

30/100
5
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

Plt No - 85/2001 ordered sheet Pg - 1 INDEX

Dismissal Date - 03/05/2001

O.A/T.A No. 102/2000

R.A/C.P No.....

E.P/M.A No. 85/2001

1. Orders Sheet O.A - 102/2000 Pg..... 1 to..... 3
2. Judgment/Order dtd. 23/2/01 Pg. No. ~~as per net order~~ to..... Dismissed
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 102/2000 Pg..... 1 to..... 57
5. E.P/M.P..... 85/2001 Pg..... 1 to..... 8
6. R.A/C.P..... NIL Pg..... to.....
7. W.S..... Pg..... 1 to..... 6
8. Rejoinder..... Pg..... to.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.

102/2000 OF 199

Applicant(s) *Shri K. Ganesh*Respondent(s) *Union of India & Ors.*Advocate for Applicant(s) *Mr. C. Barua*
*Mr. P. J. Saikia*Advocate for Respondent(s) *Mr. A. Deb Roy,*
Sr. C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
Application is in form and within time limit. F. of Rs 50/- deposited vide IPO Bld No. 594/38/65 Dated 14/3/2000	15.3.00	<p>Sri C. Baruah, learned counsel for the applicant and Sri A. Deb Roy, learned Sr. C.G.S.C. for the respondents.</p> <p>Issue notice on the respondents by registered post as to why the application should not be admitted. Notice returnable on 29.3.00.</p> <p>List for consideration of admission on 29.3.00.</p> <p>Sri C. Baruah submits for issue of an interim order.</p> <p>Issue notice on the respondents as to why the prayer for interim order should not be granted. Notice returnable on 29.3.00. Status quo as on today shall be maintained till 29.3.00.</p>

Contd...

Notes of the Registry

Date

Order of the Tribunal

15 - 3 - 2000

15.3.00

Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Road post with A/P.D. vide D/Nos. By 803 to 805.

Copy of the order shall be furnished to the counsel for the parties.

JB

Member (J)

GD
Member (A)

trd

JG
15/3/200029.3.00

Mr. C. Baruah learned counsel for the applicant and Mr. A. Deb Roy, Sr.C.G.S.C. for the respondents.

No show cause has been submitted. Mr. A. Deb Roy, Sr.C.G.S.C. submits that he has no instructions.

Heard counsel for the parties.

Application is admitted. No further notice is necessary to be issued as notices had already been issued.

List for written statement and further orders on 4.5.00.

Mr. C. Baruah, learned counsel for the applicant prays for an interim order. He submits that the order has not been given effect till to-day. Heard counsel for both sides.

Status quo as on to-day shall be maintained until further orders.

22-6-2000

1m

GD

Neither statement has been filed by the respondents.

JG
29/5/2000

4.5.00

W/T has not been filed. no DB is available. Adjourned to 30.5.00.

GD
by ~

30.5.00 There is no Bank today.
Adjourned to 27-6-00

GD
by ~

27-6-00 There is no Bank today. Adjourned to 28-7-00.
25-7-00. No Bank. Adj. 28-8-00 GD

(2) OA 102/00

3

Notes of the Registry	Date	Order of the Tribunal
WIS has been filed. 2/11/2000	28-8-00 3.11.00	There is no sum. ad'ns 15-3-11-a Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. None appears for the applicant. Written statement has already been filed. The case is ready for hearing. Office to list the matter on 19.2.2001 for hearing. mk Vice-Chairman
	19.2.01	None appears for the applicant on calling. List again on 23.2.2001 for hearing. 1CC Usha Member Vice-Chairman
26.2.2001 Copy of the order has been sent to the D/ce. for ISAKY & LSC to the L/Adm for the parties. 88	23.2.01 pg	The case is listed for hearing to also. None appeared to press the application. Mr A.Deb Roy, learned Sr.C.G.S.C is present on behalf of the respondents. The case when called on 13.11.2000 and 19.2.2001 none appeared. In the circumstances the application is dismissed for default. Interim order, if any stands vacated. 1CC Usha Member Vice-Chairman
	6.4.01 1m	List on 26.4.01 before next available Division Bench. Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal
	3.5.2001	List on

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

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

4 MAR 2000

227
गुवाहाटी आधारित
Guwahati Bench

O.A.No. 102 /2000.

Sri K.Ganesh

.... Applicant.

-Vs -

Union of India & Ors ... Respondents.

- INDEX -

<u>S1.No.</u>	<u>Description of Documents</u>	<u>Page No.</u>
1.	Application	1 to 19
2.	Verification	20
3.	Annexure - A	21
4.	Annexure- B	22
5.	Annexure- C	23
6.	Annexure- D	24
7.	Annexure- E	25 to 42
8.	Annexure- F	43 to 51
9.	Annexure- G	52
10.	Annexure- H	53
11.	Annexure- I	54 to 57

For use of Tribunal Office,

Date of filing :-

Registration No;:-

Registrar.

केन्द्रीय प्रान्तिक अदायक
Central Administrative Tribunal

14 MAR 2000

गुवाहाटी अदायक
Guwahati Bench

OK

K.Ganesh
K.Ganesh
14.3.2000
(Private Office Letter)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: :GUWAHATI BENCH

O.A.No.

/2000.

B E T W E E N

Shri K.Ganesh,

Chief General Manager, Task Force

(Under suspension), North Eastern

Telecommunication Region, Deptt. of

Telecom, 4th Floor Dr. Barman Building,

Goswami Road, Panbazar, Guwahati-781001.

-And-

1. Union of India

Represented by the Secretary to the

Govt. of India, Deptt. of Telecommuni-

cation Services, Sanchar Bhawan,

20 Ashoka Road, New Delhi.

2. The Senior Deputy Director General,

(Vigilance), Deptt. of Telecommunication,

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

Floor, R.K.Puram, New Delhi-110066.

3. Assistant Director General (Vig-A)

West Block No.1, Wing No.2,

R.K.Puram, New Delhi-66.

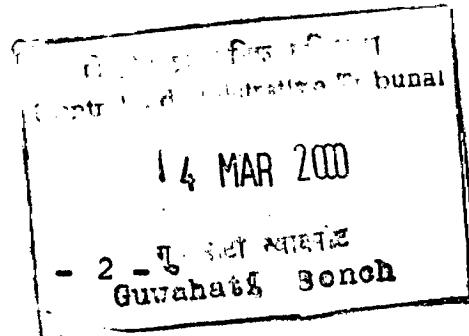
... Respondents.

Particulars of the Applicant

(i) Name of the Applicant :- Shri K.Ganesh.

(ii) Name of the Father :- Late V.Kalyanaraman

(iii) ...



(iii) Age of the applicant :- 54 years.

(iv) Designation and particulars of office in which employed. Chief General Manager, Task Force, North Eastern Telecommunication Region, Deptt. of Telecom, Guwahati.

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

Particulars of the Respondents.

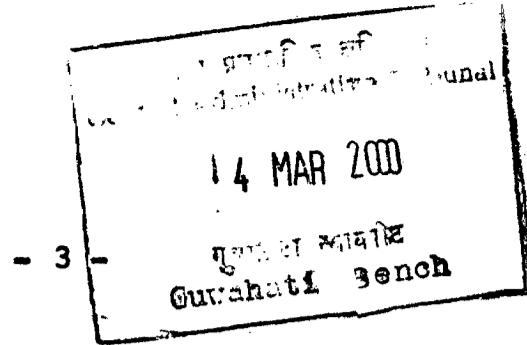
(i) Designation & office Address.

:- 1. Union of India, represented by the Secretary to the Govt. of ~~Assam~~ India, Deptt. of Telecom Services, Sanchar Bhawan, 20, Ashoka Road, New Delhi-110001.

2. The Senior Deputy Director, (Vigilance), Deptt. of Telecommunication, West Block No.1, R.K.Puram, New Delhi-110066.

3. The Assistant Director General (Vig.A), West Block No.1, Wing No.2, R.K.Puram, New Delhi-66.

(ii) ...



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

Detail of the Application

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

The application is made against the following order :- Order under No. 9-79/97-Vig I, dated 17th February, 2000 issued by the Govt. of India Ministry of Communication, Deptt. of Telecommunication and communicated through the Assistant Director General (Vig-A) shifting the Headquarter of the applicant from Guwahati to Ghaziabad during suspension.

