

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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R.A./CP/NO.....2015
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P.D. 17/07/2015
SECTION OFFICER (JUDL.)

17.7.2015

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:

ORDERSHEET

1. ORIGINAL APPLICATION No : 263 / 2009
2. Transfer Application No : ----- / 2009 in O.A. No. -----
3. Misc. Petition No : ----- / 2009 in O.A. No. -----
4. Contempt Petition No : ----- / 2009 in O.A. No. -----
5. Review Application No : ----- / 2009 in O.A. No. -----
6. Execution Petition No : ----- / 2009 in O.A. No. -----

Applicant (S) : Shri Nirmal Kumar SenRespondent (S) : Union of India & EPS.Advocate for the : Md. Khorsheed Ali
{Applicant (S)}Advocate for the : Rby.
{Respondent (S)}

Notes of the Registry	Date	Order of the Tribunal
<p>Application is in form is filed/C.F. No. 50/- deposited with PB/BD No. <u>395443292</u> Dated <u>9/12/09</u></p> <p><u>15/12/09</u> Dy. Registrar <u>15/12/09</u></p> <p><u>15/12/09</u> 5 (Five) copies of application with envelopes received for issue notices to the respondents No 1 to 5. Copy served.</p> <p><u>1/1/2010.</u> Judgment/ Final order dated 21/12/09 prepared and sent to the all the Respondents by post and issued to the Advocate for both the Parties vide No <u>83 to 88</u> dated <u>5-1-2010</u></p>	<p>21.12.2009</p> <p>/PB/</p>	<p>Heard for both sides. For the reasons recorded separately O.A. stands disposed of. No costs.</p> <p><u>(Madan Kumar Chaturvedi)</u> Member (A)</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 263 of 2009

Date of Decision: 21 .12.2009

Shri Nirmal Kumar Sen

..... Applicant/s

Md. Khorshed Ali

..... Advocate for the
Applicant/s

- Versus -

U.O.I & Ors.

..... Respondents

Dr. J.L. Sarkar, Railway Standing Counsel

..... Advocate for the
Respondents

CORAM

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

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

Judgment delivered by


Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 263 of 2009

Date of Order: This, the 21st Day of December, 2009

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

Sri Nirmal Kumar Sen
S/o Late Jitendra Nath Sen
Aged about 59 years, by occupation
Jr. Clerk (E), N.F. Railway
Electrical Department
Railway Station Road
Pan Bazar, Guwahati – 1
P.S.- Panbazar, Dist- Kamrup (Metro, Assam)

...Applicant

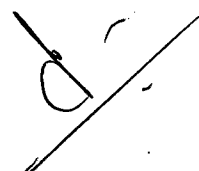
By Advocate: Md. Khorshed Ali.

-Versus-

1. The Union of India
Department of Railways
Represented by the General Manager
N.F. Railways, Maligaon, Guwahati – 11.
2. The General Manager (P)
N.F. Railways, Maligaon, Guwahati – 11.
3. The Chief Personal Officer
N.F. Railways, Maligaon, Guwahati – 11.
4. The Assistant Personal Officer
N.F. Railway, Station Road
Panbazar, Guwahati – 1.
5. The Assistant Divisional Finance Maintenance officer
N.F. Railways, Maligaon, Guwahati – 11.

...Respondents

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



ORDER (O R A L)

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


By this application, applicant makes a request for regularization and payment of arrear salaries and allowances.

2. Adverting to the facts, I find that the petitioner was arrested and placed under detention for more than 48 hours in jail. Consequently he was placed under deemed suspension by order dated 08.11.2000 with effect from 24.07.2000 by Respondent No. 4.

3. Vide letter dated 17.04.2006 suspension order was revoked on the following grounds i.e. (1) your suspension period will be regularized considering the nature of acquittal by the court of law in criminal proceedings as per Railway Board's directives, (2) You may be placed under suspension for 2nd time for the same reason if you have to detained again by police custody exceeding 48 hours.

4. Learned counsel invited my attention on the order of Special Judicial Magistrate, Assam, Guwahati in G.R. Case No. 5270/99 dated 25th June 2009. In the concluding para of the judgment it is mentioned: "situated thus, I acquit the accused of the charge under section 420 IPC and direct that he is at liberty forthwith. His bail-bond stands discharged. The seized documents shall be returned to the persons concerned (from whom seized)."

5. Learned counsel submitted that this order of acquittal was placed before Respondent No.4. It was further stated that the applicant is retiring on 31st January, 2010. It was requested that the matter be expedited and justice be done.



6. Heard Dr. J.L. Sarkar, learned Standing counsel for Railways. He assured that matter will be expedited without any further delay.

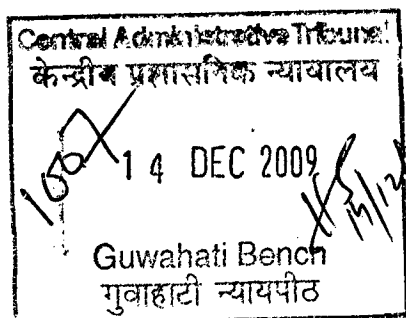
7. Having heard both parties, I direct the Respondents to regularize the suspension period as per Railway Board's directives and to consider the grant of all consequential benefits as available under the rules without any further delay.

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


(MADAN KUMAR CHATURVEDI)
MEMBER (A)

/PB/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI



O.A. No. 263/2009

Sri Nirmal Kumar Sen.

..... Applicant/Petitioner

-Vs-

Union of India & ors.

..... Respondent

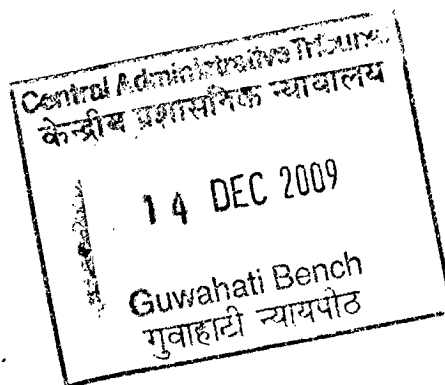
SYNOPSIS

The petitioner served in different capacities and departments under respondent no. 1 till in 1993 when he was designated as Jr. Clerk (E) in the Electrical Department under Respondent No. 4. Where under he is still in service.

That following a G.R. Case No. 5270/99, resulting from Guwahati Jalukbari P.S. Case No. 456/99, u/s 420 IPC having been instituted by same of the adversaries of the petitioner, in the court of Special Judicial Magistrate, Assam, Guwahati. The petitioner was arrested and placed under detention for more than 48 hours in Jail Hazot and for this the petitioner was consequently placed under deemed suspension by order passed on 8-11-2000 by respondent No. 4, with effect from 24-7-2000.

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ADVOCATE
14.12.09

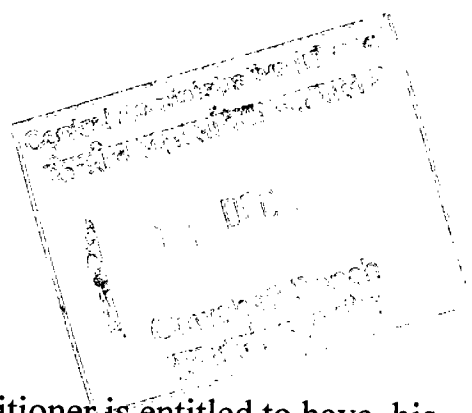


However by an order dated 18-4-2006, respondent No. 4, in follow up action as per order passed by this Hon'ble Tribunal in O.A. No. 307/05, thereafter said order of deemed suspension having been revoked the petitioner on P.M.C. & D.F.C. by D.M.O. however resumed his duties on 19-12-2007 and till date he is serving as such as usual.

The during the period of deemed suspension, the petitioner was allowed to draw at first instance, 50% of his basic pay, for (9 month, w.e.f. 01-03—01 to 30-11-01) months, in the 2nd instance 75% of his basic pay for (1-12-01 to 15-4-06) later months and in the third and last instance without a single pie w.e.f. 16-4-06 to 18-12-07.

That it is worth mention that during the period of suspension, no departmental proceedings were drawn against the petitioner and also no penal stipulation was made in the revocation of the said deemed suspension and on the contrary, the No.1 condition in the aforesaid revocation order, it was made clear that the period of suspension would be regularised subject to the result and nature of acquittal in the criminal case concerned and the order of acquittal passed by the Hon'ble Court in the said G.R. Case No. 5270/99 dated 25-6-09, the petitioner has been exonerated from any liability of the charges.

Contd....



In the circumstances, the petitioner is entitled to have, his deemed suspension, period being regularised and his arrear salaries and allowances but despite repeated request to the authorities has evoked no response from the respondents.

Hence this humble petition in the Hon'ble Tribunal for doing the justice which he is entitled to.

Filed by

MD. Khosro Ali

Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

O.A. NO...263...../2009

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ADVOCATE

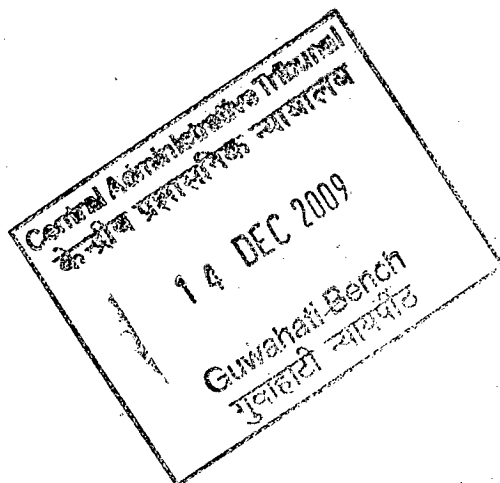
SRI NIRMAL KUMAR SEN

..... APPLICANT/PETITIONER

-VS-

UNION OF INDIA & ORS.

....RESPONDENT

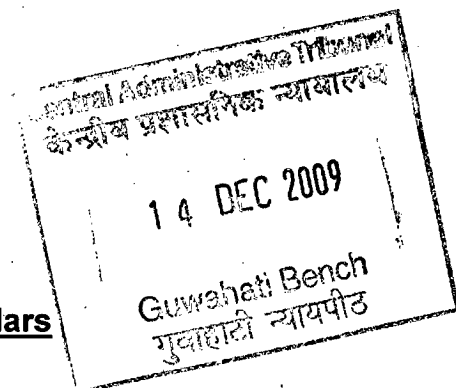


LIST OF DATES

<u>Sl.No.</u>	<u>Date</u>	<u>Annexure</u>	<u>Particulars</u>
1.	24-11-99	I	Petitioner was accorded sanction of 2 days LAP w.e.f 29-11-99 to 30-11-99 to 30-11-99
2.	3-12-99		Petitioner sent Telegram to R-4 from Simla for extension of leave.
3.	7-12-99		Petitioner arrived at Guwahati from Simla and on the same day kidnapped for ransom by miscreants
4.	02-01-2000		Petitioner was released from captivity by miscreants and left at Mariani Rly. Junction.
5.	02-01-2000 to 30-06-2008	2	Petitioner was acutely suffering from various illness due to Torture in captivity.
6.	05-02-2001	3	Petitioner was deadly afraid to continue to remain in N.E. Region and moved application for inter Rly. Transfer to Hon'ble Union Minister.

