

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (JUDL.)

22.7.2015

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

1. Original Application No: 96 / 2009

2. Miscellaneous Petition No

3. Contempt Petition No

4. Review Application No

Applicant(s)

Hare Ch. Dey Anita Dey

(Substituted
with order d.
10/12/09 from
MR 144/09)

Respondant(s)

Union of India & OPS.

Advocate for the Applicant(s):

Mr. D.K. Sharma.

Ms U. Das, Mr. P.S. Lahkar,

Ms. K. Goswami & Mr. N. Pathak.

Advocate for the Respondant(s):

Rly. Standing Counsel.

Notes of the Registrar	Date	Order of the Tribunal
------------------------	------	-----------------------

28.05.2009

Heard Ms. Usha Das, learned counsel appearing for the Applicant and Dr. J.L. Sarkar, learned Standing counsel for the Railways (to whom a copy of this O.A. has already been supplied) and perused the materials placed on record.

Admit. Issue notice to the Respondents requiring them to file their written statement by 21.07.2009.

Call this matter on 21.07.2009.

(N.D. Dayal)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

This application is in form
Is filed/C.F. for Rs. 50/-

Deposited with Rs. 50/-
No. 396 408974

Dated 25.5.09

Dy. Registrar

27/5/09

27.5.09

Received 3 copies
of Application with
envelops for issue
notice to the Respondents
1 to 3. The L/Advocate
for the Applicant under
order serve a copy of
the Application to the Rly.
Standing Counsel.

1.6.09

Issue notice to the
Respondents urgently.

27/5/09

O.A. No. 96 of 2009

Notices alongwith
order dated 28/5/09
send to D/Sec. for
issuing to respondents
by regd. post, A/D.

Ck D/No-2572 to 2574
2/6/09. D/- 02-6-2009

18.6.09

Notice duly served
on R-3.

18/6/09

No W/S filed.

20.7.09

W/S filed.

21.8.09

K.D.U

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

26/9/09

Copies of order
dated 24/8/2009
send to D/Sec. for
issuing to respdt.
by post.

Ck D/No-
1/9/09. D/-

21.07.2009 Despite notice no written
statement has yet been filed in this case.
Mr.K.K. Biswas learned counsel files a
'Vokalatnama' on behalf of the Respondents
and prays for four weeks time to file written
statement

Call this matter on 24.08.2009
awaiting written statement from the
Respondents.

(M.K. Chaturvedi)
Member(A)

M.R. Mohanty
Vice-Chairman.

24.08.2009 No written statement has yet
been filed by the Respondents in this
case. On the prayer of Mr.K.K.Biswas,
learned counsel representing the
Railways, call this matter on 09.9.2009
awaiting written statement from the
Respondents.

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

(M.K. Chaturvedi)
Member(A)

(M.R. Mohanty)
Vice-Chairman

Notes of the Registry

Date

Order of the Tribunal

No. w/s filed, /lm/

8.9.09

09.09.2009

In this case written statement has already been filed. On the prayer of Ms. Usha Das, learned counsel for the Applicant, call this matter on 13.10.2009.

8.9.09

W/s filed by the Respondents through Pky Counsel. Copy served. /lm/

8/9/09

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

13.10.2009

Ms. U. Das, learned counsel for the Applicant, states that rejoinder has already been filed in the Registry yesterday. Registry to get it and bring the same on record.

None appears for the Respondents nor the Respondents are present.

Call this matter for hearing on 30.11.2009 for hearing. Copy of the rejoinder need be served on the counsel for the Railways/Respondents within next 10 days.

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

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

15/10/09

Copy of order dated 13/10/2009 send to the D/section for issuing to the Applicant & Respds. by post.

D/No. 11889 to 11892 / 15/10/09

Dtd 19.10.09

15.10.09

Rejoinder has been filed by the Applicant w/s under taking to serve a copy to the D/Sec. in Respondents. 15/10/09

Notes of the Registry

O.A. 96/09

Date

Order of the Tribunal

03.11.2009

Miss U.Das, learned counsel
appearing for the applicant prays for
adjournment.

List on 10.12.2009.

(Madan K. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

10.12.2009

Call this matter on 20.01.2010.

(Mukesh Kumar Gupta)
Member (J)

20.1.2010

Amended ^{Memorandum of} ~~new~~ parties on ^{LR's} ~~new~~ substituting ^h has not been filed, ~~reply~~ in terms of order dated 10.12.2009. Ms. U.Das, learned counsel appearing for Applicant seeks time to do the needful.

List the matter on 10.2.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/lm/

10.2.2010

List the matter on 5.3.2010.

(Madan Kumar Chaturvedi)
Member (A)

/lm

The case is ready
for hearing.

mb
9.12.09

The case is ready
for hearing.

mb
19.1.2010

9.2.2010

Amended Original
application filed by the
applicant. Copy served.

mb
9/2/2010

The case is ready
for hearing.

mb
9.2.2010

3.3.2010

An Addl. Statement
has been filed by the
applicant with under-
taking to serve a copy
to the Rly counsel.

mb
3/3/2010

O.A. 96-09

05.03.2010

It is stated that Govt. servant in the present O.A. had expired during the pendency of the O.A. and his wife Smti Anita Dey has been substituted vide order dated 10.12.2009. Certain legal dues to be recovered from the applicant, and therefore, Mr.K.K.Biswas, learned counsel for the Respondents seeks liberty to take necessary steps. In this regard, no objection has been raised by the applicant.

Accordingly, granting liberty to take necessary steps, case is adjourned to 26.03.2010, as prayed for.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

26.03.2010

Being Division Bench matter list on 03.05.2010.

(Madan Kr. Chaturvedi)
Member (A)

/pb/

03.5.2010

On the request of Ms. U. Das, learned counsel for the Applicant, case is adjourned to 28.5.2010. Applicant should file rejoinder if any, to the additional written statement filed by Respondents on 24.5.2010.

List the matter on 28.5.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

Im

24-3-2010

W/S filed
by the respondents.
at Page - 170 - 211.

N/S filed.

25.3.2010

The case is ready
for hearing.

25.3.2010

The case is ready
for hearing.

30.4.2010

The case is ready
for hearing.

26.5.2010

α

c-6

O.A. No. 96/09

28.05.2010

On the request of Ms U. Das, learned counsel for the applicant adjourned to 7.6.2010.

Rejoinder filed
on behalf of
the applicant,
copy served.

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

Pg

4-6-2010

07.06.2010

Heard learned counsel for parties.
For the reasons recorded separately, O.A. is
disposed of. No costs.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

Received copy of
order on 14-06-2010
for GM (P) N.F. (P.O.-4/2) nkm
Maitrayee
14-06-2010
Reg. Advocate
CAT/Guwahati

Received
Usha Das
Advocate
24/6/2010

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.96 of 2009

DATE OF DECISION: 07.06.2010

Smt Anita Dey

APPLICANT(S)

Ms U. Das

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

RESPONDENT(S)

Mr K.K. Biswas, Railway Standing Counsel

ADVOCATE(S) FOR THE
RESPONDENT(S)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi Administrative Member

1. Whether reporters of local newspapers may be allowed to see the Judgment ?
2. Whether to be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?

Yes/No

Yes/No

Yes/No

Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.96 of 2009

Date of Order: This the 7th day of June 2010

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Smt Anita Dey,
W/o Late Haru Dey,
Resident of 91/B, Nambari Hilltop Road,
Guwahati-781011.

..... Applicant

By Advocate Ms U. Das.

- versus -

1. The Union of India, represented by the
General Manager,
N.F. Railway,
Maligaon, Guwahati-11.
2. The Chief Personnel Officer (Administration)
N.F. Railway,
Maligaon, Guwahati-11.
3. The Sr. Personnel Officer (Welfare)
N.F. Railway,
Maligaon, Guwahati-11.

..... Respondents

By Advocate Mr K.K. Biswas, Railway Standing Counsel.

.....

ORDER (ORAL)

MUKESH KUMAR GUPTA, JUDICIAL MEMBER

This O.A. was initially filed by Shri Haru Chandra Dey, Care Taker, N.F. Railway, Maligaon, Guwahati, who expired during the pendency of present O.A. on 05.11.2009 and, therefore, Smt Anita

Dey, being his wife and legal heir, was substituted vide order dated 10.12.2009.

2. Penalty of removal inflicted under Rule 14 (1) of Railway Servants (Discipline & Appeal) Rules, 1968 vide order dated 06.10.1997 has been questioned in present O.A. Earlier he had approached this Tribunal vide O.A.No.196/2008 and as his statutory appeal had been pending, said O.A. was disposed of vide order dated 12.11.2008 requiring the respondents to reconsider his request as prayed vide appeal dated 05.11.1997 and subsequent representations dated 03.01.2008 and 29.09.2008 by passing reasoned and speaking order. In compliance thereto, the Chief Personnel Officer, N.F. Railway, Maligaon, passed order dated 06.04.2009 disposing of his representation noticing that he had been convicted by Court of learned Special Judge vide order dated 14.10.1996. Criminal appeal filed against said conviction order was upheld vide order dated 09.02.2006 in Criminal Appeal No.242/1996. However, the period of sentence was reduced to one month, period ^{already} undergone by him. He had been convicted for forgery, cheating, theft and corruption in a Criminal Case under Section 420/468/471/IPC read with Section 13 (2) and Section 13 (1) (c) & (d) of the Prevention of Corruption Act, 1988. Smt Anita Dey, widow of the applicant, in present O.A. seeks direction to the respondents to release applicant's dues in the nature of General Insurance Scheme, General Provident Fund and Leave Encashment etc. as due to him. Our attention was drawn to para 5 of the additional written statement filed by the respondents wherein, it was stated that the leave account of late H.C. Dey had been seized by CBI and said documents are in the custody of Special Court. Railway Administration has already taken steps to collect those documents so

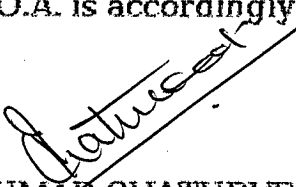
as to enable the respondents to examine as to whether applicant (deceased) is entitled to said dues or not.

3. Respondents have filed reply as well as additional reply and stated that a sum of Rs.21,179/- is due to her husband towards GPF and Rs.8,560/- towards GIS. No other benefits are available to him as no leave was due to him. It was further pointed out that a total amount of Rs.3,59,487/- is recoverable from him on account of electricity charges and damage rent for retention of Government accommodation beyond the period prescribed under the rules in vogue. Learned counsel further stated that relevant records have been retrieved from learned Court of Special Judge and the respondents will take about a month's time to release the necessary dues. It was fairly pointed out that neither GIS nor GPF could either be withheld or attached under the rules and law on said subject.

4. We have heard learned counsel for parties, perused the pleadings and other material placed on record. Challenge made to removal order dated 06.10.1997, as upheld on 06.04.2009 cannot be adjudicated in the absence of any firm ground urged in support of the relief prayed for. Furthermore, as her deceased husband had been prosecuted and sentenced by the Court of learned Special Judge, which sentence has been upheld by the Hon'ble High Court dismissing his Criminal Appeal No.242/1996, the impugned action of resorting to Rule 14 (1) of Railway Servants (Discipline & Appeal) Rules, 1968 cannot be held to be unsustainable, as prayed. No illegality is found in said action or order. Since the respondents themselves have undertaken to release necessary dues in the form of GIS and GPF, O.A. is disposed of directing the respondents to release

said amount in present applicant's favour within a period of thirty days from the date of receipt of the order. As far as recovery to be effected by the Railway Authorities is concerned, it will be open for the respondents to take appropriate steps as per rules in vogue.

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


(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER


(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

nkml

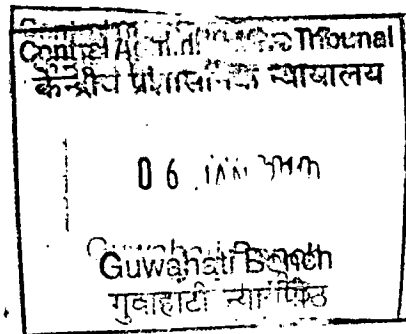
From:

Sri K.K. Biswas,

Advocate,

Central Administration Tribunal,

Guwahati.



To:

Smt. Usha Das

Advocate,

CAT/Guwahati.

Dear Sir,

Sub: O.A. No. 96 of 2009
Smt. Anita Dey substant for
Sri Harin chandra Dey Applicant/Ptitioner
(late) VS.

Union of India and Qrs. -----

Respondents/Opposite Parties.

or the Address is

Kindly acknowledge receipt of the enclosed "Service Copy" for the
Advocate of the Respondents/Opposite Parties. Applicant's Petitioners

With thanks,

Yours faithfully,

K.K. Biswas

(K.K. Biswas)

Advocate,

CAT/Guwahati.

Dated 06/01/2010

Received
Usha Das
Advocate
07/11/2010
I undertake to
submit the Applicant's
Counsel copy personally.
K.K. Biswas
06/01/10
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH; GUWAHATI

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

Title Case No.

Smt. Anila Dey
Sri Haru Chandra Dey

AND

Union of India & Others

O.A No. 96 /09

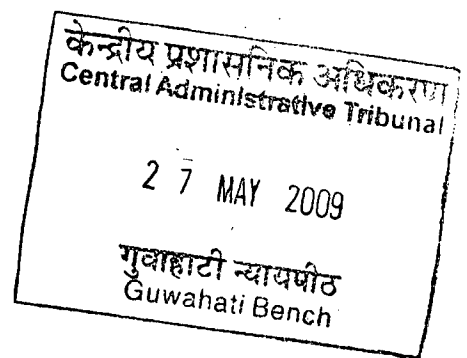
(Substituted vide order
of 10.12.09 passed in no
no. 144/09)
...Applicant

...Respondents

SYNOPSIS

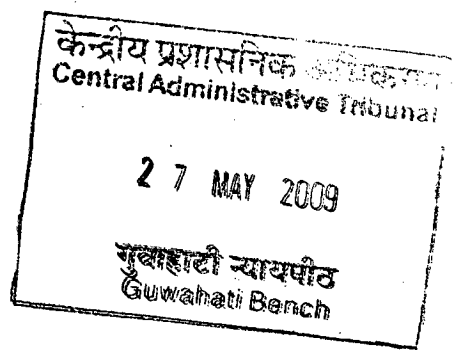
In the instant Original Application, the applicant who was initially appointed as Peon in N.F. Railway in the year 1972, has been working as Senior Clerk -cum- caretaker of 80 bedded mess situated at Maligaon during the year 1992-93. While he has been so working under the SPO(W), N.F. Railway, Maligaon, an FIR has been lodged against him and upon completion of trial he was convicted by the Court of Special Judge, Guwahati under Sections 420/468/471 IPC and Sections 13(2) read with Section 13(1) (c) and (d) of the Prevention of Corruption Act, 1988 and thereby punished on the charges for production of 8 requisitions forging the signature of SPO(W) N.F. Railway, Maligaon before DCOS/Pandu and received mattresses, blankets, bed-sheets etc. worth about Rs. 94000/- (Rupees Ninety four Thousand) for using in 80 bedded Mess as well as Rang Bhawan by its order dated 14.10.96 passed in Special Case No. 2 (C)/94. Against the aforesaid Judgment & order dated 14.10.96 passed by the Learned Special Judge, the applicant preferred a Criminal Appeal being No. 242/96. The Hon'ble High Court after hearing the Criminal Appeal was pleased to dismiss the same by observing that the incident occurred long back in the year 1992-93 i.e. 14 years ago and by this time he has suffered a lot of mental and physical torture as this appeal has been hanging over his head for all the time and no fruitful purpose would be served if the appellant is sent to jail and also considering the facts, the appellant/ applicant has no previous criminal record. Under the said circumstances, the Hon'ble High Court reduced the entire sentenced period awarded by the Learned Special Judge under all heads of this sections mentioned in the said Judgment and Order dated 14.10.1996 and modified to period of one month only (already undergone) and the appellant/ applicant was directed to pay an amount of Rs. 20,000/- only as fine in default of such payment, Rigorous Imprisonment for two months.

Filed by :- Kabita
Goswami, Advocate



Although , almost all the sentences has been reduced by the Hon'ble High Court while dismissing the Criminal Appeal preferred by the present applicant; but prior to that, the Railway Authority without holding any enquiry and Departmental proceedings, removed the applicant from his service on the basis of conviction, before filing the Criminal Appeal before the Hon'ble High Court. Infact the Departmental appeal preferred against the order of removal has not been disposed of till the date of receiving the direction of this Hon'ble Tribunal by its order dated 12.11.2008 passed in O.A. No. 196/2008. Though the appeal has now been disposed of in compliance of the direction of this Hon'ble Court; but the case of the applicant has not considered sympathetically. The order of the appellate Authority is nothing; but a mere formalities and has been passed mechanically without applying Judicious mind and the findings and observations of the Hon'ble High Court made in the Judgment and Order dated 09.02.2006 in Criminal Appeal has not been taken care of. Hence, this present application with a prayer to set aside and quash the order of removal and for giving a direction for payment of all consequential benefits, and for reinstatement in service.

Filed by :- Kabita Barman
Advocate



**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH; GUWAHATI**

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

Title Case No.

O.A. No. 96 /09

Sri Haru Chandra Dey

...Applicant

AND

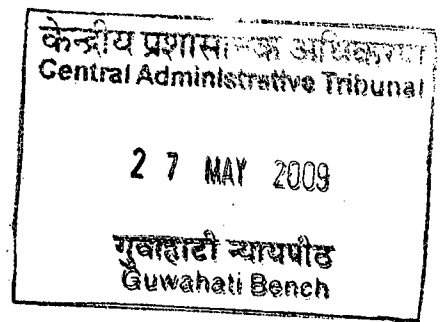
Union of India & Others

...Respondents

LIST OF DATES

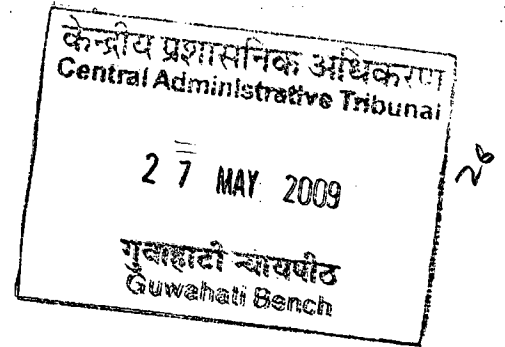
- 24.11.1972 : Applicant was initially appointed as peon in the N.F. Railway
- 24-02-1988 : Applicant was appointed as care taker of 80 bedded Mess.
- 12-02-1993 : F.I.R. lodged against the applicant.
- 14-10-1996 : Judgment passed by the learned Special Judge, Assam in Special case No. 2(c) 94.
- 15-11-1996 : Judgment of the Trial court suspended by the Hon'ble High court.
- 01-10-1997 : Order of suspension w.e.f. 14-10-1996.
- 06-10-1997 : Impugned order of removal from service.
- 05-11-1997 : Appeal preferred against the order dated 06.10.1997.
- 09-02-2006 : Judgment and order passed by the Hon'ble High Court in Criminal Appeal preferred by the applicant.
- 03-01-2008 : Representation preferred by the applicant before the Respondent No.2.
- 29-09-2008 : Prayed petition for disposal of appeal preferred by the applicant before the Respondent No.2.
- 10.11.2008 : O.A. No. 196/2008 filed before this Tribunal.
- 12.11.2008 : Aforesaid O.A. No. 196/2008 disposed of by this Hon'ble Tribunal with a direction to consider the case of the applicant.

Kabita Basumaty



- 01.12.2008 : Certified copy of the aforesaid order dated 12.11.2008 communicated to the Respondent.
- 06.04.2009 : Speaking order passed by the respondent No. 2 in compliance of the direction of this Hon'ble Tribunal.
- 09.04.2009 : The aforesaid speaking order dated 06.04.2009 has been communicated to the applicant.

Kabita Goswami



**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH; GUWAHATI**

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

Title Case No.

Q.A NO. 76 /09

BETWEEN

Sri Haru ChandraDey

...Applicant

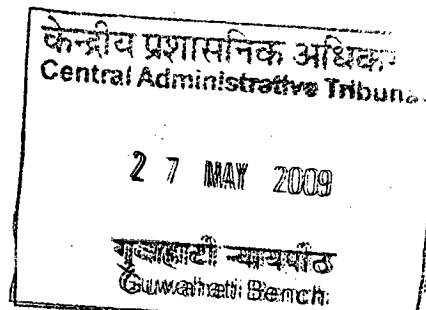
AND

Union of India & Others

...Respondents

I N D E X

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Filed by :- the applicant
through Kabita Goswami
Advocate
25/6/09

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH; GUWAHATI**

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

O.A. NO. 76 /2009

BETWEEN

Sri Haru Chandra Dey, S/O. late Bhupati Chandra Dey
Caretaker (under removal) 80 bedded Mess, Maligaon.
Resident of 91/B, Nambari Hilltop Road, Guwahati-
781011.

...Applicant

-AND-

1. The Union of India represented by the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. The Chief Personal Officer (Administration), N.F. Railway, Maligaon, Guwahati- 11.
3. The Sr. Personnel Officer (Welfare) N.F. Railway, Maligaon, Guwahati-11.

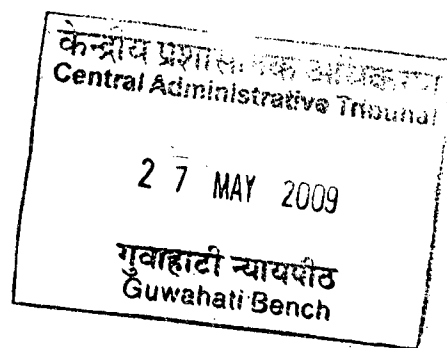
...Respondents.

PARTICULARS OF THE APPLICATION

1. PARTICULARS FOR WHICH THE APPLICATION IS MADE FOR:

This application is made being aggrieved against the speaking order dated 06.04.09 passed by the Chief Personal Officer, N.F. Railway, Maligaon in compliance to the this Hon'ble Tribunals direction issued by its order dated 12.11.08 in O.A. No. 196/2008 and communicated vide letter No. E/170/LC/NS/1117/08 dated 09.04.09 by which the appeal/representation of the applicant has been disposed of without interfering penalty of removal from service imposed by the disciplinary authority.

Haru Ch. Dey



2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the application is within the Jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

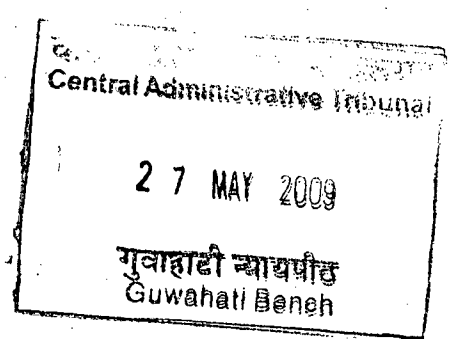
The applicant further declares that the subject matter of this application is well within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

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

4.2 That the applicant has been entered in the Railway service in the year 1972 and has rendered blemish free service to the satisfaction of all concerned by holding different post for more than 23 years; but when he has been working as a Caretaker of 80 bedded Mess, N.F.Railway and discharging his duties, an FIR has been lodged against him on 12.02.1993 alleging that the applicant was absent from duty in the month of December 1992 and January and February, 1993; but during the said period, the applicant submitted requisition/indent for supply of materials to the Pandu, Stores Depot, N.F.Railway and also collected the same which were not brought to the store room of the said mess and misappropriated. On the basis of the said FIR, a case was registered by the CBI being R.C. No. 25(A) 93 and upon investigation, charge sheet has been submitted on 05.01.1994 under section 409/420/468/471 of I.P.C. and section 13(2) R/W section 13(1)(c) and (d) of the P.C. Act. On the basis of the said charge sheet, special case No. 2(c) 1994 has been registered before the Court of Special Judge, Assam, Guwahati. Being satisfied with the services rendered by the applicant the higher authority of the N.F.Railway like Senior Deputy General Manager and Deputy Chief Personnel Officer have issued certificates dated 30.12.77 and 15.07.1978. It is also pertinent to mention herein that he had also informed/reported the matter of theft of 20% nos. of Mattresses from 80 bedded Mess to the Officer in-charge of Jalukbari Police Station and the police authority has investigated the matter and submitted a report on 23.03.1993. The said fact has also been informed to the Deputy Chief Vigilance Officer (E) N.F.Railway, Maligaon vide his letter dated 25.03.1993.

Harun ah. Singh



The copies of the certificate issued by the SDGM and Dy. CPO along with a copy of the aforesaid letter dated 25.03.1993 are annexed herewith and marked as ANNEXURE-1, 2 and 3.

4.3 That the applicant begs to state that the learned Special Judge, Assam was pleased to impose different punishment convicting him under section 420 IPC, 468 IPC, 471 IPC and U/S 13(2) R/W (13(1) (C) (D) of the P.C. Act by its Judgment dated 14.10.1996 passed in special case No. 2(c) 1994.

A copy of the aforesaid judgment dated 14.10.1996 is annexed herewith and marked as ANNEXURE- 4.

4.4. That the applicant begs to state that as he has been convicted by the learned Special Judge, Assam, by its judgment dated 14.10.1996 passed in Special Case No. 2(c) 94, the Respondent No.3 by its order No. 19E/695(Q) Loose dated 01.10.1997 has placed the applicant under suspension in terms of Rule 5(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 until further order.

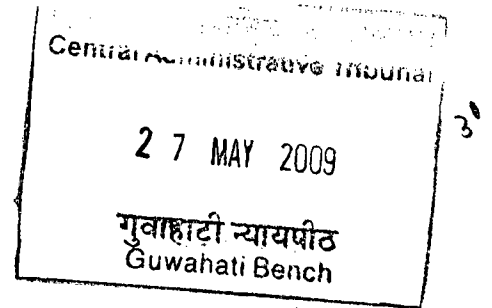
A copy of the aforesaid order dated 01.10.1997 is annexed herewith and marked as ANNEXURE- 5.

4.5. That the applicant begs to state that immediately by following the order of suspension, the respondent No.3 had passed the impugned order of penalty of removal from service with immediate effect vide Memorandum No. 19E/695(Q) dated 06.10.1997. The said impugned order of imposition of penalty has stated to be passed in exercise of power conferred under Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968, consequence of the Hon'ble court verdict, further in the impugned order itself, it was suggested that appeal against the said order will lie with the Chief Personnel Officer (Administration), N.F. Railway within 45 days of receipt of this order of imposition of penalty.

A copy of the aforesaid Memorandum dated 06.10.1997 is annexed herewith and marked as ANNEXURE-6.

4.6 That the applicant begs to state that as suggested by the Disciplinary authority in the impugned order itself, he preferred an appeal against the order dated 06.10.1997 before the Chief Personnel Officer (Administration) i.e. Respondent No.2 on receipt of the order of imposition of penalty. The aforesaid appeal has been preferred on 05.11.1997 praying for imposition of lesser punishment considering the facts and circumstances of the case.

Harman Choudhary



A copy of the aforesaid appeal dated 05.11.1997 is annexed herewith and marked as ANNEXURE-7.

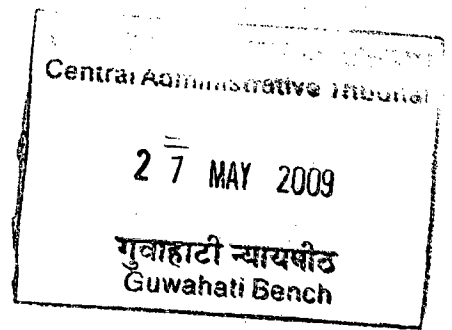
4.7 That the applicant begs to state that against the judgment dated 14.10.1996 passed by the learned Special Judge, Assam in special case No. 2(c) 94, the applicant had preferred the Criminal Appeal being Criminal Appeal No. 242/1996 before the Hon'ble High Court. The Hon'ble High court was pleased to pass an interim order of stay, suspending the judgment of the Trial Court by its order dated 15.11.1996 and bail has also been granted to the applicant by the said order. As the Criminal Appeal has been pending for final disposal before the Hon'ble High court, the applicant has not been pursuing the matter before the appellate authority, but reminder representations have been submitted before the Appellate Authority in time to time with a request to consider and dispose of his appeal dated 05.11.1997 against the order dated 06.10.1997 sympathetically.

4.8 That the applicant begs to state that the Hon'ble High Court was pleased to dismiss the Criminal Appeal No. 242/96 preferred by the applicant by its judgment and order dated 09.02.2006. It is pertinent to mention herein that while dismissing the said Criminal appeal, the Hon'ble court had given the findings that the incident occurred long back in the year 1992-93 i.e. 14 years back and in the meantime, the appellant has suffered a lot both mental and physical torture and no fruitful purpose would be served if the appellant is sent to jail. Further it had also been observed by the Hon'ble court that the appellant has no criminal previous records. Considering all these factual aspects of the matter, the Appellate court was pleased to modify the judgment passed by the Learned Trial court by reducing all the periods of sentences to a period of one month only which the appellant had already undergone and a fine of Rs.20000/- only. Accordingly the applicant had deposited the said amount of Rs. 20,000/- on 19.04.2006 by way of Treasury Challan.

A copy of the said judgment and order dated 09.02.06 along with challan dated 19.04.06 are annexed herewith and marked as ANNEXURE- 8 and 9.

4.9 That the applicant begs to state that he preferred a Special leave petition before the Hon'ble Apex Court which was pleased to dismiss by the Hon'ble court by its order dated 09.10.2006. Thereafter, the applicant preferred a representation dated 03/01/2008 before the respondent authorities to consider his case sympathetically on the basis of the findings and observations made by the Hon'ble High Court in its judgment and order dated 09/02/06 passed in Criminal appeal No. 242/96.

Harish Ray



A copy of the aforesaid representation dated 03-01-2008 is annexed herewith and marked as **ANNEXURE- 10.**

4.10 That the applicant begs to state that he preferred a detailed reminder representation dated 29/09/2008 before the Chief Personnel Officer (Administration) i.e. respondent 2 praying for disposal of his appeal dated 05.11.1997 preferred against the order dated 06-10-1997 considering the changed circumstances after passing the judgment and order dated 09-02-06. Be it mention herein that there was no departmental proceedings or enquiry conducted against the applicant, the penalty of removal from service has been imposed upon him without giving him any opportunity to place his case prior to imposition of the said penalty. Now as the Hon'ble High Court has considered his case sympathetically and reduced the sentences by modifying the same as token one.

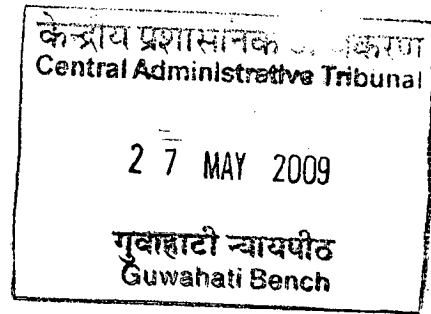
A copy of the aforesaid representation dated 29.09.2008 is annexed herewith and marked as **ANNEXURE-11.**

4.11 That the applicant begs to state that when in spite of his repeated approach/representations, after disposal of Criminal Appeal, the Appellate Authority has not yet considered his Departmental Appeal, he preferred an Original Application being O.A. No. 196/2008 before this Hon'ble Tribunal upon hearing the Learned Counsels for all the parties therein was pleased to dispose of the said application in the admission stage itself by its order dated 12.11.08 with a direction to the respondents to consider the grievances of the applicant, more particularly the grievances raised under Annexure-7 dated 05.11.1997, Annexure-10 dated 03.01.2008 and Annexure- 11 dated 29.09.2008 including the grievances raised in the said Original application and pass a reasoned order within 120 days of the date of receipt of the said order this Hon'ble Tribunal.

4.12. That the applicant begs to state that on receipt of the copy of the aforesaid order dated 12.11.08 passed by this Hon'ble Tribunal in O.A. No. 196/2008, the applicant vide his forwarding letter dated 1.12.2008 submitted a copy of the said order before the Respondent No. 2 for information with a request to consider his case suitably and sympathetically under the changed circumstances.

A copy of the order dated 12.11.08 passed in O.A. No. 196/2008 alongwith the forwarding letter dated 1.12.2008 are annexed herewith and marked as **ANNEXURE- 12 & 13.**

Haru Ch. Dey



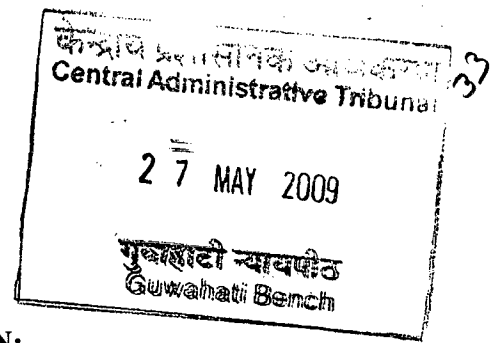
4.13. That the applicant begs to state that on receipt of the aforesaid order dated 12.11.2008 passed by this Hon'ble Tribunal in O.A. No. 196/2008, the respondent no.2 passed a speaking order dated 06.04.2009 which is stated to be in compliance of the direction of this Hon'ble Tribunal as indicated above. By the said speaking order, the Respondent Authority has uphold the penalty of removal from service of the applicant imposed vide order dated 06.10.1997 observing that the Disciplinary Authority has taken correct decision on the finding in the Special Case No. 2 (C) 94 in the Departmental Proceeding. The Appellate authority has passed the said order mechanically just to avoid the Contempt Proceeding whimsically without considering the case of the applicant suitably and sympathetically by not applying judicious mind. Even, the Compassionate allowance has also not granted to the applicant. The said speaking order dated 06.04.2009 has been communicated to the applicant by the A.P.O./ Legal cell vide his letter No. E/170/LC/NS/1117/8 dated 09.04.2009.

A copy of the aforesaid speaking order dated 06.04.2009 and the forwarding letter dated 09.04.2009 are annexed herewith and marked as **ANNEXURE-14 & 15.**

4.14. That the applicant begs to state that since last 7 years, he has been suffering severe diabetic (Diabetic Mellitus) and Bronchitis problem due to which he has lost his eye sight about 80% and now he is in bed ridden condition and required regular health check-up. Under the present financial condition it is virtually impossible for the applicant to arrange the medical expenses for him, not to speak about the day to day needs of his family, the expenses required for education of his sons & daughter. The applicant also deprived of from getting the medical facilities from the Railway Hospital. Although, the applicant has served so many years to the Railway Authority; but in spite of having adequate medical facilities under the respondent authority, the applicant has not given the opportunity to avail the said facility which is urgently required for the applicant under his present seriously ill health condition. As such, the action on the part of the respondent authority for not providing the medical facilities to the applicant is not only illegal and arbitrary; but also against the Principle of minimum humanitarian consideration. If the medical facilities has not provided to the applicant at once, it will be quit impossible to him to survive for a moment also.

A copy of the medical certificate is annexed herewith and marked as **ANNEXURE-16.**


Haru Chakraborty



5. GROUNDS FOR RELIEF (S) WITH LEGAL PROVISION:-

5.1. For that the action/inaction on the part of the Respondent authority is quite arbitrary, capricious and violation of the principles of natural justice and Administrative fair play.

5.2. For that the imposition of impugned penalty of removal from service without holding any inquiry and initiating any departmental proceedings is not sustainable in the eye of law and violative of the provisions of Rly. Servants (Discipline and Appeal) Rules, 1968.

5.3. For that the impugned order of imposition of penalty without giving any opportunity to the applicant to place his case is arbitrary, illegal, discriminatory and violation of the principles of natural justice and Administrative fair play. 

5.4. For that in spite of reducing the sentences passed by the Trial court (Special Judge) by the Hon'ble High Court in criminal Appeal No. 242/96, the respondent authority has not yet considered the case of the applicant suitably altering/reducing the penalty of removal from service and as such, the inaction of the respondent authority is arbitrary and unjust.

5.5. For that the respondents displayed a very callous, negligent, discriminatory and apathetic attitude towards the applicant.

5.6. For that the applicant has already suffered a lot mentally, financially and physically since last several years and as such, his case is required to be considered in the light of the Hon'ble High Court findings and observations.

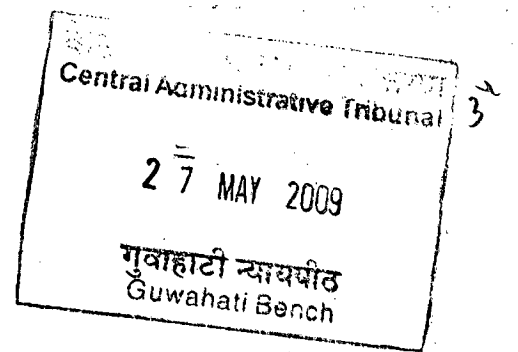
5.7. For that the respondent authority has violated the statutory provisions of Rly. Servants (Discipline and Appeal) Rules, 1968 and the settled principles of law laid down by various judicial pronouncements.

6. DETAILS OF REMEDIES EXHAUSTED :-

That the applicant begs to state that he has preferred the Departmental appeal before the Appellate Authority which has now disposed of by speaking order dated 06.04.09. Further the applicant declares that he has exhausted all the remedies available to him and he has no other alternative and efficacious remedy available to him than to file this application

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

Heem choy



The applicant further declares that he has not previously filed any application, writ petition or suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, writ petition or suit is pending before any of them.

8. RELIEF (S) SOUGHT FOR:-

Under the facts and circumstances stated above, the applicant most humbly prays that Your Lordships would be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the reliefs sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown be pleased to grant the following relief (S).

8.1. The impugned order of imposition of penalty of removal from service dated 06.11.1997 (Annexure-6) may be set aside and quashed directing the respondents to re-instate the applicant in service.

8.2. The Order passed by the appellate authority dated 06.04.2009 (Annexure-15) in compliance of the earlier direction of this Hon'ble Tribunal upholding the penalty of removal from service imposed upon the applicant by the Disciplinary Authority may also be set aside and quashed.

8.3. The respondents may be directed to pay/release all the consequential benefits payable to the applicant forthwith i.e. arrear salary, allowances, increments, promotion etc.

8.4. Cost of application

8.5. Any other relief(S) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

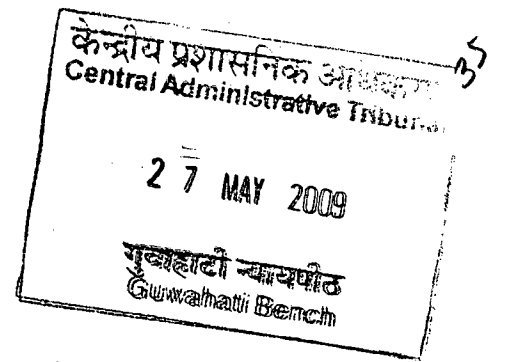
9. INTERIM RELIEF(S) PRAYED FOR:-

During pendency of this application, the applicant prays for the following relief(S).

The respondents may be directed to provide free Medical facilities in the Central Railway Hospital, Maligaon considering his service/ Critical health condition.

10. This application is filed through advocates.

Handwritten signature

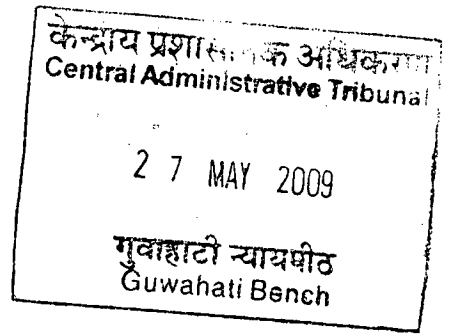
**11. PARTICULARS OF THE I.P.O.**

- (I) I.P.O. NO. : 39 h 408974
(II) Date : 25/5/09
(III) Payable at : GPO/ Guwahati.

12. LIST OF ENCLOSURES:-

As stated in the Index.

Hare Ch. Ray



VERIFICATION

I, Shri Haru Chandra Dey, Son of late Bhupati Chandra Dey, aged about 55 years, resident of Quarter No. 91/B, Nambari Hill Top road, Guwahati-781011 in the district of Kamrup (Assam) do hereby verified that the Statements made in paragraphs1 to 4.14..... are true to my knowledge and those made in paragraphs...5 to 9..... are believed to be true on legal advice and that I have not suppressed any materials facts before this Tribunal.

AND I sign this verification on this 27th day of May' 2009 at Guwahati.

Haru Chandra Dey
Signature of the Applicant.

TO WHOM IT MAY CONCERN.

This is to certify that Haru Chandra Dey,
son of Shri Bhupati Chandra Dey of Nambari, Gauhati-
781011, ^{working as a Peon in the office} is known to me for the last 6 years. He is
a young boy of active habits and possesses a good
moral character. So far my knowledge goes there is
nothing adverse against him.

I wish him all success.

Dated, Maligaon,
30th December/77.

N. P. Bhattacharya
DY. Chief Personnel Officer,
N. F. Railway, Pandu.
DY. CHIEF PERSONNEL OFFICER.
N. F. RAILWAY, MALIGAON,
GAUHATI-781011.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

27 MAY 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

*Certified to be
true copy
Bathak
Advocate*

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

27 MAY 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

TO WHOM IT MAY CONCERN

THIS is to certify that Shri Haru Chandra Dey, son of Shri Bhupati Chandra Dey of Nambari, Gauhati-781011 is known to me for the last 6 (six) years. His performance as a Peon in CPO/NF Railway/Maligaon's office is quite satisfactory. He is a young boy of active habits and possesses a good moral character. So far my knowledge goes, there is nothing adverse against him.

I wish him all success in life.

Maligaon,
15.7.'78.

[Signature]
Senior Deputy General Manager,
Sr. Dy. General Manager &
Chief Vigilance Officer,
NF Railway, Maligaon,
Gauhati-781 011 (Assam).

Senior Deputy General Manager,
N. F. Railway, Maligaon, Gauhati-1

*Certified to be
true copy
Barth
Advocate*

To
The Dy. Chief Vigilance Officer(E),
N.F. Railway, Maligaon.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

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गुवाहाटी ब्याच
Guwahati Bench

Sir,

Re :- Theft of 20 Nos. Mattresses Coir
from 80 Bedded Mess at Maligaon.

In pursuance of your instructions I beg leave to say that I required 20 Nos. Mattress Coir from PNO Stores Depot and this item was duly recorded in the Stock Register. I was on the sick list from 9.11.92 and Brooms Coco, Phenyle & Bleaching powder were kept in the Store Room attaches to the 80 Bedded Mess along with the 20 Nos. new mattresses. Since I was unable to attend to my work due to sickness & since Bleaching Powder, Phenyle etc. were required by the cleaner(Regd. Sorter) everyday I handed over the key of the store Room to the cleaner (Record Sorter), This was, however, in the knowledge of Shri B.R.Das, CLWI.

On 12.2.93 DGCPD(E) with two Vigilance Inspectors & APO/W came to the Mess to check up the Stock position. I also attended with them. The cleaner (Record Sorter) was also sent for. The Store room was opened & it was found that all the 20 mattresses were missing although there were no signs of my tampering with the lock. It is quite probable that the theft took place by opening the lock with a key that fitted with it. There were numerous other instances of theft taking place earlier in the 80 Bedded Messes, e.g. water tapes being stolen, Switch Boards being broken in the ground floor & water pipes damaged. All these were reported to Office from time to time. There Messes to be an organised plan to damage the entire Mess.

Since the loss of new Mattresses(20 Nos.) was a serious matter I reported it to the OC/Jalukbari P.S. in the evening of 12.2.93 & he had enquired into the matter and also interrogated the cleaner (R/Sorter) on 13.2.93. A copy of the Police report was submitted to your good self on 23.3.93.

This statement is true to the best of knowledge & belief & is submitted in pursuance of verbal instructions of 23.3.93.

Copy to information and necessary action please properly if you legal man and oblige.

Yours faithfully,

(Haru Ch. Dey)
Sr. Clerk, CPO's Office (Caretaker, 80 Bedded Mess, Maligaon).

Dated :- 25.3.93.

Encl : 2(Two).

Yours faithfully,

(Haru Chandra Dey)
Sr. Clerk/Caretaker of 80 Bed Mess,
MLC/GHY-11.

*Certified to be
true copy
Attak
Advocate*

IN THE COURT OF THE SPECIAL JUDGE : : : ASSAM : : : GUWAHATI.

Special Case No. 2(C)94

S T A T E

V a

Haru Day .. Accused

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

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गुवाहाटी न्यायपीठ
Guwahati Bench

Present :

Shri P. G. Agarwal,
Special Judge, Assam, Guwahati.

Shri J. S. Terang : Public Prosecutor for the CBI.

Shri N. N. Ojha : Advocate for the accused.

Date of evidence : 22.9.95, 10.11.95, 5.1.96, 6.1.96, 11.3.96,
12.3.96, 23.5.96, 24.5.96, 1.7.96, & 30.7.96;

Date of arguments : 30.9.96.

Date of judgment : 14.10.96

(Sections 420/468/471, IPC and Section 13(2) r/w section 13(1)(c) &
(d) of the Prevention of Corruption Act, 1988).

J U D G M E N T

The prosecution case, in brief, is that during the year 1992 - 1993, accused Haru Ch. Day was posted and functioning as Caretaker of 80-bedded Mess, N.F. Railway, Maligaon. During the period December, 1992 and January and February, 1993, the accused was absent from duty, but during this period, he submitted requisition/indent for supply of materials to the Pandu Stores Depot, N.F. Rly and also collected materials against them. These requisitions were all forged. The accused did receive articles against these requisition in the month of December, 1992 and January and February, 1993. The articles so collected were not brought to the Store room of the said mess and these were misappropriated. According to the prosecution, the accused even collected certain materials in the name of Rang Bhaban belonging to N.F. Railway although the above articles are not required for Rang Bhaban. The

*Certified to be
true copy
[Signature]
Advocate*

amount of the total article collected by the accused is around Rs.94/000/-. On 12.2.93 the accused was apprehended at the Store Depot, Pandu while he was waiting to collect goods on the basis of sum forged indents. Thereafter, stock verification was made both at SO-bedded mess and at Rang Bhaban. The goods collected by the accused was not found in the stock. On FIR being lodged, CHI registered RC 25(A)93. Usual investigation was made and during investigation, specimen writings, signatures, admitted writings and questioned documents were sent to the GEQD, Calcutta. After due investigation and after obtaining necessary sanction for prosecution, charge sheet was submitted on 5.1.94.

On consideration of charge, charge under section 409/420/468/571, IPC and section 13(2) r/w section 13(1)(c) & (d) of the PC Act was framed on 25.7.95. The accused pleaded not guilty.

During trial-1, prosecution has examined 46 witnesses. There are 104 numbers of documents from the side of prosecution. The statement of the accused u/s 313, CrPC was recorded. Defence has not adduced any evidence. The defence is in that of denial simplicitor.

Now, first point for consideration is that whether the accused is a public servant and whether there is proper and valid sanction for prosecution of the accused.

PW 1 Sati Moitri Brahma, who was the Senior Personnel Officer, Welfare, N.F. Rly, Maligaon during December, 1990 to February, 1993. She was over all incharge of the SO-bedded Mess (for short, Mess) located at N.F. Rly Maligaon. She has deposed that this accused Haru Ch. Dey was the caretaker of the said mess. Exs 29 and 30 are the Attendance Register for the relevant period wherein the name of accused Haru Dey appears as a railway employee.

Besides PW 1, there is oral evidence of other PWs who are Railway employees. Moreover Ex 38 is the appointment letter whereby this accused was appointed as a peon of N.F. Rly on 24.11.73. Ex 39 is another order whereby accused was appointed

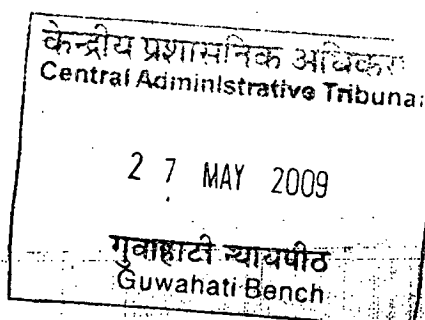
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Guwahati Bench

as caretaker of the mass on 24.2.88. Ex 35 is the Personal case file of the accused kept in regular course of official business. Exs 36 and 37 are the leave accounts. Thus, the oral evidence is fully supported by the documentary evidence on record. The prosecution evidence on this point has not been challenged or disputed by way of cross-examination. Moreover, ⁱⁿ the statement u/s 313, CrPC, the accused has admitted that ~~the~~ accused during the year 1992 and till February, 1993 he worked as a Caretaker of the mass and he was railway employee of group C. I, therefore, hold that accused H.aru Chandra Day is a public servant as defined in section 2(C) of the PC Act.

PW 3 is Hala-dhar Das who was working as Senior Personnel Officer, N.F. Rly, Maligaon from October, 1993 to July 1994. He has deposed that as the accused was an employee of group C, he was removed from service by a Sr. Scale Officer. PW 3 is the Senior Scale Officer of group A. On examination of all the materials before him he granted sanction for prosecution vide Ex 43. Exs 43(1) and 43(2) are his signatures. The witness considered all the documents and materials placed before him by the CBI and on being satisfied he accorded the sanction. On perusal of the letter Ex 43, which is in 2 sheets, I find that the facts constituting the offence are fully detailed and Ex 43 meets requirements of law as regards the sanction. Defence has not challenged the letter of sanction as such but during the course of arguments the learned defence counsel submitted that PW 3 is not competent authority to accord sanction. The accused has also stated in the statement u/s 313, CrPC that PW 3 had power to suspend him only but he was not competent to accord sanction for prosecution. The learned defence counsel has also drawn my attention to the Railway Servants (Discipline & Appeal Rules, 1968). But on perusal of the same, I find that the railway servant can be removed or dismissed from service either by the appointing authority or an authority of equivalent rank or any higher authority. Under sub clause C of section 19, the sanction is



required to be given by an authority competent to remove the public servant from the office. According to PW 3 even a Senior Scale officer of Group B was competent to remove the accused from service whereas he was an Senior Scale Officer of group A. ~~and whose higher than Group B then.~~ PW 3 was cross-examined at length and even no suggestion was given that he is not competent to accord sanction. From Ex 38 the appointment letter, I find that the accused was appointed by the Assistant Personnel officer. Considering the oral and documentary evidence on record, I, therefore, hold that PW 3 is the competent authority and there is proper and valid sanction for prosecution of the accused.

PP/CBI submitted that in the present case, the alleged offence was committed by the accused while he was absent from duty. It is stated by the witnesses ^{that} from 9.11.92 to 15.3.93 ~~that~~ the accused remained absent. Ex 32 is the report to that effect. In support of the same, prosecution has produced the relevant Attendance Register Exs 29 and 30 which shows that the accused was absent from 9.11.92 to 12.3.93. This finds support from the own letter of the accused Ex 60, whereby the accused admitted that he was on sick leave from 19.11.92 to 15.3.93 and prayed for converting the same to commuted leave. The question whether the accused enjoyed valid leave or unauthorised leave is not material for the purpose of this trial. However, the facts remain that during the relevant period, the accused was officially not present or attending his duties.

