

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 32/2000

R.A/C.P No.

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In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.

32/2000 OF 199

Applicant(s) Shri K. Ganesh

Respondent(s) Union of India 2018.


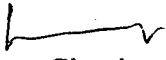

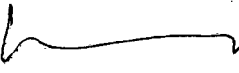
Advocate for Applicant(s) Mr. C. Barua
Mr. P. J. Saikia.

Advocate for Respondent(s)

Case.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form and within time.</p> <p>of Rs 50/-</p> <p>deposited vide</p> <p>PO BN No. 09457310</p> <p>Dated 27.1.2000</p> <p>NY 28/1/2000</p> <p>MS 28/1/2000</p> <p>pg</p> <p>MS 1/2/2000</p> <p>1.3.00</p> <p>Service of notice</p> <p>2 orders dt. 21-1-2000</p> <p>received by hand Mr.</p> <p>A. Deb Roy, Sr. C.G.S.C</p> <p>on behalf of the</p> <p>respondents.</p>	<p>31.1.2000</p>	<p>Application is admitted. Learn Mr A. Deb Roy, learned Sr.C.G.S.C receives notice on behalf of the respondents. No formal notice need be sent.</p> <p>List on 1.3.2000 for written statement and further orders.</p> <p>Member</p> <p>Vice-Chairman</p> <p>Two weeks time allowed for filing of written statement on the prayer of Mr A. Deb Roy, learned Sr. C.G.S.C. List it on 15.3.00 for written statement and further orders.</p> <p>Member(J)</p> <p>Member(A)</p>

Notes of the Registry	Date	Order of the Tribunal
28-2-00 w/ statement is not seen b/w	15.3.00	On the prayer of Sri A. Deb Roy, learned Sr. C.G.S.C. two weeks further time is allowed for filing of written statement.
28/2		List on 29.3.2000 for written statement and further orders.
14-3-00 w/ statement is not seen b/w	trd	Member(J)
28-3-00 w/ statement is not seen b/w	29.3.00	Member(A)
28/3		Mr.A. Deb Roy, Sr.C.G.S.C. submits that the written statement is to be submitted. Mr.C. Baruah learned counsel for the applicant prays for time to file rejoinder. List on 3.4.00 for orders.
28/3	1m	Member
28-3-2000 Written Statement has been filed by the respondents	29.3.00	Mr.A. Deb Roy, Sr.C.G.S.C. submits that the written statement is ready for submission and prays for time. List on 3.4.00 for orders.
28/3	1m	Member
28-4-2000 Rejoinder has been filed by the applicant Advocate.	3.4.00	No Division Bench is available today. List for hearing on 9.6.00.
28/4	nkm	Member
8.6.2000 The case is ready for hearing.	9.6.00	There is no D.B. Adj'd to 22.8.00.
28/4		870 b
	22.8.00	There is no B.B. Adj'd to 20.12.00.
		870 b

Notes of the Registry	Date	Order of the Tribunal
<p><u>19 - 12 - 2000</u></p> <p>The The case is ready for hearing.</p> <p><u>pg</u></p> <p>The case is ready for hearing.</p> <p><u>By</u> 8.1.2001</p> <p><u>29.1.2001</u></p> <p>Copy of the Judgment has been sent to the D/Sec for issuing the same to 15 L/Advocates for the parties.</p> <p>HS</p>	<p>14.12.00</p> <p>pg</p> <p>20.12.00</p> <p>9.1.2001</p> <p>nkm</p>	<p>As agreed by the parties the matter is adjourned for the day and listed for hearing on 20.12.2000.</p> <p> Member(A)</p> <p> Vice-Chairman</p> <p>L/O. List on 9-1-01.</p> <p>By h</p> <p>Present: Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman</p> <p>Hon'ble Mr K.K. Sharma, Administrative Member.</p> <p>Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is rejected. No order as to costs.</p> <p> Member(A)</p> <p> Vice-Chairman</p>

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Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./~~R.V.~~ No. . 32 of 2000

DATE OF DECISION 9.1.2001.....

Shri K. Ganesh

PETITIONER(S)

Mr C. Baruah and Mr P.J. Saikia

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. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, 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 Hon'ble Vice-Chairman

X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.32 of 2000

Date of decision: This the 9th day of January 2001

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

The Hon'ble Mr K.K. Sharma, Administrative Member

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

.....Applicant

By Advocates Mr C. Baruah and Mr P.J. Saikia.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Department of Telecom Services,
New Delhi.
2. The Senior Deputy Director General (Vigilance),
Department of Telecommunication,
New Delhi.

.....Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985, has arisen and is directed against the order dated 31.12.1999 passed by the Government of India and communicated by the Assistant Director General (Vigilance), Government of India, Ministry of Communications, Department of Telecommunications, rejecting the representation of the applicant dated 4.10.1999 in the following circumstances:

h

By an order dated 18/23.9.1997 the applicant, who happened to be the Chief General Manager, Task Force, N.E. Telecommunication Region, Guwahati, was placed under suspension in terms of Sub-rule (2)(a) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The said suspension order was passed as a sequel to the arrest of the applicant at Borjhar Airport and on the basis of an F.I.R. filed by the Executive Magistrate, Kamrup in the Azara Police Station. A case was registered as Azara P.S. Case No.74/97 under Section 713(1)(e) Prevention of Corruption Act, 1988. The applicant was granted bail by the Special Judge, Guwahati vide order dated 30.9.1997. It is also stated in the application that during all the period the police did not find any incriminating material against the applicant. Thereafter, the Central Bureau of Investigation (CBI for short) by its letter dated 30.9.1997 informed the DGP, Assam that the CBI was intending to investigate the case and accordingly the State Police handed over the original case diary to the CBI. The CBI registered a case under Section 7 and 13(1)(e) of Prevention of Corruption Act against the applicant on 11.2.1998 treating the FIR of Azara Police Station Case No.74/97 as the FIR of the said case and it was registered and numbered as R.C. No.5(A)/98-SHG. The applicant earlier knocked the door of this Tribunal challenging the impugned order of suspension dated 18/23.9.1997. The Tribunal issued notice to the parties and in due course heard the application and disposed of the same by its order dated 30.9.1999 in O.A.No.267/1998. The Tribunal considered the respective contention of the parties and elaborately dealt with the law as well as instructions pertaining to suspension. The Tribunal in its order observed that the continuation of the order of suspension indefinitely is a matter of concern for all and the Tribunal after considering all the aspects of the case found that the matter regarding suspension was not dealt with properly. The Tribunal also found that the procedure prescribed and the guidelines issued by the Government of India were not followed. Considering all the different facets, the Tribunal thought it fit to send back the matter to the respondent No.2

to.....

to consider the entire matter afresh taking into consideration the various provisions regarding suspension and Government instructions. The Tribunal also gave liberty to the respondent No.2.

2. In terms of the order of the Tribunal dated 30.9.1999 the applicant submitted a detailed representation narrating the facts and the relevant law. Finally, the matter was placed for consideration before the competent authority and the competent authority turned down the representation of the applicant by the impugned order dated 31.12.1999 on the following grounds:

"The President has carefully considered the submission of Shri K Ganesh in his aforesaid representation dated 04.10.1999. Keeping in view the fact that the offence allegedly committed by Shri K Ganesh is of a very serious nature, the President has observed that more important than the burden on the national exchequer as a result of payment of subsistence allowance to the Officer without getting any work from him, revocation of suspension and giving a posting to the Officer may send wrong signals to the fellow officers and employees and may subvert the general discipline in the organisation. The balance of advantage would lie in favour of continuing the suspension of the Officer for the present, which can be reviewed on receipt of CBI's investigation report. The President has, therefore, rejected the aforesaid representation dated 04.10.1999 of Shri K Ganesh."

Hence this application.

3. Mr C. Baruah, learned counsel for the applicant, assailing the above order, submitted that the concerned authority mechanically disposed of the representation without applying its mind. The learned counsel submitted that the authority while disposing of the representation failed to take note of the directions of this Tribunal in right perspective and rejected the same on extraneous considerations. He submitted that the suspension order is to be kept to the barest minimum and guidelines and policy of the respondents also rehearsed the stand of the Government that such order of suspension should be curbed to the minimal period. The alleged criminal prosecution initiated by the State Police, and later on taken over by the CBI is unnecessarily prolonging the matter and the delay in the name of investigation itself amounted to a persecution. Mr Baruah submitted that the respondents instead of acting as per the guidelines, mechanically turned down the applicant's

representation.....

representation without considering the spirit of the Government Circulars issued from time to time. He also submitted that the reasoning assigned by the authority that reinstatement of the applicant would send wrong signals to fellow officers and employees and that it may subvert the general principles in the organisation, by itself, is no ground for not reinstating the applicant.


4. Mr A. Deb Roy, learned Sr. C.G.S.C., on the other hand, opposing the application submitted that the authority as per direction of the Tribunal carefully considered the representation of the applicant and expressed its inability to reinstate the applicant for the reasons enjoined in the order of suspension. He submitted that the departmental authority took all the aspects into consideration and thereafter reached the conclusion communicated by the impugned order. The considerations that were taken by the President were valid and lawful consideration and thereafter the authority reached its conclusion.

5. We have given our anxious consideration in the matter. A high ranking officer of the department is placed under suspension on the circumstances set out above. The order of suspension, followed its legal pedigree and the same was passed in terms of the CCS (CCA) Rules, 1965. The initial order of suspension as such, is also not very much under attack. What is under attack is the continuation of the order of suspension. The rules read with the instructions itself indicate about the concern of the rule making authority for keeping the order of suspension only for the period necessary. Unnecessary continuance of a suspension order is deprecated by the rules itself. In the instant case, the respondents who are incharge of the administration, considering the fact situation, placed the applicant under suspension in terms of Sub-rule 2(a) of Rule 10 of the CCS (CCA) Rules, 1965. As enumerated and also as directed by the Tribunal earlier, the concerned authority, namely, the employer is required to review the situation from time to time. In the instant case the Tribunal itself directed to consider the representation of the applicant. The respondent authority

considered.....


considered the same and turned down. The concerned authority did the balancing work by taking the burden of the public exchequer, keeping an officer under suspension and also the general discipline of the organisation and the embarrassment of the authority. After weighing the same the authority turned down the representation of the applicant. The factors those were taken into consideration in reaching at the conclusion or in the decision making process cannot be said to be patently irrelevant and manifestly inappropriate. The balancing and weighing of the relevant considerations is the subject principally and essentially for the authority/ employer and not for the Courts or Tribunals. Where, however, the decision making process is affected by manifestly extravagant consideration it will always be open for Courts and Tribunals to strike down such act as arbitrary, unreasonable and unlawful. Such is not the case here. Prima facie, we do not find any infirmity in the impugned order dated 31.12.1999. The competent authority had the jurisdiction and decided the same taking into consideration the fact situation, which cannot be said to be irrelevant and extraneous.


6. The rules and the Government instructions have provided an inbuilt safeguard to the employees under suspension for reviewing their case from time to time and put the responsibility on the employer not to prolong the order of suspension, than what is more than the necessity. The instructions and guidelines lays down responsibility on the authority for periodical review of the order of suspension and for that purpose it has also armed the authority to press the investigating agency for expeditious investigation and also call for report from the investigating authority from time to time to apprise and appraise itself the situation. It, thus, cannot be said that the authority by declining the representation of the applicant dated 4.10.1999 will not make the periodical review of the order of suspension. The rules and the guidelines cast a duty on the authority to make periodical review of the suspension order, so much so, that discretion conferred on the public authority is not unfettered, but coupled with responsibility.



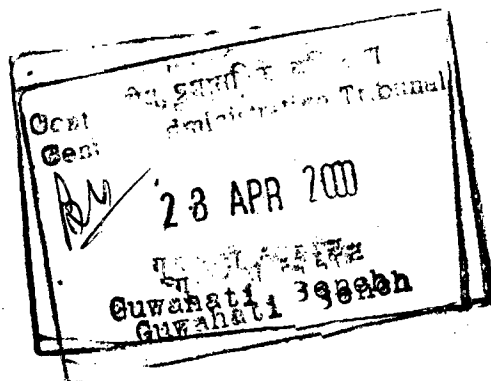
7. For the foregoing reasons we do not find any merit in this application.

9. Subject to the observations made above, the application is rejected. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm



21
13
filed by:-
K. Ganesh
V. Ganesh
P. J. Ganesh
22.4.2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:::GUWAHATI BENCH.

O.A.No.32/2000.

Sri K.Ganesh ... Applicant.

-Versus-

Union of India & Ors. ... Respondents.

In the matter of :

Affidavit-in-reply by the applicant
to the written statement submitted by
the respondent No.1, 2 & 3.

