

- 22(111) Revocation of suspension order in respect of
Dr. Ashish Kumar Das, Lecturer, Deptt. of Maths.,
NEHU, Shillong - Ratification thereon.
-

Dr. Ashish Kumar Das, Lecturer, Deptt. of Mathematics, NEHU, Shillong was placed under suspension with effect from 27.12.98 vide ANNEXURE-I and the same was ratified by the 100th Executive Council of the University for remaining in police custody in connection with a complaint filed by his wife.

Dr. A.K. Das submitted an appeal through the Head of the Department vide ANNEXURE-II for revocation of suspension order as the alleged offence under Section 498(A) I.P.C. which relates to his married life is neither directly nor indirectly related to the University affairs.

The matter was referred to the (a) Legal Adviser & (b) Standing Counsel of the University for legal opinion, where they have conveyed the considered opinions vide ANNEXURE-III & IV informing the University that there is no legal impediment for revoking the order of suspension and reinstating Dr. Das in service.

Accordingly, the Vice-Chancellor, NEHU, in exercise of the powers conferred under Statute 27(i) of the NEHU Act, 1973 revoked the orders of suspension of Dr. A.K. Das vide ANNEXURE-V subject to ratification by the Executive Council and without any prejudice to the criminal case pending against him in the Court of Chief Judicial Magistrate, Jalpaiguri.

The matter is reported to the E.C. for its ratification.

No. F. 19-307/Estt. II/93-233

...

(COPY)

ANNEXURE-I

F.19-307/Estt-II/93/-397

Dated the 22.2.99

ORDER

In pursuance to the Super Automex Retran Request Number 732 dated 6.1.99 report received from the O.C. Bhaktinagar P.S. Dist. Jalpaiguri, West Bengal, and as reported by his wife vide letter dated 11.1.1999 with the News Clipping from the Uttar Bango Sanbad dated 28.12.98 in connection with the arrest of Shri A.K. Das, Lecturer Department of Mathematics, NEHU, Shillong, on 27.12.98 under case No. 241/98 dated 25.12.98, under Section 498(A) I.P.C. the Vice-Chancellor in exercise of his powers conferred under Statute 27(i) of NEHU Act 1973, and subject to ratification of the Executive Council through this Order places Shri A.K. Das, Lecturer, Department of Mathematics under suspension with effect from 27.12.98.

Copy for information to :

Registrar

1. The Finance Officer, NEHU, Shillong.
2. The O.C. Bhaktinagar P.S. Dist. Jalpaiguri, W.B.
3. The Head, Deptt. of Mathematics, NEHU, Shillong.
4. The P.S. to the V.C., NEHU, Shillong.
5. Shri A.K. Das, Lecturer, Deptt. of Maths, NEHU :- P.O. Barapani, Qr. No. 18B/IV B, Meghalaya-793103.
6. The A.R. Finance, NEHU, Shillong.
7. The personal file.

Sd/-

Registrar

To

The Vice-Chancellor,
North-Eastern Hill University
Shillong-22, Meghalaya.

Date: 11.12.2000

Place: Shillong.

(Through the Head, Deptt. of Mathematics, NEHU, Shillong)

Subject: Appeal for revoking the order of my suspension.

Honourable Sir,

With your kind permission I would like to inform you that following a complaint lodged by my wife to the Bhaktinagar P.S., Jalpaiguri, West Bengal, I was taken in custody on 27.12.1998 u/s 498(A) of I.P.C. and then released on bail on 16.2.1999. As a consequence I was placed under suspension with effect from 27.12.1998, through the order No.F.19-307/Estt-II/93-397 dated 22.2.1999. Since then almost two years have passed but the case is still pending in the court of Chief Judicial Magistrate, Jalpaiguri.

So long I was waiting eagerly for the finalisation of the case and was very much hopeful for an early settlement of the case because the charge-sheet was submitted by the police to the court in March, 1999. But till now there is no sign of getting the decision of the court even in the near future.

Sir, since my suspension I am receiving a subsistence allowance which is about half of my salary and at present I have gone almost bankrupt because of excessive expenditure towards contesting the above case and also because of the fact that I have been asked by the court to pay a monthly maintenance of Rs.1600/- to my wife and hence Rs.80/- towards M.O. commission.

It may be mentioned here that the case u/s 498(A) against me is neither directly nor indirectly related to the University affairs. However, due to suspension, I am also suffering an irreparable academic loss for not being able to take part in various academic activities of my department including my research work.

Therefore Sir, I humbly request you to kindly revoke the order of my suspension, possibly under the provisions of Rule 10(5) (c) of CCS(CCA) note 2, para 17, page 25, Book-1 where documentary and oral evidence has already been collected and the risk of tampering with evidence (documentary or oral) by the official no longer exists, the cancellation of the suspension order should be considered by the competent authority.

Note 1, para 22, page 26, Book 1: Suspension should not be continued beyond the minimum period for which it is essentially required. If the finalisation of the court case or departmental proceedings is likely to be delayed, the feasibility of revoking the orders of suspension and transferring the official to any other post or office, if necessary, should be considered.