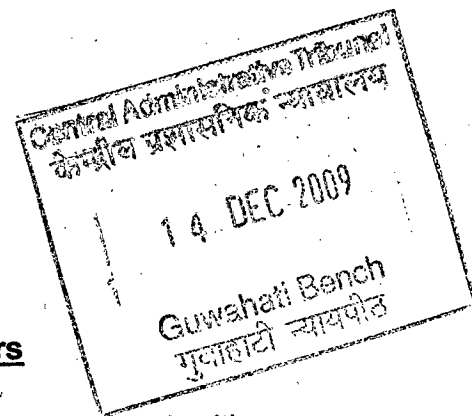
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(2)



<u>Sl.No.</u>	<u>Date</u>	<u>Annexure</u>	<u>Particulars</u>
7.	8-11-2000	4	On being fit to resume duties, petitioner went to join his duty but instead of allowing him to resume he was handed over with a letter issued by Respondent no. 4 the order of suspension with post dated effect.
8.	26-02-2001	5	Petitioner applied for revocation of the order of suspension before the respondent no. 4 and prayed for allowance to join in duty but in vain.
9.	15-12-05	6	Petitioner vide O.A. No. 307/05 moved in this Hon'ble Tribunal was allowed and order of direction passed against the suspension order of the respondents authority.
10.	17-4-2006	7	Respondent authorities issued order of revocation of suspension of petitioner with condition on regularization of suspension period.
11.	8-11-2007	8	On 5-11-07 petitioner as he was fit to resume duties, joined his duties he received show cause notice of contemplated Departmental proceeding with two articles of charges which the petitioner gave adequate and satisfactory reply, where after there was no whisper on the said D.P.
12.	25-06-2009	10	The criminal case, G.R. No. 5270/99 U/s 420 IPC instituted against the petitioner by some of his adversaries which had been the root cause for all these troubles with the petitioner was finally decided in the court of special Judicial Magistrate, Assam, Guwahati, whereby, the petitioner was exonerated from liability of the charges in the said criminal case.

contd...3



<u>Sl.No.</u>	<u>Date</u>	<u>Annexure</u>	<u>Particulars</u>
13.	10-11-2008	11	Petitioner last represented before the authorities for justice for regularizing his absent period and suspension period and consequent reimbursement of his pending dues of salary and other allowances and bonus but the same fell into deaf ears, not yet considered by the authorities.
14.	23-11-2009	12	Petitioner due date for super annuation following on 31-01-2010 has been notified for which reason this matter to decide by the Hon'ble Tribunal is urgent for a summary direction.
15.	1-12-99 to 18-12-2007	13	Table showing salary structure paid /remaining due/ unpaid to the petitioner

Filed by

MD. Khosheed Ali

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

O.A. NO...../2009

SRI NIRMAL KUMAR SEN

..... APPLICANT/PETITIONER

-VS-

UNION OF INDIA & ORS.

....RESPONDENT

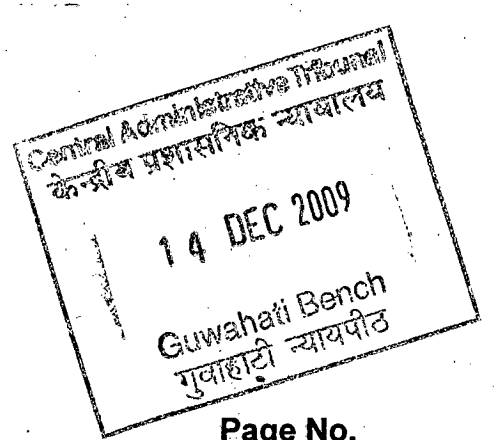
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ADVOCATE

MD. Khairul Alam

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(2)

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Filed by

MD. Khosro Ali

Advocate

DISTRICT : KAMRUP



FILED BY

MD. Khoshked Ali

ADVOCATE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Original Application No. /2009

Before Hon'ble the Chairman/Vice Chairman
of the Hon'ble CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, AT Guwahati.

IN THE MATTER OF :

A humble application of the
applicant/petitioner, praying
for an order of direction to
the respondent to regularise
the period of suspension of
the petitioner w.e.f. 24.7.2000
to 19.12.2007 and consequent
disbursement of the arrear
pending salaries and other
allowances payable as per rule/
equity and fair justice to the
petitioner.

- AND -

IN THE MATTER OF :

Sri Nirmal Kumar Sen,
S/o Late Jitendra Nath Sen,
aged about 59 years, by occupation
Jr. Clerk (E), N.F. Railway,

Nirmal Kumar Sen

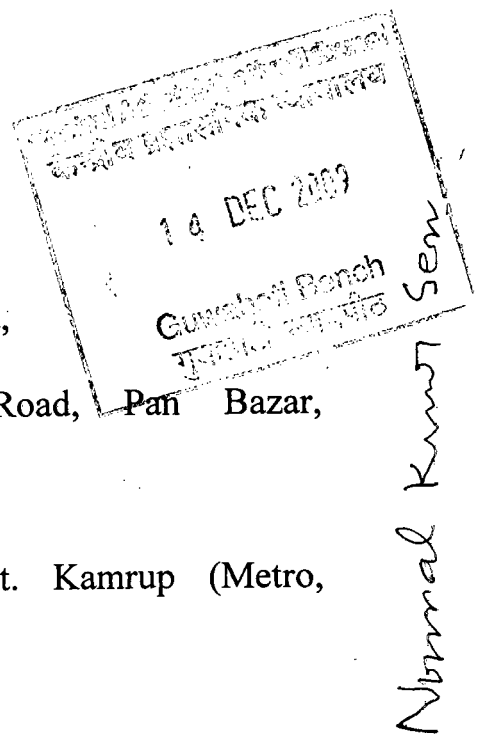
-2-

Electrical Department,

Railway Station Road, Pan Bazar,

Guwahati-1.

P.S. Panbazar, Dist. Kamrup (Metro,
Assam.



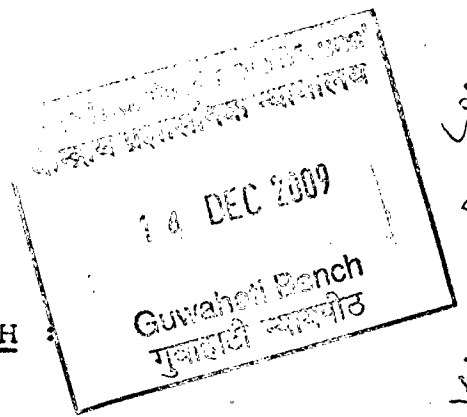
-Versus-

1. The Union of India,
Department of Railways,
Represented by the General Manager,
N.F. Railways, Maligaon,
Guwahati-11.
2. The General Manager (P),
N.F. Railway, Maligaon,
Guwahati-11.
3. The Chief Personal Officer,
N.F. Railway, Maligaon, Guwahati-11.
4. The Assistant Personal Officer,
N.F. Railway, Station Road,
Panbazar, Guwahati-1.
5. The Assistant Divisional Finance
Maintenance officer, N.F. Railway,
Maligaon, Guwahati. 11

.....Respondents.

The humble application of the
applicant/petitioner above named-

Contd...3.



MOST RESPECTFULLY SHEWETH :

Details of the application-

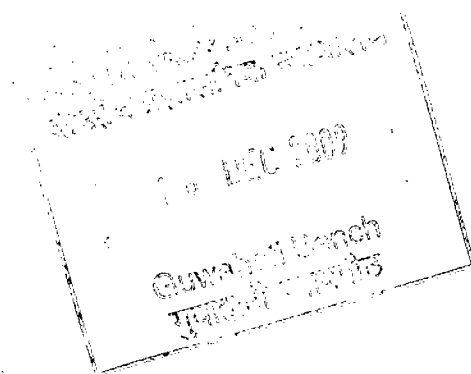
i. Particulars of the order and Judgements and order which this application relates :

i) order issued by respondent No.4 vide No. PS/N/101(P), dated 8.11.2000 whereby the petitioner was placed under "deemed to be suspension."

ii) Judgement and order passed by the Hon'ble CAT, Guwahati dated 15.12.2005 in O.A.No.307/05 under which, Hon'ble Tribunal was pleased to pass an order of direction to consider the case of suspension of the petitioner by the respondent No.3, therein within a time frame, which was subsequently complied with.

iii) Order of Revocation of the "deemed to be under suspension" of the petitioner issued by the Respondent No.4 herein dated 17.4.2006 and the condition No.1 thereof under which the petitioner seeks to base his claim in the present application.

iv) The Judgement and order dated 25.6.09 passed by the Hon'ble Court of the special Judicial Magistrate, Assam, Guwahati in G.R.case No.5270/99 under which the petitioner has been completely exonerated from any liability of the charges levelled against him to lent support to his claim.



Nirmal Kumar Sen

- (v) The pending letter of representation, last made by the petitioner to the respondent authorities for considering his case as per condition no. 1, as was stipulated in the Order of revocation of Order of "deemed to be under suspension" noted under clause no. (iii) here above.

And

- (vi) The table of month, year and structure of salaries and the mode and manner of the payment, to the petitioner, for the period of his suspension, unjustifiably meted out to the petitioner now in a moment when the petitioner is at the verge, just a few weeks to go for his super annuation.

2. Jurisdiction :-

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

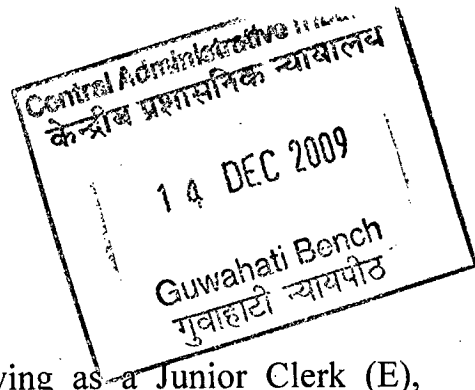
3. Limitation :-

The applicant declares that the application has been made within the period of Limitation.

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 and privileges guaranteed under the constitution of India and protection under all other laws and enactments framed these under.

Contd...



Nirmal Kumar Sen

- 4.2. That the petitioner has been serving as a Junior Clerk (E), Electrical Department under APO (E), N.F. Railway, Guwahati, since 1993.
- 4.3. That from 29-11-99, to 30-11-99 (two days) the petitioner was on sanctioned ^{Leave} with average pay and as soon as he returned home from Simla to Guwahati, he was kidnapped for ransom by miscreants, kept under captivity and released on 2-1-2000 at Moriani junction.

