

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Malita
5/12/17

FORM NO.4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWHATI BENCH ::::: GUNAHATI

ORDER SHEET
APPLICATION NO 62 OF 2001

Applicant (s) Anjita De

Respondent(s) U.C.I Qans

Advocate for Applicant(s) Mr. P.K. Dasani, Mr. S. Samanta

Advocate for Respondent(s) CGSC

Notes of the Registry	Date	Order of the Tribunal
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This application is in form
but not in the Cr. Section
Petition is filed under the
M.P.R.
for the S.C. & S.T. Committee
IPC/14/2001 No. 56421942
Dated.....30.1.2001.....

14.2.01

~~Present: Hon'ble Mr. Justice
D.N. Choudhury, Vice-Chairman and
Hon'ble Mr. K.K. Sharma, Administra-
tive Member.~~

Heard learned counsel for the
parties. Issue notice on the respon-
dents as to why the Disciplinary
Proceedings shall not be suspended.
Returnable by 6 weeks. List on
29.3.01 for orders.

Member

Vice-Chairman

Notice not yet
served to the counsel.

14.2.01

~~Present: Hon'ble Mr. D.N. Choudhury,
Vice-Chairman and Hon'ble Mr. K.K.
Sharma, Administrative Member.~~

Heard learned counsel for the
parties.

Application is admitted. Call
for records. Returnable by 4 weeks.
List on 19.3.01 for orders.

U.C.I Qans

Member

Vice-Chairman

Service of Notice
issued to the
respondent side.

16.3.01

1m

NS
14/02/01

MO 675 has been filed
1 N.

19.3.01

List on 24.4.01 to enable the
respondents to file written statement.

I C (Usha)
Member

Vice-Chairman

pg

24.4.01

Written statement has been filed.

The applicant may file written statement
within two weeks. List on 25.5.01 for
orders.

I C (Usha)
Member

Vice-Chairman

24.4.2001

W/S on behalf
of respondents submitted.

lm

25.5.01

Two weeks time is allowed to the
applicant to file rejoinder.

List on 7.6.2001 for order.

No. Rejoinder has
been filed.

Regd
5.6.01

pg

Member

Chairman

By order
Pras

7.6.01

Written statement has already been filed. The
respondents may file rejoinder, if any, within
two weeks from today.

List the matter on 4-7-2001 for hearing.

I C (Usha)
Member

Vice-Chairman

mb

4.7.01

Stand out on the prayer of Mr. S.
Sarma learned counsel for the applicant.
List on 24.7.01 for hearing.

I C (Usha)
Member

Vice-Chairman

lm

24.7. Heard with the Parties (Mr. P.K. Dwivedi, Advocate
for the appellant & Mr. A. Debnay, Dr. C. S. S. for the
respondent).

Hearing concluded.
Order reserved.

Pras
A. Debnay
24.7.

Notes of the Registry

Date

Order of the Tribunal

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8.8.2001

Copy of the Judgment
has been sent to the
Officer for issuing the
same to the Appellant
as well as to the
L.C.G. & to the
Respondent.

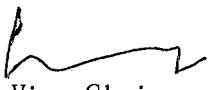
✓

30.7.2001

Judgment pronounced in open court, kept
in separate sheets. The application is allowed.
No order as to costs.

Member

rk m



Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal

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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. NO. 62 of 2001

DATE OF DECISION 30.7.2001

Arijit De

APPLICANT(S)

Mr P.K. Tiwari and Mr S. Sarma ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C. ADVOCATE FOR THE
RESPONDENTS.

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 ?
5. Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.62 of 2001

Date of decision: This the 30th day of July 2001

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

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

Arijit De,
Sub-Inspector,
Office of the Deputy Superintendent of Police,
Central Bureau of Investigation,
Lamphalpat, Imphal.Applicant

By Advocates Mr P.K. Tiwari and Mr S. Sarma.

- versus -

1. The Union of India, through the
Secretary,
Ministry of Personnel, Public Grievances and
Administrative Reforms,
New Delhi.

2. The Director,
Central Bureau of Investigation,
Special Police Establishment,
New Delhi.

3. The Additional Director/Joint Director,
Eastern Zone,
Central Bureau of Investigation,
Calcutta.

4. The Deputy Inspector General of Police,
Central Bureau of Investigation,
North Eastern Region,
Guwahati.Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The legality and validity of the order dated 13.12.1999 demoting the applicant to the rank of Sub-Inspector of Police from the rank of Inspector of Police for a period of three years passed by the Deputy Inspector General of Police, Central Bureau of Investigation, North Eastern Region, Guwahati, as well as the order dated

26.9.2000 passed by the Additional Director, Central Bureau of Investigation, Calcutta upholding the order dated 13.12.1999 in appeal is under challenge in this proceeding in the following circumstances:

The applicant while holding the post of Inspector of Police, Central Bureau of Investigation (CBI for short) at Calcutta was served with a Memorandum dated 27.2.1996 containing article of charge, statement of imputation of misconduct in support of the article of charge etc. for alleged contravention of Rule 3(1) (i) (ii) (iii) of the Central Civil Service (Conduct) Rules, 1964. The full text of the article of charge is reproduced below:

"That Shri Arijit De while functioning as Inspector/CBI/ACB/Calcutta during the period from 28.8.92 to 8.6.96 at Calcutta failed to maintain absolute integrity and devotion to duty in as much as he deliberately, illegally and with an oblique motive did not submit the FIR in the court of Chief Metropolitan Magistrate, Calcutta, either on 28.8.92 or on the next day i.e. on 29.8.92 which was drawn by him by the order of the then SP/CBI/ACB/Calcutta on 28.8.92 U/s 409/467/471 IPC Sec.13(2) r/w, Sec.13(1)(d) of P.C. Act, 1988 against Amitabha Karmakar, rather he intentionally filed the aforesaid FIR after a great delay i.e. on 8.6.95 in the Court of Chief Metropolitan Magistrate, Calcutta for enabling him to submit the F.R.T. for obtaining an order from the court of C.M.M., Calcutta as a result of which a great prejudice was caused to the accused and court took a serious view for the same.

And that, he, thereby, contravened Rule 3 General (1)(i)(ii)(iii) of Central Civil Services (Conduct) Rules 1964 r/w. Rule of Delhi Police Establishment (subordinate ranks) Discipline and Appeal Rules 1961."

The applicant submitted his reply denying the charges. In the written statement it was inter alia stated by the applicant that the case No.RC.38/92-Cal was registered under the order of the SP, which he was asked to investigate. It was stated and contended that the SP was

the.....

the Officer in Charge in the Station Headquarters and it was the SP who was responsible for registration of FIR and despatch of the same in the Court of Law. It was also stated that the FIR after registration was to be immediately sent to the Court through Court Naib or Crime Section of the Office and in the instant case the FIR which was drawn up was mixed up with other files and was lost sight of by all concerned, for which he alone could not be held responsible. He denied any oblique motive in despatching of the FIR and causing prejudice to the accused.

2. An Inquiry Officer was appointed to enquire into the charges. The Inquiry Officer, on completion of the enquiry, submitted his reply. The Inquiry Officer segregated the charge mentioned above in the following fashion into six parts:

"(i) That Shri Arijit De while functioning as Inspector, CBI, ACB, Calcutta during the period from 28.8.92 to 8.6.95

(ii) That the case RC-38(A)/92-Cal was registered on 28.8.92 in that branch by Inspector Sh. A. De under the orders of the then SP, CBI, ACB, Calcutta.

(iii) That after registration of the case, the FIR meant to be submitted to the Court of C.M.M. Calcutta was handed over to Shri A. De, the I.O. of the case, for submission in the court of C.M.M., Calcutta.

(iv) That he deliberately, illegally and with a oblique motive did not submit the FIR in the court of C.M.M. Calcutta either on 28.08.92 or the next date i.e. 29.08.92.

(v) Being the Inspector it was his duty to submit the FIR in the court of C.M.M. Calcutta on 28.08.92 or on the next date i.e. 29.08.92 which he failed to do.

(vi) He deliberately, illegally and with the oblique motive filed the aforesaid FIR in the Court of C.M.M. Calcutta after a great delay i.e. on 29.8.92 just for enabling him to submit the FIR for obtaining the order from the aforesaid court as a result of which a great prejudice was caused to the accused and court has also taken a serious view for the same.


The aforesaid omission and commissions constitute misconduct on the part of Shri A. De."

The Inquiry Officer, on enquiry, held that the applicant functioned as Inspector from 28.8.1992 to 8.6.1995 and that the RC case was registered on 28.8.1992 by the applicant under the orders of the SP, CBI, ACB, Calcutta. The Inquiry Officer held that the FIR meant to be submitted to the Court of Chief Metropolitan Magistrate (CMM for short), Calcutta was handed over to the charged officer was not proved conclusively as there was no reference made about the handing over meant for the court to the applicant or any other document. The Inquiry Officer also ruled out the allegation that the applicant deliberately, illegally and with an oblique motive did not submit the FIR in court of CMM. The Inquiry Officer held that the Disciplinary Authority failed to prove and establish that the applicant deliberately and with an oblique motive filed the aforesaid FIR in court of CMM after a great delay i.e. on 29.8.1992 just for enabling him to submit the FIR for obtaining the order from the aforesaid court as a result of which great prejudice was caused to the accused and the court also took a serious view of the same. The Disciplinary Authority held that the charges against the applicant stood proved and reached the following findings:

"Although there is no direct evidence to prove the allegation that Shri Arijit De had deliberately, and with oblique motive did not submit the F.I.R. in the Court on 28.8.92 or on the next day and subsequently thereafter until he did on 8.6.95, there is undoubtedly gross negligence on the part of Inspector Arijit De who did not discharge his duty as envisaged under departmental practice/procedure, and law thereby inviting opprobrium and stricture from the Court. His conduct has also tarnished the image of the CBI to which he belongs. Therefore I hold that the charges against Shri Arijit De, Inspector, CBI stand proved who by his gross negligence has failed to discharge his duties and failed to uphold the dignity and prestige of the organisation by his unbecoming conduct and thereby contravened of rule 3(l), (ii) and (l)(iii) of C.C.S. (Conduct) Rule 1964.

"In view of the above and after taking everything into account including the past conduct of Shri Arijit De, the undersigned being the Disciplinary Authority orders that Shri Arijit De stands demoted to the rank of Sub Inspector with immediate effect, for a period of 3 years, with all the consequences that follow."

