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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 238/2001

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SECTION OFFICER (Judl.)

unitress

FORM NO. 1
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI Bench No. 1 GUWAHATI

ORDER SHEET - 238

Original Application No. OF 2001

Applicant (s) *Farami Rahman*

Respondent (s) *Union of India*

Advocate for Applicants (s) *M.K.P. Pathak & S.K. Sharma*

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

Notes of the Registry

Date

Order of the Tribunal

10.7.01

Application is admitted call for the records. Mr. Deb Roy, learned Sr. C.G.S.C. accepts notice on behalf of the respondents. Returnable by six weeks.

Heard Mr K.P. Pathak, learned Sr. counsel on the interim relief prayer. The prayer for interim direction shall be considered after 10 days. In the meantime Mr Deb Roy may receive instructions.

List on 23.7.2001 for final order.

Member

Vice-Chairman

PT

23.07.01

bb

Notice prepared and sent to D/S for cross etc Respondent No 182 by Regd A.D. vide D/No 2327 dated 13/7/01.

11/7/01

No written statement has been filed.

23/7/01

No written statement has been filed. List again on 23-08-2001 for order.

Member

Vice-Chairman

23.8.01

List again on 25/9/01 to enable the respondents to file written statements.

Vice-Chairman

mb
25.9.01

No written statement so far been filed. Mr. B.C.Pathak, learned Addl. C.G.S.C. appearing on behalf of the Mr. A.Deb Roy, learned Sr. C.G.S.C. states that no instructions received so far. List on 4/10/01 for order.

Member

Vice-Chairman

mb
4.10.01

Heard Mr. S.K.Sarma, learned counsel for the applicant and also Mr.B.C.Pathak, learned Addl. C.G. S.C. for the respondents. The respondents are yet to file written statement. The applicant has prayed for an interim directions. We however, feel that the matter should be heard with utmost expedition and accordingly respondents are directed to file written statement positively within three weeks from today.

List on 20/11/01 for further order and final for hearing.

Member

Vice-Chairman

mb

20.11.01

By our order dated 4.10.01 instead of passing an interim direction we ordered the respondents to file written statement within 3 weeks from 4.10.01. No written statement has been filed. Mr. A.Deb Roy, learned Sr. C.G.S.C. stated that the respondents are holding a proper enquiry and the applicant was directed to attend the hearing vide communication dated 21st September/2001. The legitimacy and propriety of the initiation of disciplinary proceeding is under challenge. The respondent were granted time to state their case by our earlier order. In the circumstances and considering all the aspects of the matter we direct the respondents to stay further proceeding pursuant to memo No. 14033/27/95-UTS dated 30/1/2001 issued

Contd/-

(3)
D.A. 328/2001

Notes of the Registry

Date

Order of the Tribunal

20.11.01

by the Deputy Secretary to the
India, Ministry of Home Affairs
2) and the request memo No. 100
95-UIS dated 1/5/2001.

List on 20/12/01 for order.

Member

Vice-Chairman

mb

20.12.01

Written statement has been filed.

The case may now be listed for hearing.
The applicant may file rejoinder, if any,
within 2 weeks from today.

List on 29.1.2002 for hearing.

Member

Vice-Chairman

mb

29.1.02

Pass over for the day. List on 30.1.02
for hearing.

Member

Vice-Chairman

mb

30.1.02

On the prayer of Mr. S.K.Sharma
on the ground of illness of the Sr.
counsel the case is adjourned to
14.2.2002.

List the matter on 14.2.2002
hearing.

Member

Vice-Chairman

trd

No written statement
has been filed.

By
19.12.01

21.12.2001

17/12/01 Submitted
by the Respondent
No. 17/2.

By

W/s has been filed.

By
13.2.02

O.A. 238/2001

Notes of the Registry	Date	Order of the Tribunal
	14.2.02	List again on 21.2.02 to enable the applicant to produce some connecting evidence by way of an affidavit. Mr Deb learned Sr.C.G.S.C may also obtain necessary instruction.
	pg	Member Vice-Chairman
An additional affidavit was submitted.	21.2.02	Hear Mr. K.P. Patil, learned Counsel for the applicant, Mr. A. D. B. Sr. C.G.S.C. for the respondent. Hearing concluded. Judgment reserved.
	1.3.02	Judgment delivered in open Court, kept in separate sheets. The application is allowed with costs.
	mb	Member Vice-Chairman
18.4.02 Copy of Judgment was sent to the office for filing the rule to the applicant as well as to the Sr.C.S.C. by him.		

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.238 of 2001

Date of decision: This the 1st day of March 20

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

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

Shri Fanai Pahnuna,
Resident of Chandmari, Aizawl,
District- Aizawl, Mizoram.

.....Applicant

By Advocates Mr K.P. Pathak, Mr S.K. Sharma and
Mr Dhrubajyoti Pathak.

- versus -

1. The Union of India, represented by the
Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.

2. The Deputy Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.

.....Respondents

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

.....

O R D E R

CHOWDHURY. J. (V.C.)

The legality and validity as to the initiation and continuance of the proposed enquiry against the applicant under the All India Service (Discipline and Appeal) Rules, 1969 is the core issue raised in this application in the following circumstances:

The applicant was recruited to the India Administrative Service (IAS for short) of the Joint Arunachal Pradesh, Goa, Mizoram and Union Territories (AGMU for short) Cadre under Section 7 of the IAS (Recruitment) Rules, 1954 by Competitive Examination in the year 1965. In the year 1990 the applicant was appointed as Chief Secretary to the Government of Mizoram, which post he held till 1993. The

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applicant was thereafter appointed as Managing Director, DSFDC Ltd. cum Principal Secretary (SC&ST), Government of NCT of Delhi in the year 1994 and he continued to hold the said post till 1998. The applicant was subsequently appointed as full time Member of the Public Grievances Commission, Government of NCT of Delhi and the applicant retired from Government service on 31.1.2001. To this effect the Government issued the Notification No.14031/6/2000-UTS dated 9.2.2001 and notified the date of superannuation of the applicant as in the afternoon of 31.1.2001. At this stage, by the impugned Notification No.14033/27/95-UTS dated 30.1.2001 the Government of India, Ministry of Home Affairs initiated an enquiry against the applicant under Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969 for alleged misconduct as mentioned in the statement of articles of charge cited in Annexure-I of the communication dated 30.1.2001. The statement of imputation of misconduct in support of the articles of charge framed, the list of documents substantiating the articles of charge framed as well as the list of witnesses in support of the article of charge accompanied the said Memorandum of charge.

2. The applicant submitted his written statement of defence in March 2001 denying and disputing the charges. The applicant also questioned the jurisdiction of the Disciplinary Authority and also the propriety and legitimacy of the departmental proceeding. By memo dated 1.6.2001 the respondent authority appointed the CDI, Central Vigilance Commission as the Inquiring Authority to enquire into the charges. Hence this application assailing the legitimacy and propriety of the departmental proceeding as well as the continuance of the said proceeding as illegal and ultra vires.

3. The respondent Nos.1 and 2 contested the case and submitted their written statement seriously resisting the application including the maintainability of the same.

4. Before going into the merits of the respective cases it would be appropriate to refer below the statement of the articles of charge framed against the applicant:

"That Shri Fanai Pahnuna, IAS (AGMU:65), while working as Chief Secretary to the State Government of Mizoram and the Chairman of the State Purchase Advisory Board during the period 1990-1992 committed gross misconduct in as much as he in the matter of purchase of a plot of land measuring 22,100 sq.ft. (with a building constructed over it) owned by Smt Lalparliani, his sister-in-law, located at Upland Road, Laitumkhrah, Shillong for the purpose of setting up Mizoram House approved an arrangement under which:-

- a) The said Smt. Lalparliani was made a payment of Rs.23.00 lakhs in advance toward the cost of the said property the price for which was fixed at Rs.58.00 lakhs in an arbitrary manner without its being assessed through the relevant channels;
- b) The deal was finalized and the advance payment made to her despite the fact that the aforesaid property had been notified by the State Government of Meghalaya for acquisition for its own use and the acquisition proceedings had not been formally withdrawn;
- c) The advance payment was made without entering into any formal agreement with her so as to ensure that the money was refunded to the State Government of Mizoram in a time bound manner in case the deal did not materialise; and
- d) The advance payment was made without binding her under a proper agreement to pay the interest on the amount advanced to her in the event of the deal not materialising.

That from the aforesaid acts of commission and omission the charged officer Shri F. Pahnuna, the then Chief Secretary, Government of Mizoram, exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a Public Servant and thereby violated Rule 3(1) of All India Services (Conduct) Rules, 1968."

The applicant was accordingly charged for the alleged misconduct purportedly implicating lack of integrity and devotion to duty and acting in a manner unbecoming of a public servant. The gravamen of the charge is that the applicant as the Chief Secretary, Government of Mizoram and Chairman of the State Purchase Advisory Board approved an arrangement whereby the land owner was paid an amount of Rs.23 lakhs in advance towards the cost of the said property, the price for which was fixed at Rs.58.00 lakhs arbitrarily without the same being assessed through the relevant channels. As per the charge

the.....

the applicant was also made responsible for approval of the arrangement as to finalising the deal and advance payment made to the owner in spite of the fact that the said property was notified by the Government of Meghalaya for acquisition for its own use and that the acquisition was not formally withdrawn. The applicant was also charged for approving the advance payment without entering into formal and bidding agreement and without stipulating any interest on the amount advanced to the owner in the event of the deal not materialising.

5. The applicant in his written statement of defence assailed the competence of the Ministry of Home Affairs for initiating departmental proceeding as contrary to the scheme of disciplinary rules. The applicant in his written statement also pointed out that all throughout he acted within the parameters of law and under the authority of the competent authority. He asserted that the proposal for establishment of the Mizoram House in Shillong was made in the year 1989, prior to his appointment as Chief Secretary in the State of Mizoram. He also mentioned a number of steps taken by the authority for purchase of the property at Shillong, which was also reflected in the statement of imputation of misconduct in support of the articles of charge. The earlier proposal for purchasing land at places like Nongrim Hills belonging to one Shri V.L. Sharma, Laitumkhrah belonging to one Mrs Partei and also other locations were considered. In fact, the applicant in his note suggested that the land at Cleve Colony had a number of advantages. The land was inspected by the officers of Mizoram Government which also inspected by the Chief Minister, the Finance Minister, the applicant, the Finance Commissioner, the Chief Engineer PWD, The Joint Director I & PR and the Liaison Officer, Shillong. The applicant mentioned about his note in the at pages 39, 40 and 41 of File No.A-600011/16/89-GAD and stated that the entire facts were placed in his note and the same was approved by the then Minister of GAD and the Chief Minister at that relevant time. The applicant also referred to the draft of the.....

the D.O. No.A-60011/16/99-GAD dated 12.11.1991 which he put up to the Chief Minister of Mizoram and the same was finally sent by the Chief Minister to the Governor of Meghalaya, wherein the Chief Minister impressed upon the Governor of Meghalaya to personally intervene in the matter and have the land released from the acquisition proceedings so that the Government of Mizoram could acquire the land for the long-felt need of a VIP Guest House at Shillong.

6. Mr K.P. Pathak, learned Sr. Counsel for the applicant assisted by Mr S.K. Sharma and Mr Dhrubajyoti Pathak, mainly assailed the proceeding on two grounds. The learned Sr. Counsel, firstly contended that the very initiation of the departmental proceeding initiated by the Ministry of Home Affairs is wholly unsustainable in law. Pointing to the provisions of the All India Service, (Discipline and Appeal) Rules, 1969, more particularly Clause (c) (i), (e) of the Definition Clause contained in Rule 2 of the Rules as well as Rule 7 of the said Rules, the learned Sr. Counsel contended that it is the State Government alone or in the alternative the Joint Cadre Authority of AGMU which was the competent authority to initiate the proceeding and not the Home Ministry. The learned Sr. Counsel in support of his contention also referred to the decision of the Principal Bench of the Central Administrative Tribunal in O.A.No.967 of 1992 and O.A.No.1426 of 1992 disposed of on 8.1.1993 and specifically ruled out that the Ministry of Home Affairs was the competent authority to initiate departmental proceeding against AGMU Cadre.

7. Mr A. Deb Roy, learned Sr. C.G.S.C., on the other hand referred to the Notification No.11026/2/94-AIS(II) dated 25.4.1995 issued by the Government of India, Ministry of Personnel, P.G. and Pensions constituting the Joint Cadre Authority for the IAS etc. of Arunachal Pradesh-Goa-Mizoram-Union Territories. Mr Deb Roy submitted that in exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951), read with sub-rule (1)

of.....

of rule 4 of the All India Services (Joint Cadre) Rules, 1972, the Central Government in consultation with the Governments of States concerned constituted the Joint Cadre Authority for the respective Services. The learned Sr. C.G.S.C. submitted that for all intents and purposes the Secretary, Ministry of Home Affairs, representing the Union Territories in respect of Indian Administrative Service and Indian Police Service is constituted as a Joint Cadre Authority of AGMU. Therefore, the Ministry of Home Affairs rightly initiated the proceeding. Section 4 of the All India Service (Joint Cadre) Rules, 1972 speaks of the committee consisting of the representatives of each of the Governments of the constituent States of the Joint Cadre Authority. Mr Deb Roy submitted that the Joint Cadre Authority representing the States of AGMU Cadre of IAS, namely the State Governments of Arunachal Pradesh, Goa, Mizoram and the Ministry of Home Affairs being the State Government in respect of Union Territories had in its meeting held in October 1989 delegated, inter alia, the disciplinary powers in respect of IAS officers of AGMU Cadre to the Ministry of Home Affairs. Mr Deb Roy further submitted that this was done strictly in conformity with the All India Service (Discipline and Appeal) Rules, 1969. In support of his ^{statement}, Mr Deb Roy also referred to the minutes of the meeting of the Joint Cadre Authority (AGMU Cadre) held in October 1989.

8. We have given our anxious consideration to the Judgment and Order of the Principal Bench of the Central Administrative Tribunal in O.A.Nos.967/92 and 1426/1994, considering the relevant provisions of law including the allocation of Business Rules framed under Article 77(3) of the Constitution it was held that it was only the Ministry of Personnel, Public Grievances and Pension which was the competent authority as far as allocation of rule was concerned. The power and authority to initiate departmental proceeding is a statutory measure meant to be exercised by the statutory authority on good and sufficient reason. A mechanism has been introduced

creating.....

creating authority to commence proceeding and impose penalty. It also defined the State Government concerned, wherein the State Government concerned in relation to a Joint Cadre Authority is defined as the Government of all the States for which the Joint Cadre is constituted. As per the Notification dated 25.4.1995 the Joint Cadre Authority for the IAS etc. for Arunachal Pradesh-Goa-Mizoram-Union Territories was constituted. The materials on record did not clearly spell out any delegation of power on the Ministry of Home Affairs. The power of drawing of disciplinary proceeding on good and sufficient reason is an essential power reposed on the Disciplinary Authority, namely the State Government. Whether the essential power can even be delegated as claimed by the respondents is very much controversial. In our considered opinion the authority to initiate disciplinary measure in the settings against the applicant by the Ministry of Home Affairs is itself doubtful. Our opinion is, however, tentative in nature and we would like to decide the application on merit.