A copy of the enclosed order of leave sanction is marked as annexure -1.

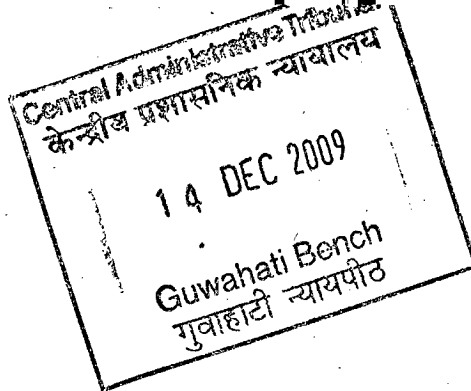
- 4.4. That in his captivity, petitioner was tortured, physically and mentally, kept for days together without food and was lastly released when he was seriously ill.

The copy of each of the first and the last Medical Certificates (for brevity) are annexed herewith and marked as Annexures-2 and 2.1)

- 4.5 That being deadly scared for life and his family he prayed and moved application for inter railways transfer upto the Union Minister of Railways, but the same has not been given any consideration.

A copy of the representation to the Union Minister for railways is annexed herewith and marked as Annexure-3.

- 4.6 That during his absence under the captivity some of his adversaries filed a case with Jalukbari P.S. regd as Jalukbari P.S. Case No. 456/99 U/s. 420 IPC; suspecting him to have fled away with mutual fund money, as the petitioner was the chief member of the fund he was running with other like



minded friends, which case gave rise to G.R. Case No. 5270/99 in the Court of Special Judicial Magistrate, Assam, Guwahati.

- 4.7. That in the aforesaid Jalukbari P.S. Case No. 456/09 Which was later on followed by G.R. Case No. 5270/99 U/s. 420 IPC in connection with which, the petitioner was arrested and detained in jail Hazot for more than 48 hours, and in the result, the petitioner was placed under deemed suspension with effect from 24-7-2000.

A copy of the said order of deemed suspension dated 8-11-2000 is annexed herewith and marked as Annexure-4.

- 4.8. That the petitioner submitted an application to the authorities, the details of his lot, narrated in the application to join in duty, but instead he was served with an order of suspension, and no consideration was given to his application either for Leave extention or to his resuming to duties.

A copy of the application is enclosed herewith and marked as Annexure-5.

- 4.9. That thereafter for reason of long period the aforesaid criminal case was not being finalised, and also, because the respondent authorities was not drawing any departmental proceedings and also the petitioner fell into hardship and economic crysis, he filed an application before this Hon'ble Tribunal vide O.A. No. 307/05 in which Hon'ble Tribunal was graciously pleased to pass order dated 15-12-2005, thereby directing the authorities

to consider his case within a time frame for revocation of the said deemed suspension of the petitioner.

(A copy of the certified Judgment and Order of the Tribunal passed in O.A. No. 307/05, dated 15-12-2005 is annexed herewith and marked as ANNEXURE-6).

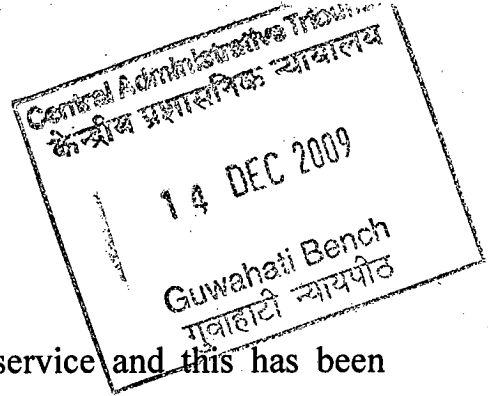
4.10. That in follow up action of the Judgment and Order of the Hon'ble Tribunal, (Annexure-6) the respondent authorities however oblized and revoked the Order of the "deemed suspension" of the petitioner but with stipulation as under condition no. 1. Therein to the effect that, the period of suspension of the petitioner would be regularised subject to the nature of the final Judgment and Order in the Criminal Case he was involved.

(A copy of the Order of Revocation of the suspension, is annexed herewith and marked as ANNEXURE-7).

4.11. That on and after the said order of revocation of his suspension, the petitioner was acutely suffering and evon though it happened for a very good news for him to resume his service, but due to his illness the petitioner

Contd....

Nilimal Kumar Sen



could not immediately resume his service and this has been duly intimated to the authorities by letter supported by Medical Certificate, before he joined in duty, by Departmental Medical Officer.

copies of relevant document are annexed herewith and marked as Annexures 8 and 8.1 respectively.

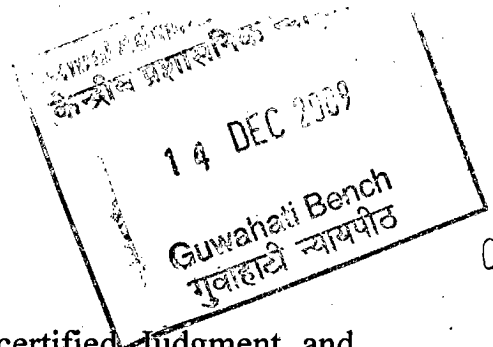
4.12. That after the petitioner was able and physically fit, he joined his service and resumed his duty on 5.11.2007, the petitioner was handed over with a charge sheet of Departmental proceedings under various charges alleged therein against which the petitioner submitted his reply on 8.11.07 whereafter there has been no whisper on the said D.P. till date.

Copy of Reply to show cause of contemplated D.P. Charges are annexed herewith and marked as annexure - 9.

4.13. That the petitioner on and after 19.12.07 has been regularly attending his duty with all sincerity and integrity and he has been presently upgraded on promotion as he has duly deserved the same and no question arises as why his claims of leave regularisation and salaries, thereof should not be granted.

4.14. That the Hon'ble Court of the Special Judicial Magistrate, Assam, Guwahati by the Judgment and Order finally passed in the said Criminal Case dtd. 25-06-09 completely exonerated the petitioner of any charges against him, which has become absolute as there has been no appeal or revision against the same till date and within the period of limitation.

Manoj Kumar Sen



A copy of the certified Judgment and Order dtd. 25-06-09 in G.R. Case No. 5270/99 is enclosed herewith and marked as Annexure -10).

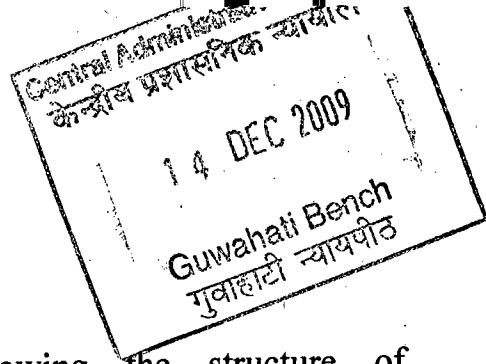
4.15. That the petitioner has made a representation, earlier praying for regularisation of his period of suspension and without having supplied a copy of the Judgment and Order of the Criminal Case as fulfillment of the pre-condition, stipulated in the said revocation of suspension for the purpose, but the same has fallen into deaf ear and has not yet been taken into consideration by the respondents.

A copy of the last representation to the authorities is annexed herewith and marked as Annexure -11.

4.16. That the petitioner has been due to super annuation on 30.01.2010 and he is seriously worrying of his fate of life long satisfactory service without his due service benefits.

A copy of the list of names as declared due to super annuation of the petitioner is annexed herewith and marked as Annexure-12.

4.17. That this humble application before the Hon'ble Tribunal praying for a direction to the respondent authorities to regularise the period of suspension and consequent early disbursement of arrear pending salaries and allowances due to the petitioner on the following among others.

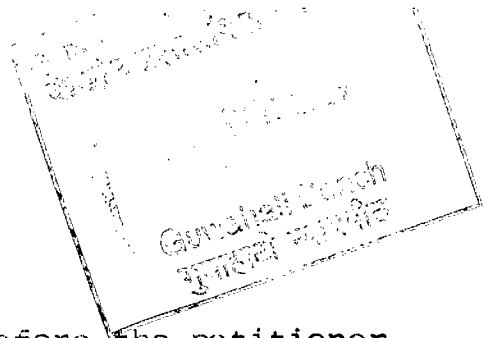


A chart showing the structure of payments remaining due to the petitioner is annexed herewith and marked as Annexure-13.

5. GROUND

- 5.1. That the petitioner has unblemished service records prior to the order of suspension dtd. 8.12.2000 and onward 5-11-2007, when he joined and resumed his duty on revocation of suspension.
- 5.2. That the incident of the criminal case for which he was made to suffer suspension has no nexus with his service, save and accepted the reason of his detention in connection therewith for more than 48 hours.
- 5.3. That the criminal Court after a prolonged trial, has completely exonerated the petitioner from any liability of the charges levelled against him in the criminal case.
- 5.4. That the Judgment and Order of the Criminal Case has justifiably fulfilled the pre-condition, imposed upon the petitioner for regularisation of his period of suspension and he stands entitled to be considered as per stipulation made under condition No.1 in the revocation order of suspension (Annexure-7)
- 5.5. That the petitioner is remaining only a couple of months to his super annuation and he have given an early consideration to his representation in the light of the Judgment in the criminal case and stipulation of pre-condition in the Revocation Order.

Sanjiv Kumar



Minister Kumar Sen

5.6. That the fact that before the petitioner joined and resumed his duty on revocation of his order of suspension, the contemplated Departmental proceeding on and after his reply to the charges thereof, has been dropped and after resuming duties he has been upgraded on promotion, has proved his sincerity and integrity in service and he is entitled to the reliefs sought for.

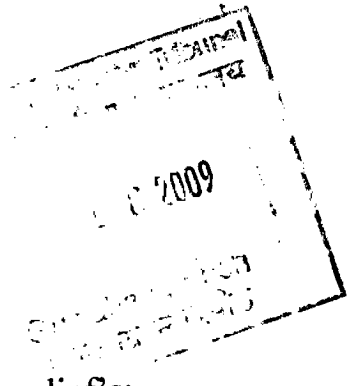
5.7. That the petitioner is entitled to the reliefs sought, which are right, just and genuine, but the same has been delayed in-ordinately amounting to denial.

6. Details of remedies exhausted :

That the applicant declares that he has preferred representation to the authorities, but the same is pending inordinately, and he is due to super annuation only next month and therefore, this Hon'ble Tribunal has been the only forum to have the subject adjudicated.

7. Matters and previously filed or pending with any other court.

That the applicant declares that he has not filed any case on the subject matter before any other court or forum save and except the representation pending long before the respondent authorities.



