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4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 332/2001

R.A./C.P No.

E.P./M.A No.

1. Orders Sheet. OA-332/2001Pg. 1to. 2
2. Judgment/Order dtd. 24/05/2002Pg. 1to. 6 allowed
3. Judgment & Order dtd. 06/11/2006 Received from H.C/Supreme Court
N.P.C Pg-1 to 3
4. O.A. 332/2001Pg. 1to. 48
5. E.P/M.P. NILPg.to.
6. R.A/C.P. NILPg.to.
7. W.S. Submitted by the RespondentsPg. 1to. 58
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

Office Note - Pg - 1

SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : : GUWAHATI.

ORDER SHEET

Original

APPLICATION NO. 332 OF 2001

APPLICANT (S) B. L. P. Gupta

RESPONDENT (S) U. O. I. Form

ADVOCATE FOR APPLICANT(S) B. Malakar, G. B. Das

ADVOCATE FOR RESPONDENT(S) Case

Notes of the Registry	dated	Order of the Tribunal
<p>This application is in form but not in time Co-donation Petition is filed vide M. P. No. 765483/2 for the purpose of vide dated 8.8.2001 22/8/01 Dr. Registrar</p> <p>Notice prepared and sent to DLS for issuing the respondent No 1 to 3 by Regd A/D vide No 3288/01 dated 30/8/01 29/8/01</p> <p>(1) Service report are still awaited.</p> <p>20/9/01</p> <p>No. written statement has been filed.</p> <p>15.11.01</p>	<p>23.8.2001</p> <p>nk m 21.9.01 23/8/01</p> <p>mb 16.11.01</p> <p>bb</p>	<p>Heard Mr B. Malakar, learned counsel for the applicant. The application is admitted. Call for the records, return- ably by four weeks. List for orders on 21.9.01.</p> <p>Vice-Chairman</p> <p>List on 16/11/01 to enable the respon- dents to file written statement.</p> <p>Vice-Chairman</p> <p>None is present for the appli- cant. List the case on 14.12.2001 for order.</p> <p>In the meanwhile respondents may file written statement.</p> <p>Member</p>

14.12.01

None is present for the applicant. On the request of Sri A. Deb Roy, learned Sr. C.G.S.C., six weeks time is allowed to file written statement.

List on 18.1.02 for order.

No. written statement has been filed.

34
17.1.02

mb

100 Shari
Member

18.1.02

At the request of Mr. A. Deb Roy, Sr. C.G.S.C. two weeks time is allowed for filing of written statement. List on 20.2.02 for orders.

No. written statement has been filed.

34
19.2.02

100 Shari
Member

lm

No. written statement has been filed.

20.2.02

List on 22.3.02 to enable the Respondents to file written statement.

34
21.3.02

100 Shari
Vice-Chairman

lm

22.3.02

At the request of Mr. A. Deb Roy, Sr. C.G.S.C. four weeks time is allowed for filing of written statement. List on 26.4.02 for filing of written statement and further orders.

27.3.2002

10/5. Submitted by the Respondents.

lm

100 Shari
Member

26.4.02

Written statement has been filed. The case may now be listed for hearing on 22.5.02. The applicant may file rejoinder if any, within two weeks.

No. rejoinder has been filed.

34
23.5.02

lm

24.5.02

Heard learned counsel for the parties. Hearing concluded. Judgement delivered in the open court, kept in separate sheets. The application is allowed. No order as to costs.

100 Shari
Vice-Chairman

2/4/6

100 Shari
Vice-Chairman

PUC

Memo No HC. XXI. 9662-65/RM. Dtd 13.12.06
received from The Assn. Registrar (Indt)
Gauhati High Court, Gauhati.

The PUC may kindly be seen.

The Union of Dads has filed
The WPC No. 1966 of 2003 before the
Hon'ble Gauhati High Court against
The Adst and order Dtd 24.5.02 by
which the respondents are accordingly
directed to refund Rs. 23,342/- to the
applicant forthwith. But the Hon'ble
High Court upheld the Adst and order
of this CAT's by its order Dtd. 6.11.06
passed in the above mentioned WPC.

sh
2/1/07

Sumo
5.1.07
SO(J)

Mon/C

9/1/07

~~DR~~ Shro
5/1/07

URGENT

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

WPCD

No. 1966 of 2003

Union of India & ors

Appellant

Petitioner

Versus

Shri B L P Gupta

Respondent

Opposite Party

Appellant

For

Petitioner

Mrs. C. Choudhury, Advocate
Senior C.G.S.C.

Respondent

For

Opposite Party

Mr. B. Mukherjee
Mr. R. Das
Mr. G. B. Das

Noting by Officer or (Advocate)	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

W.P(C) No.1966/2003

BEFORE

THE HON'BLE MR JUSTICE A H SAIKIA

THE HON'BLE MR. JUSTICE B.D.AGARWAL

06.11.2006

Heard Mr. H. Rahman, learned Assistant Solicitor General of India representating the Union of India /petitioners as well as Mr. B. Malakar, learned counsel appearing for the respondent.

This writ petition witnesses a challenge to the Judgment and order dated 24.5.2002 passed by the learned Vice Chairman, Central Administrative Tribunal, Guwahati Bench (for short 'the CAT') in Original Application No. No. 332/2001 by which the CAT, relying on the earlier decision dated 21.1.1987 of the CAT itself passed in G.C. No. 147/1986 (T) in which the termination order of the respondent who was terminated from his service as Work Sarkar Grade-I on 24.2.87 was quashed holding him to be in 'continuous service', directed the respondents/petitioners herein to refund Rs.23,342/- to the respondent forthwith which was unauthorizedly and illegally deducted from the salary of the respondent for his alleged unauthorized leave.

After careful consideration and examination of the impugned Judgment and Order and also upon hearing the learned counsel for the parties, it appears that initially the CAT vide order dated 21.1.87, as referred to above, set aside the respondent's termination recording that he should be deemed to be in continuous service.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

-2-

Nothing has been brought to our notice to show that the said order was ever assailed in the higher forum and as such the order dated 21.1.87 attained its finality.

Hence, direction given by the CAT in the impugned order so as to refund the above mentioned amount relying on the above case, it appears, suffers from no illegality or jurisdiction error.

Under such facts and circumstances of the case, we find no plausible or cogent ground to interfere with the judgment and order.

In the result, this writ petition fails and stands dismissed.

Sd/- B.D. Agarwal.
JUDGE.

Sd/- A.H. Saikia.
JUDGE.

Memo No.HC.XXI. 9662-65 /R.M. Dtd. 13.12.06

Copy forwarded for information and necessary action to:-


1. The Union of India, represented by the Secretary, M/O. Water Resources, Sharma Shakti Bhawan, New Delhi.
2. The Chief Engineer Brahmaputra and Barak Basin Organisation, Central Water Commission, Maranatha, Umpling, Meghalaya.
3. The Executive Engineer North Eastern Inv. Division-III, Central Water Commission, Itanagar, Agunachal Pradesh.
4. The Deputy Registrar, Central Administrative Tribunal Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati- 781005. He is requested to acknowledge the receipt of the following records. This has a reference to his letter No. CAT/GHY/68/2001/179 Date 05.03.2004.


Enclo:-

1. O.A. 332/2001 Part 'A'
with
Original Judgement.

File 1 (One)

By order


Asstt. Registrar (Judl.)
Gauhati High Court, Guwahati.


13/12/06

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 332 of 2001

Date of Decision. 24.5.2002...

Shri Bhagwan Lal Prasad Gupta

-----Petitioner(S)

Mr B. Malakar and Mr G.B. Das

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

-Versus-

-The Union of India and others

-----Respondent(s)

-----Mr A. Deb Roy, Sr. C.G.S.C.

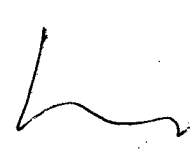
-----Advocate for the
Respondent(s)

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

THE HON'BLE

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

Judgment delivered by Hon'ble : Vice-Chairman



a

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.332 of 2001

Date of decision: This the 24th day of May 2002

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

Shri Bhagwan Lal Prasad Gupta,
Work Sarkar Grade-I, MSTLCISD-I, CWC,
Alipurduar (WB).

.....Applicant

By Advocates Mr B. Malakar and Mr G.B. Das.

- versus -

1. The Union of India, represented by the
Ministry of Water Resources,
Government of India,
New Delhi.

2. The Chief Engineer,
Bhramaputra Barak Basin,
CWC, Marathan,
Umpling, Meghalaya.

3. The Executive Engineer,
NEID-III, CWC, Itanagar,
Arunachal Pradesh.

.....Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The applicant first joined as Work Sarkar Grade II in 1973. He was thereafter promoted as Work Sarkar Grade I in the year 1975, where he was confirmed with effect from 5.9.1981 against a sanctioned post. By order dated 25.1.1984 he was terminated from service with effect from 24.2.1984. The applicant assailed the order of termination before the High Court in Civil Rule No.704 of 1985, which was finally transferred to this Tribunal and ^{the same was} registered and numbered as G.C.No.147 of 1986 (T). By Judgment and Order

dated 21.1.1987 the Tribunal set aside the order of termination and held that the applicant would be deemed to be in continuous service leaving it open to the authority to determine whether the applicant was gainfully engaged during the interregnum for the purpose of giving back wages. After the judgment and order of the Tribunal the applicant was reinstated in service.

2. The only grievance of the applicant in this application relates to the recovery of a sum of Rs.23,342. The said recovery is related to the salary for the period from 10.6.1982 to 23.2.1984, which, according to the respondents, was paid to the applicant inadvertently without sanction of leave and the same was recovered. The applicant submitted his representation dated 22.7.1992 against the proposed recovery of the excess payment. Accordingly, he was intimated by the respondent authority vide Memo dated 5.8.1992. The applicant again submitted a representation. By letter dated 30.8.1996 the Superintending Engineer intimated the Executive Engineer that the entire period of absence of the applicant was to be treated as in continuous service in view of the Judgment and Order of the Tribunal dated 21.1.1987 and accordingly advised the Executive Engineer to rectify the same. The applicant again submitted representations. Failing to get appropriate remedy he moved this Tribunal by way of the present O.A. assailing the aforesaid action of the respondents.

3. The respondents submitted their written statement and contended that the said amount was recovered from the applicant on the strength of the Tribunal's order. It was

mentioned.....

mentioned in the written statement, inter alia, that during the period prior to the termination, i.e. from 10.6.1982 to 23.2.1984, the applicant was on duty for twentyone days, on earned leave for fortyfour days, on half pay leave for sixty days and on extra ordinary leave for four hundred ninety nine days as per the order of the competent authority. The recovery of the amount of Rs.23,342 was on account of his remaining on half pay leave and extra ordinary leave without pay for the period mentioned above. It was mentioned in the written statement that by order dated 28.8.1993 the applicant was granted leave, which also included the period from 10.5.1982 to 9.7.1982, 10.7.1982 to 29.7.1982, 30.7.1982 to 31.12.1982, 1.1.1983 to 14.1.1983, 15.1.1983 to 3.2.1983, 4.2.1983 to 24.2.1983 and he resumed duties on 25.2.1983. Similarly, the applicant was granted extra ordinary leave with effect from 18.3.1983 to 31.12.1983, half pay leave with effect from 1.1.1984 to 20.1.1984 and extra ordinary leave with effect from 20.1.1984 to 23.2.1984. The order indicated that the applicant resumed duties on 24.2.1984 Forenoon. As per the verdict of the Central Administrative Tribunal, Guwahati Bench, the said communication itself indicated that the applicant was on leave. That apart, the purported termination of the applicant was on the ground of unauthorised absence. The Tribunal by Judgment and Order dated 21.1.1987 set aside the order of termination and held that the applicant would be deemed to be in continuous service. The authority was only authorised to examine whether the applicant was gainfully engaged after termination till engagement for determining his salary during the interregnum and nothing else. In the circumstances.....

circumstances the purported deduction is wholly unjustified. The respondents are accordingly directed to refund Rs.23,342 to the applicant forthwith. Since the recovery of the said amount is held to be unauthorised and illegal, the respondents are also ordered to pay interest at the rate of 6½%.

4. With the above observation the application stands allowed. No order as to costs.



(D. N. CHOWDHURY)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A. NO. 332/2001.

FILED BY

SRI BHAGWAN LAL PRASSAD GUPTA
- APPLICANT

THROUGH:-

(Gautam Bikash Das)
21/08/01
ADVOCATE

Bhagwan Lal Prasad Gupta ... Applicant

- Versus -

The Union of India and Ors. ... Respondents
(CWC)

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>Annexure</u>	<u>Page</u>
1.	Application under section 19 of the CAT Act, 1985.		1-10
2.	Verification		11
3.	Annexure	A	12 to 43
4.	Annexure	B	44
5.	Annexure	C	45
6.	Annexure	D	46
7.	Annexure	E	47 to 48

Filed by

(Gautam Bikash Das)
21/08/01
Advocate.

IN THE GENERAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. NO. 332/2001

Shri Bhagwan Lal Prassad Gupta : Applicant

Versus -

Union of India and Ors :::::::::: Respondents

- 1(I) Particulars of the applicant : Shri Bhagwan Lal Prassad Gupta, work Sarkar Grade-I MSTLCISD -I, CWC, Alipurduar (WB)
- (II) Address for service of notice : Office of the Assistant Engineer- MSTLCISD -I, CWC Alipurduar (WB)
2. Particulars of the respondents : 1. The Union of India, represented by the Ministry of Water Resources, Govt. of India, New Delhi.
2. The Chief Engineer, Bhramputra Barak Basin, CWC, Marathan, Umpling (Meghalaya)

Contd.....

Bh Gupta

FILED BY:-
SRI BHAGWAN LAL PRASSAD GUPTA
-APPLICANT
THROUGH:-
14
(Gautam BIKASH DAS)
ADVOCATE

13
3. The Executive Engineer,
NEID -III, CWC, Itanagar
Arunachal Pradesh.

(III) Office of the : As above.
respondents

(III) Address for : As above.
service-s of
the notices.

3. Particulars of : Non refund of the amount
the order for which was ~~deducted~~ from the
which the appli- salary of the applicant despite
cation is made the order passed by the Hon'ble
Tribunal.

4. Jurisdiction : The applicant declares that
of the Tribunal the subject matter of the
application is within the
jurisdiction of this Tribunal.

5. Limitation : The applicant further
declares that the application
is within the limitation
prescribed under Section
21 of the CAT Act 1985.

Contd.....

BL P Gupta

6. Facts of the case:

(I) (That the applicant who is working as Work Sarkar Grade-I posted at Alipurduar in the Central Water Commission was terminated from his service by the Superintending Engineer, CWC, Shillong on 20.5.84. The reason for termination of service was that since the July, 1982, the applicant was deprived from his pay and transfer travelling allowances without any inquiry and his efforts having been failed, he having been suffered heavily due to acute financial crisis, ~~for~~ filed an application before the Executive Engineer, Silchar on 18-3-83 for granting him leave from 9-4-83, the matter of non payment of his pay and transfer travelling allowances was settled.

(II) That the applicant while he was working at Silchar was directed by a W.T. message to join at Tuivalchua site at Mizoram. The applicant was residing at Silchar with his family made a request to the Executive Engineer to the effect that with the transfer to Mizoram, the applicant would face severe hardship as he will have to leave his family at Silchar and as there would be no suitable accommodation immediately available at Mizoram. So his case of transfer to Mizoram be reconsidered. There was however no consideration of his request by the Executive Engineer but was informed that the TuivalChuwa site was already closed and therefore he should proceed to Khokan Gauze and Discharge Site on 26-2-83. The applicant accordingly went to khokan

BLP Gupta Contd...

where he found to have surprised that the site of Khokan was yet to be opened.

III) That thereafter also the applicant was ready to go to Khokan for the second time. But the Assistant Engineer CWC, Tipaimukh did not released the applicant and rather he sent an information to the Executive Engineer requesting the latter that the site of the applicant be approved at Tipaimukh due to some urgent nature of work. The applicant had worked at Tipaimukh till 6-4-83. On 7-3-83 the applicant had not getting his salary since July 1982 filed an application before the Assistant Engineer requesting Station leave permission from 8-3-83 so that he could meet the Executive Engineer at Silchar to finalise the payment of his pay and allowances since July 82. The Assistant Engineer however declined the promotion to the applicant. Despite this on 16-4-83 the applicant went to the office of the Executive Engineer, Silchar and after meeting with the Executive Engineer narrated his plight of non receipt of salary and transfer travelling allowance. The Executive Engineer also did not pay any attention to the grievances of the applicant. However he submitted an application stating all his grivances to the Executive Engineer and therefore, he filed another application for leave on 18-3-83.

Contd.....

B. L. P. Gupta

12

IV) That the order of termination dated 25-1-84 was challenged by the applicant in the Hon'ble Gauhati High Court and filed a Civil Rule being No. 704/85 which however stood transferred by operation of law to the CAT Bench at Guwahati wherein it was renumbered as GC 147/85. In the High Court, the applicant filed another Civil Rule which was numbered as 1122/83 which was also transferred to the CAT Guwahati Bench wherein it was renumbered as GC 146/85. Both these applications were heard by the Tribunal and passed judgment and order dated 21-1-87. The application No. GC 147/85 was allowed and the order of termination was dismissed.

A copy of the judgment and order is annexed herewith and marked as Annexure-A.

V) That the applicant begs to state that while allowing GC 147/85, the termination order was set aside by the Hon'ble Tribunal and the applicant was deemed to be in continuous service. The applicant had really worked up to 7-4-83 and the Hon'ble Tribunal directed the respondent authority that the respondent authority shall 'pay' the arrear salary within a period of one month from the date of receipt of this order.

Contd.....

BL P Gupta

VI) That the applicant begs to state that the judgment and order passed on 21-1-87 and till today, the respondent authority has not paid his salary and travelling transfer allowances amounting to Rs. 23,342/-

VII) That the applicant begsto state that the Executive Engineer Silchar vide his letter NO.NEID/1/PF/126/92/5595-96 dtd. 5/8/92 wrote to the applicant that the recovery of Rs. 23,342/- was justified and within the rules and orders on the subject. It was further stated that recovery for the period of absence prior to termination of service was justified.

A copy of the said letter is annexed herewith and marked as Annexure-B

VIII) That the applicant begs to state that the wife of the applicant also wrote to the Superintending Engineer requesting for payment of the recovery made from the applicant illegally despite clear order from the Hon'ble Tribunal. The Superintending Engineer vide DO. letter NO. NESE/2001/95 dtd. 2.8.96 wrote to the Executive Engineer CWC Silchar drawing his attention to the judgment and order passed by the Tribunal in GC 147/85 where in he mentioned

Contd...

BL Bhandari

that the order of termination of the applicant was set aside and he was deemed to be in continuous service. The Superintending Engineer further wanted to know whether the recovery of Rs. 23,342/ ^{was} made from the applicant /in accordance with the above judgment.

A copy of the said letter is annexed hereto and marked as Annexure-C.

IX) That the applicant further begs to state that the Superintending Engineer again wrote to the Executive Engineer NEID CWC, Silchar vide his letter NO. NEIC/PF/26/96/3349, dtd. 30.8.96 drawing the attention of the later to the effect that the Central Administrative Tribunal had set aside the order of termination of the applicant, and have directed that the applicatn shall be deemed to be in continuous service which implies that the entire period of absence of the applicant i.e. with effect from July /82 requires to be treated as continuous service. Therefore, the regularisation of the absence of the applicant between 10-6-82 and 20-3-84 by treating as extra ordinary leave etc. ~~xx~~ was not correct. It was stted in the said letter that since the Court have directed to treat the appliçant to be in continuous service, the

Contd.....

SL PSW

recovery made by sanctioning leave was due to mis interpretation of the judgment, It was further stated that the amount of recovery made from the applicant did not appear to be ~~km~~ in conformity with the judgment and order and the same may be rectified.

A copy of the letter is annexed hereto and marked as Annexure-D.

X) That the applicant humbly submits that from the two letters written by the Superintending Engineer to the Executive Engineer clearly shows that the recovery made from the applicant was not in proper interpretation of the judgment and order of the CAT and accordingly the applicant ~~is~~ liable to be refund of the same amount which the Hon'ble Tribunal may please to direct.

7. Relief sought for:

Under the circumstances, the applicant prays for the following relief.

(i) The amount of Rs. 23,342/- which was deducted by the authority i.e. the Respondent No. 3 on an erroneous interpretation of the CAT Judgment be refunded to the applicant with interest from the date it fell due.

(ii) Cost of the application.

Contd...

BL P Gupta

8. Remedies extended.

The applicant declares that he has availed of remedies available but to no effect.

9. Legal grounds:

The termination of the applicant was due to his absence from the duty and the absence was caused by the harrasment of the officers. The order of termination was challenged in the Hon'ble Tribunal. The Hon'ble tribunal was pleased to set asside the order of termination and the ground thereof. There, is, therefore cannot any reason to regularise the absence of the applicant by sanctioning leave and by recovering the amount from the applicant for such absence. The applicant is therefore entitled to ~~the~~ refund of the amount of Rs. 23,342/-

10. Interim Order:

NIL.

11. Matter not pending in any other Court.

The applicant further declares that the matter regarding which the application has been made is not pending before any other Court or Tribunal.

Contd.....

BL D Gupta

12. Particulars of IPO:

- i) No. of IPO - 76 548317
- ii) Name of issuing post office - GPO, Gauhati
- iii) Post office where payable:-

13. Annexures:-

- A) Copy of judgment in GC 147/85.
- B) No. NEID /I/PF-116/92/5595-96
dtd. 5/8/92.
- C) Representation dtd. 2.3.92.
- D) No. NEIC /PF-26/96/3349,
dtd. 30.3.96.
- E) NO. NEIC/2001/95 dtd. 2.8.96.

Contd.....11

BLPSWPKS



VERIFICATION



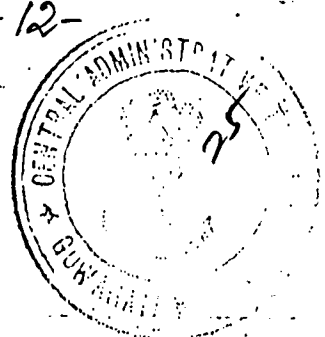
I, Shri Bhagwan Lal Prasad Gupta, the applicant of the above application do hereby verify that the statements made in para *.6 I, II, III, V, VI and VIII* are true to my knowledge and those made in para *.6 IV, VII and IX* being matters of records are true to my information which I believe to be true and the rest are my respectful submission before this Hon'ble Court.