9. The other contention of Mr K.P. Pathak, learned Sr. Counsel for the applicant, is that the respondent authority acted with impropriety and indiscriminately in initiating the departmental proceeding on the applicant. The learned Sr. counsel submitted that, admittedly, the alleged misconduct was allegedly committed during the period 1990-1992 and the respondents sat over the matter and just on the penultimate day of retirement of the applicant the respondent authority with oblique motive initiated the departmental proceeding. The learned Sr. counsel submitted that the initiation of departmental proceeding against the applicant on the basis of the materials on record is unjust and unreasonable and therefore, unlawful. In support of his contention, the learned Sr. counsel for the applicant referred to the decision of the Supreme Court in Bani Singh Vs. Union of India, reported in AIR 1990 SC 1308 and also the decision in State of A.P. Vs. N. Radhakrishnan reported in (1998) 4 SCC 154. Mr A. Deb Roy, on the other hand,

submitted.....

submitted that the respondent authority initiated departmental proceeding lawfully on the basis of materials on record. Mr Deb Roy submitted that the delay by itself would not vitiate a proceeding in the absence of any illegality. Mr Deb Roy submitted that the power of initiation of departmental proceeding rested on the respondents and the respondents on consideration of the materials on record initiated the departmental proceeding and the applicant was provided with all the opportunity permissible under the law. Since there were grounds for initiation of departmental proceeding, which were of serious nature, for fitness of things the Disciplinary Authority is required to complete the enquiry, where the applicant will get all the opportunity to vindicate his innocence.

10. There is no dispute on the issue that the power of initiation of disciplinary proceeding is vested upon the State and its instrumentalities. But, all power has its legal limits. Arbitrary exercise of power and unfettered discretion are what the Courts refuse to countenance. Statutory power is to be exercised reasonably and in good faith for proper purposes only on right and lawful considerations. The power can only be used for valid and lawful purpose. Unfettered Governmental discretion is anathema. The alleged misconduct imputed on the applicant dated back to 1990-1992. These matters were known to the authority when the alleged misconduct was committed. The Disciplinary Authority did not act upon it. All governmental actions are to be taken justly, fairly and reasonably. As per the constitutional scheme a delinquent employee also has a right for expeditious disposal of a disciplinary proceeding instead of putting him to undergo mental anxiety and pecuniary losses. Gratuitous interference with the rights of Government servants is also not permissible. The alleged charges are simple in nature without any complexity. No explanation for the delay came forth accounting the same. The applicant was not in any way responsible for the delay. The ratio of the decisions rendered by the Supreme Court in Bani Singh (Supra) and N. Radhakishan (Supra) are aptly

applicable.....

applicable. On perusal of the materials on record it appears that the Government of Mizoram took a conscious decision for the Mizoram House in Shillong in the year 1989, long before the applicant came into the picture. The imputation against the applicant was for approving the arrangement mentioned in Annexure-I to the Memorandum dated 30.1.2001, as the Chairman of the State Purchase Advisory Board. The State Purchase Advisory Board was the creation of the State Government and decisions were taken for purchase of the very land itself at the level of the Chief Minister. The Chief Minister in his D.O. letter addressed to the Government of Meghalaya requested for personal intervention in the matter and get the land released from the acquisition proceedings so that the Government of Mizoram could acquire the land for their long-felt need of a VIP Guest House in Shillong. The applicant in his written statement made before the authority specifically brought the attention of the authority to the whole gamut of the subject matter disclosing that all those actions were taken bonafide with the full authority of the Government of Mizoram. No materials were furnished before us countering those claims. As a matter of fact the respondents in the written statement did not dispute that all those arrangements were made with the knowledge and approval of the Government of Mizoram. The payment of Rs.23.00 lakhs in advance was made to the vendor with the knowledge and authority of the persons incharge. The advance in question alongwith the interest was also recovered by the Government long before the initiation of the proceeding against the applicant. In the background of the tribal society and the tribal ethos, not translating the transaction through a proper instrument cannot by itself be said to be improper in the tribal areas. The Land Acquisition Act of 1884 is not the only mode of acquisition of property. Outright purchase is also a mode for acquisition of property. Transfer of property means conveyance of land of one person to another which includes gifts, sale, exchange lease, mortgage lease etc. or any other permissible mode of transfer. The Meghalaya Transfer And Land Acquisition Act, 1971

was.....

was enacted for the protection of the Scheduled Tribes therein. Drawing of an instrument for providing advance was a ministerial act, required to be performed by the concerned officer when the advance was made. It was not the function of the Chief Secretary-cum-Chairman of the Advisory Board.

11. The statement of imputation of misconduct in support of the articles of charge itself indicated that in the matter of purchase of land all the concerned authorities including the Governments of Mizoram and Meghalaya were participatories. The note placed by the Chief Secretary was approved by the Minister, GAD/Chief Minister. In the decision making process the respondents faltered in the interpretation of Meghalaya Transfer of Land Regulation Act, 1971 (Meghalaya Act I of 1972). As mentioned the Act was enacted to regulate transfer of land in Meghalaya for protection of the interest of the Scheduled Tribes therein. Section 3(1) of the Act enjoined that no land in Meghalaya shall be transferred by a tribal to a non-tribal or by a non-tribal to another non-tribal except with the previous sanction of the competent authority. By Act I of 1978 a proviso was introduced by which the Government of Meghalaya, if satisfied, may from time to time, by notification, prohibit such transfer of land within such area or areas as may be specified in the notification and thereupon the competent authority shall not sanction any such transfer of land under the provision of the Act within such area or areas. In pursuance thereto Notification No.RDS 11/76/187 dated 7.6.1978 was made and gazetted in the Extra Ordinary Gazette dated 8.6.1978. By the notification, amongst others the areas within the East Khasi Hills District except the areas to which the Act aforesaid did not apply were indicated. Needless to state that the Act does not apply to the cantonment and normal areas of Shillong Municipality, i.e. Police Bazar, Jail Road and General Ward (European Ward). Section 11 of the Act carved out an exemption, which also exempted any transfer of land to or in favour of the Government or District Council. The Act specifically did not include other Governments. As per Clause (30) of Section 3 of the Meghalaya Interpretation and General Clauses Act, 1972, 'Government' or 'the Governments' includes the State Government as well as the Central Government. Clause (64) of Section 3 defines

State,.....

State, which means a State specified in the Constitution and includes a Union Territory. The clause under Section 11 is not to be confined only to the Government of Meghalaya. Mizoram is also a tribal State. The Act also envisaged transaction with previous sanction of the competent authority. Admittedly, as mentioned earlier all those who were basically concerned in such transaction participated. The Government of Meghalaya at all relevant times was taken into confidence by the Government of Mizoram. On the background, the role played by the applicant as the Chief Secretary to the Government of Mizoram and Chairman of the State Purchase Advisory Board, on the materials on record cannot be said to be unlawful. The very nomenclature of the Board as 'Advisory Board' is of advisory character subject to approval by the Government. In the instant case those actions were, admittedly approved at the highest level. As held earlier the discretion reposed on the authority is not an unfettered one. In the exercise of discretion the authority is to act according to rules and act justly, lawfully and fairly. It cannot be arbitrary, vague and fanciful. It must be legal and regular. Those who are charged with a discretion must exercise the same on reasonable grounds. The authority is duty bound to act lawfully without abusing the discretion. Oppressive and gratuitous interference with the rights of a Government servant is not permissible under the Constitution set up. The respondent authority while exercising its discretion took into consideration irrelevant and extraneous consideration overlooking the relevant consideration. The date of superannuation of the applicant was 31.1.2001 and the same was known to all concerned including the respondent Nos.1 and 2. The said respondents nowhere explained as to the reasons for the delay in initiating the proceeding by assigning any ostensible reason. The Mizo society is a tribal society and tribal ethos and customs dominate the members of the Mizo society. Therefore, transactions with one another in that context was to be taken in the setting of the society.

12. Law and behavioural pattern in the Society also depends on the wider canvas of the community. "In the broadest sense, law is simply any recurring mode of interaction among individuals and groups, together with more or less explicit acknowledgement by these groups and individuals that such pattern of interaction produce reciprocal expectations of conduct that ought to be satisfied", as was observed by the Contemporary Jurist R.M. Unger, in his writing in "Law in Modern Society" - "There are two sides to the concept of law as interaction, each corresponds to an aspect of a traditional notion of custom. One element is factual regularity in behaviour. The other dimension is normative", said the author. Custom lacks the attribute of positiveness, it consists of implicit standards of conduct rather than of formulated rules. These standards are mostly tacit, though often highly precise, guidelines for how an individual of certain status and rank ought to act towards one of different or similar rank in a particular situation. They determine, what one should expect from one's kinsman in a variety of circumstances and what in turn may and will demand of her or him.

13. The area in which the alleged acts were said to be committed, the persons and the settings associated is one of the area where the ordinary laws of the land are not made applicable because of the historical necessity. The areas were earlier described as Backward tracts, Excluded areas and specifically administered. Two main codes, viz. the Criminal Procedure Code (except few chapters), the Civil Procedure Code are not made applicable. The application of the General Acts of the law are also barred, e.g. by notification under Section 2 of Assam Frontier Tract Regulation, 1880 (Act 2 of 1880) the application of the Transfer of Property Act was barred in the erstwhile Khasi and Jaintia Hills, Mokokchung of the State of Nagaland, Mikir Hills Tract. The Lushai Hills District (Predecessor of the Mizoram State) was constituted on 1.4.1898 by Notification vide No.920 dated 1.4.1898 under Section 2 of the Assam Frontier Tracts Regulation.

All.....

All the laws including this Regulation then in force in the tract were repealed at first and then again under Section 3(a) of the Scheduled Districts Act 1874 the same was reapplied to the Lushai Hills District vide Notification No.921 P dated 1.4.1898.

14. The nature and extent of the law applicable in these areas are pithily reflected in two of the decisions of the Supreme Court. In Guramayum Sakhi Gopal Sarma V.K. Onghi Anisija Devi, Civil Appeal No.659 of 1957 decided by the Supreme Court on 9th February 1961 in connection with the Civil Procedure Code, where the Supreme Court applied the spirit of the code and not the letters of the C.P.C. IN the State of Nagaland Vs. Ran Singh, reported in AIR 1967 SC 212, the Supreme Court was called upon as to the extent of the application of the Cr.P.C., wherein the Constitution Bench extensively discussed as to the development and growth of law in the area. In this context, it would be appropriate to refer to the following passages from the said decision:

"..... We mustnot forget that the Scheduled Districts Act was passed because the backward tracts were never brought within the operation of the general Acts and Regulations (particularly the Criminal Procedure Code) and were removed from the jurisdiction and jurisdiction of the ordinary courts of Judicature....."

"Laws of this kind are made with an eye to simplicity. People in backward tracts cannot be expected to make themselves aware of the technicalities of a complex Code. What is important is that they should be able to present their defence effectively unhampered by the technicalities of complex laws. Throughout the past century the Criminal Procedure Code has been excluded from this area because it would be too difficult for the local people to understand it. Instead the spirit of the Criminal Procedure Code has been asked to be applied so that justice may not fail because of some technicality. The argument that this is no law is not correct. Written law is nothing more than a control of discretion. The more there is of law the less there is of discretion. In this area it is considered necessary that discretion should have greater play than technical rules and the provision that the spirit of the Code should apply is a law conceived in the best interest of the people. The discretion of the Presiding Officer is not subjected to rigid control because of the unsatisfactory state of defences which would be offered and which might fail if they did not comply with some technical rule. The removal of technicalities, in our opinion, leads to the advancement of the cause of justice in these backward tracts. On the other hand, the imposition of the Code of

Criminal.....

Criminal Procedure would retard justice, as indeed the Governors-General, the Governor and the other hands of local Government have always thought. We think, therefore, that Art. 21 does not render the Rules of 1937 ineffective."

15. Discretion necessarily implies good faith in the discharge of the public duty. There is always a perspective in-built in the statutory exercise of power to act justly, fairly and reasonably. All India Service (Discipline and Appeal) Rules, 1969 clothed on the prescribed authority the disciplinary power of imposing penalties prescribed in Part III of the Rules for good and sufficient reasons. When discretionary power is to invade upon individual rights to be exercised, factors to be determined in deciding what justice and fairness needs on the exercise of power including the nature of interest to be affected, circumstances in which the power falls to be exercised and the nature of the sanctions. Fair procedure also involves reasonable measure within the reasonable time. Public interest as well as individual interest does not countenance indolence and torpidity. It is not to be used as a vehicle of oppression. Scope of exercise of public power cannot be looked into in isolation from the general principles governing the exercise of power in constitutional democracy. Decisions which are extravagant or capricious cannot be legitimate. A decision based on considerations which have been accorded manifestly inappropriate weight is not a lawful decision. The factors mentioned in the earlier paragraphs though relevant were not taken into consideration. No reasons, not to speak of good reasons, were also ascribed for the incomprehensible delay, lacking ostensible logic for lingering over the matter. On the facts the impugned action of the respondents on the eve of the retirement of the applicant is unduly perverse subjecting the applicant to enormous hardship as well as needlessly burden some infringement of his right. De Smith, Woolf and Jowell in its treatise on "Judicial Review of Administrative Action" (5th Edition) observed that "official decisions may be held unreasonable when they are unduly oppressive because they subject the complainant to an excessive hardship or an unnecessarily onerous infringement of his rights and interests....."

The.....

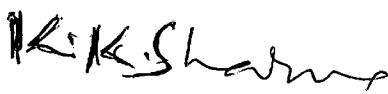
The focus of attention in these cases will be principally the impact of the decision upon the affected person. The outcome or end product of the decision making process will thus be assessed..... Since the claim is essentially abuse of power, in the sense of excessive use of power....." (paras 13-046; 13-047)

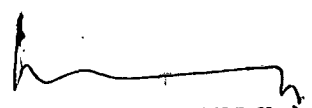
16. From the conspectus it thus emerges that the decision maker in the decision making process has taken into consideration as facts, something which was patently wrong; perversity writ large. It has misunderstood law as well as the fact upon which the decision is based. Admittedly, materials those were taken as a whole did not support the findings of the fact. The respondent authority fell into error in its decision making process by taking irrelevant considerations overlooking relevant considerations that affected the ultimate decision. The unexplained delay in the facts and circumstances of the case also amounted to an abuse of the process.

17. On an overall consideration of all aspects of the matter we are of the opinion that the impugned departmental proceeding initiated by the respondents is unlawful and unjustified. Article 14 strikes on arbitrariness in the State action and ensures fairness and equality of treatment. Where an act is arbitrary it is also unfair and unequal and therefore, it is contrary to the scheme of Article 14 of the Constitution of India (Reference: E.P. Rayappa Vs. State of Tamilnadu, reported in AIR 1974 SC 555 and Smt Maneka Gandhi Vs. Union of India and others, reported in 1978 SC 597).

18. For all the reasons the impugned departmental proceeding initiated against the applicant vide Memorandum No.14033/27/95-UTS dated 30.1.2001 communicated by the Deputy Secretary to the Government of India, Ministry of Home Affairs, New Delhi is set aside and quashed.

19. The application is allowed with costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
(An application under Section 17 of the Central Administrative
Tribunal Act, 1985.

Title of the Case : O.A. NO. 228 OF 2001

Sri Fama PahnemaApplicant.

-VERSUS-

The Union of India + orRespondents.

I N D E X

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11.	Annexure - 9	—
12.	Annexure - 10	—

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Date of Filing.

misconduct. (Annexure 2 Page No 14.)