The procedure for issue of requisition, receipt of the same by the Store Depot and delivery of goods against these requisitions, as deposed by the witnesses, it may be summed up as follows :

Requisition and Issue Notes (hereinafter referred as RIN) are available on printed Railway form Ex(42). When an article is required for a particular department, one set of RIN is required to be prepared. The set consists of one

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original and 4 numbers of carbon copies prepared in the same process, by ^{the} requisition number, date, consignee's Code, description and quantity of articles etc are to be filled up and these are to be signed by the authorised official. For the mesa, PW 1 Moltri Brahma and PW 5 Bhopal Chakraborty were the authorised signatory and P W 6 Biren Das was also authorised being an official of the Welfare department. This RIN can be sent to the Store department either by post or by messenger. If these are sent through messenger, an authorised letter is also required to be given authorising the messenger to collect / receive goods from the store.

When a RIN is received by the Store Depot, the Incharge of the requisition sanction verifies the signature of the indentors/ consignee of the RIN and endorses it to the concerned branch. Thereafter, RIN goes to the registering clerk, who makes an entry in the Register Issue Notes and gives registration number. The registering clerk also obtains the signature of the person who has brought the RIN. Thereafter, RIN is sent to the booking section and the booking clerk verifies registration number of the RIN, checks identity card of the receiver of the goods and issue gate pass (GP). The GP is repared in duplicate with the help of carbon. Carbon copy of the GP is handed over to the receiver of the goods. The receiver is required to produce the carbon copy at the gate in order to collect the goods. The carbon copy is then sent back by the gate keeper to the booking section and it is pasted with original in order to show that the goods have, in fact, gone out. While issuing GP, the signature of the receiver is taken on the reverse of the original GP and the authority letter is also pasted therewith. The authority must contain the signature of the person authorised and also the signature of the person who is to collect the goods.

Now, the point for consideration is whether eight numbers of RIN, as alleged by the prosecution, are forged/fabricated documents or not.

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According to the prosecution, Exs 21, 24 to 27 (one set), Exs 19, 20, 22, 23, 16 and 17 are the 8 numbers of RIN as described in serial Nos 1 to 8 of the charge and they are all forged and fabricated documents. PW 1 has deposed that the signatures on Exs 1(1) to 17(1) 19(1), 20(1), 21(1) and 23(1) are ~~the~~ not her signatures. PW 5 Bhopal Chakraborty and PW 6 Biren Das, who are also acquainted with the signature of PW 1 have stated that these are not the signature of PW 1. They have also stated that these Exhibits ~~do not~~ not bear their signatures. Further, Exs 1 to 5 are for 150 numbers of blankets, likewise, Ex 16 RIN is for 150 numbers of bed sheets and Ex 17 is for 150 numbers of coil mattresses for Rang Bhaban. PW 6 and other witnesses have deposed that Rang Bhaban is an auditorium having sitting arrangements ^{for} spectators and as such, articles like coil, mattresses, blankets, bed sheets etc are not required. Exs 1 to 27 are the 12 sets of requisitions out of which Exs 18, 21, and 24 to 27 are the 3 sets of RIN which bears the genuine signature of PW 1. So far allegation against these RINs are concerned, it will be discussed at the later stage.

In this case, the disputed/questioned signatures appearing on Exs 1 to 27 were marked Q12 to Q 39. The admitted signatures of PW 1, ^{an} marked A1 to A6 and admitted signatures of PW 6 Biren Kumar Das ^{an} marked A7 to A11 and the specimen signature of P^{an} 6, ^{an} marked S67 to S69 on Exs 87 alongwith other questioned documents and the specimen and other admitted signatures of accused Harun Ch. Day were sent to the GEQD, Calcutta during investigation vide forwarding letters Exs 67 and 66. The GEQD ^{in June and} duly compared and examined ~~who~~ submitted his opinion Ex 63 vide forwarding letter Ex 70. The GEQD, H.S. Tuteja was examined as witness (PW 16). P^{an} 16 has given definite opinion that the signatures marked Qs 13, 15, 17, 19, 21, 24, 27, 33, 36 and 39 are not compared with that of PW 1. Likewise, Qs 23, 26, 32, 35 and 38 appearing on these RINs are not of PW 6. I, thus, find that the oral testimony of PWs 1, 5 and 6 stands fully corroborated by

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the evidence of PW 16, the handwriting expert. There is no cross-examination of PW 16 as regards this part of his evidence. Further, PW 16 has stated that the signature appearing on Exs 18 as Q 30 and Q29 are that of PWs 1 and 6. These signatures are admitted by the witnesses. I, therefore, hold that Exs 1 to 17 and 19 to 24 are forged and fabricated RINs.

As stated above, when RINs are produced at the Store Depot, they are registered and the registration number is given on the body of the RINs and the signatures of the messenger is taken. Ex 18 and Ex 21 RINs were registered on 1.12.93. Ex 60 is the relevant register for the months of November and December, 1992. Exs 60(1) and 60(2) are the relevant entries in the above register in respect of the above RINs. Registration numbers are 5852, 5853 and 5854. These registration number appear on Exs 18 and 21. PW 12 Bharat Das was the incharge of the requisition section and he has proved the above exhibits. Ex 60(3) is the signature of the person who brought the above RINs and received it back after registration and the signature reads as that of Haru Ch. Dey. The witness in his cross-examination, however, states that he does not know accused Haru Ch. Dey personally from before. The signature Ex 60(3) has been marked as Q44.

Ex 56 is another Misc Register commenced on 1.1.93. Exs 56(3), 56(4), 56(5) and 56(6) are the relevant entries dtd 12.1.93 in respect of Exs 22, 20, 19 and 23 respectively. Ex 56(7) is the signature of Haru Ch. Dey alongwith the date. There is single signature in respect of 5 numbers of RINs and the signature is marked as Q40. The registration number Misc 60, 61, 62 and 64. These numbers alongwith the date appear on the above 4 numbers of RINs. Ex 56(8) is another entry No.212 in respect of RIN at Ex 125. Ex 56(9) is the signature of the accused alongwith the date 4.2.93. Ex 56(11) and 56(12) are the relevant entries numbering 218 and 219

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in respect of RINs Exs 16 and 17 and Ex 56(3) is the signature of Haru Ch. Dey. Ex 56(9) and 56(13) are the signatures marked as Q41 and Q42. The registration number appear on the body of the RIN.

Let us consider whether the accused Haru Ch. Dey did collect the goods in respect of the above RINs.

Boloram Bora PW 14 has deposed that Ex 57(1) is the GP No.946 dtd 4.12.92 in respect of RIN Ex 18. Exs 58(1) is another gate pass (GP) No.1353 dtd 12.1.93 in respect of RINs Exs 19, 20, 22 and 23. Ex 59(1) is another GP No.1567 dtd 5.2.93 in respect of RINs Exs 16 and 17. Exs 57(2), 58(2) and 59(2) are ~~not~~ the signature of PW 14. In these GPs, the name of Haru Ch. Dey, caretaker is mentioned as the collector of the goods. Exs 57(4), 58(4) and 59(4) are the carbon copies of the said GPs pasted to show that the goods against the above GPs were, in fact, taken out of the stores and on the reverse of the original copies of the GPs, the receiver of the goods is Haru Ch. Dey, ^{who} put his signature in presence of PW 14 and Exs 57(3), 58(3) and 59(3) are the signatures of accused Haru Ch. Dey given in presence of PW 14. On perusal of the GPs and cross-checking of the RINs including the issue number, I find that the statement of PW 14 stands fully corroborated by the documentary evidence. Further, Exs 57(5), 58(5) and 59(5) are the 3 numbers of authority letters in favour of Haru Ch. Dey allegedly issued by the PW 1 and ^{also being} prepared the signature of accused Haru Ch. Dey. Exs 57(6), 58(6) and 59(6) are the signatures of accused Haru Ch. Dey allegedly attested by Chief Labour Welfare Inspector PW 6. The signature of PW 1 were marked as Qs 4, 8, 41 and 50 whereas the signature of PW 6 were marked as Qs 3 and 7. The signatures of accused Haru Ch. Dey ^{are} even marked as Qs 10, 6 and 2.

Registers and GPs, i.e., Exs 36, 57, 58, 59 and 60 were ^{maintained} kept in the store department and in the regular course of official business and there is nothing to dispute the genuineness of these documents. Oral evidence of PWs 14, 13, 12, 11, 10 and 9

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clearly show that the above RINs were brought by Haru Ch. Dey and goods against the above RINs were duly supplied to the accused against GPS and these were received by the accused on the strength of authority letters produced. Their oral testimony stands fully corroborated by the documentary evidence. Further, as discussed above, the handwriting expert has categorically deposed that PWs 1 and 3 did not put the signatures marked Qs 3, 4 and 7 and 8. So far authority letter Ex 57(5) is concerned and the signatures Qs 49 and 50 appearing therein are that of PW 1.

The oral and documentary evidence on record is also fortified by the opinion of the expert, PW 16. In this case, the specimen signatures of the accused Harun Ch. Dey were taken during investigation in presence of witnesses Exs 65(1) to 65(39) are the above specimen writings and signatures of the accused in 39 sheets. These were marked as S1 to S39. Further, the admitted signatures and writings of the accused contained in applications, letters etc, i.e., Exs 76 to 85 were also sent to the GEQD and these were marked A12 to A21. The disputed signature of the accused on the register were marked Qs 40 to 44 on the GPS were marked Qs 5 and 9 and on the authority Qs 2, 6 and 10. PW 16 has categorically opined that the above signatures marked Qs 1, 2, 5, 6, 9, 10 and 40 to 48 are in the handwriting of accused. Ex 71 are the reasons for opinion containing five sheets. There ^{are} eight numbers of ~~dis~~ similarities and they are significant in nature and sufficient in number. These were written in free hand and there is no inherent sign of forgery. From the cross-examination of PW 16 nothing has come out to show that the opinion suffers from any disability or infirmity and that it ^{can} be relied upon. I, therefore, hold that the evidence of PW 16 fully corroborates and supports the prosecution story and it was the accused Haru Ch. Dey who produced the above forged RINs and genuine RINs (Ex 18) and collected goods from the store depot, N.F. Railway, Maligaon.

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Now, the next question for consideration is whether the accused person did deposit the goods so collected or has accounted for the same.

PW 4 Dhirendra Mall Saha, Inspector of Store Accounts, N.F. Rly, Maligaon and a vigilance team consisting him, Bhopal Chakraborty PW 5, and Badal Chakraborty have deposed that a surprise check was conducted at 80-bedded mess in presence of the accused Haru Ch. Dey. Exs 44, 45 and 46 are the memorandum and check verification in respect of the mess and Ex 31 is the physical stock verification in respect of Rang Bhaban. The coir mattresses, pillowblankets etc collected vide Exs 1 to 27 were not found in the stock. PW 2 is Anil Das, Incharge of Rang Bhaban. He has also deposed that Rang Bhaban is place where meeting, shows marriage etc are held. There is no arrangement for beds and as such there is no requirement of mattresses, blankets etc for use at Rang Bhaban. The witness has further stated that this accused Haru Dey never handed over to him any bed sheets, blankets etc. for use at Rang Bhaban. The burden was on the accused to show or explain as to how he discharge the entrustment but there is no whisper from the side of the defence. As a matter of fact, the defence plea is that no article as such was received or collected by him.

Another circumstance which appears against the accused is that he was apprehended at the store depot while he was waiting to collect goods against forged RINs. PW 7 Madhab Ch. Baishya has deposed that on the morning of 12.2.93 Kalyan Kumar Sinha informed him that if RIN is brought by the accused Haru Dey, this should be properly checked. On 12.2.93 accused appeared alongwith RIN Exs 6 to 10. These were registered in the miscellaneous register vide entry No. 330 Ex 56(1). Ex-s 6 to 10 contain the above serial number. Ex 56(10) is another entry No. 331 in respect of Exs 11 to 15. The above RINs were brought by the accused who put his signature alongwith the date 12.2.93 on Ex 56(2). PW 7 has identified the signature of the accused

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given in his presence. PW 4 has also deposed that accused Haru Dey was apprehended at the Store Depot while the later was waiting for collection of materials against same requisitions. As discussed above, the RINs Exs 6 to 10 and 11 to 15 are forged and fabricated ones. PW 1 gives neat and clean signature and all the letters are legible. The signature on the admitted writings and in her deposition supports it. A cursory glance to Ex 6(1) to 15(1) will show that these are not the signatures of PW 1. The presence of accused at the store depot on 12.2.93 and the subsequent apprehension there from is admitted. The accused has taken the plea that he had gone to inquire about the availability of logs, as ^{per} verbal instruction given by PW 5 Bhopal Chakraborty. PW 5 categorically denies about deputing the accused ^{to} store depot on that day. Further, I find that the accused was absent from the duty officially on that day and as such there is no scope for deputing the accused by PW 5. I therefore, hold that the prosecution has successfully established its case against the accused Haru Ch. Dey. The accused by using forged RINs collected Rly materials and did not deposit the same and misappropriated the articles and thereby obtained pecuniary advantage for himself.

It may, however, be mentioned here that RINs Ex 18 is not a forgery. It is a genuine requisition and signature thereon are admitted by PWs 1 and 6 and these are supported by the evidence of the handwriting expert. The authority letter Ex 57(5) is also genuine one and the accused collected goods vide GP Ex 57(1). The article in question is 40 numbers of rubberised mattresses meant for mess. These were never deposited at the Mess's Store. The accused, thus, being entrusted with 40 numbers of rubberised mattresses committed misappropriation in respect of the same. The accused has obtained pecuniary advantage for himself by abusing his position as public servant. The act of the accused, therefore, constitutes criminal misconduct.

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as defined in clause (a) & (d) of section 13 of the PC Act, 1988 which is punishable u/s 13(2) of the Act. Accordingly, I convict the accused Haru Ch. Day under the above section of law.

In view of the conviction of the accused u/s 13(2) r/w section 13(1)(c)&(d) of the PC Act, no separate conviction u/s 409, IPC is desirable although the accused was charged under section 409 of the IPC.

As the accused Haru Day cheated his employer, the N.F. Railway by deceitful means and thereby induced the Store Depot, N.F. Railway, Maligaon to deliver goods worth Rs.94,000/- to him which was the property of the said railways, I convict accused Haru Ch. Day u/s 420, IPC.

So far offence u/s 468 is concerned, there is no direct evidence as to who forged the RINs Exs 1 to 27. So far the authority letters Exs 58(5) and 59(5) are concerned, these are forged documents and they also bear the signature of the accused Haru Ch. Day as held above. Further, it was this accused Haru Ch. Day who used the exhibits 1 to 27 and Ex 58(5) and 59(5) to defraud the railways. It can safely be concluded that accused Haru Ch. Day was a party/ privy to the above forgery. Accordingly, I convict him u/s 468 of the IPC.

Coming to the offence u/s 471, IPC and in view of my forgoing discussion it is well established that at the time of using Exs 1 to 27 and Exs 58(5) and 59(5) the accused had knowledge that these are forged documents and still he used the same as genuine and as such I convict the accused U/s 471, IPC.

Typed at my dictation
and corrected by me
Special Judge, Assam,
GUWAHATI.

Special Judge, Assam,
GUWAHATI.

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S E N T E N C E

I have heard the accused on the point of sentence. His statement u/s 253 is recorded. I have heard the learned counsel for defence and the accused on the point of sentence. The learned counsel for defence has submitted that in view of the compassionate grounds lenient view may be taken.

I have considered the submissions and the facts and circumstances of the case. The accused entered into service as Grade II and then rose to the post of the Care Taker of the Railway employees. Bu the state of service as employer he indulged in different activities and by forging documents cheated the Railways to a tune of Rs.94,000/-. The corruption in service by the public servant has become a rampant feature and as such deterrent punishment is called for. Hence I sentence the ^{accused} as under:

For the offence u/s 420 IPC : The accused is sentenced to rigorous imprisonment for 2 years and fine of Rs.20,000/-, in default to RI for 3 months.

For the offence U/s 468 IPC : The accused is sentenced to RI for one year and a fine of Rs. 10,000/- 1/d to RI for 2 months.

For the offence u/s 471, IPC : The accused is sentenced to RI for 6 months and a fine of Rs.2000/- 1/d to RI for one month.

For the offence u/s 13(2) r/w section 13(1)(c)(d) of the PC Act :

All the sentences shall run concurrently.

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ANNEXURE-II

Order placing an Officer under suspension when he is detained in custody.

(Rule 5(2) of Railway Servants (Discipline & Appeal) Rules, 1968.

No. 19E/695(Q)Loose.

(Name of Railway Administration) - NF Railway.

(Place of issue) - CPD/Maligaon.

Date - 01-10-97.

ORDER

Whereas conviction of Shri Haru Chandra Dey, Care Taker, 80-Bedded Mess, NF Railway, Maligaon (Name & designation of the Railway servant), in respect of a criminal offence under Case No. 2(C)94 between State-Vs- Shri Haru Chandra Dey.

And whereas the said Shri Haru Chandra Dey is deemed to have been suspended with effect from the date of detention i.e. from 14.10.96, in terms of Rule 5(2) of Railway Servants (Discipline and Appeal) Rules, 1968 and shall remain under suspension until further orders.

Alshaham
(A KISPORTA) 1/10/97
Sr. Personnel Officer (Welfare)
NF Railway, Maligaon,
Guwahati-781 011.

Sr. Personnel Officer/Welfare

N F Rly/Mlg.

To
Shri Haru Chandra Dey,
Caretaker, 80-Bedded Mess, NF Rly., Maligaon,
91/8, Nambari,
Hill Top Road,
Guwahati-781 011.

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*Certified to be
true copy.
Advocate*

Office of the
GENERAL MANAGER (PERSONNEL)
NF Railway, Maligaon,
Guwahati- 781 011.

No. 19E/695(2).

October 6, 1997.

M E M O R A N D U M

Consequent on Court's verdict issued by the Special Judge, Assam, Guwahati, on Special Case No.2(C)94 dated 14.10.96, between State - Vs - Haru Chandra Dey (accused), Shri Haru Chandra Dey, designation - Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati- 781 011, son of Late Bhupati Chandra Dey, is informed that on a careful consideration of the circumstances of the case in which he was convicted on 14.10.96 under Section No.420/468/471, IPC and Section 13(2) r/w Section 13(1)(c) & (d) of the Prevention of Corruption Act, 1988, the undersigned considers that his conduct, which has led to his conviction, is such as to render his further retention in public service, undesirable. The undersigned has, therefore, come to the conclusion that Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, Maligaon, S/o. Late Bhupati Chandra Dey, is not a fit person to be retained in service and so the undersigned in exercise of power conferred by Rule 14(i) of the Railway Servants Discipline & Appeal Rules, 1968, imposes upon Shri Haru Chandra Dey, the penalty of removal from service with immediate effect.

The receipt of this memorandum should be acknowledged by Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati-781 011, S/o. Late Bhupati Chandra Dey.

Appeal against this order will lie with the Chief Personnel Officer, Admn., NF Railway, within 45 days of the receipt of this order.

M. K. S. P. O. T. T. A.
(A KISPOTTA) 6/10/97

Senior Personnel Officer/Welfare
NF Railway, Maligaon, Guwahati,
(DISCIPLINARY AUTHORITY)

To
Shri Haru Chandra Dey,
91/8, Nambari,
Hill Top Road,
Guwahati-781 011.

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*Certified to be
true copy
Bathuk
Advocate*

BEFORE THE CHIEF PERSONNEL OFFICER (ADMINISTRATION),

N.F. RAILWAY :: MALIGAON

DATED GUWAHATI THE 5th NOV '97

IN THE MATTER OF :

An appeal against the order

No. 192/695 (C) dated 6-10-97

imposing penalty removal from Service.

-And-

IN THE MATTER OF :

An appeal under the provisions

of the Railway Servants Discipline and Appeal Rules, 1968.

-And-

IN THE MATTER OF :

Shri Haru Chandra Dey,

son of late Bhupati Chandra Dey, aged

judgment and 91/8 Nambart Hill Top Road, a Special

Judge in the Guwahati-11. the appellant preferred

an appeal before the Hon'ble Appellate High

Court. The said appeal being admitted for hearing

before the Hon'ble High Court as Crl Appeal No.

The humble appeal of the

appellant abovenamed,

was further pleased to grant interim

Certified to be true copy
Asst. Secy
Admn. Secy

Haru Chandra Dey

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2.

MOST RESPECTFULLY SHEWETH :

1. That your humble appellant is permanent resident of India and is a Railway employee and had been working as Catetaker, 80 Beded Mess, Maligaon. The appellant has been discharging his duties with his best of abilities and there was no allegation against him prior to the alleged incident of 14.10.96.

2. That the appellant was placed under suspension with effect from 14.10.96 in connection with the Special Case No.2(C)94 wherein the appellant has been charged as an accused u/s 420/468/471 IPC read with section 13(2), Sec. 13(1)(c) and (d) of the Prevention of corruption Act. The learned court below has been pleased to pass an order of conviction against the appellant.

3. That being aggrieved by the impugned judgment and order passed by the learned Special Judge in the above case, the appellant preferred an appeal before ~~xxxx~~ the Hon'ble Gauhati High Court. The said appeal being admitted for hearing on _____ being registered as CrI Appeal No. _____/97. The Hon'ble High Court while admitting the appeal, was further pleased to grant interim bail to the appellant.

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3.

4. That the appellant states that the above Criminal Appeal is at present pending for adjudication before the Hon'ble High Court and the appellant has been advised that there is enough grounds for his success in the said appeal.

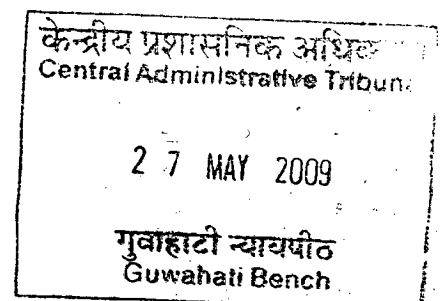
5. That the appellant states that during pendency of the above appeal before the Hon'ble High Court, the department by the above cited order |Memo dated 6.10.97 has contemplated my removal from service.

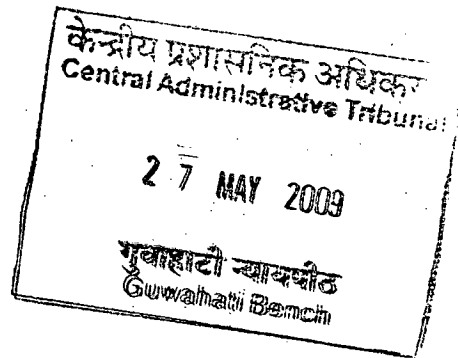
6. That Sir, I reiterate that I am an innocent person and I have been falsely implicated in the above case.

7. That Sir, I am a married person having small kids and other dependants. Because of the suspension, I have suffered a lot during the period and the sufferings of my family is now beyond description.

8. That appellant has suffered a lot for no fault of his own and the proposed action as contemplated by the authority will be too harsh not only to the appellant but also distort the poor family of your appellant.

9. That the alleged incident has cast a cloud on the neat and clean personality of your appellant in the eyes of his family members in particular and in the public in general.





4.

10. That the humble appellant prays that considering the above facts and circumstances narrated above, your Honour may be pleased to pass an appropriate order reinstating your humble appellant in service.

In the premises aforesaid, it respectfully prayed that your honour may be pleased to consider the entire fact and circumstance of the case and pass an appropriate order recalling/ rescinding the above Memo dated 6.10.97 contemplating removal from service and/or pass an order with lesser punishment to save the life of the humble petitioner/appellant and his dependant family members.

And for this act of kindness, the appellant shall ever pray.

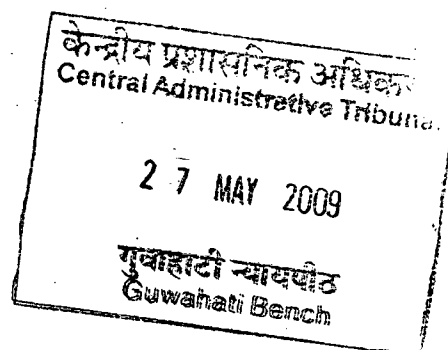
✓ Haru Chelbray

आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की तिथि Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
07/3/06	07/3/06	07/3/06	07/3/06	07/3/06

(THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA;
MANIPUR; TRIPURA; MIZORAM AND ARUNACHAL PRADESH)

Crl. Appeal No. 242/96

Shri Haru Chandra Dey,
Son of Late Bhupari Chandra Dey,
Resident of N.F. Railway, Maligaon,
Guwahati.



.....Accused/Appellant

-Versus-

The C.B.I.

.....Respondent

P R E S E N T

THE HON'BLE MR. JUSTICE ARI SAIKIA

For the appellant : Mr. JM Choudhury,
Mr. BM Choudhury,
Mr. D. Talukdar, Advocates

For the respondent: Mr. D. Das,
Ms M. Boro, Advocate

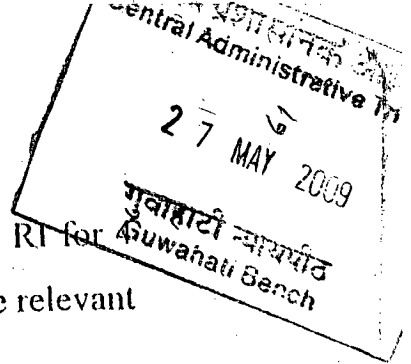
Date of hearing and
Judgment : 9.2.06

JUDGMENT AND ORDER (ORAL)

Heard Mr. JM Choudhury, learned Sr. counsel assisted by Mr. BM Choudhury and Mr. D. Talukdar, learned counsel appearing for the appellant and Mr D. Das, learned Sr. counsel assisted by Ms M. Boro, learned counsel appearing for the respondent/CBI.

2. This criminal appeal assails the judgment and order dated 14.10.96 passed by the learned Special Judge, Assam, Guwahati in Special Case No. 2(c)/94 by which the appellant was convicted under Sections 420/471 IPC read with Section 13 (2) and Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988 (for short 'the Act'), and sentenced accordingly to undergo (i) Rigorous Imprisonment (for short 'RI') for 2 years and fine of Rs. 20,000/- in default RI for 3 months under Section 420 IPC, (ii) RI for one year and fine of Rs. 10,000/- in default RI for 2 months under Section 468, (iii) RI for 6 months and a fine of Rs. 2,000/- in default RI for one

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true copy
Advocate*



month as regards sentence under Section 471 IPC, and (iv) finally RI for 6 months under the relevant Sections under the Act abovenoted

3. The law was set in motion with the filing of an FIR lodged with the C.B. I, registered as RC 25(A)/93 against the appellant alleging therein that the appellant, while working as Care-taker of the of 80 bedded Mess, N.F. Railway, Maligaon, during the period of December, 1992 and January and February, 1993, remaining absence for those period from duty, submitted forged requisition/indent for supply of materials to Pandu Stores Depot, N.F. Railway and collected materials against those items. But the articles after being collected were not brought to the store room of the said Mess and thereby he misappropriated an amount of Rs. 94,000/- being the total value of those articles so collected by him as mentioned above.

4. On completion of the investigation, charge sheet was submitted against the appellant under Sections 409/420/468/471 IPC read with the above mentioned Sections of the Act. Charge was framed in view of the charge sheet above mentioned and during the trial, the prosecution examined as many as 16 witnesses including the P.W. 16, hand writing expert, P.W. 1, Maitree Brahma, the Senior Personnel Officer, Welfare and P.W. 4. Dhirendra Malla Saha, Inspector of Stores Accounts, both from N.F. Railway, Maligaon when nobody was adduced on behalf of the defence and there was a total denial of the charge by the defence.

5. The learned Judge, on proper consideration of the evidence on record as well as on close examination of the relevant exhibits including the Requisition and Issue Note (RIN), particularly, Exhibit 63, the report of the hand writing expert and upon hearing learned counsel for the parties, came to the conclusion that the appellant was found guilty under Sections 420/468/471 IPC read with the above mentioned Sections of the Act.

6. Mr. Choudhury, learned Sr. counsel, advancing his extensive argument has contended that grave error was committed by the learned Judge in not considering the specimen signature of P.W. 1 by way of sending the same to the hand writing expert for its examination as regards

the genuinity and veracity of her signature. According to him, non examination of any specimen signature/standard signature by the hand writing expert, P.W. 6 is always fatal to the prosecution case because the veracity of the signature found in relevant exhibits, if not examined by the hand writing expert, shall always remain under the cloud. Therefore, it is the legal necessity to send the said specimen signature as well as admitted signature of the person concerned to the hand writing expert when such person is either a witness or suspect for putting such signature in the document itself. Referring to all these aspects, the learned senior counsel has tried to impress upon the Court that there is categorical statement made by the hand writing expert in Exhibit-63, Clause (7) of the report that it has not been possible to express any opinion on the rest of the items on the basis of the materials at hand; meaning thereby, according to him, full explanation cannot be given due to the absence of the materials mentioned above and the hand writing expert was handicapped for not getting the specimen signature of the P.W. 1 to give the perfect opinion on this point.

7. Mr. D. Das, learned Sr. counsel has forcefully contended that no irregularity or illegality has been committed by the learned Judge in arriving at the impugned conviction and sentence of the appellant. According to him, the prosecution has proved the case in its entirety and beyond reasonable doubt by adducing credible evidence. He has also contended that the evidence of the hand writing expert cannot be taken so seriously and that cannot be a sole basis for conviction. It is settled law, according to him, that the evidence of a hand writing expert is always taken as a weak evidence and that can only be used for corroboration and consistency in the deposition of the other witnesses who were examined to support the case of the prosecution. In the instant case, other witnesses namely, P.W.1, P.W.2 and P.W. 4, categorically indicated the involvement of the appellant in the offence so mentioned above. That being so, this Court may not make an attempt to demolish the prosecution case on the basis of the contention and submission made by the learned Sr. counsel.

8. I have carefully gone through the evidence on record so referred to by the learned Sr counsel. It appears that the findings arrived at by the learned Special Judge were not solely based on the report i.e., Exhibit 63 or the

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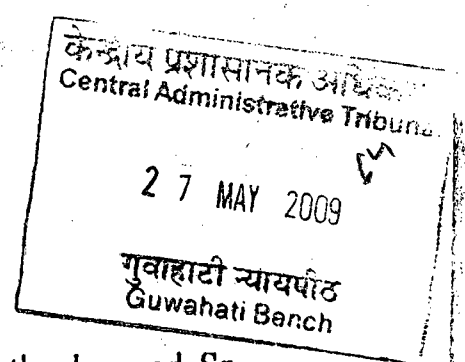
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27 MAY 2009
गुवाहाटी न्यायाधीश
Guwahati Bench

deposition of the hand writing expert, P.W.16. The learned Judge took into consideration the evidence of P.W. 16 in its proper perspective with all the supportive evidence to find corroboration and consistency in the testimony of P.W.1 and P.W. 4. It is established that the opinion of a handwriting expert is not either conclusive or substantive evidence as the same is an opinion only. In the case at hand, the evidence of P.W. 16 was fully corroborated by direct evidence of P.W. 1 and P.W. 4. In view of the credible and cogent evidence of P.W.1, P.W.4 and P.W. 16, this Court does not think that non-examination of specimen signature of P.W.1 by the handwriting expert, P.W. 16, would be fatal to the prosecution case as pleaded by the learned senior counsel. Be it mentioned herein that on close perusal of the testimony of the P.W.4, it transpires that the appellant was caught red handed when he was waiting to collect those materials in pursuance of those forged documents.

9. On close scrutiny of the entire evidence of the witnesses on record and also upon hearing the learned counsel for the parties, this Court finds that learned Judge has rightly convicted the appellant under the offences as mentioned above and sentenced him accordingly by taking a right approach to the evidence so adduced by the prosecution. I do not find any infirmity and/or inconsistency in the evidence of those witnesses and accordingly, I have no hesitation to concur with the views of the learned Court below and as a result, the impugned conviction and sentence are hereby confirmed.

10. At this juncture, Mr. Choudhury, learned Sr. counsel, has in all his fairness, submitted that the petitioner is a very poor man and he has lost his job for entering into this adventure and as such the Court should take a lenient view as regards the sentence. He has also informed that the appellant was already in jail for one month after his conviction and as such this one month's custody period of the appellant, may be treated as conviction period. That apart, he has further submitted that an amount of Rs. 10,000/- as part payment of the fine imposed by the trial Court, has already been deposited as directed by this Court at the time of filing of the appeal and now he is ready to pay another Rs. 10,000/- as fine if the period so undergone is treated as sentence period.



11. This Court finds enough force in the submission of the learned Sr. counsel because of the fact that the incident occurred long back in the year 1992-93 i.e., 14 years ago and by this time, he has also suffered a lot of mental and physical torture as this appeal has been hanging over his head for all the time and no fruitful purpose would be served if the appellant is sent to jail now. Taking into account the established facts and circumstances of the case and having given my anxious consideration to the submissions advanced by the learned counsel for the parties as well as there being no criminal previous record of the appellant, this Court is of the view that the ends of justice would be satisfied if the entire sentence period so awarded by the learned Judge under all heads of those sections, noticed above, is modified to the period of one month already undergone and the appellant is directed to pay further amount of Rs. 20,000/- (Rupees twenty thousand) only as fine in default of such payment to undergo RI for two months. It is ordered accordingly. It is made clear that the fine shall be deposited with the Special Judge, Assam Guwahati, in Special Case No. 2(C)/94 within two months from to-day.

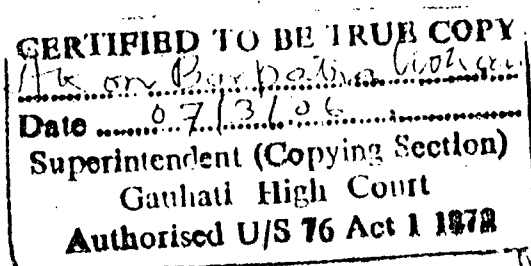
12. Consequently, this appeal stands dismissed to the extent as indicated above.

13. Send down the case records forthwith.

Sd/- A. M. Saikia
Judge

P/NO- 49537

dd. 07/3/06



07/3/06

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ANNEXURE - 9

T. R. Form No. 9

Assam Schedule III (Sec. I), Form No. 64
(P. 72/42)

Challan No.

চালান নং

Treasury/Sub-Treasury

Challan of cash paid into the

State Bank of India

Guwahati

To be filled in by the remitter প্রেরক পূর দ্বি				To be filled in by the Departmental Officer or the Treasury বিভাগীয় নাইবা কোষাগার বিষয়াই পূর	
By whom tendered কোনে দি	Name (or designation) and address of the person on whose behalf money is paid যাৰ হৈ টকা দিয়া হব ভেটৰ নাম (বা বদলী) জানকি	Full particulars of the remittance and of authority (if any) প্রেরিত টকা পইচাৰ আৰু দিয়া নিৰ্দেশ স্বাক্ষৰে পূৰ সম্পূৰ্ণ বিবরণ	Amount টকাৰ সংখ্যা Rs. P. টকা পইচা		Head of Account হিচাবৰ শিতান
Name নাম Shri Haladhi Deka স্বৰ্গীয়া হালাদী ডেকা	SHRI HARU DEY STATE BANK OF ASSAM গুৱাহাটী RS. 20,000	Fine amount 1/2 with Spl. Case No. 2(994) Order passed on 9.2.06 by The Hon'ble High Court Total (সকলগুঠ টকা)	20,000	00	0070 A.J.
(in words) Rupees (আখৰত) টকা			Twenty Thousand only.		
Signature (চহী) Date (তাৰিখ)			Signature of Departmental Officer Office		

Received Payment

Date

Treasury Officer
Account Agent

Treasurer (স্বাক্ষৰ)

Accountant (হিচাব পৰীক্ষক)

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

27 MAY 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Certified to be
true copy
Bhaskar
Advocate

To

Dated : 27/1/2008.

The General Manager(P)
N.F.Railway, Maligaon,
Guwahati-781011.

(For Kind Personal attention of Shri M.Dharmalingam,
CPO/N.F.Rly.)

Respected Sir,

Sub :- Payment of Final Settlement dues and Sanction
of Compassionate Allowance/~~ex-gratia~~ pension
etc.

- Ref :- (i) Hon'ble Supreme Court of India Judgement
order No.10035/2006 dtd. 09-10-2007.
(ii) Hon'ble High Court, Assam (Guwahati)
Judgement order of 09-02-06 on CRL
appeal No.242/96.
(iii) Your memorandum No.19E/695(Q) dtd.06.10.97.
(iv) My appeal dtd.09.02.2007 with reminders
13.06.07 and 18.08.07 addressed to GM(P)/
Maligaon.

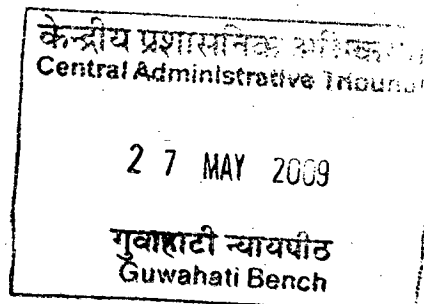
With due regards I beg to lay before you the following
few lines before you for your kind and sympathetic order to
save the wretched family from the jaws of hunger and disaster.

(1) While I was working as Sr.Clerk-cum-Care taker of
80 bedded Mess under SPO(W)/MLG, was convicted and punished by
the Court of CBI Special Judge, Guwahati, Assam and this was
not waived by the Hon'ble High Court, Assam, Guwahati. However,
it has reduced certain punishment. This was also upheld by the
Hon'ble Supreme Court of India. (References are quoted above
alongwith Xerox copies enclosed).

(2) Sir, I was finally removed by the administration
(GM(P)/ML) vide the memorandum quoted above (SL.No.iii) during
the period of subjudiced.

(3) Sir, I have applied for Final Settlement(FS) dues
to your kind honour quoted under reference (SL.No.iv) (Xerox
contd...2.

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true copy
Attaly
Advocate*



copies enclosed herewith). But to my utter distress I have received no reply of my appeal till date due to irony of fate.

(4) Sir, I was a poor-paid employee and had to maintain my large family members consisting of my wife, one unmarried student daughter, 2(two) school going sons, one unmarried sister and widow & old mother. The punishment imposed upon me is a bolt from the blue and so I have been passing the worst days of hardship at present.

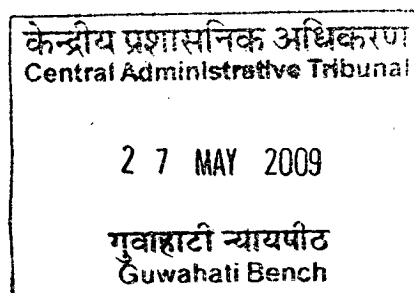
(5) Sir, I am now death bed as I have been attacked by bronchial troubles with highest degree of hyper diabetis and my days are numbered to bid good bye to this world.

(5) Sir, I was a victim of circumstances resulting my penalties to the vice that came to me as a devil to destroy me and this situation brings my repentance. I pray peace before my departure to see my family without starvation.

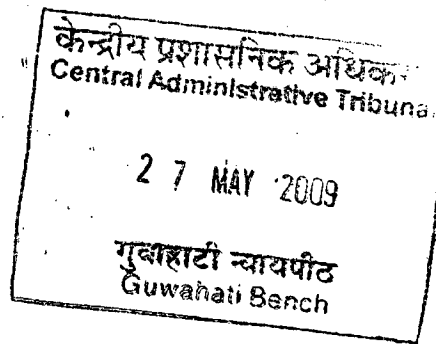
In view of the above fact I fervently pray your kind honour to please pass order to finalize my FS dues, gratuity etc. I would request your honour to kindly sanction compassionate Allowance/~~ex-gratia~~ pension in my favour so that my family members could be saved from starvation and ruins. For this act of your kindness I alongwith my family members shall remain ever grateful to you.

A word in reply will highly be solicited.

Haru Chandra Dey
Yours faithfully,



(Haru Chandra Dey)
Ex-Sr.Clerk
CPO's Office/Maligaon,
Qr.No.91/B,Nambari,
Hill Top Road,Maligaon,
Guwahati-781011.



To,

The Chief Personal Officer (Administration)
N.F. Railway, Maligaon
Guwahati-11.

Dated: 29.9.2008

Sub :- Prayer for disposal of my appeal dated 5.11.1997 preferred against the order no.19 E/695 (Q) dated 06.10.1997 passed by the SPO/Welfare, N.F. railway, Maligaon imposing penalty of removal from Service.

Ref: - My reminder letter dated 24.08.1999, 02.02.2001, 29.03.2006 & 03.01.2008

Sir,

With due deference and profound submission, I begs to lay the following few lines before Your Honour for kind consideration and appropriate necessary action.

Sir, I was placed under suspension w.e.f. 14.10.1996 in connection with a case registered against me as Special Case No. 2(C)/94 and has been charged under Section 420/468/471 IPC R/w- Sec. 13 (2)/13 (1) (C) and (d) of the Prevention of Corruption Act, 1988. The Learned Trial Court was pleased to pass an order convicting me against the charges leveled against me.

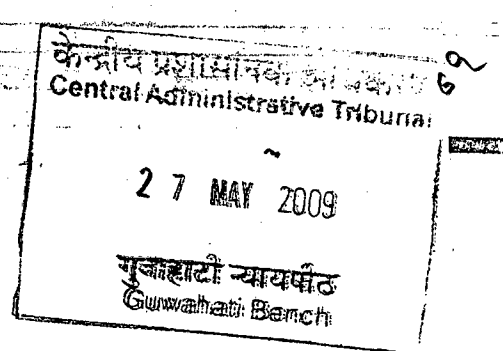
Sir, being aggrieved with the said order dated 14.10.1996, I had preferred a Criminal Appeal being No. 242/96 before the Hon'ble High Court and the Hon'ble High Court after hearing the parties and on perusal of the evidence recorded by the Trial Court was pleased to modified the Judgment and order passed by the Learned Trial Court to the period of one month which I had already undergone and to pay an amount of Rs. 20,000/- only as fine instead of the various period of sentence awarded by the Learned Trial Court.

Sir, the order of penalty of removal from service dated 06.10.1997 has been issued on the basis of conviction which has been awarded by the Learned Special Judge, Assam by its Judgment and Order dated 14.10.1996, but the same has now reduced to a token penalty by the Hon'ble High Court vide Judgment and Order dated 09.02.2006. More so the memorandum of imposition of penalty of removal from service has been

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true copy
Anil
Advocate*

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issued against me during the period when the Criminal Appeal No. 242/1996 has been admitted & and sub-judice before the Hon'ble High Court that too without giving me any opportunity to place my case before the authority without holding any disciplinary proceeding even no show cause notice has been issued prior to imposition of the said Major Penalty of removal from service. As such the same has been issued/imposed in violation the Principle of natural justice, Administrative fair play and in violation of the prescribed procedure in Railway Service Discipline & Appeal Rules, 1968 and other relevant rules in force.

Sir, though I had preferred the appeal before Your Honour against the memorandum of imposition of penalty of removal from service issued under no. 19.E/695 (U) dated 06.10.1997 and repeatedly approaching before Your Honour for disposal of the said Appeal in my favour considering the facts and circumstances of the case, but the same is yet to be dispose of.

Sir, I was a poor- paid employee and had to maintain my large family members consisting of my wife, one unmarried daughter, 2(two) school going sons, one unmarried sister, widow & old mother. The punishment imposed upon me is bolt from the blue and so I have been passing the worst days of hardship at present.

Sir, I am now death bed as I have been attacked by bronchial troubles with highest degree of hyper diabetics and my days are numbered to bid good bye to this world.

Sir, I was a victim of circumstances resulting my penalties to the vice that came to me as a devil to destroy me and this situation brings my repentance. I pray peace before my departure to see my family without starvation.

Sir, I have suffered a lot both mentally and physically since last several years and have been continuously facing tremendous financial hardships. Now I am in starvation as my child is in higher as well as lower classes till date and as such if my case/appeal is not considered symphetically, it will tell upon my family members. It is also pertinent to mention herein that the Hon'ble High Court has categorically observed that "the Appellant do not have any previous criminal records "and in view of that position and also considering the gravity of offence was pleased to reduce the entire sentence period awarded by the learned Special Judge to one month only which I had already under gone.

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3

Boys
29.9.08

In the facts and circumstances as narrated above I most humbly and respectfully pray before Your Honour to review the order of imposition of penalty of removal from service issued under memo. No. 19(E)/695 (Q) dated 06.10.1997 by the SPO/Welfare, Maligaon and consider my case sympathetically by issuing an appropriate order in my Appeal by re-instating me in my service with all consequential benefits, so that, my family members could be saved from starvation and ruins. For this act of kindness I shall be remain grateful before Your Honour for ever.

Thanking You.

Yours faithfully

Haru Chandra Dey

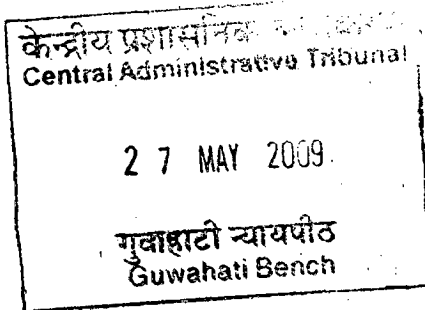
(Sri Haru Chandra Dey)

S/o- Late Bhupati Ch. Dey

Care taker (Under removal)

80 beded mess, Maligaon

R/q- 91/B Numbari Hill Top Road
Guwahati-11, Kamrup, Assam



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ANNEXURE-12

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

27 MAY 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Original Application No. 196 of 2008

Date of Order: This the 12th day of November 2008

The Hon'ble Sri Manoranjan Mohanty, Vice-Chairman

The Hon'ble Shri S.N. Shukla, Administrative Member

Sri Haru Chandra Dey,
S/o late Bhupati Chandra Dey,
Caretaker (under removal) 80 bedded Mess,
Maligaon,
Resident of 91/B, Nambari Hilltop Road,
Guwahati-781011.

.....Applicant

By Advocates Mr D.K. Sarma, Mr P.C. Boro
and Mr H.K. Das.

- versus -

1. The Union of India, represented by the
General Manager,
N.F. Railway, Maligaon, Guwahati.
2. The Chief Personnel Officer (Administration),
N.F. Railway,
Maligaon, Guwahati-11.
3. The Sr. Personnel Officer (Welfare),
N.F. Railway, Maligaon,
Guwahati-11.

.....Respondents

By Advocate Dr J.L. Sarkar, Railway Standing Counsel.

certified to be
true copy
Attest
Advocate

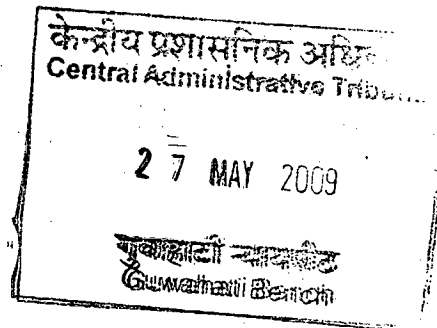
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O.A.No.196/2008

ORDER (ORAL)

12.11.2008



M.R. MOHANTY, VICE-CHAIRMAN

Applicant, a Senior Clerk of N.F. Railways (engaged as Caretaker of 80-Bedded Mess of said Railways located at Maligaon near Guwahati in the State of Assam) was convicted (in a Criminal Case) Under Section 430/468/471 IPC read with Section 13(1)(c) & (d) and Section 13 (2) of Prevention of Corruption Act; 1988 and sentenced (by the Special Judge at Guwahati/Assam) to undergo rigorous imprisonment for 2 years and a fine of Rs.20,000/- (in default to undergo R.I. for 3 months) for having committed offences under Section 420 IPC; to under⁹⁰R.I. for One year and a fine of Rs.10,000/- (in default to undergo R.I. for 2 months) for having committed an offence under Section 468 IPC; to undergo R.I. for 6 months and a fine of Rs.2,000/- (in default to undergo R.I. for one month) for having committed an offence under Section 471 IPC and it was directed (by the said Criminal Court in its judgment dated 14.10.1986 rendered in Special Case No.2(C)94) that all those sentences were to run concurrently. The case before the aforesaid Criminal Court was as under:-

"..... during the year 1992-93, accused Haru Ch. Dey was posted and functioning as Caretaker of 80-bedded Mess, N.F. Railway, Maligaon. During the period December, 1992 and January and February, 1993, the accused was absent from duty, but during this period, he submitted requisition/indent for supply of materials to the Pandu Stores Depot, N.F. Railway and also collected materials is against them. Those requisitions were all forged. The accused did receive articles against those requisitions. In the month of December, 1992 and January and February, 1993. The articles so collected were not brought to the Store room of the said mess and those were

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केन्द्रीय प्रशासनिक अधिकारी
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27 MAY 2009

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Guwahati Bench

misappropriated. According to the prosecution, the accused even collected certain materials in the name of Rang Bhaban belonging to N.F. Railway although the above articles are not required for Rang Bhavan. The amount of the total article collected by the accused is around Rs.94,000/- on 12.2.93 the accused was apprehended at the Store Depot, Pandu while he was waiting to collect goods on the basis of the forged indents. Therefore, stock verification was made both at 80-bedded mess and at Rang Bhaban. The goods collected by the accused was not found in the stock. On FIR being lodged, CBI registered RC 25(A)93. Usual investigation was made and during investigation, specimen writings, signature, admitted writings and questioned documents were sent to the CEQD, Calcutta. After due investigation and after obtaining necessary sanction for prosecution, charge sheet was submitted on 5.1.94.

On consideration of charge, charge under section 409/420/468/471, IPC and section 13(2) r/w section 13(1)(c) & (d) of the PC Act was framed on 25.7.95....."

2. Upon his conviction by the Criminal Court, as aforesaid, the Applicant was placed under suspension with effect from 14.10.1996 vide an Order dated 01.10.1997. Relevant portion of the said Order dated 01.10.1997 reads as under:-

"Whereas conviction of Shri Haru Chandra Dey, Care Taker, 80-Bedded Mess, NF Railway, Maligaon (Name & designation of the Railway servant), in respect of a criminal offence under Case No.2(C)94 between State -Vs- Shri Haru Chandra Dey.

And whereas the said Shri Haru Chandra Dey is deemed to have been suspended with effect from the date of detention i.e. from 14.10.96, in terms of Rule 3(2) of Railway Servants (Discipline and Appeal) Rules, 1968 and shall remain under suspension until further orders."

4. On 06.10.1997, a Memorandum was issued removing the Applicant from services with immediate effect. Relevant portion of the said Memorandum dated 06.10.1997 reads as under:-

"Consequent on Court's verdict issued by the Special Judge, Assam, Guwahati, on Special Case No.2(C)94 dated 14.10.96 between State -Vs- Haru Chandra Dey (accused), Shri Haru Chandra Dey, designation - Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati-781011, son of Late Bhupati Chandra

Dey, is informed that on a careful consideration of the circumstances of the case in which he was convicted on 14.10.96 under Section No.420/468/471, IPC and Section 13(2) r/w Section 13(i)(c) & (d) of the Prevention of Corruption Act, 1988, the undersigned considers that his conduct, which has led to his conviction, is such as to render his further retention in public service, undesirable. The undersigned has, therefore, come to the conclusion that Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, Maligaon, S/o Late Bhupati Chandra Dey, is not a fit person to be retained in service and so the undersigned in exercise of power conferred by Rule 14(i) of the Railway Servants Discipline & Appeal Rules, 1968, impose upon Shri Haru Chandra Dey, the penalty of removal from service with immediate effect."

