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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI

O.A.No. 1145 of 1987

M.R.Dewan, IFS (UT),  
c/o Shri R.K.Gupta (Advocate),  
666, Nadrai Gate, Kasganj,  
District Etah (UP).

.. .. Applicant

Versus

Union of India through  
the Secretary, Ministry of Environment,  
Forest & Wild Life, Prayavaran Bhawan,  
C.G.O.Complex, Lodi Road, New Delhi.

.. .. Respondent

CORAM: Hon'ble Mr. Justice J.D.Jain, Vice-Chairman.  
Hon'ble Mr. Birbal Nath, Administrative Member.

PRESENT: Applicant in person.

Mr. M.L.Verma, Advocate for the Respondent.

JUDGEMENT: (Judgement of the Bench delivered by  
Hon'ble Mr. Justice J.D.Jain, Vice-Chairman).

Shorn of all inconsequential details, the undisputed facts giving rise to this Application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act) are that the Applicant, M.R.Dewan is an IFS Officer of the U.T.Cadre. During the years 1982-83 and 1983-84 etc., he was posted and working as Divisional Forest Officer in Arunachal Pradesh. However, he was transferred from Arunachal Pradesh vide order dated 26.9.1986 passed by the Government of Arunachal Pradesh and the services of the Applicant were placed at the disposal of the Government of India. Feeling aggrieved by the said order as also some earlier orders passed by the Arunachal Pradesh Administration, he filed OA 724 of 1987 in this Tribunal challenging the legality and validity of the same. During the pendency of the said OA, the Respondent Union of India passed the impugned order dated

16.1.1987 placing the Applicant under suspension on the ground that due to certain irregularities committed by the Applicant in the discharge of his official duties while working in Arunachal Pradesh as established in the preliminary investigation conducted in the matter, a disciplinary proceeding was contemplated against him. The order of suspension was passed under sub-rule (I) of rule 3 of All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as the Service Rules) by the Government of India. Subsequently, vide Memo. dated 31.3.1987, a Statement of Articles of Charge framed against the Applicant and the Statement of Imputation of Misconduct in support of the Articles of Charge was issued. The said Articles of Charge and the Statement of Imputation were served on the Applicant on 12.6.1987 during the course of hearing of OA 724 of 1987 supra in this Tribunal. Feeling aggrieved thereby, he has challenged the legality and validity of the order of suspension as also the Memo. of Charges by way of this Application under Section 19 of the Act.

2. The impugned order of suspension has been assailed by the Applicant firstly on the ground that it is not in accordance with the provisions of Rule 3 of the Service Rules. In order to appreciate the argument advanced by him (the Applicant having argued his case in person) in right perspective, we extract the aforesaid Rule hereunder for ready reference:-

"3. Suspension - (I) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, Government of a State or the Central Government, as the case may be, is satisfied

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that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may -

(a) if the member of the Service serving under that Government, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government, request that Government to place him under suspension, pending the conclusion of the disciplinary proceedings and the passing of the final order in the case:

Provided that, in cases, where there is a difference of opinion, -

(i) between two State Governments, the matter shall be referred to the Central Government for its decision;

(ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail:

Provided further that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government.

The Applicant has canvassed with considerable fervour that the aforesaid Rule has been violated by the Respondent in two ways. In the first instance, suspension order was passed by the Respondent even before the Articles of Charge had been framed and secondly the

order passed by the State Government had to be confirmed by the Central Government within the prescribed period as stated above before the same could be treated as valid. He has pointed out that even though the order of suspension was passed on 16.1.1987, the disciplinary proceedings could be deemed to have been initiated against him only on 12.6.1987 when Articles of Charge and the Statement of Imputatio-n in support thereof were served on him by the Respondent. Thus, more than 90 days had elapsed much before the date of service of the Charge Sheet on him. Reliance in this context has been placed by him on a decision of Madhya Pradesh High Court in Onkar Chandra Sharma v/s State of Madhya Pradesh & Others - 1985 LAB IC 194 and P.R.Nayak v/s Union of India - AIR 1972 SC 554.