Guwahati,

Dtd. 08/08/2001.

B L Gupta

SIGNATURE



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH :

G.C.No.147 of 1985 (T) - C.P.No.704 of 1985 :
G.C.No.116 of 1985 - C.P.No.1122 of 1983 :

Shri Bhagwan Lal Prasad Gupta. - Petitioner in both the cases.

vrs.

Union of India and others. - Respondents.

PRESENT :

The Hon'ble Shri D. Pathak, Vice-Chairman.
The Hon'ble Shri S.P. Hazarika, Member.

For the petitioner in both the cases. : Mr. R.F. Sharma, Advocates.

For the respondents : Mr. S. Ali, Central Government Standing counsel.

Date of Judgment & Order : The 21st day of January 1987.

JUDGMENT & ORDER :

These two Writ Petitions filed by Shri E.L. Prasad Gupta before the Gauhati High Court, have come on transfer by operation of the provision of section 29 of the Central Administrative Tribunals Act, 1985, for adjudication. In writ petition No.G.C.147 of 1985 - Civil Rule No.704 of 1985, the petitioner has challenged the order of termination of his service passed on 25.1.1984 by the Superintending Engineer for Chief Engineer. (P & I) C.W.C., Shillong. In writ petition No.G.C.No.116 of 1985 - Civil Rule No.1122 of 1983, the petitioner has asked for a direction (A) to pay salary from July, 1982 and transfer travelling allowance as may be due to him, (B) to withdraw the wireless message dated 14.4.83 (Annexure No.19) and to make necessary order of posting of the petitioner, (C) to post the petitioner if possible beyond the jurisdiction of the present Superintending Engineer (Respondent No.4), and (D) to regularise the service of the petitioner as a permanent non-technical staff. Both the petitions are heard analogously and as such we propose to dispose of them by a common judgment.

-: 2 :-

2. The brief facts in petition G.C.No.147 of 1986 -
C.R.No.704 of 1983, leading to the present petition are
that the petitioner was appointed as a work sarkar grade II
under Lower Lagyap Construction Division No.1 of Central
Water and Power Commission, Government of India and posted
at Gangtok (Sikkim) in the pay scale of Rs.110-180/- plus
other allowances admissible from time to time vide appointment
letter dated 23.7.73, issued by the Executive Engineer of the
said Division. Due to his professional competence for his
satisfactory service records he was promoted to Work Sarkar
Grade I in the project in Sikkim from 13.3.75 upto 25.7.81.
During his service period there, he also received the
certificates of competency and ability. By an order dated
25.7.81, the petitioner was transferred from Sikkim to
Tipaimukh Investigation Circle, Central Water Commission,
Shillong. The aforesaid transfer and relieving order was
received by the petitioner on 26.7.81 (Sunday) at about
7.15 a.m. at his residence and he filed an application on
27.7.81 before the Executive Engineer of the said Division
wherein the petitioner stated that as the petitioner was living
with his family at Gangtok he may be granted/retained in
the said Division at least for ten days to enable him to
get train reservation but the just demand of the petitioner
was not considered at all by the authority and the petitioner
was compelled to take earned leave from 26.7.81 to 19.8.81.
Thereafter the petitioner had reported ^{for duty} the Superintending
Engineer, Tipaimukh Investigation Circle at Shillong on
17.8.81 and submitted his joining report before the Superinten-
ding Engineer, but the Superintending Engineer directed the
petitioner verbally to report to the Executive Engineer,
Tipaimukh Investigation Division No.II, Central Water
Commission, Imphal. The petitioner requested the Superintending
Engineer, Shillong, to give order in writing but the said
Engineer refused to give the order in writing. Then the
petitioner....

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petitioner reported to the Executive Engineer at Imphal Divisional Office on 20.9.81 and joined his post on the same day. The petitioner worked at Imphal till 3.9.1981. But, immediately thereafter the Executive Engineer, Imphal, transferred the petitioner to Tipaimukh Investigation Sub-division No. II about 215 Kilometers away from Imphal and the petitioner joined there on 7.9.81 and worked there till 8.11.1981. Thereafter, the petitioner was again transferred to Imphal vide letter dated 16.11.1981 but the petitioner ^{already} joined at Imphal on 9.11.1981 at the request of the Executive Engineer, Imphal, and the written transfer order was given later on 16.11.1981. The petitioner was again transferred to Silchar vide letter dated 24.3.82 and the petitioner had submitted an application on 29.3.82 to the Superintending Engineer, Shillong, through Executive Engineer, Imphal, wherein the petitioner stated that he may be retained at Imphal as he was staying at Imphal with his family members and two school going children had been admitted in the school recently and the wife of the petitioner was under treatment in the Regional Medical College Hospital at Imphal, but the authorities turned down the just demand of the petitioner. The petitioner was relieved on 30.4.82 from Imphal with a direction to report to the Assistant Engineer, Tipaimukh Investigation Sub-division No. III under Silchar Division vide letter dated 30.4.82 and the petitioner joined his new posting on 11.5.82 under the Assistant Engineer, Tipaimukh under Silchar Division. On 14.5.82, the Assistant Engineer, Tipaimukh directed the petitioner to join at Tuival Chuya side under Shri B.P. Nath, Supervisor and the petitioner went to the aforesaid site but curiously enough to the petitioner found it to be in a vacuum as the site was not opened at Tuival Chuya at that time. He went to Tuival Chuya covering a distance of 150 kilometers passing through thorny jungles but was surprised to see that there was no shadow of the.....

-: 4 :-

the site and the petitioner came back and reported to the Executive Engineer, Tipaimukh Investigation Division, Silchar on 29.5.1982. That the petitioner remained at Silchar till 9.6.1982 and thereafter the petitioner was again directed to report at Tuival Chuya site at Mizoram vide letter dated 29.5.82. Being faced with such transfers, the petitioner took leave on personal ground as he had to make arrangements for his family members who were getting harassment like anything and after availing the leave the petitioner reported for duty at Silchar Division but the petitioner was informed that the Tuival Chuya site has already closed and the petitioner was again asked to report to Khokhan gauge and discharge site vide letter dated 26.2.83. The petitioner went to Khokhan passing through jungles but he was disappointed to know that there was no site at all at Khokhan at that time. He came back from Khokhan and reported to the Assistant Engineer, Tipaimukh Investigation Sub-division III, who instructed the petitioner to become ready to go to Khokhan vide letter dated 6.3.83. When the petitioner was ready to leave for Khokhan for the second time, the Assistant Engineer of Tipaimukh did not release him from Tipaimukh and the Assistant Engineer wrote a letter to the Executive Engineer, Tipaimukh Investigation Division No.1 of Silchar vide letter dated 18.3.83, wherein he informed the Executive Engineer, Silchar that the petitioner had been temporarily engaged at Tipaimukh due to some urgent official works for the time being and the Assistant Engineer of Tipaimukh requested the Executive Engineer for the approval for retaining the petitioner at Tipaimukh and as the petitioner was not released from Tipaimukh, he continued to work there. The petitioner contends that his duty was at Tipaimukh till 5.4.83 and as he was not getting his salary from July, 1982, he filed an application.....



-: 5 :-

application on 7.4.83 before the Assistant Engineer, Tipaimukh, praying for permission to leave the Head Quarter on 8.4.83 so that the petitioner may meet the Executive Engineer at Silchar for getting the salary and transfer travelling allowances but the Assistant Engineer refused to reply anything and he did not even like to talk with the petitioner. That on 16.4.83 the petitioner received a wireless message wherein it was stated that the petitioner had not joined his posting place and violated official rule and that he insulted the Engineer in-charge. The petitioner was asked to submit explanation. The petitioner submitted explanation on 16.4.83 stating that the allegation was false. The said explanation was received on 19.4.1983. On 16.4.83 the petitioner went to the office of the Executive Engineer at Silchar for informing him the fact of the non-receipt of the salary of the petitioner, but the Executive Engineer at Silchar refused to meet the petitioner and as such the petitioner had no other alternative but to file an application on 16.4.83 at Silchar stating the grievances and the refusal of the Executive Engineer to meet with the petitioner. As the petitioner was not getting his salary and transfer travelling allowances since July 1982 he had nothing to eat and maintain himself and his family members and under the compelling circumstances he filed an application before the Executive Engineer for granting leave on and from 19.4.83. stating therein to grant earned leave and any other leave with effect from 9.4.83 till the matter was settled. Thereafter the petitioner left for his native place after filing the leave application to the Executive Engineer, Silchar. On 24.9.82, the petitioner submitted an application to the Chairman through the Executive Engineer of Imphal for onward transmission wherein the petitioner had stated that due to very frequent transfer the petitioner was unable to maintain

his....

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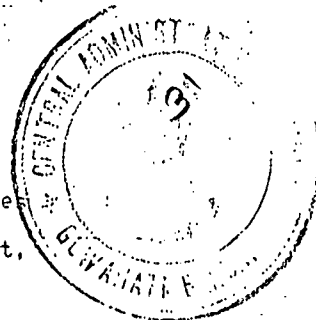
his family being a low paid employee that the petitioner had school going children and now under transfer to Tipaimukh, the petitioner had no other alternative but to stop the education of the children as there was no school at Tipaimukh site. It is also stated in the said application that the petitioner did not have sufficient money to maintain two establishments, i.e. one for the petitioner and the other for his family, and that the petitioner may be posted to a place where the petitioner could give education to his children. That the letter dated 29.4.82 was duly received by the Executive Engineer of Imphal and the same was forwarded to the Superintending Engineer, Shillong, vide letter dated 11.5.82 but the Superintending Engineer, Shillong did not forward the said letter to the Chairman. In paragraph 27 of the petition he has a catalogue of his frequent transfers to show the vindictive nature of the opposite parties to harass him. On 2.2.83, the petitioner received a letter from the Chairman, wherein the Chairman has written as follows :

"His complaint regarding frequent transfers is also investigated. In the meantime he is advised to join the place of his posting and his request for transfer to the Circles will be considered sympathetically for other Circle."

On the advice of the Chairman the petitioner reported for his duty on 25.2.83 to the Executive Engineer, Silchar and the said Engineer told the petitioner that Tuival Chuya site had been closed and the petitioner was re-posted at Khokan in Mizoram about 500 kilometers away from Silchar and the petitioner went to Khokan by-passing-through-jungles by walking three days on foot as there is no road communication. But the petitioner was surprised to know that he was posted in a vacuum as till then the site was not opened and there was neither any sign of a hut nor any other employer was present there. He has stated that the aforesaid order shows the vindictive, malicious, capricious, arbitrary and harmful attitude of the opposite parties in transferring him to a place where the site was not opened.

He has referred to a circular No.2/10/78/W.E., dated 24.10.80 issued by the Chairman of the Central Water Commission,

where....



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where it is stated that as regard to non-Industrial categories which are envisaged to be brought on the regular establishment, the extent of conversion of temporary posts of work charged into permanent is 90%. Therefore 50% of the work charged posts which fulfil the Central Civil Services Criteria can be safely converted into permanent posts without any formal classification into Industrial and non-Industrial. The petitioner filed an application before the Chairman of the Central Water Commission on 7.5.80 and 21.1.82 for the appointment of the petitioner to the post of Supervisor/Design Assistant in view of the aforesaid circular, but the genuine case of the petitioner was not considered whereas other work-charged employees, junior to the petitioner were appointed to the said post. The petitioner has also averred that in another circular dated 2.9.81 issued by the Ministry of Irrigation, Government of India, Central Water Commission to the effect that the authorities are to see that frequent transfers do not take place and the officers/staff should remain at the place of posting at least for three years unless the officer is promoted and posted elsewhere. But, in the present case the petitioner has been transferred nine times within a span of seven months between 25.7.81 and 26.2.83, which is a clear violation of the aforesaid circular and the Service Rules. Being faced with such predicament, the petitioner was compelled by the inevitable circumstances to file a Writ Application under Article 226 of the Constitution of India before the Gauhati High Court and the same has been registered as Civil Rule No.1122 of 1983 and the High Court was ^{pleaded} placed to pass an order on 25.11.1983 directing the opposite parties to pay the arrear salary within a month from the date of the receipt of the order. It is stated that the opposite parties were silent on the aforesaid representation and nothing was heard from the opposite parties till 7.4.1984, when the petitioner had received 5 letters all dated 2.1.1984 from the.....

-: 8 :-

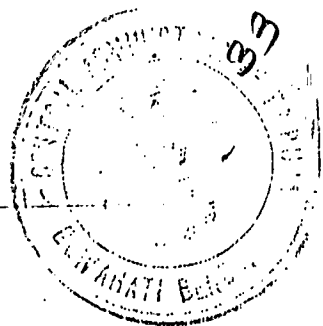
the Executive Engineer, Silchar, which was received by the petitioner on 7.4.84. The copies of the letter are annexed as Annexures, 41, 42, 43, 44 & 45. The petitioner has also annexed to the petition a copy of the letter dated 9.6.82 by which it is stated that the petitioner was granted earned leave for 21 days from 10.6.82 to 30.6.82 by the Executive Engineer, Silchar, vide his letter dated 9.6.82. On 19.4.84, the petitioner received the notice of the order of termination of his services vide letter dated 25.1.1984. As the aforesaid order of termination of service was not sent to his present address, the same ^{was} received only on 19.4.84 at Silguri the present address given to the authority. The petitioner submitted an appeal under Rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1955, against the order dated 25.1.1984 terminating his services. The petitioner received the order of termination only on 19.4.84 and the appeal was filed only on 28.5.84. It is contended that the order of termination is clearly in violation of Article 311 of the Constitution of India and also in violation of the principle of natural justice. It is contended that the authority had no right whatsoever to terminate the petitioner without holding an enquiry and without proper charges. Annexures 41, 42, 43, 44 and 45 show that he was still in service till the termination order was passed. The termination order shows that the order is passed by the Superintending Engineer for Chief Engineer, C.W.C. stating that the service of the petitioner shall stand terminated with effect from the date of expiry of a period of one month from the date on which the notice is served on or, as the case may be tendered to him.

3. It is submitted on behalf of the petitioner that although the order of termination is shown to be innocuous and termination simpliciter, it is in fact penal in nature and as such it is not sustainable in law as there was no enquiry held against....

against the petitioner before the order of termination was served on him.

4. The respondents 1 to 5 have filed written statement. In paragraph 3 of the written statement, it has been stated that the petitioner was a temporary employee and a member of the Work Charge staff in the project work under Lower Lagyap Hydel Project Circle, where he worked as Work Sarker, Grade I under lower Lagyap Construction Division No.1. This Lower Lagyap Hydel Project work was completed and the Division was finally closed in July, 1981. The petitioner being a temporary employee, was to be retrenched along with the completion of the project work, but the authority on humanitarian ground transferred and posted him under Tipaimukh Investigation Circle, Shillong. As regards the frequent transfers of the petitioner, the respondents have stated in paragraph 9 of the written statement that the petitioner was transferred in public interest with immediate effect and as such the respondent No.4 could not comply with the request made by the petitioner for his retention at Imphal by cancelling the transfer orders. In paragraph 11 of the written statement it has been stated that no order on 14.5.82 was issued to the petitioner by the Assistant Engineer to join at Tuival Chuya site as alleged by the petitioner. The petitioner did not visit Tuival Chuya site and no question of travelling at a distance of 150 kilometers through thorny jungle by the petitioner arises. In fact, instead of proceeding for opening the site at Tuival Chuya, the petitioner went on casual leave from 15.5.82 to 28.5.82. The petitioner directly came to Silchar after expiry of casual leave and he was allowed to join at Division Office at Silchar on 29.5.82 purely on his own request and to save him from unauthorised going to Silchar. At Silchar the petitioner had submitted two joining reports, one to the Executive Engineer dated 29.5.82, stating that he is joining in Division Office on 29.5.82, which was initialled by Assistant Engineer on 29.5.82 and by the Executive Engineer

on....



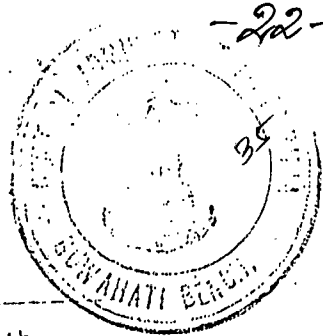
-: 10 :-

on 9.6.82. The second one is addressed to the Assistant Engineer, T.I. Sub-division No. III, saying that he is joining in the Sub-division on 29.5.82, which was initialled by the Assistant Engineer, Executive Engineer, Head Clerk on 9.6.82. By the two joining reports, he created confusion regarding his so called joining report at Silchar. In paragraph 12 of the written statement, it has been stated that the petitioner was allowed to stay at Silchar upto 9.6.82, but in the said order he was directed to join at Tuival Chuya after 9.6.82. But he again applied for leave from 10.6.82 to 30.6.82 to proceed on L.T.C. to visit a holy temple in Jammu & Kashmir. The petitioner also gave an undertaking dated 9.6.82 that he would join at the place of posting at Tuival Chuya after expiry of leave. So his leave was granted and advance payment was made as admissible under the rules.

After expiry of the leave granted to him he did not honour his own commitment and did not join accordingly at Tuival Chuya, but extended his leave upto 24.2.83. In the meantime, the petitioner sent two telegraphs first one mentioning that "leave extended for two months" sent from Siliguri junction and received in Division Office on 9.7.82. No post copy in confirmation was received by the Office. The second telegram from Samastipur saying "leave extended", received in the Division on 7.9.82, without any post copy in confirmation. A doubt was created in the minds of the Department about the visit of the petitioner to the holy temple at Jammu & Kashmir.

In paragraph 13 of the written statement it has been stated that after 7 months' absence from duties, the petitioner resumed his duty at Silchar on 24.2.83 by a joining report without mentioning the place. He was directed to join at Khokon as the Tuival Chuya site was already closed. But the petitioner never went to the Khokon site. The petitioner joined at Tipaimukh on 5.3.83 for non-opening of Khokon GSD site....

-: 11 :-

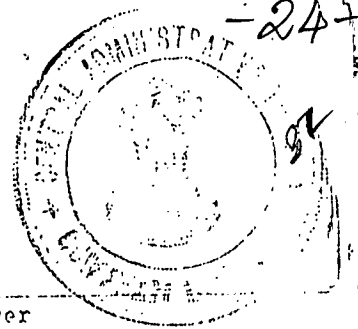


site at that time and his joining report was accepted by the Department. Further on a careful consideration of the petitioner's case, the authority reckoned his joining date with effect from 25.2.83 forenoon. In the meantime, the Assistant Engineer vide his letter dated 6.3.83, instructed the petitioner to be ready for proceeding to Khokon as soon as the site is established. The Khokon GSD site was established on 12.3.83 by the Assistant Engineer himself as the petitioner did not accompany the Assistant Engineer. Subsequently, the Assistant Engineer directed the petitioner to proceed Khokon GSD site vide letter dated 18.3.83. In paragraph 14 of the written statement, it has been denied that the Assistant Engineer did not release the petitioner to proceed to Khokon site. It is clear from the letter dated 6.3.83 which is Annexure G to the petition that the petitioner was asked to be ready to proceed to Khokon site as soon as the site is established. In paragraph 15 of the written statement it has been stated that a wireless message was sent on 13.4.83 by the Assistant Engineer, TISD-II, Tipaimukh to Executive Engineer, TID-I, Silchar that the petitioner neither joined at Khokon nor is intending to join there and insulted the Assistant Engineer badly. Subsequently, the Assistant Engineer, TISD-III was instructed by Executive Engineer TID-I on 14.4.83 through wireless to stop the petitioner's payment till he joins at his place of posting and to take effective measures in case of threaten for physical assault. Similarly, the Executive Engineer, TID-I sent another wireless message to the petitioner on 14.4.83, instructing him to submit explanation on the reports of the Assistant Engineer and any attempt for assault will be dealt severely. This fact was reported to the Superintending Engineer, TIC, Shillong by Executive Engineer, TID-I, Silchar vide his letter No. TID/PE-116/492 dated 19.4.83. The full report was received in the

Divisional.....

-: 12 :-

Divisional Office on 22.4.83 wherein the Assistant Engineer vide his letter TISD-III/Estt-9/241 dated 9.4.83 intimated that while disbursing the payment of the staff at Tipaimukh on 7.4.83; the petitioner attempted to snatch away the Attendance Register and intended to sign. He was allowed to receive his pay upto 18.3.83, i.e. the day after which he is supposed to join at Khokon GSD site. The petitioner refused the payment and insulted him with challenge. In this letter, the Assistant Engineer enclosed the application of the petitioner dated 9.4.83 addressed to the Chairman, C.V.C., New Delhi. The charges made therein are all false and fabricated as could be seen from the report of the Assistant Engineer. No action was taken on the petition dated 7.4.83 by the Assistant Engineer as the petitioner was not at his duty place and having no authority to permit him to go to Silchar. In paragraph 17 of the written statement, it has been stated that on 9.4.83, the petitioner submitted a departure report to the Assistant Engineer, saying that he is going to his native place via Silchar due to over harassment. This was received by the Sub-divisional Clerk on 9.4.83, which was submitted to the Assistant Engineer on 17.4.83. The petitioner came to Silchar Office on 16.4.83 and tried to report to the Executive Engineer against the Assistant Engineer. The Executive Engineer told him that he may submit his points in writing through proper channel or examination in this office. So, the petitioner submitted his application dated 16.4.83. This application is annexed as Annexure 20 to the petition and that the facts stated therein are incorrect. On 16.4.83, he filed another application, stating that he is going to his native place and he will neither work under the jurisdiction of this office as well as of Circle Office. The petitioner has never gone to Khokon GSD site. His mention about the fact that the Executive Engineer has refused to meet the petitioner is not correct. In paragraph 18 of the written statement, it has been stated that the petitioner has been.....



been paid from the Government a sum of Rs.2,815.35 under various heads. It is stated that the Department is to recover an amount of Rs.1,823.20 from the petitioner. It is also stated that all his earlier salaries etc. have been paid regularly. In paragraph 27 of the written statement it has been stated that the behaviour of the petitioner is wholly objectionable in view of the fact that he has stolen a D.O. confidential letter dated 24.4.82 written by H.S. Rangachar, respondent No.4 to respondent No.5 for which criminal action is warranted. No question of vindictive, malicious, arbitrary and ill motive of the authorities is there as alleged.