5. It was stated that the order of 'removal' was issued in exercise of the powers under Rule 14(i) of the Railway Servants (Discipline & Appeal) Rules, 1968. Relevant portion of Rule 14 of the Rules of 1968 reads as under,-

"14 Special procedure in certain cases-

Notwithstanding anything contained in Rules 9 to 13: -

(i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal case; or

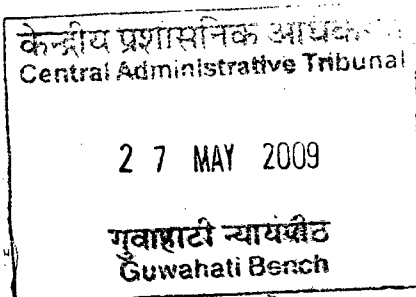
(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules.

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

6. In the above said Memorandum dated 06.10.1997 the Applicant was intimated about the availability of Appeal (against the



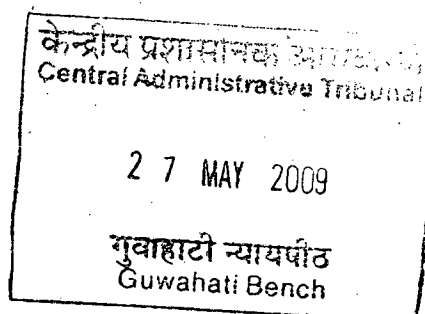
order of 'removal') within 45 days. Relevant portion of the said Memorandum dated 06.10.1997 reads as under:-

"Appeal against this order will lie with the Chief Personnel Officer, Admn., NF Railway, within 45 days of the receipt of this order."

7. It appears from Annexure-G to this O.A., that the Applicant preferred an Appeal to C.P.O. (Admn) of N.F. Railway at Maligaon; wherein he pointed out about Admission of his Criminal Appeal (in the Hon'ble High Court) that was directed against the order of conviction passed by the Trial Court and about grant of bail and pendency of the said criminal Appeal and about passing of the 'removal' order during pendency of the Criminal Appeal etc.

8. As it appears from Annexure-H to this O.A., the abovesaid Criminal Appeal (No.242/96) was disposed of (by the Hon'ble High Court at Guwahati) on 09.02.2006 confirming the conviction. The sentences were, however, modified for the following reasons as recorded by the Hon'ble High Court:-

"..... because of the fact that the incident occurred long back in the year 1992-93 i.e. 14 years ago and by this time, he has also suffered a lot of mental and physical torture as this appeal has been hanging over his head for all the time and no fruitful purpose would be served if the appellant is sent to jail now. Taking into account the established facts and circumstances of the case and having given my anxious consideration in the submissions advanced by the learned counsel for the parties as well as there being no criminal previous record of the appellant, this Court is of the view that the ends of justice would be satisfied if the entire sentence period so awarded by the learned Judge under all heads of those sections, noticed above, is modified to the period of one month already undergone and the appellant is directed to pay further amount of Rs.20,000/- (Rupees twenty thousand) only as fine in default of such payment to undergo RI for two months....."



9. Applicant carried the matter (of confirmation of his conviction) to the Hon'ble Supreme Court of India (in No.10036/06) un-successfully and, after dismissal of his case (on 09.10.2007) in the Apex Court, he addressed a representation (on 31.01.2008) to the General Manager of N.F. Railway (under Annexure-J) with prayer to grant him (Applicant) Compassionate Allowances/ex-gratia pension to save himself and his family. Such pensions are available to be granted under Rule 65 of Railway Services (Pension) Rules, 1993; relevant portion of which reads as under:-

"65. Compassionate allowance.— (1) A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity:

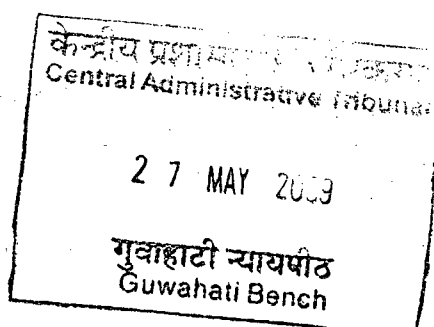
Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension,

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than three hundred seventy five rupees per mensem.

10. Applicant has made the following prayers in the present case:-

"8.1 The impugned order of imposition of penalty of removal from service dated 06.11.1997 (Annexure-F) may be set aside and quashed directing the respondents to re-instate the applicant in service.

8.2 The respondent No.2 may be directed to consider and dispose of the appeal dated 05/11/1997 (Annexure-G) preferred against the order dated 06/10/1997 on the basis of changed circumstances and findings and observations made by the Hon'ble High Court in its judgment and order dated 09-02-2006.



8.3 The respondents may be directed to pay/release all the consequential benefits payable to the applicant forthwith i.e. arrear salary, allowances, increments, promotion etc.

8.4 Cost of application

8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper."

11. Before filing the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, the Applicant claims to have preferred a representation (on 29.09.2008) to CPO (Admn) of N.F. Railway under Annexure-K.

12. Heard Mr H.K. Das, learned Counsel appearing for the Applicant, and Dr J.L. Sarkar, learned Standing Counsel for the Railways (to whom a copy of this Original Application has already been supplied) and perused the materials placed on record.

11. In course of hearing, Mr Das, learned Counsel appearing for the Applicant, stated that the order of removal having passed at a time, when the conviction and order of sentence (passed by the Trial Court) were stayed/suspended by the Hon'ble High Court during pendency of Criminal Appeal, the same (order of removal) was bad and non-sustainable/non-est in the eyes of law and, as such, same should be ignored/quashed and, as a consequence, the Applicant should be asked to be treated as a continuing staff of the Railways. On the other hand, Dr J.L. Sarkar, learned Standing Counsel for the Railways, pointed out that since it is the case of the Applicant that his Appeal under Annexure-G dated 05.11.1997 and Representation under Annexure-J dated 03.01.2008 and Annexure-K dated 29.09.2008 are still pending with the authorities/Respondents, this case is a

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Guwahati Bench

premature one and, therefore, the matter need be remitted back to the Respondents for passing orders.

14. Having heard the learned Counsel appearing for the parties, this case is hereby disposed of with direction to the Respondents to consider the grievances of the Applicant (as raised under Annexure-G dated 05.11.1997, Annexure-J dated 03.01.2008 and Annexure-K dated 29.09.2008 and in the present Original Application) and pass a reasoned order within 120 day from the date of receipt of a copy of this order.

15. With the above observations and directions this case stands disposed of.

16. Send copies of this order to the Applicant and the Respondents (with copies of this O.A.) and free copies of this order be supplied to the Advocates of both parties.

Sd/-
M.R. MOHANTY
VICE CHAIRMAN
Sd/-
S.N. SHUKLA
MEMBER (A)

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

27 MAY 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

TRUE COPY

22/11/08

22/11

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ANNEXURE - 13

Lbans
1.12.08

Dated:-01.12.08

To,

The Chief Personal officer, (Administration)
N.F. Railway, Maligaon, Gwahati-11.

Sub.:- Submission of Certified Copy of the order dated 12.11.08 passed by the Hon'ble CAT, Guwahati Bench in O.A. No. 196/08 (Sri Haru Ch. Dey - Vs- union of India & others.)

Sir,

With due regards, I hereby most respectfully inform Your Honour that I had preferred the above mentioned Original Application before the Central Administration Tribunal, Guwahati bench being aggrieved by the action of imposition of major Penalty of removal from service and inaction of non-disposal of my appeal inspite of my repeated approach. The Hon'ble Tribunal after hearing the parties including the Railway Advocates was pleased to dispose of the said O.A. preferred by me by its order dated 12.11.08 with a direction to consider my grievances more particularly stated in my representations dated 05.11.1997, 03.01.2008, and 29.09.2008 and to pass a reasoned order within period of 120 days from the date of receipt of this order.

Therefore, I earnestly request before Your Honour to consider my case suitably and symphetatically on the basis of the changed circumstances and reduction of conviction by the Hon'ble High Court. The copy of the aforesaid order dated 12.11.08 passed by the CAT, Guwahati Bench is annexed herewith for your ready reference.

Thanking You.

Yours Faithfully

Haru Ch. Dey

Haru Chandra Dey
S/O- late B.C. Dey
Caretaker (under removal)
80 bedded mess, Maligaon
R/O- 91/B Numbari Hill
Top Raod, Guwahati- 11.

2/C

Certified to be
true copy
H. Ch. Dey
Advocate

केन्द्राय प्रशासनिक अधिकारी Central Administrative Tribunal
27 MAY 2009
गुवाहाटी न्यायपीठ Guwahati Bench

Speaking Order

Sub:- Hon'ble CAT/Guwahati's order dtd 12.11.08 in OA No. 196 of 2008 - Sri Haru Ch. Dey -Vs U.O.I & Ors.

In compliance to the direction of the Hon'ble Tribunal in their above OA, the undersigned perused the order of the Hon'ble Tribunal in OA No. 196 of 2008, copy of the OA alongwith its annexures and relevant records/documents of the applicant Sri Haru Ch. Dey, Ex. Sr. Clerk cum Caretaker of 80 bedded Mess of N. F. Railway, Maligaon.

The applicant filed an application (OA No.196/08) before the Hon'ble Tribunal praying relief's that the impugned order of imposition of penalty of removal from service dated 06.11.1997 (Annexure-F) may be set aside and quashed directing the respondents to re-instate the applicant in service with all consequential benefits.

He also prayed for a direction to direct the respondent No.2 (CPO/A) to consider and dispose of the appeal dated 05.11.1997 (Annexure-G) preferred against the order dated 06.10.1997 on the basis of changed circumstances and findings and observations made by the Hon'ble High Court in its judgement and order dated 09.02.2006.

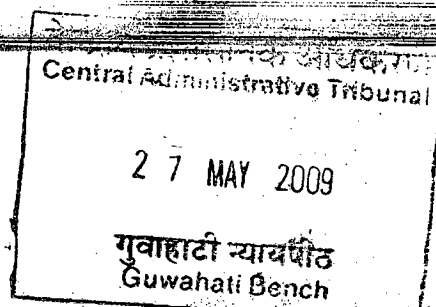
Hon'ble Tribunal in their order dtd.12.11.08 disposed of the OA with direction to the Respondents to consider the grievances of the applicant (as raised under Annexure-'G' dtd. 05.11.97, Annexure-'J' dtd. 03.1.2008 and Annexure-'K' dtd. 29.9.2008 and in the present original application) and passed a reasoned order.

The undersigned perused the memorandum No. 19E/695(Q) dated 06.10.1997 wherein the Disciplinary Authority, SPO(W)/MLG awarded the applicant the penalty of removal from service based on the verdict dtd. 14.10.1996 issued by the Special Judge, Guwahati, Assam on special case No.2(C)94. In the said judgement the applicant was convicted under Section 420, 468 & 471 IPC and Section 13(2) read with Section 13(1)(C)&(d) of the prevention of corruption Act,1988. The Disciplinary Authority did not grant applicant compassionate allowance to applicant.

The undersigned perused the appeal dtd. 05.11.1997 preferred by the applicant as annexed as Annexure-'G' to OA. The said appeal does not appear to have been received in this office. However in the said appeal the applicant stated that he preferred an appeal before the Hon'ble Gauhati High Court. The appeal was admitted and interim bail was granted and during pendency of the said appeal before the Hon'ble High Court, the authority removed him from service. As such he prayed for

Contd. to Page-2

*Certified to be
true copy
Ashu
Advocate*



appropriate order recalling/rescinding the Removal Memo dtd. 06.10.1997. The undersigned perused the appeal dtd. 31.1.08 also as annexed as Annexure-'K' to OA, which is repetition of his earlier appeal dtd. 05.11.97.

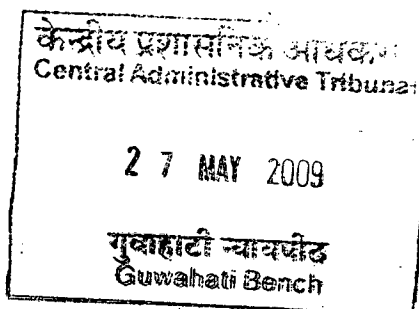
The undersigned perused the judgement dtd. 14.10.96 given by the Hon'ble Judge in Special case No.2(C)94 and the judgement dtd. 09.02.06 given by the Hon'ble High Court in Criminal Appeal (No. 242/96). The applicant was convicted in a criminal charge and was in jail. Subsequently he was released on bail by an appeal in the Hon'ble High Court. It appears from the OA and its annexures that the applicant did not inform the fact to the authority which is unbecoming of a Railway servant. The Disciplinary Authority has taken correct decision on the finding in the special case No.2(C)94 in the departmental proceeding as per service conduct rules. Again the Hon'ble High Court in the judgement dtd. 09.02.06 confirmed the order dtd. 14.10.1996, wherein the Hon'ble High Court did not find any infirmity and/or inconsistency in the evidence of those witnesses while concurring with the views of the Learned Court below.

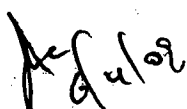
In view of the above I do not find any reason to interfere in the order of Disciplinary Authority. As such, I uphold the penalty of removal from service of the applicant vide Memorandum No.19E/695(U) dtd. 06.10.1997.

The undersigned perused the representation dtd. 31.1.2008 of the applicant as annexed as Annexure-'J' to OA. The applicant prayed for payment of FS dues and sanction of compassionate allowance/ex-gratia pension etc.

The applicant was convicted for forgery, cheating and corruption in a criminal case and as a result of which he was removed from service. He was sentenced to jail for one month. The ground of his removal does not deserve any special consideration. As such, compassionate allowance is not granted. However, FS dues due to him will be paid (as entitled to a staff removed from service) on submission of necessary documents viz, mode of payment

The appeals/representation of the applicant with the OA is disposed of accordingly.




(Sushant Jha)
Chief Personnel Officer
N. F. Railway: Maligaon

NORTHEAST FRONTIER RAILWAY

Office of the
General Manager(P)
Maligaon

No.E/170/LC/NS/1117/08

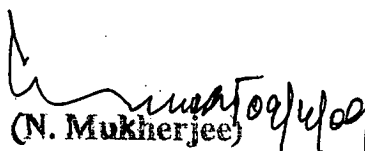
dated- 09-04-09

To

✓ Sri Haru Ch. Dey
S/O Late Bhupati Ch. Dey
91/B, Nambari Hilltop Road, Maligaon
Guwahati-11

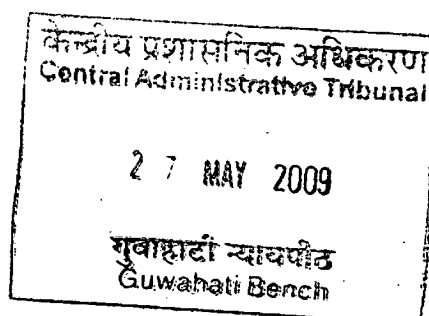
Sub:- Disposal of Representations dated. 05.11.97, 03.01.08 and
29.9.2008 in compliance to the Hon'ble CAT/GHY order dated
12.11.08 in OA No. 196/2008- Sri Haru Ch. Dey -Vs- U.O.I &
Ors

In compliance to the Hon'ble CAT/GHY's order dtd. 12.11.08 in OA No.
196/08, the Competent Authority (CPO/N. F. Railway) has passed Speaking
order to dispose of the Representations dated 05.11.97, (Annexure-G of OA No.
196/08) 03.01.08 (Annexure-J of OA No. 196/08) and 29.9.08 (Annexure-K of
OA No. 196/08) as well as the said original application. The Speaking order
dated 06.4.09 is enclosed herewith for your information and acknowledgement,
please.


(N. Mukherjee)

APO/LC

For General Manager(P)/MLG



certified to be
true copy
Attk
Advocate

Dr. Subrato Bose
M.B.B.S., M.S.
EYE SPECIALIST

FOR APPOINTMENT
Contact - (0361) 2571985
0361-2571019, Cell - 98640 61465
Raj Optics & Health Care Clinic
Maligaon Chariali, Guwahati-12

Shri H. C. Dey.

To whom it may concern.

Certified that Shri H.C. Dey,
suffering from Diabetes is having
Diabetic retinopathy & cataract.

His vision is low
to be active. He has been
advised surgery after
proper control of his Diabetic
status. At present his visual
status is not fit for paperwork.

(Signature)

Visiting Hours : MORNING : 10.30 a.m. (Sunday Off.)
EVENING : 5.30 p.m.

18/05/2009.

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Central Administrative Tribunal

27 MAY 2009

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Guwahati Bench

certified to be
true copy
Advocate

Dr. Subrato Bose
M.B.B.S., M.S.
EYE SPECIALIST

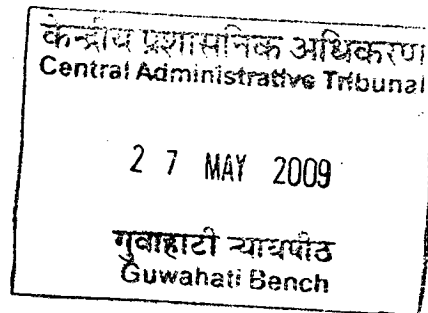
FOR APPOINTMENT
Contact - (0361) 2571985
0361-2571019, Cell - 98640 61465
Raj Optics & Health Care Clinic
Maligaon Chariali, Guwahati-12

Shri H. C. Dey.

1) Glytears eye drop
= 0 0 0
x 1 ph.

~~18/05/2009~~

Visiting Hours : MORNING : 10.30 a.m. (Sunday Off.)
EVENING : 5-30 p.m.



History & Findings	Rx	Morning	Afternoon	Night	Before Food	After Food
10/5/09 RAI > 500mg SP (4) (3)	(1) Recoside M-30	30	x	25	✓	x
	(2) Galvus (500mg)	(1)	x	(1)	✓	x
	(3) Demylin 100mg	(1)	x	(1)	x	✓
	(4) Seriflow 100mg	3 to 4 puff	6 to 8 puff			
<p>Stm Hx - Dry is suffering from Type 2 - DM (Lambr Regumy) + COPD since last 03 years. He requires constant medication & regular follow-up.</p>						

कन्दाय प्रशासनिक अधिकारी
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Guwahati Bench

(61)

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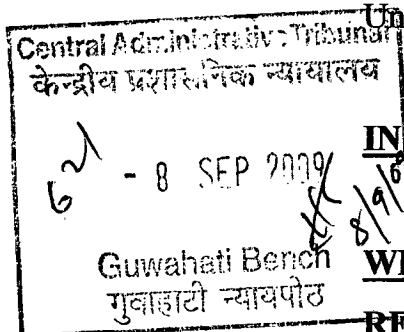
**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI**

O.A. No. 96 of 2009

Sri Haru Chandra Dey..... Applicant.

-Vrs-

Union of India and others Respondents.



IN THE MATTER OF:

**WRITTEN STATEMENT BY THE ANSWERING
RESPONDENTS.**

I N D E X

Sl. No.	Annexure	Particulars	Page
1.	--	Written Statement	1-10
2.	--	Prayer & Verification	11
3.	A-Series	Special Judge Guwahati's Order dated 14/10/96 in Special Case No. 2 (c) 94	12-25
4.	B	Suspension Order	26
5.	C	NIP dt. 06/10/97 for removal from Service	27
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8.	F	Treasury challan dt. 19/04/06 for depositing FINE of Rs. 20,000/- by the Accused/ Applicant	36
9.	--	Acknowledgement of Service Copy	37

Filed on: 08-09-09

Place: Guwahati

Filed by:

(K.K. Biswas)
Railway Advocate
C.A.T./ Guwahati

08/09/09

(62)

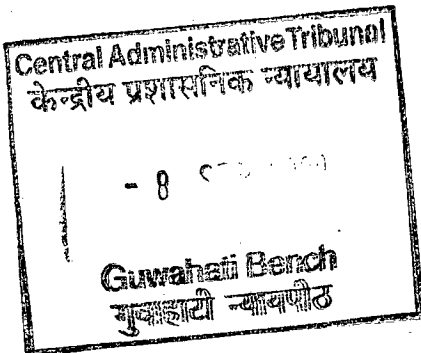
**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI**

O.A. No. 96 of 2009

Sri Haru Chandra Dey Applicant.

-Vrs-

Union of India and others Respondents.



IN THE MATTER OF:

**WRITTEN STATEMENT BY THE
ANSWERING RESPONDENTS.**

The answering Respondents most respectfully sheweth,

1. That the answering Respondents have gone through the copy of the application filed by the above named Applicant and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are borne on records all other averments/allegations made in the application are hereby emphatically denied and the Applicant is put to the strictest proof thereof.
2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However the answering Respondents confined their replies to those points/allegations/averments of the Applicant which are found relevant for enabling a proper decision on the matter.
3. That the Respondents beg to state that for want of the valid cause of action for the Applicant the application merits dismissal as the application suffers from wrong representation and lack of understanding of the basic principles followed in the matter as will be clear and candid from the statements made hereunder:
4. That the answering respondents most humbly submit the case history on the subject above of the Applicant is as under:

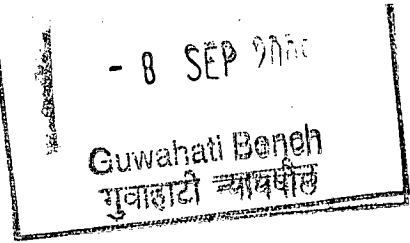
Contd.....P/2Shri Haru Ch. Dey

2. श्री हनु
म हुल्य कार्मिक अधिकारी/मुल्यमात्रा
Dy. C.P.O./HQ.
१: सी रेखे, गालीगांव,
N. F. Rly/Mal.
781011

Filed by:-
Neel Kumar
- 08/09/09
Advocate

63

11211



Shri Haru Ch. Dey Ex. Sr. Clerk(E) was initially appointed as substitute Peon in the Chief Personnel Officer's office w.e.f. 24.11.1973. While working as Sr. Clerk(E)-cum-caretaker of 80 bedded mess of N.F. Railway at Maligaon, he was convicted (in a criminal case) under section 420/468/471/IPC read with section 13 (1)(C) & (d) and section 13(2) of Prevention of Corruption Act 1988 by the Special Judge of Guwahati in its judgement dated 14/10/96 for collecting materials from Store department, Pandu (herein called Pandu Stores Depot) by submitting forged requisition/indent and misappropriating those materials worth Rs. 94,000/- (Rupees Ninety Four Thousand) which were meant for the 80 bedded Mess as well as Rang Bhawan and the said fact was not informed to the concerned authority by the applicant Shri Haru Ch. Dey. Against the aforesaid judgement and order dated 14/10/1996 passed by the Learned Special Judge, Guwahati the Applicant preferred a Criminal Appeal being No. 242/96. The Hon'ble High Court dismissed the said appeal by its order dated 09/02/2006 upholding the Learned Special Judge's order mentioned above with modifications "To the period of 1 month already undergone and the Appellant is directed to pay further amount of Rs. 20,000/- (Rupees Twenty Thousand) only as fine in default of such payment to undergo R.I. for 2 months. It is ordered accordingly. It is made clear that the fine shall be deposited with the Special Judge, Assam, Guwahati in special case no. 2 (C)/94 within 2 months from today. Consequently, this appeal stands dismissed to the extent as indicated above."

The Applicant Sri Haru Ch. Dey filed O.A. No. 196/2008 on 12/11/2008 and the Hon'ble Tribunal disposed of the said O.A. by its order with directions to the Respondents Railway Administration to consider the grievances and passed a reasoned order within 120 days from the date of receipt of the copy of the order from the Hon'ble CAT. The Chief Personnel Officer, N.F. Railway, Maligaon after all careful observations gone through the Representation of Sri Haru Ch. Dey dated 1/12/2008 and complied with the directions of the Hon'ble CAT's orders mentioned above under his reasoned and speaking order 06/04/09 stating "The Applicant was convicted for forgery, cheating and corruption in a Criminal Case and as a result of which he was removed from service. He was sentenced to jail for 1 month. The ground of his removal does not deserve any special consideration."

Contd.....P/3The photocopies

गुवाहाटी न्यायाधीश
Dy. C.P.O./HQ.,
१० सो रेलवे, मालीगाँव,
N. F. Rly/Maligaon

Advocate
08/09/09

(64)

- 8 SEP 2009
Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

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The photocopies of Spl. Judge/GHY's order dated 14.10.96 in Special case No. 2(C)/94, Hon'bel High Court, Guwahati's order and Hon'ble CAT's order mentioned above are enclosed as Annexures – 4, 8, 12, 13 & 14 of the O.A.

PARA-WISE COMMENTS:

- 4.1. With regard to statement made under para-4.1 of the O.A. it is stated that these are all matters of records and their acceptance are subject to verification and found to be of lawful, genuine and in order.
- 4.2. With regard to the statement made under para-4.2 of the O.A. made by the Applicant it is stated that the Act of the Applicant Shri Haru Ch. Dey and his performance involving Criminal and prevention of corruption of offences have been elaborately recorded by the Learned Special Judge in his judgement dated 14/10/96 and recorded that the charges framed against the accused Shri Haru Ch. Dey, herein the Applicant in the O.A., were proved and found the accused Sri Dey guilty to be of various sections of IPC, CRPC and prevention of Corruption Act 1988 and convicted him under different sections of the said Acts. The relevant portions of the Special Judge are excerpted from his judgement are reproduced hereunder:

“During trial, prosecution has examined 96 witnesses. There are 104 numbers of documents from the side of prosecution. The statement of the accused u/s 313, CRPC was recorded. Defence has not adduced any evidence. The Defence is that of denial simplicitor”.....

“I find that the Railway servant can be removed or dismissed from service either by the appointing authority or an authority of equivalent rank or any higher authority. Under sub-clause C of section 19, the sanction is required to be given by an authority competent to remove the public servant from the office. According to PW 3 even a Senior Scale officer of Group B was competent to remove the accused from service whereas he was a Senior Scale Officer of Group A.”.....

20
Dy. C.P.O./HQ.
কর্তৃপক্ষ, ন্যায়াধীশ.
কং. সৌ. রেল, গুৱাহাটী.
N. F. Rly/M.L.
Advocate
- 08/09/09

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Cent.
केन्द्रीय प्रशासनिक न्यायालय
- 8 SEP 2009
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गुवाहाटी न्यायपीठ

“As the accused Haru Dey cheated his employer, the N. F. Railway by deceitful means and thereby induced the Store Depot, N.F. Railway, Maligaon to deliver goods worth Rs. 94,000/- to him which was the property of the said Railway. I convict accused Haru Ch. Dey u/s 420, IPC..... Further, it was this accused Haru Ch. Dey who used the exhibits 1 to 27 and Ex 58(5) and 59(5) to defraud the Railways. It can therefore safely be concluded that accused Haru Ch. Dey was a party/privy to the above forgery. Accordingly, I convict him u/s 468 of the IPC.”

“Coming to the offence u/s 471, IPC and in view of my forgoing discussion it is well established that at the time of using Exs 1 to 27 and Exs 58(5) and 59(5) the accused had knowledge that these are forged documents and still he used the same as genuine and as such I convict the accused U/s 471, IPC.”

“I have considered the submission and the facts and circumstances of the case. The accused entered into service as Grade II (wrongly inserted instead of Grade IV) and then rose to the post of the Care Taker of the Railway employees. But the state of service as employer he indulged in different activities and by forging documents cheated the Railway to a tune of Rs. 94,000/-. **THE CORRUPTION IN SERVICE BY THE PUBLIC SERVANT HAS BECOME A RAMPANT FEATURE AND AS SUCH DETERRENT PUNISHMENT IS CALLED FOR. HENCE I SENTENCE THE ACCUSED AS UNDER.**”

“For the offence u/s 420 IPC: The accused is sentenced to rigorous imprisonment for 2 years and fine of Rs. 20,000/-, in default to RI for 3 months.

For the Offence u/s 468 IPC: The accused is sentenced to RI for 1 year and a fine of Rs. 10,000/- i/d to RI for 2 months.

For the Offence u/s 471 IPC: The accused is sentenced to RI for 6 months and a fine of Rs.2000/- i/d to RI for 1 month.

Contd.....P/5, for the

20/11/19
सं. १०८
२०/११/१९

Veritas
- 08/09/09
Advocate

(66)

//5//

- 8 SEP 2009

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

For the Offence u/s 13 (2) R/W section 13(1)(c)(d) of the PC Act:

All the sentences shall run concurrently.”

Thus the contention of the Applicant made here in this paragraph is not admissible and acceptable, both from the point of facts and law, at all on the face of the recorded evidentially proof of the Learned Judge mentioned above.

Photocopy of the excerpts of the Special Judges order dated 14/10/1996 in Special Case No. 2 (C)/94 is annexed as Annexure A-series.

- 4.3. With regard to the statement made under paras – 4.3 and 4.4 it is submitted that these are all matters of records and the Respondents offer no comments.

The copy of suspension order dated 01/10/97 is enclosed as Annexure-B.

- 4.4. With regard to the statement made under para – 4.5 of the O.A. it is stated that the applicant was subsequently removed from service under NIP dated 06.10.97 issued by SPO/W consequently on his conviction in respect of a criminal offence under case No. 2(C) 94 in the Court of Spl. Judge, Guwahati wherein Shri Dey was informed that appeal against NIP could be submitted to CPO/A within 45 days on receipt of the order, but Shri Dey did not submit any appeal within the stipulated period.

Copy of NIP dated. 06.10.97 is annexed as Annexure – C.

- 4.5. With regard to the statement made under para – 4.6 of the O.A. it is stated that the applicant did not submit any appeal against the order of penalty of removal from service vide Memorandum No. 19E/695(Q) dated. 06.10.1997 to the Chief Personnel Officer (Administration), N.F. Railway as claimed by the applicant wherein he was suggested to appeal against the penalty order to CPO (A) if he desired.

- 4.6. With regard to the statement made under para – 4.7 of the O.A. it is stated that the applicant had preferred criminal appeal No. 242/1996 against the

Contd.....P/6 Spl. Case

2/10/09
অধ্যক্ষ কার্যিক অফিসার/মুহূর্তা
Dy. C.P.O./HQ.
১০ সৌ রেলওয়ে, মালদা গাঁও
N. F. Rly/Mald.

2/10/09
Advocate

- 8 SEP 2007

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

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Spl. Case No. 2(C) 94 before the Hon'ble high Court, Guwahati and which was dismissed by the Hon'ble High Court, Guwahati directing the applicant to pay Rs. 20,000/- as fine and reduced rigorous imprisonment imposed by Special Judge, Guwahati as the applicant had already been undergone one month rigorous imprisonment. The appeal dated 05.11.1997 and 06.10.1997 have already been disposed of by the Respondents vide speaking order dated 06.4.09 in pursuance of Hon'ble CAT/GHY's order dated 12.11.08 in OA No. 196/08. Copy of Speaking order dt. 06.4.09 is annexed as Annexure - D.

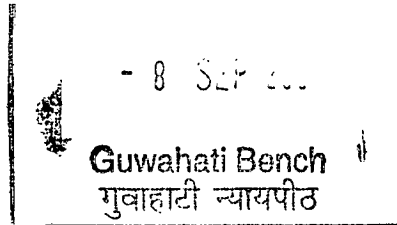
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W. B. Brown
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W. B. Brown
W. B. Brown

- 4.7. With regard to the statement made under paras – 4.8 and 4.9 these are all matters of records and the Respondents offer no comments.
- 4.8. With regard to the statement made under para – 4.10 of the O.A. it is stated that the applicant's representations dated 29.9.2008 to Chief Personnel Officer (Administration), appeal dated 05.11.1997 against the order 06.10.1997 has already been disposed of by the Respondent No. 2 under Speaking order dated 06.4.2009 in compliance of Hon'ble CAT/GHY's order dated 12.11.08 in OA No. 196/08-Haru Ch. Dey-Vs-U.O.I & Ors.
- 4.9. With regard to the statement made under paras – 4.11 and 4.12 these are all matters of records and the Respondents offer no comments.
- 4.10. With regard to the statement made under para – 4.13 of the O.A. it is stated that the Respondent No. 2 passed a Speaking Order dt. 06.4.09 in compliance of Hon'ble CAT/GHY's order dt. 12.11.08 in OA. No. 196/08 and has upheld the penalty of removal from service of the applicant as imposed. The Respondent passed the reasoned speaking order after considering all the aspects carefully but not mechanically as complained by the applicant.
- 4.11. With regard to the statement made under para – 4.14 of the O.A. it is stated that the applicant was removed from service and therefore not entitled the opportunity to avail the medical facility as per rules.

Contd.....P/7the answering

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5. The answering Respondents respectfully submit in this connection that it is further highlighted that the conduct of the Applicant Sri Dey postulates to be a man of trouble-shooter for inviting litigations one after another for the same cause of action which he himself had caused deliberately by his neglect of duty, misconduct, carelessness and callousness not to abide by the Service Conduct Rules and the prevailing system and forged the documents and cheated the administration in addition to committing criminal offence of theft.

6. That it is humbly submitted that the Respondents' act of removal the charged official / Applicant from service is protected under article 311 (2) (a) which runs thus :

“Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge” wherein “any opportunity of making representation on the penalty proposed” may not be entitled. The above suspension order was issued on 01/10/97 and punishment of removal order imposed on 06/10/97 whereas the conviction order issued by the Learned Special Judge, Guwahati on 14/10/96 and on 09/02/06 the Hon'ble High Court upholding the conviction with modification to undergo rigorous imprisonment for 2 months and with fine of further amount of Rs. 20,000/- which the Charged Official /Applicant paid under Treasury Challan No. 4/9693 dated 19/04/06. The Disciplinary Authority after examining all careful considerations imposed the punishment of removal from service. Hence, there was no flaw on the part of the Respondents, as alleged.

Photocopies of above orders and Challan are annexed as Annexure – E, F

7. That it is submitted for remaining unauthorized absence during the period of December 1992 and January and February 1993 and committing criminal offence of theft, forgery, cheat, fraud & miss-appropriation of railway materials which put the employee under suspension under rule 5(2) of the Railway servants (D) & (A) Rules, 1968 and for his custodian detention for more than 48 hours from the time of his commencements of

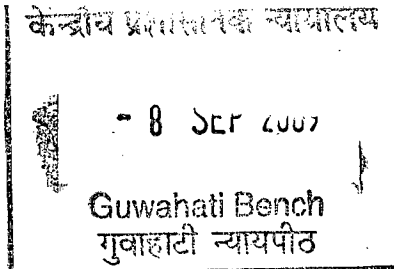
Contd.....P/8such offence

अधिकारी/मुखायुक्त
Dy. C.P.O./HQ.
सो रेलवे, मालगाँव.
N. F. Rly/Malga.
2-10-09

नियुक्ति
09/09/09
Advocate

(69)

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केन्द्रीय प्रशासनिक न्यायालय
गुवाहाटी न्यायपीठ
Dy. C.P.O./HQ.
डॉ. सी. देवदत्त, न्यायाधीश
N. F. Kly/M14

प्रति
08/09/07
A-1000000

such offence. The Applicant suffers such suspension which eventually led him to his conviction on criminal charge and as a result of which under Rule -14(1) of the said rule the charged official – Sri Haru Ch. Dey, the Applicant was removed from service w.e.f. 06/10/1997 under memorandum No. 19E/695(Q) dated 06/10/1997, with consideration of preferring appeal against that order within 45 days as per Rule. So there was no wrong on the part of the Respondents either by putting him under suspension or imposing punishment of removal from service.

Photocopies of above suspension order and imposition of punishment are enclosed as Annexures- B & C mentioned above.

8. That it is submitted that the Respondents re-iterate & re-assert their submissions in this written statement and further state that allegations of the Applicant and the grounds taken in the O.A. are not tenable in the eye of law for the activities caused by the Applicant & suffered criminal Punishments in Courts of Law detailed above and therefore does not deserve any consideration at all.
9. That the Respondents humbly submit that the instant O.A. suffers from multiple issues of relief which are contrary to Administrative Tribunal Act and Rules.
10. That the Respondents humbly submit that the Applicant Sri Haru Ch. Dey had undergone the various offences and liable to be suffered punishment under IPC, Prevention of Corruption Act and flouted the Railway servants DA Rules, 1968 and therefore according to Railway Service Conduct Rules, 1964 was not becoming of a Government Servant under Section 3(1)(i), (ii) and (iii) and therefore was removed from services as per law of the land and there was no fault of the Respondents in removing Sri Dey for such cause of action.
11. That the Respondents respectfully submit the relevant observation of the Hon'ble Gauhati High Court in connection with the Applicant's filing of the Criminal Appeal No. 242/96 which run thus:

Contd.....P/9this criminal

(70)

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

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मुख्य कार्यकारी अधिकारी/गुवाहाटी
Dy. C.P.O./HQ.
पु. सी. रेलवे, मालीगौन.
N.F. Rly/Maligaon

"This criminal appeal assails the judgement and order dated 14.10.96 passed by the learned Special judge, Assam, Guwahati in Special case No.2(c)/94 by which the appellant was convicted under sections 420/471 IPC read with section 13 (2) and section 13(I)(c)(d) of the Prevention of Corruption Act, 1988 (for short 'the Act'), and sentenced accordingly to undergo (i) rigorous imprisonment (for short 'RI') for short 2 years and fine of Rs. 20,000/- in default RI for 3 months under Section 420 IPC, (ii) RI for one year and fine of Rs. 10,000/- in default RI for 2 months under Section 468, (iii) RI for 6 months and a fine of Rs. 2,000/- in default RI for one month as regards sentence under section 471 IPC, and (iv) finally RI for 4 years and a fine of Rs. 25,000/- in default RI for 6 months under the relevant Sections under the Act above noted.".....

NEW
08/09/09
Ad vocate

"While working as care-taker of the 80 bedded Mess, N.F. Railway, Maligaon, during the period of December, 1992 and January and February, 1993, remaining absence for those period from duty, submitted forged requisition/indent for supply of materials to Pandu Stores Depot, N.F. Railway and collected materials were not brought to the store room of the said Mess and thereby he misappropriated an amount of Rs. 94,000/- being the total value of those articles so collected by him as mentioned above.".....

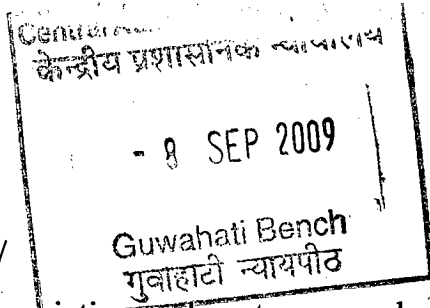
"I have carefully gone through the evidence on record so referred to by the Learned Sr. Counsel. It appears that the findings arrived at by the Learned Special Judge were not solely based on the report i.e., exhibit 63 or the deposition of the hand writing expert, P.W. 16.".....

"On close security of the entire evidence of the witnesses on record and also upon hearing the learned counsel for the parties, this Court finds that Learned Judge has rightly convicted the appellant under the offences as mentioned above and sentenced him accordingly by taking a right approach to the evidence so adduced by the prosecution. I do not find any infirmity and/or inconsistency in the evidence of those witnesses and accordingly, I have no hesitation to concur with the views of the Court

Contd.....P/10 below and

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अध्यक्ष न्यायाधीश/मुलायम
Dy. C.P.O./HQ.
पु. सी. रेलवे, मालीगाँव.
N. F. RIV/MID.

below and as a result, the impugned conviction and sentence are hereby confirmed.”.....

“He has also informed that the appellant was already in jail for one month after his conviction and as such this one month’s custody period of the appellant, may be treated as conviction period. That apart, he has further submitted that an amount of Rs. 10,000/- as part payment of the firm imposed by the trial Court, has already been deposited as directed by this Court at the time of filling of the appeal and now he is ready to pay another Rs. 10,000/- as fine if the period so undergone is treated as sentence period.”.....

“This court is of the view that the ends of justice would be satisfied if the entire sentence period as awarded by the learned Judge under all heads of those sections, noticed above, is modified to the period of one month already undergone and the appellant is directed to pay further amount of Rs. 20,000/- only as fine default of such payment to undergo RI for two months. It is ordered accordingly. It is made clear that the fine shall be deposited with the Special Judge, Assam, Guwahati, in Special Case No. 2(C)/94 within two months from to-day.”.....

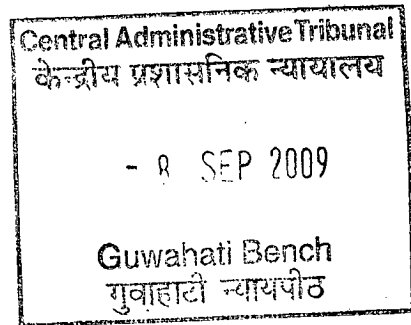
“Consequently, this appeal stands dismissed to the extent as indicated above.”.....

12. That in the premises above and also on all other factual and lawful considerations the Respondents humbly pray that the instant OA may be dismissed in limine and with costs.
13. That it is humbly submitted that the case suffers from infirmities detailed above and therefore does not deserve any consideration and the Respondents respectfully submit that the present application has no merit at all and is, therefore, liable to be dismissed.
14. That the Respondents respectfully crave leave of this Hon’ble Tribunal for submitting Additional Written Statement and reply to the rejoinder, if necessary, for the ends of justice.

Contd..... P/11 Prayer

Advocate
- 08/09/09

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15. **PRAYER:-**

In the premises above, it is respectfully submitted that all actions taken in the case by the Respondents are quite legal, valid and proper and have been taken by the competent authority with proper jurisdiction and justification after due application of mind and no unfair play of action and miscarriage of justice was caused to the Applicant and his application is based on wrong premises and suffers from misconception and misrepresentation of facts, rules and laws on the subject and may, therefore, be granted the correct discernment of the case by this Hon'ble Tribunal and thereby much obliged.

VERIFICATION

I, Anil Kumar Chhapalia
s/o H. Om Prakash Chhapalia at present working as
Dy. C.P.O./H.Q. do hereby solemnly affirm and state that the
statement made in the paragraphs1..... to7..... are derived from the
records and true to my knowledge and belief and the rest all are my humble and
respectful submission and I have not suppressed any material facts.

And I sign this Verification on this 4th Day of September
2009, at Maligaon

Place: Maligaon
04-09-09
Date:

Signature of the Deponent.

न्याय कार्यक अधिकारी/मुख्यालय
Dy. C.P.O./HQ
ए. सी. रेलवे, मालीगाँव
N. F. Rly/Maligaon
गुवाहाटी/असम

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-12- ANNEXURE - A-Series

IN THE COURT OF THE SPECIAL JUDGE 111 ASSAM 111 GUWAHATI.

Special Case No. 2(C)94

S T A T E

Vs

Haru Day .. Accused

Present :

Shri P. G. Agarwal,
Special Judge, Assam, Guwahati.

Shri J. S. Terang : Public Prosecutor for the CBI.

Shri N. N. Ojha : Advocate for the accused.

Date of evidence : 22.9.95, 10.11.95, 5.1.96, 6.1.96, 11.3.96,
12.3.96, 23.5.96, 24.5.96, 1.7.96, & 30.7.96;

Date of arguments : 30.9.96.

Date of judgment : 14.10.96

(Sections 420/468/471, IPC and Section 13(2) r/w section 13(1)(c) &
(d) of the Prevention of Corruption Act, 1988).

J U D G M E N T

The prosecution case, in brief, is that during the year 1992 - 1993, accused Haru Ch. Day was posted and functioning as Caretaker of 80-bedded Mess, N.F. Railway, Maligaon. During the period December, 1992 and January and February, 1993, the accused was absent from duty, but during this period, he submitted requisition/indent for supply of materials to the Pandu Stores Depot, N.F. Ry and also collected materials against them. These requisitions were all forged. The accused did receive articles against these requisition in the month of December, 1992 and January and February, 1993. The articles so collected were not brought to the Store room of the said mess and these were misappropriated. According to the prosecution, the accused even collected certain materials in the name of Rang Bhaban belonging to N.F. Railway although the above articles are not required for Rang Bhaban. The

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

3 Attached
Asst. Personnel Officer (Legal Cell)
B. O. P. O. Office, Guwahati-781001

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

Guwahati Bench
गुवाहाटी न्यायपीठ

During trial-1, prosecution has examined 06 witnesses. There are 104 numbers of documents from the side of prosecution. The statement of the accused u/s 313, CrPC was recorded. Defence has not adduced any evidence. The defence is in that of denial simpliciter.

PW 1 Sati Moltri Brahma, who was the Senior Personnel Officer, Welfare, N.F. Rly, Maligaon during December, 1990 to February, 1993. She was over all incharge of the 80-bedded Mess (for short, Mess) located at N.F. Rly Maligaon. She has deposed that this accused Haru Ch. Dey was the caretaker of the said mess.

Exs 29 and 30 are the Attendance Register for the relevant period wherein the name of accused Haru Dey appears as a railway employee.

Besides PW 1, there is oral evidence of other PWs who are Railway employees. Moreover Ex 38 is the appointment letter whereby this accused was appointed as a peon of N.F. Rly on 24.11.73. Ex 39 is another order whereby accused was appointed

Attested
19/9/09
Asst. Personnel Officer (Legal Cell)
6/10: 1000, Malabar, Gudamali-781001
6/10: 1000, Malabar, Gudamali-781001

- 8 SEP 2009

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गुवाहाटी न्यायापीठ

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as caretaker of the mass on 24.2.88. Ex 39 is the Personal card file of the accused kept in regular course of official business. Exs 36 and 37 are the leave accounts. Thus, the oral evidence is fully supported by the documentary evidence on record. The prosecution evidence on this point has not been challenged or disputed by way of cross-examination. Moreover, ⁱⁿ the statement u/s 313, CrPC, the accused has admitted that ~~the accused~~ during the year 1992 and till February, 1993 he worked as a Caretaker of the mass and he was railway employee of group C. I, therefore, hold that accused H.aru Chandra Dey is a public servant as defined in section 2(C) of the PC Act.

PW 3 is Hala-dhar Das who was working as Senior Personnel Officer, N.F. Rly, Maligaon from October, 1993 to July 1984. He has deposed that as the accused was an employee of group C, he was removed from service by a Sr. Scale Officer. PW 3 is the Senior Scale Officer of group A. On examination of all the materials before him he granted sanction for prosecution vide Ex 43. Exs 43(4) and 43(2) are his signatures. The witness considered all the documents and materials placed before him by the CBI and on being satisfied he accorded the sanction. On perusal of the letter Ex 43, which is in 2 sheets, I find that the facts constituting the offence are fully detailed and Ex 43 meets requirements of law as regards the sanction. Defence has not challenged the letter of sanction as such but during the course of arguments the learned defence counsel submitted that PW 3 is not competent authority to accord sanction. The accused has also stated in the statement u/s 313, CrPC that PW 3 had power to suspend him only but he was not competent to accord sanction for prosecution. The learned defence counsel has also drawn my attention to the Railway Servants (Discipline & Appeal Rules, 1968). But on perusal of the same, I find that the railway servant can be removed or dismissed from service either by the appointing authority or an authority of equivalent rank or any higher authority. Under sub clause C of section 19, the sanction is

C. Attestd
17/9/09

असि. पर्सनल ऑफिसर (Legal Coun)
ए. टी. रॉय, मालिगाँव, गुवाहाटी-781001
6B Ballian Maligaon Guwahati

- 8 SEP 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

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required to be given by an authority competent to remove the public servant from the office. According to PW 3 even a Senior Scale officer of Group B was competent to remove the accused from service whereas he was an Senior Scale Officer of group A. PW 3 was cross-examined at length and even no suggestion was given that he is not competent to accord sanction. From Ex 38 the appointment letter, I find that the accused was appointed by the Assistant Personnel officer. Considering the oral and documentary evidence on record, I, therefore, hold that PW 3 is the competent authority and there is proper and valid sanction for prosecution of the accused.

MP/CBI submitted that in the present case, the alleged offence was committed by the accused while he was absent from duty. It is stated by the witnesses from 9.11.92 to 15.3.93 that the accused remained absent. Ex 32 is the report to that effect. In support of the same, prosecution has produced the relevant Attendance Register Exs 29 and 30 which shows that the accused was absent from 9.11.92 to 12.3.93. This finds support from the own letter of the accused Ex 80, whereby the accused admitted that he was on sick leave from 19.11.92 to 15.3.93 and prayed for converting the same to commuted leave. The question whether the accused enjoyed valid leave or unauthorised leave is not material for the purpose of this trial. However, the facts remain that during the relevant period, the accused was officially not present or attending his duties.

The procedure for issue of requisition, receipt of the same by the Store Depot and delivery of goods against these requisitions, as deposed by the witnesses, it may be summed up as follows :

Requisition and Issue Notes (hereinafter referred as RIN) are available on printed Railway form (Ex 42). When an article is required for a particular department, one set of RIN is required to be prepared. The set consists of one

2 Affected
4/9/09

Asstt. Personnel Officer (Legal Cell)

द्वारा: कानून, गुवाहाटी-781005

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गुवाहाटी न्यायपीठ

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original and 4 numbers of carbon copies prepared in the same process, by the requisition number, date, consignee's Code, description and quantity of articles etc are to be filled up and these are to be signed by the authorised official. For the mess, PW 1 Moitri Brahma and PW 5 Bhopal Chakraborty were the authorised signatory and P W6 Biren Das was also authorised being an official of the Welfare department. This RIN can be sent to the Store department either by post or by messenger. If these are sent through messenger, an authorised letter is also required to be given authorising the messenger to collect / receive goods from the store.

When a RIN is received by the Store Depot, the Incharge of the requisition sanction verifies the signature of the indentors/ consignee of the RIN and endorses it to the concerned branch. Thereafter, RIN goes to the registering clerk, who makes an entry in the Register Issue Notes and gives registration number. The registering clerk also obtains the signature of the person who has brought the RIN. Thereafter, RIN is sent to the booking section and the booking clerk verifies registration number of the RIN, checks identity card of the receiver of the goods and issue gate pass (GP). The GP is repared in duplicate, with the help of carbon. Carbon copy of the GP is handed over to the receiver of the goods. The receiver is required to produce the carbon copy at the gate in order to collect the goods. The carbon copy is then sent back by the gate keeper to the booking section and it is pasted with original in order to show that the goods have, in fact, gone out. While issuing GP, the signature of the receiver is taken on the reverse of the original GP and the authority letter is also pasted therewith. The authority must contain the signature of the person authorised and also the signature of the person who is to collect the goods.

Now, the point for consideration is whether eight numbers of RIN, as alleged by the prosecution, are forged/fabricated documents or not.

Attested
21/9/09

Asstt. Personnel Officer (Legal Cell)

Asstt. Personnel Officer (Legal Cell)

Asstt. Personnel Officer (Legal Cell)

Asstt. Personnel Officer (Legal Cell)

17
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(78)

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केन्द्रीय प्रशासनिक न्यायालय
- 8 SEP 2009
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According to the prosecution, Exs 21, 24 to 27 (one set), Exs 19, 20, 22, 23, 16 and 17 are the 8 numbers of RIN as described in serial Nos 1 to 8 of the charge and they are all forged and fabricated documents. PW 1 has deposed that the signatures on Exs 1(1) to 17(1) 19(1), 20(1), 21(1) and 23(1) are ~~the~~ not her signatures. PW 5 Bhopal Chakraborty and PW 6 Biren Das, who are also acquainted with the signature of PW 1 have stated that these are not the signature of PW 1. They have also stated that these Exhibits ~~do not~~ not bear their signatures. Further, Exs 1 to 5 are for 350 numbers of blankets, likewise, Ex 16 RIN is for 350 numbers of bed sheets and Ex 17 is for 350 numbers of coil mattresses for Rang Bhaban. PW 6 and other witnesses have deposed that Rang Bhaban is an auditorium having sitting arrangements ^{for} spectators and, as such, articles like coil, mattresses, blankets, bed sheets etc are not required. Exs 1 to 27 are the 12 sets of requisitions out of which Exs 18, 21, and 24 to 27 are the 3 sets of RIN which bears the genuine signature of PW 1. So far allegation against these RINs are concerned, it will be discussed at the later stage.

