

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No.267

of 1998

30.9.1999
DATE OF DECISION.....

Shri K. Ganesh

(PETITIONER(S))

Mr A. K. Phukan, Mr C. Baruah and
Mr V.M. Thomas

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS.

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

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

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

Judgment delivered by Hon'ble Vice-Chairman



A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.267 of 1998

Date of decision: This the 30th day of September 1999

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

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

Shri K. Ganesh,
Chief General Manager, Task Force (under suspension),
North Eastern Telecommunications Region,
Department of Telecom,
Guwahati.Applicant

By Advocates Mr A.K. Phukan, Mr C. Baruah and
Mr V.M. Thomas.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Communications,
New Delhi.
2. The Chairman,
Telecom Commission,
New Delhi.
3. The Senior Deputy Director General (Vigilance),
Department of Telecommunications,
New Delhi.Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

In this O.A. the applicant has challenged the Annexure A order dtd 18/23-9-1997 suspending him on the ground of his detention for a period exceeding fortyeight hours on and from 6.9.1997, and prayed for an order to quash the said order of suspension.

2. The facts are:

The applicant, at the material time, was Chief General Manager, Task Force, North Eastern

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Telecommunications Region, Department of Telecom. The applicant was serving in the Department of Telecommunications as a Group 'A' official since December 1968 in various capacities at various places, namely Bombay, Ahmedabad and Madras. He had also worked in Saudi Arabia on deputation. He joined the present post of Chief General Manager, Task Force in Guwahati in September 1996. His case is that he has been serving the Department for almost thirty years with unblemished record.

3. On 6.9.1997 the applicant was arrested at Borjhar Airport and on the basis of an F.I.R. filed by the Executive Magistrate, Kamrup in Azara Police Station, a case was registered being Azara Police Station Case No.74/97 under Section 7/13(1)(e) Prevention of Corruption Act, 1988, on the allegation that Indian currency amounting to Rs.25,31,200/- was found in his luggage. According to the F.I.R. this amount was received by him from five contractors.

4. As per the Annexure A order dated 18/23-9-1997 issued by the Government of India, Ministry of Communication, Department of Telecom, the applicant was deemed to have been suspended with effect from the date of his detention, i.e. 6.9.1997 under the provision of Rule 10(2)(a) of the CCS(CCA) Rules, 1965. He remained under suspension till the date of filing of this application.

5. The contention of the applicant is that during investigation by the Assam Police nothing incriminating could be found out against him. However, the authority decided to hand over the matter to the Central Bureau of Investigation (CBI for short) in the month of February 1998 for further investigation. Pursuant to that the CBI registered a case as RC 5(A)/98 dated 11.2.1998. The

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investigation has not yet been concluded. According to the applicant nothing has yet been found against him. The applicant has further stated that the Special Judge, Guwahati, by order dated 30.9.1997, i.e. about two weeks after his arrest, granted him bail with certain conditions.

6. The applicant being aggrieved by and dissatisfied with the order of suspension submitted a representation dated 3.11.1997 before the 2nd respondent- The Chairman, Telecom Commission, New Delhi with a copy to the 3rd respondent- The Senior Deputy Director General (Vigilance), New Delhi, praying for revocation of the order of suspension. However nothing was done in respect of the said representation. Thereafter, the applicant submitted yet another representation dated 23.12.1997 before the Ministry of Communication, Government of India, praying inter alia, for revocation of the order of suspension. About nine months after the filing of second representation, the applicant was served with Annexure E Memorandum dated 24.8.1998 by the Government of India, Ministry of Communication (Department of Telecommunications). This memorandum was issued by the Assistant Director General (Vigilance A) informing the applicant that his representation dated 23.12.1997 had been carefully considered by the President and found no justification for revocation of the order of suspension. The applicant was further informed that his headquarter during the period of his suspension was shifted from Guwahati to Gaziabad. On receipt of Annexure E Memorandum, the applicant submitted Annexure F letter dated 7.9.1998 to the 2nd respondent requesting that his

Headquarter.....



Headquarter might be retained in Guwahati in view of the ongoing investigation by the CBI for which his presence would be required in Guwahati. Besides, he further stated that in view of the condition imposed at the time of granting him bail the Special Judge imposed condition that he should be available in Guwahati for the investigation. The applicant also submitted Annexure G representation dated 9.9.1998 before the 2nd respondent praying for revocation of his order of suspension. However, nothing was done. Hence the present application.

