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**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. H-895 150/95

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*Kahs*

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH  
GUWAHATI

ORIGINAL APPLN.NO. 150 OF 1995  
TRANSFER APPLN.NO. OF 1995  
CONTEMPT APPLN.NO. OF 1995 (IN OA NO. )  
REVIEW APPLN. NO. OF 1995 (IN OA NO. )  
MISC. PETN. NO. OF 1995 (IN OA NO. )

.....Hameswari Dargiani APPLICANT(S)

-VS-

.....U. O. I. ... Respondent(S)

FOR THE APPLICANT(S)

...MR. A. Dasgupta  
MR.  
MR.  
MR.

FOR THE RESPONDENTS

...MR. A.K. Choudhury

OFFICE NOTE	DATE	ORDER
<p>This application is in form and within time. C. F. of Rs. 50/- deposited vide IPO/BD No. 326038 Dated 12.7.95</p> <p>By Registrar (d) <i>[Signature]</i></p> <p>22.11.95 copy of Indg/Order dtd. 11.8.95 issued to the counsel of the parties vide S/No. 5100-01 Dtd. 28.11.95.</p>	<p>11-8-95</p> <p>lm</p> <p><i>[Signature]</i> CA 2</p>	<p>Mr.A.Dasgupta for the applicant. Mr.A.K.Choudhury Addl.C.G.S.C for the respondents.</p> <p>O.A.admitted. Notice waived. Arguments of both the counsel are heard and concluded. Judgment delivered in Court Application is disposed of. No order as to costs.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p><i>[Signature]</i> Member</p>

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 150/95  
T.A. NO.

DATE OF DECISION 11-8-1995.

Smti Humeswari Dangiari

(PETITIONER(S))

Mr.A.Dasgupta.

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr.A.K.Choudhury, Addl.C.G.S.C.

ADVOCATE FOR THE  
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMN)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

yes

No

*M.G. Chaudhary*

Judgment delivered by Hon'ble VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.150/95

Date of Order: This the 11th Day of August 1995.

JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN  
SHRI G.L.SANGLYINE, MEMBER(ADMN)

1. Smtl Humeswari Dangiari,  
Civil Safaiwala  
W/O.Sri Phulchahd Dangiari, defence Civil  
Qrt. No.12/3, Tusar Chakra near GE Complex, P.O.  
Garubandha, Missamari, Dist. Sonitpur, Assam. ... Applicant.

By Advocate Mr.A.Das Gupta

-Vs-

1. Union of India, Dangiari  
through Secretary, Ministry of Defence  
South Block, New Delhi
2. Commanding Officer  
180 Military Hospital  
C/O.99 A.P.O.
3. D.D.M.S.  
HQ 4 Corps (Medical Branch, C/O 99 A.P.O)
4. Station Commander  
Station HQ Missamari  
P.O. Garubandha, Dist.Sonitpur, Assam
5. Director General, Medical Services  
New Delhi.

... Respondents.

By Advocate Mr.A.K.Choudhury, Addl.C.G.S.C.

O R D E R.

CHAUDHARI J(VC)

1. O.A. admitted. Notice waived. Both the counsel heard, finally.
2. An order of termination of service of the applicant as (civilian) Sweepers (Safaiwala) was passed on 30-4-94 by the competent authority of the respondent at the conclusion of the enquiry held under Rule 14 of Central Civil Services (Discipline, Control and Appeal) Rules 1965 on alleged mis-conduct. Against the termination order aforesaid the applicant had approached this Tribunal in O.A.No.105/94. That was disposed of by order dated 17-6-94 without going into the merits of the case.

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The applicant was given opportunity to file an appeal before the appellate authority. She then filed an appeal on 13-7-94. Exhaustive grounds were stated in the memorandum of appeal. The appellate authority has by the impugned order dated 27-10-94 dismissed the appeal and confirmed the penalty of dismissal from service.

3. It appears that at initial stage on 11-6-93 the Station Commandant, Missamari had stated in his remarks that the proceedings in criminal case No.32/93 should be closely <sup>monitored</sup> ~~mentioned~~ to ensure proper justice at the enquiry. It <sup>also</sup> appears that on the same set of facts on which the disciplinary enquiry was commenced the applicant was prosecuted before the judicial Magistrate, Tezpur in GR Case No.672/93 under Section 355 IPC. It further appears that the learned judicial Magistrate convicted the applicant and sentenced her to pay a fine of Rs.500/- in default to suffer <sup>simple</sup> ~~imprisonment~~ for 3 months by order dated 26-4-94. That was few days prior to the date of the order of dismissal passed in the disciplinary proceeding on 30-4-94.

4. In the Memorandum of appeal presented to the appellate authority a reference was made to the remarks of the Station Commandant mentioned earlier as regards criminal case. But no request was made for awaiting the decision of the criminal Court. From Annexure G it is seen that the conviction of the applicant has been set aside by the learned Sessions Judge, Sonitpur, Tezpur by judgment and order dated 5-4-94. This fact also does not appear to have been brought to the notice of the appellate authority while the appeal was still pending.

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5. Thus on the date on which the order of dismissal was passed the applicant was already a convicted person. Whether that circumstance was taken into account at the enquiry or not can be gathered only from the enquiry report. The applicant however has not chosen to file a copy of the enquiry report and the copy of articles of charge produced at Annexure B is incomplete. However from the memorandum of appeal filed before the appellate authority it can be gathered that it was contended that the enquiry was influenced by the preliminary enquiry report and Memorandum of Station Headquarter, Missamari (proceeding the DE). To what extent the criminal case had influenced the decision at the enquiry ~~which had proceeded~~ ~~exparte~~ cannot be examined in the absence of the enquiry report nor the fact as to whether the remarks of the Station Commandant made on 11-6-93 in connection with the criminal case were kept in view or not.

6. Mr.A.Dasgupta for the applicant submitted that there has been violation of principle of natural justice <sup>at</sup> every stage since the beginning. We cannot accept the submission in the absence of the discussion in the enquiry report being available. The learned counsel submitted that we may call for that report from the respondents. We do not think that there is any justification for doing so. We are not thus impressed by the submission of violation of natural justice.

7. Mr.Dasgupta next submitted that the appellate order which is conveyed in the shape of a letter is a non speaking order and it does not show the reasons for which the

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appellate authority dismissed the appeal.

8. The letter reads thus "After going through the case, he has decided to uphold the penalty of dismissal from service awarded by the competent authority". The decision of the appellate authority was thus only conveyed by the ADMS. No speaking order was communicated. However as the order under appeal was confirmed on going through the case technically it was not obligatory upon the Appellate authority to record detailed reasons in support of the order. The absence of reasons would have been material to be considered if it was demonstrated that the view taken is not reasonable to take in respect of findings recorded by the Court of enquiry. Whether those findings themselves are vitiated cannot be examined in the absence of the report and it is not possible therefore to hold that the appellate order is vitiated for non recording detailed reasons.

9. It must however be noted that the applicant has been acquitted of the criminal charge. That was during the pendency of the Enquiry. That is a material circumstance. The punishment awarded therefore needs to be reconsidered in the light of the same particularly because the DE was based upon the same set of facts for which the applicant was ~~presented~~<sup>prosecuted</sup> in the criminal case. The order of dismissal thus cannot stand consistently with the acquittal in the criminal case. This situation is required to be remedied. It is well settled that the findings of Criminal Court must be accepted by the department and that principle

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squarely applies to this case. Hence following order:

- (1) The applicant is given liberty to file an application on appropriate grounds to the Director General Medical Services for revising/reviewing the impugned appellate order dated 20-10-94 (communicated on 27-10-94). Such application to be filed on or before 31-10-1995.
- (2) On the application as aforesaid being submitted the DGMS will consider it on merits in the light of discussion in this order and the judgment in the Criminal Appeal No.9(S-2)94 of the Court of Session, Sonitpur at Tezpur dated 5 -4-95 and pass suitable order thereon. DGMS may treat the application as Revision or Review as he deems fit and shall not reject it on ground of limitation or maintainability.
- (3) The DGMS shall pass consequential orders consistently with his decision.
- (4) The decision shall be taken within a period of two months from the date of filing of the application by the applicant and communicated to the applicant expeditiously.

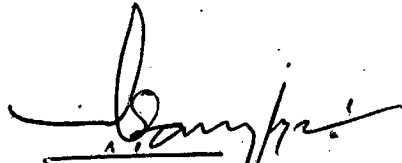
contd/-





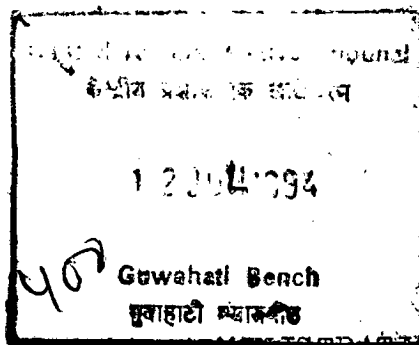
- (5) Applicant will be at liberty to adopt such remedies as she may be advised including approaching this Tribunal if she feels aggrieved by the decision of the DGMS. The contentions now urged are left open.

O.A. disposed of in terms of aforesaid order. No order as to costs.

  
(G.L. SANGLYINE)  
MEMBER (ADMN)

  
(M.G. CHAUDHARI)  
VICE-CHAIRMAN

LM



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI

O.A. 150 of 1995

Smt. Homeswari Dangiari

- Vs -

Union of India & Others

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Filed by the  
Applicant through  
Joshi Sarfraz  
(Advocate)  
12-7-95

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE  
TRIBUNAL ACT' 1985

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Date of filing

or

Date of Receipt

:

By post Regd. No.

:

Signature

Registrar.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT GUWAHATI

GUWAHATI BENCH

Smt. Humeswari Dangiari

- Vs -

Union of India .

1. Particulars of the petitioner :-

Smt. Humeswari Dangiari, Civil Sagaiwali

W/O. Sri Phulchand Dangiari, defence Civil

Qrt. No. 12/3, Tusar Chakra near

GE Complex, P.O. Garubandha, Missamari,

Dist Sonitpur, Assam .

2. Particular of the Respondents :-

1. Union of India

through Secretary, Ministry of Defence

South Block, New Delhi.