In paragraph 40 of the written statement, it has been stated that the petitioner being a temporary employee, a notice under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1955, was served on him giving one month's time which is legal and proper. It is submitted that there is no illegality, improperly or irregularity in terminating his service as stated above and as such the petition is liable to be dismissed.

5. In a counter-reply filed by the respondents on 29.10.86, it has been stated in paragraph 4 that the termination of the petitioner from service was due to his long unauthorised absence from duty with effect from 25.3.83 till the date of his termination from service. The petitioner was asked to resume duties vide Annexure 42, annexed to the petition by the petitioner, but the petitioner deliberately remained unauthorised absence and did not join duty. Thereafter, the Superintending Engineer issued termination notice as required under rule 5(1) of the Temporary Service Rule, though the rule has not been quoted therein vide Annexure 47 annexed to the petition of the petitioner.

6. The impugned order reads as under :

" No.NEID/2201/83/258.

Government.....

-: 14 :-

Government of India, Central Water Commission,
North Eastern Investigation Circle, Nohome :
Nongshilliang, Shillong - 793014.

Dt. the 25th Jan/84.

NOTICE OF TERMINATION OF SERVICE :

I, hereby give notice to Shri E.L.F. Gupta that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be tendered to him.

H. S. Rangachar,
Superintending Engineer,
for Chief Engineer (PCI)CWC

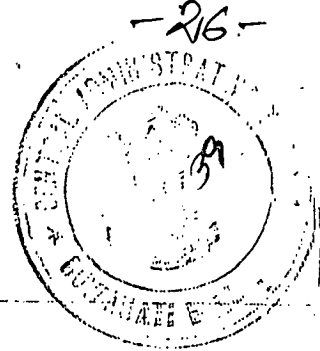
State - Shillong.

Signature of the
appointing authority.

To
Shri E.L.F. Gupta,
Work Sarkar Gr.I (absenting from duty from 25.3.84) -
Vill. Chhajjan Goun,
P.O. Chhajjan Harishankar,
via Turki,
District - Muzaffarpur.

On a perusal of the impugned order, it is found that the order appears to be termination of the service of the petitioner simpliciter. But the attending facts as noticed above from the pleadings of the parties, it is seen that prior to the passing of the impugned order there were allegations raised about his misconduct. Therefore, it is contended by the learned counsel for the petitioner that the foundation of the impugned order is based on some allegations of misconduct of the petitioner for which in order to punish him for those misconducts, the impugned order was passed. It is submitted that the impugned order although ex-facie an order of termination simpliciter, circumstances now disclosed it is found that the action in passing the impugned order was penal in nature. It is submitted by the learned counsel for the petitioner that in paragraph 27 of the written statement the respondents have raised allegations that the petitioner's behaviour is wholly objectionable in view of the fact that he has stolen a P.O. confidential letter dated 25.4.82 written

by.....



by N.S. Mangachar, respondent No.4 to respondent 5 for which criminal action is warranted. This is a very serious allegation of misconduct of the petitioner. If such a serious allegation is raised by the respondents, an enquiry is to be held in order to absolve or to punish him of such serious allegation. The learned counsel has drawn our attention to paragraph 4 of the counter reply filed by the respondents on 29.10.86. The learned counsel for the petitioner has also drawn our attention to Annexure 42 to the petition. This is an Office Memo of the Executive Engineer. It reads as under :

" GOVERNMENT OF INDIA : CENTRAL WATER COMMISSION:
NORTH EASTERN INVESTIGATION DIVISION, F.O.,
RONGPUR (PART I) SILCHAR DISTRICT
CACHAR (ASSAM)

No. NEID/WC/PF-116/4. Dated Silchar 2nd Jan'84.
MEMO

Shri B.L.P. Gupta, work sarker - Gr. I has been absent from duty without permission since 25.3.83. He is hereby directed to resume duty at site and will be treated on unauthorised absence from duty from 25.3.83 till he resumes duty. The period of his absence will be treated dies-non for all purposes and an interruption in his service.

Sd/- S.C. Nath,
Executive Engineer.

To
Shri B.L. Gupta, Work Sarker - Gr. I.
(Absenting from duty from 25.3.1983 onwards) "

On a perusal of the aforesaid memo, it is seen that there is allegation of unauthorised absence of the petitioner from duty from 25.3.83 till he resumes his duty. Here, serious allegation has been raised about his unauthorised absence. In this paragraph 4 of the counter reply referred to above, the respondents have said that the termination of the petitioner from service was due to for his long unauthorised absence from duty with effect from 25.3.85 till the date of his termination from service. This is another serious allegation which if correct called for enquiry. Without holding such enquiry, the petitioner's services cannot be terminated by invoking the provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. The learned counsel has drawn to our notice the contents of....

-: 16 :-

of a wireless message, which is Annexure 19 to the petition.

This wireless message reads as under :

" WIRELESS MESSAGE :

To

Shri B.L.P. Gupta, Work Sarkan Grade I.
Khokan G & D Site.

(Through A.E. TISD - III : TIPAIMUKH)

IT IS REPORTED THAT YOU HAVE NOT JOINED YOUR
POSTING PLACE AND VIOLATED OFFICIAL RULE AND
INSULTED ASSISTANT ENGINEER INCHARGE (.) YOU SHOULD
SUBMIT YOUR EXPLANATION ON THE ABOVE CHARGES TO ASST.
ENGINEER TISD-III WITHIN 10 HOURS OF 15.3.84 (.) ANY
ATTEMPT BY YOU ASSAULT TO ANY STAFF WILL BE DEALT
SEVERELY (.)

Sd/- S.C. Nath,
Executive Engineer

Message transmitted
to Tipaimukh on 14.4.1983
at 12.30 hrs. Schedule.

Illegible

14.4.

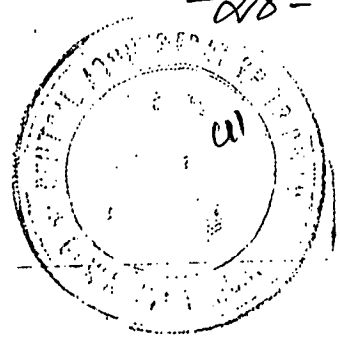
GR4: TIDIV'SILOVARIHME 1187 "

A fair reading of the wireless message shows that the petitioner has been charged with for not joining the place of posting, violation of official rules and also there is allegation of insult meted out to the Assistant Engineer in-charge. The above allegations of misconduct if correct it was only fair and proper to hold an enquiry, before taking any action against him. But, instead of doing that the authorities have chosen easy method of termination of the service of the petitioner by passing the impugned order because they thought that the launching of a proceeding would be a great bother or nuisance for them. In support of his submission, the learned counsel for the petitioner relies on three cases of the Supreme Court in Nepal Singh vrs. State of U.P., AIR 1985 SC 84, Jarnail Singh

vrs. State of Punjab, 1986 Labour and Industrial Cases 1986 and also Anup Jaiswal vrs. Govt. of India, AIR 1984 SC 636.

7. In Nepal Singh (supra), the Supreme Court had to consider an order of termination of a temporary Government servant. There it was held that if the circumstances under which the impugned order of termination of service is passed although such order prima-facie does not put any stigma shall

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-: 17 :-

be liable to be quashed on the ground that the basis of passing of the order was on certain allegation of misconduct which can be found from the attending circumstances. In that case the appellant Nepal Singh was employed in a temporary capacity as Sub Inspector of Police. He was serving at Shahjahanpur in 1968 when the Superintendent of Police, Shahjahanpur initiated disciplinary proceedings under section 7 of the Police Act against him on the charge that while posted at Pithoragrah he had in November, 1964, contracted a second marriage while his first wife was alive and as this was done without obtaining prior permission of the Government, the appellant had violated Rule 29 of the U.P. Government Servants Conduct Rules, 1956. The appellant filed a reply and denied the charge. The oral testimony of about 12 witnesses for the prosecution and an almost equal number for the defence was recorded. But in January, 1970, the Superintendent of Police, Shahjahanpur wrote to the Deputy Inspector General of Police, Bareilly Range that as the act alleged against the appellant related to the district of Pithoragarh the disciplinary proceedings taken by him would be without jurisdiction unless there was an existing order of transferring the proceedings from Pithoragarh to Shahjahanpur. About that time the Inspector General of Police, Uttar Pradesh issued a circular letter to the Superintendents of Police throughout the State requiring them to submit a list of Sub Inspectors who fell in any of the following three categories :

- 1) Whose reputation and integrity is very low and/or
- 2) Who are generally involved in scandals, like drinking, immorality, etc. which blackens the face of the U.P. Police and/or
- 3) Everywhere they are a big problem because they encourage gambling, excise offences, brothels, criminals etc.

The.....

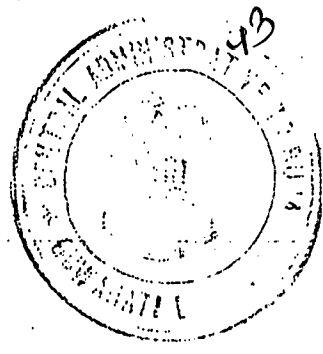
-: 18 :-

The Superintendent of Police, Shahjahanpur drew up a list of such Sub-Inspectors on February 5, 1970 and directed them to appear before the Deputy Inspector General of Police, Bareilly Range on February 10, 1970 during his inspection of the district. The list included the name of the appellant with the note "a corrupt officer, who is not straight-forward. Married two wives against Government Servants' Conduct Rules. Does not do his duty sincerely. Wherever he goes creates problems." The aforesaid facts were there before the authority and after that the impugned order dated 27.4.70 was passed by the Deputy Inspector General of Police, Bareilly Range purporting to be under the rules published by Notification No. 230/II-B-1953 dated January 30, 1953 that the appellant's services were not required any more and were terminated with one month's pay in lieu of notice. In the case no attempt was made after the initial enquiry to institute a proper enquiry by the appropriate authority. It was held that with the dropping of the enquiry the allegation remained unverified. The Supreme Court while setting aside the impugned order expressed in the following terms :

"We may observe that where allegation of misconduct are levelled against a Government servant, and it is a case where the provisions of Art. 311(2) of the Constitution should be applied, it is not open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a bother or a nuisance and that therefore it is entitled to avoid the mandate of that provision and resort to the guise of an ex facie innocuous termination order. The Court will view with great disfavour any attempt to circumvent the Constitutional provision of Art. 311(2) in a case where that provision comes into play."

8. In Jarnail Singh (supra), the question of termination of appointment of certain Government servants who were appointed on ad-hoc basis was held to be bad on the ground that such order was passed on the basis of adverse remarks and allegations of embezzlement. The order of termination was held to be illegal for non-compliance of Article 311(2) of the Constitution. There the order of termination of the services

of.....



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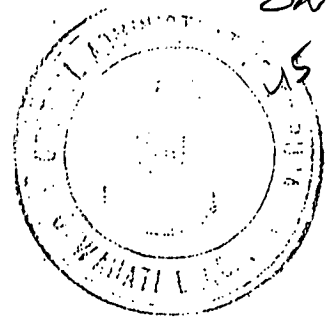
of the petitioners was prima facie passed without casting any stigma against them. In that context, the Supreme Court held that mere form of the order is not sufficient to hold that "the order of termination was innocuous and the order of termination of the services of a probationer or of an adhoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words when an allegations is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct, efficiency or not." In that case there were certain allegations of serious misconduct against the petitioners and also in the service records of the petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Art. 31(2) of the Constitution of India, while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1930. Thus, the impugned orders terminating the services of the appellants on the ground that "the posts are no longer required" were held to be made by way of punishment. The Supreme Court considered the counter-affidavit filed by the authority and took into consideration the contents of the statement made therein to come to a conclusion that....

-: 20 :-

that "the impugned order of termination of service of the petitioners had been made on the ground - that there were adverse remarks in the service records of the petitioners as well as there were serious allegations of embezzlement of funds against some of the petitioners." On considering the entire matter the Supreme Court finally came to the conclusion that "the impugned orders of termination of the services of the petitioners were really made by way of punishment and they are not termination simpliciter according to terms of the appointment without any stigma." It was further held that "it is undisputed that the respondents Nos. 2 and 3 did not follow the mandatory procedure prescribed by Art. 311(2) of the Constitution making the purported orders of termination of services of the petitioners on the ground of misconduct and thus there has been a patent violation of the rights of the petitioners as provided in Art. 311(2) of the Constitution." The Supreme Court also came to the categorical finding, on considering the facts found from the entire materials that "there is no room for any doubt that the impugned order of termination of services of the petitioners had been made by way of punishment as the allegations of embezzlement of funds as well as adverse remarks in the service records of these petitioners were the basis and the foundation for not considering the petitioners to be fit for being regularised in their services in accordance with the Government Circular dated October 28, 1980."

9. In Anup Jaiswal (supra), the Supreme Court had to consider a similar matter. There according to the authorities the appellant was considered to be one of the ring leaders who was responsible for the delay for which explanation was called for from all the probationers. In the explanation the appellant sincerely regretted the lapse while denying the charge of

instigation.....



instigating others in reporting late. On the basis of the explanation and interview but without holding any proper enquiry the Director recommended to the Government of India that the appellant should be discharged from the service. The Government accordingly passed an order of discharge of the appellant on the ground of unsuitability for being a member of the IPS. When this order was challenged their Lordships made the following observations :

"where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employees."

10. On consideration of the facts and circumstances of the case discussed above, we have no hesitation to come to the conclusion that the impugned order is passed by way of punishment on the basis of certain allegations of misconduct as noticed above for which the petitioner was not given any opportunity to prove his innocence. Therefore the impugned order is not sustainable in law. Accordingly, this impugned order is liable to be set aside which we accordingly do.

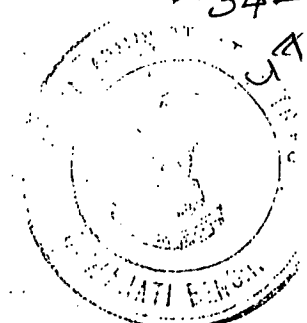
11. The other ground of challenge is that in passing the order the authorities have violated the principle enshrined in Articles 14 and 16 of the Constitution, inasmuch as, some 35 of his juniors were retained in service and the petitioner has been singled out for discrimination by terminating his service without any reasonable cause. In the impugned order, the authority does not give any reason as to why the petitioner was thus visited with such harsh treatment which is demonstrably a case of flagrant discrimination.

12. The petitioner has filed a further affidavit on 17.9.85. In that further affidavit, the petitioner has stated in paragraph 1 that no less than 35 persons who were appointed

in....

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in Work Charge and much after his appointment were confirmed in service. He has given a list of the names of the persons annexed as Annexure 'A' to the further affidavit. In paragraph 2 of the further affidavit, the petitioner has stated that not a single employee of his category of post though appointed later than him is or was removed from service by exercise of such powers. In paragraph 3, the petitioner has stated that though the termination letter does not contain any stigma, in fact, that was passed to punish him because he incurred displeasure for his officers for reasons best known to him. It is stated that there could not be any justification to retain his juniors in service and to discontinue his service except for the purpose to punish him. The respondents have filed counter reply to the further affidavit given by the petitioner. In paragraph 3 of the counter reply dated 20.10.1996, it has been stated that it is not correct that 25 persons, as stated by the applicant, who were appointed in work charged category and much after the appointment of the applicant, were confirmed in service in this circle. It is clarified that there are different circles of the Central Water Commission through out India and every such circle is headed by the Superintending Engineer, who is the appointing and dismissal authority of the work charged employees of the circle. The circle where the applicant was posted on transfer on humanitarian ground was called Tipaimukh Investigation Circle, which is now renamed as North Eastern Investigation Circle, Shillong. Every circle is a unit for seniority of work charged personnel in each category separately. Further, no transfer of work charged employee can be made normally from one unit to another unit except in a very special circumstances with the approval of the Chief Engineer, in which case such employees are not given benefit on past services in the new unit for the purpose of seniority. That apart, work charged employees are appointed against.....



-: 23 :-

against the Project temporarily and the moment the Project is completed, all the employees, so appointed, are retrenched if there is no scope to absorb them in other circles. It may further be stated that the 35 persons named by the applicant in this paragraph ^{are} not there in this circle. The applicant is put to strict proof of it. In paragraph 4, it has been stated that the service of the petitioner was terminated due to his long unauthorised absence from duty with effect from 25.3.83 till the date of his termination from service. And as such, any comparison of the other employees of the same category, as made by the petitioner is irrelevant. It is stated in this paragraph that the petitioner's case stands on a complete different footing from that of other employees of the same category appointed before or after him.

13. It is submitted by the learned counsel for the petitioner that the action of the authority in passing the impugned order is clearly violative of the provision of Articles 14 and 16 of the Constitution of India. In support of his submission the learned counsel relies on *Manager, Government Branch Press vrs. D.B. Belliappa*, AIR 1979 SC 429, where the Supreme Court had to consider the termination of one temporary Government employee while retaining some others junior to him in service. In that context on those facts it was held by the Supreme Court that "the protection of Articles 14 and 16 of the Constitution will be available even to a temporary Government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors similarly circumstanced. In that case the service of Belliappa, a temporary Class IV employee was terminated without assigning any reason although in accordance with the conditions of his service, three other employees similarly situated, junior to Belliappa in the said temporary cadre, were retained." The order of termination was held

to.....

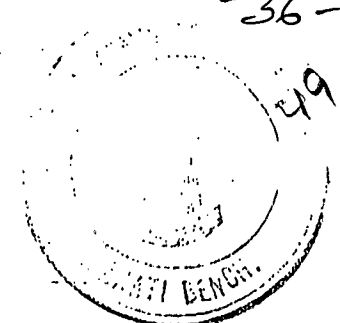
-: 24 :-

to be bad as "it offended the equality clause in Arts. 14 and 16 of the Constitution." It is submitted by the learned counsel for the petitioner that the Central Water Commission is one organisation, where the employees are working under the Commission, although there are units of the Commission yet employees from one unit to another are transferable. Appointment of the employees in the Commission are transferable. It is not a fact, submitted by the learned counsel, that if an employee is working under one unit thereby he is not transferable to another unit. Even in the affidavit of the respondents, it has been stated that in exceptional cases, an employee of one unit can be transferred to another unit. It is, therefore, submitted that while some of the juniors of the same class and category are retained in service dispensing with the services of the petitioner without any justifiable causes is a case of flagrant discrimination. It is further submitted that the petitioner has been singled out for discriminative treatment by terminating his services while retaining many of the juniors to him in service.

14. We find ~~some~~ force in the contention raised by the learned counsel for the petitioner. But as we have already held that the impugned order is punitive in nature and sustainable in law without holding an enquiry, we do not express any opinion on the second contention raised by the petitioner.

15. The facts leading to G.C.No.116 of 1986 - C.F.No.1122 of 1983 and the facts of the petition that we have just noticed are almost identical, which have ^{been} discussed above. We do not like to burden this judgment by repeating the facts which are already stated above in the other petition. In this petition, the petitioner has asked for giving direction to the respondents (1) to pay salary from July, 1982 and transfer travelling allowances as may be due to him, (2) to withdraw the wireless

message.....



-: 25 :-

message dated 14.4.83 and to make necessary order of posting of the petitioner, (3) to post the petitioner if possible beyond the jurisdiction of the present Superintending Engineer, and (4) to regulate the service of the petitioner as a permanent non-technical staff. The petitioner has stated that he received a wireless message wherein it was stated that the petitioner has not joined his posting place and violated official rule and that he insulted the Engineer in-charge and that he was asked to submit explanation. He has stated that the allegation raised by the aforesaid wireless message ^{of 14-4-83} was false and he submitted necessary explanation on 16.4.83 which was received in the Office of the Executive Engineer on 18.4.83. He has averred that on 18.4.83, the petitioner went to the office of the Executive Engineer at Silchar for informing him the fact of the non-receipt of the salary of the petitioner but the Executive Engineer at Silchar refused to meet the petitioner and as the petitioner had no other alternative he filed an application on 15.4.83 at Silchar stating the grievance and refusal to meet with the petitioner. It is stated by the petitioner that he was not getting his salary and transfer travelling allowances since July, 1982 and as such he had nothing to eat and maintain himself and his family members and under the compelling circumstances he filed an application before the Executive Engineer for granting leave on and from 18.4.83 stating therein to grant earned leave and any other leave with effect from 9.4.83 till the matter is settled. He has also complained about the frequent transfers from one place to another without considering the difficulties of the petitioner. He has stated that he was transferred nine times between 25.7.81 and 26.2.83, which is in clear violation of the circular issued by the Government of India, Ministry of Irrigation, Central Water Commission,

-: 25 :-

Commission, dated 2.9.81, which provides that frequent transfer would not take place and the official/staff should remain at the place of posting at least for three years unless the officer is promoted and posted elsewhere. But, in the present case, the petitioner was transferred as stated above 9 times within a span of 7 months. It is submitted that these frequent transfers ^{him} has harassed to great extent. In the Miscellaneous Application No. 797 of 1983 in Civil Rule No. 1122 of 1983, before the Gauhati High Court, the petitioner prayed for some interim order. On that Misc. Application, the High Court passed the following order on 25.11.1983 :

"Register the application as a separate Misc. Case.

By this application the petitioner prays for payment of his due salary and other allowances upto 7.4.83. Mr. J.N. Sarma, learned counsel for the petitioner submits that the petitioner has not received his salary and other allowances since July, 1982, and that he has a legal right to get his salary and allowances.

Heard Mr. S. Ali, learned Sr. Standing Counsel, Central Government. If the petitioner has really worked upto 7.4.83 and there is no legal cause for refusing to grant him his salary and allowances upto 7.4.83, the respondents shall pay the arrears within a month from the date of receipt of this order.

In the result, the petition is accepted to the extent indicated above. However, liberty is granted to the parties to file application for alteration, modification or cancellation of this order, if so advised.

This disposes of the Misc. Case.

Sd/- K. Lahiri,

Judge.

Sd/- T.C. Das,

Judge.