In this case, the disputed/questioned signatures appearing on Exs 1 to 27 were marked Q12 to Q 39. The admitted signatures of PW 1, ^{an} marked A1 to A6 and admitted signatures of PW 6 Biren Kumar Das ^{an} marked A7 to A11 and the specimen signature of P^{an} 6 marked S67 to S69 on Exs 87 alongwith other questioned documents and the specimen and other admitted signatures of accused Harun Ch. Dey were sent to the GEQD, Calcutta during investigation vide forwarding letters Exs 67 and 66. The GEQD ^{in Bire and} duly compared and examined ^{who} submitted his opinion Ex 63 vide forwarding letter Ex 70. The GEQD, H.S. Tuteja was examined as witness (PW 16). P^{an} 16 has given definite opinion that the signatures marked Qn 13, 15, 17, 19, 21, 24, 27, 33, 36 and 39 are not compared with that of PW 1. Likewise, Qs 23, 26, 32, 35 and 38 appearing on these RINs are not of PW 6. I, thus, find that the oral testimony of PWs 1, 5 and 6 stands fully corroborated by

JUDGE

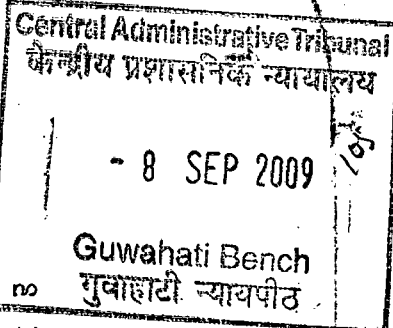
Subscribed
29/9/09

Asstt. Personnel Officer (Legal Cell)
No: P-
Dated: 28/9/09

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the evidence of PW 16, the handwriting expert. There is no cross-examination of PW 16 as regards this part of his evidence. Further, PW 16 has stated that the signature appearing on Exs 18 as Q 30 and Q29 are that of PWs 1 and 6. These signatures are admitted by the witnesses. I, therefore, hold that Exs 1 to 17 and 19 to 24 are forged and fabricated RINs.

As stated above, when RINs are produced at the Store Depot, they are registered and the registration number is given on the body of the RINs and the signatures of the messenger is taken. Ex 18 and Ex 21 RINs were registered on 1.12.93. Ex 60 is the relevant register for the months of November and December, 1992. Exs 60(1) and 60(2) are the relevant entries in the above register in respect of the above RINs. Registration numbers are 5852, 5853 and 5854. These registration number appear on Exs 18 and 21. PW 12 Bharat Das was the incharge of the requisition section and he has proved the above exhibits. Ex 60(3) is the signature of the person who brought the above RINs and received it back after registration and the signature reads as that of Haru Ch. Dey. The witness in his cross-examination, however, states that he does not know accused Haru Ch. Dey personally from before. The signature Ex 60(3) has been marked as Q44.

Ex 56 is another Misc Register commenced on 1.1.93. Exs 56(3), 56(4), 56(5) and 56(6) are the relevant entries dtd 12.1.93 in respect of Exs 22, 20, 19 and 23 respectively. Ex 56(7) is the signature of Haru Ch. Dey along with the date. There is single signature in respect of 5 numbers of RINs and the signature is marked as Q40. The registration number Misc 60, 61, 62 and 64. These numbers along with the date appear on the above 4 numbers of RINs. Ex 56(8) is another entry No. 212 in respect of RIN at Ex 125. Ex 56(9) is the signature of the accused along with the date 4.2.93. Ex 56(11) and 56(12) are the relevant entries numbering 218 and 219

DEE

Subscribed
19/9/09

Asstt. Personnel Officer (Legal Cell)
P.O. Box, Maligaon, Guwahati-781005
G.S. Highway Maligaon, Guwahati

- 8 SEP 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

- 8 -

in respect of RINs Exs 16 and 17 and Ex 56(3) is the signature of Haru Ch. Dey. Ex 56(9) and 56(13) are the signatures marked as Q41 and Q42. The registration number appear on the body of the RIN.

Let us consider whether the accused Haru Ch. Dey did collect the goods in respect of the above RINs.

Boloran Bora PW 14 has deposed that Ex 57(1) is the GP No.946 dtd 4.12.92 in respect of RIN Ex 18. Exs 58(1) is another gate pass (GP) No.1353 dtd 12.1.93 in respect of RINs Exs 19, 20, 22 and 23. Ex 59(1) is another GP No.1567 dtd 5.2.93 in respect of RINs Exs 16 and 17. Exs 57(2), 58(2) and 59(2) are the signature of PW 14. In these GPs, the name of Haru Ch. Dey, caretaker is mentioned as the collector of the goods. Exs 57(4), 58(4) and 59(4) are the carbon copies of the said GPs pasted to show that the goods against the above GPs were, in fact, taken out of the stores and on the reverse of the original copies of the GPs, the receiver of the goods is Haru Ch. Dey, who put his signature in presence of PW 14 and Exs 57(3), 58(3) and 59(3) are the signatures of accused Haru Ch. Dey given in presence of PW 14. On perusal of the GPs and cross-checking of the RINs including the issue number, I find that the statement of PW 14 stands fully corroborated by the documentary evidence. Further, Exs 57(5), 58(5) and 59(5) are the 3 numbers of authority letters in favour of Haru Ch. Dey allegedly issued by the PW 1 and ^{also being} prepared the signature of accused Haru Ch. Dey. Exs 57(6), 58(6) and 59(6) are the signatures of accused Haru Ch. Dey allegedly attested by Chief Labour Welfare Inspector PW 6. The signature of PW 1 were marked as Qs 4, 8, 41 and 50 whereas the signature of PW 6 were marked as Qs 3 and 7. The signatures of accused Haru Ch. Dey even marked as Qs 10, 6 and 2.

Registers and GPs, i.e., Exs 36, 37, 38, 39 and 60 were kept in the store department and in the regular course of official business and there is nothing to dispute the genuineness of these documents. Oral evidence of PWs 14, 13, 12, 11, 10 and 9

Attested
19/09

clearly show that the above RINs were brought by Haru Ch. Dey and goods against the above RINs were duly supplied to the accused against GPS and these were received by the accused on the strength of authority letters produced. Their oral testimony stands fully corroborated by the documentary evidence. Further, as discussed above, the handwriting expert has categorically deposed that PWs 1 and 3 did not put the signatures marked Qs 3, 4 and 7 and 8. So far authority letter Ex 57(5) is concerned and the signatures Qs 49 and 50 appearing therein are that of PW 1.

The oral and documentary evidence on record is also fortified by the opinion of the expert, PW 16. In this case, the specimen signatures of the accused Haru Ch. Dey were taken during investigation in presence of witnesses Exs 65(1) to 65(39) are the above specimen writings and signatures of the accused in 39 sheets. These were marked as S1 to S39. Further, the admitted signatures and writings of the accused contained in applications, letters etc, i.e., Exs 76 to 85 were also sent to the GEQD and these were marked A12 to A21. The disputed signature of the accused on the register were marked Qs 40 to 44 on the GPS were marked Qs 5 and 9 and on the authority Qs 2, 6 and 10. PW 16 has categorically opined that the above signatures marked Qs 1, 2, 5, 6, 9, 10 and 40 to 48 are in the handwriting of accused. Ex 71 are the reasons for opinion containing five sheets. There ^{are} eight numbers of ~~an~~ similarities and they are significant in nature and sufficient in number. These were written in free hand and there is no inherent sign of forgery. From the cross-examination of PW 16 nothing has come out to show that the opinion suffers from any disability or infirmity and that it ^{can} be relied upon. I, therefore, hold that the evidence of PW 16 fully corroborates and supports the prosecution story and it was the accused Haru Ch. Dey who produced the above forged RINs and genuine RINs (Ex 18) and collected goods from the store depot, N.F. Railway, Maligaon.

C. Attestd
19/09

Asstt. Personnel Officer (Legal Cell)

डी: रेलवे, मालिगांव, गुवाहाटी-781001

OR Railway Maligaon Guwahati

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-24-

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- 10 -

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 8 SEP 2009

Guwahati Bench
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Now, the next question for consideration is whether the accused person did deposit the goods so collected or has accounted for the same.

PW 4 Dhirendra Mall Saha, Inspector of Store Accounts, N.F. Rly, Maligaon and a vigilance team consisting him, Bhopal Chakraborty PW 5, and Badal Chakraborty have deposed that a surprise check was conducted at 80-bedded mess in presence of the accused Haru Ch. Dey. Exs 44, 45 and 46 are the memorandum and check verification in respect of the mess and Ex 31 is the physical stock verification in respect of Rang Bhaban. The coir mattresses, pillow blankets etc collected vide Exs 1 to 27 were not found in the stock. PW 2 is Anil Das, Incharge of Rang Bhaban. He has also deposed that Rang Bhaban is place where meeting, shows marriage etc are held. There is no arrangement for beds and as such there is no requirement of mattresses, blankets etc for use at Rang Bhaban. The witness has further stated that this accused Haru Dey never handed over to him any bed sheets, blankets etc. for use at Rang Bhaban. The burden was on the accused to show or explain as to how he discharge the entrustment but there is no whisper from the side of the defence. As a matter of fact, the defence plea is that no article as such was received or collected by him.

Another circumstance which appears against the accused is that he was apprehended at the store depot while he was waiting to collect goods against forged RINs. PW 7 Madhab Ch. Baishya has deposed that on the morning of 12.2.93 Kalyan Kumar Sinha informed him that if RIN is brought by the accused Haru Dey, this should be properly checked. On 12.2.93 accused appeared alongwith RIN Exs 6 to 10. These were registered in the miscellaneous register vide entry No. 330 Ex 56(1). Ex-s 6 to 10 contain the above serial number. Ex 56(10) is another entry No. 331 in respect of Exs 11 to 15. The above RINs were brought by the accused who put his signature along with the date 12.2.93 on Ex 56(2). PW 7 has identified the signature of the accused

Attested
21/09/09
Asst. Personnel Officer (Legal Cell)
पु. वि. पद. क. मालिगान, गुवाहाटी-781001

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-15-
(83)
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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 8 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

given in his presence. PW 4 has also deposed that accused Haru Day was apprehended at the Store Depot while the later was waiting for collection of materials against some requisitions.

An discussed above, the RINs Exs 6 to 10 and 11 to 15 are forged and fabricated ones. PW 1 gives neat and clean signature and all the letters are legible. The signature on the admitted writings and in her deposition supports it. A cursory glance to Ex 6(1) to 15(1) will show that these are not the signatures of PW 1. The presence of accused at the store depot on 12.2.93 and the subsequent apprehension there from is admitted. The accused has taken the plea that he had gone to inquire about the availability of logs, as ^{his} verbal instruction given by PW 5 Bhopal Chakraborty. PW 5 categorically denies about deputing the accused ^{to} store depot on that day. Further, I find that the accused was absent from the duty officially on that day and as such there is no scope for deputing the accused by PW 5. I therefore, hold that the prosecution has successfully established its case against the accused Haru Ch. Day. The accused by using forged RINs collected Rly materials and did not deposit the same and misappropriated the articles and thereby obtained pecuniary advantage for himself.

It may, however, mention here that RINs Ex 18 is not a forged one. It is a genuine requisition and signature thereon are admitted by PWs 1 and 6 and these are supported by the evidence of the handwriting expert. The authority letter Ex 57(5) is also genuine one and the accused collected goods vide GP Ex 57(1). The article in question is 40 numbers of rubberised mattresses meant for mess. These were never deposited at the Mess's Store. The accused, thus, being entrusted with 40 numbers of rubberised mattresses committed misappropriation in respect of the same. The accused has obtained pecuniary advantage for himself by abusing his position as public servant. The act of the accused, therefore, constitutes criminal misconduct.

S. Attested
29/9/09

Asst. Personnel Officer (Legal Cell)

डा: रेज्जे, मालिगांव, गुवाहाटी-781001

8, Scheme, Maligaon, Guwahati

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26-84

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

- 12 -

as defined in clause (a) & (d) of section 13 of the PC Act, 1998 which is punishable u/s 13(2) of the Act. Accordingly, I convict the accused Haru Ch. Dey under the above section of law.

In view of the conviction of the accused u/s 13(2) r/w section 13(1)(c)&(d) of the PC Act, no separate conviction u/s 409, IPC is desirable although the accused was charged under section 409 of the IPC.

As the accused Haru Dey cheated his employer, the N.F. Railway by deceitful means and thereby induced the Store Depot, N.F. Railway, Maligaon to deliver goods worth Rs. 94,000/- to him which was the property of the said railways, I convict accused Haru Ch. Dey u/s 420, IPC.

So far offence u/s 468 is concerned, there is no direct evidence as to who forged the RINs Exs 1 to 27. So far the authority letters Exs 58(5) and 59(5) are concerned, these are forged documents and they also bear the signature of the accused Haru Ch. Dey as held above. Further, it was this accused Haru Ch. Dey who used the exhibits 1 to 27 and Ex 58(5) and 59(5) to defraud the railways. It can safely be concluded that accused Haru Ch. Dey was a party/ privy to the above forgery. Accordingly, I convict him u/s 468 of the IPC.

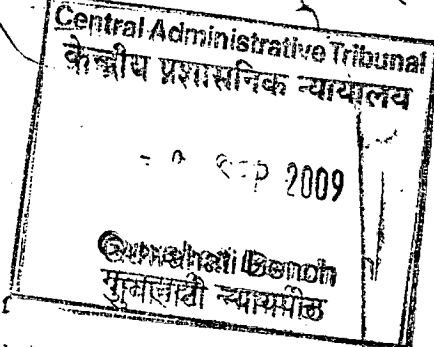
Coming to the offence u/s 471, IPC and in view of my foregoing discussion it is well established that at the time of using Exs 1 to 27 and Exs 58(5) and 59(5) the accused had knowledge that these are forged documents and still he used the same as genuine and as such I convict the accused U/s 471, IPC.

Sumit Kumar
14-10-94
Special Judge, Assam,
GUWAHATI.

Typed at my dictation
and corrected by me
Sumit Kumar
Special Judge, Assam,
GUWAHATI.

S. Attested
4/9/03

24
-27- (85)
SENTENCE



I have heard the accused on the point of sentence. His statement u/s 253 is recorded. I have heard the learned counsel for defence and the accused on the point of sentence. The learned counsel for defence has submitted that in view of the compassionate grounds lenient view may be taken.

I have considered the submissions and the facts and circumstances of the case. The accused entered into service as Grade II and then rose to the post of the Care Taker of the Railway employees. Bu the state of service as employer he indulged in different activities and by forging documents cheated the Railways to a tune of Rs.94,000/-. The corruption in service by the public servant has become a rampant feature and as such deterrent punishment is called for. Hence I sentence ^{accused} the/as under:

For the offence u/s 420 IPC : The accused is sentenced to rigorous imprisonment for 2 years and fine of Rs.20,000/-, in default to RI for 3 months.

For the offence U/s 468 IPC : The accused is sentenced to RI for one year and a fine of Rs. 10,000/- 1/d to RI for 2 months.

For the offence u/s 471, IPC : The accused is sentenced to RI for 6 months and a fine of Rs.2000/- 1/d to RI for one month.

For the offence u/s 13(2) r/w section 13(1)(c)(d) of the PC Act :

All the sentences shall run concurrently.

Attested

Joint Personnel Officer (Legal Cell)

डा: रेड्दे, मालिगांव, गुवाहाटी-7810

27 Railway Maligaon Guwahati-7810

25

(86)

112

The period undergone by the accused as UTP,
if any, shall be set off.

Let a copy of the judgment shall be given to
the accused free of cost.

[Signature] 14.10.96

Special Judge, Assam,
GUWAHATI.

Typed at my dictation
and corrected by me.

[Signature]
Special Judge, Assam,
Guwahati.

Certified to be true copy

[Signature] 18-10-96

Special Judge's Sheristadar,
Authorised 1/3 75, Act 1 of 1879

Central / State Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 8 5 0 1 0
Guwahati Bench
गुवाहाटी न्यायपीठ

श्री: कानिक बालकृष्ण (विश्व) -
Asstt. Personnel Officer (Legal Cell)
श्री: रेलवे, मालिगांव, गुवाहाटी-781001
B. Ballary Maligana Guwahati 781001

Attested

श्री: कानिक बालकृष्ण (विश्व) -
Asstt. Personnel Officer (Legal Cell)
श्री: रेलवे, मालिगांव, गुवाहाटी-781001
B. Ballary Maligana Guwahati 781001

26
REGISTERED WITH A/D

ANNEXURE-II

87
ANNEXURE-B

Order placing an Officer under suspension when he is detained in custody.

(Rule 5(2) of Railway Servants (Discipline & Appeal) Rules, 1968.

No. 19E/695(Q)Loose.

(Name of Railway Administration) - NF Railway.

(Place of issue) - CPO/Maligaon.

Date - 01-10-97.

ORDER

Whereas conviction of Shri Haru Chandra Dey, Care Taker, 80-Bedded Mess, NF Railway, Maligaon (Name & designation of the Railway servant), in respect of a criminal offence under Case No. 2(C)94 between State-Vs- Shri Haru Chandra Dey.

And whereas the said Shri Haru Chandra Dey is deemed to have been suspended with effect from the date of detention i.e. from 14.10.96, in terms of Rule 5(2) of Railway Servants (Discipline and Appeal) Rules, 1968 and shall remain under suspension until further orders.

M. K. S. P. S.
(A KISPORTA) 1/10/97
Sr. Personnel Officer (Welfare)
NF Railway, Maligaon,
Guwahati-781 011.

To
Shri Haru Chandra Dey,
Caretaker, 80-Bedded Mess, NF Rly., Maligaon,
91/8, Nambari,
Hill Top Road,
Guwahati-781 011.

Sr. Personnel Officer/Welfare

NF Rly/Mig

Guwahati-781 011.

Guwahati-781 011.

2 Attached
Sr. Personnel Officer (Legal Cell)
NF Railway, Guwahati-781 011.

27
-30-
REGISTERED WITH A/D

(88)
ANNEXURE - e

Office of the
GENERAL MANAGER (PERSONNEL)
NF Railway, Maligaon,
Guwahati- 781 011.

No. 19E/695(2).

October 6, 1997.

M E M O R A N D U M

Consequent on Court's verdict issued by the Special Judge, Assam, Guwahati, on Special Case No.2(C)94 dated 14.10.96, between State - Vs - Haru Chandra Dey (accused), Shri Haru Chandra Dey, designation - Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati- 781 011, son of Late Bhupati Chandra Dey, is informed that on a careful consideration of the circumstances of the case in which he was convicted on 14.10.96 under Section No.420/468/471, IPC and Section 13(2) r/w Section 13(1)(c) & (d) of the Prevention of Corruption Act, 1988, the undersigned considers that his conduct, which has led to his conviction, is such as to render his further retention in public service, undesirable. The undersigned has, therefore, come to the conclusion that Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, Maligaon, S/o. Late Bhupati Chandra Dey, is not a fit person to be retained in service and so the undersigned in exercise of power conferred by Rule 14(i) of the Railway Servants Discipline & Appeal Rules, 1968, imposes upon Shri Haru Chandra Dey, the penalty of removal from service with immediate effect.

The receipt of this memorandum should be acknowledged by Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati-781 011, S/o. Late Bhupati Chandra Dey.

Appeal against this order will lie with the Chief Personnel Officer, Admn., NF Railway, within 45 days of the receipt of this order.

To
Shri Haru Chandra Dey,
91/B, Nambari,
Hill Top Road,
Guwahati-781 011.

(A KISPOTTA) 6/10/97
Senior Personnel Officer/Welfare
NF Railway, Maligaon, Guwahati,
(DISCIPLINARY AUTHORITY)

Attested
Asstt. Personnel Officer (Legal Cell)
Sd/-: [Signature], Maligaon, Guwahati-781011
Sd/-: [Signature], Maligaon, Guwahati-781011

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 8 SEP 1997

Guwahati Bench
गुवाहाटी न्यायपीठ

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5.6

(89)

ANNEXURE - D

NORTHEAST FRONTIER RAILWAY

Office of the
General Manager(P)
Maligaon

dated- 09-04-09

No.E/170/LC/NS/1117/08

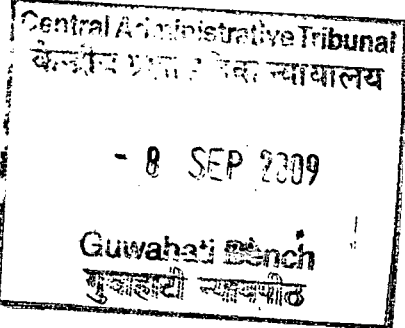
To ✓
Sri Haru Ch. Dey
S/O Late Bhupanti Ch. Dey
91/B, Nambari Hilltop Road, Maligaon
Guwahati-781001Sub:- Disposal of Representations dated. 05.11.97, 03.01.08 and
29.9.2008 in compliance to the Hon'ble CAT/GHY order dated
12.11.08 in OA No. 196/2008- Sri Haru Ch. Dey -Vs- U.O.I &
OrsIn compliance to the Hon'ble CAT/GHY's order dtd. 12.11.08 in OA No.
196/08, the Competent Authority (CPO/N. F. Railway) has passed Speaking
order to dispose of the Representations dated 05.11.97, (Annexure-G of OA No.
196/08) 03.01.08 (Annexure-J of OA No.196/08) and 29.9.08 (Annexure-K of
OA No. 196/08) as well as the said original application. The Speaking order
dated 06.4.09 is enclosed herewith for your information and acknowledgement
please.

(N. Mukherjee)

APO/LC

For General Manager(P)/MLG

Attested

क. कानिक दासकारा न विधि से
Joint Personnel Officer (Legal Cell)
डा: रजि, मालिगान, गुवाहाटी-781001
* Maligaon, Maligaon, Guwahati-781001

ANNEXURE-D

In compliance to the direction of the Hon'ble Tribunal in their above OA, the undersigned perused the order of the Hon'ble Tribunal in OA No. 196 of 2008, copy of the OA alongwith its annexures and relevant records/documents of the applicant Sri Haru Ch. Dey, Ex. Sr. Clerk cum Caretaker of 80 bedded Mess of N. F. Railway, Maligaon.

The applicant filed an application (OA No.196/08) before the Hon'ble Tribunal praying relief's that the impugned order of imposition of penalty of removal from service dated 06.11.1997 (Annexure-F) may be set aside and quashed directing the respondents to re-instate the applicant in service with all consequential benefits.

He also prayed for a direction to direct the respondent No.2 (CPO/A) to consider and dispose of the appeal dated 05.11.1997 (Annexure-G) preferred against the order dated 06.10.1997 on the basis of changed circumstances and findings and observations made by the Hon'ble High Court in its judgement and order dated 09.02.2006.

Hon'ble Tribunal in their order dtd.12.11.08 disposed of the OA with direction to the Respondents to consider the grievances of the applicant (as raised under Annexure-'G' dtd. 05.11.97, Annexure-'J' dtd. 03.1.2008 and Annexure-'K' dtd. 29.9.2008 and in the present original application) and passed a reasoned order.

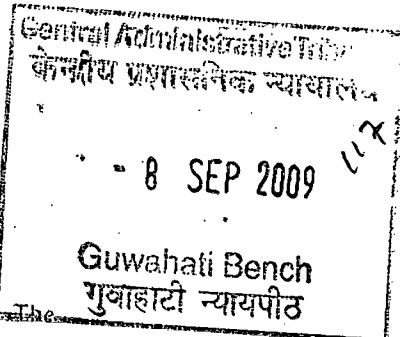
The undersigned perused the memorandum No. 19E/695(Q) dated 06.10.1997 wherein the Disciplinary Authority, SPO(W)/MLG awarded the applicant the penalty of removal from service based on the verdict dtd. 14.10.1996 issued by the Special Judge, Guwahati, Assam on special case No.2(C)94. In the said judgement the applicant was convicted under Section 420, 468 & 471 IPC and Section 13(2) read with Section 13(1)(C)&(d) of the prevention of corruption Act, 1988. The Disciplinary Authority did not grant applicant compassionate allowance to applicant.

The undersigned perused the appeal dtd. 05.11.1997 preferred by the applicant as annexed as Annexure-'G' to OA. The said appeal does not appear to have been received in this office. However in the said appeal the applicant stated that he preferred an appeal before the Hon'ble Gauhati High Court. The appeal was admitted and interim bail was granted and during pendency of the said appeal before the Hon'ble High Court, the authority removed him from service. As such he prayed for

Contd. to Page-2

Asstt. Personnel Officer (Legal Cell)
पु. नं. २६३, मालिगांव, गुजरात-७८१०

58-30
(91)



appropriate order recalling/rescinding the Removal Memo dtd. 06.10.1997. The undersigned perused the appeal dtd. 31.1.08 also as annexed as Annexure-'K' to OA, which is repetition of his earlier appeal dtd. 05.11.97.

The undersigned perused the judgement dtd. 14.10.96 given by the Hon'ble Judge in Special case No.2(C)94 and the judgement dtd. 09.02.06 given by the Hon'ble High Court in Criminal Appeal (No. 242/96). The applicant was convicted in a criminal charge and was in jail. Subsequently he was released on bail by an appeal in the Hon'ble High Court. It appears from the OA and its annexures that the applicant did not inform the fact to the authority which is unbecoming of a Railway servant. The Disciplinary Authority has taken correct decision on the finding in the special case No.2(C)94 in the departmental proceeding as per service conduct rules. Again the Hon'ble High Court in the judgement dtd. 09.02.06 confirmed the order dtd. 14.10.1996, wherein the Hon'ble High Court did not find any infirmity and/or inconsistency in the evidence of those witness while concurring with the views of the Learned Court below.

In view of the above I do not find any reason to interfere in the order of Disciplinary Authority. As such, I uphold the penalty of removal from service of the applicant vide Memorandum No.19E/695(U) dtd. 06.10.1997.

The undersigned perused the representation dtd. 31.1.2008 of the applicant as annexed as Annexure-'J' to OA. The applicant prayed for payment of FS dues and sanction of compassionate allowance/ex-gratia pension etc.

The applicant was convicted for forgery, cheating and corruption in a criminal case and as a result of which he was removed from service. He was sentenced to jail for one month. The ground of his removal does not deserve any special consideration. As such, compassionate allowance is not granted. However, FS dues due to him will be paid (as entitled to a staff removed from service) on submission of necessary documents viz, mode of payment

The appeals/representation of the applicant with the OA is disposed of accordingly.

Sd/-
21/9/09
Asst. Personnel Officer (Legal Cell)
বা: রেল, মালিগাঁও, গুৱাহাটী-781001
N. F. Railway Maligaon Guwahati-781001

(Sashant Jha)
Chief Personnel Officer
N. F. Railway: Maligaon

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62) ANNEXURE - E

आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अवधि रॉक्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अवधि स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिनिधि तैयार थी Date on which the copy was ready for delivery.	आवेदन को प्रस्तोता देने की तारीख Date of making over the copy to the applicant.
07/3/06	07/3/06	07/3/06	07/3/06	07/3/06

(THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA;
MANIPUR; TRIPURA; MIZORAM AND ARUNACHAL PRADESH)

Crl. Appeal No. 242/96

Shri Haru Chandra Dey,
Son of Late Bhupathi Chandra Dey,
Resident of N.F. Railway, Maligaon,
Guwahati.

.....Accused/Appellant

-Versus-

The C.B.I.

.....Respondent

PRESENT

THE HON'BLE MR. JUSTICE ARI SAIKIA

For the appellant : Mr. JM Choudhury,
Mr. BM Choudhury,
Mr. D. Talukdar, Advocates

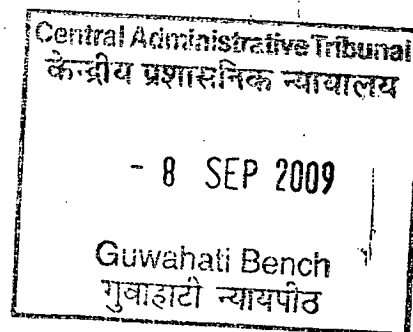
For the respondent: Mr. D. Das,
Ms M. Boro, Advocate

Date of hearing and
Judgment : 9.2.06

JUDGMENT AND ORDER (ORAL)

Heard Mr. JM Choudhury, learned Sr. counsel assisted by Mr. BM Choudhury and Mr. D. Talukdar, learned counsel appearing for the appellant and Mr D. Das, learned Sr. counsel assisted by Ms M. Boro, learned counsel appearing for the respondent/CBI.

2. This criminal appeal assails the judgment and order dated 14.10.96 passed by the learned Special Judge, Assam, Guwahati in Special Case No. 2(c)/94 by which the appellant was convicted under Sections 420/471 IPC read with Section 13 (2) and Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988 (for short 'the Act'), and sentenced accordingly to undergo (i) Rigorous Imprisonment (for short 'RI') for 2 years and fine of Rs. 20,000/- in default RI for 3 months under Section 420 IPC, (ii) RI for one year and fine of Rs. 10,000/- in default RI for 2 months under Section 471 IPC, (iii) RI for 6 months and a fine of Rs. 2,000/- in default RI for one



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month as regards sentence under Section 471 IPC, and (iv) finally RI for 4 years and a fine of Rs. 25,000/- in default RI for 6 months under the relevant Sections under the Act abovenoted

3. The law was set in motion with the filing of an FIR lodged with the C.B. 1, registered as RC 25(A)/93 against the appellant alleging therein that the appellant, while working as Care-taker of the of 80 bedded Mess, N.F. Railway, Maligaon, during the period of December, 1992 and January and February, 1993, remaining absence for those period from duty, submitted forged requisition/indent for supply of materials to Pandu Stores Depot, N.F. Railway and collected materials against those items. But the articles after being collected were not brought to the store room of the said Mess and thereby he misappropriated an amount of Rs. 94,000/- being the total value of those articles so collected by him as mentioned above.

4. On completion of the investigation, charge sheet was submitted against the appellant under Sections 409/420/468/471 IPC read with the above mentioned Sections of the Act. Charge was framed in view of the charge sheet above mentioned and during the trial, the prosecution examined as many as 16 witnesses including the P.W. 16, hand writing expert, P.W. 1, Maitree Brahma, the Senior Personnel Officer, Welfare and P.W. 4, Dharendra Malla Saha, Inspector of Stores Accounts, both from N.F. Railway, Maligaon when nobody was adduced on behalf of the defence and there was a total denial of the charge by the defence.

5. The learned Judge, on proper consideration of the evidence on record as well as on close examination of the relevant exhibits including the Requisition and Issue Note (RIN), particularly, Exhibit 63, the report of the hand writing expert and upon hearing learned counsel for the parties, came to the conclusion that the appellant was found guilty under Sections 420/468/471 IPC read with the above mentioned Sections of the Act.

6. Mr. Choudhury, learned Sr. counsel, advancing his extensive argument has contended that grave error was committed by the learned Judge in not considering the specimen signature of P.W. 1 by way of sending the same to the hand writing expert for its examination as regards

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Jal Administrative
জালায় প্রশাসনিক নথি

- 8 SEP

Guwahati Bench
গুৱাহাটী ন্যায়পাঠ

Attested
19/09/93

Asstt. Personnel Officer (Legal Cell)

৬ জন: বৈজ্ঞানিক, মালিগাঁও, গুৱাহাটী-৭৮১০১

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the genuinity and veracity of her signature. According to him, non-examination of any specimen signature/standard signature by the hand writing expert, P.W. 6 is always fatal to the prosecution case because the veracity of the signature found in relevant exhibits, if not examined by the hand writing expert, shall always remain under the cloud. Therefore, it is the legal necessity to send the said specimen signature as well as admitted signature of the person concerned to the hand writing expert when such person is either a witness or suspect for putting such signature in the document itself. Referring to all these aspects, the learned senior counsel has tried to impress upon the Court that there is categorical statement made by the hand writing expert in Exhibit-63, Clause (7) of the report that it has not been possible to express any opinion on the rest of the items on the basis of the materials at hand; meaning thereby, according to him, full explanation cannot be given due to the absence of the materials mentioned above and the hand writing expert was handicapped for not getting the specimen signature of the P.W. 1 to give the perfect opinion on this point.

7. Mr. D. Das, learned Sr. counsel has forcefully contended that no irregularity or illegality has been committed by the learned Judge in arriving at the impugned conviction and sentence of the appellant. According to him, the prosecution has proved the case in its entirety and beyond reasonable doubt by adducing credible evidence. He has also contended that the evidence of the hand writing expert cannot be taken so seriously and that cannot be a sole basis for conviction. It is settled law, according to him, that the evidence of a hand writing expert is always taken as a weak evidence and that can only be used for corroboration and consistency in the deposition of the other witnesses who were examined to support the case of the prosecution. In the instant case, other witnesses namely, P.W.1, P.W.2 and P.W. 4; categorically indicated the involvement of the appellant in the offence so mentioned above. That being so, this Court may not make an attempt to demolish the prosecution case on the basis of the contention and submission made by the learned Sr. counsel.

8. I have carefully gone through the evidence on record so referred to by the learned Sr counsel. It appears that the findings arrived at by the learned Special Judge were not solely based on the report i.e., Exhibit 63 or the

Central Administrative
नन्दरीय प्रशासनिक न्याय
- 8 SEP 2000
Guwahati Bench
गुवाहाटी न्यायपीठ

S. Attested
Asstt. Personnel Officer (Legal Cell)
6 हा: रेकवे, मालिगांव, गुवाहाटी-781001
60 Maligaon Maligaon Guwahati-781001

relative
 केन्द्रीय न्यायाधीश न्यायालय
 - 8 SEP 200
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 Guwahati Bench
 गुवाहाटी न्यायपीठ

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deposition of the hand writing expert, P.W.16. The learned Judge took into consideration the evidence of P.W. 16 in its proper perspective with all the supportive evidence to find corroboration and consistency in the testimony of P.W.1 and P.W. 4. It is established that the opinion of a handwriting expert is not either conclusive or substantive evidence as the same is an opinion only. In the case at hand, the evidence of P.W. 16 was fully corroborated by direct evidence of P.W. 1 and P.W. 4. In view of the credible and cogent evidence of P.W.1, P.W.4 and P.W. 16, this Court does not think that non-examination of specimen signature of P.W.1 by the hand-writing expert, P.W. 16, would be fatal to the prosecution case as pleaded by the learned senior counsel. Be it mentioned herein that on close perusal of the testimony of the P.W.4, it transpires that the appellant was caught red handed when he was waiting to collect those materials in pursuance of those forged documents.

9. On close scrutiny of the entire evidence of the witnesses on record and also upon hearing the learned counsel for the parties, this Court finds that learned Judge has rightly convicted the appellant under the offences as mentioned above and sentenced him accordingly by taking a right approach to the evidence so adduced by the prosecution. I do not find any infirmity and/or inconsistency in the evidence of those witnesses and accordingly, I have no hesitation to concur with the views of the learned Court below and as a result, the impugned conviction and sentence are hereby confirmed.

10. At this juncture, Mr. Choudhury, learned Sr. counsel, has in all his fairness, submitted that the petitioner is a very poor man and he has lost his job for entering into this adventure and as such the Court should take a lenient view as regards the sentence. He has also informed that the appellant was already in jail for one month after his conviction and as such this one month's custody period of the appellant, may be treated as conviction period. That apart, he has further submitted that an amount of Rs. 10,000/- as part payment of the fine imposed by the trial Court, has already been deposited as directed by this Court at the time of filing of the appeal and now he is ready to pay another Rs. 10,000/- as fine if the period so undergone is treated as sentence period.

Collected
 22/9/07
 Asstt. Personnel Officer (Legal Cell)
 गुवाहाटी न्यायपीठ, गुवाहाटी-781001

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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 8 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ
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11. This Court finds enough force in the submission of the learned Sr. counsel because of the fact that the incident occurred long back in the year 1992-93 i.e., 14 years ago and by this time, he has also suffered a lot of mental and physical torture as this appeal has been hanging over his head for all the time and no fruitful purpose would be served if the appellant is sent to jail now. Taking into account the established facts and circumstances of the case and having given my anxious consideration to the submissions advanced by the learned counsel for the parties as well as there being no criminal previous record of the appellant, this Court is of the view that the ends of justice would be satisfied if the entire sentence period so awarded by the learned Judge under all heads of those sections, noticed above, is modified to the period of one month already undergone and the appellant is directed to pay further amount of Rs. 20,000/- (Rupees twenty thousand) only as fine in default of such payment to undergo RI for two months. It is ordered accordingly. It is made clear that the fine shall be deposited with the Special Judge, Assam Guwahati, in Special Case No. 2(C)/94 within two months from to-day.

12. Consequently, this appeal stands dismissed to the extent as indicated above.

13. Send down the case records forthwith.

Sd/- A. H. Saikia
Judge

P/No:- 49537
dtd. 01/3/06

Attested
Asstt. Personnel Officer (Legal Cell)
डा. रवि, मालिगान, गुवाहाटी-781005
A.P. Maligana Maligana Guwahati-781005

CERTIFIED TO BE TRUE COPY
Date 07/3/06
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76 Act 1 1978

07/3

Assam Schedule III (Sec. I), Form No. 64
(P. 72/42)

Challan No.
চালান নং

T. R. Form No. 9

Treasury/Sub-Treasury
Challan of cash paid into the
State Bank of India

Guwahati

Central Administrative Tribunal
কেন্দ্রীয় প্রশাসনিক ন্যায়ালয়

8 SEP 2009

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

To be filled in by the remitter প্রেরক প্রদেয়			To be filled in by the Departmental Officer or the Treasury বিভাগীয় নাইদা (আধাগার বিষয়) প্রদান		
By whom tendered কোমার দিফ	Name (or designation) and address of the person on whose behalf money is paid যদি এই টেন্ডা দিয়া হয় উত্তর নাই (বা নবকী) কাক দিগন	Full particulars of the remittance and of authority (if any) কোমার টেন্ডা নাইদা আম দিগা নিউক কাকিগন দিগা মঞ্জুন বিহরণ	Amount টেকা মঞ্জা		Head of Account উচানর নিউক
			Rs. টকা	P. পয়চা	
Name নাম <i>Smt. Haru</i>	State Bank of India কোমার টেন্ডা কাক দিগন <i>RS. 20,000</i>	Fine amount 1/2 with Spl. Case No. 2(9)44 Order passed on 9.2.06 by The Hon'ble High Court Total (মঞ্জুর টেকা) <i>20,000</i>	20,000	00	0070 A.J.
			20,000	00	
(in words) Rupees (কাকিগন) টেকা <i>Twenty Thousand only.</i>			To be used only in the case of remittance to Bank through an officer of the Government কাকাকী বিষয় মঞ্জিতে কাকিগন টেকা পরিচালিত বাহানর কাকিগন Signature of Departmental Officer S. S. I. বিভাগীয় বিষয়াকী কাকী Office		
Signature (চরী) Date (তারিখ) <i>Special Judge, Assam</i> <i>19.4.06</i> <i>Guwahati</i>			Treasury Officer Agent		

Received Payment

Date

Treasurer (আবাক)

Accountant (হিচাব পরীক্ষক)

Attested
Asstt. Personnel Officer (Legal Cell)
সি: রকম, মালিগান, গুৱাহাটী-781001
© Railway Medicals Guwahati 0000

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From:

Shri K.K. Biswas,

Advocate.

Central Administration Tribunal,

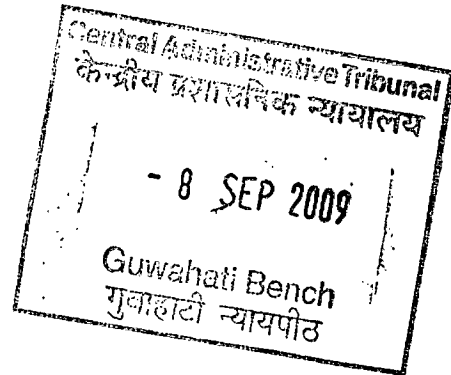
Guwahati.

To:

Miss Usha Das

Advocate,

CAT/Guwahati.



Dear Sir,

Sub: O.A. No. 96 of 2009

Sri Haru Chandra Dey Applicant/Ptitioner
VS.

Union of India and Qrs. -----

Respondents/Opposite Parties.

of written statement

Kindly acknowledge receipt of the enclosed "Service Copy" for the
Advocate of the ~~Respondents/Opposite Parties.~~ Applicant 1

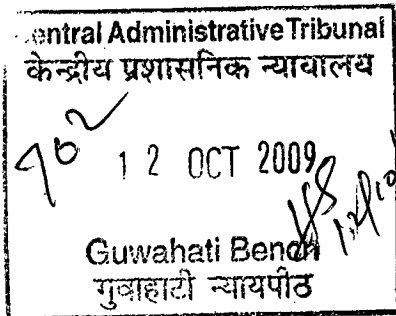
With thanks,

Yours faithfully,

(K.K. Biswas) 08/09/09
Advocate,
CAT/Guwahati.

Dated 08-09-2009
Received
Usha Das
Addl CSE
08/09/09

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



O.A. No. 96/2009

Sri Haru Chandra Dey

.....Applicant

-Versus-

Union of India & Others

....Respondents

IN THE MATTER OF

Re-joinder to the written statement filed
by the respondent.

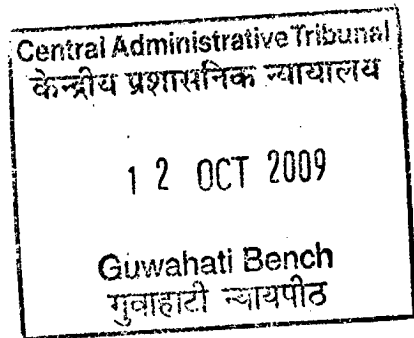
THE APPLICANT MOST RESPECTFULLY SHEWETH:

1. The applicant have gone through the copy of the written statement filed by the respondent in the above noted Original Application and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are born on records, all other statements and counter made in the written statement are denied in toto and the respondent authority is put to the strictest proof thereof.
2. That the applicant instead of giving a parawise replies likes to make a consolidated reply to the contention of the written statement as follows-
 - i. That the applicant begs to state that a railway servant can only be removed and dismissed from service by the appointing authority not by any other authority of equivalent rank.
 - ii. That the applicant begs to state that the penalty of removal from service has been imposed by the authority without any application of mind on the basis of the Judgment and Order passed by the learned Trial Court without taking into consideration of the findings of the Appellate Court.

Filed by
the applicant through
Alka Das -
Advocate
11/10/2009.

Sri Haru Ch. Dey

*I undertake to serve
a copy of rejoinder
on Mr. K.K. Biswas, Rly Advocate,
Alka Das
Advocate
11/10/2009.*

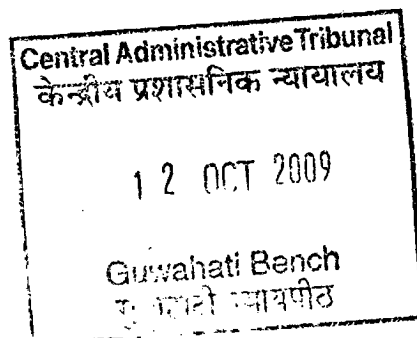


- iii. That the applicant denied the contention that he did not submit any appeal within the stipulated period of 45 days against the order of penalty of removal from service issued vide order dated 06.10.1997. In fact, it was filed within the stipulated time limit of 45 days i.e. on 5.11.1997 and 6.10.1997.
- iv. That the applicant begs to state that the appeal preferred by him has been disposed of by order dated 12.11.2008 only as per direction of this Hon'ble Court after a long back; but most unfortunately the final settlement dues which was directed to be released to the applicant by the appellate authority has not yet paid inspite of repeated approach/ request of the applicant.
- v. That the present physical condition of the applicant is such that he cannot move without the help of others as he lost about 80% of his eye sight and need continuous medical facilities which can be easily provided by the respondent authority in humanitarian ground, treating as a special case.
- vi. That the applicant begs to state that there is no ingredients of neglect of duty, misconduct, carelessness, callousness, forgery of documents, cheating, theft, forgery, fraud and mis-appropriation of railway materials; but the Railway Authority are adamant and has not considered the case of the applicant sympathetically as he approached this Hon'ble Tribunal as it is reveals from Para 5 of the written statement itself
- vii. That the applicant begs to submit that the penalty imposed on him is highly disproportionate and as such he deserves sympathetic consideration and the Railway Authority may be directed to review the matter of imposition of penalty under the factual circumstances of the case.
- viii. That the applicant further begs to submit that this Hon'ble Tribunal may direct the respondent authority to release the final settlement dues forthwith pursuant to the order dated 06.04.2009 passed by the Chief Personal Officer, N.F. Railway i.e. the Appellate Authority (Annexure D, Page 29 of W.S.)
- ix. That the applicant has no earning source but there is an urgent need of continuous medical aid that may be directed to provide in the Central Hospital, Maligaon forthwith considering his health condition.

Haru Ch Dey

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VERIFICATION

I, Shri Haru Chandra Dey, Son of late Bhupati Chandra Dey, aged about 55 years, resident of Quarter No. 91/B, Nambari Hill Top road, Guwahati-781011 in the district of Kamrup (Assam) do hereby verify that the Statements made in paragraphs 1 to 2. ix are derived from records and true to my knowledge and belief and the rest of all are my humble and respectful submission and I have not suppressed any material facts.

AND I sign this verification on this 9th day of October, 2009 at Guwahati.

A handwritten signature in black ink, appearing to read "Haru Chandra Dey".

Signature of the Applicant.

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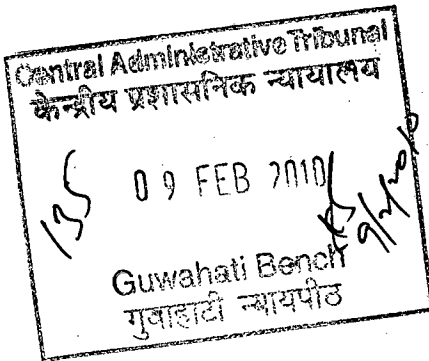
**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH; GUWAHATI**

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

(Ammended Original Application)

Title Case No.

O.A No. 96 /09



Smti. Anita Dey

... Applicant

AND

Union of India & Others

... Respondents

SYNOPSIS

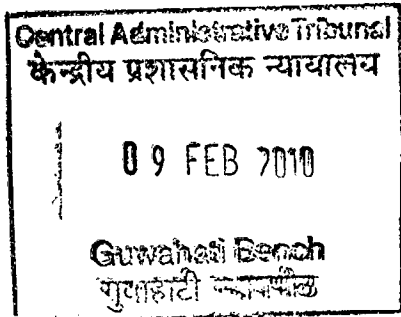
In the instant Original Application, the husband of the applicant who was initially appointed as Peon in N.F. Railway in the year 1972, has been working as Senior Clerk -cum- caretaker of 80 bedded mess situated at Maligaon during the year 1992-93. While he has been so working under the SPO(W), N.F. Railway, Maligaon, an FIR has been lodged against him and upon completion of trial he was convicted by the Court of Special Judge, Guwahati under Sections 420/468/471 IPC and Sections 13(2) read with Section 13(1) (c) and (d) of the Prevention of Corruption Act, 1988 and thereby punished on the charges for production of 8 requisitions forging the signature of SPO(W) N.F. Railway, Maligaon before DCOS/Pandu and received mattresses, blankets, bed-sheets etc. worth about Rs. 94000/- (Rupees Ninety four Thousand) for using in 80 bedded Mess as well as Raig Bhawan by its order dated 14.10.96 passed in Special Case No. 2 (C)/94. Against the aforesaid Judgment & order dated 14.10.96 passed by the Learned Special Judge, the husband of the applicant preferred a Criminal Appeal being No. 242/96. The Hon'ble High Court after hearing the Criminal Appeal was pleased to dismiss the same by observing that the incident occurred long back in the year 1992-93 i.e. 14 years ago and by this time he has suffered a lot of mental and physical torture as this appeal has been hanging over his head for all the time and no fruitful purpose would be served if the appellant is sent to jail and also considering the facts, the appellant/ applicant has no previous criminal record. Under the said circumstances, the Hon'ble High Court reduced the entire sentenced period awarded by the Learned Special Judge under all heads of this sections mentioned in the said Judgment and Order dated 14.10.1996 and modified to period of one month only (already undergone) and the appellant/

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
09 FEB 2010
Guwahati Bench गुवाहाटी बेंच

husband of the applicant was directed to pay an amount of Rs. 20,000/- only as fine in default of such payment, Rigorous Imprisonment for two months.

Although, almost all the sentences has been reduced by the Hon'ble High Court while dismissing the Criminal Appeal preferred by the husband of the present applicant; but prior to that, the Railway Authority without holding any enquiry and Departmental proceedings, removed the husband of the applicant from his service on the basis of conviction, before filing the Criminal Appeal before the Hon'ble High Court. Infact the Departmental appeal preferred against the order of removal has not been disposed of till the date of receiving the direction of this Hon'ble Tribunal by its order dated 12.11.2008 passed in O.A. No. 196/2008. Though the appeal has now been disposed of in compliance of the direction of this Hon'ble Court; but the case of the husband of the applicant has not considered sympathetically. The order of the appellate Authority is nothing, but a mere formalities and has been passed mechanically without applying Judicious mind and the findings and observations of the Hon'ble High Court made in the Judgment and Order dated 09.02.2006 in Criminal Appeal has not been taken care of. Hence, this present application with a prayer to set aside and quash the order of removal and for giving a direction for payment of all consequential benefits.

Filed by. Nabendu Pattak
Advocate.
29/1/2010



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

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

(Amended Original Application)

Title Case No.

O.A. No. 96 /09

Smt. Anita Dey

...Applicant

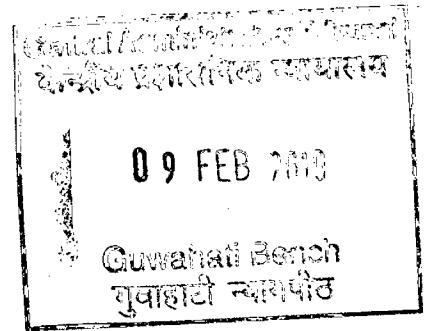
AND

Union of India & Others

...Respondents

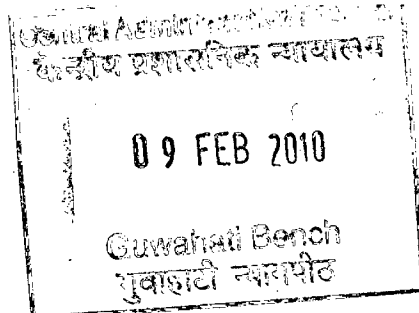
LIST OF DATES

- 24.11.1972 : The Husband of the Applicant was initially appointed as peon in the N.F. Railway
- 24-02-1988 : The Husband of the Applicant was appointed as care taker of 80 bedded Mess.
- 12-02-1993 : F.I.R. lodged against the husband of the applicant.
- 14-10-1996 : Judgment passed by the learned Special Judge, Assam in Special case No. 2(c) 94.
- 15-11-1996 : Judgment of the Trial court suspended by the Hon'ble High court.
- 01-10-1997 : Order of suspension w.e.f. 14-10-1996.
- 06-10-1997 : Impugned order of removal from service.
- 05-11-1997 : Appeal preferred against the order dated 06.10.1997.
- 09-02-2006 : Judgment and order passed by the Hon'ble High Court in Criminal Appeal preferred by the husband of the applicant.
- 03-01-2008 : Representation preferred by the husband of the applicant before the Respondent No.2.
- 29-09-2008 : Prayed petition for disposal of appeal preferred by the husband of the applicant before the Respondent No.2.