3. We have bestowed our careful thought and consideration on the points raised by the Applicant regarding non-compliance with Rule 3 of the Service Rules but we are unable to agree with the proposition propounded by him. As regards the first ground of attack, <sup>are</sup> we constrained to say that it is against the explicit language of the Rule itself which opens with the words "If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied.....". On a dichotomy of the same, it is crystal clear that the question of considering the nature of charges arises only where articles of charge have been drawn up and not otherwise. This is abundantly clear from the use of the word 'and' which is conjunctive and operates by way of additional condition for satisfaction of the concerned Government where Articles of Charge have been drawn up. In the absence of any Articles of Charge, the concerned Government would

be competent to order suspension of a member of the All India Service having regard to the circumstances of the case only provided it comes to the conclusion that it is necessary or desirable to do so. This conclusion is further fortified by the words 'against whom disciplinary proceedings are contemplated or are pending' appearing in the concluding portion of sub-rule (I). These words leave no room for doubt that the order of suspension can be made not only when disciplinary proceedings are pending i.e. where articles of charge have been drawn up but also when having regard to the circumstances of the case, it is deemed necessary or desirable to place a Government servant under suspension because disciplinary proceedings are contemplated against him. The words 'disciplinary proceedings are contemplated' again occur in Second Proviso to Rule 3. The correct legal position becomes still clearer if the aforesaid Rule which was inserted in the <sup>Service</sup> Rules in substitution of the then existing Rule vide Department of Personnel and A.R. Notification dated 5.7.1975 (GSR No. 872 dated 19.7.1975) <sup>is read in comparison with the same.</sup> /Rule 3 prior to its amendment reads as under:-

"3. Suspension during disciplinary proceedings.-

(I) If having regard to the nature of the charges and the circumstances in any case, the Government which initiates any disciplinary proceedings is satisfied that it is necessary..."

It will be noticed that on a mere juxtaposition of Rule 3 as it existed before its amendment with the amended Rule as it now stands that there is a sea change therein inasmuch as under the unamended Rule, suspension of a member of All India Service could be ordered only during disciplinary proceedings i.e. after disciplinary proceedings <sup>been</sup> had/initiated and that too having regard to the nature of the charges and the circumstances

in the case. The framing of the charge sheet under the unamended Rule was <sup>a</sup>condition precedent to the placing of a member of All India <sup>Service</sup> under suspension. However, under the amended Rule 3, as it now exists, the question of considering the nature of charges arises only where articles of charge have been drawn up but not otherwise. In other words, even where articles of charge have not been drawn up, the concerned Government will be competent to order suspension of a member of the All India Service against whom disciplinary proceedings are contemplated. The word 'contemplated' did not appear anywhere in the unamended Rule. It was on that account that the Supreme Court held in P.R. Nayak's case that:

" An order of suspension of the delinquent member of the service made before the actual initiation or commencement of disciplinary proceedings, is bad being violative of R.3(I). The operation of R.3(I) is restricted only to those cases in which the Government concerned is possessed of sufficient material whether after preliminary investigation or otherwise and the disciplinary proceedings have in fact commenced and not merely when they are contemplated. "

(Emphasis added)

As pointed out by us, the word 'contemplated' did not figure in the unamended Rule 3 whereas it has been specifically inserted not only in the main sub-rule (I) of Rule 3 but also in the Second Proviso to Rule 3. Hence the decision of the Supreme Court in P.R. Nayak cannot be invoked by the Applicant vis-a-vis the amended Rule 3 under which the impugned order of suspensio-n has been passed by the Central Government.

4. The second contention of the Applicant based

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as it is on an interpretation or misinterpretation, if we may call it so, of the Second Proviso, is equally devoid of any substance. This Proviso will come into play where a State Government passes an order placing a member of <sup>an</sup> All India Service against whom disciplinary proceedings are contemplated. In that event, the order of suspension shall not be valid unless before the expiry of the period of 45 days from the date from which a member of All India Service is placed under suspension<sup>disciplinary</sup> proceedings are initiated. However, the period of 45 days can be extended by another 45 days or less as may be specified by the Central Government for reasons to be recorded in writing if the order of suspension is confirmed by the Central Government or if disciplinary proceedings are initiated within the time specified by the Central Government. Since the impugned order of suspension has been passed by the Central Government itself, we do not see how confirmation of the said order by the Central Government or extension of the period of 45 days as contemplated in the Second Proviso would be at all necessary. It will be preposterous to hold that the Central Government having initially passed the order of suspension will be again required to confirm the same or to extend the period of 45 days for initiation of disciplinary proceedings by another 45 days.

