

5/100

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

X

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL  
 GUWAHATI BENCH ::::::::::: GUWAHATI

ORIGINAL APPLICATION NO. 36 / 96  
 MISC. PETITION/CONTENT PETITION/REVIEW APPLICATION NO. \_\_\_\_\_  
 (O.A.) \_\_\_\_\_

Mr. R.K. Bhattacharjee APPLICANT(S)

vs.  
N.O.I. Party

Mr. G.K. Bhattacharjee Advocate for Applicant(s)

Mr. J.N. Das

Mr. A.K. Choudhury Advocate for Respondent(s)

Add. C.G.S.C.

OFFICE NOTE	DATE	O R D E R
<p>Rs. 50/-</p> <p>345329</p> <p>27-2-96</p> <p>7/3/96</p>	<p>8-3-96</p> <p>lm</p>	<p>None for the applicant. List for Admission on 13-3-96. Mr. A.K. Choudhury, Addl.C.G.S.C. for the respondents.</p> <p>Member</p>
<p>13-3-96</p> <p>lm</p>	<p>13-3-96</p> <p>lm</p>	<p>Mr. A.K. Choudhury Addl.C.G.S.C. for the respondents. None for the applicant. However list again for consideration of admission on 15-3-</p> <p>Member</p>

7/3/96

OFFICE NOTE	DATE.	ORDER.
<p><i>Requisites are issued &amp; issued vide no. 626-22 d. 22-3-96</i></p> <p><i>20/3</i></p>	<p>15-3-96</p>	<p>Mr.G.K.Bhattacharjee counsel for the applicant moves this application. Perused the grievances and reliefs sought for. Application is admitted. Issue notice on the respondents by Refd. Written statement on 1-5-96. List on 1-5-96 for written statement and further orders.</p> <p style="text-align: right;"><i>62</i> Member</p>
<p><i>lm</i></p>	<p>1.5.96</p>	<p>Mr A.K. Choudhury, learned Addl. C.G.S.C., is present for the respondents. No counter has been submitted.</p> <p>List on 11.6.96 for counter and further orders.</p> <p style="text-align: right;"><i>62</i> Member</p>
<p><i>nkm</i></p>	<p>11.6.96</p>	<p>Mr G.N.Das for the applicant. Written statement has not been submitted.</p> <p>List on 10.7.96 for written statement and further orders.</p> <p style="text-align: right;"><i>62</i> Member (A) <i>62</i> Member (J)</p>
<p><i>Service Reports are still awaited.</i></p> <p><i>W/s submitted - has not been filed.</i></p> <p><i>6/7</i></p>	<p>10.7.96</p>	<p>Mr. A.K.Choudhury, Addl.C.G.S.C. for the respondents. Written statement has not been submitted. <del>xxxxxx</del></p> <p>List for written statement and further orders.on 6.8.1996.</p> <p style="text-align: right;"><i>62</i> Member</p>

6.8.96

Mr G.K.Bhattacharya for the applicant. Mr A.K.Choudhury, Addl.C.G.S.C for the respondents.

Written statement has not been submitted.

List for written statement and further orders on 5.9.96.

*[Signature]*  
Member

pg

*M/*  
*6/83*

22-8-96

*Memo of appearance filed by Mr. S.C. Chaudhary, A.C.J.*

5-9-96

None is present. No written statement has been submitted. List for written statement and further order on 1-10-96.

lm

*[Signature]*  
Member

*Service reports are awaited of student has not been filed*

1.10.96 \

Mr G.N.Das for the applicant. Mr A.K.Choudhury, Addl.C.G.S.C for the respondents No.1, 2 and 3. Written statement submitted by respondents No.1, 2 and 3. Case ready for hearing.

List for hearing on 18.11.96.

*[Signature]*  
Member

30.9-96

*DS filed on behalf of R. no. 1, 2 & 3. at 17-10-96*

pg

*M/*  
*1/x*

18.3.97

The case is ready for hearing. Let it be listed for hearing on 2.5.97.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

2.5.97

Left over. List on 20.5.97 for hearing.

*ba*  
Member

*SB*  
Vice-Chairman

trd

*F*  
*5/5*

*o/s has been asked*  
*5/5*

20-5-97

Left over. List on 16-7-97 for hearing.

*ba*  
Member

*SB*  
Vice-Chairman

lm

*F*  
*23/5*

16.7.97

On the prayer of Mr G.N. Das, learned counsel for the applicant, the case is adjourned as the counsel has some eye problem. List it on 21.7.97 for hearing.

*ba*  
Member

*SB*  
Vice-Chairman

nkm

*o/s has been fixed*  
*21/8*

21-7-97 There is no representation

*list on 1-9-97*  
*by ad*

*o/s has been listed*  
*1/11*

1-9-97

On the prayer of counsel for the parties case is adjourned till 13-11-97 for hearing.

*ba*  
Member

*SB*  
Vice-Chairman

lm

*F*  
*3/9*

13-11-97 Adjourned to 20-1-98  
*by ad*

3

6

Notes of the Registry	Date	Order of the Tribunal
<p><i>w/s no ...</i></p> <p><i>24/4</i></p>	<p>20-1-98</p> <p>lm</p> <p><i>21/1</i></p>	<p>Case is ready for hearing. List on 22-4-98. for hearing.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><i>w/s has been filed</i></p> <p><i>17</i></p> <p><i>pg</i></p> <p><i>23/4</i></p>	<p>22.4.98</p> <p>18</p> <p>pg</p> <p><i>23/4</i></p>	<p>List on 15.7.98 for hearing.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p><u>8.9.98</u></p> <p><i>Copies of the judgment have been sent to the D/acc. for delivery to the parties through Regd with R.D.</i></p> <p><i>copies of the judgment have been issued receipt. &amp; issued vide D. No. 2558 to 2561 dt. 7.9.98</i></p> <p><i>2/9.</i></p>	<p>15.7.98</p> <p>nkm</p> <p><i>4/8</i></p>	<p>Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
<p>1. Report of the local officers may be referred to the reporter of the weather bureau to see the facts of the judgment.</p> <p>2. Whether the judgment is to be finalized or not?</p> <p>3. Urgent delivered a report of the judgment.</p>	<p>1912-12-21</p> <p>1912-12-22</p> <p>1912-12-23</p> <p>1912-12-24</p> <p>1912-12-25</p> <p>1912-12-26</p> <p>1912-12-27</p> <p>1912-12-28</p> <p>1912-12-29</p> <p>1912-12-30</p> <p>1913-1-1</p> <p>1913-1-2</p> <p>1913-1-3</p> <p>1913-1-4</p> <p>1913-1-5</p> <p>1913-1-6</p> <p>1913-1-7</p> <p>1913-1-8</p> <p>1913-1-9</p> <p>1913-1-10</p> <p>1913-1-11</p> <p>1913-1-12</p> <p>1913-1-13</p> <p>1913-1-14</p> <p>1913-1-15</p> <p>1913-1-16</p> <p>1913-1-17</p> <p>1913-1-18</p> <p>1913-1-19</p> <p>1913-1-20</p> <p>1913-1-21</p> <p>1913-1-22</p> <p>1913-1-23</p> <p>1913-1-24</p> <p>1913-1-25</p> <p>1913-1-26</p> <p>1913-1-27</p> <p>1913-1-28</p> <p>1913-1-29</p> <p>1913-1-30</p> <p>1913-2-1</p> <p>1913-2-2</p> <p>1913-2-3</p> <p>1913-2-4</p> <p>1913-2-5</p> <p>1913-2-6</p> <p>1913-2-7</p> <p>1913-2-8</p> <p>1913-2-9</p> <p>1913-2-10</p> <p>1913-2-11</p> <p>1913-2-12</p> <p>1913-2-13</p> <p>1913-2-14</p> <p>1913-2-15</p> <p>1913-2-16</p> 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Report of the local officers may be referred to the reporter of the weather bureau to see the facts of the judgment.</p> <p>2. Whether the judgment is to be finalized or not?</p> <p>3. Urgent delivered a report of the judgment.</p>

