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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 98/2000.....

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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. 98/2000 OF 199

Applicant(s) Sri K.S.P.V. Pavan Kumar.

Respondent(s) Union of Des'a add'ores.

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

Mr. C.K. Nair.

Advocate for Respondent(s) C. G. S.

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

Notes of the Registry	Date	Order of the Tribunal
<p>Application admitted within time 456248 Dated 20.2.000 9/4/2000 13/3/2000</p>	<p>15.3.00</p>	<p>Application is admitted. Issue notice on the respondents by registered post. Notice returnable within four weeks. Pendency shall not be bar for the respondents to grant relief to the applicant. List on 11.4.00 for further order.</p> <p style="text-align: center;"> Member (J) </p> <p style="text-align: right;"> Member (A) </p>
<p>23-3-2000 Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A/D. vide D.No. 884 to 886 dtd. 27.3.2000.</p>	<p>trd 11.4.00</p>	<p>On the prayer of Mr. A. Deb Roy, Sr.C.G.S.C. two weeks time is allowed for filing of written statement. List on 1.5.00 for filing of written statement and further orders.</p> <p style="text-align: right;"> Member </p>

Notes of the Registry	Date	Order of the Tribunal
<p>7 - 3 - 2000</p> <p>① Service Report are still admitted.</p> <p>② No - w/Statement has been filed.</p>	<p>1-5-00</p>	<p>W/S has not been filed. No W/S is available. Adjourn to 25-5-00.</p> <p><i>W/S</i> <i>by</i></p>
<p><i>W/S</i> <i>by</i></p> <p>1-5-00</p>	<p>25-5-00</p>	<p>There is no Bench today. Adjourn to 14.6.00</p> <p><i>W/S</i> <i>by</i></p>
<p>NO W/S filed.</p> <p>NO. W/S has been filed.</p>	<p>14.6.00</p>	<p>Present : Hon'ble Mr.D.C. Verma, Judicial Member.</p> <p>Heard Mr. S. Sarma, learned counsel for the applicant and Mr.A. Deb Roy, learned Sr.C.G.S.C for the Respondent No.3. None appears for the Respondents No.1 and 2.</p>
<p><i>W/S</i> <i>by</i> 3.6.2000.</p> <p>No. written statements have been filed.</p> <p><i>W/S</i> <i>by</i> 6.7.2000.</p>	<p>mk</p>	<p>The learned counsel for Respondent No.3 requests for three weeks time to file written statement. Other respondents also to file written statement.</p> <p>List on 7.7.00 for written statement and further orders.</p> <p style="text-align: right;"><i>[Signature]</i> Member (J)</p>
<p>10.11.2000</p> <p>1) Notice issued vide No. 884 - 886 dated 27.3.2000.</p> <p>W/S has been filed</p> <p>NO W/S has been filed by two Respondents</p>	<p>7.7.00</p>	<p>Present: Hon'ble Mr S. Biswas, Administrative Member</p> <p>Learned counsel Mr U.K. Nair for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. for the respondents.</p> <p>At the request of the learned counsel for the respondents the case is adjourned and posted on 1.8.00 for filing written statement.</p> <p style="text-align: right;"><i>S. Biswas</i> Member(A)</p>
<p><i>W/S</i> <i>by</i> 11/1/2000</p> <p><i>contd</i></p>	<p>nkm</p> <p>1.8.00</p> <p>7-9-00</p>	<p>There is no Bench today. Adjourn to 7-9-00.</p> <p>NO Bench to be held on 13.11.00.</p> <p><i>W/S</i> <i>by</i></p>

Notes of the Registry

Date

Order of the Tribunal

10.11.00

Notices were issued to the respondents by Regd. post under D.No.884 & 885 dated 27.3.00 (postal Receipt No. 2843 dt.31.3.00 & 2838 dt. 29.3.00 respectively). The ld.counsel Sr.C.G.S.C has appeared for respdt.No.3 and had sought adjournment for filing written statement. Accordingly the service of notice on respdt.No.1 & 2 may perhaps be held to be sufficient under Rule 11(1) (iv)-proviso of CAT(Procedure) Rule read with Rule 25(c) of CAT Rules of Practice.

Laid before the Hon'ble Tribunal for kind orders.

[Signature]
Dy. Registrar.

13.11.00

Heard Mr S.Sarma, learned counsel for the applicant and also Mrs M.Das, learned Govt. Advocate, Assam for respondents No. 1 & 2 and Mr A.Deb Roy, learned Sr.C.G.S.C for respondents No.1. Four weeks time allowed to the respondents to file written statement.

List on 11.12.2000 for order.

[Signature]
Vice-Chairman

pg

11.12.00

Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman and Hon'ble Mr. M.P. Singh, Administrative Member.

Three weeks time is granted to the respondents to file written statement.

List on 5.1.2001 for written statement and further orders.

[Signature]
Member

[Signature]
Vice-Chairman

8.12.00

No. written statement has been filed.

5.1.01

Four weeks time is allowed to the respondents to file written statement.

List on 6.2.01 for written statement and further orders.

[Signature]
Vice-Chairman

No. written statement has been filed.

[Signature]
5.2.2001

mk

6.2.01

List on 8.3.01 to enable the respondents to file the written statements.

[Signature]
Member

[Signature]
Vice-Chairman

N/S not yet filed.