(ii) Order under Memo No.14033/27/95-UTS dated 1/6/95 issued by the Deputy Secretary to the Government of India, Ministry of Home Affairs appointing Inquiring Authority, inquire into charges framed against the applicant. (Annexure-4 Page No. 045)

2. JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION:

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

4. FACTS OF THE CASE:-

4.1 That the applicant is a citizen of India and permanent resident of Aizawl, Mizoram and as such he is entitled to all the rights and protection guaranteed under the Constitution of India and the laws framed thereunder.

4.2 That the applicant was appointed to the Indian Administrative Service (AGMU cadre) by direct recruitment in the year 1965 and joined as Assistant Commissioner at Tezpur and Jorhat, Assam, in the year, 1966. Thereafter, the applicant served in various capacities at different places of posting and in the year 1990, the applicant was appointed as Chief Secretary to the Government of Mizoram in which post he continued till 1993. Thereafter, the applicant was appointed as Managing Director, DSFDC Ltd. cum Principal Secretary

4/2/01
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
(An application under Section 19 of the Central Administrative Tribunal Act, 1985.)

O.A.NO. 238 OF 2001

BETWEEN

W
1. Sri Fanai Pahnuna,
Son of Late F. Sawikunga,
Resident of Chanmari, Aizawl
District : Aizawl, Mizoram.
...Applicant.

AND

1. The Union of India,
Represented by the Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-1.
2. The Deputy Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-1.

.....Respondents.

DETAILS OF APPLICATION

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

(i) Memorandum No.14033/27/95-UTS dated 30/1/2001 issued by the Deputy Secretary to the Government of India, Ministry of Home Affairs proposing to hold inquiry against the applicant alongwith statement of charge and statement of imputation of

Contd ...p/

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(SECRET). Government of NCT of Delhi in 1994 and he continued in the said post till 1998.

4.3 That in the year 1998, the applicant was appointed as Member (full time), Public Grievances Commission, Government of NCT of Delhi and the applicant retired from Government Service on 31/1/2001.

A copy of the Notification dated 2/2/2001 notifying the retirement of the applicant from service is annexed herewith and marked as ANNEXURE - I

4.4. That on the day prior to his retirement, the applicant was served with a Memorandum dated 30/1/2001 issued by the Deputy Secretary to the Government of India Ministry of Home Affairs informing the applicant that it is proposed to hold an inquiry against him under Rule 8 of the All India Services (Discipline and Appeal) Rules 1942. Along with the said Memorandum, the statement of Article of charges, a Statement of imputation of misconduct or misbehaviour and a list of document and witnesses were also enclosed.

The Statement of Article of Charge as framed against the applicant stated that the applicant, while working as Chief Secretary to the State Government of Mizoram and the Chairman of the State Purchase Advisory Board of the Govt. of Mizoram during the period 1990-1992 committed gross misconduct in the matter of purchase of a plot of land located at Shillong, owned by his sister in law, for the purpose of setting up the Mizoram House at Shillong. It is pertinent to mention herein that there was no purchase of land as alleged in the Article of Charge and only during the tenure of the applicant a proposal was mooted to purchase the plot of land in question which was eventually dropped.

It was further stated therein that by the said acts of

commission and omission, the applicant exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a public servant and thereby violated Rule 3 (1) of All India Services (Conduct) Rules, 1968.

A copy of the aforesaid Memorandum dated 30/1/2001 along with the Statement of Article of Charge and Statement of Imputation of Misconduct are annexed herewith and marked as ANNEXURE-2.

4.5 That the applicant submitted his written statement of defence dated March, 2001 categorically denying all the charges made against him. In the said written statement the applicant answered in detail, along with documents, all the charges made against him. The applicant also raised objection as to the jurisdiction of the present Disciplinary Authority to institute proceedings against him. The applicant further stated therein that the decision to purchase the plot of land/building for the purpose of establishing the Mizoram House at Shillong was taken by the State Government long before the applicant joined (more than one year) and the recommendation for purchase of the plot of land in question was the collective decision of the State Purchase Advisory Board and the said recommendation was duly approved by the Govt. of Mizoram.

A copy of the written statement of defence dated March, 2000 is annexed herewith and marked as ANNEXURE-3.

4.6 That thereafter, the Respondent No.2 issued the impugned order under Memo No. 14033/27/95-UTS, dated 1/6/2001 stating that whereas the Central Government considers that an Inquiring Authority should be appointed to inquire into the charges framed against the applicant, the Central Government in exercise of powers conferred by Sub-Rule 2 of Rule 8 of the AIS(D & A) Rules, 1969 appoints Sri Ashok Lakhanpal, CDI,

Contd....p/

[5]
Central Vigilance Commission as the Inquiring Authority to inquire into the charges framed against the applicant.

A copy of the aforesaid Order dated 1/6/2001 is annexed herewith and marked as ANNEXURE-4.

4.7. That the applicant states that the aforesaid impugned orders initiating proceedings against the applicant and appointing Inquiring Authority to inquire into the charges framed against the applicant are illegal and without authority of law as the Ministry of Home Affairs or the Central Government is not the competent authority to institute proceedings against the applicant as the acts or omission imputed to him relates to the period while the applicant was serving in connection with the affairs of a State namely the State of Mizoram and hence, only the State Government of Mizoram is competent to institute such proceedings against the applicant.

4.8. That in the aforesaid context, your applicant states that in the year 1998, when the Central Govt. in the Ministry of Home Affairs, inquired about alleged irregularities in the aforesaid purchase, the Govt. of Mizoram through the Chief Minister informed the Home Minister of the Govt. of India that the decision to purchase was taken by following the due procedure and was a collective decision of the Government at the highest level in the larger public interest. This was informed by a D.O. letter dated 2/9/1998 of the Chief Minister of Mizoram addressed to the Home Minister of the Govt. of India. Thereafter, to your applicant's knowledge, the Central Govt. in the Ministry of Home Affairs accepted the explanation of the Govt. of Mizoram and also after a careful verification of the whole procedure through the Central Vigilance Commission decided not to proceed in the matter.

4.9. That the applicant states that the impugned Memo-

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random dated 30/1/2001 proposing inquiry relates to alleged acts and omissions on the part of the applicant in the remote past, in the year 1990-92 i.e., 10 years ago. Thus there has been inordinate delay on the part of the authorities in initiating the proceedings for which there is sufficient explanation and hence, the impugned proceedings are liable to be set aside and quashed.

4.10 That the applicant states that the charges framed against the applicant and the imputation of misconduct or misbehaviour are false, baseless and malicious and the same cannot stand scrutiny in the eye of law.

4.11 That in view of the aforesaid proceedings, the applicant states that the applicant has not been given his service gratuity and also has not been allowed to commute his pension. He is only being paid provisional pension.

4.12 That the applicant states that the impugned proceedings are without jurisdiction and hence, liable to be set aside and quashed.

4.13 That it is respectfully submitted that it is a fit case where this Hon'ble Tribunal may be pleased to intervene in the matter in an appropriate manner and grant the reliefs as prayed for by the applicant. If the same is denied the applicant would suffer irreparable loss and injury.

4.14 That there is no other adequate equally efficacious alternative remedy available and the reliefs sought for, if granted would be just, proper and adequate.

4.15 That the applicant demanded justice and the same was denied to him.

4.16 That this application is filed bonafide and in the

interest of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that, the Central Government acting through the Joint Cadre Authority, Ministry of Home Affairs has jurisdiction to institute an inquiry and appoint an Inquiring Authority for the purpose of conducting any inquiry/departemental proceedings against the applicant in respect of alleged act or omissions related to the period of service of the applicant in connection with the affairs of the Government of Mizoram. This is so by virtue of the provisions contained in Rule 7 (1)(b)(i) and Rule 2(c)(i) and Rule 2(a) of the IAS(DFA) Rules, 1969 which may be quoted as hereunder:

"7. Authority to institute proceedings and to impose penalty. (1) Where a member of the service has committed any act or omission which renders him liable to any penalty specified in Rule 6-

(a)

(b) If such act or omission was committed after his appointment to the service-

(i) While he was serving in connection with the affairs of a State or is deputed for service under any Company, association or body of individuals, whether incorporated or not which is wholly or substantially owned or controlled by the Government of State, or in a local authority set up by an Act of the Legislature of that State or the Government of that State;

2. Definition. In these rules, and in the context otherwise requires-

(a)

[8]

(b)

(c) Government means --

(i) in the case of a member of the Service serving in connection with the affairs of a State, or who is deputed for service in any company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of a State, the Government of that State;

(ii)

(d)

(dd)

(e) 'State Government concerned' in relation to a joint cadre, means the Governments of all the States for which the joint cadre is constituted and includes the Government of a State nominated by the Governments of all such States to represent them in relation to a particular matter.

From the aforesaid provisions, it is clear that it is only a State Government which can institute inquiry/proceedings against an Officer of Joint Cadre of AGMU like the applicant. The Ministry of Home Affairs which is an integral organ of the Central Government cannot come within the definition of State Government as defined in Rule 2. Therefore, the Ministry of Home Affairs cannot be legally authorised, whether by agreement amongst the states of AGMU cadre or otherwise, to function as a 'State Govt.' in terms of Rule 2 for the purpose of carrying out the provisions of Rule-7. Hence, the institution of inquiry and appointment of Inquiring Authority by the Central Government through the Ministry of Home Affairs is without jurisdiction and liable to be set aside and

Contd. 5/

quashed.

5.2 For that, even if it is assumed, though not admitted that the Ministry of Home Affairs may act and is acting as a "State Government" in the present case in terms of Rule 2 on account of the fact that in the Joint Cadre of Arunachal Pradesh, Goa, Mizoram and Union Territories, The Ministry of Home Affairs is the "State Govt." in relation to the Union Territories Cadre, the said assumption cannot hold good in view of the fact that the Ministry of Personnel, Public Grievances and Pension had issued an Order dated 28/12/1998 which states that "the Central Government, in consultation with the Governments of Arunachal Pradesh, Goa and Mizoram hereby, constitutes for the States of Arunachal Pradesh, Goa, Mizoram and Union Territories, an Administrative Service Cadre and abolishes the Indian Administrative Service cadre of Union Territories from the date of publication of the notification". Therefore, that the IAS cadre of Union Territories stands abolished and the Ministry of Home Affairs can no longer function as "State Govt." in terms of Rule 2 in connection with the service of the AGMU Cadre, notwithstanding any agreement amongst the AGMU State Governments conferring such function on the Ministry of Home Affairs. In that view of the matter, the proceedings initiated by the Ministry of Home Affairs is without jurisdiction and liable to be set aside and quashed.

5.3 For that, assuming, though not admitting that the Ministry of Home Affairs through the Joint Cadre Authority, is legally entitled to act as a "State Govt." in terms of Rule 2 (e) in respect of the AGMU cadre, but in view of the fact that the impugned order dated 1/6/2001 clearly states that :

"..... the Central Govt. considers that an Inquiring Authority should be appointed into the charges framed against

Gato...p/

the said Sri F. Pahnuna.

..... the Central Govt. in exercise of powers conferred by Sub-Rule (2) of the said Rule hereby appointsas the Inquiring Authority to inquire into the charges framed against the said Sri F. Pahnuna." , It is abundantly clear that it is the Central Govt. which has initiated the proceedings and is conducting the inquiry against the applicant and not the Ministry of Home Affairs acting as a "State Govt." and as such, the same is without any jurisdiction or authority of law and is also in violation of Rule 2 and Rule 7 of the AIS (D&A) Rules, 1969. In that view of the matter, the impugned proceedings are liable to be set aside and quashed.

5.4 For that, under Rule 7 read with Rule 2 of the AIS (D & A) Rules, 1969, it is not the Joint Cadre Authority which can institute proceedings against a member of the service. The power clearly lies with the State Government or the Central Government (in case of members serving in connection with the affairs of the Central Government) as the case may be. This is further evident from the proviso to Rule 7 (3) which says that in relation to the members of the Service borne on a Joint Cadre, the punishing Government shall consult the Joint Cadre Authority. So what is provided for is consultation with the Joint Cadre Authority. Hence, the impugned orders passed " by order and in the name of Joint Cadre Authority" is clearly without jurisdiction and hence, liable to be set aside and quashed.

5.5 For that, the Impugned Memorandum dated 30/1/2001 proposing inquiry relates to alleged acts and omissions on the part of the applicant in the remote past, in the year 1991-92 i.e., 10 years ago. Thus there has been inordinate delay on the part of the authorities in instituting the proceedings which has vitiated the same and for which there is no sufficient explanation and hence, the impugned proceed-

Contd. ...p/

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[11]

ings are liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant declares that he has exhausted all the remedies available to him and there is no alternative remedy available to him.

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

The applicant further states that no application, writ petition or suit regarding the grievances made in this instant application is pending before any Court or any other bench of this Hon'ble Tribunal.

8. RELIEFS SOUGHT FOR:

Under the facts and circumstances stated above, it is most respectfully prayed that your Lordships would be pleased to admit this petition, call for the records and upon hearing the parties and on perusal of the records be pleased to grant the following reliefs :

(I) An order setting aside and quashing the Memorandum No.14033/27/95-UTS dated 30/1/2001 issued by the Deputy Secretary to the Government of India, Ministry of Home Affairs, alongwith Statement of Article of Charge and Statement of Imputation of Misconduct against the applicant. (Annexure 2 Page No. 14.)

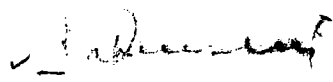
(II) An order setting aside and quashing the Order under Memo No.14033/27/95-UTS dated 1/6/2001 issued by the Deputy Secretary to the Government of India, Ministry of Home Affairs appointing Inquiring Authority to inquire into charges framed against the applicant. (Annexure-4 Page No. 45..)

VERIFICATION

I, Sri Fanai Panhuna, Son of Late F. Sawikunga, Resident of Chanmari, Aizawl, District : Aizawl, Mizoram aged about 60 years, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 1 to 12..... are true to my knowledge and those made in paragraphs XX..... being matter of records are true to my information.

I have not suppressed any material fact.

And I sign this verification on this 2nd day of July, 2001 at Guwahati.


SRI FANAI PANHUNA.

TO BE PUBLISHED IN THE GAZETTE OF INDIA, PART-1, SEC. 2

No. 14031/6/2000-~~xxx~~
 Government of India
 Ministry of Home Affairs

New Delhi-1, the 9 FEB 2001

NOTIFICATION

On attaining the age of superannuation, Shri F. P. Pahnuna, an Indian Administrative Service Officer of 1965 batch of Joint Cadre of Arunachal Pradesh-Goa-Mizoram-Union Territories has retired from service in the month of 31st January, 2001.

(K.K. Kalra)
 Under Secretary to the Govt. of India

The Manager
 Government of India Press
 Faridabad.

Copy to :

1. The Chief Secretary, Government of NCT of Delhi, Delhi Secretariat, I.P. Estate, New Delhi with two spare copies, one for the Pay and Accounts Officer concerned and another for Shri F. Pahnuna.
 2. Department of Personnel and Training (DOPT), New Delhi.
 3. Department of Personnel and Training (EO-CM), New Delhi.
- Guard File.

(K.K. Kalra)
 Under Secretary to the Govt. of India

Attested

Sanjay D. Sharma
 Advocate

No. 14033/27/95-UTS
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

North Block, New Delhi-110001
Dated, the 30th January, 2001.