Thanking you in anticipation.

Yours faithfully

Sd/-

(Ashish Kr. Das)

Lecturer, Deptts. of Maths. NEHU.

Due to lack of sufficient number of teachers in the Maths. Dept., services of Dr. A.K. Das is highly required. He is under suspension for last two years due to technical reasons. The University has no complaint against him. So, I strongly recommend his case for revocation of suspension. Other faculty members of Maths. Deptt. also have the same opinion.

Sd/-

Head, Deptt. of Maths, NEHU

Seal

(COPY)
NEHU NOTES

Kindly find the letter dated 11.12.2000 from Shri Ashish Kumar Das, Lecturer Department of Mathematics of the University with the request to advise the University whether his suspension can be revoked as prayed for.

Sd/-

D.R.(Legal Cell)
07.02.2001.

Shri S.R.Sen,
Legal Adviser of the
University.

After perusing the enclosed documents, and related provisions of law and prescribed Rules, Shri S.R.Sen, Sr. Advocate, University's Legal Adviser is of the opinion:

That Shri Ashish Kumar Das, Lecturer, Deptt. of Maths. was placed under suspension as far back as in 1998, for remaining in police custody in connection with a complaint filed by his wife for alleged offence under Section 493(A) I.P.C. which relates to his married life and has got nothing to do with his service under the University. From the available records it appears that the complaint case filed against Shri Ashish Kr. Das is still pending in the Court of Chief Judicial Magistrate, Jalpaiguri, and there is no certainty when the said proceedings will be over.

From the note of the Head of the Deptt. of Maths. as made on the body of the appeal petition of Shri Ashish Kr. Das, it appears that the service of Shri Das is highly required by the University and there is no complaint against him by the University.

Under the above circumstances, as provided under the Rules, the authority concerned may think of considering for modifying or revoking the suspension order of Shri Ashish Kr. Das to avoid unnecessary hardship to him. As the Rules also provides that suspending authority should always ensure that the period of suspension of an official is reduced to the barest minimum. Besides, in the case of Shri Das, there is no risk and likelihood of any tampering of any evidence in connection with the case filed against him.

Considering these factors, University may ~~xxxxxx~~ consider revoking of suspension order of Shri Ashish Kr. Das.

Sd/- 19.2.01

(Ms. P.D. Bujarbaruah)

Advocate

Under instruction of Shri S.R.Sen,
Senior Advocate

From the circumstances of the case it is seen that Shri Ashish Kr. Das was placed under suspension as he was under police custody for a period exceeding 48 hours and/or a case against him was pending in the Court of Chief Judicial Magistrate, Jalpaiguri. Hence, presumably the order of suspension was placed in view of the prescribed provisions of Rule 10 of the CGA.

Contd....

V.M.Thomas, Advocate
Gauhati High Court
C/o Mr.A.K.Phukan,
Senior Advocate.

C/302, Nabarun Apartments
S.K.Baruah Road,
Rukmininagar
P.O.Assam Sachivalaya
Guwahati-781006
Ph:268908(Res)

To
Mrs. B.Bareh,
Deputy Registrar(Estt-II)
NEHU, Shillong-793022.

28.3.2001

Sub: Legal advice on the re-instatement of Shri Ashish Kr.
Das, Lecturer (under suspension), Deptt. of Maths, NEHU.

Ref: Your letter No.F.19-307/Estt-II/93/3312 dt.15th March, 01.

Dear Madam,

My senior has perused the papers you had enclosed with your above-mentioned letter, concerning the suspension of Shri Ashish Kr. Das, Lecturer Mathematics, NEHU and the question of his re-instatement. He has instructed me to convey to you his considered opinion in this regard as follows:

Mr.Ashish Kr. Das was placed under suspension by order of the Vice-Chancellor in exercise of the power conferred under Statute 27(1) of the NEHU Statutes, with effect from 27.12.98 and the action was ratified by the Executive Council. Now the question is whether the suspension can be revoked and the person concerned can be reinstated, while the criminal proceeding against him is still pending?

Statute no.27(i) of the NEHU Statutes provides as follows:

"Where there is an allegation of misconduct against a teacher, or a member of the academic staff, the Vice-Chancellor may, if he thinks fit, by an order in writing place the teacher under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made: Provided that the Executive Council may, if it is of warrant the suspension of the teacher or a member of the academic staff, revoke such order."

Statute No.27(1) speaks of suspension in cases of allegations of misconduct, whereas Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, provides that a Govt. Servant may be placed under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial (Rule 10 (i) (b)), and that a Govt. servant shall be deemed to have been placed under suspension, by an order of appointing authority, with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours (Rule 10 (2)(b)).

From the circumstances of the case it is seen that Shri Ashish Kr. Das was placed under suspension as he was under police/jail custody for a period exceeding 48 hours and/or a case against him in respect of a criminal offence is under trial in the court of Chief Judicial Magistrate, Jalpaiguri. Hence presumably the order of suspension was passed in view of the aforesaid provisions of Rule 10 of the CCS(CCA) Rules.