Affidavit-in-Reply

I, Sri K.Ganesh, S/o Late V.Kalyanaraman, aged about 54 years, presently resident of Quarter Type V/I, C.T.O., Compound, Panbazar, Guwahati do hereby solemnly affirm and state as follows :-

1. That I am the applicant in O.A. No.32/2000, as such am fully conversant with the facts and circumstances of the case.
2. That a copy of the written statement herein after referred to as W.S. filed by the respondent No.1, 2 & 3 was served on my counsel, which was handed over to me. I have gone through the same and understood the contents there of.

Contd.....2

3. That the statement made in paragraph 5 of the W.S. are not wholly correct and the deponent denies the same. In this connection the deponent begs to reiterate what had been stated by him in para 5(1) of the Original Application. The deponent states that the applicant was placed under deemed suspension under CCS(CCA) Rule 10(2)(a) only because of detention by Assam police on 6/9/97 in connection with Azara P.S. Case No.74/97. Subsequently the Assam Police abandoned the investigation on 16/10/97 when they made over all original case records to C.B.I. at a time when C.B.I. had no authority to investigate into the case even though subsequently on 22/1/98, CBI got the permission of State Govt. to investigate into the case, the fact remains that the cause of suspension which is due to detention by Assam Police and investigation into the case registered by them had ~~ceased~~ ceased to exist on 16/10/97 when Assam Police had ended the investigation. Further this Hon'ble Tribunal already held in its judgement and order dated 30.9.99 in O.A.No.267/97 that during the period from 16.10.97 to 22.1.98 there was no investigation pending.

4. That with regard to the statement made in para 6 of the W.S., the deponent begs to state that though the C.B.I. had started investigation into the case as per Case No.R.C.5(A)/98-SHG dated 11/2/98, C.B.I. never detained the deponent at any time which ^{relieves the} ~~above~~ can justify continuation of deemed suspension

under Rule 10(2) (a) of CCS (CCA) Rules under the investigation by the C.B.I. As C.B.I. did not detain the applicant under custody at any time, continuation of deemed suspension under Rule 10(2) (a) of CCS (CCA) Rules is illegal and without jurisdiction

5. That the statement made in paragraph 7 of the W.S. are not correct and the deponent denies the same. In this connection, the deponent begs to state that as per normal procedure, the C.B.I. can take over the case record only after getting permission of the State Govt and only after getting permission of State Govt. and after registering a case. In the instant case, C.B.I. got the permission of State Govt. only on 22.1.98 and the case was registered on 11.2.98 as such C.B.I. could investigate the case only after 22.1.98 and not before. This Hon'ble Tribunal also in the judgement in O.A.No.267/98 had held that there was no investigation pending during the period 16.10.97 to 22.1.98.

6. That with regard to the statement made in paragraph 8 of the W.S., the deponent begs to reiterate what had been stated by him in para 5(iv) of the Application. The deponent states further that the reasons given by the respondent in their order dated 31.10.99 are extreme and not at all ^{supported} and the guide

lines laid down by this Hon'ble Tribunal in the Judgement in O.A.No.267/98 is not at all considered. The reason that the revocation of suspension will send wrong signal and subvert discipline in the organisation is based on the assumption that the applicant is already guilty without completion of investigation and without commencement of trial. The C.B.I. is yet to submit the charge-sheet. This Hon'ble Tribunal in the judgement dated 30.9.99 have already discussed the importance of the departmental circulars and the guide lines which are to be strictly adhered to by the authority in case of suspension of an employee and accordingly directed the authority to consider all those guide lines while considering the prayer ~~for~~ of the deponent for revocation of the suspension but the authority in complete^{defiance} of the said directives of this Hon'ble Tribunal most illegally rejected the prayer of the deponent on extraneous consideration.

7. That the statement and submission made in paragraph 9 of the W.S. is not at all correct and the deponent denies the same. In this connection, the deponent begs to reiterate what had been stated by him in para 5(v) of the application as well as foregoing paragraph of this affidavit. The authority did not consider the direction of this Hon'ble Tribunal contained in the judgement dated 30.9.99 and passed the order dated 31.12.99 on extraneous consideration

unfounded in law. The said order has been passed in colourable exercise of power only to victimise and harass the deponent.

8. That the statement made in paragraph 10 of the W.S. is denied and the deponent ~~now~~ reiterates what had been stated by him in para 5(vi) of the application as well as in the foregoing paragraph of this affidavit.

9. That with regard to the statement made in para 11 of the W.S. the deponent states that it is not at all premature to say that nothing incriminating has been found against the deponent even after ^{completion of} nearly 3 years of investigation. This aspect of the matter has already dealt in by this Hon'ble Tribunal in the judgement dated 30.9.99.

10. That the statement in para 12 of the W.S. is not wholly correct and the deponent begs to reiterate what had been stated by him in para 5(viii) of the application. The deponent states that though suspension is not a penalty, the order of suspension is in the nature of punishment as it deprives the deponent of his full salary and damages his reputation beyond repair and this aspect of the matter has already dealt in by this Hon'ble Tribunal at para 17 of the judgement dated 30.9.1999, and continuation of suspension has

has been discouraged. This Hon'ble Tribunal also held that this deponent may be guilty of any offence which is to^{be} decided by the Criminal Court, but that itself cannot give a sanction to the Department to continue a person under suspension. Therefore the order dated 31/12/99 is not only against the established guide lines of the Deptt. but also against the judgement dated 30.9.99.

11. That the statement made in para 13 of the W.S. are not at all correct and the deponent denies the same. The order dated 31.12.99 has been passed not only without considering the various guide lines of the Deptt. but also against the judgement of this Hon'ble Tribunal in O.A.No.267/98.

12. That with regard to para 14 of the W.S. the deponent begs to state that the respondents in their M.P.No.284/99 before this Hon'ble Tribunal while praying for 2 months time to implement the judgement dated 30.9.99 had stated that they would have to get the bail condition No.3 vacated by the Special Court as the deponent may have to be transferred out of Guwahati on revocation of suspension. However even though the bail condition was vacated by Special Court on 26.10.99, the respondents had chosen to continue the suspension on some extreneous consideration. The deponent reiterates the contents of the para 5(x) of the application.

19 77
K. G. S. S.

13. That the statement made in para 15 of the W.S. are not at all correct and the deponent denies the same and begs to reiterate what had been stated by him in para 5(xi) of the application as well foregoing paragraph of the affidavit. The continuation of the suspension of the applicant in the instant case is punishment without trial and against the principle of natural justice. It is also against the public interest as it involves payment of 75% of pay as subsistence allowance without getting any work from the applicant in nature.

14. That with regard to the statement in paragraph 16 of the W.S., the deponent begs to state that the deponent was placed under deemed suspension under Rule 10(2)(a) because of detention by Assam Police. It would have continued beyond monthly as per Govt. Rules only if the case was taken up for prosecution by Assam Police. But ~~with~~ Assam Police having ended their investigation on 16.10.97, there is absolutely no ground to continue the deemed suspension beyond 16.10.97.

15. That the statement made in para 17 of the W.S. are not wholly correct and the deponent denies the same. The deponent states that continuing the suspension for nearly 3 years without any charge-sheet is clearly illegal and amounts to a penalty. Even to continue the suspension beyond six months as per Govt. guide lines,

the investigating agency must have categorically stated that there is enough increminating material to establish the commission of the offence and that the charge sheet would be filed shortly and that reinstatement of the delinquent would hamper the investigation. However in this case nothing increminating has been found even after nearly 3 years of investigation but the suspension of the deponent has been continued indefinitely.

16. That the statement and submission made in paragraph 18 of the W.S. are not at all correct and the deponent denies the same. The deponent states that, the money allegedly found in possession of the deponent is well accounted and has already been claimed by a businessman of Arunachal Pradesh in his petition No. 289/98 before Hon'ble Gauhati High Court. The allegation against the deponent is baseless and no increminating material has been found against the deponent to connect with the said offence even after completion of nearly 3 years of investigation.

17. That the submission made in para 19 of the W.S. are totally baseless in view of the facts and circumstances stated by the deponent in the original application as well as in the forgoing paragraph of this affidavit. The respondent authority most illegally

in colourable exercise of power without considering the guide lines of the Deptt. and in complete defiance of the direction of this Hon'ble Tribunal contained in judgement of O.A.No.267/98 has continued the suspension of the applicant ~~indefinitely~~ indefinitely.

18. That vide M.P.No.284/99, submitted by the respondent authority before this Hon'ble Tribunal having accepted the judgement and order dated 30.9.99 passed by this Hon'ble Tribunal and on the basis of the said submission of the respondent authority, this Hon'ble Tribunal vide order dated 9.11.99 having granted 2 months time only to implement the said judgement, but the order dated 31.12.99 issued by the respondent authority without implementing the direction contained in the said judgement dated 30.9.99, the said order is against the said judgement dated 30.9.99 and liable to be quashed. The deponent states that ground, assigned in the order dated 31.12.99 having not founded on law and untenable and the same having clearly suggesting the vindicting ness attitude of the respondent authority even if the matter is remanded back to the authority, the deponent will not get any justice as such the respondent authority may be directed to revoke the suspension of the deponent and reinstate him forthwith.

19. That in the W.S. the respondent authority having only repeated the grounds which have already been adjudicated upon by this Hon'ble Tribunal in O.A. No.267/98, clearly suggest that there is no valid reason with the respondent authority to continue the suspension of the deponent for indefinite period, as such the impugned order dated 31.12.99 is liable to be quashed and denied the respondent authority to reinstate the deponent forthwith.

20. That the statement made in paragraph 1
to 19 of this affidavit
are true to my knowledge and those made in para-
graph of the affidavit
being matters of record true to my information
derived therefrom and rests are my humble submi-
ssion. And I sign this affidavit on this the 28th day
of April, 2000.

K. Ganesha

Signature of the Deponent

Before the Hon'ble C.A.T. Guwahati Bench

O.A. No. 32/2000

Mr. K. Ganesh. ... App. Cont
vs.
U.O.I. Soss.

The above matter may kindly be
listed for hearing on 14/12/2000.

by:- P.J. Saini, Advt
for the app. cont

11/12/2000

Allowed
not to be set aside on 12/12/2000.
Hear
11/12

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH::GUWAHATI.5

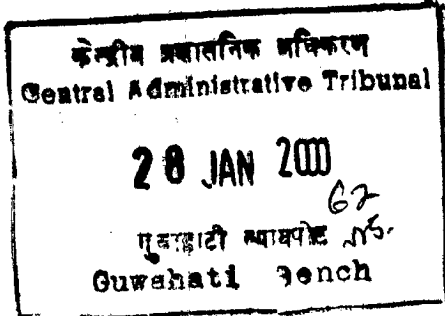
ORIGINAL APPLICATION NO: 32/2000

- a) Prescribed:
- b) Applicant Name: Srie K. Ganesh
- c) Respondents union of India & ors.
- d) No of application: one
1. Is the application in the proper form :- Yes / ~~No~~.
 2. Whether name description and adress of all the paper been: Yes/ ~~No~~.
furnished in cause title.
 - 3.(a) Has the application been duly signed and verified: Yes/ ~~No~~.
b) Have the copies been duly signed : Yes / No.
c) Have sufficient number of copies are the application: Yes/ ~~No~~.
been filed.
 4. Whether all the necessary parties are impleaded : Yes / ~~No~~.
 5. Whether English translation of documents in a Language: Yes/ ~~No~~.
 6. Is the application in time :- Yes/ ~~No~~.
 7. Has the application maintainable : Yes/ ~~No~~.
 8. Has the Vakalatnama/Memo of Apperance/authorisation: Yes/ ~~No~~.
 9. Is the application accompanied by IPO/BD/for Rs.50/... ~~99.45.73.10~~
dtd.27.1.2000
 10. Has the impugned order original/duly attested been filed: Yes/ ~~No~~.
 11. Have ligible copies of the annexure duly attested been filed:-Yes/~~No~~.
 12. Has the Index of documents been filed all available :Yes/~~No~~.
 13. Has the declaration as required by item 17 of form : Yes/~~No~~.
form been filed.
 14. Have required number of enveloped hearing full adress: ~~Yes~~/~~No~~.
of the respondents been filed.
 15. Have the required number of enveloped.
a) Whether the relief sought for arises out of the Single:-~~Yes~~/~~No~~.
cause of action.
b) Whether any Interim relief is prayed for : Yes/ ~~No~~.
 16. In case an for condonation of delay is filed is it supported:Yes/~~No~~.
by an affidavit of the application.
 17. Whether this case can be heard by : Division Bench/ ~~Single~~ Bench.
 18. Any point other point:-
 19. Result of the scrutiny with initial of the scrutiny clerk:

[Signature]
28/1/2000
Section Officer.

