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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 342/01.....

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SECTION OFFICER (Judl.)

[Signature]
8/12/17

FORM No. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

ORDERS SHEET

original APPLICATION NO. 342/2001

Applicant (S) Parimal Ghosh

Respondant(S) W.O.P. Goms

Advocate for the Applicant: B.K. Sharma, S. Sarma, Miss U. Das

Advocate for the Respondant: CASE.

Notes of the Registry	Date	Order of the Tribunal
This application is in form but not in time. Petitioner is filed for vide M.P. No. <u>Y</u> C.F. for Rs. 50/- deposited vide IPO/BO No. <u>79.548542</u>	12.9.01	List on 14/9/01 in presence of Mr. B.C. Das, learned counsel for the respondents.
Dated <u>17.8.2001</u> By, Registrar <u>28/9/01</u>	14.9.2001	Issue notice for the respondents to show cause as to why the application shall not be admitted. Mr. B.C. Das appearing on behalf of the respondents accepts notice on behalf of the respondents.
Notice Responded and sent to D/S for issuing the Respondent No 1 to 3 by Regd A.D.		List again <u>1.10.2001</u> for admission. Endeavour shall be made to dispose of the matter at the admission stage.
<u>18/9/01</u>		
D/No <u>3531 W33</u> <u>19/9/01</u>	1.10.01	List on 4/10/01 for admission.
① Show cause has not been filed.	mb	
② Office copy of the notices not in a file.		
<u>24</u> <u>28.9.01</u>		

4.10.01

Heard learned counsel for the parties.

List on 9/10/01 to enable the respondents to obtain necessary instructions.

U. C. Sharma
Member

[Signature]
Vice-Chairman

mb

9.10.01

The matter is pertains to vigilance clearance certificate. Earlier, we asked the ~~XXXX~~ counsel for the respondents to obtain necessary instructions. Mr. B.C. Das, counsel for the respondents again sought for time to obtain necessary instructions. List on 15/11/01 for admission.

Pendency of this application shall not be a bar to the respondents to give a vigilance clearance certificate to the applicant provisionally.

List on 15/11/01 for admission.

U. C. Sharma
Member

[Signature]
Vice-Chairman

mb

15.11.01

List on 27/11/01 for admission.

U. C. Sharma
Member

[Signature]
Vice-Chairman

mb

27.11.01

Judgment delivered in open Court. Kept in separate sheets. Application is allowed. No order as to costs.

U. C. Sharma
Member

[Signature]
Vice-Chairman

lm

21.12.2001

Cop 7 of the Indst has been sent to the office for issuing the same to the appraiser as well as to the Advocates for 15 Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 342 of 2001

Date of Decision. 27.11.01.....

Shri Parimal Ghosh.

-----Petitioner(S)

Mr.B.K.Sharma, Mr.S. Sharma, Ms.U.Das

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

-Versus-

Union of India & Ors.

-----Respondent(s)

Mr.K.N.Chowdhury, Mr.B.C.das.

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

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

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

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

Judgment delivered by Hon'ble : VICE-CHAIRMAN

N/O

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.342 of 2001

Date of Order: This the 27th Day of November 2001

HON'BLE MR.JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN
HON'BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER.

Shri Parimal Ghosh,
Assistant, ICAR, Research Complex,
N.E.H, Region, Umroi Road, Umium, Meghalaya.

... Applicant.

By Advocate Mr.B.K.Sharma, Mr.S.Sarma, Ms.U.Das.

-Vs-

1. Union of India, represented by the Secretary to the Indian Council of Agriculture Research (ICAR), Krishi Bhawan, New Delhi.
2. The Director General, ICAR, Krishi Bhawan, New Delhi.
3. The Director, ICAR, Research, Umroi Road, Umium, Meghalaya.

... Respondents.

By Advocate Mr.K.N.Choudhury, Mr.B.C.Das.

O R D E R.

CHOWDHURY J(VC):

The post of Assistant Administrative Officer on deputation basis under the Director NRC(Mithun) Jharnapani, Nagaland was advertised. A copy of the notice was also placed in the Notice Board of the Respondents. The applicant who was working in the post of Assistant under the Respondents submitted an application for the said post on deputation to the Director NRC(Mithun), the same application was forwarded by the Respondents vide letter dated 10.6.99 to the Director NRC(Mithun). The applicant's grievance in this application is that the respondents authority deliberately did not send Vigilance Clearance Certificate of the applicant


contd/-

alongwith the application. He submitted representation before the Director, ICAR on 9.9.1999 and thereafter he also submitted representation to the Director General, ICAR, New Delhi. Failing to get his application forwarded to the authority the applicant moved this application for appropriate direction to the respondents for issuance of Vigilance Clearance Certificate to the applicant. By order dated 19.9.2001 we issued notice on the respondents to show cause. The Respondents did not submit its show cause/reply. We asked the learned counsel for the Respondents to obtain instructions as to why the Vigilance Certificate was not granted to the applicant. Mr.B.C.Das learned counsel appearing on behalf of the respondents took time in September 2001, October 2001 and to-day also asked for sometime to obtain instructions. The controversy revolved round on a simple matter of forwarding the application of the applicant for the post of Assistant Administrative Officer NRC(Mithun) to the Director NRC. When such application is filed normally such application need to be forwarded unless there is any compelling and good reasons. The discretion is vested on the authority in forwarding the application. The authority is required to balance the interest of the state, vis a vis the interest of the employee. Care should be taken to avoid hardship to such employee. Undue delay of disposal of such application seriously prejudices the interest of the concerned person. In the instant case of the application the applicant was sent to the competent authority in 1999. The authority did not assign any reasons why the respondents could not take any decision on the matter.