The applicant preferred an appeal before the Appellate Authority assailing the legality and correctness of the findings of the order of penalty. The Appellate Authority by Office Order No.77/2000 dated 26.9.2000 dismissed the said appeal. Hence this application assailing the legitimacy of the impugned action of the respondents.

3. Mr P.K. Tiwari, learned counsel for the applicant, amongst others, contended that the findings and conclusion of the Disciplinary Authority as well as of the Appellate Authority were par se arbitrary, discriminatory and perverse. The learned counsel also submitted that the Disciplinary Authority acted on assumption and presumption and reached the conclusion on extraneous consideration overlooking the relevant considerations.

4. Mr A. Deb Roy, learned Sr. C.G.S.C. supporting the order of the respondent authority submitted that the respondents conducted a fair enquiry and only on the basis of the materials on record the impugned penalty was imposed. No illegality was caused to the applicant requiring interference by the Tribunal submitted Mr Deb Roy.

5. The impugned order of penalty was imposed on the applicant after holding an enquiry. Admittedly, the impugned order was passed as a disciplinary measure. Provisions for disciplinary proceeding is prescribed by the Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961. Demotion and/or reduction to a lower rank or post or lower time scale is a

major.....

major penalty prescribed by the Rules. The procedure for imposing major penalty is delineated in Clause 8 of the Rules. Under the rules the delinquent officer is to be provided with a reasonable opportunity to defend his case at every stage. The Disciplinary Authority is not obliged to accept the finding of the Inquiry Officer. It is free to dissent or disagree with the Inquiry Officer. But for that the Disciplinary Authority is to specify the brief reasons for disagreement, if any, with the findings of the Inquiry Officer in its statement of finding. Such procedure is prescribed to enable the delinquent officer to effectively defend the case and support his version. Furnishing of the report of the Inquiry Officer is also a part of the principles of natural justice and an integral part of fair proceeding. The Inquiry Officer exonerated the charged official from any corrupt or improper motive in not submitting the FIR in the Court of the CMM.

6. Requirement of forthwith reporting of the information received to the commission of an offence, which an investigating agency is empowered to investigate is a part of the procedure prescribed by Section 157 of the Cr.PC. The provision has its own meaning. Every report required to be sent to the Magistrate under Section 157 is required to be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf. In addition to the procedure prescribed in the Criminal Procedure, guidelines are prescribed in the CBI Crime Manual for Registration of the Regular Cases on FIR. The rule insists for forwarding of the copies of the FIR (Registration Report) immediately after registration to the jurisdictional Magistrate or Judge, as the case may be and to the Investigating Officer,

besides.....

besides, to the other concerned authority. Investigation is under constant vigil of the superior officers who are entrusted with the duties of supervision. The very disciplinary proceeding was purportedly initiated at the instance of the learned CMM as mentioned by the Disciplinary Authority. By its order dated 8.6.1995 the learned CMM forwarded a copy of its order dated 8.6.1995 for causing a proper enquiry for avoiding the recurrence of incidents of the type mentioned in the order. The materials on record, more particularly, the report of the Inquiry Officer specifically ruled out any oblique or corrupt motive. At least no such materials are discernible, save and except the assumption and presumption of the Disciplinary Authority, as well as that of the Appellate Authority. The Inquiry Officer specifically ruled out any transgression and/or deliberate violation of any statutory provision. The allegation brought against the charged official was failure to maintain absolute integrity and devotion to duty on the ground that the charged officer deliberately, illegally and with an oblique motive did not submit the FIR in the Court of the CMM, Calcutta, either on 28.8.1992 or on the next day, rather the charged official intentionally filed the aforesaid FIR after a great delay, as a result of which great prejudice was caused to the accused and the court took a serious view of the same. As such there was no definite charge for negligence of duty and failure to uphold the prestige and dignity of the organisation. The Disciplinary Authority went beyond the charge and found the charged officer guilty of gross negligence for failure to discharge duties and failure to uphold the dignity and prestige of the organisation. The Disciplinary Authority, while imposing the penalty also took into consideration the alleged past

conduct.....

conduct without indicating about this past conduct, not to speak of giving any opportunity to the applicant. The procedure followed by the Disciplinary Authority and upheld by the Appellate Authority is contrary to the rules of fair procedure and the principles of natural justice. The finding of guilt reached by the Disciplinary Authority is not borne out by any material on record. The Appellate Authority, which was entrusted with the statutory duty was empowered with the power to review for consideration of the appeal under Rule 22 and to judge the correctness and to consider as to whether the procedure prescribed under the rules were complied with and whether the findings were justified. The Appellate Authority, in the instant case, failed to consider the appeal in its proper perspective and mechanically passed the impugned order without due application of the mind.

7. For the reasons stated above the impugned order of penalty dated 13.12.1999 passed by the Deputy Inspector General of Police, CBI, Guwahati as well as the order dated 26.9.2000 passed by the Additional Director, CBI, Calcutta, the Appellate Authority, are set aside and quashed.

8. The application is accordingly allowed. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

5

O.A. No. 62/2001

Arijit De

- Versus -

U.O.I. & Ors.

LIST OF DATES WITH BRIEF FACTS

09.07.1984 Applicant joined the CBI at Calcutta as Sub-Inspector of Police.

31.07.1989 Applicant was promoted to the post of Inspector of Police, CBI.

27.02.1996 When the Applicant was holding the post of Inspector of Police, CBI at Calcutta, an office memorandum was issued by the disciplinary authority. The memorandum contained only one article of charge to the effect that when the Applicant was functioning as Inspector, CBI, Anti-Corruption Branch at Calcutta then during the period from 28.8.92 to 8.6.95, he failed to maintained absolute integrity and devotion to duty inasmuch as he deliberately, illegally and with an oblique motive did not submit the FIR in the court of the Chief Metropolitan Magistrate, Calcutta either on 28.8.92 or on the next day i.e. on 29.8.92 which was drawn by him by the order of the then SP/CBI/ACB, Calcutta on 28.8.92 under Sections 409/467/471 IPC read with Sections 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988 against Amitabh Karmakar. It was further stated that the Applicant intentionally

filed the aforesaid FIR after a great delay i.e. on 8.6.95 in the court of the CMM, Calcutta for enabling him to submit the FTR for obtaining an order from the court of CMM, Calcutta as a result of which a great prejudice was caused to the accused and court took a serious view for the same (Annexure-A/1, page 20).

16.03.1996 Applicant submitted his written statement of defence.

29.03.1996 Disciplinary Authority appointed Shri S.R. Mukherjee, DSP/CBI/ACB, Calcutta as Enquiry Officer.

*** Meanwhile Applicant was transferred from Calcutta to Imphal and consequent upon his transfer and transfer of pending proceedings from CBI/ACB, Calcutta, the DIG/CBI/NER, Guwahati appointed a new Enquiry Officer to enquire into the charges.

*** Enquiry was initiated against the Applicant and the Applicant duly participated in the enquiry.

27.08.1998 On conclusion of the enquiry, the Enquiry Officer finalised his report. The copy of the same was supplied to the Disciplinary Authority. However, the Disciplinary Authority did not furnish the copy of the report to the Applicant (Annexure-A/3, page 30).

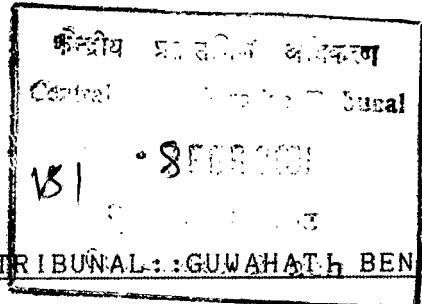
13.12.1999 Disciplinary Authority held the Applicant guilty of the charges and imposed upon him the penalty

of demotion to the rank of Sub Inspector for a period of three years with all consequences (Annexure-A/2, page 26).

20.12.1999 Applicant received the copy of the order of the Disciplinary Authority along with the copy of the enquiry report.

14.01.2000 Statutory appeal preferred by the Applicant (Annexure-A/4, page 51).

26.09.2000 Appellate Authority (Addl. Director, CBI, Calcutta) rejected the appeal of the Applicant and upheld the order of the Disciplinary Authority (Annexure-A/5, page 75).



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the Case : O.A. No. 62 of 2001

Arijit De ... Applicant

- Versus -

Union of India & Ors. ... Respondents

I N D E X

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For use in Tribunal's Office :

Date of filing :

Registration No.

REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

O.A. No. 62 of 2001

BETWEEN

Arijit De, Sub-Inspector, office of the Deputy Supdt. of Police, Central Bureau of Investigation, Lamphelpat, Imphal-795004.

... Applicant

AND

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances & Administrative Reforms, New Delhi.
2. The Director, Central Bureau of Investigation, Special Police Establishment, CGO Complex, Block III, 3rd Floor, Lodi Road, New Delhi-110011.
3. The Additional Director/Joint Director, Eastern Zone, Central Bureau of Investigation, 234/4 Acharjya Jagdish Chandra Bose, 14th Floor, Calcutta-700020.
4. The Deputy Inspector General of Police, Central Bureau of Investigation, North Eastern Region, Guwahati.

.... Respondents.

DETAILS OF APPLICATION

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

The present application is directed against the following :

(i) Order dated 13.12.99 of the Deputy Inspector General of Police, N.E.R., Guwahati (Disciplinary Authority) imposing upon the Applicant the major penalty of demotion to the rank of Sub-Inspector for a period of three years with all the consequences.

