

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A./TA/ NO. 263/2015
R.A./CP/NO. 2015
E.P./M.P./NO. 2015

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PO Box 17/07/2015
SECTION OFFICER (JUDL.)

17.7.2015

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:
O R D E R S H E E T

263

1. ORIGINAL APPLICATION No : 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 Sen

Respondent (S) :

Union of India & others

Advocate for the :

Md. Khorshed Ali

{Applicant (S)}

Advocate for the :

Rly.

{Respondent (S)}

Notes of the Registry	Date	Order of the Tribunal
<p>Application is in form is filed/C. P. No. 30/- deposited v/s. C.P.B.D No. 396, 443292 Dated 9/12/09</p> <p><i>J. Sengupta 15-12-09 Dy. Registrar 15/12/09</i></p>	21.12.2009	<p>Heard for both sides. For the reasons recorded separately O.A. stands disposed of. No costs.</p> <p><i>(Madan Kumar Chaturvedi)</i> Member (A)</p>
<p><i>15/12-09</i> 5 (Five) copies of application with envelope received for issue notices to the respondents No 1 to 5. Copy served.</p> <p><i>15/12/09</i></p>	/PBI	

1/1/2010.
Judgement / Final orders dated
21/12/09 prepared and sent to
the all the respondents by post
and issued to the Advocate for
both the parties
v/s. No. 83 to 88

dated 5-1-2010

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

Madan Kumar Chaturvedi
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 (ORAL)

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.

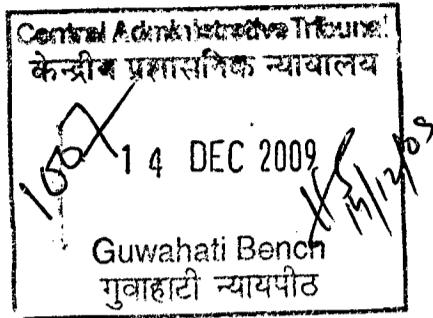
7. Having heard both parties, I direct the Respondents to regularize the suspension period as per Railway Board's directives and to consider the grant of all consequential benefits as available under the rules without any further delay.

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

Madan Kumar Chaturvedi
(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

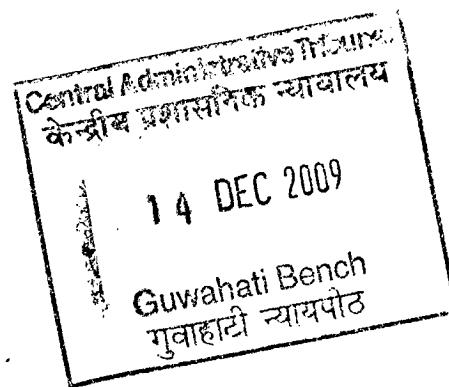
S Y N O P S I S

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 some 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.

Contd....

FILED BY
Adv. Monisha D. RO^W
ADVOCATE
16.12.09



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 ex-onerated 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. Khosrau Ali

Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

FILED BY
Advocate
Md. Khasruddin

O.A. NO...263/2009

SRI NIRMAL KUMAR SEN

.....APPLICANT/PETITIONER

-VS-

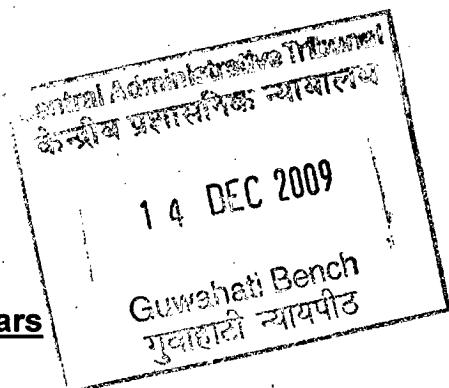
UNION OF INDIA & ORS.