contd/-

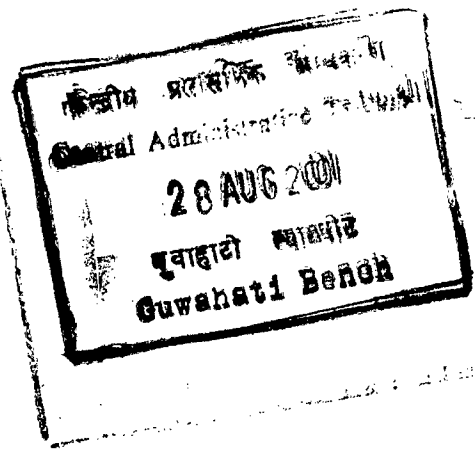
We have heard Mr.S.^Sarma learned counsel appearing on behalf of the applicant and also Mr.B.C.Das learned counsel for the respondents. Mr.Das could not justify as to why the matter was not processed. Considering all aspects. of the matter we are of the opinion that the ends of justice will be met if a direction is issued to the Respondent No.2 Director General, ICAR, New Delhi to take appropriate decision on the representation submitted by the applicant vis a vis forwarding the application to the respondents authority. We direct the applicant to submit a fresh representation within 10 days to the Director General, ICAR, Krishi Bhawan, New Delhi enclosing copy of the earlier representation as well as the order of the Tribunal and on receipt of the same the respondents are directed to take decision by passing a reasoned order and communicate the same to the applicant as early as possible preferably within 1 month from the date of receipt of the representation.

The application is allowed to the extend indicated above. There shall however be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE-CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

O. A No. 342 /2001

BETWEEN

Shri Parimal Ghosh,

... Applicant.

- AND -

Union of India & Ors.

... Respondents

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Filed by

Usha Das.

Advocate:

File = c:\ws\ss\parimal

Filed by
the applicant through
Asha Das
Advocate
13/8/2001

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

O. A No. 342 /2001

BETWEEN

Shri Parimal Ghosh,
Assistant, ICAR, Research Complex,
N.E.H. Region, Umroi Road, Umium,
Meghalaya.

... Applicant.

- AND -

1. Union of India, represented by the Secretary to the Indian Council of Agriculture Research (ICAR), Krishi Bhawan, New Delhi.
2. The Director General, ICAR, Krishi Bhawan, New Delhi.
3. The Director, ICAR, Research Complex for N.E.H. Region, Umroi Road, Umium, Meghalaya.

... Respondents

DETAILS OF THE APPLICATION.

1. PARTICULARS OF ORDER AGAINST WHICH THIS APPLICATION IS MADE.

This application is not directed against any particular order but has been made against the action of the Respondents in not considering his case for promotion to the post of Asstt. Accounts Officer.

2. LIMITATION

That the Application is declares that the instant

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application has been filed within the limitation period prescribed under Section 21 of the Central Administration Tribunal Act, 1985.

3. JURISDICTION OF THE TRIBUNAL

The Applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE

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

4.2 That the Applicant is presently holding the post of Asstt. ~~Assistant~~ ~~Secretary~~ under the Respondent No. 3, he started his service career under the Respondents in the year 1981. Thereafter taking into consideration his sincere and devoted service he got his promotion to the post of Senior Clerk in the month of April, 1986. The aforesaid promotion of Senior Clerk was followed by yet another promotion i.e. the post of Asstt., that is the post presently holding by the Applicant.

4.3 That the Applicant while working as clerk in the year 1984 he was given the charge of stores and accordingly he continued to discharge his duty. In February 1994 the Respondents issued an order of recovery of an amount of Rs. 73,262/- from the Applicant without holding any enquiry. He being aggrieved approached the Hon'ble Tribunal by way of

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filing OA NO. 41/94. The Hon'ble Tribunal vide its judgment and order dated 1.6.1994 disposed of the said OA setting aside the order of recovery. However, the Hon'ble Tribunal made it clear that Respondents may proceed departmentally against the Applicant.

4.4 That the Respondents on receipt of the aforesaid judgment and order issued charge sheet against the present Applicant alongwith one Shri B.P.S. Yadav. However, the proceeding initiated only against the Applicant and by an order dated 25.8.1995, the Disciplinary Authority imposed a penalty of censure on the Applicant. Thereafter the Director, ICAR issued another order dated 25.7.1996 by which the order of censure has been set aside and direction has been issued to the disciplinary authority to hold further enquiry into the matter impugning the aforesaid order dated 25.7.1996 the Applicant preferred OA No. 260/96 before this Hon'ble Tribunal. The Hon'ble Tribunal after hearing the parties to the proceeding allowed the said OA vide its judgment and order dated 8.6.99 setting aside the order dated 25.7.1996.

A copy of the said judgment and order dated 8.6.99 is annexed as Annexure-1.

4.5 That the Applicant thereafter continued to hold the post of Asstt. under the Respondents. Thereafter the Respondents issued an order in the Notice Board advertising a Post of Asstt. Administrative Officer on deputation basis under the Director NRC (Mithun), Jharnapani, Nagaland. The Applicant placing his willingness submitted his application for the

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said post of Asstt. Administrative Officer on deputation to the Director NRC (Mithun). The aforesaid application was forwarded by the Respondents vide letter dated 10.6.99 to the Director NRC (Mithun).

Copies of the application dated 2.6.99 and the forwarding letter dated 10.6.99 are annexed herewith and marked as Annexure-2 & 3 respectively.

