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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (JUDL.)

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

1. ORIGINAL APPLICATION No : 185 / 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) : Biraja Kanta Sarmas

Respondent (S) : Union of India in ops.

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

Advocate for the : Mr. K. Das
{Respondent (S)} Addl. C.G.S.C.

Notes of the Registry

Date

Order of the Tribunal

This application is in form
is filed (C.F. No. 396-407534)
deposited vide IPO No. 396-407534
No. 396-407534
Dated 13-8-2009

Dy. Registrar

11.09.2009

Heard Mr.H.K.Das, learned counsel
appearing for the Applicant and Mr.Kankan
Das, 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.

Issue notice to the requiring them to file
their written statement by 28.10.2009.

Call this matter on 28.10.2009.

(M.K.Chaturvedi)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

10.9.09

4 (Four) copies of
Application with envelope
received for issue
notices to the Respondents
No 1 to 4. Copy served.

K. Das

18000 notice to
the Respondents.

Received

18-9-09

14/9/09

d

Copies of notices
along with order
dated 11/9/2009
sent to D/Sec.

for issuing to
respondents by
regd. A/D post.

D/No-11433-11436

18/9/09. 22/9/09

8/10/09

Memo. of appearance
filed by Sh Kankan Das,
Addl. CGSC. for Respells.
No. 1 to 4.

8/10/09

① Service report
awaited.

27.10.09

N/S filed on behalf
of the respondents,
Copy served.

1.12.09

Issue notice in
R. No. 4

15/12/09

O.A.185/09

28.10.2009

Mr H.K.Das, learned counsel
appearing for the Applicant states that
applicant is a permanent resident of
Assam and after his retirement he is
staying within the territorial jurisdiction of
this Tribunal. It is further stated that he is
a resident of village & P.O. Bihampur,
District Nalbari, Assam which has not
been disputed by the Respondents.

Let some evidence to this
effect be furnished before the Tribunal.

List on 2.12.2009.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

O.A.136 of 2009

02.12.2009 Rejoinder has been filed. Pleadings
are completed.

List the matter on 08.01.2010.

Madan Kumar Chaturvedi)

(Mukesh Kumar Gupta)

02.12.2009

The learned counsel for the Applicant seeks time to satisfy that the Application is residing within the territorial jurisdiction of this Tribunal.

List the matter on 19.12.2009. (18.12.09)

N/S filed.

17.12.09

Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/ 18.12.2009

Mr H.K.Das, learned counsel for the applicant has produced before us communication dated 10.8.09 ~~received~~ ^{emanated} from Director General, Health Services (Govt. Medical Store Depot) addressed to Senior Pay & Accounts Officer, Calcutta. Copy of the same has been forwarded to the applicant in his home address i.e. village & P.O. Bihampur, Dist. Kamrup, Assam. Thus prima facie applicant is ordinarily resident in district Kamrup, Assam falling within the territorial jurisdiction of this Tribunal is made out. In the circumstances objection raised by the respondents that this Tribunal has no territorial jurisdiction ~~has~~ ^{is} overruled. Copy of the communication dated 10.8.09 as certified by learned counsel for the applicant has ^{been} taken on record.

Since reply has already been filed list for hearing on 4.1.2010.

N/S filed.

31.12.09

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

O.A. No. 185-2009

04.01.2010

On the request of Mr. K.K. Das, learned Addl. CGSC appearing for Respondents, adjourned to 5th January, 2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

05.01.2010

On the prayer of proxy counsel for Respondents case is adjourned to 06.01.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

06.01.2010

Applicant who had retired on 30.06.2009, in this O.A., seeks pension counting his 14 years of satisfactory service rendered as Pharmacist-cum-clerk with effect from 22.12.1971 to 11.12.1985. According to the respondents his appointment on 29.01.2003 (Annexure-7) was a fresh appointment, which makes him ineligible for pension.

Mr K.K. Das, learned Addl. C.G.S.C. for the respondents, after arguing for some time, prays for adjournment to obtain appropriate instructions as to whether 14 years of service ^{could be counted which} would make him eligible for pension and other retiral benefits.

List on 21.01.2010.

A copy of this order be made available to both sides.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

copy received
8-1-2010
copy received
Hag
20/01/10

21.01.2010 Heard Mr H.K. Das, learned Counsel appearing for Applicant and Mr K.K. Das, learned Addl. C.G.S.C. for Respondents. Hearing concluded.

For the reasons recorded separately, this case stands disposed of. There will be no order as to costs.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/PB/

Received copy.
Has,
24.2.10.

2-2-2010

Judgment/ Final order
dated 21-1-2010 Prepared
and sent to the applicant/
all the respondents by post
vide NO - 286 to 290
dated 05.2.2010

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 185 of 2009

Date of Decision: 21 .01.2010

Biraja Kanta Sarma

..... Applicant/s
Mr. H.K. Das

..... Advocates for
the Applicant/s

- Versus -

U.O.I & Ors.

..... Respondents
Mr. Kankan Das, Addl. C.G.S.C.

..... Advocate for the
Respondents



CORAM:

HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J)

HON'BLE SHRI MADAN KUMAR CHATURVEDI, MEMBER (A).

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

Judgment delivered by

 
Member (J) / Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI --BENCH:

Original Application No.185 of 2009

Date of Decision: This, the 21st day of January 2010.

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

HON'BLE MR.MADAN KUMAR CHATURVEDI, MEMBER (A)

Biraja Kanta Sarma
Son of Late Rajani Kanta Sarma
Resident of Village - Bihampur
Nalbari, P.O.- Bihampur
District- Nalbari, Assam.

...Applicant

By Advocate: Mr. H.K. Das

-Versus-

1. The Union of India
Represented by its Secretary
Government of India
Ministry of Health and Family Welfare
New Delhi - 1.
2. The Director General of Health Services
Government Medical Store Depot
Ministry of Health, New Delhi - 1.
3. The Deputy Assistant Director General (M.S.)
Ministry of Health and Family Welfare
Govt. Medical Store Depot
A.K. Azad Road, Gopinath Nagar
Guwahati - 781016.
4. The Deputy Director General (St.)
Directorate of General Health Services
Government Medical Store Depot
9, Clyde Row, Hastings
Kolkata - 700 022.

...Respondents

By Advocate: Mr. Kankan Das, Addl. C.G.S.C.

O R D E R (ORAL)MUKESH KUMAR GUPTA, JUDICIAL MEMBER:

Mr. Kankan Das, learned Addl. CGSC for Respondents has produced a communication received from Government Medical Store Depot, Guwahati dated 19th January, 2010 conveying him that they had passed a clear order of even date 19.01.2010, in compliance of the order dated 06.01.2010 passed in O.A. 185 of 2009, justifying their action that the applicant is not eligible to count his past service and he will not be entitled to any pension, gratuity etc.

2. Factual matrix of the case is that Applicant, was initially appointed as Pharmacist-cum-clerk on 23.12.1971 in the Government Medical Store Depot, Director of Health Services, Guwahati. He became mentally imbalance in the year 1985 and accordingly applied for leave. According to Respondents he had tendered his resignation. On recovering from said illness, he prayed the authority to allow him to continue in service and also made representation dated 01.03.1994 before the respondents. Since that request had not been considered, being aggrieved, he approached this Hon'ble Tribunal by filing O.A. No. 126 of 1994, which was disposed of vide order dated 01.08.1994 directing the respondents to consider the same sympathetically. In compliance thereof, an order dated 16.09.1996 was passed and stated that he was not found fit because he was over aged and thereafter another O.A. No. 216 of 1997 had been preferred which was also disposed of on 06.05.1999 with the following observations & order:

"3. We have heard Mr. M. Chanda, learned counsel for the applicant and Mr. A. Deb Roy, Sr. C.G.S.C. The respondents have not filed any written statement. The records have also

not been produced. Mr. Chanda submits that at no point of time the applicant's services were terminated although he remained absent for a long time. Mr. Deb Roy does not dispute the same in view of the fact that no written statement has been filed and the records are also not available before him. Mr. Chanda also submits that at no time the applicant was informed about his termination from service. As per the order of this Tribunal dated 1.8.1994 passed in O.A. No. 126 of 1994 his case ought to have been considered sympathetically. The impugned Annexure J order dated 16.09.1996 shows that the authority just considered and stated that the applicant could not be appointed because he was overaged and not on any other ground. From the documents available before us it appears that according to the respondents the applicant submitted resignation which was accepted. However, the applicant has totally denied the same. The respondents have not come forward with necessary documents such as the letter of resignation, etc. Be that as it may, the applicant was suffering from mental sickness and this Tribunal by order dated 1.8.1994 passed in O.A. 126/94 directed the respondents to consider his case sympathetically, therefore, in our opinion the age should not be a ground for rejecting his prayer. Mr. Deb Roy also submits that in the fitness of things he may be given a fresh appointment by relaxing the age.

4. In view of the above we dispose of this application by directing the respondents that in the special circumstances the applicant be given an appointment by relaxing the age bar.
5. The application is accordingly, disposed of. No order as to costs."

(emphasis supplied)

3. Said order had been carried before the Hon'ble High Court vide WP (C) No. 6078 of 1999 which had been disposed of vide order dated 11.09.2001(Annexure-4) holding that a sympathetic view was taken under the facts and circumstances by the Tribunal, which directed the respondents to consider the case of the applicant to any suitable post. Ultimately he was appointed vide order dated 10.01.2003 (Annexure- 7) and he was posted as Pharmacist-cum-clerk

✓

(Class-III, Non-Gazetted) purely on temporary basis in the pay scale of Rs. 4500-125-7000 with immediate effect and also contained a clause that: "he will not be eligible for the pensionary benefits." On 02.09.2008, the Respondents issued a retirement notice indicating his date of retirement as 30.06.2009 and also directing him to submit necessary documents for retirement benefits.

4. By present O.A., applicant seeks direction to Respondents to count his past service for the purpose of pension. An order dated 19th March, 2009 (Annexure - 17) had been issued whereby he was required to submit necessary papers and also conveyed that since he has rendered only 6 years 5 months & 3 days service at GMSD Kolkata, which period is less than minimum required qualifying service of 10 years for settlement of pension, as per CCS Pensions Rules, he will not be entitled to any pension except Gratuity. By present O.A., he has also challenged the impugned order dated 19th March, 2009 as well as seeks directions to the respondents to count past 14 years of service for the purpose of seniority, promotion along with all consequential service benefits. But during the course of hearing, learned counsel for applicant has confined his relief only to grant of pension and not to any other benefits. We have noted this aspect in specific.

5. By filing reply, the respondents have observed and reiterated that applicant was allowed a fresh appointment and therefore he is not entitled to count his past service for any purpose including pension.

6. We have heard both sides, perused the pleadings and other materials placed on record.



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7. It is undeniable fact that applicant has rendered more than 14 years service and because of mental illness and he initially applied for certain leave and later appears to have submitted his resignation. No documents have been placed on record to suggest that his alleged resignation, was accepted and given effect to. On the other hand, the order dated 06th May, 1999 in O.A. 216 of 1997, in specific notice stated that though he submitted a representation on 01.03.1994 requesting the Deputy Assistant Director General (M.S.), Ministry of Health and Family Welfare, Medical Store Depot, Guwahati, to allow him to continue but his request had not been accepted and therefore he had filed another O.A. No. 216 of 1997, besides earlier O.A. No. 124 of 1994. Learned counsel for applicant in above backdrop vehemently contended that the action of the Respondents in withholding his pension by rejecting to count his past service towards qualifying service is per se illegal.

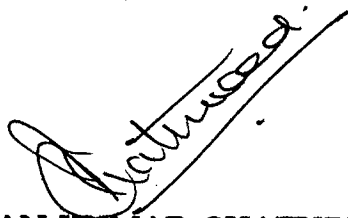
8. We have bestowed our careful & thoughtful consideration to entire conspectus of the case. On the face of present facts, as noticed hereinabove, we are of the view that denial of benefits of counting applicant's satisfactory service of 14 years for the limited purpose of pension has caused serious prejudice to him. The respondents have not paid attention to this aspect of the matter. We note that Rule 88 of the CCS (Pension) Rules 1972 contains a provision and confers power to relax operation of said rules which causes under hardship in "any particular case" for reasons to be recorded in writing.

In our considered view, present case is one such case where such relaxation of said rules would be justified as operation of

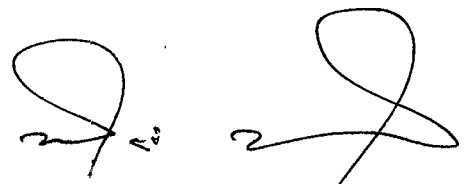


said rules prejudiced the applicant seriously. Accordingly the Respondents are directed to consider the exercise of said power keeping in view the para-meters under Rule 88 of CCS (Pension) Rules 1972 by passing a reasoned and speaking order within a period of three months only for the purpose of enabling the applicant to acquire "pension" and not other benefits.

O.A. is accordingly disposed of. No costs.



(MADAN KUMAR CHATURVEDI)
Member (A)



(MUKESH KUMAR GUPTA)
Member (J)

/PB/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

O.A. No. 185 of 2009

Biraja Kanta Sarma ...APPLICANT

- Vs -

Union of India & Ors. ...RESPONDENTS

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Received copy
Mineral in New
order case -
17/9/09 10.

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Filed by

Hridip Kr. Das.
10.9.09.

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

OA No. 185 of 2009

Biraja Kanta Sarma - Vs - Union of India & Ors.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

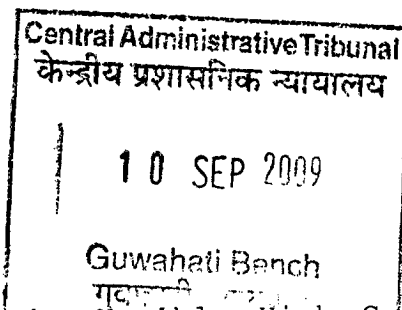
10 SEP 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

S Y N O P S I S

The applicant is the Pharmacist cum Clerk (now retired w.e.f. 30.06.09) in the Government Medical Store Depot, under the Director General of Health Services, Ministry of Health and Family Welfare, New Delhi- 1. The applicant joined the service under the respondents on 23.12.1971 as Pharmacist cum Clerk in the Government Medical Store Depot, Director of Health Services, Guwahati. Suddenly, in the year 1985 the applicant lost his mental balance and applied for leave and it was sanctioned. During that period the applicant left his home and family and it was in the year 1994 after long treatment with the help of friends and relatives he regained his mental strength and submitted a representation dated 01.03.1994 before the respondents praying for his re-instatement. However, the respondents did not give an eye to the representation submitted by the applicant. Being aggrieved the applicant approached this Hon'ble Tribunal by filing O.A. No. 126/94. The Hon'ble Tribunal vide order dated 01.08.1994 disposed of the O.A. 126/94 directing the respondents to consider the reinstatement of the applicant. However, the respondents vide order dated 16.09.1996 denied the prayer of the applicant on the ground that the applicant is over aged.

The applicant again approached the Hon'ble Tribunal challenging the order dated 16.09.1996 by way of filing O.A. No. 216/97. The Hon'ble Tribunal vide order dated 06.05.1999 was pleased to dispose of the O.A. directing the respondents to appoint the applicant in the post of Pharmacist cum Clerk. Thereafter, the respondents therein carried the matter to the Hon'ble Gauhati High Court by filing WP(C) No. 6078/99. However, the Hon'ble High Court vide order dated 11.09.01 rejected to interfere with the order of the Hon'ble Tribunal.



That even after the judgment of the Hon'ble High Court the respondents did not comply with the order of the Hon'ble Tribunal dated 06.05.199 and the applicant filed C.P. No. 34/02. The Hon'ble Tribunal closed the C.P. vide order dated 20.12.02 directing the respondents to pass necessary order appointing the applicant within two weeks.

Thereafter, on 29.01.03 the respondents issued an order appointing the applicant in the post of Pharmacist cum Clerk and the applicant joined on the same day. Another order was issued on the same day stating the condition of service of the applicant that the applicant will not get seniority; re-fixation and he will also not be entitled for any pensionary benefits etc. The applicant under compelling circumstances had to accept the offer without prejudice to his rights and joined on 29.01.03 as Pharmacist cum Clerk.

The respondents on 02.09.08 issued the retirement notice to the applicant indicating his date of retirement as 30.06.09 and also directing him to submit necessary documents for retirement benefits. On 16.01.09 the respondents issued an order canceling the retirement notice dated 02.09.08 further stating that the applicant will not be entitled for pensionary benefits. The applicant submitted a representation on the same date praying for counting of his past service for the purpose of pension. Finally the respondents issued an order dated 19.03.09 [ANNEXURE- 17] stating that the applicant is not entitled for pension. Thereafter, the applicant submitted several representations but same yielded no result in positive and on 30.06.09 the applicant retired from service.

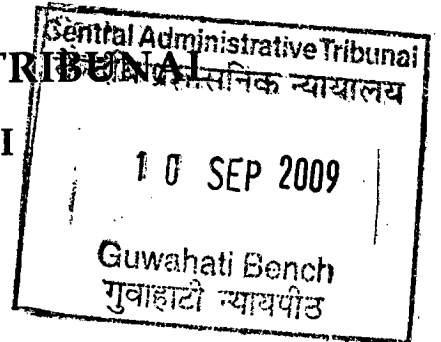
Being aggrieved by the orders dated 19.03.09 the applicant has come before this Hon'ble Court for quashing and setting aside the aforesaid order being in clear violation of Article 14 and 16 of the Constitution of India.

Hence the present original application.

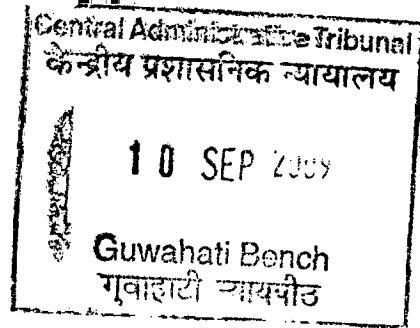
Filed by
Hridip K. Deka
10.9.09.
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

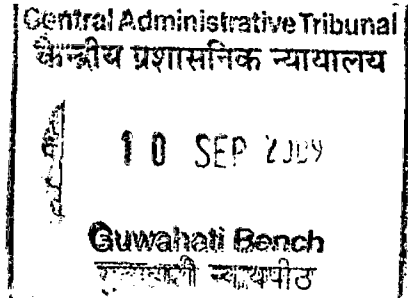
GUWAHATI BENCH :: GUWAHATI

OA No. 185 of 2009LIST OF DATES

- 23.12.71** Applicant was appointed as Pharmacist cum Clerk in the Government Medical Store Depot, Director of Health Services, Guwahati.
- 1985** Applicant became mentally imbalanced and as a consequence applied for leave on medical grounds and leave was duly sanctioned. During this period the applicant left his home and family.
- 01.03.94** The applicant with the help of friends and after prolonged treatment regained mental strength and submitted representation before the Deputy Assistant Director (M.S.), Government Medical Depot, Guwahati to allow him to resume his service. However the respondents sat over the matter.
- 1994** The applicant being aggrieved approached the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati by way of filing O.A. No. 126/94 prying for his reinstatement as Pharmacist cum Clerk under the respondents with all consequential benefits.
- 01.08.94** Order of the Hon'ble Tribunal passed in O.A. No. 126/94 directing the respondents to consider the reinstatement of the applicant. Accordingly the applicant submitted his representation. **[Annexure-1] [Page-15]**
- 16.09.96** Order issued by the respondents rejecting the prayer of the applicant on the ground that the applicant is over aged. **[Annexure- 2] [Page-16]**
- 1997** O.A. No. 216/97 was filed challenging and registering grievance against the order dated 16.09.1996.