....RESPONDENT

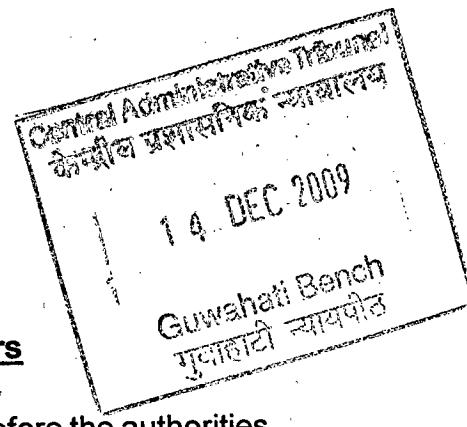
LIST OF DATES

<u>Sl.No.</u>	<u>Date</u>	<u>Annexure</u>	<u>Particulars</u>
1.	24-11-99	1	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.

contd...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.



<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

Mr. Khasshed Ali

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

FILED BY
M.D. Khorshed ALI
ADVOCATE

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

SRI NIRMAL KUMAR SEN

.....APPLICANT/PETITIONER

-VS-

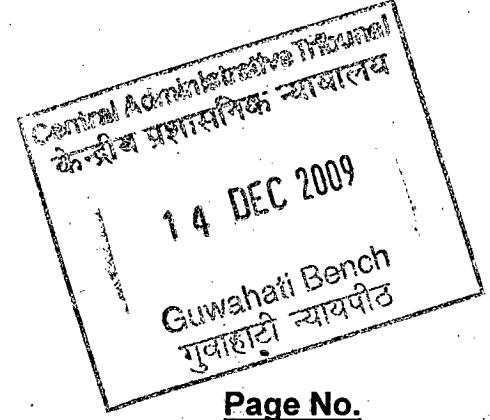
UNION OF INDIA & ORS.

....RESPONDENT

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(2)

<u>Sl. No.</u>	<u>ANNEXURE No.</u>	<u>Particulars</u>	<u>Page No.</u>
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Filed by

Md. Khoslael Ali

Advocate

DISTRICT : KAMRUP



FILED BY
Mr. Kishore Kumar Sen
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,

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

14 DEC 2009

Guwahati Bench
গুৱাহাটী বিধুৰীত

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 lend support to his claim.

(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.

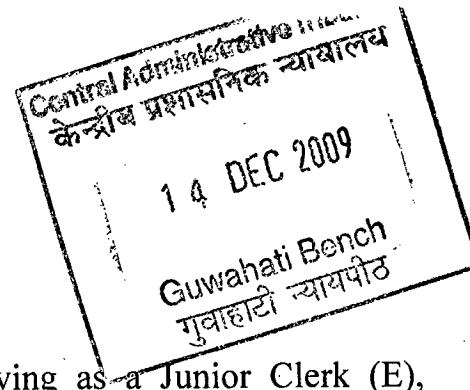
3. Limitation :-

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...



- 5 -

- 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.

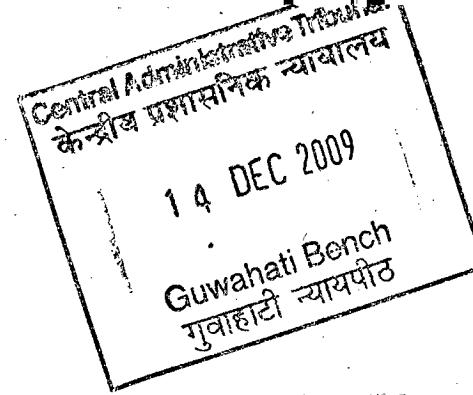
- 4.4. That in his captivity, petitioner was tortured, physically and mentally, kept for days together without food and was lastly released when he was seriously ill.

