

30/100

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

(DESTRUCTION OF RECORD RULES, 1990)

M.P-235/97 ordersheet pg-1  
Disposed date-22/8/97

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SECTION OFFICER (Judl.)

OA No. 169 196

Sr. R.K. Adnyapala Applicant(s)

Union of Graduate Respondent(s)

Mr. G.K. Bhattacharjee Advocates for the applicant(s)  
"Govt. P. Summe"

Mr. A.K. Choudhury Advocates for the Respondent(s)

Office Notes Date Courts' Orders

This application is in form and within time C. F. of Rs. 50/- deposited vide IPO/BD No. 346268 Dated 22.8.96

29/8/96  
Dy. Registrar

No index sheet is attached.

29.8.96

Notice issued to the respondents vide D. No. 2732 dt. 23.8.96

Written statement has not been filed. now

30/9/96

Reports are still awaited. Applicant has not been billed.

21-8-96

Learned counsel Mr. G.K. Bhattacharjee for the applicant. Learned Addl. C.G.S.C. Mr. A.K. Choudhury for the respondents.

Heard Mr. Bhattacharjee for Admission. Perused the application and reliefs sought. Application is admitted subject to the decision of time limitation in the final hearing of the O.A.

Issue notice on the respondents by registered post. Written statement within 6 weeks.

List for written statement and further order on 1-10-96.

lm

m/21/8

Member

1.10.96

Mr G.N. Das for the applicant Mr A.K Choudhury, Addl. C.G.S.C for the respondents seeks 8 weeks time to submit the written statement.

List on 15.11.1996 for written statement and further orders.

Member

pg

m/11/8

15.11.96 Mr. A.K. Choudhury, Addl. C.G.S.C. For the respondents submits written statement. Copies of the same be served on the counsel of the applicant. Case ready for hearing.

List for hearing on 16.12.96.

*Pl. comply*

*m 15/11*

*[Signature]*  
Member

18.11.96

pg

*m 15/11*

17-6-97

*W/S filed by m*

*Respd. no. 1, 2 & 3.*

Case is ready for hearing.  
List for hearing on 30-7-97

*[Signature]*  
Member

14.5.97

lm

*12/6*

30.7.97

*1) NO rejoinder has been filed.*

There is no representation on behalf of the applicant. The applicant is also not found when called. Mr A.K. Choudhury, learned Addl. C.G.S.C., is also not present.

The case stands dismissed for default.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

*w/s. has been filed*

8/8/97

nkm

*3/1/7*

22.8.97

*Copy of the order has been sent to the D/Sec. for issuing the same to the L/Advocates of the parties.*

In view of the order passed in M.P.235/97 the Original application is restored to file and fix it on 19.11.97 for hearing.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

*Issued vide nos. 2663 & 2664 on 11.8.97.*

pg

19.11.97

*Adjourn to 3.2.98*

*w/s. has been filed.*

*By m*

Notes of the Registry

Date

Order of the Tribunal

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Notes of the Registry	Date	Order of the Tribunal
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W/s has been filed  
SD  
5/5

3.2.98

The case is otherwise ready for hearing. List it for hearing on 6.5.98.

  
Member

  
Vice-Chairman

nkm

1/2

W/s has been filed  
SD  
2/77

6.5.98

Adjourn to 22-7-98

9

3/2

22-7-98

Mr.G.N.Das learned counsel appearing on behalf of the applicant submits that the applicant has got the relief and therefore, application is become infructuous.

Heard also Mr.A.K.Choudhury, learned Addl.C.G.S.C. On hearing the counsel for the parties the application is dismissed as infructuous.

  
Member

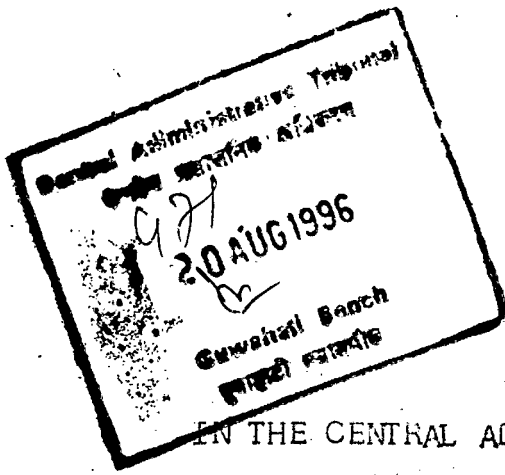
  
Vice-Chairman

Copies of the order have been sent to the D/Sec. for security the same to the parties through Regd. with M/D.

Recd vide D Nos 2415 to 2419  
Dtd. 31.8.98

lm

23/7



Filed by: 5

Prakash Sarma  
(Advocate)  
20/8/96  
Ranjit K. Adhyapak

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :  
GUWAHATI BENCH.

O.A.NO. 169 196.

Shri Ranjit Kumar Adhyapak.  
-Versus-  
Union of India and others.

1: PARTICULARS OF THE APPLICANT :

- i) Shri Ranjit Kumar Adhyapak,
- ii) Son of Late Ranjendra Kumar Adhyapak.
- iii) Aged about 56 years.
- iv) Supervisor, I.T.A.(M) Section  
Office of the Accountant General, A & E, Meghalaya  
Shillong.

2: PARTICULARS OF THE RESPONDENTS:

- 1) Union of India represented by the Comptroller,  
and Auditor General of India,  
10, Bahadur Shah Jafar Marg,  
New Delhi - 110002.
- 2) Additional Deputy Comptroller and Auditor  
General of India.  
10, Bahadur Shah Jafar Marg,  
New Delhi - 110002.
- 3) Accountant General, A & E., Meghalaya, etc.  
Shillong.

Received copy  
A.K. Choudhury  
Addl C.J.S.C  
20/8/96

3: THE APPLICANT IS AGAINST THE FOLLOWING ORDERS :

1) Action of the authorities in treating the period from 20.9.68 to 20.9.70 when the petitioner was out of service as dies non and that the petitioner would not be entitled to any pay and allowances.

2) Order conveyed under Memo No. Estt. (M)-1/68-strike /90-96/273 dated 3.6.96 whereby the applicant was informed that the matter for treating the period from 20.9.68 to 20.9.70 as on duty could not <sup>be</sup> reconsidered .

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 initially joined the office of the Respondent No.3 as Upper Division Clerk on 30.8.63 and since the date of joining service, the applicant has been carrying out his duties sincerely and to the satisfaction of all concerned . Unfortunately, due to no fault of his , two valuable years of his service from 20.9.68 to 20.9.70 have been treated as dies non for which the applicant has been made to permanently suffer loss in pay and others benefits.

2) That, while serving as such, the applicant was due to appear in the Subordinate Accounts Service examination and he was placed in the second batch and the Respondent No.3, by his order dated 19.8.68, allowed the applicant and others of the second batch to avail themselves of leave for appearing in the examination from 16.9.68 to 27.9.68 and accordingly the applicant applied for and he was granted leave for this period and the applicant was on leave from 16.9.68.

An extract of the said letter dated 19.8.68 and the different batch is annexed herewith and marked as Annexure-I.

3) That, unfortunately, during the period the applicant was on leave, a call was given for observing a token strike on 19.9.68 by the Central Govt. Employees and this strike was also observed all over India including ~~at~~ Shillong where the applicant was posted, However, as the applicant was already on leave granted by the competent authority, there was no question of his participating in any strike. Unfortunately, on 19.9.68, on the day of the strike, the applicant's mother had fallen ill and the applicant was on his way to call a doctor when he was arrested by the Police in connection with a case which was registered at Shillong P.S. on a complaint lodged by the then S.P. Shri K.P.S. Gill, I.P.S. on the ground that he had

Contd..

taken part in the Central Govt. Employees' strike and a case was registered against him U/s 4 and 5 of the E.S.M.O. , 1968 . The applicant was subsequently acquitted by the Court.

4) That, on the next day , the Deputy Accountant General (Admn), by his order No.DAGA/89/68-69/373 dated 20.9.68 , terminated the services of the applicant purportedly in exercise of powers conferred under the proviso to Sub-Rule (1) of Rule-5 of the C.C.S.(Temporary Service ) Rules, 1965 by paying him one months' salary in lieu of notice.

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

5) That the applicant begs to state that following the token strike , about 700 temporary employees of the Accountant General's Office, Shillong were served with notices terminating their services . Subsequently , the Central Govt. on 18.10.68 , decided that the temporary employees whose services were terminated following and/or because of the strike on 19.9.68 , could be reinstated and the termination notices issued to the employees of A.G.'s Office, Shillong were withdrawn except in 28 cases including that of the applicant.

6) That the applicant and some others had then filed a writ application before the Hon'ble Gauhati

Contd..

High Court challenging the termination order dated 20.9.68 and the same was numbered as Civil Rule No.374/68 .

The case ultimately came up for hearing on 27.8.70 alongwith two other cases and a submission was made that it was not possible to pass any order withdrawing the termination because of the pendency of the case and in these peculiar circumstances, the advocate for the applicant prayed for permission to withdraw the case which was allowed . The Hon'ble High Court, however, clarified that if the applicant ultimately felt aggrieved, he could renew his action in an appropriate Court.

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

7) That the Deputy Accountant General (Admn), by his E.O. No.288 dated 21.9.70, reinstated the applicant in service as U.D.Clerk w.e.f. 21.9.70 , By the said order, it was ordered that the period of absence from 20.9.68 to 20.9.70 would be treated as dies non and no pay and allowances would be allowed for that period.

Copy of the said order is annexed herewith and marked as Annexure-IV.

8) That the applicant alongwith two others, being aggrieved by the above order which was in violation of F.R..54, filed separate writ applications before the Hon'ble High Court and the applicant's case was numbered

Contd..

as Civil Rule Nb.226/74 . All the three writ applications came up for hearing on 9.7.80 and the Hon'ble High Court, after considering the entire matter, quashed that part of the reimstatement order which had stated that the period of absence would be treated as dies non and directed the Respondents to dispose of the matter after taking into consideration all the facts and circumstances peculiar to individual cases of these petitioners who could be given further opportunities of filing such representation in this regard .

Again the said judgement , the Union of India filed a writ appeal which was numbered as W.A. 25/80 and a Division Bench of the Hon'ble High Court, by judgment dated 14.5.84 , dismissed the appeal.

The relevant part of the judgment in Civil Rule Nb.226/74 is annexed herewith and marked as Annexure-V.

(The applicant craves leave of the Hon'ble Court to produce and rely on the judgment at the time of hearing ) .

9) That in pursuance to the aforesaid judgment , the Respondent Nb.3 , by his memorandum Nb. AG/SCGE/12-15/V/108 dated 24.9.85, directed the applicant to file representation against the order treating the period of absence from 20.9.68 to 20.9.70 as dies non following his participation in the strike on 19.9.68.

Copy of the said memorandum dated 24.9.85 is annexed herewith and marked as Annexure-VI.

10) That the applicant, on 4.10.85, submitted his representation specifically stating that he was on leave from 16.9.68 to 2.10.68 for appearing in the S.A.S. examination and that he was arrested on 19.9.68 early in the morning while he was going to call a doctor for his ailing mother and that there could not be any question of his participating in the strike as alleged and prayed that the period be treated as on duty for all purposes including pay and allowances.

Copy of the representation is annexed herewith and marked as Annexure-VII.

11) That the applicant then received a copy of the impugned order passed by the Respondent No.2 whereby the applicant was informed that the competent authority had taken a liberal view and ordered reinstatement of the applicant in service though there was no technical lacuna and no compulsions under the Rules and that considering the facts and circumstances of the case, there was no mitigating circumstances to treat the intervening period as on duty for any purpose.