2. Commanding Officer

180 Military Hospital

C/O. 99 A.P.O.

3. D.D.M.S.

HQ 4 Corps (Medical Branch, C/O 99 A.P.O.)

4. Station Commander

Station HQ Missamari

P.O. Garubandha, Dist. Sonitpur, Assam

5. Director General Medical Services

New Delhi .

3. Particulars of order against which the application is made :

Order dated 27.10.94 passed by D.D.M.S.

H.Q 4 Crops C/O 99 A.P.O. vide his memo

No. 230827/3/M-3(B) whereby the penalty

of dismissed was upheld by the appellate

Authority .

4. Jurisdiction of Tribunal :

It is declared that the subject matter on which the applicant wants redressal is within the jurisdiction of the Tribunal .

5. Limitation :

The applicant declares that this application is within the limitation prescribed in section of the Administrative Tribunal Act, 1985 .

6. Facts of the Case :

The humble petition of the applicant above named,

Contd....3

MOST RESPECTFULLY SHEWETH :-

1. That the applicant is a citizen of India and at present residing at Missamari, P.O. Garubandham Dist. Sonitpur, Assam .
2. That the applicant was a civilian in defence service and was serving as Ward Sweepers (Civil Safaiwala) in 180 Military Hospital, C/O 99 A.P.O.. She was a permanent employee of the aforesaid Hospital and discharged her duties to the full satisfaction of all concerned. Since her appointment, her service was never spotted by any stigma whatsoever .
3. That, the applicant was a Sweepers belonging to the lower strata of the society. She is a deserted Women. She was the sole earning member of her family consist of herself and her School going daughter .
4. That though the applicants service was not spotted by any stigma, but, recently she incurred the displeasure of one lady Doctor of the 180 Military Hospital named Capt (Mrs) Neeta Chhabra whose Husband is the Administrative commandant of Station HQ Missamari .
5. That on 29.5.93, the aforesaid Capt (Mrs) Neeta Chhabra lodged a complaint before the officiating Commanding Officer, 180 Military Hospital, that she was assaulted by the applicant on that day .

6. That on that day, i.e. on 29.5.93 a preliminary inquiry or a fact finding inquiry was held. This preliminary inquiry was conducted by another lady Doctor of the Hospital ~~Cpt~~ Capt. (MISS) Ellora Dasgupta. The applicant duly appeared before the preliminary inquiry. Copy of the complaint on the basis of which this preliminary inquiry was initiated was not served upon the applicant. In the preliminary inquiry (fact finding inquiry) it was, inter-alia, alleged that on 29.5.93 at about 0930 hrs when Capt. (Mrs) Neeta Chhabra was in her duty room, the applicant entered the duty room to collect some specimen bottles in a kidney tray. After collecting the same she went out of the room banging the door indecently that the applicant again banged the door open to enter the duty room, Capt. (Mrs) Neeta Chhabra warned that this was the second time since morning she has done this and she should not repeat the same for the third time. On this the applicant started arguing on which Capt (Mrs) Neeta Chhabra ordered her to get out from the room. It was further alleged that the applicant did not go out of the ~~room~~ room and stood against the door not allowing the Doctor to go out. At this the complainant ~~pr~~ picked up the Telephone to speak with officiating commanding officer but the applicant snatched the receiver from her hand and throw it on the floor then she put the Kidney Tray down on the trolley and

pulled the complainant on left collar, rank badged and also f hair. It was further alleged that due to this misconduct the complainants seree and pallu came off .

7. In the facts finding inquiry the applicant specifically denied these allegations by stating inter alia that she was doing her work as ordered by Sister Maj Saramma MM to pickup blood samples from officers family ward and duty room and take it to the Laboratory. As Ordered, the applicant pickup samples from the duty room and officers family ward and again entered the duty room to pickup blood slides. Both her hands were occupied to hold the kidney Tray and thus she pushed the door of the duty room by the ~~with~~ weight of her body and opened it . In this process she might have hurt Capt. (Mrs) Neeta Chhabra. CPF (Mrs) Neeta Chhabra rebuked her and told her to getout . She even pushed the applicant with her hands. At this stage the applicant asked the cause of her annoyance. Then the applicant was ~~sp~~ slapped by the aforesaid Mrs. Chhabra . The applicant put down the specimen Tray on the trolley and tried to resist Mr. Capt (Mrs) Neeta Chhabra .

8. Though this preliminary inquiry was initiated on the basis of the complaint lodged by Capt (Mrs) Neeta Chhabra, but, a copy of this complaint was never served on the delinquent .



9. After conclusion of this preliminary inquiry, the station HQ Missamari (who is the Supreme Authority of an Army station ) passed an order for another inquiry to investigate the circumstances under which <sup>alleged</sup> ~~six~~ criminal force was used against Capt (Mrs) Neeta Chhabra by the Applicant. This subsequent fact finding inquiry was absolutely uncalled for . It was at the instance of the complainant and her husband who was the Administrative commandant of the said station HQ at Missamari. It is pertinent to note that the Hospital authority had no occasion to ask the station HQ Missamari to hold such inquiry . The applicant lodged her protest against the said proposed inquiry to be conducted by an external Agency . The station HQ Missamari did not pay any heed to the same . The aforesaid purported investigation was ~~dx~~ conducted by Lt. Col. R.S. Rai with four other members of the external agency. The stn. HQ Missamari arrived at an arbitrary finding that the applicant committed the misconduct as alleged by the complainant ever before the issueance of the charge sheet and before the commencement of the Departmental proceeding. The station HQ Missamari came to a conclusion that the applicant be dismissed from service .

This inquiry report was submitted on

11.6.93 .

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A copy of the remarks<sup>k</sup> passed by station Commander Missamari on 11.6.93 is annexed hereto and marked Annexure.A .

10. After submission of this report to dismiss the service of the applicant, a charge sheet was served upon her on 25th June '93 by DDMS HQ 4 Corps. It was inter alia stated that the applicant used original force against the complainant Capt (Mrs) Neeta Chhabra. The applicant was called upon to appear before disciplinary proceeding to be conducted in this behalf .

A copy of the charge sheet served on the applicant on 25th June '93 is annexed hereto and marked as Annexure - B .

11. Though this was a predetermined disciplinary proceeding to dismiss the applicant, yet she duly appeared and contested the proceeding by submitting her reply to the charge sheet , The applicant specifically denied the allegation .

12. That the departmental proceeding was initiated after arriving at a conclusion that the applicant will be dismissed from her service . Initially Lt. Col. KMD Rao was appointed as ~~inquiry~~ inquiry officer and subsequently Lt. Col Mridul Dey was appointed as inquiry officer to conduct the inquiry. Capt. (Miss) Ellora Dasgupta who

conducted the preliminary inquiry, was engaged as presenting officer. The Persons concerned, namely Sep/NAB. Sharma, NK/NA Harjinder Singh, Mrs. Savita Senal, Mrs Sumati Kalia and the complaint adduced their evidences . Sep/NAB. Sharma specifically stated before the preliminary inquiry that he had no occasion to witness the occurrence as alleged . But in the departmental inquiry he narrated a contradictory version. Similarly, NK/NA Harjinder Singh Mrs. S. Sewal Mrs. S. Kalia adduced contradictory evidence before the preliminary and the departmental inquiry. The applicant examined three witnesses including herself. All these witnesses were eye witnesses who narrated the valid occurrence took place on 29.5.93 by stating inter alia that Capt (Mrs) Neeta Chhabra ~~Sp~~ slapped the applicant.

13. That the inquiry officer was influenced by the extraneous consideration by the report submitted by the higher authority to dismissed the applicant from service and came to a perverse finding that the applicant committed the misconduct. Contradictory statements of Sep/NAB Sharma was relied upon by him on the so-called surmises that he was afraid of to narrate the correct fact before the preliminary inquiry. How he could arrive to this conclusion was best known to him . Evidences adduced by the applicant was not relied upon by the inquiry officer

only on the ground that one of her witness Smt. Dharmeswari Devi was her co-worker. Why the version of the other witness, Sri Ram Das who is an employee from other establishment, i.e. Military Engineering service was not relied upon was not explained. The enquiry officer was absolutely influenced by the predetermined conclusion of the higher authority to dismiss the applicant and submitted his report by discarding the positive evidence adduced by the applicant and her witnesses .

14. That the aforesaid purported inquiry was absolutely in gross violation of the principles of natural Justice .

15. The proceeding was initiated on the basis of the complaint lodged by the complainant. It is incumbent on the part of the disciplinary authority to furnish a copy of the complaint to the delinquent employee, but, at no point of time whether at the stage of issuance of the charge sheet, preliminary inquiry or in the departmental inquiry, a copy of this complaint was served on the applicant . The applicant was a sweepress belonging to the lower echelon of employees. She was not acquainted with the technicalities of the departmental proceedings. Non furnishing of these documents <sup>/caused</sup> a great injustice

depriving the applicant to defend her case at the stage of preliminary, reply to the charge sheet, departmental proceedings. The inquiry conducted by the disciplinary ~~atma~~ authority was in violation of the principle of natural Justice and as such the same is liable to be set aside and quashed .

16. That on the basis of the aforesaid inquiry the petitioner is dismissed from her service on 30th April'94 .

A copy of the order of dismissal served on the applicant is annexed hereto and marked as Annexure- C .

17. That the applicant preferred an appeal before this Hon'ble Tribunal against the order of dismissal dated 30.4.94 . A case, being case No. 105/94 was registered . This appeal was disposed of with a direction that the applicant may prefer an appeal against the impugned order . Thereafter the applicant preferred an appeal before the D.G.M.S. on 13.7.94 .

A copy of the order of this Hon'ble Tribunal and memo of appeal dated 13.7.94 is Annexed hereto and annexed hereto and marked as Annexure- D & E respectively .

18. That the aforesaid appeal was dismissed by a cryptic order by the Respondent No. 1 . No reason whatsoever was assigned in this appellate order .

A copy of the order dated 27.10.94 which was communicated to the applicant vide order dated 2.11.94 is annexed hereto and marked as Annexure- F .