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



- 6 -

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

Nimmi Kumar Sen

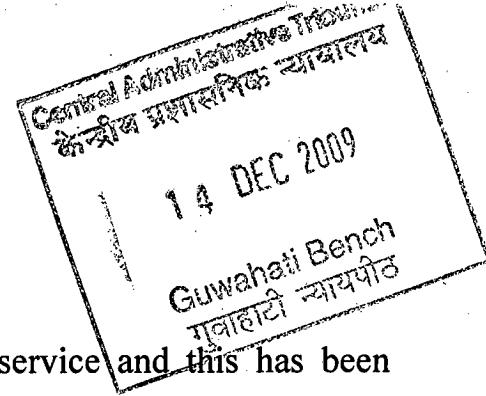
to consider his case within a time frame for revocation of the said deemed suspension of the petitioner.

(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 even though it happened for a very good news for him to resume his service, but due to his illness the petitioner



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.

14 DEC 2009
Guwahati Bench
গুৱাহাটী ন্যায়পাই

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).

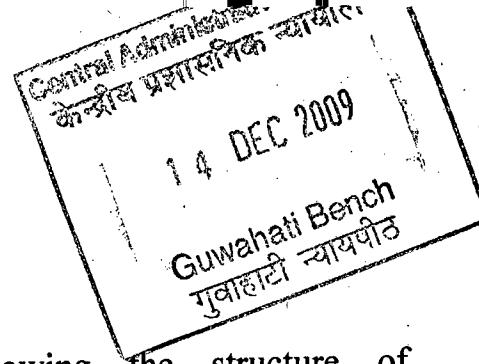
4.15. That the petitioner has made a representation, earlier praying for regularisation of his period of suspension and without having supplied a copy of the Judgment and Order of the Criminal Case as fulfillment of the pre-condition, stipulated in the said revocation of suspension for the purpose, but 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.

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 inordinately 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.

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.

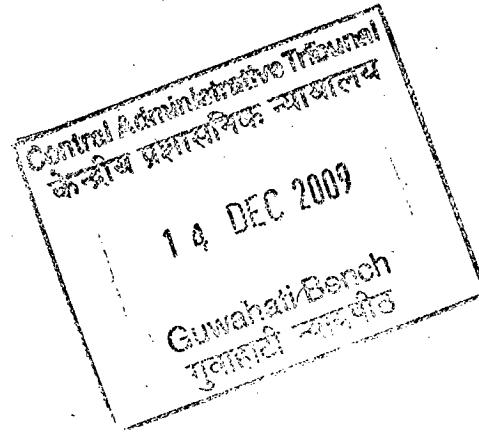
8.2. The petitioner also prays for any other or such relief or relief's as the Hon'ble Tribunal may deem fit and proper.

9. Interim relief sought for :

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

Nominal Knowledge Score

: 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.

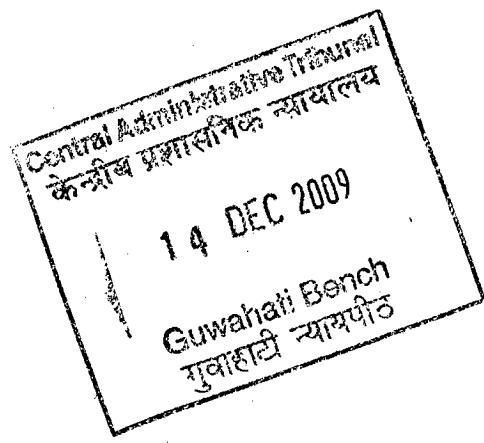
10. That this application is filed through advocate.

11. The particulars of postal order :

i) I.P.O. No. : 399. 443292
ii) Date and time : 9 - 12 - 2009.
iii) Issued from : G.P.O. Guwahati
iv) Payable at : Guwahati

contd.. Verification

: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

M.J. Khosshed A.D.