From the said order, it will be apparent that there was no discussion finding about the applicant's being on leave during the relevant period and that the order was passed in a mechanical manner.

Copy of the said order is annexed herewith and marked as Annexure-VIII.

12) That the applicant then, on 25.3.88, submitted an appeal to the Respondent No.1 through proper channel stating the entire facts and that he could not have participated in the strike as he was on leave and that he was a victim of circumstances created by the Police authorities. The applicant also pointed out that a huge loss that would ensue from the impugned order and again prayed that he be given the benefit for the period he was out of service for no fault of his. In response to the same, the applicant received order No. AG/SCGE/12-15/VI/56 dated 22.6.88 whereby the applicant was simply informed that his representation was considered and rejected by the Head Quarters.

Copy of the appeal dated 25.3.88 and reply dated 22.6.88 are annexed herewith and marked as Annexure-IX and X respectively.

13) That the applicant begs to state that the applicant was reinstated as a policy decision of the Govt. of India and there was no finding whatsoever about the guilt or otherwise of the applicant in any proceedings. The delay in reinstating the applicant could not be directly attributable to the applicant in any way and as such the applicant was entitled to be paid the full pay and allowances to which he would have been entitled had his services not been terminated. Moreover, from the records, it would be apparent that on 19.9.68,

contd...

the applicant was on Earned Leave and he could not have participated in the strike as alleged. The applicant has prepared a statement showing the approximate loss he has to suffer due to wrong and illegal orders passed by the authorities.

A copy of the said statement is annexed herewith and marked as Annexure-XI.

14) ✓ That the applicant continued to suffer the loss as stated and though the applicant was entitled to get the benefit during the period, nothing was done. During the visit of the Respondent No.1 to Shillong in January, 1994, the applicant's case was brought to his attention and the Respondent No.1 assured that his case would be reviewed and asked the Respondent No.3 to look into the matter. As such, the applicant, on 26.5.94, submitted another representation stating the entire facts and with the prayer that the applicant be given the benefit of service from 20.9.68 to 20.9.70. The aforesaid representation was duly forwarded on 30.5.94. The applicant subsequently received letter Nb.Estt(M)/68- strike/90-94/ 1511 dated 22.8.94, whereby the applicant was informed that the Head Quarters, by letter dated 1.8.94, had informed that the prayer for treating the period from 20.9.68 to 20.9.70 as on duty could not be acceded to and the earlier stand could not be reconsidered.

Copies of the representation, forwarding letter and reply are annexed herewith and marked as Annexure-XII, XIII and XIV respectively.

15) That, in this connection it will be pertinent to mention here that the Respondent No.3 had sent letter Nb.AG(A&E)/Assam/Misc/142 dated 27.5.94 wherein it was clearly mentioned that the applicant on was leave on the date of strike. The period of absence should be treated as on duty and not ~~as~~ dies non but since the case had been decided by the Head Quarters, the matter could not be considered only by the Deputy Controller and Auditor General of India and requested that the case be put up.

Copy of the said letter is annexed herewith and marked as Annexure-XV.

16) That, from what is stated above, it would be apparent that the applicant's case was dealt with in a most mechanical ~~and~~ <sup>manner</sup> and the fact that he was on leave on that particular day was not taken into consideration by the authority for which a great injustice was done to him. As such the appellant, on advice, submitted another representation which was duly forwarded on 8.4.96. The applicant has now received the impugned letter dated 3.6.96 whereby the applicant has been informed that the Head Quarters office had informed, by letter dated 21.5.96, that the matter could not be reconsidered.

Copies of the forwarding letter and impugned order dated 3.6.96 are annexed herewith and marked as Annexure-XVI and XVII respectively.

17) That, being highly aggrieved, the applicant is approaching this Hon'ble Tribunal for relief.

7 : DETAILS OF REMEDIES EXHAUSTED:

The applicant submitted representations to the authorities for regularising the period as on duty but the authorities summarily rejected the same without any application of mind .

8 : The applicant further 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 authorities, while ordering that the period of absence from 20.9.68 to 20.9.70 be treated as dies non, did not apply its mind to the facts and circumstances of the case and as such the impugned orders are bad in law and liable to be set aside.

II) For that it will be apparent from the records of the case that the applicant was on leave on 19.9.68, the date of the token strike and that the applicant could not have participated in the alleged strike and the

contd..

authorities rightly reinstated him but committed an illegality by directing the long period of absence as dies non and as such the impugned orders are bad in law and liable to be set aside.

III) For that from the order reinstating the applicant and from the other orders, it will be apparent that the applicant was reinstated on being fully exonerated and as such he was entitled to get the period treated as on duty for all purposes including pay and allowances and that not having been done, the impugned orders are bad in law and liable to be set aside.

IV) For that the authorities could have reinstated the applicant immediately instead of waiting for the applicant to approach the Hon'ble Court and thereafter, reinstate him after a lapse of two years and since this delay which resulted in long absence cannot be attributable to the applicant in any way, the applicant is entitled to get the period treated as on duty and <sup>as such</sup> the impugned orders are bad in law and liable to be set aside.

V) For that the authorities, while disposing of the representation, did not consider this aspect of the matter and also the fact that the applicant could not have participated in the strike and as such impugned orders are bad in law and liable to be set aside.

VI) For that the authorities, while rejecting the representation of the applicant, treated it in a general manner covering all cases without considering the fact that the applicant's case was on a different footing and deserved special attention.

VII) For that it is incumbent on the part of the authorities to consider the representation with proper application of mind specially when rejection of the representation involved civil consequences and there should have been a proper enquiry and an opportunity of being heard ought to have been given to the applicant before arbitrarily rejecting his prayer and that not having been done, the action of the authorities is bad in law and liable to be set aside.

•VII) For that, in any view of the matter, the impugned orders are bad in law and liable to be set aside.

10 . PRAYER :

It is, therefore, prayed that your Lordships would be pleased to admit this application, call for the entire records of the case, ask the opposite parties to show cause as to why the impugned orders (Annexure-XVI) 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 absence from 20.9.68 to 20.9.70 be treated as on duty

contd...

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 application.

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

11 . Interim order :- NIL.

12 . Does not arise.

13. Postal order No. 346768

dated .20.8.96 issued by the Post Office at Guwahati enclosed.

contd....

*h*

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

I, Shri Ranjit Kumar Adhyapak, son of Late Late Rajendra Kumar Adhyapak, aged about 56 years, resident of Forest Colony Shillong, do, hereby solemnly affirm and state that the statements made in paragraphs No. 1 to 16 are true to my knowledge and I sign this verification on this 20<sup>th</sup> day of August, 1996 at Guwahati.

*Ranjit Kr. Adhyapak*  
(Ranjit Kumar Adhyapak).

...

"An extract of A.G's orders dated 19-8-68".

The S.A.S. candidates whose names have been shown below in four batches may be granted leave subject to admissibility by the respective Branch Officers as follows :

- 1. 1st Batch - From 26-8-68 to 14-9-68 = 20 days.
- 2. 2nd Batch - From 16-9-68 to 27-9-68 = 12 days affixing Puja holidays 6 days from 28-9-68 to 2-10-68.
- 3. 3rd Batch - From 3-10-68 to 19-10-68 = 17 days prefixing Puja holidays from 20-10-68 to 2-11-68 and affixing 21-10-68 Sunday & 21-10-68 (Kali-Puja).
- 4. 4th Batch - From 22-10-68 to 8-11-68 = 19 days affixing 9-11-68 (2nd Sat.) & 10-11-68 (Sunday).

The candidates may apply in proper form for the leave to their respective Branch Officers.

*Banerjee*  
 Establishment Officer,  
 Assam and Nagaland, Shillong-1.

To

- 1). All Sections.
- 2). All Branch Officers.
- 3). All Notice Boards.

..2..

Attested by  
*[Signature]*

..2..

1st Batch (From 26-8-68).

1.	Shri Dipak Kumar Dey	...	DA-12.
2.	" Bibhuti Bhushan Bhattacharjee	...	GA-III.
3.	" Pranab Kumar Datta	...	ECPA.
4.	" Nataraj Ch. Saha	...	Try-I.
5.	" Rabindra Kr. Choudhury (2)	...	Book-I.
6.	" Rama Ranjan Deb	...	OAD-I.
7.	" Gopal Krishna Das	...	DA-5.
8.	" Samarendu Kr. Chakrabarty	...	Deposit.
9.	" Radhika Rn. Roy	...	TM-1.
10.	" Paresh Kumar Lal	...	DA-13.
11.	" Promode Rn. Dasu	...	GA-I.
12.	" Samarash Roy Choudhury	...	CA-2.
13.	" Balizo Nikla	...	Loan-II.
14.	" Doba Rn. Chakrabarty	...	GA-6.
15.	" Bani Kanta Das	...	OA-3.
16.	" Badal Ch. Chakrabarty	...	FC.
17.	" Bhowani Pada Bhattacharjee	...	AC-II.
18.	" Sankardas Chakrabarty	...	PF-10.
19.	" Ramendra Sundar Roy Choudhury.	...	Control.
20.	" Haridas Ghosh	...	PF-IV.
21.	" Sukhendu Bikash Datta	...	DA-I.
22.	" Sunimol Sengupta	...	DA-19.
23.	" Atul Krishna Roy	...	AC-I.
24.	" Jyotirindranath Datta	...	WA-12.
25.	" Amit Kanti Ghosh	...	GC-II.
26.	" Ram Chandra Chotri	...	Estt-2.
27.	" Ramyabrata Dey	...	Estt-I.

2nd Batch (From 16-9-68).

1.	Shri Amar Rn. Chanda	...	DA-12.
2.	" Ranendra Kr. Das	...	Try-I.
3.	" Ajoy Mhandu Kar	...	OA-I.
4.	" Abinash Ch. Das	...	Deposit.
5.	Smti. Namita Das.	...	GA-I.
6.	Shri Ramendra Kumar Deb Roy	...	GA-6.
7.	" Dinesh Ch. Pal	...	DA-5.
8.	" Nadiya Benode Das	...	AC-II.
9.	" Salil Rn. Mazumdar	W..	WA-IV.
10.	" Samaresh Shome	...	LC-II.
11.	" Kumud Rn. Bhattacharjee	...	CA-3.
12.	" Ranendra Narayan Datta	...	DA-21.
13.	" Jagadindra Kumar Roy	...	TV-II.
14.	" Ranjit Kumar Adhayapak	...	GA-II.
15.	" Narosh Rn. Dhar Choudhury	...	WA-I.
16.	" Prasanta Kr. Purkayastha	...	CA-2.
17.	" Chitta Rn. Bhattacharjee	...	Control.
18.	" Dakshina Rn. Pal	...	PF-IV.
19.	" Balaram Singh. Banman	...	TM-1.
20.	" Jitendralal Roy	...	Estt-II.
21.	" Santimoy Ghanda	...	Estt-I.
22.	" Hareshi Ch. Datta	...	-do-
23.	" Rebandu Kr. Bhattacharjee	...	Stone to DAG (Works).

...3...

*Sarveshwar Moh.*

contd... ..3..

- 24. Shri Dipak Kumar Nag. GA-IV.
- 25. " Sujit Deb Rep-2.
- 26. " Samarendra Kr. Bhattacharjee. -do-
- 27. " Radhashyam Datta. GN.

3rd Batch (From 3-10-60).