(ii) Office order No. 77/2000 dated 26.9.2000 passed by the Addl. Director, CBI, Calcutta (Appellate Authority) rejecting the appeal of the Applicant and affirming the order of the Disciplinary Authority.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That the Applicant in the present case is assailing the legality and validity of the order imposing upon him the major penalty pursuant to the departmental proceeding. The disciplinary proceeding was initiated against the Applicant on a charge that he deliberately with an oblique motive delayed the filing of an FIR before the Metropolitan Magistrate as a result not only the learned Magistrate took a serious view of the matter, but the accused was also prejudiced. It is noteworthy that the Applicant was an investigating officer in the case mentioned above. As per the CBI Crime Manual, it is not the job of the investigating officer to file the FIR. The investigating officer to file the FIR. The

investigating officer is to carry out the investigation and submit the report to the higher authority which in the present case was the Supdt. of Police. Be that as it may, in the aforesaid case, the Applicant recommended registration of a criminal case as well as disciplinary action against the erring charged officer. Contrary to the recommendation of the Applicant, the higher authority in the CBI recommended closure of the case. Consequently, when for the purpose of closure, the Metropolitan Magistrate was approached, it was revealed that the FIR in the aforesaid case was not even filed. In view of the fact that the CBI had decided to close the case, delayed filing of the FIR in the said case was of no consequence. However, the Metropolitan Magistrate expressed his unhappiness for such delayed filing of the FIR with the direction to the CBI to initiate the enquiry and to fix responsibility of the same. The CBI authority instead of carrying out any enquiry, held the Applicant responsible for the same and initiated disciplinary proceeding against him. From the circumstances of the case, it is clear that Applicant could not have any oblique motive or intention in delayed filing of the FIR inasmuch as contrary to his recommendation, it was the higher authority of the CBI that had recommended closure of the case as a result delayed filing of the FIR was of no consequence. Be that as it may the Disciplinary Authority ignoring and overlooking relevant aspects of the case imposed upon the Applicant major penalty of demotion to the rank of Sub-Inspector

for a period of three years with all the consequences. The order of the Disciplinary Authority was also upheld by the Appellate Authority rejecting the appeal of the Applicant. Amongst various other grounds, the order of Disciplinary Authority is illegal because copy of the enquiry report was not furnished to the Applicant prior to passing of the order imposing major penalty. Moreover, Disciplinary Authority while imposing major penalty also took into consideration the past conduct of the Applicant though the same did not form part of the memorandum of charges. The Appellate Authority failed to apply its mind to the grounds urged by the Applicant and upheld the order of the Disciplinary Authority mechanically. Hence the present application.

4.2 That the Applicant is a citizen of India. He joined the Central Bureau of Investigation (in short "CBI"), Calcutta as Sub-Inspector of Police on 9.7.1984 and was promoted to the post of Inspector of Police, CBI on 31.7.1989.

4.3 That when the Applicant was holding the post of Inspector of Police, CBI at Calcutta, an office memorandum No. 880/45(8)/ESTT/96-CAL dated 27.2.96 was issued by the Disciplinary Authority. The memorandum contained only one article of charge viz. :

"That Shri Arijit De while functioning as Inspector/CBI/ACB/Calcutta during the period from 28.8.92 to 8.6.95 at Calcutta failed to maintain absolute integrity and devotion to duty inasmuch as he deliberately, illegally and without an oblique motive

did not submit the FIR in the Court of the Chief Metropolitan Magistrate, Calcutta either on 28.8.92 or on the next day i.e. on 29.8.92 which was drawn by him by the order of the then SP/CBI/ACB, Calcutta on 28.8.92 under Section 409/467/471 IPC read with Sections 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988 against Amitabha Karmakar, rather he intentionally filed the aforesaid FIR after a great delay i.e. on 8.6.95 in the Court of the Chief Metropolitan Magistrate, Calcutta for enabling him to submit the FIR for obtaining an order from the Court of Chief Metropolitan Magistrate, Calcutta as a result of which a great prejudice was caused to the accused and court took a serious view for the same."

The aforesaid memorandum contained the statement of imputation of misconduct in support of article of charge and the list of documents and witnesses.

Copy of the memorandum of charge dated 27.2.96 is annexed hereto as ANNEXURE-A/1.

4.4 That the charge against the Applicant was misconceived inasmuch as it was the Applicant who as an I.O. in the aforesaid case had recommended prosecution of the suspect officer. Whereas the Branch Public Prosecutor had recommended closure of the case. On the other hand, the Supdt. of Police recommended regular departmental action for major penalty. Though the Applicant while carrying out his duties in the capacity of investigating officer had proved charges against the suspect officer but the prosecution was not recommended

by the branch as the amount involved was meagre. Hence there was no relevance or nexus in the delayed submission of the FIR and the final outcome of the result of the investigation. It is also noteworthy that when the concerned Metropolitan Magistrate was approached for closure of the case it was only at that stage revealed that there was no filing of the FIR in the case closure of which was being sought for. Possibly it was this, which has resulted in the learned Magistrate taking an adverse view.

4.5 That pursuant to the aforesaid memorandum of charge, the enquiry was initiated against the Applicant and the Applicant duly participated in the enquiry. The Enquiry Officer on conclusion of the enquiry submitted his report dated 27.8.98 to the Disciplinary Authority. However, the Disciplinary Authority did not furnish the copy of the Enquiry Officer's report to the Applicant thereby denying the Applicant an opportunity to submit his representation against the findings of the Enquiry Officer's report.

4.6 That after the conclusion of the enquiry, Applicant was transferred from Calcutta to Imphal as Inspector, CBI (under suspension).

4.7 That the Disciplinary Authority while agreeing with the findings of the Enquiry Officer also took into consideration the past conduct of the Applicant (which was not part of the charge) and holding the Applicant guilty of the charge imposed upon him the penalty of demotion to the rank of Sub-Inspector for a period of

three years with all consequences vide order dated 13.12.99.

Copy of the order of the Disciplinary Authority dated 13.12.99 is annexed as ANNEXURE-A/2.

4.8 That the Applicant received the copy of the order of the Disciplinary Authority dated 13.12.99 on 20.12.99. It was alongwith the order of the Disciplinary Authority that the copy of the enquiry report was enclosed. This is how the Applicant came to know about the contents of the enquiry report.

Copy of the Enquiry Officer's report dated 27.8.98 is annexed as ANNEXURE-A/3.

4.9 That in the Enquiry Officer's report it was specifically held that it was for the Branch SP to ensure that the copy of the First Information Report reached the concerned Court which could be done through staff working under him meant for the purpose or any other staff under him who could have executed the order. It was also held by the Enquiry Officer that the Applicant had recommended prosecution of the suspect officer in his capacity as the investigating officer of the said case. Whereas the Branch Public Prosecutor had recommended closure of the case. However, the Supdt. of Police had recommended regular departmental action for major penalty. It was further held by the Enquiry Officer that the Applicant in his capacity as investigating officer could prove some charges, but the prosecution was not recommended by the branch as the amount involved was meagre and that all

the allegations could not be fully proved. It was also held that there was no irregularity or lacuna in the investigation by the Applicant in his capacity as an investigating officer. It was therefore finally held by the Enquiry Officer that no nexus could be established between the late submission of the FIR and the final outcome of the result of the investigation inasmuch as investigation in CBI is regularly and meticulously supervised thoroughly at every stage and the investigation report submitted by the investigating officer is always a subject to thorough scrutiny and discussion with the legal officer/supervising officer of the branch. Enquiry Officer categorically observed that "no report of showing deliberately, illegality and oblique motive on the part of Shri A. De (present Applicant) could be seen." It was also held by the Enquiry Officer that there was no evidence to show that any prejudice was caused to the accused due to delayed submission of the FIR.

4.10 That the Applicant being aggrieved by the order of the Disciplinary Authority preferred an appeal dated 14.1.2000 alongwith annexures consisting of various documents against the order of the Disciplinary Authority. Applicant's appeal was elaborate and various grounds were urged therein. For the sake of brevity, Applicant craves the leave of this Hon'ble Tribunal to refer to and rely upon the averments made in the appeal.

Copy of the appeal dated 14.1.2000 is annexed as
ANNEXURE-A/5.

4.11 That the Appellate Authority (Additional Director, CBI, Calcutta) vide office order No. 77/2000 dated 26.9.2000 rejected the appeal of the Applicant and upheld the order of the Disciplinary Authority.

Copy of the order of the Appellate Authority dated 26.9.2000 is annexed as ANNEXURE-A/5.

4.12 That on perusal of the enquiry report, Applicant learnt that the Enquiry Officer did not find any evidence to support the allegation that the Applicant deliberately or with an oblique motive did not submit the FIR. The Enquiry Officer also took note of the fact that it was the Applicant who had recommended prosecution of the suspect officer in regard to whom the FIR was to be filed. In fact it was the Branch Public Prosecutor who had recommended closure of the case whereas the Supdt. of Police had recommended RDA for major penalty. The Enquiry Officer also took note of the fact that the Applicant in his capacity as Enquiry Officer in the aforesaid case could prove some charges, but the prosecution was not recommended by the branch as the amount amount involved was meagre. Enquiry Officer also took note of the fact that there was no report of any irregularity/lacuna in the investigation by the Investigating Officer i.e. the present Applicant. Moreover, Enquiry Officer also noted the fact that there was no nexus in the late submission of FIR and the final outcome of the result of the investigation. It was observed by the Enquiry Officer that the investigation in CBI is regularly and

meticulously supervised thoroughly at every stage and the investigation report submitted by the Enquiry Officer is always subject to thorough scrutiny and discussion with the legal officer/supervising officer of the branch. In view of aforesaid, it was clearly held by the Enquiry Officer that no charge of acting illegally or with oblique motive can be made against the Applicant. Moreover, Enquiry Officer also observed that no evidence was available to show that prejudice was caused to the accused. It was also stated in the enquiry report that the case was registered by the Applicant as per the order of SP, CBI on the basis of a verification report of a source information submitted by another officer of the branch. The investigation was endorsed to the Applicant the then Inspector, CBI, Calcutta and he submitted his FR-1 on 28.12.92 in compliance with the order of SP, CBI, Calcutta.

4.13 That the basic contention of the Applicant in the enquiry was that it is the SP of the Branch who has to register the case and he alone is solely responsible for the despatch of the copies of the FIR to various endorsees. It was contended by the Applicant that it was the Despatch Section under the Branch SP which is responsible for sending the copies of the FIRs to the endorsees. The Enquiry Officer proceeded on premise that since the case was registered and the FIR was signed by the Applicant who was well aware of the existing practice in the office of the SP, CBI, ACB, Calcutta that the I.O. generally submits the copy of the FIR meant for the concerned court to the court

himself, therefore the Applicant was held responsible for the delayed submission of the FIR. The pleas of the Applicant that as per the guidelines contained in the CBI crime manual it is the responsibility of the SP, CBI and of the Despatch Section to ensure submission of FIR was not accepted. However, though it was accepted that the Despatch Section did not hand over the copy of the FIR to the Applicant, but blame was put on the Applicant not to take initiative in collecting the FIR from Despatch Section on his own and submit it to the concerned court.