MEMORANDUM

- It is proposed to hold an inquiry against Shri F.Pahnuna, IAS, (AGMU:65) under Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969. The substance of the imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure-I). A statement of imputation of misconduct or misbehavior in support of article of charge is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom, the article of charge is proposed to be sustained are also enclosed (Annexure III & IV).
2. Shri F.Pahnuna is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.
 3. He is informed that an inquiry will be held only if the said article of charge is not admitted. He should, therefore, specifically admit or deny each article of charge.
 4. Shri F.Pahnuna is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969, or the orders/directions issued in pursuance of the said rule, the Inquiring Authority may hold the inquiry against him ex-parte.
 5. Attention of Shri F.Pahnuna is invited to Rule 18 of the All India Services (Conduct) Rules, 1968, under which no member of the All India Services shall bring or attempt to bring any political or other influence to bear upon any superior authority to further interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri F.Pahnuna is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 18 of the All India Services (Conduct) Rules, 1968.
 6. The receipt of this Memorandum may be acknowledged.

For and on behalf of the Joint Cadre Authority



(Satya Gopal)

Deputy Secretary to the Govt. of India


To
Shri F.Pahnuna, IAS,
Member Public Grievances Commission,
Govt. of NCT of Delhi.

Attested
Ranjana M. Parnan
Advocate

Copy forwarded to :-

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- i) Shri P.S.Bhatnagar, Chief Secretary, Govt. of NCT of Delhi.
It is requested that a copy of this Memorandum may be served on Shri F.Pahnuna positively before 31st January, 2001.
- ii) Shri Ashok Lakhanpal, Director, Central Vigilance Commission, Satrakata Bhavan, GPO Complex, Block-A, INA, New Delhi with reference to their OM No. Aa-DLH-31 dated 8th June 2000.
- iii) M.H.A.(Vigilance Cell), with reference to their UO No. 2573/2000/VC, dated 22.5.2000.
- iv) Guard File



30/11/2001

(Satya Gopal)

Deputy Secretary to the Govt. of India

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST
SHRI FANAI PAHNUNA, THE THEN CHIEF SECRETARY,
GOVERNMENT OF MIZORAM.

That Shri Fanai Pahnuna, IAS, (AGMU:65), while working as Chief Secretary to the State Government of Mizoram and the Chairman of the State Purchase Advisory Board during the period 1990-1992 committed gross misconduct in as much as he in the matter of purchase of a plot of land measuring 22,100 sq.ft. (with a building constructed over it) owned by Smt. Lalparliani, his sister-in-law, located at Upland Road, Laitumkhrah, Shillong for the purpose of setting up Mizoram House approved an arrangement under which:-

- a) The said Smt. Lalparliani was made a payment of Rs. 23.00 lakhs in advance toward the cost of the said property the price for which was fixed at Rs. 58.00 lakhs in an arbitrary manner without its being assessed through the relevant channels;
- b) The deal was finalized and the advance payment made to her despite the fact that the aforesaid property had been notified by the State Government of Meghalaya for acquisition for its own use and the acquisition proceedings had not been formally withdrawn;
- c) The advance payment was made without entering into any formal agreement with her so as to ensure that the money was refunded to the State Government of Mizoram in a time bound manner in case the deal did not materialise ; and
- d) The advance payment was made without binding her under a proper agreement to pay the interest on the amount advanced to her in the event of the deal not materialising.

That from the aforesaid acts of commission and omission the charged officer Shri F.Pahnuna, the then Chief Secretary, Government of Mizoram, exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a Public Servant and thereby violated Rule 3(1) of All India Services (Conduct) Rules, 1968.

ANNEXURE-IISTATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF
ARTICLE OF CHARGE FRAMED AGAINST SHRI FANAI PAHNUNA, THE
THEN CHIEF SECRETARY, GOVERNMENT OF MIZORAM.

That Shri Fanai Pahnuna, the then Chief Secretary, Government of Mizoram, while working as Chief Secretary during the period 1990-92 took initiative for purchasing a plot of land measuring 22,100 Sq. ft. located at upland Rd. Laitumkhrah, Shillong, belonging to Smt. Lalparliani, a close relative of Shri F. Pahnuna, at exorbitant cost of Rs.58 lakhs knowing fully well that the said land had been duly notified for acquisition by the Govt. of Meghalaya for use of Meghalaya Industrial Development Corporation (MIDC).

From file No.A-60011/16/89-GAD concerned of Govt. of Mizoram, it would be seen that initially there was a proposal for purchase of land belonging to late Shri V.L. Sharma for Rs.25 lakhs plus stamp duties at Nongrim Hills as indicated in note 25-26/N dated 15.08.91. This note was submitted by Chief Secretary to Minister GAD on 15.08.91 and the Minister on 16.08.91 approved the purchase provided there were no technical/legal difficulties. The note was also approved by the Chief Minister on 17.08.91.

That another note was moved on 3/08/91 (p.28/N) stating therein that the Liaison Officer, Shillong had suggested a building of Smt. Parteei, Laitumakhrah at a cost of Rs.50 lakhs since the local body did not agree to the purchase of property at Nongrim hills for Mizoram House, Shillong. This was supported by a letter of Mizo Students Union dated 27.08.91.

On 11.09.91 another proposal was moved by Under Secretary GAD for a land belonging to Mrs. L.Wankhar at a cost of Rs.35 lakhs. Thereafter, the Chief Secretary recorded a note on 14.09.91 that he would be going to Shillong in connection with NEC discussion and would take the opportunity to see those buildings and the meeting be held for consideration of aforesaid proposal thereafter.

It has been indicated in notes at pages 33-35/N dated 21.10.91 that the inspection report of land and building of Smt. Lalparliani offered for Mizoram House at Shillong submitted by the Chief Engineer PWD was placed at p.52-53/c). From this note it can be seen that the Chief Secretary and the Development Commissioner were also present during the inspection of the said property. It is here that the things started changing in favour of Smt. Lalparliani.

From the tour note of the Chief Secretary for Sept/October, 1991 as discussed at page 39/N and placed at page 58/C it may be seen that the property at Laitumakhrah site belonging to Smt. Lalparliani was found very good but it was indicated that its availability would be known only after 20.10.1991. Page 62-C is a D.O. letter of Chief Minister of Mizoram to the Governor of Meghalaya, wherein he has requested the Governor for intervention in

the matter as the property at Upland Road, Laitumakhrah, Shillong, belonging to Mrs. Lalparliani was found suitable for Mizoram House. It was further stated that the property was occupied by MIDC and there was a proposal to acquire the property although no final decision was yet taken. The Chief Minister therefore, requested the Governor to intervene in the matter and have the land released from the acquisition proceeding so that the Govt. of Mizoram can acquire the land for the proposed Mizoram House.

Even without waiting for a proper reply from Governor of Meghalaya, it is seen from note at page 43/N that a discussion was held on 18.12.91 in connection with purchase of property for Mizoram House belonging to Smt. Lalparliani for which funds to the tune of Rs.23 lakhs were required to be diverted. The said summary record of discussion held in the office of Chief Secretary placed at page 66/C was approved by the Minister, GAD/ Chief Minister on 10.01.1992.

At page 70/C there is a note indicating the summary record of the Purchase Advisory Board Meeting held on 7/8.01.1992, presided over by Shri Pahnuna, Chief Secretary and attended by Shri Rinsanga, Financial Commissioner, Shri Thangzuala, Chief Engineer and Lalthalmuana, Commissioner, GAD, wherein decision was taken to purchase the above property of Smt. Lalparliani and to pay her an amount of Rs.23 lakhs as advance.

In terms of Provisions of the Meghalaya Transfer of Land (Regulation) Act., 1971, no land in Meghalaya can be transferred by a Tribal to a non-tribal or by a non-tribal to another non-tribal except with the previous sanction of the competent authority. Clearly, enough the Govt. of Mizoram was neither a tribal nor a non-tribal. Further, in exemptions to the provisions of this Act., it is stated that nothing in this act shall apply to any transfer of land to or in favour of Government or District Council. Here the Govt. meant only the Govt. of Meghalaya. Hence, the Govt. of Mizoram neither being a physical person, nor a government in Meghalaya for the purpose of this Act could have entered into transfer by purchase or sale under the provision of the said Act. It appears that the only way left to them was to get the proposed land acquired through acquisition under the land acquisition Act., 1894, after getting such proceedings initiated and completed by the Govt. of Meghalaya.

The action of the Chief Secretary for having called a meeting of the Purchase Board was uncalled for and both Shri Pahnuna, Chief Secretary and Shri Rinsanga, Finance Commissioner, being related to Smt. Lalparliani through their wives came to the assistance of the lady to find out and see the way to finance the Hotel project of the lady by virtue of their official position.

Shri Pahnuna had the knowledge of above facts which is also indicated in his note dated 08.11.91 submitted to Minister, GAD wherein he had clearly mentioned that the land proposed to be purchased by Govt. of Mizoram was duly notified under the Acquisition Act by the Govt. of Meghalaya. That being so there was no occasion or authority available to the Govt. of Mizoram to enter into any sort of negotiation or deal unless the said property was denotified. There is no evidence to show that the accused person took

any steps to get the land denotified without which the land could not have been contracted for purchase or sale. The position was also indicated in letter of Chief Minister of Mizoram to the Governor of Meghalaya, wherein it is mentioned that the Govt. of Meghalaya had already undertaken the acquisition proceedings. Thus, while knowing that the land is duly notified, the proceeding under-taken, the decision taken to purchase the said land was an exercise in nullity.

The decision to purchase land involved financial stake and as a result the Govt. of Mizoram parted with an amount of Rs.23 lakhs. Further there is nothing on record to show the terms of reference and constitution of the Board by the Govt. of Mizoram or legal powers of the Purchase Advisory Board in this regard. There is also nothing on record to show that the Board was authorized by the Govt. to negotiate and decide to pay an amount of Rs.23 lakhs. The whole deliberations of the Purchase Advisory Board were absolutely illegal and ultravires the powers of the Chief Secretary.

In the letter dated 12.11.91 of Chief Minister, Govt. of Mizoram to Governor of Meghalaya, Shillong, it is clearly mentioned that the building at Upland Road, Laitumakhrak belonging to Mrs. Lalparliani was in the occupation of MIDC and the corporation had a proposal to acquire the same and the acquisition proceeds had already been gone through. If that be so, the decision taken to purchase the same property was malafide and motivated with intention to cause wrongful gain without its de-acquisition by the Govt. of Meghalaya.

The Govt. of Mizoram was required to first approach the Govt. of Meghalaya to denotify the notification issued by them vide notification No.RDA/4/89/20 dated 30.04.90 before taking any other step or decision for the purchase of the said land. No. steps whatsoever appears to have been taken towards this basic legal requirement without which purchase of land in Upland Road, Shillong, whether Govt. land or freehold could not have been at all visualized.

The minutes of the said meeting had misleading facts contained therein as under :-

- (a) In the minute of the meeting it is stated that the lady had quoted a negotiable price of Rs.60 lakhs. There was no such 'quotation' on record.
- (b) In the above note of the Purchase Committee it was also mentioned that the Govt. of Mizoram was interested in acquiring the said plot of land. If that was so, negotiation by way of purchase was futile and the whole action should have been initiated for acquisition under the Land Acquisition Act., 1894., which alone permitted such acquisitions. In such cases the Meghalaya transfer of land (regulation) Act., 1971 is neither attracted nor applicable which permits purchase and sale. Thus, the note of the Chief Secretary suggesting that the Govt. of Mizoram could negotiate with the land owner was wrong and covered with ulterior motives.

(c) In the note it is further stated that Govt. of Meghalaya had agreed to release the said land. This fact is mentioned in the letter dated 18.12.91 of Secretary to the Govt. of Meghalaya addressed to Smt. Lalpariani (and not to the Govt. of Meghalaya). A photo copy of this letter was produced by her at the time of aforesaid meeting. This letter also mentioned that the said release was subject to certain conditions, inter alia, stipulating that the building would continue to be occupied by the MIDC upto 30.04.92 and this condition was also accepted by the lady in her letter dated 19.12.91. That being so, the said land could not have been in any case available to the Govt. of Meghalaya for the proposed Mizoram House before 1.5.92. Thus, the urgency shown by the Chief Secretary in the said report was artificial and unrealistic and with the sole intention to cause wrongful gain to the lady by payment of Rs.23 lakhs as advance in order to finance her for Hotel Project under construction.

(d) The Board further deliberated about the considerable escalation in the price of cost of immovable properties in the urban areas with reference to General Price Index as published by the Central Statistical Organisation in the year 1990. It was said that the increase of price from Rs.45 lakhs to Rs.60 lakhs reflected about 11% increase for the period from 1988 to Jan./92. It is a common knowledge that such price escalation are applicable to general merchandise which fact the price for the land which needed to be acquired should have been assessed by the Land Acquisition Officer as per the provisions of the Land Acquisition Act and there was no scope for any sort of negotiation or consideration of price escalation. The prices of immovable properties in a particular area are fixed by the Collector with reference to their location and gradation etc. and not with reference to rise or fall in General price Index. Thus, the justification given for higher price decided to be paid to the lady was unsound and motivated with sole intention to pay the lady as much advance as possible to cause wrongful benefit to her. The purchase committee was incompetent to decide the mode of fixation of price.

(e) The note further mentioned that the transfer of land in Meghalaya is not prohibited under the Meghalaya Transfer of Land (Regulation) Act, 1971. This was misleading and not supported by legal provisions. As stated above, the Govt. of Mizoram could not have purchased land in Meghalaya under the provision of the said Act. It could have been done under Land Acquisition Act through the Government of Meghalaya, only after denotification about such acquisition by the Govt. of Meghalaya. Thus, this portion of the note is not legally and factually correct and is misleading.

(f) The lady in her letter dated 19.12.91 addressed to the Secretary, Govt. of Meghalaya and clearly mentioned that

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the property was required to be de-acquired/ de-notified by the Govt. of Meghalaya. Unless, this was done, the Govt. of Mizoram had no locus standi either to negotiate or to decide about the purchase of the said land. Therefore, the action of purchase committee on this account knowing it well that the land is in the process of acquisition by the Govt. of Meghalaya, which has not till date been de-acquired was illegal. Thus, the decision of the purchase Committee to suggest for purchase and to pay Rs.23 lakhs to the lady was clearly a colourable exercise of authority by the accused to cause wrongful gain. No amount of assurance from either side could have changed the legal position.

(g) In the deliberations of the Purchase Committee dated 7th and 8th January, 1992 it was stated that the Chief Secretary, Govt. of Meghalaya was requested to release the said land, so that the govt. of Mizoram can negotiate with the land owner and that the Govt. of Meghalaya had agreed to release the said land. However, the available record do not show any such request either having been made to the Chief Secretary, Govt. of Meghalaya or any assurance by the Chief Secretary, Govt. of Meghalaya that the land would be de-notified by the Govt. of Meghalaya and released. This was misleading to give it a colour of official approval as to the proposed action to be taken by the Govt. of Mizoram with regard to the said land.

(h) In the note it was further stated that before finalizing the case of the property by negotiation, the Board would ascertain the status of property and basis purporting the price of Rs.60 lakhs. That being so, the State Purchase Advisory Board could not have decided to pay any advance to the lady without ascertaining the status of property. Thus, the decision of the Purchase Board to pay Rs.23 lakhs to the lady was motivated with extraneous consideration. Being an interested party, it was not proper for the Board to ask the land owner herself to certify the status of land as also its price. In any case, she was not competent to certify the same. As already stated, the method of calculation adopted for fixing the price of the land, was not in conformity with the prescribed procedure under the Land Acquisition Act.