5. Confronted with this situation, the Applicant has urged with considerable vehemence that the impugned order of suspension has been passed by the Government of India in the instant case acting as a State Government and not in its capacity as the Government of the Union. Reliance in this context is placed on definitions of

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'Central Government', 'State', 'State Government' and 'Union Territory' occurring in Sections 3(8), 3(58), 3(60), 3(62-A), respectively of the General Clauses Act. Under Section 3(8) of the said Act:-

"(8) "Central Government" shall -

(a)           xx           xx           xx

(b) in relation to anything done or to be done after the commencement of the Constitution mean the President; and shall include -

(i)           xx           xx           xx

(ii)           xx           xx           xx

(iii) in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution."

Clause 58 of Section 3 of the said Act defines 'State' :

(a)           xx           xx           xx

(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory:"

However, 'State Government' as defined in Section 3(60) of the said Act:

"(a)           xx           xx           xx

(b)           xx           xx           xx

(c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union Territory, the Central Government. ...."

Clause 62-A of Section 3 of the said Act reads as under:-

" 'Union Territory' shall mean any Union territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of India but not specified in that Schedule. "

It is thus urged by the Applicant that he being in the U.T. Cadre of I.F.S., the Central Government was acting as State Government while passing the impugned order of suspension inasmuch as State also includes a Union Territory under Section 3(58)(b) of the aforesaid Act.

However, when these definitions are read in the context



of Article 239 of the Constitution, the whole legal position becomes crystal clear. Under the said Article, as substituted by the Constitution (Seventh Amendment) Act, 1956, every Union Territory shall be administered by the President acting, to such extent it deems fit, through an Administrator appointed by him with such designation as he may specify except of course to the extent ~~to the extent~~ it is otherwise provided by Parliament by law. Thus, the Administrator of a Union Territory is nothing more than a delegate of the President and his office is not analogous to that of a Governor of a State. In Goa Sampling Employees' Association v/s General Superintendence Co. of India Pvt. Ltd. and Others - (1985) 1 Supreme Court Cases 206 the question which fell for determination before the Supreme Court was whether the Central Government was the appropriate Government in respect of an Industrial Dispute raised by <sup>a</sup>workman of an Industry located in a Union Territory within the meaning of Sections 10(I) and 2(a) of the Industrial Disputes Act, 1947. On a consideration of the relevant provisions of law viz. Articles 1, 239(I), 239-A, 368, 240 and 246(4) of the Constitution and Sections 3(8), 3(58) and 3(60) of the General Clauses Act, their Lordships observed:

"....Now if we recall the definition of three expressions 'Central Government' (Section 3(8)), 'State Government' (Section 3(60)) and 'Union Territory' (Section 3(62-A)) in the General Clauses Act, it would unmistakably show that the framers of the Constitution as also the Parliament in enacting these definitions have clearly retained the distinction between State Government and Administration of Union Territory as provided by the Constitution. It is especially made clear in the definition of expression 'Central Government' that in relation to the Administration of a Union Territory, the Administrator thereof acting within the scope of the authority given to him under

Article 239 of the Constitution, would be comprehended in the expression 'Central Government'. When this inclusionary part is put in juxtaposition with exclusionary part in the definition of the expression 'State Government' which provides that as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, it shall mean, in a State, the Governor, and in a Union Territory, the Central Government, the difference conceptually speaking between the expression 'State Government' and the 'Administration of a Union Territory' clearly emerges. Therefore, there is no room for doubt that the expression 'Administration of a Union Territory', Administrator howsoever having been described, would not be comprehended in the expression 'State Government' as used in any enactment. These definitions have been modified to bring them to their present format by Adaption of Laws (No.1) Order 1956. Section 3 of the General Clauses Act, 1897 provide that in all Central Acts and Regulations made after the commencement of the Act unless there is anything repugnant in the subject or context, the words defined therein will have the meaning assigned therein."