- 10.11.2008 : O.A. No. 196/2008 filed before this Tribunal.
- 12.11.2008 : Aforesaid O.A. No. 196/2008 disposed of by this Hon'ble Tribunal with a direction to consider the case of the husband of the applicant.
- 01.12.2008 : Certified copy of the aforesaid order dated 12.11.2008 communicated to the Respondent.
- 06.04.2009 : Speaking order passed by the respondent No. 2 in compliance of the direction of this Hon'ble Tribunal.
- 09.04.2009 : The aforesaid speaking order dated 06.04.2009 has been communicated to the the husband of the applicant.

Filed by Nabendu Pathak
Advocate
29/1/2010



**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH; GUWAHATI**

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

(Amended Original Application)

Title Case No.

O.A NO. 96 /09

BETWEEN

Smti. Anita Dey

... Applicant

AND

Union of India & Others

... Respondents

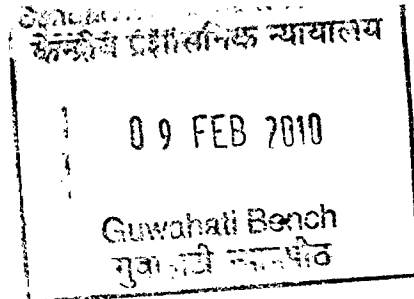
I N D E X

<u>Sl.No.</u>	<u>Particulars of file documents</u>	<u>Page No.</u>
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Filed By

Nabendu Pathak.

Advocate



**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH; GUWAHATI**

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

(Amended Original Application)

Filed by: the Applicant
through Nabendu Pathak
Advocate.
29/1/2010

O. A. NO. 96 /2009

BETWEEN

Smti. Anita Dey, Wife of Late Haru Dey, Resident of
91/B, Nambari Hilltop Road, Guwahati-781011

... Applicant

-AND-

1. The Union of India represented by the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. The Chief Personal Officer (Administration), N.F. Railway, Maligaon, Guwahati- 11.
3. The Sr. Personnel Officer (Welfare) N.F. Railway, Maligaon, Guwahati-11.

... Respondents.

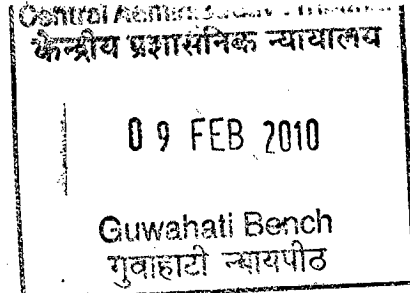
PARTICULARS OF THE APPLICATION

1. PARTICULARS FOR WHICH THE APPLICATION IS MADE FOR:

This application is made being aggrieved against the speaking order dated 06.04.09 passed by the Chief Personal Officer, N. F. Railway, Maligaon in compliance to the this Hon'ble Tribunal's direction issued by its order dated 12.11.08 in O. A. No. 196/2008 and communicated vide letter No. E/170/LC/NS/1117/08 dated 09.04.09 by which the appeal/representation of the husband of the applicant has been disposed of without interfering penalty of removal from service imposed by the disciplinary authority.

2. JURISDICTION OF THE TRIBUNAL:

Anita Dey



The applicant declares that the subject matter of the application is within the Jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

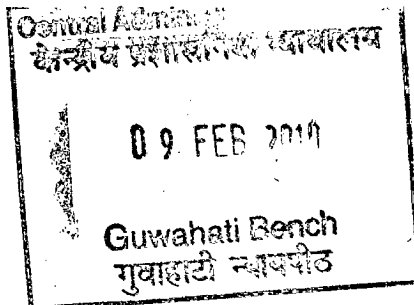
The applicant further declares that the subject matter of this application is well within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and wife of late Haru Dey, an employee of the N. F. Railway, and have filed this present Original Application pursuant to the order dated 10.12.09 of this Hon'ble Tribunal in Misc App. No. 144/09ⁱⁿ O.A. No. 96/2009; as such she is entitled to all the rights, privileges and protections as guaranteed under the constitution of India and laws framed there under.

4.2 That the husband of the applicant has been entered in the Railway service in the year 1972 and has rendered blemish free service to the satisfaction of all concerned by holding different post for more than 23 years; but when he has been working as a Caretaker of 80 bedded Mess, N. F. Railway and discharging his duties, an FIR has been lodged against him on 12.02.1993 alleging that he was absent from duty in the month of December 1992 and January and February, 1993; but during the said period, the husband of the applicant submitted requisition/indent for supply of materials to the Pandu, Stores Depot, N. F. Railway and also collected the same which were not brought to the store room of the said mess and misappropriated. On the basis of the said FIR, a case was registered by the CBI being R.C. No. 25(A) 93 and upon investigation, charge sheet has been submitted on 05.01.1994 under section 409/420/468/471 of I.P.C. and section 13(2) R/W section 13(1)(c) and (d) of the P.C. Act. On the basis of the said charge sheet, Special Case No. 2(c) 1994 has been registered before the Court of Special Judge, Assam, Guwahati. Being satisfied with the services rendered by the husband of the applicant the higher authority of the N. F. Railway like Senior Deputy General Manager and Deputy Chief Personnel Officer have issued certificates dated 30.12.77 and 15.07.1978. It is also pertinent to mention herein that he had also informed/reported the matter of theft of 20% nos. of Mattresses from 80 bedded Mess to the Officer in-charge of Jalukbari Police Station and the police authority has investigated the matter and submitted a report on 23.03.1993. The said fact has also been informed to the Deputy Chief Vigilance Officer (E) N. F. Railway, Maligaon vide his letter dated 25.03.1993.

Anita Dey



The copies of the certificate issued by the SDGM and Dy. CPO along with a copy of the aforesaid letter dated 25.03.1993 are annexed herewith and marked as ANNEXURE-1, 2 and 3.

4.3 That the applicant begs to state that the learned Special Judge, Assam was pleased to impose different punishment convicting the husband of the applicant under section 420 IPC, 468 IPC, 471 IPC and U/S 13(2) R/W 13(1) (C) (D) of the P.C. Act by its Judgment dated 14.10.1996 passed in Special Case No. 2 (C) 1994.

A copy of the aforesaid judgment dated 14.10.1996 is annexed herewith and marked as ANNEXURE- 4.

4.4. That the applicant begs to state that as the husband of the applicant has been convicted by the learned Special Judge, Assam, by its Judgment dated 14.10.1996 passed in Special Case No. 2(c) 94, the Respondent No. 3 by its order No. 19E/695(Q) Loose dated 01.10.1997 has placed the husband of the applicant under suspension in terms of Rule 5(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 until further order.

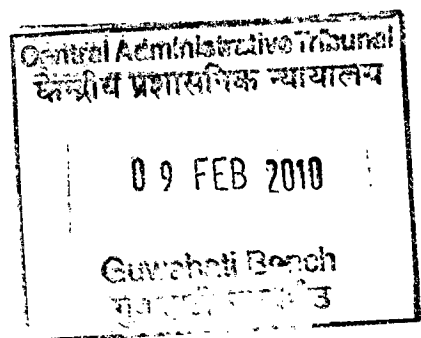
A copy of the aforesaid order dated 01.10.1997 is annexed herewith and marked as ANNEXURE- 5.

4.5. That the applicant begs to state that immediately by following the order of suspension, the respondent No.3 had passed the impugned order of penalty of removal from service with immediate effect vide Memorandum No. 19E/695(Q) dated 06.10.1997. The said impugned order of imposition of penalty has stated to be passed in exercise of power conferred under Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968, consequence of the Hon'ble Court verdict, further in the impugned order itself, it was suggested that appeal against the said order will lie with the Chief Personnel Officer (Administration), N.F. Railway within 45 days of receipt of this order of imposition of penalty.

A copy of the aforesaid Memorandum dated 06.10.1997 is annexed herewith and marked as ANNEXURE-6.

4.6 That the applicant begs to state that as suggested by the Disciplinary authority in the impugned order itself, the husband of the applicant preferred an appeal against the order dated 06.10.1997 before the Chief Personnel Officer (Administration) i.e. Respondent No. 2 on receipt of the order of imposition of penalty. The aforesaid appeal has been preferred on 05.11.1997 praying for imposition of lesser punishment considering the facts and circumstances of the case.

Anita Dey



A copy of the aforesaid appeal dated 05.11.1997 is annexed herewith and marked as ANNEXURE-7.

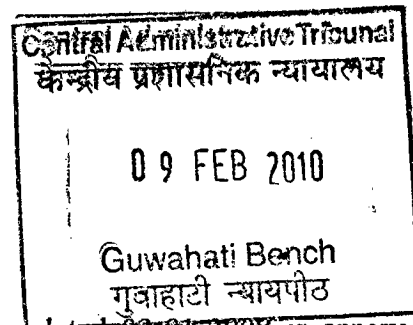
4.7 That the applicant begs to state that against the Judgment dated 14.10.1996 passed by the learned Special Judge, Assam in Special Case No. 2(c) 94, the husband of the applicant had preferred the Criminal Appeal being Criminal Appeal No. 242/1996 before the Hon'ble High Court. The Hon'ble High Court was pleased to pass an interim order of stay, suspending the Judgment of the Trial Court by its order dated 15.11.1996 and bail has also been granted to the husband of the applicant by the said order. As the Criminal Appeal has been pending for final disposal before the Hon'ble High Court, the husband of the applicant has not been pursuing the matter before the appellate authority, but reminder representations have been submitted before the Appellate Authority in time to time with a request to consider and dispose of his appeal dated 05.11.1997 against the order dated 06.10.1997 sympathetically.

4.8 That the applicant begs to state that the Hon'ble High Court was pleased to dismiss the Criminal Appeal No. 242/96 preferred by the husband of the applicant by its judgment and order dated 09.02.2006. It is pertinent to mention herein that while dismissing the said Criminal Appeal, the Hon'ble Court had given the findings that the incident occurred long back in the year 1992-93 i.e. 14 years back and in the meantime, the appellant has suffered a lot both mental and physical torture and no fruitful purpose would be served if the appellant is sent to jail. Further it had also been observed by the Hon'ble Court that the appellant has no criminal previous records. Considering all these factual aspects of the matter, the Appellate Court was pleased to modify the Judgment passed by the Learned Trial Court by reducing all the periods of sentences to a period of one month only which the appellant had already undergone and a fine of Rs. 20,000/- only. Accordingly the husband of the applicant had deposited the said amount of Rs. 20,000/- on 19.04.2006 by way of Treasury Challan.

A copy of the said Judgment and Order dated 09.02.06 along with challan dated 19.04.06 are annexed herewith and marked as ANNEXURE- 8 and 9.

4.9 That the applicant begs to state that her husband preferred a Special Leave Petition before the Hon'ble Apex Court which was pleased to dismiss by the Hon'ble Court by its order dated 09.10.2006. Thereafter, the husband of the applicant preferred a representation dated 03/01/2008 before the respondent authorities to consider his case sympathetically on the basis of the findings and observations made by the Hon'ble High Court in its Judgment and Order dated 09/02/06 passed in Criminal Appeal No. 242/96.

Anita Pey



A copy of the aforesaid representation dated 03-01-2008 is annexed herewith and marked as ANNEXURE- 10.

4.10 That the applicant begs to state that her husband preferred a detailed reminder representation dated 29/09/2008 before the Chief Personnel Officer (Administration) i.e. Respondent No. 2 praying for disposal of his appeal dated 05.11.1997 preferred against the order dated 06-10-1997 considering the changed circumstances after passing the Judgment and Order dated 09-02-06. Be it mention herein that there was no departmental proceeding or enquiry conducted against the husband of the applicant, the penalty of removal from service has been imposed upon him without giving him any opportunity to place his case prior to imposition of the said penalty. Now, as the Hon'ble High Court has considered his case sympathetically and reduced the sentences by modifying the same as token one.

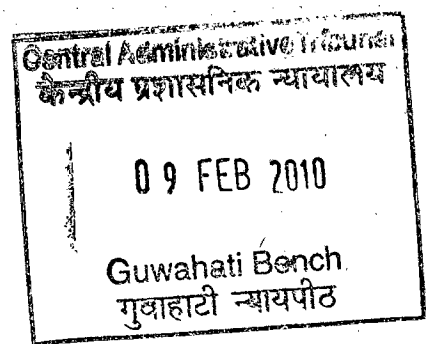
A copy of the aforesaid representation dated 29.09.2008 is annexed herewith and marked as ANNEXURE-11.

4.11 That the applicant begs to state that when in spite of repeated approach/representations of the husband of the applicant, after disposal of Criminal Appeal, the Appellate Authority has not yet considered his Departmental Appeal, her husband preferred an Original Application being O.A. No. 196/2008 before this Hon'ble Tribunal. Upon hearing the Learned Counsels for all the parties therein was pleased to dispose of the said application in the admission stage itself by its order dated 12.11.08 with a direction to the respondents to consider the grievances of the applicant, more particularly the grievances raised under Annexure- 7 dated 05.11.1997, Annexure-10 dated 03.01.2008 and Annexure- 11 dated 29.09.2008 including the grievances raised in the said Original Application and pass a reasoned order within 120 days of the date of receipt of the said order this Hon'ble Tribunal.

4.12. That the applicant begs to state that on receipt of the copy of the aforesaid order dated 12.11.08 passed by this Hon'ble Tribunal in O.A. No. 196/2008, her husband vide his forwarding letter dated 1.12.2008 submitted a copy of the said order before the Respondent No. 2 for information with a request to consider his case suitably and sympathetically under the changed circumstances.

A copy of the order dated 12.11.08 passed in O. A. No. 196/2008 alongwith the forwarding letter dated 1.12.2008 are annexed herewith and marked as ANNEXURE- 12 & 13.

Anita Dey

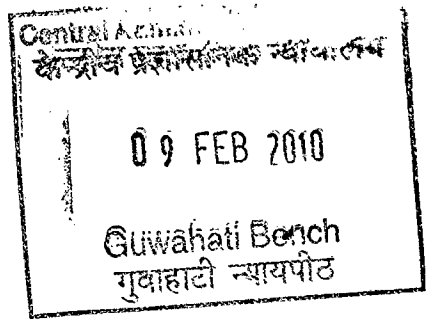


4.13. That the applicant begs to state that on receipt of the aforesaid order dated 12.11.2008 passed by this Hon'ble Tribunal in O.A. No. 196/2008, the respondent no.2 passed a speaking order dated 06.04.2009 which is stated to be in compliance of the direction of this Hon'ble Tribunal as indicated above. By the said speaking order, the Respondent Authority has uphold the penalty of removal from service of the husband of the applicant imposed vide order dated 06.10.1997 observing that the Disciplinary Authority has taken correct decision on the finding in the Special Case No. 2 (C) 94 in the Departmental Proceeding. The Appellate authority has passed the said order mechanically just to avoid the Contempt Proceeding whimsically without considering the case of the applicant suitably and sympathetically by not applying judicious mind. Even, the Compassionate allowance has also not granted to the husband of the applicant. The said speaking order dated 06.04.2009 has been communicated to the applicant by the A.P.O./ Legal cell vide his letter No. E/170/LC/NS/1117/8 dated 09.04.2009.

A copy of the aforesaid speaking order dated 06.04.2009 and the forwarding letter dated 09.04.2009 are annexed herewith and marked as ANNEXURE-14 & 15.

4.14. That the applicant begs to state that since last 7 years, her husband was suffering severe diabetic (Diabetic Mellitus) and Bronchitis problem due to which he lost his eye sight about 80% and was in bed ridden condition for long period and had also required regular health check-up also. Under the present financial condition it was virtually impossible for the applicant to arrange the medical expenses for her husband, not to speak about the day to day needs of her family, the expenses required for education of their sons & daughter. The family of the applicant is consists with her old widowed mother-in-law, two sons and one daughter. The elder son namely Sri Raja Dey, aged about 25 years, is presently a student of third semester of Electrical Engineering of NIT Silchar, the daughter namely Basanti Dey, aged about 23 years is a student of B.A. Final year and the youngest son namely Raghav Dey aged about 20 years is a student of B. Sc first year. The husband of the applicant was also deprived of from getting the medical facilities from the Railway Hospital. Although, the husband of the applicant had served so many years to the Railway Authority, but in spite of having adequate medical facilities under the respondent authority, the husband of the applicant was not given any opportunity to avail the said facilities which was urgently required for the husband of the applicant under his seriously ill heath condition and finally he lost to struggle more and died in harness on 05.11.09 for the lack of proper medical attention due to financial stringency. As such, the action on the part of the respondent authority for not providing the

Anita Dey



medical facilities to the husband of the applicant was not only illegal and arbitrary; but also against the principle of minimum humanitarian consideration. If the medical facilities were provided to the husband of the applicant at once, it will be quit possible for him to survive for more.

A copy of the medical certificate is annexed herewith and marked as ANNEXURE-16.

5. GROUND(S) FOR RELIEF (S) WITH LEGAL PROVISION:-

5.1. For that the action/inaction on the part of the Respondent Authority is quite arbitrary, capricious and violation of the principles of Natural Justice and Administrative Fair play.

5.2. For that the imposition of impugned penalty of removal from service without holding any inquiry and initiating any departmental proceedings is not sustainable in the eye of law and violative of the provisions of Railway Servants' (Discipline and Appeal) Rules, 1968.

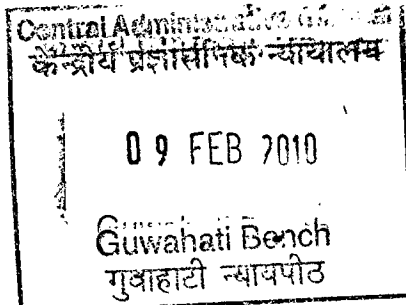
5.3 For that the impugned order of imposition of penalty without giving any opportunity to the husband of the applicant to place his case is arbitrary, illegal, discriminatory and violation of the principles of Natural Justice and Administrative Fair play.

5.4. For that in spite of reducing the sentences passed by the Trial Court (Special Judge) by the Hon'ble High Court in Criminal Appeal No. 242/96, the respondent authority has not yet considered the case of the husband of the applicant suitably altering/reducing the penalty of removal from service and as such, the inaction of the respondent authority is arbitrary and unjust.

5.5. For that the respondents displayed a very callous, negligent, discriminatory and apathetic attitude towards the husband of the applicant.

5.6. For that the husband of the applicant has already suffered a lot mentally, financially and physically since last several years and ultimately died in harness with all his legitimate expectations unfolded experiencing and witnessing inhumanitarian and arbitrary, discriminatory actions as well as inactions as such, his case is required to be considered in the light of the Hon'ble High Court findings and observations.

Anita Dey



5.7. For that the respondent authority has violated the statutory provisions of Railway Servants' (Discipline and Appeal) Rules, 1968 and the settled principles of law laid down by various judicial pronouncements.

6. DETAILS OF REMEDIES EXHAUSTED :-

That the applicant begs to state that her husband had preferred the Departmental appeal before the Appellate Authority which has now disposed of by speaking order dated 06.04.09. Further the applicant declares that her husband has exhausted all the remedies available to him and he has no other alternative and efficacious remedy available to him than to file this application

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

The applicant further declares that her husband has not previously filed any application, writ petition or suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, writ petition or suit is pending before any of them.

8. RELIEF (S) SOUGHT FOR:-

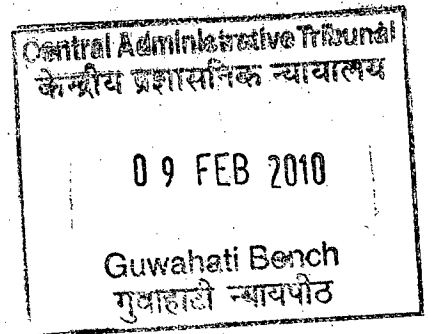
Under the facts and circumstances stated above, the applicant most humbly prays that Your Lordships would be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relieves sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown be pleased to grant the following relief (S).

8.1. The impugned order of imposition of penalty of removal from service dated 06.11.1997 (Annexure- 6) may be set aside and quashed directing the respondents to grant all consequential benefits of re-instatement of service/ compassionate appointment/ family pension etc.

8.2. The Order passed by the appellate authority dated 06.04.2009 (Annexure-15) in compliance of the earlier direction of this Hon'ble Tribunal upholding the penalty of removal from service imposed upon the husband of the applicant by the Disciplinary Authority may also be set aside and quashed.

8.3. The respondents may be directed to pay/ release all the consequential benefits payable to the husband of the applicant forthwith i.e. arrear salary, allowances, increments, promotion etc.

Anita Dey



8.4 Cost of application

8.5 Any other relief(s) to which applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. This application is filed through advocates.

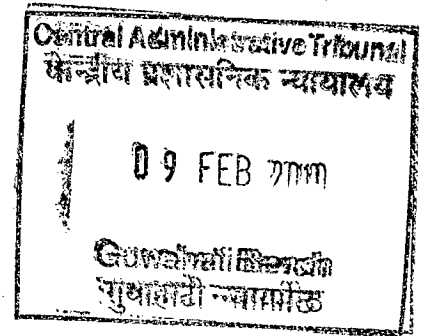
10. PARTICULARS OF THE L.P.O.

- (I) L.P.O. NO. :
- (II) Date :
- (III) Payable at : GPO/ Guwahati.

11. LIST OF ENCLOSURES:-

As stated in the Index.

Anita Dey



VERIFICATION

Smti. Anita Dey, Wife of Late Haru Dey, Resident of 91/B, Nambari Hilltop Road, Guwahati-781011 in the District of Kamrup (Assam) do hereby verify that the Statements made in paragraphs ...1, 2, 4, 5 & 7... are true to my knowledge and those made in paragraphs...4, 2 to 4, 14... are believed to be true on legal advice and that I have not suppressed any materials facts before this Tribunal.

AND I sign this verification on this 25th day of January 2010 at Guwahati.

Anita Dey

Signature of the Applicant.

TO WHOM IT MAY CONCERN.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

09 FEB 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

This is to certify that Haru Chandra Dey,
son of Shri Bhupati Chadra Dey of Nambari, Gauhati-
781011, ^{working as a Peon in the office} is known to me or the last 6 years. He is
a young boy of active habits and possesses a good
moral character. So far my knowledge goes there is
nothing adverse against him.

I wish him all success.

Dated, Maligaon,
30th December/77.

M. Pharesachar
DY. Chief Personnel Officer,
N. F. Railway, Pandu
DY. CHIEF PERSONNEL OFFICER.
N. F. RAILWAY, MALIGAON,
GAUHATI-781011.

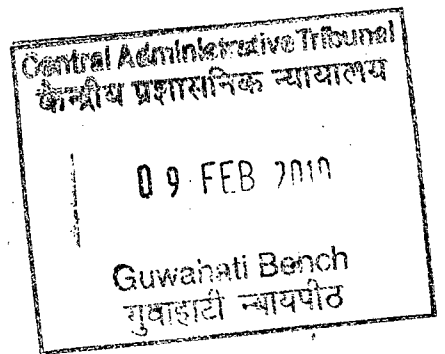
Attested
Chhagan
Advocate

717-

-12-

ANNEXURE - 2

144



TO WHOM IT MAY CONCERN

THIS is to certify that Shri Haru Chandra Dey, son of Shri Bhupati Chandra Dey of Nambari, Gauhati-781011 is known to me for the last 6 (six) years. His performance as a Peon in CPO/NF Railway/Maligaon's office is quite satisfactory. He is a young boy of active habits and possesses a good moral character. So far my knowledge goes, there is nothing adverse against him.

I wish him all success in life.

Maligaon,
15.7.'78.

[Signature]
Senior Deputy General Manager,
Sr. Dy. General Manager &
Chief Vigilance Officer,
NF Railway, Maligaon,
Gauhati-781 011 (Assam).

Senior Deputy General Manager,
N. F. Railway, Maligaon, Gauhati-1

Attested
Usha Son
Advocate

To
The Dy. Chief Vigilance Officer(E),
N.F. Railway, Maligaon.

09 FEB 2010

Guwahati Branch
21/02/2010

Sir,

Re :- Theft of 20 Nos. Mattresses Coir
from 80 Bedded Mess at Maligaon.

In pursuance of your instructions I beg leave to say that I required 20 Nos. Mattress Coir from PNO ~~XXXXX~~ Stores Depot and this item was duly recorded in the Stock Register. I was on the sick list from 9.11.92 and Brooms Coco, Phenyle & Bleaching powder were kept in the Store Room attaches to the 80 Bedded Mess along with the 20 Nos. new mattresses. Since I was unable to attend to my work due to sickness & since Bleaching Powder, Phenyle etc. were required by the cleaner(Regd. Sorter) everyday I handed over the key of the store Room to the cleaner (Record Sorter), This was, however, in the knowledge of Shri B.R.Das, CLWI.

On 12.2.93 DGCPD(E) with two Vigilance Inspectors & APO/W came to the Mess to check up the Stock position. I also attended with them. The cleaner (Record Sorter) was also sent for. The Store room was opened & it was found that all the 20 mattresses were missing although there were no signs of my tampering with the lock. It is quite probable that the theft took place by opening the lock with a key that fitted with it. There were numerous other instances of theft taking ~~xxx~~ earlier place in the 80 Bedded Messes, e.g. water tapes being stolen, Switch Boards being broken in the ground floor & water pipes damaged. All these were reported to Office pion time to time. There Messes to be an organised plan to damage the entire Mess.

Since the loss of new Mattresses(20 Nos.) was a serious matter I reported it to the OC/Jalukbari P.S. in the evening of 12.2.93 & he had enquired into the matter and also interrogated the cleaner (R/Sorter) on 13.2.93. ~~XX~~ A copy of the Police report was submitted to your good self on 23.3.93.

This statement is true to the best of knowledge & belief & is submitted the persuance of verbal instructions of 23.3.93.

Copy to information and I
necessary action please
properly if you legal man
and oblige.

Yours faithfully,

(Haru Ch. Dey)

Sr. Clerk, CPO's Office (Caretaker,
80 Bedded Mess, Maligaon).Dated :- 25.3.93.

Encls : 2(Two).

Yours faithfully,

(Haru Chandra Dey).

Sr. Clerk/Caretaker of 80 Bed Mess,
MLC/GHY-11.

Attested
Usha Das
Advocate

IN THE COURT OF THE SPECIAL JUDGE : : : ASSAM : : : GUWAHATI.

Special Case No. 2(C)94

S T A T E

Vs

Haru Day .. Accused

Present :

Shri P. G. Agarwal,
Special Judge, Assam, Guwahati.

Shri J. S. Terang : Public Prosecutor for the CBI.

Shri N. N. Ojha : Advocate for the accused.

Date of evidence : 22.9.95, 10.11.95, 5.1.96, 6.1.96, 11.3.96,
12.3.96, 23.5.96, 24.5.96, 1.7.96, & 30.7.96;

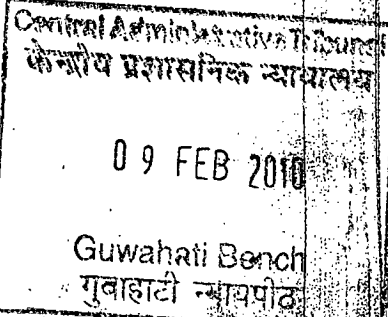
Date of arguments : 30.9.96.

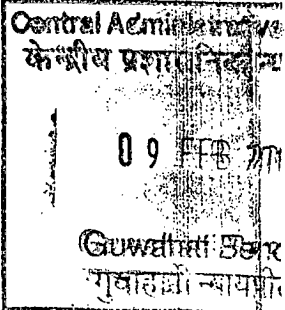
Date of judgment : 14.10.96

(Sections 420/468/471, IPC and Section 13(2) r/w section 13(1)(c) &
(d) of the Prevention of Corruption Act, 1988).J U D G M E N T

The prosecution case, in brief, is that during the year 1992 - 1993, accused Haru Ch. Day was posted and functioning as Caretaker of 80-bedded Mess, N.F. Railway, Maligaon. During the period December, 1992 and January and February, 1993, the accused was absent from duty, but during this period, he submitted requisition/indent for supply of materials to the Pandu Stores Depot, N.F. Ry and also collected materials against them. These requisitions were all forged. The accused did receive articles against these requisition in the month of December, 1992 and January and February, 1993. The articles so collected were not brought to the Store room of the said mess and these were misappropriated. According to the prosecution, the accused even collected certain materials in the name of Rang Bhaban belonging to N.F. Railway although the above articles are not required for Rang Bhaban. The

Attested
Usha Sar
Advocate





amount of the total article collected by the accused is around Rs.94,000/-. On 12.2.93 the accused was apprehended at the Store Depot, Pandu while he was waiting to collect goods on the basis of sum forged indents. Thereafter, stock verification was made both at 80-bedded mess and at Rang Bhaban. The goods collected by the accused was not found in the stock. On FIR being lodged, CBI registered RC 25(A)93. Usual investigation was made and during investigation, specimen writings, signatures, admitted writings and questioned documents were sent to the GEQD, Calcutta. After due investigation and after obtaining necessary sanction for prosecution, charge sheet was submitted on 5.1.94.

On consideration of charge, charge under section 409/420/468/471, IPC and section 13(2) r/w section 13(1)(c) & (d) of the PC Act was framed on 25.7.95. The accused pleaded not guilty.

During trial-1, prosecution has examined 06 witnesses. There are 104 numbers of documents from the side of prosecution. The statement of the accused u/s 313, CrPC was recorded. Defence has not adduced any evidence. The defence is in that of denial simplicitor.

Now, first point for consideration is that whether the accused is a public servant and whether there is proper and valid sanction for prosecution of the accused.

PW 1 Sati Moitri Brahma, who was the Senior Personnel Officer, Welfare, N.F. Rly, Maligaon during December, 1990 to February, 1993. She was over all incharge of the 80-bedded Mess (for short, Mess) located at N.F. Rly Maligaon. She has deposed that this accused Haru Ch. Dey was the caretaker of the said mess. Exs 29 and 30 are the Attendance Register for the relevant period wherein the name of accused Haru Dey appears as a railway employee.

Besides PW 1, there is oral evidence of other PWs who are Railway employees. Moreover Ex 38 is the appointment letter whereby this accused was appointed as a peon of N.F. Rly on 24.11.75. Ex 39 is another order whereby accused was appointed

Attested
Asha Das
Advocate

as caretaker of the mess on 24.2.88. Ex 35 is the Personal case file of the accused kept in regular course of official business. Exs 36 and 37 are the leave accounts. Thus, the oral evidence is fully supported by the documentary evidence on record. The prosecution evidence on this point has not been challenged or disputed by way of cross-examination. Moreover, ⁱⁿ the statement u/s 313, CrPC, the accused has admitted that ~~the accused~~ during the year 1992 and till February, 1993 he worked as a Caretaker of the mess and he was railway employee of group C. I, therefore, hold that accused H.aru Chandra Dey is a public servant as defined in section 2(C) of the PC Act.

PW 3 is Hala-dhar Das who was working as Senior Personnel Officer, N.F. Rly, Maligaon from October, 1993 to July 1994. He has deposed that as the accused was an employee of group C, he was removed from service by a Sr. Scale Officer. PW 3 is the Senior Scale Officer of group A. On examination of all the materials before him he granted sanction for prosecution vide Ex 43. Exs 43(1) and 43(2) are his signatures. The witness considered all the documents and materials placed before him by the CBI and on being satisfied he accorded the sanction. On perusal of the letter Ex 43, which is in 2 sheets, I find that the facts constituting the offence are fully detailed and Ex 43 meets requirements of law as regards the sanction. Defence has not challenged the letter of sanction as such but during the course of arguments the learned defence counsel submitted that PW 3 is not competent authority to accord sanction. The accused has also stated in the statement u/s 313, CrPC that PW 3 had power to suspend him only but he was not competent to accord sanction for prosecution. The learned defence counsel has also drawn my attention to the Railway Servants (Discipline & Appeal Rules, 1968). But on perusal of the same, I find that the railway servant can be removed or dismissed from service either by the appointing authority or an authority of equivalent rank or any higher authority. Under sub clause C of section 19, the sanction is

Attested
H. H. Das
Advocate

09 FEB 2010

Guwahati Bench

গুৱাহাটী বেঞ্চ

required to be given by an authority competent to remove the public servant from the office. According to PW 3 even a Senior Scale officer of Group B was competent to remove the accused from service whereas he was an Senior Scale Officer of group A. *i.e. one step higher than Group B Officer.* PW 3 was cross-examined at length and even no suggestion was given that he is not competent to accord sanction. From Ex 38 the appointment letter, I find that the accused was appointed by the Assistant Personnel officer. Considering the oral and documentary evidence on record, I, therefore, hold that PW 3 is the competent authority and there is proper and valid sanction for prosecution of the accused.

PP/CBI submitted that in the present case, the alleged offence was committed by the accused while he was absent from duty. It is stated by the witnesses ^{that} from 9.11.92 to 15.3.93 ~~that~~ the accused remained absent. Ex 32 is the report to that effect. In support of the same, prosecution has produced the relevant Attendance Register Exs 29 and 30 which shows that the accused was absent from 9.11.92 to 12.3.93. This finds support from the own letter of the accused Ex 80, whereby the accused admitted that he was on sick leave from 19.11.92 to 15.3.93 and prayed for converting the same to committed leave. The question whether the accused enjoyed valid leave or unauthorised leave is not material for the purpose of this trial. However, the facts remain that during the relevant period, the accused was officially not present or attending his duties.

The procedure for issue of requisition, receipt of the same by the Store Depot and delivery of goods against these requisitions, as deposed by the witnesses, it may be summed up as follows :

Requisition and Issue Notes (hereinafter referred as RIN) are available on printed Railway form (42). When an article is required for a particular department, one set of RIN is required to be prepared. The set consists of one

Attested
Usha Das
Advocate

original and 4 numbers of carbon copies prepared in the same process, by ^{submit} the requisition number, date, consignee's Code, description and quantity of articles etc are to be filled up and these are to be signed by the authorized official. For the mess, PW 1 Moltri Brahma and PW 5 Bhopal Chakraborty were the authorized signatory and P W6 Biren Das was also authorized being an official of the Welfare department. This RIN can be sent to the Store department either by post or by messenger. If these are sent through messenger, an authorized letter is also required to be given authorising the messenger to collect / receive goods from the store.

When a RIN is received by the Store Depot, the Incharge of the requisition sanction verifies the signature of the indentors/ consignee of the RIN and endorses it to the concerned branch. Thereafter, RIN goes to the registering clerk, who makes an entry in the Register Issue Notes and gives registration number. The registering clerk also obtains the signature of the person who has brought the RIN. Thereafter, RIN is sent to the booking section and the booking clerk verifies registration number of the RIN, checks identity card of the receiver of the goods and issue gate pass (GP). The GP is repared in duplicate with the help of carbon. Carbon copy of the GP is handed over to the receiver of the goods. The receiver is required to produce the carbon copy at the gate in order to collect the goods. The carbon copy is then sent back by the gate keeper to the booking section and it is pasted with original in order to show that the goods have, in fact, gone out. While issuing GP, the signature of the receiver is taken on the reverse of the original GP and the authority letter is also pasted therewith. The authority must contain the signature of the person authorized and also the signature of the person who is to collect the goods.

Now, the point for consideration is whether eight numbers of RIN, as alleged by the prosecution, are forged/fabricated documents or not.

Attested
Usha Dars
Advocate

09 FEB 2010

Guwahati Bench
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According to the prosecution, Exs 21, 24 to 27 (one set), Exs 19, 20, 22, 23, 16 and 17 are the 8 numbers of RIN as described in serial Nos 1 to 8 of the charge and they are all forged and fabricated documents. PW 1 has deposed that the signatures on Exs 1(1) to 17(1) 19(1), 20(1), 21(1) and 23(1) are ~~not~~ her signatures. PW 5 Bhopal Chakraborty and PW 6 Biren Das, who are also acquainted with the signature of PW 1 have stated that these are not the signature of PW 1. They have also stated that these Exhibits do not bear their signatures. Further, Exs 1 to 5 are for 150 numbers of blankets, likewise, Ex 16 RIN is for 150 numbers of bed sheets and Ex 17 is for 150 numbers of coil mattresses for Rang Bhaban. PW 6 and other witnesses have deposed that Rang Bhaban is an auditorium having sitting arrangements ^{for} spectators and, as such, articles like coil, mattresses, blankets, bed sheets etc are not required. Exs 1 to 27 are the 12 sets of requisitions out of which Exs 18, 21, and 24 to 27 are the 3 sets of RIN which bears the genuine signature of PW 1. So far allegation against these RINs are concerned, it will be discussed at the later stage.

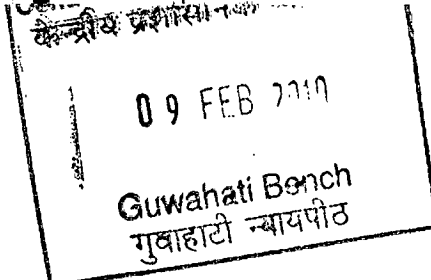
In this case, the disputed/questioned signatures appearing on Exs 1 to 27 were marked Q12 to Q39. The admitted signatures of PW 1 ^{are} marked A1 to A6 and admitted signatures of PW 6 Biren Kumar Das ^{are} marked A7 to A11 and the specimen signature of P^a 6 ^{are} marked S67 to S69 on Exs 87 alongwith other questioned documents and the specimen and other admitted signatures of accused Harun Ch. Dey were sent to the CEQD, Calcutta during investigation vide forwarding letters Exs 67 and 66. The CEQD ^{in person and} duly compared and examined ~~who~~ submitted his opinion Ex 63 vide forwarding letter Ex 70. The CEQD, H.S. Tuteja was examined as witness (PW 16). P^a 16 has given definite opinion that the signatures marked Qs 13, 15, 17, 19, 21, 24, 27, 33, 36 and 39 are not compared with that of PW 1. Likewise, Qs 23, 26, 32, 33 and 38 appearing on these RINs are not of PW 6. I, thus, find that the oral testimony of PWs 1, 5 and 6 stands fully corroborated by

Attested
Alsha Das
Advocate

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the evidence of PW 16, the handwriting expert. There is no cross-examination of PW 16 as regards this part of his evidence. Further, PW 16 has stated that the signature appearing on Exs 18 as Q 30 and Q29 are that of PWs 1 and 6. These signatures are admitted by the witnesses. I, therefore, hold that Exs 1 to 17 and 19 to 24 are forged and fabricated RINs.

As stated above, when RINs are produced at the Store Depot, they are registered and the registration number is given on the body of the RINs and the signatures of the messenger is taken. Ex 18 and Ex 21 RINs were registered on 1.12.93. Ex 60 is the relevant register for the months of November and December, 1992. Exs 60(1) and 60(2) are the relevant entries in the above register in respect of the above RINs. Registration numbers are 5852, 5853 and 5854. These registration number appear on Exs 18 and 21. PW 12 Bharat Das was the Incharge of the requisition section and he has proved the above exhibits. Ex 60(3) is the signature of the person who brought the above RINs and received it back after registration and the signature reads as that of Haru Ch. Dey. The witness in his cross-examination, however, states that he does not know accused Haru Ch. Dey personally from before. The signature Ex 60(3) has been marked as Q44.

Ex 56 is another Misc Register commenced on 1.1.93. Exs 56(3), 56(4), 56(5) and 56(6) are the relevant entries dtd 12.1.93 in respect of Exs 22, 20, 19 and 23 respectively. Ex 56(7) is the signature of Haru Ch. Dey alongwith the date. There is single signature in respect of 5 numbers of RINs and the signature is marked as Q40. The registration number Misc 60, 61, 62 and 64. These numbers alongwith the date appear on the above 4 numbers of RINs. Ex 56(8) is another entry No. 212 in respect of RIN at Ex 125. Ex 56(9) is the signature of the accused alongwith the date 4.2.93. Ex 56(10) and 56(12) are the relevant entries numbering 218 and 219

Attended
Ashwini
Advocate

In respect of RINs Exs 16 and 17 and Ex 56(3) is the signature of Haru Ch. Dey. Ex 56(9) and 56(13) are the signatures marked as Q41 and Q42. The registration number appear on the body of the RIN.

Let us consider whether the accused Haru Ch. Dey did collect the goods in respect of the above RINs.

Boloram Bora PW 14 has deposed that Ex 57(1) is the GP No. 946 dtd 4.12.92 in respect of RIN Ex 18. Exs 58(1) is another gate pass (GP) No. 1353 dtd 12.1.93 in respect of RINs Exs 19, 20, 22 and 23. Ex 59(1) is another GP No. 1567 dtd 5.2.93 in respect of RINs Exs 16 and 17. Exs 57(2), 58(2) and 59(2) are ~~not~~ the signature of PW 14. In these GPs, the name of Haru Ch. Dey, caretaker is mentioned as the collector of the goods. Exs 57(4), 58(4) and 59(4) are the carbon copies of the said GPs pasted to show that the goods against the above GPs were, in fact, taken out of the stores and on the reverse of the original copies of the GPs, the receiver of the goods is Haru Ch. Dey, ^{who} put his signature in presence of PW 14 and Exs 57(3), 58(3) and 59(3) are the signatures of accused Haru Ch. Dey given in presence of PW 14. On perusal of the GPs and cross-checking of the RINs including the issue number, I find that the statement of PW 14 stands fully corroborated by the documentary evidence. Further, Exs 57(5), 58(5) and 59(5) are the 3 numbers of authority letters in favour of Haru Ch. Dey allegedly issued by the PW 1 and ^{also bear} prepared the signature of accused Haru Ch. Dey. Exs 57(6), 58(6) and 59(6) are the signatures of accused Haru Ch. Dey allegedly attested by Chief Labour Welfare Inspector PW 6. The signature of PW 1 were marked as Qs 4, 8, 41 and 50 whereas the signature of PW 6 were marked as Qs 3 and 7. The signatures of accused Haru Ch. Dey ^{are} even marked as Qs 10, 6 and 2.

Registers and GPs, i.e., Exs 56, 57, 58, 59 and 60 ^{maintained} kept in the store department ~~are~~ in the regular course of official business and there is nothing to dispute the genuineness of these documents. Oral evidence of PWs 14, 13, 12, 11, 10 and 9

Attended
Usha Das
Advocate

09 FEB 2019

Guwahati Bench
गुवाहाटी न्यायपीठ

clearly show that the above RINs were brought by Haru Ch. Dey and goods against the above RINs were duly supplied to the accused against GPS and these were received by the accused on the strength of authority letters produced. Their oral testimony stands fully corroborated by the documentary evidence. Further, as discussed above, the handwriting expert has categorically deposed that PWs 1 and 3 did not put the signatures marked Qs 3, 4 and 7 and 8. So far authority letter Ex 57(5) is concerned and the signatures Qs 49 and 50 appearing therein are that of PW 1.

The oral and documentary evidence on record is also fortified by the opinion of the expert, PW 16. In this case, the specimen signatures of the accused Harun Ch. Dey were taken during investigation in presence of witnesses Exs 65(1) to 65(39) are the above specimen writings and signatures of the accused in 39 sheets. These were marked as S1 to S39. Further, the admitted signatures and writings of the accused contained in applications, letters etc, i.e., Exs 76 to 85 were also sent to the CEQD and these were marked A12 to A21. The disputed signature of the accused on the register were marked Qs 40 to 44 on the GPSs were marked Qs 5 and 9 and on the authority Qs 2, 6 and 10. PW 16 has categorically opined that the above signatures marked Qs 1, 2, 5, 6, 9, 10 and 40 to 48 are in the handwriting of accused. Ex 71 are the reasons for opinion containing five sheets. There ^{are} eight numbers of ^{dis}similarities and they are significant in nature and sufficient in number. These were written in free hand and there is no inherent sign of forgery. From the cross-examination of PW 16 nothing has come out to show that the opinion suffers from any disability or infirmity and that it ^{can} be relied upon. I, therefore, hold that the evidence of PW 16 fully corroborates and supports the prosecution story and it was the accused Haru Ch. Dey who produced the above forged RINs and genuine RINs (Ex 18) and collected goods from the store depot, N.F. Railway, Maligaon.

Attended
Asha Das
Advocate

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गुवाहाटी न्यायपीठ

Now, the next question for consideration is whether the accused person did deposit the goods so collected or has accounted for the same.

PW 4 Dhirendra Mall Saha, Inspector of Store Accounts, N.F. Rly, Maligaon and a vigilance team consisting him, Bhopal Chakraborty PW 5, and Badal Chakraborty have deposed that a surprise check was conducted at 80-bedded mess in presence of the accused Haru Ch. Day. Exs 44, 45 and 46 are the memorandum and check verification in respect of the mess and Ex 31 is the physical stock verification in respect of Rang Bhaban. The coir mattresses, pillowblankets etc collected vide Exs 1 to 27 were not found in the stock. PW 2 is Anil Das, Incharge of Rang Bhaban. He has also deposed that Rang Bhaban is place where meeting, shows marriage etc are held. There is no arrangement for beds and as such there is no requirement of mattresses, blankets etc for use at Rang Bhaban. The witness has further stated that this accused Haru Day never handed over to him any bed sheets, blankets etc. for use at Rang Bhaban. The burden was on the accused to show or explain as to how he discharge the entrustment but there is no whisper from the side of the defence. As a matter of fact, the defence plea is that no article as such was received or collected by him.

Another circumstance which appears against the accused is that he was apprehended at the store depot while he was waiting to collect goods against forged RINs. PW 7 Madhab Ch. Balshya has deposed that on the morning of 12.2.93 Kalyan Kumar Sinha informed him that if RIN is brought by the accused Haru Day, this should be properly checked. On 12.2.93 accused appeared alongwith RIN Exs 6 to 10. These were registered in the miscellaneous register vide entry No.330 Ex 56(1). Ex-s 6 to 10 contain the above serial number. Ex 56(10) is another entry No. 331 in respect of Exs 11 to 15. The above RINs were brought by the accused who put his signature alongwith the date 12.2.93 on Ex 56(2). PW 7 has identified the signature of the accused.

Attested
by
Advocate

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Guwahati Bench

given in his presence. PW 4 has also deposed that accused Haru Day was apprehended at the Store Depot while the latter was waiting for collection of materials against same requisitions.

As discussed above, the RINs Exs 6 to 10 and 11 to 15 are forged and fabricated ones. PW 1 gives neat and clean signature and all the letters are legible. The signature on the admitted writings and in her deposition supports it. A cursory glance to Ex 6(1) to 15(1) will show that these are not the signatures of PW 1. The presence of accused at the store depot on 12.2.93 and the subsequent apprehension there from is admitted. The accused has taken the plea that he had gone to inquire about the availability of logs, as verbal instruction given by PW 5 Bhopal Chakraborty. PW 5 categorically denies about deputing the accused to store depot on that day. Further, I find that the accused was absent from the duty officially on that day and as such there is no scope for deputing the accused by PW 5. I therefore, hold that the prosecution has successfully established its case against the accused Haru Ch. Day. The accused by using forged RINs collected Rly materials and did not deposit the same and misappropriated the articles and thereby obtained pecuniary advantage for himself.

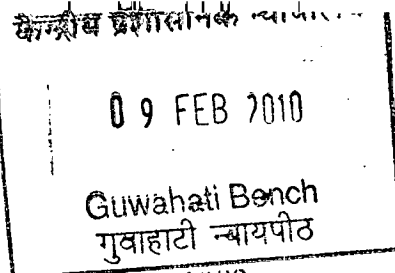
It may, however, be mentioned here that RINs Ex 18 is not a forged one. It is a genuine requisition and signature thereon are admitted by PWs 1 and 6 and these are supported by the evidence of the handwriting expert. The authority letter Ex 57(5) is also genuine one and the accused collected goods vide GP Ex 57(1). The article in question is 40 numbers of rubberised mattresses meant for mess. These were never deposited at the Mess's Store. The accused, thus, being entrusted with 40 numbers of rubberised mattresses committed misappropriation in respect of the same. The accused has obtained pecuniary advantage for himself by abusing his position as public servant. The act of the accused, therefore, constitutes criminal offence.

Attested
Jisha Bar
Advocate

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as defined in clause (a) & (d) of section 13 of the PC Act, 1988 which is punishable u/s 13(2) of the Act. Accordingly, I convict the accused Haru Ch. Dey under the above section of law.

In view of the conviction of the accused u/s 13(2) r/w section 13(1)(c)&(d) of the PC Act, no separate conviction u/s 409, IPC is desirable although the accused was charged under section 409 of the IPC.

As the accused Haru Dey cheated his employer, the N.F. Railway by deceitful means and thereby induced the Store Depot, N.F. Railway, Maligaon to deliver goods worth Rs.94,000/- to him which was the property of the said railways, I convict accused Haru Ch. Dey u/s 420, IPC.

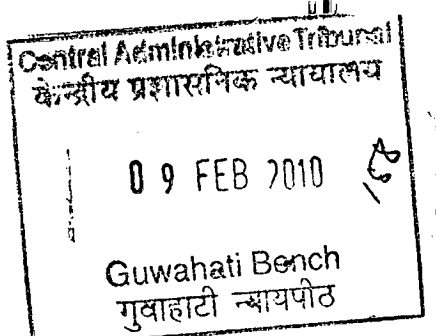
So far offence u/s 468 is concerned, there is no direct evidence as to who forged the RINs Exs 1 to 27. So far the authority letters Exs 58(5) and 59(5) are concerned, these are forged documents and they also bear the signature of the accused Haru Ch. Dey as held above. Further, it was this accused Haru Ch. Dey who used the exhibits 1 to 27 and Ex 58(5) and 59(5) to defraud the railways. It can safely be concluded that accused Haru Ch. Dey was a party/ privy to the above forgery. Accordingly, I convict him u/s 468 of the IPC.

Coming to the offence u/s 471, IPC and in view of my forgoing discussion it is well established that at the time of using Exs 1 to 27 and Exs 58(5) and 59(5) the accused had knowledge that these are forged documents and still he used the same as genuine and as such I convict the accused U/s 471, IPC.

Typed at my dictation
and corrected by me
Special Judge, Assam,
GUWAHATI.

Special Judge, Assam,
GUWAHATI.

Attested
Usha Das
Advocate

SENTENCE

I have heard the accused on the point of sentence. His statement u/s 235 is recorded. I have heard the learned counsel for defence and the accused on the point of sentence. The learned counsel for defence has submitted that in view of the compassionate grounds lenient view may be taken.