- 1. " Sudhir Kumar Sarmacharya- Deposit.
- 2. " Nihar Rn. Mazumdar .. GA-I.
- 3. " Jayanti Prasad Bhattacharjee - AC-II.
- 4. " Madhu Sudan Ghosh .. TM-II.
- 5. " Pradip Kanti Shome .. GA-2.
- 6. " Sukra ta Sinha .. WA-V.
- 7. " Ashim Kumar Mukharjee .. WA-I.
- 8. " Mihir Kiron Bhattacharjee .. OA-I.
- 9. " Remendra Narayan Choudhury .. Control.
- 10. " Nimalendu Bhowmik .. Estt-II.
- 11. " Bijan Bandhu Dey .. -do-
- 12. " Amarendra Kr. Das .. -do-
- 13. " Ramosh Ch. Ghosh .. -do-
- 14. " Saradindu Biswas .. Estt-I.
- 15. " Arumunda Das .. Estt-I.
- 16. " Manish Ch. Deb .. Try-II.
- 17. " Saradindu Pal .. GC-2.
- 18. " Sivapada Choudhury .. Rep-2.
- 19. " Sasadhar Bhattacharjee .. Rep-2.
- 20. " Behiram Boro .. DA-21.
- 21. " Marmatha Choudhury .. WA-VI.
- 22. " Pranesh Ch. Pal .. GA-7.
- 23. " Sushil Rn. Pal .. Rec-I.
- 24. " Pannalal Choudhury .. Rep-I.
- 25. " Amiya Sankar Bhattacharjee .. PF-10.
- 26. " Ramswarup Lal .. AC-I.
- 27. " Subhrendu Baran Dhar E. ECPA.

4th Batch (From 22-10-68).

- 1. " Ashok Kumar Choudhury .. GA-I.
- 2. " Samiran Ch. Pal .. WA-I.
- 3. " Tarunava Choudhury .. Rep-3.
- 4. " Nilendu Choudhury .. Bok-11.
- 5. " Harondranath Lahon .. CAD(I).
- 6. " Kashiwar Kamakar .. CA-I.
- 7. " Sumamal Kanti Choudhury .. Under P.W. Trg.
- 8. " Kohitish Ch. Pal (II). .. Under P.W. Trg.
- 9. " Bibhur Bohari Chakrabarty .. -do-
- 10. " Asit Rn. Sarkar .. -do-
- 11. " Ardhendu Sek. Nag. .. -do-
- 12. " Nimalendu Biswas .. -do-
- 13. " Babash Ch. Rakshit .. -do-

...4...

*Journal Ad.*

..4..

- 14. Shri Sachindra Kumar Deb .. Under P.W.D. Trg.
- 15. " Biswamthi Das Gupta .. Estt-2.
- 16. " Dilip Kr. Bhattacharjee .. Estt-2.
- 17. " Jyotimoy Endow Parkayastha .. Under P.W. Trg.
- 18. " Amalendu Kumar Das .. Estt-I.
- 19. " Arun Bhuvan Ghosh .. OAD (D).
- 20. " Gour Pada Patra .. Estt-I.
- 21. " Dipak Rn. Deb .. Try-A.
- 22. " Pinaki Prasad Goswami .. JA-10.
- 23. " Gouri Sankar Roy .. GC-2.
- 24. " Tarun Kanti Roy Choudhury .. Rep-2.
- 25. " Anindya Datta Choudhury .. Rep-2.
- 26. " Chitta Rn. Datta Choudhury .. GN.
- 27. " Hiralaal Das .. (Under P.W. Trg).

*Sachin Adv.*

Copy

(20)

ANNEXURE-II

OFFICE OF THE ACCOUNTANT GENERAL  
ASSAM AND NAGALAND.

No. DAGA/89/68-69/373 Shillong-1, the 20th September '68

In pursuance of the proviso to sub-rule(1) of rule 5 of the Central Civil Services(Temporary Service) Rules, 1965 I hereby terminate forthwith the services of Shri Ranjit Kumar Adhyapak, temporary Upper Division Clerk and direct that he shall be paid a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing then immediately before the date on which this order is served on or, as the case may be, tendered to, him.

Shillong

The 20th September '68.

Sd/-

(S.B. Guha)

Deputy Accountant General (Admn.)  
Assam and Nagaland, Shillong.

...

Attested  
Joremah. Adv.

IN THE HIGH COURT OF ASSAM AND NAGALAND AT GAUHATI.

Civil Rule Nos. 360, 374 and 385 of 1968.

Civil Rule No. 360/68 - Ashutosh Chakravarty .....Petitioner.  
Civil Rule No. 374/68 - Ranjit Kumar Adhyapak .....Petitioner.  
Civil Rule No. 385/68 - Bijoy Behari Bhattacharjee.....Petitioner.

-Versus-  
The Dy. Acctt. General (Admn.), Assam,  
and Nagaland and others ..... Respondents.

P R E S E N T :

The Hon'ble the Chief Justice Mr. P.K. Goswami.

The Hon'ble Mr. Justice M.C. Pathak.

For the Petitioners: Messrs S.K. Ghose, N.M. Lahiri and B.M. Mahanta,  
Advocates.

For the Respondents : Dr. J.C. Medhi, Advocate-General, Assam  
Mr. G.K. Talukdar, Sr. Govt. Advocate, Assam.

Date of hearing and order: The 27th August, 1970.

O R D E R :

Goswami, C.J. - Mr. S.K. Ghose, the learned Counsel for the petitioners, submits that similar termination orders against a large number of employees have been withdrawn and he states that perhaps, the authorities are unable to take necessary action in those cases because of the pendency of the Rules. The learned Senior Government Advocate, who is appearing along with the Advocate-General, Assam, also submits that it was not possible to pass any order in the case of these petitioners because of the pendency of these Rules. In these peculiar circumstances, Mr. Ghose submits that he withdraws these applications and he is permitted to do so.

2. The applications are accordingly dismissed on withdrawal. There will be no order as to costs. If, however, the petitioners ultimately feel aggrieved and if so advised, they may renew their action in an appropriate Court.

Dated Gauhati,  
The 27th August, 1970

Paul./

Attested  
Chandra Adc.

E.O.NO.288

Dated 21-9-70.

Shri H.K.Adhyapak whose service in this office were terminated w.o.f. 20-9-68 is reinstated in service as U.D Clerk with effect from 21-9-70 (FN) or from the date of joining, whichever is later.

The period of his absence from 20-9-68 to 20-9-70 or to the date of his joining, whichever is later will be treated as dies-non and no pay and allowances will be allowed to him for that period.

(Authority:- Orders in File No. Estt. I/30-2/68-69.)

sa/=  
D. A. G. (Admn)

.....

Copy to all concerned.

Attested  
Sarwan Adv.



Annexure-V.

IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:  
MIZORAM AND ARUNACHAL PRADESH).

SHILLONG BENCH

CIVIL RULE NO. 226, 227 and 228 of 1974.

Ashutosh Chakravarty .. Petitioner in Civil Rule No.  
227/74.

Ranjit Kumar Adhyapak .. Petitioner in Civil Rule  
No. 226/74.

Bijoy Behari Bhattacharjee. Petitioner in Civil Rule  
No. 228/74.

-versus-

Senior Deputy Accountant General  
Shillong and others ... Respondents.

PRESENT

The Hon'ble Mr. Justice B.L. Hansaria.

For the petitioners :- Mr. N.M. Lahiri, Advocate, Meghalaya  
Mr. M.A. Laskar, Central Government  
standing counsel .

Date of Judgement :- 9.7.80.

JUDGMENT & ORDER

The 3(three) petitioners were the employees in the  
establishment of the Accountant General, Assam etc. Shillong.

contd...

*Accepted  
for... Adv.*

*R*

They were temporary employees at the relevant time . Their services were terminated due to their participation in a strike in the month of September ,1968 . The strike had been observed by the Central Government employees all over the country on 19.9.68 . Subsequently the Government took a policy decision to reinstate such employees and the petitioners were also put back in service on 12.9.70 But it was ordered, while reinstating them, that the period of their absence will be treated as dies non and no pay and allowances will be allowed to them for that period. Representations were made to the authorities to grant them full pay and allowances and to treat them on duty for all purpose but this rejected stating that it was decided non to reopen the case. Feeling aggrieved, the petitioner have approached this Court in its writ jurisdiction.

3..

4...

5...

6..

7 ...

8. Keeping in view all the above, I hold that though the petitioners were temporary employees, on their reinstatement, before passing any order in terms of Rule 5(2) (b) it was required of the appointing authority to hear them or, to put it differently, to associate them before coming to a conclusion as to whether any proportion of pay and allowances were to be paid to them or not, or whether the period of absence was to be treated

*Lawyer, Adv.*

contd..

as period spent or duty. This has, admittedly, not been done. Nor have the subsequent representations been disposed of on merits. Therefore, that part of the reinstatement order which has stated that the period of absence will be treated as dies-non and no pay and allowances will be allowed to the petitioners for their period of absence is quashed and the respondents are directed to dispose of this matter on merits after taking into consideration all the facts and circumstances peculiar to the individual cases of these petitioners who would be given further opportunity of filing such representations in this regard which they may consider appropriate.

8. The petitioners stand allowed as aforesaid.

Sd/ B.L.Hansaria,  
Judge.

*Handwritten signature:*  
Laxman  
Adv.

.....

OFFICE OF THE ACCOUNTANT GENERAL (A&A): A&S&M:  
SHILLONG

MEMORANDUM

NO. AG/SCGE/12-15/V/108

Dt: 24.9.85

To

Shri Ranjit Kumar Adhyapak,  
Accountant.  
MG-1

In pursuance of the orders passed by the Hon'ble High Court in the matter of the Writ Appeal vide No.23,24 and 25 of 1980, Shri Ranjit Kumar Adhyapak is hereby given an opportunity to file representation against the order (vide Estt. order no.288 dt.21.9.70) treating the period of absence from 20.9.68 to 20.9.70 as 'dies-nōn' following his participation in the strike on 19.9.68.

If Shri Ranjit Kumar Adhyapak fails to submit his representation within 10 days after receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri Ranjit Kumar Adhyapak, ex-parte.

The receipt of this Memorandum should be acknowledged by Shri Ranjit Kumar Adhyapak.

*Shri Ranjit Kumar Adhyapak*  
Dy. Accountant General (Admn)

*Attested  
Ranjit Kumar Adv.*

To

The Deputy Accountant General (Admn.),  
Office of the A. G. (A&E), Meghalaya etc.,  
SHILLONG-1

Subject :- Representation against the treatment of  
'Dies-non' for the period from 20.9.68 to  
20.9.70.