4.14 That since the Applicant did not have the advantage of perusing the report of the Enquiry Officer, he could not submit any representation against the findings of the Enquiry Officer. The Disciplinary Authority also failed to discharge its obligation of furnishing to the Applicant the copy of the Enquiry Officer's report. Had Applicant known the contents and findings of the enquiry report he would advance his argument against the same before the Disciplinary Authority by submitting a representation which then could have been considered by the Disciplinary Authority. However, in the present case, this important procedure was not followed thereby seriously prejudicing the Applicant.

4.15 That neither the Enquiry Officer nor the Disciplinary Authority appreciated the fact that as per the CBI crime manual, it is the duty of the SP, CBI and the Despatch Section in the Crime Branch to ensure submission of FIR before the concerned court. Moreover,

the fact that Applicant was not served with the copy of the FIR, but the Despatch Section of the Crime Branch was also not properly appreciated. In the facts and circumstances of the case, Applicant has reasons to believe that in order to protect the senior officers and the personnel of the Despatch Section of the Crime Branch, the Applicant was made the scapegoat.

4.16. That the Disciplinary Authority seriously erred while observing in its order dated 13.12.99 that the practice of sending FIRs to courts in CBI varies from branch to branch and in Calcutta ACB branch, it was the practice that the concerned I.O. is responsible for taking the original copy of the FIR and submitting it in the court and recording a certificate to this effect in the crime file/CD file thereafter. It is stated that, practice to be followed in submitting the FIR to the court has to be in conformity with the clauses in CBI manual. Practice cannot be contrary to the provisions contained in CBI manual. The legality of the Applicant's action has to be tested on the touch stone of the provisions of the CBI manual and he cannot be found blameworthy for acting in conformity with the provisions of CBI crime manual. Curiously, the Disciplinary Authority found the Applicant guilty for not discharging his duties as envisaged under departmental practice and procedure. In the context of the present case, failure to discharge duties as envisaged under departmental practice and procedure has to be understood in contradistinction to the procedure laid down in the CBI manual. It is noteworthy that the

Applicant has not been found guilty of discharging duties contrary to the procedure laid down in CBI manual.

4.17 That the Disciplinary Authority also gravely erred in law by taking into account the past conduct of the Applicant. Applicant was not told at any stage of enquiry that his past conduct would also be the subject matter of consideration. Enquiry Officer did not look into the past conduct of the Applicant and no finding in regard to the same was given. The past conduct of the Applicant was also not the part of the memorandum of charge. Hence, the Disciplinary Authority erred in law by taking into consideration the past conduct of the Applicant while imposing penalty on the Applicant. In this connection, it is stated that past conduct of the Applicant has been without any blemish and at no point of time, Applicant was communicated any adverse entry in his Annual Confidential Report. However, Applicant has no knowledge as to what materials pertaining to his past conduct were taken into consideration by the Disciplinary Authority. Though Applicant had no knowledge of any adverse material against him related to past, but the possibility of considering such material by the Disciplinary Authority without bringing the same to the notice of the Applicant cannot be ruled out.

4.18 That the Appellate Authority failed to address itself to all the aforesaid relevant aspects of the case. It acted in total non-application of mind and

upheld the order of the Disciplinary Authority. The Appellate Authority ought to have taken note of the fact that the Applicant could never had an oblique motive or extraneous consideration in delayed submission of the FIR inasmuch as he was the person who had recommended prosecution of the suspect officer whereas contrary to his recommendation, the Branch Public Prosecutor had recommended closure of the case and the Supdt. of Police had recommended regular departmental action for major penalty against the suspect officer. Ultimately, as per the direction of the higher authority in CBI, the case against the suspect officer was closed before the concerned Magistrate. Enquiry report was clear of the fact that due to delayed submission of the FIR, no prejudice was caused to the suspect officer nor any injury was caused to the department. Moreover, the Appellate Authority also failed to take note of the fact that it was the responsibility of the Supdt. of Police to enquire that the FIR was filed on time to the concerned Magistrate. Apparently, in the case at hand, there was a supervisory lapse on the part of the Supdt. of Police and it was wrong to make Applicant the scapegoat.

4.19 That the Applicant is filing this application bonafide for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that as per the CBI Crime Manual, it is for the Branch SP or in his absence, the next seniormost officer present in the station/office otherwise

competent or the officer who has been authorised to do so to register the case and it is for the branch SP to ensure that the copy of the FIR reached the concerned Court. Apparently, there was a supervisory lapse on the part of the branch SP and it was wrong to find fault with the Applicant for not doing something which in any case the Applicant was not supposed to do. Neither the Disciplinary Authority nor the Appellate Authority appreciated this important facet of the case.

5.2 For that despite the specific finding of the Enquiry Officer that the Applicant had no oblique motive in delayed filing of the FIR inasmuch as he had recommended prosecution of the suspect officer whereas it was the higher authority in CBI which had taken a decision of the closure of the case and it was as per the decision of the higher authority in CBI that the case was closed, the Disciplinary Authority held the Applicant guilty of gross negligence which was not the charge whereas the Appellate Authority went a step further and held the Applicant guilty of oblique motive itself holding interalia that the motive is captive in the mind of the delinquent official which is difficult to be unmasked indubitably. Hence neither the order of the Disciplinary Authority nor that of the Appellate Authority are tenable in law.

5.3 For that the Applicant was denied the opportunity of submitting a representation against the report of the Enquiry Officer to the Disciplinary Authority inasmuch as the order of the Disciplinary Authority imposing major penalty on the Applicant was served upon

him alongwith the copy of the Enquiry Officer's report. The Disciplinary Authority imposed a major penalty upon the Applicant without the advantage of examining the representation of the Applicant against the Enquiry Officer's report.

5.4 For that both the Disciplinary Authority and the Appellate Authority held the Applicant guilty of gross negligence and dereliction of duty. However, neither the gross negligence nor dereliction of duty was part of the charge against the Applicant. The Disciplinary and the Appellate Authorities therefore deviated from the charge and held the Applicant guilty of something which was not part of the charge.

5.5 For that in view of the fact that no prejudice was caused to the suspect officer because of the action of the Applicant and that Applicant did not act out of any extraneous consideration or oblique motive, the Disciplinary Authority ought not to have imposed upon the Applicant the major penalty of demotion to the rank of Sub-Inspector. The penalty imposed upon the Applicant is, therefore, grossly disproportionate to the wrong he committed.

5.6 For that the Disciplinary Authority gravely erred in law by taking into consideration the past record/conduct of the Applicant while imposing upon him the major penalty inasmuch as past record/conduct of the Applicant was not part of the charge and the Applicant at no point of time was told that the past conduct/record would be taken into consideration for

imposing upon him the major penalty. Hence the past conduct/record of the Applicant could not have formed part of the decision making process of the Disciplinary Authority.

5.7 For that the Appellate Authority gravely erred in law and in fact in taking into consideration the relevant aspects of the case. It acted in total non-application of mind while upholding the order of the Disciplinary Authority.

6. DETAILS OF REMEDIES EXHAUSTED :

That the Applicant states that he has no other alternative efficacious remedy except by way of approaching this Hon'ble Tribunal.

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

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

8.1 Quash and set aside the order dated 13.12.99* of the Deputy Inspector General of Police, N.E.R., Guwahati (Disciplinary Authority) imposing upon the Applicant the major penalty of demotion to the rank of Sub-Inspector for a period of three years, with all the consequential benefits.

8.2 Quash and set aside the office order No. 77/2000 dated 26.9.2000 passed by the Addl. Director, CBI, Calcutta (Appellate Authority) rejecting the appeal of the Applicant and affirming the order of the Disciplinary Authority, with all the consequential benefits.

8.3. Pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case for securing the ends of justice.

9. INTERIM ORDER PRAYED FOR :

In the facts and circumstances of the case, the Applicants do not pray for any interim relief.

10.

The Application is filed through Advocate

11. PARTICULARS OF THE I.P.O. :

- (i). I.P.O. No. : 56421942
- (ii). Date : 30.1.2001
- (iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

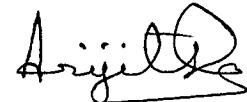
As stated in the Index.

Verification.....

VERIFICATION

I, Arijit De, Sub-Inspector, office of the Deputy Supdt. of Police, CBI, Lamphelpat, Imphal-79004, son of Late Chitta Ranjan Dey, aged about 41 years, do hereby solemnly affirms and verify that the statements made in the accompanying application in paragraphs 4.1, 4.2, 4.4 to 4.6, 4.9, 4.12 to 4.19 are true to my knowledge ; those made in paragraphs 4.3, 4.7, 4.8, 4.10, 4.11 being matters of records are true to my information derived therefrom and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this the 7th day of January 2001 at Guwahati.



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ANNEXURE-A/1

Recd. on 27-2-96

No. 560/45(8)/Estt/96-Cal.

Government of India,
Central Bureau of Investigation,
Office of the Dy. Comr. Genl. of Police,
Calcutta Region,
2nd MSO Bldg., Nizam Palace, 15th floor,
234/A, A.J.C. Bose Road,
Calcutta-700020.

Date: 27/2/96.

Office Memorandum

The undersigned proposes to hold an enquiry against Sri Arijit De, Inspector of Police, Central Bureau of Investigation, Anti-Corruption Branch, Calcutta under Rule 3 General (1)(i)(ii)(iii) of Central Civil Services (Conduct) Rules, 1964 r/w Rule of Delhi Special Police Establishment (Subordinate ranks) Discipline & Appeal Rules 1961. The substance of the Imputation of misconduct in respect of which the enquiry is proposed to be held is sent out in the enclosed statement of Article of Charge (Annexure-I). A statement of imputation of misconduct in support of Article of Charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the Article of Charge are proposed to be sustained are also enclosed (Annexure-III & IV).

2. Sri Arijit De is directed to submit within 10 (ten) days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an enquiry will be held only in respect of those Article of Charge as are not admitted. He should, therefore, specifically admit or deny each Article of Charge.

4. Sri Arijit De is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiry Authority or otherwise fails or refuses to comply

....2/-

Attached
P.W.D.

with the provisions of Rule 1. of the CCS(CEA) Rules, 1965 or the order/directions issued in pursuance of the said Rule, the Inquiry Authority may hold the enquiry against him ex parte.

3. Attention of Sri Arijit De is invited to Rule 20 of the Central Civil Services(Conduct) Rules 1964 under which no Govt. servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service, under the government. If any representation is received on his behalf from another person in respect of any matter dealt with in this proceedings, it will be presumed that Sri Arijit De is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS(Conduct) Rules 1964.