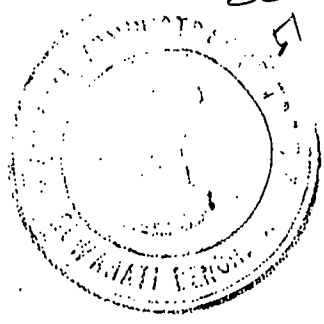
On 11.1.1984, the respondents filed an application before the Gauhati High Court, praying for modification, alteration or

cancellation of the order dated 25.11.83 in Misc. Application No. 797 of 1983 - Civil Rule No. 1122 of 1983. This application

was registered as Misc. Application No. 203 of 1984 - C.R. No. 1122 of 1983. On that Misc. Application, the Gauhati High Court passed the following order on 27.3.1984 :

"Register the application filed by the respondent as Misc. Case.

On 25.11.1983 in Misc. Case No. 797 of 1983, we made the following order, which is relevant for the purpose....



-: 27 :-

purpose of this petition. We ordered :

Heard Mr. S. Ali, learned Sr. Standing Counsel, Central Government. If the petitioner has really worked upto 7.4.63 and there is no legal cause for refusing to grant him his salary and allowances upto 7.4.63, the respondents shall pay the arrears within a month from the date of receipt of this order.

Mr. S. Ali, learned Standing Counsel, Central Government, submits that the petitioner did not work upto 7.4.63 and he is not entitled to any salary and allowances upto the said period. If in fact the petitioner Bhagwan Lal Prasad Gupta has not worked upto 7.4.63 and there exists legal cause for refusing to grant his salary and allowances upto 7.4.63, as ordered, the question of making the payment does not arise. As such, the order is very clear and requires no modification or alteration. We have examined the petitioner. We do not express any opinion on it in respect of the averments made therein nor do we accept the same as correct and/or incorrect. We hold that if the respondents think that the petitioner is not entitled to any salary or allowances at all in that event they may not pay the salary and allowances to him.

With these observations, the petition is disposed of.

Sd/- K. Lohari,
Judge.

Sd/- T.C. Das,
Judge.

In the Misc. Application before the Gauhati High Court for modification, alteration or cancellation of the order, the respondent has given in details about the order of transfer of the petitioner from different places. In paragraph 3 of the said Misc. Application, the respondent has stated that the petitioner was transferred by the Superintending Engineer, Tipaimukh Investigation Circle, Central Water Commission, Shillong, dated 24.3.62 from Tipaimukh Investigation Division No.2, Imphal to Tipaimukh Investigation No.1, C.W.C., Silchar, with a direction for further posting at Tuivai Gauge Discharge site. The Executive Engineer, Tipaimukh Investigation Division No.1, Silchar, issued the posting order to Tuivai Chuva site in Mizoram. The petitioner was relieved by the Executive Engineer, Tipaimukh Investigation Division No.2, Imphal, with effect from 20th April 1962 (afternoon) with an instruction, to report for duty to the Assistant Engineer,

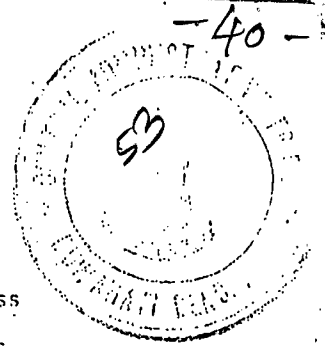
Tipaimukh.....

-: 28 :-

Tipaimukh Investigation Sub-division, Tipaimukh under Tipaimukh Investigation Division No.1, Silchar. The petitioner joined Tipaimukh Investigation Sub-division, Tipaimukh with effect from 11.5.82. On 13.5.82, the Supervisor in-charge informed the petitioner that he should report to Supervisor at Tuival Chuya site. Instead of joining the work site the petitioner proceeded on Casual Leave from 15.5.82 to 20.5.82. On return from Casual Leave the petitioner was allowed to join at Division Office at Silchar where he worked till 9.6.82. He was then directed to report to Tuival Chuya site immediately. But the petitioner applied for leave from 10.6.82 to 20.6.82 to proceed on Leave Travel Concession to Jammu and Kashmir and back. The petitioner gave an undertaking to join his place of posting at Tuival Chuya site at Mizoram after expiry of leave and the leave was granted with effect from 10.6.82 to 20.6.82, i.e. 21 days. On verification of the records, it revealed that he had only 14 days' Earned Leave at his credit on 10.6.82. As such the leave order was revised and 14 days Earned Leave from 10.6.82 to 23.6.82 and 7 days extraordinary leave from 24.6.82 to 30.6.82 without pay and allowances was granted. As such the excess leave salary for the period of 7 days, i.e. 24.6.82 to 30.6.82, is liable to be recovered from the petitioner as per rules. It is also stated by the respondent that after 7 months' absence from duty the petitioner resumed his duty at Silchar on 25.2.83 (forenoon) and at Tipaimukh on 5.3.83. On 6.3.83 the petitioner was given an advance intimation that he should proceed to Khokan G & D site since the site is established. On 12.3.83 the site was established by an Assistant Engineer and on 18.3.83 the petitioner was directed to join this site. The petitioner continued to stay at Tipaimukh defying the authority's order till 24.3.83. It is also stated that from 25.3.83 the petitioner ~~was~~ willfully remained absent from duty.

On...

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On 13.4.83 the Assistant Engineer informed through a wireless message that the petitioner had not joined the work site nor intend to join and the petitioner had insulted him. In a subsequent report the Assistant Engineer informed that on 7.4.83 the petitioner forcibly tried to put his attendance in the Attendance Register from 25.3.83 but the Assistant Engineer did not allow him to do so. The petitioner then demanded the pay for the entire month of March, 1983, when the Assistant Engineer was prepared to give his pay upto 17.3.83, the day on which the petitioner should have joined at Khoken site. But the petitioner refused to draw part payment for March, 1983. On 15.4.83 the petitioner came down to the Division Office at Silchar and started complaining against the Assistant Engineer and thereafter the petitioner submitted the complaints against the Assistant Engineer in writing on 15.4.83 itself stating that he is going to his native place as he has not been paid his salary for March 1983 and that he would be at his native place till he would not get the posting order out of the jurisdiction of Silchar Division as well as Tipaimukh Investigation Circle, Shillong. It is stated that since 25.3.83 the petitioner has not resumed his duty till date of filing of this Misc.

Application. In paragraph 6 of the aforesaid Misc. Application, it has been stated that the petitioner has been paid excess leave salary for 7 days from 24.6.82 to 30.6.82 amounting to Rs.224.25, which is recoverable from him and the order for recovery has already been issued to him on 2.1.84 with a direction to deposit the amount within a month from the date of receipt of the order failing which penal interest shall be charged and appropriate action taken for recovery of the amount.

In this paragraph, the respondent has also given the details about the payment of transfer T.A. bill. In paragraph 11, the respondents have also stated that the petitioner has not filed the petition bonafide as the following dues are recoverable from him :

Dues:

-: 30 :-

Dues :

Salary :
From 25.2.83 to 28.2.83. - Rs.158.60
From 1.3.83 to 24.3.83 - " 739.35
Arrear AD4 of 2/83
... " 61.90
1.6.82 to 23.6.82. " 32.30
Rs.992.15

Recoveries :

L.T.C. advance Rs.2500.00
(pending adjustment for want of authentic proof of having undertaking journey from Jammu forpur to Jammu and back).
Excess T.T.A. advance drawn in May, '83 " 91.00
Excess leave salary drawn from " 224.25
24.6.82 to 30.6.82.
Grand total Rs.2015.35

In paragraph 12, the respondent has submitted that the petitioner wants his pay and allowances without doing any work in the Department. In fact, he desires that he should get his salaries and allowances without joining in his duty which is not permissible under the law and service rules.

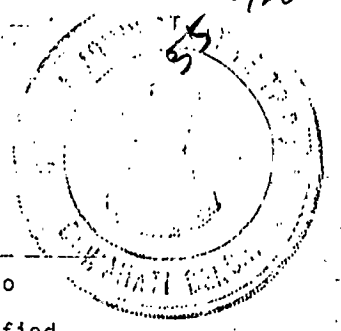
On 18.2.1984, the petitioner filed another Misc. Application before the Gauhati High Court with a prayer for giving direction to the respondents to pay the salary and travelling allowances of the petitioner from July 1982 onwards and to give direction to the respondents to post the petitioner outside the jurisdiction of the respondent No.4. This Miscellaneous Application has been filed after the respondents filed the Misc.

Application on 11.1.1984 with the prayer for modification, alteration or cancellation of the order dated 25.11.1983.

In this Misc. Application, the petitioner has disputed some of the contentions raised by the respondents in the Misc.

Application filed by the respondents on 11.1.1984. But the High Court did not pass any order.

15. After going through the counter-affidavit of the respondents, we find that the petitioner's salary and transfer travelling allowance had been paid to him in accordance with law. Further, no action has been taken by the authority on the wireless message dated 14.4.83 as complained in his petition and as such he should not have any grievance to make now on his...



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his count. The question of regularisation of his services as permanent non-technical staff lies with the authority to consider, for which we do not think that we shall be justified to give any direction. Moreover, the learned counsel for the petitioner has not advanced any submission on the aforesaid grievances at the time of hearing. At the time of hearing of the application, the learned counsel for the petitioner has only urged that we should give a direction to respondents that the petitioner should be transferred out of the jurisdiction No. 4 - Superintending Engineer, Central Water Commission, Tipaimukh Investigation Circle, Shillong, due to the harassment which was met out to him by frequent transfers by respondent No. 4 and his subordinate officers.

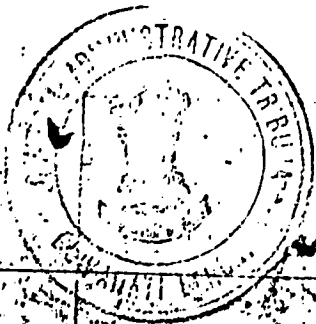
17. The learned counsel for the respondents submits that there was no harassment to the petitioner. All the transfer orders that were made by the respondents were in the interest of public service and transfer being the incidence of public service, such transfer order cannot give rise to any cause to seek for transferring him out of the jurisdiction of respondent No. 4. It is further submitted by the learned counsel for the respondents that no case of malafide of the respondent No. 4 has been made out calling for any action by way of giving any direction to the respondents to transfer the petitioner out of the jurisdiction of respondent No. 4.

18. After hearing the learned counsel for the parties and on going through the pleadings, we do not find any substance in the submissions made by the learned counsel for the petitioner to give a direction to the respondents to transfer him out side the jurisdiction of respondent No. 4.

On consideration of the entire matter we do not find any merit in the petition and accordingly this application is liable to be dismissed, which we accordingly do.

19. In the result, the Application No. G.C.No. 147 of 1936 - C.R.No. 704 of 1935 is allowed and the impugned order passed

by.....



-43- 56

by the authority terminating the service is set aside and he shall be deemed to be in continuous service. It will however be open to the authorities to determine whether the petitioner during the interregnum was gainfully engaged for the purpose of considering the extent of relief to which he may be entitled pursuant to our present order quashing the impugned order.

The Application No. G.C. 116 of 1985 - C.E. No. 1122 of 1983 is dismissed. In the facts and circumstances of the cases, we pass no order as to costs.

[Signature]
MEMBER : 21/1/87

[Signature]
VICE-CHAIRMAN : 21/1/87

Sarna :

Certified to be true copy

[Signature]
28/1/87
Deputy Registrar,
Central Administrative Tribunal,
Guwahati Bench.

True copy of the
original
[Signature]
Advocate

From :: 'Northeast'

Phone :: 21187

No. NEID/1/PP-116/92/ 5595-96

Govt. of India
Central Water Commission
North Eastern Inv. Divn. No. I
Rongpur part-I, Silchar-9

Dated :- - 5 AUG 1992

To,

Shri B.L.P. Gupta, W/S-gr-I
NEISD-II, CW, C
Rongpur, Silchar-9

Your representation dated 22nd July, 92 against the proposed recovery of excess payment of salary amounting to Rs. 23,342/- for the period from 10-6-1982 to 23-2-1984 (forwarded vide I/C AEE's, NEISD-II Rongpur, letter No. NEISD-II/E-2/92/1191 dt. 23-7-92) has been carefully examined and the following clarifications are given below for your information.

1. The proposed recovery, as worked out and intimated to you vide this office letter No. NEID/1/AB/92/93/5293 dt. 21-7-92, relates the salary for the period from 10-6-82 to 23-2-84, which was paid to you inadvertently without sanction of leave. However this period has now been regularised by sanction of leave, (i) vide this office order No. NEID/1/PP-116/92/3787-90 dt. 15-5-92 & (ii) this office order No. NEID/1/PP-116/92/3783-86 dt. 15-5-92, on the basis of your leave application dated 13-4-92. Thus it is clear that you were not entitled for drawal of pay and allowances for the said period till sanction of leave and accordingly the onus of drawal of undue salary primarily devolves on you. Any mistake in over payment does not absolve the person concerned, who draws the payment, from his responsibility of making correct claim and verifying the payment made to him.

2. Further the above mentioned period, has not no relevancy with regard to the CAT's Judgement order dt. 21-1-87, which was based on your writ petition No. G.C. 147 of 1986-civil Rule No. 704 of 1985, as appeared from the judgement itself. On the contrary your other writ petition No. G.C. No. 116 of 1986-Civil Rule No. 1122 of 1983, which inter-alia includes release of salary for the period from July, 82, has been dismissed by the said Judgement of C.A.T's, Guwahati Bench.

In view of the foregoing facts, the proposed recovery of Rs. 23,342/- as pointed out by this office is justified and with in the rules and orders on the subject. The periods of your absence prior to termination, as noted in the judgement have already been accepted by you and hence any payment/recovery made on the basis of regularisation of leave is bound to be accepted from by you. You are therefore, once again advised to deposit the above sum failing which the proposed recovery will be effected from your salary in accordance with the provisions contained in Rule 215 of the C.T.R as already intimated to you. This can be considered as a second opportunity given to you for exercising your option in the matter.

(R.C. Jha)

Executive Engineer

Copy to the Accounts Branch, Division office, for information and necessary action w.e.f August '92.

True copy of the
original
Advocate

(R.C. Jha)

Executive Engineer

38

The Executive Engineer,
North Eastern Inv. Division No.I,
Central Water Commission,
Rangpur part-I, Silchar
(Assam)

Recovery from my pay of Rs. 23,342-00 (Rupees Twenty three thousand three hundred forty two only).

Ref:- 1) Your letter No.NEID/I/PF-116/92/1582, dt. 2.3.92.
2) Your letter No.NEID-I/AS- /92-93/5293, dt. 21.7.92.

Sir,

With reference to the above, I have the honour to state as follows for favour of your necessary action:-

1. That the proposal for recovery of the salary paid to me for the periods from July 1982 to 23.2.1984 is illegal and void.

2. That after the Hon'ble Central Administrative Tribunal's judgement dated 21.1.1987, the departmental authorities with cool brain took the decision taking about 3 (Three) years in regard to payment of salary for the period from July 1982 to 23.2.1984 and onwards. When the payment was made in 1990, I was told that my periods of alleged absence from July 1982 and onwards were regularised and the salary for the periods paid.

It is now really shocking that now after a lapse of about more than 2½ years, recovery is sought to be made for a period, relating to 10 (ten) years back.

3. That as per your honour's letters under reference, I am said to be entitled to salary w.e.f. 24.2.1984, although the impugned notice of termination was of 25.1.1984. Perhaps your honour is taking the plea of expiry of one month period from the notice (dated 25.1.1984) has been quashed by the Hon'ble Central Administrative Tribunal Gauhati Bench and as such the notice is not in existence, how can there be any arrears effective date? So the above letters under reference has also attempted to deprive me of one month's salary besides the periods already regularised and paid.

4. That as per your above letters my service was terminated on 25.1.1984 on the allegation of absence from duty, which the Hon'ble Central Administrative Tribunal Gauhati Bench did not accept and quashed the termination order, and as such the basis/allegation on which the order of termination was passed was also deemed to have been quashed and non-existent. Based on this fact, the department very thoroughly examined my case taking full three years, after the "CAT" Judgement, and regularised and paid my salary.

Now there can not be any question of recovery.

It is therefore prayed that your honour may be pleased to consider my case and withdraw the letters under reference, and oblige.

Yours faithfully,

(B.L.P. GUPTA)

W/S Grade-I,

North Eastern Inv. Sub-Divn. No.II,
Central Water Commission,
Rangpur part-I, Silchar
(Assam)

True copy of the original
B Das
Advocate

Train : SENEK : SHILLONG

Phone : Off : 226865

Res : 230107

भारत सरकार

कार्यालय अधीक्षण अभियन्ता

उत्तर पूर्व अन्वेषण परिमंडल, केन्द्रीय जल आयोग

जमीर मन्सन, नोंगशिल्लियांग, शिलांग-७६३०१४

GOVERNMENT OF INDIA

Office of the Superintending Engineer

NORTH EASTERN INVESTIGATION CIRCLE, CENTRAL WATER COMMISSION

JAMIR MANSION, NONGSHILLIANG, SHILLONG-793014

Fax-0364-226865

Noneic/PF-26/96/3349

Date 30/8/96

To

The Executive Engineer,
North Eastern Inv.Divn.No.I,
Central Water Commission,
Rongpur Part-I, Silchar-9

Sub: Representation of Smt. Pawan Gupta, w/o Shri B.L.P.Gupta, W/S Gr.I
regarding of his husband and payment of dues etc.

Please refer to your letter No.NEID/I/PF-116/96/4824, dated 19.8.96
on the subject mentioned above.

As you are aware Shri B.L.P.Gupta, W/S Gr.I in his writ petition before the High Court had submitted that his absence from duty from July'82 onwards was due to harrasment given to him by the officers and not at his own will. In their judgement the CAT have set aside the termination order and have directed that Shri B.L.P.Gupta shall be deemed to be in continuous service. It therefore implies that the entire period of the absence i.e. with effect from July'82 as submitted by him in his writ petition is to be treated as continuous service.

In view of above the regularisation of the absence of Shri B.L.P. Gupta between 10.6.82 and 20.3.84 by treating it as E.O.L. for 20 months & 14 days and HPL for 40 days is not correct since the Court have directed to treat the period as continuous service. The recovery being made by sanctioning the above leave due to mis-interpretation of the Judgement therefore needs to be regularised and an amount of Rs.23,342/- recovered from him on account of the above action therefore does not appears to be in order and may please be rectified.

Separate communication is being sent in respect of other clarifications furnished by you for the remaining paragraphs.

(B.S.Ahuja) 30/8/96
Superintending Engineer

True copy of the original
Advocate.

Phone: 226865
Fax-0364-226865



अर्थ स. पत्र सं.

D.O. No. NEIC/2001/95/ 02 AUG 1996
3262-64

भारत सरकार

Government of India

केन्द्रीय जल आयोग

Central Water Commission

North Eastern Inv. Circle,

"Jamir Mansion", Nongshilliang,
Shillong- 793014 (Meghalaya)

Dated, the 2nd August, 1996

B.S.Ahuja,
Superintending Engineer

Sub: Representation of Smt. Pawan Gupta, w/o of Shri B.L.P.Gupta,
W/S Gr.I - Regarding transfer of her husband and payment of
dues etc.

Ref: 1. This office letter No.NEIC/2001/95/3111 dt.8.7.96
2. D.O. letter No.NEIC/3010/3239 dt.27.7.96.

Dear Shri

Please refer to this office letters cited above regarding
clearing all the pending bills in respect of Shri B.L.P.Gupta,
W/S Gr.I.

I hope the bills have been cleared. If it is not so kindly
look into the matter personally to ensure that all pending
payments in respect of Shri B.L.P.Gupta, W/S Gr.I are cleared by
the end of this month and reported to me.

It is seen that CAT Judgement dated 21.1.87 that " In the
result, the Application No.G.C.No.147 of 1986- C.R.No.704 of 1985
is allowed and the impugned order passed by the authority
terminating the service is set aside and he shall be deemed to be
in continuous service. It will however be opened to the
authorities to determine whether the petitioner during the
interregnum was gainfully engaged, for the purpose of considering
the extent of relief to which he may be entitled pursuant to our
present order quashing the impugned order.

The Application No.G.C.116 of 1986 - C.R.No.1122 of 1983 is dismissed. In the facts and circumstances of the cases, we pass no order as to costs".

Please let me know whether the recovery of Rs.23,342/- being made from Shri B.L.P.Gupta, W/S Gr.I is in accordance with the above judgement.

Immediate reply shall be appreciated.

With wishes;

Yours

BSA 2/8
(B.S.Ahuja)

Shri P.S.Mandal,
Executive Engineer,
North Eastern Inv.Divn.No.I,
Central Water Commission,
Rongpur Part-I, Silchar-9.

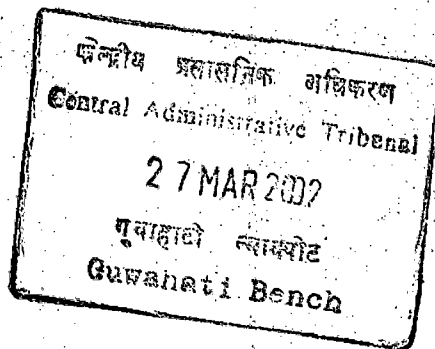
Copy to:

1. The Chief Engineer, Brahmaputra & Barak Basin, CWC, Shillong for favour of information.
2. The Under Secretary(I), CWC, Sewa Bhawan, R.K.Puram, New Delhi.

BSA 2/8
(B.S.Ahuja)
Superintending Engineer

True copy of the original

AB Das
Advocate



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHTI**

OA No. 332/2001

Shri Bhagwan Lal Prasad Gupta

Applicant

v/s

Union of India & others

Respondents

IN THE MATTER OF

~~A petition praying for acceptance of written statement submitted by the~~
respondents in OA No.332/2001.

AND

IN THE MATTER OF

Union of India & others

Petitioners
Respondents

v/s

Shri Bhagwan Lal Prasad Gupta

Opposite Party
Applicant

The humble petition of the above named petitioners

63

MOST RESPECTFULLY SHEWETH

1. That the petitioners/respondents beg to state that they could not file the written statement within the period allowed to file the same by the Hon'ble Tribunal.
2. That delay in filing the written statement is not due to negligence, but as the matter involved different branches of the Department, so it could not be filed within the time limit.