Advocate

Nirmal Kumar Sen

Signature

ANNEXURE:
ANNEXURE: 1

<p>दृष्टिकोण समिति रेलवे Northeast Frontier Railway विभाग/Department : <i>Personnel</i></p> <p>(1) नामकरण/Name and designation : नाम संधर्म प्रवासी/Name in fuji & designation : <i>Senior Assistant Engineer</i></p> <p>(2) नियुक्ति की तारीख/Date of appointment : <i>24/08/1974</i></p> <p>(3) 55 साल की उम्र पूरी होने की तारीख/Date of attaining the age of 55 years : <i>24/08/2029</i></p> <p>(4) वृहि वे हिस्से और वर्गीकरण के बारे में जानकारी/Nature and party of leave applied for the date from when required : <i>Leave for 10 days starting from 24/08/2019</i></p> <p>(5) इस का संबंधित/Purpose for which leave is required : <i>रिट्रियर्सन</i>। यह अवकाश के दौरान सामाजिक व्यवहार विभाग की अधिकारीयता प्रमाण पत्र सुनाया जाय। Note—If on medical grounds, medical certificate should be attached.</p> <p>(6) अवकाश पत्र/Address while on leave : <i>36/1/1481/10/2019</i></p> <p>दावेत करने की तिथि/Date : <i>24/08/1999</i> 1999</p> <p>आवेदक का हस्ताक्षर/Signature of applicant : <i>Signature of the applicant</i></p>	<p>दृष्टि का अधिकार पत्र SAVE APPLICATION FORM N. F. C. 54</p> <p>कार्यालय/Office : <i>Proprietary Office, Dibrugarh</i></p>
---	--

**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

Name of Patient:

Sex:

Date:

ডাঃ দেবেশ্বর দাস এম, বি, বি, এচ, এম, ডি, (মেড)

মেডিচিন বিশেষজ্ঞ

আধুনিক চিকিৎসক (প্রাইভেট), মেডিচিন বিভাগ

গুৱাহাটী মেডিকেল কলেজ।

বেজিটার্ড নং - ৮০৯৩ (এ, এম, ডি)

বোগু চোৰা সমৰ : আৰেণ্ডি ২ বজাৰ পৰা ৭ বজালৈ

শান্তিৰ আৰু বৰিবাৰ বক্স

উজানবজাৰ, গুৱাহাটী - ১

Age:
Religion:
Regd No:

High Court of Assam
Administrative Tribunal
প্রক্ষেপ প্রশাসনিক ন্যায়বিদ্যা
১৪ DEC 2009

Guwahati Bench
গুৱাহাটী ন্যায়বিদ্যা

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

Das
02/01/2001

CERTIFIED
TRUE COPY

ADVOCATE

Dr. J. K. BARUAH

SR. MEDICAL CONSULTANT

Specialist in Transfusion Medicine (Bombay)

Specialised in Chest Diseases

Specialised in STD and Venereal Diseases

Phone : (R) 2206275 Mobile : 9864043609

Reg. No. 1870 (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. Nivedita Sen

Date : 10/6/08

Age : 59 yrs Sex : M/F

Symptoms:

This is to certify that Dr. Nivedita Sen
s/o late Dr. Shyamashankar Sen, a patient
of Thoracic bronchitis & essential hypertension.
He was under treatment and is now
advised to take rest for 20 (Twenty days).

DR. J. K. BARUAH
10/6/08

Diagnosis:

DR. J. K. BARUAH
S. Medical Consultant
Regd. No 1870 (AMC)
Formerly Medical College Hospital

Investigation/s:

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TRUE COPY

ADVOCATE

Signature

Date : 05/02/2001

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

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 & Simla N.Railway if any place. I am the employee of APO/Elect/Ghy under CPO/HQ/MLG Gauhati-11 as Jr.Clerk(E) in scale of pay Rs. 3050/- - 4596/- (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 ~~Member~~ ^{Member} to Transfer me the above causes.

The following particulars are given as below:—

Under the circumstances I would like to inform you that I therefore prayed that your goodself would be pleased and admit this application 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 (E)

Yours faithfully,
Jinal Kumar Sen
N.K.Sen) Jr.Clerk(E)

**CERTIFIED
TRUE COPY**

ADVOCATE

STANDARD FORM NO. 2

REGD NO. 1/D

N. F. RAILWAY

G. 174 A (i)

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

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) *John*

(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

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TRUE COPY

[Signature]
ADVOCATE

ANNEXURE: S

To,

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

Through proper channel OS(P)E/Ghy.