19. That the applicant further begs to state that the she was put under a trial for having committed ~~offence~~ ~~offences~~ punishable under sections 448/353/355/506 I.P.C. A case, being G.R. Case No. 672/93 was registered . This applicant has been Humbly acquitted by the appalate court on 5.4.95 .

A copy of the aforesaid judgment dated 5.4.95 is annexed hereto and marked as Annexure- G .

7. Details of remedies exusted :-

The applicant declares that all the remedies available under the normal rules are exhusted .

8. Matters not previously filed or pending with any other Court :-

The applicant further declares that this matter with respect to which the relief is being claimed is not pending before any court of Tribunal .

9. Relief prayed for :-

In view of the facts stated above the applicant prays for the following relief:-

1). To ~~get~~ aside the order of dismissal issued by the DDMS, HQ 4 Corps, C/O 99 APO on 30.4.94 vide his order No. 35452/HD/PC/M-3 .

ii). To set aside the order dated 27.10.94 passed by the Director Medical Services vide his order dated 230827/3/M-3(B) .

GROUND S

i). For that the impugned order of dismissal is a predetermined order as the Respondent No. 4 the station (Commander) Stn. HQ Missamari before issuance of the charge sheet recommended that the applicant be dismissed from the service. In view of this fact consequent departmental proceeding has become redundant.

ii). For that, the decision arrived at by the disciplinary authority is tainted with <sup>biasness</sup> bias as it is actuated with predetermined decision to dismiss the service of the applicant .

iii). For that, the decision arrived at by the inquiry officer is not at <sup>all</sup> based on material on record, it is rather based <sup>on</sup> surmises and conjectures . It is an admitted fact that Sep/NAB Sharma Specifically stated in the preliminary inquiry that he had no knowledge about the alleged misconduct. The inquiry officer disregarded this aspect of this case and accepted the subsequent contradictory & statement given before

the department inquiry on the purported<sup>/ground</sup> that he was afraid to state the real facts in the preliminary inquiry. What led him to conclude that the statement made in the preliminary inquiry were not correct and the statement made in the departmental inquiry were correct is best known to him. No reason was assigned by the inquiry officer to accept the subsequent contradictory statements.

iv). For that, inquiry officer arbitrarily discarded the evidence adduced by Smt. Dharmeswari Devi on the so called contention that Smt. D. Devi was a Safaiwali and a coworker of the applicant .

v). For that, the inquiry officer disbelieved the statement of Sri Ram Das who was an employee of Military engineering service, why his statement was not considered by the inquiry officer is best known to him .

vi). For that, the inquiry officer was influenced by extraneous and irrelevant matters arising out of the court of inquiry conducted by the external agency who before issuance of the charge sheet arrived at a conclusion that service of the applicant be dismissed . The said conduct of the inquiry officer clearly shows that he cannot discharge his function in a fair and



independent manner under the influence of ~~his~~ his superior officer. This clearly shows that the said inquiry officer is not competent to discharge his ~~proper~~ responsibility as an inquiry officer in fair and equitable manner.

vii). For that, Departmental inquiry conducted by the Disciplinary authority was in gross violation of the principle of natural justice, the entire proceeding was initiated at the behest of a written complaint lodged by Capt (Mrs) Neeta Chhabra. A copy of this complaint was not served on the delinquent employee. The applicant was a Sweepress and was not aware of the technicalities of departmental inquiry. It is the duty of the inquiry officer to direct the disciplinary authority to serve the copy of this complaint to the applicant. Non submission of this document caused a great prejudice to the applicant as she was deprived of adequate opportunity to defend her case before the departmental inquiry.

viii). For, that, the impugned order <sup>u</sup>suffers from non application of mind. The applicant <sup>is</sup> with a sweepress belonging to the lower strata of the society. It is too much to expect that a Sweepress would be acquainted with all sophisticated manners. So, on the face of the misconduct, the punishment of dismissal is showingly

disproportionate to the alleged misconduct . The disciplinary authority acted in a whimsical manner . The impugned order of dismissal is liable to be set-aside and quashed .

ix). For that, there is a positive evidence that Capt (Mrs) Neeta Chhabra slapped the applicant and the inquiry officer did not pay any heed to this crucial aspect of this case and arrived at a contradictory finding that the applicant committed the misconduct as alleged .

x). For that the impugned order is against the procedure established by law and the same is violative of Article 21 of the Constitution of India .

xi). For that, the appellate authority did not apply their mind and disposed of the appeal in a cryptic manner . The appellate order is not a reasoned order . It has not dealt with the evidence on record . The appellate authority without assigning any reason dismissed the appeal . The impugned order of appeal is liable to be dismissed .

xii). For the alleged misconduct, the appellant was put under a trial of having committed criminal offences . The applicant has been acquitted . For this reason also the applicant is entitled to be reinstated with full back wages and the impugned order of termination is liable to be set aside and quashed.

10. Particulars of the postal order in respect of :

Postal order No.	& Amount .
09 326038	Rs 50.00

11. List of enclosures :

As stated in the Index of this application .

VERIFICATION

I, Smt. Humeswari Dangiari, wife of  
 Sri Phulchand Dangiari aged about 35 years, at  
 resident of village Garubandhu, P.S. Missamari  
 District Sonitpur, Assam, do hereby solemnly  
 affirm to state that the statements made in  
 paragraphs ~~10005~~, ~~10006~~ to 10005, 6 (Partly)  
 are true to my knowledge and that of ~~the 9th~~ <sup>and</sup> ~~10th~~ <sup>and</sup>  
 6 (Partly) are matter of records .

I have not suppressed any material facts before  
 this Hon'ble Court .

I Sign in this verification on this 21st  
 day of May'1995 .

SA

শ্রীমতী হুমেশ্বরী দাঙ্গিয়ারী

ANNEXURE :- A

REMARKS OF STATION COMMANDANT MISSAMARI OF THE  
COURT OF INQUIRY PROCEEDINGS ORDERS TO INVESTIGATE THE  
CIRCUMSTANCES UNDER WHICH CRIMINAL FORCE WAS USED  
AGAINST RS. 12304K CAPT (MRS) NEETA CHHABRA OF 180  
MILITARY HOSPITAL CIVIL SAFAI KARMACHARI SMTN HOMESWARI  
DANGIARI OF THE HOSPITAL ON 29 MAY 93.

1. I agree with the opinion of the Court .
2. I direct that Smt. Komeswari Dangiari, Civil Safai Karmachari of 180 Military Hospital should be immediately placed under suspension under OCS (CCA) Rule No. Sub Rule 1(a) and 1(b) .
3. I recommend that action should be taken to terminate her service as recommended by the court .
4. I also recommend that Criminal case No. 32/93 filed by ~~father~~ police station Missamari in the Court of Chief Judicial Magistrate, Tezpur should be closely mentioned and pursued by 180 Military Hospital and concerned staff at HQ Corps to ensure that proper justice is done to Capt (Mrs) Neeta Chhabra for yyc offence committed against her and also in the overall interest of the organisation .

Station : Missamari

Dated : 11 Jun 93

Sd/- Illegible

( P S Bhatia )

Brig

Stn Cdr

*Missamari  
12/9/95*

ANNEXURE :- B

35452/M-3/

HQ 4 Corps

C/O 99 APO

25 Jun '93

Place of Issue : No. 4 Corps

C/O 99 APO

MEMORANDUM

The undersigned proposes to hold an inquiry against No. 484397 Civ/Safaiwali Humeswari Dangiari of 180 Military Hospital under Rule 14 of the Central Civil Services (Classification, Central and Appeal) Rules, 1965 . The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure- I) . A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II) . A list of documents by which and a list of witnesses by whom, the Article of charge are proposed to be sustained are also enclosed (Annexure III and IV) .

2. No. 484397 Civ/Safaiwali Smt. Humeswari Dangiari of 180 Military Hospital is directed to submit within 15 days of the receipt of this memorandum a written statement of her defence and also to state whether she desires to be heard in person .

attested  
for file  
12/9/55

Contd....2

3. She is informed that an inquiry will be hold only in respect of these articles of charge as are not admitted. She should therefore, specifically admit or deny each Article of Charges .

4. No.484397 Civ/Safaiwali Smt. Humeswari Dangiari is further informed that if she does not submit her written statement of defence on or before the date specified in para 3 above, or does not appear before the inquiry authority in person or otherwise fails or ~~refuse~~ refuses to comply with the provisions of Rule 14 of the C.C.S. (C.C.A) Rules, 1965, or the orders/directions issued in pursuance of the said Rule, the inquiry authority may hold the inquiry against her ex parte .

5. Attention of No. 484397 Civ/Safaiwali Smt. Humeswari Dangiari of 180 Military Hospital is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further herx interest in respect of matters partaining to her service under the Government. If any representation is received on her behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that No. 484397 Civ/Safaiwali

Smt Humeswari Dangiari is aware of such representation and that it has been made at her instance and action will be taken against her for violation of Rule 20 of the C.C.S. (Conduct) Rules, 1964 .

6. The receipt of the memorandum may be acknowledged.

( A.S. Kular )

Brig

DDMS HQ 4 Corps

(Name and signation of the competent  
Authority )

Enclosure :

copy to :-

No. 484397 Civ/Safaiwali Smt Humeswari Dangiari  
180 Military Hospital C/O 99 APO.

Postal Address :

Qtr. 12/3 Tushar Chakra  
Near GE Complex (Gangaragar), Missamari  
Gorubandha (PO) Sonitpur, Assam .

Statement of Articles of charge are framed against  
No. 484397 Civ/safaiwali Smt. Humeswari Dangiari, Employee  
of 180 Military Hospital C/O 99 APO.

Article-I

That the said No. 484397 Civ/safaiwali Smt. Humeswari  
Dangiari of 180 Military Hospital while functioning  
as Safaiwali on 29 May 93 at about 0930 hours at Family

Contd....4



ANNEXURE :- CREGISTERED BY POST/AC DUE

HQ 4 Corps

C/O 99 APO

35458/GD/PG/P-3

30 April 94

place of Issue : Tezpur

ORDER

On a careful consideration of the inquiry report and also having considered your submission to the inquiry report, the undersigned agrees with the findings of the inquiry officer and holds that the article of charge is proved against No. 484397 Smt. Humeswari Dangiari Safaiwali of 180 Mil Hosp .

