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

9

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 49/2000

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SECTION OFFICER (Judl.)

FORM NO. 4

( See Rule 42 )

# In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 49/2000 OF 199

Applicant(s) Sri Ashok Kumar Saha.

Respondent(s) Union of India and o/s.

Advocate for Applicant(s) Mr. B.K. Sharma  
Mr. S. Sharma

Advocate for Respondent(s) Mr. U.K. Nair.

C. G. S. L.  
Dr. Y. K. Phukan  
Mrs. M. Das, G. A. Assam.

Notes of the Registry.	Date	Order of the Tribunal
<p>11.2.2000</p> <p>Form No. 49/2000 Deposited vide No. 4576/14 Dtd. 2.2.2000</p> <p>Sd/- Member</p> <p>22-2-2000</p> <p>Service of notices prepared and sent to D. Section for issuing to the same to the respondents through Regd. post with A.D. vide D.Nos. 526 to 530 Dtd. 22-2-2000.</p>	<p>11.2.2000</p> <p>pg</p> <p>14.3.00</p>	<p>Application is admitted. Issue of notice.</p> <p>List on 14.3.2000 for written statement and further orders.</p> <p>Pendency of this application shall not be a bar for the respondents to give relief to the applicant.</p> <p>Sd/- Member</p> <p>Sd/- Vice-Chairman</p> <p>On the prayer of Dr. Y.K. Phukan, learned Sr. Govt. Advocate, Assam four weeks time is allowed for filing of written statement. Mr. B.K. Sharma has no objection.</p> <p>List on 10.4.00 for written statement and further orders.</p>

Member(J)

Member (J)

Notes of the Registry	Date	Order of the Tribunal
<p>13-3-00</p> <p>Service Reports are awaited.</p> <p>W/statement is not seen by</p> <p>mk</p>	10.4.00	<p>On the prayer of Mr.B.C.Pathak, learned Addl.C.G.S.C., two weeks time is allowed for filing of written statement.</p> <p>List on 27.4.00 for filing of written statement and further orders.</p> <p>Member</p>
<p>Notice duly served on R.No. 1 to 5.</p> <p>11-5-00</p> <p>no W/S has been filed.</p> <p>12-5-00</p> <p>nk</p>	27.4.00	<p>Two weeks further time allowed for submission of written statement on the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. List for written statement and further orders on 12.5.00.</p> <p>Member</p>
<p>9-6-2000</p> <p>No written statement has been filed.</p> <p>12-6-2000.</p> <p>No written statement has been filed.</p> <p>pg</p>	12.5.00	<p>Mr S.Sarma for the applicant.Mr B.C.Pathak, learned Addl.C.G.S.C for respondents No.1 and 4. None for respondents No.2, 3 and 5.</p> <p>List on 13.6.2000 for written statement and further orders.</p> <p>Member(J)</p>
<p>13.6.00</p> <p>mk</p>	13.6.00	<p>The learned counsel for the respondents Mr.B.C. Pathak requests for two weeks time to file written statement. Time is allowed.</p> <p>List on 28.6.00 for written statement and further orders.</p> <p>Member (J)</p>
<p>28.6.00</p> <p>mk</p>	28.6.00	<p>There is no Bench today. Adjourn to 27.7.00.</p>
<p>27.7.00</p> <p>mk</p>	27.7.00	<p>No Bench. Adjourn to 31.8.00.</p>

(3) GA 49/00

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Notes of the Registry	Date	Order of the Tribunal
	31.8.00	no Bench. Adm N-1-11-00. m20 1a
No. written statement has been filed. <u>By</u> 31.10.2000	29.9.00	Two weeks further time allowed for filing of written statement on the prayer of Mrs M.Das, learned Govt. Advocate Assam. List on 1.11.2000 for order.  Vice-Chairman
	pg. 1-11-00	No representation, List again on 2.11.00. By m/s.
23-11-2000 Written statement has been filed by the respondents. 2 & 5. <u>By</u>	2.11.00	No written statement has been filed. However, on the <sup>A</sup> prayer made on behalf of the respondent No.1 & 4 by Shri B. C. Pathak, Addl.C.G.S.C. for filing of written statement. Prayer is allowed. List on 29.11.00.  Vice-Chairman
	lm	
written statement filed on behalf of R.No. 2 & 5, other respondent has not been filed. <u>By</u> 21.12.2000	29.11.00	Three weeks further time is granted to file written statement on the prayer of Mr B.C.Pathak, learned Addl.C.G.S.C. List on 22.12.2000 for order.  Vice-Chairman
	pg	
has been filed.	22.12.00	List on 16.1.01 to enable the respondents to file written statement.  Vice-Chairman
	lm	
15-2-2001 w/s has been filed on behalf of Respondent No 1, <u>By</u> 15/2		

Notes of the Registry	Date	Order of the Tribunal
W/S has been filed. <u>By</u> 5.2.2001	16.1.01	The Respondent State of Assam has filed the written statement. Union of India is filing its reply soon as submitted by the Addl. C.G.S.C. List on 6.2.01 for orders. <u>Member</u> <u>Vice-Chairman</u>
23.2.2001. The case is ready for hearing as regards W/S on behalf of the respondents 1, 2 & 5. Respondent No 3 and 4 service is completed. NB 23/2/01	6.2.01	Heard Mr. B.K. Sharma learned counsel for the applicant and also Dr. Y.K. Phukan learned Sr. Government Advocate Assam, Mr. B.C. Pathak, Addl. C.G.S.C. for the respondents. Mr. Phukan has stated that the State respondents has filed the written statement. The Union of India seeks further time to file written statement. List on 27.2.01 for hearing. In the meantime the applicant may file rejoinder within two weeks. <u>Member</u> <u>Vice-Chairman</u>
No. Rejoinder has been filed. <u>By</u> 26.2.01	27.2.	Mr. B.C. Pathak, Addl. C.G.S.C. stated that W/S has been filed, two weeks time is allowed to the applicant to file rejoinder. List it on 13/3/2001. M/s A.K. Jey 27.2
12.3.2001 Rejoinder to the W/S has been filed by Respondent Nos 2 to 5.	18.3	Heard in part. List it again on 29/3/2001. M/s A.K. Jey 13.3
20.4.01 Ready & hearing.	29.3.	Hearing remained inconclusive. List it again on 9/4/2001. M/s A.K. Jey 29.3
la.	9.4.	There is no discussion bench today. The case is adjourned to 23.4.2001. M/s A.K. Jey 9.4
	23.4.01	Heard in part. List it tomorrow 27.24.4-01. M/s A.K. Jey 23.4

SA 49/2000

Notes of the Registry	Date	Order of the Tribunal
	24.4.01	Hearing concluded, Judgment reserved.
Received copy. Ashwin Jain 21/5/01	11.5.01	<sup>1070</sup> Judgment delivered in open Court. Kept in separate sheets. Application is dismissed. No order as to costs.  1000shar Member  Vice-Chairman
25.5.201 Copy of the Judgment has been sent to the Office for issuing the Order to the L/Adv. for the parties. etc	1m	

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Notes of the Registry	Date	Order of the Tribunal

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CENTRAL ADMINISTRATIVE TRIBUNAL ::  
GUWAHATI BENCH.

O.A./R.A. No. 49 . . . . . of 2000

DATE OF DECISION 11.5.2001 .....

Shri Ashok Kumar Sahu, IPS

APPLICANT(S)

Mr B.K. Sharma, Mr S. Sarma and  
Mr U.K. Nair

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

Mr B.C. Pathak, Addl. C.G.S.C.,  
Dr Y.K. Phukan, Sr. Government Advocate, Assam  
and Mrs M. Das, Government Advocate, Assam.

ADVOCATE FOR THE  
RESPONDENTS.

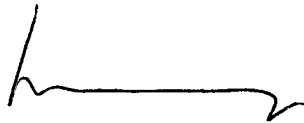
THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

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 ?

5.

Judgment delivered by Hon'ble Vice-Chairman





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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.49 of 2000

Date of decision: This the 11<sup>th</sup> day of May 2001

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

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

Shri Ashok Kumar Sahu, IPS  
Assam - Meghalaya Joint Cadre,  
Inspector General of Police (OSD) (under suspension),  
DGP's Office,  
Ulubari, Guwahati.

.....Applicant

By Advocates Mr B.K. Sharma, Mr S. Sarma and  
Mr U.K. Nair.

- versus -

1. The Union of India, represented by  
The Secretary to the Government of India,  
Ministry of Home Affairs,  
New Delhi.
2. The State of Assam, represented by  
The Chief Secretary,  
Dispur, Guwahati.
3. The State of Meghalaya, represented by  
The Chief Secretary,  
Shillong.
4. The Secretary to the Government of India,  
Ministry of Home Affairs,  
New Delhi.
5. The Secretary to the Government of Assam,  
Home (A) Department,  
Dispur, Guwahati.

.....Respondents

By Advocates Mr B.C. Pathak, Addl. C.G.S.C.,  
Dr Y.K. Phukan, Sr. Government Advocate, Assam,  
Mrs M. Das, Government Advocate, Assam.

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O R D E R

CHOWDHURY.J. (V.C.)

In this application under Section 19 of the Administrative Tribunals Act, 198, the applicant, amongst others, assailed the Notification dated 4.6.1997 placing the applicant under suspension and the communication dated 9.7.1997 asking the applicant to show cause under Rule 8 of the All India Service (Discipline and Appeal) Rules, 1965 and the Notification dated 8.9.1997 accepting the prayer for voluntary retirement tendered

by the applicant allowing him to go on voluntary retirement with effect from 1.8.1997.

2. A thumb nail sketch leading to the institution of this application are adumbrated hereinbelow:

The applicant, at the relevant time, was a member of the Indian Police Service (IPS for short) allocated to the Assam - Meghalaya Joint Cadre. While he was serving in the Assam Wing of the Assam - Meghalaya Joint Cadre and holding the post of Inspector General of Police (OSD) and Director (Prosecution) under the Government of Assam he submitted a notice for voluntary retirement addressed to the Chief Secretary on 30.4.1997. In the said notice the applicant inter alia, stated that he had completed twenty years of service as on 16.7.1997 and he intended to go on voluntary retirement with effect from 1.8.1997. By communication dated 20.5.1997 the Additional Chief Secretary to the Government of Assam referred to some news items published in a few newspapers in Assam allegedly criticising the Government of Assam. The relevant paper clippings were enclosed with the aforementioned communication and the applicant was directed to explain why disciplinary action should not be initiated against him for violating all India Service (Conduct) Rules, 1968. The applicant submitted his reply thereto and thereafter by Notification dated 4.6.1997, the Governor of Assam in exercise of powers conferred under Rule 3 of All India Services (Discipline and Appeal) Rules, 1969 placed the applicant under suspension with effect from 4.6.1997 pending initiation of proceeding for disciplinary action against him. A disciplinary proceeding was thereafter initiated against the applicant and show cause notice was issued under Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969 as to why any of the penalties prescribed in Rule 6 of the aforesaid Rules would not be inflicted on him on the charges based on the statement of imputation of misconduct vide memorandum dated 9.7.1997. According to the applicant the aforesaid communication did not accompany the list of documents as well as the list of witnesses on which the charges were proposed to be sustained

and.....

and he accordingly submitted an application for furnishing the same and also for inspection of the relevant documents for preparation of the show cause. By notification No.HMA(IPS)/58/Pt-V/39 dated 8.9.1997, the respondents conveyed the acceptance of the prayer for voluntary retirement tendered by the applicant and to allow him to go on voluntary retirement with effect from 1.8.1997 without prejudice to the ongoing disciplinary proceeding. The applicant by his representation dated 6.4.1999 requested the authority for revocation of the suspension order. By communication No.HMA(IPS).58/Pt-III/2 dated 29.10.1999 the applicant was informed by the Government of Assam that the Government of India had once again examined the matter of voluntary retirement and found that in terms of Rule 16(2)(a) of the All India Service (DCRB) Rules, the applicant stood retired from service with effect from 1.8.1997, i.e. after expiry of the three months notice period and therefore, question of revocation of the suspension order and posting him accordingly did not arise. The applicant by this application assailed the aforementioned orders as illegal and without jurisdiction.

3. The respondent No.1, Union of India, as well as the respondent Nos.2 and 5, the State of Assam and the Secretary, Government of Assam, Home Department, submitted two separate written statements denying and disputing the contentions of the applicant and supporting the actions so far taken by the respondent authority.

4. Mr B.K. Sharma, learned counsel for the applicant, mainly, assailed the legality and validity of the action of the respondents accepting the voluntary retirement. Mr Sharma submitted that since those actions are in contravention of the rules, the said actions are patently invalid and therefore, the same are liable to be set aside. The learned counsel submitted that in the instant case, the applicant submitted his application for voluntary retirement on 30.4.1997 in terms of Rule 16 (2A) of the All India Service (Death-cum-Retirement Benefits) Rules, 1958, after giving three months previous notice to the State Government concerned.

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The learned counsel submitted that the rules read with the Government of India instructions dated 16.10.1980 enjoined a time frame. Acceptance of the voluntary retirement was to be made within the period specified and if no actions were taken within the period specified, such notice would fall into desultude. Therefore, according to the learned counsel, the respondents could not have acted upon the aforesaid application for voluntary retirement. Mr Sharma, to buttress the aforementioned arguments further submitted that acceptance of resignation was required to be communicated and that communication must also be at the earliest instance. Failure to communicate within the time frame affected the right of the applicant to exercise his right to withdraw the application for voluntary retirement before the crucial date, namely 1.8.1997. Mr Sharma further submitted that in the instant case the acceptance of the voluntary retirement by the Government of Assam was not a valid acceptance, so much so, the said acceptance under the Rules were to be made only by the Joint Cadre Authority and no other authority. The learned counsel, lastly, submitted that the impugned notification dated 8.9.1997, which was not served upon the applicant, indicated about acceptance of voluntary retirement with effect from 1.8.1997. According to Mr Sharma the same was unauthorised, so much so, that acceptance of retirement could not have been made retrospectively.

5. Mr B.C. Pathak, learned Addl. C.G.S.C. and Dr Y.K. Phukan, learned Sr. Government Advocate, Assam, representing the Union of India and the State of Assam respectively, countering the submissions of Mr Sharma and supporting the action of the respondent authority, submitted that there was no illegality in accepting the voluntary retirement and the action of the respondents in suspending the applicant and subsequent initiation of disciplinary proceedings were made in accordance with law and the learned counsel submitted their respective submissions in that regard.

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6. Before going into the respective merits of the case it would be appropriate to refer to the provisions of Rule 16 (2) and Rule 16 (2A) of the AIS (DCRB) Rules, 1958, which are reproduced below:

"16(2) A member of the service may, after giving atleast three month's previous notice in writing to the State Government concerned, retire from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

Provided that the member of the service under suspension shall not retire from service except with the specific approval of the State Government concerned.

16(2A) A member of the service may, after giving three month's previous notice in writing to the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice;

Provided that, a notice of retirement given by a member of the service shall require acceptance by the Central Government, if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the service could have retired from service under sub-rule (2)."