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

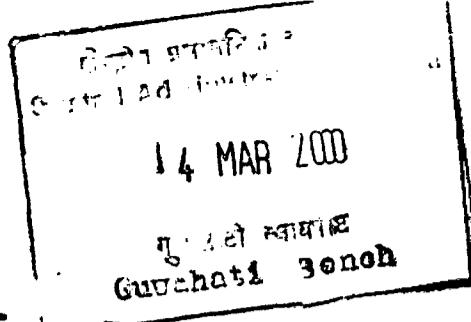
3. Limitation :-

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

4. Facts of the case :-

(a) That the applicant is the Chief General Manager, Task Force, North Eastern Telecommunication, Region, Deptt. of Telecom. (presently under suspension).

The ...



- 4 -

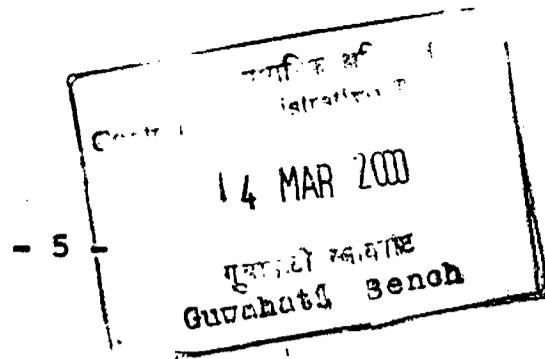
The applicant has been in service in the Deptt. of Telecom Govt. of India as a Group A Official since December, 1968. He has worked in various capacities in Bombay, Ahmedabad, Madras and Saudi Arab (on deputation). He joined as Chief General Manager, Task Force at Guwahati on 25.9.96. The applicant has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

(b) That on 6.9.97, the applicant was arrested at Borjhar Airport and on the basis of an F.I.R. filed by the Executive Magistrate, Kamrup in the Azara Police Station a case was registered being Azara P.S. Case No. 74/97 U/S 7 and 13(i) (e) of prevention of corruption Act, 1988.

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

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

(d) ...



- 5 -

(d) That the applicant was granted bail by the

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

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

(e) That the applicant states that during all these days, the police did not find any incriminating material against the applicant. However the Central Bureau of Investigation - C.B.I. vide letter dated 30.9.97 informed the D.G.P., Assam that as the accused/applicant involved in the aforesaid case is a Central Govt. servant it is intending to investigate the case and accordingly, the D.G.P. on 4.10.97 directed the D.S.P.(City) to handover the original case diary to C.B.I. and the D.S.P.(City) on 16.10.97 directed the Officer-in-charge Azara P.S. to hand over the original case diary to C.B.I. and accordingly original case diary was handed over to C.B.I. Thereafter the C.B.I. vide its letter dated 28.11.97 sought the consent of the State Govt. for taking up the investigation of the case and the State Govt. vide its letter dated 22.1.98

issued ...

- 6 -

17 MAR 2000

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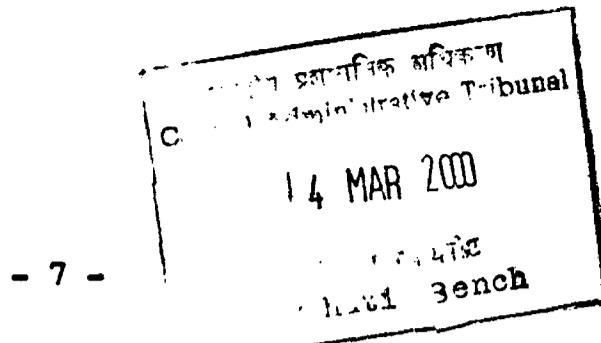
legumes

issued through the Deputy Secretary (Political) expressed its no objection.

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

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

(h) That after a long wait the application received the Memorandum bearing No.9-97/VIG.I/Pt. dated 24th August, 1998 from the Govt.of India in the Ministry of Communications (Dept. of Telecommunications) signed by the Asstt.Director General (VIG-A) informing the applicant that his representation dated



- 7 -

23.12.97 has been carefully considered by the President who has found no justification for revocation of his suspension for the present. The applicant was also further informed that it was decided that the applicant's Head Quarters during suspension should be shifted from Guwahati to Gaziabad.

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

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

A copy of the representation dated 7th Sept '98 submitted by the applicant is annexed as Annexure-D.

(j) That the applicant states that although the respondent authority did not reply to the representation dated 7/9/98 and 9/9/98 submitted by the applicant, however, the respondent authority is abundones

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14 MAR 2000

14 March

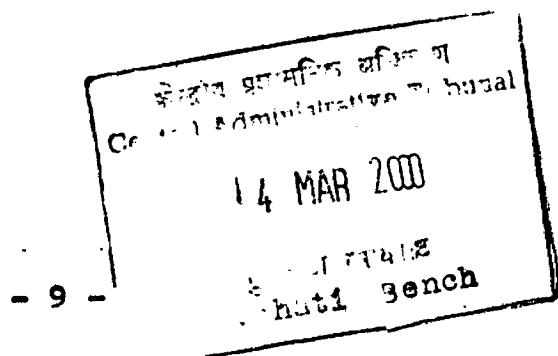
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the Memorandum No.9-79/97-Vig-I/Pt. dated 24th August, 1998.

(k) That the applicant states that as the respondent authority did not reply to the aforesaid representation dated 9.9.98 and the applicant was continued under deemed suspension more than 1 year without any just cause, he filed an application before this Hon'ble Tribunal on 20.11.98 for quashing the order of suspension of the applicant bearing No.9-79-Vig-I dated September 18/23, 1997 which was registered and numbered as O.A.No.267/98.

(l) That after hearing both the parties, this Hon'ble Tribunal while disposing of the O.A.No.267/98 ~~affixed~~ observed that the applicant may be guilty of an offence, which is to be decided by the Criminal Court, but that cannot give a sanction to the authority to continue a person under suspension. If the authority finds that the reinstatement of the applicant in the present post would be detrimental to the interest of the investigation, then as per Govt.instruction he may be transferred to a distant place. But the difficulty is that the special Judge, while granting bail, directed the applicant to remain at Guwahati during the investigation. If the Special Judge, Guwahati is approached in this regard a solution may be found out and came to the openion that the matter regarding suspension of the applicant had not been properly dealt with by

the ...

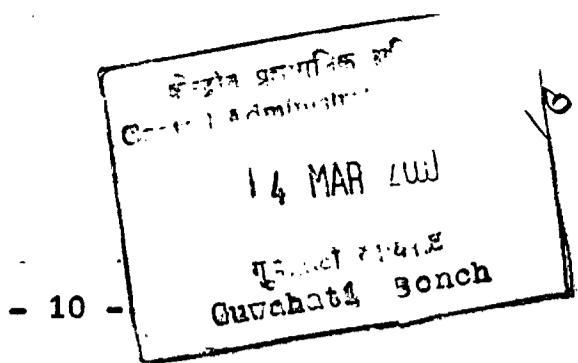


the authority. The procedure prescribed and the guidelines issued by the Govt. of India have not been followed, and accordingly directed the respondent No.2 to consider the entire matter ~~as~~ afresh taking into consideration of the various provisions regarding suspension and Govt. instruction and to ~~the~~ dispose of the entire matter within a period of 3 weeks from the date of the submission of the fresh representation and if in the opinion of the respondent No.2 the order of suspension under the provisions of rule and Govt. instruction should not continue and at the same time the applicants continuance in Guwahati ~~xxx~~ is detrimental to the interest of investigation the authority should approach the Special Judge, Guwahati for modification of the condition imposed in the order dated 30-9-97 granting bail to the applicant and if the conditions so imposed by the Special Judge, Guwahati are changed, transfer the applicant to a distant place.

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

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

(n) ...

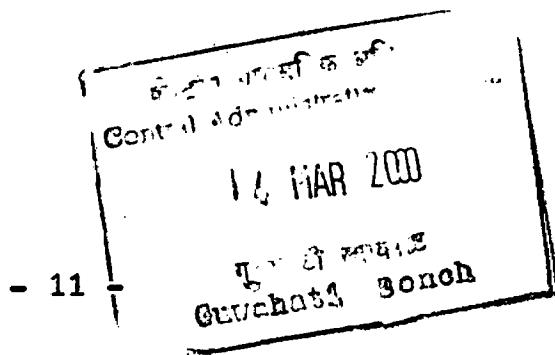


- 10 -

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

(c) That as the time granted by this Hon'ble Tribunal to implement the aforesaid judgement and order dated 30.9.99 was not found to be sufficient by the respondent authority had submitted an application before this Hon'ble Tribunal for extension of time for further two months to implement the said judgement and order of this Hon'ble Tribunal which was registered and numbered as M.P.No. 284/99. In the said miscellaneous petition, one of the ground assigned by the respondent authority was that before coming to the finality in respect of the deemed suspension and reinstatement, necessary permission must be obtained from the Special Judge, Guwahati in respect of place of posting of the applicant and, in this connection, the respondent authority also annexed a copy of the Department letter addressed from the office of the Chairman, Telecom Commission, New Delhi to the C.G.M. (Task Force), North Eastern Telecom Region Guwahati with request to approach this Hon'ble Tribunal for extension of time limit. In the said letter also ground for seeking extension of time limit from this Hon'ble Tribunal was that in case the representation of the applicant is considered ~~ok~~ and it is decided to revoke the suspension, the officer needs

to ...