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI-5.

O.A.No. 36 of 1996

15.7.1998  
DATE OF DECISION.....

Shri R.K. Bhattacharjee (PETITIONER(S))

Mr G.K. Bhattacharyya and Mr G.N. Das ADVOCATE FOR THE  
PETITIONER(S)

VERSUS

Union of India and others RESPONDENT(S)

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

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

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 ?

Judgment delivered by Hon'ble Vice-Chairman



9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.36 of 1996

Date of decision: This the 15th day of July 1998

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

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

Shri Ram Kumar Bhattacharjee,  
Telephone Operator,  
Telephone Exchange,  
Panbazar, Guwahati.

.....Applicant

By Advocate Mr G.K. Bhattacharyya,  
Mr G.N. Das

- versus -

1. The Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Telecommunication,  
New Delhi.

2. The Telephone District Manager,  
Guwahati Telephones,  
Ulubari, Guwahati.

3. The Sub-Divisional Engineer (TK),  
Panbazar, Guwahati.

.....Respondents

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

.....

O R D E R

BARUAH.J. (V.C.)

The applicant, at the material time, was a Telephone Operator and posted at Telephone Exchange, Guwahati. In the year 1986 he alongwith three other members of his family were involved in a criminal case in Nalbari P.S. Case No.174/86 under Section 341/325 I.P.C. In due course they had to face the trial before the Sessions Court (in Sessions Case No.29(N) 87). By judgment dated 23.8.1989 the applicant alongwith the others were convicted under Section 325/34 I.P.C.. Accordingly he was placed under suspension. On appeal,

*JB*

the Hon'ble Gauhati High Court set aside the order of conviction and sentence. Thereafter, the applicant submitted representation on 9.5.1995 annexing the certified copy of the judgment of the Hon'ble Gauhati High Court and prayed that his suspension be revoked. On 11.8.1995 the suspension order was revoked in exercise of the powers under Rule 10(5)(c) of the C.C.S.(C.C.A.) Rules, 1965 with immediate effect. The applicant remained under suspension from 8.12.1989 to 11.8.1995 and during this period he was given subsistence allowance as admissible. After the revocation of the suspension order the applicant joined service and was given the basic pay of Rs.1270/-,(which was his basic pay when he was placed under suspension) though according to him he should have been given the basic pay of Rs.1520/-. After revocation of suspension, a specific order was required to be issued under F.R.54(B)(3), but no such order had been passed. The applicant submitted representation for treating the period of suspension from 8.12.1989 to 11.8.1995 as on duty for all purposes. By Annexure V order dated 10.10.1995 the applicant was informed that he was not honourably acquitted, only benefit of doubt had been given to him, and therefore, his period of suspension could not be treated as on duty. Hence the present application.

2. In due course the respondents have entered appearance and filed written statement. In the written statement the respondents have reiterated the stand taken earlier. According to the respondents the applicant was not given a clear acquittal, but was acquitted on the benefit of doubt. Therefore, he was not entitled to be treated as on duty during the period of suspension.

*[Handwritten signature]*

3. We have heard Mr G.K. Bhattacharyya, learned counsel for the applicant and Mr A.K. Choudhury, learned Addl. C.G.S.C. Mr Bhattacharyya submits before us that the applicant was undoubtedly acquitted from the criminal case. It is immaterial whether he was acquitted on the benefit of doubt or acquitted otherwise, because in both cases he was found not guilty. Therefore, according to the learned counsel, the applicant was entitled to get the period of suspension as on duty. In para 1(d) of the Government of India order under F.R.54 it has been stated that when a Government servant who is deemed to be under suspension in the circumstances mentioned in clause (a) or who is suspended in the circumstances mentioned in clause (b) is reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under F.R. 54-B, i.e., in the event of his being acquitted of blame or (if the proceeding taken against him was for his arrest for debt) or its being proved that his liability arose from circumstances beyond his control or the detention being held by any competent authority to be wholly unjustified, the case may be dealt with under F.R. 54-B (3); otherwise it may be dealt with under proviso to F.R.54-B(5). Besides, Mr Bhattacharyya has drawn our attention to two decisions, namely, Krishna Mohan Dutta -vs- The State of Tripura and others, reported in (1988) 2 GLR 332, and L/NK Chhotelal -vs- Union of India and others, reported in (1989) 1 GLR 307. In the case of Krishna Mohan Dutta (Supra), relying on the decision of the Apex Court, the Division Bench of the Hon'ble Gauhati High Court directed the respondents to pay full salary and allowances.....



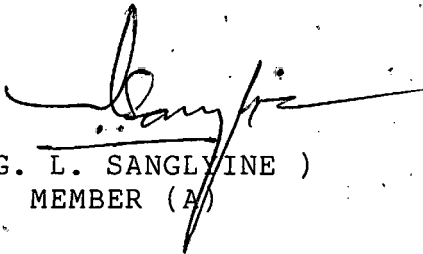
allowances as admissible under the rules to the petitioner during the period of suspension with effect from 21.9.85 to 12.4.1987. Similarly, in L/NK Chhotelal's case (Supra), the Division Bench of the Hon'ble Gauhati High Court directed the respondents to pay full pay and allowances to the petitioner for the period during which he was under suspension by treating the period of suspension as period spent on duty for all purposes and to consider the case of promotion of the petitioner with effect from that date by which he had become fit for promotion. Mr Bhattacharyya has also drawn our attention to the decision of the Apex Court in Brahma Chandra Gupta -vs- Union of India, reported in AIR (1984) SC 380. In the said case the Apex Court held thus:

".....Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal and further that even for the period in question that concerned authority has not held that the suspension was wholly justified because 3/4th of the salary is ordered to be paid, we are of the opinion that the approach of the trial Court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the judgment of first appellate Court as well of the High Court and restore the one of trial Court with this modification that the amount decreed shall be paid with 9% interest p.a. from the date of suit till realisation with costs throughout."