The Government of India's decision, relevant for the purpose, is reproduced below:

"DP & AR Letter No.15011/47/78-AIS (II), dated 16th October, 1978.- Under sub-rule (2) of Rule 16 *ibid*, retirement of a member of the Service becomes effective on the expiry of three months' notice given by him, unless he is under suspension. Once the notice period begins to run, it may not be open to the Government a unilateral act of suspension to prevent the running of three months' period. In other words, a member of the Service, who has given notice for voluntary retirement under the aforesaid rule will retire from service on the expiry of the period of the prescribed three months even if he is placed under suspension after he gave notice. However, as provided in the explanation below Rule 6(1) *ibid*, a departmental proceedings in items of the aforesaid rule shall also be deemed to have been instituted against the pensioner on the date he was placed under suspension. In view of this, if a member of the Service is placed under suspension after he gives notice for retiring from service voluntarily, the benefit of the limitation contained in clause (b) (ii) of the proviso to Rule 6(1) *ibid* will not be available to him and departmental proceedings under this rule for reduction of his pensionary benefits can be initiated against him, even after the date of his retirement, for a misconduct committed by him while in service, although such proceeding may be in respect of an event which took place more than four years before the institution of such proceedings."

"DP & AR Letter No.25011/2/80-AIS (II), dated the 16th October 1980.- It has been decided to lay down the following guidelines for the acceptance of the notice of retirement under sub-rule (2A) of Rule 16 of the All India Service (Death-cum-retirement Benefits) Rules, 1958 for the information and guidance of the State Governments :-

(i) A notice of voluntary retirement given by a member of the Service may be withdrawn by him, after it is accepted by the State Government, only with the approval of the State

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Government concerned provided the request for such withdrawal is made before the expiry of the period of notice.

(ii) In case where disciplinary proceedings are pending or contemplated against a member of the Service for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that the imposition of the major penalty of removal or dismissal from service would be warranted, the notice of voluntary retirement given by the officer concerned may not ordinarily be accepted.

(iii).....

(iv)....."

7. The materials on record provided the indication that the applicant submitted an application for voluntary retirement from All India Service on 30.4.1997 before the Chief Secretary, Government of Assam. The said application was at the first instance sent to the Government of India and the Government of India, in turn, sent back the same to the Government of Assam for placing the matter before the Joint Cadre Authority. The Joint Cadre Authority consisting of Shri D.K. Gangopadhyay, IAS, the then Chief Secretary of Meghalaya and Shri T.K. Kamilla, IAS, the then Chief Secretary of Assam, considered the prayer of the applicant for voluntary retirement with effect from 1.8.1997 under Rule 16(2A) of the Rules and the Joint Cadre Authority allowed the applicant to go on voluntary retirement without prejudice to the existing disciplinary proceedings against him. The Government of India by way of a Fax Message, sent to the Chief Secretary, Government of Assam and Chief Secretary, Government of Meghalaya vide No.31012/4/97-IPS.II dated 13.8.1997 conveyed the approval of the Government of India to the acceptance of the request of the applicant to retire from service with effect from 1.8.1997 without prejudice to the on going disciplinary proceedings. By Notification No.HMA (IPS) 58/Pt-V/39-A dated 8.9.1997 a communication was made about the acceptance of voluntary retirement of the applicant by the Government of Assam and to allow the applicant to go on voluntary retirement with effect from 1.8.1997 without prejudice to the ongoing disciplinary proceedings against the applicant. Mr Sharma submitted that the order dated 8.9.1997 was not an order of the Governor. It was only issued at the instance of the Government of India, who sent the approval to the acceptance of the request of the applicant to retire voluntarily from.....



from service with effect from 1.8.1997. Mr Sharma, questioning the act of the resolution of the Joint Cadre Authority allowing the applicant to go on voluntary retirement, submitted that the said acceptance was in valid on two counts. Firstly, according to Mr Sharma, the communication contained in Annexure II to the written statement on behalf of respondent Nos.2 and 5 did not indicate as to when, how and where the Joint Cadre Authority took the matter into consideration and secondly, Mr Sharma, questioning the propriety of the resolution, submitted that the Joint Cadre Authority signed on the dotted line and granted the approval as was advised by the Government of India as indicated in para 6 of the written statement of the respondent Nos.2 and 5. The contention of Mr Sharma, in the facts and circumstances of the case, is not acceptable to us. The applicant submitted his application praying for voluntary retirement before the Chief Secretary. Mr Sharma also agreed that the appropriate Government in this matter was the Joint Cadre Authority of the States of Assam and Meghalaya. The application dated 30.4.1997 was to be placed before the Joint Cadre Authority as per the law. Since it was not done the Central Government only pointed about the legal requirement and the same was sent to the Government of Assam. The Government of Assam, in turn, sent the application before the Joint Cadre Authority, which on perusal of the application of the applicant accepted the same and allowed him to go on voluntary retirement without prejudice to the existing disciplinary proceedings against him. The Resolution of the Joint Cadre Authority contains the signatures of Shri D.K. Gangopadhyay and Shri T.K. Kamilla, Chief Secretaries of the Governments of Meghalaya and Assam respectively. Shri Gangopadhyay, though did not put the date below his signature, Shri Kamilla, Chief Secretary, Government of Assam, put the date "25.7.97" below his signature. There is no material before us to accept the plea that the Joint Cadre Authority did not consider the matter on 25.7.1997. The endorsement of the two Chief Secretaries made below the Resolution, backed by the action of the Government of India and the State Government, in the circumstances, cannot thus be overlooked or ignored. The application for voluntary retirement from All India Service

made.....

made by the applicant on 30.4.1997 was thus accepted by the competent authority, namely the Joint Cadre Authority, on 25.7.1997, i.e. within the ninety days period of the application and the Government of India sent its approval of the acceptance by Fax Message dated 13.8.1997, which was finally communicated by the Government of Assam, Home Department, vide communication dated 8.9.1997. In the circumstances there is no infirmity in the acceptance of the application made by the applicant for his voluntary retirement. The acceptance was made by the competent authority, namely the Joint Cadre Authority and the acceptance was also made according to law. The acceptance of the voluntary retirement, in the circumstances, finally communicated by the Government of Assam on 8.9.1997, cannot be held to be invalid on the ground of undue delay in intimating the public servant concerned. Inordinate deferment or procrastination in responding to the letter on the voluntary retirement, in a given case may lead to an inference that the resignation was not accepted, but in the facts and circumstances of the case the said inference also cannot be drawn.

8. Mr B.K. Sharma referred to the decisions of the Supreme Court in Union of India vs. Sayed Muzaffar Mir, reported in 1995 Supp (1) SCC 76, Tagin Litin vs. State of Arunachal Pradesh, reported in (1996) 5 SCC 83, Union of India vs. Dinanath Santa Ram Karekar and others reported in (1998) 7 SCC 569, J.N. Srivastava vs. Union of India, reported in (1998) 9 SCC 559 and the decision of Tek Chand vs. Dile Ram, reported in AIR (2001) SC 905.

9. The decision of Tagin Litin has no application in the instant case. The aforementioned decision mainly pertains to the effectiveness of an appointment letter. An order of appointment to a post, postulates communication. In the absence of communication the appointment remains ineffective. In the instant case, undeniably, the order of acceptance was communicated to the applicant and the applicant by his letter dated 10.8.1999, at least mentioned about the Government of Assam Notification dated 22.9.1997 retiring him from the Indian Police Service with effect from 1.8.1997. Similarly, in Dinanath Santa Ram Karekar, the Supreme Court had the occasion to deal with an order of termination which was

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not communicated. An order of termination not communicated was said to be not an order of termination. J.N. Srivastava's case basically dealt with the right of withdrawal of voluntary retirement before the intended date. An employee, undoubtedly, has the Locus Paenitentiae to withdraw the proposal for retirement, till the date mentioned in the notice. The case of Sayed Muzaffar Mir is also not applicable in the instant case.

10. Needless to state that rules applicable in various Government Departments provide for voluntary retirement by giving a notice. Rules are of different nature. Some rules provide for automatic retirement on expiry of the period specified as FR 56 C of Assam FR and like rules mentioned in Dinesh Chandra Sangma vs. State of Assam, reported in (1977) 4 SCC 441, B.J. Shelat vs. State of Gujarat, reported in (1978) 2 SCC 202 and Sayed Muzaffar Mir (Supra). In the aforesaid cases, the Supreme Court had to deal with the rules which conferred on the Government employee the right to voluntary retirement in absolute terms and there is/was no provision for withholding permission in certain contingencies and voluntary retirement came into effect automatically as per the rules under FR 56 C as was indicated in the case of Dinesh Chandra Sangma (Supra), B.J. Shelat's case (Supra) and Sayed Muzaffar's case (Supra). The authority concerned was empowered to withhold permission to retire in certain situations, namely where the employee was under suspension or departmental proceeding was pending or contemplated - the mere pendency of the suspension or departmental proceeding or its contemplation did not result in the notice for voluntary retirement not coming into effect on expiry of the period specified therein. The rules further required the authority concerned to pass a positive order withholding the permission to retire and the communication of the same to the employee concerned before expiry of the notice period.

In the circumstances the case of Sayed Muzaffar Mir is also not applicable to the present case.

11. In State of Haryana vs. S.K. Singhal, reported in (1999) 4 SCC 293, while dealing with the case of notice for voluntary retirement of a Medical Officer, under the Punjab Government, the Supreme Court had the occasion to review the relevant cases on the issue, wherein it made the following observations:

"Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz. in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed in that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission."


The Supreme Court in the aforesaid judgment took note of three Groups of rules pertaining to voluntary retirement after notice. Voluntary retirement comes into effect automatically on expiry of the notice period as per the first category. Retirement comes into force automatically unless an order is passed during the notice period declining the permission to retire, as per the second category. In the third type of case voluntary retirement does not come into force unless permission to the effect is granted by the competent authority. In such a case refusal of permission can be communicated even after the expiry of the notice period. All will depend on the provisions of rules. As per the statutory rules regulating the member of the service pertaining to All India Service, a notice of voluntary retirement given by a member of the service may be withdrawn by him after it is accepted by the State Government only with the approval of the State Government concerned, provided the request for such withdrawal was made before the expiry of the period of notice.


The Government of India's decision also contemplate that where a disciplinary.....

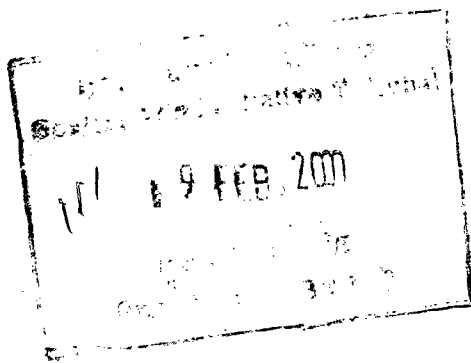
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disciplinary proceeding was pending or contemplated against the member of the service for imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that the imposition of major penalty of removal or dismissal from service would be warranted, the notice of voluntary retirement given by the officer concerned would not ordinarily be accepted. In the case in hand, no move was made by the applicant for withdrawal of the resignation before the expiry period of the notice. There was also no legal requirement on the part of the authority to communicate the acceptance of the resignation within the period mentioned in Rule 16 (2A). There is no scope to read in the rules that the acceptance of the resignation was also to be communicated to the Government servant within ninety days. In the instant case the resignation was accepted in conformity with Rule 16 (2A) of the Rules as per the choice given by the member of the service and his retirement was accepted accordingly. The plea raised by the applicant that the resignation was accepted retrospectively in the circumstances also cannot be accepted.

12. For all the reasons stated above we do not find any merit in this application. Accordingly the application is dismissed. In the facts and circumstances of the case there shall, however, be no order as to costs.

  
( K. K. SHARMA )  
ADMINISTRATIVE MEMBER

  
( D. N. CHOWDHURY )  
VICE-CHAIRMAN



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THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

D.A. No. 49 of 2000

Shri Ashok Kumar Sahu ... Applicant

- Versus -

The Union of India & Ors. ... Respondents

I N D E X

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For use in Tribunal's Office :

Date of filing :

Registration No. :

Registrar

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

O.A. No. \_\_\_\_\_ of 2000

BETWEEN

Shri Ashok Kumar Sahu, IPS - Assam Meghalaya  
Joint Cadre, Inspector General of Police  
(OSD), under suspension, DGP's office,  
Ulubari, Guwahati-7.

... Applicant

-- AND --

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Home Affairs, New Delhi. ✓
2. The State of Assam, represented by the Chief Secretary, Dispur, Guwahati-6. ✓ state
3. The State of Meghalaya, represented by the Chief Secretary, Shillong. ✓ state
4. The Secretary to the Government of India, Ministry of Home Affairs, New Delhi. ✓
5. The Secretary to the Government of Assam, Home (A) Department, Dispur, Guwahati-6. ✓ state

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

This application is directed against -

- (i) Notification No. HMA(IPS).58/Pt.II/156 dated 4.6.97 issued in the name of the Governor of Assam placing the Applicant under suspension with effect from 4.6.97 ;

- (ii) Letter No. HMA(IPS).58/Pt.II/158 dated 9.7.97 issued by the Addl. Chief Secretary and Principal Secretary to the Government of Assam, Home & Political Department asking the Applicant to show cause under Rule 8 of the AIS (Discipline & Appeal) Rules, 1965 read with ✓ Article 311 of the Constitution of India on the articles of charge mentioned therein ;
- (iii) Notification No. HMA(IPS).58/Pt-V/39 dated 8.9.97 issued in the name of the Governor of ✓ Assam purportedly allowing the Applicant to go on voluntary retirement with effect from 1.8.97;
- (iv) Letter No. HMA(IPS).58/Pt-V/54 dated 28.4.99 issued by the Government of Assam, Home (A) Department to the Accountant General, Assam purportedly conveying the sanction of the Governor of Assam to the payment of subsistence allowance to the Applicant for the period with effect from 4.6.97 to 31.7.97 ;
- (v) Letter No. HMA(IPS).58/Pt-III/2 dated 29.10.99 issued by the Government of Assam, Home (A) Department to the Applicant communicating the purported decision that the Applicant stood retired from his service with effect from 1.8.97 ; and
- (vi) The letter No. 31012/4/97-IPS.II dated 18.10.99 purportedly written to the State Government by the Ministry of Home Affairs, Government of India (copy not given to the Applicant).
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2. JURISDICTION OF THE TRIBUNAL :

The Applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The Applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India and as such, he is entitled to all the rights, protections and privileges guaranteed under the Constitution of India and the laws framed thereunder.

4.2 That the grievance made in this application is in respect of purported voluntary retirement of the Applicant from service as an IPS officer. It is the case of the Applicant that the acceptance of the voluntary retirement notice given by the Applicant is void ab-initio and non-est in the eye of law, there being no sanction of law behind the same.

4.3 That the Applicant is a member of the IPS. He is a direct recruit to the service and after his selection, he was allocated to the Assam Meghalaya Joint Cadre. His year of allotment is 1975. As a member of the All India Services, the service conditions of the Applicant are regulated by the provisions of the All India Services Act, 1951 and the rules and regulations framed thereunder.

4.4 That the Applicant while was serving in the Assam Wing of the Assam Meghalaya Joint Cadre and while was holding the post of Inspector General of Police (OSD) and Director (Prosecution) under the Government of Assam had submitted a notice of voluntary retirement addressed to the Chief Secretary on 30.4.97. By the said notice, the Applicant while inter alia stating that he had completed 22 years of service as on 16.7.97 conveyed his intention to go on voluntary retirement with effect from 1.8.97.

A copy of the said notice dated 30.4.97 as ANNEXURE-1.

4.5 That after issuance of the said notice, the Government of Assam in the Home (A) Department asked for an explanation from the Applicant by issuing a letter No. HMA(IPS).58/Pt-II/140 dated 20.5.97 for alleged violation of the provisions of AIS (Conduct) Rules, 1968.

A copy of the said letter dated 20.5.97 is annexed as ANNEXURE-2.