(i) In the note of the State Purchase Advisory Board while deciding about the payment of Rs.23 lakhs as a consideration of the process of execution of sale and purchase of the said property, it was stated that if a decision was taken by the Govt. of Mizoram to purchase the land, the said land practically no longer belongs to them. If the note is read with reference to context the word 'them' stood for either MIDC or the Govt. of Meghalaya. It was a thoroughly misleading and unrealistic assertion made in the deliberations. At no stage the Govt. of Meghalaya had retraced its steps towards acquisition of the said land and by no stretch of imagination a land which is in physical possession of the MIDC and in the process of land acquisition by issue of notification, could have been taken as no longer belonging to them. The validity of the actions taken

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by the Purchase Board is also exposed in the note dated 29.4.92 wherein it is clearly stated that the land was being processed for acquisition by MIDC and the agency was going to acquire the property and the same would not be released to the Govt. of Mizoram.

(j) Further in order to cause wrongful gain to Mrs: Lalparliani there was unauthorized diversion of funds to the tune of Rs.23 lakhs. These funds were initially allotted as under:-

- Rs.8 lakhs for Mizoram House at Shillong.
- Rs.2 lakhs for Mizoram House at Guwahati
- Rs.3 lakhs for Bhairabi
- Rs.10 lakhs for Assembly Secretariat.

By diverting the funds Shri Pahnuna was successful in arranging finance to the tune of Rs.23 lakhs to the lady. The advance payment was made without entering into any formal agreement with her so as to ensure that the money was refunded to the State Government of Mizoram in a time bound manner in case the deal did not materialise and without binding her under a proper agreement to pay the interest on the amount advanced to her in the event of the deal not materialising.. The clear advantage caused to the lady is also patent from the fact that the lady enjoyed the finance and utilized it for commercial purpose without being bound to refund the funds released to her which was also not utilized for the purpose it was given for and also not being bound to pay the interest on the advance made to her within a stipulated time period. In one of the letters the lady mentioned that she was hard pressed because of the ongoing construction activity of hotel of her husband.

Thus, Shri Pahnuna, Chief Secretary devised a way to finance the lady for her Hotel Project under construction at Shillong by taking a wrongful decision. In her letter dated 10.4.92 placed at page 96-C addressed to the Minister of Industry, Govt. of Meghalaya, Smt. Lalparliani while narrating the sale of the said property with the background of agreement for sale with Govt. of Meghalaya, stated that the same was done with the sole intention to raise funds to finance her husband's Hotel Project- 'Hotel Centrepoint' and that since the Govt. of Meghalaya could not keep up their promise the Govt. has arranged for the sale of the said property to the Govt. of Mizoram due to her financial constraints to finance the Hotel Project of her husband.

The so called representation dated 27.8.91 submitted by Mizoram Student's Union requesting to purchase the very property belonging to Smt. Lalparliani was a stage managed affair and appears to be at the instance of the suspected officials to justify their actions.

The normal Secretarial practice pertaining to processing of files is that the files move from down to up. In this case, it may be seen that the note at 43/N was recorded by Shri H. Lalthlamuana, Commissioner, GAD on 18.12.91 after

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calling the file directly from Dealing Asstt. With whom it was lying since 9.12.91. Similarly, the record of meeting held in the office chamber of Chief Secretary on 7-8/1/92 was also recorded at 43N by the Commissioner, GAD on 9.1.92 after calling the file from dealing Asstt. with whom the file was lying since 20.12.91. This shows the extra interest being exhibited by the suspect officers concerned in the matter.

In note dated 29.4.92, of Under Secretary, GAD at 49/N it is clearly written that as recommended by State Purchase Board in the said meeting held on 7-8/1/92 part payment had been released but even before the purchase was made it was known that the said land was being processed for acquisition by MIDC.

After the release of the aforesaid fund, Shri Pahnuna adopted dilatory tactics to allow the lady the maximum time to avail the funds and after a lapse of more than one year only, the principal amount of Rs.23 lakhs was refunded by the lady and the interest on the said amount was paid by her only after a lapse of more than seven years. It is further in evident that the lady was asked to pay the interest also which any how she managed to pay only after a lapse of more than seven years. This shows the subsequent conduct of Shri Pahnuna who allowed the lady to utilize the funds for commercial purpose and also did not bother to take any action to recover the funds released to her along with the amount of interest due within a particular time frame.

It was also noticed that MIDC being interested in the Hotel Project of Smt. Lalparliani were interested in getting it financed. This appeared to be the background of the letter of Secretary to the Govt. of Meghalaya. Industries Deptt. indicating no objection for the release of the property subject to certain conditions. Clearly, the intention of the Industries Deptt. was to finance the Hotel Project of the lady via Govt. of Mizoram through the purported deal by virtue of which she could raise finance of Rs.23 lakhs. This very letter was produced by the lady before the purchase committee on 8.1.92. Even though this letter would have been true, in its letter and spirit, the Govt. of Mizoram could not have laid their hands on the said property till the notification dated 30.4.90 of the Govt. of Meghalaya was in force and the letter of Secretary could not have changed this legal position.

Thus, by his various acts of Commission and Omission, the Charged Officer Shri F. Pahnuna, the then Chief Secretary, Government of Mizoram committed gross misconduct and exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of member of the Service and thereby violated Rule 3(1) of All India Services (Conduct) Rules, 1968.

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ANNEXURE III

LIST OF DOCUMENTS SUBSTANTIATING THE ARTICLE OF
CHARGE FRAMED AGAINST SHRI FANAI PAHNUNA, THE
THEN CHIEF SECRETARY, GOVERNMENT OF MIZORAM

1. File No.A.60011/16/89-GAD, Captionia, Mizoram House, at Shillong along with notesheet No.1/N to 89/N of the file No.A.60011/16/89-GAD of Mizoram House at Shillong.

The following letters/correspondence of the file are cited:-

- (1). Letter No.A.45011/1/87-LO(SH)/80 dated 5.4.89 of L.O., Govt. of Mizoram at Shillong addressed to Secretary, GAD, Mizoram.
- (2). Letter No.NMPMC/1/89/112 dated 2.6.89 of Local Mizo Community at Shillong addressed to Chief Minister, Mizoram.
- (3). The Minutes of the Works Advisory Board held at Office Chamber of Chief Secretary, Mizoram on 31.7.89 at 11 A.M. with Shri Lalkhama, C.S., Mizoram in the Chaer, P-9 of file.
- (4). D.O. letter No.A.60011/6/18-GAD dated 18.8.89 of Shri Lalkhama, IAS, Chief Secretary, Mizoram to Shri V. Ramakrishna, IAS, C.S. Govt. of Meghalaya, Shillong.
- (5). Letter No.A.45011/1/91/LO(SH) dated 5.6.91 of Liaison Officer, Mizoram at Shillong to Under Secretary, GAD, Mizoram.
- (6). Letter No.A.50011/1/91/LO(SH)/32 dated 24.7.91 of Liaison Officer, Mizoram to Special Secretary, GAD, Mizoram.
- (7). Letter No.A.50011/1/91/LO(SH)/44 dated 26.8.91 of Shri John DHINGA, Liaison Officer, Govt. of Mizoram, Aizawal to the Commissioner, GAD, Mizoram on purchase of Building at Mizoram House at Shillong intimating that the building obtaining of Mrs.Parteii at Leimukrah, Shillong, available with sale at Rs.50 Lakhs page 4 & 40 of the main file.
- (8). Representation of Mizo Students Union, Shillong to the Chief Minister, Mizoram dated 27.9.91-35 to 37 of the file.
- (9). Letter dated 15.9.91 for holding meeting of State Purchase Advisory Board P-39 to 45 of the file.
- (10). Letter No.46 dated 28.8.91 of L.O. Mizoram at Shillong to the Commissioner, GAD.

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- (11). Letter No.BDG/147/87/NON dated 21.10.91 submitted by K.Thangzuala, C.E., PWD to the Commissioner/Secretary, PWD Mizoram of his inspection of land and building offer from Mizoram House at Shillong P-52 to 53 of the main file.
 - (12). Two note of Shri F.Pahnuna, C.S. Mizoram Page-53 to 54 of the main file.
 - (13). D.O. letter of the Chief Minister Mizoram to his Excellency Governor, Meghalaya.
 - (14). Summary record and discussion in the office of C.S. in connection with purchase of land/building for Mizoram House at Shillong and Guwahati P-66 to 67.
 - (15). Letter No.IND.159/91/57 of Shri A.K. Srivastava, IAS, Secretary to the Govt. of Meghalaya, Smt. Lalparliani, land owner Page 68.
 - (16). Reply to above Page.68(B).
 - (17). Summary record of the State Purchase Advisory Board meeting held at 10 A.M. on 7th and 8th January 92 for considering purchase of land for Mizoram House at Shillong Page.70-73 of the main file.
 - (18). Letter No.C/Plan/CE-23/90/Pt/MON dated 29.1.92 of Chief Engineer to S.E. PWD, Central Circle, Mizoram Page.83 and 84 of the main file and reply to it Page.86-88.
 - (19). Letter No.A.50011/92-LO(SH)/9 dated 29.4.92 of Shri N.L. Chakma to Commissioner, GAD, Mizoram on dispute over the plot of land and building both for the Mizoram House at Shillong Page.93 and 94 of the file.
 - (20). Letter No.nil dated 10.4.92 of Smt.Lalparliani to Meghalaya Minister of Industries Page.96 of the file.
 - (21). Letter No.MIDC(Gen.)/95-92/315 dated 2.5.92 on the status of land/property Kismat at Leithumkhrah, Shillong.
 - (22). Letter No.203/89/PE dated 4.5.92 of Spl. Secretary, Meghalaya to Managing Director MIDC, Shillong, P-98 and 99.
 - (23). Letter No.Gen./95/92/360 dated 8.5.92 of Managing Director MIDC Page 100-101.
 - (24). Letter dated 7.7.92 of Chief Engineer, PWD, Mizoram to Secretary GAD, Mizoram Page 102 and 103.
 - (25). Letter concerning position of land purchase at Shillong for construction of Mizoram House Page 105 to 106.
 - (26). Technical sanction/fund relocation etc. P.107-110.

- (27). Letter dated 24.11.92 of Under Secretary FAD Mizoram to Smt. Lalparliani Shillong directing to refund the advance payment Page 111 and 112 and reply to it on page 113.
- (28). Letter No.nil (Regd.) dated 21.11.92 of land owner to M.D., MIDC Shillong release of property Page 114.
- (29). Letter No. Nil dated 28.2.92 of Smt.Lalparliani to Under Secretary, GAD, page 117-118.
- (30). Paper clipping of the paper Senhri 30.3.93 page 120-122.
- (31). Letter No.nil dated 4.5.93 of Lalparliani for refund of 23 lakhs addressed to Under Secretary, GAD Mizoram P.123 and 128.
- (32). Letter No.A.50011/1/92-LO(SH)/92 dated 28.5.93 of S.L.O. on recovery of advance from Lalparliani and acknowledgement to it Page 129 and 131.
- (33). Letter No. nil dated 30.6.93, 5.7.93, 6.7.93 of Lalparliani on refund of advance, page 133A to 133C.
- (34). Details regarding recovery of amount advance to Mrs. Lalparliani, Shillong page 141.
- (35). Treasury Challan No.63B on refund Page 143.
- (36). Correspondence between Mrs.Lalparliani and Minister, Government of Mizoram on refund of advance of Rs.23 Lakhs and request for waiving of interest, page 158 to 160.
2. Letter No.MIDC(Gen.)/95/92/288 dated 10.6.94 of M.D.,MIDC Shillong.
3. Extract from the Minutes of the 86 meetings of the Board of Directors of MIDC Ltd. held on 9.9.1988.
4. Attested photocopy of Govt. of Meghalaya notification dated 30.4.1990.
5. Photocopy MOA U/s.41 of Land Acquisition Act 1894 between MIDC and Govt. of Meghalaya
6. Agreement dated 13.9.88 between MIDC and Lalparliani.
7. Letter No.nil dated 9.12.91 of Lalparliani to C.S. Meghalaya.
8. Letter No.LIA/5/(AO)88/52 dated 2.5.92 of DC, Revenue, Shillong to the Director MIDC Meghalaya.

ANNEXURE IV

LIST OF WITNESSES TO SUBSTANTIATE THE ARTICLES OF
CHARGE FRAMED AGAINST SHRI FANAI PAHNUNA, THE
THEN CHIEF SECRETARY, GOVERNMENT OF MIZORAM.

1. Shri Lalmalsawma, IAS, Secy to the Govt. of Mizoram, GAD.
2. Shri Tamlallohar, Superintendent, GAD, Mizoram.
3. Shri John Tlangdingluaia, ADC, Saiha, Chintuipui distt., the process of acquisition then Liaison Officer, Mizoram at Shillong.
4. Shri N.L. Chakma, Director, DRDA, Saiha, the then Liaison Officer, Mizoram at Shillong & also Under Secy. GAD.
5. Shri J.R. Myrbock, Managing Director, MIDC, Meghalaya, Shillong.
6. Shri N.M. Singh, Dy. Supdt. of Police, CBI, SPE, Silchar.
7. Shri D.B. Desai, DSP, CBI, SPE, Bangalore.
8. Shri L. Hangshing, SI, CBI, SPE, Silchar.



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The Secretary to The Govt. of India
Ministry of Home Affairs
North Block
New Delhi

Sir,

Respectfully, I am to refer to the Memorandum No. 14033/27/95-- UTS dated the 30th Jan. 2001 and have to make the following submissions for your kind consideration:-

1. That I am an officer belonging to I.A.S. Cadre of AGMU of 1965 batch and was holding the post of Member, Public Grievances Commission Government of NCT of Delhi, when the impugned Memorandum was served on me on 30th of Jan. 2001, only one day in advance of my superannuation i.e. my retirement falling on 31-01-2001.
2. That the impugned Memorandum intends to castigate me for an alleged misconduct having been allegedly committed by the undersigned during the period 1991-92 when I was posted as Chief Secretary to the Government of Mizoram and functioned as Chief Secretary of the Mizoram State for the period, 1990-1993.
3. That the allegations made in the Memorandum negates my whole service ideals and has been targeted to take away the very ethos of my service – career. That I am privileged to mention that I have althrough my career guided myself with the high ideals and dignity of the cadre and not a single slipshod ever occurred during my entire career and my performance has all along been par-excellence and I have blissfully maintained the dignity of the cadre and have observed a discipline befitting the most prized officer belonging to the All India Service. Despite the same the Memorandum under reference served on me voluntarily a day before my retirement has marred my entire brilliant service career and has dented my retirement.

Attested
Lanjee M. Sharma
Advocate

4. Sir, I am to draw your kind attention to the provisions as stipulated in Rule 7 (b) (1) of the All India Services (Discipline and Appeal) Rules 1969 which reads as:
- "7. Authority to institute proceedings and to impose penalty :-
(b) If such act or omission was committed after his appointment to the service -
(i) While he was serving in connection with the affairs of a state or is deputed for service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a state, or in a local authority set up by an Act of the Legislature of that state, the Government of that State".
5. Sir, it may be appreciated that a great prejudice has been caused to me by not following the provisions of the relevant rules in the matter of Disciplinary Authority.
6. The alleged allegations constituting the misconduct relate to the purchase of a plot of land measuring 22,100 sq.ft. (with a building constructed over it) owned by Smt. Lalparliani, a sister in-law of the undersigned. The location of the plot was at Upland Road, Laitumkhrah, Shillong and was for the purpose of setting up Mizoram House.
7. The brief facts as alleged in the Memorandum are as under :
- a) The said Smt. Lalparliani was made a payment of Rs. 23,00 lakh in advance toward the cost of the said property the price for which was fixed at Rs. 58.00 lakhs in an arbitrary manner without its being assessed through the relevant channels;
- b) The deal was finalized and the advance payment made to her despite the fact that the aforesaid property had been notified by

the State Government of Meghalaya for acquisition for its own use and the acquisition proceedings had not been formally withdrawn;

- c) The advance payment was made without entering into any formal agreement with her so as to ensure that the money was refunded to the state Government of Mizoram in a time bound manner in case the deal did not materialise; and
 - d) The advance payment was made without binding her under a proper agreement to pay the interest on the amount advanced to her in the event of the deal not materialising.
8. From these allegations a conclusion has been drawn that these acts of commission or omission form an act exhibiting lack of integrity and devotion to duty and are unbecoming of a public servant alleged to have Violated Rule 3 (1) of All India Services (Conduct) Rules 1968. The relevant Rule reads as under --

"3 General-(1) Every member of the Service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the Service".