Sub:- Prayer for joining in duty on 26/01/2001.

Received

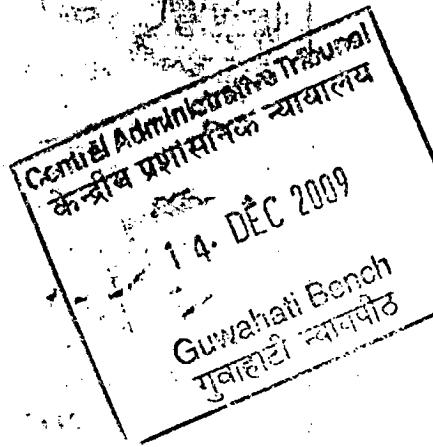
Sir,

26/2/2001 With due respect I would like to inform you and beg to
(N.F.Railway) state:-
(S.E.C.I.C.I.C.I)

1. That I was on leave a vegar 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 preveledge pass no. 152817 dt. 17.11.99. issued by OS(P)E Ghy for me and for my one (unmarried) daughter from Guwahati to Shimla and back Guwahati and having that I want to bring my daughter who is in Shimla 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 uo 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 brief case where some important documents & telegrams copy also were there to some unknown places. Where they have threatened me with dire consequences, torched 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

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ADVOCATE



contd...2

21

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 hajot on from 7/8/2000 to 16.10.2000.
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 on 26.01.2001.

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 : 26-01-2001.

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

14 DEC 2009

Enclo:- 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 - 05.01.2001) for viral hepatitis (in Goundies). (if certified also).

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

Almora K. N. 2.5.01
(N.K.Sen)
Jr. Clerk (E)

1. Through
2. C. M.
3. P. O. 10/11/2001
4. 26/12/2001
5. Received (S)

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.
 L/48 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.

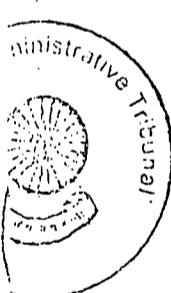
2. Mr. B.K. Talukdar, learned counsel for the applicant submits that the continued suspension of the applicant without trial in the criminal case or any departmental proceedings amount to punishment and that the applicant's family cannot survive with the small subsistence allowance now given to him. 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)

14 DEC

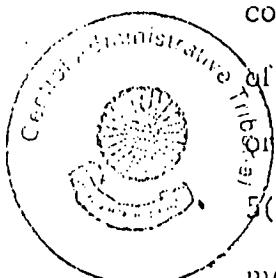
Guwahati
Talukdar

14 DEC
Guwahati
Talukdar



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.

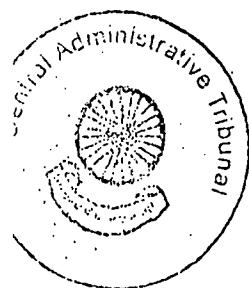
3. Mr J.L.Sarkar, learned counsel for the Railway, submits that the facts stated by the applicant has to be ascertained and the principle laid down in the said decisions relied on by the applicant can be considered only on ascertainment of facts. Mr J.L.Sarkar further submits that since the applicant 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



8/25

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.



S.D)-

Vice-Chairman

TRUE COPY

Info@fr

N 19/12/05
07/01/2006

Central Administrative Tribunal

Guwahati Bench

Office of the Vice-Chairman

Guwahati, Assam, India

Guwahati, Assam, India

K. P. 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
Ist 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- Crl.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

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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).