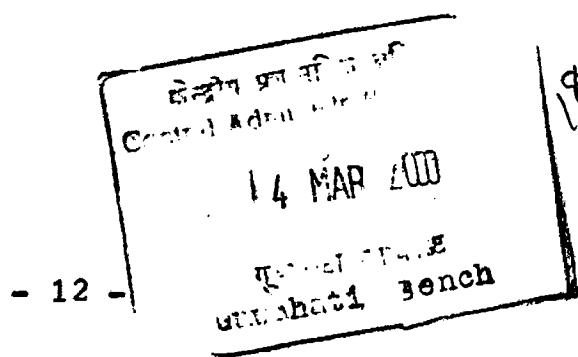


to be posted outside Guwahati as his continuance at Guwahati as Head of the Circle may be detrimental to the on going investigation by the C.B.I. Therefore, the court of Special Judge needs to be approached immediately for vacation of the stay and other conditions if any, imposed by that court on the movement of the applicant before a decision is taken, and accordingly this Hon'ble Tribunal vide order dated 9.12.99 had allowed further 2 months time w.e.f. 9.11.99.

A copy of the aforesaid Miscellaneous petition in M.P.No. 284/99 is annexed as Annexure-F.

(p) That thereafter on behalf of the respondent authorities the Assistant Director General (VIG) had communicated the order No.9-79/97-Vig-1(Part-II) dated 31st Dec'1999, to this petitioner to the effect that the President has rejected the representation of the applicant dated 4.10.99. On the ground that the offence allegedly committed by the applicant is of a very serious nature and keeping in view of the said fact, the President had observed that more important than the burden on the national exchequer as a result of payment of subsistence allowances to the officer without getting any work from him, revocation of suspension and giving a posting to the officer may send a wrong signals to the fellow officers and employees and may subvert the general discipline in the organisation and that the balance of advantage would be in

favour ...



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- 12 -

favour of continuing the suspension of the officer for the present which can be reviewed after C.B.I's investigation Report.

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

(q) That the applicant states that the respondent authority while passing the aforesaid order did not consider the direction given by this Hon'ble Tribunal at all nor any of the circular, instruction, guidelines governing the suspension was ever considered, but most mechanically on extreaneous consideration and most malafidely issued the said order dated 31.12.99.

(r) That being aggrieved with the aforesaid order No.9-79/97-Vig-1 Part-II dated 31.12.99, the applicant had moved this Hon'ble Court and filed a fresh application on 28.1.2000 for quashing the said order dated 31.12.99 and also for a direction to reinstate the applicant forth with which is registered and numbered as O.A.No.32/2000 and is pending for its final disposal.

(s) That surprisingly, the respondent authority ~~again~~ again issued an order No.9-79/97/Vig-1 dated 17th Feb, 2000 whereby the applicant was informed that the Head quarter of the applicant during suspension stands

shifted ...

14 MAR 2000

गुवाहाटी न्यायिक
Guwahati Bench

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shifted from Gauhati to Ghaziabad with immediate effect and the subsistence allowance payable to the officer shall in future be drawn from the office of the Chief General Manager, AITTC. Ghaziabad which was received by the applicant on 6.3.2000.

A copy of the aforesaid office memorandum No. ~~979/98~~ 9-79/97-Vig-I dated 17/2/2000 is annexed as Annexure-H.

(t) That the applicant states that Govt. of India issued certain instruction vide letter No. 201/43/76-DISC ~~issued~~ dated 15th July, 1976 for the ~~max~~ obser-
vade of the Deptt. while dealing in the matter of sus-
pension which are to be followed scrupulously by the
subordinate authorities, and as per the clause 3 of the
said instruction, all cases particularly those where
officials are under suspension for more than 6 months
and wherever it is found that the official can be allowed
to resume duties by transferring him from one post to
another post, order should be issued for revoking the
suspension and allowing the official to resume duties.
The ~~As per~~ clause 3 of office Memorandum No. 221/18/65-AVD
dated the 7th Sept, 1965 also states that if the inves-
tigation is likely to take more time than 6 months, it
should be considered whether the suspension order should
be revoked and the officer permitted to ~~be~~ resumed duty.
If the presence of the officer considered detrimental to

the ...

the collection of evidence etc. or if he is likely to temper with the evidence, he may be transferred on revocation of the suspension order.

The copies of the aforesaid circulars are annexed as Annexure-I.

5. Grounds for Relief with legal provisions :-

(i) That the impugned order No.9-79/97-Vig-1 dated 17/2/2000 changing the Head quarter of the applicant from Guwahati to Ghaziabad during the period of suspension is only a weapon of harrassment of the applicant. Therefore the said impugned order dated 17/2/2000 is liable to be quashed.

(ii) That the shifting of the Head quarter of the applicant from Guwahati to Ghaziabad during the period of his suspension is not at all in public interest ~~max~~ in as much as, during suspension, the applicant cannot have any access to the official documents or to influence any one of the Deptt. in connection with the investigation of the offence. In fact all the documents necessary for the purpose of investigation having been in the custody of the C.B.I., no apprehension may also arise in this regard. Therefore the impugned order dated 17/2/2000 is patently illegal and liable to be quashed.

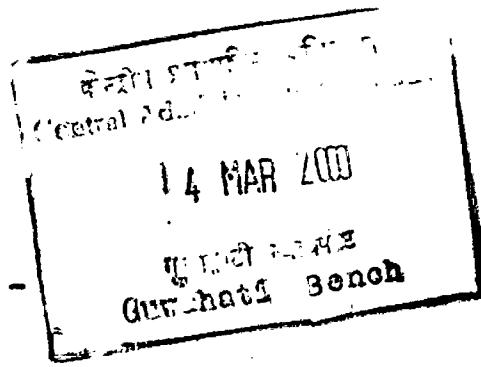
(iii) ...

(iii) That as per the circulars dated 15th July, 1976 all cases of suspension for more than 6 months and wherever it is found that the official can be allowed to resume duties by transferring him from one post to another post, orders should be issued for revoking the suspension and allowing the officials to resume duties. As per the circular dated 7th Sept, 1965 even if the presence of the officer is considered detrimental to the collection of evidence etc. or if he is likely to ~~transfer~~ ^{lumber} with evidence, he may be transferred on revocation of suspension order. On the basis of the aforesaid circulars, this Hon'ble Tribunal having opined vide judgement and order dated 30.9.99 in O.A.No.267/98 that the applicant may be guilty of any offence which is to be decided by a criminal court but that itself cannot give a sanction to the authority to continue a person under suspension and that if the authority finds that reinstatement of the applicant in the present post would be detrimental to the interest of the investigation, than as per Govt. instruction he may be transferred to a distant place, the respondent authorities ought not to have passed the impugned order dated 17/2/2000 shifting the Head quarter of the applicant without revoking the order of suspension. Therefore, the said order dated 17/2/2000 is illegal and liable to be quashed.

(iv) That this Hon'ble Tribunal vide its order dated 30.9.99 in O.A.No.267/98 having opined that

if ...

if the authority finds that reinstatement of the applicant in the present post would be detrimental to the investigation than as per Govt. instruction he may be transferred to a distant place and that as the Special Judge, while granting bail to the applicant having directed the applicant to remain at Guwahati during investigation, to meet the difficulty of the Special Judge, Guwahati, is approached in this regard a solution may be found out and further that if the conditions so imposed by the Special Judge are changed, transfer the applicant to a distant place. The respondent authority also vide its M.P.No. 284/99 while praying for extension of the time limit for implementation of the judgement of this Hon'ble Tribunal having cited one of the grounds to the effect that before coming to the finality in respect of deemed suspension and reinstatement of this applicant necessary permission must be obtained from the Special Judge, Guwahati in respect of the place of posting of the applicant and accordingly on being approached, the Special Judge, Guwahati also having vacated the condition No.3 of the bail order vide order dated 26.10.99, the applicant submits that for all fairness and bonafide, the respondent authority ought to have issued the impugned order dated 17/2/2000 for the purpose of revoking suspension and ought not to have passed the said order dated 17/2/2000 while continuing the order of suspension.