Sir,

With reference to your Memorandum No. AG/SCGE/12-15/  
V/108 dated 24.9.85, I beg to state as follows :-

1. That Sir, my services were terminated under Order No. DAGA/89/68-69/373 dated 20.9.68 and I was re-instated in service under Estt. Order No. 288 dated 21.9.70 treating the entire period from 20.9.68 to 20.9.70 as dies-non.
2. That Sir, on 19.9.68, I was on earned leave sanctioned by the A.G. from a date prior to 19.9.68 ( i.e. from 16.9.68 to 2.10.68) and my services were terminated during the pendency of the leave.
3. That Sir, on 19th September, '68 I was arrested early in the morning under Section 4 & 5 of E.S.M.A. while I was going to call in a doctor for my ailing mother.
4. That Sir, The Honourable Shillong Court acquitted me of all the charges regarding my involvement in the Token Strike as brought out by the Police.
- 5.1 That Sir, I was arrested early in the morning on 19th September '68, the question of my attending office even during leave or participation in strike did not arise.
- 5.2 That in view of above, termination of my service for participation in Strike (vide your Memo. under reference) was irregular and inappropriate as in my case the question of participation in strike was absolutely not there.
- 6.1 That Sir, as mentioned in your honour's Memo. under reference, my services were terminated for participation in Strike.
- 6.2 That in view of the above fact termination of service in my case was termination "without specifying reason" and as such carried the stigma of punishment. Hence the notice of termination was outside the purview of rule-5 of Temporary Service Rules.
- 6.3 That in view of the above, mine was a case attracting provisions of Article 311(2) of the Constitution of India and Rule 14 of C.C.S. (C.C.A.) Rules, 1965.  
And as such, termination in my case without inquiry was violative of specific prohibition in rule 14(1) of the Rules *ibid.*
- 6.4 That on the basis of the then existing shape of rule 5 of Temporary Service Rules, payment of one month's notice pay simultaneously with service of notice was a must and that this was not complied with in my case.  
On the basis of ~~existing~~ latest Supreme Court judgement (as the then existing shape of rule *ibid.*), simultaneous non-payment of notice pay rendered the notice of termination inoperative and invalid.

*Attested  
Deputy A.G.*

6.5 That Sir, in my case while my services were terminated many of my juniors were allowed to continue in services.

That on the basis of latest Supreme Court judgement (now famous Heliyon case) termination of service of senior by invoking rule 5 of Temp. Service Rules while retaining juniors in service is ultra vires to Article 14 of the Constitution of India.

6.6 That in view of the above, it would be appreciated that the order of termination was not a legally valid order.

7. That Sir, I had completed 6 (six) years of service prior to the date of termination of my services and hence qualified for confirmation after having passed the Departmental Confirmatory Test in due course.

8. That Sir, there was no reduction of strength in the Cadre to which I belonged at the time of termination of my Services.

9. That Sir, no opportunity was provided to me under Article 311 of the Constitution of India, against the said order of termination.

10. That Sir, I did submit a representation on 31.10.70 in this matter as well.

11. In view of the facts and circumstances explained above, I would request your good self to be kind enough to treat the entire period from 20.9.68 to 20.9.70 as period spent on duty for all purposes including pay and allowances for the aforesaid period.

And for which act of your kindness, I shall remain in deep debt to you.

Yours faithfully,

*Ranjit-Kr. Adhyapak*

( RANJIT KUMAR ADHYAPAK )  
Senior Accountant.

Dated, Shillong,  
The 11th October, 1985.

*Attested*  
*Laxman*  
*Adl*

(29)  
ORDER

2/13/87

I have carefully considered the representation of Shri R.K. Adhyapak of the office of the Accountant General, Assam for treating the period of absence between the date of termination of his service and the date of reinstatement as duty and for grant of pay and allowances. I have perused the records relating to his reinstatement and also seen the directions of the Guwahati High Court in the writ appeal No. 25 of 1980 in the case of the Union of India and others versus R.K. Adhyapak.

2. While exercising the powers under Rule 5(2) of the CCS(TS) Rules 1965, the competent authority had taken a liberal view and ordered the reinstatement in service of the petitioner, though there was no technical lacuna and there was no compulsion under the Rules to reinstate the petitioner.

3. I have carefully considered the facts and circumstances leading to the termination of service of the petitioner, his reinstatement and also the various points mentioned by him in his petition and have come to the conclusion that there are no mitigating circumstances to treat the intervening period as duty for any purpose or to allow full or proportionate pay and allowances during the intervening period as the department had already shown compassion to the petitioner in reinstating him in service.

4. In the above circumstances, I hereby order that the intervening period of absence of the petitioner shall be treated as dies non and he shall not be entitled to any pay and allowances during the said period.

( C. Sankara Menon )  
Additional Deputy Comptroller and  
Auditor General of India

New Delhi  
27.1.1987

Attested  
Sankara Menon  
Adv.

(30)

Handwritten (14)

Advance copy forwarded by the C. & A. of India

To

The Comptroller & Auditor General of India  
10, Bahadur Shah Zafar Marg,  
New Delhi-110002.

(Through the Accountant General (A&E), Meghalaya etc.  
Shillong )

Subject: Appeal for allowing the period from 20.9.68 to  
29.9.70 as on duty.

Reference: Additional Dy. Comptroller & Auditor General's  
order dated 27.11.87.

Respected Sir,

I beg most respectfully to prefer the following few facts before the Comptroller & Auditor General of India with the earnest hope and fervent prayer that on sympathetic appraisal thereof, his gracious self will condescend to have mercy on a loyal and faithful employee of yours :

- 1). That Sir, I was on earned leave from 16.9.68 to 2.10.68 duly sanctioned by the then Accountant General for preparing myself for the S.A.S. Examination.
- 2) That Sir, my mother who was bedridden due to paralytic attack since 1964 needed immediate attention at the night of 18th September, 1968. So on the morning of 19th September, 1968 I was going to call on a physician and to request him to visit my ailing mother.
- 3) While I was on the way to that physician's Chamber, I was to my utter surprise arrested by the Police early in the morning on 19.9.68 and implicated me in a false case.

Attested  
Signature  
Adv.

4) That Sir, on the basis of the false police report on my alleged participation in the strike my service was terminated with effect from 20.9.68 vide No.DAGA/89/68-69/373 dated 20.9.68.

5) The Police could not substantiate their wrong and unteneble charge against me before the Hon'ble Shillong Court and, therefore, I was fully and wholly exonerated from all the charges regarding my any sort of involvement in the said strike as sought to be brought against me by the Police.

6) I was subsequently reinstated with effect from 21.9.70 treating the period of absence from 20.9.68 to 20.9.70 as dies non.

7) That Sir, subsequently I was forced to go to the Hon'ble Guwahati High Court against the orders of termination of my service. In pursuance of the orders passed by the Hon'ble High Court I was given an opportunity to file a representation against the order (vide Estt.Order No.288 dated 21.9.70) treating the period of absence from 20.9.68 to 20.9.70 as dies non.

8) Subsequently, I filed my representation and this was considered at the level of Headquarters not in my favour by the Addl.Dy.Comptroller and Auditor General.

9) Sir, I have always been rendering very useful service to my Department and considering all these I have been promoted in the cadre of Supervisor with effect from May, 1987.

*(Signature)*

*Sincerely, Adv.*

-3:-

10) Sir, I have become a victim of circumstances unjustly created by the Police authorities implicating me in the Token Strike of 1968 and causing unbearable financial hardship due to 2 years dies non. I will not be able to get the benefit of 2 years dies non for the purpose of pension and gratuity.

With all humility, I beg to leave to invite the gracious attention of the Comptroller and Auditor General of India that I am far advanced in years and age and I could not yet provide a roof of my own for my family to live under. The order wiping out the period from 20.9.68 to 20.9.70 from my service period will, by implication as well as by actual application deprive me of a substantial amount of retiring benefits, in addition to the pay and allowances for the said period with cumulative effect.

In the above premises, I look to the Comptroller and Auditor General of India, with absolute faith and confidence for favour of his kindly reviewing my case on humanitarian grounds and consideration and restoring to me the benefit of the service otherwise due to me for the said period from 20.9.68 to 20.9.70.

For this act of kindness, I shall be much obliged and shall remain ever grateful to the Comptroller and Auditor General of India.

With profound regards,

Yours faithfully,

*Ranjit Kumar Adhyapak*  
(Ranjit Kumar Adhyapak)  
Supervisor, Pension (M) Sec.  
% the A.G. (AGE), Meghalaya, etc.

Dated, Shillong  
the 25<sup>th</sup> March '88. X

*Lance. Sec.*

(33)

Annexure - X

CONFIDENTIAL

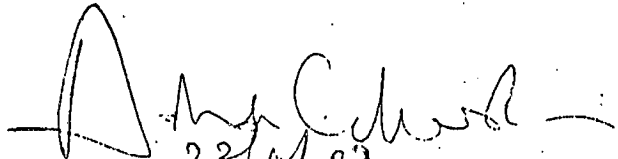
56

OFFICE OF THE ACCOUNTANT GENERAL (A&E) : MEGHALAYA ETC.  
SHILLONG - 1.

No. AG/SONE/12-15/VI/ GG

Dated 22nd June, 1988.

With reference to his appeal dated 25.3.88  
addressed to the Comptroller and Auditor General of India,  
New Delhi for allowing the period 20.9.68 to 20.9.70  
as duty. Shri R.K. Adhyapak, Supervisor is hereby informed  
that his representation has been carefully considered and  
rejected by the HQrs. office.

  
22/6/88  
Deputy Accountant General (Admn.)

Shri R.K. Adhyapak,  
Supervisor,  
O/O The A.G. (A&E),  
Meghalaya etc., ITA (M) Section,  
Shillong.

Attested  
D. K. Adhyapak, Adm.

STATEMENT

(A) Statement of showing approximate loss due to non-removal of dies-non period from 20.9.1968 to 20.9.1970 for two years in respect of Shri Ranjit Kr. Adhyapak.

1) Length of service :- Had this dies-non not been imposed on me I would have the following length of service from the date of my joining the department till the date of retirement.

	Y	M	D
From 30-8.1963 to 31-5-1997=	33	09	02

i.e., 66 six monthly qualifying service.

2) Affect in qualifying service due dies-non	Y	M	D
Less the period (20.9.1968 to 20.9.1970)	33	09	02
	02	00	02
	31	09	00

i.e., 63/64 six monthly qualifying service

3) Loss of pay & other allowances :- Full pay and allowances for the period from 20-9-1968 to 20-9-1970

4) Loss of Increments :- One increment for the period from 16-6-1969 to 15-6-1970 and subsequently by 2 to 4 increments for the period from 16.6.70 onwards due to the effect of :  
(a) Revised scale of pay 1973 and 1986 effective from 1.1.1973 and 1.1.1986  
(b) Loss of increments also for delayed promotion to Selection Grade Asstt. post for behind the date and period of promotion of my juniors

5) Loss of corresponding allowances including dearness allowance at different rates from time to time.

6) Loss of benefits of Revision of pay scales of 1973, 1986 and the benefits those are likely to be available with the announcement of Central XV Pay Commission.

*Accepted  
Ranjit Kr. Adhyapak*

7)

S.A.S. Examination 1968:-

I was a candidate for the S.A.S. Exam. 1968 but for my termination of services from 19-9-1968 till to the date of my reinstatement in service on 21-9-1970, I was debarred appearing in the SAS Exam.1968. I feel I would have been placed in better footing had I been allowed to sit in S.A.S. Exam,1968. I was granted earned leave by the sanctioning authority for the period from 16-9-1968 to 2-10-1968. The termination of service on 19.9.1968 resulted huge monetary loss with mental depression.

8

*Sachin. Adv.*

(B) Quantum of Monetary loss with facts and figures :

- 1) Pay not allowed from 19-9-1968 to 20-9-1970: Rs. 4000.00 (approximately) plus other allowances as admissible from time to time (say) Rs. 4,000/- (approx)
- 2) Difference of pay, DA and other allowances from 21-9-1970 onwards : Rs. 70,000.00 (approx.)
- 3) Difference of Cash equivalent of Leave Salary :- Rs. 5,000.00 (approx.)
- 4) Difference of DCRG :- Rs. 10,000.00 (approx.)
- 5) Difference of commutation of pension :- Rs. 9,000.00 (approx.)
- 6) Difference of Pension:- Over and above monthly pension is expected to be less by Rs. 200/- per month (excluding Dearness relief as admissible).

*General Adv.*

PAY STATEMENT

37

40

Basic pay (drawn)

Basic pay (due)  
(approx.)