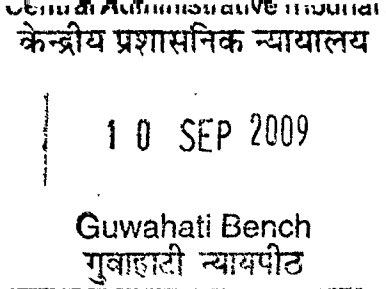


- 16.05.99 The Hon'ble Tribunal after observing that the applicant being an employee of the respondents and served the respondents for 14 years age should not be a factor towards his disqualification and was pleased to dispose of the O.A. No. 216/97 directing the respondents to appoint the applicant in the post of Pharmacist cum Clerk. **[Annexure- 3] [Page-17]**
- 1998 The respondents approached the Hon'ble Gauhati High Court by way of filling WP(C) No. 6078/98 challenging the order dated 16.05.99 passed in O.A. No. 216/97.
- 11.09.01 Order of the Hon'ble High Court passed in WP(C) No. 6078/98 refusing to interfere with the judgment and order passed by the Hon'ble Tribunal. **[Annexure- 4] [Page-20]**
- 2002 The C.P. No. 34/02 was filed by the applicant alleging non compliance of the order dated 16.05.99 passed in O.A. No. 216/97.
- 20.12.02 Order of the Hon'ble Tribunal passed in C.P. No. 34/02 directing the respondents to pass necessary order appointing the applicant within two weeks as per the assurance made in the affidavit filed by the 2nd respondent. **[Annexure- 5] [Page-24]**
- 29.01.03 Order of appointment issued appointing the applicant in the post of Pharmacist cum Clerk. **[Annexure- 6] [Page-26]**
- 29.01.03 Order issued indicating the service condition of the applicant i.e. he would not get the seniority and he will rank junior to all the incumbents in the said cadre, without re-fixation of pay. **[Annexure- 7] [Page-27]**
- 29.01.03 The applicant submitted his acceptance under compelling circumstances without any prejudice to his rights. **[Annexure- 8] [Page-29]**
- 02.09.08 Order issued under Memo No. 9(F10/7) / (Admn)/ Pension/ 4714 intimating the applicant that he will be retired from Government service w.e.f. 30.06.09



(AN). By the said order the applicant was also asked to submit necessary documents for the purpose of release of his pension. [Annexure- 9] [Page-30]

- 23.12.08** Communication issued by the Deputy Director (MS), Kolkata to the Joint Director, CGHS, Government Medical Store Depot, Guwahati, Assam to withdraw the order dated 29.01.03 for condoning the break in service for granting pensionary benefits to the applicant. He also highlighted that the condition imposed in the said order regarding non eligibility for pensionary benefit is harsh and is not in conformity with the order of the Hon'ble Tribunal. [Annexure- 12] [Page-33]
- 29.12.08** Communication by which the applicant submitted his documents. [Annexure- 10] [Page-31]
- 16.01.09** Order issued under Memo No. 9(F-10/7)/PE(Admn)/Personal/08-09/9145 canceling the retirement notice dated 02.09.08 further stating that the applicant will not be entitled for pensionary benefits. [Annexure- 13] [Page-35]
- 16.01.09** Representation submitted by the applicant to the Deputy Director General (MS), Govt. Medical Store Depot, praying for consideration of his past 14 years of service at G.M.S.D., Guwahati for granting him pensionary benefits. [Annexure- 14] [Page-36]
- 28.01.09** Communication by which the applicant submitted his documents for the purpose of pension. [Annexure- 11] [Page-32]
- 06.02.09** communication issued to the Joint Director, CGHS, Guwahati seeking further clarification in the matter of counting of past service of the applicant at an early date because the retirement of the applicant is forthcoming. [Annexure- 15] [Page-37]
- 02.03.09** Representation submitted by the applicant to the DDG (MS), GMSD, Kolkata praying for counting of his past service for granting of pensionary benefits as



he is going to retire on 30.06.09. [Annexure- 16]
[Page-38]

19.03.09 Impugned order stating that the applicant does not fulfill the period of qualifying service of 10 years as per the CCS pension rules from the date of his reappointment in GMSD, Kolkata, therefore he is not entitled for the pensionary benefits. [Annexure- 17]
[Page-40]

09.04.09 Representation submitted by the applicant to the Additional Director, Director of Health Services, Medical Stores Organization, New Delhi praying for consideration of his case sympathetically as per the direction of the Hon'ble CAT, Guwahati Bench and count his past 14 years of service as qualifying service for grant of pension. [Annexure- 18] [Page-41]

08.05.09 Representation submitted by the applicant to the Additional Director, Director of Health Services, Medical Stores Organization, New Delhi praying for consideration of his case sympathetically as per the direction of the Hon'ble CAT, Guwahati Bench and count his past 14 years of service as qualifying service for grant of pension. [Annexure- 19] [Page-42]

11.06.09 Representation submitted by the applicant to the Additional Director, Director of Health Services, Medical Stores Organization, New Delhi praying for consideration of his case sympathetically as per the direction of the Hon'ble CAT, Guwahati Bench and count his past 14 years of service as qualifying for grant of pension. [Annexure- 20] [Page-44]

30.06.09 The applicant retired from service.

Filed by

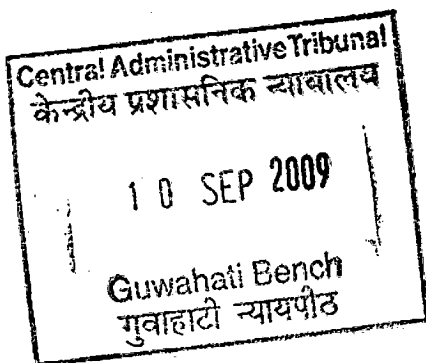
Hridip K. Das.
10.9.09.
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

OA No. 185 of 2009

Filed by: 1
The Applicant
through
Shri Bipin Das,
Advocate
10.9.09.



BETWEEN

Biraja Kanta Sarma,
Son of late Rajani Kanta Sarma,
Resident of Village Bihampur,
Nalbari, P.O Bihampur, District-
Nalbari, Assam.

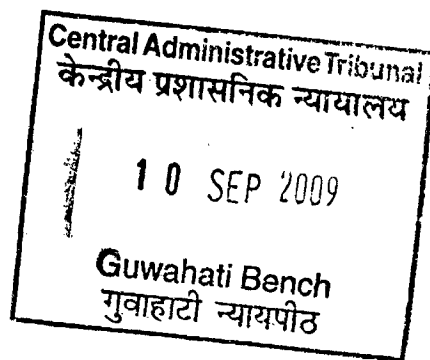
APPLICANT

-Versus-

1. The Union of India
Represented by its Secretary,
Government of India, Ministry of
Health and Family Welfare, New
Delhi- 1.
2. The Director General of
Health Services, Government
Medical Store Depot, Ministry of
Health, New Delhi- 1.
3. The Deputy Assistant Director
General (M.S.), Ministry of Health
and Family Welfare, Govt. Medical
Store Depot, A.K. Azad Road,
Gopinath Nagar, Guwahati- 781016.
4. The Deputy Director General
(St.), Directorate of General
Health Services, Government
Medical Store Depot, 9, Clyde Row,
Hastings, Kolkata- 700 022.

RESPONDENTS

Biraja Kanta Sarma



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. 9/(F-10/7)/PE/(Admn)/Pension/08-09/11272 dated 19.03.09 issued by the 4th respondent. [ANNEXURE- 17]

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 Pharmacist cum Clerk (now retired w.e.f. 30.06.09) in the Government Medical Store Depot, under the Director General of Health Services, Ministry of Health and Family Welfare, New Delhi- 1.

4.2 That the applicant was initially appointed on 23.12.1971 as Pharmacist cum Clerk in the Government Medical Store Depot, Director of Health Services, Guwahati. The educational qualification of the applicant includes B.Sc. with three years Diploma course in Pharmacy and four year Diploma course in Bio-Chemistry. The applicant was discharging his duties to the satisfaction of all concern till 1985. Suddenly, in the year 1985 the applicant became mentally imbalanced and as a consequence applied for leave on medical grounds and leave was duly sanctioned. During the aforesaid period the applicant left home and the family. However, after a long lapse of time with the help of friends and long term of treatment the

Binay's Memo for Review

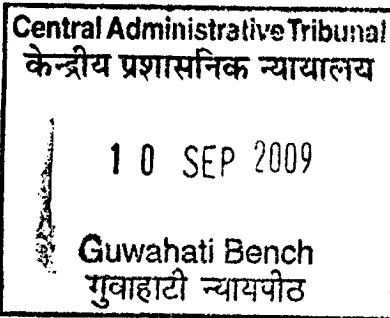
applicant returned home regaining his mental strength. Thereafter, the applicant submitted a representation dated 01.03.1994 before the Deputy Assistant Director (M.S.), Government Medical Depot, Guwahati to allow him to resume his service. It is stated that the respondents being well acquainted with the ailment of the applicant had neither drawn any disciplinary proceeding against him nor terminated his service. However, the respondents did not put an eye to the grievance of the applicant and his pathetic situation and sat over the matter.

4.3 That the applicant made several representations to the respondents for allowing him to resume duty by submitting due medical certificate. Since the service of the applicant was not terminated, the respondents ought to have allowed the applicant to resume duty by treating his period of absence as medical leave or other admissible leave due to his credit but the respondents sat over the prayer made by the applicant. The applicant having no alternative being aggrieved by the inaction on the part of the respondents approached the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati by way of filing O.A. No. 126/94 prying for his reinstatement as Pharmacist cum Clerk under the respondents with all consequential benefits. The Hon'ble Tribunal having regard to the facts and circumstances of the case and upon hearing the parties to the proceeding was pleased to dispose of the O.A. vide order dated 01.08.1994 directing the respondents to consider the reinstatement of the applicant. The Hon'ble Tribunal while passing the order dated 01.08.1994 took note of the sickness and sufferings of the applicant.

A copy of the order dated 01.08.1994 passed in O.A. No. 126/94 is annexed herewith and marked as **ANNEXURE- 1**.

4.4 That immediately after receipt of the order dated 01.08.1994 the applicant prayed before the authority

Biraja Kanta Sarma.



concerned to reinstate him as Pharmacist cum Clerk. However, the respondents while considering issued the order dated 16.09.1996 rejecting the prayer of the applicant on the ground that the applicant is over aged.

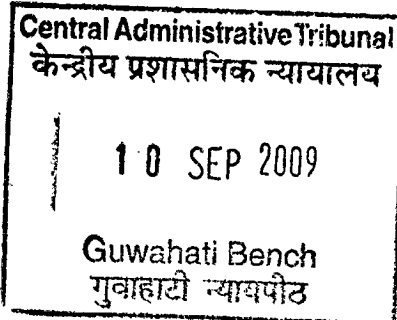
A copy of the order dated 16.09.96 is annexed herewith as marked as **ANNEXURE-2.**

4.5 That the applicant challenging and registering grievance against the impugned order dated 16.09.06 again approached the Hon'ble Central Administrative Tribunal, Guwahati Bench by way of filing O.A. No. 216/97. It is stated that the basic contention raised in the said impugned order was that the applicant was over aged for consideration of his case. Moreover, the respondents stated that the applicant tendered resignation which has been categorically denied by the applicant. The Hon'ble Tribunal during the course of hearing took the view that the applicant being an employee of the respondents, his age should not be a factor towards disqualification of such appointment as he had served for about 14 years under the respondents. The Hon'ble Tribunal having regard to the peculiar fact situation of the case was pleased to dispose of the said O.A. vide judgment and order dated 06.05.1999 directing the respondents to appoint the applicant in the post of Pharmacist cum Clerk.

A copy of the order dated 06.05.99 passed in O.A. No. 216/97 is annexed herewith and marked as **ANNEXURE- 3.**

4.6 That the respondents thereafter approached the Hon'ble Gauhati High Court by filing WP(C) No. 6078/98 challenging the order dated 06.05.1999 passed in O.A. No. 216/97. The Hon'ble High Court after hearing the parties to the proceeding was pleased to dispose of the said writ petition vide judgment and order dated 11.09.01 refusing to

Biraj's Memo to Smt. S.



interfere with the judgment and order passed by the Hon'ble Tribunal.

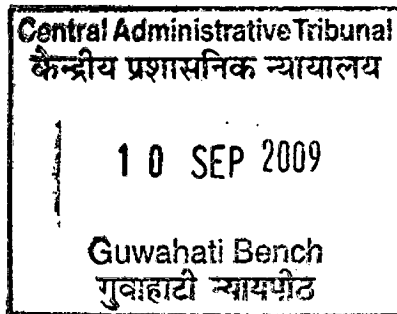
A copy of the judgment dated 11.09.01 passed in WP(C) No. 6078/98 is annexed herewith and marked as **ANNEXURE- 4**.

4.7 That the respondents even after passing of the judgment and order of the Hon'ble High Court did not implement the order of the Hon'ble Tribunal. The applicant complaining contempt against the respondents filed C.P. No. 34/02 [in O.A. No. 216/97]. The Hon'ble Tribunal on 16.08.02 issue notice to the contemnors thereto enabling them to show cause. The Contemnor No. 2 filed an affidavit in the said C.P. and assured that the applicant will be reinstated and adjusted against the available vacancy. In the said affidavit the respondents have highlighted the communications dated 30.09.02, 23.10.02 and 04.12.02 issued by the Deputy Director, Director of Health Services, (MS), New Delhi, wherein there was a direction to the said contemnor to adjust the applicant in the post of Pharmacist cum Clerk. It is stated that the applicant was in regular employment under the respondents since 23.12.1971 having 14 years of continuous service till 1985 and his service was never been terminated by the respondents at any point of time. The Hon'ble Tribunal having regard to the said assurance made on behalf of the respondents closed the C.P. vide judgment and order dated 20.12.02 directing the respondents to pass necessary order appointing the applicant within two weeks.

A copy of the order dated 20.12.02 passed in C.P. No. 34/02 is annexed herewith and marked as **ANNEXURE- 5**

4.8 That the applicant begs to state that after the order of the Hon'ble Tribunal in the C.P. no. 34/02 the respondents issued an order dated 29.01.03 appointing the applicant in the post of Pharmacist cum Clerk. The

Biraja Kant Sarmah,



applicant joined on the same day i.e. 29.01.03. It is stated that the respondents in the said order made mention that the applicant will not get his seniority and he will not be entitled to pensionary benefits.

A copy of the said order dated 29.01.03 is annexed herewith and marked as **ANNEXURE- 6.**

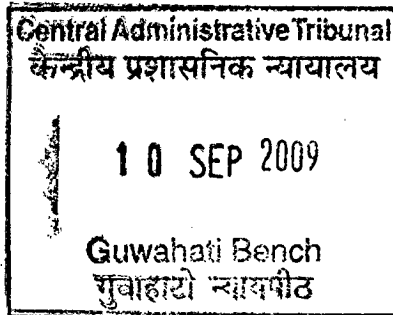
4.9 That the respondents at the time of issuance of the order dated 29.01.03 issued another order on the same date indicating the condition of service that the applicant would not get the seniority and he will rank junior to all the incumbent in the said cadre, without re-fixation of pay. The applicant submitted his willingness under the compelling circumstances highlighting that said condition has been accepted without any prejudice to his rights.

Copies of the said order dated 29.01.03 and the acceptance letter dated 29.01.03 is annexed herewith and marked as **ANNEXURE- 7 and 8.**

4.10 That the applicant begs to state that the pursuant to the order dated 29.01.03 the applicant resumed his duty as Pharmacist cum Clerk in the Government Medical Store Depot, Kolkata. It is stated that since the date of his joining the applicant discharged his duties to the satisfaction of all concern.

4.11 That the applicant begs to state that on 02.09.08 the respondents issued an order under Memo No. 9(F10/7)/(Admn)/Pension/4714 intimating the applicant that he will be retired from Government service w.e.f. 30.06.09 (AN). The respondents also asked the applicant to submit joint photographs, bank account No. etc. for the purpose of his monthly pension. Accordingly, the applicant vide two communication dated 29.12.08 and 28.01.09 submitted the necessary documents for payment of his pension.

Biraja Kanta Sarmah,



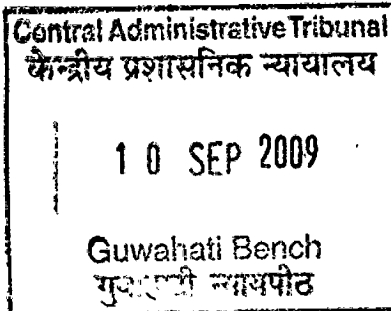
A copy of the order dated 02.09.08 and the communication dated 29.12.08 and 28.01.09 are annexed herewith and marked as **ANNEXURE- 9, 10 and 11.**

4.12 That the applicant begs to state that the Deputy Director (MS), Kolkata issued a communication under No. PE(Admn)/01/4(35)/04-06/PE/BKS/8321 dated 23.12.08 to the Joint Director, CGHS, Government Medical Store Depot, Guwahati, Assam to withdraw the order dated 29.01.03 for condoning the break in service for granting pensionary benefits to the applicant. In the aforesaid communication the Deputy Director, highlighted that the conditions imposed in the order dated 29.01.03 i.e. the applicant will not be entitled for pensionary benefits, is harsh and is not in conformity with the direction of the Hon'ble Tribunal to settle the case of the applicant justly, fairly and reasonably. By the said communication clarifications were also been sought for with regard to the consideration past service of 14 years of the applicant, payment of GPF balance and Group Insurance money. Finally, taking into considering the entire aspect of the matter the Deputy Director (MS), Kolkata emphasized for recalling of the order dated 29.01.03 for granting of the pensionary benefits to the applicant.

A copy of the communication dated 23.12.08 is annexed herewith and marked as **ANNEXURE- 12.**

4.13 That the applicant begs to state that on 16.01.09 the respondents issued an order under memo No. 9(F-10/7)/PE(Admn)/Personal/08-09/9145 canceling the retirement notice dated 02.09.08 further stating that the applicant will not be entitled for pensionary benefits. The applicant immediately on receipt of the said memo submitted a representation dated 16.01.09 to the Deputy Director General (MS), Govt.. Medical Store Depot, Kolkata praying

Biraja Kanta Sarmah



for consideration of his past 14 years of service at G.M.S.D., Guwahati for granting him pensionary benefits.