4.6 That as per the rules guiding the field the Respondents are to submit the application of the Applicant alongwith vigilance clearance certificates. However, the Respondents with a malafide intention to harass the Applicant never forwarded the vigilance clearance certificate of the Applicant to the Director NRC (Mithun). The Applicant being aggrieved preferred a representation dated 9.9.99 to the Respondent No. 3 praying for issue necessary vigilance clearance certificates. However, nothing has been done in the matter by the Respondents.

A copy of the said representation dated 9.9.99 is annexed as Annexure-4.

4.7 That the Applicant could come to know about the fact of his selection in the post of Asstt. Administrative Officer under NRC (Mithun) from a reliable source. He also could come to know about the fact that because of absence of vigilance clearance certificate his case could not be considered by the Director NRC (Mithun). The Applicant kept on representing the matter before the concerned authority but the same yielded no result in positive. It is noteworthy

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to mention here that the application preferred by the Applicant dated 2.6.99 (Annexure-2), the forwarding letter dated 10.6.99 (Annexure-3) and representation dated 9.9.99 (Annexure-4) filed by the Applicant was sent to the office of the Respondent No. 2 for necessary instruction in the matter and while offering its comment the Respondent No. 2 issued a positive instruction to the Respondent No. 3 for issuance of vigilance clearance certificate (No. objection certificate) but the Respondent No. 3 for the reason best known to him has not issued any such vigilance clearance certificate. Situated thus the Applicant preferred a representation to the concerned authority praying for redressal of his grievances but till date nothing has been done so far in the matter.

A copy of the aforesaid representation is annexed as Annexure-5.

4.8 That the Applicant begs to state that the post of Asstt. Administrative officer under the Director, NRC (Mithun) is still lying vacant but due to non-supply of vigilance clearance certified the Director NRC (Mithun) could not appoint the Applicant in the said post of Asstt. Administrative Officer on deputation.

4.9 That the Applicant begs to state that the Respondents mainly the Respondent No. 3 has not yet indicated any reason for non-issuance of vigilance clearance certificate to the Applicant. In spite of repeated request the Respondents are bent upon not to act on any request made by the Applicant. It is pertinent to mention here that the

P. Ghosh

Respondent No. 3 after passing of the judgment and order dated 8.6.99 by which the order dated 25.7.96 was set aside, took the matter very seriously against the Applicant. As a measure of punishment, the Respondent No. 3 has decided not to issue any vigilance clearance certificate (NOC) to the Applicant so that he gets no further scope of his career advancement.

4.10 That the Applicant begs to state that like the post of Asstt. Administrative Officer under director NRC (Mithun) Nagaland, numbers of equivalent posts are going to advertise soon and in the event of non-issuance of vigilance clearance certificate the Applicant will suffer irreparable loss and injury. The Applicant apprehending the aforesaid fact prays before this Hon'ble Tribunal for an appropriate directed to the Respondents to issue necessary vigilance clearance certificate (NOC) to him so that for his career advancement, his future opportunity of promotion/appointment is not adversely effected.

4.11 That the Applicant begs to state that Respondents mainly the Respondent NO. 3 has acted illegally in withholding the vigilance clearance of the Applicant without any reason. In fact the Respondent No. 2, has made it clear about the fact that vigilance clearance can be issued to the Applicant for consideration of his case against the post of Asstt. Administrative Officer under NRC (Mithun) Nagaland, but nothing has been done so far in the matter. Now almost 2 years have been passed and within a short time the post of Asstt. Administrative Officer under NRC (Mithun) Nagaland

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will be filled up by some other Candidates, and the Applicant will lose his chance. The Respondent No. 3 is withholding the said vigilance clearance certificate (NOC) only on the ground of pendency of judicial proceeding but same could not be a ground of withholding vigilance clearance certificate (NOC). It is noteworthy to mention here that similarly placed person i.e. Dr. BPS Yadav, who was also chargesheeted along with the Applicant, has been selected on deputation of two member Indian Expert to Mongolia, and in his case vigilance clearance has been issued with utmost promptitude. It is further stated that said Dr. BPS Yadav has also been promoted to the post of Principal Scientist (Animal Nutrition) and to that effect the Respondents have issued vigilance clearance certificate (NOC) without any delay. However, the reasons best known to the Respondent No. 3 no vigilance clearance certificate (NOC) been issued to the Applicant. The non furnishing/non issuance of vigilance clearance certificate (NOC) has virtually blocked the avenue of future progression of the Applicant.

4.12 That the Applicant begs to state that the Respondents have acted illegally is not issuing the vigilance clearance certificate to the Applicant. Presently the NRC (Mithun) Nagaland as well as other Govt. organisations are going to issue various advertisements for the post of Asstt. Administration Officer, or equivalent posts and in the absence of vigilance clearance certificate (NOC), the Applicant will lose his chance for his consideration. In that view of the matter, the Applicant prays before the Hon'ble Tribunal for an appropriate interim order directing

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the respondents to clarify the reason to the Applicant as to why his vigilance clearance certificate has been withheld, alternatively for an interim order directing the Respondents to issue provisional vigilance clearance certificate (NOC) so that his case can be considered provisionally. It is further stated that in absence of any such interim order, as prayed for, the Applicant once again will lose the further chance of consideration of his case and thereby he will suffer irreparable loss and injury.

5. GROUND WITH LEGAL PROVISIONS

5.1 For that the action/inaction on the part of the Respondents is illegal, arbitrary and same is violative of the principles of natural justice and administrative fairplay and hence same is liable to be set aside and quashed.