7. According to the applicant continued suspension has become a source of harassment to him. Though suspension itself is not a punishment, in the present case, continued suspension amounts to punishment. The further contention of the applicant is that the order of suspension is being allowed to continue without any valid reason and contrary to the rules and thereby he has been deprived of his legitimate dues. It has also affected his reputation. According to the applicant the continued suspension cannot be said to be for administrative reasons and in the interest of public service. It has, therefore, become a weapon of harassment. With the subsistence allowance it is extremely difficult for him to meet the requirements of his family. No effort has been made by the authority concerned to take immediate steps for conclusion of the investigation. Two years have already elapsed. The applicant has further contended that, to the best of his knowledge, nothing has been found against him, so far. The applicant states that a case of this nature should not take more than six months from the date of registering the case against the applicant. The continued suspension is absolutely arbitrary without justification. The applicant feels that completion is only a ruse to harass him. He further

contends....

contends that he is absolutely innocent, inasmuch as the amount recovered from his possession actually did not belong to him, but to a businessman of Arunachal Pradesh, who had no official dealings with him. The applicant has further stated that the said businessman already filed a petition before the Hon'ble Gauhati High Court claiming his money back. It is also contended that the police did not find any incriminating evidence against him. The CBI has already collected all the materials whatever was possible. So there is no danger of tampering with the evidence if the order of suspension is revoked. Under the present circumstances continuance of the suspension order is illegal, arbitrary and contrary to the relevant rules and Government instructions and guidelines issued from time to time. Therefore, this Tribunal should quash the order of suspension and reinstate him in his service.

8. In due course the respondents have filed written statement refuting the claim of the applicant. In the written statement the respondents have stated that the case was initially investigated by the Assam State Police and later on, it was handed over to the CBI for further investigation which was under progress. The respondents have further stated that the representations dated 7.9.1998 and 9.9.1998 were under consideration of the competent authority in consultation with the CBI which was investigating into the case. However, before the decision could be conveyed to the applicant, the applicant has approached this Tribunal. According to the respondents the present application is premature.

9. We heard both sides. Mr C. Baruah, learned counsel for the applicant submitted before us that the prolonged pendency of the criminal investigation by the CBI was contrary to law. According to him under Section 6 of the Delhi Special Police Establishment Act, 1946, the CBI has

no power, authority and jurisdiction in any area of the State to make investigation without the consent of the State Government. Therefore, the investigation into the case by the CBI could have commenced only after 22.1.1998. Accordingly the CBI started the investigation by lodging the FIR with effect from 11.2.1998. Without there being any specific order from the State Government or from the court the State Police had no authority and power to hand over the entire original case diary to any authority including the CBI. On 4.10.1997, the Director General of Police directed the Deputy Superintendent of Police (City) to hand over the entire original case diary to the CBI. Accordingly, on 16.10.1997, the DSP (City) handed over the entire case diary to the CBI through the Officer-in-Charge, Azara Police Station. No investigation in the matter was pending before the Police with effect from 16.10.1997. By saying so Mr Baruah wanted to show that at least there was no investigation pending during the period from handing over the case by the Assam Police and the commencement of the investigation by the CBI and in this period the order of suspension could not have continued. The further contention of Mr Baruah was that the applicant was suspended under the provisions of Rule 10(2)(a) and not under Rule 10(1)(a) or Rule 10(1)(b) of the CCS (CCA) Rules, 1965. Mr Baruah drew our attention to Clause 1(d) of the Circular No.201/43/76-DISC.II dated 15.7.1976. As per the said clause when an official is deemed to have been placed under suspension under the provisions of Rule 10(2) of the CCS (CCA) Rules, it is the duty of the authority to decide whether the continuance of the official under suspension is absolutely necessary or not as soon as he is released from police custody. No such effort was made by the authority....