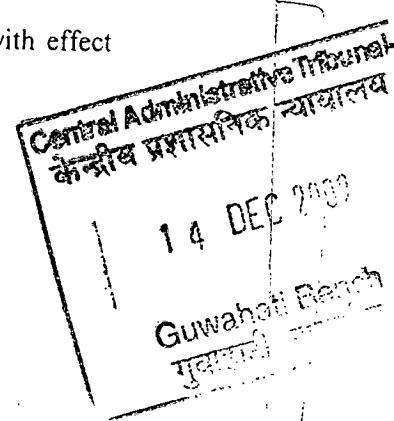
DA: One


17/4/06
(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,

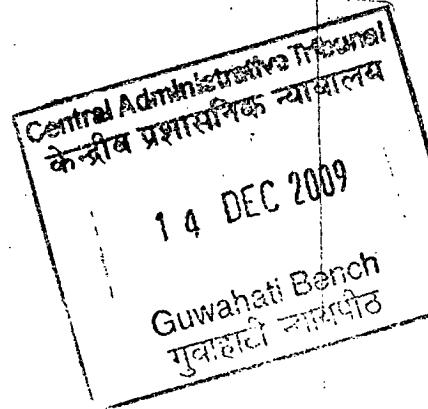

(G.K.KAKATI)
APO/GHY



STANDARD FORM 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..... 21.4.10

Name: G.K.KAKATI, APO/GHY
सहायक धार्मिक अधिकारी
म. सी. बंद्रवे, 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

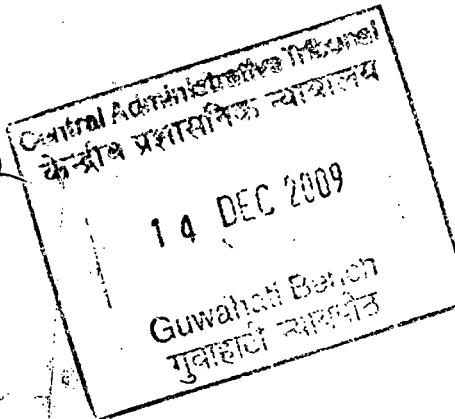
ANNEXURE: - 8

प्र० सी०/ N. F. एम/ M-43 एम/ M - 44
आर ए०/ RB मैड/ Med स०/ C-6

प्र० सी० रेलवे/ N. F. RAILWAY
चिकित्सा विभाग/ Medical Department
द्युटी फिट चयन-पत्र/ Duty Fit Certificate

अस्पताल/ Hospital
दवाखाना/ Dispensary

स०/ No. 209/02



मैं एवराहार प्रमाणित करता हूँ कि मैंने/ I hereby certify that I have examined

नाम/ Name: Nirmal K. Seng

पद्धति/Designation: Jr. Div. E

पहचान/Mark of identification: One black male

शाखा य विभाग/Branch or Department: Chitlhand, Pulin D.P.D.

दस्तावेज की जगह/ Stn. where employed: G.H.

की जांच की है और समझता हूँ कि दुरस्ती पत्र सेवे पर जारी/ Remarks.

द्युटी करने यायक है/ and consider him fit to resume duty pending production of
fit certificate from: 13/12/07

आवेदक का हस्ताक्षर/ वारे अंगूठे का निशान/

Sig./L.T.I. of the applicant: Nirmal Kumar Seng
विष्ट मडल चिकित्सा विभाग (प्र)

कार्यालय की मोहर/ Office Seal: डिविल मेडिकल डिविडियल/ Div. Med. Div. D.M.D/IC
रेलवे डॉक्टर का आधार/ Initials of Rly. Doctor

तारीख/ Date: 14/12/09

N. F. Railway

गुवाहाटी
Guwahati

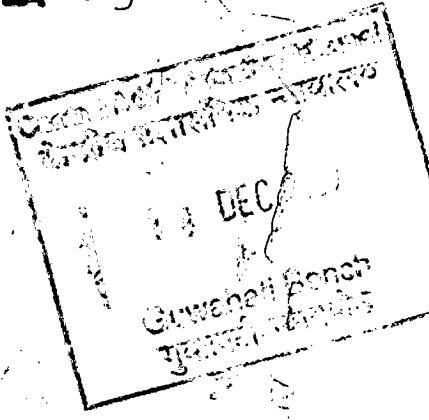
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TRUE COPY

ADVOCATE

To

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

Dated Guwahati the 8th November, 2007.