4.6 That the Applicant on receipt of the said letter dated 20.5.97, submitted his explanation on 28.5.97 on receipt of which he was placed under suspension with effect from 4.6.97 by a notification No. HMA(IPS).58/Pt-II/156 dated 4.6.97 issued in the name of the Governor of Assam.

A copy of the said notification dated 4.6.97 is annexed as ANNEXURE-3.

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4.7 That thereafter a letter No. HMA(IPS).58/Pt-II/158 dated 9.7.97 was issued by the Government of Assam, Home (A) Department to the Applicant requiring him to show cause under Rule 8 of the AIS (Discipline & Appeal) Rules, 1969 read with Article 311 of the Constitution of India as to why any of the penalties prescribed in Rule 6 of the said Rules should not be inflicted on him by the competent authority on the basis of the articles of charge based on the statement of imputation of misconduct mentioned therein.

A copy of the said letter dated 9.7.97 is annexed hereto as ANNEXURE-4.

4.8 That the Applicant states that the said letter dated 9.7.97, although stated to be a charge sheet was in gross violation of the provisions of Rule 8 and the same did not accompany a list of documents by which and list of witnesses by whom the articles of charge were proposed to be sustained. Accordingly, the Applicant prayed for supply of the same which would give him an opportunity of inspection of the relevant documents towards preparation of his show cause reply, but the same has not been acceded to till this very date.

4.9 That when the matter rested thus and the notice of voluntary retirement given by the Applicant became infructuous in view of the order of suspension and the charge sheet issued to the Applicant, a notification No. HMA(IPS).58/Pt-V/39 dated 8.9.97 was issued by the Government of Assam, Home (A) Department in the name of the Governor of Assam purportedly accepting the prayer

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for voluntary retirement of the Applicant and allowed him to go on voluntary retirement w.e.f. 1.8.97 and the same was stated to be without prejudice to the disciplinary proceedings against him.

A copy of the said notification dated 8.9.97 is annexed as ANNEXURE-5.

4.10 That the Applicant states that the notice of voluntary retirement was submitted by him under compelling circumstances as was explained in the show cause reply. He wanted to go on voluntary retirement without any stigma attached to him, but the Government of Assam intended to proceed otherwise and taking a vindictive attitude put the Applicant under suspension and thereafter initiated a departmental proceeding by issuing a charge sheet although no progress whatsoever has been made to the said proceeding and the same has by now become stale. The 90 days period expired on 30.7.97 but the Government of Assam did not take any action in the matter of voluntary retirement as required under the relevant Rules and thus the notice of voluntary retirement became infructuous and non-est and no action could have been taken on the said notice.

4.11 That in the meantime, the office of the Accountant General (A&E), Assam, Guwahati by their letter No. GE.CELL/IPS/SUSPENSION/81 dated 11.5.98 asked for a clarification from the Government of Assam, Home (A) Department as to how to treat the period of suspension of the Applicant. In reply to the said letter, the Government of Assam, Home (A) Department,

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by their letter No. HMA(IPS).58/Pt-V/54 dated 28.4.99 conveyed the sanction of the Governor of Assam towards payment of subsistence allowance to the Applicant for the period from 4.6.97 to 31.7.97. In both the letters, the Applicant was shown to be under suspension.

Copies of the letter dated 11.5.98 and 28.4.98 are annexed as ANNEXURES-6 and 6A respectively.

4.12 That the Applicant having been placed under suspension and the Departmental proceeding having been initiated against him, he prayed for his subsistence allowance by his representation dated 28.2.98 on which the State Government sought for the views of the Legal Remembrancer on the subject. The Legal Remembrancer submitted his views in January 1999. On 6.4.99 the Applicant submitted a representation to the Government of Assam praying for granting him subsistence allowance and to consider revocation of the order of suspension. In the said letter, the Applicant stated in categorical terms that his request for voluntary retirement was nullified by the subsequent order of suspension. By the said letter, the Applicant conveyed his decision to withdraw his notice of voluntary retirement submitted on 30.4.97. In the letter, the Applicant indicated as to how for the last two years he was without any payment including subsistence allowance. Accordingly, a prayer was made to review his case of Departmental proceeding and to consider revocation of the order of suspension.

A copy of the said letter dated 6.4.99 is annexed as ANNEXURE-7.

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4.13 That the Applicant having not received any response to his representation, submitted yet another representation dated 10.8.99 to the Government of Assam praying for revocation of the order of suspension and to make payment of subsistence allowance for the period from 4.6.97 till the date of revocation and also to give him posting and regularise the period of his suspension.

A copy of the said letter dated 10.8.99 is annexed as ANNEXURE-8.

4.14 That now a letter has been addressed under No. HMA(IPS).58/Pt-III/2 dated 29.10.99 to the Applicant by the Government of Assam in the Home (A) Department in reference to his representation dated 10.8.99 stating inter alia that the Government of India had once again examined the matter and found that in terms of Rule 16(2)(a) of the AIS (DCRB) Rules, the Applicant stood retired from service w.e.f. 1.8.97 and as such, there was no case of revocation of the order of suspension or payment of subsistence allowance and posting as sought for by the Applicant. It has been stated in the said letter that the three months' notice given by the Applicant was accepted on a later date made no difference. This intimation conveyed by letter dated 29.10.99 is stated to be as per the desire of the Ministry of Home Affairs, Government of India vide their letter No. 31012/4/97-IPS-II dated 18.10.99

A copy of the said letter dated 29.10.99 is annexed as ANNEXURE-9.

4.15 That the Applicant states that under the provisions of the All India Services (DCRB) Rules, 1958 there is definition relating to the "State Government concerned". According to the definition given in the AIS (DCRB) Rules, 1958, the "State Government" means the State Government on whose cadre the member of the service was born immediately before retirement or death and in relation to a member of an all India service born on a joint cadre, the Joint Cadre Authority. Likewise in all other rules and regulations applicable to the Applicant, it has been clearly defined as to what constitutes a State Government in case of a Joint Cadre. In this connection the provisions and the schedule of the All India Services (Joint Cadre) Rules, 1972 may also be referred to.

4.16 That as per the provisions of the AIS (DCRB) Rules, a member of the service may after giving three months' previous notice in writing to the State Government concerned retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in his notice. In this connection, sub-rule 2(A) of Rule 16 of the said Rules may be referred to proviso to which specifies that a notice of retirement given by member of the service shall require acceptance by the Central Government if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the service could have retired from service under sub-rule (2). Sub-rule (2) of Rule 16 provides that a member of the service may after giving

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at least three months' previous notice in writing to the State Government concerned, retire from service on the date on which such member completes 30 years of qualifying service or attains 50 years of age or on any date thereafter to be specified in the notice. The provisions of sub-rule 2 and 2(A) of Rule 16 will have to be understood referring to sub-rule (3) under which the Central Government may in consultation with the State Government concerned and after giving a member of the service at least three months' notice in writing require a member to retire in public interest from service on the date on which such member completes thirty years of qualifying services or attains fifty years of age or on any date thereafter to be specified in the notice.

4.17 That the Applicant states that the facts and circumstances leading to the instant case clearly indicate that none of the aforesaid requirements have been complied with in the instant case making the very acceptance of the voluntary retirement notice null and void and inoperative. The Governor of Assam is not the authority to accept the notice of voluntary retirement given by the Applicant. Similarly the requirements of proviso to sub-rule 2 and 2(A) of Rule 16 of the DCRB Rules, 1958 having not been followed in the instant case, the impugned order of acceptance of voluntary retirement is not sustainable in the eye of law. Further the notice of voluntary retirement having been given by the Applicant to a wrong authority and under compelling circumstances and the same being a

conditional one, such a notice could not have been acted upon by the Government of Assam without following the requirements of the rules and the procedures laid down therein. The Applicant being a member of the IPS and being allocated to the Joint Cadre of Assam Meghalaya, the notice of voluntary retirement could not have been accepted by the Governor of Assam who is not the appointing authority of the Applicant. The Applicant having withdrawn the said notice of voluntary retirement by his Annexure-7 letter dated 6.4.99, there is no question of acceptance of his notice of voluntary retirement.

4.18 That the Applicant states that he having been placed under suspension and a departmental proceeding having been initiated, there is no question of acceptance of his voluntary retirement on both counts viz. such acceptance is contrary to the rules and secondly the Applicant did not desire to go on voluntary retirement with stigma. The State Government could not have accepted the notice of voluntary retirement which was offered under compelling circumstances and by casting stigma on the Applicant. This being the position, the Applicant continues to be an IPS officer in the Assam Meghalaya Joint Cadre being placed under suspension.

4.19 That the Applicant states that the fact that he is still under suspension is also evident from the correspondences made by the State of Assam with the Accountant General in which he has been referred to be

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an IPS officer under suspension. The Applicant has not been paid his subsistence allowance and the departmental proceeding has not made any progress. In such a situation, the order of suspension is required to be revoked. Further there being no progress in the departmental proceeding for the last about three years and the requirements of the rules towards institution and proceeding of a departmental proceeding having not been followed, the impugned letter dated 9.7.97 (Annexure-4) is liable to be set aside and quashed with all consequential benefits to the Applicant including his arrear salary.

4.20 That the Applicant states that due to non-revocation of the order of suspension and keeping the departmental proceeding hanging over the head of the Applicant, a stigma is being attached to the Applicant over all these years and although the State Government is of the opinion that the Applicant is no longer in service having gone on voluntary retirement, the state of affairs of the Applicant is that he is not in a position to take up any other avocation and/or profession even if for argument's sake it is held that the Applicant has gone on voluntary retirement. Adding insult to the injury, the Applicant has also not been paid his pensionary benefits. The voluntary retirement notice, even if held to be valid, same had lost its force on expiry of 90 days and could not have been acted upon. In any view of the matter, the impugned orders are not sustainable and the Applicant is entitled to the reliefs sought for in this application.

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4.21 That in view of the order of suspension and the charge sheet, the employer-employee relationship still persists and accordingly, the Applicant is entitled to the subsistence allowance which has been accrued till date and having regard to the duration of the suspension and also in view of the fact that there is no progress in the departmental proceeding, the order of suspension as well as the charge sheet are liable to be set aside and quashed.

4.22 That the Applicant states that even if the Government version of the story is accepted to be correct and legally sustainable, then also, the Applicant is entitled to his dues pursuant to his voluntary retirement from service and the same having not been paid to him over the years, the Respondents are liable to pay the same to him together with interest due thereon at the Bank rate. However, it is the case of the Applicant that the voluntary retirement has not come into effect, the very invocation of the same being without jurisdiction and there being violation of the relevant rules towards acceptance of the same.

4.23 That the Respondents cannot keep the Applicant in an uncertainty and the stigma attached to him having been continued over the years, the Applicant has been made to suffer in all spheres of his life and the Respondents are liable to adequately compensate the Applicant for such a situation.

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5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the impugned orders are not at all sustainable in law as will be evident from the facts and circumstances narrated above, more particularly, when the very notice and the explanation in continuation thereof were given by the Applicant under the duress and compulsion and not out of free volition due to the prevailing circumstances at that time and accordingly the actions taken thereof are all bad in law.

5.2 For that there being violation of the provisions of the rules, there could not have been any voluntary retirement and consequently, the Applicant continues to be in service entitling him to all consequential benefits.

5.3 For that the very invocation of the voluntary retirement notice being void ab-initio and there being violation of the provisions of the Rules towards acceptance of the same, the impugned orders are not sustainable.

5.4 For that even assuming but not admitting that the acceptance of voluntary retirement of the Applicant is proper and legal, then also, the Applicant should be paid his dues, but the same having not been paid to him over the years, he is entitled to the same together with the interest due thereon at Bank rate.

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5.5 For that under the facts and circumstances stated above, the Applicant having been continued in service, the order of suspension as well as the charge sheet are liable to be set aside and quashed.

5.6 For that the charge sheet issued against the Applicant is liable to be set aside and quashed ~~inasmuch as same~~ could not have been kept hanging over the head of the Applicant over the years without taking any further follow up action, more particularly, when the Applicant has not been given access to the documents and the list of witnesses on the basis of which the charges have been framed for which the Applicant had made request to the Respondents.

5.7 For that there being violation of the provisions of the AIS (DCRB) Rules, 1958 ; AIS (Joint Cadre) Rules, 1972 and the other rules holding the field the basic foundation of the voluntary retirement notice and the follow up action fall through and the impugned order on the basis of such action are not sustainable and liable to be set aside and quashed.

5.8 For that the Applicant having been placed under suspension and a charge sheet having been issued against him during the pendency of the voluntary retirement notice, the order accepting such a notice could not have been issued and that too by an incompetent authority without any jurisdiction and consequently, the Applicant continues to be in service although under suspension and he is entitled to all the consequential benefits.

5.9 For that the Applicant having been allocated to the Joint Cadre of Assam and Meghalaya, the State Government concerned for such a cadre is the joint cadre authority and the voluntary retirement notice having been addressed to the Chief Secretary to the Government of Assam alone, same could not have been acted upon without any reference to the joint cadre authority.

5.10 For that there being no consultation by the State of Assam with the other constituent State viz. Meghalaya and for that matter, the Joint Cadre Authority towards acceptance of the voluntary retirement notice of the Applicant and there being no acceptance of the Central Government for the voluntary retirement notice within the specific period of ninety days, the impugned order of acceptance of the voluntary retirement is void ab-initio.

5.11 For that the Applicant having been appointed to the IPS by the President of India, the voluntary retirement notice could not have been accepted by the Governor of Assam and as such and in any view of the matter, the impugned orders are liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

*Handwritten signature*

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

7. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

- 8.1 To set aside and quash the Annexure-9 letter dated 29.10.99 ; Annexure-6 letter dated 28.4.99 ; Annexure-5 notification dated 8.9.97 ; Annexure-4 charge sheet dated 9.7.97 and the Annexure-3 notification dated 4.6.97 placing the Applicant under suspension.
- 8.2 To grant all consequential benefits including arrears salary to the Applicant consequent upon quashing of the aforesaid impugned orders
- 8.3 To reinstate the Applicant in service with all consequential benefits

for

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8.4 In case the Hon'ble Tribunal comes to the conclusion that the impugned order dated 8.9.97 is sustainable, then in that case, be pleased to direct the Respondents to release all pensionary benefits to the Applicant upon quashing of the Annexures-4 and 3 impugned orders together with the interest due thereon at the Bank rate.

8.5 Cost of the application

8.6 To grant any other relief or reliefs to which the Applicant is entitled and as may be deemed fit and proper by the Hon'ble Tribunal under the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR :

Under the facts and circumstances of the case, the Applicant prays for an interim direction to the Respondents to consider the case of the Applicant towards redressal of his grievance and that the pendency of this application shall not be a bar to do so.

10. ....

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 457614
- ii) Date : 22.2.2000
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....

gk

VERIFICATION

I, Shri Ashok Kumar Sahu, aged about 46 years, son of Late N.K. Sahu, the Applicant, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 3, 4.1 to 4.5, 4.8, 4.10, 4.12, 4.13, 4.15 to 4.23 and 5 to 12 are true to my knowledge ; those made in paragraphs 4.6, 4.7, 4.9, 4.11 and 4.14 are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 24 th day of January 2000.

*Ashok Kumar Sahu*



PA  
A.K. Sahu, I.P.S.

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Annexure - 1

ANNEXURE (1/1)

Ashok Kr. Sahu, I.P.S.  
Inspector General of Police (OSD)  
and  
Director (Prosecutions) Assam  
Guwahati-781007  
The 30th April, 1997

To

The Chief Secretary to the Govt. of Assam,  
Dispur, Guwahati-6

Sub : VOLUNTARY RETIREMENT FROM ALL INDIA SERVICES.