Remarks

Date of joining as  
U.D.C. on 30.8.1963

30.8.1963	=	Rs. 130.00 p.m.	Rs. 130.00 p.m.	
30.8.1964	=	Rs. 135.00 p.m.	Rs. 135.00 p.m.	
16.6.1965	=	Rs. 150.00 p.m.	Rs. 150.00 p.m.	
16.6.1966	=	Rs. 155.00 p.m.	Rs. 155.00 p.m.	
16.6.1967	=	Rs. 160.00 p.m.	Rs. 160.00 p.m.	
16.6.1968	=	Rs. 168.00 p.m.	Rs. 168.00 p.m.	
19.6.1968	=	--	Rs. 168.00 p.m.	was on earned leave duly sanctioned by the Comptant Authority from 16.9.68 to 2.10.68 but my services were terminated on 19.9.68 till 20.9.1970. (Re-instated)
16.6.1969	=	--	Rs. 176.00 p.m.	
16.6.1970	=	--	Rs. 184.00 p.m.	
20.9.70	=	--	Rs. 184.00 p.m.	
21.9.1970	=	Rs. 168.00 p.m.	Rs. 184.00 p.m.	
16.6.1971	=	Rs. 168.00 p.m.	Rs. 192.00 p.m.	
18.6.1971	=	Rs. 176.00 p.m.	Rs. 192.00 p.m.	
20.12.1971	=	Rs. 192.00 p.m.	Rs. 208.00 p.m.	(Rev. Audit Exam.)
16.6.1972	=	Rs. 192.00 p.m.	Rs. 216.00 p.m.	
18.6.1972	=	Rs. 200.00 p.m.	Rs. 216.00 p.m.	
1.1.1973	=	Rs. 200.00 p.m.	Rs. 428.00 p.m.	(RoP, 1973)
16.6.1973	=	Rs. 200.00 p.m.	Rs. 440.00 p.m.	
18.6.1973	=	Rs. 208.00 p.m.	Rs. 440.00 p.m.	
1.6.1974	=	Rs. 428.00 p.m.	Rs. 452.00 p.m.	(Revised scale of 1973 given effect).
1.6.1975	=	Rs. 440.00 p.m.	Rs. 464.00 p.m.	
1.6.1976	=	Rs. 452.00 p.m.	Rs. 476.00 p.m.	(My Juniors were drawing Rs. 488/- at that time).
1.6.1977	=	Rs. 464.00 p.m.	Rs. 488.00 p.m.	
1.6.1978	=	Rs. 476.00 p.m.	Rs. 500.00 p.m.	
20.2.1979	=	Rs. 500.00 p.m.	Rs. 530.00 p.m.	(My juniors were promoted as S.C.A. before me).
1.2.1980	=	Rs. 515.00 p.m.	Rs. 545.00 p.m.	
1.2.1981	=	Rs. 530.00 p.m.	Rs. 560.00 p.m.	
1.2.1982	=	Rs. 545.00 p.m.	Rs. 580.00 p.m.	
1.2.1983	=	Rs. 560.00 p.m.	Rs. 600.00 p.m.	
1.2.1984	=	Rs. 580.00 p.m.	Rs. 620.00 p.m.	
1.2.1985	=	Rs. 600.00 p.m.	Rs. 640.00 p.m.	
1.1.1986	=	Rs. 1750.00 p.m.	Rs. 1900.00 p.m.	(Revision of Pay scale '86)
1.2.1986	=	Rs. 1800.00 p.m.	Rs. 1950.00 p.m.	
1.2.1987	=	Rs. 1850.00 p.m.	Rs. 2000.00 p.m.	
22.5.1987	=	Rs. 2000.00 p.m.	Rs. 2240.00 p.m.	(Supervisor Post).
1.5.1988	=	Rs. 2120.00 p.m.	Rs. 2300.00 p.m.	
1.5.1989	=	Rs. 2180.00 p.m.	Rs. 2360.00 p.m.	
1.5.1990	=	Rs. 2240.00 p.m.	Rs. 2420.00 p.m.	
1.5.1991	=	Rs. 2300.00 p.m.	Rs. 2480.00 p.m.	
1.5.1992	=	Rs. 2360.00 p.m.	Rs. 2540.00 p.m.	
1.5.1993	=	Rs. 2420.00 p.m.	Rs. 2600.00 p.m.	
1.5.1994	=	Rs. 2480.00 p.m.	Rs. 2675.00 p.m.	
1.5.1995	=	Rs. 2540.00 p.m.	Rs. 2750.00 p.m.	
1.5.1996	=	Rs. 2600.00 p.m.	Rs. 2825.00 p.m.	
1.5.1997	=			
to	=	Rs. 2675.00 p.m.	Rs. 2900.00 p.m.	
31.5.1997				

*L. Arora Ad V.*

To

The Accountant General,  
c/o the Accountant General (A&F),  
Assam, Meghalaya etc.  
Shillong.

Sub:- Prayer for allowing the period from 20.9.68 to 20.9.70 as  
on duty.

(Dated, Shillong the 26<sup>th</sup> May 1994)

Respected Sir,

I beg most humbly and respectfully bring to your kind notice the following facts with the earnest hope and fervant prayer <sup>that you</sup> ~~for~~ sympathetic appraisal thereof, you would be kind enough to review my case and to have compassion on a loyal and dedicated employee of yours.

1. That Sir, my services were terminated on 20.9.1968 on the basis of the concocted police report on my alleged participation in the Strike. Vide this office letter No. DAGA/89/68-69/373 dated 20.9.68.
2. The police could not substantiate their wrong charge against me before the Hon'ble Shillong Court and therefore, I was fully and wholly exonerated from all the Charges regarding my any sort of involvement in the said Strike ( on 19.9.68) as sought to be brought against me by the police.
3. I was subsequently re-instated with effect from 21.9.1970 treating the period of absence from 20.9.68 to 20.9.70 as diea-non.
4. That Sir, since my reinstatement, I made all frantic approach to the authority to review and consider my case in the light of my non-parti- cipation in the said Strike as I had no scope to be involved myself in the Strike. I may be permitted to submit here that I was on earned leave from 16.9.1968 to 2.10.1968 duly sanctioned by the then Accountant General for preparing myself for the S.A.S. Examination 1969, which could be verified from my service record.
5. That Sir, I have been rendering devoted service to my Department since my appointment with effect from 30.9.1963 and considering my useful service I have been promoted in the Cadre of Supervisor since May, 1967.
6. That Sir, I have become a Victim of Circumstances unjustly created by the police authorities implicating me in the 19th September 1968 Taken Strike and causing unbearable financial hardship due to 2years diea-non.

Accepted  
Sachin. Adv.

Contd.....2/-

42

7. That Sir, I am far advanced in years and age. The Order Wiping out the period from 28.9.68 to 26.9.70 from my service period will by implication as well as by actual application deprive me of a substantial amount of retiring benefits in addition to the pay and allowances for the said period with cumulative effect.

In the above premises, I look to the benign A.G. with absolute faith and confidence for favour of kindly reviewing my case at his end and resorting to me the benefit of the service for the said period from 28.9.68 to 26.9.70.

Thanking you,

Yours faithfully,

*Ranjit Kr. Adhyapak*

(RANJIT KR. ADHYAPAK)

Supervisor,  
ITA (M) Section.

*Forwarded Relv.*

Annexure

XIII

43

OFFICE OF THE ACCOUNTANT GENERAL (M) MEGHALAYA: SEC:  
SHILLONG-793 001.

No. Estt (M)/68-Strike/90-94/438 Dated: 30.5.96.

To,

Shri Ranjit Kumar Adhyapak,  
Supervisor/I.T.A. (M) Section,  
O/o The A.G. (A&S), Meghalaya, etc.,  
Shillong.

Subject: Prayer for allowing the period from 20.9.68 to 20.9.70 as on duty.

Sir,

With reference to your representation dated 26.5.94 on the subject mentioned above, I am to inform you that the Accountant General has been pleased to forward your case to the Head Quarter's office with necessary recommendation.

(Auth. copy) 1 orders dt. 27.5.94 at P/16  
of file No. Estt (M)/68-Strike/90-11

Yours faithfully,

Section Officer/Estt (M) Sect 7/94

Attested  
Governor. Adv.

(41)

Annexure - XIV

44

OFFICE OF THE ACCOUNTANT GENERAL (A&E) MEGHALAYA, ETC., ::  
SHILLONG-793001  
-0000-

No.Estt(M)/68-Strike/90-94/1511 . Dated Shg., the 22nd.August'94.

To  
Shri Ranjit Kumar Adhyapak,  
Supervisor,  
I.T.A., Meghalaya,  
Office of the A.G.(A&E), Meghalaya,  
Shillong.

Sub:- Prayer for allowing the period from 2-9-68  
to 20-9-70 as on duty.

Sir,

In continuation of this office letter No.Estt(M)/  
68-Strike/90-94/438 dated 30-5-94 on the subject mentioned above,  
I am to inform you that in reply to the D.O. letter No.AG(A&E)  
Assam/Misc/142 dated 27-5-94, the Headquarter's Office has since  
intimated this Office vide D.O. letter No.214 NGE-Disc/32-94  
dated 1-8-94 that, prayer for treating the period from 2-9-68 to  
20-9-70 as on duty, which was treated as ~~return~~ dies-non, could not  
be acceded to and their earlier stand <sup>and</sup> could not be reconsidered.

(Authority :- AG's Orders in the margin of the HQ's D.O.letter  
dated 1-8-94.

Yours faithfully,

*[Signature]*  
22/8/94  
Section Officer,  
Establishment (Megh).

*[Handwritten signature]*  
22/8/94

Attested  
*[Signature]*

REGISTERED

AG(A&E)/Assam/Misc./142

May 27, 1994

Dear Shri Rayalu,

I am sending herewith a representation addressed to me from Shri R.K.Adhyapak, Supervisor regarding treating the period from 2.9.68 to 20.9.70 as on duty which was treated as dies non vide Additional Comptroller & Auditor General's order dated 27.1.87 received under the HQrs. letter No.77N.II/21 87 dated 29.1.87 consequent upon his participation in the strike on 19.9.68.

When the Comptroller & Auditor General of India visited Shillong the local association has raised the issue before him and the Comptroller and Auditor General of India had asked me to look into the case.

I have gone into the case on the basis of the records available. During the 1968 strike Shri Adhyapak was arrested by the police on being on a strike and was suspended. He was reinstated on 21.9.70 and the period of absence from 20.9.68 to 20.9.70 was treated as dies non.

Shri Adhyapak had been pleading that he was wrongly implicated in the case. He represented that he was not on a strike on 19.9.68 as he was on leave. I have gone through the records and I have found that on 10.9.68 Shri R.K.Adhyapak had applied for Earned Leave w.e.f. 16.9.68 to 27.9.68 and his leave was sanctioned by the sanctioning authority. There is nothing on record to indicate that the leave so sanctioned was ever cancelled.

Keeping in view the fact that the officer was

Contd/-2-

Attested  
Revenue Adv.

sanctioned the Earned Leave as applied by him and the leave was not cancelled at any stage, the officer cannot be treated to be on strike on 19.9.68. On this technical ground I feel that the period of suspension should be treated as on duty and not dies non. Since the case has been seen and decided by HQrs., the case can now only be considered by the Deputy Comptroller and Auditor General and I therefore request you to put up the case for his kind consideration. There is no other case pending with us for the 1968 strike period.