Nirmal Kumar Sen

8. Relief's sought for:

8.1. The petitioner humbly seek for the following relief's:

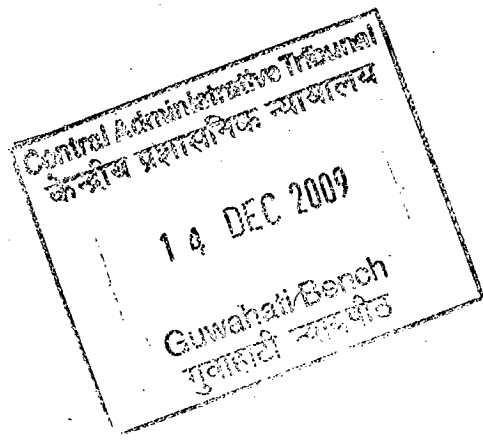
- (i) LAP (Leave Average Pay) for the two days i.e. 29-11-2009 and 30-11-99 which were sanctioned by Respondent No. 4 and consequent privilege pass had been issued in favour of the petitioner.
- (ii) LAP or. Commuted Leave for the period of 1-12-99 to 25-2-01 as against shown as absentee.
- (iii) Regularise the deed suspension period from 26-2-01 to 15-4-06 as on duty.
- (iv) Regularise Leave for the period from 16-4-06 to 18-12-07 as against shown as absentee.
- (v) To fix the correct pay scale as per norms of 6th Pay Commission upto 1-8-08 and to re-imbuse the pending dues to the petitioner with his medical Bills also pending due to the petitioner.

8.2. The petitioner also prays for any other or such relief or relief's as the Hon'ble Tribunal may deem fit and proper.

9. Interim relief sought for :

That during the pendency of this application, and in the event the petitioner happens to have super

: 13:



annuated, Hon'ble Tribunal may kindly pass an order of interim relief thereby granting him a summary adjudication and/or, his super annuation may be taken to have no adverse effect or diminish any way his claim of remedy sought by this application.

10. That this application is filed through advocate.

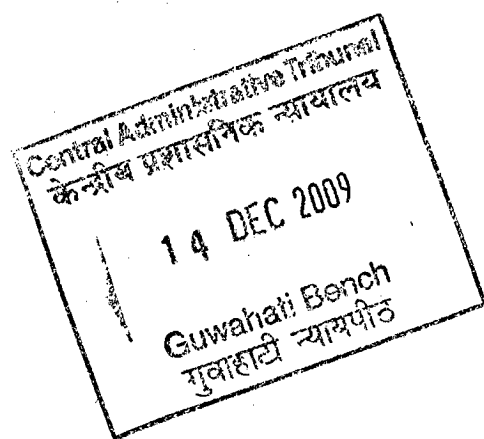
11. The particulars of postal order :

- i) I.P.O. No. : 39 G. 443292
- ii) Date and time : 9-12-2009.
- iii) Issued from : G.P.O. Guwahati
- iv) Payable at : Guwahati

contd.. Verification

Nirmal Kumar Sen

:14:



VERIFICATION

I, Sri Nirmal Kumar Sen, S/o. Late Jitendra Nath Sen, aged about 59 years, by profession Central Govt. Service, N.F. Railway, Electrical Department, Panbazar, Station Road, Guwahati-1, do hereby verify that, the contents in the petitioner from para 1 to 9 are true and correct to the best of my personal knowledge and belief.

Verified on this the 14th day of December 2009 at
Guwahati

Identified by

MD. Khurshed Ali

Advocate

Nirmal Kumar Sen

Signature

ation

६० १० ३०/P. T.O.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

14 DEC 2009

Guwahati Bench
गुवाहाटी न्यायालय

**CERTIFIED
TRUE COPY**

ADVOCATE

Dr. Debeswar Das M.B.B.S. M.D. (MED)

Specialist in General Medicine

Resident Physician (Ex), Department of
Medicine, Guwahati Medical College.

Regd No. 8093 (AMC)

Consulting hours : 5 p.m. to 7 p.m

Saturday and Sunday closed

Uzanbazar, Guwahati-1

548131

ডাঃ দেবেশ্বৰ দাস এম. বি. বি. এচ. এম. ডি. (মেড)

মেডিচিন বিশেষজ্ঞ

আবাসিক চিকিৎসক (প্রাক্তন), মেডিচিন বিভাগ

গুৱাহাটী মেডিকেল কলেজ।

রেজিষ্টার্ড নং - ৮০৯৩ (এ. এম. ডি)

যোগাঃ চোৰা সময় : আবেলি ৫ বজাৰ পৰা ৭ বজালৈ

শনিবাৰ আৰু বৰিবাৰ বন্ধ

উজানবজাৰ, গুৱাহাটী - ১

Guwahati Bench
গুৱাহাটী ন্যায়দণ্ড

14 DEC 2009

Guwahati Bench
গুৱাহাটী ন্যায়দণ্ড

To Whom it may Concern.

This is to certify that Sri Nirmal Kumar Sen of Uzanbazar, Guwahati-1 was suffering from viral hepatitis from 20/10/2000 to 02/01/2001. He was under my medical care and I advised him to take rest for that period. He is now fit to resume his job.

Dr. Debeswar Das
M. B. B. S., M. D.
Medical Consultant
Regd. No. - 8093 [A. M. C.]
GUWAHATI - 1

02/01/2001

CERTIFIED
TRUE COPY

ADVOCATE

Dr. J. K. BARUAH

SR. MEDICAL CONSULTANT

Specialised in Transfusion Medicine (Bombay)

Specialised in Chest Diseases

Specialised in STD and Venereal Diseases

Phone : (R) 2206275 Mobile : 9864043609 / 9864506989

Reg. No. 4370 (AMC)

CARE CLINIC

Maligaon

Guwahati-781 011

10 A.M. to 12 Noon

LIFE PHARMACY COMPLEX

Ulubari Chariali

Guwahati-781 007

8 P.M. to 9 P.M.

Name: Dr. Nirmed K. Sen Date: 10/6/08
Age: 59 Sex: M/F

Symptoms:

This is to certify that Dr. Nirmed K. Sen
is a late J.N. Sen who has been suffering from acute
arteriosclerotic bronchitis & essential hypertension.
He has been under treatment and is now
advised to take rest for 20 (twenty days)
D.K.P. 10/6/08

Diagnosis:

DR. 10/6/08
S. Medical Consultant
Regd. No 4370 (A.M.C.)
Formerly Medical College Hospital

Investigation/s:

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ADVOCATE

Signature

Date: 05/02/2001

From N.K.Sen,
C/o T.P.Majumdar
(Advocate)
Uzan Bazar,
Guwahati-1.
Near Raj Bhawan.

✓ To,

The Rail Minister New Delhi.

(Through Proper Channel)

(Kind attention Smt Mamata Bajerjee

Sub:- Prayer for Inter Rail Transfer
in favour of me from CPO/HQ/MLG
APO/Elec/GIM
N.F.Rly to Delhi, Amballa, Kalkha &
Simlla in N.Railway.

Respected Madam,

I have the honour to stay that I want to transfer in
Inter Railway prayer in favour of me from CPO/HQ/MLG N.F.Rly to
APO/Elec/Ghy

Delhi, Amballa, Kalkha & Simlla N.Railway if any place. I am the emp-
loyee of APO/Elect/Ghy under CPO/HQ/MLG Gauhati-11 as Jr.Clerk(E) in
scale of pay Rs. 3050/- - 4595/- (Rs) present pay Rs. 3650/- (PM) due to
facing troubles of ULFA, SULFA, Railway Employees & Janata (Public).
The Militant each & any time afraid to disturb me to Qtrs & office.
They will be killed & death to go & fro and do not joined my duty at
office. The 14 months was medical sick in P.M.C. till date (Private
doctor) I am very much trouble to face leaving in life, wife, children
also here. So again I am ~~Membership~~ to Transfer me the above causes

The following particulars are given as below:

- (1) Name - Nirmal Kumar Sen.
- (2) Father's name :- Late Jitendra Nath Sen.
- (3) Designation:- Jr. Clerk (E)
- (4) Place of posting : APO/Elect/Ghy, N.F.Rly.
- (5) Under whom : CPO/HQ/Maligaon, Ghy-11.
- (6) Pay in scale of Rs. 3050-4595/- (Rs)
- (7) Present pay :- 3650/- (P.M)
- (8) Qualification :- H.S.L.C. passed.
- (9) Other qualification:- P.U.C.Science placked.
- (10) Extra Qualification :- Hindi Probin & Pragu passed. in departmental
- (11) Date of birth :- 07-01-1950.
- (12) Date of appn:- (1) 13/2/68 to 20/8/74 -indefence CSD(1) Narengi
as L.D.C. and surplus.
(2) 23/8/74 to 3/8/81 - as casual labour (Tolley-
man, peon, Kha, R/s.
(3) 4/8/81 to 20/2/86 - as kha in posting (Regu-
lar-basis) Permanent.
(4) 21/2/86 to 18/9/90 - as kha/Helper permanent.
(5) 19/9/90 to 4/8/94 - promotion as painter-
Gr-III class staff.
(6) 5/8/94 - as Jr. Clerk(E) & till conting.
- (13) Service permanent or not - permanent.
- (14) Permanent Address:- C/o M.R.Sen, Paul-Para, Narayanpur, Kankinara,
West Bengal (WB)
- (15) Father & Mother alive or not :- Not alive.
- (16) Rly Qtrs. or not :- Qtrs. Not L/48, Loco Colony Pandu, Ghy-12.
- (17) How many daughter & sons :- Two daughters, (1) Miss Anamika Sen,
age 11 years, (2) Miss Aparajita Sen,
age 5 years, 6 months. 1st daughter
is reading in class VI in Auckland
House School Boarders Simlla, 2nd
daughter is reading in class L.K. in
Praggyotish High School, Baripara, Ghy.

Under the circumstances I would like to inform you that I there-
fore prayed that your goodself would be pleased and admit this applica-
tion and requesting to transfer allow me the above subject. Consider
my case and needfull, sympathetic & oblige.

Thanking you;

Copy to : 1) CPO/HQ/MLG

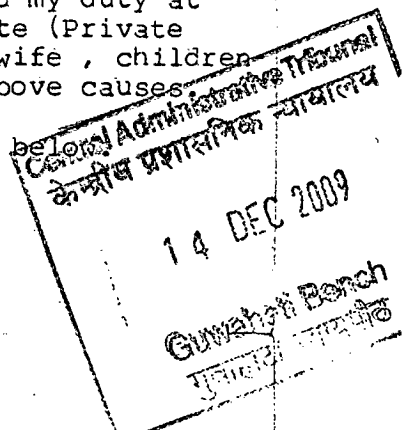
2) APO/GHY (Elect) } for information

Yours faithfully,

Nirmal Kumar Sen
(N.K.Sen) Jr. Clerk(E)

CERTIFIED
TRUE COPY

ADVOCATE



Standard Form for deeming a Railway servant under suspension

(Rule 5 (2) of RS (D&A) Rules, 1968)

No. PS/N/101 (P) -

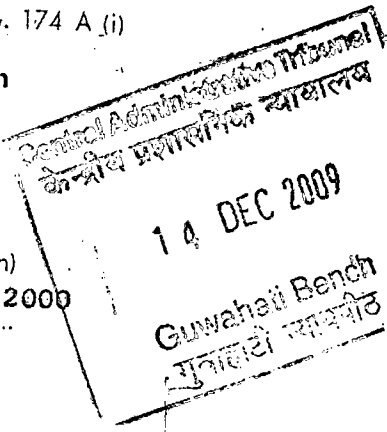
N.F. Railway

(name of Railway Administration)

(Place of issue) APO/GHY

dated 8.11.2000

9



ORDER

Whereas a case against Shri/Smt. Nirmal Kr. Sen, Jr. Clerk (name and designation of the Railway servant), in respect of a criminal offence is under investigation.