9. The reply on merits to the charges as brought out in the Memorandum under reference will establish that no act of omission or commission has been done by the undersigned which form a misconduct as defined in the Rule No. 3(1) of the All India Services (Conduct) Rules 1968 and neither any lack of integrity or devotion to duty has been shown as alleged in the impugned Memorandum.

REPLY ON MERITS

The undersigned while denying each article of charges submits the facts as they existed on records.

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10. The proposal to establish Mizoram House, in Shillong was made in the year 1989 in pursuance of a decision of the Government of Mizoram to have their own Mizoram House in Shillong and this was announced in a public meeting held on 28.02.1989 at Madanritting, Shillong. This fact is ascertainable in File No. A-60011/16/89-GAD at page 1N (A photocopy of the same is enclosed as Annexure 'A').
 11. It may be mentioned that the undersigned at that relevant period of 1989 was neither posted in Mizoram State nor had any concern with the proposal of the State Government.
 12. It will further appear from the record that as a measure of follow up, the Government of Mizoram had also taken up with the Government of Meghalaya for allotment of Government land in August 1989 vide DO No. A-60011/18/89/GAD DATED 18.08.89. A copy of the said correspondence is enclosed herewith as Annexure 'B'.
 13. The Government of Meghalaya regretted its inability to allot a Government land as there was no vacant plot available and as a result the noting in this behalf is available at Page 13N of File No. A-60011-16/89-GAD which was initiated by Secretary GAD suggesting that in view of the constraints of the Government of Meghalaya it was necessary to acquire private land/ property for the purpose of setting up a Mizoram House in Shillong. The note further mentions about a proposal as submitted by Liaison Officer Government of Mizoram posted in Shillong. This proposal was to be placed before Advisory Committee for a decision. It was further suggested that Chief Secretary may kindly consider if D.C., Aizwal, could be sent to Shillong for the inspection of the site. This was on 18/10/89 and was marked to the then Chief Secretary, Mr. Lalmanzuala, who approved the said note on 18.10.1989. It may be noted here that at that relevant time the undersigned was not the Chief Secretary. A copy of the note is annexed as Annexure 'C'.

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14. The proposal to acquire private land continued and one property located at upper Nongrim Hills, Shillong, belonging to one Shri V.L. Sharma was identified for a value of Rs. 25.00 lakhs, but the proposal did not materialise on the interference of the residents of the locality who objected the setting up of Mizoram House in a residential area. This was on 26.08.1991. A copy of the said letter is annexed as Annexure 'D'.

15. Further the Liaison Officer submitted another proposal vide his letter no. A50011/1/91-L.O. (SH)/44 dated 26.08.1991 to the Commissioner, GAD regarding availability of a building belonging to one Mrs. Partei at Laitumkhrah, Shillong. He further described that the building was big and had about 13 rooms. There was a good water connection and the location was most suitable and fell within the municipal area. The Liaison Officer had also stated that it was available at Rs. 50.00 lakhs but he had not mentioned whether this Rs. 50.00 lakhs was the offer of the owner or his own estimate. It may be of interest to place on record letter of date 27.08.1991 from the Mizo Students Union, Shillong, stating that the land belonging to Smt. Lalpariani about which the Liaison Officer had already made a proposal was suitable and therefore they had also requested the Chief Minister of Mizoram to consider the buying of the said property for the Mizoram House. A copy of the letter is annexed as Annexure 'E'. A copy of the students union letter is annexed as Annexure 'F'.

16. There was another proposal by Under Secretary GAD for a land belonging to one Mrs. L. Wankhar at a cost of Rs. 35.00 lakhs.

17. Thereafter the Chief Secretary i.e. the undersigned recorded a note on 14.09.1991 that he would be going to Shillong in connection with NEC discussion and would take that opportunity to see those buildings and the meeting be held for consideration of aforesaid proposal thereafter.

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18. The undersigned now places a copy of his note as on Page 39N and 40N and 41N giving the site wise position of each site under consideration. From the same it would be seen that:

- (a) That Nongrim Hills site belonging to one Shri V.L. Sharma had to be abandoned as the elder man of the Durbar Shnong, Nongrim Hills, had objected as no State Guest House could be set up in a residential area. (Document already annexed as Annexure 'D').
- (b) Land at Cleve Colony had a number of advantages and the same have been brought out in the note by the undersigned in his note under reference.
- (c) Land at Lower Lachumier -- but it was an old building and located in a low lying area and therefore was not very attractive.
- (d) **Land at Upland Road (Laittumkhrah)** The area of the land is 22,000 sq.ft. with Assam type building having floor area of 2700 sq.ft. (approx.) and it had 15 small rooms. The entire area is flat, buildable and was within the municipal area. The land belonged to Pi, Lalparliani and the price of the property (land and building) quoted by the owner tentatively at Rs. 60.00 lakhs negotiable. The building was at that time occupied by Meghalaya Industrial Development Corporation for their Office and the Corporation was interested to purchase the same for which acquisition proceedings have also been initiated. It was learnt that the Corporation could not go ahead in purchasing the property due to shortage of funds. The owner was, therefore, willing to sell the property to the Government of Mizoram.

The undersigned wants to place a copy of this document marked as Annexure 'G' as the same was recorded after the Joint Inspection of the Sites. The Inspection team consisted of :-

The Chief Minister (Mr. Lalthanhawla)

The Finance Minister

The Chief Secretary (the undersigned)
The Finance Commissioner
The Chief Engineer PWD
The Joint Director I&PR
The Liaison Officer, Shillong

19. The analysis made in para 18 examining the merits/ demerits, suitability/ non-suitability of each site vis-à-vis the constraints in the procurement of the individual sites have been fully elaborated in the note of the undersigned as available at P.39N, 40N and 41N of file no. A-60011/16/89-GAD. A copy of this note is appended herewith as Annexure 'G'. It would be seen from the same that the undersigned had placed the entire facts and there was nothing personal or individual that was mentioned and all these aspects were brought out on record to enable a fair decision making. The same note was approved by the then minister of GAD and the Chief Minister at that relevant time (11.11.1991).
20. As a measure of follow up a draft of D.O. No. A-60011/16/99-GAD dated 12 November 1991 was put up by the undersigned for the Chief Minister, Mizoram to the Governor of Meghalaya which was finally sent by the then Chief Minister to the Governor of Meghalaya. A copy of the said D.O. is annexed herewith as Annexure 'H'. The undersigned takes the liberty to quote some important lines: "I would request your personal intervention in the matter and have the land released from the acquisition proceedings, so that this Government may acquire this land for our long-felt need of "VIP Guest House in Shillong"". The other material lines are also quoted from the said D.O. "In the meantime a private building has been taken on rent for the Guest House which does not meet our full requirement of accommodation. The owner of the building has now served a notice to this Government that he would like to have the building back and asked for vacation of the same by Feb. 1992". Thus the undersigned had at the very outset taken recourse to the "land acquisition" aspect to be initiated by the

concerned Government i.e. the Government of Meghalaya. This 'document' is very vital in as much as it will dispel the notion that the undersigned had not followed the procedures relating to 'Land Acquisition'.

21. As a measure of abundant caution, the undersigned had asked the Chief Engineer, PWD to make his own personal assessment about the site under consideration. The undersigned had also asked him to give a technical assessment of the building etc. and scope for expansion and suitability. That was only to obtain a technical status of the site. The undersigned craves further liberty to place the same document on record and a copy of the same is annexed herewith as Annexure 'J'. The report of the Chief Engineer as contained in his letter no. BDG/147/87/MOM dated 21.10.1991 will make it amply clear that the site was attractive and had a lot of merit and plus point in it for making it worthwhile for consideration of the Government of Mizoram. The merits as in the site are absent in other sites available and therefore, it was an ideally suited site for setting up the State Quest House.
22. Thereafter, the matter was put up by way of an agenda to the State Purchase Advisory Board. The undersigned craves liberty to place a copy of the same as a very vital and material document in the matter and the said copy is annexed herewith as Annexure-I. It would be seen from the same that the said meeting of 7th and 8th Jan. 1992 was attended by the undersigned as Chief Secretary and other functionaries :

1. PU. Rinsanga, Financial Commissioner.
2. PU. K. Thangzuala, Chief Engineer, PWD.
3. PU. H. Lal Thlamuana, Commissioner -GAD.

Initially the committee was assisted by S.E. Central Circle PWD, Adviser, Planning and Dy Director of Accounts, PWD.

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The undersigned mentioned the plot of land measuring 22,100 sq.ft. belonging to Pi Lalparliani was the one that the Government of Mizoram had agreed in principle to purchase for Mizoram Guest House. The undersigned further craves liberty to mention that this site was also one of the sites inspected by the Chief Minister along with other officers as already brought out in para 18 above. The consideration of the site was more because of its suitability and less because the owner was related to the undersigned and equally to Mr. Rinsanga, the Financial Commissioner. This aspect of the proposal be kept in mind to adjudge the true role of the undersigned in the entire matter.

It has also been brought on record (under para-2 of the minutes) that the said land at Upland Road was once to be purchased by the Meghalaya Industrial Development Corporation. The relevant para material to the explanation of the undersigned are being quoted as follows:

"Considering price escalation for immovable properties especially in urban areas in the country and the requirement of the Government of Mizoram, the Committee in principle recommends purchase of the said land. Before finalising the case of the property by negotiation, the Committee felt it desirable to ascertain the status of the property and the basis for quoting the price of Rs. 60 lakhs from the land owner. The land owner is therefore asked to present his case.

The land owner at 10:30 a.m. on 8.1.92 appears before the committee. The land owner stated that the price of Rs. 45 lakhs was asked in 1988 which on the basis of escalation in general prices and especially of real estate value the present price of Rs. 60 lakhs is reasonable as the price increase over the period is between 10-15 percent. The increase in price from Rs. 45 lakhs to Rs. 60 lakhs represents about 11 percent increase over the said period. It was also stated by the land owner that the price of Rs. 45 lakhs in 1988 was an internal assessment made by

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Meghalaya Industrial Development Corporation. It was further mentioned that the process of land acquisition proceedings under the Land Acquisition Act was initiated so as to formalise the proposed sale and purchase of the said property. Once the land is released by the Government of Meghalaya through the Meghalaya Industrial Development Corporation, it is free from all encumbrances as the land is owned by the land owner on a free-hold basis. Transfer of land in Meghalaya to the Government is also not prohibited by the Meghalaya Transfer of Land (regulation) Act 1971, under Section 11(C). In support of this contention, the land owner produced copies of letters issued by the Meghalaya Industrial Development Corporation according to which the land will be released from 1.5.92. The land owner, however, expected that the Meghalaya Industrial Development Corporation may physically and actually release the property even before this stipulated date".

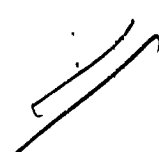
The undersigned craves further leave to place on record the contents as in the further para which reads as :

"It was pointed out by the members of the Committee to the land owner that since it was agreed earlier to sell the land at a price of Rs. 45 lakhs which however could not be practically executed over a period of about 3 years it may not be unreasonable to sell the land at a price less than Rs. 60 lakhs. The land owner agreed to sell the land at Rs. 58 lakhs. The Committee felt that this price of Rs. 58 lakhs is not unreasonable in view of the escalation of general price index as published by the Central Statistical Organisation in 1990. According to this publication the level of general price index in the country increases by 10-15 percent. Normally the rate of increase in the price of land is more than the rate of increase in the general price level. This price of Rs. 58 lakhs represents an increase at a simple rate of about 10 percent per year since 1988 which is considered reasonable. The land owner requested for payment of Rs. 25 lakhs pending conclusion of the process of execution of the sale and purchase of the said property as the said

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land practically no longer belongs to them after a decision is taken by the Government of Mizoram to purchase the land. The Committee however, impressed upon the land owner of the necessity of completing all the formalities for the finalisation of the sale and purchase of the property, so that a deed of agreement can be signed at the earliest so as to enable the Government of Mizoram to occupy the property. The land owner agreed to pursue the matter at all levels for expeditious finalisation of the process of transfer of the said property".

These very contents of the material recommendation may be read as natural development of the proposal and nothing mysterious is hidden in the para to infer any motive and there is absolutely no place for imputation or involvement of moral turpitude allegedly marking it a ground for any disciplinary proceeding. The undersigned further takes the liberty to quote and place on record the last para which reads as :

"(III) Pending finalisation of the process of sale and purchase, an advance payment of Rs. 25 lakhs may be made to the land owner and the balance will be paid after physical transfer of the said property is completed. The required fund for the full cost of the land including advance payment may be met by pooling funds for the purpose under the budgetary allocation of the Mizoram PWD."

 The State Purchase Advisory Board as it then existed had the following constitution:

Chief Secretary – Chairman
Financial Commissioner – Member
Commissioner GAD – Member
Chief Engineer PWD – Member

The status of the Advisory Board was only Advisory. It did not enjoy any sanctioning power and was entrusted with only the recommendatory part. In this perspective the role of each member be examined to come to a definite

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conclusion regarding malicious charges as brought out in the Memorandum under reference.

23. The undersigned after having placed the facts of the case and relevant documents proceeds to explain the charges as brought out in the Annexure-I:

Regarding (a)

It may be clarified that no price of the said land was fixed as alleged in the para. It was only an offer which was negotiable and after reduction it was brought down to Rs.58.00 lakhs by the owner of the property. Hence the allegation that with regard to the cost of the property, the price was fixed in an arbitrary manner is a void charge as it has no substance. As far as payment of Rs.23.00 lakhs in advance is concerned it was demanded by the owner. The demand of Rs.25.00 lakhs was also recommended by the Committee but while the payment was released it was only Rs.23.00 lakhs that was actually paid. The owner had made this demand so that she may not consider any other proposal pending finalisation by the Government. This is a normal practice adopted in the matter of sale of land and building obtainable in urban areas and apparently this advance was to block the property in favour of the Government.

Regarding the charges brought out in para (b):

The undersigned respectfully submits that the aspect of Land Acquisition proceedings was the first consideration of the undersigned who had prepared a D.O. for the Chief Minister Mizoram to the Governor of Meghalaya. For the sake of brevity the same is not reproduced here and the same document being Annexure 'H' may be read as reply to this charge.

In addition, to clarify the position further two documents are being placed on record as Annexure 'K' and 'L'. The document 'K' is a letter No. IND 159/91/57 dated 18/12/91 from the secretary to the Government of Meghalaya, Industries Department to Smt. Lalpariani.