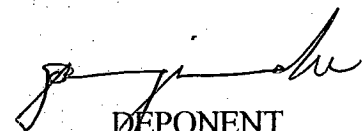
It is, therefore, respectfully prayed that the Hon'ble Tribunal may be pleased to accept the written statement filed by the respondents for the ends of justice.

And for this act of kindness the petitioners as in duty bound shall ever pray.

VERIFICATION

I, Amalendra G. Ghosh Majumdar..... being authorised do hereby solemnly declare that the statements made in this petition are true to my knowledge, belief and information and no material fact has been suppressed.

And I sign this verification on this 25 Twenty Sixth the day of March....., 2002 at Guwahati.


DEPONENT
Executive Engineer
G.W.C. NEID-III
(Manager)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI**

OA No. 332 OF 2001

APPLICANT : SHRI BHAGWAN LAL PRASAD GUPTA
V/S
RESPONDENTS : (1) SECRETARY,
MINISTRY OF WATER RESOURCES
REPRESENTING UNION OF INDIA
(2) CHIEF ENGINEER,
BRAHMAPUTRA & BARAK BASIN, CWC,
MARANATHA, UMPLING (MEGHALAYA)
(3) EXECUTIVE ENGINEER,
NORTH EASTERN INV. DIVN. NO.III, CWC,
ITANAGAR (ARUNACHAL PRADESH)

IN THE MATTER OF

Written Statement submitted by respondents.

BACKGROUND OF THE CASE –

Background of the case may be treated as part of written statement.

Shri B.L.P. Gupta, Work Sarkar Gr.I who has been working at MSTLC Inv. Sub Divn-I, CWC, Alipurduar under this division

65

since 7.7.97 (FN) on his transfer from North Eastern Investigation Circle, CWC, Shillong/North Eastern Investigation Division No.I, CWC, Silchar vide Superintending Engineer, North Eastern Investigation Circle, CWC, Shillong Office Order No. NEIC/2009/Vol.V/1457-63 dt. 12/6/97 has filed a case in CAT, Guwahati Bench under OA No.332/2001 seeking the relief of

refund of the amount of Rs.23,342/- along with interest due deducted from his salary due to erroneous interpretation of CAT Judgement dt. 21.1.87

During his incumbency under North Eastern Investigation Division No.I, CWC, Silchar since 11.5.82 Shri B.L.P. Gupta, Work Sarkar Gr.I had remained absent from duty since 10.6.82 during various periods of time and had remained continuously absent without any information since 18.3.83. As a result, he was terminated from service by Superintending Engineer, North Eastern Investigation Circle, CWC, Shillong to be effective from 24.2.84 after giving one month's notice vide Order No. NEIC/2001/83/248-61 dt. 25.1.84.

The above termination Order was set aside by the Hon'ble CAT, Guwahati in their judgement dated 21.1.87 on a case

filed by Shri B.L.P. Gupta. In their judgement, the Hon'ble Tribunal has observed that

"The impugned order passed by the authority terminating the service is set aside and he shall be deemed to be in continuous service. [It will, however, be open to the authorities to determine whether the petitioner during the interregnum was gainfully engaged, for the purpose of considering the extent of relief to which he may be entitled pursuant to our present order quashing the impugned order."

In accordance with the judgement, Shri Gupta was allowed to resume duties w.e.f. 2.2.87. An amount of Rs.52,483/- was paid to him being his salary for the period from 24.2.84 to 1.2.87 treating him to be as in continuous service w.e.f. the date of his termination. A further amount of Rs.23,459/- was also paid to him as salary for the period from 1.7.82 to 23.2.84. This additional amount was paid to him inadvertently without proper sanction of leave of absence of Shri Gupta during the period from 10.6.82 to 23.2.84. Subsequently, while regularizing his period of absence prior to his termination, Shri Gupta was sanctioned leave as per his admissibility by the competent authority.

Accordingly, the amount of Rs.23,342/- was subsequently recovered from him.

Shri B.L.P. Gupta is now claiming refund of the above amount of Rs.23,342/- along with interest due in terms of relief in the present case filed in CAT, Guwahati Bench.

The written statement of the respondents are as follows :

1. That the deponent is working as Executive Engineer and he has been authorized to file this counter reply on behalf of respondents and as such he is fully conversant with the facts of the case deposed hereunder.
2. That the answering respondent has read over the content of the original application filed by the applicant, has understood the content thereof and he is submitting preliminary observations and parawise reply as under :-

PRELIMINARY OBSERVATIONS

3. Shri Bhagwan Lal Prasad Gupta working as Work-charged Work Sarkar Grade-I under Central Water Commission, Alipurduar has filed application under Section 19 of the CAT Act, 1985. The applicant has sought relief that the amount of

8
6

Rs.23,342/- which was deducted from the salary of the applicant for the period from 10.6.82 to 23.2.84 for his absence from duty prior to his termination from service w.e.f. 24.2.84 be refunded to him.

4. The applicant is contending that the amount of Rs.23,342/=-, which was recovered from him as excess payment for the period from 10.6.82 to 23.2.84 prior to his termination w.e.f. 24.2.84 and subsequent reinstatement, is wrong in view of judgment delivered by CAT, Guwahati on 21.1.87 in GC.No.147 of 1986 and GC.No.116 of 1986. The contention is factually wrong and hence untenable.

The Hon'ble Tribunal in their judgment has observed that "The impugned order passed by the authority terminating the service is set aside and he shall be deemed to be in continuous service. It will however be open to the authorities to determine whether the petitioner during the interregnum was gainfully engaged, for the purpose of considering the extent of relief, to which he may be entitled pursuant to our present order quashing the impugned order."

During the period prior to the termination i.e. from 10.6.82 to 23.2.84, the applicant was on duty for 21 days, on Earned Leave for 44 days, on Half Pay Leave for 60 days and on Extra

Ordinary Leave for 499 days as per order of competent authority sanctioning his leave. The recovery of Rs.23,342/- was on account of his remaining on Half Pay Leave & Extra Ordinary Leave without pay for the period mentioned above.

5. In their judgement in the case of Shri Hiranmoy Sen and others vs Union of India & others delivered in OA No. 85 of 2000, the Hon'ble CAT, Guwahati Bench has stated that a decision rendered by the Tribunal, which has attained finality, shall operate as res judicata against subsequent disputes between the same parties and cannot be allowed to be reopened on any ground. The copy of the relevant publication under Case-Law Section of Swamy's news of Sept., 2001 under Sl.No. 145 is enclosed as Annexure-I.

The similar case of the applicant was already examined by the Hon'ble CAT, Guwahati Bench, Guwahati under petition No.G.C.147 of 1986-C.R.No.704 of 1985 and No. GC 116 of 1986 – C.R. No.1122. The Hon'ble CAT in their judgment passed on 21.1.1987 (Annexure-II) has stated that the impugned order passed by the authority terminating the service is set aside and he shall be deemed to be in continuous service. It will however, be open to the authorities to determine whether the petitioner during the interregnum was gainfully engaged, for the purpose of considering the extent of

70

relief to which he may be entitled pursuant to our present order quashing the impugned order.

In accordance with directive of the Hon'ble Tribunal, the applicant was reinstated in service w.e.f. 24.2.84 by allowing all consequential benefits. For the period prior to his termination i.e. from 10.6.82 to 23.2.84, his period of absence was regularized by competent authority as per entitlement. The application is, therefore, barred by above limitation.

The OA is also barred by limitation that recovery of excess salary was effected during the period 1992-93 and the petitioner has filed the OA in August, 2001. The filing of application for redressal of grievances being beyond the stipulated period, the application may be dismissed/not admitted with cost to the Deptt.

6. Facts of the Case.

PARAWISE REPLY

Para 6(l) : That with regard to Para 6(l) the respondents submit that the applicant is presently working as Work Sarkar Gr.I in the office of the Assistant Engineer, Manas-Sankosh-Tista Link Canal

Inv. Sub Division No.I, Central Water Commission, Alipurduar
(West Bengal).

That the matter of his termination w.e.f.24.2.84 has already been dealt in Hon'ble CAT, Guwahati in GC No.147 of 1986 and in accordance with directive given in their judgment on 21.1.87 (Annexure-II), Shri B.L.P. Gupta has been reinstated in Govt. service deeming him to be in continuous service. Quoting details about the termination is not relevant in the present case.

Para 6(II)&6(III) : That with regard to Para 6(II) the respondents submit that the statement made by the petitioner has no bearing with the present case under consideration. Moreover, the same statement was considered by Hon'ble Tribunal in their order dated 21.1.87 (Annexure-II).

Para 6(IV) : That with regard to para 6(IV) the respondents submit that both the writ petitions – GC No.147 of 1986 – Civil Rule No.704 of 1985 and GC No.116 of 1986 – Civil Rule No.1122 of 1983 transferred from Guwahati High Court by operation of the provision of Section 29 of the CAT Act,1985 for adjudication, were heard by Hon'ble Tribunal analogously & was disposed off by a common judgement dated 21.1.87 (Annexure-II). The

(Annexure-II). The contention of the petitioner in the above petitions were as follows:-

GC No.147 - Challenging the order of termination of his service issued on 25.1.1984 by the Superintending Engineer, Tipaimukh Investigation Circle, Central Water Commission, Shillong (Since redesignated as Superintending Engineer, North Eastern Investigation Circle, Central Water Commission, Shillong).

- GC No.116 -
- A) Payment of salary from July,1982 and Transfer Traveling Allowance as may be due to him.
 - B) To withdraw the W.T.Message and to make necessary order of posting of the petitioner.
 - C) To post the petitioner if possible beyond the jurisdiction of the present Superintending Engineer.
 - D) To regularize the services of the petitioner as a permanent non-technical staff.

In their judgement delivered on 21.1.1987 (Annexure-II), the Hon'ble Tribunal has stated that :-

"The Application No.GC No.147 of 1986 – C.R.No.704 of 1985 is allowed and the impugned order passed by the authority terminating the service is set aside and he shall be deemed to be in continuous service. It will however be open to the authorities to determine whether the petitioner during the interregnum was gainfully engaged, for the purpose of considering the extent of relief to which he may be entitled pursuant to our order quashing the impugned order.

The Application No. GC 116 of 1986 – C.R. No.1122 of 1983 is dismissed." The Tribunal observed that facts contained in this petition were almost identical.

Para 6(V) :

The contents of para 6(V) are misleading and hence denied. As per directive of the Hon'ble Tribunal, the impugned order of termination was set aside & the applicant has been treated as to be in continuous service. However, the second part of the statement of the applicant that "The applicant has really worked upto 7.4.83 and the Hon'ble Tribunal directed the responding authority that the responding authority shall 'pay' the arrear salary within a period of one month from the date of receipt of this order" is false, misleading and trying to

substitute the directive of the Tribunal by his own words thus making him liable to be prosecuted for contempt of court.

Para 6(VI) : It is submitted that the statement of the petitioner is false, misleading and malafide in nature. The common judgement of the Hon'ble Tribunal delivered on 21.1.87 (Annexure-II) in GC No.147 of 1986 and GC No.116 of 1986 has been implemented in full and the salary and transfer traveling allowances as due to the applicant till his termination has been cleared in full as per his entitlement which was corroborated by the Hon'ble Tribunal at P-30, para 16 of their judgement (Annexure - II)

The Hon'ble Tribunal during the course of hearing of GC No.147 of 1986 and GC No.116 of 1986 has also opined at page-30, Para 16 of the Judgement dated 21.1.87 (Annexure-II) that "After going through the counter-affidavit of the respondents we find that the petitioner's salary and transfer traveling allowance had been paid to him in accordance with law."

On humanitarian consideration and with a view to help the applicant so that there was no break of service, his period of absence till the issue of now impugned termination order was regularized by Order No. NEID-I/PF-116/93/4885-88 Dt.

28.8.93 (Annexure-III) on basis of applications for leave submitted by him on 13.4.92 for the period from 10.6.82 to 24.2.83 (Annexure-IV) and for the period from 18.3.83 to 23.2.84 (Annexure-V).

The recovery of the amount of Rs.23,342/- was made from him on account of Half Pay Leave for 60 days and Extra Ordinary Leave for 499 days as above and was justified. Letter No. NEID-I/PF-116/92/5595-96 Dt. 5.8.92 of the then Executive Engineer, North Eastern Investigation Division No.I, Silchar in this regard is enclosed (Annexure-VI).

Para 6(VII) : It is submitted that the reasons for recovery of amount of Rs.23,342/- were clarified to the applicant in the letter No. NEID-I/PF-116/92/5595-96 Dt. 5.8.92 (Annexure-VI).

Para 6(VIII) : It is submitted that the petitioner has not annexed the copy of the letter written by his wife as a supporting document and as such the contention of such letter shall not form a part of the proceedings.

The petitioner has quoted the official letter No. NEIC/2001/95/3262-64 Dt. 2.8.96 (Annexure-VII) written by the Superintending Engineer, North Eastern Investigation Circle, Central Water Commission, Shillong to Executive Engineer,

North eastern Investigation Division No.I, Central Water Commission, Silchar as a supporting document as Annexure-C in his application. The respondents submit that the petitioner was not authorized to have access to this letter officially and his using the letter for his personal use is violative of CCS Conduct Rule 11. This document shall, therefore, not form a part of proceedings. The respondents submit that the petitioner has willfully misinterpreted the order dt. 21.1.87 of the Hon'ble Tribunal (Annexure-II) to his advantage regarding considering him to be in continuous service, disregarding the due procedures followed in such matters according to rules/regulations.

Para 6(IX) : It is submitted that the petitioner has made use of the official letter No. NEIC/PF/26/96/3349 Dt. 30.8.96 (Annexure-VIII) unauthorisely as this was an official correspondence made by Superintending Engineer, North Eastern Investigation Circle, Central Water Commission, Shillong with Executive Engineer, North Eastern Investigation Division No.I, Central Water Commission, Silchar which was not endorsed to him thus violating CCS Conduct Rule 11. The document may, therefore, not form a part of the proceedings.

Para 6(X) : It is submitted that the interpretation of the order dated 21.1.87 of Hon'ble CAT (Annexure-II) in GC No.147 of 1986 and GC

77

No.116 of 1986 which were heard analogously & disposed off in common judgment, has not been correctly interpreted by the petitioner ignoring the implications of the second part of the directions of the Tribunal. It was directed by the Hon'ble Tribunal "The contention of the application No. GC No.147 of 1986 – CR No.704 of 1985 is allowed and the impugned order passed by the authority terminating the service is set aside and he shall be deemed to be in continuous service. It will, however, be open to the authorities to determine whether the petitioner during the interregnum was gainfully engaged, for the purpose of considering the extent of relief to which he may be entitled pursuant to our order quashing the impugned order.

Also, in page 30, Para-16 of the Judgment Dt.21.1.87 (Annexure-II), the Hon'ble Tribunal has opined that "After going through the counter affidavit of the respondents we find that the petitioner's salary and transfer traveling allowances had been paid to him in accordance with law."

As per directive of the Hon'ble Tribunal, the petitioner joined his duties w.e.f. 2.2.87 and he was paid an amount of Rs.52,483/- as salary for the period from 24.2.84, the date of his deemed termination as per impugned order to 1.2.87 treating him as being on continuous service. Additionally, he was also overpaid an amount of Rs.23,459/- as arrear salary

78

for the period from 1.7.82 to 23.2.84 of which an amount of Rs.23,342/- was later on recovered as his absence from 10.6.82 to 23.2.84 excepting for the period from 25.2.83 to 17.3.83 when he was treated as on duty, was regularized by Office Order No. NEID-I/PF-116/93/4885-88 Dt. 28.8.93 (Annexure-III) as detailed in Para 6(VI).

The respondents submit that the above recovery has been made in accordance with law and also in proper interpretation of the directive of the Hon'ble CAT on dt. 21.1.87 (Annexure-II) in GC No.146 of 1986 and GC No.116 of 1986 .

Para 7 : It is submitted that the relief has been sought in willful misinterpretation of the judgement dt. 21.1.87 of Hon'ble Tribunal (Annexure-II) and disregarding the appropriate rules/regulations applied and does not merit considerations.

Para 8 : Matter of record.

Para 9 : It is submitted that the termination of the petitioner because of his remaining absent for a very long period without permission, was set aside by Hon'ble Tribunal in judgment dated 21.1.87 (Annexure-II) on the ground of not following proper disciplinary proceedings against him in this regard prior to issue of termination order by the department. The issue of remaining


absent due to harassment was not recognized by the Hon'ble Tribunal in their judgment dated 21.1.87 (Annexure-II). The Hon'ble Tribunal has already held therein that payment of salaries and transfer traveling allowances has been made according to law. As such the relief sought by the petitioner for getting pay for the period prior to his termination when he had remained absent and was not gainfully engaged can not be maintained and is liable to be dismissed at the initial stage.

Para 10 to 13: No comments to offer being matter of record.

PRAYER

In view of the submissions made herein above, the averments made by the petitioner in the instant OA are devoid of any merit and not maintainable under law. It is submitted that the petitioner is resorting to tactics by misinterpreting the valued order dated 21.01.87 passed by this Hon'ble Tribunal in similar issue as explained in the 'Written Statement' above, to his advantage, ignoring the actual rule position. Hence, it is prayed that, this Hon'ble Tribunal be pleased to dismiss the said OA with costs.

Date : 26-3-2002
Place: Aunwalati.


DEPONENT
THROUGH THE GOVT. COUNSEL
Executive Engineer
G.W.C. MEID-III
Manager

80

VERIFICATION

I, Amalendra Ghosh Majumdar Presently
working as Executive Engineer, NEID-III, C.W.C., Itanagar being duly authorised and
competent to swear and sign this verification, do hereby solemnly affirm and state
that the statements made in Para 6(II), 6(III), 6(IV) & 6(V) are true to my
knowledge and belief, those made in Paras 6(I), 6(VI), 6(VII), 6(VIII), 6(IX) & 6(X)
being matter of records, are true to my information derived therefrom and the rest
are my humble submission before this Hon'ble Tribunal. I have not
suppressed/concealed any material facts.

And I sign this verification on this (26) Twenty-Sixth the day
of March, 2001 at Guwahati.


DEPONENT

Executive Engineer
C.W.C. NEID-III
Itanagar

A decision rendered by the Tribunal which has attained finality shall operate as *res judicata* against subsequent disputes between the same parties and cannot be allowed to be reopened on any ground

Held: The decision of the respondents communicated through D.O. No. PCC/FT/97, dated 4-2-2000, by the Deputy Director (Legal), Office of the Comptroller and Auditor-General of India, New Delhi informing the Government decision declining to revise the pay scale of Senior Auditors in the Indian Audit and Accounts Department is the subject matter of the present proceeding. The Tribunal disposed of O.A. No. 45 of 1992 by its order, dated 2-11-1994 and turned down the contention of the respondents refusing to grant parity in pay scale to these applicants and upheld the claim of the applicants. The Tribunal, while adjudicating the above OA, framed the following specific issues:

(i) Whether the applicants are entitled to get parity of pay scale with the Assistants and Stenographers, Grade 'C' of the Central Secretariat Service on the principle of equal pay for equal work and on the basis of other grounds raised by them? (ii) Whether the refusal to grant the applicants pay parity by the respondents is in violation of Articles 14, 16 and 39 (d) of the Constitution of India? (iii) Whether the respondents have acted contrary to the recommendation of the Fourth Pay Commission arbitrarily and illegally? (iv) Whether any relief can be granted to the applicants and if so what relief?"

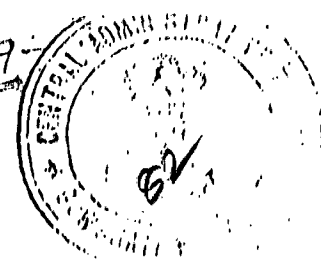
The Tribunal answered the issue Nos. 1, 2 and 3 in the affirmative, but as regards issue No. 4, the Tribunal directed the respondents to look into the matter and take an appropriate decision afresh without postponing the issue to the report of the Fifth Central Pay Commission. The aforesaid decision of the Tribunal was not assailed at any stage.

The key question in this proceeding is the admissibility for pay parity of the applicants with the Assistants in the Central Secretariat Service. The question is no longer *res integra* in view of the decisions rendered by the Tribunal in O.A. No. 45 of 1992, dated 2-11-1994, as well as the judgment and order, dated 14-9-1999 passed in O.A. No. 63 of 1997. The Bench in clear terms, in O.A. No. 45 of 1992, came to a positive conclusion that the applicants were entitled to get parity in the revised scale of pay with the Assistants and Stenographers in the Central Secretariat Service and that refusal of the respondents, to grant the parity in pay scale to the applicants was in violation of Articles 14, 16 and 39 (d) of the Constitution of India. The Tribunal also held that by refusing the parity in pay scale the respondents had acted arbitrarily and illegally.

The decision rendered by the Tribunal has attained its finality and is binding on the parties and the decision rendered by it shall operate as *res judicata* against subsequent disputes within the same parties before the Court or Tribunal. A decision on merit rendered between the parties cannot be permitted to be reopened on any ground whatsoever. Neither law nor logic, nay, any administrative exigency or political compulsion should withstand the implementation of the lawful decision of the Competent Authority that has attained finality. The application is allowed and the respondents are ordered to pay Rs. 5,000 as cost.

[*Hiranmoy Sen and others v. Union of India and others*, 9/2001, *Swamysnews* 64, (Guwahati), date of judgment 19-1-2001.]

O.A. No. 85 of 2000



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI

RECEIVED BY THE TRIBUNAL ON 12.12.1986
RECEIVED BY THE TRIBUNAL ON 12.12.1986

Shri Bhagwan Lal Prasad Gupta, - Petitioner in both the cases.

vs.

Union of India and others. - Respondents.

PRESENT :

The Hon'ble Shri D. Pathak, Vice-Chairman.
The Hon'ble Shri S.P. Hazarika, Member.

For the petitioner in both the cases. : Mr. R.F. Sharma, Advocates.

For the respondents : Mr. S. Ali, Central Government Standing counsel.

Date of Judgment & Order : The 21st day of January 1987.