And whereas the said Shri/Smt. Nirmal Kr. Sen, was detained in custody on 24.7.2000 for a period exceeding forty-eight hours.

Now, therefore, the said Shri/Smt. Nirmal Kr. Sen is deemed to have been suspended with effect from the date of detention i.e. the 24.7.2000 in terms of rule 5 (2) of RS (D&A) Rules, 1968 and shall remain under suspension until further orders.

*(By order and in the name of the President)

(Signature)

(Name) P.G. Johnson

APO/GHY

Designation of the Suspending Authority

(Secretary, Railway Board, where Railway Board is the suspending authority)

Designation of the Officer

authorised under article 77 (2) of the Constitution to authenticate orders on behalf of the President, where the President is the suspending authority.)

Copy to:-

Shri/Smt. Nirmal Kr. Sen, (Name and designation of the suspended Railway servant). Orders regarding subsistence allowance admissible to him during the period of suspension will be issued separately. Copy to: 1. GM(P)/MLG. 2. P/Case. 3. Bill section.

*Where the order is expressed to be made in the name of the President.

N. F. Rly Press-1/5

CERTIFIED TRUE COPY

ADVOCATE

To,

The Asstt. Personal Officer,
Guwahati (Electrical),
N.F. Railway, Guwahati.

Through proper channel OS(P)/E/Ghy.

Subj:- Prayer for joining in duty on 26.01.2001.

Sir,

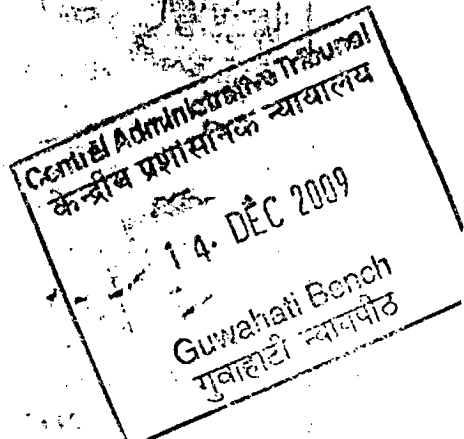
With due respect I would like to inform you and beg to

state:-

1. That I was on leave average pay for 4 (Four) days w.e.f. 29.11.99 to 2.12.99 as sanctioned by APC/E himself (Mr. N. Deka) through OS/P/E/Ghy.
2. That a II class privileged pass no. 152917 dt. 17.11.99. issued by OS(P)/E/Ghy for me and for my one (unmarried) daughter from Guwahati to Shima and back Guwahati and having that I went to bring my daughter who is in Shima and return from there on 3.12.99.
3. That on 3.12.99 I had prayed you through a telegram for extension of my leave.
4. That on 7.12.99 I had reached Kamakhya, the home station in the morning at about 9.00 a.m. by 4056 up B.P. Mail to late.
5. That when I had reached my residence I could come to know that police was searching me for interrogation regarding my some personal matter.
6. That on that very day at about 9.30 a.m. some miscreants entered into my residence forcefully and taken me away tightening my eyes with black cloth along with my personnel briefcase where some important documents & telegrams copy also were there to some unknown places. where they have threatened me with dire consequences, tormented physically and mentally and taken some signatures in some blank papers and on some non-judicial stamp papers and kept me on their captivity.
7. That on 2.1.2000 the said miscreants left me and then I could come to know that the said place where they left me is namely Moriani junction.
8. That due to heavy torture on me I was senseless and I was lying nearby a railway line. There after the local people found me.

CERTIFIED
TRUE COPY

ADVOCATE



contd.: 2

(2)

and offered some food and medical aids from the above date i.e. on 2-1-2000.

9. That since then I was under treatment till 21.7.2000 at Jorhat.
10. That as per the instruction of Jalukbari P.S. of my locality 5 boys (civil) with the help of Jorhat P.S. arrested me and handed over to C.I.D. inspector Md. Jahirul Haque (Assam) in connection with the above mentioned Jalukbari P.S. Case No. 456/99 on 22.7.2000.
11. That since the date of my arrest I was in C.I.D. custody in Panbazar P.S. for 14+2 days = 16 days and w.e.f. 23/7/2000 to 6/8/00 in jail hajat on from 7/8/2000 to 18.10.2000.
12. That on 19.10.2000 I had been released on bail.
13. That, after release on bail (from 20.10.2000) till 25.01-2001 (for 129 days) I was suffering from viral hepatitis as private doctor treatment (PMC).
14. That I am sincere, hard working, dedicated and never neglected my duties during my service period.

Under the circumstances above for the interest of my job I would like to inform you that I was not employed anywhere. Now I am physically fit and would like to resume my duty as on 26.02-2001.

It is therefore prayed that your goodself would be pleased to admit this application and allow me to join in my duty considering my facts and circumstances of absence.

And for this act of kindness your applicant in duty bound shall ever pray.

Dated : 26-02-2001.

Yours faithfully,

(N.K.SEN)
Jr. Clerk (E)

- Encls:-
- 1) Copy of Railway travelling pass.
 - 2) Copy of telegram for extension of leave. (to be filed)
 - 3) Medical certificate (PMC has not yet now) till 21.7.2000
 - 4) Information letter for reason of arrest. (C.I.D.) 22/7/2000 - 24/7/2000 (PS/Panbazar)
 - 5) Certified copy of release order on bail from the court.
 - 6) Medical certificate (PMC) (w.e.f. 20.10.2000 - 25.01.2001) for viral hepatitis (in Goundies) of certificate also.

Copy to:- CPO/MLG.HQ - for information-
please.

(N.K.Sen)
Jr. Clerk (E)

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

Through
28/2/2001
28/2/2001
28/2/2001

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

Original Application No.307 of 2005

Date of order: This the 15th Day of December, 2005,

HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN

Sri Nirmal Kumar Sen
Son of Late Jitendra Nath Sen,
Resident of Railway Quarter No.
1/43 Loco Colony, Pandu,
P.O. Guwahati-12
District- Kamrup (Metro)
Assam.

Applicant.

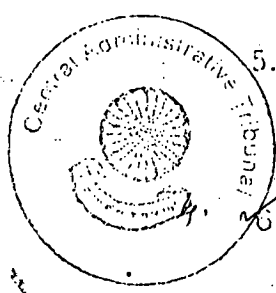
By Advocate Mr.A.K.Borah, Mr.B.K.Talukdar,

-Vs-

1. ✓ The union of India,
Represented by the General Manager,
N.F.Railway, Maligaon,
Guwahati-781011.
2. The General Manager,
N.F.Railway, Maligaon.
Guwahati-7810011.
2. ✓ 3. The General Manager (P)
N.F.Railway, Maligaon,
Guwahati-7810011.
3. ✓ 4. The Chief Personnel Officer,
N.F.Railway, Maligaon,
Guwahati-781011.
5. The Additional Divisional
Railway Manager,
N.F.Railway, Station Road,
Guwahati-1.
6. The Assistant Personnel Officer,
N.F.Railway, Station Road,
Guwahati-1.
5. ✓ 7. The Assistant Divisional Accounts
Officer, N.F.Railway,
Station Road,
Guwahati-1

Respondents

By Advocate Mr.J.L.Sarkar, Railway counsel



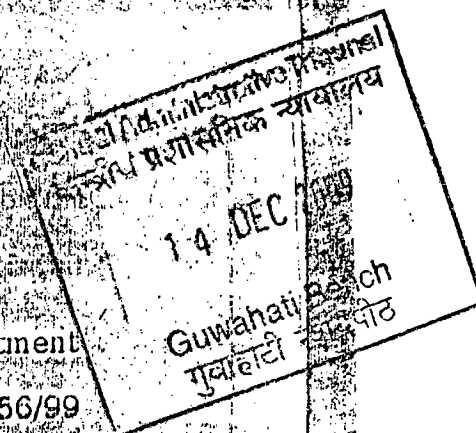
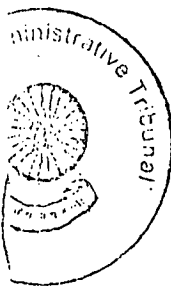
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TRUE COPY

ADVOCATE

ORDER (ORAL)SIVARAJAN, J.V.C.

The applicant is a Junior Clerk (E) in the Electrical Department under the Respondents. Pursuant to Jalukbari P.S. Case No.456/99 U/S 420 IPC later registered as G.R. Case No.5270/99, the applicant was kept under suspension as per order (Annexure B) with effect from the date of detention i.e. 24.7.2000 in terms of rule 5(2) of RS (D&A) Rules, 1968 until further orders. The applicant is still under suspension. It is stated that the criminal case is pending trial in the Court of the Special Judicial Magistrate, Kamrup, Guwahati and copies of the documents have not been supplied to the applicant, for which the applicant made application on 26.9.05 (Annexure C). It is also stated that no departmental proceedings has yet been commenced. Since more than five years have lapsed from the date of suspension it is stated that the applicant made representation dated 30.5.05 (Annexure-B) before the 3rd Respondent, but there is no response.

2. Mr. B.K. Talukdar, learned counsel for the applicant submits that the continued suspension of the applicant without trial in the criminal case or any departmental proceedings amount to punishment and that the applicant's family cannot survive with the small subsistence allowance now given to him. The counsel for the applicant also submits that on similar facts the Hon'ble Gauhati High Court in J. Abdur Rahman -Vs- State of Assam and another decided on 19.10.2001 reported in 2002 (3) GLT - Page 498 had revoked the suspension and directed reinstatement of the applicant. The counsel also submits that the facts of the said decided case and the present



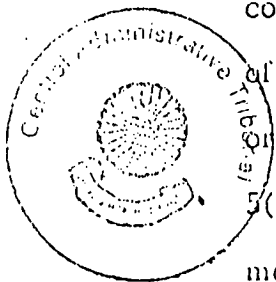
[Signature]

case are similar in nature and therefore, a similar direction has to be issued to the Respondents. The counsel submits that the Hon'ble Gauhati High Court as reported in (2) 2005(3) GLT page 345 (Matiur Rahman -Vs- State of Assam and another) decided on 13.3.05 has also taken similar view.