(v) That the order No. 9-79/97-Vig-1/Pt dated 24th August, 1998 passed by the authority shifting the Head quarter of the applicant from Guwahati to Ghaziabad during continuation of the suspension having been abandoned by the respondent authority on receipt of the representation dated 7th Sept, 1998 filed by the applicant, the action of the respondent authority in issuing the order dated 17/2/2000 cannot be said to be bonafide intention. Said order dated 17/2/2000 purely on malafide intention to harass the applicant, for approaching this Hon'ble Tribunal vide O.A.No. 267/98 and O.A.No. 32/98. As such the impugned order dated 17/2/2000 is liable to be quashed.

(vi) That if the impugned order dated 17/2/2000 is allowed to be executed, it will be very difficult on the part of the applicant to pursue the matter of his suspension before this Hon'ble Tribunal and the authority also knowing fully well about the about position, only to determine the applicant to seek remedy effectually, has issued the impugned order dated 17/2/2000. As such the said order dated 17/2/2000 is liable to be quashed.

6. Details of the Remedies Sought :-

(a) That the applicant declares that nature of the impugned order and the ~~xxxxxx~~ circumstances in which the said order has been passed is such that

14 MAR 2000

- 18 -

Guwahati Bench

24
filing of any representation against the said order would of no result in view of the representation dated 7/9/98 which is not ~~again~~ yet replied. The applicant declares further that there is no other remedy available to the applicant under the relevant service Rules.

7. Matters not previously filed or pending with any other Court :-

The applicant further declare that except the representation mentioned above, he had not previously filed any other application, writ petition or suit regarding the matter in respect of ~~whice~~ this application has been made, before any court of Law, or any other authority or any other Bench of the Tribunal or nor any such application writ petition or suit is pending before any other court.

8. Relief Sought :-

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

(a) That the order under memorandum No.9-79/97-vig-I dated 17th February, 2000 issued by the Govt. of India, Ministry of Communication, Deptt. of Telecommunication and communicated through the Assistant Director General (vig-A) shifting the Head quarter of the applicant during suspension from Guwahati to Ghaziabad may be quashed.

(b) ----

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(b) The respondent authority may be directed not to shift the Head quarter of the applicant till the order of suspension dated Sept, 18/23, 1997 is revoked.

9. Interim order if any prayed for :-

The applicant prays that during the pendency of the instant application as well as O.A.No.32/2000, the order under memorandum No.9-79/97-Vig-I, dated 17th February, 2000 issued by the Govt. of India, Ministry of Communication, and communicated through the Assistant Director General (VIG-A), shifting the Head quarter of the applicant from Guwahati to Ghaziabad may be stayed.

10. This application is filed through Advocate.

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

(i) I.P.O. No. :- 17ES94132, 17ES94139, 17ES94140
17ES94141, 17ES94146

(ii) Name of the Issuing Post Office:- Guwahati

(iii) Date of I.P.O. :- 14.3.2000

(iv) Post Office at ~~xx~~ which :- Guwahati
payable.

12. List of Enclosure :-

(1) This application

(2) Annexure-A to NJ

(3) Vakalatnama.

Contd.....

Verification

I, Sri K.Ganesh, S/o Late V.Kalayanaraman, aged about 54 years, presently resident of Quarter Type V/I, C.T.O. compound, Panbazar, Guwahati do hereby verify that the contents of paragraph 1,2,3,4(a) to 4(d), 4(f), 4(g) to 4(t), 6, 7, 8, 11 are true to my knowledge and those made in paragraph 4(e) are true to my information derived from the record which I believe to be true and paragraphs 5(i) to 5(vi) are believed to be true on legal Advice and that I have not supressed any material facts.

Date :- 17/8/2000

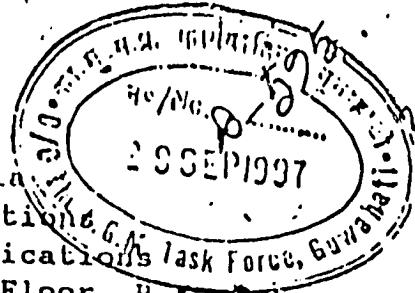
Kganesh .

Place :- Guwahati

Signature of the applicant.

To

The Registrar,
Central Administrative Tribunal,
Guwahati Bench.



21
 NO. 9-79/97-Vig. I
 Government of India
 Ministry of Communications
 Department of Telecommunications Task Force, Guwahati
 West Block # I, Wing # 2, Ground Floor, R K Puram
 New Delhi - 110 066.

Dated September 18, 1997

22
ORDER

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

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

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

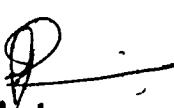
By order and in the name of the President.

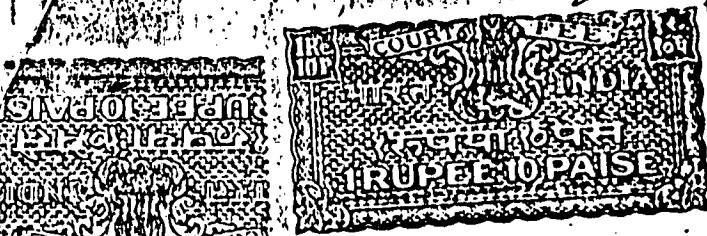
Sd/-

[D H SARKAR]
 DIRECTOR [VT]

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

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


 Certified to be true copy
 ADVOCATE

P.P.
Sd/- 7/10/97Court of Special Judge
Assam Guwahati

DISTRICTS

IN THE COURT OF

AZAM P.S. CHASO
District No. 74/27

NO.

OR 19

OF

VERSUS

Capital No. of Order	Date	DAFB	Signature
30/9/27		<p>Seen the bail petition of the accused i.e. Ganesh Ghosh. Heard the learned advocate for the accused and the learned P.P. Perused the C.D.</p> <p>From the Case Diary, it is seen that the accused was thoroughly interrogated by the I.C. The accused is in jail Imjet since 17.9.97 and prior to that he was in Police custody for 10 days. The I.C. has not prayed for any further time for remand of the accused.</p> <p>Considering the above facts and the progress of the investigation made by the I.C. the prayer of the accused is allowed.</p> <p>The accused K. Ganesh is allowed to go on bail of Rs. 50,000/- with one local surety of the like amount on the following conditions :-</p> <ul style="list-style-type: none"> (i) That he shall not interfere in the investigation of the case in any manner or directly or indirectly to make any inducement or threat to any person acquainted with the facts of the case. (ii) That he shall surrender his passport before this court. (iii) That he shall not leave the jurisdiction without prior permission of the court. (iv) That he shall appear before the court or before the I.C. whenever he is directed. <p>Return the Case Diary.</p>	

NOTES—This form should

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

Dictated and concerned by me

Sd/- K.K.Das,
Special Judge, Assam,
Guwahati.Certified to be true copy
ADVOCATE

- 23 -

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

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

29
 Dated, the 24th August, 1998.

MEMORANDUM

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

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

By order and in the name of the President.


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

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

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

Certified to be true copy

ADVOCATE

- 24 -

- 20 -

From

K. Ganesh,
 (C.G.M., Task Force under deemed suspension),
 C.T.O. Compound,
 Guwahati.

To

The Chairman,
 Department of Telecom.,
 Through Sr. D.D.G. (Vigilance), D.O.T., New Delhi.

Subject

Sub:- Request to retain the headquarters at Guwahati only during suspension.

Ref:- D.O.T. letter No. 9-79/97-Vig.1/PT., Dtd. 24th Aug., '98.

Vide letter referred above, it has been conveyed that my headquarters during suspension is shifted from Guwahati to Ghazlabad with immediate effect. I would request you to kindly reconsider this order of shifting my headquarters and retain the headquarters at Guwahati only, for the following reasons.

1. I have been under deemed suspension from 6th Aug., '97 onwards. During this period, I had never requested to shift my headquarters from Guwahati to any place during suspension. Hence, shifting of my headquarters at this stage from Guwahati to Ghazlabad is uncalled for and punitive in nature.

2. I am innocent and have not committed any criminal offence. Actually, the cash alleged to have been recovered from me, belongs to a businessman from Arunachal Pradesh, Shri NIMA TSERING KHRIME who has no official link with me. He has since filed a petition in Guwahati High Court claiming the money back (Criminal Rev. Petition No. 264/98, dtd. 5th Aug., '98). Therefore, my presence is required at Guwahati till the issue is settled legally.

3. Further, the investigation by C.B.I., Guwahati Branch is in progress in this case, and my presence at Guwahati may be required at any time for purpose of Interrogation.