[Signature]
2/3

8.3.01

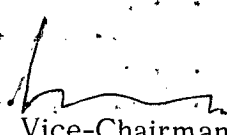
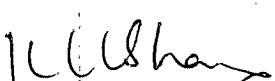
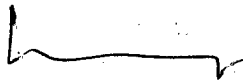




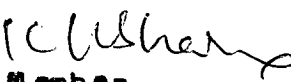

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List on 9.4.01 to enable the respondents to file written statement.

[Signature]
Member

[Signature]
Vice-Chairman

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Notes of the Registry	Date	Order of the Tribunal
	9.4.2001	<p>Four weeks time allowed to the respondents to file written statement. List it for orders on 10.5.01.</p> <p style="text-align: right;"> Vice-Chairman</p>
	11.5.01	<p>List on 8.5.01 to enable the respondents to file written statement.</p> <p> Member  Vice-Chairman</p>
	8.6.01	<p>Mr. Ad Deb Roy, Sr.C.G.S.C. asked 4 weeks time to file written statement. List on 3-7-2001 for order.</p> <p style="text-align: right;"> Member</p>
<p>No. written statement has been filed.</p> <p><u>20</u> 13.8.01</p>	03.7.01	<p>The application was filed on 15.3.2000. The respondents were given so many opportunities to file written statement. Shri B.C.Pathak, learned Addl.C.G.S.C. for the respondents, again prays for time to file written statement. The case is fixed for hearing on 14-8-2001. In the meanwhile respondents may take steps to file written statement, giving the applicant 1 week time to file rejoinder.</p> <p style="text-align: right;"> Member</p>
	14.8.01	<p>List again on 16.8.01 for hearing.</p>
<p><u>13.9.2001</u> Copy of the judgment has been sent to the Office for issuing the same to the Applicant as well as to the L/Advocates for the parties.</p>	16.8.01	<p>Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application stands disposed of in terms of the order. No order as to cost.</p> <p> Member  Vice-Chairman</p> <p style="text-align: right;"> Member  Vice-Chairman</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 98 of 2000.

Date of Decision 16.8.2001.....

----- Mr. K. S. P. V. Pavan Kumar -----

----- Petitioner(S) -----

----- Mr. B. K. Sharma, Mr. S. Sarma &
Mr. U. K. Nair -----

----- Advocate for the
Petitioner(s) -----

Versus-

----- Govt. of Assam & Others -----

----- Respondent(s) -----

----- Mr. B. C. Pathak, & Dr. Y. K. Phukan &
Mrs. M. Das -----


----- Advocate for the
Respondent(s) -----

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

THE HON'BLE MR. K. K. SHARMA, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble : Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH X

Original Application No. 98 of 2000.

Date of Order : This is the 16th Day of August, 2001.

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

HON'BLE MR. K.K.SHARMA, ADMINISTRATIVE MEMBER

Shri K.S.P.V. Pavan Kumar
S/O Shri K.V.N. Nagendra Sai
Presently posted as Deputy Conservator of Forests
Consolidation Division, Haflong
N.C.Hills District
Assam. . . . Applicant.

By Mr.B.K.Sharma, Mr.S.Sarma & Mr.U.K.Nair.

- Vs -

1. State of Assam
Represented by the Commissioner & Secretary
to the Government of Assam, Deptt. of Forests
Assam Sachivalaya, Dispur
Guwahati-781006.
2. Chief Secretary to the Govt. of Assam
Dispur, Guwahati.
3. Union of India
Represented by the Secretary to Govt. of India
Ministry of Environment & Forests
Paryavaran Bhawan, C.G.O. Complex
Lodhi Road, New Delhi.

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

O R D E R

CHOWDHURY J.(V.C.) :

We have heard Mr.S.Sarma, learned counsel for the applicant at length and also Mr.B.C.Pathak, learned Addl. C.G.S.C for the respondents.

2. By the impugned order dated 8.3.1999, the respondent No.1 Government of Assam dropped the Departmental Proceeding, which was initiated against the applicant vide order No, FRE.117/91/Pt.II/39 dated 29.8.98. The order also mentioned that the said order was passed on the basis of the applicant's letter dated 21.1.1999 praying for dropping the Departmental Proceeding.

3. In view of the order closing the Departmental Proceeding against the applicant, we do not find any


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cause for ground to proceed with the proceeding. The applicant cannot be said to be a person aggrieved. Mr. S.Sarma, learned counsel for the applicant, however, submitted that though by the order dated 8.3.99, the proceeding was withdrawn he was thereby cautioned without any justification. In support of his contention Mr.Sarma produced before us the notification dated 1.10.2000 issued by the Government of Assam re-publishing the notification of the Govt. of India dated 11.10.2000 showing the date of confirmation of the applicant as 1.1.1996.

In view of observation made above, we do not find any justification to proceed with the matter.

Accordingly, the application stands disposed of.

There shall, however, be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

O.A.No. 98/2000

FILED BY: 10
The Applicant
Thomyki, Advocate
U.K. Naha,
7.3.2000

BETWEEN

- 1). Shi.K.S.P.V.Pavan Kumar, I.F.S.,
Son of Shri.K.V.N.Nagendra Sai,
At present posted as Deputy Conservator of Forests,
Consolidation Division, Haflong, N.C.Hills District, Assam.

-Applicant.

-AND-

- 1). State of Assam, (Represented by the Commissioner & Secy.
to the Government of Assam, Deptt. Of Forests, Assam
Sachivalaya, Dispur, Guwahati-781006.
- 2). Chief Secretary to the Govt. of Assam, Dispur, Guwahati.
- 3). Union of India (Represented by the Secretary to Govt. of India,
Ministry of Environment & Forests, Paryavaran Bhawan,
C.G.O.Complex, Lodhi Road, New Delhi).