3. Mr J.L.Sarkar, learned counsel for the Railway, submits that the facts stated by the applicant has to be ascertained and the principle laid down in the said decisions relied on by the applicant can be considered only on ascertainment of facts. Mr J.L.Sarkar further submits that since the applicant had already made representation before the 3rd Respondent, which is stated to be pending, the said authority has to consider all the matters stated by the applicant and to take decision thereon. I find weight in the said submission, for, though the applicant has stated that the criminal trial has not yet been started and no departmental proceedings has yet been commenced, those are matters which have to be verified and ascertained. It is only thereafter a decision can be taken with reference to the decisions relied on by the applicant. If as a matter of fact the criminal trial has not yet been started and no departmental proceedings has yet been commenced, to keep the applicant under suspension for a long period

of five years, the 3rd Respondent will not be justified in continuing the order of suspension particularly in view of the provisions of Rule 5(5)(a) of the RS (D&A) Rules 1968 which enable him to revoke or modify the said order. I find that the representation (Annexure D) submitted by the applicant does not contain all the relevant matters to enable the 3rd Respondent to objectively consider the matter. In the circumstances I direct the applicant to make a proper representation with all details and photocopy of the decisions relied by him before

[Signature]

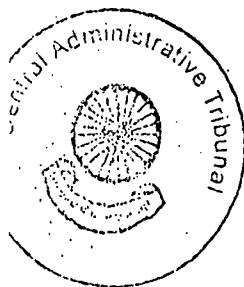


Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
14 DEC 2009
Guwahati Bench
गुवाहाटी न्यायालय

the 3rd Respondent within 15 days from today. If such a representation is filed by the applicant the 3rd Respondent will consider the representation (Annexure D) and the representation directed to be filed together and pass a reasoned order thereon, within a period of two months from the date of receipt of the additional representation.

The O.A. is disposed of as above at the admission stage itself. The applicant will produce this order alongwith the additional representation before the 3rd respondent for compliance.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
14 DEC 2009
Guwahati Bench



sd/-
Vice-Chairman

TRUE COPY

19/12/05
Central Administrative Tribunal
Guwahati Bench
19/12/05

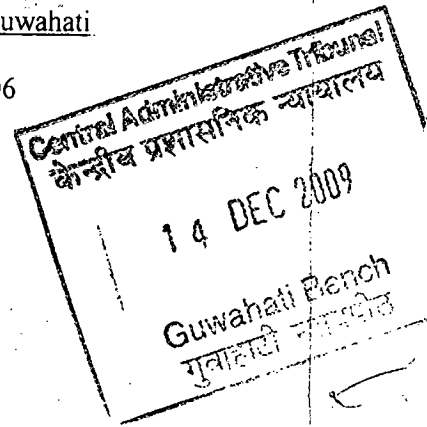
N.F. Railway

Office of the
Asstt: personnel Officer
Station Road, Guwahati

No-PS/N/101(P)

Dated: 17/4/2006

To
Sri Nirmal Kumar Sen,
Junior Clerk/E
Under APO/GHY
C/O-Sri B.K. Talukder, Advocate
1st Bye lane (Right)
Asram Road,
House No-7
South Sarania
Guwahati-781007



Sub: - Revocation of suspension order.

Ref: - Your application dated 20/12/05 addressed to GM (P)/Maligaon

To dispose up the application as per Hon'ble CAT/Guwahati's order under OA No-307 of 2005, you were asked to let this office know whether you have released from police custody or not. If released, the released document was asked to submit vide this office letter No-E/74/GHY/NKS dtd.17/2/2006 and 23/2/2006. The letters were sent to you as per residential address indicated in your application dated 20/12/2005. But the letters have been returned by the postal authority undelivered remarked as "Add-Left".

However Sri B.K. Talukder, Advocate of the petition in the PS case No-456/1999 who attended this office and requested to offer future correspondence to his care of.

Now your application has been considered by this office for revocation of suspension on the ground cited in the order No- CrI.Revn No-40/2006 of Hon'ble Guwahati high Court.

The revocation order is issued on the following grounds.

1. Your suspension period will be regularized considering the nature of acquittal by the court of law in criminal proceedings as per Railway Board's directives.

2. You may be placed under suspension for 2nd time for the same reason if you have to detained again by police custody exceeding 48 hours.

Contd -2

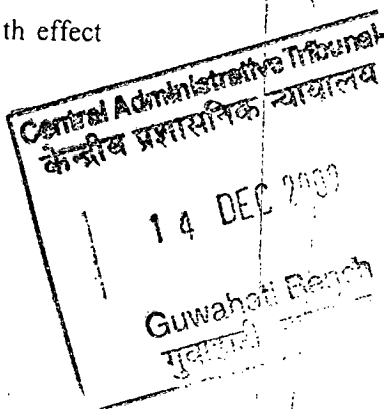
CERTIFIED
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ADVOCATE

You are hereby advised to resume duty as your suspension has been revoked with effect from 18/4/06(copy attached).

DA: One


(G.K.KAKATI)
APO/GHY



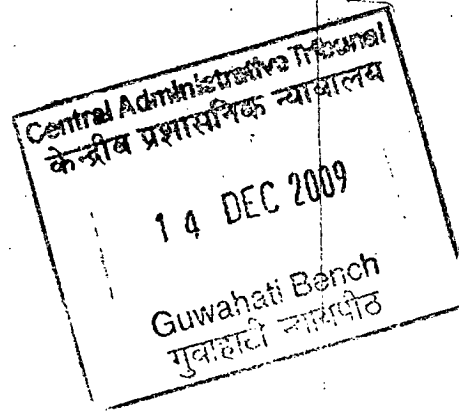
Copy forwarded for information please.

- 1) GM (P)/MLG (Legal Cell),
- 2) DRM (P)/LMG (CLA/LMG)
- 3) DPO/Lumding- He is requested to send the S/Book, P/Case of Sri N.K.Sen,Jr.Clerk/E which was received by COS (P)/LMG on 01-03-2001.
- 4) S/C for P/case,
- 5) Ch.OS/P/Elect/GHY,


(G.K.KAKATI)
APO/GHY

STANDARD FROM NO-4
Standard Form of Order for Revocation of Suspension Order
(Rule 5(5) © of RS (D & A) Rules, 1968)

No- PS/N/101(P)
Railway- N.F.Railway
Place of issue -Guwahati
Dated:-17-04-2006



ORDER

Whereas the order placing Shri Nirmal Kumar Sen, Jr.Clerk/E under suspension was made/was deemed to have been made by APO/GHY on 24-07-2000.

Now,therefore, the undersigned(the authority which made or is deemed to have made the order of suspension or any other authority to which that authority is subordinate) in exercise of the powers conferred by Clause © of sub-rule(5)of Rule-5 of the RS(D & A)Rules,1968, hereby revokes the said order of suspension with immediate effect from 18-04-2006.

Signature.....

Name: G.K.KAKATI, APO/GHY

सहायक कार्मिक अधिकारी
पु. सी. गन्व, गुवाहाटी
Asstt. Personnel Officer
N.F. Railway Guwahati

Copy to: - Shri Nirmal Kumar Sen, Jr.Clerk/E

Address:-C/O-Sri B.K.Talukder, Advocate
1st Bye lane(Right)
Asram Road,
House No-7
South Sarania
Guwahati-781007

ANNEXURE: 8

फॉर्म/ N. F. एम/ M-43 एम/ M-44
आर बी/ RB मेडी/ Med सी/ C-6

पू० सी० रेलवे/ N. F. RAILWAY
चिकित्सा विभाग/ Medical Department
इयूटी प्रमाण-पत्र/ Duty Fit Certificate

अस्पताल/ Hospital
दवाखाना/ Dispensary

सं/ No. 209/02

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
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मैं एतद्वारा प्रमाणित करता हूँ कि मैंने/ I hereby certify that I have examined

नम/ Name. Nirmal K. Sen

पदनाम/ Designation. Jr. C.I.E

पहचान/ Mark of identification. One black tooth

शाखा या विभाग/ Branch or Department. Amalendu Purn DPO

इयूटी की जगह/ Stn. where employed. Guwahati

की जाँच की है और समझता हूँ कि दुरुस्ती पत्र देने पर तारीख/ Remarks.

इयूटी करने लायक है/ and consider him fit to resume duty pending production of
fit certificate from. 13/12/07

आवेदक का हस्ताक्षर/ याप्रे अंगूठे का निशान/

Sig./ L.T.I. of the applicant. Nirmal Kumar Sen

डिविजनल चिकित्सा अधिकारी (प्र)

कार्यालय की मोहर/ Office Seal

रेलवे डॉक्टर का आवास/ Initial of Rly. Doctor

तारीख/ Date

N. F. Railway

गुवाहाटी
Guwahati

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ADVOCATE

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

पू० सी० जी०/149/N.F.-O 149
घार बी-बी/एम/RR-C/M-1

रोगी स्थापन/Sick Memo

विभाग/Department Electrical कार्यालय/Office 2FO/RR-C/GHY
तारीख/Date 11-12-2007
सेवा में/To

चिकित्सा अधिकारी/The Medical Officer Dr. Sanyal/GHY
निम्नलिखित कर्मचारी को चिकित्सा की आवश्यकता है। कृपया उसे देखें और निर्धारित प्रमाण-पत्र प्रदान करें/The undermentioned requires treatment please attend him and grant the prescribed certificate.

नाम/Name Mr. Nirmal Kumar Designation J/Class 1B GHY
टिकट संख्या/Ticket No.
नियुक्ति की तारीख/Date of appointment 23-08-1974
सेक्शन/Section Elect वेतन/छुटी वेतन/Pay/Leave-Salary Rs-3575/-

हस्ताक्षर/Signature [Signature] पदनाम/Designation (कार्यालय, रेलवे/Office GHY)

प्रस्थान/Departure	आगमन/Arrival
गाप/कार्यालय/Shop/Office	गाप/कार्यालय/Shop/Office
समय कार्यालय/Time Office	समय कार्यालय/Time Office
अस्पताल/Hospital	अस्पताल/Hospital

दिनांक को बड़े छुटी पुनः आरम्भ की/Resumed duty

on at hours

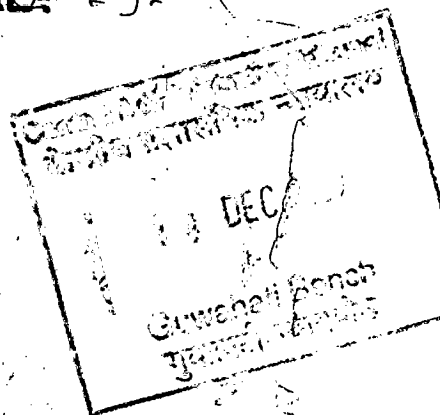
M. P. B. Form 1/11/8605/61-July '88-2,020/100 Lm

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
14 DEC 2007
Guwahati Bench
गुवाहाटी न्यायालय

Menu No 07/107
7750
12/12/07

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ADVOCATE



To

The Divisional Personnel Officer,
N.F. Railway, Guwahati.