4. Presently, I am on bail granted by Special Court, Guwahati. As per Govt. of India orders, the fixing of headquarters during suspension of a Govt. servant enlarged on bail will be subject to any restriction the Govt. servant may impose on his movement while granting the bail to. As per bail condition, I have to seek the permission of court for any movement outside Guwahati. As per the court orders, my presence is required at Guwahati for purpose of investigation and for the progress of the case. Therefore, the shifting of headquarters outside Guwahati may be followed by certain legal complications. The order of special court granting bail to me is enclosed for your kind information.

In view of the above reasons, I would request you to kindly reconsider your order of shifting my headquarters from Guwahati to Ghazlabad and order for retaining the headquarter at Guwahati only. Your decision in this regard may kindly be intimated to me within a period of one month so that further action can be taken accordingly.

Thanking you,

Yours faithfully,

K Ganesh

Dtd. at Guwahati,
 the 7th Sept., '98.

(K. Ganesh)

Copy to :- 1. The Member (Services), D.O.T., New Delhi.

2. The C.G.M., Task Force, Guwahati.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.267 of 1998

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

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

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

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

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

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Communications,
New Delhi.

2. The Chairman,
Telecom Commission,
New Delhi.

3. The Hon'ble Deputy Director General (Vigilance),
Department of Telecommunications.Respondents

IV. Advocate Mr A. Deb Roy, Mr. C.G.S.C.

ORDER

BARUAH, (V.C.)

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

2. The facts are:

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

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

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

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

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

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

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

Headquarter.....

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

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

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

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

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

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

13

-31-

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

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

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

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82

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

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

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

may.....

may place a Government servant under suspension-

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

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

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

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

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

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

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

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

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

1. Instances have been noticed where inordinate delay has taken place in filing charge-sheets in courts in cases where prosecution is launched and in serving charge-sheets in cases where disciplinary proceedings are initiated.
2. Even though suspension may not be considered as a punishment, it does constitute a very great hardship for a Government servant. In fairness to him, it is essential that this period is reduced to the barest minimum."

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

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

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

This.....

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

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

reinstatement.....

RZ

: 16 :

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

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

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

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

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

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

RJ

: 18 :

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

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

SD/- VICE-CHAIRMAN
SD/- MEMBER (A)

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nkm

M. Telleras
Deputy Registrar (S)
Central Administrative Tribunal
Guwahati Bench

8/10/95
4/10/95

Certified to be true copy
ADVOCATE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:::GUWAHATI BENCH

GUWAHATI.

M.P.No. 284 OF 1999.
In O.A.No. 267 of 1998.

In the matter of :

An Application for extension of
stipulated time for implementation
of Judgment and Order.

-And-

In the matter of :

Judgment and order dated
20/9/99 30.9.99 passed by the
Hon'ble Tribunal.

-And-

In the matter of :

O.A.No. 267 of 1998 (since
disposed of) (Sri K.Ganesh-Vs-
Union of India and Ors).

-And-

In the matter of :

UNION OF INDIA
represented by Sri P.C.Daimari,
Divisional Engineer (Estt),
Office of the OGM, Task Force,
North East Telecom Region,
Silpukhuri, Guwahati-3.

... Petitioner/Respondent.

Contd....2

 Certified to be true copy

ADVOCATE

-Versus-

Sri K.Ganesh, CGM, Task Force,
(Under suspension), North East
Telecom Region, Silpukhuri,
Guwahati-3.

... Respondent/Applicant.

The petitioner hereof most humbly files
this application and Respectfully Sheweth :

1. That the petitioner hereof is the Divisional Engineer (Estt), Office of the Chief General Manager, Task Force, North East Telecom Region and has been authorised by the Chief General Manager, Task Force to file this application and look after time to time development of the same, as such he is competent to file this application for and on behalf of Union of India.

2. That the Petitioner most respectfully states that the Respondent/Applicant filed an O.A. in the Hon'ble Tribunal which was registered and numbered as O.A.No.267/98 being aggrieved of his suspension. The Hon'ble Tribunal after prolonged hearing of the parties was finally pleased to dispose of the matter vide Judgment and Order dated 30.9.99 with certain directions. The pertinent portion of the aforesaid judgment and order containing the directions may be reproduced as follows :

"17. Coming to the present case we find that the deemed suspension was passed with effect

from ...

- 3 -

from 6.9.1997. The applicant was released on bail on 30.9.1997. Till now, no charge-sheet has been filed. Mr Deb Roy could not show whether the officer suspending had written to the higher authority regarding the necessity of continued suspension. Besides, during the period from 16.10.1997 to 22.1.2998 there was no investigation pending. The applicant was not under any detention. Mr Deb Roy could not show anything from the record as to what steps had been taken during this period. Nothing was shown before us that anything incriminating was found against the applicant from the date of registering the case on 6.9.1997 till now. The matter is still under investigation. Almost two years have passed the suspension is still continuing without there being anything to show that the investigation is likely to come to an end within a short time. Such action cannot be encouraged. It is true that the applicant was involved in carrying a huge amount of Indian currency in his luggage which was detected in the Airport. The applicant may be guilty of any offence, which is to be decided by the criminal court, but that itself cannot give a sanction to the authority to continue a person under suspension. If the authority finds that reinstatement of the applicant in the present post would be detrimental to the interest of the investigation, then

as ...

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

18.

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

- 5 -

three weeks from the date of submission of the fresh representation. If in opinion of the 2nd respondent the order of suspension under the provision of rule and Government instructions should not continue and at the same time the applicant's continuance in Guwahati is detrimental to the interest of investigation the authority should approach the Special Judge, Guwahati, for modification of the conditions imposed in the order Dated 30.9.1997 and thereafter, if the conditions so imposed by the Special Judge, Guwahati are changed, transfer the applicant to a distant place.

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

A photostat true copy of the aforesaid Judgment & Order Dated 30.9.1999 is annexed herewith and marked as Annexure-'I' hereof.

3. That the petitioner respectfully states that the Hon'ble Tribunal vide aforesaid judgment and order was pleased to direct the 2nd Respondent in O.A.No.267/98, viz., the Chairman, Telecom Commission, New Delhi to take into consideration within a period of 3(three) weeks from the date of submission of a fresh representation by the Respondent/Applicant.

Be it further stated that the Respondent/Applicant has accordingly filed a fresh representation dated

Contd.....

- 6 -

4.10.1999 which has been received in the Office of the Chairman, Telecom Commission, New Delhi on 7.10.1999 and same has already been processed in accordance with the direction issued by the Hon'ble Tribunal vide aforesaid judgment and order.

4. That the petitioner respectfully states that since the Respondent/Applicant Sri K.Ganesh is a SAG level Group-'A' Officer, his case is required to be decided by the Minister of Communication on behalf of the President of India which requires opinion from the Law Department too.

5. That the petitioner most respectfully states that the New Ministry in the Centre has been sworn in only a few days back and transaction of official business has not started yet in the concerned Ministries. Under this circumstance some time is taking in the process of implementation of the aforesaid judgment and order.

6. That the petitioner most respectfully states that before coming to the finality in respect of deemed suspension and reinstatement necessary permission must be obtained from the Special Judge, Guwahati in respect of place of posting of the Respondent/Applicant. Besides, the matter requires thorough examination is consultation and concurrence with the Law Department and finally approval of the Hon'ble Minister of the Communication. Hence it is likely to take more than the stipulated time in the judgment and order dated 30.9.99.

- 7 -

Be it stated that in term of the aforesaid judgment and order the time limit will expire on 29.10.1999. Keeping in view the prevalent facts and circumstances, a letter has been addressed from the office of the Chairman, Telecom Commission, New Delhi to the Chief General Manager, Task Force, North Eastern Telecom Region, Guwahati vide D.O. No.9-79/97-Vig. (pt-II) Dated 12.10.1999 with a request to approach the Hon'ble Tribunal for extension of time limit for further period of 2(two) months from 29.10.1999.

A photostat true copy of the aforesaid D.O. letter Dated 12.10.1999 is annexed herewith and marked as Annexure-II hereof.

7. That the petitioner respectfully submits that the extension of time is necessitated for the administrative convenience, and if, the Hon'ble is not pleased to grant extension of time limit for further period of atleast 2(two) months from the date it expires as stipulated, i.e. w.e. from 29.10.1999 onward the petitioner's Department will face lot of administrative complications including further litigation.
8. That the petitioner most respectfully submits that the situation and circumstances demand the filing of the instant petition, and not because of inactions on the part of the petitioner's Department.
9. That this petition is filed bonafide and for the ends of justice.