The receipt of the memorandum may be acknowledged.


23/2/96
(D.K. Sinha)
By. Insp. Genl. of Police
CBI: Cal. Region : Calcutta

Enclo :-

Annexure-I, II, III & IV
(1 sheets).

Sri Arijit De,
Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Calcutta.

29/10

Annexure - I

Article of charge to be framed against Shri Arijit De,
Inspector of Police, CBI/ACB/Calcutta.

ARTICLE OF CHARGE

That Shri Arijit De while functioning as Inspector/ CBI/ACB/Calcutta during the period from 23.8.92 to 8.6.95 at Calcutta failed to maintain absolute integrity and devotion to duty in as much as he deliberately, illegally and with an oblique motive did not submit the FIR in the court of Chief Metropolitan Magistrate, Calcutta, either on 23.8.92 or on the next day i.e. on 24.8.92 which was drawn by him by the order of the then SP/CBI/ACB/Calcutta on 23.8.92 J/s.

409/467/471 IPC & Sec.13(2) r/w Sec.13(1)(d) of P.C.Act, 1988 against Amitabha Karmakar, rather he intentionally filed the aforesaid FIR after a great delay i.e. on 8.6.95 in the Court of Chief Metropolitan Magistrate, Calcutta for enabling him to submit the P.M.T. for obtaining an order from the court of C.M.H., Calcutta as a result of which a great prejudice was caused to the accused and court took a serious view for the same.

And that, he, thereby, contravened Rule 3 General(1) (i)(ii)(iii) of Central Civil Services(Conduct) Rules 1964 r/w Rule of Delhi Police Establishment(subordinate ranks) Discipline and Appeal Rules 1961.]

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P.M.

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Statement of imputation of misconduct in support of Article of Charge to be framed against Shri Arijit De, Inspector of Police, CBI/ACB/Calcutta.

1. That Shri Arijit De was functioning as Inspector, CBI/ACB/Calcutta during the period from 28.3.92 to 8.6.95.
2. That the case NC 38/92 was registered on 28.3.92 in this branch J/s.409/467/471 IPC & Sec.148, 21 r/w Sec.13(1)(d) of P.C. Act against Amitabh Karmakar by Inspector Shri De on the basis of information collected by an Officer of the branch under the orders of the then SP/CBI/ACB/Calcutta Shri T.K.Sanyal.
3. That after registration of the case, the FIR meant to be submitted to the court of Chief Metropolitan Magistrate, Calcutta was handed over to Shri De, the I.O. of the case, for submission in the court of C.M.M., Calcutta.
4. That he deliberately, illegally and with an oblique motive did not submit the FIR in the court of CMM, Calcutta either on 28.8.92 or on the next day i.e. on 29.8.92.
5. Being an Inspector, it was his ~~due~~ duty to submit the FIR in the court of CMM, Calcutta either on 28.8.92 or on the next day i.e. on 29.8.92 which he failed to do.
6. He deliberately, illegally with an oblique motive filed the aforesaid FIR ~~affxxxxxxaxxxxxxx~~ of the aforesaid case in the court of C.M.M., Calcutta after a great delay i.e. on 8.6.95 after it's lodging just for enabling him to submit the F.R.F. for obtaining the order from the aforesaid court, as a result of which a great prejudice was caused to the accused and court has also taken a serious view for the same.

The aforesaid omissions and commissions constitute grave misconduct on the part of Inspector Shri Arijit De.

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Annexure-III

List of documents

1. Carbon copy of FIR of RC 38/92 dated. 28.8.92
2. Copy of ordersheet dated. 8.6.95 sent by C.M.M., Cal. to the D.C.B.I. and forwarded to JD(EZ)
3. Application of Inspector Shri Arijit De dated. 26.6.95 filed in the court of C.M.M., Calcutta with FIR
4. Copy of the ordersheet dated. 26.10.95 of the C.M.M., Calcutta forwarded to SP/CBI/ACB/Calcutta
5. Copy of the explanation dated 7.7.95 submitted by Sri Arijit De to JD(EZ)
6. Other papers if any will be filed later on.

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Annexure-IV

List of witnesses

1. Shri Narayan Jha, SP/CBI/ACB/Calcutta
2. Shri Sushil Dey, CA(I)/CBI/ACB/Calcutta
3. Shri S.R. Majumder, the then Inspector/CBI/ACB/Cal.
4. Court Peshkar of C.M.M., Calcutta
5. Typist who typed the FIR
6. Shri T.K. Sanyal, the then SP/CBI/ACB/Calcutta

Attached
Pic/Chw

Recd 20/12/97
26
41
GOVERNMENT OF INDIA
CENTRAL BUREAU OF INVESTIGATION
N.E.REGION, GUWAHATI.

ANNEXURE-A/2

ORDER:

Shri Arijit De, formerly inspector of Police, CBI, ACB, Calcutta now Inspector CBI Silchar Branch, posted at present in Imphal Unit (Under suspension w.e.f. 13th January, 1998) was issued with a Memorandum No.886/45(8)/Estt./96Cal dated 27.2.1996, alongwith enclosures, in Annexure I to IV (Four sheets), containing Articles of Charges (Annexure I), Statement of Imputation of Misconduct in support of Article of charge (Annexure II), List of documents (Annexure III) and List of Witnesses (Annexure IV), by Shri D.K.Sinha, the then Dy. Inspector General of Police, CBI, Calcutta Region, Calcutta for having committed alleged misconduct in discharge of his official duties by failing to submit the FIR of RC. No.38/92-Cal dt.28.8.92 promptly in the court either on 28.8.92 or on the next date on 29.8.92 but which he did on 8.6.95 and thereby contravened Rule 3(i), (ii) and (iii) of Central Civil Services (Conduct) Rules, 1964. The above memorandum was issued under provisions of Delhi Special Police Establishment Act (Subordinate Ranks), Discipline and Appeal) Rules, 1961 and Shri Arijit De, Inspector was directed to submit written statement of his defence within 10 days of receipt of this Memo.

2. Shri Arijit De, submitted his written statement / defence to DIG CBI Calcutta through proper channel vide his reply dated 16.3.1996. In his reply Shri Arijit De denied the charges altogether pleading that there was no mention of violation of specific clause under the DSPE Act (Subordinate Rank) (Discipline and Appeal), Rules 1961 and the proposed charge, as per Annexure-I, was only vague and distortion of facts and as such no action can be taken against him under Central Civil Services (Conduct) Rules, 1964. Shri Arijit De further maintained in his said reply that though Case No. RC.38/92-Cal was registered under orders of SP which he was asked to investigate, but it was the SP who was the Officer in Charge while stationed at Hqrs and as such he is responsible for registration of F.I.R. and despatch of the same in the Court of Law. The said Shri Arijit De further maintained that in reality the F.I.R. of the case after registration is immediately sent to the Court through Court Naib or Crime Section of the Office and in the instant case the F.I.R. which was drawn up was mixed up with other file and was lost sight of by all concern for which he alone cannot be held responsible. His mere owning of responsibility in this regard, was out of his magnanimity, he said, which cannot be panacea for another's failure of discharge of his / her legal duty. He ruled out any oblique motive in despatch of F.I.R. and causing prejudice to the accused rejecting the maxim "Falsus in uno, falsus in omnibus" as not being sound rule. He also denied any oblique motive on his part in this regard as he said, he had recommended prosecution of the case against the accused as well as for RDA for Major penalty while PP suggested closure and SP for major penalty against the accused.

After read
P.W.D. 2000

3. The Disciplinary Authority, i.e. DIG CBI Cal, not being satisfied with the above explanation of Shri Arijit De, Inspector, appointed Shri S.R. Mukherjee, Dy.SP, CBI, Calcutta as Inquiry Officer under provisions of Delhi Special Police Establishment (Subordinate Rank) (Discipline and Appeal) Rules, 1961 vide No.1513/45(8)/Estd./96Cal dated 29.3.1996. A copy of this order was endorsed to the Charged official Shri Arijit De among others. During the course of enquiry, Shri Arijit De sought permission for engaging a Legal Practitioner to defend himself which was not permitted to him as there was no such provision of engaging a legal practitioner, under Delhi Special Police Establishment (Subordinate Rank) (Discipline and Appeal) Rules, 1961 which governed the above inquiry. As such Shri Arijit De defended his case himself. In the midway said Shri Arijit De was transferred and posted under SP, CBI, Silchar first at Aizawl and later transferred to Imphal, both under Silchar Branch under the control of SP CBI Silchar and under over all control of Dy. Inspector General of Police, CBI, N.E. Region, Guwahati.

4. Pursuant to transfer of Shri Arijit De, Inspector, Shri N.M. Singh, Dy.SP, CBI, Silchar was appointed as Inquiry Officer vide office Memo. No.1705-1710 dated 15.7.97.

5. After completing the Inquiry, the Inquiry Officer submitted his finding holding that the charges against Shri Arijit De had been partly established during the Inquiry. Shri N.R. Ray, the then DIG CBI Calcutta Region who was holding the Additional charge of N.E. Region being the Disciplinary Authority of Shri Arijit De, Inspector examined the report of the Inquiry but did not agree with the findings of the Inquiry officer Shri N.R. Ray DIG therefore proposed to award a penalty as specified under Rule 6(vii) of DSPE (Subordinate Rank) (Discipline and Appeal) Rules, 1961.

6. While the above matter was under process, Inspector Arijit De, filed petition in the Central Administrative Tribunal Calcutta Bench vide OA 950 of 1996 in which vide order dated 12.02.90, the Hon'ble Central Administrative tribunal Calcutta Bench consisting of Hon'ble Justice Mr. S.N. Mallick, Vice Chairman and Hon'ble Mr. S. Dasgupta, Administrative Member allowed the respondent (CBI) to continue with the disciplinary proceedings against the petitioner but not to pass the final order without the leave of the court.

7. The above mentioned petition of Shri Arijit De (OA No.950/1996) was finally heard on 11.11.99 and Hon'ble Judge of Central Administrative Tribunal Calcutta Bench an ordered to the effect that RDA proceeding initiated against Shri Arijit De should be finalised as per rule and should be concluded within 8 weeks.