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authority concerned, at least, Mr Baruah stated, the pleadings do not indicate any such. If the period of suspension had already exceeded the limit of three months and if the competent authority found no justification to revoke the suspension, he should have immediately made a report to the next higher authority giving details of justification for keeping the official under suspension. As per clause (3) of the said circular all cases of suspension should be reviewed regularly, particularly where the officials have been under suspension for more than the period prescribed and if it was found that an official can be allowed to resume duty by transferring him from one post to another, order should be passed for revoking the suspension. Mr Baruah also drew our attention to another Circular No.G.I. M.H.A. No.221/18/65 AVD dated 7.9.1965. As per this circular if the investigation is likely to take more time, it should be considered whether the suspension order could be revoked and the officer be permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence or is detrimental to take evidence, he may be transferred to another post. Mr Baruah further submitted that the applicant was suspended on 6.9.1997 under Rule 10(2)(a) of the CCS (CCA) Rules and after expiry of the period of three months therefrom, i.e. on 6.12.1997, the order of suspension ought to have been reviewed by the competent authority and in that case it would have appeared that no investigation was pending or continuing against the applicant either by the State Police or by the CBI, at least during the period from handing over the case by Assam Police till the CBI commenced investigation and there was no reason, whatsoever, to keep the applicant under deemed suspension under Rule 10 (2) (a) of the CCS (CCA) Rules, 1965. According to Mr Baruah the Appellate Authority....

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Authority also did not consider this aspect of the matter and the applicant's representation was disposed of mechanically by order dated 24.8.1998 holding that the authority did not find any justification for revocation of the suspension for the present. The learned counsel for the applicant relied on another Circular No.35014/9/76-Estt(A) dated 8.8.1977. As per this circular where a Government servant who has been deemed to be under suspension due to detention in police custody erroneously or without any basis and thereafter released without proceedings having been launched, the competent authority should consider that aspect of the matter at the time of review of suspension and reinstatement of the official. In all such cases, the deemed suspension under Rule 10(2) may be revoked from the date the cause of the suspension cease to exist, i.e. the Government servant is released from police custody without any prosecution having been launched. Mr Baruah further submitted that delay in investigation by the CBI with effect from 11.2.1998 could not be a ground for keeping the applicant under deemed suspension under provisions of Rule 10(2)(a) of the CCS (CCA) Rules, inasmuch as the CBI never arrested and detained the applicant for more than fortyeight hours in their custody. Mr Baruah further contended that pendency of an investigation cannot be a ground for keeping a person under deemed suspension, inasmuch as because of the pendency of the investigation for more than three months the question of review would come. However, this was not done in complete disregard to the rules and Government instructions.

10. Mr A. Deb Roy, learned Sr. C.G.S.C., on the other hand, refuted the claim of the learned counsel for the applicant. In his reply he submitted that on the basis of

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the representation of the applicant a reference was made to the CBI as to whether they had any reservation for revocation of the order of suspension. The CBI had intimated that according to their information, all major contracts were awarded to various parties with the approval of the applicant and the case had wide ramification in the whole of North Eastern Circle and investigation would have to be carried out at the applicant's native place also. The CBI did not recommend revocation of the suspension. The CBI also recommended transfer of the applicant to a far off place as his presence at Guwahati might hamper the investigation. Accordingly, with the approval of the competent authority, the headquarters of the applicant was changed from Guwahati to Ghaziabad in public interest. Mr Deb Roy further submitted that the subsistence allowance payable to the applicant was also reviewed and enhanced to 75% of the initial amount. Mr Deb Roy also submitted that the representation of the applicant dated 23.12.1997 for revocation of the order of suspension was rejected by the competent authority by Memorandum dated 24.8.1998, Annexure A to the written submission, and it was again reviewed by Memorandum dated 18.9.1998, Annexure B to the written submission. According to Mr Deb Roy the order changing the headquarter of the applicant could not be implemented as the Special Judge, Guwahati, had restricted his movement outside Guwahati while granting bail to the applicant. Mr Deb Roy further submitted that steps have already been taken by the authority for vacation of the order passed by the Special Judge, Guwahati requiring the applicant to remain at Guwahati, so that the applicant can be transferred.

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11. On the rival contentions of the learned counsel for the parties, it is now to be seen whether the continued order of suspension can sustain in law. It is true that carrying such a huge amount of money may be illegal. There may be a case under the provisions of the Prevention of Corruption Act, but that is a matter to be decided by the criminal court. Now, the question is whether the order of suspension should be allowed to continue for an indefinite period. Two aspects are to be considered here - (1) that a person is deprived of his full salary, and (2) from the records it appears that the applicant is getting at least 75% of his salary without doing any work. It may not be proper in the interest of the State. It is also true that a person who is involved in such a case and holding a very high post in the department may be an impediment in the investigation of the matter if he is allowed to stay here. But, whatever is to be done, it has to be done under the provisions of law and Government of India instructions. Merely, because there is likelihood of tampering with the evidence may not be a valid ground for continued suspension. Before we consider this aspect of the matter, we feel it will be apposite to look into some of the provisions regarding suspension. Part IV of Swamy's Compilation of CCS (CCA) Rules contain the provisions of suspension. Rule 10 specifically relates to the order of suspension.