Bz

4. In the present case also after the acquittal of the applicant in the criminal case the authority did not initiate any disciplinary proceeding on those charges. Therefore, we are of the opinion that the period during which the applicant was placed under suspension should be treated as on duty for all purposes and he is entitled to full pay and allowances. Accordingly we direct the respondents to pay the full salary minus the subsistence allowance, if paid for the period. The amount shall be paid as early as possible, at any rate within a period of two months from the date of receipt of this order.

5. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.



( G. L. SANGLYINE )  
MEMBER (A)



( D. N. BARUAH )  
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

14  
Filed by:-  
Sankar Chatterjee  
Advocate

O.A. 36/96.

R.K. Bhattacharjee .

- Versus-

Union of India and others.

LIST OF DATES:

1978 : Joined the Tele-Communication Department as Telephone Operator.

1986 : The applicant alongwith 3 other members of his family were falsely implicated in a Criminal case, being Nalbari P.S. case No.174/86 U/s 341/325 I.P.C. Ultimately the applicant alongwith the other members of his family were sent up for trial in Sessions Case No.29(N) 87 and the Sessions Judge, Nalbari, by his judgment dated 23.8.89 convicted the applicant and others U/s.325/34 I.P.C. and sentenced to undergo R.I. for 3 years and to pay a fine of Rs.1000/-.

(Paragraph : 2 )

8.12.89 Applicant was placed under suspension for his being convicted as aforesaid.

contd...

24.4.95 : The applicant had filed a criminal appeal in the Hon'ble Gauhati High Court challenging his conviction and it was numbered as Criminal Appeal No.125/89. The Hon'ble High Court set aside the conviction and sentence.

(Annexure-I : Page 9).

9.5.95 : Applicant submitted representation enclosing certified copy of the judgment and prayed that his suspension be revoked.

(Annexure-II : Page -14).

11.8.95 : Suspension order was revoked in exercise of powers under Rule-10(5) (c) of the C.C.S.(C.C.A.) Rules, 1965 with immediate effect.

8.12.89 : The applicant was under suspension during this to  
11.8.95 : since he was ultimately acquitted, the suspension was wholly unjustified and the applicant was entitled to full pay and allowances during the entire period.

(Paragraph - 7 : Page 4 )

contd...

6.10.95 : After joining ,the applicant was given the basic pay of Rs.1270/- which was his basic pay in 1989 when he was placed under suspension when, infact, he should have been given the basic pay of Rs.1520/- .After revocation of suspension, a specific order was required to be passed under F.R.54(B)(3) regarding the period spent under suspension but no such order was passed. The applicant submitted representation for treating the period of suspension from 8.12.89 to 11.8.95 as period spent on duty for all purpose.

(Annexure-IV ;Page 15).

10.10.95 : Impugned order informing the applicant that he was not honourably acquitted but only benefit had been given to him and that it was regretted to treat this period of suspension as on duty.

GROUNDS TO BE URGED:

I) For that the impugned order by which the applicant has been informed that the period of suspension could not be treated as on duty was passed on extraneous consideration and in violation of the Rules and as such the same is bad in law and liable to be set aside.

II) For that, after an employee is reinstated after being acquitted ,the authorities are required to

contd..

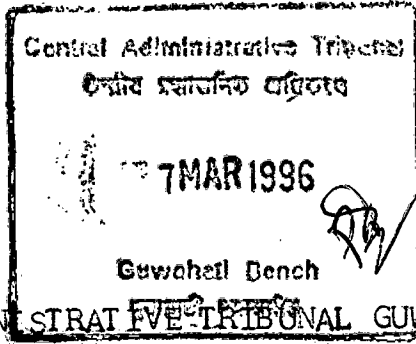
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pass a specific order under F.R.54(b) (3) and in the instant case, the authorities without following this procedure, had taken into consideration extraneous and irrelevant factors while refusing to treat the period as on duty for all purposes and as such the impugned order is bad in law and liable to be set aside.

III) For that the applicant was placed under suspension for his being convicted in the criminal case after he had filed the Criminal Appeal in the Hon'ble High Court when the sentence was suspended. Since, ultimately, the applicant was acquitted of the Criminal charge, the suspension of the applicant was wholly unjustified and the applicant is entitled to get the period spent under suspension as period spent on duty for all purposes including pay and allowances.

IV) For that the applicant had filed the criminal appeal in the Hon'ble High Court immediately, after his conviction in 1989 and the criminal appeal was finally disposed of only in 1995 and this delay cannot, in any way, be attributable to the applicant and as such the applicant is entitled to all the benefits including ~~ap~~years and increments.

....



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH:

GUWAHATI.

O.A. NO. 36 /96 .

Shri Ram Kumar Bhattacharjee.

-Versus-

Union of India and others.

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Filed by :-

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH:  
GUWAHATI.

O.A. NO. \_\_\_\_\_/96.

Shri Ram Kumar Bhattacharjee.

- Versus -

Union of India and others.

1 : PARTICULARS OF THE APPLICANT:

- i) Shri Ram Kumar Bhattacharjee.
- ii) Son of Late Tara Prasad Bhattacharjee.
- iii) Aged about 40 years.
- iv) Telephone Operator  
Telephone Exchange  
Panbazar, Guwahati.

2 : PARTICULARS OF THE RESPONDENTS:

- 1) Union of India represented by the  
Secretary to the Govt. of India,  
Ministry of Tele Communications,  
New Delhi.
- 2) Telephone District Manager,  
Guwahati Telephones,  
Ulubari, Guwahati.
- 3) Sub- Divisional Engineer,  
(TK), Panbazar, Guwahati.

3 : THE APPLICATION IS AGAINST THE FOLLOWING ORDERS:

Letter No. Q-234/95-96/1 dt. 10.10.95 from the  
Respondent No. 3 whereby the applicant has been informed  
that the Respondent No. 2, vide Order No. TDM/Staff/Q-B/

contd...

528//95-96/15 dated 9.10.95 , had regretted to treat the period of suspension as on duty.

4: The applicant declares that the subject-matters of the orders are within the jurisdiction of this Tribunal.

5: The applicant further declares that the application is within the limitation prescribed u/s 21 of the Administrative Tribunals Act, 1985 .

6: FACTS OF THE CASE:

1) That the applicant joined the Tele-Comm-unications Department as a Telephone Operator in 1978 and since the date of his joining service, the applicant has been carrying out his duties sincerely and to the best of his abilities and so far as his official duties are concerned , there is nothing adverse and the applicant has a very good service record.

2) That, unfortunately, during 1986 , the applicant was falsely implicated in a Criminal case, being Nalbari P.S.Case No.174/86 u/s. 341/325 I.P.C. Ultimately the applicant alongwith three other members of his family was sent up for trial in Sessions Case No.29(N)/87 and the Sessions Judge, Nalbari , by his judgment dt.23.8.89 , convicted the applicant and others u/s 325/34 I.P.C. and sentenced to undergo R.I. for 3 years and to pay a fine of Rs.1000/- , in default, R.I. for 2 months.