Dated Guwahati the 8th November, 2007.

Ref:- No.E/74/DAR/GHY/HKS dt. 17.4.2007
handed over to the Himself on 5.11.2007.

Respected Sir,

I have the honour to state that the aforesaid letter dt. 17.4.2007 was handed over to me only on 5.11.2007 when I joined my duty on 5.11.2007. By the said letter, I have been asked to submit my written statement in defence within 10 days from the date of receipt of the ^{memo/ordinance} ~~memo/ordinance~~ under Rule 9 of the Railway servants (Discipline and appeal) Rules, 1968.

1) That sir, I humbly and respectfully submit that the statement of Article and Charges framed against me, are not based on facts.

Article-I (Annexure- I)

2) That sir, I was not un-authorisedly absent from duty with effect from 29.11.99. I was granted 2(two) days LAP with effect from 29.11.99 to 30.11.99 and 4(four)days MDL with effect from 1.12.99 to 4.12.99 by the then APO/GHY, Electrical, Late Mr. Nagen Deka who was also ~~pleased~~ pleased to issue Railway pass to me for going to Simla to bring my daughter and back. On 3-12-99, I sent a telegram to the APO/GHY

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TRUE COPY

contd...p/2

ADVOCATE

- 2 -

from Simla praying for extension of leave.
I arrived in Ghwahati by Brahmaputra Mail (TSK)
in the morning of 7.12.99 in order to join my duty
on that day. But ill luck would have it I could
not join my duty on 7.12.99 as I was kidnapped
by militants from Tribeni Complex, Pandu on my
arrival from Simla. So, my absence from duty is
neither deliberate nor intentional but for the
reasons beyond my control. The suspension order
was received by me only on 26.2.2001. Your honour
has already held that letter No S.PP/N/101(P)2889
dt. 21.12.99 and No. PS/N/101 dt. 21.01.2000
were not received by me.

The revocation of suspension order was received
by me but I could not join my duty as I was
seriously suffering from various illness since
15.4.06 which is an act of God and the reasons
are beyond my control.

Therefore, the allegation of unbecoming on the
part of the Railway servant and tantamounts to
serious mis-conduct violating Rules of para
3(1), (i), (ii) & (iii) of Railway service ^{Conduct} (Control)
Rules 1966 is not tenable against me and I,
therefore, pray that on perusing the case shown,
Your honour would be pleased to drop the said
charge.

contd...p/3

Telegram to the APO/GHY

c. htd...p/2

14 DEC 2009
Guwahati Bench
গুৱাহাটী বেঞ্চ

3) Annexure II

That Sir, the 2nd allegation relates to charge no. 2. I have already stated at above the causes of non-resumption of my duties which are beyond my control and the same is act of God. My absence from duty is neither intentional nor deliberate. The losers are my family members and this humble self only.

So, I am ^{not} ~~is~~ liable at all for serious misconduct, lack of devotion and integrity ~~and~~ and for violation of Rules 3(1), (ii) & (iii) of the Railway Service (Conduct) Rules 1966 leveled against me.

4) That Sir, as stated herein above, all the charges levelled against me and the statement of article and charges on the basis on which, the said charges are framed, are not tenable against me and I am entitled liable to be exonerated from the charges, by dropping the departmental proceeding (Memorandum)

5) That Sir, I humbly submit that my service record is fine as I have neither mis-appropriated Railway fund, nor have destroyed Railway property or have shown any mis-behaviour to my superior authority. I possess good will to the Railway.

6) That Sir, I very much desire to be heard in person, if your honour proposes to continue with the proceedings and I also pray to take the

18 DEC 1957
Goverment of India
Ministry of Railways

assistance of a co-worker of my choice to defend
in the proceedings if held.

- 7) That Sir, a copy of Medical certificate is annexed
hereto and marked as Annexure 'A' for favour of
kind perusal of your honour. Other papers will be
submitted later on.

However, I most respectfully pray that
Your honour would be graciously pleased to drop the
proceeding on perusal of this written statement and
would be pleased to sanction my salary, bonus etc.
forthwith as my family ~~and~~ members and the
humble self ~~and~~ have been suffering from
various illness for want of proper medicines etc.
and thereby got myself rid of the mental agony
which I am facing all day in and all day out.

I remain, Sir,

Yours faithfully,

Nirmal Kumar Sen
(Nirmal Kumar Sen)
Jr. Clerk/E
(Elect. Section) Under
DPO/GHY, N.E. Railway.

Enclosures:

As stated above.

7/c

Received

8/11/57
COS/P/bk
(N Ram Das)

प्रतिनिधि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की तिथि 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 प्रतिनिधि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिनिधि देने की तारीख Date of making over the copy to the applicant.
2/10/09	14/10/09	14/10/09	14/10/09	14-10-09

In the Court of Spl. Jndl. Magt.
GR 5270/1999
(Potecha) Jha

IN THE COURT OF SPECIAL JUDICIAL MAGISTRATE, ASSAM,
AT GUWAHATI

Case no. GR.5270 of 1999

State of Assam

Vrs-
Shri Nirmal Kumar SenAccused.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
14 DEC 2009
Guwahati

Present : Shri S. Datta, AJS

Learned Advocates appeared :
For the prosecution--- Shri S. Bhattacharjee, APP
For the defence----- Shri B. K. Talukdar

Evidence recorded on : 26.6.07 & 30.10.07
Argument heard on : 12.6.09
Judgment delivered on : 25.6.09
Penal law involved : u/s 420 IPC

JUDGMENT

1. The prosecution-case in brief, as revealed from the e-janar, is that the accused Shri Nirmal Kumar Sen, an employee of the NF Railway, used to operate some private funds viz. Bihi Fund, Puja Fund etc. in his own account by collecting deposits from different people including some Railway employees. The accused was supposed to repay the amount to the depositors alongwith interest on a particular month as per the scheme of the concerned fund (eg. Bihi Fund was meant to be disbursed in the month of January) but he failed to do so in 1999, like in the previous years, despite repeated demand made by the depositors. On 10.10.99 the depositors did not find the accused either in his residence or in his office. On 15.10.99 the accused promised to disburse the fund on 07.11.99 but, on the date so fixed, both of his flats were found under lock & key.

2. Police, after investigation, submitted Charge-sheet against the accused and, on his appearance before the Court, the charge-u/s 420 IPC was framed against and read over & explained to him after supplying the copies u/s 207 Cr.P.C. The accused pleaded not guilty to the charge and claimed to be tried as the order dated 16.12.05 shows.

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ADVOCATE

3. During trial, the prosecution examined only two witnesses out of the charge-sheeted forty six, though as many as twenty one dates were fixed for evidence in this old pending case. Sufficient opportunity thus having been given to the prosecution for adducing evidence, I, for ends of justice, closed further evidence for the prosecution and examined the accused u/s 313 CrPC. Defence declined to adduce any evidence.

4. I have heard the argument of both sides.

5. The sole Point for Determination in this case is whether the accused (date & time not available) cheat the informant & other depositors or any of them in any manner and thus dishonestly induced them or any of them to deposit money in the relevant fund/s and thus committed an offence punishable u/s 420 IPC and, if so, what punishment he deserves.

Decision & reasons therefor:

6. As already noted, prosecution has examined two witnesses in this case out of whom PW-2 Shri Pradip Kr. Dey is the informant-victim and PW-1 Smti Baly Nandi is one of the other victims.

7. PW-2 deposed that the accused opened a fund in association with the Railway-staff in which all of them used to deposit money. An interest used to be charged on loan taken by anybody from that fund and all the depositors used to share the money so earned (interest). The accused did not disburse the interest-amount among the depositors in 1999 and misappropriated the same. They contacted him but the accused started protracting the matter (payment). PW-2 proved his case as Ext. 1.

8. PW-1 testified that the accused opened three kinds of fund, namely "short-term Deposit Fund", "Puja Fund" & "Bihu Fund" and requested her (PW-1) to deposit money in those funds. He asked PW-1 to deposit Rs. 30,000/- in the "short-term Deposit Fund" saying that the amount would be double in fourteen months and took money from her accordingly. One day PW-1 came to know that many people were creating chaos in the house of the accused because he misappropriated their money. Some of them were even weeping for money. After 10-12 days, when the accused was caught, he promised PW-1 that he would pay the money but failed to do so till the date of her deposition (26.6.07).

9. Both the PWs were cross-examined at length but could not be much shaken individually. Still I am of the considered opinion, for reasons at least three-fold, that the evidence on records does not constitute the offence punishable u/s 420 IPC for which the accused has been charged in this case. Because firstly, there is nothing in the evidence to show that any interest at all accrued to the funds (in other words, anybody took loan out of those funds) in the relevant year so that the accused could be expected to disburse the same. Secondly, it is not clear if the accused alone was responsible for operating the funds. Given the specific evidence of PW-2 that the accused opened the fund in association with the Railway-staff and that the depositors shared the dividend amongst themselves give an impression that all of them collectively managed the funds together with the accused. The confusion gains further back-up from the evasive reply of PW-1 (vide his cross-examination) that he could not say if anybody apart from the accused was opening the funds. And, thirdly and no less importantly, there is nothing in the evidence that, at the time of the so-called inducement, the accused had a mala fide intention not to repay the money and such mala fide can not be assumed from the mere failure of the accused to make

Contd.

Central Criminal Court
Guwahati Bench
14 DEC 2009

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গুৱাহাটী ন্যায়পীঠ

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payment subsequently, particularly when there is specific evidence of PW-2 that the depositors had shared the interest accrued to the fund in the past (prior to the occurrence of 1999, as I gather from the context in which PW-2 deposed so). In this regard, I may beneficially refer to the decisions of the Hon'ble Supreme Court in Medchi Chemicals & Pharma (P) Ltd. -vrs- Biological E. Ltd as reported in (2000)3 SCC 269, Ajoy -vrs- State as reported in (2003)3 SCC 11 and Hridaya Ranjan Deb Verma -vrs- State of Bihar as reported in AIR 2000 SC 2341. In the first-mentioned decision (Hridaya Ranjan Deb Verma case) the Hon'ble Apex Court observed, "Mere breach of contract can not give rise to criminal prosecution for cheating, unless fraudulent or dishonest intention is shown right at the beginning (emphasis supplied) of the transaction, that is, the time in which the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence... From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he (accused) made the promise can not be presumed."

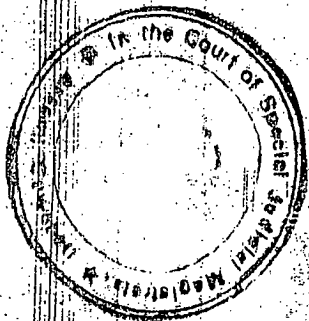
10. Situated thus, I acquit the accused of the charge under 420 IPC and direct that he be set at liberty forthwith. His bail-bond stands discharged. The seized documents shall be returned to the persons concerned (from whom seized).