Ref : Under Sub-Rule (2A) of Rule 16 of the  
All India Services (Death-cum-Retirement  
Benefits) Rules 1958.

Sir,

I have the honour to inform you that on personal grounds I would like to quit the Indian Police Service, on voluntary retirement, to which I was recruited on the basis of the examination held in 1974 and allotted to the Joint Cadre of Assam and Meghalaya, with 1975 as the year of allotment.

Whereas, I will be completing 22 years of service as on the 16th July, 1997; I intend to voluntarily retire from service with effect from the 1st August, 1997 afternoon.

Meanwhile, I would like to request you to kindly issue necessary directions so that my pension papers are processed and finalised as per existing rules, and oblige.

Yours faithfully,

( A.K.Sahu )

Contd...2.

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31 Jul  
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- 2 -

Copy to :-

- 1) The Accountant General, Assam, Belitola, Guwahati for information.
- 2) The Director (Police), Ministry of Home Affairs, North Block, New Delhi.
- ✓ 3) The Director General of Police, Assam, Guwahati for information.
- 4) The Director General of Police, Meghalaya, Shillong for information.

*A.R. Sahu*  
28/4/97

( A.R. Sahu )  
Inspector General of Police, (OSD),  
and  
Director (Prosecutions),  
Assam, Guwahati.

Annexure-2

ANNEXURE-2

with

F.A. (Phd)

26/5/97

GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT

No. HMA(IPS)58/Pt. II/140. Dated Dispur, the 20th May, 1997.

From : Shri C. P. Misra, IAS,  
Addl. Chief Secretary & Principal  
Secretary to the Govt. of Assam,  
Home Department,

To : Shri A. K. Sahu, IPS,  
Inspector General of Police (OSD),  
Office of the Director General & Inspector  
General of Police, Assam.  
Ulubari, Guwahati-7.

Sub. : EXPLANATION.

Sir,

I am directed to refer to the News Item under the caption "মই জনে খুঁজিবনৈ টান পাইছো" published in "Asomiya Pratidin" dated 2-5-97 followed by the news item under the heading "বিচৰিত্ত আৰক্ষী বিষয়া অশোক চাহুব বিক্ষোভক সাফাৎকাৰ" published in the "Biweekly Agradoot" dated 4-5-97 and news item under the caption "চাহুব পদত্যাগ-টিনি বিষয়াৰ ভূমিকাক নৈ মূলমূল মহন্তৰ মূৰ ঘূৰণি, ভূমি কথাবে গৃহমন্ত্ৰীৰ ওক" published in the "Asomiya Pratidin" dated 5-5-97 wherein you have been reported to have criticised the Govt. and made certain derogatory remarks against the Govt. as well as the Police force. Relevant papers clippings are enclosed for ready reference. This is a blatant violation of the provisions of the AIS (Conduct) Rules, 1968.

You are, therefore, directed to explain on or before 30-5-97 why disciplinary action should not be initiated against you for violating all India Service (Conduct) Rules, 1968.

Yours faithfully,

20/5/97

Additional Chief Secretary & Principal  
Secretary to the Govt. of Assam,  
Home Department.

&&&&

K.B./

Attended  
Ami  
(A.K. Nain)  
Advocate

6/3/97  
27/5/97

12  
27/5/97

GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 4th June, 1997.

NO. HMA(IPS) 58/Pt.II/156 : Whereas, <sup>Shri</sup> Ashok Kumar Sahu, IPS, holding the post of Inspector General of Police (OSD) and Director, Prosecution has submitted an application dated 30.4.97 for voluntary retirement with effect from 1.8.97;

And whereas Shri A.K. Sahu, IPS, immediately after submission of the said application for voluntary retirement started indulging in spreading illwill, disaffection and indiscipline among the Police force of the State charged with the maintenance of Public order by issuing highly derogatory statements ;

And whereas the statements so made by Shri A.K. Sahu, IPS were published in the local and national Newspapers containing derogatory remarks against the Government and the Chief Minister ;

And whereas in reply to the notice asking for explanation given by Addl. Chief Secretary and Principal Secretary, Home Department dated 20.5.97 Shri A.K. Sahu, IPS categorically admitted that whatever statements appeared in the Newspapers were based on the statements made by him to the respective reporters of the different newspapers ;

And whereas after submission of his reply to the aforesaid notice asking for explanation, Shri A.K. Sahu, IPS again made different statements and allegations in different newspapers within and outside the State of Assam criticising the State Government, and creating division and chaos among the members of the Police force ;

Contd...P/2.

Attended  
Anni Bora  
(A.K. Nain)  
Advocate

P.T.O

Annexure - 3

Annexure - 3

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And whereas, the statements of allegation so made by Shri A.K. Sahu, IPS are derogatory and unbecoming of a member of a discipline force (Police) ;

And whereas, such statements and allegations are violative of the All India Services (Conduct) Rules 1968 ;

And whereas, the Governor of Assam is satisfied that there are sufficient materials to take disciplinary action against Shri A.K. Sahu, IPS in the interest of public service.

Accordingly, the Governor of Assam in exercise of powers conferred under Rule 3 of All India Services (Discipline and Appeal) Rules, 1969 places Shri A.K. Sahu, IPS under suspension, with effect from 4th June, 1997 pending initiation of proceeding for disciplinary action against him.

By order and in the name of the Governor of Assam.

04/6/97

Addl. Chief Secretary & Principal Secretary to the Govt. of Assam, Home & Political Department.

Memo.No. HMA(IPS) 58/Pt.II/156-A, Dtd.Dispur,the 4th June,1997.  
Copy to :-

1. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati- 7 for information and necessary action.
2. The Accountant General, Assam, Shillong for necessary action.
3. The Secretary to the Government of India, Ministry of Home Affairs, New Delhi for information.
4. The Secretary to the Government of Meghalaya, Home (P) Department, Shillong.
5. Shri A.K. Sahu, IPS, Inspector General of Police (OSD) and Director, Prosecution, Assam, Ulubari, Guwahati-7.
6. The Superintendent of Assam Government Press, Bamunimaidam, Guwahati- 21 for publication.

By order etc.,

Joint Secretary to the Govt.of Assam,  
Home Department.

Memo. P.A/19/19/97  
Copy forwarded to  
Director, Prosecution, Assam, Guwahati for information.

attested  
Anni Indu  
(U.K.Naii)  
Advocate

DPSCA

GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT

NO. HMA(IPS) 58/Pt.II/158 Dated Dispur, the 9th July, 1997.

To : Shri A.K. Sahu, IPS (W/S),  
C/O Director General & Inspector General  
of Police, Assam, Ulubari, Guwahati- 7.

You are hereby required to show cause under rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 read with Article 311 of the Constitution of India as to why any of the penalties prescribed in rule 6 of the aforesaid Rules should not be inflicted on you by the competent authority on the following articles of charge based on the statement of imputation of misconduct or misbehaviour attached.

1) That while you were the Inspector General of Police (OSD), you did submit a representation praying for voluntary retirement and soon after submission of the prayer you started indulging in spreading illwill, disaffection and indiscipline among the Police force of the State charged with the maintenance of public order by issuing highly derogatory statements.

That you made a Press statement published in a Assamese Daily "Asomiya Pratidin" dated 2.5.97 where you have critised the Administration for indulging in corruption and nepotism. You had even uttered names of certain Police Officers alleged to have been indulging in corruption.

You have issued another statement to the Press which was published in the "Biweekly Agradoot" dated 4.5.97, wherein you have criticised the Government for paying you salary etc. without any work. You have issued statement criticising the activities of Police Officers, and failure of the Govt. in taking action against them.

The above action is quite unbecoming on your part as a Senior Police Officer, and more particularly on the part of an Officer of a disciplined force and is also in violation of the All India Services Conduct Rules, 1968.

2) That for your above Press statements issued in violation of relevent rules, you were asked to submit explanation, and in your reply furnished to Govt., it has been categorically admitted by you that the News published in the News Papers were based on the statements made by you. Even after submission of the explanation, you have issued/ made different Press statements and allegations in different News Papers within and outside the State of Assam criticising the State Government ; thus creating division and chaos amongst the members of the Police Force.

The above actions are quite unbecoming on the part of a Senior Police Officer of your status, and tantamounts to insubordination and violation of the All India Services (Conduct) Rules, 1968.

Contd....P/2.

09/7/97

Attended  
Suni Bmlz  
(U.K. Nain)  
Advocate

634  
10/7/97

You are, therefore, charged with violation of Rule 3(I) of the All India Services (Conduct) Rules, 1968.

You should submit your written statement in defence within 10(ten) days from the date of receipt of this communication provided you do not intend to inspect the documents which have relevance with the issue under enquiry.

In case you intend to inspect the documents, you should write to the undersigned for the same within 7(seven) days from the date of receipt of this communication and submit your explanation thereafter within 10(ten) days from the date of completion of the inspection.

Your written statement whether you desire to be heard in person should be submitted to the undersigned within the period specified above.

Enclo:

1. Statement of imputation of misconduct/misbehaviour.
2. List of documents.

09/7/97  
Addl. Chief Secretary & Principal  
Secretary to the Govt. of Assam,  
Home & Political Department.

♦♦♦♦

Memo.No. HMA(IPS) 58/Pt.II/158-A, Dtd.Dispur, the 9th July, 1997.  
Copy to :-

1. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
2. The Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
3. The Under Secretary to the Govt. of Meghalaya, Home (P) Department, Shillong.

By order etc..

sd/-

Deputy Secretary to the Govt. of Assam,  
Home (A) Department.

♦♦♦♦

Attested  
Linn body  
(U.K. - rai)  
Advocate

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STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR.

1. That while Shri A.K. Sahu, IPS was the Inspector General of Police (OSD), he submitted a prayer for voluntary retirement and soon after the submission of the prayer he started indulging in spreading illwill, disaffection and indiscipline amongst the Police Force of the State charged with the maintenance of public order by issuing highly derogatory statements.

That Shri Sahu made a Press statement published in a Assamese Daily "Asomiya Pratidin" dated 2.5.97 where he criticised the Administration for indulging in corruption and nepotism.

That Shri Sahu made another statement to the Press which was published in the "Biweekly Agradoot" dtd. 4.5.97 and he criticised the Govt. for not entrusting any work to him as Inspector General of Police (OSD) and for paying salary etc. without any work. That he criticised the activities of certain Police Officers and also the Govt. for failing to take action against them.

2) That Shri Sahu was asked to submit explanation for the Press Statement issued by him. Shri Sahu in his reply admitted that the News Items criticising the Govt. as well as the Police Force were published on the basis of statements made by him. He has even after submission of explanation issued Press Statement, criticising the Govt. as well as the Police Force,

C-09/7/97

Addl. Chief Secretary & Principal Secretary  
to the Govt. of Assam.  
Home & Political Department.

...

Attested  
Anni Bora  
(A.K. Sahu)  
Advocate

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LIST OF DOCUMENTS

1. News item published in "Asomiya Pratidin"  
dated 2.5.96.
2. News item published in "Biweekly Agradoot"  
dated 4.5.97.

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Addl. Chief Secretary & Principal Secretary  
to the Govt. of Assam,  
Home & Political Department.

....

attested  
Luni Pandey  
(U.K. Nain)  
Advocate.



GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT.

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 8th September, 1997.

NO. HMA (IPS) 58/PC-V/39

The Governor of Assam is pleased to accept the prayer for voluntary retirement tendered by Shri A.K. Sahu, IPS (U/S) and to allow Shri Sahu to go on voluntary retirement with effect from 1-9-97 (F.N.) without prejudice to the ongoing Disciplinary proceedings against him.

28.5.97

Sd/- D.N. Saikia,  
Joint Secretary to the Govt. of Assam,  
Home (A) Department.

Memo NO. HMA (IPS) 58/PC-V/39-A Dated Dispur, the 8th September/97.

Copy to :-

1. The Accountant General, Assam, Maidamgaon, Beltola, Guwahati - 28 for information and necessary action.
2. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati - 7.
3. The Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi with reference to the Max Message No. 31012/4/97-IPS-II dated 13-8-97.
4. The Secretary to the Govt. of Meghalaya, Home (P) Department, Shillong.
5. Shri A.K. Sahu, IPS (Retd.), C/O Director General & Inspector General of Police, Assam, Ulubari, Guwahati - 781007.

By order etc.,

Deputy Secretary to the Govt. of Assam,  
Home (A) Department.

Memo No. PA/X/II/267/PC/97/6-A, Dated Guwahati, the 9th Sept/97.

As directed, copy for information and necessary action forwarded to:-

1. Shri A.K. Sahu, IPS, C/O-Commit. 4th APBN, Kahilipara, Gtly.
2. Shri A.P. Rout, IPS, Commit. 4th APBN, Kahilipara Gtly. He is requested to hand-over the enclosed Memo to Shri A.K. Sahu, IPS on obtaining acknowledgement and report compliance.
3. Pension Cell, DGP Office.
4. Proceeding Cell, DGP Office.

Asstt. Inspector General of Police (A)  
Assam 11: Guwahati

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Annexure-6

OFFICE OF THE ACCOUNTANT GENERAL (A & E) ASSAM  
GUWAHATI - 781005

No. GE.CELL/IPS/SUSPN/81

Dated guwahati : \_\_\_\_\_

To

The Secretary to the Govt. of Assam  
Home (A) Department, Dispur,  
Guwahati - 6

Sub : Suspension period of Sri A.K. Sahu, IPS.

Ref : HMA (IPS) 58/pt/v/43 dated 03.10.97

Sir,

With reference to the subject cited above, I am to request you to communicate to this office as to how to treat the period of suspension of Sri A.K. Sahu, IPS, (u/s) who has already proceeded on voluntary retirement with effect from 1.8.97 vide Govt. sanction No. HMA(IPS)/58/pt/v/39 dated 03/00/97. ✓

Yours faithfully,

Sd/-

ACCOUNTS OFFICER.

Memo No. GE.CELL/IPS/SUSPN/82-83

Copy forwarded to :

1. Director General and Inspector General of Police, Assam, Ulubari, Guwahati-7.
2. Sri A.K. Sahu, IPS, (u/s) C/O DGP and IGP, Assam, Guwahati-7

Sd/-

ACCOUNTS OFFICER.

Attested  
Luni Pong  
(A.K. Sahu)  
Advocate

GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT  
££££

No. HMA (IPS) 58/Pt. V/54. Dated Dispur, the 28th April/99.

From : SHRI A. BARDOLLOYE, ACS  
DEPUTY S-SECY. TO THE GOVT. OF ASSAM,  
HOME (A) DEPARTMENT.

To : The Accountant General, Assam,  
Maidamgaon, Beltola, Guwahati-28.

Sub : PAYMENT OF SUBSISTANCE ALLOWANCE TO  
SHRI A.K. SAHU, IPS.

Sir,

I am directed to convey the sanction of the Governor of Assam to the payment of subsistence allowance to Shri A.K. Sahu, IPS (U/S) for the period with effect from 4/6/97 to 31/7/97 at an amount equal to the leave salary which he would have drawn had he been on leave on Half average pay or on Half pay under FR(I) (11) (a).

Certified that the Officer is not engaged in any other employment/business/profession or vacation while under suspension.

Yours faithfully,

(S)

Deputy Secy. to the Govt. of Assam,  
Home (A) Department  
££££

Memo No. HMA (IPS) 58/Pt. V/54-A, Dated Dispur, the 28th April/99.  
Copy forwarded to :-

- 1) The Director General & Inspector General of Police, Assam, Ulubari, Guwahati-7.
- 2) Shri A.K. Sahu, IPS, (U/S), Officers Mess, Ulubari, Guwahati-7.