3) That, after the applicant was convicted as such, the Asstt. Engineer (Trunks ) Guwahati, by his order

contd...

No.X-4/89-90 (Part-II)/2 dated 8.12.89, placed the applicant under suspension for his being convicted. At the time of his suspension, the applicant was drawing a basic pay of Rs.1270/- P.M. in the scale of Rs.975/- to Rs.1660/- .

4) That, being aggrieved by the judgment and conviction, the applicant had filed a criminal appeal in the Hon'ble Gauhati High Court which was numbered as Criminal Appeal No.125/89. The Hon'ble High Court, after hearing the entire matter, by judgment dt.24.4.95, set aside the conviction and sentence.

A copy of the judgment is annexed herewith and marked as Annexure- I.

5) That, after the applicant was acquitted as such, the applicant, on 9.5.95, submitted a representation of the Respondent No.2 endosing a certificate copy of the judgment passed by the Hon'ble High Court and prayed that his suspension be revoked.

A copy of the representation is annexed herewith and marked as Annexure- II.

6) That, ultimately, the Respondents, by order No.X-4/95-96/2 dated 11.8.95, revoked the order of suspension dated 8.12.89, in exercise of powers under Rule 10(5) (c) of the CCS (CCA) Rules, 1965 with immediate effect.

A copy of the order is annexed herewith and marked as Annexure- III.

contd...

7) That the applicant duly joined his service and because of the conviction, the applicant was under suspension from 8.12.89 to 11.8.95 during which period the criminal appeal was pending in the Hon'ble High Court and the delay in disposing of the appeal cannot be attributed to the applicant in any way. Moreover, since the applicant was acquitted of the Criminal charge, his suspension was wholly unjustified and the applicant is entitled to full pay and allowances .

8) That, after joining, the applicant, in the month of September, 95 was again given the basic pay of Rs.1270/- when, in fact, he ought to have been given Rs.1520/- as basic pay and it appears that his basic pay had remained stagnant at Rs.1270/- from the date of his suspension. After the suspension was revoked, the authorities were required to pass a specific order under the provisions FR-54(b) (3) regarding the period spent under suspension but in the instant case, the same was not done. The applicant, in August, 95, had submitted an application praying that such an order be passed but nothing was done . The applicant , again on 6.10.95 , submitted a representation to the Respondent No.2 praying that the period under suspension from 8.12.89 to 11.8.95 be treated as period spent on duty for all purposes including pay and allowances.

A copy of the representation dated 6.10.95 is annexed herewith and marked as Annexure-IV.

contd...

8 9) That the applicant then received the impugned letter No.Q- 234/95-96/9 dated 10.10.95 from the Respondent No.3 whereby the applicant was informed that the Respondent No.2, vide his order No. TDM/Staff/QB/528/95-96/15 dated 9.10.95, had informed that the applicant was misleading the office by stating that he had been honourably acquitted and that in the Judgment only benefit had been given to him and that it was regretted to treat this period of suspension as on duty.

A copy of the said order dated 10.10.95 is annexed herewith and marked as Annexure-V.

7: DETAILS OF REMEDIES EXHAUSTED:

The applicant has no remedy under the Service Rules against the order which is palpably erroneous and without jurisdiction.

8: The applicant declares that he has not previously filed any application/writ petition or suit regarding the matter in respect of which this application has been made before any Court of Law or any other authority or any other Bench of this Hon'ble Tribunal and no such application /writ petition or suit is pending.

9: RELIEF SOUGHT AND GROUNDS :

I) For that the impugned order by which the applicant has been informed that the period of suspension could not be treated as on duty was passed on extraneous considerations and in violation of the Rules and as such the same is bad in law and liable to be set aside.

II) For that, after an employee is reinstated after being acquitted, the authorities are required to pass a specific order under F.R.54(b) (3) and in the instant case, the authorities, without following this procedure, had taken into consideration extraneous and irrelevant factors while refusing to treat the period as on duty for all purposes and as such the impugned order is bad in law and liable to be set aside.

III) For that the applicant was placed under suspension for his being convicted in the criminal case after he had filed the Criminal Appeal in the Hon'ble High Court when the sentence was suspended. Since, ultimately, the applicant was acquitted of the Criminal charge, the suspension of the applicant was wholly unjustified and the applicant is entitled to get the period spent under suspension as period spent on duty for all purposes including pay and allowances.

IV) For that the applicant had filed the criminal appeal in the Hon'ble High Court immediately after his conviction in 1989 and the criminal appeal was finally disposed of only in 1995 and this delay cannot, in any way, be attributable to the applicant and as such the applicant is entitled to all the benefits including arrears and increments.

V) For that in any view of the matter, the applicant is entitled that the period of suspension be treated as on duty for all purposes including pay and allowances and increments.

It is, therefore, prayed that your Lordships would be pleased admit this application, call for the records of the case, ask the opposite parties to show cause as to why the impugned order dt.10.10.95 (Annexure-V) should not be set aside and after perusing the causes shown, if any and hearing the parties, set aside the impugned order and direct that the period of suspension from 8.12.89 to 11.8.95 be treated as on duty for all purposes including pay and allowances and/or pass any other order/orders as your Lordships may deem fit and proper so as to grant relief to the applicant.

And for the act of kindness the applicant, as in duty bound, shall ever pray.

10. INTERIM ORDERS :-

Nil.

11. Does not arise .

12. Postal Order No. dt...

issued by the Post Office at Guwahati enclosed.

VERIFICATION

I, Shri Ram Kumar Bhattacharjee, son of Late Tara Prasad Bhattacharjee, aged about 40 years, at present serving as Telephone Operator, Telephone Exchange, Guwahati do, hereby, verify that the contents of paragraphs 1, 3, 7. are true to my knowledge and those made in paragraphs 2, 4, 5, 6, 8 & 9 are believed to be true on legal advice and that I have not suppressed any material fact.

Ram Kr. Bhattacharjee.

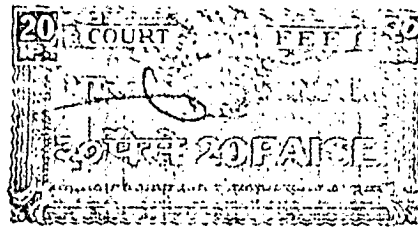
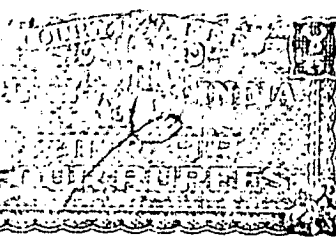
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IN THE HON'BLE HIGH COURT

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



CRIMINAL APPEAL NO. 125 OF 1989

1. Shri Ram Kumar Bhattacharjee,
2. Shri Hari Prasad Bhattacharjee,
3. Shri Ajay Bhattacharjee,
4. Shri Pradip Bhattacharjee

..... Accused-Appellants.