[Signature]
28/1/2000
DY. REGISTRAR

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT, 1985.



O.A. NO. 32 /2000.

Sri K.Ganesh ----- Applicant.

- Vs -

Union of India & Ors.- Respondents.

INDEX

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For use of Tribunals Office

Date of filing :-

Registration No.:-

Registrar.

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal

28 JAN 2000

गुवाहाटी न्यायालय
Guwahati Bench

28

filed by

through K. Ganesh.
P. S. Sanyal
28/1/2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:::GUWAHATI BENCH.

O.A.No. 32 /2000

BETWEEN

Shri K.Ganesh,

Chief General Manager, Task Force (under suspension)

North Eastern Telecommunication Region,

Department of Telecom,

4th Floor, Dr.Burman Building,

Goswami Road, Panbazar,

Guwahati - 781001.

... Applicant.

-AND-

1. Union of India

Represented by the Secretary to the Govt.

of India, Department of Telecom Services,

Sanchar Bhawan, 20, Ashoka Road,

New Delhi.

2. The Senior Deputy Director General

(Vigilance), Department of Telecommunication,

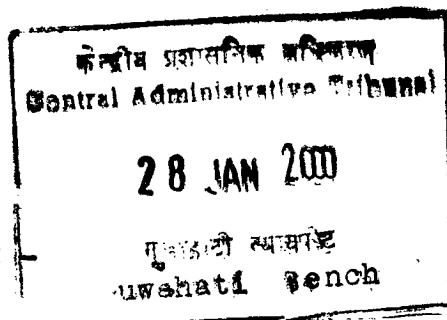
2 West Block No.1, Wing No.2, Ground Floor,

R.K.Puram, New Delhi-110066.

... Respondents.

Particulars of the Applicant -

- | | |
|---|--|
| (i) Name of the Applicant | : Shri K.Ganesh. |
| (ii) Name of the Father | : Late V.Kalyanaraman. |
| (iii) Age of the Applicant | : 54 years. |
| (iv) Designation and Particulars of office in which employed. | : Chief General Manager, Task Force, North Eastern Telecommunications Region, Deptt. of Telecom. |



(v) Address for service : Quarter Type-V/I, C.T.O.
of Notices.
Compound, Panbazar,
Guwahati - 781001.

Particulars of Respondents:

- (1) Designation & office : 1. Union of India, represented by the Secretary to the Govt. of India, Deptt. of Telecom Services, Sanchar Bhawan, 20 Ashoka Road, New Delhi - 110001.
2. Senior Deputy Director, (Vigilance), Department of Telecommunications, West Block No.1, R.K. Puram, New Delhi-110066.

(ii) Address for service : (Same as above).
of Notices.

Details of Application

1. Particulars of the order against which the application is made :-

The application is made against the following order :- Order under No.9-79/97-Vig.1/Pt.2 by the Govt. of India, Ministry of Communication, Deptt. of Telecommunication and communicated through the Asstt. Director General (VIG), rejecting the representation dated 4.10.99 submitted by the applicant for revocation of the order No.9-79/97-Vig.1 dated September 18/23, 1997 in pursuance

of ...

of the direction of this Hon'ble Tribunal vide Judgement and order dated 30th day of Sept, 1999 passed in O.A.No. 267/98.

2. Jurisdiction of the Tribunal - The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Tribunal.

3. Limitation :-

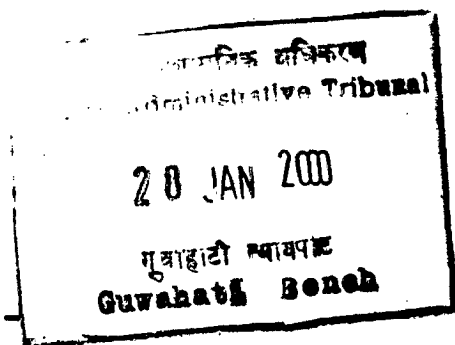
The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case :-

(a) That the applicant is the Chief General Manager, Task Force, North Eastern Telecommunication, Region, Deptt. of Telecom. (presently under suspension). The applicant has been in service in the Deptt. of Telecom Govt. of India as a Group A Official since December, 1968. He has worked in various capacities in Bombay, Ahmedabad, Madras and Saudi Arabia (on deputation). He joined as Chief General Manager, Task Force at Guwahati on 25.9.96. The applicant has served in the department for nearly 30 years with unblemish service record.

(b) That on 6.9.97, the applicant was arrested at Borjhar Airport and on the basis of an F.I.R. filed by the Executive Magistrate, Kamrup in the Azara Police

Station,



Station, a case was registered being Azara P.S. Case No. 74/97 U/S 713(1)(e) Prevention of Corruption Act, 1988. It was alleged in the FIR that currency amounting to Rs. 25,31,200/- was found in his bag, suitcase and Luggage.

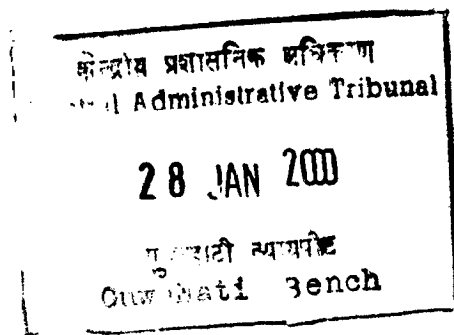
(c) That subsequently vide order dated Sept, 18/23, 1997 of the Govt. of India in the Ministry of Communication, Deptt. of Telecommunication, it was ordered that the applicant is deemed to have been suspended with effect from the date of his detention i.e. 6th September, 1997 in terms of Sub Rule 2(a) of the Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and shall remain under suspension until further orders".

A copy of the aforesaid suspension order dated 18/23, 1997 is annexed as Annexure-A.

(d) That the applicant was granted bail by the Special Judge, Guwahati in connection with the aforesaid case vide its order dated 30.9.97 on condition inter alia that the applicant should be available for investigation whenever required and that the applicant shall not leave Guwahati without prior permission of the court.

A copy of the aforesaid order dated 30.9.97, granting bail to the applicant is annexed as Annexure-B.

(e) ...

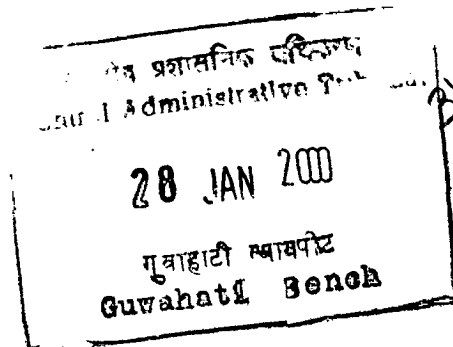


- 5 -

(e) That the applicant states that during all these days, the police did not find any incriminating material against the applicant. However the Central Bureau of Investigation - C.B.I. vide letter dated 30.9.97 informed the D.G.P., Assam that as the accused/ applicant involved in the aforesaid case is a Central Govt. servant it is intending to investigate the case and accordingly, the D.G.P. on 4.10.97 directed the D.S.P.(City) to handover the original case diary to C.B.I. and the D.S.P.(City) on 16.10.97 directed the Officer-in-charge Azara P.S. to hand over the original case diary to C.B.I. and accordingly original case diary was handed over to C.B.I. Thereafter the C.B.I. vide its letter dated 28.11.97 sought the consent of the State Govt. for taking up the investigation of the case and the State Govt. vide its letter dated ~~22.1.98~~ 22.1.98 issued through the Deputy Secretary (Political) expressed its no objection.

(f) That thereafter the C.B.I. registered a case under Section 7 & 13(1)(e) of Prevention of Corruption Act against the applicant on 11.2.98 treating the F.I.R. of Azara P.S. Case No.74/97 lodged by Sri Dinesh Sharma, Executive Magistrate, Kamrup, as the FIR of the said case & which ^{was} registered and numbered as Crime No. RC 5(A)/98-SHG. and C.B.I. commenced investigation in the case, but till today the C.B.I. has not arrested the applicant in connection with the said case.

A copy ...



K. G. S.

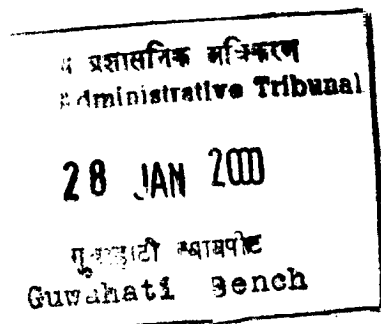
A copy of the F.I.R. in Crime No.RC5(A)/98-SAG pending before the C.B.I. is annexed as Annexure-C.

(g) That on the otherhand the applicant submitted an appeal dated 3.11.97 before the Chairman Telecom Commission, Sanchar Bhawan with a copy to the respondent No.2, praying for revocation of the aforesaid suspension order. However, the applicant received no response to his appeal. Accordingly the applicant submitted another appeal dated 23.12.97 before the Hon'ble Minister of Communication, Govt.of India praying for revocation of the suspension.

(h) That after a long wait the application received the Memorandum bearing No.9-79/97-VIG.I/Pt.dated 24th August, 1998 from the Govt. of India in the Ministry of Communications (Deptt. of Telecommunications) signed by the Asstt.Director General (VIG-A) informing the applicant that his representation dated 23.12.97 has been carefully considered by the President who has found no justification for revocation of his suspension for the present. The applicant was also further informed that it was decided that the applicant's Head Quarters during suspension should be shifted from Guwahati to Gazibavad.

A copy of the aforesaid Memorandum dated 24th August'98 is annexed hereto as Annexure-D.

h) ...



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K. Ganesh

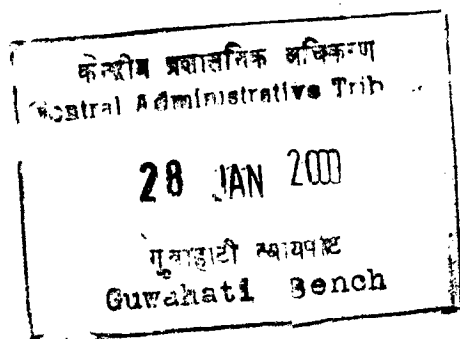
- 7 -

(i) That on receipt of the aforesaid memorandum the applicant has submitted a letter dated 7th Sept '98 to the respondent No.2 requesting that his Head Quarter may be retained in Guwahati in view of the on going C.B.I. investigation for which the presence of the applicant would be required at Guwahati and in view of the conditions placed in the order of bail. Further the applicant also submitted another letter dated 9.9.98 to the respondent No.2 once again requesting for revocation of the suspension order.

(j) That the applicant states that although, the respondent authority did not reply to the representation dated 7.9.98 and 9.9.98 submitted by the applicant, however at the request of the respondent authority, the Investigation Officer of the C.B.I. case filed a petition on 16.12.98 before the Court of Special Judge, Assam praying to waive the condition imposed upon the applicant while granting bail to the applicant vide order dated 30.9.97 that the applicant shall not leave the jurisdiction of the court without prior permission of the court.

(k) That the applicant states that as the respondent authority did not reply to the aforesaid representations dated 7.9.98 and 9.9.98, and the applicant was continued ~~ex~~ under deemed suspension more than 1 year without any just cause, he filed an application before this Hon'ble Tribunal on 20.11.98 for

quashing ...

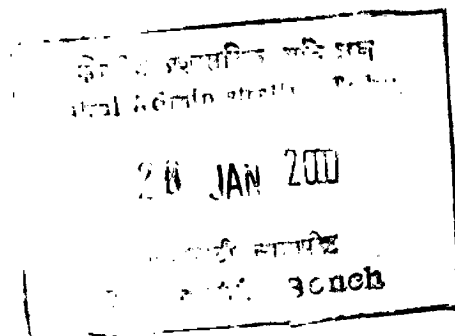


- 8 -

quashing the order of suspension of the applicant bearing No.9.79/97-Vig-I dated September 18/23 1997 which was registered and numbered as O.A.No.267/98.