I have considered the submissions and the facts and circumstances of the case. The accused entered into service as Grade II and then rose to the post of the Care Taker of the Railway employees. But the state of service as employer he indulged in different activities and by forging documents cheated the Railways to a tune of Rs.94,000/-. The corruption in service by the public servant has become a rampant feature and as such deterrent punishment is called for. Hence I sentence the ^{accused} as under:

For the offence u/s 420 IPC : The accused is sentenced to rigorous imprisonment for 2 years and fine of Rs.20,000/-, in default to RI for 3 months.

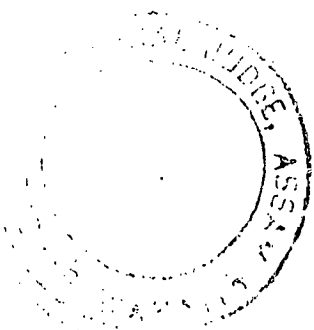
For the offence U/s 468 IPC : The accused is sentenced to RI for one year and a fine of Rs. 10,000/- 1/d to RI for 2 months.

For the offence u/s 471, IPC : The accused is sentenced to RI for 6 months and a fine of Rs.2000/- 1/d to RI for one month.

For the offence u/s 13(2) r/w section 13(1)(c)(d) of the PC Act :

All the sentences shall run concurrently.

Attested
Asha Ban
Advocate



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Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
09 FEB 2010
Guwahati Bench गुवाहाटी न्यायपीठ

The period undergone by the accused as URP,
if any, shall be set off.

Let a copy of the judgment shall be given to
the accused free of cost.

Typed at my dictation
and corrected by me.

Special Judge, Assam,
Guwahati.

[Signature] 14.10.96
Special Judge, Assam,
GUWAHATI.

Certified to be true copy

[Signature] 18-10-96
Special Judge's Sheristadar,
Authorised U/76.0011 of 1879

Attested
[Signature]
Advocate

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REGISTERED WITH A/D

ANNEXURE - 5

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ANNEXURE-II

Order placing an Officer under suspension when he is detained in custody.

(Rule 5(2) of Railway Servants (Discipline & Appeal) Rules, 1968.

No. 19E/695(Q) Loose.

(Name of Railway Administration) - NF Railway.

(Place of issue) - CPD/Maligaon.

Date - 01-10-97.

ORDER

Whereas conviction of Shri Haru Chandra Dey, Care Taker, 80-Bedded Mess, NF Railway, Maligaon (Name & designation of the Railway servant), in respect of a criminal offence under Case No. 2(C)94 between State-Vs- Shri Haru Chandra Dey.

And whereas the said Shri Haru Chandra Dey is deemed to have been suspended with effect from the date of detention i.e. from 14.10.96, in terms of Rule 5(2) of Railway Servants (Discipline and Appeal) Rules, 1968 and shall remain under suspension until further orders.

A. KISPOTTA
(A KISPOTTA) 1/1/97
Sr. Personnel Officer (Welfare)
NF Railway, Maligaon,
Guwahati-781 011.

Sr. Personnel Officer/Welfare
N F Rly/Mig.

To
Shri Haru Chandra Dey,
Caretaker, 80-Bedded Mess, NF Rly., Maligaon,
91/8, Nambari,
Hill Top Road,
Guwahati-781 011.

*Attested
Asha Das
Advocate*

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REGISTERED WITH A/D

ANNEXURE-6 161

Office of the
GENERAL MANAGER (PERSONNEL)
NF Railway, Maligaon, Guwahati- 781 011.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

No. 19E/695(2).

October 6, 1997.

09 FEB 2019

M E M O R A N D U MGuwahati Bench
গুৱাহাটী ন্যায়পীঠ

Consequent on Court's verdict issued by the Special Judge, Assam, Guwahati, on Special Case No.2(C)94 dated 14.10.96, between State - Vs - Haru Chandra Dey (accused), Shri Haru Chandra Dey, designation - Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati- 781 011, son of Late Bhupati Chandra Dey, is informed that on a careful consideration of the circumstances of the case in which he was convicted on 14.10.96 under Section No.420/468/471, IPC and Section 13(2) F/W Section 13(1)(c) & (d) of the Prevention of Corruption Act, 1988, the undersigned considers that his conduct, which has led to his conviction, is such as to render his further retention in public service, undesirable. The undersigned has, therefore, come to the conclusion that Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, Maligaon, S/o. Late Bhupati Chandra Dey, is not a fit person to be retained in service and so the undersigned in exercise of power conferred by Rule 14(i) of the Railway Servants Discipline & Appeal Rules, 1968, imposes upon Shri Haru Chandra Dey, the penalty of removal from service with immediate effect.

The receipt of this memorandum should be acknowledged by Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati-781 011, S/o. Late Bhupati Chandra Dey.

Appeal against this order will lie with the Chief Personnel Officer, Admn., NF Railway, within 45 days of the receipt of this order.

A. K. S. P. P. T. A.
(A KISPOPTA) 6/10/97

Senior Personnel Officer/Welfare
NF Railway, Maligaon, Guwahati,
(DISCIPLINARY AUTHORITY)

Senior Personnel Officer/Welfare

To
Shri Haru Chandra Dey,
91/8, Nambari,
Hill Top Road,
Guwahati-781 011.

Attested
Usha Das
Advocate

BEFORE THE CHIEF PERSONNEL OFFICER (ADMINISTRATION),

N.F. RAILWAY :: MALIGAON

DATED GUWAHATI THE 5th NOV '97

IN THE MATTER OF :

An appeal against the order

No. 192/695(C) dated 6-10-97

imposing penalty removal from

Service.

-And-

IN THE MATTER OF :

An appeal under the provisions

of the Railway Servants Discipline

and Appeal Rules, 1966.

-And-

IN THE MATTER OF :

Shri Haru Chandra Dey,

son of late Shupatt Chandra Dey, signed

judgment and 91/B Nambart Hill Top Road, Special

Judge in the Guwahati-II. the appellant preferred

an appeal before the Hon'ble Appellate High

Court. The said appeal being admitted for hearing

on 27.11.97. The Hon'ble High Court while admitting

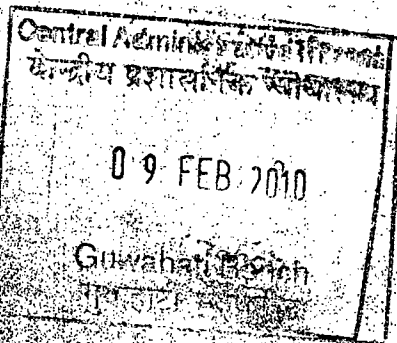
appellant abovenamed.

An appeal was further pleased to grant interim

relief to the appellant.

Alotted
Shri Haru Chandra Dey
Advocate

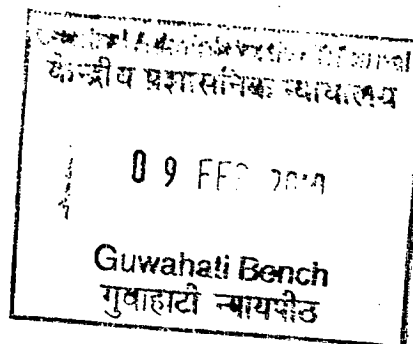
2.



MOST RESPECTFULLY SHEWETH:

1. That your humble appellant is permanent resident of India and is a Railway employee and had been working as Catetaker, 80 Bedded Mess, Maligaon. The appellant has been discharging his duties with his best of abilities and there was no allegation against him prior to the alleged incident of 14.10.96.
2. That the appellant was placed under suspension with effect from 14.10.96 in connection with the Special Case No.2(C)94 wherein the appellant has been charged as an accused u/s 420/468/471 IPC read with section 13(2), Sec. 13(1)(c) and (d) of the Prevention of corruption Act. The learned court below has been pleased to pass an order of conviction against the appellant.
3. That being aggrieved by the impugned judgment and order passed by the learned Special Judge in the above case, the appellant preferred an appeal before ~~xxx~~ the Hon'ble Gauhati High Court. The said appeal being admitted for hearing on _____ being registered as Crl Appeal No. _____/97. The Hon'ble High Court while admitting the appeal, was further pleased to grant interim bail to the appellant.

Attended
 Usha Das
 Advocate



3.

4. That the appellant states that the above Criminal Appeal is at present pending for adjudication before the Hon'ble High Court and the appellant has been advised that there is enough grounds for his success in the said appeal.

5. That the appellant states that during pendency of the above appeal before the Hon'ble High Court, the department by the above cited order |Memo dated 6.10.97 has contemplated my removal from service.

6. That Sir, I reiterate that I am an innocent person and I have been falsely implicated in the above case.

7. That Sir, I am a married person having small kids and other dependants. Because of the suspension, I have suffered a lot during the period and the sufferings of my family is now beyond description.

8. That appellant has suffered a lot for no fault of his own and the proposed action as contemplated by the authority will be too harsh not only to the appellant but also distort the poor family of your appellant.

9. That the alleged incident has cast a cloud on the neat and clean personality of your appellant in the eyes of his family members in particular and in the public in general.

Attested
Usha Das
Advocate

09 FEB 2010

Gowahat Bench
সুপ্রিম কোর্ট অসম

4.

10. That the humble appellant prays that considering the above facts and circumstances narrated above, your Honour may be pleased to pass an appropriate order reinstating your humble appellant in service.

In the premises aforesaid, it respectfully prayed that your honour may be pleased to consider the entire fact and circumstance of the case and pass an appropriate order recalling/ rescinding the above Memo dated 6.10.97 contemplating removal from service and/or pass an order with lesser punishment to save the life of the humble petitioner/appellant and his dependant family members.

And for this act of kindness, the appellant shall ever pray.

✓ Hari Chandra

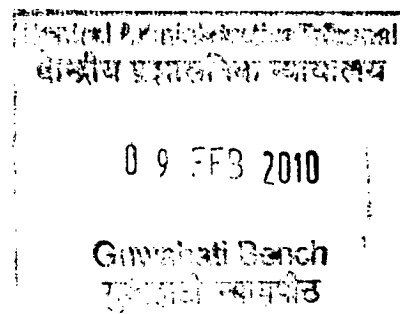
Attested
Usha Das
Advocate

34 - ANNEXURE - 8	34 -	34 -	34 -	34 -
को प्रारम्भ करने की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
07/3/06	07/3/06	07/3/06	07/3/06	07/3/06

-139- (THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA;
MANIPUR; TRIPURA; MIZORAM AND ARUNACHAL PRADESH)

Crl. Appeal No. 242/96

Shri Haru Chandra Dey,
Son of Late Bhupati Chandra Dey,
Resident of N.F. Railway, Maligaon,
Guwahati.



.....Accused/Appellant

-Versus-

The C.B.I.

.....Respondent

P R E S E N T

THE HON'BLE MR. JUSTICE ARI SAIKIA

For the appellant : Mr. JM Choudhury,
Mr. BM Choudhury,
Mr. D. Talukdar, Advocates

For the respondent: Mr. D. Das,
Ms M. Boro, Advocate

Date of hearing and
Judgment : 9.2.06

JUDGMENT AND ORDER (ORAL)

Heard Mr. JM Choudhury, learned Sr. counsel assisted by Mr. BM Choudhury and Mr. D. Talukdar, learned counsel appearing for the appellant and Mr D. Das, learned Sr. counsel assisted by Ms M. Boro, learned counsel appearing for the respondent/CBI.

2. This criminal appeal assails the judgment and order dated 14.10.96 passed by the learned Special Judge, Assam, Guwahati in Special Case No. 2(c)/94 by which the appellant was convicted under Sections 420/471 IPC read with Section 13 (2) and Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988 (for short 'the Act'), and sentenced accordingly to undergo (i) Rigorous Imprisonment (for short 'RI') for 2 years and fine of Rs. 20,000/- in default RI for 3 months under Section 420 IPC, (ii) RI for one year and fine of Rs. 10,000/- in default RI for 2 months under Section 468, (iii) RI for 6 months and a fine of Rs. 2,000/- in default RI for one

Attended
Shri D. Das
Advocate

month as regards sentence under Section 471 IPC, and (iv) finally RI for 4 years and a fine of Rs. 25,000/- in default RI for 6 months under the relevant Sections under the Act abovenoted

3. The law was set in motion with the filing of an FIR lodged with the C.B. I, registered as RC 25(A)/93 against the appellant alleging therein that the appellant, while working as Care-taker of the of 80 bedded Mess, N.F. Railway, Maligaon, during the period of December, 1992 and January and February, 1993, remaining absence for those period from duty, submitted forged requisition/indent for supply of materials to Pandu Stores Depot, N.F. Railway and collected materials against those items. But the articles after being collected were not brought to the store room of the said Mess and thereby he misappropriated an amount of Rs. 94,000/- being the total value of those articles so collected by him as mentioned above.

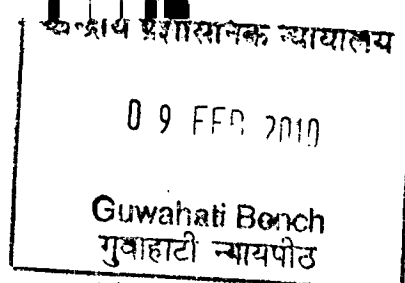
4. On completion of the investigation, charge sheet was submitted against the appellant under Sections 409/420/468/471 IPC read with the above mentioned Sections of the Act. Charge was framed in view of the charge sheet above mentioned and during the trial, the prosecution examined as many as 16 witnesses including the P.W. 16, hand writing expert, P.W. 1, Maitree Brahma, the Senior Personnel Officer, Welfare and P.W. 4, Dharendra Malla Saha, Inspector of Stores Accounts, both from N.F. Railway, Maligaon when nobody was adduced on behalf of the defence and there was a total denial of the charge by the defence.

5. The learned Judge, on proper consideration of the evidence on record as well as on close examination of the relevant exhibits including the Requisition and Issue Note (RIN), particularly, Exhibit 63, the report of the hand writing expert and upon hearing learned counsel for the parties, came to the conclusion that the appellant was found guilty under Sections 420/468/ 471 IPC read with the above mentioned Sections of the Act.

6. Mr. Choudhury, learned Sr. counsel, advancing his extensive argument has contended that grave error was committed by the learned Judge in not considering the specimen signature of P.W. 1 by way of sending the same to the hand writing expert for its examination as regards

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the genuinity and veracity of her signature. According to him, non-examination of any specimen signature/standard signature by the hand writing expert, P.W. 6 is always fatal to the prosecution case because the veracity of the signature found in relevant exhibits, if not examined by the hand writing expert, shall always remain under the cloud. Therefore, it is the legal necessity to send the said specimen signature as well as admitted signature of the person concerned to the hand writing expert when such person is either a witness or suspect for putting such signature in the document itself. Referring to all these aspects, the learned senior counsel has tried to impress upon the Court that there is categorical statement made by the hand writing expert in Exhibit-63, Clause (7) of the report that it has not been possible to express any opinion on the rest of the items on the basis of the materials at hand; meaning thereby, according to him, full explanation cannot be given due to the absence of the materials mentioned above and the hand writing expert was handicapped for not getting the specimen signature of the P.W. 1 to give the perfect opinion on this point.

7. Mr. D. Das, learned Sr. counsel has forcefully contended that no irregularity or illegality has been committed by the learned Judge in arriving at the impugned conviction and sentence of the appellant. According to him, the prosecution has proved the case in its entirety and beyond reasonable doubt by adducing credible evidence. He has also contended that the evidence of the hand writing expert cannot be taken so seriously and that cannot be a sole basis for conviction. It is settled law, according to him, that the evidence of a hand writing expert is always taken as a weak evidence and that can only be used for corroboration and consistency in the deposition of the other witnesses who were examined to support the case of the prosecution. In the instant case, other witnesses namely, P.W.1, P.W.2 and P.W. 4, categorically indicated the involvement of the appellant in the offence so mentioned above. That being so, this Court may not make an attempt to demolish the prosecution case on the basis of the contention and submission made by the learned Sr. counsel.

8. I have carefully gone through the evidence on record so referred to by the learned Sr counsel. It appears that the findings arrived at by the learned Special Judge were not solely based on the report i.e., Exhibit 63 or the

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গুৱাহাটী ন্যায়পীঠ

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deposition of the hand writing expert, P.W.16. The learned Judge took into consideration the evidence of P.W. 16 in its proper perspective with all the supportive evidence to find corroboration and consistency in the testimony of P.W.1 and P.W. 4. It is established that the opinion of a handwriting expert is not either conclusive or substantive evidence as the same is an opinion only. In the case at hand, the evidence of P.W. 16 was fully corroborated by direct evidence of P.W. 1 and P.W. 4. In view of the credible and cogent evidence of P.W.1, P.W.4 and P.W. 16, this Court does not think that non-examination of specimen signature of P.W.1 by the handwriting expert, P.W. 16, would be fatal to the prosecution case as pleaded by the learned senior counsel. Be it mentioned herein that on close perusal of the testimony of the P.W.4, it transpires that the appellant was caught red handed when he was waiting to collect those materials in pursuance of those forged documents.

9. On close scrutiny of the entire evidence of the witnesses on record and also upon hearing the learned counsel for the parties, this Court finds that learned Judge has rightly convicted the appellant under the offences as mentioned above and sentenced him accordingly by taking a right approach to the evidence so adduced by the prosecution. I do not find any infirmity and/or inconsistency in the evidence of those witnesses and accordingly, I have no hesitation to concur with the views of the learned Court below and as a result, the impugned conviction and sentence are hereby confirmed.

10. At this juncture, Mr. Choudhury, learned Sr. counsel, has in all his fairness, submitted that the petitioner is a very poor man and he has lost his job for entering into this adventure and as such the Court should take a lenient view as regards the sentence. He has also informed that the appellant was already in jail for one month after his conviction and as such this one month's custody period of the appellant, may be treated as conviction period. That apart, he has further submitted that an amount of Rs. 10,000/- as part payment of the fine imposed by the trial Court, has already been deposited as directed by this Court at the time of filing of the appeal and now he is ready to pay another Rs. 10,000/- as fine if the period so undergone is treated as sentence period.

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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
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गुवाहाटी न्यायपीठ

11. This Court finds enough force in the submission of the learned Sr. counsel because of the fact that the incident occurred long back in the year 1992-93 i.e., 14 years ago and by this time, he has also suffered a lot of mental and physical torture as this appeal has been hanging over his head for all the time and no fruitful purpose would be served if the appellant is sent to jail now. Taking into account the established facts and circumstances of the case and having given my anxious consideration to the submissions advanced by the learned counsel for the parties as well as there being no criminal previous record of the appellant, this Court is of the view that the ends of justice would be satisfied if the entire sentence period so awarded by the learned Judge under all heads of those sections, noticed above, is modified to the period of one month already undergone and the appellant is directed to pay further amount of Rs. 20,000/- (Rupees twenty thousand) only as fine in default of such payment to undergo RI for two months. It is ordered accordingly. It is made clear that the fine shall be deposited with the Special Judge, Assam Guwahati, in Special Case No. 2(C)/94 within two months from to-day.

12. Consequently, this appeal stands dismissed to the extent as indicated above.

13. Send down the case records forthwith.

Sd/- A. M. Saikia
Judge

P/No:- 49537

dt d. 07/3/06

CERTIFIED TO BE TRUE COPY
Atk on B. P. D. A. G. O. A.
Date 07/3/06
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76 Act 1 1872

07/3/06

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-144- 39-

ANNEXURE - 9

T. R. Form No. 9

Assam Schedule III (Sec. I), Form No. 64
(P. 72/42)

Challan No.

চালান নং

Treasury/Sub-Treasury

Challan of cash paid into the

State Bank of India

4/9/06
Guwahati

To be filled in by the remitter প্রেরকে পূৰ্ণ দৰিব				To be filled in by the Departmental Officer or the Treasury বিভাগীয় নাইবা কোষাগার বিষয়াই পূৰ্ণ		
By whom tendered কোনো দিহে	Name (or designation) and address of the person on whose behalf money is paid যান চৈ টকা দিয়া হব ভেঙৰ নাম (বা পদকী) আৰু ঠিকনা	Full particulars of the remittance and of authority (if any) প্ৰেৰিত টকা পইচাৰ আৰু দিয়া নিৰ্দেশ হাকিলে তাৰ সম্পূৰ্ণ বিৱৰণ	Amount টকাৰ সংখ্যা Rs. P. টকা পইচা		Head of Account হিচাবৰ শিতান	Order of the Bank বেংকৰ আতি নিৰ্দেশ
Name নাম Shri Haladhi Deka কোষ নং STATE BANK OF ASSAM RS. 20,000	SHRI HARU DEY STATE BANK OF ASSAM RS. 20,000	Fine amount 1/c with Spl. Case No. 2(944) Order passed on 9.2.06 by The Hon'ble High Court Total (সৰ্বমুঠ টকা)	20,000	00	0070 A.J.	Date Correct receive and grant receipt (Signature) Full designation of the officer ordering the money to be paid in
(in words) Rupees (আখৰত) টকা Twenty Thousand only. 6			To be used only in the case of remittance to Bank through an officer of the Government বেংকাৰী বিষয়াৰ সন্মিত বেংকলৈ টকা পঠিৱাৰ্ত্তে ব্যৱহাৰ কৰিব। Signature of Departmental Officer S.D.A. বিভাগীয় বিষয়াৰ চহী Office			
Signature (হহী) Date (তাৰিখ) Special Judge, Assam 19.4.06 Guwahati			Treasury Officer Account Agent			

Received Payment

Date

Treasurer (স্বাক্ষৰক)

Accountant হিচাব পৰীক্ষক

09 FEB 2010

Attested
Alsha Jan
Advocate

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ANNEXURE-10

To

Dated : 31/1/2008.

The General Manager(P)
N.F.Railway, Maligaon,
Guwahati-781011.

(For Kind Personal attention of Shri M.Dharmalingam,
CPO/N.F.Rly.)

Respected Sir,

Sub :- Payment of Final Settlement dues and Sanction
of Compassionate Allowance ~~ex-gratia~~ pension
etc.

Ref :- (i) Hon'ble Supreme Court of India Judgement
order No.10035/2006 dtd. 09-10-2007.

(ii) Hon'ble High Court, Assam (Guwahati)
Judgement order of 09-02-06 on CRL
appeal No.242/96.

(iii) Your memorandum No.19E/695(Q) dtd.06.10.97.

(iv) My appeal dtd.09.02.2007 with reminders
13.06.07 and 18.08.07 addressed to GM(P)/
Maligaon.

With due regards I beg to lay before you the following
few lines before you for your kind and sympathetic order to
save the wretched family from the jaws of hunger and disaster.

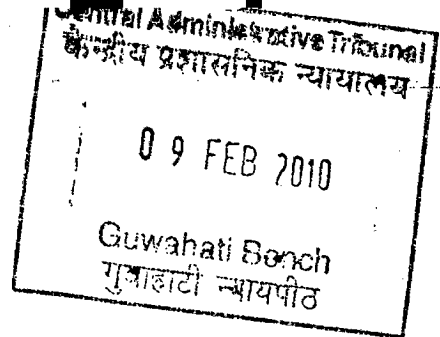
(1) While I was working as Sr.Clerk-cum-Care taker of
80 bedded Mess under SPO(W)/MLG, was convicted and punished by
the Court of CBI Special Judge, Guwahati, Assam and this was
not waived by the Hon'ble High Court, Assam, Guwahati. However,
it has reduced certain punishment. This was also upheld by the
Hon'ble Supreme Court of India. (References are quoted above
alongwith Xerox copies enclosed).

(2) Sir, I was finally removed by the administration
(GM(P)/ML) vide the memorandum quoted above (SL.No.iii) during
the period of subjudiced.

(3) Sir, I have applied for Final Settlement(FS) dues
to your kind honour quoted under reference (SL.No.iv) (Xerox
contd...2.

Attended
Usha Das
Advocate

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copies enclosed herewith). But to my utter distress I have received no reply of my appeal till date due to irony of fate.

(4) Sir, I was a poor-paid employee and had to maintain my large family members consisting of my wife, one unmarried student daughter, 2(two) school going sons, one unmarried sister and widow & old mother. The punishment imposed upon me is a bolt from the blue and so I have been passing the worst days of hardship at present.

(5) Sir, I am now death bed as I have been attacked by bronchial troubles with highest degree of hyper diabetis and my days are numbered to bid good bye to this world.

(6) Sir, I was a victim of circumstances resulting my penalties to the vice that came to me as a devil to destroy me and this situation brings my repentence. I pray peace before my departure to see my family without starvation.

In view of the above fact I fervently pray your kind honour to please pass order to finalize my FS dues, gratuity etc. I would request your honour to kindly sanction compassionate Allowance/~~ex-gratia~~ pension in my favour so that my family members could be saved from starvation and ruins. For this act of your kindness I alongwith my family members shall remain ever grateful to you.

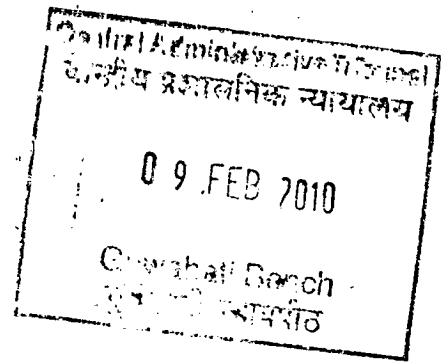
A word in reply will highly be solicited.

Haru Chandra Dey
Yours faithfully,

(Haru Chandra Dey)
Ex-Sr.Clerk
CPO's Office/Maligaon,
Gr.No.91/B,Nambari,
Hill Top Road,Maligaon,
Guwahati-781011.

Attested
Usha Das
Advocate

-156-147-42- ANNEXURE - 11



To,

The Chief Personal Officer (Administration)
N.F. Railway, Maligaon
Guwahati-11.

Dated: 29.9.2008

Sub :- Prayer for disposal of my appeal dated 5.11.1997 preferred against the order no.19 E/695 (Q) dated 06.10.1997 passed by the SPO/Welfare, N.F. railway, Maligaon imposing penalty of removal from Service.

Ref: - My reminder letter dated 24.08.1999, 02.02.2001, 29.03.2006 & 03.01.2008

Sir,

With due deference and profound submission, I begs to lay the following few lines before Your Honour for kind consideration and appropriate necessary action.

Sir, I was placed under suspension w.e.f. 14.10.1996 in connection with a case registered against me as Special Case No. 2(C)/94 and has been charged under Section 420/468/471 IPC R/w- Sec. 13 (2)/13 (1) (C) and (d) of the Prevention of Corruption Act, 1988. The Learned Trial Court was pleased to pass an order convicting me against the charges leveled against me.

Sir, being aggrieved with the said order dated 14.10.1996, I had preferred a Criminal Appeal being No. 242/96 before the Hon'ble High Court and the Hon'ble High Court after hearing the parties and on perusal of the evidence recorded by the Trial Court was pleased to modified the Judgment and order passed by the Learned Trial Court to the period of one month which I had already undergone and to pay an amount of Rs. 20,000/- only as fine instead of the various period of sentence awarded by the Learned Trial Court.

Sir, the order of penalty of removal from service dated 06.10.1997 has been issued on the basis of conviction which has been awarded by the Learned Special Judge, Assam by its Judgment and Order dated 14.10.1996, but the same has now reduced to a token penalty by the Hon'ble High Court vide Judgment and Order dated 09.02.2006. More so the memorandum of imposition of penalty of removal from service has been

Attested
Usha Sar
Advocate

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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
09 FEB 2010
Guwahati Bench
গুৱাহাটী ন্যায়ালয়

issued against me during the period when the Criminal Appeal No. 242/1996 has been admitted & and sub-judice before the Hon'ble High Court that too without giving me any opportunity to place my case before the authority without holding any disciplinary proceeding even no show cause notice has been issued prior to imposition of the said Major Penalty of removal from service. As such the same has been issued/imposed in violation the Principle of natural justice, Administrative fair play and in violation of the prescribed procedure in Railway Service Discipline & Appeal Rules, 1968 and other relevant rules in force.

Sir, though I had preferred the appeal before Your Honour against the memorandum of imposition of penalty of removal from service issued under no. 19.E/695 (U) dated 06.10.1997 and repeatedly approaching before Your Honour for disposal of the said Appeal in my favour considering the facts and circumstances of the case, but the same is yet to be dispose of.

Sir, I was a poor- paid employee and had to maintain my large family members consisting of my wife, one unmarried daughter, 2(two) school going sons, one unmarried sister, widow & old mother. The punishment imposed upon me is bolt from the blue and so I have been passing the worst days of hardship at present.

Sir, I am now death bed as I have been attacked by bronchial troubles with highest degree of hyper diabetes and my days are numbered to bid good bye to this world.

Sir, I was a victim of circumstances resulting my penalties to the vice that came to me as a devil to destroy me and this situation brings my repentance. I pray peace before my departure to see my family without starvation.

Sir, I have suffered a lot both mentally and physically since last several years and have been continuously facing tremendous financial hardships. Now I am in starvation as my child is in higher as well as lower classes till date and as such if my case/appeal is not considered symphetically, it will tell upon my family members. It is also pertinent to mention herein that the Hon'ble High Court has categorically observed that "the Appellant do not have any previous criminal records" and in view of that position and also considering the gravity of offence was pleased to reduce the entire sentence period awarded by the learned Special Judge to one month only which I had already under gone.

09 FEB 2019

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

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In the facts and circumstances as narrated above I most humbly and respectfully pray before Your Honour to review the order of imposition of penalty of removal from service issued under memo. No. 19(E)/695 (Q) dated 06.10.1997 by the SPO/Welfare, Maligaon and consider my case sympathetically by issuing an appropriate order in my Appeal by re-instating me in my service with all consequential benefits, so that, my family members could be saved from starvation and ruins. For this act of kindness I shall be remain grateful before Your Honour for ever.

Thanking You.

Yours faithfully

Sri Haru Chandra Dey

(Sri Haru Chandra Dey)
S/o- Late Bhupati Ch. Dey
Care taker (Under removal)
80 bedded mess, Maligaon
R/o- 91/B Numbari Hill Top Road
Guwahati-11, Kamrup, Assam

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ANNEXURE-12
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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 196 of 2008

Date of Order: This the 12th day of November 2008

The Hon'ble Sri Manoranjan Mohanty, Vice-Chairman

The Hon'ble Shri S.N. Shukla, Administrative Member

Sri Haru Chandra Dey,
S/o late Bhupati Chandra Dey,
Caretaker (under removal) 80 bedded Mess,
Maligaon,
Resident of 91/B, Nambari Hilltop Road,
Guwahati-781011.

.....Applicant

By Advocates Mr D.K. Sarma, Mr P.C. Boro
and Mr H.K. Das.

- versus -

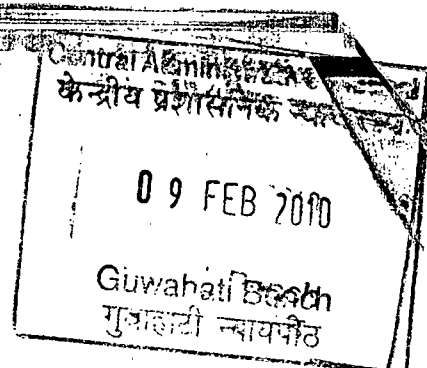
1. The Union of India, represented by the
General Manager,
N.F. Railway, Maligaon, Guwahati.
2. The Chief Personnel Officer (Administration),
N.F. Railway,
Maligaon, Guwahati-11.
3. The Sr. Personnel Officer (Welfare),
N.F. Railway, Maligaon,
Guwahati-11.

.....Respondents

By Advocate Dr J.L. Sarker, Railway Standing Counsel.

.....
Altered
H.K. Das
Advocate

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O.A.No.196/2008
ORDER (ORAL)
12.11.2008



M.R. MOHANTY, VICE-CHAIRMAN

Applicant, a Senior Clerk of N.F. Railways (engaged as Caretaker of 80-Bedded Mess of said Railways located at Maligaon near Guwahati in the State of Assam) was convicted (in a Criminal Case) Under Section 430/468/471 IPC read with Section 13(1)(c) & (d) and Section 13 (2) of Prevention of Corruption Act; 1988 and sentenced (by the Special Judge at Guwahati/Assam) to undergo rigorous imprisonment for 2 years and a fine of Rs.20,000/- (in default to undergo R.I. for 3 months) for having committed offences under Section 420 IPC; to under R.I. for One year and a fine of Rs.10,000/- (in default to undergo R.I. for 2 months) for having committed an offence under Section 468 IPC; to undergo R.I. for 6 months and a fine of Rs.2,000/- (in default to undergo R.I. for one month) for having committed an offence under Section 471 IPC and it was directed (by the said Criminal Court in its judgment dated 14.10.1986 rendered in Special Case No.2(C)94) that all those sentences were to run concurrently. The case before the aforesaid Criminal Court was as under:-

"..... during the year 1992-93, accused Haru Ch. Dey was posted and functioning as Caretaker of 80-bedded Mess, N.F. Railway, Maligaon. During the period December, 1992 and January and February, 1993, the accused was absent from duty, but during this period, he submitted requisition/indent for supply of materials to the Pandu Stores Depot, N.F. Railway and also collected materials is against them. Those requisitions were all forged. The accused did receive articles against those requisitions. In the month of December, 1992 and January and February, 1993. The articles so collected were not brought to the Store room of the said mess and those were

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misappropriated. According to the prosecution, the accused even collected certain materials in the name of Rang Bhaban belonging to N.F. Railway although the above articles are not required for Rang Bhaban. The amount of the total article collected by the accused is around Rs.94,000/- on 12.2.93 the accused was apprehended at the Store Depot, Pandu while he was waiting to collect goods on the basis of the forged indents. Therefore, stock verification was made both at 80-bedded mess and at Rang Bhaban. The goods collected by the accused was not found in the stock. On FIR being lodged, CBI registered RC 25(A)93. Usual investigation was made and during investigation, specimen writings, signature, admitted writings and questioned documents were sent to the CEQD, Calcutta. After due investigation and after obtaining necessary sanction for prosecution, charge sheet was submitted on 5.1.94.

On consideration of charge, charge under section 409/420/468/471, IPC and section 13(2) r/w section 13(1)(c) & (d) of the PC Act was framed on 25.7.95....."

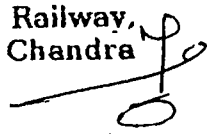
2. Upon his conviction by the Criminal Court, as aforesaid, the Applicant was placed under suspension with effect from 14.10.1996 vide an Order dated 01.10.1997. Relevant portion of the said Order dated 01.10.1997 reads as under:-

"Whereas conviction of Shri Haru Chandra Dey, Care Taker, 80-Bedded Mess, NF Railway, Maligaon (Name & designation of the Railway servant), in respect of a criminal offence under Case No.2(C)94 between State -Vs- Shri Haru Chandra Dey.

And whereas the said Shri Haru Chandra Dey is deemed to have been suspended with effect from the date of detention i.e. from 14.10.96, in terms of Rule 3(2) of Railway Servants (Discipline and Appeal) Rules, 1968 and shall remain under suspension until further orders."

4. On 06.10.1997, a Memorandum was issued removing the Applicant from services with immediate effect. Relevant portion of the said Memorandum dated 06.10.1997 reads as under:-

"Consequent on Court's verdict issued by the Special Judge, Assam, Guwahati, on Special Case No.2(C)94 dated 14.10.96 between State -Vs- Haru Chandra Dey (accused), Shri Haru Chandra Dey, designation - Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati-781011, son of Late Bhupati Chandra



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Dey, is informed that on a careful consideration of the circumstances of the case in which he was convicted on 14.10.96 under Section No.420/468/471, IPC and Section 13(2) r/w Section 13(i)(c) & (d) of the Prevention of Corruption Act, 1988, the undersigned considers that his conduct, which has led to his conviction, is such as to render his further retention in public service, undesirable. The undersigned has, therefore, come to the conclusion that Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, Maligaon, S/o Late Bhupati Chandra Dey, is not a fit person to be retained in service and so the undersigned in exercise of power conferred by Rule 14(i) of the Railway Servants Discipline & Appeal Rules, 1968, impose upon Shri Haru Chandra Dey, the penalty of removal from service with immediate effect."

5. It was stated that the order of 'removal' was issued in exercise of the powers under Rule 14(i) of the Railway Servants (Discipline & Appeal) Rules, 1968. Relevant portion of Rule 14 of the Rules of 1968 reads as under,-

"14 Special procedure in certain cases-

Notwithstanding anything contained in Rules 9 to 13: -

(i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal case; or

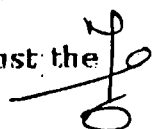
(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules.

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

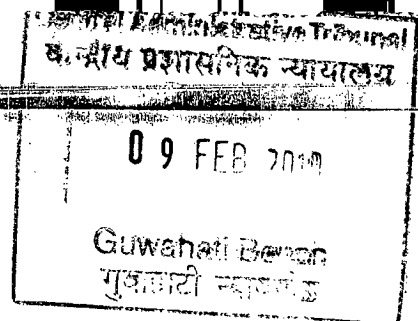
Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

6. In the above said Memorandum dated 06.10.1997 the Applicant was intimated about the availability of Appeal (against the



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-154- 49 -

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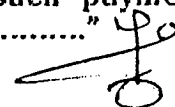
order of 'removal') within 45 days. Relevant portion of the said Memorandum dated 06.10.1997 reads as under:-

"Appeal against this order will lie with the Chief Personnel Officer, Admn., NF Railway, within 45 days of the receipt of this order."

7. It appears from Annexure-G to this O.A., that the Applicant preferred an Appeal to C.P.O. (Admn) of N.F. Railway at Maligaon; wherein he pointed out about Admission of his Criminal Appeal (in the Hon'ble High Court) that was directed against the order of conviction passed by the Trial Court and about grant of bail and pendency of the said criminal Appeal and about passing of the 'removal' order during pendency of the Criminal Appeal etc.

8. As it appears from Annexure-H to this O.A., the abovesaid Criminal Appeal (No.242/96) was disposed of (by the Hon'ble High Court at Guwahati) on 09.02.2008 confirming the conviction. The sentences were, however, modified for the following reasons as recorded by the Hon'ble High Court:-

"..... because of the fact that the incident occurred long back in the year 1992-93 i.e. 14 years ago and by this time, he has also suffered a lot of mental and physical torture as this appeal has been hanging over his head for all the time and no fruitful purpose would be served if the appellant is sent to jail now. Taking into account the established facts and circumstances of the case and having given my anxious consideration in the submissions advanced by the learned counsel for the parties as well as there being no criminal previous record of the appellant, this Court is of the view that the ends of justice would be satisfied if the entire sentence period so awarded by the learned Judge under all heads of those sections, noticed above, is modified to the period of one month already undergone and the appellant is directed to pay further amount of Rs.20,000/- (Rupees twenty thousand) only as fine in default of such payment to undergo RI for two months....."



09 FEB 2008

Guwahati Bench
गुवाहाटी न्यायालय

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9. Applicant carried the matter (of confirmation of his conviction) to the Hon'ble Supreme Court of India (in No.10036/06) un-successfully and, after dismissal of his case (on 09.10.2007) in the Apex Court, he addressed a representation (on 31.01.2008) to the General Manager of N.F. Railway (under Annexure-J) with prayer to grant him (Applicant) Compassionate Allowances/ex-gratia pension to save himself and his family. Such pensions are available to be granted under Rule 65 of Railway Services (Pension) Rules, 1993; relevant portion of which reads as under:-

"65. Compassionate allowance.— (1) A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity:

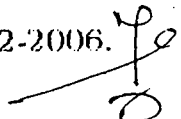
Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than three hundred seventy five rupees per mensem.

10. Applicant has made the following prayers in the present case:-

"8.1 The impugned order of imposition of penalty of removal from service dated 06.11.1997 (Annexure-F) may be set aside and quashed directing the respondents to re-instate the applicant in service.

8.2 The respondent No.2 may be directed to consider and dispose of the appeal dated 05/11/1997 (Annexure-G) preferred against the order dated 06/10/1997 on the basis of changed circumstances and findings and observations made by the Hon'ble High Court in its judgment and order dated 09-02-2006.



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-156- 51-
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09 FEB 2010
General Search
रुमाहरी न्यायपीठ 183

8.3. The respondents may be directed to pay/release all the consequential benefits payable to the applicant forthwith i.e. arrear salary, allowances, increments, promotion etc.

8.4 Cost of application

8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper."

11. Before filing the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, the Applicant claims to have preferred a representation (on 29.09.2008) to CPO (Admn) of N.F. Railway under Annexure-K.

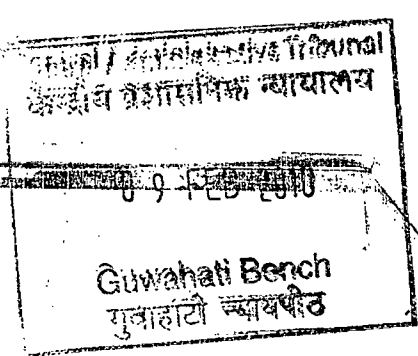
12. Heard Mr H.K. Das, learned Counsel appearing for the Applicant, and Dr J.L. Sarkar, learned Standing Counsel for the Railways (to whom a copy of this Original Application has already been supplied) and perused the materials placed on record.

11. In course of hearing, Mr Das, learned Counsel appearing for the Applicant, stated that the order of removal having passed at a time, when the conviction and order of sentence (passed by the Trial Court) were stayed/suspended by the Hon'ble High Court during pendency of Criminal Appeal, the same (order of removal) was bad and non-sustainable/non-est in the eyes of law and, as such, same should be ignored/quashed and, as a consequence, the Applicant should be asked to be treated as a continuing staff of the Railways. On the other hand, Dr J.L. Sarkar, learned Standing Counsel for the Railways, pointed out that since it is the case of the Applicant that his Appeal under Annexure-G dated 05.11.1997 and Representation under Annexure-J dated 03.01.2008 and Annexure-K dated 29.09.2008 are still pending with the authorities/Respondents, this case is a

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premature one and, therefore, the matter need be remitted back to the Respondents for passing orders.

14. Having heard the learned Counsel appearing for the parties, this case is hereby disposed of with direction to the Respondents to consider the grievances of the Applicant (as raised under Annexure-G dated 05.11.1997, Annexure-J dated 03.01.2008 and Annexure-K dated 29.09.2008 and in the present Original Application) and pass a reasoned order within 120 day from the date of receipt of a copy of this order.

15. With the above observations and directions this case stands disposed of.

16. Send copies of this order to the Applicant and the Respondents (with copies of this O.A.) and free copies of this order be supplied to the Advocates of both parties.

Sd/-
M.R. MOHANTY
VICE CHAIRMAN
Sd/-
S.N. SHUKLA
MEMBER (A)

100% COPY

22/11/08

22/11

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-138-53-
ANNEXURE-13

155
Lbcs
1.12.08

Dated:-01.12.08

~~RECEIVED~~
DEPT. OF RAILWAYS
OFFICE OF THE
CHIEF PERSONAL OFFICER
MALIGAON

To,

The Chief Personal officer, (Administration)
N.F. Railway, Maligaon, Gwahati-11.

Sub:- Submission of Certified Copy of the order dated 12.11.08 passed by the Hon'ble CAT, Guwahati Bench in O.A. No. 196/08 (Sri Haru Ch. Dey - Vs- union of India & others.)

Central Administration
কেন্দ্রীয় প্রশাসন

09 FEB

Guwahati B
গুৱাহাটী

Sir,

With due regards, I hereby most respectfully inform Your Honour that I had preferred the above mentioned Original Application before the Central Administration Tribunal, Guwahati bench being aggrieved by the action of imposition of major Penalty of removal from service and inaction of non-disposal of my appeal inspite of my repeated approach. The Hon'ble Tribunal after hearing the parties including the Railway Advocates was pleased to dispose of the said O.A. preferred by me by its order dated 12.11.08 with a direction to consider my grievances more particularly stated in my representations dated 05.11.1997, 03.01.2008 and 29.09.2008 and to pass a reasoned order within period of 120 days from the date of receipt of this order.

Therefore, I earnestly request before Your Honour to consider my case suitably and symphetatically on the basis of the changed circumstances and reduction of conviction by the Hon'ble High Court. The copy of the aforesaid order dated 12.11.08 passed by the CAT, Guwahati Bench is annexed herewith for your ready reference.

Thanking You.

Yours Faithfully

Haru Ch. Dey

Haru Chandra Dey
S/O- late B.C. Dey
Caretaker (under removal)
80 bedded mess, Maligaon
R/O- 91/B Numbari Hill
Top Raod, Guwahati- 11.

3/C

Attested
Alsha Das
Advocate

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ANNEXURE-14

केन्द्रीय प्रशासनिक

09 FEB 2

Guwahati B
गुवाहाटी न्याय

Speaking Order

Sub:- Hon'ble CAT/Guwahati's order dtd 12.11.08 in OA No. 196 of 2008 - Sr Haru Ch. Dey -Vs U.O.I & Ors.

In compliance to the direction of the Hon'ble Tribunal in their above OA, the undersigned perused the order of the Hon'ble Tribunal in OA No. 196 of 2008, copy of the OA alongwith its annexures and relevant records/documents of the applicant Sri Haru Ch. Dey, Ex. Sr. Clerk cum Caretaker of 80 bedded Mess of N. F. Railway, Maligaon

The applicant filed an application (OA No.196/08) before the Hon'ble Tribunal praying relief's that the impugned order of imposition of penalty of removal from service dated 06.11.1997 (Annexure-F) may be set aside and quashed directing the respondents to re-instate the applicant in service with all consequential benefits.

He also prayed for a direction to direct the respondent No.2 (CPO/A) to consider and dispose of the appeal dated 05.11.1997 (Annexure-G) preferred against the order dated 06.10.1997 on the basis of changed circumstances and findings and observations made by the Hon'ble High Court in its judgement and order dated 09.02.2006

Hon'ble Tribunal in their order dtd.12.11.08 disposed of the OA with direction to the Respondents to consider the grievances of the applicant (as raised under Annexure-'G' dtd. 05.11.97, Annexure-'J' dtd. 03.1.2008 and Annexure-'K' dtd. 29.9.2008 and in the present original application) and passed a reasoned order.

The undersigned perused the memorandum No. 19E/695(Q) dated 06.10.1997 wherein the Disciplinary Authority, SPO(W)/MLG awarded the applicant the penalty of removal from service based on the verdict dtd. 14.10.1996 issued by the Special Judge, Guwahati, Assam on special case No.2(C)94. In the said judgement the applicant was convicted under Section 420, 468 & 471 IPC and Section 13(2) read with Section 13(1)(C)&(d) of the prevention of corruption Act,1988. The Disciplinary Authority did not grant applicant compassionate allowance to applicant.

The undersigned perused the appeal dtd. 05.11.1997 preferred by the applicant as annexed as Annexure-'G' to OA. The said appeal does not appear to have been received in this office. However in the said appeal the applicant stated that he preferred an appeal before the Hon'ble Gauhati High Court. The appeal was admitted and interim bail was granted and during pendency of the said appeal before the Hon'ble High Court, the authority removed him from service. As such he prayed for

Contd. to Page-2

Attested
Lika Das
Advocate

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- 180 -

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09 FEB 2010
Guwahati Bench
গুৱাহাটী ন্যায়ালয়

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appropriate order recalling/rescinding the Removal Memo dtd. 06.10.1997. The undersigned perused the appeal dtd. 31.1.08 also as annexed as Annexure-'K' to OA, which is repetition of his earlier appeal dtd. 05.11.97.

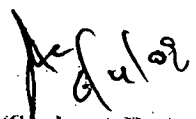
The undersigned perused the judgement dtd. 14.10.96 given by the Hon'ble Judge in Special case No.2(C)94 and the judgement dtd. 09.02.06 given by the Hon'ble High Court in Criminal Appeal (No. 242/96). The applicant was convicted in a criminal charge and was in jail. Subsequently he was released on bail by an appeal in the Hon'ble High Court. It appears from the OA and its annexures that the applicant did not inform the fact to the authority which is unbecoming of a Railway servant. The Disciplinary Authority has taken correct decision on the finding in the special case No.2(C)94 in the departmental proceeding as per service conduct rules. Again the Hon'ble High Court in the judgement dtd. 09.02.06 confirmed the order dtd. 14.10.1996, wherein the Hon'ble High Court did not find any infirmity and/or inconsistency in the evidence of those witness while concurring with the views of the Learned Court below.

In view of the above I do not find any reason to interfere in the order of Disciplinary Authority. As such, I uphold the penalty of removal from service of the applicant vide Memorandum No.19E/695(U) dtd. 06.10.1997.

The undersigned perused the representation dtd. 31.1.2008 of the applicant as annexed as Annexure-'J' to OA. The applicant prayed for payment of FS dues and sanction of compassionate allowance/ex-gratia pension etc.

The applicant was convicted for forgery, cheating and corruption in a criminal case and as a result of which he was removed from service. He was sentenced to jail for one month. The ground of his removal does not deserve any special consideration. As such, compassionate allowance is not granted. However, FS dues due to him will be paid (as entitled to a staff removed from service) on submission of necessary documents viz, mode of payment

The appeals/representation of the applicant with the OA is disposed of accordingly.


(Sushant Jha)
Chief Personnel Officer
N. F. Railway: Maligaon

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ANNEXURE-15

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ASSISTANT GENERAL MANAGER

Office of the
General Manager(P)
Maligaon

dated- 09-04-09

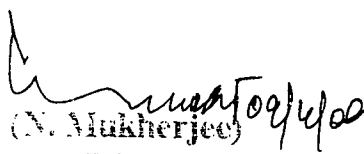
General Manager (P) Maligaon কেন্দ্রীয় প্রশাসনিক কার্যালয়
09 FEB 2009
Guwahati Bench গুৱাহাটী ন্যায়পীঠ

No.E/170/LC/HS/1117/08

To ✓
Sri Haru Ch. Dey
S/O Late Bhupati Ch. Dey
91/B, Nambari Hilltop Road, Maligaon
Guwahati-11

and Dispute of Representations dated 05.11.97, 03.01.08 and
and in compliance to the Hon'ble CAT/GHY order dated
12.11.08 in OA No. 196/08- Sri Haru Ch. Dey -Vs- U.O.I &
A.P.O.

In compliance to the Hon'ble CAT/GHY's order dtd. 12.11.08 in OA No.
196/08, the Competent Authority (CPA/N. E. Railway) has passed Speaking
order to dispose of the Representations dated 05.11.97, (Annexure-G of OA No.
196/08) 03.01.08 (Annexure-H of OA No. 196/08) and 29.9.08 (Annexure-K of
OA No. 196/08) as well as the said original application. The Speaking order
dated 06.02.09 is enclosed herewith for your information and acknowledgement
please.


(N. Mukherjee)
APO/LC

For General Manager(P)/MLG

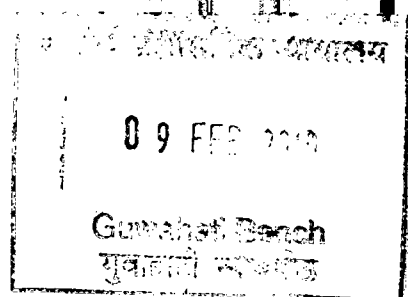
Attested
Isha San
Advocate

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-162-

-59-

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ANNEXURE-16



189

Dr. Subrato Bose
M.B.B.S., M.S.

