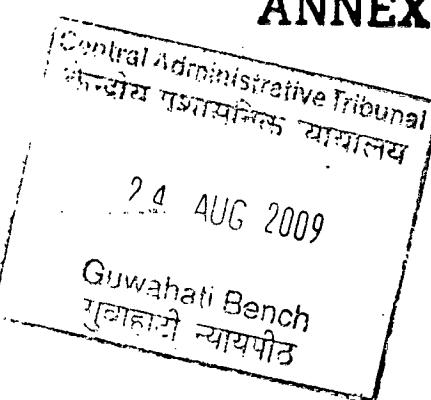
It is for your kind
consideration and necessary action.
Yours faithfully

P.C. Sarmah,

(P.C. Sarmah)
T2 - UXS 11-2-2008

Attested


Advocate



REGISTERED A/D

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR Research Complex for N.E.H. Region
Umroi Road, Umiam-793 103, Meghalaya

No.RC(P) 40/78

Dated Umiam, the 22nd March, 2008.

To

The Programme Coordinator,
Krishi Vigyan Kendra (I.C.A.R.),
Sangsanggiri, West Garo Hills,
Tura, Meghalaya.

Sub: Court Cases (1) State Vs Shri Prafulla Ch. Sharma and (2) State Vs Shri Dharmeswar Rabha - reg.

Ref: i) This office letter No.RC(G)67/ 2004 dated 23.11.2005 (Copy enclosed).
ii) Your letter No.KVK/TU/37/87/307 dated 30.01.08.

Sir,

I am directed to request you kindly to forward duly attested copies of the final order issued by the Deputy Commissioner, West Garo Hills District, Tura in respect of Shri Prafulla Ch. Sharma and Shri Dharmeswar Rabha for our record.

Further, I would like to inform that, you were requested vide this office letter cited under reference to pursue the matter with the Deputy Commissioner, Tura and intimate the position, as to whether Shri Sharma and Shri Rabha have been acquitted. But, nothing has been heard from you in this regard.

You are, therefore, requested again to pursue the matter with the Deputy Commissioner, Tura personally and intimate the position, as to whether aforesaid staff have been acquitted so as to enable this office to initiate further necessary action and process the pension case of Shri Dharmeswar Rabha.

The matter may please be treated as Most Urgent.

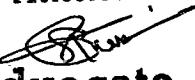
Yours faithfully,


22/3/08
(M.J. Kharmawphlang)

Sr. Administrative Officer

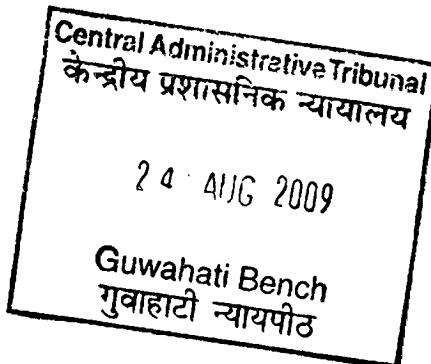
✓ Copy to Shri Prafulla Ch. Sharma, Fieldman T-2 (Under Suspension), Krishi Vigyan Kendra (I.C.A.R), Sangsanggiri, West Garo Hills, Tura, Meghalaya for information with reference to his letter dated 04.10.2007.

Attested


Advocate

Chitren Bhuyan
ADVOCATE

Club Road, Jorhat-785001 (Assam)



2320087 (O)

2311331 (R)

Ref:

Date: 10.11.08

To,
The Director,
Indian Council of Agricultural Research
I.C.A.R Research Complex for N.E.H. Region,
Umroi Road,
Umium-793103 (Meghalaya)

Ref: G.R.Case no. 145/88, State Vs. Sri Prafulla Chandra Sharma.

Sub: Matter of suspension and reinstate

Dear Sir,

under instruction from my client Sri Prafulla Chandra Sharma, son of late Nogen Sharma, Field man T-2 (under suspension), Krishivigyan Kendra (I.C.A.R.), Sangsanggiri, West Garo Hills, Tura, Meghalaya, presently residing at Chakihat (Sarbaibandha), P.O & P.S. Jorhat, Distt: Jorhat, Assam, I do hereby serve this notice and address you as follows:-

1. That, my client said Sri Prafulla Chandra Sharma had been working under you and put under suspension as he has been arrested in connection of the case no. G.R. 145/88 in the year 1988.
2. That, my client said Sri Prafulla Chandra Sharma made various representations before the concerned authorities with a prayer to reinstate him in his service with all the benefits entitled under provisions of law. But the authorities have not honoured his prayer for about last twenty years.
3. That, at present my said client is suffering from serious financial crisis due to his suspension from service for such a longer period that he was actually not defaulted in any way, but quite innocent.
4. That, the prosecution could not produce any evidence on various dates and ultimately the learned SDO (C), Ampati Sub-Division, Tura Court, West Garo Hills (Meghalaya) was pleased to passed the Final Order on 20.11.2003 and thereby the case no. G.R. 145/88 against my client said Sri Prafulla Chandra Sharma was disposed off on the basis of the direction given by the Hon'ble Supreme Court in Writ Petition no. 1128 of 1986.
5. That, as per the Order dtd. 20.11.2003 passed by the learned SDO (C), Ampati Sub-Division, and Tura Court, West Garo Hills (Meghalaya), it proves beyond all reasonable doubts that the cases have finally been disposed off and at present no cases pending against my client said Sri Prafulla Chandra Sharma.