(1) That after hearing both the parties, this Hon'ble Tribunal vide judgement and order dated 30th Sept,1999, had finally disposed of the Original application No.267/98 with the observation that the matter regarding suspension of the applicant had not been properly dealt with by the authority and the procedure prescribed and the guide lines issued by the Govt.of India have not been followed. It was further observed that almost two years have passed but the applicant is still under suspension. Therefore, this Hon'ble Tribunal had sent back the matter to the respondent authority to consider the entire matter a fresh taking into consideration of the various provisions regarding suspensions and the Govt. instructions. Liberty was also granted to the applicant to file another representation giving details of his claim with a direction to the respondent authorities to take into consideration of the same and dispose of the matter by reasoned order within a period of 3 ~~xxx~~ weeks from the date of submission of the representation. It was further categorically directed by this Hon'ble Tribunal that if ⁱⁿ the opinion of the respondent authorities, the order of suspension under the provisions of the Rule and the Govt.instruction should not continue and at the same time the applicants continuance in Guwahati is detrimental to the interest

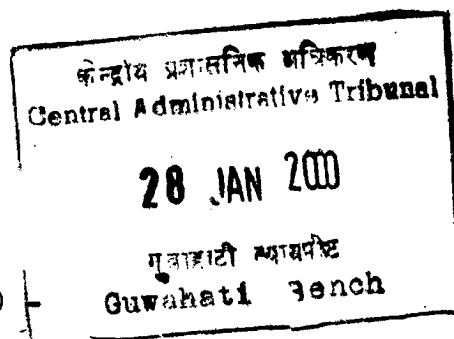
of ...



of the investigation the authority should approach the special Judge, Guwahati for modification of the conditions imposed in the order dated 30.9.97 and thereafter if the condition so imposed by the Special Judge are changed, transfer the applicant to a distant place.

A copy of the judgement and order dated 30.9.99 passed in O.A.No.267/98 aforesaid is annexed as Annexure-E.

(m) That the aforesaid judgement was passed by this Hon'ble Tribunal, having found from the materials submitted on behalf of the respondent authorities by their counsel as well as on the submissions made by both the parties, that deemed suspension was passed w.e.f. 6.9.97 and the applicant was released on bail on 30.9.97, but till now no charge-sheet has been filed and that the counsel for the respondents ~~xx~~ could not show whether the officer suspending had written to the higher authority regarding the necessity of continued suspension and besides during the period from 16.10.97 to 22.1.98 there was no investigation pending and the applicant was also not under any detention. It was observed that the respondent authority could not show anything from the record as to what steps have ~~a~~ been taken during these period and nothing was shown that anything ~~was~~ incriminating was found against the applicant from the date of registering the case



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on 6.9.97 till now. In the aforesaid judgement, it was further observed that the applicant may be guilty of any offence which is to be decided by the Criminal but that itself cannot give a sanction to the authority to continue a person under suspension. The Hon'ble Tribunal also referred to the various circulars and, office memorandum issued by the Central Govt. applicable to the Central Govt. servants which suggests that the period of suspension should be kept to the bare minimum. The Hon'ble Tribunal also referred to the provisions of Rule 10(1) of Central Civil Services (classification, control and Appeal) Rules, which empowered the authority to place a Govt. servant under suspension as well as Sub Rule (2) (a) of the aforesaid Rule 10 which provides for deemed suspension of a Govt. servant.

(n) That in pursuance of the aforesaid judgement and order dated 30.9.99, the applicant submitted a detail representation before the respondent authorities on 4th Oct, 1999 along with the certified copy of the judgement of this Hon'ble Tribunal for revocation of his suspension at the earliest before expiry of 3 weeks.

A copy of the aforesaid representation dated 4th Oct, 1999 submitted by the applicant is annexed as Annexure-F.

(o) ...

28 JAN 2000

- 11 - गुवाहाटी न्यायापीठ
Guwahati Bench

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Kg...

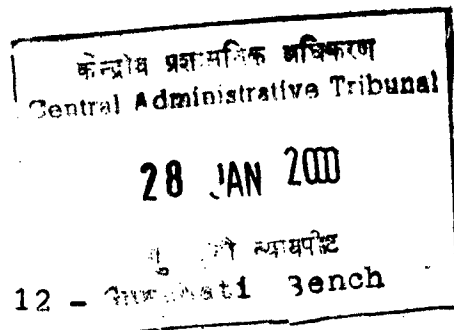
(o) That in the meantime vide order dated 26.10.99, the Special Judge, Assam had vacated the condition No.3 of the order dated 30.9.97 relating to grant of bail of this applicant, and the copy of the said order was also furnished by the applicant to the respondent authorities.

(p) That as the time granted by this Hon'ble Tribunal to implement the aforesaid judgement of this Tribunal was not found to be sufficient by the respondent authorities, the respondent authorities had submitted an application before this Hon'ble Tribunal for extension of ~~kk~~ time for further two month to implement the said judgement of this Hon'ble Tribunal and the said application was registered as M.P.No. 284/99. In the said Miscellaneous Petition, the respondent authorities accepted the judgement and order dated 30.9.99 passed by this Hon'ble Tribunal and accordingly, vide order dated 30.9.99, this Hon'ble Tribunal had allowed further 2 months time w.e.f. 9.11.99 to implement the aforesaid judgement and order of this Hon'ble Tribunal.

A copy of the aforesaid order dated 9.11.99 is annexed as Annexure-G.

(q) That thereafter on behalf of the respondent authorities the Assistant Director General (VIG)

had ...



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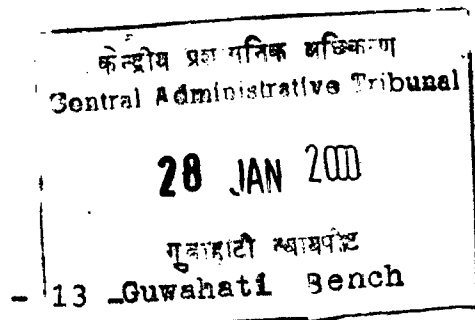
had communicated the order No.9-79/97-Vig-1(Part-II) dated 31st Dec'1999, to this petitioner to the effect that the President has rejected the representation of the applicant dated 4.10.99. On the ground that the offence allegedly committed by the applicant is of a very serious nature and keeping in view of the said fact, the President had observed that more important than the burden on the national exchequer as a result of payment of subsistence allowances to the officer without getting any work from him, revocation of suspension and giving a posting to the officer may send a wrong signals to the follow officers and employees and may subvert the general discipline in the organisation and that the balance of advantage would be in favour of continuing the suspension of the officer for the present which can be reviewed ^{after} C.B.I's investigation Report.

A copy of the aforesaid order No.9-79/97-VIG 1 Part-II dated 31.12.99 is annexed as Annexure-H.

5. Grounds for Relief with Legal Provisions :

(i) That vide order dated 18th Sept, 1997, the applicant was placed under suspension in terms of Sub Rule 2(a) of Rule 10 of the Central Civil Services (classification Control and Appeal) Rules, 1965 until further orders with effect from 6th Sept'1997 as the

applicant ...



applicant was arrested by Assam Police in Azara P.S. Case No.74/97 on 6.9.97 and was detained in custody for a period exceeding 48 hours. The applicant was not suspended in terms of Rule 10(1) (a) or (aa) or (b) of the aforesaid Rules. The Assam Police having abandoned the investigation on 16/10/97 and handed over the entire case record to the C.B.I. who had no power and authority to investigate the matter, for all practical purposes the Azara P.S. Case in connection of which, the applicant was arrested and detained in custody had come to an end, and the respondent authorities, therefore on 16/10/97 ought to have revoked the suspension and ought to have reinstated in service.

(ii) That the C.B.I. had acquired the jurisdiction to investigate the matter only after it received to objection from the State Govt on 22.1.98 and formally started investigation by lodging the F.I.R. on 11.2.98 but the C.B.I. at no point of time had arrested or detained the applicant nor ever requested the respondent authorities to keep the applicant under suspension. Therefore, the respondent authorities had no power and jurisdiction to keep the applicant under continued suspension on the ground of pendency of Criminal investigation by the C.B.I. in Crime No. R.C.5(A)/98-SHG.

(iii) That when the application was deemed to be under suspension under Rule 10(2) (a) of the

Rules, ...

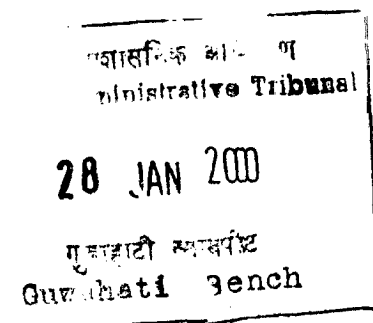
28 JAN 2000

- 14 -
Constitution Bench

Rules, and the authority who arrested and detained the applicant in custody for more than 48 hrs. has abandoned the investigation on 16.10.97 and no other authority thereafter legally investigated any offence against this applicant till 11.2.98, the respondent authority ought to have revoked the order of suspension of this applicant as per Rule 10(5)(c) of the aforesaid Rules as well as as per OM No.11012/16/85-Estt..(A) dated 10th January 1986 applicable to Central Govt. service.

(iv) That this Hon'ble Tribunal having directed the respondent authorities vide judgement and order dated 30.9.99 passed in O.A.No.267/98 to follow the procedure prescribed and the guide lines issued by the Govt. of India while dealing the matter regarding of suspension of this applicant, the respondent authorities ought to have considered the said guide lines and follow the procedure prescribed while considering the matter of suspension of this applicant as well as his representation dated 4.10.99. But the same having not been done and the representation of the applicant dated 4.10.99 having been dismissed on ~~extreme~~ consideration such as revocation of suspension and giving a posting of the officer may send wrong signals to the fellow officers and employees and may subvert the general discipline of the organisation, vide order dated 31.12.99, the said order is illegal

and ...

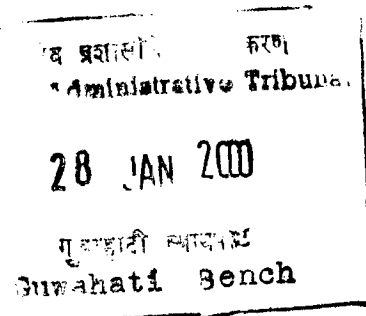


and liable to be quashed and the respondent authorities may be directed to reinstate the applicant forthwith.

(v) That there is no whisper in the impugned order dated 31st Dec'1999 that the judgement and order of this Hon'ble Tribunal dated 30.9.99 passed in O.A. No.267/98 has been considered or the provisions of Rule 10(2)(a) or 10(5)(c) and the different circulars issued by the Govt. of India regarding revocation of suspension have been considered by the respondent authorities while representation of this applicant and the said impugned order having been passed clearly with the view that suspension of this applicant can be reviewed on receipt of the C.B.I.'s investigation report, the said impugned order is patently illegal without jurisdiction, non application of mind and liable to be quashed. Consequently, the order of suspension of this applicant under Rule 10(2)(a) of the aforesaid Rules dated 18/23 Sept, 1997^{may} revoked and the applicant may be reinstated in service.

(vi) That the applicant having been suspended under Rule 10(2)(a) of the aforesaid Rules not because of any arrest or detention by the C.B.I. and/or because of investigation by the C.B.I. but applicant having been suspended because of detention by the Assam Police, the impugned order dated 31st Dec'1999, of the respondent authority rejecting the representation of the applicant with the view that suspension of this

applicant ...



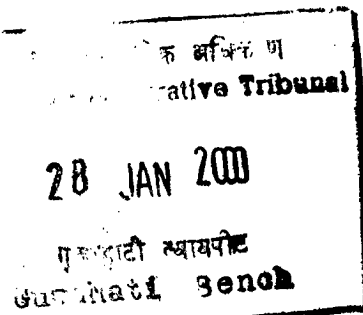
- 16 -

applicant can be reviewed on receipt of the CBI's Investigation report is extremely illegal, without jurisdiction and liable to be quashed, and consequently, the respondent authorities may be directed to reinstate the applicant forth with by revoking the order of suspension.

(vii) That neither the Assam police nor the C.B.I. having reported the respondent authorities that there is any incriminating materials against this applicant ~~xx~~ nor there is any material before the respondent authorities to show that this applicant is in any way adversely involved in the organisation of the respondent authorities, the rejection of the representation dated 4.10.99 of this applicant vide order dated 31st Dec, 1999 on the ground that the revocation of the suspension and giving a posting to the applicant may send wrong signals to the fellow officers and employees and may subvert the general discipline in the organisation is extremely illegal without any basis and liable to be quashed.

(viii) That this Hon'ble Tribunal vide judgement and order dated 30.9.99 passed in O.A.No.267/98 having held that the applicant may be guilty of any offence which is to be decided by a Criminal Court but that itself cannot give a sanction to the authorities to continue a person under suspension, the respondent authorities vide impugned order dated 31.12.99 had

disregarded ...



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K. G. S.

disregarded the said observation of the Hon'ble Tribunal and dismiss the application of this applicant holding that the offence allegedly committed by this applicant is of a very serious nature. Therefore the applicant submits that the impugned order dated 31st Dec 1999 refusing to revoke the suspension of this applicant is a penalty and it goes to the root of the scope and object of suspension. Therefore the said order dated 31.12.99 is & liable to be quashed.