- 50 -

6

In the circumstances, it is therefore, most respectfully prayed that Your Lordships would graciously be pleased to admit this petition and taking into consideration of the facts and circumsances and after hearing the parties may kindly be pleased to grant extension of time limit for further of 2(two) months w.e.f. from 29.10.1999 onward for implementation of the Judgment and Order Dated 30.9.1999 passed in O.A.No.267/98.

And for this the petitioner as in duty bound shall ever pray.

Verification ...

VERIFICATION

I, SRI P.C.DAIMARI, Divisional Engineer(Estt),
Office of the Chief General Manager, Task Force, North
East Telecom Region, Silpukhuri, Guwahati-3 do here by
solemnly affirm and state as follows :

1. That I am the Divisional Engineer(Estt), in the Office of the Chief General Manager, Task Force, North East Telecom Region, Silpukhuri and I have been authorised by the Chief General Manager, Task Force to file and verify the instant application on behalf of the Union of India as well as on his behalf. As such I am competent to verify and file this application before the Hon'ble Tribunal.
2. That the statement made in this verification and those have been made in paragraphs 1 of the accompanied petition are true to the best of my knowledge and belief and those have been made in paragraphs 2,3,4,5,6 are true to the best of my information which have been derived from the records and rests are my humble submission before the Hon'ble Tribunal.

I verify and sign this verification this the
day of October, 1999 at Guwahati.

Sd/- Pradip Ch.Daimari
Signature of the Applicant.

Certified to be true copy
S. W. COOPER

52
No.9-79/97-Vig.I/Pt.2
Government of India
Ministry of Communications
Department of Telecommunications

Annexure - 6
B

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

3154
Dated the 21st December, 1999.

ORDER

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

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

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

By order and in the name of the President.

John Mathew
(JOHN MATHEW)
ASSTT. DIRECTOR GENERAL (VIG)

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

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

Certified to be true copy

12/12/99

- 53 -

Government of India
Ministry of Communications
Department of Telecommunications

West Block H T, Wing H 2
R K Puram, New Delhi-66.

No. 9-79/97-Vig.T

Dated February 17, 2000

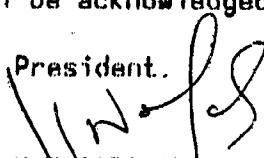
MEMORANDUM

Shri K Ganesh, Chief General Manager, Task Force, Gauhati is under suspension with effect from 6th September, 1997 as he was detained in Police custody in connection with a criminal case on 6.9.97 for a period exceeding 48 hours. The Headquarters of Shri K Ganesh during suspension was fixed at Gauhati. However, the Headquarters of Shri K Ganesh was shifted from Gauhati to Ghaziabad in public interest vide this Office Memorandum of even No. dated 24th August, 1998. However, Shri Ganesh vide his representation dated 7th Sept., 98 intimated that he was on bail granted by the Special Court, Gauhati and the Court had imposed restrictions on his movement outside Gauhati. In view of this, the order issued by the competent authority changing his Headquarters to Gauhati could not take effect. The Court of Hon'ble Special Judge has now vide order dated 26.10.99 vacated the condition No. 3 of the bail order permitting Shri K Ganesh to move out of the jurisdiction of the Court of Hon'ble Special Judge, Gauhati.

2. In view of the above, Shri K Ganesh is hereby informed that his Headquarters during suspension shall stand shifted from Gauhati to Ghaziabad with immediate effect and the subsistence allowance payable to the Officer shall in future be drawn from the Office of Chief General Manager, ATTC, Ghaziabad.

Receipt of this Memorandum shall be acknowledged.

By order and in the name of the President.


(K NAGARAJAN)
Asstt. Director General (Vig.A)

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

(Through CGM, Assam Telecom Circle, Gauhati)

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P.S.

Copies of Orders

1

Guiding principles for placing a Government servant under suspension

It has been decided that public interest should be the guiding factor in deciding to place a Government servant under suspension, and the disciplinary authority should have the discretion to decide this taking all factors into account. However, the following circumstances are indicated in which a disciplinary authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory:

- (i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry, (e.g., apprehended tampering with witnesses or documents);
- (ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;
- (iii) Where the continuance in office of the Government servant will be against the wider public interest other than those covered by (i) and (ii) such as, there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption.
- (iv) Where allegations have been made against the Government servant and the preliminary inquiry has revealed that a *prima facie* case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

NOTE.—(a) In the first three circumstances the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case is made out.

(b) Certain types of misdemeanour where suspension may be desirable in the four circumstances mentioned are indicated below:

Copies of Orders

2

- (i) any offence or conduct involving moral turpitude;
- (ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain;
- (iii) serious negligence and dereliction of duty resulting in considerable loss to Government;
- (iv) desertion of duty;
- (v) refusal or deliberate failure to carry out written orders of superior officers.

In respect of the types of misdemeanour specified in sub-clauses (iii), (iv) and (v) discretion has to be exercised with care.
 [G.I., M.H.A., Letter No. 4356/64-ADV, dated the 22nd October, 1964.]

2

Report of arrest to superiors

1. It shall be the duty of a Government servant who may be arrested for any reason to intimate the fact of his arrest and the circumstances connected therewith to his official superior promptly even though he might have subsequently been released on bail. On receipt of the information from the person concerned or from any other source the departmental authorities should decide whether the fact and circumstances leading to the arrest of the person call for his suspension. Failure on the part of any Government servant to so inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the police case against him.

2. It is requested that the above position may kindly be explained to all Government servants with whom the Ministry of Defence, etc., may be concerned.

[G.I., M.H.A., O.M. No. 3059/54-Ests. (A), dated the 25th February, 1955.]

NOTE.—State Governments have been requested to issue necessary instructions to the police authorities under their control to send prompt intimation of arrest or/and release on bail, etc., of Central Government servants to the latter's official superiors as soon as possible after the arrest or release indicating also the circumstances of the arrest, etc., to enable them to decide what action, if any, should be taken against such employees.

[G.I., M.H.A., Letter No. 3959/54-Ests. (A), dated the 25th February, 1955.]

3

Limiting number of officials under suspension to the minimum

1. In spite of a series of instructions issued from time to time for limiting the number of officials under suspension and also reducing the periods

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60

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55

74

3. In suspension, it is observed that quite a good number of officials continue under suspension for prolonged durations. In order to keep the number of officials under suspension to the barest minimum, and also to reduce the period of suspension to the minimum possible term, the following instructions on the subject are being reiterated for guidance and strict compliance.

(a) An official may be placed under suspension only in the following circumstances:

- (i) }
- (ii) }
- (iii) } Same as in 1, para 1.
- (iv) }

(v) where the public servant is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

(b) Even in the above circumstances, an official may be placed under suspension only in respect of misdemeanour of the following types:

- (i) }
- (ii) }
- (iii) } Same as in 1, Note (b).
- (iv) }
- (v) }

(c) While placing an official under suspension the competent authority should consider whether the purpose cannot be served by transferring the official from his post to a post where he may not repeat the misconduct or influence the investigation, if any, in progress. If the authority finds that the purpose cannot be served by transferring the official from his post to another post then he should record reasons therefor before placing the official under suspension.

(d) In case where an official is deemed to have been placed under suspension under Rule 10 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as soon as the official is released from police custody the competent authority should consider the case to decide whether the continuance of the official under suspension is absolutely necessary or not. If the period of suspension has already exceeded the limit of three months and the competent authority does not find justification to revoke the suspension in such case he should immediately make a report to the next higher authority giving detailed justification for continuing the official under suspension.

(e) In order to keep the period of suspension to the barest minimum the competent authority should take all possible steps to file a charge-sheet in a court of law, where an official had been placed under suspension on account of a court case, or serve the charge-sheet if the action is to be

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8

75

taken under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, within three months from the date of suspension and in case it is not possible to do so to report the matter to higher authorities explaining the reasons for delay.

(f) In respect of cases other than those pending in courts, the total period of suspension should not ordinarily exceed six months except in exceptional cases where it is not possible to adhere to this time-limit then the competent authority should make a report to the next higher authority explaining the reasons for delay.

2. All authorities receiving information/report about the continued suspension of officials from their subordinate authorities should carefully examine each case and see whether the continued suspension of an official is absolutely necessary or the suspension should be revoked by transferring the official to another post or office.

✓ 3. In order to ensure that above instructions are scrupulously observed by subordinate authorities, all cases of suspension may be reviewed regularly, particularly those where officials are under suspension for more than six months, and wherever it is found that the official can be allowed to resume duties by transferring him from his post to another post, orders should be issued for revoking the suspension and allowing the official to resume duties with such further direction as may be considered desirable in each individual case.