-Versus-

The State of Assam.

..... Respondent.

PRESENT.

THE HON'BLE SMTI JUSTICE M.SHARMA.

For the appellants :- Mr. J.M.Choudhury,  
Mr. Z.Kamar, Advocates.

For the respondent :- Mr. S.K.N.Mahammad, P.P.Assam.

Date of hearing :- 20.9.94.

Date of Judgment :- 24.4.95

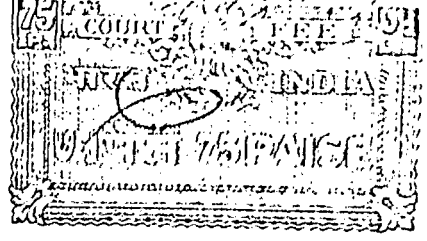
JUDGMENT & ORDER

This appeal has been preferred by the four accused-appellants namely (1) Shri Ram Kumar Bhattacharjee, (2) Shri Hari Prasad Bhattacharjee, (3) Shri Ajay Bhattacharjee and (4) Shri Pradip Bhattacharjee against the judgment and order dated 23.9.89 passed by the Sessions Judge, Nalbari in Sessions Case No.29(N)87 convicting the accused-appellants U/s 325/34 of the I.P.C. and sentenced to undergo R.I. for 3 years and to pay a fine of Rs. 1000 /- in default to suffer further imprisonment for 2 months R.I. and the appellant No.4 to undergo rigorous imprisonment for one year and to pay a fine of Rs. 300/- in default to suffer further imprisonment for 20 days.



On .....

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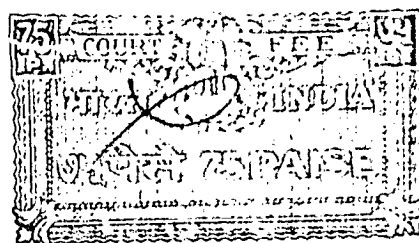
On 9.5.86 at about 8-30 A.M. the deceased Tarini Kalita himself lodged an ejarah with Officer-in-charge of Kamarkuchi out post alleging that at about 7 A.M. while he was coming out of his house accused appellants Nos. 1, 2 and 3 came to his house and assaulted him and as a result he sustained greivous injuries. When the family members tried to intervene they were also assaulted. The ejarah was forwarded to Nalbari Police Station for registering a case and the same was registered being Nalbari P.S. Case No. 174/86 U/s 341/325 I.P.C. Thereafter at about 11-30 P.M. the said informant Tarini expired at his own residence and his wife Smti Joymati Kalita (P.W. 1) lodged an ejarah with the Kamarkuchi Police Out post, alleging that as her husband was assaulted by the accused-appellants on 9.5.86 and due to the injuries sustained by him he died. Re-investigation was made by the police and a forwarded the case to Nalbari Police Station on receipt of which a case being Nalbari Police Station case No. 175/86 U/s 302/323/34 of the IPC was registered. Accused-appellants were charged U/s 302/34 I.P.C. After the trial accused-appellants convicted U/s 325/34 IPC as aforesaid.

The ground for appeal is that the prosecution failed to establish the case beyond all reasonable doubt, that no charge U/s 325/34 IPC had been framed against the appellants, that common intention of causing death of the accused was not established.

Prosecution examined as many as 9 witnesses out of which 5 P.Ws alleged to be eye witnesses of the occurrence. The learned trial court found on the evidence on record, particularly on the evidence of the Doctor that the cause

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cause of death was due to rupture of spleen, but there is no sufficient evidence to show that the rupture of spleen was caused as a result of the assault alleged to have been caused by the accused-appellants.

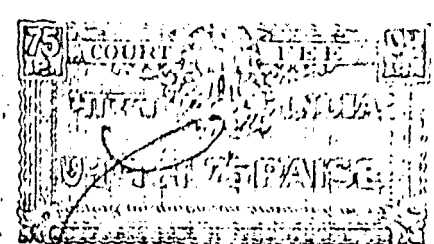
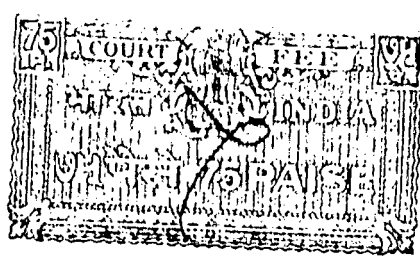
In this appeal the appellants claimed their acquittal on the ground of medical evidence as regards injuries is inconsistent with the ocular version of the eye witnesses.

The ocular version of P.W. 1, 4 and 5 who were the wife and two sons of the deceased was that the deceased was assaulted by 'Dhekithora' and 'hand'; that on hearing hulla P.W. 2 and 3 came there. Admitted fact was that there was no external injuries but the victim suffered a lot. That the injured husband was examined by doctor and died on the night of occurrence. This evidence of the eye witnesses not corroborated each other. It is seen from the P.W. 2 and 3's evidence they arrived the place on hearing hulla, and therefore they cannot be eye witnesses.

P.W. 8 and 9 are the doctors. P.W. 9 Dr. Nasiruddin Ahmed examined the Tarini Kalita on the date of occurrence at 4-30 P.M. Alleged occurrence took place at 7 A.M. The age of the injury could not be ascertained and that injury of the spleen suspected. Nature of the injury was found as caused by blunt weapon. Doctor advised the injured to attend Balbari Hospital. Prescribed treatment was, analgin injection, oxidall tablets. The injury of the spleen was mentioned as grievous. In his cross-examination, this witness stated that he did not find any external injury, that as by touch of hand the injured complained of pain, he mentioned the injury as grievous; that he did not examined the injured by taking any X-ray. In his opinion injury on spleen can be caused by dashing against a hard substance.

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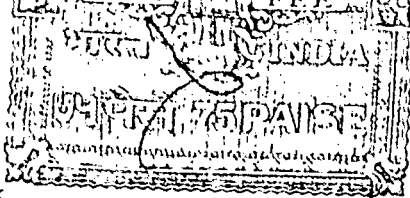
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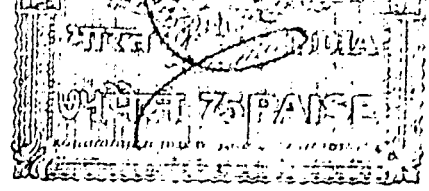
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The evidence of P.W. 8, Dr. Urendra Nath Thakuria performed the Post Mortem on the dead body. He found all other organs healthy; that spleen was not discolored and it was ruptured following traumatic injury. He did not find any external injury but on opening the abdomen found ruptured spleen in its convex surface with the capsule; that death was due to shock and haemorrhage as a result of injury of the spleen; the spleen was not enlarged.