The undersigned has come to the conclusion that Smt. Humeswari Dangiari Safaiwali No. 484397 of 180 Mil Hospital is not a fit person to be regained in service and therefore the penalty of dismissal from service is imposed on No. 484397 Safaiwali Smt. Humeswari Dangiari.

The receipt of this order be acknowledged.

Sd/- Illegible

(A.S. Kalra )

Brig

DDMS HQ 4 Corps .

To  
No. 484397 Civ/Safaiwali  
Smti. Humeswari Dangiari  
Qtr. No. 12/3 of ~~Qtr~~  
Tushar Chakra, near GE Complex  
(Ganga Nagar) Missamari  
Garubanda (PO)  
Sonitpur (Assam)

Copy to :-  
180 Mil Hosp-  
C/O 99 APO

Two copies of the above order (one copy  
for Civ/Safaiwali Humeswari Dangiari  
for infor of the Individual .

*Attested  
by  
12/4/95*

ANNEXURE :- D

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

OA. 105/94

Smt. H. Dengiari ... Applicant

- Vs -

Union of India &amp; Ors ... Respdt .

PRESENT

HON'BLE MR. JUSTICE S. HAQUE, VICE CHAIRMAN

HON'BLE SRI G. L. SANGLYINE? MEMBER (A)

For the Applicant ... Mr. A. Dasgupta, Adv.

For the Respdt. ... Mr. G. Sarma, Addl. CGSc

ORDER

17-6-94 Heard learned counsel Mr. A. Dasgupta on behalf of the applicant. perused the statement of grievances and reliefs sought for in this application. The grievance is against the penalty of dismissal consequent to a disciplinary proceeding. Learned Addl. C.G.S.C. Mr. G. Sarma, Submits that the applicant has not exhausted available remedy by appeal before the competent authority. We are convinced that the ~~as~~ appeal lies against the penalty order. Therefore, we do not propose to entertain this application at this stage. The interim relief order passed on 30.5.1994 is also vacated .

Contd....2

- 2 -

The applicant may file appeal before the appellate authority within 30 (thirty) days from today, the 17-6-1994 . In the event of filing such appeal, the competent authority shall treat such appeal to be within limitation and dispose of the same in accordance with rules .

---

Mr. Dasgupta prays for a direction on the respondents not to evict the applicant during the appeal/period/pendency of appeal. We leave it with the appellate authority to consider this prayer and pass necessary orders after hearing her .

Sd/- S. HAQUE

VICE CHAIRMAN

Sd/- G. L. SANGLYINE

MEMBER (ADMN)

25

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ANNEXURE :- E

FROM : SMT. Humeswari Dangiati

Ex-Safaiwali

Tusar Chakra Near GE Complex

Qrt No. 12/3 Def Civ. Qrt

Ganga Nagar Missemari

P.O. Garubandha, Dist : Sonitpur (Assam)

To

The D.G.M.S.

Army Headquarters

Sera Bhaban

New Delhi- 110011

(Through the Disciplinary Authority )

Subject :- APPEAL AGAINST PENALTY OF DISMISSAL FROM  
SERVICE CONSEQUENT TO DISCIPLINARY PROCEED-  
ING .

Respected Sir,

As per the order passed on dated 17.6.94 by the Hon'ble Central Administrative Tribunal, Guwahati Bench against OA 105/94 (copy enclosed and marked as Annexure (A) Ix I most humbly and respectfully beg to submit my appeal against imposing the penalty of dismissal against me vide HQ 4 Corps C/O : 99 APO letter No. 35452/HD/PC/M-3 dated 30 April 94 (copy enclosed and marked as Annexure 'B') for your kind consideration and favourable order pleased

That Sri, I served in the strength of a civilian Safaiwali under 180 Military Hospital, C/O. 99 APO

Contd....2

Attested  
by  
Safaiwali  
12/7/95

- 2 -

wef. 8th May '83 as a permanent employee (Regular ty Establishment) with full satisfaction of the superiors.

That Sir, on 29.5.93, Duty Medical officer Capt (Mrs) Neeta Chhabra lodged a complain before the officiating commanding officer, 180 Military Hospital that I have assaulted her on that day .

That, on receipt of the allegation a preliminary investigation had been ordered by the offg. Commanding officer Lt. Col. K.VK. Puri vide DO Pt. I No. 120/5/93 dated 29th May '93 , The copy of the allegation lodged against me had not been served on me so as to enable me to know the actual contention of the allegation and prepare my defence .

That, Sir, in the preliminary investigation presided over by Capt (Miss) Ellora Dasgupta, on 29.5.94 although I was not served with a copy of the allegation, I duly appeared in the inquiry and categorically denied the charge of assaulting Cpt (Mrs) Neeta Chhabra rather submitted that I was misbehaved and slapped by Capt (Mrs) Neeta Chhabra .

That, Sir, during the preliminary investigation, No. 13966978-Y Sop/NA B. Sharma as witness No. 4 categorically denied of witnessing any physical assault in the Duty room as he did not entered the duty room at any time and also denied of his

Contd...3

- 3 -

physical involvement in the course of the alleged incident. On the other hand the rest of the State witnesses contradicted each other.

That Sir, although nothing was established beyond doubt, the preliminary inquiry heard presided over by Capt (Miss) E. D's gupta on the same day i.e. on 29th May '93 hastily submitted its findings ~~stating~~ stating that Capt (Mrs) Neeta Chhabra while on official duty was physically assaulted and arrogently behaved by me .

The copy of the proceedings of the preliminary Investigation alongwith findings of the Enquiry officer is annexed hereto and marked as Annexure - C page 1 to 612

That Sir, Lt. Col. V.K. Puri. Offg. Commanding officer 180 Military Hospital on dated 31 May '93 forwarded the report of the preliminary Investigation to DDMS, HQ 4 Corps C/O. 99 APO for further necessary action .

The copy of the same is annexed hereto and marked as Annexure - "D" page - 1 .

Contd....4

- 4 -

That Sir, after completion of the preliminary investigation, as per the existing Rule, the appointing/~~main~~ disciplinary authority is the competent administrative authority to order for a Court of Inquiry. Whereas in this case the Station Commander, Stn. HQ Missamari vide convening order No. 217/2/2/A dated 02 Jun'93 ordered for a court of Inquiry to investigate the circumstances under which criminal force was used against Capt (Mrs) Neeta Chhabra by me .

That sir, the court of inquiry conducted by the station HQ Missamari concluded its proceedings exparte and reached to the conclusion as under :

1). "Services of Civil Safaiwari Smt. Homeswari Dangiari should be terminated immediately" .

ii). "Criminal Case No.-32/93 filed by police station Missamari in the Court of chief Judicial Magistrate, Tezpur should be closely monitored and persuaded by 180 Military Hospital and concerned staff at HQ 4 Corps to ensure that proper justice is done to Capt. (Mrs) Neeta Chhabra for the offence committed against her and also in the overall interest of the organisation" .

Contd...5

- 5 -

That Sir, Brig PS Bhatia, Stn Commander, Stn HQ Missamari in his remarks and recommendation dt. 11.6.93 on the finding of the court of Inquiry, uphold the findings and recommendation of the inquiry Board and recommended that action to be taken to terminate my service .

That Sir, as regard of the court of Inquiry conducted by the Stn HQ Missamari, the following discrepancies are submitted :-

a) After completion of the preliminary inquiry conducted by the appointing authority, the appointing authority Disciplinary authority the only competent authority to conduct a court of inquiry where as the Stn HQ Missamari conducted the Court of inquiry who is neither the competent authority to conduct such inquiry nor was it requested by the 180 MH authority or any other authority to conduct such court of Inquiry .

b). During the alleged incident husband of Capt (Mrs) Neeta Chhabra, Maj SK Chhabra CC of 310 FDL Depot was the officiating Adm comdt of stn HQ Missamari and thus to turn tide of the Case in the favour of his wife influenced the stn HQ administration and conducted the inquiry .

Contd...6



- 6 -

c). The court of inquiry as ordered by the Stn HQ Missamari was for the purpose" to investigate the circumstances under which criminal force was used against MS-12304-K Capt (Mrs) Neeta Chhabra of 180 MH". It is very much evident that the court was empowered to investigate the circumstances only and had no power to recommended any penalty whereas the court stopped beyond its limitation and recommended termination from service just with the intension to influence the further disciplinary action against me .

d). The witness No. 4 No. 13965978-7 Sep/Nursing again Assistant B. Sharma who during preliminary inquiry held on the same day of the alleged incident categorically denied witnessing any physical assault in the duty room and also denied of his physical involvement in the course of the alleged incident, now in this court of inquiry surprisingly changed his position ( may be on direction from his authority), and stated that the witnessed the incident and also he entered the Duty Room.

e). The Court of inquiry was conducted ex parte and thus the findings was based on hearing one side only .

Contd...7

- 7 -

f). During Court of inquiry against Witness No. 6 MS-12320-F (Capt) (Miss) Allora Dasgupta who presided over the preliminary inquiry submitted her witness by virtue of being presiding officer which is against the rule and against the process of natural justice .

g). All the other witness, differed from their statements submitted during the preliminary inquiry .

(Copy of the proceeding of court of inquiry ~~is~~ ordered by the Stn HQ Missamari alongwith Recommendation of the Court as well as station commander, Stn HQ Missamari annexed hereto and marked as "Annexure-E" )

That, Sir, on receipt of the recommendation of the Stn Commander, Stn HQ Missamari to terminate my service, for conducting a Departmental inquiry charge sheet was issued on me dated 25 Jun 93 by DMS HQ IV Corp inter alia stating that I used criminal force against Capt (Mrs) Neeta Chhabra. I categorically denied the charge and even knowing that the Departmental inquiry is ordered only with the aim to impose the penalty recommended by the Stn Commander, Stn HQ Missamari, through a so called legal process, I participated in the inquiry and defended myself . During the proceeding of the inquiry I with the help of my Defence assistant

Conte ...8

- 8 -

pointed out the legal lapses in the inquiry processes procedures and pointed out the contradictions in the witnesses of the state witnesses. The defence witnesses also established that I was slapped by Capt (Mrs) Neeta Chhabra and for my self protection from being further physical torture I hold the hair of the complainant and hold her back . I was intentionally provoked by the said officer and I had to act to save myself . (Copy of the Memorandum Annexures Annexure "F" . Reply to Memorandum Annexure "G" , Daily order sheet Annexure "E" .