5.2 For that the Applicant being selected for the post of Asstt. Administrative Officer, on deputation, the Respondent No. 3 ought to have issued the vigilance clearance certificate (NOC) to him, taking into consideration his past service career. Withholding of the said vigilance clearance certificate (NOC) without any reason has put the Applicant to a disadvantageous situation and virtually blocked his future career and hence same is not sustainable in the eye of law and liable to be set aside and quashed.

5.3 For that the Applicant being a sincere and devoted employee, he deserves commendation from his higher authority but not to speak of commendation, the Respondents have now

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withheld his due vigilance clearance certificate (NOC) for some extraneous reason with a malafide intention to harass him. In that view of the matter the impugned action of the Respondents are liable to be set aside and quashed.

5.4 For that the Respondents have acted in violation of Article 14 and 16 of the Constitution of India is not replying to his representations highlighting the fact as to why his vigilance clearance certificate (NOC) has been withheld. In spite of repeated representation, the Applicant could not ascertain the reason as to why his said vigilance clearance certificate has been withheld. On this score alone, the action of the Respondents are not sustainable in the eye of law and liable to be set aside and quashed.

5.5 For that the Respondents have acted illegally in not issuing the said certificate (NOC) to the Applicant on the ground of pendency of judicial proceedings. The Respondents however, issued similar certificate to a person (Dr. BPS Yadav) against whom same set of charges was in existence. This discriminatory action of the Respondents, mainly the Respondent No. 3 forced the Applicant to believe that the fact of withholding of vigilance clearance certificate (NOC) is not a routine matter but has been done same is not sustainable in the eye of law and liable to be set aside and quashed. ✓

5.6 For that the Respondent No. 3 has acted illegally in withholding the vigilance clearance certificate of the Applicant without any reason. The Respondent No. 2 vide his communication has made it clear that there is no bar in

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issuing vigilance clearance certificate (NOC) to the Applicant, but the Respondent No. 3 has not yet issued the said certificate, which is per-se illegal, arbitrary and violative of principles of Administrative fair play.

5.7 For that in any view of the matter the action/inaction on the part of the Respondents is not sustainable in the eye of law and liable to be set aside and quashed.

The Applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this case.

6. DETAILS OF THE REMEDIES EXHAUSTED.

That the Applicant declares that they have exhausted all the possible departmental remedies towards the redressal of the grievances in regard to which the present application has been made and presently they have got no other alternative than approached this Hon'ble Tribunal.

7. MATTER PENDING WITH ANY OTHER COURTS

That the applicants declares that the matter regarding this application is not pending in any other Court of Law or any other authority or any other branch of the Hon'ble Tribunal.

8. RELIEF SOUGHT:

Under the facts and circumstances stand above the Applicant prays that the instant application be admitted, records be called for and upon hearing the parties on the cause or causes that may be shown and on perusal of records

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be pleased to grant the following reliefs.

8.1 To direct the Respondents to issue necessary vigilance clearance certificate (NOC) to the Applicant immediately for consideration of his case for appointment to the post of Asstt. Administrative Officer in the office of the Director NRC (Mithun), Nagaland.

8.2 Cost of the application.

8.3 Any other relief/reliefs to which the present Applicant are entitled to under the facts and circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR:

Under the facts and circumstances of the case, the Applicant prays for an interim order from this Hon'ble Tribunal directing the Respondents to issue necessary vigilance clearance certificate (NOC) provisionally during the pendency of the OA.

10. THE APPLICATION IS FILED THROUGH ADVOCATE:

11. PARTICULARS OF THE POSTAL ORDER :

- (i) I.P.O. No.: T G 548547
- (ii) Date: 11/8/2001
- (iii) payable at Guwahati

12. LIST OF ENCLOSURES :

P Ghosh

VERIFICATION

I, Shri Parimal Ghosh, aged about 37 years, son of I Ghosh, at present working as Assistant in the office of the Director, ICAR, Umium Meghalaya, do here by solemnly affirm and state that the statement made in this application from paragraph 1-3; 41-43; 48 to 4.12 & 5 to 12 are true to my knowledge and those made in paragraphs 44 to 47 are matters records of records informations derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on 11th day of August, 2001.

Signature.

Parimal Ghosh

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ANNEXURE - 1

REGD. WITH A/D

BY HAND

Applicant

Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

Despatch No. CAT/GHY/JUDL/3095 Dated, Guwahati the 5-7-99

✓ Original Application No. : 260/96

Misc. Petition No. :

Contempt Petition No. :

Review Application No. :

Transfer Application No. :

Shri Parimal Ghosh

Applicant(s)

VERSUS

U. O. I. & Ors.

Respondent(s)

To

Shri Parimal Ghosh,
S/o Late P.C. Ghosh,
Assistant (C.O.)
I.C.A.R. Research Complex,
Barapani, Meghalaya.

Please find herewith a copy of Judgment/Order dated 8.6.99 passed by the Bench of this Hon'ble Tribunal comprising of Hon'ble Justice Shri D.N. Baruah Vice-Chairman and Hon'ble Shri G.L. Sanglyine Member, Administrative in the above noted case for information and necessary action, if any.

Please acknowledge receipt of the same.

Encl: As stated above.
- Sheets.