8. The undersigned being the Disciplinary Authority of Inspector Arijit De (who is at present posted at Imphal Unit under Silchar Branch and is still under suspension), has carefully gone through the Inquiry Report of Shri N.M. Singh, Dy.SP dated 27.8.98, documents exhibited during departmental

Enquiry Statements of witnesses recorded during the departmental enquiry, statements of the Charged Official dated 26.6.92 recorded during enquiry and written brief dated 5.7.98 submitted by Inspector Thangzalian, (Presenting Officer), and Defence Brief of Inspector Arijit De dated 4.8.98 etc.

9. The order of the Ld. CMM Cal dt.8.6.95 is one of the listed documents which was produced during departmental enquiry against Shri Arijit De, Inspector. It is apparent from the said order of Ld. Chief Metropolitan Magistrate Calcutta (a copy of which was sent to Director, Central Bureau of Investigation) that Inspector Arijit De submitted the F.I.R. of RC.38/92-Cal dt.28.8.92 before the Hon'ble Court on 8.6.95 only. Order of the Ld. CMM Calcutta, reads inter-alia, as under :

" Heard the I.O.

It appears that the F.I.R. was lodged on 28.8.92. The I.O. has submitted the F.I.R. before this court to-day, that is about three years and ten months after its lodging. He has stated in his petition submitted with the F.I.R. that there was a mistake on his part in filing the F.I.R. and that such mistake was not deliberate. The explanation is not at all tenable. I.O. now, intends to submit F.I.R. and, as such, he has submitted the F.I.R. to-day.

I.O. is an Inspector of Police and is attached to the C.B.I.. He appears to have kept the F.I.R. with him deliberately for about four years and then he filed the same just for enabling him to submit the F.I.R. for obtaining an order from the Court. It is necessary that the matter be brought to the notice of the highest authority of the C.B.I. for proper enquiry. Accordingly, a copy of this order be sent to the Director, C.B.I., in New Delhi in his personal name for causing proper enquiry for avoiding the recurrence of incidents of this type."

10. It is also clear from the written brief submitted by Inspector T.Thangzalian dt.7.7.98 that the Charged Official Shri Arijit De, Inspector had already admitted this charge vide Para 2 of his submission to the Court of CMM Calcutta dt.8.2.95 (which was an exhibited document during departmental enquiry) stating inter alia as under.

" As per requirement under law, I was supposed to forward the F.I.R. to this Ld. Court for favour of information and record. However, due to inadvertance, I forgot to forward the FIR to the Ld Court".

The above para is "Self Speaking" in which Shri De, had admitted the fact that it was his duty and responsibility to submit the FIR to the Court. The fact that this practice has been in vogue since the time of joining of Sh. Arijit De, in ACB, CBI Calcutta Branch was admitted by Shri Arijit De in his statement recorded by E.O. during departmental enquiry on 26.6.98. The relevant portion of which is reproduced below.

" I remained posted in CBI ACB Calcutta from April'91 to 10.01.97. I investigated so many cases during my tenure in Calcutta. Here in ACB Calcutta, the I.O.s used to sign the F.I.R. and register the cases. I also used to submit the F.I.R.s in the Court of Law. I used to submit the same within a few days after registration. I registered the F.I.R. or RC.38/92-Cal. on 28.8.92 and submitted the same in the Court on 08.06.95".

11. Moreover the practice of sending FIRs to courts in CBI varies from Branch to Branch and in Calcutta ACB Branch it was the the practice that the concerned I.O. is responsible for taking the original copy of the FIR and submitting it in the court and recording a certificate to this effect in the crime file / CD file thereafter.

12. The P.O. has therefore rightly argued in the written brief dated 9.7.98 submitted by him that even if the F.I.R. copy meant for the Court was not handed over to Arijit De, it was his duty to obtain the copy of the FIR from the Dealing Asstt. / Crime Section and submit it in the Court. He cannot evade his responsibility as required under the Law by taking advantage of minor lapse on the part of Crime Clerk as an excuse. The undersigned fully agrees with the above reasoning of the P.O.

13. Although there is no direct evidence to prove the allegation that Shri Arijit De had deliberately, and with oblique motive did not submit the F.I.R. in the Court on 28.8.92 or on the next day and subsequently thereafter until he did on 8.6.95, there is undoubtedly gross negligence on the part of Inspector Arijit De who did not discharge his duty as envisaged under departmental practice/ procedure, and law thereby inviting opprobrium and stricture from the Court. His conduct has also tarnished the image of the CBI to which he belongs. Therefore I hold that the charges against Shri Arijit De, Inspector CBI stand proved who by his gross negligence has failed to discharge his duties and failed to uphold the dignity and prestige of the organisation by his unbecoming conduct and thereby contravened of rule 3(I), (ii) and (1) (iii) of C.C.S. (conduct) Rule 1964.

14. In view of the above and after taking everything into account including the past conduct of Shri Arijit De, the undersigned being the Disciplinary Authority orders that Shri Arijit De stands demoted to the rank of Sub Inspector with immediate effect, for a period of 3 years, with all the consequences that follow.

15. Inspector Shri Arijit De should acknowledge receipt of this order.

Enclo : Copy of Enquiry report written brief, written statement of defence.

(K.C. KANUNGO)
DY. INSPECTOR GENERAL OF POLICE
CBI NER GUWAHATI.

Attn: P.I.C. L.W.M.

PCAI

Conc

ENQUIRY REPORT

Sub : Departmental Enquiry against Shri A. De,
Inspector, CBI, Imphal Unit.

Introduction :

1. The Departmental proceeding was initiated against Shri A. De, the then Inspector, CBI, ACB, Calcutta as per the orders of the DIG, CBI, Calcutta vide his office memo No. 886/45(8)/Estt./96-Calcutta dtd. 27.02.96 under the 3 General (i)(i)(ii)(iii) of Central Civil Services (Conduct) Rules 1964 r/w rule of Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rules, 1961 for alleged misconduct in the discharge of his official duties.
2. Shri A. De, Inspector of Police, the Charged Officer (C.O.) was directed to submit within 10(ten) days of the receipt of the memorandum, a written statement of his defence and also to state whether he desired to be heard in person.
3. The substance of the imputation of misconduct in respect of his enquiry which was proposed to be held as mentioned in the statement of article of charges, statement of imputation of misconduct in support of article of charge, a list of documents by which and a list of witnesses by whom the article of charges were proposed to be substantiated were also enclosed as Annexure-III & IV.

Charges

(i) That Shri Arijit De while functioning as Inspector, CBI, ACB, Calcutta during the period from 28.8.92 to 8.6.95

Patented
P.K. Lala

(ii) That the case RC-38(A)/92-Cal was registered on 28.08.92 in that branch by Inspector Sh. A. De under the orders of the then SP, CBI, ACB, Calcutta. ✓✓

Not P
(iii) That after registration of the case, the FIR meant to be submitted to the Court of C.M.M. Calcutta was handed over to Shri A. De, the I.O. of the case, for submission in the court of C.M.M., Calcutta. ✓✓

Not P
(iv) That he deliberately, illegally and with a oblique motive did not submit the FIR in the court of C.M.M. Calcutta either on 28.08.92 or the next date i.e. 29.09.92.

No duty was due but practice
(v) Being the Inspector it was his duty to submit the FIR in the court of C.M.M. Calcutta on 28.08.92 or on the next date i.e. 29.08.92 which he failed to do.

E 10 P
(vi) He deliberately, illegally and with the oblique motive filed the aforesaid FIR in the Court of C.M.M. Calcutta after a great delay i.e. on 29.8.92 just for enabling him to submit the FIR for obtaining the order from the aforesaid court as a result of which a great prejudice was caused to the accused and court has also taken a serious view for the same.

The aforesaid omission and commissions constitute misconduct on the part of Shri A. De.

Shri A. De received the above mentioned memo and submitted his reply to DIG (P), CBI, ACB, Calcutta Region vide his letter dtd. 16.03.96, in which he contested the article of charges which he denied.

4. Chronology of Proceedings :

Shri S.R. Mukherjee, Dy SP, CBI, ACB, Calcutta was appointed as Enquiry Officer (EO) to enquire into the charges framed against Shri A. De vide order No. 1513/45(8)/Estt./96-Cal dtd. 29.03.96. In the court of the Departmental proceedings, the xerox copies of 5 documents cited as per Annexure-III were furnished to the C.O. which Shri A. De acknowledged vide his receipt dtd. 11.06.96.

After that, no progress was made in the RDA proceedings. Meanwhile Shri A. De was transferred from ACB, Calcutta. Shri A. De, Inspector, CBI was relieved on 10.01.97 (forenoon) to join Imphal Unit from ACB, Calcutta vide order No. 50/97 dtd. 10.01.97 of the SP, CBI, ACB, Calcutta.

Consequent upon transfer of Shri A. De and transfer of pending proceedings from CBI, ACB, Calcutta, the DIG, CBI, NER, Guwahati in exercise of powers conferred by Sub Rule 3 of Rule of Delhi Special Police Establishment (Subordinate ranks) (Discipline and Appeal) Rules, 1961 r/w Rule No. 3 General (1)(i)(ii)(iii) of Central Civil Services (Conduct) Rules 1964, the DIGP, CBI, NER, Guwahati appointed the undersigned as E.O. to enquire into the charges framed against Shri A. De in supersession of the order issued by DIG, CBI, Calcutta vide No. 5648/45(8)/Estt/96-Cal dtd. 07.10.96, vide DIG, CBI, NER, Guwahati order No. 1709 dtd. 15.07.97.

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5. The date list of the proceedings conducted :

1. Dated 29.07.97 : The E.O. vide his office memo dtd. 29.07.97 fixed the first hearing after his appointment, on 18.08.97 at Silchar. The C.O. was directed to submit the name of his defence assistant if he desires to do so.
2. The P.O. intimated the E.O. vide his letter dated 29.07.97 that he requested the Disciplinary Authority to furnish the calendar of evidence or the statement of witnesses cited by the prosecution.
2. Dated 18.08.97 : In the hearing conducted at Imphal, the P.O. and C.O. were asked to submit the list of Addl. documents/witnesses if required, and for fixing the next hearing at Imphal on October/97 to complete the inspection of documents.
3. Dated 01.10.97 : On this date during hearing, the C.O. assured to submit his defence documents etc. The C.O. and P.O. were asked to complete the inspection of defence documents latest by 05.11.97 so that witnesses could be examined in the next hearing.
4. Dated 01.10.97 : The C.O. submitted a request for production of five nos. of defence documents, some of them are available, some in the office of the SP, CBI, ACB, Calcutta and some with SP, CBI, Silchar as these are required for his defence, the request was allowed.