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the owner of the property. The contents of the same are reproduced herein below for ready reference:

**GOVERNMENT OF MEGHALAYA
INDUSTRIES..... DEPARTMENT**

No. IND159/91/57

Dated, Shillong 18th December 1991.

From: Shri A.K. Srivastava, IAS
Secretary to the Government of Meghalaya.

To Smt. Lalparliani,
Lower Mawprem,
Shillong

Madam,

I am directed to refer to your letter dated 9.01.91 requesting to release the property called "KISMAT" and to say that Government would have no objection provided you agree to the following:

- (1) That the Meghalaya Industrial Development Corporation are allowed to keep this property upto 30th April, 1992 on payment of the rent, at the rate at which it is being paid at present.
- (2) That you will forego any legal rights for compensation under Sec. 48 of the land Acquisition Act.
- (3) That you will forego any other claim for compensation of any kind whatsoever.

You are, therefore, requested to communicate your acceptance of the above to enable the Government to direct the Meghalaya Industrial Development Corporation to release the property with effect from 1st May, 1992.

Yours faithfully,

Sd/-
(A.K. SRIVASTAVA)
Secretary to the Government of Meghalaya,
Industries Department

Memo No. IND. 159/91/57-A Shillong, Dt. 18th December, 1991.

Copy to:

The managing Director, Meghalaya Industrial Development Corporation,
"Kismat" Upland Road, Shillong - 6, for on formation and necessary action.

BY ORDER etc.
Sd/-
Secretary of the Government of Meghalaya,
Industries Department

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It will appear from the contents of the same that the Government of Meghalaya had agreed to denotify the property from acquisition subject to the owner of the property to accept certain conditions as stipulated in the letter under reference. The document 'L' is the reply of the owner to the said letter and gives her approval to the laid down conditions.

It will construe from the same that the Government concerned had, in principle, agreed to denotify the property in question. In view of the position in these documents and the document Annexure 'H', the charge regarding acquisition proceedings becomes false and unsubstantiated.

Regarding the charge in para 'C' and 'D' of the Memorandum. It is respectfully submitted that the matter had since been scrutinized in the presence of the Chief of the Finance Department and the Deputy Director of Accounts and it was for them to lay down the procedure for issuance of advance. It appears that the formalities could be properly observed but it may be appreciated that the party had not taken any advantage of a non-existence of an agreement or terms and conditions and had refunded the entire advance along with the interest. Some delay in refund of interest had happened but it was not during my tenure and I submit here a copy of the note sheet no. 66-N of File No. A-60011/16/89-GAD on 26.3.93 where the undersigned had given his observations and has issued instructions for the possession of the site or recovery of the dues. A copy of the same is annexed as Annexure 'M'. In view of the same the imputation as brought in the paras are vague without any purpose and are malicious and have been made only to malign my position.

The Government ultimately has been able to recover its dues without going into any litigation and it is unfortunate that the entire affairs were seen with Jaundiced eyes and predetermined mind.

24. The undersigned craves liberty to place on record document, copy of which is annexed as Annexure 'N'. The said document is a material record as it contains the approval of the Chief Minister of the entire

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proposal regarding the property of Mrs. Lalpariani. It would be of relevance to read the notings of the Chief Minister.

"Approved.

The site has been inspected by me along with FM, the C.S. and the Development Commissioner and is very good. The Mizo population also approved the place for construction of a Mizoram House".

Sd/-

10.1.92

This order of the Chief Minister tantamounts to an order of the State Government and the role of the undersigned is only executive as the proposal relates to the Development of the State for which the Chief Minister is the head of the Government.

25. That it appears that these documents were not considered while issuing a Memorandum of misconduct and the undersigned has full hope that a candid view has not been taken and the entire proceedings have been initiated forgetting the norms and there is not even an iota of misconduct in the entire article of charge and the Memorandum, therefore, deserves to be withdrawn.

Technical Aspect

26. It may be of paramount interest to visualise that the role of Mr. Rinsanga, the then Financial Commissioner, belonging to All India Service that his presence all through the decision has been an important factor in the decision making. His case was also before the Investigating Agency and a view was taken that although he belonged to Karnataka Cadre his Disciplinary Authority would be Government of Mizoram where he was posted during the period involved in the proposal to purchase the property of Mrs. Lalpariani, who is equally a relation of Mr. Rinsanga in the same capacity as she is alleged to be the relation of the undersigned. This has created an administrative imbalance and the two parameters set by the Authorities to adjudge the alleged misconduct, vitiates the whole proceedings and needs to

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be reviewed in the interest of JUSTICE and Fair Play as no iota can be traced back when things would be seen from the right end of the telescope and it will be established that there is no gravity of misconduct on the part of the undersigned as to merit a charge on a day prior to his retirement.

This equation is essential as 2 distinct Disciplinary Authorities in the same case, will vitiate the entire 'proceedings' and in the interest of parity the Government of the State of Mizoram may be designated as the Disciplinary Authority of the undersigned as well, since the undersigned belongs to the AGMU Cadre and thus to the State of Mizoram. Two officers belonging to All India Service alleged to be involved in the case were posted at the relevant time with the state of Mizoram and had, simultaneous position so far being in relation with Pi Lalparliani whose property is the subject matter of the case and it is a matter of chance only that the undersigned was related to her in a similar way in which Mr. Rinsanga, the then Finance Commissioner was also related to her.

The view of the State Government of Mizoram, has also not been obtained and it is understood that the Government of Mizoram had given its clear opinion to the Investigating Agency that the undersigned had gone by the directive of the then Government headed by the Chief Minister, Shri Lalthanhawla, and that no moral turpitude was involved in the case and that the state had not suffered in the deal. The Ministry of Home Affairs thus has failed to have the view of the State Government of Mizoram in the matter and this deficiency is against all principles of Natural Justice and has caused the undersigned great prejudice. In view of this it is respectfully prayed that the case be referred to the Government of the State concerned.

The documents as mentioned in the Memorandum under reference and other records have yet to be examined and consulted. The same

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will be taken up after the decision on the 2 issues involved, as elaborated in my prayer, have been considered.

Since the matter is serious in nature as it has marred the very existence of an officer so committed and devoted and had a brilliant record of service, an opportunity of "personal hearing" be also granted to the undersigned to enable him to explain the salient features of the case so that justice could be done in the matter.

Dated the , March, 2001
New Delhi

Yours faithfully,

(F. PAHNUNA)

New Delhi-1, the May, 2001

ORDER

- 1 JUN 2001

Whereas an Inquiry under Rule 8 of the AIS (Discipline and Appeal) Rules, 1969 is being held against Shri F. Pahnuna, IAS (Retired).

2. And whereas the Central Government considers that an Inquiring Authority should be appointed into the charges framed against the said Shri F. Pahnuna.

3. Now, therefore, the Central Government in exercise of the powers conferred by Sub-rule (2) of the said Rule hereby appoints Shri Ashok Lakhanpal, CDI, Central Vigilance Commission as the Inquiring Authority to inquire into the charges framed against the said Shri F. Pahnuna.

By order and in the name of Joint Cadre Authority.


(SATYA GOPAL)

Deputy Secretary to the Govt. of India

Copy to :

1. ✓ Shri F. Pahnuna, Chanmari, Aizawl, Mizoram.
2. Shri Ashok Lakhanpal, Commissioner for Departmental Inquiries, Central Vigilance Commission, Satarkta Bhavan, Block-A, GPO Complex, INA, New Delhi.
3. Shri Suyash Prakash, Deputy Commissioner (North West), GNCT of Delhi.
4. Guard File.


(SATYA GOPAL)

Deputy Secretary to the Govt. of India

*Attested
Sanjeev K. Sharma
Advocate*

- 47 -
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

O.A. No.238 of 2001

Shri F. Pahnuna

Applicant

Versus

Union of India & Others

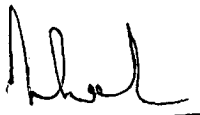
Respondents

In the matter of :

**WRITTEN STATEMENT SUBMITTED BY THE
RESPONDENTS 1 & 2.**

The respondents beg to submit the written statement as follows:

1. That with regard to para 1 to 3 and 4.1 of the application, the respondents beg to offer no comments.
2. That with regard to para 4.2 of the application, the respondents beg to state that it is matter of record. Needs no comments.
3. That with regard to para 4.3 of the application, the respondents beg to offer no comments.
4. That with regard to para 4.4 of the application, the respondents beg to state that it is matter of record. The contention of the applicant that during his tenure as Chief Secretary, Mizoram there was no purchase of land and only a proposal was mooted to purchase the plot of land in question which was eventually dropped is denied. As may be clearly seen from the Statement of Articles of Charge framed against Shri Pahnuna, which has been annexed by the applicant to his application at Annexure-II, the sister-in-law of the applicant was made a payment of Rs.23.00 lakhs in advance towards the cost of the said property the price for which was fixed at Rs.58.00 lakhs in an



arbitrary manner. It may also be observed that the advance payment was made to her despite the fact that the aforesaid property had been notified by the State Government of Meghalaya for acquisition for its own use. Further the advance payment was made without entering into any formal agreement with her so as to ensure that the money was refunded to the Government of Mizoram in a time bound manner in case the deal did not materialise. The advance payment was made without binding Smt. Lalparliani under a proper agreement to pay the interest on the amount advanced to her in the event of the deal not materialising.

5. That with regard to para 4.5 of the application, the respondents beg to state that it is matter of record. Needs no comments.

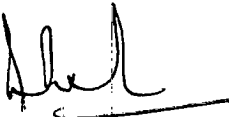
6. That with regard to para 4.6 of the application the respondents beg to offer no comments.

7. That with regard to para 4.7 of the application the respondents beg to state that it is denied that the Ministry of Home Affairs is not the competent authority to institute proceedings against the applicant.

Rule 7(1)(b) of the All India Services (Discipline & Appeal) Rules, 1969 lays down as follows :

“7(1)(b) If such act or omission was committed after his appointment to the Service -

(i) while he was serving in connection with the affairs of a State, or is deputed for service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by


(३०३) क. ३३
(E. K. KAL)
मुख्य कार्य
Under Secretary
मुख्य कार्य

an Act of the Legislature of that State, the Government of that State”.

The applicant belongs to the Joint Arunachal Pradesh, Goa, Mizoram and Union Territories (AGMU) Cadre. Rule 2(e) of the All India Services (Discipline & Appeal) Rules, 1969 defines the State Government concerned in relation to a Joint Cadre as follows :-

“2(e) ‘State Government concerned’ in relation to a Joint cadre, means the Government of all the States for which the Joint Cadre is constituted and includes the Government of a State nominated by the Government of all such States to represent them in relation to a particular matter.”

In terms of rule 2(c) of the Indian Administrative Service (Cadre) Rules, 1954, the word ‘State’ has been defined as follows :

“ ‘State’ means a State specified in the First Schedule to the constitution and includes a Union Territory.”

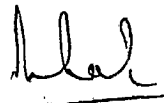
It has been further provided under Rule 2(d) of the Indian Administrative Service (Cadre) Rules, 1954 that:

“ ‘State Government concerned’ in relation to a Joint Cadre means the Joint Cadre Authority.”

In accordance with Clause (c) of Sub-Section (60) of Section 3 of the General-Clauses Act, 1897 :

“ ‘State Government’ in relation to a Union Territory means ‘Central Government’.”

The Joint AGMU Cadre of IAS comprises three States of Arunachal Pradesh, Goa and Mizoram and the seven Union Territories of Delhi, Andaman & Nicobar Islands, Daman & Diu, Dadra and


(K. K. MALRA)
Under Secretary
MHA

Nagar Haveli, Pondicherry, Chandigarh and Lakshadweep. The Department of Personnel and Training vide their Notification No.13013/1/89-AIS(I) dated 3rd April, 1989 constituted the Joint Cadre Authority of AGMU Cadre of IAS consisting of Secretary, Ministry of Home Affairs, Chief Secretary, Arunachal Pradesh, Chief Secretary, Goa, Chief Secretary, Mizoram and Chief Secretary, Delhi which was reconstituted vide Department of Personnel and Training's Notification No.11026/2/94-AIS(II) dated 25th April, 1995. A copy of the aforesaid Notification is annexed herewith and marked as **Annexure R-I**. Secretary, Ministry of Home Affairs represents the Union Territories segment of the Joint AGMU Cadre of IAS in the Joint Cadre Authority constituted by the Government of India vide the aforesaid Notification.

The Joint Cadre Authority representing the Governments of all the constituent States of the AGMU Cadre of IAS (viz. the State Governments of Arunachal Pradesh, Goa, Mizoram and the Ministry of Home Affairs being the State Government in respect of Union Territories) had in its meeting held in October, 1989 delegated, inter alia, the disciplinary powers in respect of IAS officers of AGMU Cadre to the Ministry of Home Affairs. This is in conformity with the provisions contained in Rule 2(e) of the All India Services (Discipline & Appeal) Rules, 1969. A copy of the decision taken by the Joint Cadre Authority in its meeting held in October, 1989 is annexed herewith and marked as **Annexure R-II**.

8. That with regard to the statement made in para 4.8 of the application, the respondents beg to state that it is denied that Ministry

of Home Affairs after taking into account the explanation of the Government of Mizoram and after consultation with the Central Vigilance Commission had decided not to proceed in the matter. On the contrary, on the basis of evidence on record, MHA designated as the disciplinary authority in respect of officers of AGMU Cadre of IAS came to the conclusion that it was a fit case for initiation of major penalty proceedings against the applicant. The Central Vigilance Commission had also advised the same course of action in the matter.

9. That with regard to the statement made in para 4.9 of the application, the respondents beg to offer no comments.

10. That with regard to the statement made in para 4.10 of the application, the respondents beg to state that it is denied that the charges framed against the applicant and the imputation of misconduct and misbehaviour are false, baseless and malicious and the same cannot stand scrutiny in the eye of law. It is submitted that it is premature for the applicant to move the Hon'ble Tribunal at this stage on this count. The applicant will have full opportunity to present his case before the Inquiring Authority which has been appointed in terms of Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969.

11. That with regard to the statements made in para 4.11 of the application, the respondents beg to state that the contents of this para are not denied. The service gratuity of the applicant has not been released because of the pending disciplinary proceedings against him. The said action is in terms of the All India Services (Death-cum-Retirement Benefits) Rules, 1958.

[Handwritten signature]

Under Secretary
[Stamp]

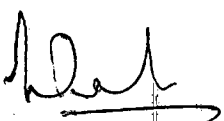
12. That with regard to the statement made in para 4.12 of the application, the respondents beg to refer to the reasons given in the preceding paragraphs.

13. That with regard to the statement made in para 4.15 of the application, the respondents beg to state that there is no case for the intervention by the Hon'ble Tribunal at this stage of the disciplinary case. As already submitted, the applicant will get full opportunity to present his case before the Inquiring Authority appointed by the disciplinary authority.

16. That with regard to the statement made in para 4.16 of the application, the respondents beg to offer no comments.

17. That with regard to the statement made in para 5.1 of the application, the answering respondent craves leave of the Hon'ble Tribunal to refer to the submissions made in reply to para 4.7 of the application. It is, therefore, denied that the Ministry of Home Affairs has no jurisdiction to institute an inquiry and appoint an Inquiring Authority for the purpose of conducting any inquiry/departmental proceedings against the applicant.