BY ORDER

[Signature]
28/6/99
DEPUTY REGISTRAR

Attested

[Signature]
Advocate.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.260 of 1996

Date of decision: This the 8th day of June 1999

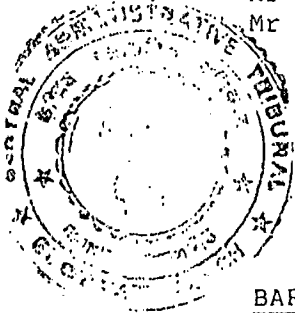
The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

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

Shri Parimal Ghosh,
Assistant (C.O.),
Indian Council of Agricultural Research,
Barapani, Meghalaya.Applicant
By Advocate Mr B.K. Sharma

-versus-

1. The Union of India, represented by the
Secretary,
Indian Council of Agricultural Research,
New Delhi.
 2. The Director General,
Indian Council of Agricultural Research,
New Delhi.
 3. The Director,
Indian Council of Agricultural Research,
N.E.H. Region, Rs
Barapani, Meghalaya.
 4. Dr N.D. Verma,
Project Director,
National Research Centre (Mithun),
Jharnapani, Nagaland.Respondents
- By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Mr K.N. Choudhury, Mr P. Bhowmik and
Mr B.C. Das.



.....
O R D E R

BARUAH.J. (V.C.)

The applicant is an Assistant in the Indian Council of Agricultural Research (ICAR for short). He entered into service in the year 1981. Thereafter, he was promoted to the post of Sr. Clerk in April 1986. In September 1991 he was promoted to the post of Assistant. In 1984 he was placed in charge of Stores and he discharged his duty as such. In February 1994, because of a departmental loss an order was passed towards recovery of an amount of Rs.73,262.58 from

Attested
[Signature]
Advocate.

the salary of the applicant at a monthly rate of Rs.500/-. The authority also decided to hold a departmental enquiry against the applicant. According to the applicant the order of recovery was passed by the authority without holding any enquiry and giving any opportunity of hearing to the applicant. The applicant approached this Tribunal by filing original application No.41 of 1994. By Annexure 2 order dated 1.6.1994 this Tribunal disposed of the said application setting aside the order passed by the authority for recovery of the amount mentioned above. However, the Tribunal further ordered that the disciplinary proceeding against the applicant would continue.

2. By Annexure 3 order dated 15.7.1994 Dr U.C. Sharma, Sr. Scientist, ICAR, was appointed Enquiry Officer to enquire into the charges levelled against the applicant alongwith one Dr B.P.S. Yadav. By Annexure 4 order dated 15.7.1994, the Director, ICAR appointed Shri M. Sarania, Inspector, C.B.I./A.C.B., Shillong as Presenting Officer. Both the orders were passed in exercise of the powers conferred under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as applicable to ICAR. However, on 26.10.1994 the Administrative Officer, ICAR intimated the Enquiry Officer not to conduct the enquiry against Dr B.P.S. Yadav. Therefore, the enquiry was to be conducted only against the applicant. The enquiry was conducted thereafter by the Enquiry Officer and on conclusion of the enquiry the Enquiry Officer submitted the enquiry report. On 24.6.1995 the Disciplinary Authority sent the enquiry report to the applicant. On 24.8.1995 the applicant submitted Annexure 10 representation. Thereafter, by Annexure 11 order dated 25.8.1995 the Disciplinary Authority imposed penalty of censure on the applicant. On 25.7.1996 by Annexure 1 order the Director General, ICAR in purported.....

Attested

Advocate.

purported exercise of power under Rule 29(i)(iv) of the CCS(CCA) Rules, 1965 set aside the order of censure and remitted the case to the Disciplinary Authority with direction to hold further enquiry on the issue whether balance stationery items had been received till 24.4.1992 or not. The applicant being aggrieved by the said order of the Director General submitted Annexure 12 representation dated 21.8.1996 for review of the decision of the Director General. The applicant has also alleged malafide of the order dated 13.9.1995 passed by the 4th respondent- Dr N.D. Verma, the subsequent Director, ICAR. According to the applicant the decision of the Disciplinary Authority was revised by setting aside the order of censure and remitting the matter for further enquiry within thirteen days from the date of joining of the 4th respondent as Director, ICAR. According to the applicant the impugned Annexure 1 order dated 25.7.1996 setting aside the original order of penalty of censure and remitting the matter for further investigation was passed with malafide intention which would be evident from the facts and circumstances of the case. Hence the present application.

3. The contention of the applicant is that the impugned action of the respondents was illegal and without jurisdiction and it was passed with malafide intention. The applicant has further contended that the impugned Annexure 1 order dated 25.7.1996 was passed in purported exercise of the revisional power by the authority without having any jurisdiction and therefore, it is liable to be set aside. The applicant has, therefore, prayed for quashing the Annexure 1 order dated 25.7.1996.

4. In due course the respondent Nos.1 to 4 have entered appearance and filed written statement.



Attested
U.S. Das
Advocate.

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5. We have heard both sides. Mr B.K. Sharma, learned counsel for the applicant submitted before us that once the applicant having been punished by way of censure, the Director General, ICAR had no authority or jurisdiction to exercise power under Rule 29(i)(iv) of the CCS(CCA) Rules, 1965 to set aside the penalty of censure imposed by Annexure 11 order dated 25.8.1996 and remit the case back to the Disciplinary Authority, i.e. Director, ICAR to hold further enquiry on the issue whether balance stationery items had been received till 24.4.1992 or not. Mr Sharma also submitted before us that the earlier order was passed by the then Director, ICAR awarding penalty of censure. After his transfer when the 4th respondent took charge, immediately within thirteen days of his joining he made the recommendation and only at his instance the revisional order was passed by the Director General for taking up the matter by the 4th respondent. According to Mr Sharma the facts and circumstance of the case would amply show that the decision was taken with malafide intention of the Director, ICAR. The applicant has made allegation of malafide against the 4th respondent- Dr N.D. Verma, Project Director, National Research Centre (Mithun), Nagaland. Notices were served on the 4th respondent. However, he chose not to file any written statement. In this regard, Mr Sharma submitted that, as per the decision of the Apex Court if an allegation of malafide is made then counter to the said allegation should be filed by the officer against whom the allegation is made.