(ix) That the impugned order dated 31st Dec, 1999 disregarded the judgment of this Hon'ble Tribunal as well as various circulars issued by the Govt. of India in dealing with the suspension of an employee and pressed the opinion that the applicant would be continued under suspension for indefinite period. Therefore the impugned order dated 31.12.99 is & liable to be quashed and the respondent authorities may be directed to reinstate the applicant forthwith by revoking the order of suspension.

(x) That the respondent authorities in M.P. No. 284 of 1999 while praying for extension of time to implement the judgement and order of this Hon'ble Tribunal having accepted the order dated 30.9.99 aforesaid and only for some time was prayed for implementation of the same, the respondent authority ought to have considered and accepted the said judgment and order and to implement the same. But while passing

the ...

28 JAN 2000

गुवाहाटी ब्याचपेड
- 18 - Guwahati Bench

the impugned order dated 31.12.99, the respondent authorities having left out the said judgement and order of the Hon'ble Court from consideration, the said impugned order is illegal and liable to be quashed. It appears that extension of time was obtained from this Hon'ble Tribunal by committing fraud on this Tribunal and such action of the respondent authorities may be discouraged by this Hon'ble Tribunal, under the circumstances, the respondent authorities may be directed to reinstate the applicant forthwith.

(xi) That the impugned order dated 31.12.99 having passed without considering the direction issued by this Hon'ble Tribunal in the judgement and order passed in O.A.No.267/98, and without considering the provisions of Rule 10(2)(a) and various circulars issued by the Govt.of India - the said order is actuated by malice in law and liable to be quashed.

(xii) That the respondent authorities have failed to see the differences of suspension under Rule 10(1)(b) and 10(2)(a) of the aforesaid Rules. Therefore the said impugned order dated 31.12.99 is liable to be quashed, and the respondent authorities may be directed to reinstate the applicant forth with.

(xiii) That although suspension is not a punishment, but in the case of the applicant suspension

has ...

28 JAN 2000

গুৱাহাটী বেঞ্চ
Guwahati Bench

- 19 -

has amounted to punishment as the same has been already prolonged for more than 2 years although he has not yet been found guilty.

(xiv) That suspension brings upon a Govt. servant consequences far more serious in nature than several of the penalties mentioned in Rule 11 of the C.C.S (C.C.A.) Rules, 1965. In the case of the applicant the prolonged suspension is resulting in grave hardship to the applicant in as much as not only he is not allowed to perform his legitimate duties and earn his full salary and allowances, but also the prolonged suspension is having a disastrous impact on the fair name and good reputation built up by him in the course of his several years of service.

(xv) That it is most unjust and arbitrary on the part of the respondents to continue the applicant under suspension indefinitely with no end in view, thereby placing the applicant under disability and distress for an indefinite period.

6. Details of the Remedies Exhausted :-

(a) That the applicant declares that he has availed all the remedies available to herein under the relevant service Rules.

(b) In response to the representation dated 4.10.99 the respondent authority vide order No.

Contd.....

20 JAN 2000

गुजराती ब्याच
Gujarati Bench

HS

Kegane

- 20 -

No.9-79/97-Vig.1/Pt.2 dated 31.12.99 has rejected the prayer of the applicant to revoke the suspension order No.9-79/97-Vig.1 dated Sept-18/23,1997.

7. Matters not previously filed or pending with any other court.

The applicant further declares that except the representation mentioned above, he had not previously filed any other 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 the Tribunal or nor any such application writ petition or suit is pending before any other court.

8. Relief Sought :-

In view of the facts and grounds mentioned above, the applicant prays for the following relief :-

(a) That the order No.79/97-Vig-1/Pt.2 dated 31.12.99 issued by the Govt.of India communicated through the Assistant Director General (VIG) rejecting the representation dated 4.10.99 of the applicant may be quashed.

(b) The respondent authority may be directed to reinstate the applicant forthwith by revoking the

suspension ...

28 JAN 2000

46

K. G. S. S.

- 21 -

suspension order No.9-79/97-Vig.I dated Sept,18/23, 1997.

9. Interim order if any prayed for :-

No interim order is prayed for in this application.

10. This application is filed through Advocate.

11. Particulars of the I.P.O. in respect of the application Fee.

(i) I.P.O. No. :- OG 457310

(ii) Name of the Issuing Post Office Guwahati H.O.

(iii) Date of I.P.O. 27.1.2000.

(iv) Post Office at which payable.

Guwahati Head Office

12. List of Enclosures :-

(1) This application.

(2) Annexure - A to H

(3) Vakalatnama

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

I, Sri K. Ganesh, Son of Late V. Kalyanaraman; aged about 54 years Presently resident of Quarter Type-V/I, C.T.O. compound, Panbazar, Guwahati do here by verify that the contents of paragraph 1, 2, 3, 4(a) to 4(d), 4(f), 4(h), 4(i), 4(k) to 4(o), 4(q), and 6 to 12 are true to my personal knowledge and those made in paragraph 4(e) — are true to my information derived from the record through my counsel which I beleive to be true and the contents of 4(f), 4(j), 4(p) paragraph — are true to my information derived from the records which I also believe to be true and paragraphs 5(i) to 5(xv) are beleived to be true on legal advice and that I have not suppressed any material facts..

Date : 28.1.2000.

Place : Guwahati

To,

Registrar,

Central Administrative Tribunal,

Guwahati Bench.

K. Ganesh

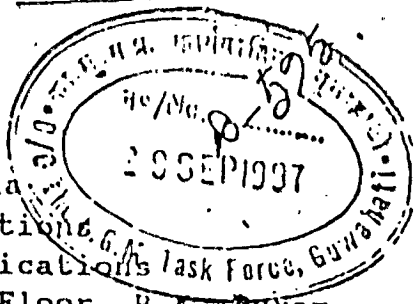
Signature of the Applicant.

HO.9-79/97-Vig.I
Government of India

Ministry of Communications

Department of Telecommunications

West Block # I, Wing # 2, Ground Floor, R K Puram
New Delhi - 110 066.



Dated September 18, 1997

ORDER

WHEREAS a case against Shri K Ganesh, Chief General Manager, Task Force, North Eastern Telecom. Region in respect of a criminal offence is under investigation.

AND WHEREAS the said Shri K Ganesh was detained in custody on 06.09.97 and for a period exceeding forty-eight hours.

NOW, THEREFORE, the said Shri K Ganesh is deemed to have been suspended with effect from the date of detention, i.e. the 6th September, 1997 in terms of sub-rule (2)(a) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and shall remain under suspension until further orders.

By order and in the name of the President.

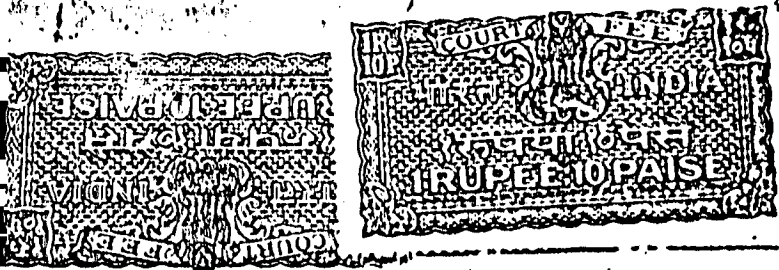
Sd/-
[D H SANKAR]
DIRECTOR[VT]

Shri K Ganesh
Chief General Manager
Task Force
North-Eastern Telecommunication Region
Guwahati - 3.

(Through Chief General Manager, Assam Telecom. Circle
Guwahati)

Date of application for copy ... 6/10/97
Date on which the copy was ready for delivery 7/10/97
Date of making over the copy to the ... 7/10/97

K. K. Das
7/10/97
Court of Special Judge
Guwahati



DISTRICT RECORDS

DISTRICTS

IN THE COURT OF

MAZARA P.S. Case No. 74/97

NO.

OF 19

OF

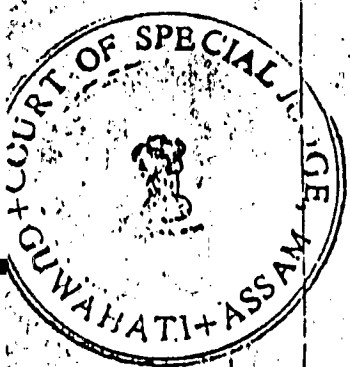
VERSUS

Serial No. of Order	Date	ORDER	Signature
	30/9/97	<p>Seen the bail petition of the accused K. Ganesh. Heard the learned advocate for the accused and the learned JP. Perused the CD.</p> <p>From the Case Diary, it is seen that the accused was thoroughly interrogated by the IO. The accused is in jail since 17.9.97 and prior to that he was in Police custody for 10 days. The IO has not prayed for any further time for remand of the accused.</p> <p>Considering the above facts and the progress of the investigation made by the IO the prayer of the accused is allowed.</p> <p>The accused K. Ganesh is allowed to go on bail of Rs. 50,000/- with one local surety of the like amount on the following conditions :-</p> <p>(i) That he shall not interfere in the investigation of the case in any manner or directly or indirectly to make any inducement or threat to any person acquainted with the facts of the case.</p> <p>(ii) That he shall surrender his passport before this court.</p> <p>(iii) That he shall not leave the jurisdiction without prior permission of the court.</p> <p>(iv) That he shall appear before the court or before the IO whenever he is directed.</p> <p>Return the Case Diary.</p>	

NOTES—This form should be filled up by the IO.

Dictated and concerned by me
Sd/- K.K.Das,
Special Judge, Assam,
Guwahati.

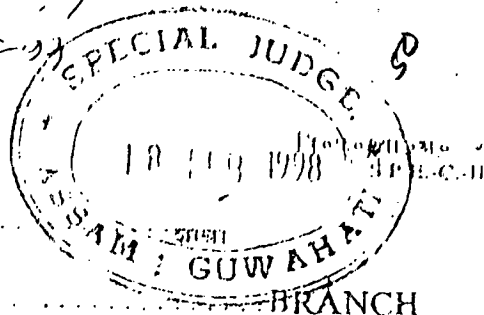
Sd/- K.K.Das,
Special Judge, Assam,
Guwahati.



Date of application for copy ... 10-5-97 - 25 -
Date on which the copy was ready for delivery ... 10-5-97
Date of making over the copy to the applicant ... 10-5-97

Annexure - C

Court of Special Judge
Assam Guwahati



HI SPECIAL POLICE ESTABLISHMENT

प्रथम सूचना
FIRST INFORMATION REPORT

(संद प्रक्रिया संहिता की भाग 154 के अन्तर्गत)
(Recorded u/s 154 Cr. P.C.)

प्रपराध संख्या
Crime No. RC 5(A)/98-SHG

रिपोर्ट करने का समय और तारीख
Date and time of Report

11-2-98 at 1600 hrs.

घटना-स्थल और राज्य का नाम
Place of occurrence with State

: Dist. Kamrup, Assam.

घटना का समय और तारीख
Date and time of occurrence

: 6.9.97 at 2050 Hrs.

परिचारी या सूचना देने वाले का नाम और पता
Name of complainant or informant with address

: Sri Dinesh Sharma, Executive Magistrate
Kamrup, Guwahati.

प्रपराध का विवरण
Offence

: Under Section 7 & 13(1)(c) of P.C. Act,
1988 r/w 120B of IPC.

प्रतिबन्धित का नाम और पता
Name and address of the accused

: 1) Sri K. R. Ganesh s/o Lt. K. Raman
(1) Chief General Manager, Telecom
(Task Force) Guwahati, Assam.

Permanent Address :-

26 Partha Sarathi Pura,
(2) Flat No. 3,
P.S. T. Nagar,
Chennai-17
&
(Others.)
(3)



कार्रवाई का विवरण

Action taken RC 5(A)/98-SHG Registered

तफ़्तीश अधिकारी

Investigating Officer... Sh. S. P. Singh Yadav, Inspector.

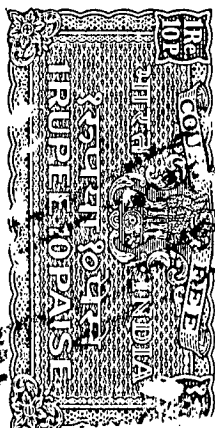
सूचना
INFORMATION

The complaint dt. 6.9.97 received from the complainant, Sri Dinesh Sharma, Executive Magistrate, Kamrup, Guwahati, as enclosed herewith, which has been treated as FIR in P.S. : Azra, Kamrup, Assam Case No. 74/97, is treated as FIR in the instant case also.

Sh. S. P. Singh Yadav
11/5/99

This instant offence has been registered by the CBI/DSPE/Shillong branch at Guwahati subsequent to the receipt of a letter No. PIA-452/92/Pt/244 dtd. Dispur, the 22nd Jan, '98 from Sri R. N. Mishra, ACS, Dy. Secretary to the Govt. of Assam, Political(A) Department, conveying the no objection of the State Government of Assam for investigating the case by CBI.