Ref:- No. E/74/DAR/GHY/11KS 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 ~~more or less~~ 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-authorizedly 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 IDL with effect from 1.12.99 to 4.12.99 by the then APO/GHY, Electrical, Late Mr. Nagen Deka who was also 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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c. ntd...p/2

ADVOCATE

- 2 -

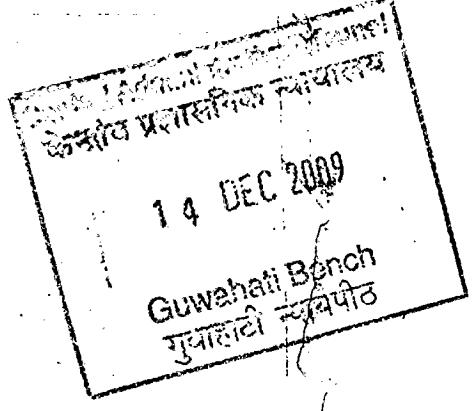
from Simla praying for extension of leave. I arrived in Gwahati by Brahmaputra Mail (TSK) in the morning of 7.12.99 in order to join my duty on that day. But ill luck would have it I could not join my duty on 7.12.99 as I was kidnapped by militants from Tribeni Complex, Pandu on my arrival from Simla. 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/R/101(P)2869 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} ~~service~~) 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

c.h.t.d... p/2



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~~ liable at all for serious misconduct, lack of devotion and integrity ~~and~~ and for violation of Rules 3(i), (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 of 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 ~~not~~ neither misappropriated 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

JK
Pass

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,

Nimai Kumar Sen.

(Nimai Kumar Sen)

Jr. Clerk/E
(Elect. Section) Under
PPO/GPO, N.E. Railway.

Enclosures:

As stated above.

J/C

Received

8/1/01
COS/P/B/1
(N. Ram Das)

प्रतिलिपि के लिए आवेदन की तारीख
Date of application for the copy.

स्टाम्प और फॉलोजो की अपेक्षित संख्या सूचित करने की निषिद्धता
तारीख
Date fixed for notifying the requisite number of stamps and folios.

अपेक्षित स्टाम्प और फॉलोजो की तारीख
Date of delivery of the requisite stamps and folios.

तारीख, जबकि देने की तारीख
प्रतिलिपि तैयार थी
Date on which the copy was ready for delivery.

जानवदक का प्रतिलिपि देने की तारीख
Date of making over the copy to the applicant.

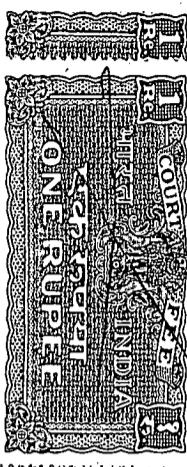
2/10/09

16/10/09

16/10/09

16/10/09

14-10-09

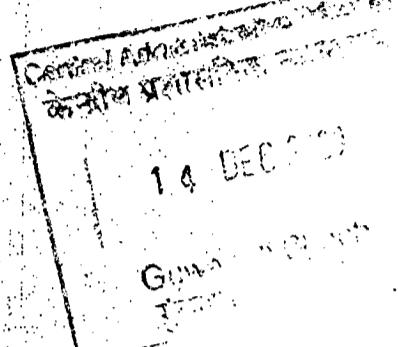


IN THE COURT OF SPECIAL JUDICIAL MAGISTRATE, ASSAM,
AT GUWAHATI:

Case no : GR 5270 of 1999

State of Assam

vrs-
Shri Nirmal Kumar Sen Accused.



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 ejahar, is that the accused Shri Nirmal Kumar Sen, an employee of the NE Railway, used to operate some private funds viz. Bihu 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. Bihu 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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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 statement 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 to 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.