By Order Etc.,

26/5/99  
Deputy Secy. to the Govt. of Assam,  
Home (A) Department  
££££

Taked/

Attested  
Luni Bork  
(H.K. Nain)  
Advocate

-29-

From : Shri A.K.Sahu, IPS,  
Inspector General of Police, (OSD)  
under suspension  
DGP's Office, Ulubari, Guwahati.

To : The Chief Secretary  
Government of Assam,  
Dispur, Guwahati-6.

Subject : PRAYER FOR REVOCATION OF SUSPENSION  
ORDER DATED 4-6-97.

Sir,

In continuation with my earlier prayers requesting for grant of subsistence allowance, I further request you to kindly consider revocation of the suspension order dated 4-6-97. My request seeking voluntary retirement is nullified by the subsequent order of suspension and hence I formally withdraw my petition dated 30-4-97. Now, for almost two years I am without any payment including subsistence allowance.

Therefore, may I request you to kindly review my case of Departmental Proceedings and consider revocation of suspension order to mitigate the untold financial hardship I am undergoing.


Date 6-4-99  
Officers' Mess,  
Ulubari, Guwahati-7.

Yours faithfully,

s/-

( A.K. Sahu )

Copy to the Hon'ble Chief Minister of Assam  
for favour of kind information.

  
( A.K. Sahu )

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- 30 -

ANNEXURE - 8

From : A.K. SAHU, IPS  
(ASSAM & MEGHALAYA, 1975)  
Police Officers Mess  
Ulubari  
Guwahati - 7

To : The Chief Secretary  
Government of Assam  
Dispur

Subject : Revocation of suspension and posting.

Sir,

I had given ninety days notice on 30.4.97 seeking voluntary retirement from Indian Police Service w.e.f. 1.8.97. During the period of notice, I was placed under suspension by the Government of Assam vide order dated 4.6.97. The notice period of voluntary retirement had expired on 1.8.97 but no acceptance of my voluntary retirement was communicated by the State Government which is mandatory in terms of first proviso to Rule 16(2A) of the AIS (DCRB) Rules, 1958. Subsequently the Government of Assam issued a notification dated 22.9.97 retiring me from the Indian Police Service w.e.f. 1.8.97. However, by this time my notice seeking voluntary retirement had become infructuous on or after 1.8.97 i.e. after the expiry of notice period. Since there is no order revoking my suspension, I continue to be under suspension till date.

2. As it is evident that orders of my retirement from Indian Police Service w.e.f. 1.8.97 is infructuous, I continue to be a member of Indian Police Service. I, therefore, request for the following:-

- (i) to revoke orders of my suspension with immediate effect;
- (ii) to make payment of subsistence allowance for the period from 4.6.97 till the date of revocation; and
- (iii) to give me a posting and regularise the period of suspension.

Yours faithfully,

*Ashok Sahu*  
10/8/99  
( A.K. SAHU )

Dated the 10th August, 1999.

Copy to :- The Secretary, Ministry of Home Affairs,  
New Delhi - with a request to take up my  
case with the Government of Assam and  
direct them to settle my pending issues  
in the manner as it is deemed proper.

*Ashok Sahu*  
10/8/99  
( A.K. SAHU )

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ANNEXURE-9

9

GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT  
.....

No.HMA(IPS)58/Pt.III/2,

Dated Dispur, the 29th Oct/99.

From : Shri A. Bardoloye, ACS.  
Deputy Secy. to the Govt. of Assam,  
Home (A) Department,

To, : Shri A. K. Sahu, IIS (Retired),

Subject : VOLUNTARY RETIREMENT.

Sir,

Memo. No. HMA(IPS)58/Pt.III/2-A  
18.10.98

I am directed to inform you that with reference to your representation submitted to the Ministry of Home Affairs, Government of India, dated 10/8/99 on the subject of your voluntary retirement, the Government of India had once again examined the matter and found that, in terms of Rule 16(2A) of AIS( DCRS ) Rules, you stand retired from service with effect from 01.08.1997 i.e. date of expiry of 3 months notice period and as such there is no case of your suspension being revoked or paying any subsistence allowance and posting as sought by you. The fact that your three months notice was accepted or you were informed of the acceptance of your request on a later date i.e. after completion of notice period, makes no difference.

This is intimated as desired by the Ministry of Home Affairs, Government of India vide their letter No. 31012/4/97-IFS.II, dated 18.10.1999.

Yours faithfully,

18.10.98  
not for file

Deputy Secy. to the Govt. of Assam,  
Home (A) Department.

Memo No.HMA(IPS)58/Pt.III/2-A, Dated Dispur, the 29th Oct./99.

Copy to :-

- 1) P.S. Pillai, Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi-
- 2) The Director General of Police, Assam, Ulubari, Guwahati-7 for information and necessary action.

By order etc.

sdf

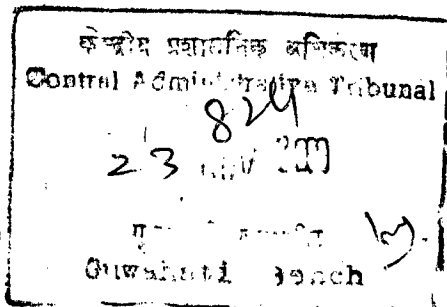
Deputy Secy. to the Govt. of Assam,  
Home (A) Department.

....

Attested  
Anni Imb  
(U.K. Nair)  
Advocate  
RD/KB

Date : ASSAM

In the Central Administrative Tribunal,  
Guwahati Bench.



In the matter of :

O.A. No. 49/2000

Shri Ashok Kr. Sahu - Applicant

-Vs-

The Union of India &  
Ors.

- Respondents

- AND -

In the matter of :

Written Statement on behalf of  
Respondent Nos 2 and 5 to the  
application filed by the applicant.

(Written Statement on behalf of Respondent Nos. 2 and 5 )

I, Shri Anjan Bardoloye, son of late *Lalit Bardoloye* at present working as Deputy Secretary to the Govt. of Assam, Home (A) Department, Dispur, Guwahati- 6, do hereby solemnly declare and state as follows :-

1. That the copies of the aforesaid application have been served upon the respondent Nos. 2 and 5. I perused the same and understood the contents thereof. I have been authorised to file this written statement on behalf of respondent Nos. 2 and 5.
2. That I donot admit any of the averments not borne out by records. All allegations/averments which are not specifically admitted hereinafter are to be deemed as denied.
3. That with regard to the statements made in paragraph 4.4 of the application the answering respondents have no comment to make thereon as they being are matters of records.

Contd...P/2.

92  
Filed by :-  
The State of Assam &  
--- Respondent Nos. 2 and 5  
YK Singh  
Mangilal Das  
Sr. Govt. Advocate  
(St. of Assam)  
20/4/2000

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4. That with regard to the statements made in paragraph 4.5 of the application it is stated that the explanation letter dated 20.5.97, issued to the applicant is not in any way connected with the prayer for voluntary retirement as the explanation called for is a separate issue.

5. That with regard to the statements made in paragraphs 4.6, 4.7 and 4.8 of the application, the answering respondents stated that the applicant was placed under suspension on the basis of News items published in "Asomiya Pratidin" dated 2.5.97 and "Bi-Weekly Agradoot" dated 4.5.97 wherein the statements made by the applicant criticising the policy of the Government, spreading ill will, disaffection amongst the Police personnel, passing derogatory remarks against the Government and the Chief Minister were published. The applicant in his reply to the notice asking for explanation by the Government, had also categorically admitted that the news items published in the papers in question were based on the statements made by him. The suspension was solely based on the News paper cutting received by the Government of Assam and his reply to the explanation letter. Hence, the question of furnishing a list of witnesses does not arise. Moreover no representation from the applicant seeking to inspect documents were received.

6. That with regard to the statements made in paragraph 4.9 of the application the answering respondents beg to state that the applicant's prayer for voluntary retirement was sent to <sup>6</sup>Government of India who had advised for obtaining the approval of Joint Cadre Authority and on receipt of Joint Cadres Authority's approval the same

Contd...P/3.



was communicated to Government of India and then Government of India conveyed clearance for allowing the applicant to go on voluntary retirement with effect from 1.8.97 (FN) and accordingly the State Government issued the notification on 8.9.97.

Further it is stated that the applicant was placed under suspension in separate issue and accordingly actions had been taken separately and one cannot be tagged with the other. The contention of the applicant that the prayer of voluntary retirement given by the applicant became infructuous in view of the issuance of suspension order, is not correct and cannot be taken into account as, the said suspension order issued in pursuance of the Government of India's decision No. 5 under Rule 16 of the All India Services (Death-Cum-Retirement) Rules, 1958. It says,

" In other words a member of the service who has given notice for voluntary retirement under the aforesaid rule will retire from service on the expiry of the period of the prescribed three months even if he is placed under suspension after he gave notice."

7. That the humble answering respondents deny the correctness of the statements made in paragraph 4.10 of the application. It is to be stated here that issuing a press statements, which was published in News Papers, containing adverse and destructive criticism of the Government as well as against disciplined Police force is purly in violation of A.I.S.Rules. And as such placing the applicant under suspension is in accordance with rules.

Contd...P/4.

Further it is stated that since an IPS Officer as per AIS (DCRB) Rules can go on voluntary retirement after issue of Notification before 3 months from the date he intends to retire, the applicant who submitted notice praying for voluntary retirement on 30.4.97 was allowed to go on voluntary retirement inspite of having a pending Departmental Proceeding against him and as such in the notification dated 8.9.97 it was clearly mentioned that the acceptance of voluntary retirement of the applicant is without prejudice to the ongoing Disciplinary proceeding against him.

8. That with regard to the statements made in paragraph 4.11 of the application it is stated that the Accountant General in his query as regards to the mode of treatment of the period of suspension of the applicant it was informed that the departmental proceedings drawn up against the applicant (Retd) was still pending and hence it was difficult to predict as to how the period of suspension will be treated. The subsistence allowance was sanctioned upto 31.7.97 because the applicant proceeded on voluntary retirement with effect from that date.

9. That with regard to the statements made in paragraph 4.12 of the application, the humble deponent begs to state that no request for subsistence allowance from the applicant was received by the Government earlier than the petition dated 6.4.99 so the statement made by the applicant i.e. continuous prayer requesting for grant of subsistence allowance is not at all correct. The required certificate that he is not engaged in business/profession/vacation or employment during the period of suspension had not been submitted by the

applicant to the Government which is the mandatory provision of Rule 4(2) of AIS, Discipline and Appeal Rules, 1969. However on receipt of the said application dated 6.4.99 made by the applicant, the Government allowed the subsistence allowance vide sanction order dated 24.4.99. The delay occurred due to the lapse of the Officer.

10. That with regard to the statements made in paragraph 4.13 of the application, the humble deponent begs to state that the question of posting of the applicant on revocation does not arise as he had already been allowed to go on voluntary retirement with effect from 1.8.97 (FN).

11. That with regard to the statements made in paragraph 4.14 of the application the humble deponent states that the applicant submitted a representation dated 10.8.99 to the Government of India regarding revocation of suspension and posting, but the Government of India reiterated its earlier decision allowing him to go on voluntary retirement with effect from 1.8.97(FN) and directed the State Government vide letter No. 31012/4/97-IPS.II dated 18.10.99 to intimate the same to Shri Sahu. Accordingly the State Government vide letter dated 29.10.99 intimated Shri Sahu the decision of the Government of India contains in letter dated 18.10.99.

A photocopy of the said letter dated 18.10.99, issued by the Under Secretary, Ministry of Home Affairs, Government of India is annexed herewith and marked as Annexure-~~III~~ I

12. That with regard to the statements made in paragraph 4.15 of the application, it is stated that the order allowing the applicant to go on voluntary retirement was issued by the competent authority i.e. the State

Contd...P/6.

State Government in consultation with the Government of India as well as Joint Cadre Authority.

13. That with regard to the statements made in paragraphs 4.16 and 4.17 of the application, the deponent begs to state that the applicant was allowed to go on voluntary retirement under Rule 2A of Rule 16 and not under Rule 2 of Rule 16. Further it is stated that at every stage from the receipt of the notice of voluntary retirement dated 30.4.97 submitted by the applicant before the Government till issuing formal order allowing the applicant to go on voluntary retirement, the Government of India was consulted. The required approval of the Joint Cadre Authority and of the Government of India were obtained before issuing the acceptance of the notice for voluntary retirement.

Photocopies of Resolution of Joint Cadre Authority and the Fax Message of the Government of India dated 13.8.97 are annexed herewith and marked as Annexure VI and III respectively.

14. That with regard to the statements made in paragraph 4.18 of the application, the deponent begs to state that the notice of voluntary retirement made by the applicant has been accepted in accordance with rules. Further there is no mention about compelling circumstances in his notice of voluntary retirement dated 30.4.97.

15. That with regard to the statements made in paragraphs 4.19 and 4.20 of the application, the deponent begs to state that the applicant has been granted subsistence allowance for the period upto 31.7.97 i.e. the date on which he retired. The Disciplinary proceedings is in progress. The voluntary retirement becomes effective on expiry of 90 days notice. Pensionary benefits will be considered as and when Pension papers/documents are submitted by him.

16. That with regard to the statements made in paragraph 4.21 of the application it is categorically stated that as the applicant had already been allowed to go on voluntary retirement with effect from 1.8.97 (FN) the question of granting subsistence allowance till date does not arise. Further the Disciplinary Proceedings were drawn up against him.

17. That with regard to the statements made in paragraph 4.22 of the application the humble deponent begs to state that it is the duty of the Officer concerned to submit the pension papers. No such pension papers has been submitted by the applicant before the authority.

18. That with regard to the statements made in paragraph 4.23 of the application, the humble deponent begs to state that the applicant violated the rules laid down in AIS Rules and the order placing him under suspension is purely as per rule. He has also accepted the charges and reiterates that he will do so again.

19. That none of the grounds set forth in the application is a valid ground of law. The order against the notice of voluntary retirement made by the applicant was issued by the competent authority as per provisions of the All India Service Rules with due approval from the Government of India.

20. That the deponent begs to submit that there is no merit in this case and hence this application may be dismissed.

Contd...P/8.

VERIFICATION

I, Shri Anjan Bardoloye, son of *Late Lalit Bardoloye* at present Deputy Secretary to the Government of Assam, Home (A) Department, do hereby verify that the statements made in paragraphs 1, 2, 3, 4, 7, 8, 10, 11, 12, 14, 17 and 18 are true to my knowledge ; those made in paragraphs 5, 6, 9, 13, 15 and 16 are true to my information based on records which I believe to be true ; those made in the rests are submissions before this Hon'ble Tribunal and I have not suppressed any material fact.

I have signed this verification on this the *20<sup>th</sup>* day of *November* 2000, at Guwahati.

*Anjan Bardoloye*

Signature

No. 31012/4/97-IPS.II  
 Government of India/Bharat Sarkar  
 Ministry of Home Affairs/Grih Mantralaya

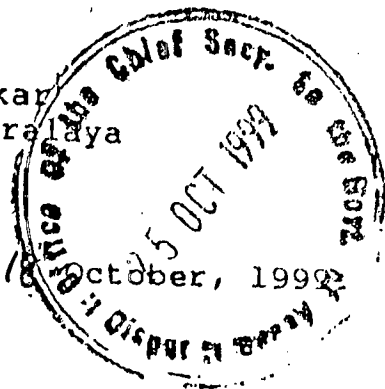
Adm/CO (Home & P)

Secy Home

To

M  
 26/10/99

New Delhi, the 15 October, 1999



The Chief Secretary,  
 Government of Assam,  
 Dispur.