The facts, disclosed in the said complaint constitute commission of offences punishable w/s 7 & 13(1)(a) of P.C. Act, 1908 w/r/w 170B of IPC on the part of the accused. Hence a RC is registered and endorsed to Sh. S. P. Singh Yadav, Inspector, CBI, ACB, Guwahati for investigation.



(H. K. Jha)
Supt. of Police,
CBI, ACB, Guwahati.



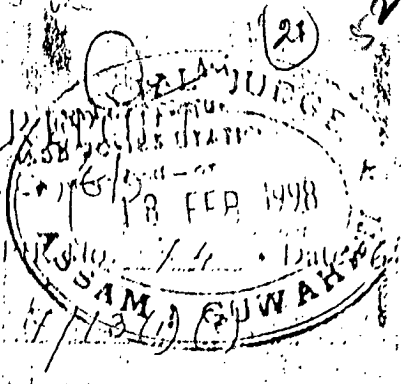
21/5/99
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21/5/99

Copy to I.L.K. Jorwal 27 -
BY SP. (P) 8/10/97

FIRST INFORMATION REPORT

(Under Section 154 Cr. P.)



1. Dist. Karaikal, P.S. Karaikal, Year 1997, File No. 11/130/97, Date 18/2/98

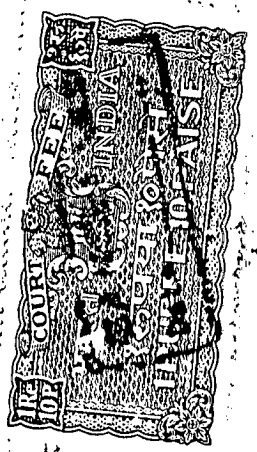
2. (i) Act: Breach of Copyright Sections: 17/130/97
(ii) Act: Sections:
(iii) Act: Sections:
(iv) Other Acts & Sections:

3. (a) General Entry Reference: Entry No. 170 Time 6 PM
(b) Date and Time of Offence: Day Saturday, Date 6.9.97, Time 10.50
(c) Information received Date 06.9.97 Time 1130 AM, G.D. No. 156
at the Police Station:

4. Type of Case: Written / Oral

5. Place of Offence: (a) Direction and Distance from P.S. 3 km West
(b) Address: Benjar Air Port.
D.K. Ram Rame Beat No. 4
(c) If case outside limit of this Police Station, then the of P.S. District

6. Complainant: (a) Name: Sd. Dinesh Sarma
(b) Father's / Husband's Name: K. B. N. Sarma
(c) D.O.B. of Birth: 1.2.56
(d) Nationality: Indian
(e) Passport No. / Date of issue: Place of issue
(f) Occupation: Executive Magistrate Karaikal
(g) Address: Benjar Air Port, Karaikal



Dy SP, Karaikal
Division Station
K. Parthasarathy, AS
will please
investigate the case.

6/11/97
Contd. that took the
have date of F.I.R. of 13004
case no 24/317 sub
7/130/97 S.O. Act.

Sd. K. R. Ganesha (53 years)
y/o K. K. Ramana
26 Parthasarathi param
Flat no. 3.
P.S. T. Nagar - 17.
Chennai.

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8. Reasons for delay in reporting by the Complainant/Informant

9. Particulars of properties stolen / involved. (Attached separate sheet, if reqd.)

Rs. Twenty five Lakhs thirty one thousand and two hundred only.

10. Total value of properties stolen/involved

11. Inquest report, if any

12. F. I. R. Contents : (Attach separate sheets, if reqd.)

The above report received at the station is treated as F.I.R. and is enclosed herewith.

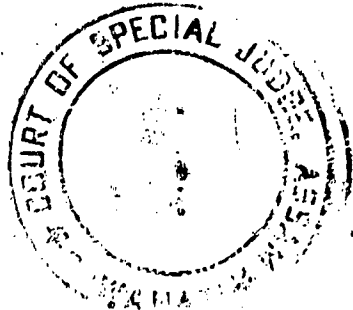
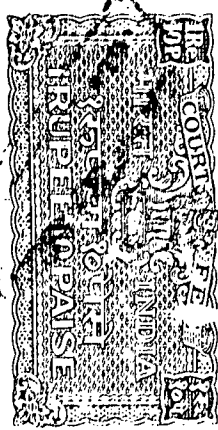
13. Action taken - Since the above report reveals commission of offence (s) u/s as mentioned at Item No. 2, registered the case and took up the investigation/directed. Sr. Sub-Inspector Divisional Dy. S.I. Pawan Kumar took up the investigation transferred to P.S. as ordered by the point of jurisdiction. F.I.R. was given to the Complainant/Informant, admitted, to be correctly recorded and a copy given to the Complainant/Informant free of cost.

Signature, Place & designation of the Complainant/Informant

Signature of the Officer in-Charge, Police Station with Name: Sujit K. Gaithe

Rank: Sub-Inspector
Number: 12-02130
Date: 6/8/91

Stamp: 115799



- 29 -

(20)

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To,

The O.C. Azara Police Station.

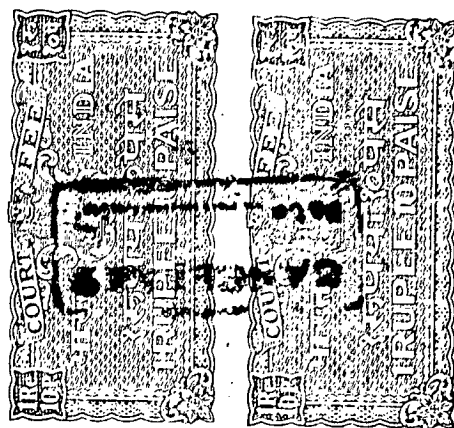
Subj:- ELALA



On 6.9.97 Shri K.R. Ganesh S/O Lt. K. Roman of Partha Sorathi Pura, T.Nagar-Chennai-17 is the Chief General Manager of Tala Communication Deptt (Task Force) Guwahati, ^{and} he was going from Guwahati-Calcutta-Chennai by IAC flight No. 230 scheduled to leave at 1200 hrs. He went to book his luggage. I.A.C. security men put the baggage in the X-ray machine which revealed something fishy. The security supervisor wanted Shri K. Ganesh to open up and show what the baggage contained. As Shri K. Ganesh refused to open the baggage on the plea that he was not having the key with him. The security supervisor Shri Jitendra Dalshya informed the matter to police security. Mr. K. Ganesh was brought to police security enclosure. He was found also carrying hand baggage. At this point Mr. K. Ganesh took out one letter reportedly issued from M/s Pragjyotish Construction and enterprise (Pvt) Ltd. a certificate that cash of five lakhs are sent for cost of materials to be purchased. Airport security incharge police Inspector Eshan Das, informed the matter to S.P. and D.C. D.C. Kamrup detailed one Executive Magistrate ^{City} Shri D. Sarma to enquire into the matter.

On arrival at Barjhar Airport at the police security enclosure found Mr. K. Ganesh with I.A.C. Security supervisor and police. On enquiry Mr. Ganesh identified himself as above and identified his luggage to me including one locked suitcase and one locked hand bag. In presence of witness the key of the suitcase and hand bag were taken from him and was asked to open ~~the bag~~ and show the articles by opening the bag and the suitcase. On opening the bag, suitcase and luggage found Mr. K. Ganesh carrying currency amounting to Rupees 25,31,200/- of different denominations of Rupees 500/-, 100/-, 50/-, 10/-.

Contd.-p/2



22/9/97

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On enquiry Mr. K. Ganesh admitted that the money belonged to him. The money was given to him by the contractors, suppliers who were working under him. They are viz- Mr. Ditta of N/3 Anson Concrete Guwahati, Mr. M.K. Agarwala of Guwahati, Mr. H.K. Maheswari, Mr. Abid Hussain, Ghousdin Ahmed and others. These contractors, suppliers were given works by him. They earned profits and gave him share of their profit. Thus the money along with the connected documents were seized.

Mr. K. Ganesh also revealed that he is living at Guwahati alone. His family is at Chennai. Every after 2/3 months he visits Chennai and every time he used to carry undisclosed amount of cash with him.

For the above criminal misconduct please register a case under proper section of law against Mr. K.R. Ganesh, the Chief General Manager of Telecom. Deptt, Tech Force, Guwahati and investigate.

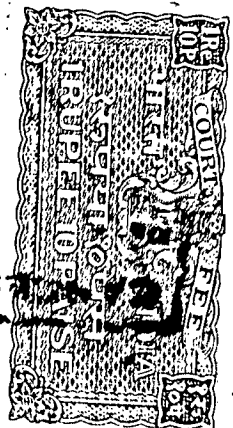
(K. Ganesh)

Executive Magistrate, Kamrup,
GUWAHATI.

Certified to be true copy

V. S. N. N. N.
11/5/95

Special Judge's Sheristadar,
Authorized U/S 76, Act-1 of 1871



abg

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No. 9-79/97-VIG.I/Pt.
GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF TELECOMMUNICATIONS

WEST BLOCK NO.1, WING-2,
GROUND FLOOR, R.K.PURAM,
NEW DELHI-110 066.

Dated, the 24th August, 1998.

M E M O R A N D U M

With reference to his representation dated 23.12.1997. addressed to the Hon'ble Minister (Communications), Shri K. Ganesh 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.

2. However, the President has also decided that the Headquarters of Shri K. Ganesh, the then Chief General Manager Task Force during suspension should be shifted from Guwahati to Ghaziabad in public interest and therefore the Headquarters of Shri K. Ganesh will be Ghaziabad during suspension with immediate effect and subsistence allowance will be drawn from the office of Chief General Manager, ALTTC, Ghaziabad, as per rules.

3. Receipt of the Memorandum shall be acknowledged.
By order and in the name of the President.

(K. NAGARAJAN)
ASSTT. DIRECTOR GENERAL (VIG.A).

✓ Shri K. Ganesh
Chief General Manager
Task Force (under suspension)
GUWAHATI.

(Through CGM, Assam Telecom. Circle, Guwahati).

dt. 24/8/98
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- 32 - Annexure-E

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.

.....

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.....

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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....

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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

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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,

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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.....

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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 the employee is also deprived of his full salary.

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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
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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.

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SD/- HEARS (C)

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Dep. Registrar (U)
Central Administrative Tribunal,
Guwahati Bench

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Annexure - F

Dated : 4th Oct '99

From : K.Ganesh

CGM, NE Task Force, Guwahati (Now under suspension)
Qtr. Type VI, CTO Compound, Panbazar,
Guwahati - 781001.

To, Chairman, Telecom Commission, Sanshar Bhawan,
New Delhi.

Through Sr.DDG (Vigilence).

Deptt. of Telecom, West Block - I,
Wing - 2, RK. Puram, New Delhi - 110 066.

Respected Sir,

Ref : D.O.T, Memo No.9-79/97-Vig - I (Pt) dtd. 24.8.98

Sub : Representation to revoke suspension in accordance
with Hon'ble C.A.T. Guwahati Bench order dtd. 30.9.99
30.09.99

- 1) I have been placed under deemed suspension w.e.f.
6.9.97 vide DOT order No.9.79/97-Vig- I dtd.
18.9.97. My appeal dtd. 23.12.97 to the Department to
revoke the suspension was rejected vide DOT Letter
No.9-79/97-Vig-I (Pt) dt. 24.8.98. To seek redressal and
justice, I preferred an application before Hon'ble Central
Administrative Tribunal (C.A.T.) Guwahati as per O.A. No.
267/98 dtd. 20.11.98 (K.Ganesh Vs. Union of India and others).
In their judgement of the case delivered on 30.9.99, the
Hon'ble Tribunal has directed me to send another represen-
tation giving details of my claim. A certified copy of the
said Hon'ble CAT order is enclosed in Annexure A for your
kind perusal. In accordance with the directive in the Hon'-
ble CAT's order, I am making this representation with a
prayer for revocation of the suspension. The facts of the
case are given below :-

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- 2) a) I worked as C.G.M, N.E. Task Force Circle, Guwahati during the period from 25.5.96 to 5.9.97. Before being posted in Assam for first time, I worked in various capacities in different places like Bombay, Madras etc. and Saudi Arabia (Deputation to TCIL). On 6.9.97, I was detained by Assam Police at Guwahati airport for a period exceeding 48 hours, due to which I was placed under deemed suspension under CCS(CCA) Rule 10 (2)(a). A case was registered by Assam Police being Azara P.S. 74/97 dtd. 6.9.97 under section 7 and 13(1) (e) of Prevention of Corruption Act. It was alleged in FIR that cash amounting to Rs. 25,31,200.00 was found in my baggage in Guwahati Air Port which was supposedly obtained from 5 contractors.
- b) I was granted bail by special Judge, Guwahati Order on 30.9.97. The Assam Police in their investigation could not find any evidence against me for prosecution and subsequently handed over the case to CBI, Guwahati who registered a fresh case RC5(A)/98/SHY dtd. 11.2.98, The investigation by CBI is still said to be in progress and no chargesheet has been filed so far.
- c) Actually, I am completely innocent and did not commit any criminal offence at any time. The cash allegedly recovered from my baggage actually belongs to a businessman of Arunachal Pradesh who has since claimed his money in a petition No. 264/98 pending before Guwahati High Court. It may be pertinent to mention here that carrying cash as such is not an offence under any law.
- d) None of the five contractors mentioned in the FIR were arrested by Assam Police or CBI who could not find any evidence in their intensive investigation to link these contractors with the charges in the F.I.R. During the investigation which has been going on for

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more than 2 years, no irregularity by me has been noticed in my office. There is absolutely no evidence to establish the charges under P.C. Act. it is not a 'Trap' case and there is no evidence whatsoever to establish that the cash was given as illegal gratification by anyone under sec 7 of the P.C. Act. It is also not a disproportionate Asset case under Sec 13 (1) (e) of the PC Act as the cash does not belong to me at all and there is a bonafide claimant of the money. Thus the FIR leading to my detention in custody is totally false, baseless and fabricated. There is every reason to conclude that it is a case of wrongful detention in custody.