Yours sincerely,  
*[Handwritten Signature]*  
 25/9/68

aShri N.R.Rayalu,  
 Pr. Director (Staff),  
 Office of the Comptroller &  
 Auditor General of India,  
 10, Bahadur Shah Zafar Marg,  
 Indraprastha Head Post Office,  
NEW DELHI : 110 002.

*Sarvesh Adh.*

(44)

Annexure - XVI  
97

OFFICE OF THE ACCOUNTANT GENERAL (A&E) MEGHALAYA ETC. SILDONG: ::

With reference to his representation dt. 28.3.96 on the subject of prayer for allowing the period from 20.9.68 to 20.9.70 as on duty, Sri Ranjit Kr. Adhyapak, Supervisor, is hereby informed that the said representation has since been forwarded to the Hqrs. office vide this office letter No. Estt.(M), 68-Strike/90-96/3244 dt. 8.4.96.

*Sd/-*

Establishment officer(M)

Memo No. Estt.-1(M)/68-Strike/90-96/11

*8.4.96*

Copy to Sri Ranjit Kr. Adhyapak, Supervisor, ITA(M) Section.

*[Signature]*  
Establishment officer(M)

*Attested  
Sarunol Sdc.*

(45)

Annexure - XVII

OFFICE OF THE ACCOUNTANT GENERAL (A&E), MEGHALAYA, ETC.,  
SHILLONG.

1/8

In continuation to this office memo no: Estt.(M)-1/68-Strike/90-96/11 dated 8.4.96, Shri Ranjit Kr. Adhyapak, Supervisor, is hereby informed that the HQ's office, in their letter no: 90-N.G.E(DISCIP)/20-96 dated 21.5.96, has intimated that the matter for treating the period from 20.9.68 to 20-9.70 as on duty, which was treated as dias-non after detailed deliberation, cannot be reconsidered.

Memo no: Estt.(M)-1/68-Strike/90-96/273

Copy forwarded for information to Shri Ranjit Kr. Adhyapak, Supervisor, I.T.A(M) section.

Establishment Officer(M)

Attested  
Laxman. Adh.

Filed in Court  
on 15-11-96.....  
Hon'ble  
Court Master  
15/11

907  
4 NOV 1996  
Central Administrative Tribunal  
Guwahati Bench

In the Central Administrative Tribunal,  
Guwahati Bench. Guwahati

Filed by:-  
A.K. Choudhury  
Addl. Central Govt  
Standing Counsel  
15.11.96

In the matter of :-

O.A.NO.169/96

Shri R. K. Adhyapak Applicant

Versus

Union of India & Others Respondents

And

In the matter of :-

Written Statement submitted by the  
respondents No. 1,2 and 3. Written  
statements.

The humble respondents submit their  
written statements as follows:-

1. That with regard to the statements made in paragraphs 1,2,3, and 4 of the application, the respondents submit that they have no comments to offer.
2. In reply to para 5, it is submitted that the OA is barred by limitation . His representation and appeal were duly considered and rejected in January 1987 and June, 1988. It has been held by the Hon'ble Supreme Court that repeated representations do not increase the limitations. Since the application has been filed after inordinate delay, it deserves to be dismissed on this ground alone.
3. That with regard to the statements made in paragraph 6.1 of the application, the respondents submit that the applicant was temporary

Cont.. 2

Service Copy  
Received by  
Adv. Adv.  
18/11/96

Government servant and his service was terminated as per service rules for his participation in the strike on 19.9.68 which was declared illegal by the Government under the essential Services Maintenance Ordinance of 1968. The applicant was arrested by the police and as such this deponent has got nothing to comment on the same.

4. That with regard to the statements made in paragraph 6.2 of the application, the respondents submit that the applicant applied earned leave for 12 days w.e.f. 16.9.68 to 27.9.68 on the ground to appear in S.A.S. Examination in November '68 which was duly sanctioned by the leave sanctioning authority as shown in Annexures 'A' and 'B'. However, as per entry made in the service book and P.C. of Shri Ranjit Kr. Adhyapak was terminated w.e.f. 20.9.68 for his participation in strike on 19.9.68. The period from 19.9.68 to 20.9.70 was treated as dies-non. His date of increment had been worked out as shown below.

Date of last increment	- 16.6.68
D.N.I. but for the period treated as dies-non	- 16.6.69
Add the period treated as dies-non 19.9.68 to 20.9.70	- Y    M    D 2    0    2
D.N.I.	Y    M    D 69   6   16 2    0    2
D.N.I. on	----- 71   6   18

5. That with regard to the statements made in para 6.3 and 6.4 of the application the reasons of which have been stated in para 2 and para 3 above. Hence, this deponent has got nothing to comment further on this.

6. That with regard to the statements made in para 6.5 and 6.6 of the application, on which a copy of the judgement and order of Hon'ble Guwahati High Court as mentioned in Annexure - III furnished by the applicant, refers.

7. That with regard to the statements made in para 6.7 of the application the reasons of which have been stated in para 3 above.

As regards, para 6.8 of the statements, a copy of the judgements of the Hon'ble High Court are also enclosed herewith as Annexures - 'C' & 'D'

8. That with regard to the statements made in para 6.9 of the application, the respondents submit that the applicant had submitted a representation as directed by the court of law and on receipt of the said representation the same was forwarded to the C & AG office for consideration. The competent authority had duly considered the representation and rejected the same on the ground as mentioned in Annexure -VIII furnished by the applicant.

9. That with regard to the statements made in para 6.10 of the application, the reason of which has already been stated in para 3 above.

As regards, para 6.11 of the statements the reason has already been stated in para 7 above, hence no further comments to offer.

10. That with regard to the statements made in para 6.12 of the application, the respondents submit that the applicant's appeal was duly considered and rejected ( As appended in Annexure - IX and X respectively furnished by the applicant). Hence, the respondents have no further comments to offer.

Further, with regard to the statements made in para 6.13 of the application, the respondents submit that they have no comments to offer.

11. That with regard to the statements made in paragraph 6.14 to 6.16 of the application, the respondents submit that his representation dated 26-5-94 was again forwarded to the C&AG office for consideration and the same was rejected as mentioned in Annexures XII to XVII furnished by the applicant. Hence, no comments to offer.
12. That with regard to the statements made in para 17 of the application, the respondents submit that they have no comments to offer.
13. That with regard to para 7 under "Details of Remedies Exhausted", the respondents submit that his representations were duly considered and rejected by the competent authority after due application of mind.
14. That with regard to para 8 under "Details of Remedies Exhausted" the respondents submit that they have no comments to offer.
15. That with regard to para 9(I) under "Relief Sought and Grounds", the respondents submit that the case had been rejected by the competent authority after due application of mind and as such the contention of the applicant is not tenable.
16. That with regard to para 9(II) under "Relief Sought and Grounds" the respondents submit that though as per record of the office, the official was on earned leave during the period of strike, that the applicant could not participate in the alleged strike, is not convincing as he was arrested by the police.
17. That with regard to statements made in sub-para(III) to (VII) under "Relief Sought and Grounds" of the application, the Respondents submit that his service was terminated under Rule 5(1) of the C.C.S. (TS) Rule, 1965. He was reinstated in service on 21-9-70 and the period of absence was treated as 'dies-non' by the competent Authority by invoking the provisions of Rule 5 (2)

ibid. That whole episode happened following the strike on 19-9-68 which was declared illegal by the Government.

18. That with regard to the statements made in para 10 (Prayer) of the application, the respondents pray that the reliefs claimed may not be granted and the OA may be dismissed

VERIFICATION

I R. Kharlukhi aged 57 son of  
(Late) L. Kharluker working as DAI (Adm)  
in the O/o AG (A & E) Khyabala Shillong  
do hereby verify that the statements contained in the above paragraphs are true and correct to the best of my knowledge, information and belief and I have not suppressed any material facts in connection with the above case. I am filing this reply statement for and on behalf of the respondents in the above OA as I am duly authorised for the same.

Dated this the 13 day of Nov 1996.

R. Kharlukhi  
(R. Kharlukhi) 13/11

DEPONENT

Dy. Accountant General (Admn)  
O/o the A.G. (A & E) Assmt, Meghalaya etc.  
Shillong.

Annexure - A

6

(5)

AC 135  
A

5

FORM S. R. 1.

(See Supplementary Rule 216.)

Form for Application for Leave.

NOTE: - Items 1 to 9 must be filled in by all applicants whether gazetted or non-gazetted. Item 12 applies only in the case of gazetted Officers.

- 1. Name of applicant . . . . . Ranjit Kumar Adhyapak
- 2. Leave Rules applicable . . . . . Liberalised leave Rules
- 3. Post held . . . . . Upper Division Clerk
- 4. Department or Office . . . . . A.G. Assam & Nagaland, Shillong
- 5. Pay . . . . . Rs 168/- P.M.
- 6. House-rent allowance, Conveyance allowance, or allowance drawn in the present post. . . . . as admissible under the rules
- 7. Nature and Period of leave applied for and date from which required . . . . . Earned leave for 12 days
- 8. Ground on which leave is applied for: . . . . . week 16-9-68 affixing the
- 9. Date of return from last leave, and the nature and period of that leave. . . . . period from 28-9-68 to 2-10-68
- 10. Undertake to refund the difference between the leave salary drawn during leave on average pay/commuted leave and that admissible during leave on half average pay/half pay leave which would not have been admissible had the provision to F. R. 81 (b) (ii)/rule 11 (c) (iii) of the Revised Leave Rules, 1933 not been applied in the event of my retirement from service at the end or during the currency of the leave. . . . . to appear in the S.A.S Exam in Nov '68

Date..... 10-9-68

Signature of applicant.  
Ranjit Kumar Adhyapak  
U. D. G. A 2 Sec

11. Remarks and/or recommendation of the controlling officer :

Attached  
PAC  
10/9/68  
10/9/68

Date.....

Signature.  
Designation.

12. Report of the Audit officer :

S/ EOM I  
Please report on the admissibility of leave applied for by Smt. R.K. Adhyapak, U.D.

E. L. for 12 days from 16-9-68 is due and admissible. But in leave he will continue to officiate as usual

Date..... 10/9/68

Signature. 10/9/68  
Designation. E.C. 10/9/68

[P.T.O.]

13. Statement of leave granted to applicant previous to this application :—

5

Name of leave.	In current year.	During past year.	Total.
Privilege/on average pay/Earned on average pay on M. C./Commuted on half average pay/Half pay			
Not-due on quarter average pay .			
Extraordinary . . . . .			
Total	<hr/>		
	<hr/>		

14. Certified that  $\frac{\text{Leave on average pay}}{\text{Earned leave}}$  for \_\_\_\_\_ months and \_\_\_\_\_ days from  
 19 \_\_\_\_\_ to \_\_\_\_\_, 19 \_\_\_\_\_ is admissible under  
 of the \_\_\_\_\_

Date

Signature.

Designation.

15. \*Order of the sanctioning authority :

Date

Signature.

Designation.

\*If the applicant is drawing any compensatory allowance, the sanctioning authority should state whether on the expiry of leave he is likely to return to the same post or to a other post carrying a similar allowance (No. 855, dated the 12th October 1961.)

Annexure  
B

The enclosed application ~~from~~ Shri Rajat Kumar  
Adhyapak applying for Earned leave for 12 days  
w.e.f 16.9. '18 may kindly be sanctioned  
to per AG's order, extract of which was  
furnished by ECHZ Section vide their circular  
placed below, Shri Adhyapak is eligible

Ext. of Leave / 349

for Ext. E.L. for the period to prepare  
himself for the ensuing S.A.S. examination

Sanctioned  
B.P. Chatterjee  
19/9

Shri Adhyapak may <sup>therefore</sup> kindly be granted E.L.  
for 12 days w.e.f 16.9. '18 to 27.9. '18 with  
permission to avail Pujya Holidays from  
28.9. '18 to 2.10. '18

checked  
B.P. Chatterjee  
11/9

It may also kindly be certified that  
but for the leave he would have continued  
to officiate as usual and that there  
is every likelihood of his returning to  
the same post from which he is on  
leave.