-Respondents.

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DETAILS OF THE APPLICATION.

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

The application is against certain remarks made in the Govt. of Assam's Order No. FRE.17/95/76 dtd. Dispur, 08.03.1999 issued by the Commissioner & Secretary to the Government of Assam, Department of Forests which the applicant sees as being adverse to him.

2.JURISDICTION OF THE TRIBUNAL :

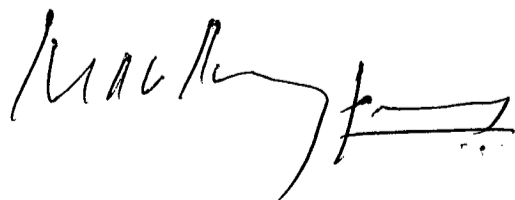
The applicant declares that the subject matter of the instant application for which he wants redressal is well within the jurisdiction of this Hon'ble Tribunal.

3.LIMITATION :

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

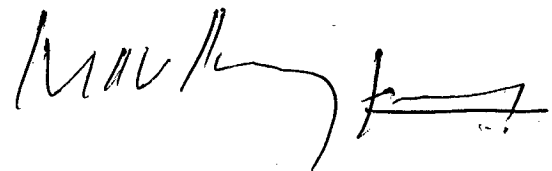
4.FACTS OF THE CASE:

- 4.1. That the applicant is a Direct Recruit of the Indian Forest Service, 1992 Batch, and allocated to the Assam & Meghalaya Joint Cadre. He is presently working as Deputy Conservator of Forests, Consolidation Division, Haflong, North Cachar Hills District, Assam. He is aggrieved by the Order No.FRE.17/95/76 dtd. Dispur, 08.03.1999 passed by the Commissioner & Secy. to the Govt. of Assam, Deptt. Of Forests that held him as a probationer at the time



of filing the O.A.No.141 of 1996 before this Hon'ble Tribunal. The applicant had duly represented to the Commissioner & Secy. to the Govt. of Assam, Deptt. Of Forests over various anomalies in the impugned Govt. Order, and upon getting no redressal, has now approached this Hon'ble Tribunal.

- 4.2. That at the time of filing of the O.A.No.141/96, the applicant was posted as Asstt. Conservator of Forests in the Junior Scale of pay of the I.F.S. As per the provisions of I.F.S. (Pay) Rules, 1968, and the letter No. 20014-22/87/IFS-II dtd. 27.04.1987 issued by the Government of India, Ministry of Environment and Forests, the applicant was entitled to the Senior Time Scale of pay of the I.F.S. on completion of four years of service which was to be counted from the year of allotment. This in the applicant's case was 1992. Thus the applicant became entitled to the Senior Time Scale of pay w.e.f. 01.04.1996.
- 4.3. That the applicant, along with two others belonging to the 1991 Batch of the I.F.S., aggrieved by the non-promotion to the Senior Time Scale of pay even after completion of four years of service, approached this Hon'ble Tribunal by filing the O.A.No.141/96. This Hon'ble Tribunal, upon hearing the parties including the State of Assam and on perusal of the records, allowed the said O.A. by its judgement and order dtd. 02.04.1997. In doing so, the Hon'ble Tribunal relied upon its earlier decisions in the O.A.s filed by some Direct Recruit I.F.S. officers belonging to earlier Batches who were similarly deprived of their promotion to the Senior Time Scale even after completion of four years of service.
- 4.4. That the State of Assam preferred a writ petition bearing Civil Rule No.2979/97 before the Hon'ble Gauhati High Court against the aforesaid judgement and order of this Hon'ble Tribunal. The



Hon'ble Gauhati High Court set aside the judgement and order of this Hon'ble Tribunal in the O.A.141/96. Unfortunately, that the two S.L.P.s preferred against the the earlier decisions of this Hon'ble Tribunal following which the judgement in question was delivered were dismissed by the Supreme Court, could not be brought into the notice of the Hon'ble High Court, but for which perhaps things could have been different. Also, that so far the Government of Assam has not, by means of any kind of notification, prescribed the passing of certain kinds of Departmental Examinations as prerequisite for promotion to the Senior Time Scale of the I.F.S., couldnot be highlighted before the Hon'ble Gauhati High Court.

4.5. That the State of Assam had also filed their written statement in the O.A.No.141/96, wherein the only objection raised against the promotion of the applicants to the Senior Time Scale of pay was that none of the applicants, including the present applicant, had cleared the Departmental Examinations and therefore, the applicants were not entitled to the promotion to the Senior Time Scale. No other plea was raised.

4.6. That the applicant was shocked to receive the copies of two notifications, the State Government's Order No.FRE.117/91/Pt.II/39 dtd. Dispur, 29.08.1998 that initiated Departmental Proceedings against the applicant, and an Order of Suspension No.FRE.17/95/41 issued on the same date based on those Departmental Proceedings against the applicant. The single article of charge against the applicant mentioned in the former document was, "suppression of material facts" before this Hon'ble Tribunal in the O.A.No.141/96. No preliminary enquiry upon the charge was held. The applicant was never given a chance to represent his case before the Govt. of Assam prior to the issuance of Suspension Order. Thereafter the Govt. of Assam went on to issue press-releases over the

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applicant's Suspension to News Dailies and Guwahati Doordarshan, subjecting the applicant to considerable mental trauma. The above mentioned two Govt. Orders are hereby annexed as annexures-1&2.