6. Mr K.N. Choudhury, learned Standing Counsel, ICAR strenuously argued before us in support of the action of the respondents. According to Mr Choudhury the authority, i.e. the Director General, ICAR had jurisdiction to pass such order in furtherance of justice. According to him the applicant was involved in such a serious crime that mere
censure.....

Attested
W. S. S.
Advocate.

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censure would not meet the ends of justice. Therefore, it was necessary for the administration to reconsider the whole matter by making proper investigation. Mr Choudhury further submitted that the records revealed that some other matters had been left out of consideration. According to Mr Choudhury there was nothing wrong on the part of the Director General in asking the subordinate authority to make further enquiry. Mr Choudhury also submitted before us that the allegation of malafide was not at all proved and in the absence of proof the Tribunal cannot come to the conclusion regarding malafide.

7. On the rival contention of the learned counsel for the parties, the following questions fall for consideration:

- (I) Whether the authority had the jurisdiction to invoke the revisional power under Rule 29(iv) of the CCS(CCA) Rules, 1965.
- (II) Whether the facts and circumstances of the case indicate malafide intention of the respondent No.4.

Point No.I:

Rule 29 of the CCS(CCA) Rules, 1965 prescribes the procedure for revision under various circumstances. Rule 29 (iv) relates to the revisional power of the Head of the Department directly under the Central Government. As per Rule 29(iv), 'Notwithstanding anything contained in these rules- the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department, may at any time, either on his or its own motion or otherwise call for the



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W. Das
Advocate

the records of any inquiry and revise any order made under the CCS (CCA) Rules, 1965, from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may revise the order as mentioned in the said rule. However, as per the second proviso of the said rule such revisional power by the Head of the Department shall not be exercised by the Head of the Department unless the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him. In other words revisional power can be exercised by the Head of a Department only when the Head of the Department is superior to the Appellate Authority. In the present case it is admitted by both sides that the Director General is the Head of the Department (Institution) and also the Appellate Authority. Therefore, as per the second proviso mentioned above the Director General who is the Appellate Authority cannot exercise the revisional power. Again under Rule 29(v) the Appellate Authority can also revise an order, but in such case power can be exercised by the Appellate Authority within six months from the date of the order proposed to be revised. Even assuming the Director General, being the Appellate Authority, has exercised the power under Rule 29(v) then the order ought to have been passed within six months. But in the present case the Director General exercised the power after almost eleven months. Therefore, on both the counts the Director General had no jurisdiction to exercise the jurisdictional power. In this connection Mr Sharma has drawn our attention to a decision of the Madras High Court in P. Sabesan -vs- State of Tamil Nadu and another, reported in (1985) Lab. I.C. 1545. This decision was rendered by the Madras High Court on

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W.S.S.
Advocate.

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the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, R. 15A and proviso of the said rules which is similar to the second proviso to Rule 29 of the CCS(CCA) Rules. The High Court observed thus:

".....The power to review under the above rules can be exercised by four authorities (1) The State Government, (2) the Head of the departments, (3) the appellate authority and (4) any other authority specified in this behalf by the State Government by a general or special order. But the power of review given to the Head of the department, is, however, subject to a restriction under the proviso to the rule. The proviso says that no power of review shall be exercised by the Head of the department unless the appellate authority, which had passed the appellate order of the authority to which an appeal would be preferred against the original order is subordinate to him....."

In view of that the power exercised was struck down by the Madras High Court.

In another decision, namely Kailash Prasad Sinha -vs- Union of India and another, reported in 1985(1) SLR 24, the Delhi High Court had occasion to consider the second proviso to Rule 29 of the CCS(CCA) Rules, 1965. In the said decision the Delhi High Court observed thus:



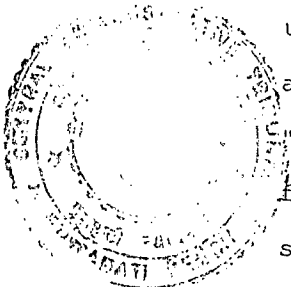
".....Second proviso to Rule 29 clearly says that no power of review shall be exercised by the head of the department unless the authority to which an appeal would lie where no appeal is preferred is subordinate to him (vide sub-clause (ii)). Thus merely being a head of the department is not sufficient by itself to exercise a power of review The object of 2nd proviso to Rule 29 is to provide that though the head of department can exercise the power of review, it is only in those cases where the appellate authority is subordinate to the former. But as in the present case the appellate authority and the reviewing authority are the same person i.e. Director C.B.I., the condition precedent in 2nd proviso to Rule 29 is not satisfied..... In that view it has to be held that the Director C.B.I. being the appellate authority could not exercise the power of reviewing authority under Rule 29, and the impugned notice thus issued by him was not warranted in law."

Attested
W. S. S.
Advocate.

The decisions cited above squarely cover the point at issue. Therefore, we have no hesitation to come to the conclusion that the Director General being the Appellate Authority had no jurisdiction to exercise the revisional power.