That Sir, on completion of the regular hearing the presenting officer submitted her written brief on 7th Jan 94 (Copy enclose as Annexure-I ) and 072 receipt of the written brief from the presenting officer, I submitted my final brief on 27th Jan 94 (Copy enclosed Annexure 'J' )

That Sir, on 15 th Feb 94, the inquiry officer Lt Col Mridul Dey, submitted his inquiry report to the DDMS Hq IV corps C/O 99 APO vide letter No. 115028/M-3/PC/Adm dated 15-2-94 ( The copy enclosed and Annexure- "K" ) In this inquiry report , your kind attention is invited on the following notes :

Contd....9

- 9 -

APPX"A" SL.NO. 3(d)(xvi)

APPX"A" SL.NO. 3(c)(vi, ix, xi,

xiv, xviii, xx,

xxii and xxiii )

That Sir, the inquiry officer recommended that suitable disciplinary action should be taken against me for using criminal forces against Capt (Mrs Neeta Chhabra although their findings of the inquiry was not based on the merit of the inquiry, rather based on presumption and prejudiced without consideration of the material facts which is very much evident from the numbered contents in the inquiry report as submitted above .

That Sir, on receipt of the inquiry report vide HQ IV Corps C/O 99 APO letter No. 35452/MS/ dtd 08 Mar 94 (Copy enclosed and marked as "L" ) I submitted my representation pointing out that the inquiry has failed to establish my offence beyond doubt and thus requested to release me from the charge as I am innocent. (copy enclosed and marked as M . )

That Sir, to conduct the court of inquiry the inquiry officer was influenced by the extraneous considerations of the ~~report~~ report submitted by the Stn HQ

Contd....10

- 10 -

Missamari to dismiss me from service and came to a perberse findings that I committed the misconduct.

Contradictory statements of Sep/NA B Sharma was relied upon by him on the so called surmiss that he was afraid of to narrate the correct fact before the preliminary inquiry. How he could arrive to this conclusion was best known to him. Evidences adduced by me was not relied upon by the inquiry officer only on the ground that one of my witness Smt. Dharmeswarin Devi was my Coworker. Why the version of the other witness, Sri Ram Das who is an employee from other establishment i.e Military Engineering service was not relied upon was not ~~expix~~ explained. The inquiry officer was absolutely influenced by the predetermined conclusion of the court of inquiry conducted by Stn HQ Missamari to dismiss me and submitted his report by discarding the positive evidence adduced from my side .

That the aforesaid purported inquiry was absolutely in gross violation of the principles of natural justice .

The proceeding was initiated on the base of the complain lodged by the complainant. It is incumbent on the part of disciplinary authority to furnish a copy of the complain to the delquent employee, but at no

Conted....11

- 11 -

point of time whether at the stage of issuance of charge sheet, preliminary inquiry or in the Departmental inquiry a copy of this complain was served on me I being a Safaiwali belonging to the lower echolon of employees was not acquainted with the technicalities of the departmental proceedings . Non furnishing of these documents caused a great injustice depriving me to defend my case at the stage of preliminary inquiry, reply to the charge sheet, Departmental proceedings : The inquiry conducted by the disciplinary authority was in gross violation of the principle of the natural justice and as such the same is liable to be set aside and quashed .

That on the basis of the aforesaid inquiry I have been dismissed from my service on 30 Apr'94

A copy of the order of dismissal served on the applicant is annexed hereto and marked as Annexure "B" .

That on 03 May 94 commanding officer 180 MH issued an order whereby I have been directed to vacate the quarter occupied by me .

A copy of this letter issued on 03 May 94 is annexed hereto and marked as Annexure "M2" .

Contd....12

That Sir, on receipt of the order of dismissal from service and the order to vacate the Govt accomodation, I approached the Hon'ble Central Administrative Tribunal Guwahati Bench with the prayer to quash the order of dismissal from service and stay the order of vacating the accomodation occupied by me .

That Sir, the Hon'ble Court on dated 30 May 94 against CA No 105/94 ~~xxx~~ stayed the order of vacation till disposal of the case .

The copy of the order of the Hon'ble CAT, Guwahati Bench dtd 30 May 94 is annexed hereto and marked as Annexure "A" .

That Sir, subsequently the Hon'ble Central Adm. Tribunal Guwahati Bench on dt 17 Jun 94 passed an order to submited my appeal to your kind honour within 30 days for consideration of my appeal and the matter of appeal as regard of retaining the Govt accomodation till finalisation or disposal of my appeal is also left for your kind consideration .

The copy is annexed with this application as Annexure A .

- 13 -

On the above circumstances I meet humbly and respectfully beg to submit that :-

A). During the inquiry, the circumstances of the incident had not been considered to. As regard banging of the door, I had no hand in it as both my hands were engaged to hold the tray and I had to push the door with my body to open it and as the door is fitted with spring it automatically closes. If the door closes with a bang it is not my fault .

B). Then I was Folding the tray with my both hands I was slapped by Capt (Mrs) Neeta Chhabra and thus provoked me to act in repulsion for my safeguard which has been established during the inquiry but ignored by the inquiry officer .

C). The inquiry was influenced by the inquiry report and recommendation of Stn HQ Missamari although the inquiry officer in his report has noted that he has not considered preliminary inquiry and the court of inquiry conducted by Stn HQ Missamari. It is established fact that the court of inquiry considered the considerations of the above said two inquiries .

Contd... 14



- 14 -

d). The inquiry report is mostly based on the presumption and not based on material fact .

I therefore pledged to your kind honour for the following reliefs :-

a). Even if my act after the intentional provocation is considered an offence liable to be punished, the order for dismissal from service is excess and hence the order for dismissal from service may please be quashed .

b). I may please be permitted to retain the Govt accomodation till final disposal of my appeal .

Thanking you,

Yours faithfully

Sd/- H. Dangari

(Asmt. Humeswari Dangari

Ex- Sagaiwari

Dt. 13.7.94

Advance copy to

DGMS, Army HQ

New Delhi- 110011

(The original appeal is preferred with all connected documents through the DGMS. HQ  
4 Corps, C/O 99 APO

39

P

ANNEXURE :- F (1)

HQ 4 Corps

C/O 99 APO

35452 /HD/PC/M-3

02 Nov 94

APPEAL AGAINST PENALTY OF DISMISSAL FROM  
SERVICE CONSEQUENT TO DISCIPLINARY PROCEEDING

A copy of HQ East Comd (Mea) letter No.230327/3/  
M-3(B) dt 27 Oct 94 is fwd herewith for your info and  
further necessary action please .

Sd/- VK Srivastava

Col

Offg DDMS

Encl :- As above

Copy to :-

Station HQ - for info alongwith a copy of above quoted  
Missamari letter please .

*A Hester  
12/7/95*

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ANNEXURE :- F (2)

Tele : FW W-2265

Headquarters Eastern

Command Fort William

Calcutta-21

230827/3/M-3(B)

27 Oct 94

HQ 4 Corps (Med)

C/O 99 APO

APPEAL AGAINST PENALTY OF DISMISSAL FROM  
SERVICE CONSEQUENT TO DISCIPLINARY PROCEEDING

1. Ref :-

(a) This HQ letter of even number dt. 11 Oct 94

(b) Your HQ letter No. 35452/M-3/HD/PC dt. 04 Oct 94

2. The appeal of Smt Humeswari Dangiari, Ex-~~afm~~ safaiwali of 180 MH has been considered by Director General Medical Services. After going through the case, he has decided to uphold penalty of dismissal from service, awarded by the competent authority .

3. She may be asked to vacate the married Govt Accommodation as her appeal has been dismissed .

4. The individual may be intimated accordingly .

( Auth:- Army HQ letter No. B/72000/147/DGMS-3(B)

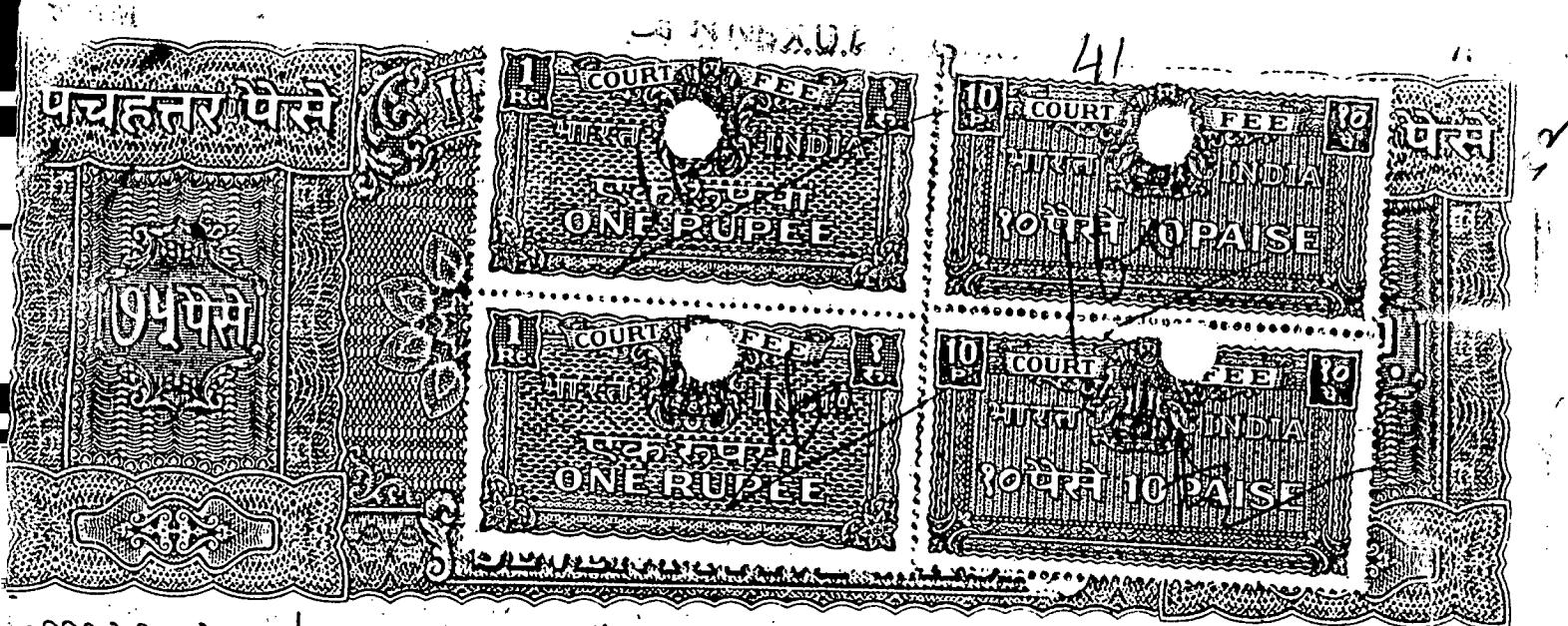
dated 20 Oct 94 )

Sd/- xxx

( S.K. Dutta )

ADMS

for DDMS



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
7-4-95	21-4-95	21-4-95	15-5-95	16-5-95

In the Court of the sessions Judge of Smitpur at Tezpur.