18. That with regard to the statement made in para 5.2 of the application, the respondents beg to state that even after the abolition of the Union Territories Cadre of Indian Administrative Service and coming into being of the Joint Arunachal Pradesh, Goa, Mizoram and Union Territories Cadre (AGMU Cadre), the Ministry of Home Affairs continues to discharge the functions of dealing with matters falling under the purview of the State Government in so far as IAS officers serving in connection with the affairs of the Union Territory

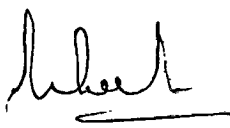

(K. K. KAMATH)
Joint Secretary
Ministry of Home Affairs

Administration are concerned. This is clear from the relevant entry in the Government of India (Allocation of Business) Rules, 1961, as reproduced below :

“Indian Administrative Service Cadre of the Union Territories, matters falling within the purview of State Government.”

Besides, as per the Government of India (Allocation of Business) Rules, 1961, Ministry of Home Affairs is the nodal Ministry in respect of the Union Territories.

19. That with regard to the statement made in para 5.3 of the application, the answering respondent craves leave of the Hon'ble Tribunal to refer to the averments made in reply to para 4.7 of the application. As already submitted the Joint AGMU Cadre of IAS comprises three States of Arunachal Pradesh, Goa and Mizoram and the seven Union Territories. Under Rule 2(e) of the All India Services (Discipline & Appeal) Rules, 1969, the Joint Cadre Authority of AGMU Cadre consisting of the representatives of the Governments of all the constituent States, namely, Arunachal Pradesh, Goa, Mizoram and the Ministry of Home Affairs being the State Government in respect of Union Territories, delegated the disciplinary powers in respect of IAS officers of AGMU Cadre to the Ministry of Home Affairs. Under the General Clauses Act, 1897, the Central Government in the Ministry of Home Affairs is the State Government in relation to the Union Territories. The said order dated 1st June, 2001 appointing the Inquiring Authority has thus been issued on behalf of the Central Government in the above light.


(S. K. DALVI)
(S. K. DALVI)
Under Secretary
to the Government of India

20. That with regard to the statement made in para 5.4 of the application, the respondents beg to state that it is denied that the Joint Cadre Authority cannot institute proceedings against a member of the service belonging to a Joint Cadre. As already pointed out in reply to para 4.7 of the application in accordance with the provisions contained in Rule 2(e) of the All India Services (Discipline & Appeal) Rules, 1969, the State Government concerned in relation to a Joint Cadre means the Governments of all the States for which the Joint Cadre is constituted and includes the Government of a State nominated by the Governments of all such States to represent them in relation to a particular matter. Further, in terms of Rule 2(d) of the Indian Administrative Service (Cadre) Rules, 1954, State Government concerned in relation to a Joint Cadre means the Joint Cadre Authority. In the instant case, the Joint Cadre Authority nominated the Ministry of Home Affairs as one of the constituent State Governments the powers to institute proceedings against the members of the service borne on the Joint AGMU Cadre of IAS.

21. That with regard to the statement made in paras 6 and 7 of the application, the respondents beg to offer no comments.

22. That with regard to the statement made in para 8 of the application, the respondents beg to state that in view of the submissions made by the answering respondent there is no merit in the application filed by the applicant and the same deserves to be dismissed.



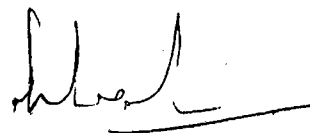
RESPONDENT

(30.02.2014)
LRA)
Under Secretary
74, K. V. Road, MHA

VERIFICATION:

I, K.K. Kalra, S/o Shri K.R. Kalra, working as Under Secretary in the Ministry of Home Affairs, being authorised do hereby solemnly affirm and declare that the statements made in this written statement are true to my knowledge and information and I have not suppressed any material fact.

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



RESPONDENT

Filed through Shri Arunesh Deb Roy
Sr. Central Govt. Counsel
Central Administrative Tribunal
Guwahati Bench, Guwahati.

F.No.11026/2/94-AIS(II)
Government of India
Ministry of Personnel, P.G. & Pensions
(Department of Personnel & Training)

New Delhi,

25/4/95

NOTIFICATION

G.S.R.....In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951), read with sub-rule (1) of rule 1 of the All India Services (Joint Cadre) Rules, 1972, the Central Government in consultation with the Governments of States concerned hereby constitutes the Joint Cadre Authority for the Indian Administrative Service, Indian Police Service and India Forest Service Joint Cadres of Arunachal Pradesh-Goa-Mizoram Union Territories, as below:-

1. Secretary, Ministry of Home Affairs (representing Union Territories in respect of the Indian Administrative Service and Indian Police Service)
2. Chief Secretary, Arunachal Pradesh
3. Chief Secretary, Goa
4. Chief Secretary, Mizoram
5. Chief Secretary, Delhi
6. Inspector General of Forests, Ministry of Environment and Forests (representing Union Territories in respect of the Indian Forest Service)
7. Joint Secretary (Union Territories Division) Ministry of Home Affairs (Convenor in respect of the Indian Administrative Service and Indian Police Service) / Joint Secretary (in charge of Indian Forest Service Cadre Management), Ministry of Environment and Forests (Convenor in respect of Indian Forest Service)".

(Signature)
(Madhumita D.Mitra)
Deputy Officer

NOTE:- The All India Services (Joint Cadre) Rule 1972 were notified vide No.13/4/1-AIS(I) dated 11.1.1972. The Joint Cadre Authority of Arunachal Pradesh-Goa-Mizoram Union Territories Cadre was notified vide Notification No.13/1/89-AIS(I) dated 3.4.89 and GSR No.919 (E) dated 11.12.1992.

To

The Manager,
Government of India Press,
Ring Road, Mayapuri,
New Delhi.

(Signature)
(Madhumita D.Mitra)
Deputy Officer

S. 36 AIS

4072 Jt Car 264

October, 89

2. In the interest of proper management and smooth functioning of the Joint Cadre within the four constituent units of the Cadre, namely Arunachal Pradesh, Goa, Mizoram and Union Territories, it has become imperative that the Joint Cadre Authority delegated some of its routine functions to and authorise the Ministry of Home Affairs (UI Division) and other constituent units to discharge/exercise those functions/powers, though within the policy framework as determined by the Joint Cadre Authority from time to time. JCA has given a serious thought to the above proposal. JCA, as pointed out above, in the interest of cadre management, strongly feels that service matters of local nature which do not have any adverse impact on the overall structure of the service or the cadre as such, should be dealt with by the constituent units at their own level as it may not be practicable or desirable for the Joint Cadre Authority to go into these matters in detail. JCA also feels that if the constituent units are allowed to exercise these routine powers, it would generate a sense of responsibility among the constituent units towards the cadre management. Consequently, JCA also feels that the involvement of JCA should be restricted to only such matters which warrants a policy decision or matters having impact on other constituent units or matters involving more than one constituent unit, in order to maintain uniformity and continuity in the administrative structure of these services/Joint Cadre. Once policy guidelines have been determined by the JCA, question of delegating the authority to implement the policy as per guidelines to the constituent units can also be considered by the JCA later.

3. After going through the provisions of All India Service (Joint Cadre) Rules, 1972; AIS (Recruitment) Rules, 1954; IPS (Recruitment) Rules, 1954; All India Service (Provident Fund) Rules, 1955; All India Services (Discipline and Appeal) Rules, 1969; All India Services (Confidential Rolls) Rules, 1970; IAS/IPS (Probation) Rules; IAS/IPS (Regulation of Seniority) Rules; IAS/IPS (Pay) Rules, etc., the JCA decides as under -

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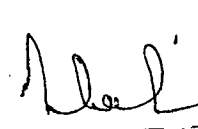
Under 3. 2. 1. r.
1. 4. 1. 1. 2.

(A) Functions to remain with JCA:

- (i) Since after the reorganisation of the Cadre as Joint Cadre, vacancies against promotion quota are to be filled in segment-wise (i.e. vacancies occurring in a particular segment), it has become necessary to decide the number of promotion quota posts falling under each segment so that interest of each constituent unit is duly protected. Being an item of common nature and involving a policy decision, division of vacancies against promotion quota among the constituents units of the Joint Cadre will be decided by the JCA.
- (ii) In order to ensure that State deputation reserve remains within the limits with reference to the cadre strength of the constituent units and secondly in order to ensure that undue benefits are not extended by any of the constituent units to the service officers or officers in the feeder line by creating them with the posts included in Schedule III of the cadre for pay purposes, such matters would remain with JCA to ensure uniformity in all the segments of the Joint Cadre.
- (iii) Similarly in order to protect the interest of cadre officers as well as to establish effective administrative structure in the constituent units, the issues relating to Inter-State deputation of IAS/IPS officers to and from AGMU Cadre will be decided by the JCA.

(B) Functions to remain with MHA (UT Division):

- (i) Transfer/posting of cadre officers from one segment to another. However, for this purpose JCA will frame proper guidelines keeping the overall interest of the service officers as well as the constituent units in view. Till the new guidelines are framed by the JCA, transfer/posting from one segment to another will be guided by the guidelines as existing on date.
- (ii) In the interest of the morale of the service officers as well as to maintain the uniformity in decision-making on matters pertaining to vigilance cases/departmental proceedings it is desirable as well as necessary that such matters are dealt with at Central level though the recommendations of the constituent units are to be given due consideration. It is, therefore, advisable to leave this matter with MHA(UT Division).



- (iii) Maintenance of ACRs of the cadre officers.
- (iv) All cases pertaining to 'seniority' of the officers.
- (v) All cases pertaining to study leave/training abroad.

(C) Functions to remain with each constituent unit i.e. Arunachal Pradesh, Goa and Mizoram in respect of officers serving in each State and MHA in respect of officers serving in the Union Territories:

As already mentioned above, constituent units should also be allowed to exercise some powers relating to service matters of the service officers posted in each segment in order to generate a sense of responsibility towards proper management of the cadre, JCA, therefore, feels that following types of cases which were hitherto being looked after by MHA(UT Division) should be dealt with by the constituent units at the local level -

- (i) All cases of relaxation of rules in respect of advances/withdrawals from Provident Fund.
- (ii) All cases of relaxation - TA and DA.
- (iii) All cases pertaining to commutation of pension.
- (iv) Cases pertaining to extension of joining time under Joining Time Rules.
- (v) All cases pertaining to treatment of period of compulsory wait in a particular segment.

4. JCA also decides that the Joint Cadre will be represented by the respective segment in the Selection Committee to prepare the 'Select List' as per promotion Rules of the concerned Service, in respect of vacancies arising in each segment, after the decision of the JCA on division of vacancies between segments/notional allocation of officers appointed by promotion/selection to various constituent units.

5. JCA also nominates AS(P), MHA, to represent the Joint Cadre in the Selection Committee to select/recommend the officers to be appointed to IAS through 'Selection'.

(Shrivastav)
Joint Secretary
Ministry of Home Affairs

(Matin Dai)
Chief Secretary
Arunachal Pradesh

(P.V. Jaikrishnan)
Chief Secretary
Goa

(M. Lalmanzuala)
Chief Secretary
Mizoram

[Handwritten signature]

(S. S. Chatterjee)
Joint Secretary
Ministry of Home Affairs

Filed by The Defendant
through Advocate
2/200

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

O.A. NO. 238 OF 2001

IN THE MATTER OF:-

O.A. No. 238/2001

Sri Fanai Pahnuna,

-VS-

Union of India & Ors.

-AND-

IN THE MATTER OF:-

An additional affidavit on behalf of
the applicant in the aforesaid case.

-AND-

IN THE MATTER OF:-

Sri Fanai Pahnuna,
Son of Late F. Sawikunga,
Resident of Chanmari, Aizawl
District : Aizawl, Mizoram.

.....Applicant.

AND

1. The Union of India,
Represented by the Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-1
2. The Deputy Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-1.

3. The Commissioner for Departmental
Inquiries, Central Vigilance
Commission,
Satarkata Bhawan,
G.P.O. Complex, INA, New Delhi.

.....Respondents

ADDITIONAL AFFIDAVIT

I, Sri Fanai Pahnuna, Son of Late F. Sawikunga, Resident of
Chanmari, Aizawl, District : Aizawl, Mizoram, aged about 60
years do hereby solemnly affirm and say as follows:-

1. That the deponent abovenamed had filed the aforesaid
original application before this Hon'ble Tribunal challenging
the Memorandum No.14033/27/95-UTS dated 30/1/2001 issued by
the Deputy Secretary to the Government of India, Ministry of
Home Affairs proposing to hold inquiry against the applicant
alongwith statement of charge and statement of imputation of
misconduct and the Order under Memo No.14033/27/95-UTS dated
1/6/2001 issued by the Deputy Secretary to the Government of
India, Ministry of Home Affairs appointing Inquiring Authori-
ty to inquire into charges framed against the applicant, on
the grounds, inter-alia, that the impugned proceedings were
without jurisdiction and that the same having being institut-
ed after an unexplained delay of more that 10 years after the
acts attributed to the applicant were alleged to have been
committed.

2. That the Hon'ble Tribunal, by its order dated
10/7/2001 was pleased to admit the application and to call
for the records. Thereafter, the Hon'ble Tribunal by its
Order dated 20/11/2001 was pleased to stay further
departmental proceedings against the applicant.

3. That thereafter, the Respondents filed written state-
ment on 19/12/2001 and the Hon'ble Tribunal was pleased to
fix the matter for hearing by its Order dated 20/12/2001.

Contd.....

F.K. Ady

3

4. That after the matter was fixed for hearing as afore-said, some additional documents came to the knowledge of the deponent which are material to the case and necessary for just adjudication of the same. Hence, this additional affidavit.

5. That it is the case of the applicant/deponent that the decision to purchase the land for Mizoram House at Shillong was taken at the highest level by following the due procedure and was a collective decision of the Government in public interest. The said fact is established from a letter dated 2/9/1998 from the then Chief Minister of Mizoram to the Home Minister of India, in response to enquiries made by the Ministry of Home Affairs regarding alleged irregularities in the aforesaid purchase, wherein it was clarified that the matter has been examined at length and no malafide intention on the part of the applicant was found.

A copy of the aforesaid letter dated 2/9/1998 is annexed herewith and marked as ANNEXURE-5.

6. That the statement made in this affidavit in paragraphs 1 to 5 are true to my knowledge and those made in paragraphs being matter of record of the case are true my information derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on thisth day of February, 2002 at Guwahati.

Identified by:

[Signature]
DEPONENT

DO NOT WRITE IN THESE SPACES
Dated: 2nd September 1998

4

Dear Shri Advani,

I have learnt that Government of India have decided to draw up departmental proceedings against Shri F Patnaik, IAS (AGM) 05, former Chief Secretary, Mizoram on some irregularities allegedly committed by him while he was working as Chief Secretary, Mizoram. The alleged irregularities in which Shri F Patnaik is said to have been involved were examined at length and I find that there was no mala fide intention on the part of Shri F Patnaik while committing the alleged irregularities. In fact, some of the actions taken by him were done with the knowledge and approval of the State Government. As such, I would request you kindly to drop the proposed departmental proceedings against him.

The State Government had already requested Government of India to drop the proposed departmental proceedings against Shri P. S. Singh, IAS (KIK 69), former Financial Commissioner, Government of Mizoram who was said to have been involved in the same irregularities. Copy of my letter to Government of India is enclosed. I would, therefore, request you kindly to drop the proposed departmental proceedings against these two officers as we find, on examination of their cases, that there was no mala fide intention on their part while dealing with these cases.

Yours sincerely,

Yours sincerely,

(Signature)
(LAL KISHOREN)

Shri U.K. Advani,
Home Minister,
Government of India,
New Delhi.

For the Government of India
Secretary, Home Department

(1/1)

2/9/98