POINT NO. II:

The applicant has alleged malafide in the present case on the ground that Shri S. Laskar, the then Director, ICAR, Research Complex for N.E. Hill Region, passed the Annexure 11 order dated 25.8.1995 imposing penalty of "Censure". After Shri Laskar was transferred the respondent No.4- Dr N.D. Verma, Project Director, National Research Centre (Mithun) took over charge and within a short time the respondent No.4 sent a recommendation for revision of the order. According to the applicant this was done with an ulterior motive to harass the applicant. The applicant has also urged that once the Director had imposed the penalty of "Censure", the respondent No.4 ought not to have recommended for revision of the order. Except that nothing has been shown by the applicant. It is an established principle of law that without sufficient proof of malafide intention the Court or Tribunal cannot come to a conclusion that the action was vitiated by a malafide intention. The malafide action is not only to be pleaded, but it also has to be proved with reasonable certainty. In the present case, in our opinion, the applicant has not been able to satisfy the test. On perusal of the records we do not find that the action was taken with a malafide intention. Therefore, this action cannot be said to be taken by the authority with malafide intention. Therefore, we find no force in the contention of the applicant in this point.



Attested
[Signature]
Advocate.

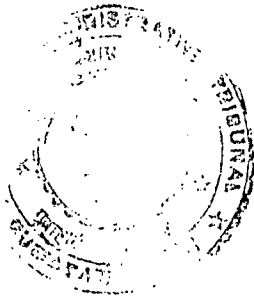
8. In view of our decision in Point No.I we find that the impugned Annexure 1 order dated 25.7.1996 issued by the Director General exercising revisional power cannot be sustained in law. Accordingly we set aside the same.

9. The application is accordingly disposed of. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

nkm



TRUE COPY
प्रतिलिपि

[Signature]
25/6/99

Section Officer (J)
आचार्य न्यायाधीश (आचार्य न्यायाधीश)
Central Administrative Tribunal
दिल्ली न्यायाधीश
आचार्य न्यायाधीश, दिल्ली-6
आचार्य न्यायाधीश, दिल्ली-6

[Signature]
25/6

Attested
[Signature]
Advocate.

23 -

To,

The Director,
N.R.C. (Mithun),
Jharnapani, Nagaland.

(Through proper channel)

Sub.:- Asstt. Admn. Officer on deputation basisreg.
Ref.:- Your letter No. NRCM(R)3/88(Vol.III)/3907 dt.3.3.99
addressed to the Director, ICAR Research Complex,
Umiam and subsequent circulation of the same in the
Notice Board, Umiam.

Sir,

With due respect I beg to offer myself as one of the
candidate for the above post as per the established terms and
condition of the I.C.A.R. My necessary particulars are furnish
below for your kind information and necessary action please.

1. Date of joining ICAR Service :- 26.10.1981 as Jr. Clerk.
:- Promoted to Sr. Clerk
on 11.11.1986 as D.L.E.
candidate.
:- Promoted to Asstt. on
3.9.1991 as D.L.E. candidate.
2. Work shop/traning under
taken :- 1. Reservation on service
i.e. SC/ST etc.
2. Computerisation of
Accounts(ICAR).

Thanking you,

Yours faithfully,

Dated Umiam the
2nd June '99.

(Parimal Ghosh)
Asstt.
ICAR Research Complex
For NEH Region, Umiam.
Meghalaya.

Advance copy to:-

The Director, N.R.C. (Mithun), Jharnapani, Nagaland.

(Parimal Ghosh)
Asstt.

Attested
Advocate.

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ANNEXURE - 3

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR RESEARCH COMPLEX FOR N.E.H. REGION
UMROI ROAD, UMIAM, MEGHALAYA - 893 103.

NO. RC(P)61/81

Dated Umiam, the 10th June, '99.

TO

The Director,
N.R.C. (mithun)
Jharnapani,
Nagaland.

Sub : Forwarding of application for the post of
A.A.O. in respect of Sh. P. Ghosh, Asstt.

Sir,

I am directed to forward herewith the
application for the post of A.A.O., N.R.C. (Mithun)
in your organisation in respect of Sh. P. Ghosh,
Asstt. of ICAR (RC), Umiam for further consideration
from your end.

Yours faithfully,

Encl : As above.

V. Sinha 10/6/99
V. Sinha)
Asstt. Administrative Officer (A)

Copy to :-

Sh. P. Ghosh, Asstt. ICAR (RC), Umiam.

Attested
W. Das
Advocate.

To

- 25 -

ANNEXURE - 4

The Director,
ICAR Res. Complex,
Umiam, Meghalaya.

(Thru: Disputed Channel)

Sub:- Request for issue of vigilance clearance certificate-reg.

Sir,

Kindly refer my application for the post of A.A.O. on deputation to M.R.C.(H), Nagaland which was forwarded by this Office, it is understood that the matter is in final stage and for want of vigilance clearance certificate from this Office, the ~~offer~~ OFFER IS HELD UP;

Here, it will not be out of place to mention that a judgement was pronounced on 8.6.99 by the Hon'ble C.A.T., Guwahati allowing the petition O.A.No.260/96 and it is understood that the Deptt.(ICAR Res.Complex, Umiam)contemplating to file an appeal petition to Hon'ble High Court on the above judgement and keeping in view this contention vigilance - clearance certificate in my case has not been issued by this Office.

Further, it may kindly be noted that, in case the Hon'ble High Court allow the appeal petition, if I go on deputation to M.R.C.(H)ICAR, in that case also I will be well within the ICAR system and under any case my disciplinary authority will not be changed i.e. Director, ICAR Res.Complex, Umiam will be my disciplinary authority.

If the above vigilance clearance certificate is not issued, the same will effect an irreparable damage to my carrier prospect and ~~other~~ financial loss.