Limited for copy.

C.P. Chatterjee  
10/9

B.P. Chatterjee  
AO (G-2) 11/9

Handwritten notes and stamps on the left margin, including a large '11' and some illegible scribbles.

lib  
16/9/18  
C.P. Chatterjee  
9/18

Forwarded to the S/ECHZ  
for necessary action.

C.P. Chatterjee  
10/9

Annexure - 'e'

89 - 5 (57)

THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA; MANIPUR & TRIPURA)  
SHILLONG BENCH:

No. C. Civil Rule 226/74/

Dt. Shillong, the \_\_\_ July, 1980.

From :- Deputy Registrar,  
Gauhati High Court,  
Shillong Bench.

To Mr. M. A. Laskar,  
Central Govt. Standing Counsel,  
Gauhati High Court, Gauhati.

Sub :- Judgment in Civil Rule Nos. 226, 227 and 228/74  
and records relating to Civil Rule No. 226/74.

Sir,

I have the honour to forward herewith a copy of Judgment dt. 9.7.80 of the above Civil Rules along with the case records in Civil Rule No. 226/74 furnished by you earlier for your information and necessary action.

Yours faithfully,

*[Signature]*

Deputy Registrar.

Memo No. C. Rule 226/74/296

Dt. Shillong, the 16<sup>th</sup> July, 1980.

Copy with a copy of the Judgment to the Accountant General, Assam, Nagaland, Meghalaya, etc., Shillong.

*[Signature]*

DEPUTY REGISTRAR.

for all our... but this is... decided not to...

IN THE GAUHATI HIGH COURT

(The High Court of Assam Meghalaya Manipur Tripura)

Civil Rule Nos. 226, 227 and 229 of 1974.

Ashutosh Chakravarty ... Petitioner in Civil Rule No. 227/74  
Ranjit Kumar Adhyapak ... Petitioner in Civil Rule No. 226/74  
Bijoy Bahari Bhattacharjee... Petitioner in Civil Rule No. 229/74

- versus -

Senior Deputy Accountant General  
Shillong and others ..... Respondents.

P R E S E N T :

The Hon'ble Mr Justice B.L.Hansaria.

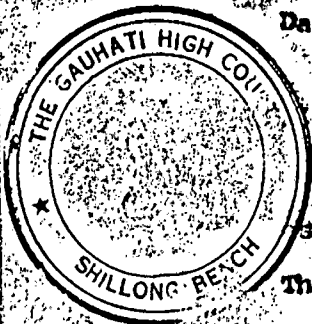
For the petitioners - Mr N.M.Lahiri, Advocate General, Meghalaya  
Mr S.K.Hamchothuri, Advocate

For the respondents - Mr M.A.Laskar, Central Government  
Standing Counsel.

Date of hearing and judgment - 9.7.80.

J U D G M E N T & O R D E R :

The 3 (three) petitioners were the employees in the establishment of the Accountant General, Assam etc., Shillong. They were temporary employees at the relevant time. Their services were terminated due to their participation in the strike observed in the month of September, 1969. The strike had been observed by the Central Government employees all over the country on 19.9.69. Subsequently, the Government took a policy decision to reinstate such employees and the petitioners were also put back in service on 12.9.70. But it was ordered, while reinstating them, that the period of their absence will be treated as dies non and no pay and allowances will be allowed to them for that period. Representations were made to the authority to grant them full pay and allowances and to treat them on duty for all purposes but this was rejected stating that it was decided not to re-open the case. Feeling aggrieved, the petitioners



87 10 55

have approached this Court in its writ jurisdiction.

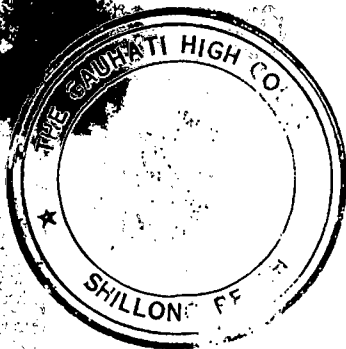
2. Though it has been submitted on behalf of the petitioners that the order of termination should be regarded as one of dismissal and the same having been passed without giving reasonable opportunity to the petitioners is bad in the eye of law, I have not felt inclined to enter into this aspect of the case because for the purpose at hand, it is not necessary. The next submission is that, in any case, the petitioners were entitled to reasonable opportunity of being heard before a decision was taken that their period of absence will be treated as dis-ten and they would not be given any pay and allowances for the period of their absence. Reliance has been placed on the decision of the Supreme Court in Gopal Krishna Vs State of Madhya Pradesh, AIR 1969 SC 240, wherein the Supreme Court had dealt with the provisions of Fundamental Rule 54 as it then existed. For the purpose of this case, it would be amiss to quote Fundamental Rule 54, as noted in para 3 of the judgment.

\* (1) When a Government servant who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order-

a). Regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and

(b). Whether or not the said period shall be treated as a period spent on duty;

(2). Where the authority mentioned in sub-rule (1) is of opinion, that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be.



26  
60/11  
K.S.

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent allowances are admissible. (sic)

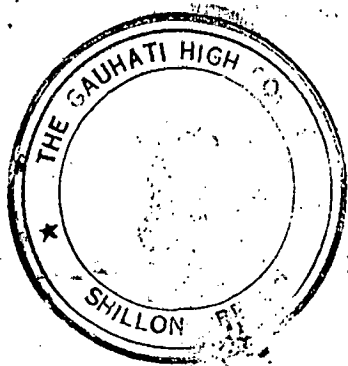
Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under Rule 53.

(4) In a case falling under clause (2), the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5). In a case falling under clause (3), the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that if the Government servant so desired, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant. "



3. The Supreme Court held that an order under this Rule is in a sense a consequential order but the fact that it is a consequential order does not determine the question whether the Government servant has to be given an opportunity to show cause or not. It was pointed out that an order passed under this Rule obviously affects the Government servant adversely if it is one under Clauses 2, 3 and 5. The considerations which have to be borne in mind while passing orders these Clauses were held to be objective rather than subjective. It was stated that from the very nature of the function implied the duty to act judicially and so even an opportunity to show cause against the action proposed was liable to be

12

85-52

ground that it was one in breach of the principles of natural justice.

4. Shri Laskar has strenuously contended that the principles applicable to orders passed under F.R.54 cannot be invoked in the case of temporary Government servants whose rights were described as very precarious. The learned Standing Counsel submits that when a temporary Government servant is not entitled to a notice when his service is terminated under Rule 5(1) of the Central Civil Services ( Temporary Service ) Rules, 1955, no notice would be necessary when a consequential order is passed in terms of Rule 5(2) (b) of the aforesaid Rules. It is <sup>further</sup> ~~submitted~~ <sup>The point</sup> that as a temporary Government servant has no right to ~~leave~~ he has not right to be heard also while order of the present nature is passed on ~~the~~ his reinstatement.

5. To appreciate this submission of Shri Laskar, it would be useful to note Rule 5(2) (b) :-

" 5. Termination of temporary service - (1) (a) \*\*\*\*

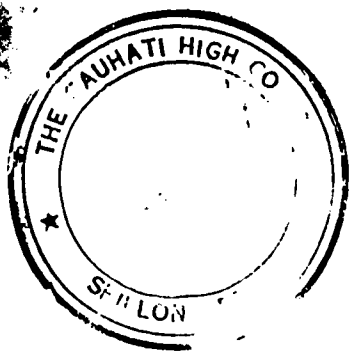
(b) \*\*\* \*\*

(2) (a) \*\*\* \*\*

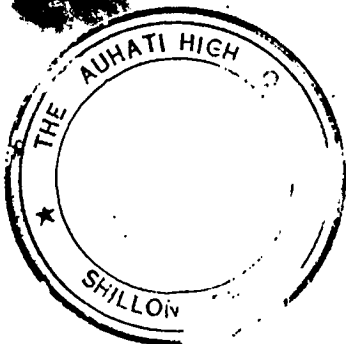
(b). Where a Government servant is reinstated in service under sub-rule (2) the order of reinstatement shall specify:-

(i) the amount of proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes."



A reading of the above sub-rule shows that it has conferred a duty on the appointing authority to specify while reinstating a Government servant as to whether he would be given any proportion of pay and allowances and whether the period of absence shall be treated as a period spent on duty for any specified purpose or purposes. Clauses (3) and (5) of F.R. 54 which were noted by the Supreme Court in Gopal Krishna (supra) had also dealt with such a <sup>matters</sup> situation. The language of the two provisions may be different but, according to me, the effect is the same. Orders under both the provisions do affect a Government servant adversely if full benefit is not to be given. There can also be no two opinions, that the order to be passed under Rule 5(2)(b) has to be based on objective considerations. The learned Advocate General, Meghalaya, who has appeared for the petitioners, also draws my attention to Annexure-9, which is an office Memorandum of the Department of Personnel, Government of India, dated 10th October, 1972 stating that the requests for the grant of pay and allowances of the temporary employees whose services had been terminated as a consequence of their arrest/prosecution in connection with their participation in the strike of September, 1968, were to be considered on merits. To enable the authorities to dispose of the cases on merits they must have full facts before them which has to include the defence, if any, of the employee relating to his participation in the strike. The word "consider" in the aforesaid Memo itself implies objective determination, which would be <sup>really</sup> possible when the employee is given a chance to satisfy the authorities regarding the order to be passed on the two counts by placing before them full facts and circumstances, including those which may induce the authorities to grant him full pay and allowances etc.

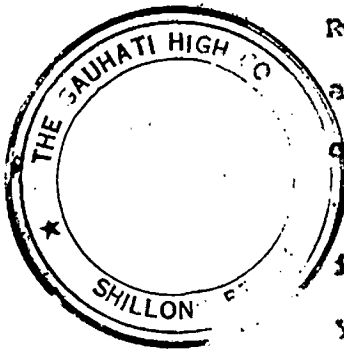


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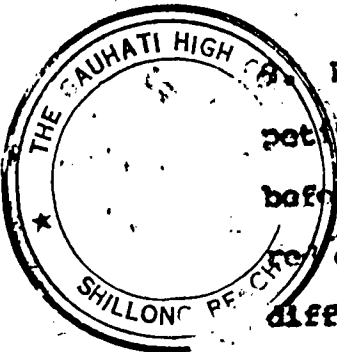
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6. As to the petitioners being temporary employees with no right to post and their tenure being of very precarious nature about which Mr Inskar has submitted, it may first be stated that after the decision of the Supreme Court in Belliapua (AIR 1979 SC 429), the conception that temporary employees could be dealt with arbitrarily or their service condition could be adversely affected at the pleasure of the employer without rhyme or reason, must be taken to have passed into the fossils of time. Secondly, the relevant question, according to me, is not whether the petitioners were temporary employees or permanent incumbents. Even in the case of temporary employees, Article 311 can not attract, if an order of termination is sought to be passed as a measure of punishment. The real question is whether on reinstatement, the temporary employees as well have been given a right or not, to receive full pay and allowances and to be treated on duty for all purposes, and if so, whether any adverse order relating to <sup>matters</sup> ~~the~~ it could be passed without hearing the employees. So far as this aspect is concerned, I do not find any real difference between the rights conferred to the permanent and temporary employees. Though the language of two provisions ( P.P. 54 and Rule 5(2) (b) of the Temporary Service Rules) is different, and it has to be, as in case of temporary employees question of their dismissal etc. under the Temporary Service Rules would not arise, but it cannot be denied that adverse orders in both cases will affect otherwise similarly situated employees of the two categories with equal force. Then both the permanent and temporary employees have been clothed with the right to receive even full pay and allowance, if so ordered, which order, as already stated, has to be passed on objective consideration for which hearing of the employees is a must, according to me.