4.7. That the applicant states that a bare perusal of the charge levelled against the applicant smacked of malafide and colourable exercise of power, in as much as such charge could not have been levelled against the applicant under any circumstance, more particularly when in the O.A.No.141/96 the Government of Assam was given ample opportunity to tell its side of the story, and there was not even a whisper about the so called suppression of material facts in the written statement by the Government of Assam in the O.A.141/96. Such course of action was unheard of in service jurisprudence and amounted to usurpation of the jurisdiction of this Hon'ble Tribunal. Even assuming, but not admitting, that there had been a suppression of material facts, this Hon'ble Tribunal and only this Hon'ble Tribunal had the jurisdiction to take cognizance of such an offence.

4.8. That as to how the Government of Assam came to the conclusion that there had been suppression of material facts by the applicant in the O.A.141/96, the paragraph no.5 of Imputation of Misconduct, which was a part of the Govt. Order No.FRE.117/91/Pt.II/39 dtd. Dispur, 29.08.1998, was self-explanatory. It said,

"Being a probationer you know it well that your Service is governed by the I.F.S.(Probation) Rules, 1968. You are entitled to draw salary in junior time scale during probation period as per provision of subrule(I) of Rule.14 of the I.F.S.(Probation) Rules, 1968. However, you preferred to move the Hon'ble Central Administrative Tribunal for your promotion to



Senior Time Scale by suppressing the fact that you were a probationer at that time".

4.9. That the applicant submits that the logic used by the Govt. of Assam in initiating Departmental Proceedings against this applicant had the following assumptions, all of which are legally untenable for the lack of supporting evidence :

- a).The applicant was a probationer at the time of filing the O.A.No.141/96.
- b).The applicant had knowledge that he was a probationer.
- c).The applicant should not have approached this Hon'ble Tribunal because he was a probationer.
- d)Because he had done so, there had been a suppression of material fact.
- e).The Govt. of Assam which was only a respondent in O.A.No.141/96 could usurp the jurisdiction of this Hon'ble Tribunal and take direct action on the applicant for what it deemed to be suppression, eventhough it had chosen to remain silent in this regard in its written statement submitted in O.A.No.141/96.

The first among these assumptions, that the applicant was a probationer at the time of filing the O.A.No.141/96, was the key-surmise upon which the others depended.

4.10. That aggrieved by the Suspension Order, this applicant preferred a fresh O.A.No. 213/1998 before this Hon'ble Tribunal whom he was accused of misleading by the Commissioner & Secy. to the Govt. of Assam, Deptt. of Forests. This Hon'ble Tribunal, passed an Order in O.A.213/1998 dtd. 11.09.1998 saying,

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"...the order of suspension dated 29.08.1998 shall remain suspended until further orders."

4.11. That subsequently, the applicant submitted a prayer petition to the Govt. of Assam on 21.01.1999. The subject of the prayer petition was the applicant's promotion to the Senior Time Scale of the I.F.S. In the said prayer petition, the applicant clearly and categorically stated that he did not suppress any fact before this Hon'ble Tribunal, and prayed for a early promotion to the Senior Time Scale.

4.12. That the Govt. of Assam finally dropped the charges vide its Order No.FRE.17/95/76 dtd. Dispur, 08.03.1999, and promoted this applicant to the Senior Time Scale of I.F.S. on the same date vide its Order No.FRE.64/94/161. Thus the basic grievance of the applicant was redressed by way of dropping the Departmental Proceedings initiated against him by the Government of Assam.

4.13. That however, the paragraph.2 of the Order No.FRE.17/95/76 dtd. Dispur, 08.03.1999 still held,

"Whereas later on it came to notice of the Govt. that Shri.Pavan Kumar had not attended the Working Plan Exercise till March, 1997 and also not attended the Foundational Course at the Lal Bahadur Shastri National Academy of Administration till August, 1998, and therefore he was still a probationer at the time of filing of the above O.A.No.141/96."

The above mentioned Govt. Order is annexed herewith as annexure-3.

4.14. That the applicant states that thus, the Govt. of Assam continued to hold that this applicant was a probationer at the time of filing of the



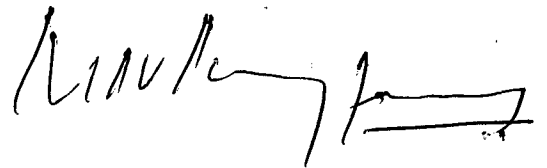
above O.A.No.141/96, whereas this applicant has all through been vehemently stating that he was NOT a probationer at the time of filing O.A.No.141/96, and that he did not suppress any fact before this Hon'ble Tribunal. The applicant submits that this phraseology by the Govt. of Assam affects the applicant in three ways :

i).The stigma of "suppression" remains with the applicant which the applicant believes was a systematic and deliberate attempt to harass and humiliate him by the office of Commissioner & Secy. to the Government of Assam, Deptt. Of Forests.

ii).The applicant would not be entitled to Special Duty Allowance (S.D.A.) allowed to full-fledged officers for the period the Govt. of Assam held him as a probationer.

iii).The applicant would not be able to pray for a retroeffective promotion to the Senior Time Scale of pay of the I.F.S. from the date he had become entitled for it as per the I.F.S. (Pay) Rules, 1968.