Subject: Voluntary Retirement of Shri A.K. Sahu, IPS  
 (A&M:75).

Sir,

I am directed to refer to the representation of Shri A.K. Sahu, IPS (A&M:75) dated 10.8.99 on the subject cited above and to say that the matter was again examined by the Government and it was found that in terms of Rule 16(2A) of AIS (DCRB) Rules, Shri Sahu stands retired from service with effect from 1.8.97, i.e. the date of expiry of three months notice period and as such there is no case of his suspension being revoked or paying any subsistence allowance and posting as sought by Shri Sahu. The fact that his three months notice was accepted or he was informed of the acceptance of his request on a later date i.e. after completion of notice period, makes no difference.

2. Shri Sahu may be informed accordingly.

Yours faithfully,

*[Signature]*

( P.S. PILLAI )

Under Secretary to the Govt. of India

CHIEF SECRETARY'S OFFICE

Dy. No. 3135

Date 26/10/99

RESOLUTION OF THE JOINT CADRE AUTHORITYMembers:

1. Shri D.K. Gangopadhyay, IAS - Chief Secretary, Meghalaya
2. Shri T.K. Kamilla, IAS - Chief Secretary, Assam.

After perusal of the representation of Shri A.K. Sahu, IPS praying for voluntary retirement with effect from 1-8-97 under rule 16(2A) of the All India Services (DCRB) Rules, 1953, the Joint Cadre Authority is of the view that Shri Sahu may be allowed to go on voluntary retirement without prejudice to the existing disciplinary proceedings against him.

*D.K. Gangopadhyay*

( D.K. GANGOPADHYAY )

D. K. GANGOPADHYAY  
Chief Secretary,  
Govt. of Meghalaya,  
Shillong.

*T.K. Kamilla*

( T.K. KAMILLA )

Chief Secretary  
GOVT. OF ASSAM.

25/8/92



F A X M E S S A G E

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Please put up

today

17/8/97  
21/9/97

FROM : HOME SECY, NEW DELHI

TO : THE CHIEF SECRETARY, GOVT. OF ASSAM, DISPUR

REPEAT : THE CHIEF SECRETARY, GOVT. OF MEGHALAYA, SHILLONG

NO. 31012/4/97-IPS.II

DATED 13TH AUGUST, 1997.

APPROVAL OF THE GOVT. OF INDIA IS HEREBY CONVEYED TO THE ACCEPTANCE OF THE REQUEST OF SHRI A.K. SAHU, IPS (A&M:75) TO RETIRE VOLUNTARILY FROM SERVICE WITH EFFECT FROM 1.8.1997 WITHOUT PREJUDICE TO THE ON-GOING DISCIPLINARY PROCEEDINGS (.) REQUEST TO ISSUE NECESSARY ORDERS/NOTIFICATIONS ACCORDINGLY (.)

( F. J. BHAT )

UNDER SECRETARY TO THE GOVT. OF INDIA

At Amt up  
21/9/97

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
15 FEB 2001  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI.  
Guwahati Bench

Original Application No. 49/2000.

Shri A.K. Sahu ----- Applicant.  
-Versus-  
Union of India ----- Respondent.

Filed by *Pooja*  
15/2/2001  
(B. C. Pathak)  
Addl. Central Govt. Standing Counsel  
Central Administrative Tribunal  
Guwahati Bench, Guwahati  
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Written Statements filed on behalf of Respondent No.1.

1. That the Original Application No. 49/2000 (hereinafter referred to as "application") is barred of limitations and hence it is not maintainable in law.
2. That the application is not maintainable as the applicant has sought plural remedies in the application.
3. That before transversing the various paragraphs of the applications, the respondent No.1 gives hereunder a brief history of the case as follows:-

(a) The applicant has made the aforesaid application challenging the following orders:-

(i) State Government's order dated 4.6.97, placing the application under suspension.

(ii) State Government's charge-Memo, dated 9.7.97, served upon the applicant ;

(R. K. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

- (iii) State Government's order dated 8.9.97, permitting the applicant to go on voluntary retirement.
- (iv) State Government's order dated 28.4.99, sanctioning subsistence allowances to the applicant for the period of suspension to the date of voluntary retirement, and ;
- (v) Government of India letter dated 18.10.99 by which State Government was apprised of the rule position w.r.t. voluntary retirement of the officer stating that as officer stood retired consequent upon acceptance of his notice, there is no case of his suspension being revoked or paying of subsistence allowances after the date of retirement.

4. Copies of each impugned letters/orders annexed as Annexure-R1 (Series).

5. The applicant served three months notice 30.4.97 seeking voluntary retirement w.e.f. 1.8.97 i.e.      on completion of three months notice period. according to the Rule 16 (2) and 16 (2A) of AIS (DCRB) Rules 1958 which contain provisions for voluntary retirement. The provisions are quoted below:-

↓  
Sd/- (M. 7A)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

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16(2) A member of the service may, after giving atleast three month's previous notice in writing to the State Government concerned, retire from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

Provided that the member of the service under suspension shall <sup>not</sup> retire from service except with the specific approval of the <sup>State</sup> ~~Central~~ Government concerned.

16(2A). A member of the service may, after giving three month's previous notice in writing to the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice;

Provided that, a notice of retirement giving by a member of the service shall require acceptance by the <sup>State</sup> ~~Central~~ Government, if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the service could have retired from service under sub-rule (2).

1.8.97

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6. Hence rule 16(2) provides that once the notice period begins to run, it may not be open to the Government to prevent running of three months period and on completion of three months notice, officer will be deemed to have retired from service. In other words, it shall not require prior acceptance of the Government. Whereas situation under Rule 16 (2A) is different. Notice given under Rule 16 (2A) requires prior acceptance of the Government. In other words officer can retire only in case his notice is accepted by the Government.

7. As regards suspension of the officer after serving of the notice, Government of India decision No.5 below Rule 16 (2) explains the rule position. It states that in case a Member of service, who has given notice for voluntary retirement under the aforesaid rule will retire from service on the expiry of the period of the prescribed three months even if he is placed under suspension after he gave notice. However, departmental proceedings in such cases shall be deemed to have been instituted from the date of suspension and the benefit of limitation contained under clause (b) (ii) of proviso to Rule 6 (1) of AIS (DCRB) Rule shall not be available to member of service. The above decision of Government of India equally applies in the case of voluntary retirement under Rule 16 (2A) ibid with exception that notice under this rule requires prior acceptance by Central Government.

(R. K. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

8. Shri Sahu (applicant) gave notice on 30.4.97 seeking voluntary retirement w.e.f. 1.8.97. In terms of Rule 16 (2A) and proviso thereunder, State Government of Assam referred the matter to Central Government for acceptance of notice, which was given consent by Home Minister on 27.6.97 under the delegated power of the President. However, in the meantime, State Government placed the applicant under suspension and proposed Departmental Enquiry against him. The matter was called for by the Home Minister for reconsideration and after taking concurrence of both the segments of the cadre. Home Minister again approved the acceptance of notice on 8.8.97 without any prejudice to the ongoing Disciplinary Proceedings. As officer (applicant) was placed under suspension after his serving of notice on the authority of the President or the Governor as the case may be to accept the notice.

9. As regards status of suspension order after retirement of the Member of Service, on attaining the age of superannuation or otherwise, the suspension shall stand revoked automatically. As such once the officer was permitted to retire voluntarily his suspension stood revoked automatically from the date of his retirement as notified by the Government. It is relevant to mention here that basic principal for keeping a Government servant under suspension is to prevent him from attending his official duties so that he could not be able to influence the Disciplinary Action against him. However,

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when a member of service is permitted to retire, he demits the office and therefore, his further continuance of suspension does not arise.

10. Applicant was placed under suspension vide order dated 4.6.97. He was served charge-memo vide order dated 9.7.97 and he was permitted to retire voluntarily vide order dated 8.9.97.

Present OA has been filed after expiry of more than two years of passing of the above impugned orders of the Government of Assam, and as such the present OA so far as its part (1) to (iii) of para 1 is concerned is barred by limitation under Section 21 (1) (a) of Administrative Tribunal Act.

11. Further a member of service may prefer an appeal to the Central Government against any of the grievances as explained below Rule 16 (1) to (IV) of AIS (D&A) Rules 1969. No appeal preferred under these rules shall be entertained under such appeal is preferred within a period of 45 days from the date on which a copy of the order(s) appealed against is delivered to the appellants. Rule 1 of AIS (D&A) Rule 1969 further provides that no appeal shall lie against an order made by the President. First of all as order of permitting the applicant to retire from service was passed by the President, it was not applicable. It's subsequent communication by the State respondents does alter its original authority and

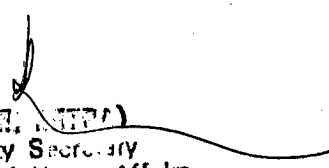
(S. K. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

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therefore, no appeal lies against this order. As such, any subsequent representation by the applicant, not being statutory, can not make present application maintainable against the respondent.

12. Further, any representation, as lies in terms of Rule 16 of AIS (D&A) Rules, 1969 can be made only within 45 days of the order appealed against and any appeal made after the statutory period is not maintainable. As officer filed no appeal within 45 days of issue of order, dated 6.4.97, 9.7.97 and 1.8.97 impugned, his time barred representations or representation of unstatutory nature can not extend him any benefit for relaxation of time prescribed under section 21 of Administrative Tribunal Act. As such application is badly delayed.

13. As regards orders, dated 28.4.97, impugned, regularises the period of suspension of the officer and only grievance this order may cause to the applicant is fixing his pay and allowances during the suspension period to his disadvantage. This order cause no other grievance, except one referred to above, which has been made subject of grievance by the applicant. Applicant has not come out with any grievance, this order has caused to the applicant. When Government issued order dated on 8.9.97 permitting to retire him voluntarily w.e.f. 1.8.97, suspension order stood automatically revoked on the date of his deemed demitting the office.

  
Joint Secretary  
Ministry of Home Affairs  
New Delhi.



As such, at this belated stage of two years after his deemed revocation of suspension order, he has no fresh grievance to come before this Tribunal. Similarly, Government of India letter dated 10.10.99 simply clarifies the rule position to State Government with reference to the objection raised by the applicant in his non-statutory, application dated 10.08.99 and therefore, his impugned letter also causes no fresh grievance, as it is not an order but confirms the rule position with reference to stand earlier taken by the Government while accepting his notice for voluntary retirement. As such appeal is badly delayed by time limit and deserves rejection on this sole ground.

14. That, with regard to the statements made in paragraphs 1, 2, and 3 of the application, this respondent refers and reiterate the statements made herein above in this written statements.

15. That with regard to the statements made in paragraph 4.1 of the application, the answering respondent has no comments.

16. That, with regard to the statements made in paragraph 4.2 of the application, the respondent states that the applicant submitted a notice of three months on 30.4.97 to retire voluntarily from service w.e.f. 1.8.97

(R. E. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

under the provisions of Rule 16 (2A) of AIS (DCRB) Rules, and the same was accepted by the President strictly in terms of the provisions under the relevant rules and powers vested in it. As such order have no legal informity. Allegations of the applicant are baseless.

17. That with regard to the statements made in paragraph 4.3 to 4.8 of the application, the respondent states that these are all matters of records and mostly concerning the State Government. Hence, the answering respondent has no comments.

18. That with regard to the statements made in paragraph 4.9, the respondents state that the presumption of the applicant that consequent upon issue of suspension order and charge-Memo, notice for Voluntary Retirement become infructuous is unfounded and not supported by rule position. Any notice given under Rule 16 (2A) requires prior permission of the Central Government and it takes effect from the date it is accepted by the Government. As provided under Government of India decision below 16 (2A) ibid, any order of suspension after the notice is served, does not effect the right of the applicant to retire provided, it is accepted by the Government and simultaneously, discretion of the Government to accept or otherwise of the notice is also not affected by any subsequent event. Notice can be infructuous only in case it is withdrawn by the Member of Service before it is

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accepted by the Government. In the instant case the notice for Voluntary Retirement was accepted by the competent authority within three months. In view of foregoing, presumption of the applicant is not acceptable. Any Departmental Enquiry started against the applicant before his retirement shall be deemed to have been instituted against the officer in terms of Rule 6(1) (a) of AIS (DCRB) Rules.

19. That with regard to the statements made in paragraph 4.10 of the application, the respondent states that the submission of the applicant appears as an after thought. As appears from the notice dated 30.04.97, he sought for Voluntary Retirement on personal grounds. As per rule position explained in reply to previous para, notice of Voluntary Retirement stood valid till it was accepted by the President and subsequent order of suspension have no effect on its existence. He stood retired from service from the date of its acceptance i.e. 1.8.97 (FN) notwithstanding the continuance of Disciplinary Proceedings initiated during the notice period.

20. That with regard to the statements made in paragraph 4.11 of the application, the respondent states that the applicant is trying to mislead the Tribunal by submitting half truth, Actually when applicant was stood retired w.e.f. 1.8.97, the office of AG, Assam,

(P. H. M. S. S.)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

requested State Government to clarify as how to treat the suspension of Shri A.K. Sahu, IPS (Under Suspension) who has already proceeded on Voluntary Retirement w.e.f. 1.8.97. This letter clearly speaks that officer stood retired w.e.f. 1.8.97 and now communication was for regularisation of suspension period for the purpose of pay and Allowances and Pensionary benefits.

21. That with regard to the statements made in paragraph 4.12 of the application, the answering respondent states that as notice for Voluntary Retirement was accepted by the President w.e.f. 1.8.97 and accordingly State Government issued order dated 8.9.97, there was no occasion for the applicant to withdraw it on 6.4.99 i.e. after 1 1/2 years of its acceptance. Further, as officer stood retired w.e.f. 1.8.97, question of suspension thereafter does not arise and therefore, application for revocation of suspension after more than one year is not maintainable.

22. That with regard to the statement made in paragraph 4.13 of the application, the answering respondent reiterated and re-asserted foregoing statements in this regard also.

23. That with regard to the statement made in paragraph 4.14 of the application, the answering respondent states that as no appeal lies against the

Presidential order, his representation dated 10.08.99 was not maintainable. Otherwise too it was time barred and based on unfounded ground and for reliefs not existing at that time.

24. That with regard to the statements made in paragraph 4.15 and 4.16 of the application, this respondent has no comments. The matter being related to record.

25. That with regard to the statements made in paragraph 4.17 of the application, the answering respondent denies the allegation and misgivings. The factual rule position is as under:-

(i) Government's order permitting the officer to retire voluntarily has all legal force.

(ii) In terms of Rule 16 (2A) Central Government is competent to accept the notice for voluntary retirement and therefore action of the Central Government was in order.

(R. K. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

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(iii) All the segments of Assam & Meghalaya Cadre gave their concurrence to the acceptance of notice of applicant. ✓✓

(iv) Notice of the applicant has been accepted by the president, in terms of powers vested in him and therefore, action of acceptance of notice for voluntary retirement was as per rules.

(v) As notice was accepted by the President w.e.f. 1.8.97 which was conveyed by Government order dated 8.9.97, there is no question of its withdraw on 6.4.99 i.e. after 1 1/2 years of its acceptance. ✓

(vi) That his notice for voluntary retirement was conditional is a white lie and Tribunal should take notice of this misgiving. ✓

(vii) As Joint Cadre Authority approved his voluntary retirement, Central Government rightly accepted his notice and issued order accepting his notice and issued order retiring him for service w.e.f. 01.08.97.

Ministry of Home Affairs  
New Delhi.