JUDGMENT & ORDER :

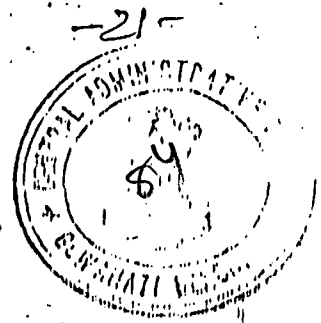
These two Writ Petitions filed by Shri B.L. Prasad Gupta before the Gauhati High Court, have come on transfer by operation of the provision of section 29 of the Central Administrative Tribunals Act, 1985, for adjudication. In writ petition No. G.C. 147 of 1986 - Civil Rule No. 704 of 1985, the petitioner has challenged the order of termination of his service passed on 25.1.1984 by the Superintending Engineer for Chief Engineer (P & I) C.W.C., Shillong. In writ petition No. G.C. No. 116 of 1986 - Civil Rule No. 1132 of 1983, the petitioner has asked for a direction (A) to pay salary from July, 1982 and transfer travelling allowance as may be due to him, (B) to withdraw the wireless message dated 14.4.83 (Annexure No. 19) and to make necessary order of posting of the petitioner, (C) to post the petitioner if possible beyond the jurisdiction of the present Superintending Engineer (Respondent No. 4), and (D) to regularize the service of the petitioner as a permanent non-technical staff. Both the petitions are heard analogously and as such we propose to dispose of them by a common judgment.

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2. The brief facts in petition C.C.No.147 of 1993 & C.C.No. 211 of 1994, leading to the present petition are that the petitioner was appointed as a work sarker grade II under Lower Lagan Construction Division No.1 of Central Water and Power Commission, Government of India and posted at Gangtok (Sikkim) in the pay scale of Rs.110-100/- plus other allowances admissible from time to time vide appointment letter dated 23.7.73, issued by the Executive Engineer of the said Division. Due to his professional competence for his satisfactory service records he was promoted to Work Sarker Grade I in the project in Sikkim from 13.3.75 upto 25.7.01. During his service period there, he also received the certificate of competency and ability. By an order dated 25.7.01, the petitioner was transferred from Sikkim to Tipaimukh Investigation Circle, Central Water Commission, Shillong. The aforesaid transfer and relieving order was received by the petitioner on 26.7.01 (Sunday) at about 7.10 a.m. at his residence and he filed an application on 27.7.01 before the Executive Engineer of the said Division wherein the petitioner stated that as the petitioner was living with his family at Gangtok he may be granted/retained in the said Division at least for ten days to enable him to get train reservation but the just demand of the petitioner was not considered at all by the authority and the petitioner was compelled to take earned leave from 26.7.01 to 19.8.01.

Thereafter the petitioner had reported ^{for duty} the Superintending Engineer, Tipaimukh Investigation Circle at Shillong on 17.8.01 and submitted his joining report before the Superintending Engineer, but the Superintending Engineer directed the petitioner verbally to report to the Executive Engineer, Tipaimukh Investigation Division No.11, Central Water Commission, Imphal. The petitioner requested the Superintending Engineer, Shillong, to give order in writing but the said Engineer refused to give the order in writing. Then the petitioner....



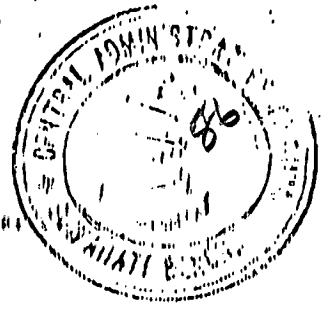
petitioner reported to the Executive Engineer at Imphal Divisional Office on 20.8.01 and joined his post on the same day. The petitioner worked at Imphal till 3.9.1901. But, immediately thereafter the Executive Engineer, Imphal, transferred the petitioner to Tipaimukh Investigation Sub-division No. II about 215 kilometers away from Imphal and the petitioner joined there on 7.9.01 and worked there till 0.11.1901. Thereafter, the petitioner was again transferred to Imphal vide letter dated 10.11.1901 but the petitioner joined at Imphal on 9.11.1901 at the request of the Executive Engineer, Imphal, and the written transfer order was given later on 16.11.1901. The petitioner was again transferred to Silchar vide letter dated 24.3.02 and the petitioner had submitted an application on 29.3.02 to the Superintending Engineer, Shillong, through Executive Engineer, Imphal, wherein the petitioner stated that he may be retained at Imphal as he was staying at Imphal with his family members and two school going children had been admitted in the school recently and the wife of the petitioner was under treatment in the Regional Medical College Hospital at Imphal, but the authorities turned down the just demand of the petitioner. The petitioner was relieved on 30.4.02 from Imphal with a direction to report to the Assistant Engineer, Tipaimukh Investigation Sub-division No. III under Silchar Division vide letter dated 30.4.02 and the petitioner joined his new posting on 11.5.02 under the Assistant Engineer, Tipaimukh under Silchar Division. On 14.5.02, the Assistant Engineer, Tipaimukh directed the petitioner to join at Tuival Chuya site under Shri B. N. Nath, Supervisor and the petitioner went to the aforesaid site but curiously enough to the petitioner found it to be in a vacuum as the site was not opened at Tuival Chuya at that time. He went to Tuival Chuya covering a distance of 150 kilometers passing through thorny jungles but was surprised to see that there was no shadow of

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the site and the petitioner came back and reported to the Executive Engineer, Tipaimukh Investigation Division, Silchar on 29.5.1992. That the petitioner remained at Silchar till 2.6.1992 and thereafter the petitioner was again directed to report at Tuival Chuva site at Mizoram vide letter dated 29.5.92. Being faced with such transfers, the petitioner took leave on personal ground as he had to make arrangements for his family members who were getting harassment like anything and after availing the leave the petitioner reported for duty at Silchar Division but the petitioner was informed that the Tuival Chuva site has already closed and the petitioner was again asked to report to Khokan gauge and discharge site vide letter dated 26.2.93. The petitioner went to Khokan passing through jungles but he was disappointed to know that there was no site at all at Khokan at that time. He came back from Khokan and reported to the Assistant Engineer, Tipaimukh Investigation Sub-Division III, who instructed the petitioner to become ready to go to Khokan vide letter dated 6.3.93. When the petitioner was ready to leave for Khokan for the second time, the Assistant Engineer of Tipaimukh did not release him from Tipaimukh and the Assistant Engineer wrote a letter to the Executive Engineer, Tipaimukh Investigation Division No. 1 of Silchar vide letter dated 10.3.93, wherein he informed the Executive Engineer, Silchar that the petitioner had been temporarily engaged at Tipaimukh due to some urgent official works for the time being and the Assistant Engineer of Tipaimukh requested the Executive Engineer for the approval for retaining the petitioner at Tipaimukh and as the petitioner was not released from Tipaimukh, he continued to work there. The petitioner contends that his duty was at Tipaimukh till 3.4.93 and as he has not getting his salary from July, 1992, he filed an

application for

- 5 -



application on 7.4.83 before the Assistant Engineer, Silchar, praying for permission to leave the Head Office on 8.4.83 so that the petitioner may meet the Executive Engineer at Silchar for getting the salary and transfer travelling allowances but the Assistant Engineer refused to reply anything and he did not even like to talk with the petitioner. That on 16.4.83 the petitioner received a wireless message wherein it was stated that the petitioner had not joined his posting place and violated official rule and that he insulted the Engineer in-charge. The petitioner was asked to submit explanation. The petitioner submitted explanation on 15.4.83 stating that the allegation was false. The said explanation was received on 19.4.1983. On 19.4.83 the petitioner went to the office of the Executive Engineer at Silchar for informing him the fact of the non-receipt of the salary of the petitioner, but the Executive Engineer at Silchar refused to meet the petitioner and as such the petitioner had no other alternative but to file an application on 19.4.83 at Silchar stating the grievance and the refusal of the Executive Engineer to meet with the petitioner. As the petitioner was not getting his salary and transfer travelling allowances since July 1982 he had nothing to eat and maintain himself and his family members and under the compelling circumstances he filed an application before the Executive Engineer for granting leave on and from 19.4.83 stating therein to grant earned leave and any other leave with effect from 9.4.83 till the matter was settled. Thereafter the petitioner left for his native place after filing the leave application to the Executive Engineer, Silchar. On 24.9.83, the petitioner submitted an application to the Chairman through the Executive Engineer of Imphal for onward transmission wherein the petitioner had stated that due to very frequent transfer the petitioner was unable to maintain

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-16-

his family being a low paid employee that the petitioner had school going children and now under transfer to Tipaimukh, the petitioner had no other alternative but to stop the education of the children as there was no school at Tipaimukh site. It is also stated in the said application that the petitioner did not have sufficient money to maintain two establishments, i.e. one for the petitioner and the other for his family, and that the petitioner may be posted to a place where the petitioner could give education to his children. That the letter dated 29.4.52 was duly received by the Executive Engineer of Jirah and the same was forwarded to the Superintendent Engineer, Shillong, vide letter dated 11.5.52 but the Superintendent Engineer, Shillong did not forward the said letter to the Chairman. In paragraph 27 of the petition he has a catalogue of his frequent transfers to show the vindictive nature of the opposite parties to harass him. On 2.2.53, the petitioner received a letter from the Chairman, wherein the Chairman has written as follows :

"His complaint regarding frequent transfers is also investigated. In the meantime he is advised to join the place of his posting and his request for transfer to the Circles will be considered sympathetically for other Circle."

On the advice of the Chairman the petitioner reported for his duty on 25.2.53 to the Executive Engineer, Silchar and the said Engineer told the petitioner that Tulai Chuya site had been closed and the petitioner was re-posted at Khokan in Mizoram about 500 kilometers away from Silchar and the petitioner went to Khokan by passing through jungles by walking three days on foot as there is no road communication. But the petitioner was surprised to know that he was posted in a vacuum as till then the site was not opened and there was neither any sign of a hut nor any other employer was present there. He has stated that the aforesaid order shows the vindictive, malicious, depraved, arbitrary and harmful attitude of the opposite parties in transferring him to a place where the site was not opened.

He has referred to a circular No.2/16/70/W.B., dated 24.10.50 issued by the Chairman of the Central Water Commission, where...



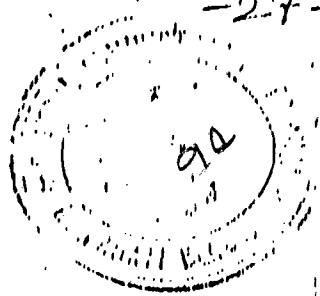
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where it is stated that as regard to non-Industrial categories which are envisaged to be brought on the regular establishment, the extent of augmentation of temporary posts of work absorbed into permanent is 90%. Therefore 90% of the work charged posts which fulfil the Central Civil Services Criteria can be safely converted into permanent posts without any formal classification into Industrial and non-Industrial. The petitioner filed an application before the Chairman of the Central Water Commission on 7.5.80 and 21.1.82 for the appointment of the petitioner to the post of Supervisor/Design Assistant in view of the aforesaid circular, but the genuine case of the petitioner was not considered whereas other work-charged employees, junior to the petitioner were appointed to the said post. The petitioner has also averred that in another circular dated 2.9.81 issued by the Ministry of Irrigation, Government of India, Central Water Commission to the effect that the authorities are to see that frequent transfers do not take place and the officers/staff should remain at the place of posting at least for three years, unless the officer is promoted and posted elsewhere. But, in the present case the petitioner has been transferred nine times within a span of seven months between 25.7.81 and 26.2.83, which is a clear violation of the aforesaid circular and the Service Rules. Being faced with such predicament, the petitioner was compelled by the inevitable circumstances to file a writ Application under Article 226 of the Constitution of India before the Gauhati High Court and the same has been registered as Civil Rule No. 1122 of 1983 and the High Court was ^{pleaded} to pass an order on 25.11.1983 directing the opposite parties to pay the arrear salary within a month from the date of the receipt of the order. It is stated that the opposite parties were silent on the aforesaid representation and nothing was heard from the opposite parties till 7.4.1984, when the petitioner had received 5 letters all dated 7.1.1984 from the.....

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the Executive Engineer, Silchar, which was received by the petitioner on 7.4.84. The copies of the letter are annexed as Annexures 41, 42, 43, 44 & 45. The petitioner has also annexed to the petition a copy of the letter dated 9.6.82 by which it is stated that the petitioner was granted earned leave for 21 days from 10.6.82 to 30.6.82 by the Executive Engineer, Silchar, vide his letter dated 9.6.82. On 19.4.84, the petitioner received the notice of the order of termination of his services vide letter dated 25.1.1984. As the aforesaid order of termination of service was not sent to his present address, the same ^{was} received only on 19.4.84 at Silguri the present address given to the authority. The petitioner submitted an appeal under Rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1955, against the order dated 25.1.1984 terminating his services. The petitioner received the order of termination only on 19.4.84 and the appeal was filed only on 20.5.84. It is contended that the order of termination is clearly in violation of Article 311 of the Constitution of India and also in violation of the principle of natural justice. It is contended that the authority had no right whatsoever to terminate the petitioner without holding an enquiry and without proper charges. Annexures 41, 42, 43, 44 and 45 show that he was still in service till the termination order was passed. The termination order shows that the order is passed by the Superintending Engineer for Chief Engineer, C.W.C. stating that the service of the petitioner shall stand terminated with effect from the date of expiry of a period of one month from the date on which the notice is served on or as the case may be tendered to him.

3. It is submitted on behalf of the petitioner that although the order of termination is shown to be innocuous and termination simpliciter, it is in fact penal in nature and as such it is not sustainable in law as there was no enquiry held against....

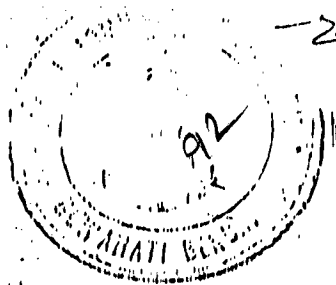


against the petitioner before the order of termination was served on him.

4. The respondents 1 to 5 have filed written statement. In paragraph 3 of the written statement, it has been stated that the petitioner was a temporary employee and a member of the Work Charge staff in the project work under Lower Lagaap Hydel Project Circle, where he worked as Work Barber, Grade I under Lower Lagaap Construction Division No.1. This Lower Lagaap Hydel Project work was completed and the Division was finally closed in July, 1961. The petitioner being a temporary employee, was to be retrenched along with the completion of the project work, but the authority on humanitarian ground transferred and posted him under Tipaimukh Investigation Circle, Shillong. As regards the frequent transfers of the petitioner, the respondents have stated in paragraph 9 of the written statement that the petitioner was transferred in public interest with immediate effect and as such the respondent No.4 could not comply with the request made by the petitioner for his retention at Imphal by cancelling the transfer orders. In paragraph 11 of the written statement it has been stated that no order on 14.5.62 was issued to the petitioner by the Assistant Engineer to join at Tuival Chuya site as alleged by the petitioner. The petitioner did not visit Tuival Chuya site and no question of travelling at a distance of 120 kilometers through thorny jungle by the petitioner arises. In fact, instead of proceeding for opening the site at Tuival Chuya, the petitioner went on casual leave from 15.5.62 to 30.5.62. The petitioner directly came to Silchar after expiry of casual leave and he was allowed to join at Division Office at Silchar on 29.5.62 purely on his own request and to save him from unauthorised going to Silchar. At Silchar the petitioner had submitted two joining reports, one to the Executive Engineer dated 27.5.62, stating that he is joining in Division Office on 29.5.62, which was initialed by Assistant Engineer on 29.5.62 and by the Executive Engineer on....

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on 9.6.62. The second one is addressed to the Assistant Engineer, T.I. Sub-division No. 111, saying that he is joining in the Sub-division on 29.5.62, which was initialled by the Assistant Engineer, Executive Engineer, Head Clerk on 9.6.62. By the two joining reports, he created confusion regarding his so called joining report at Silchar. In paragraph 12 of the written statement, it has been stated that the petitioner was allowed to stay at Silchar upto 9.6.62, but in the said order he was directed to join at Tuival Chuya after 9.6.62. But he again applied for leave from 10.6.62 to 30.6.62 to proceed on L.T.C. to visit a holy temple in Jammu & Kashmir. The petitioner also gave an undertaking dated 9.6.62 that he would join at the place of posting at Tuival Chuya after expiry of leave. So his leave was granted and advance payment was made as admissible under the rules. After expiry of the leave granted to him he did not honour his own commitment and did not join accordingly at Tuival Chuya, but extended his leave upto 24.2.63. In the meantime, the petitioner sent two telegraphs first one mentioning that "leave extended for two months" sent from Siliguri junction and received in Division Office on 9.7.62. No post copy in confirmation was received by the Office. The second telegram from Dimaasipur saying "leave extended", received in the Division on 7.9.62, without any post copy in confirmation. A doubt was created in the minds of the Department about the visit of the petitioner to the holy temple at Jammu & Kashmir. In paragraph 13 of the written statement it has been stated that after 7 months' absence from duties, the petitioner resumed his duty at Silchar on 24.2.63 by a joining report without mentioning the place. He was directed to join at Khokon as the Tuival Chuya site was already closed. But the petitioner never went to the Khokon site. The petitioner joined at Tipaimukh on 5.3.63 for non-opening of Khokon GSD site....



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site at that time and his joining-report was accepted by the Department. Further on a careful consideration of the petitioner's case, the authority reckoned his joining date with effect from 25.3.83 forenoon. In the meantime, the Assistant Engineer vide his letter dated 6.3.83, instructed the petitioner to be ready for proceeding to Khokon as soon as the site is established. The Khokon GSD site was established on 12.3.83 by the Assistant Engineer himself as the petitioner did not accompany the Assistant Engineer. Subsequently, the Assistant Engineer directed the petitioner to proceed Khokon GSD site vide letter dated 10.3.83. In paragraph 14 of the written statement, it has been denied that the Assistant Engineer did not release the petitioner to proceed to Khokon site. It is clear from the letter dated 6.3.83 which is Annexure G to the petition that the petitioner was asked to be ready to proceed to Khokon site as soon as the site is established. In paragraph 15 of the written statement it has been stated that a wireless message was sent on 13.4.83 by the Assistant Engineer, TISD-II, Tipaimukh to Executive Engineer, TID-I, Silchar that the petitioner neither joined at Khokon nor is intending to join there and insulted the Assistant Engineer badly. Subsequently, the Assistant Engineer, TISD-III was instructed by Executive Engineer TID-I on 14.4.83 through wireless to stop the petitioner's payment till he joins at his place of posting and to take effective measures in case of threaten for physical assault. Similarly, the Executive Engineer, TID-I sent another wireless message to the petitioner on 14.4.83, instructing him to submit explanation on the reports of the Assistant Engineer and any attempt for assault will be dealt severely. This fact was reported to the Superintending Engineer, TID, Shillong by Executive Engineer, TID-I, Silchar vide his letter No. TID/PP-116/492 dated 19.4.83. The full report was received in the provisional....

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Divisional Office on 22.4.83 wherein the Assistant Engineer vide his letter TISD-111/Hstt-9/741 dated 9.4.83 intimated that while disbursing the payment of the staff at Tipaimukh on 7.4.83, the petitioner attempted to snatch away the Attendance Register and intended to sign. He was allowed to receive his pay upto 18.3.83, i.e. the day after which he is supposed to join at Khokon GSD site. The petitioner refused the payment and insulted him with challenge. In this letter, the Assistant Engineer enclosed the application of the petitioner dated 9.4.83 addressed to the Chairman, C.V.C., New Delhi. The charges made therein are all false and fabricated as could be seen from the report of the Assistant Engineer. No action was taken on the petition dated 7.4.83 by the Assistant Engineer as the petitioner was not at his duty place and having no authority to permit him to go to Silchar. In paragraph 17 of the written statement, it has been stated that on 9.4.83, the petitioner submitted a departure report to the Assistant Engineer, saying that he is going to his native place via Silchar due to over harassment. This was received by the Sub-divisional Clerk on 9.4.83, which was submitted to the Assistant Engineer on 17.4.83. The petitioner came to Silchar Office on 16.4.83 and tried to report to the Executive Engineer against the Assistant Engineer. The Executive Engineer told him that he may submit his points in writing through proper channel or examination in this office. So, the petitioner submitted his application dated 15.4.83. This application is annexed as Annexure 20 to the petition and that the facts stated therein

are incorrect. On 16.4.83, he filed another application, stating that he is going to his native place and he will neither work under the jurisdiction of this office as well as of Circle Office. The petitioner has never gone to Khokon GSD site. His mention about the fact that the Executive Engineer has refused to meet the petitioner is not correct. In paragraph 18 of the written statement, it has been stated that the petitioner has

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been paid from the Government a sum of Rs. 2,015.35 under various heads. It is stated that the Department is to recover an amount of Rs. 1,023.70 from the petitioner. It is also stated that all his earlier salaries etc. have been paid regularly. In paragraph 27 of the written statement it has been stated that the behaviour of the petitioner is wholly objectionable in view of the fact that he has stolen a D.O. confidential letter dated 24.4.63 written by H.S. Bhargava, respondent No. 4 to respondent No. 2 for which criminal action is warranted. No question of vindictive, malicious, arbitrary and ill motive of the authorities is there alleged.

In paragraph 40 of the written statement, it has been stated that the petitioner being a temporary employee, a notice under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1955, was served on him giving one month's time which is legal and proper. It is submitted that there is no illegality, impropriety or irregularity in terminating his service as stated above and as such the petition is liable to be dismissed.

5. In a counter-reply filed by the respondents on 29.10.66, it has been stated in paragraph 4 that the termination of the petitioner from service was due to his long unauthorised absence from duty with effect from 25.3.63 till the date of his termination from service. The petitioner was asked to resume duties vide Annexure 42, annexed to the

petition by the petitioner, but the petitioner deliberately remained unauthorised absence and did not join duty. Thereafter, the Superintending Engineer issued termination notice as required under rule 5(1) of the Temporary Service Rule, though the rule has not been quoted therein vide Annexure 47 annexed to the petition of the petitioner.

6. The impugned order reads as under :
" No. NEID/2701/83/250.

Government....

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- 14 -

Government of India, Central Water Commission,
North Eastern Irrigation Division, Haldwari,
Bangladesh, Shillong - 793014.

Dt. the 25th Jan/84.

NOTICE OF TERMINATION OF SERVICE

I, hereby give notice to Shri P.L.L. Gupta that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be tendered to him.

H. S. Rangachar,
Superintending Engineer,
for Chief Engineer (I&I)CWC

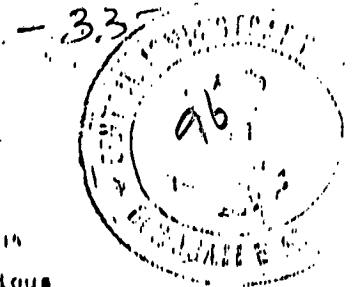
State - Shillong.