IPX SPECIALIST

FOR APPOINTMENT

Contact - (0361) 2571985

0361-2571019, Cell - 98640 61465

Raj Optics & Health Care Clinic

Maligaon Chariali, Guwahati-12

Shri H. C. Dey.

To whom it may concern.

Undified that Shri H.C. Dey,
suffering from Diabetes is having
Diabetic retinopathy & cataract.

His vision is low
to be active. He has been
advised surgery after
proper control of his Diabetic
status. At present his visual
status is not fit for paperwork.

~~Dr. Subrato Bose~~

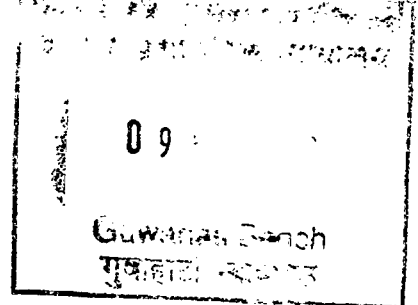
Visiting Hours : MORNING : 10.30 a.m. (Sunday Off)
EVENING : 5.30 p.m.

18/05/2019.

Attested
Usha Das.
Advocate

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-163-

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Dr. Subrato Bose
M.B.B.S., M.S.
EYESPECIALIST

FOR APPOINTMENT
Contact - (0361) 2571985
0361-2571019, Cell - 98640 61465
Raj Optics & Health Care Clinic
Maligaon Chariali, Guwahati-12

Shri H. C. Roy.

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x 1 ph.

~~18/05/2009~~

Visiting Hours : MORNING : 10.30 a.m. (Sunday Off.)
EVENING : 5.30 p.m.

Attested
Usha Das
Advocate

MBBS (Dib.), Dip. Diab. Care (Aust.), MDRC (DRC, Madras), FCCP (New Delhi)
Regd. No. : 8439 (AMC)
DAIBETOLOGIST
Life Member of Research Society for Study of Diabetes in India (RSSDDI)
Life Member of Indian Diabetes Association
Life Member of Diabetes Foot Society of India

Mob. No-9957550541
Ph. No-0361-2432807

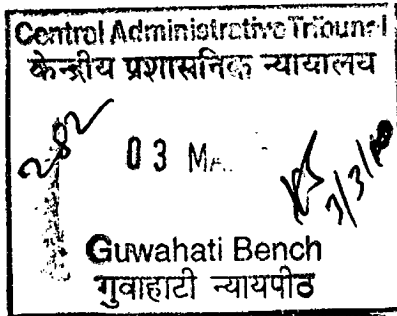
Residence :
Bungalow No. 433, Nambari,
(Near Maligaan St. Mary's School)
Guwahati-781011, Assam
Tel. No. : 0361-2672111 (O), 2670866 (R)
Mobile : 9435550113
E-mail : hiranghy@satyam.net.in

Name Shri H. C. Dey Age 56 Sex M Ht. 5' 6" Wt. 140 Date 24/3/02

History & Findings	Rx	Morning	Afternoon	Night	Before Food	After Food
SP @ @ fern @ RAS = 294mg/l Styptol inadeq W? i @ <u>AS = 140/80</u> Ash Blum pr A/E - main Ureg, Rr + 237 111	(1) Recosol M-30 (cont) (2) Galvus (GALVUS) (50mg) (3) Zady (50mg) (4) Felvex Plus Calc Seriflow Tot (Theo Bldk)	20 ① ① ① R -	x x ⊖ ⊖	20 ① ① ⊖ ⊖	✓ ✓ x ⊖ ⊖	X X X6da 10 da ⊖

Attested
Usha Das.
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI



O. A. NO. 96 /2009

BETWEEN

Smti. Anita Dey

... Applicant

-AND-

The Union of India & others.

... Respondents.

-AND-

IN THE MATTER OF

An Additional statement of facts on behalf of the
Applicant to highlight the subsequent
development in the aforesaid case.

MOST RESPECTFULLY SHEWETH:

1. That the Applicant begs to state that during pendency of the instant Original Application, the husband of the present Applicant expired and as such the applicant preferred an application dated 16.12.2009 before the Respondent Authority to consider for appointment of her son on compassionate ground as there is no earning source of Income in the entire family which consists the old mother-in-law of the present applicant, two sons and one daughter, all are students.

A copy of the application dated 16.12.2009 is annexed herewith
and marked as ANNEXURE- 17.

2. That the Applicant begs to state that the aforesaid application dated 16.12.2009 for compassionate appointment has been rejected by the Respondent Authority on the ground that in case of removal there are no provision for compassionate appointment and the said rejection has been duly communicated to the applicant vide order dated 26.02.2010.

A copy of the aforesaid letter of rejection dated 26.02.2010 is
annexed herewith and marked as ANNEXURE-18.

Anita Dey

I undertake to serve a
copy of additional statement
on Mr. K. K. Biswas, Adv. Rly
as and when he will be available
Anita Dey 03/03/2010

Filed by
the applicant through
Anita Dey
Advocate
03/03/2010

3. That the Applicant begs to submit that under the aforesaid circumstances if this Hon'ble Court would not interfere with the order of removal of the husband of the Applicant, the family of the Applicant would suffer irreparable loss and injury.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
03 MAR 2010
Guwahati Bench
गुवाहाटी न्यायपीठ

VERIFICATION

I, Smti. Anita Dey, Wife of Late Haru Dey, Resident of 91/B, Namhari Hilltop Road, Guwahati-781011 in the District of Kamrup (Assam) do hereby verify that the Statements made in paragraphs 3 are true to my knowledge and those made in paragraphs 1, 2 are believed to be true on legal advice and that I have not suppressed any materials facts before this Tribunal.

AND I sign this verification on this 3rd day of March 2010 at Guwahati.

Anita Dey

Signature of the Applicant

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ANNEXURE-17

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To,
The Chief Personal Officer,
NF RLY, Maligaon
Guwahati - 11

Date: 16/12/09

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
03 MAR 2010
Guwahati Bench गुवाहाटी न्यायपीठ

Sub: Prayer for appointment on compassionate ground
Ref: Your speaking order no. NO.E/170/LC/NS/1117/08 date: 09/04/09

Respected Sir,

With due regards and humble submission I beg to inform you the following few lines for favour of your kind consideration and favourable order please.

That Sir, my husband, Haru Chandra Dey had been working as Sr. Clerk-Cum Caretaker of 80 Bedded Mess under your kind control. It is my utter distress that due to certain unwilling error of my deceased husband, his service was terminated. However, as the consequence of the judgement of the judiciary, he applied for final settlement. All documents and paper have already been submitted at your end. The dues are yet to be paid.

That Sir, due to prolong ailment of my deceased husband owing to Diabetic-2 attack, he died on 05/11/09 leaving my and two college going sons and one unmarried student daughter. In order to give medical treatment to my deceased husband the little money we had, that has been spent. He was out of service for a long time. Now, the family is standing at the verge of impending danger.

That Sir, it is my earnest prayer to you that to extend your helping hand to a poor and helpless family like ours by providing an employment to my elder son Shri Raja Dey (DOB 30/08/84) who has passed out Class XII-(Sc) with good result. I have no other source to provide education to my children. And if no one is engaged in a job our family will go to starvation due to lack of income in the present sky-rocketting price rise. Separate Bio-Data of Raja Dey with testimonials is enclosed herewith.

In the circumstances stated above, I would fervently pray your honour to please consider my prayer as stated above. For this act of your kindness I shall remain ever grateful to you.

Enclosed: -

- (1) Death- Certificate of
Haru Chandra Dey
- (2) AISSE & AISSCE marksheets
and pass certificate
- (3) Caste Certificate
- (4) Birth Proof/ Admit Card

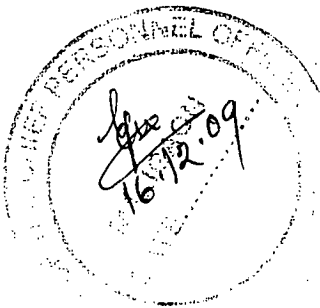
Yours faithfully,

Anita Dey

(Anita Dey)

W/o Late Haru Ch. Dey
Ex- Sr Clerk, CPO's office, Maligaon.
C/o Narayan Ch. Dey
91/B, Nambari Hill Top Road
Maligaon, Guwahati- 11

O/C



Attested
Alsha Das
Advocate

- 4 -

ANNEXURE-18

196

N.F. Railway

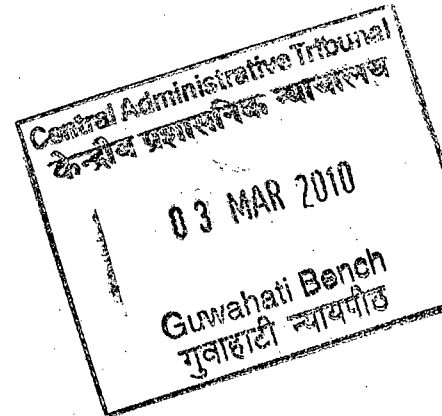
Office of the
General Manager(P)
Maligaon

No.E/195/15/Misc (Q) Pt.II

dated- 26-02-10

To,

Smt Anita Dey
W/o Lt. Haru Ch. Dey
Ex- Sr. Clerk-Cum-Caretaker
of 80 bedded Mess
CPO's Office/MLG
C/o N. Dey, Rly. Qrs. No. 91/B,
Nambari, Hill Top Road,
Maligaon, Guwahati- 11




Sub:- Appointment on Compassionate ground.

Ref:- Your application dt. 05-01-2010.

Your application under reference was put up to competent authority for appointment of your son on compassionate ground, but competent authority has observed as under:-

" CGA is not admissible in case of Removal"

This is for your information.

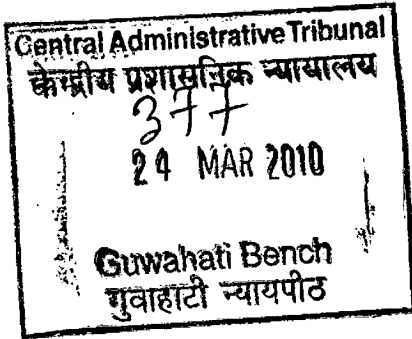

26.02.10
(S. A. Ahmed)
APO/LC
For General Manager(P)/MLG

Attested
Usha Das
Advocate

-170 -

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



O.A. No. 96 of 2009

Smt. Anita Dey

(substituted for Late Haru Chandra Dey)

..... Applicant.

-Vrs-

Union of India and others

..... Respondents.

Dy. C.P.O. / HQ.,
 Dy. सी.ए.ओ.,
 Dy. सी.ए.ओ.,
 N. F. Rly/Mlg.
 741011

IN THE MATTER OF:

**AMENDED WRITTEN STATEMENT BY
THE ANSWERING RESPONDENTS.**

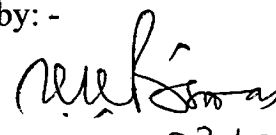
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Filed on: 23-03-2010

Place: Guwahati

Filed by: -


 (K.K. Biswas)
 Advocate

23/03/10

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

O.A. No. 96 of 2009

Smt. Anita Dey

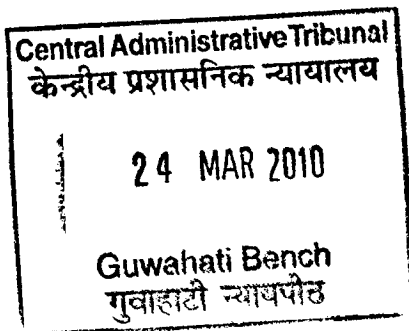
(substituted for Late Haru Chandra Dey)

..... Applicant.

-Vrs-

Union of India and others

..... Respondents.



IN THE MATTER OF:

**AMENDED WRITTEN STATEMENT BY
THE ANSWERING RESPONDENTS.**

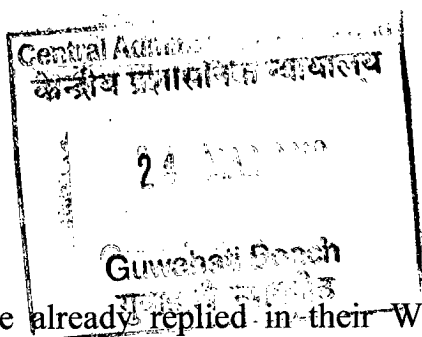
The answering Respondents most respectfully sheweth,

1. That the answering Respondents have gone through the copy of the amended application filed by the above named Applicant and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are borne on records all other averments/allegations made in the application are hereby emphatically denied and the Applicant is put to the strictest proof thereof.
2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However the answering Respondents confined their replies to those points/allegations/averments of the Applicant which are found relevant for enabling a proper decision on the matter.
3. That the Respondents beg to state that for want of the valid cause of action for the Applicant the application merits dismissal as the application suffers from wrong representation and lack of understanding of the basic principles followed in the matter as will be clear and candid from the statements made hereunder:

Contd.....P/2 that the answering

Filed by:
N. F. 19/Mlg.
23/03/10
198 Advocate
Dy. C.P.O./HQ.
पू. सी. रेलवे, मालगोवा.
N. F. 19/Mlg.
01/011

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//2//



अतिरिक्त
का.मि.क. अधिकारी/मुख्यालय
Dy. C.P.O./HQ.,
पू. सी. रेलवे, मालीगांव.
N.F. 14/Mlg.
199

4. That the answering Respondents have already replied in their Written Statement in reply to the Original Application and reiterate their earlier submission of the same before this Hon'ble Tribunal for Adjudication and Justice in the matter.
5. That the answering respondents most humbly submit the case history on the subject above of Application is as under:

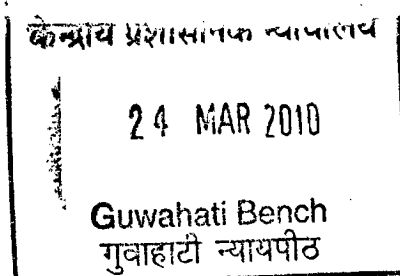
Advocate
23/03/10

Late Haru Ch. Dey Ex. Sr. Clerk(E) was initially appointed as substitute Peon in the Chief Personnel Officer's office w.e.f. 24.11.1973. While working as Sr. Clerk(E)-cum-caretaker of 80 bedded mess of N.F. Railway at Maligaon, he was convicted (in a criminal case) under section 420/468/471/IPC read with section 13 (1)(C) & (d) and section 13(2) of Prevention of Corruption Act 1988 by the Special Judge of Guwahati in its judgement dated 14/10/96 for collecting materials from Railway Store department, Pandu (herein called Pandu Stores Depot) by submitting forged requisition/indent and misappropriating those Railway materials worth Rs. 94,000/- (Rupees Ninety Four Thousand) which were meant for the 80 bedded Mess as well as Rang Bhawan and the said fact was not informed to the concerned authority by the Late Haru Ch. Dey. Against the aforesaid judgement and order dated 14/10/1996 passed by the Learned Special Judge, Guwahati the Late Haru Ch. Dey preferred a Criminal Appeal being No. 242/96. The Hon'ble High Court dismissed the said appeal by its order dated 09/02/2006 upholding the Learned Special Judge's order mentioned above with modifications "To the period of 1 month already undergone and the Appellant is directed to pay further amount of Rs. 20,000/- (Rupees Twenty Thousand) only as fine in default of such payment to undergo R.I. for 2 months. It is ordered accordingly. It is made clear that the fine shall be deposited with the Special Judge, Assam, Guwahati in special case no. 2 (C)/94 within 2 months from today. Consequently, this appeal stands dismissed to the extent as indicated above."

Late Haru Ch. Dey filed O.A. No. 196/2008 on 12/11/2008 in CAT/Guwahati and the Hon'ble Tribunal disposed of the said O.A. by its order with directions to the Respondents Railway Administration to consider the grievances and passed a reasoned order within 120 days from the date of receipt of the copy of the order

Contd.....P/3 from the Hon'ble

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Dy. C.P.O./HQ.
श्री सी रेल्के, मालीगॉन.
N. F. IV/M

from the Hon'ble CAT. The Chief Personnel Officer, N.F. Railway, Maligaon after all careful observations gone through the Representation of Late Haru Ch. Dey dated 1/12/2008 and complied with the directions of the Hon'ble CAT's orders mentioned above under his reasoned and speaking order dated 06/04/09 stating "The Applicant was convicted for forgery, cheating and corruption in a Criminal Case and as a result of which he was removed from service. He was sentenced to jail for 1 month. The ground of his removal does not deserve any special consideration."

Advocate
23/03/10

The photocopies of Spl. Judge/GHY's order dated 14.10.96 in Special case No. 2(C)/94, Hon'bel High Court, Guwahati's order and Hon'ble CAT's order mentioned above were enclosed earlier as Annexures - 4, 8, 12, 13 & 14 of the O.A. and again are resubmitted herewith.

PARA-WISE COMMENTS:

- 5.1 That with regard to the statement made under para-4.1 of the O.A. it is stated that these are all matters of records and their acceptance are subject to verification and found to be of lawful, genuine and in order.
- 5.2 That with regard to the statement made under para-4.2 of the O.A. made by the Applicant it is stated that the act of Late Haru Ch. Dey and his performance involving Criminal and prevention of corruption of offences have been elaborately recorded by the Learned Special Judge in his judgement dated 14/10/96 and recorded that the charges framed against the accused Late Haru Ch. Dey, were proved and found the accused Late Dey guilty to be of various sections of IPC, CRPC and prevention of Corruption Act 1988 and convicted him under different sections of the said Acts. The relevant portions of the Special Judge and are excerpted from his judgement are reproduced hereunder:

"During trial, prosecution has examined 96 witnesses. There are 104 numbers of documents from the side of prosecution. The statement of the accused u/s 313, CRPC was recorded. Defence has not adduced any evidence. The Defence is that of denial simplicitor".....

Contd.....P/4 I find that

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24 MAR 2010
Guwahati Bench
गुवाहाटी न्यायपीठ

//4//

201
Dy. C.P.O./M.Q.
पु. सी. रेल्वे, मालीगाँव.
N. F. Rly/Mlg.
-01011

"I find that the Railway servant can be removed or dismissed from service either by the appointing authority or an authority of equivalent rank or any higher authority. Under sub-clause C of section 19, the sanction is required to be given by an authority competent to remove the public servant from the office. According to PW 3 even a Senior Scale officer of Group B was competent to remove the accused from service whereas he was a Senior Scale Officer of Group A.".....

"As the accused Haru Dey cheated his employer, the N. F. Railway by deceitful means and thereby induced the Store Depot, N.F. Railway, Maligaon to deliver goods worth Rs. 94,000/- to him which was the property of the said Railway. I convict accused Haru Ch. Dey u/s 420, IPC..... Further, it was this accused Haru Ch. Dey who used the exhibits 1 to 27 and Ex 58(5) and 59(5) to defraud the Railways. It can therefore safely be concluded that accused Haru Ch. Dey was a party/privy to the above forgery. Accordingly, I convict him u/s 468 of the IPC."

Advocate
23/03/10

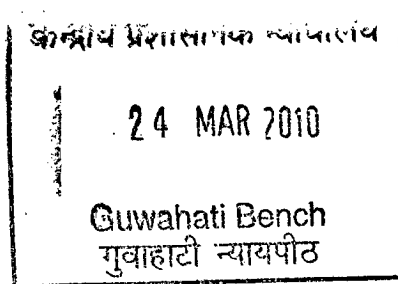
"Coming to the offence u/s 471, IPC and in view of my forgoing discussion it is well established that at the time of using Exs 1 to 27 and Exs 58(5) and 59(5) the accused had knowledge that these are forged documents and still he used the same as genuine and as such I convict the accused U/s 471, IPC."

"I have considered the submission and the facts and circumstances of the case. The accused entered into service as Grade II (wrongly inserted instead of Grade IV) and then rose to the post of the Care Taker of the Railway employees. But the state of service as employer he indulged in different activities and by forging documents cheated the Railway to a tune of Rs. 94,000/-. **THE CORRUPTION IN SERVICE BY THE PUBLIC SERVANT HAS BECOME A RAMPANT FEATURE AND AS SUCH DETERRENT PUNISHMENT IS CALLED FOR. HENCE I SENTENCE THE ACCUSED AS UNDER.**"

Contd.....P/5 for the offence

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১৭/০৩/১০
ডা. সুনীল কুমার অধিকারী/মুখ্যালয়
Dy. C.P.O./M.O.
৯: সৌ. রেলওয়ে, মালগাঁও.
N. F. Kly/MIB.
২০২

“For the offence u/s 420 IPC: The accused is sentenced to rigorous imprisonment for 2 years and fine of Rs. 20,000/-, in default to RI for 3 months.

For the Offence u/s 468 IPC: The accused is sentenced to RI for 1 year and a fine of Rs. 10,000/- i/d to RI for 2 months.

For the Offence u/s 471 IPC: The accused is sentenced to RI for 6 months and a fine of Rs. 2000/- i/d to RI for 1 month.

For the Offence u/s 13 (2) R/W section 13(1)(c)(d) of the PC Act:

All the sentences shall run concurrently.”

Thus the contention of the Applicant made here in this paragraph is not admissible and acceptable, both from the point of facts and law, at all on the face of the recorded evidentially proof of the Learned Judge mentioned above.

Photocopy of the excerpts of the Special Judges order dated 14/10/1996 in Special Case No. 2 (C)/94 is annexed as Annexure A/1-series.

- 5.3. That with regard to the statement made under paras – 4.3 and 4.4 it is submitted that these are all matters of records and the Respondents offer no comments.

The copy of suspension order dated 01/10/96 is enclosed as Annexure-B/1.

- 5.4 That with regard to the statement made under para – 4.5 of the O.A. it is stated that Haru Ch. Dey was subsequently removed from service under NIP dated 06.10.97 issued by SPO/W consequently on his conviction in respect of a criminal offence under case No. 2(C) 94 in the Court of Spl. Judge, Guwahati wherein Shri Dey was informed that appeal against NIP could be submitted to CPO/A within 45 days on receipt of the order, but Shri Dey did not submit any appeal within the stipulated period.

Copy of NIP dated. 06.10.97 is annexed as Annexure – C/1.

Contd.....P/6 that with regards

১৭/০৩/১০
২৩/০৩/১০
Advocate

24 MAR 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

203

पु. नि. ५१० / मुख्यालय

अप मुख्य कार्यालय, पु. नि. ५१०.

DY. (P.) / P.O.

पु. नि. ५१०, मुख्य, मुख्य, मुख्य.

P. N. F. 1-11/MLB.

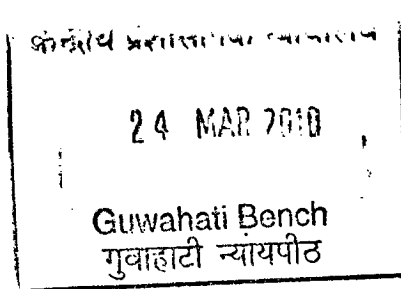
781011

Verkins
" 23/03/10
Advocate

- 5.5 That with regard to the statement made under para – 4.6 of the O.A. it is stated that Haru Ch. Dey did not submit any appeal against the order of penalty of removal from service vide Memorandum No. 19E/695(Q) dated. 06.10.1997 to the Chief Personnel Officer (Administration), N.F. Railway as claimed by the applicant wherein he was suggested to appeal against the penalty order to CPO (A) if he desired.
- 5.6 That with regard to the statement made under para – 4.7 of the O.A. it is stated that Haru Ch. Dey had preferred criminal appeal No. 242/1996 against the Spl. Case No. 2(C) 94 before the Hon'ble high Court, Guwahati and which was dismissed by the Hon'ble High Court, Guwahati directing to pay Rs. 20,000/- as fine and reduced rigorous imprisonment imposed by Special Judge, Guwahati as had already been undergone one month rigorous imprisonment. The appeal dated 05.11.1997 and 06.10.1997 have already been disposed of by the Respondents vide speaking order dated 06.4.09 in pursuance of Hon'ble CAT/GHY's order dated 12.11.08 in OA No. 196/08. Copy of Speaking order dt. 06.4.09 is annexed as Annexure – D/1.
- 5.7 That with regard to the statement made under paras – 4.8 it is stated that these are all matters of records and the Respondents offer no comments.
- 5.8 That with regard to the statement made under para 9 it is stated that the Applicant herself stated that Late Haru Ch. Dey preferred a Special Leave Petition before the Hon'ble Supreme Court and the Hon'ble Apex Court was pleased to dismiss the SLP by its order dated 09-10-2006. This postulates that the action taken by the Respondents and Judgments/orders given by the different Hon'ble Courts mentioned above were lawful and in order and Late Haru Ch. Dey had to suffer the consequences for the wrong/offence the committed in respect of his employment and hence the question of consideration as desired in this application does not arise at all.
- 5.9 That with regard to the statement made under para – 4.10 of the O.A. it is stated that Haru Ch. Dey representations dated 29.9.2008 to
- Contd.....P/7 Chief Personnel

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Chief Personnel Officer (Administration), appeal dated 05.11.1997 against the order 06.10.1997 has already been disposed of by the Respondent No. 2 under Speaking order dated 06.4.2009 in compliance of Hon'ble CAT/GHY's order dated 12.11.08 in OA No. 196/08-Haru Ch. Dey-Vs-U.O.I & Ors.

Photocopy of above is enclosed as Annexure D/1.

অপ মুখ্য কাৰ্মিক বনাম - সি/মুখ্যালয়
 Dy. C.F. : J/Q.
 পূ. সৌ. বেল্‌চ, মালিগাঁও.
 N. F. Kly/Mlb.

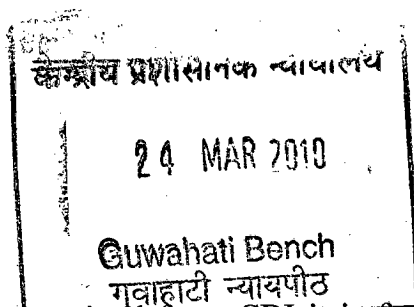
- 5.10 That with regard to the statement made under paras – 4.11 and 4.12 these are all matters of records and the Respondents offer no comments.
- 5.11 That with regard to the statement made under para – 4.13 of the O.A. it is stated that the Respondent No. 2 passed a Speaking Order dt. 06.4.09 in compliance of Hon'ble CAT/GHY's order dt. 12.11.08 in OA. No. 196/08 and has upheld the penalty of removal from service of the Late Haru Ch. Dey was imposed. The Respondent passed the reasoned speaking order after considering all the aspects carefully but not mechanically as complained by the applicant.
- 5.12 That with regard to the statement made under para – 4.14 of the O.A. it is stated that Late Haru Ch. Dey was removed from service and therefore not entitled the opportunity to avail the medical facility as per rules. That the demise of Sri Haru Ch. Dey is admittedly painful and the respondents convey their condolence for the bereaved family; but the Respondents are helpless and bound by the law of the land to express their inability for the benefit of the family as claimed for, of the deceased employee removed from the service.
6. That all the case records of Late Haru Ch. Dey were seized by CBI in Special case No. 2(C)/94, Special Court/GHY in the year 1994 for exhibition in the Court. The Railway Respondents nominated an advocate to chase up and collect the records, as on the case the Hon'ble Court has passed Order on 14.10.1996. After so long pursuance and ordered by the Special Court/GHY, CBI Official returned the records to the Railway administration at Maligaon only a few days ago and the final settlement of Late Haru Ch. Day's dues payable by the Respondents – Railway Administration are in progress.

Advocate
 23/03/10

Contd.....P/8 that on examination

-178-

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205
2010/3/10
Dy. C.P.: /HQ.
पु. सी. रेलवे, माहोगाँव.
N. F. 11/1/1018.

7. That on examination of the records, since received from CBI it is found that Late Haru Ch. Dey was occupying the Railway Qrs. No. 91/B(Type-I) unauthorisedly from 07-10-1997 to 14-05-2008 (as H.C. Dey was removed from Railway service on 06-10-1997) and his damage rent of Railway Qrs. is calculated to Rs. 3,38,424.00 and electricity charges Rs. 21,063.00 total Rs. 3,59,487.00 as outstanding dues. On the other hand, his PF amount is Rs. 21,179.00 and GIS amount is Rs. 8560.00, which is lying in this Railway. The Applicant Smt. Anita Dey has been requested to pay the Rly. Dues payable by Late Haru Ch. Dey.

Photocopies of the above is enclosed as enclosed as Annexure-G/1.

8. That Smt. Anita Dey, submitted application to Railway administration for family pension and death-cum-retirement gratuity on 14-12-2009 on death of Late H.C Dey on 05-11-2009 which is not entitled as per extant rule of Railway in case of removal from service.

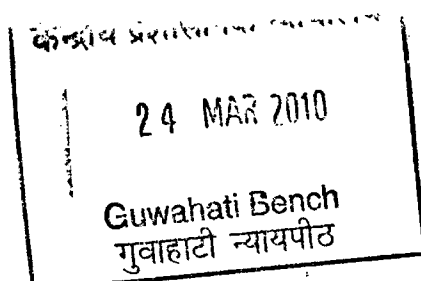
Photocopy of Respondents letter in this connection is enclosed as Annexure-H/1

9. That the answering Respondents respectfully submit in this connection that it is further highlighted that the conduct of Late Haru Ch. Dey, though it is painful to mention against a dead man, but for the sake of the submission of the Respondents with regards to the reply to the amended original Application, postulates to be a man of trouble-shooter for inviting litigations one after another for the same cause of action which he himself had caused deliberately by his neglect of duty, misconduct, carelessness and callousness not to abide by the Service Conduct Rules and the prevailing system and forged the documents and cheated the administration in addition to committing criminal offence of theft.
10. That it is humbly submitted that the Respondents' act of removal the charged official-Late Haru Ch. Dey from service is protected under article 311 (2) (a) which runs thus :

Contd.....P/9 where a person

-179-

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अप मुख्य कर्मि
सि/मुखायलय
Dy. C.F. : J. Q.
पुं सी रेहवे, मालीगाँव.
N. F. 1.14/M.18.
781011

Advocate
23/03/10

“Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge” wherein “any opportunity of making representation on the penalty proposed” may not be entitled. The above suspension order was issued on 01/10/97 and punishment of removal order imposed on 06/10/97 whereas the conviction order issued by the Learned Special Judge, Guwahati on 14/10/96 and on 09/02/06 the Hon’ble High Court upholding the conviction with modification to undergo rigorous imprisonment for 2 months and with fine of further amount of Rs. 20,000/- which the Charged Official /Applicant paid under Treasury Challan No. 4/9693 dated 19/04/06. The Disciplinary Authority after examining all careful considerations imposed the punishment of removal from service. Hence, there was no flaw on the part of the Respondents, as alleged.

Photocopies of above orders and Challan are annexed as Annexure – E/1, F/1

11. That it is submitted for remaining unauthorized absence during the period of December 1992 and January and February 1993 and committing criminal offence of theft, forgery, cheat, fraud & miss-appropriation of railway materials which put the employee Late Haru Ch. Dey under suspension under rule 5(2) of the Railway servants (D) & (A) Rules, 1968 and for his custodian detention for more than 48 hours from the time of his commencements of such offence. The Applicant suffers such suspension which eventually led him to his conviction on criminal charge and as a result of which under Rule – 41 (1) of the said rule the charged official- Late Haru Ch. Dey, the Applicant was removed from service w.e.f. 06/10/1997 under memorandum No. 19E/695(Q) dated 06/10/1997, with consideration of preferring appeal against that order within 45 days as per Rule. So there was no wrong on the part of the Respondents either by putting him under suspension or imposing punishment of removal from service.

Photocopies of above suspension order and imposition of punishment are enclosed as Annexures- B/1 & C/1 mentioned above.

Contd.....P/9 That it is submitted

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24 MAR 2010
Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

২৪২
Dy. C.F. : 111Q.
পূঃ সী রে বে, মালোগাঁও.
N. F. : 111/M18.
গুৱাহাটী/গুৱাহাটী
81011

12. That it is submitted that the Respondents re-iterate & re-assert their submissions in this written statement and further state that allegations of the Applicant and the grounds taken in the O.A. are not tenable in the eye of law for the activities caused by Late Haru Ch. Dey & suffered criminal Punishments in Courts of Law detailed above and therefore does not deserve any consideration at all.
13. That the Applicant has not submitted any documentary evidence in support of her lawful claim to be the lawful wife of Late Haru Ch. Dey as mentioned in this amended O.A. to be her husband. Hence, this application is not maintainable as per law.
14. That the Applicants' claim to appoint her son on compassionate ground after the death of Late Haru Ch. Dey who was removed from services on punishment after observing of all necessary rules in the matter is not admissible. The Rejoinder submitted by the Applicant also is not maintainable as the compassionate ground appointment on removal from service is not admissible as per Railway Rule.
15. That the Respondents humbly submit that the instant O.A. suffers from multiple issues of relief which are contrary to Administrative Tribunal Act and Rules.
16. That the Respondents humbly submit that Late Haru Ch. Dey had undergone the various offences and liable to be suffered punishment under IPC, Prevention of Corruption Act and flouted the Railway servants DA Rules, 1968 and therefore according to Railway Service Conduct Rules, 1964 was not becoming of a Government Servant under Section 3(1)(i), (ii) and (iii) and therefore was removed from services as per law of the land and there was no fault of the Respondents in removing Sri Dey for such cause of action.
17. That the Respondents respectfully submit the relevant observation of the Hon'ble Gauhati High Court in connection with filing of the Criminal Appeal No. 242/96 which run thus:

২৩/০৩/০৩
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২৪২

Contd.....P/11 This criminal appeal

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24 MAR 2010
Guwahati Bench
गुवाहाटी न्यायपीठ

"This criminal appeal assails the judgement and order dated 14.10.96 passed by the learned Special judge, Assam, Guwahati in Special case No.2(c)/94 by which the appellant was convicted under sections 420/471 IPC read with section 13 (2) and section 13(I)(c)(d) of the Prevention of Corruption Act, 1988 (for short 'the Act'), and sentenced accordingly to undergo (i) rigorous imprisonment (for short 'RI') for short 2 years and fine of Rs. 20,000/- in default RI for 3 months under Section 420 IPC, (ii) RI for one year and fine of Rs. 10,000/- in default RI for 2 months under Section 468, (iii) RI for 6 months and a fine of Rs. 2,000/- in default RI for one month as regards sentence under section 471 IPC, and (iv) finally RI for 4 years and a fine of Rs. 25,000/- in default RI for 6 months under the relevant Sections under the Act above noted.".....

"While working as care-taker of the 80 bedded Mess, N.F. Railway, Maligaon, during the period of December, 1992 and January and February, 1993, remaining absence for those period from duty, submitted forged requisition/indent for supply of materials to Pandu Stores Depot, N.F. Railway and collected materials were not brought to the store room of the said Mess and thereby he misappropriated an amount of Rs. 94,000/- being the total value of those articles so collected by him as mentioned above.".....

"I have carefully gone through the evidence on record so referred to by the Learned Sr. Counsel. It appears that the findings arrived at by the Learned Special Judge were not solely based on the report i.e., exhibit 63 or the deposition of the hand writing expert, P.W. 16.".....

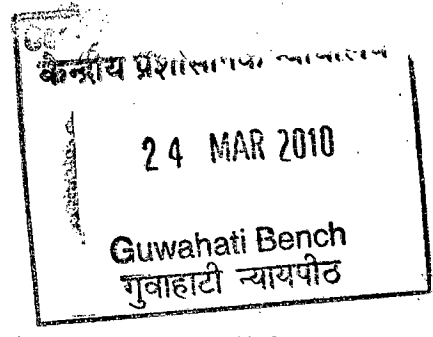
"On close security of the entire evidence of the witnesses on record and also upon hearing the learned counsel for the parties, this Court finds that Learned Judge has rightly convicted the appellant under the offences as mentioned above and sentenced him accordingly by taking a right approach to the evidence so adduced by the prosecution. I do not find any infirmity and/or inconsistency in the evidence of those witnesses and accordingly, I have no hesitation to concur with the views of the Court below and as a result, the impugned conviction and sentence are hereby confirmed.".....

Contd.....P/12 He has also informed

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अप मुख्य कार्यकारी अधिकारी/मुलायम
Dy. C.F.: /PQ.
पुं सो रेले, मालीगांव.
N.F. I ly/Mlg.
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Dy. C.T. / Q.
পূ. সী. রেলওয়ে, মালদা.
N. F. 11/1/MLB.
গুৱাহাটী ন্যায়পীঠ - 781011

22/03/10
N. F. 11/1/MLB.
গুৱাহাটী ন্যায়পীঠ - 781011

“He has also informed that the appellant was already in jail for one month after his conviction and as such this one month’s custody period of the appellant, may be treated as conviction period. That apart, he has further submitted that an amount of Rs. 10,000/- as part payment of the firm imposed by the trial Court, has already been deposited as directed by this Court at the time of filling of the appeal and now he is ready to pay another Rs. 10,000/- as fine if the period so undergone is treated as sentence period.”.....

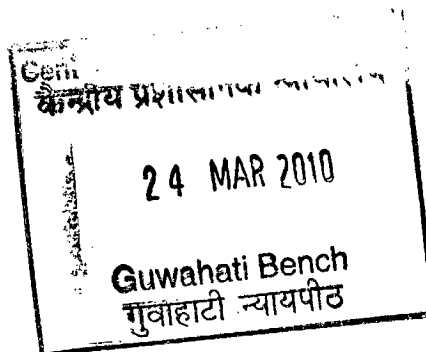
“This court is of the view that the ends of justice would be satisfied if the entire sentence period as awarded by the learned Judge under all heads of those sections, noticed above, is modified to the period of one month already undergone and the appellant is directed to pay further amount of Rs. 20,000/- only as fine default of such payment to undergo RI for two months. It is ordered accordingly. It is made clear that the fine shall be deposited with the Special Judge, Assam, Guwahati, in Special Case No. 2(C)/94 within two months from to-day.”.....

“Consequently, this appeal stands dismissed to the extent as indicated above.”.....

18. That in the premises above and also on all other factual and lawful considerations the Respondents humbly pray that the instant OA may be dismissed in limine and with costs.
19. That it is humbly submitted that the case suffers from infirmities detailed above and therefore does not deserve any consideration and the Respondents respectfully submit that the present application has no merit at all and is, therefore, liable to be dismissed.
20. That the Respondents respectfully crave leave of this Hon’ble Tribunal for submitting Additional Written Statement and reply to the rejoinder, if necessary, for the ends of justice.

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21. PRAYER: -

In the premises above, it is respectfully submitted that all actions taken in the case of Sri Haru Ch. Dey (now deceased) by the Respondents were quite legal, valid and proper and had been taken by the competent authority with proper jurisdiction and justification after due application of mind and, hence, no unfair play of action and miscarriage of justice were caused to the him and this application is based on wrong premises and suffers from misconception and misrepresentation of facts, rules and laws on the subject and may, therefore, be granted the correct discernment of the case by this Hon'ble Tribunal and thereby much obliged.

23/03/10
Advocate

VERIFICATION

I A. K. Chhaporia
s/o At. Om. preakash Chhaporia at present working as
Dy. CPO/HQ do hereby solemnly affirm and state that the
statement made in the paragraphs1..... to 17..... are derived from the
records and true to my knowledge and belief and the rest all are my humble and
respectful submission and I have not suppressed any material facts.

And I sign this Verification on this 23rd Day of March,
2010, at Maligaon.

Place: Maligaon
Date: 23-03-2010

Signature of the Deponent.

व्य. मुख्य कार्मिक अधिकारी/मुख्यालय

Dy. C.P.O./HQ.

पू. सी. रेलवे, मालागाँव.

N. F. Nly/Mlg.

गुवाहाटी/Guwahati 781011

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ANNEXURE - A/1. Srang
IN THE COURT OF THE SPECIAL JUDGE : ASSAM : GUWAHATI.

Special Case No. 2(C)94

S T A T E

Vs

Haru Day .. Accused

Present :

Shri P. G. Agarwal,
Special Judge, Assam, Guwahati.

Shri J. S. Terang : Public Prosecutor for the CBI.

Shri N. N. Ojha : Advocate for the accused.

Date of evidence : 22.9.95, 10.11.95, 5.1.96, 6.1.96, 11.3.96,
12.3.96, 23.5.96, 24.5.96, 1.7.96, & 30.7.96;

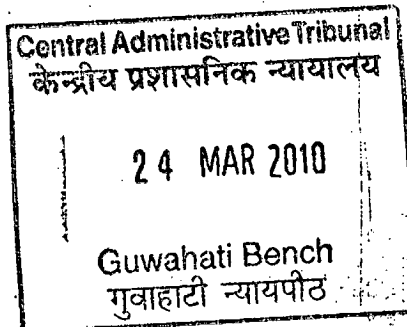
Date of arguments : 30.9.96.

Date of judgment : 14.10.96

(Sections 420/468/471, IPC and Section 13(2) r/w section 13(1)(c) &
(d) of the Prevention of Corruption Act, 1988).

J U D G M E N T

The prosecution case, in brief, is that during the year 1992 - 1993, accused Haru Ch. Day was posted and functioning as Caretaker of 80-bedded Mess, N.F. Railway, Maligaon. During the period December, 1992 and January and February, 1993, the accused was absent from duty, but during this period, he submitted requisition/indent for supply of materials to the Pandu Stores Depot, N.F.Rly and also collected materials against them. These requisitions were all forged. The accused did receive articles against these requisition in the month of December, 1992 and January and February, 1993. The articles so collected were not brought to the Store room of the said mess and these were misappropriated. According to the prosecution, the accused even collected certain materials in the name of Rang Bhaban belonging to N.F. Railway although the above articles are not required for Rang Bhaban. The



Attended

19.10.96
श्री. प्रशासनिक न्यायाधीश (आ. न. न.)
श्री. प्रशासनिक न्यायाधीश (आ. न. न.)
श्री. प्रशासनिक न्यायाधीश (आ. न. न.)
श्री. प्रशासनिक न्यायाधीश (आ. न. न.)

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amount of the total article collected by the accused is around Rs.94,000/-. On 12.2.93 the accused was apprehended at the Store Depot, Pandu while he was waiting to collect goods on the basis of cum forged indents. Thereafter, stock verification was made both at 80-bedded mess and at Rang Bhaban. The goods collected by the accused was not found in the stock. On FIR being lodged, CBI registered RC 25(A)93. Usual investigation was made and during investigation, specimen writings, signatures, admitted writings and questioned documents were sent to the GEQD, Calcutta. After due investigation and after obtaining necessary sanction for prosecution, charge sheet was submitted on 5.1.94.

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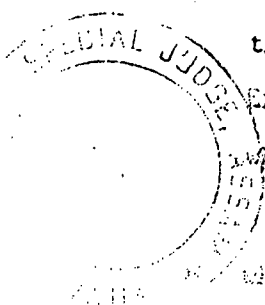
On consideration of charge, charge under section 409/420/468/471, IPC and section 13(2) r/w section 13(1)(c) & (d) of the PC Act was framed on 25.7.95. The accused pleaded not guilty.

During trial, prosecution has examined 66 witnesses. There are 104 numbers of documents from the side of prosecution. The statement of the accused u/s 313, CrPC was recorded. Defence has not adduced any evidence. The defence is in that of denial simpliciter.

Now, first point for consideration is that whether the accused is a public servant and whether there is proper and valid sanction for prosecution of the accused.

PW 1 Sati Moitri Brahma, who was the Senior Personnel Officer, Welfare, N.F. Rly, Maligaon during December, 1990 to February, 1993. She was over all incharge of the 80-bedded Mess (for short, Mess) located at N.F. Rly Maligaon. She has deposed that this accused Haru Ch. Dey was the caretaker of the said mess. Exs 29 and 30 are the Attendance Register for the relevant period wherein the name of accused Haru Dey appears as a railway employee.

Besides PW 1, there is oral evidence of other PWs who are Railway employees. Moreover Ex 38 is the appointment letter whereby this accused was appointed as a peon of N.F. Rly on 24.11.73. Ex 39 is another order whereby accused was appointed



Attended
19-3-10
2. राज्य अधिकाारी (विधि)
अधीन, Personal Officer (Legal Cell)
ए. सी. देव, मालिगाँव, गुवाहाटी-781005
आ. न्याय मालिगाँव

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as caretaker of the mess on 24.2.88. Ex 35 is the Personal case file of the accused kept in regular course of official business. Exs 36 and 37 are the leave accounts. Thus, the oral evidence is fully supported by the documentary evidence on record. The Prosecution evidence on this point has not been challenged or disputed by way of cross-examination. Moreover, ⁱⁿ the statement u/s 313, CrPC, the accused has admitted that ~~the accused~~ during the year 1992 and till February, 1993 he worked as a Caretaker of the mess and he was railway employee of group C. I, therefore, hold that accused H.ara Chandra Day is a public servant as defined in section 2(C) of the PC Act.

PW 3 is Hala-dhar Das who was working as Senior Personnel Officer, N.F. Rly, Maligaon from October, 1993 to July 1994. He has deposed that as the accused was an employee of group C, he was removed from service by a Sr. Scale Officer. PW 3 is the Senior Scale Officer of group A. On examination of all the materials before him he granted sanction for prosecution vide Ex 43. Exs 43(1) and 43(2) are his signatures. The witness considered all the documents and materials placed before him by the CBI and on being satisfied he accorded the sanction. On perusal of the letter Ex 43, which is in 2 sheets, I find that the facts constituting the offence are fully detailed and Ex 43 meets requirements of law as regards the sanction. Defence has not challenged the letter of sanction as such but during the course of arguments the learned defence counsel submitted that PW 3 is not competent authority to accord sanction. The accused has also stated in the statement u/s 313, CrPC that PW 3 had power to suspend him only but he was not competent to accord sanction for prosecution. The learned defence counsel has also drawn my attention to the Railway Servants (Discipline & Appeal Rules, 1968). But on perusal of the same, I find that the railway servant can be removed or dismissed from service either by the appointing authority or an authority of equivalent rank or any higher authority. Under sub clause C of section 19, the sanction is

Attended

2. **मानव संसाधन विभाग**
Manr. Personnel Officer (Legal Cell)
श्री: रमेश, मल्लिकार्जुन, गुवाहाटी-781001
श्री: रमेश, मल्लिकार्जुन, गुवाहाटी-781001

required to be given by an authority competent to remove the public servant from the office. According to PW 3 even a Senior Scale officer of Group B was competent to remove the accused from service whereas he was an Senior Scale Officer of group A. ^{i.e. one of the higher than Group A Officer.} PW 3 was cross-examined at length and even no suggestion was given that he is not competent to accord sanction. From Ex 38 the appointment letter, I find that the accused was appointed by the Assistant Personnel officer. Considering the oral and documentary evidence on record, I, therefore, hold that PW 3 is the competent authority and there is proper and valid sanction for prosecution of the accused.

PP/CBI submitted that in the present case, the alleged offence was committed by the accused while he was absent from duty. It is stated by the witnesses ^{that} from 9.11.92 to 15.3.93 ~~that~~ the accused remained absent. Ex 32 is the report to that effect. In support of the same, prosecution has produced the relevant Attendance Register Exs 29 and 30 which shows that the accused was absent from 9.11.92 to 12.3.93. This finds support from the own letter of the accused Ex 30, whereby the accused admitted that he was on sick leave from 19.11.92 to 15.3.93 and prayed for converting the same to committed leave. The question whether the accused enjoyed valid leave or unauthorised leave is not material for the purpose of this trial. However, the facts remain that during the relevant period, the accused was officially not present or attending his duties.

The procedure for issue of requisition, receipt of the same by the Store Depot and delivery of goods against these requisitions, as deposed by the witnesses, it may be summed up as follows :

Requisition and Issue Notes (hereinafter referred to as RIN) are available on printed Railway Form ¹⁰⁰ Ex(42). When a article is required for a particular department, one set of RIN is required to be prepared. The set consists of one

attested

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original and 4 numbers of carbon copies prepared in the same process, by the requisition number, date, consignee's Code, description and quantity of articles etc are to be filled up and these are to be signed by the authorized official. For the mess, PW 1 Moitri Brahma and PW 5 Bhopal Chakraborty were the authorized signatory and P W6 Biren Das was also authorized being an official of the Welfare department. This RIN can be sent to the Store department either by post or by messenger. If these are sent through messenger, an authorized letter is also required to be given authorizing the messenger to collect / receive goods from the store.

When a RIN is received by the Store Depot, the Incharge of the requisition sanction verifies the signature of the indentora/ consignee of the RIN and endorses it to the concerned branch. Thereafter, RIN goes to the registering clerk, who makes an entry in the Register Issue Notes and gives registration number. The registering clerk also obtains the signature of the person who has brought the RIN. Thereafter, RIN is sent to the booking section and the booking clerk verifies registration number of the RIN, checks identity card of the receiver of the goods and issue gate pass (GP). The GP is repared in duplicate with the help of carbon. Carbon copy of the GP is handed over to the receiver of the goods. The receiver is required to produce the carbon copy at the gate in order to collect the goods. The carbon copy is then sent back by the gate keeper to the booking section and it is pasted with original in order to show that the goods have, in fact, gone out. While issuing GP, the signature of the receiver is taken on the reverse of the original GP and the authority letter is also pasted therewith. The authority must contain the signature of the person authorised and also the signature of the person who is to collect the goods.

Now, the point for consideration is whether eight numbers of RIN, as alleged by the prosecution, are forged/fabricated documents or not.

Attended

19.3.10
Joint Personal Officer (Legal Cell)
श्री: रमेश, मालिन्, गुवाहाटी-781001
& Birla Mahalanad

Central Administrative Tribunal
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According to the prosecution, Exs 21, 24 to 27 (one set), Exs 19, 20, 22, 23, 16 and 17 are the 8 numbers of RIN as described in serial Nos 1 to 8 of the charge and they are all forged and fabricated documents. PW 1 has deposed that the signatures on Exs 1(1) to 17(1) 19(1), 20(1), 21(1) and 23(1) are ~~not~~ her signatures. PW 5 Bhopal Chakraborty and PW 6 Biren Das, who are also acquainted with the signature of PW 1 have stated that these are not the signature of PW 1. They have also stated that these Exhibits do not bear their signatures. Further, Exs 1 to 5 are for 150 numbers of blankets, likewise, Ex 16 RIN is for 150 numbers of bed sheets and Ex 17 is for 150 numbers of coil mattresses for Rang Bhaban. PW 6 and other witnesses have deposed that Rang Bhaban is an auditorium having sitting arrangements ^{for} spectators and, as such, articles like coil, mattresses, blankets, bed sheets etc are not required. Exs 1 to 27 are the 12 sets of requisitions out of which Exs 18, 21, and 24 to 27 are the 3 sets of RIN which bears the genuine signature of PW 1. So far allegation against these RINs are concerned, it will be discussed at the later stage.