From this aspect of the evidence the subsequent conduct of the deceased after alleged occurrence as disclosed in the evidence of the P.W. 1 is that, the accused appellant No.1 assaulted her husband with a "dhekithura" and appellant No.2 and 3 with lathi and appellant No.4 with hands. Evidently, there was no external injuries nor any bruises or marks found on the person of the injured (deceased). In the FIR (Ext. 2) filed by the injured himself (deceased) was that just about 7 a.m. while he was coming out of his house to prepare sweets on order for a marriage, all the accused appellants drugged him and assaulted at random, that they assaulted his wife and as a result they sustained injuries. This Ext. 2 shows that the distance of the Police Station was 20 K.M. and the injured (deceased) informant walked both ways all alone to that distance to report assault on him by the accused persons. The second FIR (Ext. 2) was lodged by P.W.1, the wife of the victim in the next day alleging that while her husband at about 7 P.M. was going out of the house to prepare sweets for a marriage ceremony, he was assaulted by the named accused persons as a result of which he died on that night at 11-30 P.M. In both the FIRs there were no mention of use of any weapon. But in her evidence the P.W. 1 improved her statement as stated above. The fact remains, that though the assault on the victim was alleged to be caused at 7 a.m., he did not go to the doctor for 'treatment', but went to the police Station.



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8.

to file the F.I.R. for assault. F.I.R. was lodged at 10 A.M. 31 and after that he returned to his home. He was brought to the doctor P.W. 9 at 4-30 P.M. for examination. The exaggerations and contradictions in the evidence of the P.W. 1, did not describe the actual involvement of the accused persons and use of weapons. From the medical evidence, it is seen that the use of weapon and nature of injury are inconsistent. This was sufficient reason to doubt the participation of the accused persons in the occurrence and the resultant cause of death. Absence of external injuries belied the use of weapons by the accused persons. Post mortem report found the deceased healthy except rupture of spleen which caused death. Ext. 2 shows that it was the deceased who went himself and filed the ejghar though the P.W. 1 did not mention it in her evidence. Further Dr. Dinash Sarma was not examined by prosecution though P.W. 1 stated that her husband was treated by him before taking him to hospital.

The vital discrepancies and inconsistent evidence of P.W. 1 who claimed as the main eye witness, can not be relied on to bring home the offence U/s 325/34 I.P.C. against the appellants. The subsequent conduct of the victim after his assault, non mention of use of weapons in the F.I.R. Ext. 1 and 2 and exaggerated evidence of P.W. 1 are sufficient to raise doubt about the direct or indirect involvement of the accused-appellants for the cause of death of Tarini Kalita. When two views are possible regarding their involvement in the cause of death of the deceased, benefit should go to the accused-appellants.

In the result the conviction U/s 325/34 I.P.C. and sentence awarded by the Sessions Judge by judgment and order dated 23.9.89 in Sessions Case No.29(N)87 is set-aside on the reasons discussed above.

The appeal is allowed.

sd/- M. Sharma  
Judge

Certified to be true Copy

Ganesh Kishor  
8/5/95  
Superintendent (Copying)

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18

Annexure- II.

To

The T.D.M. Kamrup Telecom District,  
Guwahati.

(Through Proper channel).

Dated at Guwahati 9th May, 95.

Sub :- Your office order No.X-4/89-90(part-II)/2 dt.8.12.89.

Sir,

Most humbly and respectfully I beg to inform that I was placed under suspension vide your office order as cited above, in respect of a criminal offence.

That sir, I have been convicted by the Sessions Judge, Nalbari in case No.29(N)/87 on dt.23.9.89.

That sir, against the said order of the Session Judge, Nalbari, I preferred criminal Appeal (No.125/89) before the Hon'ble High Court, Guwahati.

That sir, the Gauhati High Court on dt.24th May, 95 passed the final Judgment of my appeal and I was honourably acquitted from the charge ( a copy of the judgement and order is enclosed ).

So, I therefore requested your honour to revoke my suspension orders as per verdict of this Hon'ble High Court to enable me to join my study as early as possible and for this act of your kindness I shall, remain ever grateful to you.

Your's faithfully,

Enclo:-

1. Certified copy of the Judgement of Gauhati High court in Criminal appeal No.125 of 1989.

Sd/-R.K.Bhattacharyya, T.O.  
T.M.X, Guwahati.

Advace copy to the TDM, Guwahati for information & n/a.

...

(15) III 33

Govt. of India.  
Department of Telecommunication.  
Office of the SDF(11) Gauhati

(Standard form of order for revocation of suspension order)  
Rule 10(5)(c) C.C.S. (C.C.A) Rule 1955.

No. X-4/95-96/2 dt. 11/8/95

Govt. of India.  
Ministry of Communication.

(Place of Issue Gauhati Dated 11/8/95 . . . 1995.

ORDER

Whereas an order placing Sr. Ram. Kr. Bhattacharya T.O  
(name and designation of the Govt. servant) under suspension was  
made by . . . A.F. (11) Gauhati . . . on . 21/12/89  
with effect from . 09/12/89 .

Now, therefore, the President/ the undersigned (the  
authority which made the order of suspension) in exercise of the  
powers conferred by clause (c) of sub-rule (5) of Rule 10 of the  
Central Civil Service (Classification control and appeal) Rules  
1965 hereby revoked the said order of suspension with effect from  
immediate effect 11/8/95

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

(Name and designation of beauthority  
making this order.)

Copy to:-

- 1) sri Ram. Kr. Bhattacharya T.O for info. pl.
  - 2) The TDM Gauhati subsec for info.
  - 3) The SE(P&A) of the TDM cell for info.
  - 4) The JAO O-0 of the TDM Gauhati for info.
  - 5) The JOP Government cell for info.
  - 6) The Sr. Telephone Supr, TDM cell for info.
- The reason for revoking the order:-

TDM Gauhati letter no  
TDM/shank/AB-528/95 dt 11/8/95

*Attest*

*Full  
Name*

Annexure- IV.

To

The Telephone District Manager,  
Guwahati Telephone.

Dated at Guwahati 6th Oct, 95.

(Through proper channel):

Ref :- Your office letter No.X-4/95-96/2 dt.11.8.95.

Sub :- Regularisation of suspension period as a  
period spent on duty with full pay and  
allowance.

Sir,

With reference to the above subject matter of I  
beg you to inform that I was placed under suspension w.e.f.  
23.9.89, the date of Judgement passed by the learned  
Sessions Judge, Nalbari in Sessions Case No.29/(N)/89 .  
The learned Sessions Judge vide his said order dt.23.9.89  
was pleased to convict me and 3 others under section 325/34  
I.P.C. and sentenced to go rigorous imprisonment for 3 years  
and pay fine of Rs.1000/-.