4.15 That the applicant states that he had duly represented to the Commissioner & Secy. to the Government of Assam, Deptt. Of Forests subsequent to the Govt. Order No.FRE.17/96/75 dtd. Dispur, 08.03.1999, including the representation dtd. 06.12.1999, quoting all the relevant rules and Govt. Orders, requesting him to suitably amend the Govt. Order No.FRE.17/95/76 dtd. Dispur, 08.03.1999, and delete the reference to this applicant as a probationer at the time of filing the O.A.No.141/96. But there has been no response from the Commissioner & Secy. to the Govt. of Assam, Department of Forests, causing great anguish to the applicant. Hence the applicant has now sought to come under the protective hands of this Hon'ble Tribunal.



4.16 That applicant also submits that subsequent to the redressal of his grievance by way of dropping the Departmental Proceedings initiated against him by the Government of Assam, this Hon'ble Tribunal has passed another Order dtd. 30.09.1999 dismissing the O.A.No. 213/98 as infructuous. This was done at the insistence of the Learned Government Advocate who produced the impugned Government Order dropping the charges against the applicant, and the Govt. Order promoting the applicant to the Senior Time Scale. The applicant did not have an opportunity to bring an amendment to the O.A.No.213/98

4.17 That while clearly and categorically stating that he was NOT a probationer at the time of filing the O.A.No.141/96 before this Hon'ble Tribunal, the applicant seeks to take the support of the following Rules and Govt. Orders.

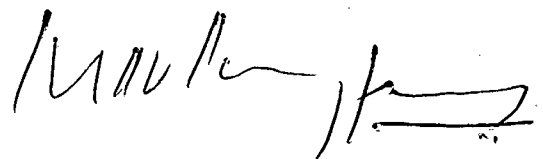
Rule.3(4) of the I.F.S.(Probation) Rules, 1968 :

"...The Central Government may, if it so thinks fit in any case or class of cases extend the period of probation..."

M.H.A. Office Memo.No.44/01/59-Ests.(A) dtd.15.04.1959 :

"Shortcomings, if any, should be brought to notice of the probationer well in advance for making special efforts at self improvement. Decision either to confirm or extend probation period should be taken within 6-8 weeks before probationary period ends and should be communicated immediately."

It is overwhelmingly clear from the above, that the Central Government was the sole authority to extend the probation of this applicant, and any such extension should have come in the form of a Central Government's notification prior to the completion of



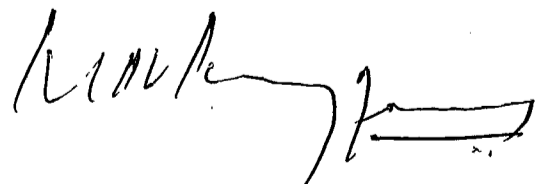
probationary period by the applicant . This applicant had learnt through the written statement submitted by the Government of Assam in O.A.No.213/98 to this Hon'ble Tribunal, that the date of completion of the probation of this applicant was 01.07.1996 which was communicated to the Govt. of Assam vide Central Government's letter F.No.17022/02/94-IFS-(II) dtd.16/04/1995. Thereafter there has been no extension of his probation. The Government of Assam could not produce a single Central Government notification that had specifically extended the probation of this applicant to a date beyond 01.07.1996. In the absence any such notification by the Central Government extending the probation of this applicant beyond 01.07.1996, the probation of this applicant was deemed to be complete on that date.

- 4.18. That as far as doing the Working Plan Exercise at I.G.N.F.A., Dehra Dun, or the Foundational Course at the L.B.S.N.A.A., Mussorie in 1997 is concerned, the applicant seeks to take support from the following Rules and provisions :

Rule.9 of I.F.S.(Probation) Rules, 1968 :

"Where a probationer is prevented by sickness or other cause over which he has no control from completing his course of studies for the final examinations or from appearing at such examinations, the Central Government may allow him to appear at the next final examination or any special examination which the President may hold for the purpose, or may exempt him from appearing in all or any of the subjects prescribed for the final examination."

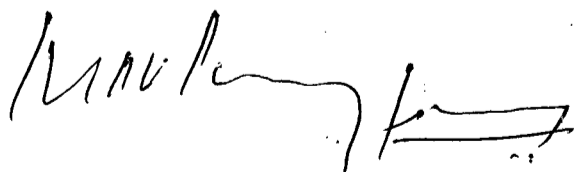
It is clear from the above rule that doing a part of the course of studies for the final examination at a later date is quite permissible under I.F.S.(Probation) Rules, 1968. No provision whatsoever exists under the above mentioned rules to extend the probation of



such officers till the next/special examination, and as to how and when such examination is conducted is the prerogative of the Indira Gandhi National Forest Academy, Dehra Dun and the Lal Bahadur Shastri National Academy of Administration, Mussorie. The Govt. of Assam has no *locus standii* to go into such issues.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS.

- 5.1. For that prima facie the impugned order is illegal, arbitrary and depicts both malice in law as well as malice in fact.
- 5.2. For that the impugned Order being the foundation of malafide and colourable exercise of power, same is not sustainable.
- 5.3. For that leaving aside technicalities, on merit also, it was the definite case of the applicant that he was entitled to get his senior time scale of pay having regard to the factual as well legal position depicted above, and it was on that background, the O.A. was filed. Accordingly there was no question of the applicant being probationer at the time of filing of O.A.141/96, and hence no question of suppression.
- 5.4. For that the impugned Order had been issued unmindful of the factual as well as legal position as depicted under the head "Facts of the Case", and accordingly, same is not suitable.
- 5.5. For that the impugned Order clearly depicts the arbitrariness involved in it which could not have been issued by any person instructed in Law. The sequence of events leading to the issuance of the impugned Order establish beyond any reasonable doubt that the same had been issued as a measure of punishment and vindictiveness, and not on any bonafide foundation.