Contd.....2/-

However, Rule 10 of the CCS(CCA) Rules further provides in sub-rule (5)(c) that:

"An order of suspension made or deemed to have been made under this Rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate".

Hence it is within the discretion of the authority (the Vice-Chancellor) to modify or revoke the order of suspension, subject to ratification by the Executive Council if so required. Moreover Statute 27(i) of the NEHU Statutes itself empowers the EC to revoke the suspension order if ~~xx~~ it is of opinion that the circumstances of the case does not warrant the suspension of the teacher. Hence in our opinion even now the Executive Council also may exercise that power and revoke the suspension order in question.

It is also seen that Shri Ashish Kr.Das is facing trial for an offence which is in no way connected with his services as lecturer in the University. As such, reinstating him in service would not cause any hindrance in regard to the criminal proceedings.

Another aspect of the matter is that the University has been paying subsistence allowance to Shri Ashish Kr. Das for the past over two years without getting any service from him. The University requires the services of a Mathematics Lecturer, but appointing another person temporarily would involve further financial burden. Hence considering also the academic as well as financial interests of the University the suspension order may be revoked.

In view of the aforesaid position, in our opinion there is no legal impediment for revoking the order of suspension and reinstating Shri Ashish Kr.Das in service. However, while revoking the order of suspension it would be advisable to record briefly the reasons for the revocation.

If ultimately Shri Ashish Kr.Das is convicted by the Court it would be open to the University to take appropriate action against him as per relevant law and rules.

Yours faithfully,

Sd/-

(V.M.Thomas)

Advocate

For Mr.A.K.Phukan
Sr.Advocate & Standing
Counsel for NEHU.

NORTH-EASTERN HILL UNIVERSITY

SHILLONG

No.F.19-307/Estt-II/93-3452

Dated 26.4.2001

O R D E R

In exercise of the powers conferred under Statute 27(i) of the North-Eastern Hill University Act, 1973 and in pursuance of the provisions of Rule 10 of CCS(CCA) Rules, the Vice-Chancellor, NEHU, Shillong is pleased to revoke the orders of suspension of Dr. Ashish Kumar Das, Lecturer, Deptt. of Mathematics with effect from 27.12.1998 (issued vide F.19-307/Estt-II/93-397 dt. 22.2.1999). This order of the Vice-Chancellor is subject to ratification by the Executive Council of the University and without any prejudice to the criminal Case pending against Dr. Ashish Kumar Das in the Court of Chief Judicial Magistrate, Jalpaiguri.

Dr. Ashish Kr. Das is accordingly directed to report for duties to the Department of Mathematics with immediate effect, however, treatment of the period of suspension w.e.f. 27.12.1998 till the date of resuming duties will be decided in due course after finalization of the Court case.

Sd/-
REGISTRAR

Copy forwarded for necessary action to :

1. P.S. to the Vice-Chancellor, NEHU for V.C.'s information.
2. Dean, School of Physical Sciences, NEHU, for information.
3. Head, Deptt. of Mathematics, NEHU, Shillong.
4. Finance Officer, NEHU, Shillong.
5. Asstt. Registrar (Finance), NEHU, Shillong.
6. Section Officer (Salary), Finance, NEHU, Shillong.
7. Dr. Ashish Kr. Das, Lecturer, Deptt. of Mathematics, NEHU.
C/o Qr. No. 18B/IVB, P.O. Barapani-793103, Meghalaya. He is requested to report for duties to the Deptt. of Mathematics, NEHU, Shillong immediately and submit charge report through the Head of the Department.
8. Smti. Sumita Das (Majumder) C/o Sri Ram Krishna Majumder, H.No. 2802 Dabgram II, G.P. Shantinagar, P.O. Dabgram, P.S. Bhaktinagar, Dist. Jalpaiguri (W.B.) - for information.
9. D.R. Legal Cell, NEHU.

Sd/-
REGISTRAR

(iii) Reporting Item.

EC:110:2001:2:(iii): The Council considered the action taken on its various decisions resolved in the last meeting and noted the same.

Item No.3

**RATIFICATION OF ACTION TAKEN BY THE
VICE- CHANCELLOR:**

**(i) Appointment of Head, Department of Education,
NEHU, Shillong.**

EC:110:2001:3:(i): The Council ratified the action taken in appointing Prof. R. Bhattacharjee as HOD of Education, NEHU, Shillong w.e.f. 24.5.2001 till a new Head is appointed.

**(ii) Extension of lien to Dr. BS Butola, Reader,
Department of Geography.**

EC:110:2001:3:(ii): The Council ratified the action taken in extending the lien to Dr. BS Butola, Reader, Department of Geography for a period of one year w.e.f 16.11.2000.

**(iii) Revocation of suspension order in respect of
Dr. Ashish Kumar Das, Lecturer, Department
of Mathematics, NEHU, Shillong- Ratification
thereof.**

EC:110:2001:3:(iii): The Council ratified the action taken in revoking the suspension order in respect of Dr. Ashish Kumar Das, Lecturer, Department of Mathematics, w.e.f the date he resumes duties.