26. That with regard to the statement made in paragraph 4.18 of the application, this respondent states that as stated earlier, applicant served an unconditional notice for voluntary retirement on personal grounds, which was accepted by the President and orders issued accordingly under the authority of Government of Assam, officer stood retired w.e.f. 1.8.97. As such, the suspension order become non-existent. Placing a Member of service under suspension during the notice period does not effect the powers of the Government to accept or reject the notice for voluntary retirement served under Rule 16 (2A).

27. That with regard to the statements made in paragraph 4.19 of the application, this respondent reiterates the statements made herein above in this written statements.

28. That with regard to the statements made in paragraph 4.20 of the application, this respondent states that Rule 16 (2A) provides three months previous notice for voluntary retirement provided it is accepted by the Central Government. There is, however, no provision about its been deemed non exist after expiry of 90 days. Such notice remains in operation till it is accepted or withdrawn which ever date falls earlier. As notice was accepted before it is withdrawn there is no question of its expiry after 90 days.

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- 15 -

29. That with regard to the statements made in paragraph 4.21 of the application, this respondent states that the officer is entitled to subsistence allowance from the date of suspension till the date of his retirement. The officer stood retired w.e.f. 1.8.97 consequent upon acceptance of his notice for voluntary retirement. Rule 6 (1) (a) of AIS (DCRB) Rules, provides that the departmental Proceedings instituted against the person, while he was in service, shall after his retirement be deemed to be proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced, in the same manner as if the person has continued in service and as such he cannot claim to be in service.

30. That with regard to the statements made in paragraph 4.22 and 4.23 of the application, the respondent states that the non payment of post-retiral benefits to the applicant consequent upon his retirement w.e.f. 1.8.97 relates to the State Government only. Hence, this respondent has nothing to comment.

31. That with regard to the statement made in paragraphs 5.1, 5.2 and 5.3 of the application are denied by this respondent. Applicant in this notice have stated that he will be completing 22 years of service on 16th July, 1997 and intend to voluntarily retire from service

  
Ministry of Home Affairs  
New Delhi.



w.e.f. 1st August, 1997 afternoon. He has never mentioned anything about compulsion and duress in his notice. Orders of Respondent's are issued strictly in terms of relevant rules and therefore suffer with no legal infirmity.

32. There is no violation of provisions of rules as alleged. Applicant stood retired from service w.e.f. 1.8.97.

33. That with regard to the statements made in paragraph 5.4, 5.5. and 5.6 of the application, this respondent states that the applicant is entitled to all post retiral benefits and this matter solely relates to the State Government.

34. That with regard to the statements made in paragraph 5.7 and 5.8 of the application, this respondent states that there is no violation of rules as alleged. Order of suspension or charge-sheeting does not effect the discretion of the competent authority to accept notice of voluntary retirement. Once the member of service give a notice of three months to retire voluntarily from service under Rule 16 (2A) and if the same is not withdrawn before the notice is accepted, the officer is deemed to have retired from service w.e.f. the date of acceptance of notice even if he is placed under suspension during the period of currency of notice. ✓

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Further, Departmental Enquiry started against him before his retirement, shall be deemed to have been constituted under the provision of Rule 6 (1) (a) of AIS (DCRB) Rules, 1958.

35. That with regard to the grounds shown in paragraphs 5.9 and 5.10 of the application, this respondent denies the correctness of the same. The matter was referred to Government of Meghalaya and that Government vide their letter No.HPL.98/97/3 dated 112.06.97 conveyed their no objection to the acceptance of the applicant's notice for voluntary retirement. A resolution of the Joint Cadre Authority have also been received in this regard signed by Chief Secretaries of both the States on behalf of their respective Cadres. Only after having received the resolution of the Joint Cadre Authority, as per the provision below Rule 16 (2A) of AIS (DCRB) Rules 1958, the Central Government accepted notice for Voluntary Retirement. Hence the allegation and presumptions of the applicant are unfounded.

36. That with regard to the grounds made in paragraph 5.11, this respondent states that in terms of proviso below Rule 16 (2A) of AIS (DCRB) Rules, 1958, State Government referred the notice to Central Government and the same was accepted by the President on 27.06.1997.

37. That with regard to the statement made in paragraphs 6 and 7 of the application, this respondent has no comments.

(R. K. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

38. That with regard to the statements made in paragraphs 8.1 to 8.6 of the application, this answering respondent states that the applicant in view of the above facts, circumstances and the provision of law of rules, not entitled to any such relief as prayed for and hence, the application is liable to be dismissed with cost.

39. That with regard to the statements made in paragraph 9 of the application, this respondent states that in view of the foregoing statements made in this written statements and the order passed by this Hon'ble Tribunal on 11.02.2000 in connection with the application, the answering respondent respectfully submits that the applicant being baseless and denied any merit is liable to be dismissed with cost. ✓

40 In the premises aforesaid, it is therefore prayed that your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records, shall further be pleased to dismiss the application (O/A No. 49/2000) with cost and/or pass such order that your Lordships may deem fit and proper.

DEPONENT

(R. K. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

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

I, Shri R.K. Mitra presently working as Deputy Secretary to the Government of India, Ministry of Home Affairs being competent and duly authorised to sign this verification, do hereby solemnly affirm and state that the statements made paragraph 1, 2, 4 to 40.....are true to my knowledge and belief, those made in paragraph 3..... being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed/concealed any materials/informations from this Hon'ble Tribunal.

And I sign this verification on this day of 12th. February, 2001 at New Delhi.

Deponent.

Shri R.K. Mitra  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

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Annexure - R.1  
(62)  
FA (P.N.A.)  
4/6/97

GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT

FF  
5/5/97

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 4th June, 1997.

NO. HMA(IPS) 58/Pt.II/156 : Whereas, <sup>Shri</sup> Ashok Kumar Sahu, IPS, holding the post of Inspector General of Police (OSD) and Director, Prosecution has submitted an application dated 30.4.97 for voluntary retirement with effect from 1.8.97;

And whereas Shri A.K. Sahu, IPS, immediately after submission of the said application for voluntary retirement started indulging in spreading illwill, disaffection and indiscipline among the Police force of the State charged with the maintenance of Public order by issuing highly derogatory statements ;

And whereas the statements so made by Shri A.K. Sahu, IPS were published in the local and national Newspapers containing derogatory remarks against the Government and the Chief Minister ;

And whereas in reply to the notice asking for explanation given by Addl. Chief Secretary and Principal Secretary, Home Department dated 20.5.97 Shri A.K. Sahu, IPS categorically admitted that whatever statements appeared in the Newspapers were based on the statements made by him to the respective reporters of the different newspapers ;

And whereas after submission of his reply to the aforesaid notice asking for explanation, Shri A.K. Sahu, IPS again made different statements and allegations in different newspapers within and outside the State of Assam criticising the State Government, and creating division and chaos among the members of the Police force ;

Contd...P/2.

And whereas, the statements of allegation so made by Shri A.K. Sahu, IPS are derogatory and unbecoming of a member of a discipline force (Police) ;

And whereas, such statements and allegations are violative of the All India Services (Conduct) Rules 1968 ;

And whereas, the Governor of Assam is satisfied that there are sufficient materials to take disciplinary action against Shri A.K. Sahu, IPS in the interest of public service.

Accordingly, the Governor of Assam in exercise of powers conferred under Rule 3 of All India Services (Discipline and Appeal) Rules, 1969 places Shri A.K. Sahu, IPS under suspension, with effect from 4th June, 1997 pending initiation of proceeding for disciplinary action against him.

By order and in the name of the Governor of Assam.

04/6/97

Addl. Chief Secretary & Principal Secretary to the Govt. of Assam, Home & Political Department.

Memo.No. HMA(IPS) 58/Pt.II/156-A, Dtd.Dispur, the 4th June, 1997.

Copy to :-

1. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati- 7 for information and necessary action.
2. The Accountant General, Assam, Shillong for necessary action.
3. The Secretary to the Government of India, Ministry of Home Affairs, New Delhi for information.
4. The Secretary to the Government of Meghalaya, Home (P) Department, Shillong.
5. Shri A.K. Sahu, IPS, Inspector General of Police (OSD) and Director, Prosecution, Assam, Ulubari, Guwahati-7.
6. The Superintendent of Assam Government Press, Bamunimaidam, Guwahati- 21 for publication.

By order etc.,

Joint Secretary to the Govt. of Assam, Home Department.

(R. K. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi

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(64)  
ANNEXURE-R-II  
15/7/97  
F.A. (H.O.)  
9/7/97

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GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT

....

NO. HMA(IPS) 58/Pt.II/158 Dated Dispur, the 9th July, 1997.

To : Shri A.K. Sahu, IPS (U/S),  
C/O Director General & Inspector General  
of Police, Assam, Ulubari, Guwahati- 7.

You are hereby required to show cause under rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 read with Article 311 of the Constitution of India as to why any of the penalties prescribed in rule 6 of the aforesaid Rules should not be inflicted on you by the competent authority on the following articles of charge based on the statement of imputation of misconduct or misbehaviour attached.

1) That while you were the Inspector General of Police (OSD), you did submit a representation praying for voluntary retirement and soon after submission of the prayer you started indulging in spreading illwill, disaffection and indiscipline among the Police force of the State charged with the maintenance of public order by issuing highly derogatory statements.

That you made a Press statement published in a Assamese Daily "Asomiya Pratidin" dated 2.5.97 where you have criticised the Administration for indulging in corruption and nepotism. You had even uttered names of certain Police Officers alleged to have been indulging in corruption.

You have issued another statement to the Press which was published in the "Biweekly Agradoot" dated 4.5.97, wherein you have criticised the Government for paying you salary etc. without any work. You have issued statement criticising the activities of Police Officers, and failure of the Govt. in taking action against them.

The above action is quite unbecoming on your part as a Senior Police Officer, and more particularly on the part of an Officer of a disciplined force and is also in violation of the All India Services Conduct Rules, 1968.

2) That for your above Press statements issued in violation of relevant rules, you were asked to submit explanation, and in your reply furnished to Govt., it has been categorically admitted by you that the News published in the News Papers were based on the statements made by you. Even after submission of the explanation, you have issued/made different Press statements and allegations in different News Papers within and outside the State of Assam criticising the State Government ; thus creating division and chaos amongst the members of the Police Force.

The above actions are quite unbecoming on the part of a Senior Police Officer of your status, and tantamounts to insubordination and violation of the All India Services (Conduct) Rules, 1968.

Contd....P/2.

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10/7/97

09/7/97

(R. E. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR.

1. That while Shri A.K. Sahu, IPS was the Inspector General of Police (OSD), he submitted a prayer for voluntary retirement and soon after the submission of the prayer he started indulging in spreading illwill, disaffection and indiscipline amongst the Police Force of the State charged with the maintenance of public order by issuing highly derogatory statements.

That Shri Sahu made a Press statement published in a Assamese Daily "Asomiya Pratidin" dated 2.5.97 where he criticised the Administration for indulging in corruption and nepotism.

That Shri Sahu made another statement to the Press which was published in the "Biweekly Agradoot" dtd. 4.5.97 and he criticised the Govt. for not entrusting any work to him as Inspector General of Police (OSD) and for paying salary etc. without any work. That he criticised the activities of certain Police Officers and also the Govt. for failing to take action against them.

2) That Shri Sahu was asked to submit explanation for the Press Statement issued by him. Shri Sahu in his reply admitted that the News Items criticising the Govt. as well as the Police Force were published on the basis of statements made by him. He has even after submission of explanation issued Press Statement, criticising the Govt. as well as the Police Force.

C. 9/7/97

Addl. Chief Secretary & Principal Secretary  
to the Govt. of Assam.  
Home & Political Department.

...



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(11) (16 89)

ANNEXURE-R-III

GOVERNMENT OF ASSAM  
HOME (A) DEPARTMENT.

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 8th September, 1997.

NO.HMA(IPS) 58/Pt-V/39 : The Governor of Assam is pleased to accept the prayer for voluntary retirement tendered by Shri A.K. Sahu, IPS (U/S) and to allow Shri Sahu to go on voluntary retirement with effect from 1-8-97 (F.H.) without prejudice to the ongoing Disciplinary proceedings against him.

Sd/- D.N. Saikia,  
Joint Secretary to the Govt. of Assam,  
Home (A) Department.

Memo NO.HMA (IPS) 58/Pt-V/39-A Dated Dispur, the 8th September/97.

Copy to :-

1. The Accountant General, Assam, Maidamgaon, Deltola, Guwahati - 28 for information and necessary action.
2. The Director General & Inspector General of Police, Assam, Ulubari, Guwahati - 7.
3. The Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi with reference to the Fax Message No.31012/4/97-IPS-II dated 13-8-97.
4. The Secretary to the Govt. of Meghalaya, Home (P) Department, Shillong.
5. Shri A.K. Sahu, IPS (Retd.), C/O Director General & Inspector General of Police, Assam, Ulubari, Guwahati - 781007.

By order etc.,

Deputy Secretary to the Govt. of Assam,  
Home (A) Department,

Memo No. PA/XII/267/Pt/97/6-A, Dated Guwahati, the 9th Sept/97.  
As directed, copy for information and necessary action forwarded to:  
1. Shri A.K. Sahu, IPS, C/O-Commit. 4th APBN, Kohilipara, Chty.  
2. Shri A.P. Rout, IPS, Commit. 4th APBN, Kohilipara Chty. He is requested to hand-over the enclosed Memo to Shri A.K. Sahu, IPS on obtaining acknowledgement and report compliance.  
3. Pension Cell, DGP Office.  
4. Proceeding Cell, DGP Office.

(R. B. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.

Asstt. Inspector General of Police (A)  
Assam : Guwahati

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Sl. No. 13(2)

Ammezure-2-IV

No. 31012/4/97-IPS.II  
Government of India/Bharat Sarkar  
Ministry of Home Affairs/Grih Mantralaya

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New Delhi, the 18 October, 1999.

To

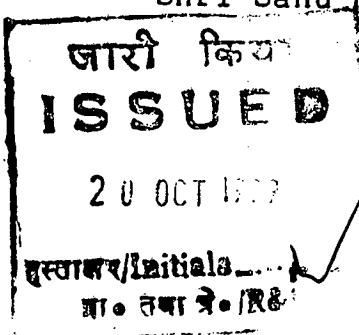
The Chief Secretary,  
Government of Assam,  
Dispur.

Subject: Voluntary Retirement of Shri A.K. Sahu, IPS  
(A&M:75).

Sir,

I am directed to reffer to the representation of Shri A.K. Sahu, IPS (A&M:75) dated 10.8.99 on the subject cited above and to say that the matter was again examined by the Government and it was found that in terms of Rule 16(2A) of AIS (DCRB) Rules, Shri Sahu stands retired from service with effect from 1.8.97, ie. the date of expiry of three months notice period and as such there is no case of his suspension being revoked or paying any subsistence allowance and posting as sought by Shri Sahu. The fact that his three months notice was accepted or he was informed of the acceptance of his request on a later date ie. after completion of notice period, makes no difference.

2. Shri Sahu may be informed accordingly.

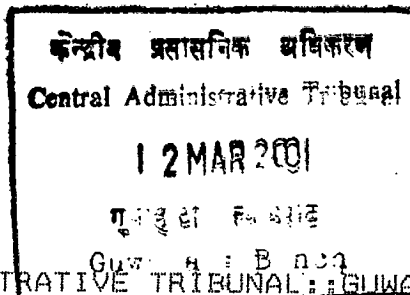


Yours faithfully,

( P.S. PILLAI )

Under Secretary to the Govt. of India

(R. E. MITRA)  
Deputy Secretary  
Ministry of Home Affairs  
New Delhi.



THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

GUWAHATI

O.A. No. 49/2000

Ashok Kumar Sahu.

.... Applicant

- Vs -

Union of India & Ors.

... Respondents

REJOINDER TO THE WRITTEN STATEMENT

FILED BY RESPONDENTS NOS. 2 TO 5 :

The abovenamed Applicant begs to state as follows:

1. That the Applicant has received the copy of the written statement filed by the Respondents Nos. 2 to 5, has gone through the same and he has understood the contents thereof. Save and except the statements which are not specifically admitted hereinbelow, other statements made in the WS may be treated as total denial. Further the statements which are not borne on records are also denied and the Respondents are put to the strict proof thereof.

2. That with regard to the statements made in paragraphs 1, 2 and 3 of the WS the Applicant does not admit anything contrary to the relevant records. It is denied that the Deputy Secretary to the Government of Assam, who has verified the WS is also authorised to file the written statement on behalf of the Respondent No. 3. In this connection the purported authorisation may be directed to be produced before this Hon'ble Tribunal.

3. That with regard to the statements made in paragraphs 4 and 5 of the WS, the Applicant states that as per the statements made by the Respondents, the Applicant was placed under suspension on the basis of news item published in "Asomiya Pratidin" dated 2.5.97 and "Bi- Weekly Agradoot" dated 4.5.97. These news items were in sequel to the notice by the Applicant seeking voluntary retirement under compelling circumstances. Thus the suspension order dated 4.6.97 and the explanation by the Applicant and subsequent departmental proceedings are inter related and inseparable. The merit of the charges may not be within the purview of the OA which is the subject matter yet to be inquired into in the departmental proceeding which is yet to commence.

4. That with regard to the statements made in paragraph 6 of the WS the Applicant states that the plea taken by the Respondents with regard to various alleged correspondences between the Respondent No. 1 and the Respondents No. 2 and 5 are based on records. The Respondents have also mentioned about the alleged approval of the JCA and clearance by the Government of India and the same are all based on records. The said records are very much necessary for a proper adjudication of the matter and accordingly the Applicant craves leave of the Hon'ble Tribunal for a direction to the Respondents to produce the said records. It will be pertinent to mention here that the correspondences in the shape of Annexure-I, II and III annexed to the WS were never communicated to the

Applicant and he was in complete dark about those correspondences and it is through the WS only, he has been made known about the existence of those purported correspondences. As regards the Annexure-II document (undated), it is stated that the same cannot be the proceeding of JCA as contemplated under the Rules and void ab-initio. To the best of knowledge of the Applicant there was no JCA meeting. ✓

The Applicant denies that placing of the Applicant under suspension is a separate issue and cannot be tagged with the issue of voluntary retirement. The very fact that during the pendency of the voluntary retirement notice which eventually became infructuous and lost its force on expiry of the period of the notice, the Applicant was placed under suspension and a departmental proceeding was initiated, leaves no manner of doubt that the Applicant was continued in service. This fact is very much relevant to decide the issue in hand. The Respondents have only referred to a particular decision without mentioning anything about the other decisions of the Government of India holding the field. The Applicant craves leave of the Hon'ble Tribunal to refer and rely upon the Government of India's decisions at the time of hearing of the case.

5. That with regard to the statements made in paragraph 7 of the WS the Applicant states that the Respondents themselves have admitted that since an IPS officer as per AIS (DCRB) Rules can go on voluntary retirement after issue of notification before three months from the date he intends to retire. In view of

such admission which is in conformity with Rule 16 (2) (A) of the said Rules, the impugned orders are not sustainable and liable to be set aside. As already stated above, the voluntary retirement notice given by the Applicant having expired on 31st July 1997, no action on such a notice could have been taken and consequently the impugned order of acceptance of voluntary retirement with retrospective effect is not sustainable. It is further stated that suspension and drawal of departmental proceedings after more than 30 days of receipt of the notice of voluntary retirement prevents the competent authority to accept the notice as per administrative guidelines. Even if the so call approval of the JCA as reflected at Annexure-II of the WS is held to be in existence, it is the firm belief of the Applicant that the members of the JCA were not made known the factum of placing the Applicant under suspension during the pendency of the voluntary retirement notice.

6. That with regard to the statements made in paragraph 8 of the WS the Applicant states that an order of suspension always remains in force till the same is revoked or modified by the competent authority. The admitted fact is that even in the impugned notification dated 8.9.97, the Respondent No. 2 did not modify the order of suspension when there was ample scope. On the other hand the Respondents have admitted that the Applicant is still under suspension which would be regularised at the time of conclusion of the departmental proceedings. Deemed voluntary retirement

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as stated in para 6 and continuation under suspension even after retirement as stated in para 8 are incongruous and bad in law. Further the notification dated 8.9.97 has been issued in the name of the Governor of Assam clearly stating that it is the Governor of Assam who has accepted the voluntary retirement notice, but that too with retrospective effect i.e. from 1.8.97. In the said order there is no mention about the correspondences which allegedly took place amongst the Respondents. The Respondents have failed to explain as to why such a notification could not be brought out before expiry of the notice period and as to why the order of suspension could not be revoked before the proposed date of retirement as specified in the notice. The Respondents are silent about the period with effect from 1.8.97 to the date of notification i.e. 8.9.97, the date on which the Applicant even on the basis of the impugned notification was very much in service.

7. That with regard to the statements made in paragraphs 9 and 10 of the WS it is categorically deny that the Applicant did not make any request for subsistence allowance. The Respondents of their own ought to have granted the same to the Applicant. The Applicant submitted the required certificate on 28.2.98 making a prayer for providing him with the subsistence allowance. In this connection the Respondents may be directed to produce the relevant file (Pt. file) which also contains the views of the LR, which will reveal the truth. Thus the Applicant never accepted the impugned order and instead insisted that he was/is

still under suspension and the impugned order is non-est.

8. That with regard to the statements made in paragraph 11 of the WS the Applicant states that the Government of India finally intimated the Applicant vide Annexure-9 letter dated 29.10.99 disposing of the representations of the Applicant. It was only thereafter the Applicant approached this Hon'ble Tribunal by filing the OA. As already stated above none of the correspondences between the Governments was endorsed to the Applicant. It appears that even the State Government was directed by the Government of India by its letter dated 18.10.99 to intimate that Applicant about the contents of the letter dated 29.10.99. The statements that "the Government of India reiterated its earlier decision" does not carry any meaning so far as the Applicant is concerned inasmuch as never before filing of the WS the Applicant was apprised of anything regarding Annexure-I, II and III of the WS. The Applicant was given to understand that his voluntary retirement notice has been accepted by the Governor of Assam by the impugned notification. The Respondents cannot improve upon the said situation by producing certain other documents which were never furnished to the Applicant, except the one dated 29.10.99 (Annexure-9 to the OA) which has given rise to the cause of action for filing the OA.

9. That the Applicant denies the correctness of the statement made in paragraph 12 of the WS. It is denied that the impugned order was issued by the competent



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authority in consultation with the Government of India as well as Join Cadre authority. Any decision even if taken by those authorities, unless communicated to the person concerned, same does not become effective on the person concerned. In the instant case the Applicant was not furnished and/or communicated with anything regarding acceptance of his voluntary retirement either by the Government of India or by the JCA.

The Respondents are confused with regard to the competent authority to accept the voluntary retirement notice within the meaning of Rule 16(2)(A). Under the Rule there is no mention about approval by JCA or the Central Government. The competent authority under the said Rules is the JCA to whom only the voluntary retirement notice ought to have been addressed and who alone could have accepted it within the dates specified in the notice and communicated the same to the Applicant on or before the specified date i.e. 1.8.97. From the undisputed facts as reflected by the Respondents themselves, it is established that the Applicant's premature retirement is not supported by *any* ~~territory~~ <sup>statutory</sup> provisions.

10. That with regard to the statements made in paragraph 13 of the WS, while reiterating and reaffirming the statements made herein above, the Applicant states that from they one on which the notice was received till the impugned notifications dated 8.9.97 and 29.10.99, the Respondents No. 1 and 2 have been jointly, concurrently and in consultation in one and other took all the steps to effect the premature

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retirement of the Applicant. This admitted fact which has no support of law reveals a conspiracy to deprive the Applicant of a substantive post in the all India services contrary to the provisions of Articles 309 and 312 of the Constitution of India read with the provisions of All India Services Act, 1951 and AIS (D&A) Rules 1969 and IAS(DCRB) Rules, 1958

It is not known as to under what Rule the Respondent No. 2 was referring the matters seeking approval from the Respondent No. 1 and under what Rules the Respondent No. 1 was obliging the Respondent No. 2 by approving the former's action thereby reducing the statutory body namely the JCA a mere formality. So called resolution of the JCA appears to be not authentic on the face of it. The relevant file showing the details of the deliberations, constitution of the JCA by the State of Assam in consultation with the State of Meghalaya, how the JCA was constituted etc. including the correspondences before such meeting as received from the Respondent No. 1 and after it was decided, the communication to the Respondent No. 1 may be called for.

11. That with regard to the statements made in paragraph 14 of the WS it is denied that the notice of voluntary retirement has been accepted in accordance with Rules. Compelling circumstances are many and numerous. The notice dated 30.4.97 was in sequel to memo in February 1997 by the Respondent No. 5 in reply to a representation by the Applicant in September 1996. The immediate background of the matter is promotion of

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the Applicant to the rank of Inspector General of Police in March 1996 and later demotion to the rank of DIG in July 1996. The Applicant submitted representation in September 1996 to which the Respondents No. 2 and 5 replied in February 1997 that the Applicant could seek voluntary retirement in proper form. The Applicant was merely asserting his legal rights to work with dignity within the framework of the statutes. To escape these heaps of humiliation and indignity, a member of All India Services in normal circumstances does not feel comfortable to seek justice by always knocking at the door of the Judiciary, nor a member with dignity would like to run after politicians to seek his legal dues. As a last resort, a member finding no alternative to serve the Rule of law with dignity chooses the hard way of quitting the service prematurely. Even that was not allowed to be done in the instant case.

The Respondent No. 2 and 5 may perhaps be directed to produce the entire record in support of their averments in the WS.

12. That with regard to the statements made in paragraph 15 of the WS the Applicant states that the voluntary retirement becomes effective on expiry of 90 days notice. This stand taken by the Respondents is contrary to the legal position.

The relationship between the Applicant and the Respondents is not a matter merely of status under the constitutional provisions laid down by Article 309 and

312. This status is regulated by statutes and statutory provisions. The matter of retirement from All India Services in case of the Applicant is envisaged under Rule 16 of the AIS (DCRB) Rules, 1958. The Rule lays down a scheme for three types of retirement.

- (i) Retirement by superannuation
- (ii) Voluntary retirement by volition or choice of the Government servant
- (iii) Compulsory retirement by desire of the Government.

Voluntary retirement under Rule 16 is of two types :

- (a) Bilateral
- (b) Unilateral.

Voluntary retirement is possible on a date specified in the notice by a member of the AIS giving three months in advance to the State Government concerned. It is a unilateral action and the member stands retired on completion of the notice period in case who has served 30 years or more in service and completed 50 years of age ; and he is not under suspension during the notice period. In case he is under suspension acceptance of the notice by the State Government concerned is specifically necessary before expiry of the date and such acceptance should be communicated before the date specified in the notice and hence the retirement is bilateral.

In case the member is less than 50 years of age and he has completed more than 20 and less than 30

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years of service, he may give a three months advance notice to the state Government concerned specifying a date in the notice on which he chooses to retire. This notice has to be accepted within the date and communicated to the member within the date. It is a bilateral act whether he is under suspension or not during the notice period of three months. Acceptance by the Joint Cadre Authority and communication before the expiry of the notice period shall make the voluntary retirement effective from the date specified by the member in the notice. Till that time the jural relationship of master and servant continues between the Government servant and the Government. Acceptance is not "approval". Approval is a sort of endorsement or concurrence whereas acceptance is an explicit, singular and specific act in relation to a proposal, as opposed to rejection or denial or refusal.

U/R 16(2-A) there is mention of State Government concerned as to whom the notice should be addressed and which should also "accept" it or reject it. There is no mention of the "President of India" or Central Government or approval by anybody else other than the acceptance by the "State Government concerned". "State Government concerned" means the Joint Cadre Authority u/r 2(m) of the AIS (DCRB) Rules. Rule 4 of the JCA Rules defines JCA.

Under Rule 16, the phrase "any date thereafter, as specified in the notice" is of great significance. "The date" is repeated at several places in Rule 16(2) as well as Rule 16(2-A) which implies expiry of "the date" renders the notice loose all its meaning and purpose.

Because by that date, the member of the service is at liberty to choose alternative avenue to earn his livelihood.

In this case, the Applicant was placed under suspension before the expiry of the date. The order of suspension was not revoked before expiry of the date..

Bearing presumption by implication that notice by the Applicant has not been accepted as he did not receive any communication within the date specified in the notice, the Applicant had no communication whatsoever regarding the fate of his notice till he received a notification on 22.9.97 issued by the Respondent No. 2 on 8.9.97.

Immediately on receipt of the notification, the Applicant objected to its contents as illegal and on the same day submitted a petition to the Respondent No. 2 with a copy to the Accountant General. The Accountant General took up the matter by a letter questioning the "retrospective" part of the retirement. The entire record may be called from the Respondent No. 2 and 5. The views expressed by the Legal Remembrancer in this connection were also suppressed by the Respondents No. 2 and 5. The Respondents No. 2 and 5 have filed a convince as to why they abdicated their responsibility to review the position. It is not understood under which rule the responsibility of the acceptance of Applicant's notice was shifted to the Respondent No. 1 bypassing the Joint cadre authority. JCA is a body created by statutes. Its proceedings must be transparent enough to stand the test of legal scrutiny. Hence all

deliberations must be supported by records. However, the notice for voluntary retirement has been wrongly addressed by the Applicant to the Respondent No. 2 instead of the Joint Cadre Authority which is jointly represented by the Respondents No. 2 and 3. The notification dated 9.7.97 speaks of acceptance by the Governor of Assam who even by implication is not same as the Joint Cadre Authority. It is a faulty notification to show the Applicant retired with retrospective effect. The suspension order issued u/r 3 of AIS (D&A) Rules, 1969 remains in force under Rule 3(7) of the same Rules. By deliberate conspiracy Respondents have deprived the Applicant of rightful living even by denying the subsistence allowance which should now be paid with interest. The Applicant is supporting his family with 3 school and college going children by borrowing money from Banks paying heavy interest. By circumventing law the Respondents have subjected the Applicant to undue harassment mentally and financially, which cannot be compensated by any amount in terms of payments or arrears with Bank interest.

14. That with regard to the statements made in paragraphs 16, 17, 17, 18, 19 and 20 of the WS, the Applicant while reiterating and reaffirming the statements made above, denies the correctness of the said statement. The Respondents all along treated the Applicant to be in service and under suspension otherwise he would have been paid his pensionary benefits, for which the Applicant need not ask for. It

is duly of the Government to forward the pension papers. All these only lead to the irresistible conclusion that the Applicant is still in service without subsistence allowance and that the impugned orders are liable to be set aside.

15. That under the facts and circumstances of the case the OA deserves to be allowed with cost and compensation.

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

I, Shri Ashok Kumar Sahu, the Applicant in OA No. 49/99, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 15 are true to my knowledge ; those made in paragraphs 2 to 14 [parawise reply] are matters of records which I verily believe to be true and the rests are my humble submissions before this Hon'ble Court and I have not suppressed any material fact.

And I sign this verification on this the 12<sup>th</sup> day of ~~February~~ <sup>March</sup> 2001.

Ashok Sahu