Their Lordships further observed that:

"The High Court fell into an error in interpreting clause (c) of Section 3(60) which upon its true construction would show that in the Union Territory, there is no concept of State Government but wherever the expression 'State Government' is used in relation to the Union Territory, the Central Government would be the State Government. The very concept of State Government in relation to Union Territory is obliterated by the definition. ...still

The Supreme Court clarified the position further as under:-

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"But where the High Court fell into the error was when it held that the President representing the Central Government and the Administrator, and appointee of the President and subject to all orders of the President constitute two different Governments for a Union Territory. The position, the power, the duties and functions of the Administrator in relation to the President have been overlooked. On a conspectus of the relevant provisions of the

Constitution and the 1963 Act, it clearly transpires that the concept of State Government is foreign to the administration of Union Territory and Article 239 provides that every Union Territory is to be administered by the President. The President may act through an Administrator appointed by him. Administrator is thus the delegate of the President. His position is wholly different from that of a Governor of a State."

6. In view of the foregoing observations, there can be no shadow of doubt that to say that the impugned order of suspension was passed by the Central Government acting as a State Government would be simply fallacious and totally misconceived. The very idea of the Central Government functioning in two different capacities viz. of passing an order of suspension in relation to an All India Service Officer of U.T. Cadre in its capacity as State Government and then confirming the same order later on in its capacity as Central Government is totally repugnant to the very scheme of administering a Union Territory by the President which means Central Government. This controversy is placed beyond any realm of doubt by the definition of the Government as given in Rule 2 of the Service Rules. Under Rule 2(c), Government means:

"(i) in the case of a member of the Service serving in the connection with the affairs of a State, or who is deputed for service in any company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of a State Government of that State;

(ii) in any other case, the Central Government;"

Since the Applicant in the instant case was serving in connection with the affairs of a Union Territory at the relevant time, the Central Government was the only competent Government to take any disciplinary action against the Applicant and place him under suspension in exercise of the power conferred by Rule 3 (supra). Hence we are of the considered view that the Second Proviso to Rule 3 will not come into play where the ~~original~~ order of suspension has been passed by the Central Government (as distinct from a State Government in the case of an All India Service Officer serving in a State) in relation to an All India Service Officer serving in a Union Territory or for that matter under the Union itself. Hence this ground of attack must be repelled as being devoid of any merit.

7. In the view of the matter we have taken, we need not dilate on the question as to when the disciplinary proceedings were initiated against the Applicant in the instant case as that would be hardly relevant when the application of Second Proviso itself is totally excluded in this case.

8. The next ground of attack directed against the impugned order of suspension by the Applicant is that the same has been issued not bonafide but maliciously, illegally and not in public interest. He has gone to the extent of saying that the impugned order has been passed <sup>take</sup> to revenge on the Applicant for having knocked the doors of the Central Administrative Tribunal, Guwahati with regard to his promotion to the Senior Scale of the IFS. It would appear that the Applicant was promoted to the Senior Scale of the IFS with effect from 1.3.1979. However, he challenged the same by filing an Application under Section 19 of the

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of the Act, being OA No. 173 of 1986 contending that he ought to have been promoted to the Senior Scale with effect from 1.3.1977 when his juniors were given the senior scale especially when he had always earned good reports and no adverse report had been conveyed to him. The said Application was <sup>partly</sup> allowed by the Gowahati Bench of this Tribunal vide judgement dated 8.9.1986 (Annexure A-V) as under:-

"In view of the above discussions, we hold that there is substantial force in the application for antedating the promotion of the applicant to the senior time-scale to 1.3.78 with all the consequential benefits regarding seniority etc. vis-a-vis the promoted officer and others. Accordingly, the petition is allowed and it is directed that the applicant be deemed to be promoted to the senior time-scale with effect from 1.3.78."

The grievance of the Applicant is that instead of complying with the said order of Guwahati Bench, the Respondents sought to punish him first by transferring him out of Arunachal Pradesh vide order of transfer dated 26.9.1986 and placing his services at the disposal of the Government of India and then by placing him under suspension vide impugned order on flimsy grounds. He has averred that before the Articles of Charge were framed against him on 31.3.1987, a preliminary enquiry had already been conducted by Shri K.B.Srivastava, D.I.G., New Delhi and as per the informatio-n got by him, he was not found guilty of any misconduct. Rather, his next superior, on whose advice/under whose supervision the alleged unauthorised work of enumeration of trees was carried out, was held responsible for unauthorised and unwarranted expenditure. He has, therefore, vehemently urged that it is a clear

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case of hostile discrimination inasmuch as he has been singled out for being suspended from service, while his superior <sup>S.K.</sup> Shri/Mazumdar, who was directly responsible for the unauthorised work of enumeration of trees, has been simply transferred from the place of his posting.