14 DEC 2009

Guwahati Bench
मुख्यमंत्री न्यायालय

14 DEC 2009

Guwahati Bench

payment subsequently, particularly when there is specific evidence of PW-2 that the depositor's 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 last-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 u/s 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.
Special Judicial Magistrate
Assam, Guwahati

25.6.01
Special Judicial Magistrate
Assam, at Guwahati.

Comparing Assistant
MS/01
Office of the
Chief Judicial Magistrate
Kamrup, Guwahati
Date.....

Certified to be true copy
by [Signature]



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

Dated, Guwahati the 10th November, 2008.

10 DEC 2008
Guwahati Bench
N.F. Railway

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 my family on 1-12-99, so I prayed for extension of

contd... 2/

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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 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
গুৱাহাটী বেঞ্চ

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~~ ^{more} 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.

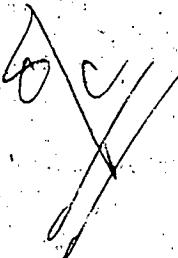
And for this act of kindness of your
Honour, I, as in duty bound shall ever pray.

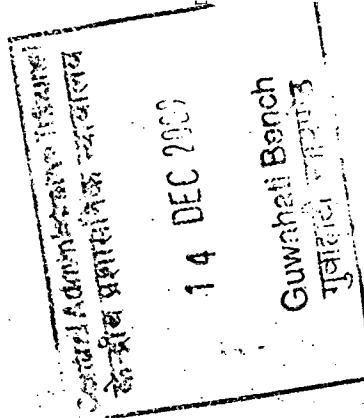
Yours faithfully,

Nirmal Kumar Sen
(N.K. Sen)

Clcark (E) (Electrical)

N.F. Railway, Guwahati





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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 Appts	Dt.of Retirement	Remarks
1	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01	Sri Nirmal Kr.Sen	Jt.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 M.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 Hargobinda Kalita	OS/Gr.I	ADEF/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	23-105-0	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	CPT/II	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	CPT/II	SSE/TL/GHY	03046471	01-01-51	01-11-78	31-12-2010	

NO: F/207/1/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,Goswami, 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.R.Ry Co-opr. Bank Ltd,Kolkata, (14) AID/CH/MLG- He is requested to issue medical clearance certificate after their retirement to the undersigned please.

15. ADFM/MLG

16. 27/12/2010
M. F. Bly. Guwahati MZG

APO/GHY
17. 10/12/2010
M. F. Bly. Guwahati Officer [Elec]
18. 10/12/2010
M. F. Bly. Guwahati
19. 10/12/2010
M. F. Bly. Guwahati

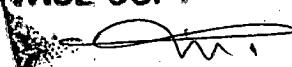
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20. 10/12/2010
M. F. Bly. Guwahati
ADVOCATE

TABLE OF SUBSISTENCE ALLOWANCES ALLOWED TO NIRMAL
KUMAR SEN, JR. CLERK (E), NE RAILWAY, GUWAHATI-1

Central Administration Tribunal
देशीय प्रशासनिक न्यायालय
14 DEC 2001
Guwahati Bench
গুৱাহাটী

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 2	Rs. 3500/- +DA+SCA+PP+PLB and etc. Rs. 3575/- +DA+SCA+PP+PLB	No Payment
	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 1-8-2004 to 1-7-2005 1-8-2005 to 15-4-2006	1 2 3	Rs. 3725/- +DA+DP+SCA+ PP+PLB Rs. 3800/- +DA+DP+SCA+ PP+PLB Rs. 3875/- +DA+DP+SCA+ PP+PLB	75% of basic Pay Rs. 2625/- +DA+DP+SCA+ PP+ Other allowance etc.

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3	16-4-2006 to 1-8-2006	1	Rs. 3950/- +DA+DP+SCA+ PP+PLB	14 DEC 2009 Guwahati Bench गुवाहाटी न्यायालय
	1-9-2006 to 18-12-2007	2	Rs. 10310/- +DA+DP+SCA+ PP+PLB	No Payment
4	1-12-1999 to 18-12-2007	1	Pending Medical Bills Rs. 7000/- approax	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

Mr. Khasnab Ali

Advocate