A copy of the memorandum dated 16.01.09 and representation dated 16.01.09 is annexed herewith and marked as **ANNEXURE- 13 and 14.**

4.14 That the Deputy Director General (MS), Kolkata on receipt of the representation submitted by the applicant issued another communication dated 06.02.09 to the Joint Director, CGHS, Guwahati seeking further clarification in the matter at an early date because the retirement of the applicant is forthcoming.

A copy of the said communication dated 06.02.09 is annexed herewith and marked as **ANNEXURE- 15.**

4.15 That on 02.03.09 the applicant submitted a detail representation to the DDG (MS), GMSD, Kolkata praying for counting of his past service for granting of pensionary benefits as he is going to retire on 30.06.09. The applicant further stated that the Hon'ble CAT, Guwahati Bench directed for reinstatement in service, however due to non availability of vacancy at GMSD, Guwahati he was reinstated in GMSD, Kolkata giving fresh appointment and the applicant had to accept the same under the compelling circumstances. At no point of time any inquiry was made and any proceeding was made against the applicant. Moreover, no termination order was issued towards termination of his service. Therefore, his past service can not be denied towards granting of pensionary benefits.

A copy of the said representation dated 02.03.09 is annexed herewith and marked as **ANNEXURE- 16.**

4.16 That the respondents on 19.03.09 issued an order under memo No. 9(F-10/7)/PE/(Admn)/Pension/08-09/11272

Bicaya Kant Sharma,

stating that the applicant does not fulfill the period of qualifying service of 10 years as per the CCS pension rules from the date of his reappointment in GMSD, Kolkata, therefore he is not entitled for the pensionary benefits.

A copy of the order dated 19.03.09 is annexed herewith and marked as **ANNEXURE-17**.

4.17 That being aggrieved by the impugned order dated 19.03.09 the applicant submitted representations dated 09.04.09, 08.05.09 and 11.06.09 to the Additional Director, Director of Health Services, Medical Stores Organization, New Delhi praying for consideration of his case sympathetically as per the direction of the Hon'ble CAT, Guwahati Bench. However, the respondents failed to attend the grievance of the applicant and sat over the matter causing serious injustice to the applicant.

Copies of the representations dated 09.04.09, 08.05.09 and 11.06.09 is annexed herewith and marked as **ANNEXURE- 18, 19 and 20**.

4.18 That the applicant begs to state that the law is very clear that the pension is not a bounty payable at the sweet will and pleasure of the Government. The right to pension is a valuable right vested in a Government servant and it can not be withheld by a mere unreasoned executive order. Therefore, the respondents by denying the past 14 years of service towards counting of the qualifying service of the applicant for the purpose of pension, has committed serious illegality. Moreover, the respondents adding insult to the injury of the applicant did not count the past service of the applicant towards granting of other service benefits like ACP benefits, pay fixation etc. and such an action is in clear violation of Article 14 and 16 of the Constitution of India which incurs interference of this Hon'ble Tribunal.

4.19 That from the facts and circumstances of the case it is clear that the respondents resorting to gross illegalities and without recording any reasons rejected the

Bireja Kanta Sarma

benefit of past 14 years service rendered by the applicant w.e.f 22.12.1971 to December, 1985 toward counting of qualifying service for granting of pensionary benefits to the applicant. 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 19.03.09 with a further direction to consider the past service rendered by the applicant towards counting of qualifying service for the purpose of granting pension pending disposal of the present original application. 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.

4.20 That the applicant has filed this application bonafide for securing the ends of justice.

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

5.1. Because the respondents committing serious illegality and without assigning any reason denied the applicant the benefit of past 14 years of service rendered under the respondents towards counting of qualifying service of the applicant for granting of pensionary benefits and passed the impugned order dated 19.03.09 depriving the applicant from his right of getting pension in clear violation of Article 14 and 16 of Constitution of India. Hence, the impugned order dated 19.03.09 is illegal, arbitrary and is liable to be set aside and quashed.

5.2. Because the law is very clear that the pension is not a bounty payable at the sweet will and pleasure of the Government. The right to pension is a valuable right vested

Biraj's Kant's Sarema

10 SEP 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

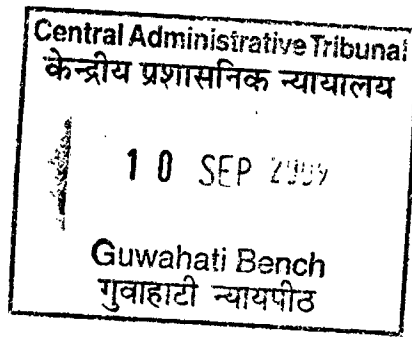
in a Government servant and it can not be withheld by a mere unreasoned executive order. Hence, action of the respondents in withholding the pension of the applicant by rejecting his past service towards qualifying service is per se illegal and on this ground alone the impugned order dated 19.03.09 is liable to be set aside and quashed.

5.3 Because the respondents failed in totality to under stand the meaning of qualifying service. As per the CCS (Pension) Rules, 1972 "Qualifying service" means service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuities admissible under these rules. The applicant joined the service on 22.12.1971 and continued till December' 1985 and thereafter again from 29.01.03 rendered service to 30.06.09. Therefore, the aforesaid period of service rendered by the applicant has to be counted as qualifying service under the CCS (Pension) Rules' 1972. Merely because an unreasonable condition is imposed and the applicant had accepted without prejudice to his rights, the respondents can not deprive the applicant from his right to get pension. Hence, the impugned order dated 19.03.09 is illegal and contrary to the Constitutional mandate and liable to be set aside and quashed.

5.4 Because the respondents while passing the impugned order have exercised the discretion in totality and come out with an order which is cryptic and non-speaking. Hence, no more discretion is left with the respondents and the impugned order dated 19.03.09 is 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 19.03.09 in clear violation of the CCS (Pension) Rules, 1972 as well as the mandate of the Constitution by not including the past service rendered by the applicant

Birendra Kumar Sharma



towards counting of qualifying service for the purpose of granting pension 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 and deprive him from his legitimate right. Hence on this ground alone the Hon'ble Court can set aside and quash the impugned order dated 19.03.09.

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.

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. 9/(F-10/7)/PE/(Admn)/Pension/08-09/11272 dated 19.03.09 issued by the 4th respondent. **[ANNEXURE- 17]**

8.2 To direct the respondents to count past 14 years of service of the applicant in GMSD, Guwahati for the purpose of seniority, promotion along with all consequential service benefits.

8.3 To direct the respondents grant and release monthly pension with the arrears and interest accrued thereon along with all consequential retirement benefits.

8.4 Cost of the application.

8.5 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. 9/(F-10/7)/PE/(Admn)/Pension/08-09/11272 dated 19.03.09 issued by the 4th respondent [ANNEXURE- 17] with a further direction to release the monthly pension of the applicant.

10. The application is filed through Advocates.

11. PARTICULARS OF THE IPO:

(I)	IPO No.	: 396 407534
(II)	Date of Issue	: 13.8.09
(III)	Issued from	: G.P.O
(IV)	Payable at	: Guwahati

12. LIST OF ENCLOSURES:

As stated in the Index.

...Verification

Bireya Kamte Suresh

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

10 SEP 2009

VERIFICATION

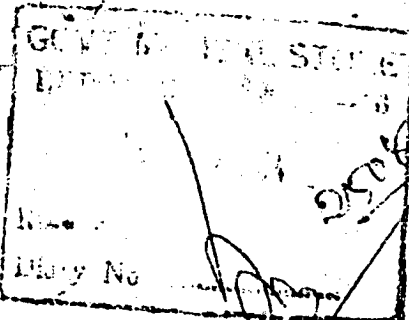
Guwahati Bench
गुवाहाटी न्यायपीठ

I, Biraja Kanta Sarma, Son of late Rajani Kanta Sarma, aged about 60 years, Resident of Village Bihampur, Nalbari, P.O Bihampur, District- Nalbari, Assam., do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 4.1, 4.2, 4.10, 4.18 and 4.19 are true to my knowledge, those made in paragraphs 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16 and 4.17 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 10th day of September, 2009 at Guwahati.

Biraja Kanta Sarma

APPLICANT



Handwritten notes: 'Alcon', '12/05/99', and '05/99'.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH (11 GUWAHATI) - 5

G.A.126/99

Sri B.K. Sarma ... Applicant
-VS-
Union of India & Ors. ... Respondents

P R E S E N T
THE HON'BLE JUSTICE SHRI S. HAQUE, VICE CHAIRMAN,
THE HON'BLE SHRI G. L. SANGLYNE, MEMBER (ADMIN.).

For the Applicant ... Mr. J.L. Sarkar,
Mr. M. Chandra,
Mr. M.K. Choudhury.
For the Respondents ... Mr. S. Ali, Sr.C.G.S.C.

1.3.94

Learned counsel Mr J.L.Sarkar for the applicant and Sr.C.G.S.C Mr S.Ali are present. Mr Ali has produced records. Records disclose that the applicant was an employee under respondents No.2 and 3 at Guwahati. His name was struck off from the list of employees for reasons available in record. Mr J.L. Sarkar submits that the applicant was mentally imbalanced and annexed medical certificate with the application. Mr Sarkar now prays for an order on the respondents to re-consider appointment of the applicant in the department. Mr Sarkar does not like to proceed with this application, if such an order is passed. Mr Ali submits that order of such nature, if made, be left with the discretion of the department.

This application is now disposed of with order as under :

The applicant is required to file an application/representation before the respondents seeking for appointment. Respondents shall consider the case of the applicant sympathetically for appointment in the department against available vacancy or next available vacancy.

This application is disposed of with the above order.

Sd/- S. HAQUE
VICE CHAIRMAN
Sd/- G.L.SANGLYNE
MEMBER (ADMIN.)



Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
10 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Registered with A/D

Memo No. : 3729

Date : 31/8/24

- Copy for information & necessary action to :
- (1) Shri Biraje Kanta Sarma, Ex-Pharmacist-cum-Clerk, Government Medical Store Depot, Guwahati.
 - (2) The Secretary, Govt. of India, Ministry of Health & Family Welfare, New Delhi.
 - (3) The Director General, Health Services, Govt. Medical Store Depot, Ministry of Health, New Delhi-22.
 - (4) The Dy. Assistant Director, General, (H.S.) Govt. of India, Ministry of Health & Family Welfare, Govt. Medical Store Depot, Guwahati.
 - (5) Mr. M. Chandra, Advocate, Guwahati High Court, Guw.
 - (6) Mr. S. Ali, Sr.C.G.S.C., 11, Guwahati Bench.

Handwritten notes: 'Affidavit', 'Has', and 'Advocate'.

Handwritten signature and date '31/8/24'.
Stamp: 'SECTION OFFICER (D)' with handwritten number '24518'.

Government Medical Store Depot

A. K. AZAD ROAD, P. O. GOPINATH NAGAR, GUWAHATI-781016

REGISTERED AD

16 SEP 1996

No. 1 Adm/163/BKS/

233-34

To,

Shri Biraja Kanta Sharma,
C/O Dr. B. K. Sharma,
M.A. Road, Near Purbadesh Mundran,
P.O. Rehabori, Gt-781008 (ASSAM).

Reference his application dtd. Nil for the appointment to the post of Pharmacist-cum-Clerk and subsequent letter dtd. 10.7.96 Shri Biraja Kanta Sharma, Ex-Pharmacist-cum-Clerk of this depot is hereby informed that his candidature for the filling up of vacant post of the Pharmacist-cum-Clerk of this depot was considered carefully by the Selection Committee and it was decided by the Selection Committee to reject the candidature of Shri B.K. Sharma as he had already crossed the prescribed upper age limit for appointment to Govt. service. Hence his request for appointment to the post of Pharmacist-cum-Clerk cannot be acceded to.

(G. SUBRAMANIAN)
Asstt. Director General (MS)

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
10 SEP 2009
Guwahati Bench गुवाहाटी न्यायपीठ

REGD.

Not in original

Copy to :

The Dy. Director, Adm. (Sts),
M.S.O.,
Dto. Genl. of Health Services,
West Block No. 1, Wing No. 6,
N.K. Puram, New Delhi-110066, With ref. to the Dto. let. No.
G.18013/6/94-St. I dtd. 29.8.96 for kind information.

(G. SUBRAMANIAN)
Asstt. Director General (MS)

16/9/96
16/9

Attached

Has

4 Enclosures

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 216 of 1997

Date of decision: This the 6th day of May 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Biraja Kanta Sarma,
Ex Pharmacist-cum-Clerk,
Government Medical Store Depot,
Guwahati.

.....Applicant

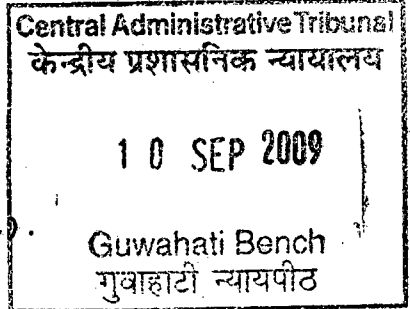
By Advocates Mr A. Roy, Mr M. Chanda and
Mr S. Sarma.

- versus -

1. The Union of India, represented by the
Secretary, Government of India,
Ministry of Health & Family Welfare,
New Delhi.
2. The Director General of Health Services,
Government Medical Store Depot,
Ministry of Health,
New Delhi.
3. The Deputy Assistant Director General (M.S.).

Government of India,
Ministry of Health & Family Welfare,
Government Medical Store Depot,
Guwahati.

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.



.....Respondents

ORDER

BARUAH, J. (V.C.)

This application has been filed by the applicant seeking certain directions to the respondents.

2. Facts for the purpose of disposal of this application are:

The applicant was appointed Pharmacist-cum-Clerk on 23.12.1971 in the Government Medical Store Depot, Directorate General of Health Service, Guwahati. He read upto B.Sc. with three years Diploma course in Pharmacy and four years Diploma course in Bio-Chemistry. In the year

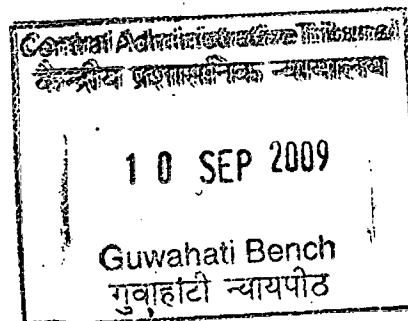
Attended

Has

Admoral e-

1985 he became mentally imbalanced and accordingly he applied for leave. The authority granted him leave. However, on expiry of his leave further extension of leave was not granted. During that period he left home. But after some time he returned with the help of his friend. Thereafter he commenced a normal life. According to the applicant he was not terminated from service. As he remained out of service for a long time he submitted Annexure G representation dated 1.3.1994 requesting the respondent No.3 to allow him to continue his service. Thereafter, as nothing was done the applicant filed an original application (O.A.No.126 of 1994) before this Tribunal. The said application was disposed of by this Tribunal by order dated 1.8.1994 directing the respondents to consider the case of the applicant sympathetically. The applicant again submitted a detailed representation requesting the authority to put him back in service. However, on 16.9.1996 the impugned Annexure J order was passed. As per Annexure J order dated 16.9.1996 the applicant was not found fit because he was overaged. Hence the present application.

3. We have heard Mr M. Chanda, learned counsel for the applicant and Mr A. Deb Roy learned Sr. C.G.S.C. The respondents have not filed any written statement. The records have also not been produced. Mr Chanda submits that at no point of time the applicant's services were terminated although he remained absent for a long time. Mr Deb Roy does not dispute the same in view of the fact that no written statement has been filed and the records are also not available before him. Mr Chanda also submits that at no time the applicant was informed about his termination from service. As per the order of this Tribunal dated 1.8.1994 passed in O.A.No.126/94 his case ought.....



ought to have been considered sympathetically. The impugned Annexure J order dated 16.9.1996 shows that the authority just considered and stated that the applicant could not be appointed because he was overaged and not on any other ground. From the documents available before us it appears that according to the respondents the applicant submitted resignation which was accepted. However, the applicant has totally denied the same. The respondents have not come forward with necessary documents such as the letter of resignation, etc. Be that as it may, the applicant was suffering from mental sickness and this Tribunal by order dated 1.8.1994 passed in O.A.No.126/94 directed the respondents to consider his case sympathetically, therefore, in our opinion the age should not be a ground for rejecting his prayer. Mr Deb Roy also submits that in the fitness of things he may be given a fresh appointment by relaxing the age.

4. In view of the above we dispose of this application by directing the respondents that in the special circumstances the applicant be given an appointment by relaxing the age bar.

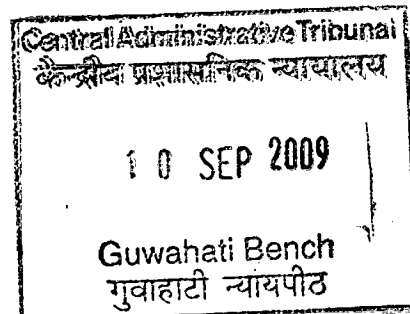
5. The application is accordingly disposed of. No order as to costs.



TRUE COPY
प्रतिनिधि

Section Officer (L)
आनुमान अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench, Guwahati
गुवाहाटी न्यायपीठ, गुवाहाटी

Sd/- VICE CHAIRMAN
Sd/- MEMBER (ADMIN)



IN THE GAUHATI HIGH COURT

(High Court of Assam Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from
Civil Rule

Q.P.C.

No. 6078 of 19 25

Union of India

Appellant
Petitioner

Versus

Central Administrative Tribunal,
Guwahati Bench

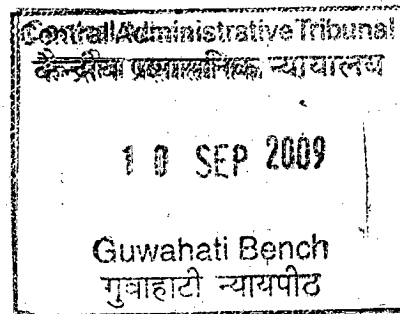
Respondent
Opposite-Party

Appellant
Petitioner

C.A.S.C.

Respondent

Opposite-Party



Noting by Officer, or

Serial

Date

Office notes, reports, orders or proceedings
with signature

Attended

Has

Advocate

Spiking by Officer or Advocate	Serial No.	Date	Office Notes, Reports, Orders or Proceeding with signature
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11.9.2001

PRESENT :

THE HON'BLE THE CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE H.K.K. SINGH

Heard Mr. D. Sur, learned counsel for the petitioner.

This is one of those cases where justice has been sought to be done by the Central Administrative Tribunal with a pinch of compassion. The respondent (applicant before the Tribunal) had been appointed Pharmacist-cum-Clerk in the Government Medical Stores Depot, Directorate General of Health Services, Govt. of India, Guwahati, in December, 1979. He read upto B.Sc. with three years Diploma course in Pharmacy and four years Diploma course in Bio-Chemistry. Unfortunately, in 1985, he became mentally imbalanced and on that ground applied for medical leave, which was duly sanctioned. However, on expiry of the sanctioned leave, he was not granted any further extension.