12. As per Rule 10 (1) the appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order,

may.....

may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

Under sub-rule (2) of Rule 10 a Government servant shall be deemed to have been placed under suspension by an order of appointing authority-

- (a) 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;
- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

13. In the present case Rule 10(2)(a) is applicable inasmuch as the applicant was detained for more than forty-eight hours from the date of detention, i.e. 6.9.1997. Therefore, the authority had, definitely, the power and jurisdiction to place the applicant under suspension. Under sub-rule 5(c) of Rule 10, an order of suspension made or deemed to have been made under this

rule.....



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. As per sub-rule (5)(a) of Rule 10, an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so. Again, under sub-rule (5)(b) of Rule 10, where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

14. Precisely, Rule 10 (5)(a),(b),(c) authorised the authority to continue the order of suspension. However, there are Government instructions in this regard. It is a well established principle of law that the order of suspension is not a punishment, but such order of suspension may entail evil consequences, inasmuch as under continued suspension, an employee is entitled to receive almost the entire salary, namely about 75% or so. He will get this money without doing any work. This is a loss to the Government. On the other hand, the Government servant, under continued suspension, is deprived of his entire salary. Besides this, in our society the order of suspension is not very well looked upon... Therefore, the Government has issued several guidelines. However, these guidelines.....

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guidelines should not be taken as mandatory. These guidelines have been made for proper administration of justice and these can be taken as professed norms.

15. In Clause (9) of Chapter V (Suspension - Principles) as referred to in Swamy's Manual on Disciplinary Proceedings for Central Government Servants it is stated as follows:

"(9) Speedy follow-up action in suspension cases and time-limits prescribed-

1. Instances have been noticed where inordinate delay has taken place in filing charge-sheets in courts in cases where prosecution is launched and in serving charge-sheets in cases where disciplinary proceedings are initiated.

2. Even though suspension may not be considered as a punishment, it does constitute a very great hardship for a Government servant. In fairness to him, it is essential that this period is reduced to the barest minimum."

By Office Memorandum No.221/18/65-AVD dated 7.9.1965, it was, therefore, decided that in cases of officers under suspension, the investigation should be completed and a charge-sheet filed in a court of competent jurisdiction in cases of prosecution or served on the officer in cases of departmental proceedings within six months as a rule. If the investigation is likely to take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence etc., or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order. This was partially modified by Office Memorandum No.39/39/70-Ests.(A) dated 4.2.1971. By this Office Memorandum it was decided that every effort should be made to file the charge-sheet in court or serve the charge-sheet on the Government servant, as the case may be, within three months of the date of suspension, and

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in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay. Again, by another Office Memorandum No.11012/7/76-Ests.(A) dated 14.9.1978 it was observed that in spite of instructions issued earlier, instances had come to the notice in which Government servants continued to be under suspension for unduly long periods. It was further observed that such unduly long suspension, while putting the employee concerned to undue hardship, involves payment of subsistence allowance without the employee performing any useful service to the Government. It was, therefore, impressed on all the authorities concerned that they should scrupulously observe the time-limits laid down earlier and review the cases of suspension to see whether continued suspension in all cases were really necessary. It was further observed that the authorities superior to the disciplinary authorities should also give appropriate directions to the disciplinary authorities keeping in view the provisions given earlier.

16. The rules regarding suspension and the various Government instructions issued from time to time as referred to above, clearly indicate that suspension should not be allowed to continue for an indefinite period. Efforts should be made to complete the investigation within the period prescribed. The instructions further indicate that continued suspension and undue delay in completing the investigation cause harm to both the Government as well as the employee concerned, because the Government has to pay the maximum subsistence allowances without taking any service from the employee, and at the same time the employee is also deprived of his full salary.

This.....



This should, as per the instructions, be avoided as far as practicable. If, however, the investigation could not be completed within the period prescribed the official incharge of the matter should report to the next higher authority giving reasons. All these instructions have been issued by the Government to maintain a balance regarding the difficulties that are likely to occur both for the Government as well as the employees concerned.