5.6. For that in any view of the matter, the impugned Order is not sustainable.

6.DETAILS OF REMEDIES EXHAUSTED.

2

That the applicant states that he had already duly represented at length the Commissioner & Secy. to the Government of Assam, Deptt. Of Forests regarding the anomalies in the Govt. Order No. FRE.17/96/75 dtd. 08.03.1999, and waited adequately for redressal. Since there has been none, the applicant states that he has no other alternative efficacious remedy except by way of approaching this Hon'ble Tribunal. The circumstances have been fully explained under the head "Facts of the Case".

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

That the applicant further declares that no other application, writ petition or suit 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.

8.RELIEF SOUGHT FOR :

Under the facts and circumstances stated above, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to call for the records of the case, admit the O.A., issue notice to the Respondents and upon hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to grant the following reliefs to the applicant :

[Handwritten signature]

- (i) to issue such directions to the Government of Assam represented by the Commissioner & Secy. to Govt. of Assam, Deptt. of Forests to delete the reference made to this applicant as a "probationer" in the Paragraph.II of the Govt. Order No. FRE.17/95/76 dtd. Dispur, 08/03/1999.
- (ii) to amend the rest of the Govt. Order No. FRE.17/95/76 dtd. Dispur, 08/03/1999 accordingly.
- (iii) pass such other orders as be deemed fit and proper in the facts and circumstances of the case for securing the ends of justice.

9.INTERIM RELIEF PRAYED FOR :

No prayer for interim relief is being made by the applicant at this stage.

10.

The application is filed through Advocate.

11.PARTICULARS OF THE I.P.O :

- (I) I.P.O. No. : 09 4562 48
- (II) Date : 20.2.2000.
- (III) Payable at: Guwahati.

12.LIST OF ENCLOSURES :

As stated in the Index.


Verification.....



VERIFICATION.

I, K.S.P.V.Pavan Kumar, aged about 29 years, son of Shri.K.V.N.Nagendra Sayee, presently holding the post of Deputy Conservator of Forests, Consolidation Division, Haflong, N.C.Hills Autonomous Council, Assam, do hereby solemnly affirm and verify that the statements made in this ~~rejoinder~~^{O.A.} in paragraphs 1-3, 4'1-4'5, 4'7-4'12, 4'14-4'17 & 5 to 12 are true to my knowledge and those made in paragraphs 4'6, 4'13 being matters of records are true to my information derived therefrom, and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this the 07th day of March 2000 at Guwahati.


(K.S.P.V. PAVAN KUMAR)

ORDERS BY THE GOVERNOR

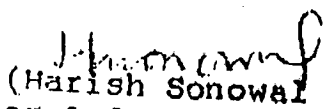
- NOTIFICATION -

Dated Dispur, the 29th August, 1998.

NO.FRE-17/95/41 : The Governor of Assam is pleased to place Shri K.S.P.V. Pawan Kumar, IFS, ACF attached to the Field Director, Manas Tiger Project under suspension with immediate effect on the charge drawn against him vide No.FRD-17/95/38 dtd. 29-8-98.

During the period of suspension his Head Quarter is fixed at Barpeta Road in the Office of the Field Director, Manas Tiger Project, The officer concerned, in no case shall leave the Head Quarter without prior approval of the competent authority.

Shri K.S.P.V. Pawan Kumar, IFS, ACF, is allowed to draw the subsistence allowance as admissible under the provision of Rule 53 (ii) (a) of the F.R. & S.Rs. subject to production of non-employment certificate.


(Harish Sonowal)
Commissioner & Secy. to the Govt. of Assam,
Forest Department, Dispur

Dated Dispur, the 29th August, 1998.

Memo No. FRE.17/95/41-A
Copy to :-

1. The Accountant General (A&E) Assam, Beltola, Guwahati-28.
2. The Principal Chief Conservator of Forests, Assam, Rehabari, Guwahati.
3. The Under Secretary to the Govt. of India, Ministry of Environment and Forests, Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi-110003.
4. The Chief Conservator of Forests, Wild Life, Assam, Rehabari, Guwahati-8.
5. The Field Director, Manas Tiger Project, Barpeta Road,
6. The P.S. to Minister, Forests, Assam for information of the Minister.
7. The P.S. to Minister of State, Forests, Assam for information of the Minister.
8. P.S. to the Chief Secretary, Assam for information of the Chief Secretary.
9. Shri K.S.P.V. Pawan Kumar, IFS, ACF attached to the Field Director, Manas Tiger Project, Barpeta Road.
10. The Deputy Director, Assam Govt. Press, Bamunimaidan, Guwahati-2 for publication of the above Notification in the next issue of the Assam Gazette.
11. Personal file.

By order etc.,

ARTICLES OF CHARGE

While you were working as Asstt. Conservator of Forests, attached to the Field Director, Manas Tiger Project you alongwith 2(two) others submitted petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench which was numbered as O.A. No.141/96 for granting you promotion with effect from 1-4-96 on the ground that you had completed four years of service on that particular date. In para 5 of the petition you stated that you are eligible to be promoted to Senior time Scale of IFS on 1-4-96 as per provision of Rule 3(1) of the I.F.S. (Pay) Rules, 1968 subject to the provision of Sub-Rule (2) of Rule 6(A) of the I.F.S.(Recruitment) Rules, 1966 and guidelines of the Ministry of Environment and Forests issued vide their letter No.20014-22/87/IFS-II dtd. 27-4-87.