In this case, the disputed/questioned signatures appearing on Exs 1 to 27 were marked Q12 to Q 39. The admitted signatures of PW 1, ^{an} marked A1 to A6 and admitted signatures of PW 6 Biren Kumar Das, ^{an} marked A7 to A11 and the specimen signature of PW 6, ^{an} marked S67 to S69 on Exs 87 alongwith other questioned documents and the specimen and other admitted signatures of accused Harun Ch. Day were sent to the GEQD, Calcutta during investigation vide forwarding letters Exs 67 and 66. The GEQD ^{in June and} duly compared and examined ~~who~~ submitted his opinion Ex 63 vide forwarding letter Ex 70. The GEQD, H.S. Tuteja was examined as witness (PW 16). PW 16 has given definite opinion that the signatures marked Qs 13, 15, 17, 19, 21, 24, 27, 33, 36 and 39 are not compared with that of PW 1. Likewise, Qs 23, 26, 32, 33 and 38 appearing on these RINs are not of PW 6. I, thus, find that the oral testimony of PWs 1, 5 and 6 stands fully corroborated by

Attested
19.3.10
Joint Personnel Officer (Legal) Lt
Col: रजि, मालिगं, गुवाहाटी-781008
Lt Colonel Mallick, Guwahati-781008

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the evidence of PW 16, the handwriting expert. There is no cross-examination of PW 16 as regards this part of his evidence. Further, PW 16 has stated that the signature appearing on Exs 18 as Q 30 and Q29 are that of PWs 1 and 6. These signatures are admitted by the witnesses. I, therefore, hold that Exs 1 to 17 and 19 to 24 are forged and fabricated RINs.

As stated above, when RINs are produced at the Store Depot, they are registered and the registration number is given on the body of the RINs and the signatures of the messenger is taken. Ex 18 and Ex 21 RINs were registered on 1.12.93. Ex 60 is the relevant register for the months of November and December, 1992. Exs 60(1) and 60(2) are the relevant entries in the above register in respect of the above RINs. Registration numbers are 5852, 5853 and 5854. These registration number appear on Exs 18 and 21. PW 12 Bharat Das was the Incharge of the requisition section and he has proved the above exhibits. Ex 60(3) is the signature of the person who brought the above RINs and received it back after registration and the signature reads as that of Haru Ch. Dey. The witness in his cross-examination, however, states that he does not know accused Haru Ch. Dey personally from before. The signature Ex 60(3) has been marked as Q44.

Ex 56 is another Misc Register commenced on 1.1.93. Exs 56(3), 56(4), 56(5) and 56(6) are the relevant entries dtd 12.1.93 in respect of Exs 22, 20, 19 and 23 respectively. Ex 56(7) is the signature of Haru Ch. Dey alongwith the date. There is single signature in respect of 5 numbers of RINs and the signature is marked as Q40. The registration number Misc 60, 61, 62 and 64. These numbers alongwith the date appear on the above 4 numbers of RINs. Ex 56(8) is another entry No.212 in respect of RIN at Ex 125. Ex 56(9) is the signature of the accused alongwith the date 4.2.93. Ex 56(11) and 56(12) are the relevant entries numbering 218 and 219.

Attested

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Joint Personnel Officer (Legal) C
श्री: देवी, मालिका, गुवाहाटी-781001
Joint Personnel Officer (Legal) C

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in respect of RINs Exs 16 and 17 and Ex 56(3) is the signature of Haru Ch. Dey. Ex 56(9) and 56(13) are the signatures marked as Q41 and Q42. The registration number appear on the body of the RIN.

Let us consider whether the accused Haru Ch. Dey did collect the goods in respect of the above RINs.

Boloram Bora PW 14 has deposed that Ex 57(1) is the GP No.946 dtd 4.12.92 in respect of RIN Ex 18. Exs 58(1) is another gate pass (GP) No.1353 dtd 12.1.93 in respect of RINs Exs 19, 20, 22 and 23. Ex 59(1) is another GP No.1567 dtd 5.2.93 in respect of RINs Exs 16 and 17. Exs 57(2), 58(2) and 59(2) are ~~not~~ the signature of PW 14. In these GPs, the name of Haru Ch. Dey, caretaker is mentioned as the collector of the goods. Exs 57(4), 58(4) and 59(4) are the carbon copies of the said GPs pasted to show that the goods against the above GPs were, in fact, taken out of the stores and on the reverse of the original copies of the GPs, the receiver of the goods is Haru Ch. Dey, ^{who} put his signature in presence of PW 14 and Exs 57(3), 58(3) and 59(3) are the signatures of accused Haru Ch. Dey given in presence of PW 14. On perusal of the GPs and cross-checking of the RINs including the issue number, I find that the statement of PW 14 stands fully corroborated by the documentary evidence. Further, Exs 57(5), 58(5) and 59(5) are the 3 numbers of authority letters in favour of Haru Ch. Dey allegedly issued by the PW 1 and ^{also bear} prepared the signature of accused Haru Ch. Dey. Exs 57(6), 58(6) and 59(6) are the signatures of accused Haru Ch. Dey allegedly attested by Chief Labour Welfare Inspector PW 6. The signature of PW 1 were marked as Qs 4, 8, 41 and 50 whereas the signature of PW 6 were marked as Qs 3 and 7. The signatures of accused Haru Ch. Dey ^{also} marked as Qs 10, 6 and 2.

Registers and GPs, i.e., Exs 56, 57, 58, 59 and 60 were kept in the store department and in the regular course of official business and there is nothing to dispute the genuineness of these documents. Oral evidence of PWs 14, 13, 12, 11, 10 and 9

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19-3-10
J. S. Deka, Magistrate (Legal Officer)
J. S. Deka, Magistrate (Legal Officer)
J. S. Deka, Magistrate (Legal Officer)

clearly show that the above RINS were brought by Haru Ch. Dey and goods against the above RINS were duly supplied to the accused against GPS and these were received by the accused on the strength of authority letters produced. Their oral testimony stands fully corroborated by the documentary evidence. Further, as discussed above, the handwriting expert has categorically deposed that PWs 1 and 3 did not put the signatures marked Qs 3, 4 and 7 and 8. So far authority letter Ex 57(5) is concerned and the signatures Qs 49 and 50 appearing therein are that of PW 1.

The oral and documentary evidence on record is also fortified by the opinion of the expert, PW 16. In this case, the specimen signatures of the accused Harun Ch. Dey were taken during investigation in presence of witnesses Exs 65(1) to 65(39) are the above specimen writings and signatures of the accused in 39 sheets. These were marked as S1 to S39. Further, the admitted signatures and writings of the accused contained in applications, letters etc, i.e., Exs 76 to 85 were also sent to the GEQD and these were marked A12 to A21. The disputed signature of the accused on the register were marked Qs 40 to 44 on the GPS were marked Qs 5 and 9 and on the authority Qs 2, 6 and 10. PW 16 has categorically opined that the above signatures marked Qs 1, 2, 5, 6, 9, 10 and 40 to 48 are in the handwriting of accused. Ex 71 are the reasons for opinion containing five sheets. There ^{are} eight numbers of ~~the~~ similarities and they are significant in nature and sufficient in number. These were written in free hand and there is no inherent sign of forgery. From the cross-examination of PW 16 nothing has come out to show that the opinion suffers from any disability or infirmity and that it can be relied upon. I, therefore, hold that the evidence of PW 16 fully corroborates and supports the prosecution story and it was the accused Haru Ch. Dey who produced the above forged RINS and genuine RINS (Ex 18) and collected goods from the store depot, N.F. Railway, Maligaon.

Attested

19-3-10
Joint Personnel Officer (Legal Cell)
रा: रजि, मालिगा, गुवाहाटी-7810
A. B. Maligaon

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Now, the next question for consideration is whether the accused person did deposit the goods so collected or has accounted for the same.

PW 4. Dharendra Mall Saha, Inspector of Store Accounts, N.F. Rly, Maligaon and a vigilance team consisting him, Bhopal Chakraborty PW 5, and Badal Chakraborty have deposed that a surprise check was conducted at 80-bedded mess in presence of the accused Haru Ch. Dey. Exs 44, 45 and 46 are the memorandum and check verification in respect of the mess and Ex 31 is the physical stock verification in respect of Rang Bhaban. The coir mattresses, pillowblankets etc collected vide Exs 1 to 27 were not found in the stock. PW 2 is Anil Das, Incharge of Rang Bhaban. He has also deposed that Rang Bhaban is place where meeting, shows marriage etc are held. There is no arrangement for beds and as such there is no requirement of mattresses, blankets etc for use at Rang Bhaban. The witness has further stated that this accused Haru Dey never handed over to him any bed sheets, blankets etc. for use at Rang Bhaban. The burden was on the accused to show or explain as to how he discharge the entrustment but there is no whisper from the side of the defence. As a matter of fact, the defence plea is that no article as such was received or collected by him.

Another circumstance which appears against the accused is that he was apprehended at the store depot while he was waiting to collect goods against forged RINs. PW 7 Madhab Ch. Baishya has deposed that on the morning of 12.2.93 Kalyan Kumar Sinha informed him that if RIN is brought by the accused Haru Dey, this should be properly checked. On 12.2.93 accused appeared alongwith RIN Exs 6 to 10. These were registered in the miscellaneous register vide entry No. 330 Ex 56(1). Exs 6 to 10 contain the above serial number. Ex 56(10) is another entry No. 331 in respect of Exs 11 to 15. The above RINs were brought by by the accused who put his signature alongwith the date 12.2.93 on Ex 56(2). PW 7 has identified the signature of the accused

Attended

19-3-10

Joint Personal Officer (Legal Cell)
श्री: देवे, मालिगाँव, गुवाहाटी-781001
22 Bellary Maligaon Guwahati

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as defined in clause (a) & (d) of section 13 of the PC Act, 1988 which is punishable u/s 13(2) of the Act. Accordingly, I convict the accused Haru Ch. Dey under the above section of law.

In view of the conviction of the accused u/s 13(2) r/w section 13(1)(c)&(d) of the PC Act, no separate conviction u/s 409, IPC is desirable although the accused was charged under section 409 of the IPC.

As the accused Haru Dey cheated his employer, the N.F. Railway by deceitful means and thereby induced the Store Depot, N.F. Railway, Maligaon to deliver goods worth Rs. 94,000/- to him which was the property of the said railways, I convict accused Haru Ch. Dey u/s 420, IPC.

So far offence u/s 468 is concerned, there is no direct evidence as to who forged the RINs Exs 1 to 27. So far the authority letters Exs 58(5) and 59(5) are concerned, these are forged documents and they also bear the signature of the accused Haru Ch. Dey as held above. Further, it was this accused Haru Ch. Dey who used the exhibits 1 to 27 and Ex 58(5) and 59(5) to defraud the railways. It can ^{therefore} safely be concluded that accused Haru Ch. Dey was a party/ privy to the above forgery. Accordingly, I convict him u/s 468 of the IPC.

Coming to the offence u/s 471, IPC and in view of my foregoing discussion it is well established that at the time of using Exs 1 to 27 and Exs 58(5) and 59(5) the accused had knowledge that these are forged documents and still he used the same as genuine and as such I convict the accused U/s 471, IPC.

Typed at my dictation
and corrected by me
Special Judge, Assam,
GUWAHATI.

Imule 14.10.94
Special Judge, Assam,
GUWAHATI.

Attested
19-3-10
Joint. Personnel Officer (Legal) Lt.
Jt. Secy, Maligaon, Guwahati-781002

Guwahati Bench
गुवाहाटी न्यायपीठ

REFERENCE

I have heard the accused on the point of sentence. His statement u/s 253 is recorded. I have heard the learned counsel for defence and the accused on the point of sentence. The learned counsel for defence has submitted that in view of the compassionate grounds lenient view may be taken.

I have considered the submissions and the facts and circumstances of the case. The accused entered into service as Grade II and then rose to the post of the Care Taker of the Railway employees. Bu the state of service as employer he indulged in different activities and by forging documents cheated the Railways to a tune of Rs.94,000/-. The corruption in service by the public servant has become a rampant feature and as such deterrent punishment is called for. Hence I sentence
accused
the/are under

For the offence u/s 420 IPC : The accused is sentenced to rigorous imprisonment for 2 years and fine of Rs.20,000/-, in default to RI for 3 months.

For the offence U/s 468 IPC : The accused is sentenced to RI for one year and a fine of Rs. 10,000/-
1/d to RI for 2 months.

For the offence u/s 471, IPC : The accused is sentenced to RI for 6 months and a fine of Rs.2000/- 1/d to RI for one month.

For the offence u/s 13(2) r/w section 13(1)(c)(d)
of the PC Act :

All the sentences shall run concurrently.

Attended

PERSONAL OFFICER (Legal Cell)
श्री. वि. प्रसिदा, गार्डर 7818

197
-28-27

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
24 MAR 2010
Guwahati Bench
गुवाहाटी न्यायपीठ

The period undergone by the accused as UTP,
if any, shall be set off.

Let a copy of the judgment shall be given to
the accused free of cost.

Typed at my dictation
and corrected by me,
Special Judge, Assam,
Guwahati.

[Signature] 14.10.96
Special Judge, Assam,
GUWAHATI.

Certified to be true copy
Upendrajit - Nalla 18-10-96
Special Judge's Sheristadar,
Authorized 1/376 Act 1 of 1879

Attended
[Signature] 19-3-10
Joint Magistrate (Legal Cell)
Joint Magistrate, Guwahati-Tribunal
Joint Magistrate, Guwahati

198-29-28
REGISTERED WITH A/D

ANNEXURE-II

225
ANNEXURE-B/1

Order placing an Officer under suspension when he is detained in custody.

(Rule 5(2) of Railway Servants (Discipline & Appeal) Rules, 1968.

No. 19E/695(Q) Loose.

(Name of Railway Administration) - NF Railway.

(Place of issue) - CPD/Maligaon.

Date - 01-10-97.

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
24 MAR 2010
Guwahati Bench गुवाहाटी न्यायपीठ

ORDER

Whereas conviction of Shri Haru Chandra Dey, Care Taker, 80-Bedded Mess, NF Railway, Maligaon (Name & designation of the Railway servant), in respect of a criminal offence under Case No. 2(C)94 between State-Vs- Shri Haru Chandra Dey.

And whereas the said Shri Haru Chandra Dey is deemed to have been suspended with effect from the date of detention i.e. from 14.10.96, in terms of Rule 5(2) of Railway Servants (Discipline and Appeal) Rules, 1968 and shall remain under suspension until further orders.

Alakshya
(A KISPOOTA) 1/10/97
Sr. Personnel Officer (Welfare)
NF Railway, Maligaon,
Guwahati-781 011.

To
Shri Haru Chandra Dey,
Caretaker, 80-Bedded Mess, NF Rly., Maligaon,
91/B, Nambari,
Hill Top Road,
Guwahati-781 011.

Sr. Personnel Officer/Welfare
NF Rly./Mig
Guwahati-781 011.

Attested

19-3-10
Jr. Personnel Officer (Legal Cell)
NF Rly., Maligaon, Guwahati-781 011.

199-30-29
REGISTERED WITH A/D

ANNEXURE E/1

Office of the
GENERAL MANAGER (Personnel) Administrative Tribunal
NF Railway, Maligaon, Guwahati-781 011.
केन्द्रीय प्रशासनिक न्यायालय

No. 19E/695(2).

October 6, 1997.

24 MAR 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

M E M O R A N D U M

Consequent on Court's verdict issued by the Special Judge, Assam, Guwahati, on Special Case No.2(C)94 dated 14.10.96, between State - Vs - Haru Chandra Dey (accused), Shri Haru Chandra Dey, designation - Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati-781 011, son of Late Bhupati Chandra Dey, is informed that on a careful consideration of the circumstances of the case in which he was convicted on 14.10.96 under Section No.420/468/471, IPC and Section 13(2) r/w Section 13(1)(c) & (d) of the Prevention of Corruption Act, 1988, the undersigned considers that his conduct, which has led to his conviction, is such as to render his further retention in public service, undesirable. The undersigned has, therefore, come to the conclusion that Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, Maligaon, S/o. Late Bhupati Chandra Dey, is not a fit person to be retained in service and so the undersigned in exercise of power conferred by Rule 14(i) of the Railway Servants Discipline & Appeal Rules, 1963, imposes upon Shri Haru Chandra Dey, the penalty of removal from service with immediate effect.

The receipt of this memorandum should be acknowledged by Shri Haru Chandra Dey, Caretaker, 80-Bedded Mess, NF Railway, Maligaon, Guwahati-781 011, S/o. Late Bhupati Chandra Dey.

Appeal against this order will lie with the Chief Personnel Officer, Admn., NF Railway, within 45 days of the receipt of this order.

A. K. S. P. O. T. T. A.
(A KISPOTTA) 6/10/97

Senior Personnel Officer/Welfare
NF Railway, Maligaon, Guwahati,
(DISCIPLINARY AUTHORITY)

To
Shri Haru Chandra Dey,
91/B, Nambari,
Hill Top Road,
Guwahati-781 011.

Attested
19-3-10
Chief Personnel Officer (Legal) &
NF Railway, Maligaon, Guwahati-781 011

Central Administrative Tribunal
अन्तर्राष्ट्रिय प्रशासनिक न्यायालय
24 MAR 2010
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गुवाहाटी न्यायपीठ

In compliance to the direction of the Hon'ble Tribunal in their above OA, the undersigned perused the order of the Hon'ble Tribunal in OA No. 196 of 2008, copy of the OA alongwith its annexures and relevant records/documents of the applicant Sri Haru Ch. Dey, Ex. Sr. Clerk cum Caretaker of 80 bedded Mess of N. F. Railway, Maligaon.

The applicant filed an application (OA No.196/08) before the Hon'ble Tribunal praying relief's that the impugned order of imposition of penalty of removal from service dated 06.11.1997 (Annexure-F) may be set aside and quashed directing the respondents to re-instate the applicant in service with all consequential benefits.

He also prayed for a direction to direct the respondent No.2 (CPO/A) to consider and dispose of the appeal dated 05.11.1997 (Annexure-G) preferred against the order dated 06.10.1997 on the basis of changed circumstances and findings and observations made by the Hon'ble High Court in its judgement and order dated 09.02.2006

Hon'ble Tribunal in their order dtd.12.11.08 disposed of the OA with direction to the Respondents to consider the grievances of the applicant (as raised under Annexure-'G' dtd. 05.11.97, Annexure-'J' dtd. 03.1.2008 and Annexure-'K' dtd. 29.9.2008 and in the present original application) and passed a reasoned order.

The undersigned perused the memorandum No. 19E/695(Q) dated 06.10.1997 wherein the Disciplinary Authority, SPO(W)/MLG awarded the applicant the penalty of removal from service based on the verdict dtd. 14.10.1996 issued by the Special Judge, Guwahati, Assam on special case No.2(C)94. In the said judgement the applicant was convicted under Section 420, 468 & 471 IPC and Section 13(2) read with Section 13(1)(C)&(d) of the prevention of corruption Act, 1988. The Disciplinary Authority did not grant applicant compassionate allowance to applicant.

The undersigned perused the appeal dtd. 05.11.1997 preferred by the applicant as annexed as Annexure-'G' to OA. The said appeal does not appear to have been received in this office. However in the said appeal the applicant stated that he preferred an appeal before the Hon'ble Gauhati High Court. The appeal was admitted and interim bail was granted and during pendency of the said appeal before the Hon'ble High Court, the authority removed him from service. As such he prayed for

Contd. to Page-2

[illegible]

appropriate order recalling/rescinding the Removal Memo dtd. 06.10.1997. The undersigned perused the appeal dtd. 31.1.08 also as annexed as Annexure-'K' to OA, which is repetition of his earlier appeal dtd. 05.11.97.

The undersigned perused the judgement dtd. 14.10.96 given by the Hon'ble Judge in Special case No.2(C)94 and the judgement dtd. 09.02.06 given by the Hon'ble High Court in Criminal Appeal (No. 242/96). The applicant was convicted in a criminal charge and was in jail. Subsequently he was released on bail by an appeal in the Hon'ble High Court. It appears from the OA and its annexures that the applicant did not inform the fact to the authority which is unbecoming of a Railway servant. The Disciplinary Authority has taken correct decision on the finding in the special case No.2(C)94 in the departmental proceeding as per service conduct rules. Again the Hon'ble High Court in the judgement dtd. 09.02.06 confirmed the order dtd. 14.10.1996, wherein the Hon'ble High Court did not find any infirmity and/or inconsistency in the evidence of those witness while concurring with the views of the Learned Court below.

In view of the above I do not find any reason to interfere in the order of Disciplinary Authority. As such, I uphold the penalty of removal from service of the applicant vide Memorandum No.19E/695(U) dtd. 06.10.1997.

The undersigned perused the representation dtd. 31.1.2008 of the applicant as annexed as Annexure-'J' to OA. The applicant prayed for payment of FS dues and sanction of compassionate allowance/ex-gratia pension etc.

The applicant was convicted for forgery, cheating and corruption in a criminal case and as a result of which he was removed from service. He was sentenced to jail for one month. The ground of his removal does not deserve any special consideration. As such, compassionate allowance is not granted. However, FS dues due to him will be paid (as entitled to a staff removed from service) on submission of necessary documents viz, mode of payment

The appeals/representation of the applicant with the OA is disposed of accordingly.

(Sushant Jha)
Chief Personnel Officer
N. F. Railway: Maligaon

Attend

19-3-10
Joint Personnel Officer (Legal Cell)
रा. रेलवे, मालिगाँव, गुवाहाटी-781001
Joint Personnel Officer (Legal Cell)
रा. रेलवे, मालिगाँव, गुवाहाटी-781001

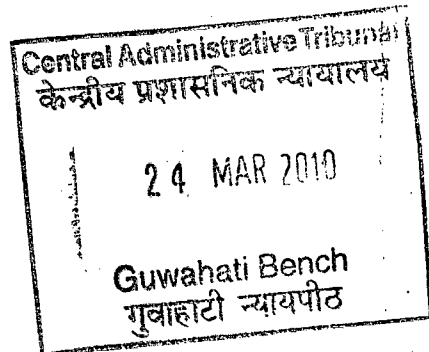
202 Date of application for the copy. তারিখ	Date fixed for notifying the requisite number of stamps and folios. স্টাম্প ওর ফোলিও নী অপেক্ষিত সংখ্যা सूचित करने की निश्चित তারিখ	Date of delivery of the requisite stamps and folios. अपेक्षित स्टाम्प और फोलिओ देने की तारीख	Date on which the copy was ready for delivery. तारीख, जबकि-देने के लिए प्रतिलिपि तैयार थी	Date of making over the copy to the applicant. अपेक्षित को प्रतिलिपि देना-तारीख
07/3/06	07/3/06	07/3/06	07/3/06	07/3/06

(THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA; MANIPUR; TRIPURA; MIZORAM AND ARUNACHAL PRADESH)

32
Crl. Appeal No. 242/96

ANNEXURE - E/1

Shri Haru Chandra Dey,
Son of Late Bhupati Chandra Dey,
Resident of N.F. Railway, Maligaon,
Guwahati.



.....Accused/Appellant
-Versus-
The C.B.I.

.....Respondent

P R E S E N T
THE HON'BLE MR.JUSTICE AN SAIKIA

For the appellant : Mr. JM Choudhury,
Mr. BM Choudhury,
Mr. D. Talukdar, Advocates
For the respondent: Mr. D. Das,
Ms M. Boro, Advocate

Date of hearing and
Judgment : 9.2.06

JUDGMENT AND ORDER (ORAL)

Heard Mr. JM Choudhury, learned Sr. counsel assisted by Mr. BM Choudhury and Mr. D. Talukdar, learned counsel appearing for the appellant and Mr D. Das, learned Sr. counsel assisted by Ms M. Boro, learned counsel appearing for the respondent/CBI.

2. This criminal appeal assails the judgment and order dated 14.10.96 passed by the learned Special Judge, Assam, Guwahati in Special Case No. 2(c)/94 by which the appellant was convicted under Sections 420/471 IPC read with Section 13 (2) and Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988 (for short 'the Act'), and sentenced accordingly to undergo (i) Rigorous Imprisonment (for short 'RI') for 2 years and fine of Rs. 20,000/- in default RI for 3 months under Section 420 IPC, (ii) RI for one year and fine of Rs. 10,000/- in default RI for 2 months under Section 468, (iii) RI for 6 months and a fine of Rs. 2,000/- in default RI for one

19-3-10
Attested
Joint Personal Officer (Legal Cell)
श्री. प्रदीप, मालिगाँव, गडहिंग-781001

24 MAR 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

month as regards sentence under Section 471 IPC, and (iv) finally RI for 4 years and a fine of Rs. 25,000/- in default RI for 6 months under the relevant Sections under the Act abovenoted

3. The law was set in motion with the filing of an FIR lodged with the C.B. I, registered as RC 25(A)/93 against the appellant alleging therein that the appellant, while working as Care-taker of the of 80 bedded Mess, N.F. Railway, Maligaon, during the period of December, 1992 and January and February, 1993, remaining absence for those period from duty, submitted forged requisition/indent for supply of materials to Pandu Stores Depot, N.F. Railway and collected materials against those items. But the articles after being collected were not brought to the store room of the said Mess and thereby he misappropriated an amount of Rs. 94,000/- being the total value of those articles so collected by him as mentioned above.

4. On completion of the investigation, charge sheet was submitted against the appellant under Sections 409/420/468/471 IPC read with the above mentioned Sections of the Act. Charge was framed in view of the charge sheet above mentioned and during the trial, the prosecution examined as many as 16 witnesses including the P.W. 16, hand writing expert, P.W. 1, Maitree Brahma, the Senior Personnel Officer, Welfare and P.W. 4. Dhirendra Malla Saha, Inspector of Stores Accounts, both from N.F. Railway, Maligaon when nobody was adduced on behalf of the defence and there was a total denial of the charge by the defence.

5. The learned Judge, on proper consideration of the evidence on record as well as on close examination of the relevant exhibits including the Requisition and Issue Note (RIN), particularly, Exhibit 63, the report of the hand writing expert and upon hearing learned counsel for the parties, came to the conclusion that the appellant was found guilty under Sections 420/468/471 IPC read with the above mentioned Sections of the Act.

6. Mr. Choudhury, learned Sr. counsel, advancing his extensive argument has contended that grave error was committed by the learned Judge in not considering the specimen signature of P.W. 1 by way of sending the same to the hand writing expert for its examination as regards

Attended
19-3-10
Legal Officer (Legal Co.)
पुनः, मालिगा, गुवाहाटी-781015

24 MAR 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

36-34
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the genuinity and veracity of her signature. According to him, non-examination of any specimen signature/standard signature by the hand writing expert, P.W. 6 is always fatal to the prosecution case because the veracity of the signature found in relevant exhibits, if not examined by the hand writing expert, shall always remain under the cloud. Therefore, it is the legal necessity to send the said specimen signature as well as admitted signature of the person concerned to the hand writing expert when such person is either a witness or suspect for putting such signature in the document itself. Referring to all these aspects, the learned senior counsel has tried to impress upon the Court that there is categorical statement made by the hand writing expert in Exhibit-63, Clause (7) of the report that it has not been possible to express any opinion on the rest of the items on the basis of the materials at hand; meaning thereby, according to him, full explanation cannot be given due to the absence of the materials mentioned above and the hand writing expert was handicapped for not getting the specimen signature of the P.W. 1 to give the perfect opinion on this point.

7. Mr. D. Das, learned Sr. counsel has forcefully contended that no irregularity or illegality has been committed by the learned Judge in arriving at the impugned conviction and sentence of the appellant. According to him, the prosecution has proved the case in its entirety and beyond reasonable doubt by adducing credible evidence. He has also contended that the evidence of the hand writing expert cannot be taken so seriously and that cannot be a sole basis for conviction. It is settled law, according to him, that the evidence of a hand writing expert is always taken as a weak evidence and that can only be used for corroboration and consistency in the deposition of the other witnesses who were examined to support the case of the prosecution. In the instant case, other witnesses namely, P.W.1, P.W.2 and P.W. 4, categorically indicated the involvement of the appellant in the offence so mentioned above. That being so, this Court may not make an attempt to demolish the prosecution case on the basis of the contention and submission made by the learned Sr. counsel.

8. I have carefully gone through the evidence on record so referred to by the learned Sr counsel. It appears that the findings arrived at by the learned Special Judge were not solely based on the report i.e., Exhibit 63 or the

Attested 19-3-10
19-3-10
Perennial Officer (Legal Cell)
মালিক, গুৱাহাটী-781001

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24 MAR 2010
Guwahati Bench गुवाहाटी न्यायपीठ

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deposition of the hand writing expert, P.W.16. The learned Judge took into consideration the evidence of P.W. 16 in its proper perspective with all the supportive evidence to find corroboration and consistency in the testimony of P.W.1 and P.W. 4. It is established that the opinion of a handwriting expert is not either conclusive or substantive evidence as the same is an opinion only. In the case at hand, the evidence of P.W. 16 was fully corroborated by direct evidence of P.W. 1 and P.W. 4. In view of the credible and cogent evidence of P.W.1, P.W.4 and P.W. 16, this Court does not think that non-examination of specimen signature of P.W.1 by the handwriting expert, P.W. 16, would be fatal to the prosecution case as pleaded by the learned senior counsel. Be it mentioned herein that on close perusal of the testimony of the P.W.4, it transpires that the appellant was caught red handed when he was waiting to collect those materials in pursuance of those forged documents.

9. On close scrutiny of the entire evidence of the witnesses on record and also upon hearing the learned counsel for the parties, this Court finds that learned Judge has rightly convicted the appellant under the offences as mentioned above and sentenced him accordingly by taking a right approach to the evidence so adduced by the prosecution. I do not find any infirmity and/or inconsistency in the evidence of those witnesses and accordingly, I have no hesitation to concur with the views of the learned Court below and as a result, the impugned conviction and sentence are hereby confirmed.

10. At this juncture, Mr. Choudhury, learned Sr. counsel, has in all his fairness, submitted that the petitioner is a very poor man and he has lost his job for entering into this adventure and as such the Court should take a lenient view as regards the sentence. He has also informed that the appellant was already in jail for one month after his conviction and as such this one month's custody period of the appellant, may be treated as conviction period. That apart, he has further submitted that an amount of Rs. 10,000/- as part payment of the fine imposed by the trial Court, has already been deposited as directed by this Court at the time of filing of the appeal and now he is ready to pay another Rs. 10,000/- as fine if the period so undergone is treated as sentence period.

Attended
19-3-10
Mr. Permal Officer (Legal)
Mr. Kishore, Malima, Guwahati-78
Mr. Mahanta, Malima, Guwahati-78

11. This Court finds enough force in the submission of the learned Sr. counsel because of the fact that the incident occurred long back in the year 1992-93 i.e., 14 years ago and by this time, he has also suffered a lot of mental and physical torture as this appeal has been hanging over his head for all the time and no fruitful purpose would be served if the appellant is sent to jail now. Taking into account the established facts and circumstances of the case and having given my anxious consideration to the submissions advanced by the learned counsel for the parties as well as there being no criminal previous record of the appellant, this Court is of the view that the ends of justice would be satisfied if the entire sentence period so awarded by the learned Judge under all heads of those sections, noticed above, is modified to the period of one month already undergone and the appellant is directed to pay further amount of Rs. 20,000/- (Rupees twenty thousand) only as fine in default of such payment to undergo Ri for two months. It is ordered accordingly. It is made clear that the fine shall be deposited with the Special Judge, Assam Guwahati, in Special Case No. 2(C)/94 within two months from to-day.

12. Consequently, this appeal stands dismissed to the extent as indicated above.

13. Send down the case records forthwith.

Sd/- A. M. Saikia

Judge *Attended*

P/NO:- 49537

dt. 07/3/06

CERTIFIED TO BE TRUE COPY
At or By *Personal Officer*
Date *07/3/06*
Superintendent (Copying Section)
Guwahati High Court
Authorised U/S 76 Act 1 1972

19-3-10
Personal Officer (Legal)
6/3/10, Guwahati-781006

T. R. Form No. 3

Treasury/Sub-Treasury

Challan of cash paid into the

State Bank of India

To be filled in by the remitter

श्रीरामाय १२ दशरथ

To be filled in by the Departmental
Officer or the Treasury

বিভাগীয় নাইদা কোষাগার বিষয়টি পূর্বান

বিভাগীয় নাইদা কোষাগার বিষয়টি পূর্বান						
By whom tendered কোষে দিয়া	Name(or designation) and address of the person on whose behalf money is paid যাহার উই টাকা দিরা হবে তোতর নাম (বা বন্দী) আব ঠিকানা:	Full particulars of the remittance and of authority (if any) প্রেরিত টকা মহিদার আব দিরা নির্দেশ হাবিলে হাব সম্পূর্ণ বিবরণ	Amount টাকার সংখ্যা		Head of Account হিসাবের শিরোনাম	Order of the Bank বেংকের প্রক্তি নির্দেশ
			Rs. টকা	P. পাইসা		
Name SIAT Bank Ltd. ১৯৪৩ চন ২০-৭-৫৬ ১৯৫৬ চন ২০-৭-৫৬	SAC HARU DEY ১৯৪৩ চন ২০-৭-৫৬ ১৯৫৬ চন ২০-৭-৫৬	Fine amount 1/c with Spl. Case no. 2(9)44 Okder passed on 9.2.06 by The Hon'ble High Court Total (সকলমুঠ টকা)	20,000	00	COTO A J.	Date Correct receive and grant receipt (Signature) Full designation of the offi- cer ordering the money to be paid in)
			20,000	00		

(in words) Rupees

५ (आयनल) टेक्ना

Signature (БЭ))

Date: (তারিখ)

Special Judge, Assam
Gauhati, 14/1/66

19.4.0 Guwahati.

Received Payment

Date _____

Treasury Officer
Agent

Treasurer (সচিব)

Accountant: हिसाब पबोकर

Central Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय

24 MAY 1964

Guwahati Bench

गुब्बारादी लुगामपीठ

Attested

9-3-10

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N.F.RLY

ANNEXURE - G/1

Office of the
General Manager (P)
Maligaon

Date:-17-03-2010

No:-19E/695(Q)

To,

Smt Anita Dey
C/O N. Dey
Rly Qr No.91/B
Nambari, Hill Top Road
Maligaon, Ghy-11

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
24 MAR 2010
Guwahati Bench गुवाहाटी न्यायपीठ

Sub:-Deposit of outstanding RLY. dues

It has been ascertained from the records available in this office that an amount of Rs.3,59,487/- (Electric Bill Rs.21063/- + Damage rent of Qr. 338424/- (Rupees Three Lack Fifty nine thousand four hundred eighty seven) only towards the RLY. Qr. rent and electric consumption charge lying outstanding against RLY.Qr No. 91/B, Nambari, Hill Top Road, Guwahat-11 which was vacated by late Haru Ch. Dey on 14-05-2008 after removal from service.

The said amount may please be deposited to Rly. administration before releasing the FS dues as admissible.

(B. C. Biswasi)

APO/W

for General Manager(P)/MLG

✓ Copy to:-

APO/LC/MLG – for information and necessary action please.

for General Manager(P)/MLG

Attested

19-3-10
Personnel Officer (Legal Cell)
मालिगाँव, गुवाहाटी

39-
209
N.F. Railway

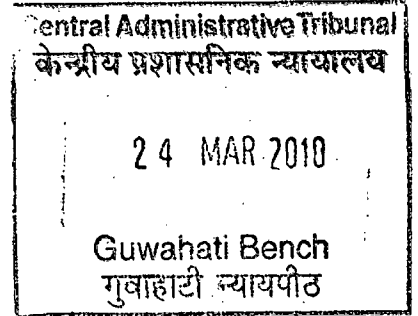
ANNEXURE-7/1 236
Office of the
General Manager (P)
Maligaon

No.E/195/15/Misc (Q) Pt.II

dated- 26-02-10

To,

Smt Anita Dey
W/o Lt. Haru Ch. Dey
Ex- Sr. Clerk-Cum-Caretaker
of 80 bedded Mess
CPO's Office/MLG
C/o N. Dey, Rly. Qrs. No. 91/B,
Nambari, Hill Top Road,
Maligaon, Guwahati- 11




Sub:- Appointment on Compassionate ground.

Ref:- Your application dt. 05-01-2010.

Your application under reference was put up to competent authority for appointment of your son on compassionate ground, but competent authority has observed as under:-

" CGA is not admissible in case of Removal"

This is for your information.


(S. A. Ahmed)
APO/LC
For General Manager(P)/MLG

Attested
19-3-10
Sec. Personnel Officer (Legal Cell)
रा. देवो, मालिगान, गुवाहाटी- 781001

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ANNEXURE-1/1

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
24 MAR 2010
Guwahati Bench गुवाहाटी न्यायपीठ

To

Dated : 3/1/2008.

The General Manager(P)
N.F.Railway, Maligaon,
Guwahati-781011.

(For Kind Personal attention of Shri M.Dharmalingam,
CPO/N.F.Rly.)

Respected Sir,

Sub :- Payment of Final Settlement dues and Sanction
of Compassionate Allowance/~~ex-gratia~~ pension
etc.

- Ref :- (i) Hon'ble Supreme Court of India Judgement
order No.10035/2006 dtd. 09-10-2007.
- (ii) Hon'ble High Court, Assam (Guwahati)
Judgement order of 09-02-06 on CRL
appeal No.242/96.
- (iii) Your memorandum No.19E/695(Q) dtd.06.10.97.
- (iv) My appeal dtd.09.02.2007 with reminders
13.06.07 and 18.08.07 addressed to GM(P)/
Maligaon.

With due regards I beg to lay before you the following
few lines before you for your kind and sympathetic order to
save the wretched family from the jaws of hunger and disaster.

(1) While I was working as Sr.Clerk-cum-Care taker of
80 bedded Mess under SPO(W)/MLG, was convicted and punished by
the Court of CBI Special Judge, Guwahati, Assam and this was
not waived by the Hon'ble High Court, Assam, Guwahati. However,
it has reduced certain punishment. This was also upheld by the
Hon'ble Supreme Court of India. (References are quoted above
alongwith Xerox copies enclosed).

(2) Sir, I was finally removed by the administration
(GM(P)/ML) vide the memorandum quoted above (SL.No.iii) during
the period of subjudiced.

(3) Sir, I have applied for Final Settlement(FS) dues
to your kind honour quoted under reference (SL.No.iv) (Xerox
contd....2.

Attended

19-3-10
Joint Personnel Officer (Legal Cell)
सा: रेलवे, मालिगांव, गुवाहाटी-781011

copies enclosed herewith). But to my utter distress I have received no reply of my appeal till date due to irony of fate.

(4) Sir, I was a poor-paid employee and had to maintain my large family members consisting of my wife, one unmarried student daughter, 2(two) school going sons, one unmarried sister and widow & old mother. The punishment imposed upon me is a bolt from the blue and so I have been passing the worst days of hardship at present.

(5) Sir, I am now death bed as I have been attacked by bronchial troubles with highest degree of hyper diabetes and my days are numbered to bid good bye to this world.

(6) Sir, I was a victim of circumstances resulting my penalties to the vice that came to me as a devil to destroy me and this situation brings my repentance. I pray peace before my departure to see my family without starvation.

In view of the above fact I fervently pray your kind honour to please pass order to finalize my FS dues, gratuity etc. I would request your honour to kindly sanction compassionate Allowance/~~ex-gratia~~ pension in my favour so that my family members could be saved from starvation and ruins. For this act of your kindness I alongwith my family members shall remain ever grateful to you.

A word in reply will highly be solicited.

Haru Chandra Dey
Yours faithfully,

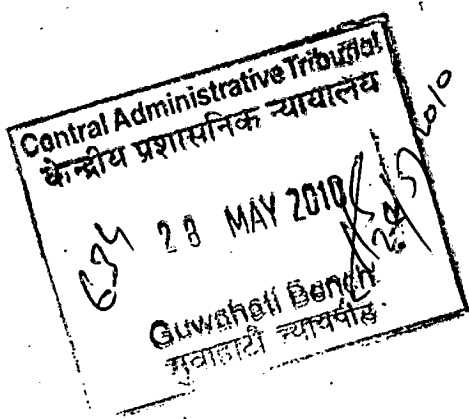
(Haru Chandra Dey)
Ex-Sr. Clerk
CPO's Office/Maligaon,
Qr.No.91/B, Nambari,
Hill Top Road, Maligaon,
Guwahati-781011.

Attested

19-3-10
मानव संसाधन अधिकारी (Legal)
मानव संसाधन, गुवाहाटी-781011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

Filed by
the applicant through
Alsha Das
Advocate
28/5/10



O.A. No. 96/2009

Sri Anita Dey

... Applicant

-Versus-

Union of India & Others

... Respondents

IN THE MATTER OF

Re-joinder to the written statement filed
by the respondent in amended Original
Application.

THE APPLICANT MOST RESPECTFULLY SHEWETH:

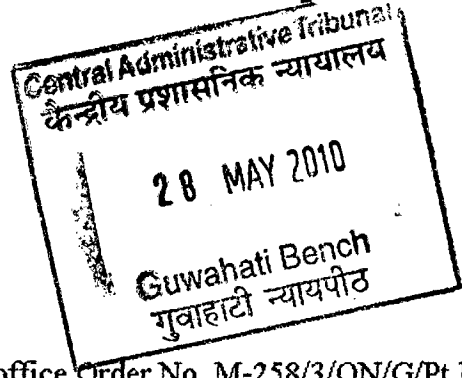
1. The applicant have gone through the copy of the written statement filed by the respondent in the above noted Original Application and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are born on records, all other statements and counter made in the written statement are denied in toto and the respondent authority is put to the strictest proof thereof.
2. That the applicant begs to rely upon the averments and contentions made in the earlier rejoinder and hence do not like to reiterate the same herein again except the reply of paragraph 7 and 13 of the said amended written statement.
3. That with regards to the statement and averment made in paragraph 7 of the additional written statement, the deponent begs to state that at no point of time the respondent authority issued any letter/ notice asking the husband of the applicant to vacate the railway Quarter No. 91/13 allotted to her husband. However the husband of the applicant/deponent has written the letter dated 17.04.2008 expressing his willingness to vacate the same with a request to advice him to whom he has to handover his quarter. Pursuant to the said request, the ADGM & Secretary to CHC vide Office Order No. 3815 dated 2.05.2008 released the said quarter to

Anita Dey

Rejoinder copy to
ADGM & Secy
28/5/10
Advocate

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mechanical department and allotted to Sri N.C. Dey vide office Order No. M-258/3/QN/G/Pt.I dated 13.05.2008 and accordingly the same has been handed over and taken over in a very good condition with full fitting and fixtures on 14.05.2008. As no notices were served to the deceased husband of the deponent directing him to vacate the quarter in question, the authority has no right to demand the damage rent that to after two years of handing over the quarter and more particularly after expiry of the husband of the applicant.

The copies of the relevant documents are annexed herewith and marked as ANNEXURE- 19- Series.

4. That regards to the statements and averments made in paragraph 13 of the additional written statement, there is no need to submit any documentary evidence as regards the lawful wife of Late Haru Chandra Dey. The same is a matter of record available with the respondent authority in the service profile of her deceased husband.

VERIFICATION

I, Smt. Anita Dey, Wife of Late Haru Chandra Dey, Resident of 91/B, Nambari Hilltop Road, Guwahati- 781011 in the District of Kamrup (Assam) do hereby verify that the Statements made in paragraphs 1 to 4 are true to my knowledge and those made in paragraphs..... are believed to be true on legal advice and that I have not suppressed any materials facts before this Tribunal.

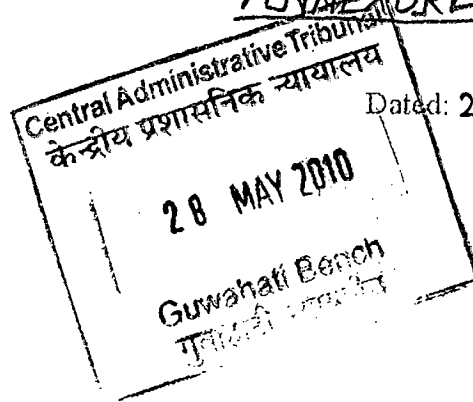
AND I sign this verification on this 1 st day of May, 2010 at Guwahati.

Anita Dey

Signature of the Applicant.

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-3-

ANNEXURE - 19-Series



Dated: 26-03-2010

To,

The Assistant Personal Officer/W
N.E. Railway; Maligaon
Guwahati-11

Sub:- Deposit of outstanding dues and release of Final Settlement Dues.

Ref:- Your letter No. 19E/695 (a) dated 17.03.2010

Sir,

With reference to your above referred letter dated 17.03.2010, I would like to lay the following few lines for your information and appropriate necessary action:-

That, the Railway authority at no point of time has issued any letter or notice asking my husband to vacate the Railway Quarter No. 91/B allotted to him. However, my husband has initiated written letter dated 17.04.08 expressing his willingness to vacate the said Quarter with a request to advice him to whom he has to hand over the same.

That, pursuant to the request of my husband the ADGM & Secretary to CHC vide Office order No. 3815 dated 2.05.08 released the said Quarter to Mechanical Department and allotted to Sri Narayan Chandra Dey, peon of CME's Office vide Office order No. M-258/3/QN/G/PL1 dated 13.05.2008. Accordingly the same has been handed over and taken over in a very good condition with full fittings and fixtures on 14.05.08.

That, under the aforesaid circumstances, as no notices were served to my deceased husband directing him to vacate the quarter in question, the authority can not demand the damage rent and hence the letter dated 17.03.2010 may kindly be withdrawn. Further, the letter asking to deposit the damage rent has issued after about 2 years of handing over and taking over the Railway Quarter that too after expiry of my husband and I have claimed the final settlement dues which is not permissible under the law.

In view of the above, I hereby most humbly and respectfully beg to request your honour to withdraw the letter dated 17.03.2010 and to release the final settlement dues as early as possible considering my financial hardships for which I shall be grateful before your honour forever.

Thanking You.

Yours faithfully

Anita Dey

(Smt. Anita Dey)

C/O- N. Dey, Rly. Qr. No. 91/B.
Nambari Hill Top Road, Maligaon
Guwahati-11



Attested
Asha Das
Advocate

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-4-
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To
The Dy. General Manager (G), &
Chairman, Central Housing Committee,
N. F. Railway, Maligaon

Sub: Vacation of Rly. Qrs. No. 91/B at Nambari

Respected Sir,

I would like to vacate my above Railway quarter with a very short time. Kindly advice me to whom I hand over the same.

Thanking you.

Date: 17.04.08

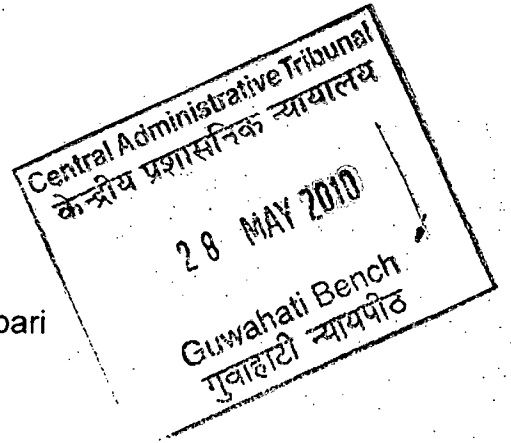
Yours faithfully,

Haru Chandra Dey

(Haru Chandra Dey)

Sr. Clerk, CPO Office

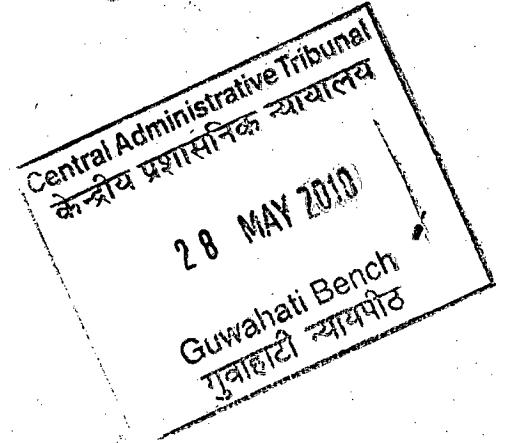
*Attested
Usha Das
Advocate*



Office of the
General Manager
Maligaon, Guwahati : 11

Office order No.3815

Dated : 02/05/08



To

Dy.CME Cum
Secy. to CME/MLG

Sub: Release of one Type -I quaters against CME's non - pooled Nambari.

Ref: Dy.CME.Hq. cum Secy. to CME's letter No. 258/3(QN) G/Pt - I. Dt. 14.3.07.

Rly.Qr. No. 91 / B Type - I, at Nambari which is now under occupation of Shri Haru Chandra Dey, Ex. Sr. Clerk, CPO's office and ~~with~~ express willingness to vacate is hereby released to Mechanical Pool in lieu of Qr. No. 180/D at Nambari (Dismantled)

This issues with the approval of the competent authority.

[Signature] 02/05/2008
ADGM & Secy. to C.H.C
for Chairman/CHC & DGM/G/MLG

No.Z/314/15 /Pt. XV (Non- Pooled)

Dated: 02 . 05. 08

Copy forwarded for information & necessary action to :

1. FA & CAO/Admn/MLG , 2. PDA/MLG, 3. Sr.DEN/MLG, 4. SSE/W/Nambari
5. SSE/P/33 KV/MLG, 6. SPO/W

[Signature] 02/05/2008
ADGM & Secy. to C.H.C
for Chairman/CHC & DGM/G/MLG

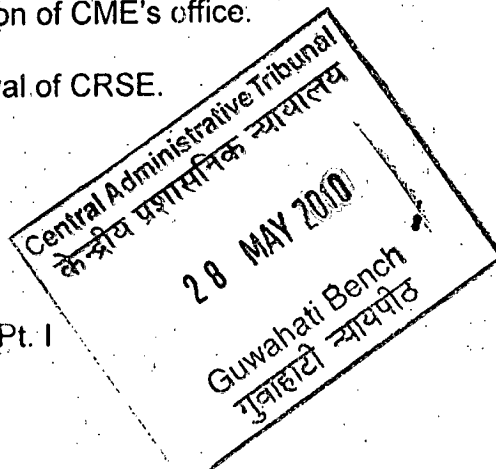
*Attested
Urha Sns
Advocate*

Office order

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Railway Qrs. No. 91/B, Type-I (non-pooled) of Mechanical Department at Nambari, released from GM pool to CME's pool is now hereby allotted to Shri Narayan Ch. Dey, Peon of CME's office.

This has the approval of CRSE.



Secy. To CME

No. M-258/3/QN/G/Pt. I

May 13, 2008

Copy to:-

1. DGM(G)/MLG for information please.
2. Shri Narayan Ch. Dey, Peon, CME Office - for information and necessary action.
3. SSE/Elec./MLG
4. SSE/W/MLG
5. APO/Bill


P. S. Narayan
13/05/08
Secy. To CME
SME / HQ
Cum
Secy. to CME
N.F. Railway / Mallgaon

*Attested
Advocate*

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
28 MAY 2010
Guwahati Bench
गुवाहाटी न्यायपीठ

28 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ



U.S. Army of the Pacific
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741 5108

Ref: CME/MLG's O.O. No. M-258/3/QN/G/Pt.I dtd. 13.05.08

This is for your kind information and necessary action please.

Haru Ch. Dey
(Haru Ch. Dey)
Ex. Sr. Clerk, CPC Office
Maligaon

1. CPO/MLG
2. DGM(G)/MLG
3. MD/Central Hospital, Maligaon
4. CPO/Pass/MLG
5. Sr. DEN/MLG
6. SPO/Mech./MLG
7. AEE/MLG

✓ 8. SEE/Elec./33 KV
✓ 9. SEE/Works/Goshala
✓ 10. APO/Bill/MLG

Admitted
Ursha Das -
Advocate