- e) During my tenure as CGM TF Guwahati, I took keen interest in developing the Telecom Network in North East. I streamlined the working of optical fibre schemes reducing tender rates in range of Rs. 600/- to Rs. 700/- per meter to nominal departmental rates of Rs. 100-Rs. 150/- per meter for excavation in rocky terrain thereby effecting saving to the dept to the tune of at least Rs. 15 crores. I initiated action on a number of projects involving a number of Jobless youths who were given work. These steps had angered some established contractors who stood to lose heavily. Hence, I have reasons to believe that I was falsely implicated at the behest of some local vested interests who are quite influential and who could collude with Assam Police to do me harm taking advantage of my being a rank outsider here. I did not commit any irregularity in office during my tenure. Even the Department's vigilance wing in their investigation did not find anything against me.

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f) During the hearing of my application before Hon'ble CAT, the case records of CBI were produced before the Hon'ble Tribunal. It was revealed that the CBI approached DG Assam Police on 30.9.97 expressing their intention to take over the case. The Assam Police found it convenient to wash their hands off the case as they could not find any evidence whatsoever for further action and hence made over the original case records to CBI on 16.10.97. Under section 6 of Delhi Police special Establishment at 1946, the CBI has no authority to investigate into a case of Assam Police without permission of Govt. of Assam. Despite this, Assam police hurriedly handed over to CBI all case records in original on 16.9.97 without permission of state Govt. knowing fully well the legal position, thus putting an end to their investigation in to the case. Later CBI wrote to State Govt. seeking the permission on 28.11.97. State Govt. conveyed their no objection for CBI to investigate into the matter on 22.1.98. Thereafter CBI registered their case on 11.2.98 as RC5(A) dtd. 11.2.98. Thus it is clear that Assam police who detained me in custody had ended their investigation on 16.10.97 when they handed over all original case records to CBI. The CBI however could commence their investigation only on 22.1.98, when they got permission from State Govt. of Assam. Thus during the period from 16.10.97 to 22.1.98, there was no investigation into the case pending before any authority. If a review of the suspension which is mandatory under HR 53(I)(ii)(a) at the end of 3 months of suspension had been undertaken on 6.12.97, it would have been clear that there was no investigation pending before any authority at that time and the suspension would have been revoked at that time itself. Further the deemed suspension under

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CCS (CCA) Rule 10(2) (a) was because of detention in custody by Assam Police as per their case Azara P.S. 7497 dtd 6.9.97. When investigation by Assam Police had ended on 16.10.97 without there being any prosecution, further continuation of deemed suspension is invalid and illegal. The CBI commenced its investigation on 11.2.98 as per their case No. RB8(A) 98 dtd. 11.2.98 which is different from the Assam Police case No. Azara P.S. 7497 of 6.9.97 due to which I was placed under deemed suspension. Further CBI did not detain me in custody at any time which alone can justify deemed suspension under their investigation. Hence, Continuation of deemed suspension under CCS (CCA) Rule 10(2) (a) under CBI's investigation is contrary to the provision of rules.

- g) The Department carried out the first review of suspension only on 24.8.98 while rejecting my appeal, nearly a year after suspension. As per the order of 24.8.98, my Headquarter under suspension was shifted to Ghaziabad. The subsistence allowance was reviewed for first time on 18.9.98 more than a year after suspension. During the hearing of the case before Hon'ble CAT, no indication was given as to how long the CBI will take to complete its investigation and whether the investigation will be completed within a short time. The investigation in progress for more than 2 years has not revealed anything against me. As per G.I. Min. of Per. & Trg. OM No. 11012/1685 - Estt A dtd. 10.1.86, (Annexure- B) in all cases of deemed suspension where Govt. servant was detained in Police custody erroneously or without any basis, the deemed suspension under Rule 10(2) of CCS(CCA) Rule, may be revoked from the date the cause of suspension ceases

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to exist i.e. Govt.servent is released from custody without any prosecution having been launched. As per this provision, my suspension has to be revoked from 30.9.97 itself when I was released without any prosecution by Assam Police who had ended their investigation on 16.10.97.

- h) My representation dtd. 7.9.98 requesting deptt to retain the Headquarter at Guwahati and representation dtd. 9.9.98 seeking revocation of suspension have not yet been replied. The copies are at Annexure C & D for your kind perusal.
- i) The CBI has already collected all records in the case which is under investigation for more than 2 years. As such revocation of suspension at this stage can not be detrimental to investigation in any way.
- j) Suspension is not a punishment, nor it should operate as such. It is only intended to facilitate investigation. Beyond a time limit of 6 months as per Govt. Instruction and guidelines if investigation continues, it has to be examined whether suspension can be ~~revoked~~ revoked. If presence of officer is detrimental to investigation, he can be transferred to a different place. Govt. instructions on the matter of suspension, explicitly provide for such option. Continuing the suspension indefinitely beyond six months merely under the plea that investigation is in progress and that the revocation will prejudice investigation, amounts to punishing the Govt. servant without a trial and is violative of a principle of natural justice and against public interest.
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- 3) There are various Govt. of India instructions on the matter of follow up action in suspension cases which have been referred to in the Hon'ble CAT's judgement. A copy of all these instructions as in Swamy's Book on suspension is furnished in Annexure 'E'
- i) DG, P & T No. 201/43/76 - Dis II dtd. 15.7.76
- ii) GI MHA OM No. 221/18/65 - AVD dt. 7.9.65.
- iii) GI, CS (Deptt of Personnel) OM No.39/39/70 - Est(A) dt. 4.2.71.
- iv) GI, CS (Deptt of Personnel) OM No.39/33/72 -Est(A) dtd. 16.12.72
- v) GI, MHA (Dept of Personnel & AR) Om No.11012/7/78-Est(A) dtd. 14.9.78
- vi) GI, MHA (Deptt of Personnel & AR) Om No.42014/7/83 - Est (A) dtd. 18.2.84.

A summary of these instructions is given below :-

- a) As suspension causes great hardship to the Govt. servant, in fairness to him it is essential to reduce its period to barest minimum.
- b) In case of offices under suspension, every effort must be made to complete investigation and file chargesheet within 3 months as a rule. If the investigation is likely to take more time, it should be considered whether suspension should be revoked. If the presence of officer is considered detrimental to investigation he may be transferred on revocation of suspension or order.
- c) Govt. has reduced the period of suspension during investigation from 6 months to 3 months barring exceptional cases. Thus even in exceptional cases it has to be limited to 6 months only.

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- d) All cases of suspension may be reviewed regularly particularly those where officials are under suspension for more than 6 months and whenever it is found that the official can be allowed to resume duties by transferring him from his post to another post, orders should be issued for revoking the suspension and allowing the official to resume duties.
- e) Detailed justification and concrete reasons are necessary to continue suspension in exceptional cases to be reported to higher authority in writing.
- f) Unduly long suspension while putting employee concerned to undue hardship, involves payment of subsistence allowance often at enhanced rate without the employee performing any useful service to the Government. It is therefore necessary for all concerned to scrupulously observe the time limits laid down and to review the cases of suspension to see whether continued suspension is really necessary.
- g) As these guidelines contain salutary principles which safeguard the interest of Govt. employee against arbitrary and iniquitable action by Govt. they are to be kept in view by Govt. while considering appeal by affected employee. Also they contain balancing provisions which serve the interest of both the Govt. and its employee. As such they are binding on the Govt.
- h) Nowhere in these guidelines, it has been suggested that the Headquarters of employee can be shifted during suspension in public interest in order to facilitate investigation as has been done in my case.

While analysing these guidelines, the Hon'ble Tribunal has observed in their judgement of 30.9.99 in these matters as below :

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- i) Merely because there is likelihood of tampering with evidence, may not be a valid ground for continuing the suspension (Para - 11).
 - ii) In order to facilitate investigation the officer can be transferred to a different place (Para - 16)
 - iii) Govt. instruction clearly indicate that suspension should not be allowed to continue for an indefinite period (Para - 16)
 - iv) Continued suspension and undue delay in completing investigation cause harm to both Government as well as the employee concerned, because the Govt. has to pay maximum subsistence allowance (75 % pay) without taking any service from employee and at the same time the employee is deprived of his full salary. (Para - 16)
 - v) All these instructions have been issued by Govt. to maintain a balance regarding the difficulties that are likely to occur for both the Government as well as the employee concerned (Para - 16).
- 40 In paras 17, 18, and 19 of their judgement, the Hon'ble Tribunal has made the following observation pertaining to this matter of whether continued suspension is justified or not.
- a) The investigation has been in progress for more than 2 years. No chargesheet has been filed till now. The Govt. advocate could not show whether any report was sent to higher authority regarding necessity of continued suspension (Para - 17)
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- b) Beside, during the period from 16.10.97 to 22.1.98 there was no investigation pending . The applicant was not under any detention (by CBI who took over investigation) Govt. advocate could not show what steps had been taken during this period.(Para-17).
- c) Nothing incriminating was found against the applicant from the date of registering the case on 6.9.97 till now (30.9.99) (Para- 17).
- d) Almost 2 years have passed. The suspension is still continuing without there being anything to show whether the investigation is likely to end within a short time. Such action can not be encouraged (Para - 17).
- e) Whether the applicant is guilty of any criminal offence or not , is a matter to be decided by criminal court but that itself can not give a sanction to the authority to continue a person under suspension (Para - 17).
- f) If reinstatement in present post is detrimental to investigation, he may be transferred to a distant place (Para - 17)
- g) The authority while disposing of the appeal of applicant for revocation of suspension, has passed an order dt. 24.8.98 which is a cryptic one without assigning any reason. It is the duty of authority to consider all rules and guidelines and decide the matter giving reasons thereof. No such reasons have been assigned by the authority. It does not appear to
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us that the concerned authority applied its mind to the rules and Govt. instruction on the matter of suspension while disposing of the representation.

(Para - 18)

- h) Continued suspension harms both the Govt. and its employee. 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 higher authority. In the present case the Govt. advocate could not show any such. If the interest of investigation so desires, the applicant should be transferred out so that investigation can be made without any interference whatsoever. (Para- 18)
- i) 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 guidelines issued by the Govt. have not been followed (Para- 19).
- j) Almost 2 years have passed. The applicant is still under suspension. In the circumstances, we have no alternative but to send the matter back to the 2nd respondent (Chairman, Telecom Commission) to consider the entire matter afresh taking into consideration of various provisions regarding suspension and Govt. instruction on the matter (Para- 19).
- k) Applicant may also file another representation giving details of his claim within 15 days (Before 14.10.99). The authority should take into consideration of this representation and dispose of the matter by a reasoned order as early as possible, at any rate within 3 weeks of date of submission of fresh representation (Para-19).

PRAYER

- 5) a) In accordance with Hon'ble Tribunals observation in Para 19 of their order of 30.9.99, I am sending this

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fresh representation giving details of the case . I would request you to kindly consider my case favourably in the light of observationse of the Hon'ble Tribunal and revoke my suspension at the earliest, before expiry of 3 weeks i.e. before 25.10.99.