You moved the Hon'ble Court inspite of the fact that at the time of submission of the petition you were still a probationer and knowing fully well that you were governed by the IFS (Probation) Rules, 1968 and therefore you were entitled only for the junior time scale as per sub-rule (1) of Rule 14 of the IFS (Probation) Rules, 1968. Your probationary period was extended by Government of India from time to time due to your failure to pass Working Plan Exercise at the Indira Gandhi National Forest Academy and also for non-completion of Foundational Course at the Lal Bahadur Shastri National Academy of Administration.

While submitting the said petition you suppressed the fact that your probationary period had been extended by Government of India from time to time and that you were governed by the IFS (Probation) Rules, 1968 and thereby you tried to gain promotional benefit out of the way.

You are therefore charged with gross misconduct of misrepresentation of facts before the Hon'ble Central Administrative Tribunal, Guwahati Bench. You are also charged with misconduct of dishonesty for your act of suppressing ^{facts} with malafide intention to secure personal gain.

Shri...
Commissioner & Secy. to the Govt. of Assam,
Forest Department, Dispur

IMPUTATION OF MISCONDUCT

26

While you submitted the petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench (O.A.No.141/96-Exhibit-I) you were a probationer at that time since you did not pass the Working Plan Exercise at Indira Gandhi National Forest Academy and had not completed the Foundational Course at Lal Bahadur Shastri National Academy of Administration for which your period of probation was extended from time to time by Government of India.

Joint Director, Indira Gandhi National Forest Academy vide his telegram dtd. 6-3-97 (Exhibit-2) asked you to attend the Working Plan Exercise from 27-3-97. As per regulation 3 and 6 of the IPS (Probationer's Final Examination) Regulations, 1968 a probationer is required to appear and pass by obtaining minimum marks in the written and practical examinations and exercises.

Further, the controller of Examination of Indira Gandhi National Forest Academy vide his letter No.2753/97-NFA/70-48(B), dt. 13-8-97 (Exhibit-3) informed that you did not complete the Foundational Course at Lal Bahadur Shastri National Academy of Administration. As per rule 6 and 7 of the IPS (Probation) Rules, 1968 every probationer is required to undergo training at Lal Bahadur Shastri National Academy of Administration and other institutes as Central Government may direct.

Your period of probation was extended upto 1-7-96 by Government of India vide Notification F.No.17022/02/94-IPS-II, dt. 16-4-95 (Exhibit-4). Also Joint Director, Indira Gandhi National Forest Academy in his telegram dtd. 6-1-97 addressed to the Principal Chief Conservator of Forests, Assam and Controller of Examination, Indira Gandhi National Forest Academy, in his letter No.2753/97-NFA/70-48 (B) dt. 13-8-97. You have been mentioned as Probationer which means that you were a probationer on that day (13-8-97).

Being a probationer you know it well that your Service is governed by the IPS (Probation) Rules, 1968. You are entitled to draw salary in junior time scale during probation period as per provision of Sub-rule (1) of Rule 14 of the I.P.S.(Probation) Rules, 1968. However, you preferred to move the Hon'ble Central Administrative Tribunal for your promotion to Senior time Scale by suppressing the fact that you were still a probationer at that time.

You apprised the Hon'ble Central Administrative Tribunal that you have completed 4 years of Service and therefore you are eligible for promotion to Senior Time Scale as per provision of Rule 3(1) of I.F.S. (Pay) Rules, 1966 subject to the provision of sub-rule (2) of Rule 6(A) of the IFS (Recruitment) Rules, 1966 and guidelines of the Ministry of issued vide No.20014-22/87/IFS-II dtd.27-4-87.

But knowing fully well that being a probationer at that time the above rules are not applicable in your case, you tried to get the promotion to Senior Time Scale by misrepresenting the facts before the Hon'ble Central Administrative Tribunal which amounts to gross misconduct on your part.

J. H. Dasgupta
Commissioner & Secy. to the Gov. of Assam,
Forest Department, Dispu

~~CONFIDENTIAL~~
CONFIDENTIAL 2bGOVERNMENT OF ASSAM
FOREST DEPARTMENT : : : DISPURORDERS BY THE GOVERNOR- MEMORANDUM -

Dated Dispur, the 29th August, 1968.

The Governor of Assam is pleased to hold an inquiry against Shri K.S.P.V. Pawan Kumar, IFS, Asstt. Conservator of Forests attached to the Field Director, Manas Tiger Reserve, Barpeta Road, under Rule 8 of All India Services (Discipline and Appeal) Rules, 1969 read with Article 311 of the constitution of India. The substance of the imputation of misconduct in respect of which the inquiry is proposed to be held is set out in the article of charges given at Annexure-I. A statement of imputation of misconduct in support of the article of charge is given at Annexure-II. A list of documents by which the article of charge is proposed to be sustained are also given in Annexure-III respectively.

2. Shri K.S.P.V. Pawan Kumar, IFS, ACF is directed under Rule 8(5) of the All India Services (Discipline and Appeal) Rules, 1969 to submit within 15 (fifteen) days of receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. Shri K.S.P.V. Pawan Kumar, IFS, ACF is informed that an inquiry will be held in respect of the article of charge if not admitted. He should therefore, specifically admit or deny the article of charge.

4. Shri K.S.P.V. Pawan Kumar, IFS, ACF is further informed that if he does not submit the written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority or otherwise fail or refuse to comply with the provision of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, or orders/direction issued in pursuance of the said rules, the Inquiring Authority may hold the inquiry against him ex-parte.

Confd....2..