It was the case of the applicant before the Tribunal that when he became alright, he reported back for duty sometime in the year 1994; but he was told that his services stood terminated. However, no order of termination was ever served on the applicant or produced before the Tribunal. He, by O.A. No. 126/94 filed before the Tribunal, asked for a direction to the respondents therein (now, the writ petitioner) that he should be allowed to continue in service. The Original Application was disposed of on

1.8.94

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
10 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

By Member or Agent	Serial	Date	Office Notes, Reports, Orders or Proceedings with signature
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11.9.2001 (cont.)

1.8.94 directing the writ petitioner (respondents before the Tribunal) to consider his representation sympathetically. However, on 16.9.96 an order was passed that the applicant before the Tribunal could not be appointed as he has already become overage for entering into Govt. service. This led the applicant to file another O.A. before the Tribunal, which has been disposed of by the impugned order dated 6.5.99. The view taken by the Tribunal is that in the absence of any written reply on behalf of the respondents before the Tribunal, no order of termination being forthcoming and then to say that the applicant's case has been considered sympathetically, could not be said to be correct on the part of the respondents before the Tribunal, inasmuch as, the applicant's representation was thrown out on the ground of his being overage. As per the order of the Tribunal, the intention of the Tribunal was to consider the case of the applicant even for fresh appointment by relaxing the requirement of age.

We are of the opinion that a sympathetic view was taken under the facts and circumstances by the Tribunal where such directions have been given. We do not find it a fit case for interference. Let the writ petitioner consider the case of the respondent (applicant before the Tribunal) even for fresh appointment to any suitable post commensurate with his qualifications, as and when a post is vacant. Learned counsel for the respondent (applicant before the Tribunal) states that his client is prepared to work at any place

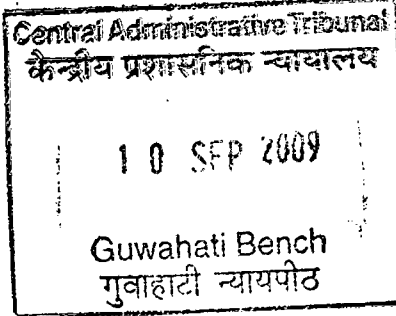
High Administrative Tribunal
10 SEP 2009
Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

By Officer or Advocate	Serial No.	Date	Office Notes, Reports, Orders or Proceeding with signature
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11.9.2001 (contd.)

place, wherever a post may be lying, commensurate
with his qualifications.

The writ petition is disposed of in the
above terms.



ORDER SHEET

Original Application No. _____
 Misc Petition No. _____
 Interpet Petition No. 34/02 in O.A. 216/97
 Review Application No. _____

Applicant: Priraja Kumar Sharma

-Vs-

Respondent(s): H.C.I. Firm

B.K. Sharma

Advocate for the Applicant(s): Mr. M. Chandra, S. Sharma, V.K. Nair

Mr. A. Das Roy, Adv. S. Das

Advocate for the Respondent(s): Mr. C. A. S.

20.12.2002

This application is for contempt filed by the applicant for alleged non compliance of the judgment and order dated 6.5.1999 passed in O.A. No. 216/97. By the said judgment and order, the Tribunal directed the respondents to appoint the applicant under the respondents by relaxing the age bar. The respondents moved the High Court and by judgment and order dated 11.9.2001, the High Court refused to intervene in the matter. Mr. B.K. Sharma, learned Sr. counsel appearing on behalf of the applicant submitted that despite the direction issued by the Tribunal dated 6.5.1999, the applicant is yet to be appointed. Mr. Sharma, also submitted that the matter is a long pending one and the case of the applicant was considered by the Tribunal vide order dated 1.8.1994 passed in O.A. No. 126/1994.

Mr. A. Das Roy, learned Sr. C.G. S.C. appearing on behalf of the respondents referring to paragraph 5 of the affidavit stated that one post of pharmacist-cum-Clerk is lying vacant in Kolkata on retirement of Mr. A. Das on 30.11.2002 and the respondents are willing to appoint the applicant in that post with immediate effect after completion of the formalities. In the affidavit the respondents also stated that one post of pharmacist-cum-Clerk will occur on 1.7.2005 in the Govt. Medical Store Depot, Guwahati.

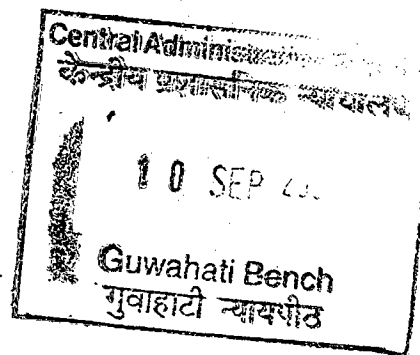
Mr. B.K. Sharma, learned Sr. counsel for the applicant stated that the applicant is agreeable to accept the offer of appointment in Kolkata also. Since the applicant is agreeable, the matter may now be resolved.


The respondents shall now issue the appointment order to the applicant expeditiously as per the statement mentioned in paragraph 5 of the affidavit in terms of the communication dated 4.12.2002.

Attended.

H. Das

Advocate



Note of the Registry	Date	Order of the Tribunal
	20.12.2002	<p>Mr. B.K. Sharma, learned Sr. counsel for the applicant also submitted that since the applicant remained out from the department since 1984-85 and the order was passed by the Tribunal on 1.8.94, he will lose the seniority and will be deprived of the pensionary benefits. We are not inclined to pass any order in the C.P. in this aspect, leaving it open to be resolved by the authorities themselves justly, fairly and reasonably.</p> <p>The respondents shall now complete the process of appointment of the applicant in Kolkata within two weeks from the date of receipt of the order.</p> <p>Subject to the observations made above, the contempt proceeding stands closed.</p>

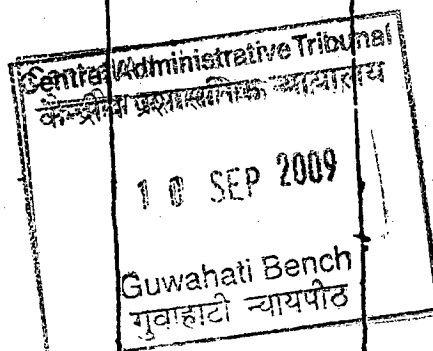
Sd/ VICE CHAIRMAN
Sd/ MEMBER (ADM)

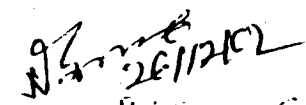
Memo. No. 3473

Dated: 27/12/02

Copy for information and necessary action to:

- 1) Mr. S. Sharma Advocate, Gauhati High Court, Guwahati.
- 2) Mr. H. Deb Roy, S.C.S.C., C.A.T.




 Section Officer (S)
 C.A.T. Guwahati Branch
 Guwahati-781005

GOVT. OF INDIA
GOVT. MEDICAL STORE DEPOT
9, CLYDE ROW, HASTINGS,
KOLKATA - 22.

Office Order No. 201

Part - II

Dated: 29.01.03

On agreeing and accepting the terms and conditions of appointment by Shri Biraja Kanto Sarma vide his acceptance dt. 29-01-03 against GMSD, Guwahati Office Order No. 253(Part-II) dt. 29-01-03 Quoting TGHs, MSO, R.K.Puram, New Delhi letter No. C-18018/6/99-ST.I dt. 10-01-03, he is allowed to join in duty at GMSD, Kolkata w.e.f. 29-01-03 (FN) in the post of Pharmacist-cum-Clerk on Temporary basis in the scale of Pay 4,500-125-7,000/-.

He will not be accorded any seniority in the cadre of Pharmacist-cum-Clerk at the Office and will be ranked Junior to all the incumbents in the said Cadre.

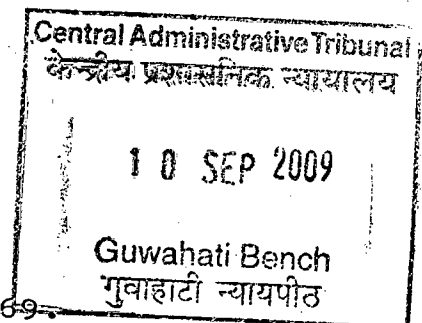
His initial Pay in the Post of Pharmacist-cum-Clerk is fixed at Rs. 4,500/- in the scale of Rs. 4,500-125-7000.

Other terms and condition as laid down in his appointment letter issued by the GMSD, Guwahati.

(P.K.Guha)
Deputy Director General (MS),
Kolkata - 22.

Copy to:-

1. Directorate General of Health Services,
Medical Store Organisation, R.K.Puram,
New Delhi - 66 with reference to Dte. letter No. C-18018/6/99-ST. dt. 10-01-03.
2. Joint Director, CGHS I/C,
A.K.Azad Road, Gopinath Nagar,
MSD, Guwahati - 781 016.
3. Office Order Book.
4. Bill Table
5. Attendance Table.
6. Sr. Accounts Officer, PAO,
Min. of Health & F.W., Kolkata - 69.
7. Biraja Kanto Sarma.



Amis

He

Advocate

(P.K.Guha)

Deputy Director General (MS)
Kolkata - 22.

Gram : MEDSTORE
FAX No. : 0361-4214
Tele. No. : 235 2234 GMSD IN
P.S.B. No. : 84

GOVERNMENT OF INDIA
Ministry of Health & Family Welfare
Directorate General of Health Services

Phone : 45214

Government Medical Store Depot

A. K. AZAD ROAD, GOPINATH NAGAR, GUWAHATI-781016

Office Order No.253.

(Part-II)

Date : 29.1.2003

Ref :- This depot O.O. No.236 (Pt-II) dt. 16.1.2003.

In pursuance of the Hon'ble C.A.T., Guwahati Order dt. 20.12.2002 in C.P.No.34/2002 (O.A.No.216/97) and instruction contained in the D.G.H.S. (M.S.O.), New Delhi's letter No. C.18018/6/99-St.I dt. 10.1.2003 Shri Biraja Kanta Sarma, Ex-Pharmacist-Cum-Clerk of this depot is hereby re-appointed (fresh appointment by relaxing his age bar) purely on temporary basis to the post of Pharmacist-cum-clerk (Class-III, Non-Gazetted) in the Govt. Medical Store Depot, Kolkata with immediate effect on the pay of Rs. 4500-125-7000 plus usual allowances admissible in accordance with the rules & orders issued from time to time against the vacancy of Shri A.Das, Pharmacist-cum-clerk who has retired on 30.11.2002.

The appointment of Shri B.K.Sarma is subject to the following terms & conditions :-

1. His appointment is purely temporary and on ad-hoc basis and can be terminated at any time without assigning any reasons.
2. He will be on probation for 2 years from the date of appointment in the post subject to the continuance of his services. The appointment may be terminated at any time without any reasons and notice during the probationary period by the appointing authority. Thereafter the appointment may be terminated at any time by a month notice, given by either side viz. appointee or the appointing authority without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.
3. Other conditions of service will be governed by the relevant rules and orders in force from time to time and
4. If any declaration given or information furnished by him is proved to be false or if he is found to have wilfully suppressed any material information, he will be liable to removal from services and such other action as Govt. may deem necessary.

4/11/03

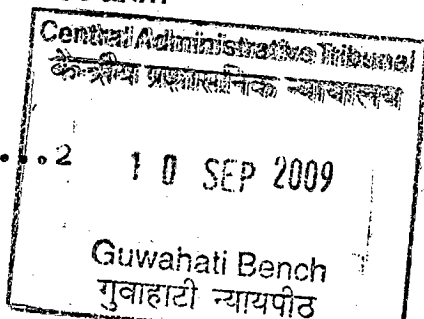
H.S.

Advocate

Contd... 2

10 SEP 2009

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ



- : 2 : -

5. He will loose the seniority in the grade of Pharmacist-cum-clerk and he will accorded seniority from the date of his joining the duty at G.M.S.D. Kolkata.

6. He will not be eligible for the pensionary benefits.

Jt. Director, CGHS & Incharge
GMSD., Guwahati.

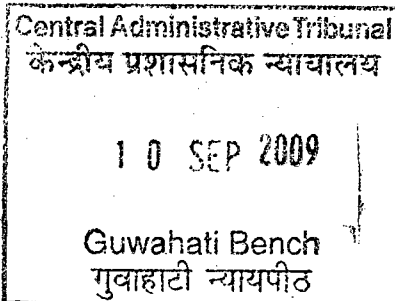
No. Admn/164/BKS/
Copy to :-

8429

29 JAN 2003

1. The Director General of Health Services, (M.S.O.), West Block No.1, Wing No.6, R.K.Puram, New Delhi-66.
2. The Dy. Director General (MS), Govt. Medical Store Depot, 9-Clyde Row, Hastings, Kolkata-22.
3. The Pay & Accounts Officer, P&A.O., Min. of Health & F.W., Kolkata-69.
4. Shri B.K.Sarma, C/o. Dr. B.K.Sarma, P.O. Renabari, Ghy-8.
5. The Accounts Officer, GMSD, Guwahati.
6. The Section Officer (J), C.A.T., Bhangagarh, Guwahati-5.

Jt. Director, CGHS & Incharge
GMSD., Guwahati.



The Dy. Director General (NSD) Kolkata.
 Clyde Row Hastings. Kolkata. 82.
 At Kolkata the 29th Jan '08.

Sir: I pray for reinstatement my service at Kolkata.

Sir,

With reference to M.S.D. letter no.

and Order no. 201, ^{Part II} A 29.01.03 I have accepted the
 terms & conditions of M.S.D. Gauhati and resumed
 my duty on dt. 29.1.003.

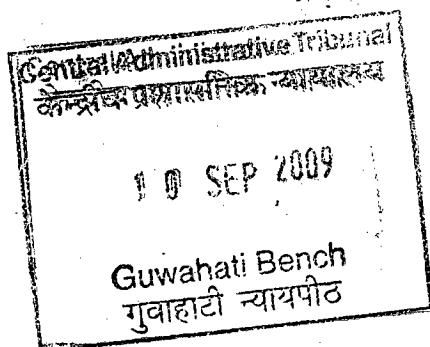
I have request to resume my
 duty on today forenoon dt 29.1.003. And this
 is without any prejudice.

Yours,

Faithfully Yours.

Mr Biraja Kanto Sarma.
 Kolkata.

Attested
 By
 Advocate



-30-

ANNEXURE - 93

भारत सरकार

सरकारी निमित्त सामग्री भंडार

9, क्लाइड रो, हेस्टिंग्स, कोलकाता - 22.

Govt. of India

Govt. Medical Store Depot

9, Clyde Row, Hastings, Kolkata-22.

संदर्भ संख्या: 91एफ 10/ 1/प्रशा. /पेंशन/

Ref.No: 9(F10/ 7)/(Admn)/Pension

दिनांक/ Date:

1-9-2008

04/9/2008

मेमो/MEMO

सेवा में/To,

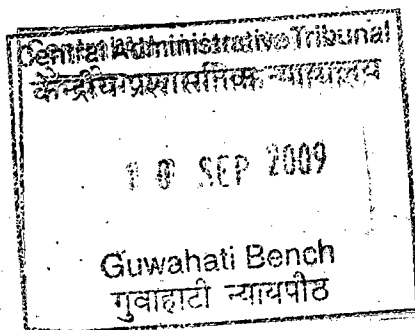
...Shri. Biraja Kanta Sarma
...Pharmacist... Cum-Clerk,
...G.M.S.D., Kolkata.

विषय:- सरकारी सेवा से सेवा निवृत्ति ।

Sub:- Retirement from Government Service.

दृष्टया ध्यान दें कि आप को दिनांक 30-6-2009 (AN) से सरकारी सेवा से सेवानिवृत्त कर दिया जाएगा । यह आप की सूचना के लिए है । आप पासपोर्ट आकार के संयुक्त फोटोग्राफ की चार प्रतियाँ बैंक लेखा संख्या के साथ प्रस्तुत करें जिसमें आप की मासिक पेंशन की राशि क्रेडिट करने के लिए आवश्यक कार्यवाही की जा सके ।

Please note that you will be retired from Govt. Service w.e.f. 30-6-2009 (AN)..... This is for your information please. You should furnish 4 copies of Passport size joint photographs alongwith Bank Account No. to which monthly pension is to be credited.



Attended

Has

Advocate

उप महा निदेशक, एम एस डी

कोलकाता-22.

Dy. Director General (MSD)
Kolkata-22.

To

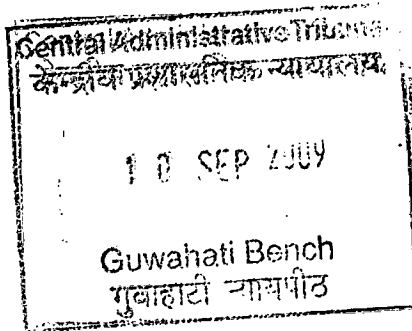
To D.D.G. (111)

G. N. S. D. Kallikot.

Dt. 29.12.08.

Sir,

I have submitted the S.B.S. Account NO. 11004635038
for my monthly pension. This is for your kind information
& necessary action please.



Sincerely yours.

Dr. Biraj's name Samee.
P.E.C.

29/12/08
Dated
29/12/08
Dated
29/12/08

Attested

Has

Advocate

To

The S.D.G. (H/S)

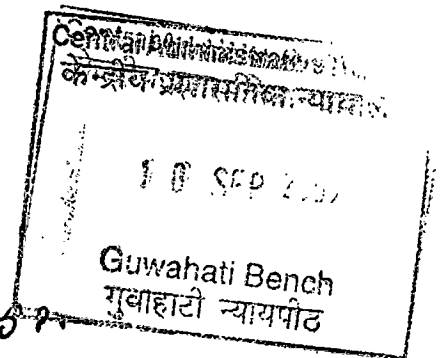
G. M. S. D. Kulkarni. 22.

Sir,

I have the honour to state a few facts for your kind consideration. That Sir, I have submitted here with the birth statements of my wife.

Name: Smt. Nilima Sarma.

Date of Birth - 23rd January 1952



This is for your kind information & necessary action for pensionary benefits.

Attested

Has

Advocate

28/11/07

Examined Contents not Verified
For V. Final Store Depos
Mastings Kolkata-700033

Faithfully Yours.

Smt. Biraja Kaula Sarma.

P. e. e.



No. PE(Admn)/01/4(35)/04-06/PE/BKS/ f321

Government of India
Directorate General of Health Services
(Government Medical Store Depot)

PHONE : (033)2223-0409/0452/3593/6125

FAX : (033)2223-0838

E-mail: gmsdkol@yahoo.com

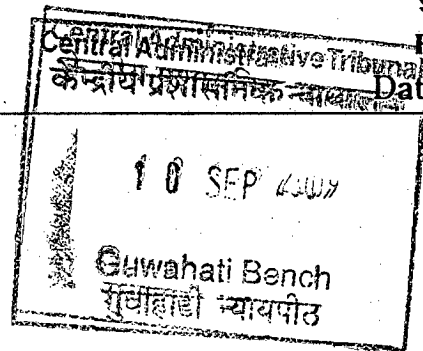
9, Clyde Row, Hastings,

Kolkata - 700 022

Dated: - 21st Nov. 2008

Speed Post

To,
The Joint Director, CGHS & In-charge,
Govt. Medical Store Depot,
A. K Azad Road, Gopinath Nagar,
Guwahati-781016



23/11/08

Sub:- Regarding pensionary benefits in respect of Shri B K Sharma, Pharmacist -cum-Clerk at present working at GMSD, Kolkata, due to retire on 30/6/2009
Sir,

The photocopies of the office orders dt. 16/1/2003 & 29/1/2003 issued by your office may kindly be examined (enclosed for ready reference)

As per office order dt. 16/1/2003 the incumbent was directed to report for duty at GMSD Kolkata in the same capacity immediately and as per office order dt. 29/1/2003 also issued by your office he was directed to be re-appointed (fresh appointment at GMSD Kolkata as Pharmacist-cum-Clerk) against the vacancy caused due to retirement of Shri A. Das on 30/11/2002, both the orders were endorsed ~~to~~ MSO(HQ).