4. In respect of cases where it is found that the competent authorities have not made report in terms of these instructions serious notice on the lapses of such authorities should be taken as also considering making adverse entries in their annual confidential reports. Similarly when an appellate authority finds that an official has remained under suspension for a period exceeding six months and the competent authority has not made report in terms of these instructions the appellate authorities should also take serious notice of the lapses of the concerned subordinate authority and consider making adverse remarks in annual confidential reports.

[D.G., P. & T., New Delhi Letter No. 201/4776-DSC/II, dated 1976.]

Speedy follow-up action in suspension cases and time-limits prescribed

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

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

- 56 -

COPIES OF ORDERS

3. It has, therefore, been decided that in cases of officers under suspension, the investigations should be completed and a charge-sheet filed in a court of competent jurisdiction in cases of prosecution or served on the officer in cases of departmental proceedings within six months as a rule. If the investigation is likely to take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence, etc., or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order.

[G.L. M.H.A., O.M. No. 39/39/70-Estt. (A), dated the 4th February, 1971.]

4. In partial modification of the above orders, it has been decided that every effort should be made to file the charge-sheet in court or serve the charge-sheet on the Government servant, as the case may be, within three months of the date of suspension, and in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay.

[G.L. C.S. (Department of Personnel), O.M. No. 39/39/70-Estt. (A), dated the 4th February, 1971.]

5. It would be observed that the Government have already reduced the period of suspension during investigation, barring exceptional cases which are to be reported to the higher authority, from six months to three months. It has now been decided that while the above orders would continue to be operative in regard to cases pending in courts, in respect of the period of suspension pending investigation before the filing of a charge-sheet in the court as also in respect of serving of the charge-sheet on the Government servant in cases of departmental proceedings, in cases other than those pending in courts, the total period of suspension, viz., both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months. In exceptional cases where it is not possible to adhere to this time-limit, the disciplinary authority should report the matter to the next higher authority, explaining the reasons for the delay.

[G.L. C.S. (Department of Personnel), O.M. No. 39/33/72-Estt. (A), dated the 16th December, 1972.]

6. In spite of the above instructions, instances have come to notice in which Government servants continued to be under suspension for unduly long periods. Such unduly long suspension, while putting the employee concerned to undue hardship, involves payment of subsistence allowance without the employee performing any useful service to the Government. It is, therefore, impressed on all the authorities concerned that they should scrupulously observe the time-limits laid down and review the cases of suspension to see whether continued suspension in all cases is really necessary. The authorities superior to the disciplinary authorities should also exercise a strict check on cases in which delay has occurred and give appropriate directions to the disciplinary authorities keeping in view the provisions contained above.

[G.L. M.H.A., (Dept. of Personnel & A.R.), O.M. No. 11012/7/78-Estt. (A), dated the 14th September, 1978.]

- 9 -

COPIES OF ORDERS

71

7. In spite of these instructions it has been brought to the notice of this Department that Government servants are sometimes kept under suspension for unduly long periods. It is, therefore, once again reiterated that the provisions of the aforesaid instructions in the matter of suspension of Government employees and the action to be taken thereafter should be followed strictly. Ministry of Finance, etc., may, therefore, take appropriate action to bring the contents of the O.M. of 14th September, 1978 to the notice of all the authorities concerned under their control directing them to follow those instructions strictly.

[G.L. M.H.A., (Dept. of Personnel & A.R.), O.M. No. 42014/7/83-Est. (A), dated the 18th February, 1984.]

5.

First review of suspension and subsistence allowance

1. According to the proviso to F.R. 53 (1) (ii) (a) the authority which made or is deemed to have made the order of suspension of a Government servant is competent to vary the amount of subsistence allowance for any period subsequent to the period of first six months of suspension. The subsistence allowance can be increased by a suitable amount not exceeding 50% of the subsistence allowance granted for the first six months if in the opinion of the said authority, the period of suspension was prolonged due to reasons, to be recorded in writing, not directly attributable to the Government servant. Similarly, the subsistence allowance can be reduced by an amount not exceeding 50% of the earlier subsistence allowance if the period of suspension was prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant. This variation of the subsistence allowance is obligatory under F.R. 53.

2. The Staff Side of the National Council (JCM) had suggested that the subsistence allowance payable to a Government servant under suspension should be reviewed for an increase or decrease after a period of ninety days from the date of suspension, instead of six months as envisaged in the proviso to F.R. 53 (1) (ii) (a). The matter has been examined by the Government and after consultation with the Staff Side, it has been decided that a review of the subsistence allowance would be made at the end of three months from the date of suspension instead of the present practice of varying the subsistence allowance after six months. This would also give an opportunity to the concerned authority to review not merely the subsistence allowance but also the substantive question of suspension.

[G.L. M.H.A., (Dept. of Personnel & A.R.), O.M. No. 16012/1/79-L.U., dated the 23rd August, 1979.]

6.

Form of order to be suitably modified to suit the requirement of individual case

1. Reference is invited to the two prescribed standard forms to be used while issuing orders for placing Government servants under suspension

57

called against the officer. Whether it is necessary or desirable to place the officer under suspension even before definite charges have been framed would depend upon the circumstances of the case and the view which is taken by the Government concerned. There would be nothing improper *per se* if the rules were to provide for suspension even before definite charges of misconduct had been communicated to the officer concerned. In principle there is no difference between the position of an officer against whom definite charges have been framed to which he is required to put in his written statement and a situation where on receipt of allegations of grave misconduct against him the Government is of opinion that it would not be proper to allow the officer concerned to function in the ordinary way. The order in this case shows that serious allegations of corruption and malpractices had been made against the respondent and he was also reported to have contravened the provisions of the All India Conduct Rules and the enquiries made by the Government into the allegation had revealed that there was a *prima facie* case made out against him. Merely because the order mentioned that disciplinary proceedings were contemplated against the respondent, as compared to Rule 7 which contains phrases like "the initiation of disciplinary proceedings" and the "starting of such proceedings" it cannot be held that the situation in the present case had not reached a stage which called for an order of suspension. In substance disciplinary proceedings can be said to be started against an officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Government that a *prima facie* case has been made out against him for framing of charges. When the order of suspension itself shows that Government was of the view that such a *prima facie* case for departmental proceedings had been made out the fact that the order also mentions that such proceedings were contemplated makes no difference. Again, the fact that in other rules of service an order of suspension may be made "when disciplinary proceedings were contemplated" should not lead this Court to take the view that a member of the All India Service should be dealt with differently; the reputation of an officer is equally valuable no matter whether he belongs to the All India Service or to one of humbler cadre. It is the exigencies of the conditions of service which require or call for an order of suspension and there can be no difference in regard to this matter as between a member of an All India Service and a member of a State Service or Railway Service.

[The Government of India, Ministry of Home Affairs & others v. Tarak Nath Ghosh, 1971 S.L.R. 264 at 269, 270 and 272.]

Suspension cannot be for indefinite period

In G.O. Ms. No. 211, P. & A.R., the Government of Tamil Nadu has impressed on the concerned authorities the need to reduce the period of suspension to the barest minimum. It is true that the said G.O. would not be applicable to cases of Government servants against whom criminal

proceedings have been initiated. Even so, even in such cases, if the continued suspension pending investigation is made out to be the outcome of indifference or inaction, it would only result in the order being vitiated by the failure to exercise the power justly and equitably.

In this connection, it would be pertinent to take note of the various circulars issued by the Central Government in this regard. The concerned circulars found in the 'Suspension and Reinstatement', by Muthuswamy disclose that the entire emphasis is laid on speedy follow-up action in suspension cases and that every endeavour should be made to reduce the period of suspension to the barest minimum. If the Government servants are guilty they should be punished at the earliest point of time. If not, they should be restored to duty. The mere claim that the investigation is being carried on cannot be a valid ground for indefinite and prolonged suspension of Government servants.

[M. Chengal v. State of Tamil Nadu, (1983) 2 M.L.J. 348.]

It cannot be disputed that more than three years have passed as on date since the order of suspension was passed against the appellant. Till now neither a departmental proceeding has been initiated nor a charge-sheet filed by the police before the criminal court. Even assuming that investigation by the police takes a longer time than the time taken at the departmental enquiry to frame charges, three years period taken by the police cannot be said to be reasonable. The order of suspension is penal in nature and the continued suspension of the appellant indefinitely is not justified. Whatever be the reason for non-filing of the charge-sheet for nearly three years, that is a factor to be taken into account by the Court for quashing the order.

[D.S. Mohammed Khan v. The Secretary to Government, (1983) 2 M.L.J. 134.]