Given under my hand and seal of the Court on this the 25th Day of the Month of June in the Year 2009.

Typed & corrected by me,

25.6.09
Special Judicial Magistrate
Assam, Guwahati

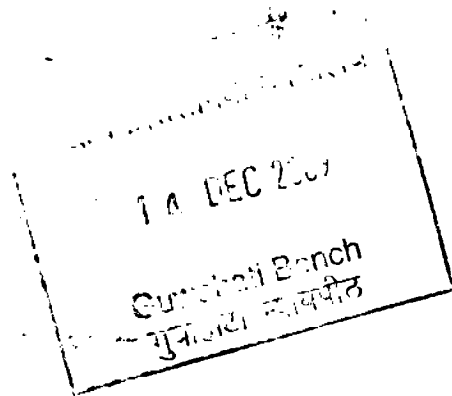
25.6.09
Special Judicial Magistrate
Assam, at Guwahati



Comptroller Assistant
Office of the
Chief Judicial Magistrate
Kamrup, Guwahati
Date

Certified to be a
14-10-09

To
The Assistant Personnel Officer,
Electrical, N.F. Railway,
Guwahati-1.



Dated, Guwahati the 10th November, 2008.

Subject : Humble prayer for granting

- 1) LAP, for the period from 29/11/99 to 30/11/99 both days inclusive which were already sanctioned by the then learned APO,
- 2) to grant LAP or commuted leave for the period from 1-12-99 to 25-2-01 (both days inclusive shown as absentee.
- 3) to regularise the suspension period from 26/2/01 to 15/4/06 both days inclusive
- 4) to regularise leave for the period from 16/4/06 to 15/12/07 shown as absentee.

Respected Sir,

Most humbly and respectfully I beg to lay the following few lines for favour of your honour's kind consideration and immediate favourable order.

That Sir, the then learned A.P.O. sanctioned me LAP for two days i.e. on 29/11/1999 and 30-11-99 and accordingly I proceeded to Simla to bring my daughter to Guwahati but I was held up at Simla and could not join only on 1-12-99, so I prayed for extension of

contd...2/

Handwritten notes and signatures:
To
Chief (E) G.M.
Post off
11/11/08
in jail in place
(G.K. real life)
(Election)
Sri Rabha
(Sri Ram Das)
11/11/08

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ADVOCATE

/ 2 /

my leave by telegram but due to some unforeseen circumstances, I could not join my duty.

That Sir, I went to join my duty on 26/2/01 on which date I was served with suspension order dt. 24/7/00 suspension was revoked by your honour on 17/4/06 which was received by me on the same day. I was directed to join my duty on 18/4/06 but as I was sick from 15/4/06 I could not join duty on 18/4/06.

That Sir, I joined my duty on 19/12/07 by submitting a fitness certificate from a Registered private Doctor. Then, I was referred to Railway Doctor, i.e, Senior D.M.O. Guwahati N F. Rly, who was pleased to issue D.F.C and since then, I have been doing duties till date to the satisfaction of my Hon'ble authorities.

That Sir, I respectfully submit that I have not yet received bonus 50% pay and other allowance, 25% of subsistence allowance for the suspension period and the enhanced D.A. etc.

That Sir, I have not yet received a single paisa for the period from 1-12-99 to 28-2-01 I received only 50% from 1-3-01 to 30-9-01 I received only 75% from 1-10-01 to 15-4-06.

That Sir, I have ^{not} received a single paisa from 16-4-06 to 18-12-07 though I submitted leave application supported by one Medical certificate.

cont d....3/

Guwahati Bench
गुवाहाटी बेंच

/ 3 /

14 DEC 2009
Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

Under the circumstances above, I fervently pray that your honour would be graciously pleased to sanction me the following any dues after granting necessary leave very early as prayed for as I have been suffering from in ^{maner} ~~manner~~ economic hardship;

- a) pay and other allowances etc. for the period from 1-12-99 to 28-2-2001 including PLB ;
- b) Arrear amount for the period from 1-3-01 to 15-4-06 including PLB ;
- c) pay and other allowance etc. for the period from 16-4-06 to 18-12-07 including PLB.

And for this act of kindness of your Honour, I, as in duty bound shall ever pray.

Yours faithfully ;

Nirmal Kumar Sen
(N.K. Sen)

Cleark (E) (Electrical)

N.F. Railway, Guwahati-1

[Handwritten signature/initials]

Central Administrative Tribunal
 14 DEC 2010
 Guwahati Bench
 गुवाहाटी बेंच

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ANNEXURE - 12

12

Northeast Frontier Railway

Retirement list for the year 2010 (Jan to Dec '2010) under Electrical Department of GHY Sub-Division.

SN	Name	Design	Station	P.F.No	Dt.of birth	Dt. of Appt.	Dt. of Retirement	Remarks
1	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01	Sri Nirmal Kr.Sen	Jr.Clerk/E	APO/Elec/GHY	01883513	07-01-50	23-08-74 04-08-81	31-01-2010	
02	S. P. N.Thakur	SPA/Gr.I	SSE/P/GHY	04031507	01-03-50	20-03-72	28-02-2010	
03	Sri Subrata Mazumdar	FCD/Gr.I	SSE/P/MLG	04028624	03-02-50	24-10-70	28-02-2010	
04	Sri A. C. Kumar	SPA/Gr.I	SSE/P/NGC	04031295	03-03-50	24-10-70	31-03-2010	
05	Sri P.Chakraborty	SPA/Gr.I	SSE/P/PNO	04031386	11-03-50	20-03-72	31-03-2010	
06	Syed H. Ahmed,	ELF/Gr.I	SSE/TL/GHY	04024667	31-03-50	05-01-71 07-10-78	31-03-2010	
07	Sri Lok Nath Seal	ELF/Gr.I	SSE/P/PNO	01876326	01-06-50	17-05-79	31-05-2010	
08	Sri N. C. Boro	MCM	SSE/P/PNO	04031611	31-07-50	13-09-69	31-07-2010	
09	Sri Harigobinda Kalita	OS/Gr.I	ADEE/MLG	04036086	01-09-50	28-08-72	31-08-2010	
10	Islamuddin Ahmed	ELF/Gr.I	SSE/TL/GHY	01851093	01-10-50	01-07-73	30-09-2010	
11	Sri Laddu Ram	FCD/II	SSE/P/NGC	01870713	29-1-50	16-10-72	31-10-2010	
12	Sri Durga Dutta,	SSE/P	SSE/P/MLG	01798261	23-10-50	26-09-68	31-10-2010	
13	Sri P.C. Talukdar,	BM/Gr.I	SSE/TL/GHY	03010648	17-11-50	06-04-74	30-11-2010	
14	Sri N. C.Sutradhar	CPTR/I	SSE/P/NGC	04031120	01-01-50	01-03-73	31-12-2010 31-12-11	
15	Sri J.C. Das,	MCM	SSE/TL/GHY	01841841	04-12-50	26-08-69	31-12-2010	
16	Sri N. N. Sarkar	CPTR/I	SSE/TL/GHY	03046471	01-01-51	01-11-78	31-12-2010	

NO: F/207/1/Pen/Pt.II(Elect)/GHY - 773

Copy forwarded for information and necessary action to:-

- 1) FA & CAO/MLG(PEN); (2) GM(P)/MLG; (3) DRM(P)/LMG; (4) Sr.DEE/GHY; (5) ADFM/GHY; (6) SSE/P/GHY, PNO, Goshala; NGC; (7) JE/AMJ; (8) SSE/TL/GHY; (9) SSE/AC/GHY; (10) SSE/T & AC/NGC; (11) SE/IBM/MLG; (12) CLWI/GHY; (13) Secy E & N.F.Rly Co-opr Bank Ltd, Kolkata; (14) MD/CH/MLG. He is requested to issue medical clearance certificate after their retirement to the undersigned please.

बहायक कार्यालय अधिकारी (विद्युत)
 Asstt. Personnel Officer (Elec)

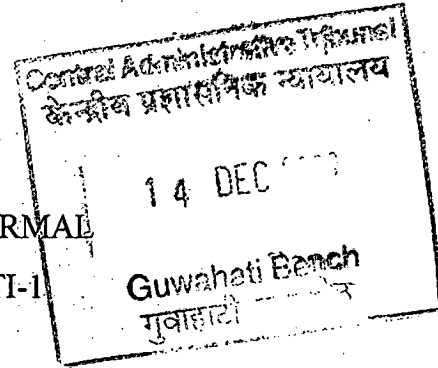
गु. सी. 237/2, गुवाहाटी
 M. F. Bly. Guwahati

बहायक कार्यालय अधिकारी (विद्युत)
 Asstt. Personnel Officer (Elec)

गु. सी. 237/2, गुवाहाटी
 M. F. Bly. Guwahati

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 ADVOCATE

TABLE OF SUBSISTANCE ALLOWANCES ALLOWED TO NIRMAL
KUMAR SEN, JR. CLERK (E), N.F. RAILWAY, GUWAHATI-1



Sl. No.	Month fromto		Basic pay and all other allowances payable per month	Amount allowed to draw as substances allowance Per Months
1	1-12-1999 to 28-2-2001	1	Rs. 3500/- +DA+SCA+PP+PLB and etc.	No Payment
		2	Rs. 3575/- +DA+SCA+PP+PLB	
	1-3-2001 to 30-11-2001	1	Rs. 3650/- +DA+SCA+PP+PLB	50% of basic pay Rs. 1750/- with +DA+SCA+PP+ other allowances etc.
2	1-12-2001 to 1-7-2004	1	Rs. 3725/- +DA+DP+SCA+ PP+PLB	75% of basic Pay Rs. 2625/- +DA+DP+SCA+ PP+ Other allowance etc.
	1-8-2004 to 1-7-2005	2	Rs. 3800/- +DA+DP+SCA+ PP+PLB	
	1-8-2005 to 15-4-2006	3	Rs. 3875/- +DA+DP+SCA+ PP+PLB	

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

3	16-4-2006 to 1-8-2006 1-9-2006 to 18-12-2007	1 2	Rs. 3950/- +DA+DP+SCA+ PP+PLB Rs. 10310/- +DA+DP+SCA+ PP+PLB	No Payment
4	1-12-1999 to 18-12-2007	1	Pending Medical Bills Rs. 7000/- approx	No Payment
5	1-12-1999 to 18-12-2007	1	By 6 th pay Commission revised pay - 40% in crease Total Rs. 32000/- payable to the petitioner	Paid only Rs. 8210/-
		2	By 6 th Pay Commission revised pay 60% in crease Rs. 52000/- payable to the petitioner.	Paid only Rs. 3901

Filed By

M. K. Khosla

Advocate