Signature of the
appointing authority..

To
Shri P.L.L. Gupta,
Mark Barker Dr. I (absenting from duty from 25.3.84),
Vill. Chhajan Gump,
P.O. Chhajan Harishankar,
via Turki,
District - Mizoram.

On a perusal of the impugned order, it is found that the order appears to be termination of the service of the petitioner simpliciter. But the attending facts as noticed above from the pleadings of the parties, it is seen that prior to the passing of the impugned order there were allegations raised about his misconduct. Therefore, it is contended by the learned counsel for the petitioner that the foundation of the impugned order is based on some allegations of misconduct of the petitioner for which in order to punish him for those misconducts, the impugned order was passed. It is submitted that the impugned order although ex-facie an order of termination simpliciter, circumstances now disclosed it is found that the action in passing the impugned order was penal in nature. It is submitted by the learned counsel for the petitioner that in paragraph 27 of the written statement the respondents have raised allegations that the petitioner's behaviour is wholly objectionable in view of the fact that he has stolen a D.O. confidential letter dated 25.4.82 written

by.....



by H.S. Banqachar, respondent No.4 to respondent 3 for which criminal action is warranted. This is a very serious allegation of misconduct of the petitioner. If such a serious allegation is raised by the respondents, an enquiry is to be held in order to absolve or to punish him of such serious allegation. The learned counsel has drawn our attention to paragraph 4 of the counter reply filed by the respondents on 25.10.86. The learned counsel for the petitioner has also drawn our attention to Annexure 42 to the petition. This is an Office Memo of the Executive Engineer, It reads as under :

GOVERNMENT OF INDIA : CENTRAL WATER COMMISSION
NORTH EASTERN INVESTIGATION DIVISION, P.O.,
BONGPOUR (PART I) SILCHAR DISTRICT
CACHAR (ASSAM)

No. NEID/WC/PF-115/4. Dated Silchar 2nd Jan'84.
MEMO

Shri B.L.P. Gupta, work sarker - Gr. I has been absent from duty without permission since 25.3.83. He is hereby directed to resume duty at site and will be treated on unauthorised absence from duty from 25.3.83 till he resumes duty. The period of his absence will be treated dies-non for all purposes and an interruption in his service.

Sd/- S.C. Nath,
Executive Engineer.

To
Shri B.L. Gupta, Work Sarker - Gr. I.
(Absenting from duty from 25.3.1983 onwards)

On a perusal of the aforesaid memo, it is seen that there is allegation of unauthorised absence of the petitioner from duty from 25.3.83 till he resumes his duty. Here, serious allegation has been raised about his unauthorised absence. In this paragraph 4 of the counter reply referred to above, the respondents have said that the termination of the petitioner from service was due to for his long unauthorised absence from duty with effect from 25.3.86 till the date of his termination from service. This is another serious allegation which if correct called for enquiry. Without holding such enquiry, the petitioner's services cannot be terminated by invoking the provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. The learned counsel has drawn to our notice the contents of....

of a wireless message, which is Annexure 10 to the petition.
This violation of message reads as under:-

" WIRELESS MESSAGE :
To
Shri D.L.P. Gupta, Work Sarker Grade I
Khokan G S D Site.
(Through A.E. TISD - III : TITAI'UKH)

IT IS REPORTED THAT YOU HAVE NOT JOINED YOUR
POSTING PLACE AND VIOLATED OFFICIAL RULE AND
INSULTED ASSISTANT ENGINEER INCHARGE (.) YOU SHOULD
SUBMIT YOUR EXPLANATION ON THE ABOVE CHARGES TO ASST.
ENGINEER TISD-III WITHIN 10 HOURS OF 15.3.84 (.) ANY
ATTEMPT BY YOU ASSAULT ON ANY STAFF WILL BE DEALT
SEVERELY (.)

Sd/- S.C. Nath,
Executive Engineer

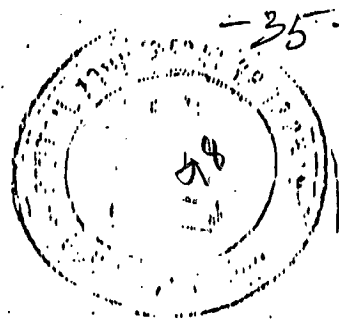
Message transmitted
to Tipaimukh on 14.4.1983
at 12.30 hrs. Schedule.
Illegible

14.4.

GR47: TIDIV'SILGOW: HINDS 1187 "

A fair reading of the wireless message shows that the petitioner
has been charged with for not joining the place of posting,
violation of official rules and also there is allegation
of insult meted out to the Assistant Engineer in-charge. The
above allegations of misconduct if correct it was only fair
and proper to hold an enquiry, before taking any action against
him. But, instead of doing that the authorities have chosen
easy method of termination of the service of the petitioner
by passing the impugned order because they thought that the
launching of a proceeding would be a great bother or nuisance
for them. In support of his submission, the learned counsel
for the petitioner relies on three cases of the Supreme Court
in Nopal Singh vrs. State of U.P., AIR 1935 SC 84, Jarnail Singh
vrs. State of Punjab, 1906 Labour and Industrial Cases 1906
and Amul Jaimval vrs. Govt. of India, AIR 1904 SC 636.

7. In Nopal Singh (supra), the Supreme Court had to
consider an order of termination of a temporary Government
servant. There it was held that if the circumstances under
which the impugned order of termination of service is passed
although such order prima-facie does not put any stigma shall
be....



- 17 -

be liable to be quashed on the ground that the basis of passing of the order was on certain allegation of misconduct which can be found from the attending circumstances. In that case the appellant Nepal Singh was employed in a temporary capacity as Sub Inspector of Police. He was serving at Shahjahanpur in 1960 when the Superintendent of Police, Shahjahanpur initiated disciplinary proceedings under section 7 of the Police Act against him on the charge that while posted at Pithoragarh he had in November, 1954, contracted a second marriage while his first wife was alive and on this was done without obtaining prior permission of the Government, the appellant had violated Rule 29 of the U.P. Government Servants Conduct Rules, 1956. The appellant filed a reply and denied the charge. The oral testimony of about 12 witnesses for the prosecution and an almost equal number for the defence was recorded. But in January, 1970, the Superintendent of Police, Shahjahanpur wrote to the Deputy Inspector General of Police, Bareilly Range that as the act alleged against the appellant related to the district of Pithoragarh the disciplinary proceedings taken by him would be without jurisdiction unless there was an existing order of transferring the proceedings from Pithoragarh to Shahjahanpur. About that time the Inspector General of Police, Uttar Pradesh issued a circular letter to the Superintendents of Police throughout the State requiring them to submit a list of Sub Inspectors who fell in any of the

following three categories :

- 1) whose reputation and integrity is very low and/or
- 2) who are generally involved in scandals, like drinking, immorality, etc. which blackens the face of the U.P. Police and/or
- 3) everywhere they are a big "rotten house" because they encourage gambling, excise offences, brothels, criminals etc.

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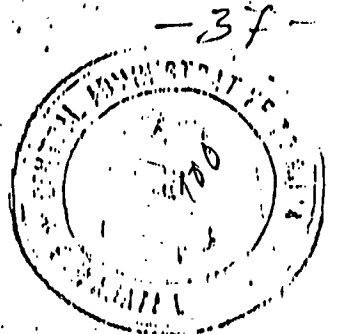
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The Superintendent of Police, Shahjahanpur drew up a list of such Sub Inspectors on February 2, 1970 and directed them to appear before the Deputy Inspector General of Police, Bareilly Range on February 15, 1970 during his inspection of the district. The list included the name of the appellant with the note "a corrupt officer, who is not straight-forward. Married two wives against Government Servants' Conduct Rules. Does not do his duty sincerely. Wherever he goes creates problems." The aforesaid facts were there before the authority and after that the impugned order dated 27.4.70 was passed by the Deputy Inspector General of Police, Bareilly Range purporting to be under the rules published by Notification No. 230/II-P-1953 dated January 30, 1953 that the appellant's services were not required any more and were terminated with one month's pay in lieu of notice. In the case no attempt was made after the initial enquiry to institute a proper enquiry by the appropriate authority. It was held that with the dropping of the enquiry the allegation remained unverified. The Supreme Court while setting aside the impugned order expressed in the following terms :

"We may observe that where allegation of misconduct are levelled against a Government servant, and it is a case where the provisions of Art. 311(2) of the Constitution should be applied, it is not open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a bother or a nuisance and that therefore it is entitled to avoid the mandate of that provision and resort to the guise of an ex facie innocuous termination order. The Court will view with great disfavour any attempt to circumvent the Constitutional provision of Art. 311(2) in a case where that provision comes into play."

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8. In Jarnail Singh (supra), the question of termination of appointment of certain Government servants who were appointed on a fixed term basis was held to be bad on the ground that such order was passed on the basis of adverse remarks and allegations of embezzlement. The order of termination was held to be illegal for non-compliance of Article 311(2) of the Constitution. There the order of termination of the servants

of.....



of the petitioners was prima facie passed without casting any stigma against them. In that context, the Supreme Court held that mere form of the order is not sufficient to hold that "the order of termination was innocuous and the order of termination of the services of a probationer or of an adhoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned, it is the substance of the order i.e., the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct, efficiency or not." In that case there were certain allegations of serious misconduct against the petitioners and also in the service records of the petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Art. 31 (2) of the Constitution of India, while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1970. Thus, the impugned orders terminating the services of the appellants on the ground that "the posts are no longer required" were held to be made by way of punishment. The Supreme Court considered the counter-affidavit filed by the authority and took into consideration the contents of the statement made therein to come to a conclusion that....

(D)

- 10 -

that "the impugned order of termination of service of the petitioners had been made on the ground that there were adverse remarks in the service records of the petitioners as well as there were serious allegations of embezzlement of funds against some of the petitioners." On considering the entire matter the Supreme Court finally came to the conclusion that "the impugned orders of termination of the services of the petitioners were really made by way of punishment and they are not termination simpliciter according to terms of the appointment without any stigma." It was further held that "it is undisputed that the respondents Nos. 2 and 3 did not follow the mandatory procedure prescribed by Art. 311(2) of the Constitution making the purported orders of termination of services of the petitioners on the ground of misconduct and thus there has been a patent violation of the rights of the petitioners as provided in Art. 311(2) of the Constitution." The Supreme Court also came to the categorical finding, on considering the facts found from the entire materials that "there is no room for any doubt that the impugned order of termination of services of the petitioners had been made by way of punishment as the allegations of embezzlement of funds as well as adverse remarks in the service records of these petitioners were the basis and the foundation for not considering the petitioners to be fit for being regularised in their services in accordance with the Government Circular dated October 28, 1960."

85

9. In Anup Jaiswal (supra), the Supreme Court had to consider a similar matter. There according to the authorities the appellant was considered to be one of the ring leaders who was responsible for the delay for which explanation was called for from all the probationers. In the explanation the appellant sincerely regretted the lapse while denying the charge of

instigation.....

instigating others in reporting late. On the basis of the explanation and interview but without holding any proper enquiry the Director recommended to the Government of India that the appellant should be discharged from the service. The Government accordingly passed an order of discharge of the appellant on the ground of unsuitability for being a member of the IPS. When this order was challenged their Lordships made the following observations :

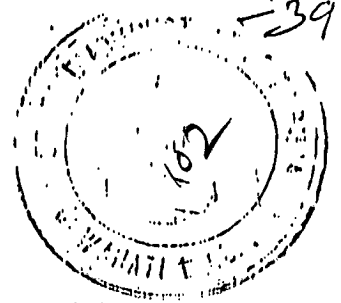
"Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment the Court would not be deterred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

10. On consideration of the facts and circumstances of the case discussed above, we have no hesitation to come to the conclusion that the impugned order is passed by way of punishment on the basis of certain allegations of misconduct as noticed above for which the petitioner was not given any opportunity to prove his innocence. Therefore the impugned order is not sustainable in law. Accordingly, this impugned order is liable to be set aside which we accordingly do.

11. The other ground of challenge is that in passing the order the authorities have violated the principle enshrined in Articles 14 and 16 of the Constitution, inasmuch as, some 35 of his juniors were retained in service and the petitioner has been singled out for discrimination by terminating his service without any reasonable cause. In the impugned order, the authority does not give any reason as to why the petitioner was thus visited with such harsh treatment which is demonstrably a case of flagrant discrimination.

12. The petitioner has filed a further affidavit on 17.9.85. In that further affidavit, the petitioner has stated in paragraph 1 that no less than 35 persons who were appointed

in.....



in Work Charge and much after his appointment were confirmed in service. He has given a list of the names of the persons annexed as Annexure 'A' to the further affidavit. In paragraph 2 of the further affidavit, the petitioner has stated that not a single employee of his category of post though appointed later than him is or was removed from service by exercise of such powers. In paragraph 3, the petitioner has stated that though the termination letter does not contain any stigma, in fact, that was passed to punish him because he incurred displeasure for his officers for reasons best known to them. It is stated that there could not be any justification to retain his juniors in service and to discontinue his services except for the purpose to punish him. The respondents have filed counter reply to the further affidavit given by the petitioner. In paragraph 3 of the counter reply dated 20.10.1986, it has been stated that it is not correct that 25 persons, as stated by the applicant, who were appointed in work charged category and much after the appointment of the applicant, were confirmed in service in this circle. It is clarified that there are different circles of the Central Water Commission through out India and every such circle is headed by the Superintending Engineer, who is the appointing and dismissal authority of the work charged employees of the circle. The circle where the applicant was posted on transfer on humanitarian ground was called Tipaimukh Investigation Circle, which is now renamed as North Eastern Investigation Circle, Shillong. Every circle is a unit for seniority of work charged personnel in each category separately. Further, no transfer of work charged employee can be made normally from one unit to another unit except in a very special circumstances with the approval of the Chief Engineer, in which case such employees are not given benefit on past services in the new unit for the purpose of seniority. That apart, work charged employees are appointed against....

against the Project temporarily and the moment the Project is completed, all the employees, as appointed, are retrenched if there is no scope to absorb them in other circles. It may further be stated that the 35 persons named by the applicant in this paragraph ~~are~~^{are} not there in this circle. The applicant is put to strict proof of it. In paragraph 4, it has been stated that the service of the petitioner was terminated due to his long unauthorised absence from duty with effect from 25.3.03 till the date of his termination from service. And as such, any comparison of the other employees of the same category, as made by the petitioner is irrelevant. It is stated in this paragraph that the petitioner's case stands on a complete different footing from that of other employees of the same category appointed before or after him.

13. It is submitted by the learned counsel for the petitioner that the action of the authority in passing the impugned order is clearly violative of the provision of Articles 14 and 16 of the Constitution of India. In support of his submission the learned counsel relies on *Manager, Government Branch Press v. D.D. Delliappa*, AIR 1979 SC 429, where the Supreme Court had to consider the termination of one temporary Government employee while retaining some others junior to him in service. In that context on those facts it was held by the Supreme Court that "the protection of Articles 14 and 16 of the Constitution will be available even to a temporary Government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors similarly circumstanced. In that case the service of Delliappa, a temporary Class IV employee was terminated without assigning any reason although in accordance with the conditions of his service, three other employees similarly situated, junior to Delliappa in the said temporary cadre, were retained." The order of termination was held

to....

105

to be had as "it offended the equality clause in Arts. 14 and 16 of the Constitution." It is submitted by the learned counsel for the petitioner that the Central Water Commission is one organisation, where the employees are working under the Commission, although there are units of the Commission yet employees from one unit to another are transferable. Appointment of the employees in the Commission are transferable. It is not a fact, submitted by the learned counsel, that if an employee is working under one unit thereby he is not transferable to another unit. Even in the affidavit of the respondents, it has been stated that in exceptional cases, an employee of one unit can be transferred to another unit. It is, therefore, submitted that while some of the juniors of the same class and category are retained in service dispensing with the services of the petitioner without any justifiable causes is a case of flagrant discrimination. It is further submitted that the petitioner has been singled out for discriminative treatment by terminating his services while retaining many of the juniors to him in service.

14. We find some force in the contention raised by the learned counsel for the petitioner. But as we have already held that the impugned order is punitive in nature and sustainable in law without holding an enquiry, we do not express any opinion on the second contention raised by the petitioner.

15. The facts leading to G.C.No.116 of 1986 - C.F.No.1122 of 1983 and the facts of the petition that we have just noticed are almost identical, which have been discussed above. We do not like to burden this judgment by repeating the facts which are already stated above in the other petition. In this petition, the petitioner has asked for giving direction to the respondents (1) to pay salary from July, 1972 and transfer travelling allowances as may be due to him, (2) to withdraw the wireless

message.....

- 25 -

message dated 14.4.63 and to make necessary order of posting of the petitioner, (3) to post the petitioner if possible beyond the jurisdiction of the present Superintending Engineer, and (4) to regulate the service of the petitioner as a permanent non-technical staff. The petitioner has stated that he received a wireless message wherein it was stated that the petitioner has not joined his posting place and violated official rule and that he insulted the Engineer in-charge and that he was asked to submit explanation. He has stated that the allegation raised by the aforesaid wireless message ¹⁴⁻⁴⁻⁶³ was also and he submitted necessary explanation on 16.4.63 which was received in the Office of the Executive Engineer on 19.4.63. He has averred that on 14.4.63, the petitioner went to the office of the Executive Engineer at Silchar for informing him the fact of the non-receipt of the salary of the petitioner but the Executive Engineer at Silchar refused to meet the petitioner and as the petitioner had no other alternative he filed an application on 15.4.63 at Silchar stating the grievance and refusal to meet with the petitioner. It is stated by the petitioner that he was not getting his salary and transfer travelling allowances since July, 1962 and as such he had nothing to eat and maintain himself and his family members and under the compelling circumstances he filed an application before the Executive Engineer for granting leave on and from 19.4.63 stating therein to grant earned leave and any other leave with effect from 9.4.63 till the matter is settled. He has also complained about the frequent transfers from one place to another without considering the difficulties of the petitioner. He has stated that he was transferred nine times between 25.7.61 and 25.2.63, which is in clear violation of the circular issued by the Government of India, Ministry of Irrigation, Central Water

Commission,

-44-
-43-
107

Correlation, dated 2.8.81, which provides that frequent transfers could not take place and the official/staff should remain at the place of posting at least for three years unless the officer is promoted and posted elsewhere. But, in the present case, the petitioner was transferred as stated above 9 times within a span of 7 months. It is submitted that these frequent transfers have harassed ^{him} to great extent. In the 'Miscellaneous Application No. 797 of 1983 in Civil Rule No. 1122 of 1983, before the Gauhati High Court, the petitioner prayed for some interim order. In that Misc. Application, the High Court passed the following order on 25.11.1983 :

"Register the application as a separate Misc. Case. By this application, the petitioner prays for payment of his due salary and other allowances upto 7.4.83. Mr. J.N. Sarma, learned counsel for the petitioner, submits that the petitioner has not received his salary and other allowances since July, 1982, and that he has a legal right to get his salary and allowances. Heard Mr. S. Ali, learned Sr. Standing Counsel, Central Government. If the petitioner has really worked upto 7.4.83 and there is no legal cause for refusing to grant him his salary and allowances upto 7.4.83, the respondents shall pay the arrears within a month from the date of receipt of this order."

In the result, the petition is accepted to the extent indicated above. However, liberty is granted to the parties to file application for alteration, modification or cancellation of this order, if so advised.

This disposes of the Misc. Case.

Sd/- K. Lohiri,
Judge.
Sd/- T.C. Das,
Judge."

On 11.1.1984, the respondents filed an application before the Gauhati High Court, praying for modification, alteration or cancellation of the order dated 25.11.83 in Misc. Application No. 797 of 1983 - Civil Rule No. 1122 of 1983. This application was registered as Misc. Application No. 203 of 1984 - C.R. No. 1122 of 1983. On that Misc. Application, the Gauhati High Court passed the following order on 27.3.1984 :

"Register the application filed by the respondent as Misc. Case."

On 25.11.1983 in Misc. Case No. 797 of 1983, we made the following order, which is relevant for the

purpose....

-1 27 1-

purpose of this petition. We ordered :

Heard Mr. S. Ali, learned Sr. Standing Counsel, Central Government. If the petitioner has really worked upto 7.4.63 and there is no legal cause for refusing to grant him his salary and allowances upto 7.4.63, the respondents shall pay the arrears within a month from the date of receipt of this order.

Mr. S. Ali, learned Standing Counsel, Central Government, submits that the petitioner did not work upto 7.4.63 and he is not entitled to any salary and allowances upto the said period. If in fact the petitioner Bhadrin Lal Prasad Gupta has not worked upto 7.4.63 and there exists legal cause for refusing to grant his salary and allowances upto 7.4.63, as ordered, the question of making the payment does not arise. As such, the order is very clear and requires no modification or alteration. We have examined the petitioner. We do not express any opinion on it in respect of the averments made therein nor do we accept the same as correct and/or incorrect. We hold that if the respondents think that the petitioner is not entitled to any salary or allowances at all in that event they may not pay the salary and allowances to him.

With these observations, the petition is disposed of.

Sd/- K. L. Hiri,

Judge.

Sd/- T. C. Das,

Judge.

In the Misc. Application before the Gauhati High Court for modification, alteration or cancellation of the order, the respondent has given in details about the order of transfer of the petitioner from different places. In paragraph 3 of the said Misc. Application, the respondent has stated that the petitioner was transferred by the Superintending Engineer, Tipaimukh Investigation Circle, Central Water Commission, Shillong, dated 24.3.62 from Tipaimukh Investigation Division No.2, Imphal to Tipaimukh Investigation No.1, C.W.C., Silchar, with a direction for further posting at Tuival Gauge Discharge site. The Executive Engineer, Tipaimukh Investigation Division No.1, Silchar, issued the posting order to Tuival Chuya site in Mizoram. The petitioner was relieved by the Executive Engineer, Tipaimukh Investigation Division No.2, Imphal, with effect from 20th April 1962 (afternoon) with an instruction to report for duty to the Assistant Engineer,

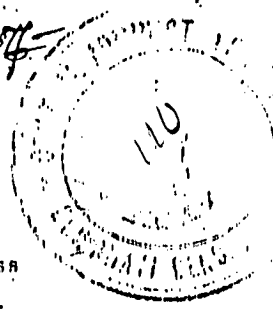
Tipaimukh.....