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7. Had any post decisional hearing been given (. I am not  
 beunderstood to say that the case of the present nature is  
 one where post-decisional hearing is permissible ) in the  
 sense that representations filed by the employees were consi-  
 dered on merits, <sup>the</sup> aspect relating to lack of hearing before  
 passing of the order would have <sup>perhaps</sup> lost much of its force. But  
 in the present case after assuring that the matter was under  
 consideration or receiving attention ( Annexures 7 and 10 to  
 the petition in Civil Rule 226/74) it was informed by Annexure-  
 11 that " it has been decided not to reopen the case." So,  
 the representations were not considered on their merits in  
 terms of the office Memorandum at Annexure-9. ( See para 21  
 of ~~Divisional Personnel Officer Vs. T.R. Chalapuri, AIR 1975~~  
 SC 2216).



Keeping in view all the above, I hold that though the  
 petitioners were temporary employees, on their reinstatement  
 before passing any order in terms of Rule 5(2) (b) it was requi-  
 red of the appointing authority to hear them or, to put it  
 differently, to associate them before coming to a conclusion  
 as to whether any proportion of pay and allowances were to  
 be paid to them or not, or whether the ~~the~~ period of absence  
 was to be treated as period spent on duty. This has, admit-  
 tedly, not been done. Nor have the subsequent representations  
 been disposed of on merits. Therefore, that part of the rein-  
 statement order which has stated that the period of absence  
 will be treated as dis-non and no pay and allowances will  
 be allowed to the petitioners for their period of absence  
 is quashed; and the respondents are directed to dispose of  
 this matter on merits after taking into consideration all the  
 facts and circumstances peculiar to the individual cases of

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these petitioners who would be given further opportunity of filing such representations in this regard which they may consider appropriate.

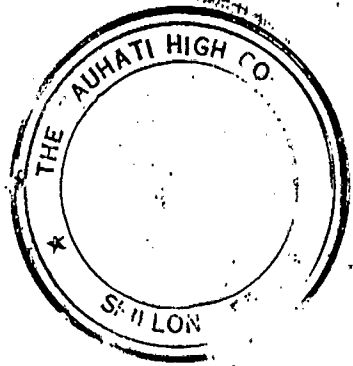
B. The petitions stand allowed as aforesaid.

Certified to be true copy.

*[Signature]*  
Superintendent  
GAUHATI HIGH COURT  
SHILLONG BENCH.

sd/-  
B. L. Hantaria  
Judge.

Sinh  
10.7.80.



*Attested*  
*[Signature]*

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Form No. D4(a)

Annexure - D

**THE GAUHATI HIGH COURT**

(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR AND TRIPURA)

Civil Writ Jurisdiction

The Hon'ble Mr. Justice **K. N. Saikia**

and

The Hon'ble Mr. Justice **T. C. Das**

Civil Rules/Revision No. **W.A. 23, 24 & 25/80** of 19

Issued by this Court,

In the matter of application under third proviso to Rule 2 chapter V.A. of the High Court Rules against the Judgment of the learned single Judge and in the latter Judgment and order dated 9.7.80 passed by Hon'ble Mr. Justice B. L. Hansari sitting singly at Shillong Bench in Civil Rule No. 826/74 Section 25 of the Provincial Small Cause Courts Act, 1887 allowing the writ petition.

Appeal from Decree/Order No. of 19

and

In the matter of

The Union of India & Ors. - in W.A. 23/80  
The Union of India & Ors. - in W.A. 24/80  
The Union of India & Ors. - in W.A. 25/80

Appellant -  
Petitioners

Versus

Bijoy Behari Battacharjee in W.A. 23/80  
Ashutosh Chakravarty in W.A. 24/80  
Ranjit Kumar Adhyapak in W.A. 25/80

Respondents  
Opposite-Party

order 14.5.84.  
copy of Judgment dated 22.5.84 passed by the Hon'ble  
Court is enclosed herewith).  
XXXXXXXXXXXXXXXXXXXX

67  
Memo. No. 5414-15 RM dated. 18.6.84

Copy forwarded for information and necessary action to the:-

- 2) Senior Deputy Accountant General, (Administration) Assam at Shillong
- 3) Accountant General, Assam, Meghalaya etc. at Shillong.

Adm I  
M. P. M. P. M. P.  
h. w. p. / by

By order

*[Signature]*  
Asstt. Registrar(A)

*[Signature]*  
18.6.84

~~KKB~~ DC  
20/6/84

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IN THE GAUHATI HIGH COURT

( THE HIGH COURT OF ASSAM ; NAGALAND ; MEGHALAYA ;  
MANIPUR & TRIPURA )

WRIT APPEAL NO. 25 OF 1980

( From judgment and order dated 9.7.80 passed by Hon'ble  
Mr. Justice B.L. Hansaria in Civil Rule No. 226 of 1974)

The Union of India & others ..... Appellants

- Versus -

Ranjit Kumar Adhyapak ... .. Respondent

P R E S E N T

THE HON'BLE MR. JUSTICE K. ~~...~~ N. SAIKIA.

THE HON'BLE MR. JUSTICE T.C. DAS

For the Appellants :: Mr. S. Ali,  
Standing Counsel for the Central  
Govt.

For the Respondent :: Mr. N.M. Lahiri,  
Mr. S.K. Homchoudhury, Advocates.

Date of hearing :: 2.5.84

Date of judgment  
and order :: 14.5.84

JUDGMENT AND ORDER

Das, J -

This Writ Appeal can be disposed of by a short  
judgment on a simple point as regards the applicability of  
provision of Fundamental Rule 54 read with Rule 5(2) (b) of  
Temporary Service Rules.

2. Heard Mr. S. Ali, learned Standing Counsel for  
the Central Government and Mr. N.M. Lahiri, learned Advocate  
General, Meghalaya representing the respondent. This Writ  
Appeal stems from a common judgment of the learned Single

Judge....

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Judge of this Court rendered in Civil Rule Nos. 226, 227 and 228 of 1974. In nutshell the facts may be stated hereunder :

That the respondent herein was the writ petitioner in Civil Rule No. 226 of 1974 who was an employee in the establishment of the Accountant General, Assam, Shillong. He was a temporary employee at the relevant time and his service was terminated due to his participation in the strike in the month of September, 1968 which was observed by all Central Government employees all over the country on 19.9.68. Subsequently a policy was adopted by the Central Government to reinstate such employees and the respondent was also put back in service on 12.9.70. While reinstating the respondent it was ordered that the period of his absence would be treated as dies-non and he shall not be paid any pay and allowances for that period. The respondent made a prayer to the authority with a request that he should be treated as on duty for all the purposes during that period but his prayer was turned down by the authority. Being aggrieved, the respondent approached this Court with the writ application. A ~~response~~ return was filed by the present appellant (respondent in the said writ petition) and denied the averments made in the Writ petition with further assertion that the petitioner was not entitled to claim any pay and allowances for the said period namely from 19.9.68 to 12.9.70. The matter was contested before the learned Single Judge with allegations and counter allegations in support of the respective stands taken by the parties. The learned single Judge on hearing the arguments and the rival contentions disposed of the Writ application along with two others namely, Civil Rule 227 of 1974 and Civil Rule 228 of 1974

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by a common judgment rendered on 9.7.80. Being aggrieved, the respondents <sup>of</sup> in the said Writ application have preferred this Writ appeal and have challenged the said judgment.

3. On hearing the learned counsel of both the parties, we conclude that the dispute did not finally end with the impugned judgment as because the learned Single Judge of this Court directed the respondents (appellants herein) to dispose of the matter as regards the representations made by the writ petitioners on merit after taking into consideration all the facts and circumstances peculiar to the individual cases with a direction to give further opportunity of filing any representation in this regard. Therefore, it appears that the matter has been kept open for an appropriate decision by the authority concerned of the appellants herein. While disposing of the Writ application the learned Single Judge observed :

".....The real question is whether on reinstatement, the temporary employees as well have been given a right or not, to receive full pay and allowances and to be treated on duty for all purposes, and if so, whether any adverse order relating to these matters could be passed without hearing the employees. So far as this aspect is concerned, I do not find any real difference between the rights conferred to the permanent and temporary employees. Though the language of two provisions (F.R.)54 and Rule 5(2) (b) of the Temporary Service Rules is different, and it has to be as in case of temporary employees question of their dismissal etc. under the temporary service Rules would not arise, but it cannot be denied that adverse orders in both cases will affect otherwise similarly situated employees of the two categories with equal force. ...."

"8. Keeping in view all the above, I hold that though the petitioners were temporary employees on their reinstatement before passing any order in terms of Rule 5(2) (b) it was required of the appointing authority to hear them or, to put it differently, to associate them before coming to a conclusion as to whether any proportion...."

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proportion of pay and allowances were to be paid to them or not, or whether the period of absence was to be treated as period spent on duty...."

".... Therefore, that part of the reinstatement order which has stated that the period of absence will be treated as dies non and no pay and allowances will be allowed to the petitioners for their period of absence is quashed; and the respondents are directed to dispose of this matter on merits after taking into consideration all the facts and circumstances peculiar to the individual cases of these petitioners who would be given further opportunity of filing such representations in this regard which they may consider appropriate."

4. On perusal of the judgment of the learned Single Judge, we feel that the direction made has not caused any prejudice whatsoever to either of the parties. The authority of the appellants have been given full opportunity to consider all aspects of the matter as they may consider appropriate.

5. Mr. S. Ali, learned Standing Counsel for the Central Government has fairly agreed that the authority concerned of the appellants have been given liberty to decide the dispute as they consider appropriate. If that be the position, we do not feel that any grievances can be raised in this Writ Appeal. While the learned Single Judge <sup>has given</sup> a direction to dispose of the matter on merits after taking into consideration all the facts and circumstances of each individual case, the question of any apprehension limiting the power of the authority concerned to consider the matter as they think appropriate cannot arise. The learned Advocate General who represents the respondents herein has submitted that when the liberty has been granted to the authority concerned by direction of the learned Single Judge, the entire matter has been kept open and the matter may be disposed of at that end considering the representation

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representation of the respondent. Therefore, there is no merit in this Writ Appeal. The contentions raised by the learned ~~Singlxzmmx~~ Advocate General is very much meaningful and has sufficient force. We, therefore, hold that as the dispute has been remanded back for disposal of the matter by the authority concerned of the appellants as directed in the judgment rendered by the learned Single Judge, we do not feel that that impugned judgment is not justified. We are of the opinion that there is nothing to interfere with the impugned judgment and as such we hold that the appeal has no merit and is liable to be dismissed.

In the result the appeal is dismissed. Out on the facts and circumstances of the case we leave the parties to bear their own cost in this appeal.

I agree  
 sd/ K. N. Sankha  
 JUDGE

sd/ T. C. Das  
 JUDGE

*Attected*  
*AK Chundler*  
 Addl. Central Govt  
 Standing Council

TRIPUR  
 K. N. Sankha  
 15/3/18

*Sd/-*  
 18.6.54