The C.O. cited one defence witness.

Further C.O. had in writing (on the same petition)

that he wished to defend his case by his own without any defence assistant/defence hand.

5. Dated 10.11.97 : No effective progress could be made
6. Dated 04.12.97 : as the P.O. could not furnish the
7. Dated 04.02.98 : defence documents which were
8. Dated 11.03.98 : requested by the C.O.

These documents were available in the office of the SP, CBI, ACB, Calcutta.

The C.O. Sh. A. De was permitted to visit Calcutta to inspect the defence documents available in the O/O the SP, CBI, ACB, Calcutta.

The C.O. visited Calcutta and inspected his defence documents.

9. Dated 26.05.98 : The regular hearing was fixed from 23.06.98 to 26.06.98 in the office of the SP, CBI, ACB, Calcutta since all the PWs were posted at Calcutta. Seven nos. of summons were issued to 6(six) PWs and 1 (one) DW to attend the hearing. I was also directed that no more postponement will be allowed. A copy of the order sheet was made available to the DIGP, CBI, NER and the SP, CBI, ACB, Calcutta.

11. Dated 23.06.98 to 26.06.98 : The regular hearing was taken up as scheduled on 23.06.98 which was continued till 26.06.98. The listed documents S-1 to S-5 of the prosecution to prove the charges against Shri A. De were marked and taken on record. Defence documents D-1 to D-7 cited by the C.O. were also marked and taken into record. Two defence documents i.e. (i)

Enquiry Report for conducting enquiry against Sh.A. De before initiation D.I. and (ii) Despatch Register of CBI, ACB, Calcutta were dropped as they could not be made available for which the P.O. & the C.O. had no objection. On the requests of the P.O. & C.O. the Despatch Register of CBI, ACB, Calcutta for the current year, 1998 and the Crime File of RC-46/88-Cal were also introduced in the interest of the enquiry.

The following are documents cited by the protection :

1. Carbon copy of FIR of RC-38/92-Cal dtd.28.8.92 (S-1)
2. Order sheet dated 8.6.95 of CMM, Calcutta (S-2)
3. Application of Inspector A. De dated 3.6.95 to CMM, Calcutta (S-3)
4. Copy of order sheet dated 26.10.95 of the CMM, Calcutta (S-4)
5. Copy of the explanation dated 7.7.95 submitted by Arijit De to JD (EZ), Cal (S-5).

Defence/CO cited the following documents for his defence.

1. Final Report Part-I of RC-38/92-Cal (D-1)
2. S.Ps. Report of RC-38/92-Cal (D-2)
3. Chapter-VI of CBI, Crime Manual 1991 (D-3)
4. Attested copies of FIR of RC-46/88-Cal, alongwith forwarding letter signed by Sh. A.K. Sahay, Dy. SP, CBI, Calcutta (D-4)
5. Despatch Register of CBI, SPE, Silchar branch for the year 1996 (D-5)
6. FIRs of case Nos. RC-1(A)/97-SLC, RC-2(A)/97-SLC, RC-3(A)/97-SLC (D-6)
7. Crime File of RC-38/92-Cal (D-7).

Thus, the inspection of the defence was completed and the C.O. was supplied with all the extracts of documents required for his defence.

On 24.06.98, P.O. submitted that only one PW namely Sh.Sushil Kumar Dey attended the hearing to prove the procedure followed in ACB, Calcutta for sending FIR etc. Thus P.O. admitted that he did not require the attendance of any other witnesses. The P.O. had also admitted that there was no statements of witnesses nor any gist or calendar of evidence to show what the witness will prove. It was also submitted that one of the PW was the typist who typed the FIR of RC-38(1)/92-Cal and another PW is the court Peskar of CMM, Calcutta in which the identification of the concerned persons are difficult as the name was not given and the address/designation was not specific and incomplete. Since the C.O. had not questioned/disputed his signature on the FIR of the case nor the order of CMM, Calcutta, which are cited as prosecution documents, the P.O. submitted to drop these two PWs for which C.O. had no objection. Other three PWs namely S/Sh. T.K. Sanyal, Narayan Jha and S.R. Mazumdar did not attend even though summons had already been sent on 27.05.98, well in advance.

The P.O. requested that in the absence of summoned witnesses, he wanted to cite the current Despatch Clerk and Crime Assistant of CBI, ACB, Calcutta who are well acquainted with the despatch of the copies of the FIR and the practice followed in the office of the SP, CBI,

ACB, Calcutta for sending the FIRs to endorsee. The submission of the P.O. was allowed as this was quite relevant in the enquiry, C.O. had no objection to it.

Thus, on the submission of the P.O. the following PWs were cited and deposed.

1) Shri Sushil Kumar Dey, the then Asstt. (Crime) O/O the SP, CBI, SCB, Calcutta.

2) Smti. Shipra Roy Choudhury, Despatch Clerk, O/O the SP, CBI, ACB, Calcutta.

3) Shri Chittaranjan Das, Crime Asstt., CBI, Calcutta. The examination-in-chief of the PWs were completed. The C.O. cross examined the two PWs namely S/Shri Sushil Kumar Dey and Chitta Ranjan Das. All the 5 documents cited by the prosecution were admitted by the C.O. The P.O. closed the case for the prosecution.

As for the defence, the C.O. cited one DW, who deposed before the enquiry. The CO also asked for self examination which was allowed. The PO did not cross-examine the CO, however, CO was examined by the P.O.

Thus the case was closed from defence also. The P.O. was directed to submit his written brief by 6.7.98 with a copy to the C.O. under intimation to the E.O. After receipt of the P.O.s. brief the C.O. was directed to submit his written brief by 28.7.98.

6. The P.O. submitted written brief on 9.7.98. The C.O. vide his letter dated 21.07.98 and requested to give 15 days more time to submit his defence brief.

The written brief of the C.O. was received on 13.08.98.

The facts narrated by the P.O. in his written brief are as under :

7. Arguments of the P.O. :

The P.O. has given the para-wise comments/arguments in support of/to prove the charges/allegations in his written brief at Para-3 which are reproduced as follows :

"In the charges given point-wise in para-1, as there is no dispute about points-I and II the arguments will concentrate in points (Charges) III, IV, V & VI only."

Point-III

During the course of the enquiry, the case file/crime file of RC-38(A)/92-Cal was meticulously scrutinized but there is no reference made either in the note-sheet about handing over the copy of FIR meant for the Court of C.M.M., Calcutta to Shri A. De nor any other documents to prove that the same was handed over to Sh. A. De.

But there is sufficient evidence to show that Shri Arijit De was very much aware of the practice followed by Calcutta Branch of CBI, ACB i.e. registering of the FIR and submitting the copy to the concerned court was (and "is" till date) the duty and responsibility of the concerned I.O. In his submission in the court of C.M.M., Calcutta dtd. 02.06.95 i.e. (S-3) Shri A. De had already admitted to this fact, para-2 of the said

submission is reproduced below :

"As per requirement under Law, I was supposed to forward the FIR to this Ld. Court for (favour of information and record. However, due to in-advertance, I forgot to forward the FIR to the Ld. Court." ✓

The above para is self speaking in which Shri A. De had admitted the fact that it was his duty and responsibility to submit the FIR to the Court. The fact that this practice has been in vogue since the time of joining of CBI, ACB, Calcutta by shri A. De was confined by both Shri Sushil Kumar Dey (PW-2) and Shri Chittaranjan Das (PW-). Apart from his own admission in the submission dtd. 02.06.95 addressed to the CMM, Calcutta Shri A. De also stated in his examination that PO (illegible).

"I remained posted in CBI, ACB, Calcutta from April/91 to 10/01/97. I investigated so many cases during my tenure in calcutta. Here in ACB, Calcutta, the IOs used to sign the FIR and register the case. I also used to submit the FIRs in the Court of Law. I used to submit the same within a few days after registration. I registered the FIR of RC-38/92-Cal on 28.08.92 and submitted the same in the court on 08.06.95."

Conclusion drawn by P.O. :

Even if the FIR copy meant for the court was not handed over to him, it was his duty to get hold of it somehow and submit the same to the court. He cannot simply shirk his responsibility by taking advantage of a minor lapse on the part of the Crime Clerks as an excuse.

Point-IV :

There is neither documentary nor oral evidence to substantiate the allegation that Sh. De had deliberately illegally and with an oblique motive did not submit the FIR in the Court of CMM, Calcutta either on 28.08.92 or on the next date/day i.e. on 29.08.92.

At the most, it can be said that Sh.A. De, had "knowingly or intentionally" did not submit the FIR in time. But the result of his investigation in which he recommended prosecution of the suspect appears to have that no oblique motive was there in not submitting the FIR to the Court in time by Sh. A. De.

Conclusion drawn by P.O. only :

The specific particulars charge cannot be established.

Point-VI :

This charge appears to be self-contradictory. On the one hand, it is alleged that "he deliberately, illegally with an oblique motive filed the aforesaid FIR of the aforesaid case in the court of CMM, Calcutta after a great delay i.e. on 8.6.95, whereas on the other hand, it was alleged "just for enabling him to submit the FIR for obtaining the order from the aforesaid Court". In the same breath, the charges goes to allege that "as a result of which a great prejudice was caused to the accused."

As the P.O. cannot understand this portion of the charges, he cannot present this point. Moreover, there is no evidence to support that the great delay in

submitting the FIR to the court is "deliberately, illegal and with oblique motive" though it is clear even to a layman that he had admitted on 8.6.95 just to enable him to submit the FRT (without the court first taking cognizance of the case through FIR. It cannot accept the FIR. The P.O. is also at a loss to comprehend how "prejudice was caused to the accused", as it is within the purview of the court to accept the FIR first (however, late it may be) and then the FRT. In the case of prosecution also, it can accept the FIR first and then the charge sheet it is satisfied.

8. Arguments of the charged Officer (C.O.) :

The C.O. presented the arguments in defence of charges alleged against him in his written brief, which is given as follows :

"Now after going through the P.O.'s. brief I (C.O.) also agree with him that there is no dispute by me about the points *I & II* of the charges mentioned above. No. I (C.O.) also like to concentrate my arguments for points from III to VI of the charges mentioned in Para-1.