Under the above circumstances, I request your honour to kindly issue the necessary vigilance clearance certificate at an early date and save me from the irreparable losses.

Thanking you,

Dated:-09.09.1999

Yours faithfully,

(Parimal Ghosh)
Asstt.

.....

Attested
Advocate.

To

The Hon'ble Director General,
I.C.A.R., Krishi Bhavan,
New Delhi-110 001

(Through proper channel)

Sub.:- Prayer for justice.

Respected Sir,

I have the honour to state that the ICAR Authority is giving me un-due punishment and re-newed harrasement which is very much unjustified. To elaborate the matter I am to state that :-

1. A summery recovery order for recovering a sum of Rs.73262.50 from my salary was issued vide ICAR Research Complex for NEH Region, Umiam's O/O No.RC(G)16/92 dated 11.2.1994 without any inquiry. This order was quashed by the Hon'ble Tribunal vide its order dated 1.6.1994 against O.A. No.41/94.
2. Thereafter, a common proceeding was drawn against Shri P.Ghosh (me) and Dr.B.P.S.Yadav the then Store Officer. Matter related to para 1 above was not included in the charge sheet as there was no such case. During the process of inquiry, proceedings against Dr.B.P.S.Yadav was stopped by the Council vide Council's letter F.No.28(2)/92-vig dated 4.5.1994 for reasons best known to them while proceedings against me was continued which was against the very spirit of the rule. On the basis of inquiry report punishment of CENSURE was imposed on me though the same was not at all merited because the findings of the Inquiry officer was made without going through the proper documents apart from other factual position i.e. I CERTIFIED THE BILL AS PER THE RECORDED PROCEDURE OF THE OFFICE WHICH WAS RECORDED IN THE FILE NO.RC(S)1/89 AND RC(S)18/86 AND AS PER THE ORDER OF THE STORE OFFICER ONLY- who also countersigned the bills, but inspite of my repeated request the RELEVANT FILES WERE NOT PRODUCED BEFORE THE INQUIRY OFFICER AND THIS FACT WAS ALSO OBSERVED AND RECORDED BY THE I.O. vide para 7 of page 24 of the report, probably, these documents were not produced to save the officers of the high ups and to harrase me.

.....2/-

Attested

Udas
Adm. Secy.

Received for
copy
23/6/92

3. As I suffered for a long period of three years from 1992-95 and only because of that I did not go for any appeal inspite of the above fact, but, the same was also pointed out in my defence statement. 25
4. Unfortunately, on the basis of the recommendation of Dr.N.D.Verma, subsequent Director, Council re-opened the case on the ground that the penalty was not - commensurate of charge framed, which was against the very spirit of the relevant rules and accordingly I submitted a REVIEW PETITION to your kindness but having no reply and getting no other alternative I approached the Hon'ble CAT and the Hon'ble CAT was pleased to set aside the aforesaid order vide its order dated 8.6.1997 against O.A.No.260/1996.
5. Although the Hon'ble CAT set aside the aforesaid order, Office submitted a petition in the Guwahati High Court for stay of the order of CAT, but, the Hon'ble High Court did not granted any stay on this and admitted the case for regular hearing, but, till date I have not received the copy of the application filed by ICAR.
6. On 2.6.1999, I applied for the post of AAO on deputation to NRC(Mithun), Nagaland and the same was forwarded by this office (ICAR Res.Complex, Umiam) on 10.6.1999 vide o/o No.RC(P)61/81 dated 10.6.1999. But no vigilance clearance was issued citing some illogical question in the file though the Hon'ble CAT set aside the order of re-opening as discussed above.

Subsequently, I submitted another prayer vide my letter dated 9.9.1999 praying for vigilance - clearance but after laps of more than two years, office did not issued the same which resulted an irreparable losses to me.

Further, it is understood that the matter related to vigilance clearance certificate was forwarded to

..... 3/-

Advocate,

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Advocate.

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the Council (legal Cell) and it is also understood that Council has already issued necessary positive instruction to this office but till date this office (ICAR Res. Complex) had not issued any clearance etc. nor any intimation was given to me.

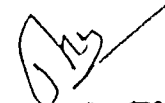
7. As stated above, I am being harassed by the office which seems to be very much intentional, which can be established if asked for. On the contrary Dr. B.P.S. Yadav, the then store office who was also chargesheeted with me was re-warded by the office in many occasions like (i) he was allowed to go on deputation as INDIAN EXPERT TO MONGOLIA during the pendency of the matter (ii) he was promoted to the post of P.S. vide Council's letter F.No.30-13/97-per(III) dated 9.10.2000 which he joined on 13.10.2000(FN).

Under the above circumstances, I request your honour to kindly look into the matter very sympathetically and accord necessary justice to me by withdrawing the petition from the Guwahati High Court and necessary vigilance certificate (NOC) may kindly be issued to me as explained above and save my career prospect.

For act of kindness I shall remain ever grateful to you Sir,

Thanking you,

Yours faithfully,



(PARIMAL GHOSH)

Assistant

ICAR Research Complex for NEH Region, Umroi Road, Umiam, Meghalaya.


Attested

Advocate.


Copy to:-

1. The Dy. Director General (NRM),
2. The Under Secy. (Admn.),
3. The Under Secy. (Legal Cell)

ICAR, Krishi Bhavan, New Delhi with a request to kindly look into the matter and necessary justice may kindly be accorded to me.


4.

The Admn. Officer, ICAR Res. Complex, Umiam, for information & necessary action please.


(Parimal Ghosh)