-45-
409

-: 20 :-

Tipaimukh Investigation Sub-division, Tipaimukh under
Tipaimukh Investigation Division No. 1, Silchar. The petitioner
joined Tipaimukh Investigation Sub-division, Tipaimukh with
effect from 11.5.82. On 13.5.82, the Supervisor in-charge
informed the petitioner that he should report to Supervisor at
Tuivai Chuva site. Instead of joining the work site the petitioner
proceeded on Casual Leave from 15.5.82 to 20.5.82. On return
from Casual Leave the petitioner was allowed to join at Division
Office at Silchar where he worked till 9.6.82. He was then
directed to report to Tuivai Chuva site immediately. But the
petitioner applied for leave from 10.6.82 to 30.6.82 to proceed
on Leave Travel Concession to Jammu and Kashmir and back. The
petitioner gave an undertaking to join his place of posting at
Tuivai Chuva site at Mizoram after expiry of leave and the leave
was granted with effect from 10.6.82 to 30.6.82, i.e. 21 days.
On verification of the records, it revealed that he had only
14 days' Earned Leave at his credit on 10.6.82. As such the
leave order was revised and 14 days Earned Leave from 10.6.82
to 23.6.82 and 7 days extraordinary leave from 24.6.82 to
30.6.82 without pay and allowances was granted. As such the
excess leave salary for the period of 7 days, i.e. 24.6.82 to
30.6.82, is liable to be recovered from the petitioner as per
rules. It is also stated by the respondent that after 7 months'
absence from duty the petitioner resumed his duty at Silchar
on 25.2.83 (forenoon) and at Tipaimukh on 5.3.83. On 6.3.83
the petitioner was given an advance intimation that he should
proceed to Khokan G & D site since the site is established. On
12.3.83 the site was established by an Assistant Engineer and
on 18.3.83 the petitioner was directed to join this site.
The petitioner continued to stay at Tipaimukh defying the
authority's order till 24.6.83. It is also stated that from
25.3.83 the petitioner ~~was~~ willfully remained absent from duty.

(n...)



On 13.3.83 the Assistant Engineer informed through a wireless message that the petitioner had not joined the work site nor intend to join and the petitioner had insulted him. In a subsequent report the Assistant Engineer informed that on 7.4.83 the petitioner forcibly tried to put his attendance in the Attendance Register from 25.3.83 but the Assistant Engineer did not allow him to do so. The petitioner then demanded the pay for the entire month of March, 1983, when the Assistant Engineer was prepared to give his pay upto 1.3.83, the day on which the petitioner should have joined at Thokan site. But the petitioner refused to draw part payment for March, 1983. On 16.4.83 the petitioner came down to the Division Office at Silchar and started complaining against the Assistant Engineer and thereafter the petitioner submitted the complaints against the Assistant Engineer in writing on 16.4.83 itself stating that he is going to his native place as he has not been paid his salary for March 1983 and that he would be at his native place till he would not get the posting order out of the jurisdiction of Silchar Division as well as Tipaimukh Investigation Circle, Shillong. It is stated that since 25.3.83 the petitioner has not resumed his duty till date of filing of this Misc. Application. In paragraph 6 of the aforesaid Misc. Application, it has been stated that the petitioner has been paid excess leave salary for 7 days from 24.6.82 to 30.6.82 amounting to Rs.224.25, which is recoverable from him and the order for recovery has already been issued to him on 2.1.84 with a direction to deposit the amount within a month from the date of receipt of the order failing which penal interest shall be charged and appropriate action taken for recovery of the amount. In this paragraph, the respondent has also given the details about the payment of transfer T.A. bill. In paragraph 11, the respondents have also stated that the petitioner has not filed the petition bonafide as the following dues are recoverable from him :

Dues:

-: 30 :-

Salary :
From 25.2.83 to 28.2.83. - Rs.155.60
From 1.3.83 to 24.3.83 - " 739.35
Arrear AD of 2/83
... " 51.90
1.6.82 to 23.6.82. " 32.30
Rs.992.15

Recovery :
L.T.C. advance Rs.7500.00
(pending adjustment for want of authentic proof of having undertaken journey from Dibrugarh to Jorhat and back).
Excess T.T.A. advance drawn in May, '83 - " 91.00
Excess leave salary drawn from 24.5.82 to 30.5.82. " 224.25
Grand total Rs.2015.35

In paragraph 12, the respondent has submitted that the petitioner wants his pay and allowances without doing any work in the Department. In fact, he desires that he should get his salaries and allowances without joining in his duty which is not permissible under the law and service rules. On 18.2.1984, the petitioner filed another Misc. Application before the Gauhati High Court with a prayer for giving direction to the respondents to pay the salary and travelling allowances of the petitioner from July 1982 onwards and to give direction to the respondents to post the petitioner outside the jurisdiction of the respondent No.4. This Miscellaneous Application has been filed after the respondents filed the Misc. Application on 11.1.1984 with the prayer for modification, alteration or cancellation of the order dated 28.11.1983. In this Misc. Application, the petitioner has disputed some of the contentions raised by the respondents in the Misc. Application filed by the respondents on 11.1.1984. But the High Court did not pass any order.

16. After going through the counter-affidavit of the respondents, we find that the petitioner's salary and transfer travelling allowance had been paid to him in accordance with law. Further, no action has been taken by the authority on the wireless message dated 14.4.83 as complained in his petition and as such he should not have any grievance to make now on his...

his count. The question of regularisation of his services as permanent non-technical staff lies with the authority to consider, for which we do not think that we shall be justified to give any direction. Moreover, the learned counsel for the petitioner has not advanced any submission on the aforesaid grievances at the time of hearing. "At the time of hearing of the application, the learned counsel for the petitioner has only urged that we should give a direction to respondents that the petitioner should be transferred out of the jurisdiction No. 4 - Superintending Engineer, Central Water Commission, Tipaimukh Investigation Circle, Shillong, due to the harassment which was met out to him by frequent transfers by respondent No. 4 and his subordinate officers.

17. The learned counsel for the respondents submits that there was no harassment to the petitioner. All the transfer orders that were made by the respondents were in the interest of public service and transfer being the incidence of public service, such transfer order cannot give rise to any cause to seek for transferring him out of the jurisdiction of respondent No. 4. It is further submitted by the learned counsel for the respondents that no case of malafide of the respondent No. 4 has been made out calling for any action by way of giving any direction to the respondents to transfer the petitioner out of the jurisdiction of respondent No. 4.

18. After hearing the learned counsel for the parties and on going through the pleadings, we do not find any

substance in the submissions made by the learned counsel for the petitioner to give a direction to the respondents to transfer him out of the jurisdiction of respondent No. 4. On consideration of the entire matter we do not find any merit in the petition and accordingly this application is liable to be dismissed, which we accordingly do.

19. In the result, the Application No. G.C. No. 147 of 1936 - C.R. No. 704 of 1935 is allowed and the impugned order passed

by.....



-50-
113

by the authority terminating the service is not valid and he shall be deemed to be in continuous service. It will however be open to the authorities to determine whether the petitioner during the interregnum was gainfully engaged, for the purpose of considering the extent of relief to which he may be entitled pursuant to our present order quashing the impugned order.

The Application No. G.C. 116 of 1986 - C.T. No. 1122 of 1983 is dismissed. In the facts and circumstances of the cases, we pass no order as to costs.

[Signature]
MEMBER : 21.1.87

[Signature]
VICE-CHAIRMAN : 21/1/87

Saxena

Certified to be true copy

[Signature]
28/1/87
Deputy Registrar,
Central Administrative Tribunal
Guwahati Bench.

ANNEXURE - III

Northeast Silchar

No. NEID-I/PF-116/93/4885-88

Govt. of India
Central Water Commission
North Eastern Investigation Divn. I
Rongpur (part-I) silchar
(-Assam)

Dated 28.8.93

OFFICE ORDER

Shri B.L.P. Gupta, W/S Gr.I, is hereby granted the following kinds of leave as mentioned below under CCS leave Rule, 1972 (Revised and enlarged) as amended from time to time.

1. (a) E/L w.e.f. 2.10.81 to 6.10.81 = 5 days In supersession of previous order No. TO-II/CB/PF/84/1431-32 dt. 5.4.83
(b) Commuted leave w.e.f. 7.10.81 to 16.10.81 on medical ground debit to 20 days H.P.L. = 10 days
(c) E/L w.e.f. 17.10.81 to 8.11.81 = 18 days
(d) EOL w.e.f. 4.11.81 to 7.11.81 suffix on 8.11.81 being Sunday. Resumed duties on 9.11.81 FN. = 4
2. (a) E/L w.e.f. 10.5.82 to 9.7.82 = 30 days In supersession of T.O.O. No. NEID-I/PF-116/92/3787-90 dt. 15.5.92
(b) HPL w.e.f. 10.7.82 to 29.7.82 = 20 days
(c) EOL w.e.f. 30.7.82 to 31.12.82 = 155 days
(d) E/L w.e.f. 1.1.83 to 14.1.83 = 14 days
(e) HPL w.e.f. 15.1.83 to 3.2.83 = 20 days
(f) EOL w.e.f. 4.2.83 to 24.2.83 = 21 days Resumed duties of 25.2.83 FN.
3. (a) EOL w.e.f. 18.3.83 to 31.12.83 = 289 In supersession of O.O. No. NEID-I/PF- /92/3783-86 dt. 15.5.92.
(b) H.P.L. w.e.f. 1.1.84 to 20.1.84 = 20 days
(c) E.O.L. w.e.f. 20.1.84 to 23.2.84 = 34 days Resumed duties on 24.2.84 FN as per verdict of CAT. Guwahati
4. (a) Free joining time for 2 days 10.1.91 and 11.1.91 In supersession of this O.O. No. NEID-I/PF-116/92 /607-10 dt. 25.1.92
(b) E/L w.e.f. 8.12.1.91 to 18.6.91 = 188
(c) H.P.L. w.e.f. 19.6.91 to 18.7.91 = 30 days
(d) Free joining time for 2 days w.e.f. 19.7.91 to 20.7.91 & 21.7.91 being Sunday. Resumed duties on 22.7.91 FN.
5. (a) H.P.L. w.e.f. 10.9.91 to 29.9.91 = 12 days In supersession of T.O.O. No. NEID-I/PF-116/92/3778-82 dt. 15.5.92 Resumed duties on 30.9.91 FN
6. (a) Prefix 9.2.92 (Sunday) & free joining time for 2 days w.e.f. 10.2.92 to 11.2.92 In supersession of T.O.O. No. NEID-I/PF-116/92/3428 -31 dt.
(b) E/L w.e.f. 12.2.92 to 19.3.92 = 37
(c) H.P.L. w.e.f. 20.3.92 to 2.4.92 = 14
(d) Free joining time for 2 days w.e.f. 3.4.92 to 4.4.92 & 5.4.92 (Sunday) Resumed duties on 6.4.92 FN.

- 335 -181-
- a) Free joining time for 2 days u.s.f.
30.9.92 to 1.10.92 (Holiday) = 92 days
- b) H.P.L. u.s.f. 3.10.92 to 31.12.92 = 18 days
- c) E/L u.s.f. 1.1.93 to 15.1.93 = 24 days
- d) H.P.L. u.s.f. 16.1.93 to 8.2.93 = 38 days
- e) EOL u.s.f. 9.2.93 to 10.3.93
- f) Free joining time for 2 days u.s.f.
19.3.93 to 20.3.93 and 21.3.93
(sunday) Resumed duties on 22.3.93

In supersession
of this U.O.No.
NEID-I/PF-116/93/
2048-B1 dt.13.4.93

8. a) Free joining time for 1 day on
2.4.93 and 3.6.93 (Holiday) = 11 days
- b) E/L u.s.f. 4.6.93 to 14.6.93 = 10 days
- c) HPL u.s.f. 15.6.93 to 24.6.93 = 34 days
- d) EOL u.s.f. 25.6.93 to 29.6.93
- e) Free joining time for 1 days on
30.7.93. Resumed duties on 31.7.93FN

Certified that Shri B.L.P. Gupta, W/S Gr-I would have continued to officiate in the same post but for proceeding on leave for above period.

Earned leave or NIL days and HPL for NIL days at his credit upto 31.12.93 after recasting of leave due to his confirmation u.s.f. 5.9.81

S/d
(R. C. JHA)
EXECUTIVE ENGINEER

Copy for information and necessary action to:-

1. The Assistant Executive Engineer, NEID-II, CWC, Rongpur in duplicate.
2. The Accounts Branch (Divn. office)
3. Person concerned.
4. Office order file.

S/d
(R. C. JHA)
EXECUTIVE ENGINEER

APPLICATION FOR LEAVE OR FOR EXTENSION OF LEAVE.

1. Name of applicant : **B. L. P. GUPTA** 182
2. Post held : **W/S grader-I** 116
3. Department, Office, Section : **NEID-I, CWC, Bikaner.**
4. Basic pay : **1760**
5. House Rent & other Comp, Allowance drawn in the present post. : **H.R.A. and A.C. drawing.**
6. Nature & period of leave applied for & date from which required : **10/6/82 to 24/2/83 E/L**
7. Sundays/Holidays proposed to be prefixed/suffixed to leave
8. Grounds on which leave is applied for : **NEID/PP-116/92/1582 H.**
9. Date of return from last leave the nature & period of leave : **2/3/92 of E.L. Eoyn NEID-I, CWC Bikaner.**
10. I propose/do not propose to avail myself of leave travel concession for the block years 19____ During the ensuing leave ;
11. Address during the leave period :
Vill/Town **Chhajan Gora** P.O. **Chhajan Harishankar**
Dist. **Muzaffargarh** State. **Chhilar**
- Signature of applicant : **[Signature]**
With date. **12/4/92**
12. Remarks/Recommendations of the controlling officer:
- Signature with date :
Designation.

CERTIFICATE REGARDING ADMISSIBILITY OF LEAVE

13. Certified that _____ for _____
_____ from _____ to _____
is admissible under rule _____ of the Central
Civil Services leave Rule, 1972

Signature with date
Designation.

14. Orders of the authority competent to grant leave.

Signature with date
Designation.

ANNEXURE -

(See Rule 14)

APPLICATION FOR LEAVE OR FOR EXTENSION OF LEAVE.

1. Name of applicant
2. Post held
3. Department, Office, Section:
4. Basic pay
5. House Rent & other Comp, Allowance drawn in the present post.
6. Nature & period of leave applied for & date from which required
7. Sundays/Holidays proposed to be prefixed/suffixed to leave
8. Grounds on which leave is applied for
9. Date of return from last leave the nature & period of leave
10. I propose/do not propose to avail myself of leave travel concession for the block years 19__ --
11. Address during the leave period
12. Remarks/Recommendations of the controlling officer:

B. L. P. Subbar
 Sps. grade
 NEID-I, CWC, Silchar
 1760/-
 H.R.A. and A.C.A.
 Advancing
 EL from 18/2/83 to 22/2/83

NEID/I/PF-116/72/158281
 2/2/82 of B.L. Subbar
 Silchar.

Vill/Town & P.O. Chhajer, Mahisabansa
 Dist. Muzaffarpur State. Bihar

Signature of applicant
 With date. 13/4/82

Signature with date
 Designation.

CERTIFICATE REGARDING ADMISSIBILITY OF LEAVE

13. Certified that _____ for _____
 _____ from _____ to _____
 is admissible under rule _____ of the Central Civil Services leave Rule, 1972

Signature with date
 Designation.

14. Orders of the authority competent to grant leave.
 Signature with date
 Designation.

ANNEXURE

Phone 11 21187

northeast

No. NEID/1/PP-116/92/ 5595-96

Govt. of India
Central Water Commission
North Eastern Inv. Divn. No. I
Rangpur part-I, Silchar-9

Dated :- - 5 AUG 1992

To,

Shri B.L.P. Gupta, M/S-gr-I
NEISD-II, CWO,
Rangpur, Silchar-9

Your representation dated 22nd July, 92 against the proposed recovery of excess payment of salary amounting to Rs. 23,342/- for the period from 10-6-1982 to 23-2-1984 (forwarded vide I/O AEB's, NEISD-II Rangpur, letter No. NEISD-II/E-2/92/1191 dt. 23-7-92) has been carefully examined and the following clarifications are given below for your information.

1. The proposed recovery, as worked out and intimated to you vide this office letter No. NEID/1/AB/92/93/5293 dt. 21-7-92, relates the salary for the period from 10-6-82 to 23-2-84, which was paid to you inadvertently without sanction of leave. However this period has now been regularised by sanction of leave (i) vide this office order No. NEID/1/PP-116/92/3787-90 dt. 15-5-92 & (ii) this office order No. NEID/1/PP-116/92/3783-86 dt. 15-5-92, on the basis of your leave application dated 13-4-92. Thus it is clear that you were not entitled for drawal of pay and allowances for the said period till sanction of leave and accordingly the onus of drawal of undue salary primarily devolves on you. Any mistake in over payment does not absolve the person concerned, who draws the payment, from his responsibility of making correct claim and verifying the payment made to him.

2. Further the above mentioned period, has got no relevancy with regard to the OAT's Judgement order dt. 21-1-87, which was based on your writ petition No. C.O. 147 of 1986-civil Rule No. 704 of 1985, as appeared from the judgement itself. On the contrary your other writ petition No. C.O. No. 116 of 1986-civil Rule No-1122 of 1983, which inter-alia includes release of salary for the period from July, 82, has been dismissed by the said Judgement of O.A.T's, Guwahati Bench.

In view of the foregoing facts, the proposed recovery of Rs. 23,342/- as pointed out by this office is justified and within the rules and orders on the subject. The periods of your absence ~~from~~ to termination, as noted in the judgement have already been accepted by you and hence any payment/recovery made on the basis of regularisation of leave is deemed to be accepted ~~from~~ by you. You are therefore, once again advised to deposit the above sum falling which the proposed recovery will be effected from your salary in accordance with the provisions contained in Rule 215 of the O.T.R as already intimated to you. This can be considered as a second opportunity given to you for exercising your option in the matter.

Copy to the Accounts Branch, Division office, for necessary action w.e.f August '92.

(R.O. Jha)
Executive Engineer

(R.O. Jha)
Executive Engineer

ANNEXURE -

Phone: 225065
Fax: 0364-226865

श्री. म. म. म.

D.O. No. NBIC/2001/90/3262-64

भारत सरकार

Government of India

केन्द्रीय जल आयोग

Central Water Commission

North Eastern Inv. Circle,

"Jumir Manjun", Nonguhilliang,
Shillong- 793014 (Meghalaya)

Dated, the 2nd August, 1996

B.S. Ahuja,
Superintending Engineer

Sub: Representation of Smt. Pawan Gupta, w/o of Shri B.L.P. Gupta,
W/S Gr.I - Regarding transfer of her husband and payment of
dues etc.

- Ref: 1. This office letter No. NBIC/2001/90/3111 dt. 8.7.96
2. D.O. letter No. NBIC/3010/3239 dt. 27.7.96.

Dear Shri

Please refer to this office letter cited above regarding
clearing all the pending bills in respect of Shri B.L.P. Gupta,
W/S Gr.I.

I hope the bills have been cleared. If it is not, kindly
look into the matter personally to ensure that all pending
payments in respect of Shri B.L.P. Gupta, W/S Gr.I are cleared by
the end of this month and reported to me.

It is seen that CAT Judgment dated 21.1.87 that "In the
result, the Application No. G.C.No.147 of 1986- C.R.No.704 of 1988
is allowed and the impugned order passed by the authority
terminating the service is set aside and he shall be deemed to be
in continuous service. It will however be open to the
authorities to determine whether the petitioner during the
interregnum was gainfully engaged, for the purpose of considering
the extent of relief to which he may be entitled pursuant to our
present order quashing the impugned order.

57-46-186-120
The Application No. O.C. 116 of 1986 - C.R. No. 1122 of 1989 is dismissed. In the facts and circumstances of the cases, we pass no order as to costs.

Please let me know whether the recovery of Rs. 20,342/- being made from Shri B.L.P. Gupta, W/S or. 1 is in accordance with the above judgement.

Immediate reply shall be appreciated.

With wishes;

Yours

(B.S. Ahuja)

Shri P.S. Mandal,
Executive Engineer,
North Eastern Inv. Divn. No. 1,
Central Water Commission,
Bongpur Part-I, Sitchar-9.

Copy to:

1. The Chief Engineer, Brahmaputra & Barak Basin, CWC, Shillong for favour of information.
2. The Under Secretary (1), CWC, Sewa Bhawan, R.K. Puram, New Delhi.

(B.S. Ahuja)
Superintending Engineer

NEIDC/PP-26/96/33-4/7

Date 30/3/96

To

The Executive Engineer,
North Eastern Inv.Divn.No.1,
Central Water Commission,
Romdur Part-1, Silchar-9

Sub: Representation of Smt. Pawan Gupta, w/o Shri B.L.P.Gupta, W/S Gr.I
regarding of his husband and payment of dues etc.

Please refer to your letter No.NEID/I/PP-116/96/4824, dated 19.8.96
on the subject mentioned above.

As you are aware Shri B.L.P.Gupta, W/S Gr.I in his writ petition
before the High Court had submitted that his absence from duty from
July'02 onwards was due to harassment given to him by the officers and
not at his own will. In their judgement the CAT have set aside the
termination order and have directed that Shri B.L.P.Gupta shall be deemed
to be in continuous service. It therefore implies that the entire period
of the absence i.e. with effect from July'02 as submitted by him in his
writ petition is to be treated as continuous service.

In view of above the regularisation of the absence of Shri B.L.P.
Gupta between 10.6.82 and 20.3.84 by treating it as E.O.L. for 20 months
14 days and HPL for 40 days is not correct since the Court have directed
to treat the period as continuous service. The recovery being made by
deducting the above leave due to mis-interpretation of the judgement.
Therefore needs to be regularised and an amount of Rs.23,342/- recovered
from him on account of the above action therefore does not appear to be
order and may please be rectified.

Separate communication is being sent in respect of other
clarifications furnished by you for the remaining paragraphs.

(D.S.Amija) 20/3/96
Superintending Engineer