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Attention of Shri K.S.P.V. Pawan Kumar, IFS
 is invited to Rule 18 of the All India Services (Conduct)
 Rules, 1969 under which no member of service shall bring
 or attempt to bring any political or outside influence to
 bear upon any authority to further his interest in respect
 of matters pertaining to his services under Government.

The receipt of the memorandum may be acknowledged.

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

sd/-
 Commissioner & Secy. to the Govt. of Assam,
 Forest Department, Dispur

Memo No. FBE-117/91/FS-XI/89-A Dtd., Dispur, the 29th August/98.
 Copy to :-

1. The Under Secretary to the Government of India,
 Ministry of Environment and Forests, Paryavaran Bhawan,
 C.G.O. Complex, Lodi Road, New Delhi-110003. A copy
 of article of charges, statement of imputations and
 misconduct together with a copy of list of documents,
 are enclosed herewith for information.
2. The Principal Chief Conservator of Forests, Assam,
 Rehabari, Guwahati-9.
3. SRI K.S.P.V. Pawan Kumar, IFS, ASF attached to the
 Field Director, Manas Tiger Reserve, Barpeta Road.

By order etc. &

M. Kumar
 Commissioner & Secy. to the Govt. of Assam,
 Forest Department, Dispur

~~21~~

ANNEXURE-III

LIST OF DOCUMENTS

- 1) O.A. NO. 141/96 of Central Administrative Tribunal, Guwahati Bench.
- 2) Telegraphic Message No. IO/97-NFA/21.12/Tour dtd. 6-3-97 from Joint Director, Indira Gandhi National Forest Academy addressed to Principal Chief Conservator of Forests, Assam.
- 3) Letter No. 2753/97-NFA/70-48(B), dt. 13-8-97 of the Controller of Examination, Indira Gandhi National Forest Academy addressed to the Principal Chief Conservator of Forests, Assam.
- 4) Government of India, Ministry of Environment and Forests, Notification F. No. 17022/02/94-IFS, dtd. 16-4-95.

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GOVERNMENT OF ASSAM
FOREST DEPARTMENT ::::: DISPUR.

NO.FRE. 17/95/76,

Dated Dispur, the 8th March, 1999.

ORDERS BY THE GOVERNOR

ORDER

Whereas Shri K.S.P.V. Pawan Kumar, IFS, A.C.F. (RR-1992) attached to Field Director, Manas Tiger Project, Barpeta Road filed a case before the Central Administrative Tribunal, Guwahati Bench, which was numbered as O.A.No:141/96 claiming senior time scale with effect from 1.4.96 on completion of four years service.

Whereas later on it came to notice of the Govt. that Shri Pawan Kumar had not attended the Working Plan Exercise till March, 1997 and also not attended the foundational course at Lal Bahadur Shastri National Academy of Administration till August, 1998 and therefore he was still a probationer at the time of filing of the above O.A. No: 141/96.

Whereas, Shri Pawan Kumar did not mention the above facts in the O.A.No: 141/96 and therefore a departmental proceeding was drawn up against him vide Govt. order No.FRE. 117/91/Pt.II/39, dt. 29.8.98 on the charge of suppression of facts before the Hon'ble Central Administrative Tribunal while filing the O.A. No. 141/96.

Whereas, Shri Pawan Kumar has now vide his letter dt. 21.1.99 has tendered his apology and made a prayer to drop the departmental proceeding.

And whereas, after careful consideration of his submission made before the Govt., the Governor of Assam is pleased to take a lenient view of the matter and to drop the departmental proceeding drawn against Shri Pawan Kumar vide order No.FRE. 117/91/Pt.II/39, dt. 29.8.98. Shri Pawan Kumar is however, hereby cautioned to be careful in future so that such mistakes do not recur.

By order etc., and in the name of the Governor.

Sd/- H. Sonowal,
Commissioner & Secy. to the Govt. of Assam,
Forest Department, Dispur.

Contd....2..

Attested
Sd/- (H.K. Nair)
Advocate

Memo No. FRE. 17/95/76-A, Dated Dispur, the 8th March, 1999.

Copy to :-

1. The Principal Chief Conservator of Forests, Assam, Rehabari, Guwahati-8.
2. The Accountant General (A&E), Assam, Baltola, Guwahati-28.
3. The Under Secretary to the Govt. of India, Ministry of Environment & Forests, Paryaveeran Bhawan, C.G.O. Complex, Lodi Road, New Delhi- 110003.
4. The Chief Conservator of Forests (Social Forestry), Assam, Zoo Nazangl Road, Guwahati-24.
5. The Chief Conservator of Forests (Wildlife), Assam, Rehabari, Guwahati-8.
6. The Chief Conservator of Forests (Territorial), Assam, Panbazar, Guwahati-1.
7. The Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati- 24.
8. The Field Director, Manas Tiger Project, Barpeta Road.
9. P.S. to the Minister, Forest, Assam, Dispur, Guwahati-6 for information of the Minister.
10. P.S. to the Minister, Forest (Social Forestry), Assam, Dispur, Guwahati-6 for information of the Minister.
11. P.S. to the Chief Secretary, Assam, Dispur, Guwahati-6 for information of the Chief Secretary.
12. Shri Pawan Kumar, IFS, A.C.F. attached to the Field Director, Manas Tiger Project, Barpeta Road.
13. Personal File.

By order etc.,

mm
gml an
 Joint Secretary to the Govt. of Assam,
 Forest Department, Dispur.

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A Hested
Luni bond
(L.K.N. 8112)
Advocate