The anomaly between the two office orders in question regarding reporting for duty and fresh appointment as Pharmacist-cum-Clerk may kindly be reconciled or the later order dt. 29/1/2003 may please be withdrawn in the capacity of the appointing authority of Gr-"C" employees for the lawful pensionary benefits of the incumbent and his break in service may also be condoned because of the following considerations:-

In the office order dt. 29/1/2003 it had been clearly stated that he was given fresh appointment purely on temporary and adhoc basis with 2 years probation, inter alia, he would not be entitled to any pensionary benefits. But neither in the order dt. 20/12/2002 of Hon'ble CAT Guwahati nor in the order dt. 10/1/2003 issued by MSO (HQ) imposed any such harsh conditions, rather: Hon'ble CAT Guwahati ordered to settle the case justly, fairly and reasonably. If the order dt. 29/1/2003 is not withdrawn, your good office may please send a copy of resignation letter tendered by the incumbent as stated by the learned council of respondent (Govt. side) which was dowelt in in the order of Hon'ble CAT. Guwahati.

If the order dt. 29/1/2003 of GMSD Guwahati is not withdrawn 1) How his previous qualifying service of about 14 years will be dealt with may kindly be clarified. 2) why his GPF balance & Group Insurance money were not paid by your good office if he actually tendered his resignation may also be clarified.

Contd. Page-2

The leave account of the incumbent had not been closed after adjustment of EOL from the accrued EL and not closed under attestation of the competent authority which may please be done now.

Service verification of the incumbent while he was under GMSD Guwahati upto 6/12/1985 may also please be done.

His date of birth had not been specifically attested both in figure and in words (words not incorporated in the service book) nor left hand fingers' impressions had been taken in the service book on the space provided for, nor his photograph affixed under attestation by the competent authority at his initial appointment

It is therefore again emphasized that the order dt. 29/1/2003 may kindly be withdrawn in order to settle the case justly, fairly & reasonably (as per order of Hon'ble CAT, Guwahati) and parawise queries may kindly be complied urgently, since the incumbent is going to be retired shortly.

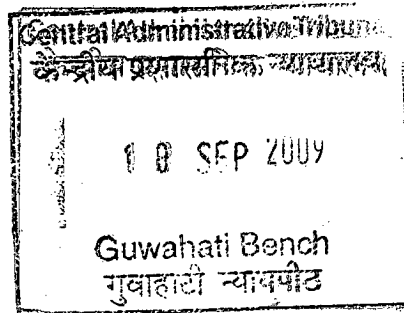
Yours faithfully

Encl:- Service Book of Sri B K Sarma, Pharmacist-cum-clerk

Dy. Director General (MS),
Kolkata

Copy to:

1. The Addl. Director General (ST) Dte. General of H.S. (MSO)
West Block No.-1, Wing No.-6, R K Puram, New Delhi-110066
....for information & urgent necessary action please;
because the incumbent is going to retire on 30/6/2009.



Dy. Director General (MS),
Kolkata

Ext. opt.

c/c

-35-

ANNEXURE - 13

56

No. 9(F-10/7)/PE(Admn)/Personal/08-09/19/45.



Government of India
Directorate General of Health Services
(Government Medical Store Depot)

PHONE : (033)2223-0409/0452/3593/6125

FAX : (033)2223-0838

E-mail: gmsdkol@yahoo.com

9, Clyde Row, Hastings,

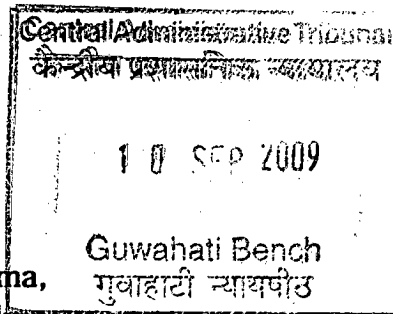
Kolkata - 700 022

Dated: - 12th Jan. 2009

16/1/2009

MEMORENDUM

In cancellation of this office Memo No. 9(F-10/7)/PE(Admn)/Pesion/08-09/4775 dt. 2/9/2008 regarding retirement from Govt. Service, it is to inform him that he will not be eligible for pensionary benefits vide GMSD Guwahati Office Order No. 253 Part-II dt. 29/01/2003 read with their letter No. Admn/164/BKS/5745 dt. 31/12/2008



To,
Shri Biraja Kanta Sarma,
Pharmacist Cum Clerk
GMSD, Kolkata-22.

Dy. Director General (MS),
Kolkata

16/1/09

Attested

Has

Advocate

To,
The D.D.G(MS)
Govt. Medical Store Depot
Kolkata - 22

Sub - Pensionary benefit on the retirement of the undersigned.

Sir,

This has a reference to your office memo No.9(F-10/7)/PE(Admn)/Pension/08-09/4775 dt. 2/9/08 regarding processing of my pension case. And subsequent memo No. (F-10/7)/PE(Admn)/Personal/08-09/9145 dt.16.1.09 regarding my ineligibility to pensionary benefits.

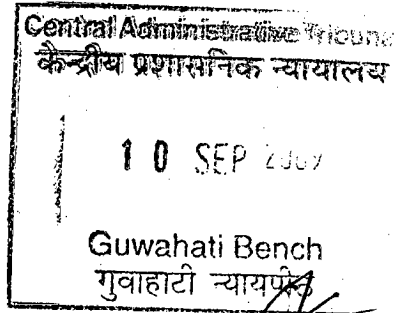
On personal enquiry, it is learnt that based on G.M.S.D Gauhati Office No.253 Part.II dt.29/1/03 read with their letter No. Adm/164/BKS/5745 dt.31.12.08 have been found inelligible of pensionary benefits.

Incidentally, I submit that at no point of time, during my service at G.M.S.D Gauhati, I tendered my resignation.

So, kindly process my pension case taking into account my previous service at G.M.S.D Gauhati for which I did not get my benefits.

Yours faithfully,
Biraja Kanta Sarma
Biraja Kanta Sarma
Pharamacist-Cum Clerk
G.M.S.D.Kolkata-22

Dated : 16.1.09



16/1/09
Checked Contents not Panded
Govt. Medical Store Depot
Kolkata-22

Affected

Has

Adviser

No. PE(Admn)/01/4(35)/04-06/PE/BKS/ */P826*
Government of India
Directorate General of Health Services
Government Medical Store Depot

PHONE : (033)2223-0409/0542/6125

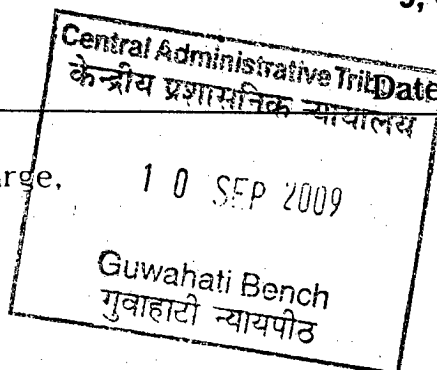
FAX : (033)2223-0838/3593

E-mail: gmsdkol@yahoo.com

9, Clyde Row, Hastings,
Kolkata - 700 022

Dated: - 03rd Feb. 2009

To,
The Joint Director, CGHS & In-charge,
Govt. Medical Store Depot,
A. K Azad Road, Gopinath Nagar,
Guwahati-781016



Sub:- Regarding pensenary benefits in respect of Shri B K Sharma, Pharmacist -cum-Clerk at present working at GMSD, Kolkata, due to retire on 30/6/2009
Sir,

With reference to your office letter No. Admn/164/BKS/5745 dt. 31/12/2008 and letter of even no. dt. 5/1/2005 on the subject cited above regarding refusal of pensenary benefits admissible to the Govt. Servant and return of service book respectively it is to request you once again to kindly reply parawise (Specifically) as asked for in this office letter of even No. 8321 dt. 23/12/2008 positively with due corrections in service book for the period when the Govt. Servant was working in GMSD, Guwahati.

Incidentally, a copy of representation dt. 16/1/2009 received from the Govt. servant is enclosed for your kind perusal and necessary action.

The matter may be treated as most urgent since the Govt. Servant is due to retire on 3/6/2009.

Yours faithfully

Encl:- Service Book & a representation as stated above.

Dy. Director General (MS),
Kolkata

Copy to:

1. The Addl. Director General (ST) Dte. General of H.S. (MSO)

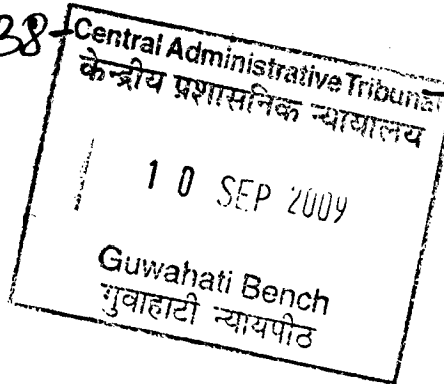
West Block No.-1, Wing No.-6, R K Puram, New Delhi-110066

....with reference to the endorsement to this office letter dt. 23/12/2008. Copy of reply by GMSD, Guwahati vide their letter dt. 31/12/2008 & a copy of representation dt. 16/1/2009 received from the Govt. Servent.

2. Shri B K Sharma, Pharmacist -cum-Clerk, GMSD, KOI-22

P826-
Advocate
Dy. Director General (MS),
Kolkata

-38-



ANNEXURE - 16⁶

To,
The DDG(MS),
GMSD. Kolkata-22.
Date: 2/3/09

Sub:- Prayer for pensionary and along with other benefits to me vide the order of the Honorable CAT.

Sir,

With reference to your letter no. 9(F-10)/7/Admn/Pension/4714 dated:- 02-09-08, I have been submitted all my documents regarding my pensionary benefits. But it is a matter of disgreatfull that on dated 16-01-09, vide your letter no.9/(F10)/7/Admn/Personnel/0809/9145, you have informed that I will not be eligible for pensionary benefit vide GMSD, Guwahati office order no. 253 part-II dated:- 29-01-03.

That sir, you have counted my retirement age from the time of my appointment. But at the time of my retirement benefits you are not willing to count my pre service period, which is the act of injustice for the parts of a senior employee. I have stated the following points for your kind necessary action and information.

I was appointed in the year 1971 at GMSD, Guwahati and continue my service up to the year 1985. In the year 1985 I was mentally depressed and applied for leave. But the authority did not allow the leave. In the year 1986 I approached the DADG(MS), GMSD, Guwahati for my reinstatement. But the DADG(MS), GMSD, Guwahati did not allow me to join. As a fact I have to approach to the Honorable CAT, Guwahati for my reinstatement. In the year 1994 vide O.A No. 126/1994 the Honorable CAT order to reinstate me. But the DADG(MS), GMSD, Guwahati denied me to reinstate due to over age and which was not a point of rejection for an ex employee.

So, again I approach the Honorable CAT for justice. In the year 06-05-1999 the Honorable CAT again pass the order to reinstate me. But again G.M.S.D Guwahati appeal to Guwahati High Court against the order. The Honorable High Court rejected the appeal and vide 34/02inOA/216/97 by the Honorable CAT, I was again reinstated at G.M.S.D Kolkata, and also Dy. Director Admn (MSO) Vide letter dt.23/10/02 suggested to adjust me at G.M.S.D Kolkata.

That sir, my appointment was mainly based by the verdict of the Honorable CAT Guwahati, and not by the order of G.M.S.D Guwahati which is baseless and unlawful in the eye of law.

That sir, now I am an employee at G.M.S.D Kolkata and it is your duty to do all the needful against me, in relation with all my relatives matters. And the Honorable CAT had empowered you (i.e the authority) to dissolved my case justly, fairly and reasonably and not by the order of G.M.S.D Guwahati.

Attested
By
Admn. Officer

Signature

P.T.O.

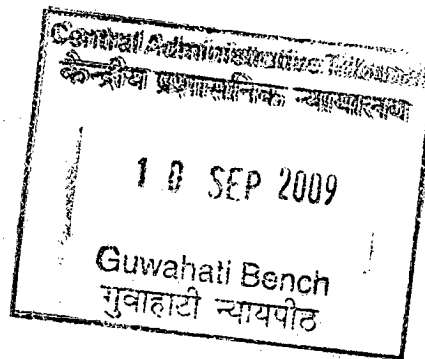
At the age of 54 years the DDG(MS)G.M.S.D Kolkata reinstate me at a junior scale by ignoring the past service. And it also an unlawful by the eye of law or against the verdict of Honorable CAT.

So, I again request you to kindly consider my case sympathetically by the order of the Honorable CAT to get my pensionary and other benefits from your end at the time of my retirement. Otherwise, I will have to approach to Honorable CAT Kolkata, for my genuine justice. A affidavit copy with the letter of Dy. Director Admn.(MSO) is attached for ready reference.

Your's faithfully.

Bireja Kanta Sahoo
J. C. C. Kalkata.

2/3/09
Central Administrative Tribunal
Kolkata-700009





No. 9(F-10/7)/PE/(Admn)/Pension/08-09/11272.
Government of India
Directorate General of Health Services
Government Medical Store Depot

PHONE : (033)2223-0409/0542/6125

FAX : (033)2223-0838/3593

E-mail: gmsdkol@yahoo.com

9, Clyde Row, Hastings,

Kolkata - 700 022

Dated: - 13th Mar. 2009

15/3/09

MEMO

In connection with his retirement on 30/06/2009 he is hereby informed that his past service at GMSD Guwahati will not be counted towards pension as confirmed by Jt. Director In-charge GMSD Guwahati in his letter No. Admn/164/BKS/595 dt 13/2/2009 (Copy enclosed for information). Further since he has rendered only 6 years 5 months & 3 days service at GMSD Kolkata as on 30/6/2009 on his reappointment (His date of re-appointment at GMSD, kolkata being 29/1/2003) & the period is less than minimum required qualifying service of 10 years for settlement of pension as per CCS pensions rules, he will not be entitled to any pension. only Gratuity could be sanctioned as per rules.

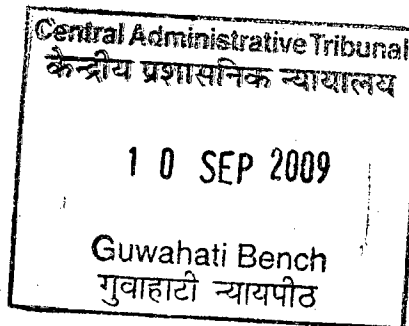
The relevant paper are enclosed for his submission after duly filled in

Enclo:- As above

To

✓ Shri B.K. Sarma, Pharmacist cum clerk.
GMSD, KOLKATA

Dy. Director General (St),
Kolkata

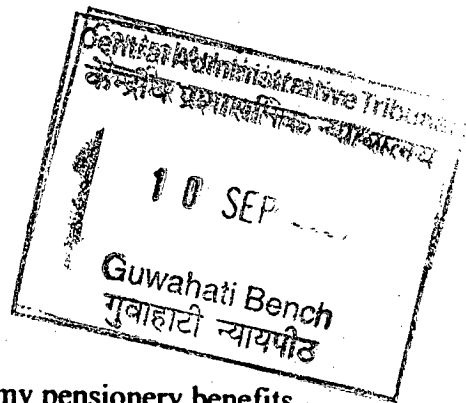


Attchd

Pat

Advocate

To,
Additional Director
Dte, General of Health Services
Medical Stores Organization
West Block No-1, Wing No-6
R. K. Puram, New Delhi-110066



Through DDG (MS) GMSD, Kolkata

Subject: – Prayer for consideration of my pensionary benefits.

Sir,

With due respect I have the honor to state a few lines for a kind consideration, that sir I was appointed as PCC as GMSD, Guwahati in the year December 1971 and continue my service up to the year 1985 without any blemish. That sir, in the last part of 1985, I mentally depressed and applied for leave. The authority GMSD, Guwahati granted me the leave, but did not allow me to extend my leave. In the last part of December 1985, I loss my mental balance and also left my home. By the grace of god in the middle part of 1986. I was returned back to my home with the help of my friend. From that time I was treated accordingly. In the month of January 1994, I became normal from my mental illness and on dated 1.3.94. I made one representation to GMSD, Guwahati to allow me to join in my duty. But authority of GMSD, Guwahati did not allow me to join. As a fact, I have to approach to the Honorable CAT. After hearing my case, the Honorable CAT made an order vide O.A.No.126 dated 1.8.94 to consider my case sympathically. The GMSD, Guwahati vide letter dated 16.9.96 rejected my case showing the cause of my over age and nothing else. Again I approach to the Honorable CAT and dated 6.5.1999 the Honorable CAT passed an order to re-instate me. Again joint director GMSD, Guwahati vide W/P appple to Guwahati High court against the verdict of the Honorable CAT. The Guwahati High court rejected the appple of GMSD, Guwahati by giving verdict to re-appoint me immediately in any where. In the year 29 th January 2003, I was re-instate at GMSD, Kolkata at the age of 54 years as a junior most by ignoring my previous services. And this incident might be happened at list on 1.8.94 as per the verdict of the Honorable court. This intentional mistake of GMSD, Guwahati I have to suffer from monetary and pensionary benefit at the time of my retirement.

That sir, during the service in GMSD, Kolkata I have appealed many times to counting my seniority and pay protection. But I have not got any positive remarks from the end. And on vide O.A.No. 58/07 dated 12.3.07; the Honorable CAT Guwahati passed a "speaking order" for consideration of my seniority, arrear salary, pay protection and pensionary benefit within two months of receiving the order. But authority of GMSD, Guwahati did not do anything towards me.

As such, I humbly request you to do the need full for me at the time of my retirement. And for this kind of action I shall remain grateful to you and I hope you will kind enough to consider my case sympathically.

Affected

H. S.

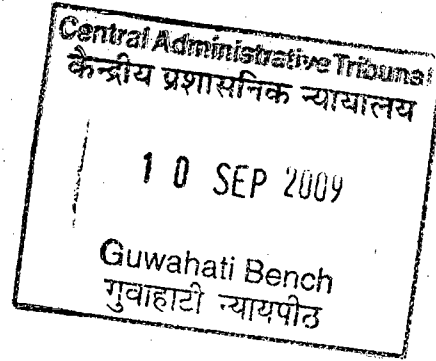
Advocate

9/10/09
Bhupendra Kumar Das
Joint Director
Medical Stores Depot
Kolkata-700022

Yours faithfully,

B. Binaya Kumar Das
P. C. C.
dt. 9.04.09

To,
The Additional Director (ST)
Director of Health Service
Medical Store Organisation
P.K.Puram, Wing No-1, Block No-2
New Delhi-110006



(Through proper channel)

Subject : Proposal for superannuation of Sri B.K.Sarma, Pharmacist-Cum-Clerk,
GMSD, Kolkata without pensionary benefit.