Annexure-6

Present :-

Shri B. Chitla, M.A., LL.B.,  
Sessions Judge,  
Smitpur, Tezpur.

Criminal Appeal No. 9(S-2)/94.

Appeal against the judgment and order dated 26.4.94  
passed by S.K. Sarma, Judicial Magistrate, Tezpur in  
G.R. Case No. 672/93 u/s. 355 IPC.

Shri Homeshwari Ungiyari ...

Accused Appellant

- vs -

State of Assam ...

Respondent.

For the appellant :: Shri J. Choudi, Advocate

For the Respondent: Shri D.C. Boru, Public Prosecutor.

Date of hearing :: 22.3.95

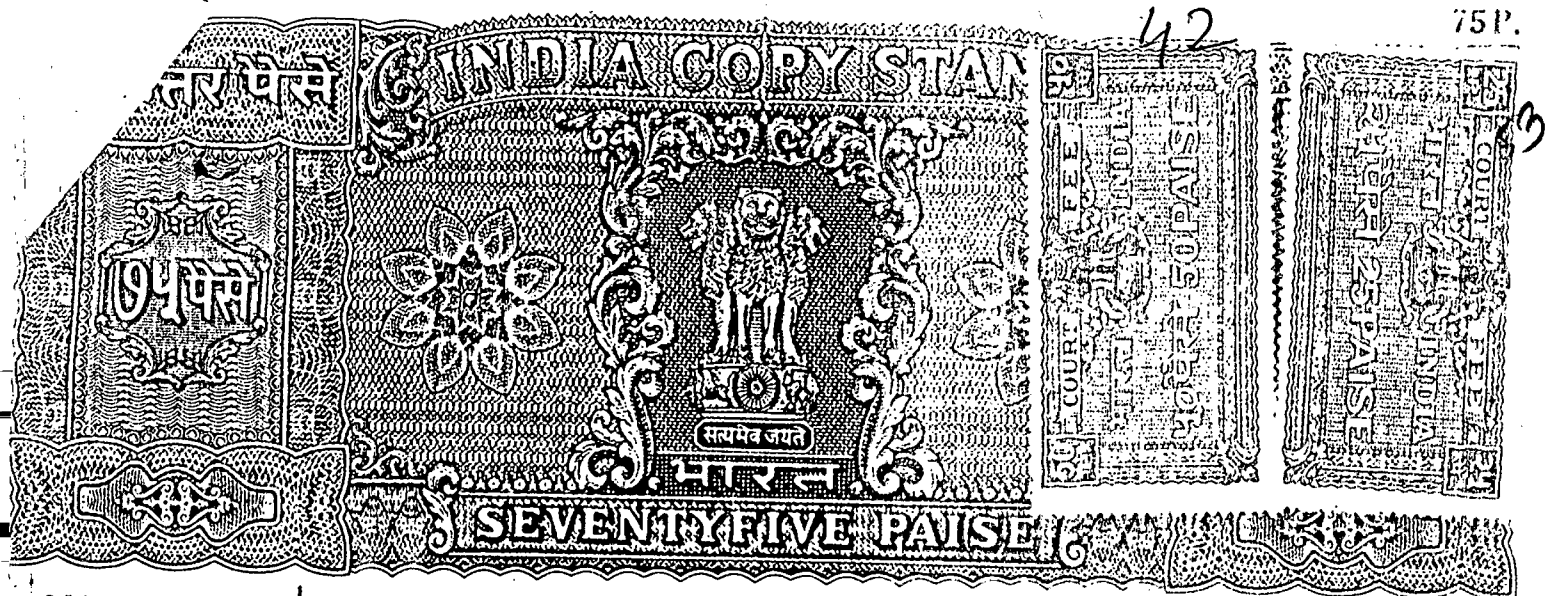
Date of Judgment :: 5.4.95.

### J U D G M E N T

This appeal has been filed against the judgment and order dated 26.4.94 passed by Shri S.K. Sarma, Judicial Magistrate, Tezpur by which the accused appellant was convicted and sentenced to pay a fine of Rs. 500/- u/s. 355 IPC in default to under-go S.I. for 3 months.

1. Briefly stated the prosecution case is that on 20.3.93 at about 9-30 A.M. while the complainant Dr. (Mrs) Meeta Choudhary was discharging her duties and examining patients in the 180 Military Hospital, Misingari, accused Homeshwari Ungiyari entered into her room without permission

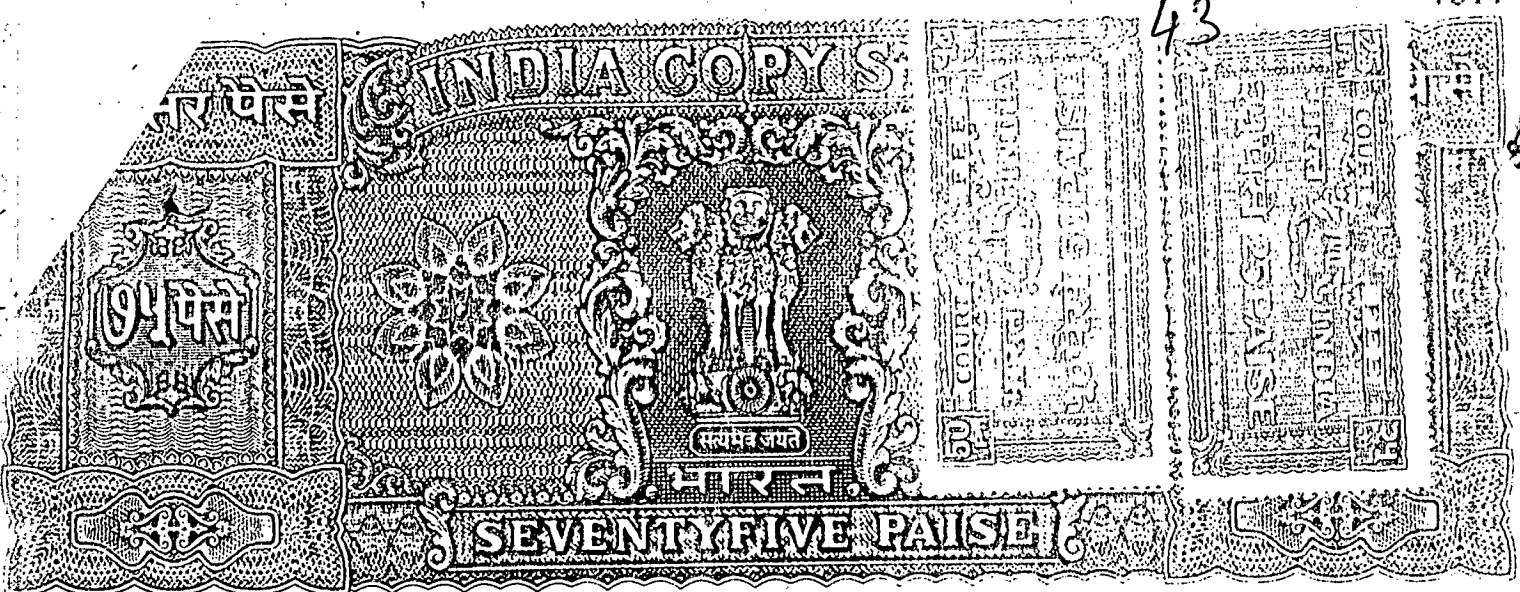
*Meeta Choudhary*



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and left the room banging the door in a very arrogant manner and after some time, she again came and this time also she banged the door deliberately against complainant Dr. (Mrs) Neeta Chabra and as the complainant asked her to behave properly and asked to leave the room, she started abusing her and as the complainant tried to ring up her Commanding Officer, the accused obstructed her and pulled her hair and sari. She was rescued by one Nursing Assistant and along with two ladies - Mrs. Sawal and Mrs. Kalia, who were present in her duty room. Ejahar was lodged to that effect on receipt of which the police registered a case u/s. 448/353/506 IPC and took up investigation. On ~~completion~~ completion of investigation, the police submitted charge sheet against the accused u/s. 448/353/506 IPC and sent her up to stand trial before the court. As the accused persons appeared before the court, the learned Magistrate explained the particulars of the charges u/s. 448/353/355/506 IPC to ~~the~~ accused to which she pleaded not guilty and claimed to be tried. The prosecution, in support of the case, examined 3 witnesses including the complainant who were cross-examined and discharged and after conclusion of the hearing, the learned magistrate found the accused not guilty u/s. 448/353/355 506 IPC, but having found the accused guilty u/s. 355 IPC, she was