-1-

Contd...

Attested

Chitren Bhuyan
Advocate

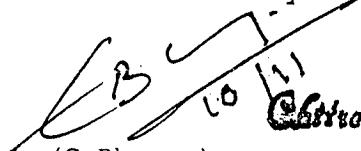
6. That, according to the "Concise Oxford Dictionary" of current English "Dispose Off" means "Dismiss" and as such the case no. G.R. 145/88 has already been dismissed and such there is no legal bar to reinstate my client in the service.

7. That, due to the suspension from service my client has been deprived of his promotions, revised pay scale and allowances, higher scale of pay etc. for a longer period.

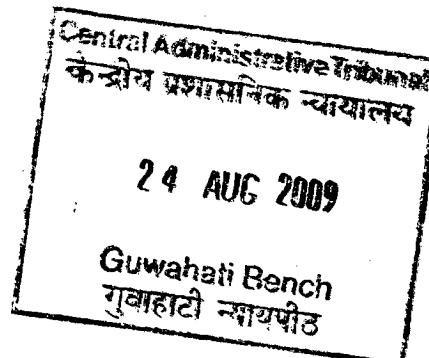
So, I, for and on behalf of my client Sri Prafulla Chandra Sharma, do hereby request you to reinstate my client with all benefits entitled to, as mentioned in Para 7 above with interest on whole the arrear amount, till final payment, within one month from the date of receipt of this notice. Otherwise my client will be compelled to institute a Civil Suit in competent Court of Jurisdiction, and then you will be liable to bear all costs and compensation for the same.

Thanking you,

Your's faithfully


(C. Bhuyan)
Advocate, Jorhat. Jorhat, Assam

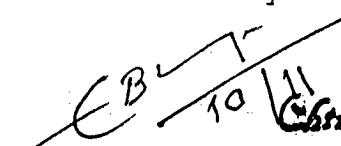
Date:



Copy to: 1. The Senior Administrative Officer,
Indian Council of Agricultural Research
I.C.A.R Research Complex for N.E.H. Region,
Umroi Road,
Umiam-793103 (Meghalaya)

✓ 2. The Deputy Commissioner,
Tura, Garo Hills,
Meghalaya.

Your's faithfully


(C. Bhuyan)
Advocate, Jorhat. Jorhat, Assam

Date: 10-11-2008

Notice/101/08 — Director
102/ — Ad. Officer
103/ — D.C.

Attested

Advocate

REGISTERED A/D
INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR Research Complex for N.E.H. Region
Umroi Road, Umiam-793 103 (Meghalaya)

No.RC(P)40/78

Dated Umiam, the 5th December, 2008.

To,

The Programme Coordinator,
Krishi Vigyan Kendra (I.C.A.R.),
Sangsanggiri, West Garo Hills,
Tura, Meghalaya.

Sub: Court cases No.GR.145/88 & 134/98.

Ref: Your Letter No.KVK/TU/ESTT/37/87/25 dated 22.4.2008.

Sir,

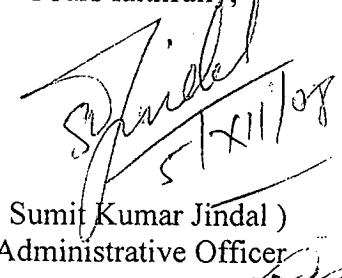
With reference to the above, I would like to inform you that, the Deputy Commissioner, West Garo Hills, Tura, Meghalaya was requested to provide a copy of the directions given by the Hon'ble Supreme Court in Writ Petition (Civil) 1128 of 1986 vide this Office's letter No.RC(G)67/2004 dated 24.10.08 (Copy enclosed) with copy to you for pursuing the matter. But, no communication has so far been received from either side in this regard.

You are, therefore, instructed to kindly pursue the matter at your level expeditiously with the D.C., Tura and settle the matter at your end at the earliest. Action taken report on the matter may please be sent to this Office for record and necessary action.

This may please be treated as a matter of top priority, as it may lead to civil jurisprudence case in future.

This issues with the approval of the Director.

Yours faithfully,


(Sumit Kumar Jindal)
Administrative Officer

Copy to:-

Reed

1. Shri Prafulla Ch. Sarma, Fieldman T-2 (Under Suspension), K.V.K. (I.C.A.R.),
Sangsanggiri, West Garo Hills, Tura, Meghalaya for information.
2. The Deputy Commissioner, West Garo Hills, Tura, Meghalaya for kind information and
with a request to cooperate in expeditious settlement of the case.