Sir,

I beg to refer to the correspondence resting with your letter No.9(F-10)/7/PE/Admn/Pension/08-09/11272 dated 19.3.2009 on the above subject and to appeal to your goodself kindly to consider the sanctioning of pension to me on the following ground :-

1. That I was appointed as Pharmacist with effect from 23.12.1971 in your Medical Store and naturally I have completed 10 years of service on 23.12.1981.
2. That due to my mental imbalances in 1985 I was granted leave for a specified period but granting of such leave for further period could not be granted.
3. That my service was not also terminated due to long absence.
4. That by the order of the Hon'ble Tribunal Judges, I was appointed again by relaxing the age bar with effect from 29.01.2003. But the order was published by the Hon'ble Tribunal on 1.8.1994. At that time the authority of GMSD, Gawhati denied to give appointment showing the cause of overage only. It is funny thing that after 10 years at the age of 54 years I was appointed again in GMSD, organization i.e at GMSD, Kolkata. Hence the stand of overage was totally wrong and intentional.
5. That it was stated that my past services at GMSD, Gawhati will not be granted towards pension. If the previous service is not considerable how a person should be appointed in the Central Government Service at the age of 54 years. This is not clear to me. The reason for penalising me in this fashion should be explain to me clearly. Any punishment to the employee should be followed by the enquiry to be setup by the enquiry committee by the authority. But nothing have been done in my case in this respect. Merar observator of the officer that my past service at Gawhati will not be counted towards pension will not be tenable under the Central Services Rules.

Cont: page 2

Handwritten signature
Handwritten signature
Advocate

6. That in the interest of the humanitarian ground the authority could issue necessary order considering my absence from the services to the serious illness of mine. I hold a good record in maintaining an honest and sincere services.

In view of this, I would appeal to your goodself kindly to ^{reconsider} ~~the considered~~ the case in light of the above observation and see that I may get my pensionary benefit on humanitarian ground as a very special case.

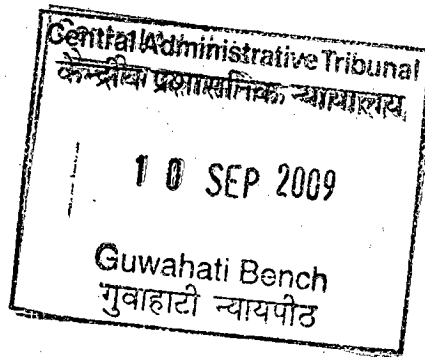
Praying for an early order.

Dated : 8.05.2009

Yours faithfully,

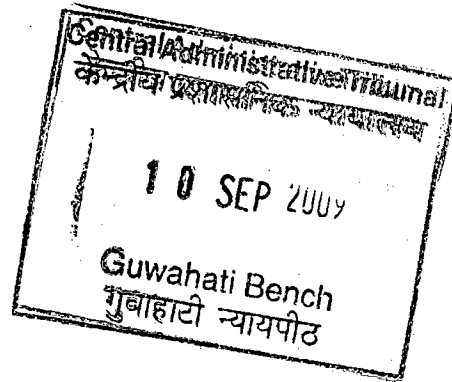
Biraja Kanta Sarma.

(B.K.Sarma)
Pharmacist-cum-Clerk
GMSD, Kolkata-22



8/5/09
Contents not verified
Dr. Medical Store Dept
Kolkata-700022

To,
The Additional Director
Medical Store Organisation
R.K.Puram, Wing No.1, Block No.6
New Delhi- 66



Through Proper Channel

Sub: Superannuation of B.K.Sharma, Pharmacist cum clerk, GMSD, Kolkata
without pensionary benefit.

Respected Sir,

With reference to the previous letter dated 8.4.09 and 9.5.09 it is stated that I have received no information regarding pensionary benefit till date from your end and this type of harassment at the time of retirement may causes distress, mental depression and other incident.

Though you are not willing to settle my pensionary and other benefits inspite of the proper direction of Hon'ble CAT, I am not ready to accept the gratuity from your end at this stage. As I have to approach the Hon'ble CAT, Guwahati against for justice after superannuation please.

Yours faithfully,

B.K. Sarma

B.K.Sarma
Pharmacist cum Clerk
GMSD, Kolkata-22

Date: 11.6.09

Copy to:

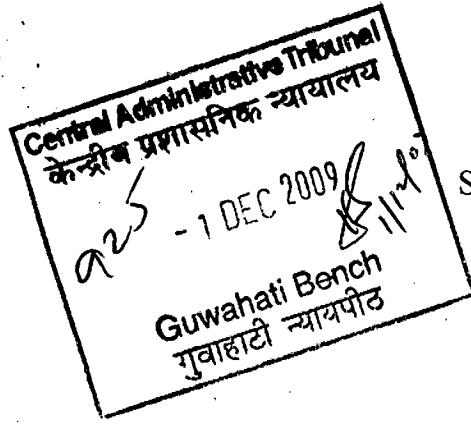
The Addl Director, CGHS I/C, GMSD Guwahati-16 – for information and necessary action please.

Affected

Has

Advocate

Ranajit Chatterjee
Ranajit Chatterjee
Medical Store Depot
Kolkata-700029



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

Original Application No.185/2009.

Shri Biraja Kanta Sarma

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

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4	Photocopy of DGHS(MSO), R.K.Puram, New Delhi letter No.F.No.C.18018/6/99-Store-I dated 4.5.07.	B series	9
5	Photocopy of letter mentioning demand draft No.TT/N-162699 dated 25.1.88 for Rs.1,209/-	C	10
6	Photocopy of letter No.Health/FCR/D.D/568 dated 4.2.88 from Pay & Accounts Office, Ministry of Health & FW, Kolkata.	D series	11
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8	Photo copy of GMSD, Kolkata letter vide Memo dated 19.3.2009	F	16
9	Photocopy of the speaking order in compliance with judgment and order dated 12.3.07 passed by Hon'ble CAT Guwahati	G series	17-26

Filed by
Kankam Das
30-11-09

Kankan Das
Addl.C.G.S.C
CAT, Guwahati Bench, Guwahati.

68

Adl. Director
C.G.H.S., I/C G.M.S.D.
Guwahati-16.

- 46 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



IN THE MATTER OF

Original Application No.185/2009.

Shri Biraja Kanta Sarma

.....Applicant

- Versus -

Union of India & Ors.

.....Respondents

IN THE MATTER OF

Written statement submitted by the Respondents No.

WRITTEN STATEMENT

The humble answering respondents

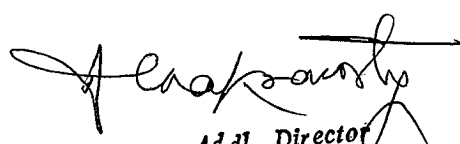
submit their written statement as follows

Received by
H.S.
1.12.09.

1. That I Dr. Ardhendu Chakravarty
working as Addl. Director CGHS Guwahati & I/C GMSD Guwahati
and Respondents No. 3 in the above case and I have gone through a copy of
the application served on me and have understood the contents thereof. Save and
except whatever is specifically admitted in the written statement, the contentions
and statements made in the application may be deemed to have been denied. I am
competent and authorized to file the statement on behalf of all the respondents.
2. That with regard to the statements made in paragraphs 1, 4.2, 4.5,
4.8, 4.9, 4.10, 4.13 and 4.15 the answering respondents beg to state that these are
being matter of records. Hence no comments.

Cited by
the
respondents
Chakravarty
Addl. Director
C.G.H.S., I/C G.M.S.D.
Guwahati-16
Through Gannan Das
20-11-09

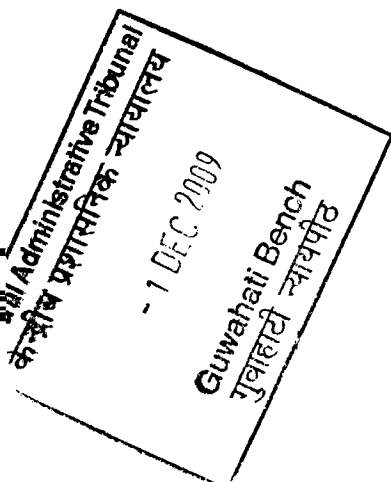
3. That with regard to the statements made in paragraphs 4.20, 5.1, 5.2, 5.3, 5.4, 5.5, 6.7, 8.1, 8.2, 8.3, 8.4, & 8.5 of the O.A the answering respondents do not offer any comments.
4. That with regard to the statements made in para 4.1 of the O.A the answering respondents beg to state that the applicant Shri B.K.Sarma, PCC has retired with effect from 30.6.09 (A.N) from the Govt. Medical Store Depot, Kolkata.
5. That with regard to the statements made in para 4.3 of the O.A the answering respondents beg to state that the same is not fully correct. However, the O.A No.124/94 was filed by the applicant and the judgment and order passed by the Hon'ble CAT Guwahati on 1.8.94 was implemented by this depot in terms of Govt. rules/order.
6. That with regard to the statements made in para 4.4 of the O.A the answering respondents beg to state that the applicant's case could not be considered as he was overage and it was mentioned in the said order.
7. That with regard to the statements made in para 4.7 of the O.A the answering respondents beg to state that the applicant ~~was~~ tendered his resignation at GMSD, Guwahati vide application dated 18.6.85 and 11.12.85 stating on the ground of inability to continue his service due to some domestic affairs and also requested to relieve him. The office thereafter accepted the resignation letter dated 11.12.85 and the said acceptance order was forwarded to Shri B.K.Sharma by this office.
8. That with regard to the statements made in para 4.11 of the O.A the answering respondents beg to state that this is as per existing Govt. rules and orders. Hence no comment.


Addl. Director
C.G.H.S., I/C G.M.S.D.
Guwahati-16.

9. That with regard to the statements made in para 4.12 of the O.A the answering respondents beg to state that a communication regarding pensionary benefits of the applicant was received from GMSD Kolkata vide letter No.PE(Admn)/01/4(35)/04-06/PE/BKS/7828 dated 8.12.08 and again a copy of the said letter was forwarded to this office vide letter No. PE(Admn)/01/4(35)/04-06/PE/BKS/8321 dated 23.12.08 and accordingly necessary reply on the above letters was furnished to GMSD Kolkata vide this office letter No.Admn/164/BKS/5745-46 dated 31.12.08 and letter No. (Admn)/01/4(35)/04-06/PE/BKS/5790 dated 5.1.09 (copies enclosed) stating that the appointment of the applicant was a clear cut fresh appointment and hence question of granting of past service benefits, pensionary benefits etc. does not arise as informed by the DGHS(MSO), R.K.Puram, New Delhi vide letter No.F.No.C.18018/6/99-Store-I dated 4.5.07 (copy enclosed). As regards final payment of GPF balances of Shri B.K.Sarma it is stated that necessary payment of GPF balances was made to him by this office through PAO Kolkata as per his request and a copy of letter mentioning demand draft No.TT/N-162699 dated 25.1.88 for Rs.1,209/- only and a copy of letter No.Health/FCR/D.D/568 dated 4.2.88 from Pay & Accounts Office, Ministry of Health & FW, Kolkata under which the said demand draft issued in favour of Shri B.K.Sarma are also enclosed as an evidence.

Photocopies of the GMSD Kolkata letters No.Admn/164/BKS/5745-46 dated 31.12.08 and letter No. (Admn)/01/4(35)/04-06/PE/BKS/5790 dated 5.1.09 are annexed herewith and marked as Annexure-A series.

Photocopy of DGHS(MSO), R.K.Puram, New Delhi letter No.F.No.C.18018/6/99-Store-I dated 4.5.07 is annexed herewith and marked as Annexure "B" series.



✓ *[Signature]*
 Adl. Director
 C.G.H.S., I/C G.M.S.D.
 Guwahati-16.

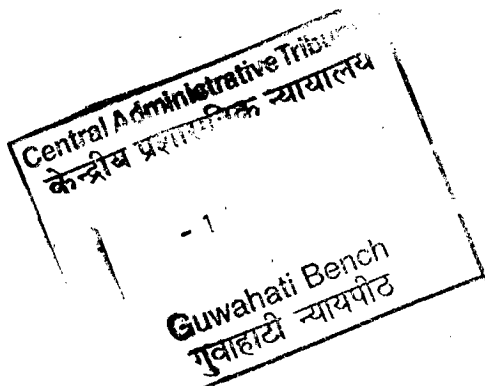
Photocopy of letter mentioning demand draft No.TT/N-162699 dated 25.1.88 for Rs.1,209/- only is enclosed herewith and marked as Annexure "C".

Photocopy of letter No.Health/FCR/D.D/568 dated 4.2.88 from Pay & Accounts Office, Ministry of Health & FW, Kolkata is annexed herewith and marked as Annexure-D series.

10. That with regard to the statements made in para 4.14 of the O.A the answering respondents beg to state that a communication vide letter dated 6.2.09 from GMSD Kolkata was received by this office and accordingly the same was disposed of vide this office letter dated 13.2.09 (copy enclosed) addressing to the Addl. Director General (Stores) DGHS, (MSO), New Delhi with a copy endorsed to GMSD, Kolkata. It was clearly mentioned in the letter that the appointment of the applicant in GMSD Kolkat as P.C.C was a fresh appointment and question of fixation of seniority, counting of previous period of service, benefit of pension etc. does not arise. Further, it was also mentioned that the applicant Shri B.K.Sarma tendered his resignation from GMSD Guwahati vide his letter dated 18.6.85 and 11.12.85 which was accepted by this office vide O.O.No. 62(Part-II) dated 6.5.86 and the said acceptance order was forwarded to Shri B.K.Sharma.

Photocopy of official letter vide memo No.Admn/164/BKS/594-595 dated 13.2.09 issued by Joint Director I/c, GMSD, Guwahati is annexed herewith and marked as Annexure- "E".

11. That with regard to the statements made in para 4.16 of the O.A the answering respondents do not offer any comments. However, it is to state that the communication issued to the applicant by GMSD, Kolkata vide Memo dated 19.3.2009 is correctly issued as per existing Govt. rules/orders.



[Signature]
Adl. Director
C.G.H.S., I/C G.M.S.D.
Guwahati-16.

Photo copy of GMSD, Kolkata letter vide Memo dated 19.3.2009 is annexed herewith and marked as Annexure-F.

12. That with regard to the statements made in para 4.18 of the O.A the answering respondents beg to state that this office has acted as per Govt. rules/orders in force and nothing wrong was done against the applicant.

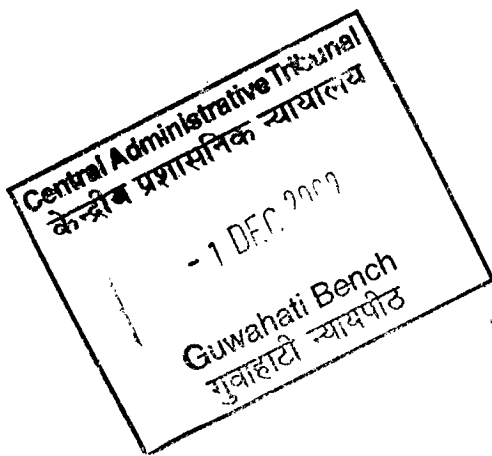
13. That with regard to the statements made in para 4.19 of the O.A the answering respondents beg to state that the applicant was clearly informed by this office by issuing a speaking order in compliance with judgment and order dated 12.3.07 passed by Hon'ble CAT Guwahati in O.A.58/2007 regarding non-counting of previous period of service, refixation of pay, allowing arrears of salary, benefits in pension etc.

Photocopy of the speaking order in compliance with judgment and order dated 12.3.07 passed by Hon'ble CAT Guwahati in O.A.58/2007 regarding non-counting of previous period of service, refixation of pay, allowing arrears of salary, benefits in pension etc. is annexed herewith and marked as Annexure-G series.

14. That the application is devoid of any merit and deserved to be dismissed.

15. That the reply has been made bonafide and for the ends of justice and equity.

It is therefore humbly prayed before this Hon'ble Tribunal that the present application filed by the applicant may be dismissed with costs.



[Signature]
Addl. Director
C.G.H.S., I/C G.M.S.D.
Guwahati-16.

51-6

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 1 DEC 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

VERIFICATION

I Dr. Ardheender Chakrasorty

Son of Late Aswini Kr. Chakrasorty aged about 59

years, resident of Flat NO 301, Pubali Estate, Ananda Nagar,
G.M.C.H. Road, Guwahati-5
working as Addl. Director CGHS Guwahati & I/C G.M.S.D., Guwahati

Duly authorized and competent officer of the answering respondents to sign this verification, do hereby solemnly affirm and verify that the statements made in paras 7, 8, 12, 14 & 15 are true to my knowledge, belief and information & those made in para 9, 10, 11, 13 being matter of record 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 30 day of November, 2009 at Guwahati

Ardheender Chakrasorty
Addl. Director
C.G.H.S., I/C G.M.S.D.
Guwahati-16.

52

Annexure A

54



Gram: MEDSTORE
FAX NO.: 9361-2471214
P.B.No. : 84
E.MAIL: gh75108@bsnl.in

GOVERNMENT OF INDIA
Ministry of Health & Family Welfare
Directorate General of Health Services

Phone : 2471214

Government Medical Store Depot
A.K. AZAD ROAD, GOPINATH NAGAR, GUWAHATI - 781016

REGISTERED/AD
No. Admn/164/BKS/

5790

05 JAN 2009

To
The Dy. Director General (MS)
Govt. Medical Store Depot,
9, Clyde Row, Hastings,
Kolkata - 700022

Sub :- Regarding Pensionary benefits in respect of Shri B.K.Sarma, P.C.C., GMSD, Kolkata - regarding.

Ref :- Your letter No. PE (Admn)/01/4(35)/04-06/PE/BKS/8321 dt. 23/12/08 and this depot letter No. Admn/164/BKS/5745 dt. 31.12.08.

Sir,

Kindly refer to the above mentioned letters.

The Service Book of Shri B.K.Sarma, P.C.C. as received vide your letter dt. 23.12.08 is returned herewith. Also it is stated that Shri B.K.Sarma was appointed as P.C.C. (fresh appointment) in your depot vide your Office Order No. 201 (Pt-II) dt. 29.01.2003. Hence the matter may kindly be settled at your end accordingly.

Yours faithfully,

Encl :- One Service Book of Shri B.K.Sarma.