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

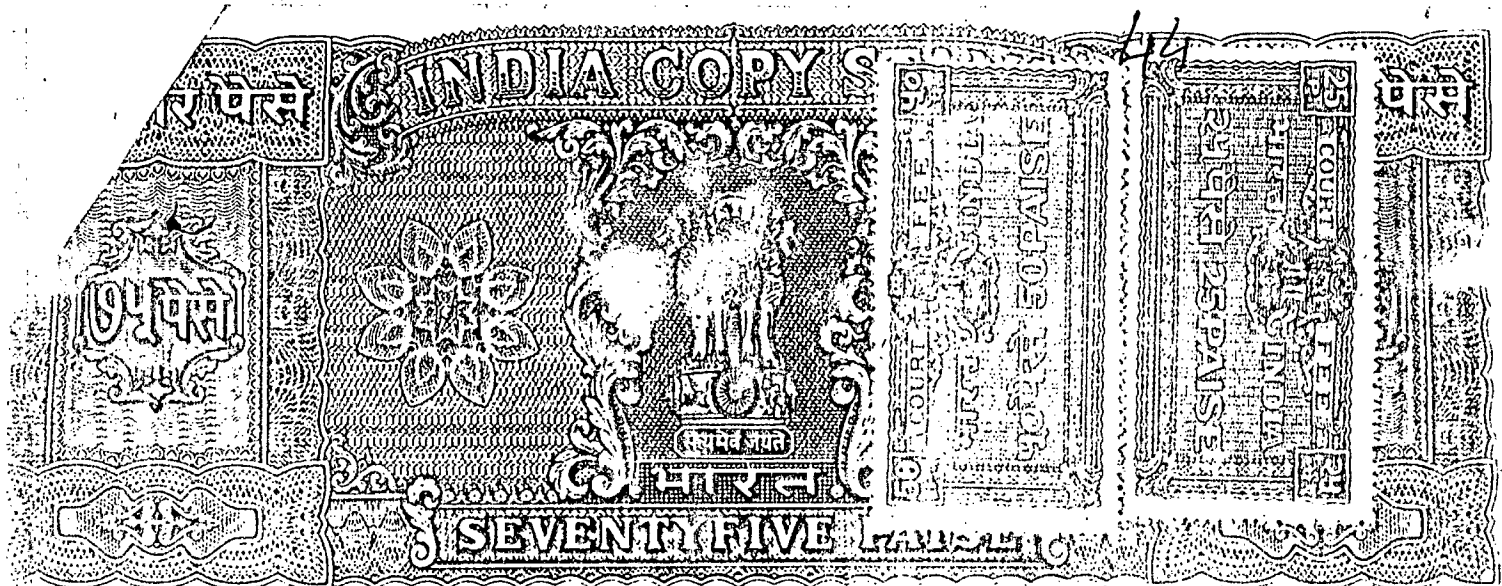
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under

convicted accordingly under this section and was sentenced her as above. Being highly aggrieved, the accused-appellant has now come up to the present appeal.

3. Perused the impugned judgment and the order of conviction. Also I have gone through the records of the case and considered the arguments advanced by the learned counsels appearing for the appellant accused and the learned Public Prosecutor for the respondent State.

4. As noted above, the prosecution in this case has adduced the evidence of 3 witnesses including the complainant. The learned counsel for the appellant Shri J. Chaudh, while assailing the impugned judgment and order of conviction has contended that the prosecution case suffers from serious infirmities and that the evidence tendered by the prosecution witnesses *highly discrepant and contradictory and* are not at all sufficient to base conviction of the accused-appellant. The learned counsel also contended that the ingredients of sec. 355 I.P.C. has not been attracted in this case and there was absolutely no intention on the part of the accused-appellant to dishonour the complainant and that she never pulled her hair and ears of the complainant as alleged.

5. Now, the gist of the offence u/s. 355 IPC lies in dishonouring a person by means of assault or use of criminal force and is confined to acts which are considered as derogatory to one's honour and that



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the intention with which the assault is made is important ingredient of an offence under the section. Such intention has to be derived from the facts and the circumstances of the case itself. The complainant in her evidence alleged that the accused caught hold of her saree and pulled her hair.

The accused was a subordinate staff being a Safai Karamchari and the

acts as alleged may be sufficient to show her intention derogating the honour of a superior officer like the complainant. The defence, however, was that the accused by virtue of her office carried a

kidney tray in her hand & skin, blood sample, urine sample for pathological examination and this has been revealed in the evidences of the witnesses.

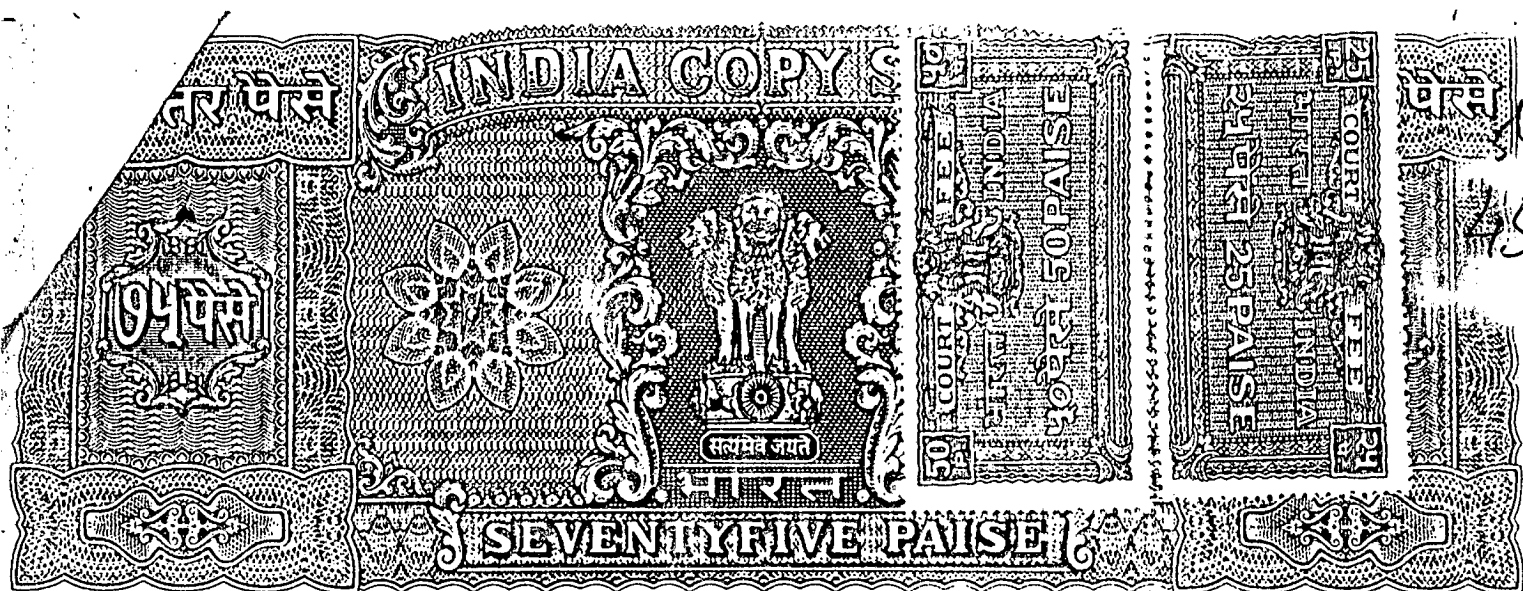
The complainant also in her evidence stated that she did not notice if the accused brought a kidney tray in her hand while entering into her room.

The defence took the plea that the accused while carrying kidney tray with blood sample, urine sample etc. and as her both the hands are engaged, she pushed the door open with her body and in doing so, the door slightly touched the body of the complainant. Witnesses Sabita

Sharma (P.W.2) and witnesses Sumati Kalia (PW3), in their evidence

before the trial court although did not state anything about the fact of carrying the kidney tray by the accused, they made clear statement before the police while examined in course of investigation that they saw the accused carrying a kidney tray in one hand and one bottle of blood in the other hand. Witnesses Kalia (P.W.3) appeared to have further stated before the police that both Mrs. Chabra (complainant) and the accused were watching



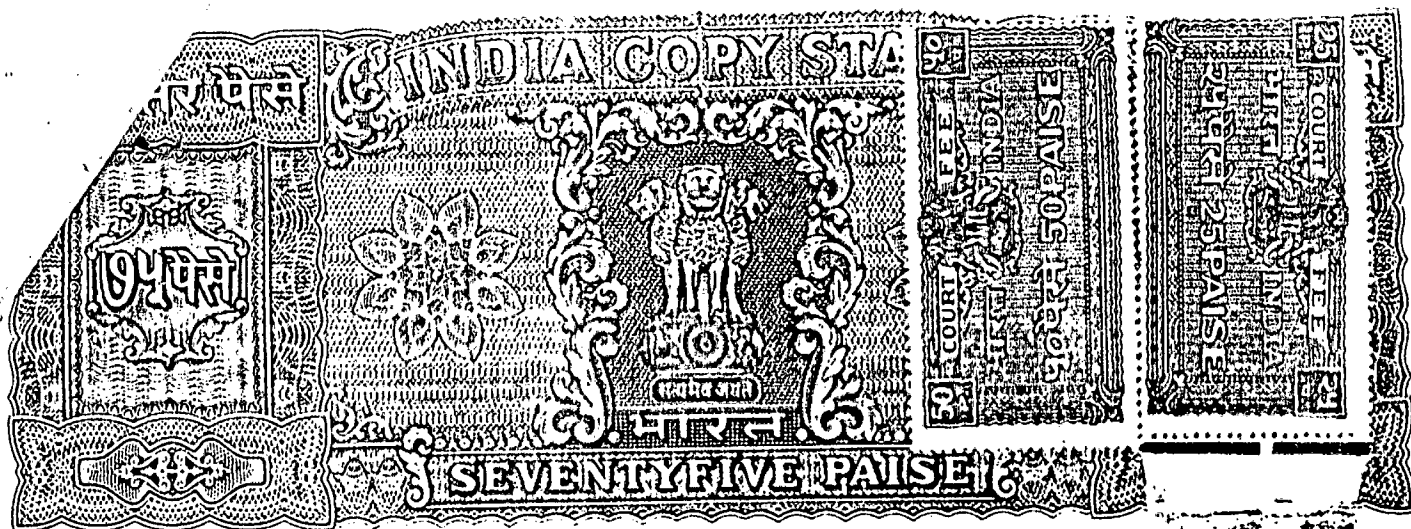


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and pulling each one's hair and there and a scuffle took place between the two. Learned counsel for the appellant while drawing my attention to all the omissions and contradictions in that statements of the witnesses made before the Investigating Police Officer and their subsequent statements made in their evidence before the court, submitted that since Investigating Police officer has not been examined in this case, the accused had greatly been prejudiced as the defence has been deprived of the opportunity of confronting the Investigating Officer with the statements made before him. I am convinced with the arguments of the learned counsel in this respect. The Investigating Police Officer has not been examined in this case for reasons not known. In AIR 1977 SC 381 (Mandeo Daulata Dnyagude and others State of Maharashtra), it was held that where the story narrated by the witnesses in his evidence before the court differs substantially from that set out in his statement before the police and there was large number of contradictions in his evidence not on mere matters of detail, but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilty of the accused. In the case at our hand, there appear vital omissions/contradictions in the statement of the witnesses made before the investigating Officer and their subsequent depositions before the court and so, non examination of the Investigating Officer is considered to have prejudiced the interest of the accused-appellant.