I preferred an appeal before the Hon'ble High  
Court Gauhati challenging the impounded order and judgement  
dt.23.9.89 passed by the learned Sessions Judge. The said  
appeal was number as Criminal Appeal No.125/89 of Gauhati  
High Court . The Hon'ble High Court vide order and Judgment  
dt.24.4.95 allowed the appeal and set aside the Judgement  
and order dt.23.9.89 passed in Sessions case No.29(N)/89 .

contd...

*Handwritten notes:*  
Hk-td  
- We  
- 2

That I have preferred two representations of dt.9th May/95 and 2nd of Aug/95 for revoking the said suspension order and your goodself vide order dt.11.8.95 was pleased to revoke the said suspension order ~~at~~ w.e.f. 11.8.95.

That I have preferred another representation dt. 3rd Sept,95 for declaring the suspension period spent on duty .But your goodself did not pass any specific order regarding the regularisation of service during suspension period .As a result my pay has been stagnate at Rs.1270(basic) which was fined prior to my suspension. If the said suspension period is regarded as a period spent on duty then I would have draw Rs.1520 as basic salary and against Rs.1270 (basic), I am drawing at present.

Through this representation, I like to inform you that the Hon'ble High Court vide order and Judgement dt.24.4.95 in criminal appeal No.125/89 set aside the conviction and sentenced passed by the Sessions's Judge and allowed the appeal.

The Hon'ble High Court disposed the appeal on merits after clear appreciation of the evidence on record. Moreover, there is a finding to the effect that there are vital discrepancies and inconsistant evidence on record and as a result the guilt of the appealant cannot be proved beyond resonable doubt and benefit of doubt was given to the all appealants.

contd..

*Attest*  
*Erill*  
*12/95*

As I have been acquitted of the criminal charge my suspension period should be treated as a period spent on duty by evoking the provisions of FR.54(2) and 54(3) of the fundamental rules. It is pertinent to mention here that as I am acquitted of the Criminal charge the guilt has not been proved and therefore prosecution has failed to prove the charge. The code of Criminal procedure does not contemplate honourable acquitted.

Therefore in other words it can be said that I am fully exonerated to the charges levelled against me and as such I am entitled for the full salary which I would have drawn if I had not been suspended for the period of suspension.

It is therefore prayed that your goodself would be pleased to regularise the suspension period dt.8.12.89 to dt.11.8.95 and shall treat the said period spent on duty and for this act of your kindness, I shall ever pray.

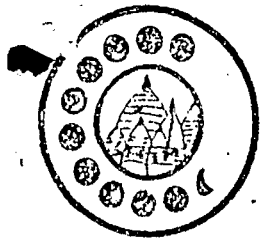
Thanking you,

Yours faithfully,

Copy to :-

- 1. Advance copy to T.D.M. (by name ) for information and necessary action .

*Attested  
Sd/-  
A.D.*



कोर-7 / Corr-7.

भारतीय दूरसंचार / DEPARTMENT OF TELECOMMUNICATIONS

कार्यालय / Office of the S.D.E. Tmuk, Panbazar, Ltt-1.

To Shri Ram Kumar Bhattacharjee T.O.  
TMX, Panbazar, Ltt-1.

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No. Q-234/95-96/9

Dated 10-10-95.

Subj: Representation to declare the suspension period spent on duty and for necessary orders regarding pay and allowance to be paid for the period of suspension ending with reinstatement.

Ref: Your representation as mentioned above subject TDM's NO = TDM/Staff/QB/528/95-96/15 dtd 9-10-95.

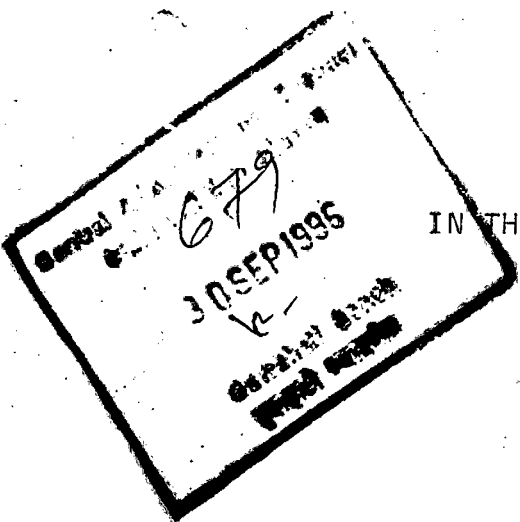
With reference to your representation dated 4-8-95, you are informed under TDM's NO = TDM/Staff/QB/528/95-96/15 dtd 9-10-95 that you are misleading this office through your representation that you were honourably acquitted by Hon'ble High Court Guwahati, but in the Judgement only benefit has been given to you.

In view of this the TDM has regretted to treat this period of suspension as duty.

Received  
2/10/95

B. J. D. Chakraborty  
Sub Divisional Engineer (TK)  
Guwahati Telephone  
Panbazar, Guwahati-1.

Handwritten notes at the bottom left corner, including "10/10" and other illegible scribbles.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

Filed by:  
A. H. Chandra  
Addl. Central Govt.  
Standing Counsel.

38

In the matter of :-

A.O. No.36 of 1996

Ram Kumar Bhattacharjee,

-Versus-

Union of India & others.

Written statement for and on behalf of Respondents  
Nos.1,2 & 3.

I, Balaram Saha, Telecom District  
Manager, Guwahati, do hereby solemnly affirm and  
say as follows :-

- 1) That I am the Telecom District Manager, Guwahati, and Respondent No.3 in the case and am acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statements made in the application may be deemed to have been denied. I am authorised to file this written statement on behalf of all the Respondent.
- 2) That with reference to the paragraph 1 to 5 and 6(i) of the application have no comments.
- 3) That with reference to the paragraph 6(2) of the application, the respondents beg to state that the applicant was implicated in a criminal case bearing No.174/86 - U/S 341/325 I P C but the fact was not intimated by him to the authority even when he was convicted by the Hon'ble Session Court, Nalbari vide judgement dtd.23-8-89. It proves suppression of the fact on his part and thus deserves departmental action.

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- 39
- 4) That with reference to the paragraph 6(3) of the application the respondents beg to state that the A.E.(Trk), Guwahati placed him under suspension vide his Memo No.X-4/89-90 Part-II/2, dated 8-12-89 with effect from 8-12-89 as soon as he (AE Trk) came to know the fact, as per departmental Rules.
- 5) That with reference to the paragraph 6(4) of the application the respondents beg to state that the applicant did not intimate the judgement of conviction and even in respect of Criminal Appeal No.125/89 filed in the Hon'ble High Court.
- 6) That with reference to the paragraph 6(5) of the application, the respondents beg to state that on receipt of his application for revocation (of suspension), the matter was under process as the appeal/<sup>to</sup>appears have been allowed.
- 7) That the statements made in paragraph 6(6) of the application have no comments.
- 8) That with reference to the paragraph 6(7) of the application the respondents beg to state that not agreed. The applicant was implicated in a criminal case relating to his family life and placing him under suspension is justified under Rule No.FR-54, Administrative Instructions No.1(b).
- 9) That with reference to the paragraph 6(8) of the application the respondents beg to state that the applicant was paid Basic Pay @ Rs.1270/-B.M. as his period of Suspension had been treated as non-qualifying service as per Rule FR-54, Govt. of India order 3(i) (copy enclosed as Annexure-I) and as per Rule No.54(B)(3) as referred by the official claiming Full Pay and allowances when suspension is wholly unjustified. In the instant case, suspension is fully justified because there is a question of moral turpitude and non-receipt of service due to implication in the criminal case relating to his family life where he was directly involved. As such question of payment of full pay and allowances is not at all justified as per above Rule.