Authentic to be
true copy
30/11/09

Jt. Director, I/c GMSD.GHY

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 1 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ



Gram: MEDSTORE
FAX NO.: 0361-2471214
P.B.No. : 84
E.MAIL: gh75108@bsnl.in

GOVERNMENT OF INDIA
Ministry of Health & Family Welfare
Directorate General of Health Services

Phone : 2471214

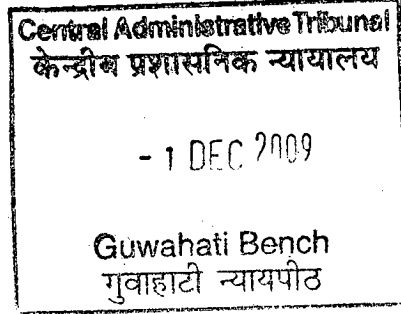
Government Medical Store Depot
A.K. AZAD ROAD, GOPINATH NAGAR, GUWAHATI - 781016

REGISTERED / (SPEED)
No. Admn/164/BKS/

5745-46

31 DEC 2008

To
The Dy. Director General (MS)
Govt. Medical Store Depot,
9, Clyde Row, Hastings,
Kolkata - 700022



Sub :- Regarding Pensionary benefits in respect of Shri B.K.Sharma, Pharmacist-cum-clerk of G.M.S.D Kolkata (Due for retirement on 30/6/2009)-regarding.

Ref :- Your letter No. PE (Admn)/01/4/35/04-06/PE/BKS/7828 dt. 8/12/08.

Sir,

With reference to the above, I am to draw your attention to this office Registered Letter No. Admn/164/BKS/1109-14 dt.22/5/2007(copy enclosed for ready reference) under which Shri Biraja Kanta Sharma, Pharmacist cum clerk, GMSD, Kolkata, C.M.O, GMSD, Kolkata along with others were informed suitably by this depot by issuing a speaking order in compliance with the judgement and order dt.12/3/07 passed by Hon'ble C.A.T Guwahati in O.A.No.58/2007 after examining of all representations of Shri B.K.Sharma on various issues like fresh appointments, service benefits, pension, seniority and refixation of pay etc.

Also it is stated that Shri B.K.Sharma, P.C.C has filed several cases in Hon'ble CAT Guwahati / Hon'ble Guwahati High Court from time to time against this depot and Union of India on various issues as mentioned above. All the cases along with his representations submitted to this depot have already been disposed off by Hon'ble CAT Guwahati and this depot. In this connection your office letter no. Admn/02-03/5654 dt.7/3/2003(copy enclosed) may also kindly be referred to.

Since the appointment of Shri B.K.Sharma, P.C.C in GMSD Kolkata was a clear cut fresh appointment, hence question of granting past service benefit, pensionary benefits, etc. does not arise as informed by the DGHS(MSO) R.K.Puram, New Delhi vide letter no.F.No.C-18018/6/99 Store-I dt.4/5/07(copy enclosed).

As regards the final payment of GPF balances of Shri B.K.Sharma it is to state that necessary payment of GPF balances was made to him by this depot through PAO Kolkata as per his request. The payment of group insurance value required to be verified from the very old records of this depot and PAO Kolkata as the matter is above 20 years old.

In view of the above it is requested that the matter may kindly be settled at your end accordingly. The Service Book of B.K.Sharma has not been received / enclosed as stated in your above mentioned letter.

Encl :- As stated above.

F. Ghosh (Jt. Secy.)

Yours faithfully

Jt. Director, I/c GMSD.GHY

Copy to :-

The Additional Dir. Genl.(Stores), DGHS(MSO) West Block No.1, Wing no.6 New Delhi -110066 for kind information. This refers to the GMSD Kolkata end letter no. PE(Admn)/01/4/35/04-06/PE/BKS7828 dt.8.12.08

Certified true copy
30-11-09

Jt. Director, I/c GMSD.GHY
31/12/08

54
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

Annexure -13

2007 10:06

DGHS MSO

-1 DEC

6189307

Guwahati Bench

BY FAX

GOVT. MEDICAL STORE DEPOT
GUWAHATI-10
0 MAY 2007
Diary No. 13
Date 13

F. No. C-18018/6/99-St-I
Directorate General of Health Services
(Medical Store Organization)

West Block No.1, Wing No.6,
R.K. Puram, New Delhi-86,
Dated the 4th MAY 2007

To

The Joint Director, Office I/c
Govt. Medical Store Depot,
A.K. Azad Road, Gopinath Nagar,
Guwahati-781018.

Sub: Implementation of Judgment and order dated 12.03.2007 passed by Hon'ble CAT Guwahati Bench in O.A. No. 58 of 2007.

Sir,

I am directed to refer to your letter No. Admn. 184/BKS/507 dated 23.04.2007, on the above subject.

The representation dated 07.09.2006 and all other representations of Sh. B.K. Sharma have been examined. The appointment of Sh. Sharma in GMSD, Kolkata is fresh appointment. Therefore no question of fixation of seniority, counting of previous period as service, re-fixation of pay, allowing arrears of salary, benefits in pension on its basis etc. arise. The representation dated 07.09.2006 as well as other representations are, thus, disposed off.

You are requested to issue a suitable speaking order on above lines to Sh. Sharma immediately.

This issues with the approval of Addl. D.G.(St.)

Yours faithfully,

A.K. Tripathi
(A.K. TRIPATHI)

DY. DIRECTOR ADMN. (MSO)

Centibled to be
four copy
30-4-09

Telephone: 25214
Telex: 235 234 GMSD IN
Telegram: MEDSTORE
P.B. NO: 84, Gauhati-I.

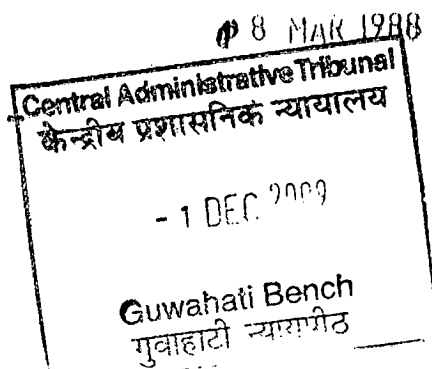
55'
GOVERNMENT OF INDIA
Ministry of Health & Family Welfare,
Directorate General of Health Services,
GOVERNMENT MEDICAL STORE DEPOT,
P.O. Rehabari, Gauhati-781008, Assam.

REGD/AD

NO: Admr/164/BKS/18163

- : M-E-M-O-R-A-N-D-U-M :

Sub :- ISSUE OF BANK DRAFT



Enclosed please find herewith a Bank Draft bearing No. TT/N-162699 dated 25-1-88 amounting to Rs. 1,209-00 (Rupees One thousand Two hundred nine) only towards final payment of his G.P.F. accumulation.

A stamped receipt of the said amount may please be sent early to this office for our record.

Enclo : 1 (One Bank Draft
No. TT/N 162699 dtd.
25-1-88. X

(P.K. GUHA)

Depot Manager

for Dy-Asstt. Director General (Ms).

To

Shri Biraja Kanta Sharma,
C/O. Padam Bahadur House,
Upper Mowprem, Shillong-2. With reference to his application dated 3-4-86 and subsequent application dated 13-12-86.

Centified to be
true copy
30-11-89

-56-

Annexum - "D" 24

Government of India
Pay and Accounts Office
Ministry of Health & F.W.
15-Ganesh Chandra Avenue
(4th Floor), Calcutta-13

Pl 186

No: Health/FCR/D.D./568

Dated 4 FEB 1988

REGISTERED

8 FEB 1988
RECEIPT DIARY NO. GAUHATI 9007

To
The Dy. Asst. Director General (Ms)
Govt. Medical Store Depot....
P.O. Rehbari, Dist. Gauhati
Assam - 781 001.....

Subject: Issue of Demand Draft(s)/Cheque(s).

Sir/Madam,

I am to enclose herewith.....Draft(s)/Cheque(s)
preferred against the bills mentioned below:-

BILL NO.	DRAFT NO.	NAME	AMOUNT
AC/12/87/411 dt 16-12-87	TT/N-162700 dt 25-1-88	Talin Ch Bazar - maternity	R 1410/-
AC/12/87/412 dt 16-12-87	TT/N-162699 dt 25-1-88	Bijaya Kanti Sharma	R 1208/-

Enclo: 2 (Two) No of Draft(s)/
Cheque(s).

Yours faithfully,
(G. S. Bhattacharya)
Accounts Officer

Authenticated
true copy
30-4-89

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 1 DEC
Guwahati Bench
गुवाहाटी न्यायपीठ

Gram: MEDSTORE

FAX NO.: 0361-2471214

P.B.No. : 84

E.MAIL: gh75108@bsnl.in

GOVERNMENT OF INDIA

Ministry of Health & Family Welfare

Directorate General of Health Services

Phone : 2471214

Government Medical Store Depot

A.K. AZAD ROAD, GOPINATH NAGAR, GUWAHATI - 781016

SPEED POST

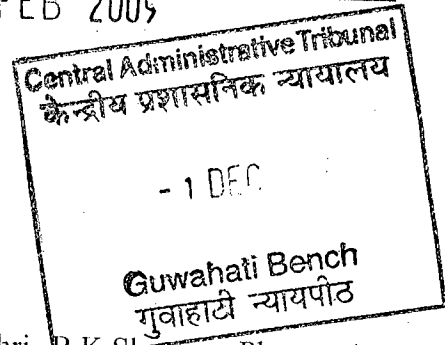
No. Admn/164/BKS/

594-595

13 FEB 2009

Page-1

To,
The Addl. Director General (Stores),
Dte. General of Health Services,
(M.S.O.), West Block No.1,
Wing No.6, R.K.Puram,
New Delhi - 110066.



Sub :- Regarding Pensionary benefits in respect of Shri B.K.Sharma, Pharmacist-cum-clerk, GMSD, Kolkata (Due for retirement on 30.6.09).

Ref :- GMSD, Kolkata letter No. PE(Admn)/01/4(35)/04-06/PE/BKS/9824-9826 dt. 6.2.09 addressed to GMSD, Guwahati and copy endorsed to Dte. and others.

Sir,

Kindly refer to GMSD, Kolkata letter No. PE(Admn)/01/4(35)/04-06/PE/BKS/9824-9826 dt. 6.2.09 (copy enclosed) addressed to this depot and copy endorsed to MSO (HQ). In this connection it is stated that as per orders issued by MSO (HQ) DGHS, New Delhi vide letter No. C.18018/6/99-St.I dt. 4.5.07 and letter No. C.18018/6/99-St.I dt. 10.1.03 (copies enclosed) Shri B.K.Sharma, PCC, GMSD, Kolkata was categorically informed that his appointment as P.C.C. in GMSD, Kolkata is a fresh appointment and question of fixation of seniority, counting of previous period as service, re-fixation of pay, allowing arrears of salary, benefit in pensions on its basis etc. does not arise vide GMSD, Guwahati letter No. Admn/164/BKS/1109-14 dt. 22.5.07 (copy enclosed) addressed to Shri B.K.Sharma and GMSD, Kolkata etc.

Inspite of the above facts, GMSD, Kolkata again referred the matter to this depot vide their letter No. PE(Admn)/01/4(35)/04-06/PE/BKS/7828 dt. 8.12.08 (copy enclosed) requesting to **withdraw the appointment order No. 253 (Pt-II) dt. 29.1.03** (copy enclosed) which was issued on receipt of MSO (HQ) letter No. C.18018/6/99-St.I dt. 10.1.03. It will be seen from the appointment order dt. 29.1.03 of Shri Sharma that his appointment was a fresh appointment by relaxing his age bar and clearly mentioning that he will not be eligible for the Pensionary benefits. A detailed reply enclosing all the relevant documents was sent to GMSD Kolkata vide this depot letter No. Admn/164/BKS/5745-46 dt. 31.12.08 (copy enclosed).

During the Service period Shri B.K.Sharma made several representations including approaching CAT Guwahati / High Court, Guwahati and the same have been disposed off in consultation with MSO (HQ) DGHS, New Delhi.

Contd..p/2

Authenticated
true copy
30-11-09

Since Shri B.K.Sharma, Pharmacist-cum-clerk, GMSD, Kolkata had tendered his resignation from GMSD, Guwahati vide his letter dt. 18.6.85 and again on 11.12.85 (copy enclosed) which was accepted vide office order no. 62 (Pt-II) dt. 6.5.86 (copy enclosed) and accordingly **his name was struck off from depot strength.**

Under the above circumstances Dte. is requested to examine the matter on the above issues and GMSD Kolkata may kindly be advised suitably in the matter under intimation to this depot.

Yours faithfully,

Enclo :- As stated above.
(20 Pages)

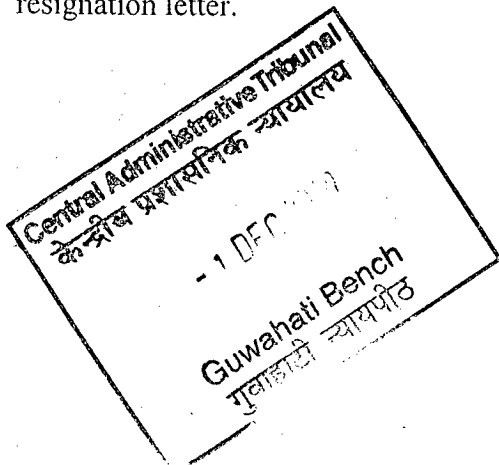
Jt Director, I/c. GMSD, Guwahati.

Insurance Value Rs. 20/-

Insured Regd. AD

Copy to :- The Dy. Director General (MS), Govt. Medical Store Depot, 9, Clyde Row, Hastings, Kolkata - 700022 with reference to their letter mentioned above. The **service book** of Shri B.K.Sharma, P.C.C. along with the copy of **resignation letter dated 18.6.85 and 11.12.85** as submitted to GMSD Guwahati are enclosed herewith which may kindly be acknowledged.

Enclo :- 1(One) Service book of Shri B.K.Sharma alongwith copy of resignation letter.



Jt Director, I/c. GMSD, Guwahati.

Handwritten signatures and dates: 12/2/09, 12/2/09, 12/2/09.

① 59-

Annexure - "E"

81

No. PE(Admn)/01/4(35)/04-06/PE/BKS/ / 8824-8826
Government of India
Directorate General of Health Services
Government Medical Store Depot

RECEIVED
GOVERNMENT OF INDIA
MEDICAL STORE DEPOT
GUWAHATI
11 FEB 2009
6146
Receipt Dy. No. : (033)2223-0409/0542/6125
PHONE : (033)2223-0409/0542/6125
FAX : (033)2223-0838/3593
E-mail: gmsdkol@yahoo.com

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 1 DEC 2009
Guwahati Bench

9, Clyde Row, Hastings,
Kolkata - 700 022
Dated: - 03rd Feb. 2009
06/2/2009

To,
The Joint Director, CGHS & In-charge,
Govt. Medical Store Depot,
A. K Azad Road, Gopinath Nagar,
Guwahati-781016

Sub:- Regarding pensionary benefits in respect of Shri B K Sharma, Pharmacist -cum- Clerk at present working at GMSD, Kolkata, due to retire on 30/6/2009

Sir,

With reference to your office letter No. Admn/164/BKS/5745 dt. 31/12/2008 and letter of even no. dt. 5/1/2005 on the subject cited above regarding refusal of pensionary benefits admissible to the Govt. Servant and return of service book respectively it is to request you once again to kindly reply parawise (Specifically) as asked for in this office letter of even No. 8321 dt. 23/12/2008 positively with due corrections in service book for the period when the Govt. Servant was working in GMSD, Guwahati.

Incidentally, a copy of representation dt. 16/1/2009 received from the Govt. servant is enclosed for your kind perusal and necessary action.

The matter may be treated as most urgent since the Govt. Servant is due to retire on 3/6/2009.

Yours faithfully

Encl:- Service Book & a representation as stated above.

Dy. Director General (MS),
Kolkata

Copy to:

1. The Addl. Director General (ST) Dte. General of H.S. (MSO)
West Block No.-1, Wing No.-6, R K Puram, New Delhi-110066
.....with reference to the endorsement to this office letter dt. 23/12/2008, Copy of reply by GMSD, Guwahati vide their letter dt. 31/12/2008 & a copy of representation dt. 16/1/2009 received from the Govt. Servent.
2. Shri B K Sharma, Pharmacist -cum- Clerk, GMSD, KOI-22

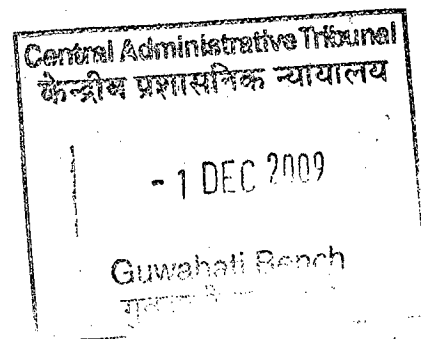
Dy. Director General (MS),
Kolkata

Certified to be
true copy
20-11-09

260-

82

To,
The D.D.G(MS)
Govt. Medical Store Depot
Kolkata - 22



Sub - Pensionary benefit on the retirement of the undersigned.

Sir,

This has a reference to your office memo No.9(F-10/7)/PE(Admn)/Pension/08-09/4775 dt. 2/9/08 regarding processing of my pension case. And subsequent memo No. (F-10/7)/PE(Admn)/Personal/08-09/9145 dt.16.1.09 regarding my ineligibility to pensionary benefits.

On personal enquiry, it is learnt that based on G.M.S.D Gauhati Office No.253 Part.II dt.29/1/03 read with their letter No. Adm/164/BKS/5745 dt.31.12.08, have been found inelligible of pensionary benefits.

Incidentally, I submit that at no point of time, during my service at G.M.S.D Gauhati, I tendered my resignation.

So, kindly process my pension case taking into account my previous service at G.M.S.D Gauhati for which I did not get my benefits.

Yours faithfully,
Biraja Kanta Sarma
Biraja Kanta Sarma
Pharamacist-Cum Clerk
G.M.S.D.Kolkata-22

Dated : 16.1.09



- 40 - 61 -
Annexure - 'F'
No. 9(F-10/7)/PE/(Admn)/Pension/08-09/11272.
Government of India
Directorate General of Health Services
Government Medical Store Depot

PHONE : (033)2223-0409/0542/6125

FAX : (033)2223-0838/3593

E-mail: gmsdkol@yahoo.com

9, Clyde Row, Hastings,

Kolkata - 700 022

Dated: - 13th Mar. 2009

MEMO

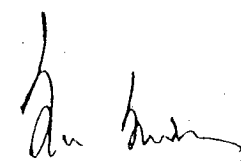
In connection with his retirement on 30/06/2009 he is hereby informed that his past service at GMSD Guwahati will not be counted towards pension as confirmed by Jt. Director In-charge GMSD Guwahati in his letter No. Admn/164/BKS/595 dt 13/2/2009 (Copy enclosed for information). Further since he has rendered only 6 years 5 months & 3 days service at GMSD Kolkata as on 30/6/2009 on his reappointment (His date of re-appointment at GMSD, kolkata being 29/1/2003) & the period is less than minimum required qualifying service of 10 years for settlement of pension as per CCS pensions rules, he will not be entitled to any pension. only Gratuity could be sanctioned as per rules.