9. In order to comprehend the precise grievance of the Applicant in proper perspective, certain facts including the Articles of Charge may be noticed. The Articles of Charge, as framed against the Applicant on 31.3.1987, are two in number. The first charge against him is that while functioning as Divisional Forest Officer, Northern Resources Survey Division, Kamengbari during the years 1982-84, he incurred an expenditure of Rs. 81,038.09 Paise ~~xxx~~ for enumerating 94,999 pine trees as against the sanctioned amount of Rs. 80,170.00 and thus he exceeded the sanctioned amount by Rs. 868.09 Paise during the year 1982-83. The second charge against the Applicant is that during the year 1983-84, he took up the work of enumerating 1,87,926 pine trees in Nefra area of the aforesaid Forest Division at a cost of Rs. 2,23,339.98 only without administrative approval and sanction of the Government and without having funds allocated to him for the same. It was violative of Rules 6 and 7 of the General Financial Rules as also of Rule 3(1) and (2) of A.I.S.(Conduct) Rules, 1968.

10. The Articles of Charge on which disciplinary proceedings have been initiated against his superior Shri S.K.Mazumdar, Conservator of Forests and which were framed on the same date viz. 31.3.1987 are almost identical. The first <sup>Article of Charge</sup> is that Shri Mazumdar while functioning as Conservator of Forests, Planning

and Development Circle during the years 1982-84, was guilty of administrative lapse of not keeping a check on the excess expenditure of Rs. 868-09 Paise incurred by the Applicant as Divisional Forest Officer for work relating to enumeration of one lakh pine trees for which an amount of Rs. 80,170.00 had been sanctioned by the Government of Arunachal Pradesh vide order dated 31.3.1983 while an amount of Rs. 81,038.09 Paise was actually spent. The second Article of Charge against Shri Mazumdar was that on 2nd May, 1983, he, in his capacity as Conservator, Planning and Development Circle issued an instruction to the Applicant as Divisional Forests Officer, Northern Resources Survey to take up the 'left over works of total enumeration of pine trees in Nefra area which was initiated in the last year' and the Divisional Forests Officer accordingly carried out the work but instead of restricting it to the approved/sanctioned amount and numbers continued it further and enumerated as many as 1,87,926 numbers of pine trees during the period May, 1983 to August, 1983 at a total expenditure of Rs.2,23,339.98 Paise in addition to what was done earlier as mentioned in the report dated 10.7.1984. The said expenditure was incurred even though there was neither any provision in A.O.P. for the additional works done nor any fund allotment. Thus, Shri Mazumdar did not take effective steps to check the progress reports submitted by the Applicant as D.F.O. from incurring irregular expenditure beyond the sanctioned amount. In particular, the Articles of Charge reads:

" Shri S.K.Mazumdar, being the controlling officer, should have restrained the Divisional Forest Officer from the unauthorised expenditure and serious financial irregularities committed by the Divisional Forest Officer. By this act, Shri S.K.Mazumdar exhibited lack of supervision and control and committed financial irregularity thereby contravening Rule 3(2) of AIS(Conduct) Rules, 1968."

11. On a bare juxtaposition of the Articles of Charge on which both the Applicant and his boss Shri S.K. Mazumdar are being proceeded against by way of disciplinary action, it would be patently clear that the lapses imputed to both of them arise out of the same transaction viz. incurring of expenditure beyond the sanctioned amount of enumeration of pine trees in Nefra area during the years 1982-83 and 1983-84, the only difference being that while the Applicant is being held responsible for carrying out the job as a Field Officer while his superior Shri S.K. Mazumdar is being held responsible for not exercising proper control and supervision over the functioning of the Applicant and thus allowing the carrying out of unauthorised enumeration of trees and incurring of expenditure thereon. However, it may be useful in this context to refer to certain more documents especially the Statement of Imputation of Misconduct/Misbehaviour accompanying the Articles of Charge issued to ~~xxxx~~ the Applicant and Shri S.K. Mazumdar as also letter dated 10.7.1984 written by the Secretary to Government of Arunachal Pradesh to the Under Secretary, Government of India, Ministry of Agriculture and Cooperation. A perusal of the said document would show that administrative approval was accorded by the Arunachal Pradesh Government to an expenditure of Rs. 80,170.00 only for enumeration work of 1 lakh pine trees in Nefra Area (West Kamengbari District) vide order dated 31.3.1983, and pursuant to the instructions issued by the Chief Conservator of Forests vide letter dated 5.1.1983 to the Conservator of Forests, Planning and Development Circle viz. Shri S.K. Mazumdar, the latter directed the Applicant to embark on the work of enumeration of pine trees in Nefra area