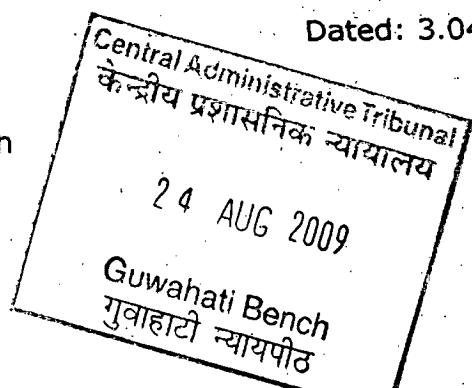
Attested


Advocate

Registered A/D

To
 The Director
 Indian Council of Agricultural Research
 ICAR Research Complex, NEH Region
 Umroi Road, Umiam-793 103
 Meghalaya

Dated: 3.04.2009



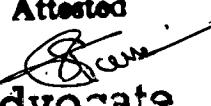
Sub: Legal notice for and on behalf of my client Shri Prafulla Chandra Sarma, Fieldman T-2 (under suspension) KVK (ICAR) Sangsanggiri, West Garo Hills, Tura, Meghalaya.

Sir,

Under instructions and on behalf of my client aforesaid, I serve upon you the following legal notice:

1. That my client was initially appointed as a Filedman vide an order dated 09.08.1978 and was posted at the Nagaland Centre of your esteemed organisation with his head quarter at Yisemyong. Since the date of his appointment, my client has been working dedicatedly and to the full satisfaction of the authorities.
2. That in the year 1988, my client was arrested in connection with G.R. Case No. 145 / 1988 under the jurisdiction of the Court of S.D.O. (C) Ampati, Tura, West Garo Hills. In view of such arrest, my client was put under suspension vide an order dated 12.05.1988.
3. That the aforesaid criminal case was duly attended to by my client and after repeated opportunities the prosecution had failed to produce any witness in its support. Accordingly, the learned Court conducting the trial was pleased to pass an order dated 20.11.2003 disposing of the case in the guidelines of the Hon'ble Supreme Court in Writ Petition (Civil) No. 1128 of

Attested


Advocate

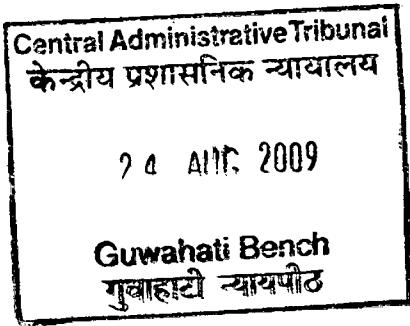
1986. On such disposal, the trial against my client had come to an end and no charges existed against him any further.

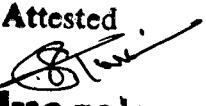
4. That the aforesaid order passed by the learned S.D.O. (Civil) was intimated to your organisation with further prayer to revoke the suspension order of my client and to re-instate him in service. However, till date my client continues to remain under suspension for the last more than 20 years. At the same time, the subsistence allowance entitled to by my client at the admissible rate has not been paid to him. It may be mentioned that on completion of 1 year of suspension, my client is entitled to subsistence allowances @ 90% which has not been given to my client.

5. That it is the established principle in service jurisprudence that a person cannot be indefinitely kept under suspension. However, in the instant case, my client has been kept under suspension for the last more than 20 years. Further, the very basis of putting my client under suspension namely being involved in a criminal case is completely erased on passing of the order dated 20.11.2003 by the learned Court of S.D.O. (Civil) in the said criminal case.

6. That it is also on record that during the tenure of my client as Fieldman, the competent authority had issued a certificate dated 18.07.1985 whereby the services rendered by my client have been greatly appreciated and he has been termed as industrious and trust-worthy.

7. That it is the instruction of my client that the departmental proceeding was not continued. It may also be mentioned that vide a letter dated 2.03.2008, the Senior Administrative Officer had requested the Programme Coordinator to advise on the matter, a copy of which was marked to my client. Thereafter, nothing has been heard by my client. The inaction to reinstate my client in service is absolutely unreasonable, arbitrary and has caused immense hardships and prejudice to my client.



Attested

Advocate

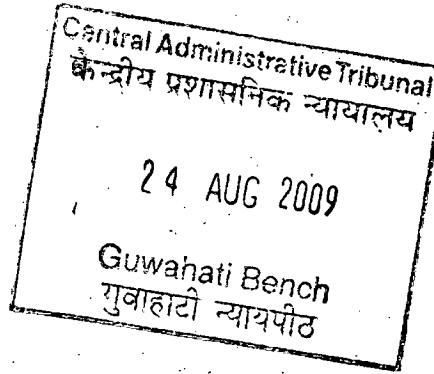
8. Under the aforesaid facts and circumstances I, on behalf of my client hereby demand of you to

- i) immediately reinstate my client in his service as Fieldman T-2 and in any case not later than 15 days from the date of receipt of this notice,
- ii) pay the arrear subsistence allowance @ 90% from completion of 1 year of suspension

failing which my client shall have no other alternative but to approach the appropriate forum of law for redressal of his grievances. It is needless to say that the contemplated legal proceeding would be wholly at your risk and costs.

Yours faithfully,

(S K Medhi)



Attested
B. K. Mehta
Advocate