10) That with reference to the paragraph 6(9) of the application the respondents beg to state that the same are correct. Order dtd. 23-8-89 of the Hon'ble Session Court, Nalbari has been set-aside by the Hon'ble High Court on 24-4-95 on benefit of doubt but he has & not been honourably acquitted.

11) That the statements made in paragraph 7 & 8 of the application have no comments.

12) That with reference to the paragraph 9(i) of the application the respondents beg to state that the benefit can not be extended as it is the discretionary Power of the disciplinary authority as per Rule referred earlier viz FR-54.

13) That with reference to the paragraph 9(ii) of the application the respondents beg to state that his period of suspension declared as non-qualifying service. In the instant case the last sentence of Rule 54 B(3) is applicable regarding payment of pay and allowances.

14) That with reference to the paragraph 9(iii) of the application, the respondents same are not admitted and incorrect.

15) That with reference to the paragraph 9(iv) & 9(v) of the application, the respondents beg to state that the same are not correct. In view of the facts and circumstances stated above the order dtd. 10-10-95 should not be set-aside.

16) That the statements made in paragraph 10, 11 & 12 of the application have no comments.

17) That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

V E R I F I C A T I O N

I, Balasam Saha, Telecom District  
Manager, Guwahati, do hereby declare that the statements  
made in this written statement are true to my knowledge  
derived from the records of the case.

Sept. I sign this Verification of this the 3<sup>rd</sup>  
day of 1996 at Guwahati.

Balasam Saha  
3/9/96  
DEPONENT

(9) <sup>1</sup>[The amount] determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 53.

### GOVERNMENT OF INDIA'S ORDERS

(1) **F.R. 54 absolute.**—A Government servant was dismissed from service on the 8th March, 1927, and, on appeal, was re-instated with effect from the 27th October, 1927. The appellate authority declared, under F.R. 54, that the period of unemployment between the dates of dismissal and re-instatement should be treated as spent on duty and allowed to count for leave and increments. As there was no post against which the lien of the Government servant could be shown for the period of dismissal, the question arose whether in the absence of lien on a permanent post the period of unemployment could count for leave or increments. It was decided that F.R. 54 is absolute and unconditional and that it could not be absolute if the condition of "lien" had first to be satisfied.

[ G.I., F.D. No. F/28-R.1/28, dated the 5th April, 1928.]

(2) **When suspension regularised as leave, consequential recovery inescapable.**—A question having arisen whether in cases where the period of suspension is ordered to be treated as one spent on leave and when on conversion it is found that the greater part of the period is to be treated as extraordinary leave for which no leave salary is admissible, the recovery of the subsistence allowance already paid would be in order. The moment the period of suspension is converted into leave, it has the effect of vacating the order of suspension and it will be deemed not to have been passed at all. Therefore, if it is found that the total amount of subsistence and compensatory allowances that an officer received during the period of suspension exceeds the amount of leave salary and allowances, the excess will have to be refunded and there is no escape from this conclusion.

[ G.I., M.F., U.O., No. 3409-E. IV/53, dated the 25th April, 1953, U.O. No. 320-E. IV/54, dated the 22nd February, 1954 to the Communications Division and M.F., (C's) U.O. No. 1681-C. II/54, dated the 2nd March, 1954 ]

(3) **Treatment of period of absence and payment thereof.**—The Government of India have conveyed the following clarifications in regard to certain points which have been raised in connection with the application of F.R. 54, 54-A and 54-B:—

- (1) The decision of the competent authority under F.R. 54, 54-A and 54-B is in respect of two separate and independent matters, viz., (a) pay and allowances for the period of absence and (b) whether or not the period of absence should be treated as duty.

It is not necessary that the decision on (a) above should depend upon the decision on (b) above.

The competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specified purpose (s) or only to pay the proportionate pay and allowances. It has no discretion to pay full pay and allowances when the period is treated as "non-duty".

<sup>1</sup> Substituted by G.I., M.F., Notification No. 1 (5)-E. IV (A)/73, dated the 2nd November, 1974.

proceedings or proceeding for arrest for debt or during detention under a law providing for preventive detention, shall be dealt with in the following manner hereafter:—

- 6 25
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- (a) A Government servant who is detained in custody under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or for his arrest for debt shall, if the period of detention exceeds 48 hours and unless he is already under suspension, be deemed to be under suspension from the date of detention until further orders as contemplated in the Central Civil Services (Classification, Control and Appeal) Rules. A Government servant who is undergoing a sentence for imprisonment shall also be dealt with in the same manner pending a decision on the disciplinary action to be taken against him.
- Justified*
- (b) A Government servant against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (e.g., a person released on bail) may be placed under suspension by an order of the competent authority under the Central Civil Services (Classification, Control and Appeal) Rules. If the charge is connected with the official position of the Government servant or involving any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course.
- (c) A Government servant against whom a proceeding has been taken for his arrest for debt but who is not actually detained in custody may be placed under suspension by an order under the Central Civil Services (Classification, Control and Appeal) Rules, i.e., only if a disciplinary proceeding against him is contemplated.
- (d) When a Government servant who is deemed to be under suspension in the circumstances mentioned in clause (a) or who is suspended in the circumstances mentioned in clause (b) is re-instated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under F.R. 54/54-B, i.e., in the event of his being acquitted of blame or (if the proceeding taken against him was for his arrest for debt) or its being proved that his liability arose from circumstances beyond his control or the detention being held by any competent authority to be wholly unjustified, the case may be dealt with under F.R. 54 (2)/54-B (2) ; otherwise it may be dealt with under F.R. 54 (3)/54-B (5).

[ G.I., M.F., O.M.No. M.F. 15 (8)-E. 1V/57, dated the 28th March, 1959 as amended ]

(2) **Erroneous detention or detention without basis.**—It has been decided that in the case of a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched, the competent authority should apply its mind at the time of revocation of the suspension and reinstatement of the official and if he comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed.

[ G.I., C.S., Deptt. of Personnel, O.M. No. 35014/9/76-Estt. A, dated the 8th August, 1977 ]

(3) **Keeping permanent post vacant.**—A permanent post vacated by the dismissal, removal or compulsory retirement of a Government servant

*Attended  
M. H. Chandra  
H. D. Chandra  
SC*