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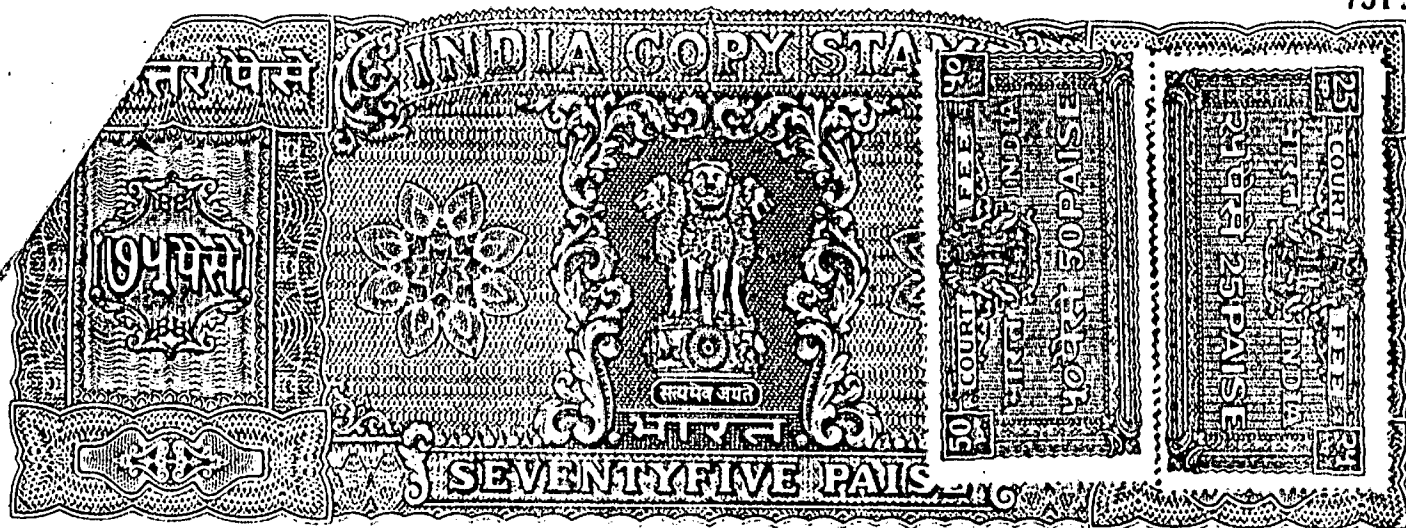
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in the case. The learned lower court has not appreciated this aspect of the matter while passing his impugned judgment.

6. Learned counsel for the appellant also contended that there was delay in lodging the FIR. It is submitted that although the alleged occurrence took place in the morning hour of 9-30 A.M. and the FIR lodged at 6 PM in the evening and thus there was a delay of more than 8 hours in filing the FIR from the time of occurrence. This delay has not been explained. So, according to the learned counsel, the delay is fatal to the prosecution. It was held in the case Babu Singh and others -vs- State of Rajasthan in 1979 Cr.L.J. NOC 36 Raj. that the FIR is an extremely vital and valuable piece of evidence from the stand point of accused. Delay of about 7½ hours after this scuffle between the two rival groups in making the FIR fatal to the prosecution. In the present case, it is seen that delay caused in lodging the FIR has not apparently been explained by the prosecution.

7. Another important ground taken in this appeal by the appellant is that only 3 witnesses including the complainant were examined in this case and they were all partisan witnesses. The learned counsel while taking me through the evidence of the witnesses has argued that the 2 witnesses (PW 2 and 3) came to the court with the complainant Mr. Nandu Chandra by official vehicle without getting summons from the court. It is also found to be admitted in their evidence that they came to the court along

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

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with the complainant by the official vehicle. It is also seen that witness Shrita Sawal was in indoor patient at the hospital at the relevant time and she was being treated by the doctor-complainant. Learned counsel, therefore, has submitted that both these Shrita Sawal and Smti Kalie were partisan and interested witnesses. The matter would have been somewhat different had there been no other eye witnesses to the occurrence. But it is clear revealed that the alleged occurrence was witnessed by two other persons, namely Shri R. Sina, Sify-constable and another one Shri Harigander Singh, a Nursing Asst. The learned counsel has submitted that these two witnesses are not only material and independent but they also took part separately in the quarrel between the complainant and the accused. It is subsequently stated by the complainant and her two witnesses that Shri R. Sina separated the accused-appellant from the complainant. It is also out in their evidence that the Nursing Assistant Harigander Singh was present there. These two eye witnesses are considered to be important material witnesses to the occurrence. But surprisingly, their evidence has been withheld by the prosecution for reasons not known as no explanation has ever been given for not examining them. I am inclined to agree with the learned counsel for the appellant that adverse inference may be drawn u/s. 14 of the Evidence Act against the prosecution case for nonexamination of these material eye witnesses. Moreover, as revealed from the evidence of the complainant that the matter was immediately informed and reported to the commanding Officer who came to



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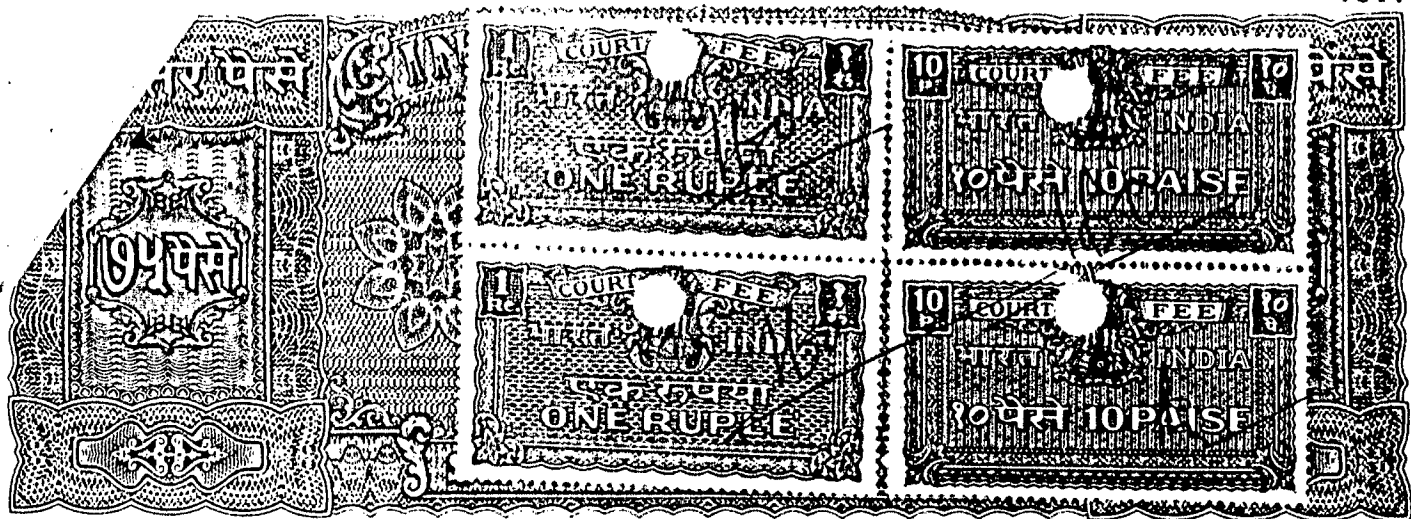
her room and an inquiry was conducted into the incident on the same day. The appellant also is said to have filed a case relating to the incident which is now said to be pending in court martial. This being so, the Commanding Officer happens to be an important witness. But he has not been examined in this case.

8. The learned trial court appears to have not considered all these aspects of the case while coming to the conclusion in regard to the guilt of the accused person and passed his order of conviction and sentence on the basis of the evidence of the witnesses as discussed above. It cannot, therefore, be said that the trial court properly appreciated the evidence on record.

From the above observations and reasons, I am of the opinion that the order of conviction and sentence of the appellant-accused cannot be sustained. Accordingly, the appeal is allowed and the impugned order of conviction and sentence passed against the appellant-accused are set aside.

Sd/- Back the case record.

Sd/- B. Gupta,  
Sessions Judge, Sonitpur,  
Tezpur. 5.4.95



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7-4-95	21-4-95	21-4-95	15-5-95	16-5-95

#### Form of Order sheet

District Court, Tezpur.

In the Court of the Sessions Judge of Sonitpur at Tezpur.

Present :-

Sri R. Chutia, M.A., LL.B.,  
Sessions Judge,  
Sonitpur, Tezpur.

C.A. No. 9(S-2)/94

Sati Humsauri Dangiari ..... Appellant

-vs-

Suto of Agam ..... Respondent

Sl. No.	Into	Order	Signature
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5.4.95

The learned counsel for the accused appellant is present. Judgment written on separate sheets and delivered to-day. The appeal is allowed and the impugned order of conviction and sentence is set aside against the appellant and set aside.

Said back the case record.

Sd/- R. Chutia,  
Sessions Judge,  
Sonitpur, Tezpur.

*[Handwritten signature]*

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