The relevant paper are enclosed for his submission after duly filled in

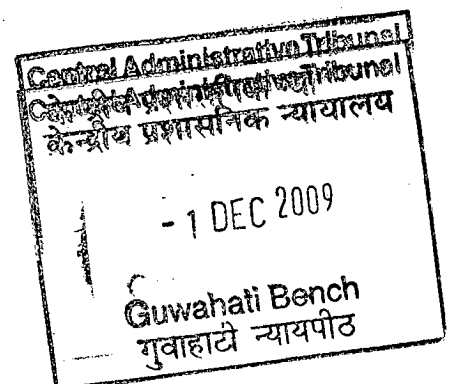
Enclo:- As above

To

✓ Shri B.K. Sarma, Pharmacist cum clerk.
GMSD, KOLKATA


Dy. Director General (St),
Kolkata

*Confirmed by
true copy
30-06-09*



BY FAX

GOVT. MEDICAL STORE DEPOT
Guwahati-781016

0 MAY 2007

Diary No.
Date 73

F. No. C-18018/6/99-St-I
Directorate General of Health Services
(Medical Store Organization)

West Block No.1, Wing No.6,
R.K. Puram, New Delhi-66,
Dated the 4th MAY 2007

To

The Joint Director, Office I/c
Govt. Medical Store Depot,
A.K. Azad Road, Gopinath Nagar,
Guwahati-781016.

Sub: Implementation of Judgment and order dated 12.03.2007 passed by
Hon'ble CAT Guwahati Bench in O.A. No. 58 of 2007.

Sir,

I am directed to refer to your letter No. Admn. 164/BKS/507 dated
23.04.2007, on the above subject.

The representation dated 07.09.2006 and all other representations of Sh.
B.K. Sharma have been examined. The appointment of Sh. Sharma in GMSD,
Kolkata is fresh appointment. Therefore no question of fixation of seniority,
counting of previous period as service, re-fixation of pay, allowing arrears of
salary, benefits in pension on its basis etc. arise. The representation dated
07.09.2006 as well as other representations are, thus, disposed off.

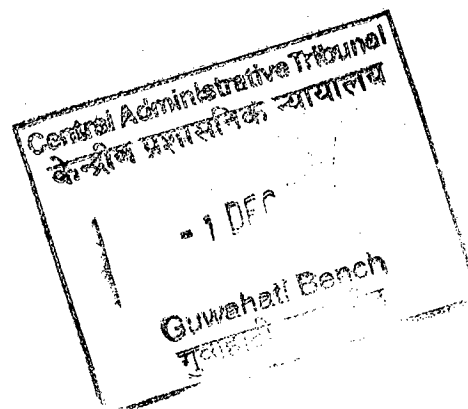
You are requested to issue a suitable speaking order on above lines to
Sh. Sharma immediately.

This issues with the approval of Addl. D.G.(St.)

Yours faithfully.

A.K. Tripathi
(A.K. TRIPATHI)

DY. DIRECTOR ADMN. (MSO)



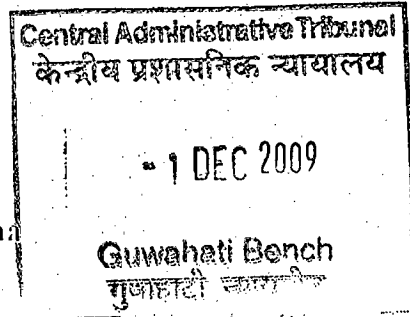
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20-11-09

Ministry of Health & Family Welfare
Directorate General of Health Services
(MEDICAL STORES ORGANISATION)

R.K. Puram, New Delhi
Dated the 10th January, 2003

To

✓ The Joint Director (CGHS),
I/C Govt. Medical Store Depot,
Guwahati.



Subject:- C.P.No. 34/2002 in OA No.216/97 filed by Shri B.K. Sarma

Sir,

I am directed to refer to your Fax letter No. Admn /164/BKS/698 dated January, 2003 on the above mentioned subject and to say that Depot has already been advised time and again vide our letters of even number dated 24.10.2002 & 4.12.2002 to adjust Shri B.K. Sarma against the clear cut vacancy occurring in near future. Therefore Depot is hereby again advised to adjust him against vacant post available at CMSD, Kolkata immediately, keeping in view of the court order dated 20.12.2002 & also inform the court accordingly, under intimation to this Medical Stores Organisation.

2. This has the approval of Addl. DG (Stores).

Yours faithfully,

(Hukam Chand)
Dy. Director Admn. (Stores)

Copy to:-

DDG (MS), Govt. Medical Store Depot, Kolkata w.e.t. their letter
No. PE(Admn.)/3389 dated 1.10.2003.

Carried to be
from copy
20-11-09

64 - Annexure - "G" series

Government of India
Ministry of health & Family Welfare
Directorate General of Health Services
Government Medical Store Depot

Guwahati-781016

REGISTERED AD

No.-ADMN/164/BKS/ 1109-14.

Dated 22.5.07

22 MAY 2007

22 MAY 2007

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 1 DEC 2007

Guwahati Bench
गुवाहाटी

Sub : I. Order dated 12.3.07 in O.A.No.-58/07.
Sri Biraja kanta Sharma.

.....Applicants

-Versus-

Union of India & others

.....Respondents

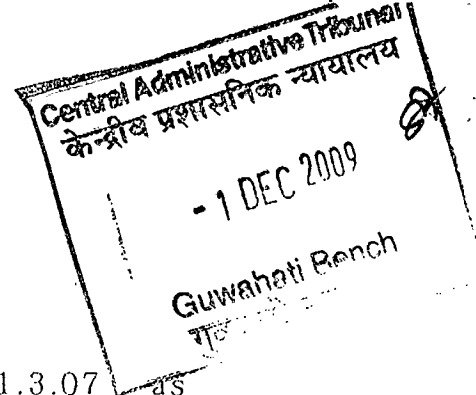
II. Representation dated 7.9.06 and
21.3.07.

Perused the representations dated 7.9.06 and 21.3.07 made by the applicant Sri B.K.Sharma along with order dated 12.3.07 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench. In the said case the Hon'ble Tribunal was pleased to pass an order dated 12.3.07 directing -

"The respondent No.-2 i.e. the Director General of Health Services or any other competent authority to consider the representation and to dispose of the same with a speaking order within two months from the date of receipt of the order".

The above representation dated 21.3.07 and order dated 12.3.07 have been received by this office on 26.3.07 and accordingly same was forwarded to the Director General of Health Services (respondent No.-2) and as directed by the Directorate general of Health Services (Medical Store Organisation, New Delhi) and being the competent authority I, hereby dispose of the above

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true copy
20-11-09



representations dated 7.9.06 and 21.3.07 as mentioned below-

1. That Sri B.K.Sharma was appointed as Pharmacist-cum-clerk on 22.12.71 in Government Medical Stores Depot. However on 18.6.85 he tendered his resignation letter stating on the ground of inability to continue his service due to some domestic affairs. Thereafter, again on 11.12.85 he made a letter to the Dy. Asstt. Director General (MS) Government Medical Store Depot, Guwahati tendering his resignation from his service with effect from 18.6.85 stating inability to continue in his service and requested to relieve him.

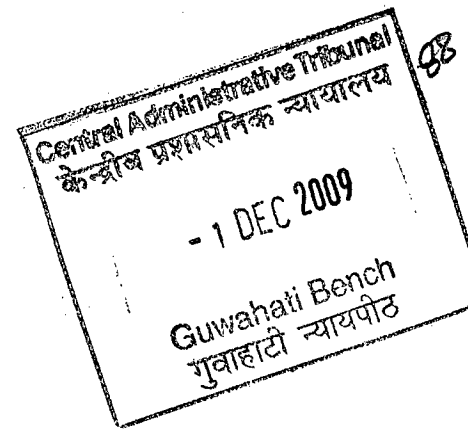
This office thereafter accepted the resignation letter dated 11.12.85 tendered by the applicant Sri B.K.Sharma and accordingly an order was issued by Dy.Asstt. Director General (MS), Government Medical Store Depot, Guwahati under office order No.-62(Part-II) dated 6.5.86. The said acceptance order was forwarded to Sri B.K.Sharma (the applicant) ✓

2. In the year of 1994 the applicant Sri B.K.Sharma approached the Hon'ble Tribunal, Guwahati Bench by filing O.A.No.-126/94 with a prayer for his reinstatement. After hearing the Hon'ble Tribunal Guwahati Bench was pleased to dispose of the case with a direction -

"The applicant to make application/representation before the respondents seeking for appointment. Respondents shall consider the case of the applicant sympathetically for appointment in the department against available vacancy or next available vacancy".

In compliance of the Hon'ble CAT's order dated 1.8.96 this department examine the matter and considered carefully and placed the matter before

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the Selection Committee, however, the committee rejected his candidature as he had already crossed the age for appointment to Government service. Hence, he request for appointment to the post of Pharmacist-cum-clerk could not be accepted to. Accordingly, vide letter dated 16/18.9.96, Sri B.K.Sharma was informed.

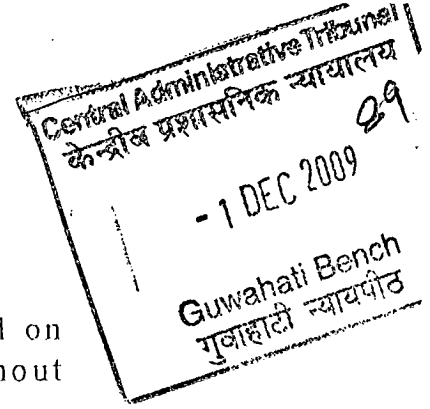
3. Thereafter, Sri B.K.Sharma again approached before the Hon'ble Tribunal, Guwahati bench, by filing O.A.No.-216/97. The Hon'ble Tribunal after hearing was pleased to dispose of the said case vide order dated 6.5.99 directing the respondents to give an appointment by relaxing the age bar.

4. Against the said order the Union of India preferred a writ petition W.P.(C) No.-6078/01 before the Hon'ble Gauhati High Court and the Hon'ble Court after hearing was pleased to dispose of the said case vide order dated 11.9.01 and directed the Government to consider the case of applicant (Sri B.K.Sharma) even for fresh appointment to any suitable post commensurate with the qualification as and when the post is vacant.

5. The applicant Sri B.K.Sharma filed a C.P.No.-34/02 in O.A.No.-216/97 and the Government in response to the order dated 20.12.02 in C.P.No.-34/02 made a fresh appointment of Sri B.K.Sharma by relaxing his age bar to the post of Pharmacist-cum-clerk in the Government Medical Store Depot, Kolkata with the terms and condition incorporated in his appointment order dated 29.1.03 under office order No.-253 (Part-II) dated 29.1.03 issued by the Joint Director CGHS and in-charge GMSD, Guwahati.

As per the conditions amongst other incorporated in the appointment order dated 29.1.03 are as follows -

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1. His appointment is purely temporary and on ad-hoc basis and can be terminated any time without assigning any reason

2. He will on probation for 2 years from the date of appointment in the post subject to the continuance of his services. The appointment may be terminated at any time without any reasons and notice during the probationary period by the appointing authority. Thereafter the appointment may be terminated at any time by a month notice, given by either side viz; appointee or the appointing authority without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

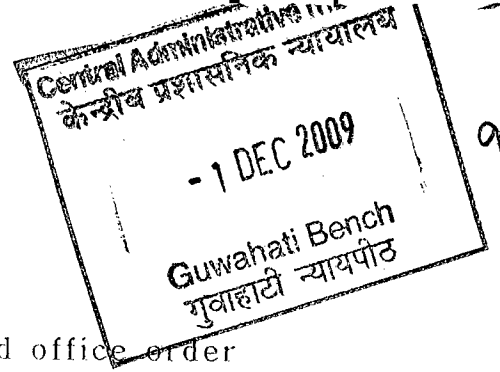
3. Other conditions of service will be governed by the relevant rules and orders in force from time to time and

4. If any declaration given or information furnished by him is proved to be false or if he is found to have willfully suppressed any material information, he will be liable to removable from services and such other action as Govt. may deem necessary.

5. He will loose the seniority in the grade of Pharmacist-cum-clerk and he will accorded seniority from the date of his joining the duty at GMSD, Kolkata.

6. He will not be eligible for the pensionary benefits.

7. Sri B.K.Sharma was also directed to report for duty at Government Medical Store Depot, Kolkata as pharmacist-cum-clerk. Further on 29.1.03, vide office order No.-201 (Part-II) the Deputy Director



General (MS), GMSD Kolkata also issued office order dated 29.1.03 as follows -

"On agreeing and accepting the terms and conditions of appointment of Sri B.K.Sharma vide his acceptance dated 29.1.03 against GMSD, Guwahati office order No.-253 (Part-II) dated 29.1.03 quoting DGHS, MSO, R.K.Puram, New Delhi letter No.-C-180/8/6/99-ST.I dated 10.1.03 he is allowed to join in duty at GMSD, Kolkata w.e.f. 29.1.03 (FN) in the post of Pharmacist-cum-clerk on temporary basis in the scale of pay 4,500-125-7,000/-".

He will not be accorded seniority in the cadre of Pharmacist-cum-clerk at the office, he will be ranked junior to all the incumbents in the said cadre.

His initial pay in the post of Pharmacist-cum-clerk is fixed at Rs.4,500/- in the scale of Rs.4,500-125-7,000/-

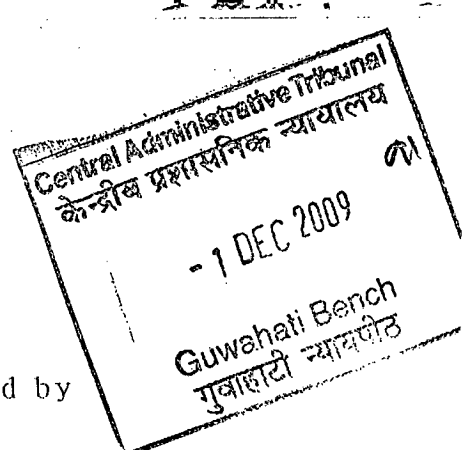
Other terms and condition as laid down in his appointment letter issued by the GMSD, Guwahati.

8. Sri B.K.Sharma submitted his joining report vide letter dated 29.1.03. In his said letter he specifically stated that he accepted the terms and conditions of GMSD, Guwahati.

9. Sri B.K.Sharma after 3 years 8 months of joining in pursuance of his fresh appointment made a representation dated 7.9.06 before the Chief Medical Officer (I/C), Government Medical Store Depot, Guwahati with a prayer as follows -

"For consideration of my case for posting at GMSD, Guwahati and to refix my seniority with

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retrospective effect as directed by the Hon'ble Court".

In this connection it is stated that there is no such order from the Hon'ble Court for refixation of seniority.

10. Both the representations have been perused with careful exploration and examined the matter properly.

In his representation he repeatedly stated that the Hon'ble Court directed his reinstatement in his post which is not correct at all. The Hon'ble Court no where ordered for reinstatement in his earlier post. Further he stated that Hon'ble Court directed reinstatement at Guwahati Depot with restoration of seniority that is also not at all correct. In fact there is no such order. The representation contains false statement.

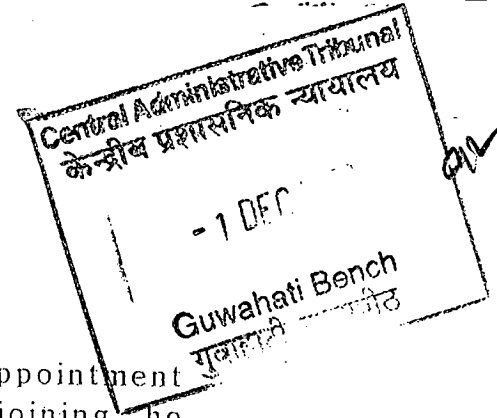
11. The appointment dated 29.1.03 Sri B.K.Sharma is in fact a fresh appointment. Further he accepted the terms and conditions incorporated in order dated 29.1.03 under office order No.-253 (Part-II).

In clause 5 of the terms and conditions it is specifically mentioned that Sri B.K.Sharma will loose the seniority in the grade of Pharmacist-cum-clerk and he will accorded seniority the date of his joining the duty at GMSD, Kolkata.

In clause 6. it is mentioned that he will not be eligible for the pensionary benefits.

Further his joining report dated 29.1.03 Sri B.K.Sharma accepted all the terms and condition incorporated in appointment order dated 29.1.03.

In compliance of the Hon'ble Central Administrative Tribunal's order dated 12.3.07 passed in O.A.No.-58/07 the representation dated 7.9.06 and 21.3.07 have been examined. The appointment of Sri



B.K.Sharma in GMSD, Kolkata is fresh appointment and at the time of appointment and joining he accepted the terms and conditions incorporated in the appointment order dated 29.1.03 and therefore no question for seniority counting of previous period as service, refixation of pay, allowing arrears of salary, benefits in pension on its basis etc. arise.

Further his resignation letter dated 18.6.85 and thereafter on 11.12.85 for his earlier service was accepted vide order dated 6.5.86 and thereafter in compliance of the Hon'ble CAT's order and Hon'ble High Court's order his fresh appointment dated 29.1.03 was made with terms and conditions which have been accepted by the applicant vide his joining letter dated 29.1.03.

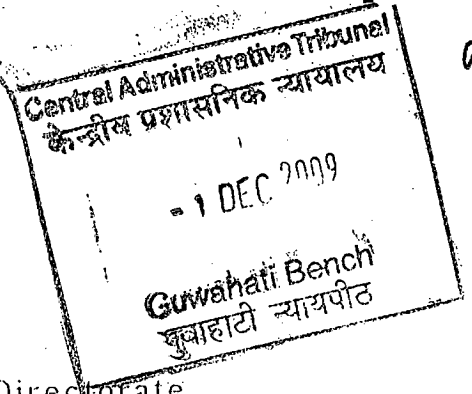
Thus, in view of the judgment/order dated 12.3.07 passed by the Hon'ble Tribunal Guwahati bench in O.A.No.-58/07 the request made by Sri B.K.Sharma in his representation was examined, but could not be considered his case keeping in view of the facts and circumstances narrated in foregoing paragraphs.

Sd/-

Copy to:-

1. Sri Biraja Kanta Sharma
son of Late R.K.Sharma
Pharmacist-cum-clerk
Government Medical Store Depot,
9, Clyde Row, Hastings,
Kolkata-22
2. Secretary to the Government of India,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110011.
3. The Addl. Dir. Genl.(store)
Directorate Genl. Of Health Services,
(Medical Stores Organisations)
West Block No.-1,
Wing No.-6, R.K.Puram,

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New Delhi-66 with reference to Directorate
letter No.F.No.C-18018/6/99-ST.I dated 4.5.07.

4. The Chief Medical Officer
Ministry of Health & Family Welfare,
(DGHS), Govt. Medical Store Depot,
9, Clyde Row, Hastings,
Kolkata-22
5. Registrar, CAT, Guwahati Bench, Bhangagarh,
Guwahati-5 for favour of information, this
refers to O.A.No.-58/07 dated 12.3.07.
6. Mrs Manjula Das
Addl. Central Government Standing Counsel,
CAT, Guwahati-5 for information and appraisal
of the matter.

Joint Director
CGHS & IIC
Govt. Medical Store Depot
Guwahati-16
Joint Director
CGHS & IIC
Govt. Medical Store Depot
Guwahati-16