and complete the same within a month, the same being a time bound programme. He also indicated the method of enumerating the pine trees. Consequently, the Applicant enumerated 94999 pine trees up to 31.3.1983. The enumeration of another 5000 trees was carried out during April, 1983. The total expenditure involved in the said task was Rs. 81,038.09 Ps as against the sanctioned amount of Rs. 80,170.00. That constitutes the basis for the first Article of Charge. The defence of the Applicant, however, is that the approval regarding sanction of the amount was conveyed to him on 31.3.1983 when almost the entire enumeration work of one lakh pine trees was over and only a small quantity of 5000 trees more were to be enumerated. So, under the directions of the Conservator of Forests (Shri S.K.Mazumdar), he carried out the same.

12. Even, thereafter, vide letter dated 2.5.1983, the Conservator of Forests, Planning and Development Circle i.e. Shri S.K.Mazumdar issued instructions to the Applicant to take up 'the left over work of total enumeration of the Pine forests in Nefra area which was initiated by you last year.' The said direction purported to have been issued by Shri S.K.Mazumdar under the directions of the Chief Conservator of Forests, as stated in his letter dated 2.5.1983. It was pursuant to the said letter that the Applicant resumed the work of enumeration of pine trees in Nefra area and informed Shri S.K.Mazumdar vide his letter dated 13.5.1983 about it. He also sought permission to purchase instruments, stores and camp <sup>equipment</sup> for the same. Vide letter dated 19.5.1983, Shri Mazumdar informed the Applicant that procurement of the stores by his Division under the Scheme was well within the powers of the Applicant and therefore the matter may be disposed of at his own end. It will further

appear that thereafter the Applicant had been submitting monthly reports about the progress of the work done by him in the enumeration of the pine trees. Vide letter dated 20.8.1983, Shri Mazumdar wrote to the Applicant as under:-

" With reference to your letter No. quoted above, this is to inform you that after completion of work in Nefra area, your camp should be closed and your full party be called back to Headquarters. As regards further work of your Division, you will be intimated in due course."

13. In his letter dated 10.7.1984, the Secretary to Government of Arunachal Pradesh has inter alia remarked:

"The Divisional Forest Officer, Northern Resources Survey Division took up the works without prior administrative approval and sanction from competent authority i.e. the Government of Arunachal Pradesh and funds allotted as required per rule. Even either of them did not feel it necessary to make a reference or submit any estimate for such work and request for funds and sanction. It may be stated that the Chief Conservator of Forests never desired taking up of new enumeration work of pine trees at Nefra area though mentioned by Conservator of Forests, Planning and Development Circle (now Working Plan and Resources Survey Circle) in his letter No. PDF/26/81/849-50 dt. 2.5.83 (copy enclosed). The Conservator of Forests, Planning and Development Circle (Now Working Plan and Resources Survey Circle) had, therefore, given an incorrect information to the Divisional Forest Officer, about it."