- b) I would appeal to you to kindly pass the order treating the entire period of deemed suspension as duty as it is a case of wrongful detention in custody, and no evidence has been found against me during the investigation in progress for more than 2 years and the suspension had been prolonged for more than 2 years without any justification as pointed out in the above representation.
- c) I have been subjected to extreme mental agony and acute harassment as I have ben kept under suspension for more than 2 years for no fault of mine. I had served the Dept. for nearly 30 years with an unblemished record with utmost sincerity keeping the interest of Dept. always in mind . The suspension over the past two years has come as a rude shock and trauma to me.

In view of above I would once again appeal to you to kindly take an early favourable decision. I shall be deeply grateful to you for your favourable decision in this regard.

Thaning You.

Yours sincerely,

Alfred
B
(K.GANESH)

Enclosures :- Annexur 'A', 'B', 'C', 'D', and 'E'.

62-Annexure-6

FORM NO. 4
(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

M.P. NO 284/99 APPLICATION NO. 267 OF 1998.

Applicant(s) Union of India

Respondent(s) Shri K. Ganesh

Advocate for Applicant(s) Mr. B.S. Basumatary, Addl. C.G.S.C.

Advocate for Respondent(s)



Present: Hon'ble Mr Justice D.N. Baruah,
Vice-Chairman
Hon'ble Mr G.L. Sanglyine,
Administrative Member

This Misc. petition has been filed praying inter alia for extension of time to implement the judgment and order dated 30.9.1999 passed by this Tribunal in O.A.No.267/98.

Heard Mr B.S. Basumatary, learned Addl. C.G.S.C. and Mr Saikia, learned counsel for the opposite party/applicant. Mr Basumatary submits that the petitioner/respondents have accepted the order dated 30.9.1999 passed by this Tribunal. However, in order to implement it some more time is required. Accordingly Mr Basumatary prays for two months further time.

On hearing the learned counsel for the parties we allow the petitioner/respondents two months time from today to implement the order dated 30.9.1999 passed in O.A.No.267/98.

The Misc. Petition is disposed of.

Sd/- Vice-Chairman

Sd/- Member (A)

- 63 - 88

Memo.No. 4168

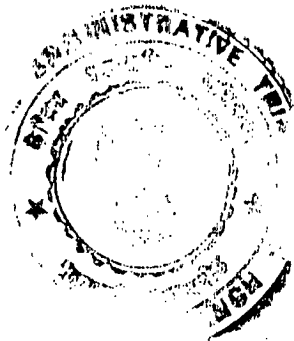
- 2 -

Dated 18-11-88

Copy for information and necessary action to :

- ✓ 1. Shri K. Ganesh, CCM, Task Force, (under suspension),
North East Telecom Region, Silpukhuri, Guwahati-3.

2



17/11/88
DEPUTY REGISTRAR
17/11/88

alms
R

West Block # 1, Wing # 2
Ground Floor, R K Puram
New Delhi - 110 066.

31st

Dated the 31st December, 1999.

ORDER

Shri K Ganesh, formerly CGM, Task Force, NE Telecom. Region, Guwahati (now under suspension), has submitted a representation dated 04.10.99, addressed to the Chairman, Telecom. Commission, in compliance of the directions of Hon'ble CAT, Guwahati Bench, vide order dated 30.09.99 in OA No.267 of 1998 against Order No.9-79/97-Vig.I dated 18/23.09.1997 regarding his deemed suspension with effect from 06.09.1997. Shri K Ganesh has requested that his suspension be revoked.

2. The President has carefully considered the submission of Shri K Ganesh in his aforesaid representation dated 04.10.1999. Keeping in view the fact that the offence allegedly committed by Shri K Ganesh is of a very serious nature, the President has observed that, more important than the burden on the national exchequer as a result of payment of subsistence allowance to the Officer without getting any work from him, revocation of suspension and giving a posting to the Officer may send wrong signals to the fellow officers and employees and may subvert the general discipline in the organisation. The balance of advantage would lie in favour of continuing the suspension of the Officer for the present, which can be reviewed on receipt of CBI's investigation report. The President has, therefore, rejected the aforesaid representation dated 04.10.1999 of Shri K Ganesh.

3. Receipt of this order shall be acknowledged by Shri K Ganesh.

By order and in the name of the President.

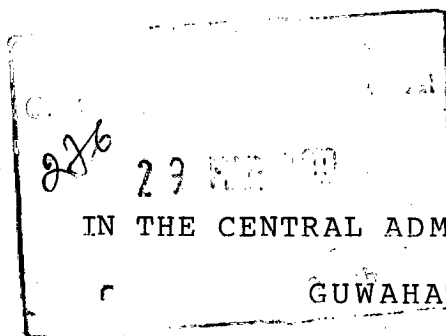
(JOHN MATHEW)
ASSTT. DIRECTOR GENERAL(VIG)

Shri K Ganesh
Formerly CGM(T/F)
NE Telecom. Region (Now under suspension)
Guwahati

(Through Chief General Manager, Task Force, NE Telecom. Region,
Guwahati)

Balance & Acknowledgement

1) Non application of mind
2) Extraneous circumstances - for
Reviewing



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Filed by

29/3/2000
(A. DEB ROY)

Sr. C. O. C.

G. A. T., Guwahati Bench

O.A. No. 32 OF 2000

Shri K. Ganesh

. . . Applicant

- VS -

Union of India & Others

. . . Respondents

IN THE MATTER OF :

Written statement submitted by

Respondents No. 1,2,3

WRITTEN STATEMENT

The humble respondents beg to submit
their written statement as follows :

1. That with regard to paras 1,2,3, 4(a),(b),(c),(d) the respondents beg to offer no comment.
2. That with regard to para 4(e), the respondents beg to state that the case was investigated initially by Assam State Police and subsequently the case was made over by the State Police to the CBI for detailed investigation which is in progress.
3. That with regard to para 4(f), the respondents beg to state that the CBI has registered as FIR against the applicant Shri K. Ganesh and the investigation is in progress.
4. That with regard to pars 4(g),(h),(i),(j),(k),(l),(m),(n),(o),(p) & (q), the respondents beg to offer no comment.

5. That with regard to para 5(i), the respondents beg to state that the CBI has full powers to investigate the matter. CBI registered a case when the case was transferred to it by the State Police, and the matter is still under investigation. Therefore, the case in which the applicant was arrested and subsequently placed under suspension has not come to an end and is still continuing. As admitted by the applicant himself in the foregoing paras, the competent authority has reviewed the suspension from time to time and has come to the conclusion that the applicant should be kept under suspension. There is no provision in the CCS (CCA) Rules which says that the Government servant who is deemed to have been suspended in terms of Rule 10(2)(a) thereof has to be reinstated immediately after the Government servant has been released from detention. The competent authority has to take a decision taking into account the charges and the circumstances leading to the arrest of the Government servant. As mentioned above the competent authority has examined the question of revocation of suspension and based on the facts and circumstances of the case, has concluded that the applicant needs to be kept under suspension for the time being.

6. That with regard to para 5(ii), the respondents beg to state that the applicant was placed under deemed suspension in view of the fact of his detention by the police for a period exceeding 48 hours in terms of Rule 10(2)(a) of the CCS (CCA) Rules. The case in which the applicant was detained has ultimately resulted in the registration of a case by the CBI vide RC.5(A)/98-SHG.

7. That with regard to para 5(iii), the respondents beg to state that the investigation into the case in which the applicant was arrested had been abandoned on 16-10-97 which is incorrect. As per the normal procedure the case was only transferred to the CBI by the State Police on this date. Thereafter, CBI has taken necessary action to investigate the case further. Since the investigation into the case is still going on, the competent authority has decided to continue the suspension of the applicant. The rule/instructions cited by the applicant are not relevant in his case.

8. That with regard to para 5(iv), is denied. The respondents beg to state that the representation dated 4-10-99 submitted by the applicant was considered by the competent authority i.e. the President. As communicated to the applicant vide dated 31-12-99 (Annexure-H to the application) the case against the applicant is of a very serious nature and revocation of his suspension may send wrong signals to the fellow officers and employees and may subvert the general discipline in the organization. The competent authority has decided to continue the suspension and the case is to be reviewed on receipt of CBI's report. Therefore, the order dated 31-12-99 rejecting the representation of the petitioner is perfectly in accordance with the relevant rules and is perfectly legal, and the same has been issued fully in compliance with the directions of this Hon'ble Tribunal.

9. That with regard to para 5(v), is denied. The respondents beg to state that the representation of the applicant was examined in the light of the directions given by the Hon'ble Tribunal. The reasons for rejection of the representation and continuing the applicant suspension, have been clearly indicated in the order dated 31-12-99. Therefore, the order is well considered, is a speaking order, perfectly legal and liable to be upheld.

10. That with regard to para 5(vi), is denied. The respondents beg to state that the case investigated by the CBI is the same on which the applicant was arrested by the Assam Police. The contention of the applicant, is, therefore, totally misplaced and the order for continuing the suspension is perfectly legal and liable to be upheld.

11. That with regard to para 5(vii), is denied. The respondents beg to state that as the investigation into the case is still going on. it is premature to say that there is no incriminating material against the applicant. The applicant was arrested by the Assam Police on 6-9-97 while allegedly in possession of huge amount of currency amounting to Rs.25,31,200/-. It is in view of these facts that the competent

authority has decided that the revocation of the suspension and giving a posting to the applicant will send wrong signals to the fellow officers and employees and may subvert discipline in the organisation. Therefore, the order is based on valid consideration and is in order.

12. That with regard to para 5(viii), is denied. The respondents beg to state that the submission of the applicant is based on misrepresentation of law and facts. It is well established now that suspension is not a penalty and that it is only temporary deprivation of office. The competent authority i.e. the President after consideration of the facts and circumstances of the case has decided to continue the suspension of the applicant. Therefore, the order dated 31-12-99 is perfectly as per law.

13. That with regard to para 5(ix), is denied. The respondents beg to state that the order dated 31-12-99 has been passed by the competent authority after careful consideration of all the relevant rules and instructions and the directions of this Hon'ble Tribunal.

14. That with regard to para 5(x), is denied. The respondents beg to state that the submission of the applicant is based on lack of appreciation of facts. The Hon'ble Tribunal had directed for consideration of the representation of the applicant within a period of three weeks, which period, on a prayer being made by the respondent was extended by this Hon'ble Tribunal. The representation given by the applicant was given careful consideration by the competent authority in the light of the observations and directions of the Hon'ble Tribunal and it was decided to continue the applicant under suspension. There was no direction from the Hon'ble Tribunal to the respondents to reinstate the applicant, while directing the competent authority to consider the case of the applicant.

15. That with regard to para 5(xi), is denied. The respondents beg to state that the order dated 31-12-99 is a conscious decision of the

competent authority based on the facts of the case including the observations and derfections of this Hon'ble Tribunal.

16. That with regard to para 5(xii), is denied. The respondents beg to state that the applicant is deemed to have been placed under suspension by an order of the competent authority issued under Rule 10(2)(a) of the CCS (CCA) Rule, 1965 and not under Rule 10(a)(b) of the said Rules. The contention of the applicant is based on misinterpretation of rules and may be rejected.

17. That with regard to para 5(xiii), is denied. The respondents beg to state that the applicant has himself admitted that the suspension is not a penalty. The competent authority has decided to continue the suspension of the applicant keeping in view the circumstances in which he was detained and the fact that the investigation of the case is still pending, and other relevant considerations as expressly stated in the impugned order dated 31-12-99.

18. That with regard to para 5(xiv), is denied. The respondents beg to state that the applicant was arrested by the police while he was allegedly in possession of huge amount of unaccounted money and a case under Section 7 and 13(1)(e) of the prevention of Corruption Act. 1988 read with Section under 120(b) of the IPC stands registered against him. He was released on conditional bail only. Revoking the suspension while the case is still under investigation would send a wrong signal to other officers and employees and may subvert discipline in the organisation. Therefore, the order is based on valid consideration and is in order.

19. That with regard to para 5(xv), is denied. The respondents beg to state that as explained in the foregoing paras, the continued suspension of the applicant is fully justified in view of the facts and circumstances of the case.

20. That with regard to para 6, the respondents beg to offer no comment. That with regard to para 7, the respondents beg to deny for want of knowledge.

21. That with regard to para 8 & 9, the respondents beg to state that it is denied that the applicant has adduced any valid ground for the grant of the reliefs prayed for by him.

22. That with regard to paras 10 to 12, the respondents beg to offer no comment.

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

I, Shri PRADIP CHANDRA DAIMARI, DE (Est)

being authorised do hereby solemnly declare that the statements made in this written statement are true to my knowledge, belief and information and no material fact has been suppressed.

And I sign this verification on this the day of 28th
March / 2000.

Pradip Chandra Daimari
DECLARANT