17. Coming to the present case we find that the deemed suspension was passed with effect from 6.9.1997. The applicant was released on bail on 30.9.1997. Till now, no chargesheet has been filed. Mr Deb Roy could not show whether the officer suspending had written to the higher authority regarding the necessity of continued suspension. Besides, during the period from 16.10.1997 to 22.1.1998 there was no investigation pending. The applicant was not under any detention. Mr Deb Roy could not show anything from the record as to what steps had been taken during this period. Nothing was shown before us that anything incriminating was found against the applicant from the date of registering the case on 6.9.1997 till now. The matter is still under investigation. Almost two years have passed the suspension is still continuing without there being anything to show that the investigation is likely to come to an end within a short time. Such action cannot be encouraged. It is true that the applicant was involved in carrying a huge amount of Indian currency in his luggage which was detected in the Airport. The applicant may be guilty of any offence, which is to be decided by the criminal court, but that itself cannot give a sanction to the authority to continue a person under suspension. If the authority finds that
reinstatement.....

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reinstatement of the applicant in the present post would be detrimental to the interest of the investigation, then as per Government instructions he may be transferred to a distant place. But, the difficulty is that the Special Judge, while granting bail, directed the applicant to remain in Guwahati during the investigation. If the Special Judge, Guwahati is approached in this regard a solution may be found out.

18. The applicant submitted several representations, namely, Annexures C, D, F and G. Annexure D representation dated 23.12.1997 was disposed of by the authority by Annexure E Memorandum dated 24.8.1998 rejecting the prayer for revocation of the suspension order. We have perused the Annexure E memorandum. The representation was disposed of by the following words:

"With reference to his representation dated 23.12.1997 addressed to the Hon'ble Minister (Communications), Shri K. Ganesh (applicant) is hereby informed that his representation has been carefully considered by the President who has found no justification for revocation of his suspension for the present."

This order was passed as far back as in August 1998. We find the order to be cryptic one without assigning any reason. When a representation is filed before the authority, it is the duty of the authority to consider the points raised and also the rules and the guidelines issued by the Government of India and decide the matter giving reasons thereof. No such reasons have been assigned by the authority. From the aforesaid order it does not appear to us that while disposing of the representation of the applicant the authority concerned applied its mind to the rules regarding suspension and the Government instructions. The Government instructions are issued for proper administration. While issuing such instructions the Government was definitely not oblivious of the fact that

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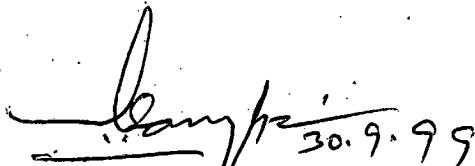
continued suspension normally causes harm both to the Government as well as the employee concerned. In exceptional cases it may be treated as otherwise and for doing so reasons are to be recorded. As per instructions in such cases the authority concerned should write to the higher authority. In the present case, the learned counsel for the respondents could not show any such. Besides, the shifting of the applicant's headquarter from Guwahati to Ghaziabad is directly in conflict with the order passed by the Special Judge, Guwahati. It is true that in some cases for the interest of investigation a person should be transferred out so that the investigation can be made without any interference whatsoever. It may be mentioned that the two other representations filed by the applicant, namely Annexure F and G dated 7.9.1998 and 9.9.1998 respectively have not been replied to by the authority.


19. In view of the above we find that the matter regarding suspension of the applicant, had not been properly dealt with by the authority. The procedure prescribed and the guidelines issued by the Government of India have not been followed. Almost two years have passed, the applicant is still under suspension. In the circumstances we have no other alternative, but to send back the matter to the 2nd respondent to consider the entire matter afresh taking into consideration of the various provisions regarding suspension and Government instructions. The applicant may also file another representation giving details of his claim within fifteen days from today. If such representation is filed the authority should take into consideration of the same and dispose of the matter by a reasoned order as early as possible, at any rate within a period of three weeks from the date of submission of the fresh representation. If in opinion of the 2nd respondent the order of suspension....

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suspension under the provisions of rule and Government instructions should not continue and at the same time the applicant's continuance in Guwahati is detrimental to the interest of investigation the authority should approach the Special Judge, Guwahati, for modification of the conditions imposed in the order dated 30.9.1997 and thereafter, if the conditions so imposed by the Special Judge, Guwahati are changed, transfer the applicant to a distant place.

20. With the above observations the application is disposed of. No order as to costs.


(G. L. SANGLIANE)
ADMINISTRATIVE MEMBER


(D. N. BARUAH)
VICE-CHAIRMAN