3. The Divisional Forest Officer, had spent an amount of Rs.2,23,339.98 ps. for fresh work of enumeration of pine trees carried out from May 83 to Aug.83. These amount include cost of enumeration of 1,87,926 pine trees, cost of survey instruments, camp equipments, maint. of vehicles, transportation charges and other miscellaneous

expenditure. It is not understood as to how the Divisional Forest Officer, Northern Resources Survey Division, being drawing and disbursing authority could spend such amount without valid sanction and in absence of fund allotted for the purpose. This unauthorized expenditure came to the notice of the Chief Conservator Forests, in July/83 and immediately the concerned Divisional Forest Officer, Northern Resources Survey Division and Conservator of Forests, Planning and Development Circle (now Working Plan and Resources Survey Circle) were asked to explain the reason for doing so. Instead of taking prompt action, the Conservator of Forests, Planning and Development Circle (now Working Plan and Resources Circle) kept silent till the Divisional Forest Officer, Northern Resources Survey Division sought permission from him for stoppage of the work vide No. RS/13/81/1096-97 dated 19.8.83 (Copy enclosed). Only then the Conservator of Forests, Planning and Development Circle (Now Working Plan and Resources Survey Circle) instructed the Divisional Forest Officer, Northern Resources Survey Division vide his letter No. PDF/26/81/1392-93 dated 20.8.83 (copy enclosed) to close the work. The Conservator of Forests, Planning and Development Circle (Now Working Plan and Resources Survey Circle) and Divisional Forest Officer's action on the issue not only tantamount to abuse the norms and procedure in taking up a new scheme but also raised a question of financial propriety as defined in GFR."

The said letter proceeds to say that:-

"It will appear from the foregoing paragraphs that both Conservator of Forests, Planning and Development Circle (Now Working Plan and Resources Survey Circle) and Divisional Forest Officer, Northern Resources Survey Division has incurred such an irregular huge amount deliberately and preplanned way and acted irresponsibly causing excess expenditure on Government account without authority and hence, some exemplary action are required to be taken against them so that such irregularities do not happen in future in Arunachal Pradesh Forest Department."

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14. The foregoing facts, to our mind, leave no room for doubt that culpability of both the Applicant and Shri Mazumdar for going ahead with the work of enumeration of pine trees in Nefra area without obtaining previous administrative approval/sanction of necessary funds subsequent to April, 1983 was of the same gravity. Indeed, having regard to the fact that the Applicant took up the work of enumeration of trees without first ascertaining about the administrative approval and the sanction of the requisite amount for expenditure on the said work, he cannot escape his liability for dereliction of duty. All the same, one cannot lose sight of the fact that he did so under the directions of his superior who was primarily responsible for issuing directions to the Applicant for taking up the left over work of enumeration of pine trees without first obtaining the requisite administrative approval and financial sanction for incurring the required expenditure. It, therefore, passes one's comprehension as to why the Government of India chose to place the Applicant under suspension but did not take similar action against Shri S.K. Mazumdar. The only argument advanced by the learned Counsel for the Respondent is that the role of Shri S.K. Mazumdar was basically different from that of the Applicant inasmuch as the Applicant ought not to have resumed the enumeration of pine trees without first ascertaining that the administrative approval as well as the necessary sanction of funds had been obtained. We have already observed that the Applicant cannot disown his liability for this serious lapse. All the same, there can be no two opinions that the Conservator of Forests, who was Incharge of the Planning and Development Circle was primarily responsible for not ensuring that



the requisite administrative approval and allocation of funds was sanctioned by the competent authority before instructions could be issued to the Applicant for resuming the work of enumeration of pine trees. Hence, we feel constrained to hold that the action of the Respondent, Union of India, in not suspending Shri S.K.Mazumdar while suspending the Applicant on identical facts is tantamount to invidious discrimination which cannot be justified by any stretch of reasoning.

15. We are fortified in the view taken of the matter by a recent judgement of the Supreme Court in E.S.Reddi v/s Chief Secretary, Government of Andhra Pradesh and Another - (1987) 3 Supreme Court Cases 258. In the said case, Special Leave Petition had been filed by E.S.Reddi, a member of the Indian Administrative Service belonging to Andhra Pradesh Cadre who had worked as the Vice-Chairman - cum - Managing Director of the Andhra Pradesh Mining Corporation. He had earlier filed a Writ Petition calling in question the validity of order of the State Government of Andhra Pradesh dated 11.2.1985 placing him under suspension under Rule 13(I) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 but the same was dismissed by a Division Bench of the Andhra Pradesh High Court. The grievance of the Petitioner was that the impugned order of suspension was wholly malafide, arbitrary, irrational and violative of Article 14 of the