If a Government servant is placed under suspension in contemplation of an enquiry against him, public interest enjoins that the authority concerned shall frame charges and serve the same on the Government servant as expeditiously as possible. The Government may take time in collecting material to draw a formal charge-sheet but the time taken must be reasonable. It is desirable in public interest to serve charges along with the order of suspension. If a Government servant is placed under suspension for an indefinite period of time it would certainly be against public interest and is liable to be struck down.

[Chauhan v. State of U.P., 1977 A.W.C. 204.]

An officer cannot be placed under suspension for an indefinite period. That would be against the principles of natural justice.

An officer is entitled to ask, if he is suspended from office pending enquiry into misconduct, that the matter should be investigated with reasonable diligence. If such a principle were not to be recognised it would vest the executive with an arbitrary and unfettered power of placing its officers under suspension and distress for an indefinite duration.

[State of Madras v. K.A. Joseph, (1969) 2 M.L.J. 242.]

22 JUN 2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Guwahati Bench
GUWAHATI BENCH

64
L.2.9
C.1
95/15/250
58
(A. DEB ROY)
Sr. C. C. S. C.
C. A. T. Guwahati Bench
G

O.A.NO. 102 OF 2000

Shri K. Ganesh

- VS -

Union of India & others

IN THE MATTER OF

Written statement submitted by the respondents

WRITTEN STATEMENT

- (1) That with regard to para 1,2,3,4(a),4(b),4(c),4(d) the respondents beg to offer no comments as matter of records.
- (2) That with regard to para 4(e) the respondents beg to say that the case was investigated initially by Assam State Police and subsequently the case was made over by the State Police to the CBI for detailed investigation which is in progress.
- (3) That with regard to para 4(f) the respondents beg to say that CBI has registered an FIR against Shri K.Ganesh and the investigation is in progress.
- (4) That with regard to para 4(g),4(h),4(i) the respondents beg to offer no comments as matter of records.
- (5) That with regard to 4(j) the respondents beg to say that it is pointed out that as clearly indicated in the order dated 17.02.2000, the earlier order NO.9-79/97-Vig1/Pt dated 24.08.98 could not take effect immediately, in view of the restrictions imposed by the Special Court,Guwahati on the movement of the applicant outside Guwahati, while granting bail.The Hon'ble Special ~~Court~~ judge has since,vide order dated 26.10.99 vacated the condition NO.3 of the bail order, thus permitting the applicant to moves out of the jurisdiction of the Special Court,

Guwahati. The order dated 17.2.2000 has been issued in view of the vacation of the aforesaid condition by the Special Court and is public interest.

(6) That with regard to para 4(k), 4(l), 4(m), 4(n), 4(o) the respondents beg to offer no comments as matter of records.

(7) That with regard to para 4(p) the respondents beg to say that it is stated that the directions of the Hon'ble Tribunal was given due consideration by the competent authority i.e. the President. As the case against the applicant is of a very serious nature, revocation of his suspension would have sent wrong signals to the fellow officers and employees and may subvert the general discipline in the organization. Therefore, the competent Authority had decided to continue the suspension.

(8) That with regard to para 4(r) the respondents beg to say no comments as matter of records.

(9) That with regard to para 4(s) the respondents beg to say that it is granted that the Head Qtrs of the applicant who was under suspension was shifted from Guwahati to Ghaziabad in public interest. However, as per the condition (iii) of the bail order dated 30.09.97, restriction was imposed on the applicant to move outside Guwahati. In view of this, the order issued by the Competent Authority did not take effect. Thereafter, on the order of the Special judge dated 26.10.99 vacating the condition No. 3 of the bail order permitting the applicant to move out of the jurisdiction of the Court of Hon'ble Special Judge Guwahati, a memorandum dated 17.02.2000 was issued with the approval of the Competent Authority informing the applicant that the Head Quarter during suspension stands shifted from Guwahati to Ghaziabad ~~xx~~

with immediate effect.

(10) That with regard to para 4(t) the respondents beg to offer no comments as matter of records.

(11) That with regard to para 5(I) the respondents beg to say that the Contents of this para of the application are denied. The Head Quarters of the applicant was changed from Guwahati to Ghaziabad in public interest so that he may not be in a position to influence the fair investigation. However as per the condition (iii) of the bail order dated 30.09.97 restriction was imposed on the applicant ~~to~~ move outside Guwahati. In view of this the order issued by the Competent Authority did not take effect. Thereafter, on the order of the Special judge dated 26.10.99 vacating the condition No.3 of the bail order permitting the applicant to move out of the jurisdiction of the Court of Hon'ble Special Judge Guwahati, a memorandum dated 17.02.2000 was issued with the approval ~~showing suspension stands shifted from Guwahati~~ ~~xxGhaziabad~~ of the Competent Authority informing the applicant that the Head Quarters during suspension stands shifted from Guwahati to Ghaziabad with immediate effect. Therefore, the order is based on valid consideration.

(12) That with regard to para 5(II) the respondents beg to say that the contents of this para of the application are denied. The CBI had requested that the applicant be transferred to a far off place from Guwahati as the applicant may tamper with the evidence both oral and documentary by exercising his influence which may prove detrimental to the interest of the investigation. This was duly considered by the Competent Authority and the Head Quarters was shifted to Ghaziabad during the suspension.

(13) That with regard to para 5(III) the respondents beg to say that the contents of this para of the application are denied. It is granted that the Hon'ble Court in its judgement dated 30.09.99 in O.A.NO.267/1998 has directed as follows ;

"In the circumstance we have no other alternative, but to send back the matter in the 2nd respondents to consider the entire matter afresh taking into consideration of the various provisions regarding suspension and Government instructions. The applicant may also file another representation giving details of his claim within fifteen days from today. If such representation is filed the authority should take into consideration of the same and dispose off the matter by a resolved order as early as possible, at any rate within a period of three weeks from the date of submission of both representation. If in opinion of the 2nd respondent the order of suspension under the provision of rule and Government instructions should not continue and at the same time the applicant's continuance in Guwahati is detrimental to the interest of investigation, the authority should approach the Special Judge, Guwahati for modification of the conditions imposed in the order dated 30.09.97 and thereafter, if the conditions so imposed by the Special Judge, Guwahati are changed transfer the applicant to a distant place.

With the above observations the application is disposed of.

No order as to costs.

All the points raised in the above order were duly considered by the competent authority and the applicant was replied vide order dated 17.02.2000.

(14) That with regard to para 5(IV) the respondents beg to say that the contents of this para of the application are denied. The order of the Hon'ble Tribunal dated 30.09.99 was duly considered by the Competent Authority. Owing to the seriousness of the case the investigation of the CBI which is still in progress and the request of the CBI to continue to place the applicant under suspension and transfer the applicant to a distant place, it was decided by the Competent Authority that the applicant stands to be kept under suspension for the time being and his Head Quarters be changed from Guwahati to Ghaziabad in public interest.

(15) That with regard to para 5(V) the respondents beg to say that the contents of this para of the application are denied. The applicant in this para speaks about "abundment by the respondent authority" of the order No.9-79/97-Vig-1/Pt dated 24.08.98. It is not understood what the applicant means by "abundment by the respondent authority". It may however be pointed out in this ~~xx~~ context that, as clearly indicated in the order dated 17.02.2000 the earlier order ~~dated~~ No.9-79/97-Vig-1/Pt dated 24.08.98 could not take effect immediately, inview of the restrictions imposed by the Special Court, Guwahati on the movement of the applicant outside Guwahati, while granting bail. The Hon'ble Special Judge has since, Vide order dated 26.10.99 vacated the condition No 3 of the bail order, thus permitting the applicant to move out of the jurisdiction of the Special Court, Guwahati. The order dated 17.02.2000 has been issued in view of the vacation of the aforesaid condition by the Special Court. This is also in keeping with the observation made by the Hon'ble High Court is in judgement referred in para 5(III) above.

63
68

(16) That with regard to para 5(VI) the respondents beg to say that the application filed by the applicant ^{is} frivolous and without any valid grounds. It deserves to be summarily dismissed with exemplary costs.

(17) That with regard to para 6-8 the respondents beg to say that these paras of the application are formal.

(18) That with regard to para 9 the respondents beg to say that in view of the above submissions it is requested that the interim relief asked for may not be granted.

(19) That with regard to paras 10 - 12 the respondents beg to say that these paras of the application are formal.

VERIFICATION

I, Shri P. C. DAMMARI D.E (Estt)

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

And I sign This Verification on this
the day of 6th June 2000.

P. C. Damari
DECLARANT