Constitution as there was no justification for different treatment meted out to him while Shri T.V.Choudhary, also a member of the Indian Administrative Service who had worked in various capacities namely as General Manager, Functional Director, Member, Board of Directors and Vice-Chairman-cum-Managing Director of the aforesaid Corporation<sup>and</sup> was involved in the commission of the alleged irregularities, had been merely transferred from the Corporation and posted as Managing Director, Andhra Pradesh State Textile Development Corporation. The Supreme Court issued a notice on the Special Leave Petition and Counter Affidavit was filed by the State Government. On a perusal of the letter dated 2.5.1984 written by the State Government of Andhra Pradesh as also the report of the Director General, Anti-Corruption Bureau, Andhra Pradesh dated 25.3.1988, the Supreme Court observed:-

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" It is somewhat surprising that the petitioner alone should have been placed under suspension by the State Government pending contemplated departmental enquiry under Rule 13 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1963 and not the other two officers T.V. Choudhary and S.M. Rao Choudhary, the then Managing Director who it appears are equally culpable."

" The matter is adjourned till after vacation to enable the State Government to obtain the requisite sanction from the Central Government for the prosecution of R.Parthasarthy and that of the State Government of Maharashtra for the prosecution of P.Abraham under Section 6(I) of the Act. ....We are afraid, if the State Government does not pass any order placing the other officers under suspension it may become necessary for the court to revoke the suspension of the petitioner at the next date of hearing."

16. Pursuant to the aforesaid directions of the Supreme Court, the State Government passed an order on September 6, 1986 suspending R. Parthasarthy and T.V.Choudhary under Rule 13(I) of the aforesaid Rules. Both R.Parthasarthy and T.V.Choudhary had in the meantime filed CMP Nos. 25510 of 1986 and 25533 of 1986 for recalling the directions made by the Supreme Court on May 5, 1986 and August 11, 1986 adverted to above.

17. We are of the considered view that the ratio of decision in E.S.Reddi will squarely apply to the facts of the case on hand and the action of the Respondent Union of India in singling out the Applicant for placing him under suspension and not his co-culprit Shri S.K.Mazumdar can only be termed as wholly arbitrary, capricious and unjustified.

18. Article 14 of the Constitution contains an express constitutional injunction against the State prohibiting it from denying to any person (1) equality before law; or (2) the equal protection of the laws. In other words, it contains a guarantee of equality before law to all persons and protection to them against discrimination by any law. To treat one person differently from another where there was no rational basis for doing so would be arbitrary and thus discriminatory. As observed by Bhagwati J., as his Lordship then was, in *E.P. Royappa v. State of Tamil Nadu* - AIR 1974 SC 555:-

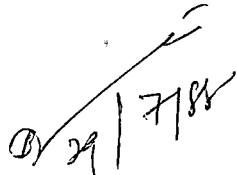
"....Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Article 16.

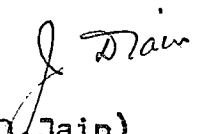
Hence equals have to be treated equally and unequals ought to be treated unequally. The principle of equality, enunciated in Article 14, no doubt does not take away from the State the power of classifying persons for legitimate purposes and differential treatment does not per se constitute violation of Article 14. However, it denies protection when there is no reasonable basis for differentiation. In the instant case, discriminatory treatment meted out to the Applicant is not founded on any intelligible differentia and it has no rational relation to the object sought to be achieved when both the Applicant and his superior are *pari delicto* and equally at fault.

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19. To sum up, therefore, this Application succeeds and the impugned order of suspension of the Applicant cannot be sustained as being violative of Articles 14 and 16 of the Constitution unless, of course, his superior Shri S.K.Mazumdar is also placed under suspension. That is, however, a matter for the Central Government to deal with. We, therefore, hold that the impugned order of suspension shall stand revoked as being illegal and invalid unless of course the Central Government places Shri S.K.Majumdar<sup>too</sup> under suspension. Whatever treatment is meted out to Shri S.K.Majumdar by way of suspension or otherwise should be accorded to the Applicant too. We allow time of three months to the Respondent for this purpose and in case similar treatment is not meted out to both the Applicant and Shri S.K.Mazumdar, the impugned order of suspension shall be deemed to have been revoked and quashed as being illegal ab initio. There will be no order as to costs.

  
(Birbal Nath)  
Administrative Member.

  
(J.D. Jain)  
Vice-Chairman

July 29, 1988.