Point-III

P.O. already agreed in his brief that no documentary evidence was available even after meticulous examination of the concerned records to prove the contention of the charge that "That after registration of the case, the FIR _____ was handed over to Sh. A. De..... for submission in the court of CMM, Calcutta. Yet the Ld. P.O. stated that though the copy of FIR was handed over to me, it was my duty to get

hold of it somehow and submit the same to the Court. In support of his claim he also cited the para-2 of S.3 wherein I (C.O.) stated "As per requirement under Law, I was supposed to forward the FIR to this Ld. Court for favour of information and record." Thus as per the Ld. P.O. "The above para is self speaking in which Sh. De had admitted the fact that it was his duty and responsibility to submit the FIR to the Court.

It is a fact that a case vide No. RC-38/92-Cal was registered under the orders of SP, CBI, ACB, Calcutta and was also investigated by the undersigned. But under the DSPP Act, 1946, the S.. is the Officer-in-Charge while stationed at Head Quarters and also responsible for registration of FIR and despatch of the same to the Court of Law (Chapter VI Para 2/161 & 9/169 of CBI Crime Manual marked as D-3).

Again it came into evidence during the deposition of DW-1 (Sh. Himangshu Ranjan Deb) who worked in Crime Section of Shillong and Silchar Branches for 12/13 years that it is the S.P. who used to register FIRs in both the branches. When the SP was on tour or leave, the officer holding the charge of office used to register the FIRs. The endorsement part of the FIRs was also used to be signed by the SP (or In-charge) including the copy meant for I.O. The copies of the FIR including the I.Os. copy and Court's copy used to go for the concerned persons/offices only through Despatch Section. He also proved the documents D-6(I)(II)(III) to corroborate his claim.

Again it came into evidence during the examination in chief of PW-2 (Sh. Sushil Kr. Dey) "For sending the copies of FIR to the Court, sometimes the Deptt. used to send the FIR and sometimes the I.Os. personally submit the FIR to the Court". Thus in the instant case, FIR as drawn up, was mixed up with other files and was lost sight of by all concerned, for which the undersigned (C.O.) cannot be held responsible.

~~"Once magnanimity in owing responsibility cannot be panacea for another failure to discharge his or her legal duties."~~

Point-IV

The allegation of oblique motive in despatching the FIR vis-a-vis prejudice to the accused is not reconcilable. The maxim *Falsus in uno* is *falsus in omnibus* is not a sound rule.

As a matter of fact, the undersigned (C.O.) recommended prosecution as well as RDA for Major Penalty against the accused while the P.O. recording contrary views suggested closure of the case. S.P. however recommended RDA for Major Penalty against the accused.

Point-V

It came into evidence of PW-2 (Sh. Sushil Kr. Dey) "I cannot say anything nor can cite any evidence to support the contention that after registration of the case (RC-38/92) the FIR meant to be submitted to the Court of Chief Metropolitan Magistrate, Calcutta was

Wk ✓
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handed over to Sh. De, the then I.O. of the case, for submission to the Court of CMM, Calcutta. I am not aware of any circular or provision or notification of CBI which says that it is the duty of the Inspector of a branch to send the copy of the FIR meant for Trial Court by the Inspector himself.

Again it came into evidence that the FIR of case No. RC-46/88-Cal. was resubmitted in the court of SDSM, Durgapur, West Bengal under the signature of one Dy. SP, Sh. A.K. Sahay of ACB, Calcutta who signed the forwarding letter on behalf of SP, CBI, ACB, Calcutta and sent the same through the Special Messenger on 21.11.96 through the I.O. of the case was one Sh. RNP Sinha, the then Inspector, CBI, ACB, Calcutta and not Sh. A.K. Sahay, Dy. SP, CBI, ACB, Calcutta. Again through Sh. RNP Sinha was not available at the pertinent time in Calcutta, there is a system of HIO, in CBI to look after the left over by the original I.Os. of the concerned cases. But in this instant case (RC-46/88-Cal.) the attested copy of FIR was resubmitted to the court by a Dy. SP who acted as the representative of SP, CBI, ACB, Calcutta.

Point-VI :

"I(C.O.) also agree with the Ld. P.O. that the charge is contradictory and since the Ld. P.O. is convinced that no portion of the charge can be proved by any means I (C.O.) also do not like to discuss this charge."

9. Analysis and findings :

The E.O. after going through evidence/records in hand and after listening to the arguments of both the PO and CO, came to realise the following facts :

1. Sh. A. De, Inspector, registered the case in RC-38(A)92-Cal and the FIR was signed by him. It was done as per the order of the SP, CBI, ACB, Calcutta in the note-sheet. ✓
2. As per Cr.PC, the CBI Crime Manual, it is for the branch SP or in his absence, the next Senior-most Officer present in the station/office otherwise competent or the Officer who has been authorised to do so, to register the case. So, as far as the registration of the case is concerned, it is in order. ✓
3. It is necessary that a copy of the FIR should reach the Ld. Court of jurisdiction immediately after the case has been registered. ✓
4. It is for the branch SP to ensure that the copy of FIR reach the concerned Court, which can be done through staff, working under him meant for the purpose, or any other staff under him, who should execute the order. ✓
5. In the office of SP, CBI, ACB, Calcutta Branch, it was an established practice that the copy meant for the court is generally made available/submitted to the Court by the I.O. concerned. ✓
6. Sh. Arijit De, Inspector, CBI, ACB, Calcutta is aware of the practice, as he had already admitted in

his deposition during his self-examination and cross-examination on 26.6.98 by the E.O. and also in his submission to the Court of the MM, Calcutta dated 02.06.95.

7. It is also an admitted fact that the case RC-38(A)92-Cal was registered on 28.08.92 but the copy of the FIR was produced/submitted to the Court on 08.06.95 only.

8. Thus because of this delayed submission of the FIR the Ld. CMM, Calcutta had taken an adverse view.

9. That Sh. A. De, Inspector admitted in his submission to the Ld. CMM dated 2.6.95 that it was a lapse on his duty/part, thus owing the responsibility for the late submission of the FIR.

10. That since the case was registered and the FIR signed by Sh. A. De, the then Inspector, CBI, ACB, Calcutta who was well aware of the existing practice in the office of the SP, CBI, ACB, Calcutta that the I.O. generally submits the copy of FIR meant for the concerned court to the court himself, then Sh.A. De, the C.O. is responsible for the non-submission of the FIR in this particular case to the court in time.

11. That such lapses on the part of the C.O. (i.e. Sh. A.De, the then Inspector) has caused displeasure and the subsequent adverse view of the Ld. CMM, Calcutta.

12. The contention of the C.O. is that it is the SP of the branch to register the case and also solely

responsible for the despatch of the copies of the FIR to various endorsees. The C.O. cited the some FIRs, despatch register of the CBI, Silchar Branch and one Defence Witnesses to prove the registers. The contention is that it is the despatch section under the branch SP, which is responsible for sending the copies of the FIRs to the endorsees.

13. The practice followed in the office of the SP, CBI, ACB, Calcutta for registration of cases, despatching of copies of FIR are also as per the provisions of Cr.P.C./CBI Crime Manual. The S.P. can endorse any of his subordinate, if they are eligible/competent to register/sign the FIR and also for sending/for submitting the copy of the FIR to the concerned court. This was never challenged nor contested previously by the C.O. at any stage even in his submission to the Ld. CMM, Calcutta on 2.6.95.

Thus, the relevance of the arguments of the CO as emphasized at the para 12 could not be substantiated as it also contradicts his admitted statement. There is no specific order or comment/instruction in the note-sheet in which the I.O. (Sh. A. De) was asked to submit the copy of the FIR to the concerned Court. But the C.O. knows the practice followed in the branch. Thus, he is responsible for the delay in the submission of the FIR in the Court.

14. That right from his joining in Calcutta Branch of CBI, ACB, in April/1991 till 29.09.92 when the case RC-38(A)92-Cal was registered by himself, Sh. Arijit De

had registered many cases and submitted the FIR copies to the concerned courts himself and thus, he was fully aware of the practice. In his prayer to the CMM, Calcutta dated 2.6.95, when he submitted the FIR of RC-38(A)92-Cal, he admitted that due to inadvertence, he forgot to forward the FIR to the Ld. Court" (not that "he was not aware that it was his duty to do so").

15. As for the other charges of "deliberately, illegally with an oblique motive for late submission of FIR" could not be substantiated convincingly because :

- (i) There is neither documentary nor oral evidence to substantiate the allegation that Sh De had deliberately, illegally and with an oblique motive did not submit the FIR in the court of the CMM, Calcutta, either on 28.08.92 or on the next day i.e. on 29.08.92.
- (ii) The C.O. recommended prosecution of the suspect officer (C.O. was the I.O.) in his case RC-38(A)92-Cal. the branch P.P. recommended closure of the case, but the S.P. recommended RDA for Major Penalty. It could be seen that the I.O. could prove some charges but the prosecution was not recommended by the branch as the amount involved was meagre and that all the allegation could not be fully proved. Nowhere, it was commented to review the investigation for re-investigation nor any report of irregularity/lacuna in the investigation by the I.O. These could not be found either in the note-sheet or in the body/correspondence part of the office file of RC-38(A)92-Cal, which was cited as one of the documents in the enquiry.

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(iii) No relevancy could be established, linking the late submission of the FIR and the final outcome of the result of the investigation. The investigation in CBI is regularly and meticulously supervised thoroughly at every stage and the investigation report submitted by the I.O. is always subject to thorough scrutiny and discussion with the Legal Officer/the Supervising Officer of the branch. Here, no report of showing deliberately, illegality and oblique motive on the part of the Sh. A. De could be seen.

(iv) Similarly, no such evidence was available to show that "prejudice" was caused to the accused. That the C.O. had submitted the FIR on 8.6.95 just to enable him to submit FRT is at most a "Statement" not "a charge". As also seen from the records of the case RC-38(A)92-SLC, the case was registered by Sh. A. De as per the order of the SP, CBI, on the basis of a Verification Report of a Source Information submitted by another officer of the branch. The investigation was endorsed to sh. A. De, the then Inspector, CBI, Calcutta who submitted his FR-I on 28.12.92 in complying with the order of the SP, CBI, ACB, Calcutta at page-5 of the note-sheet.

10. Conclusion :

1. The charges-I and II were admitted and not disputed by the Charged Officer (C.O.)
2. The charge-III that the FIR meant to be submitted to the Court of CMM, Calcutta was handed over to Sh. A. De, the I.O. of the case for submission in the court of C.M.M. Calcutta cannot be proved, conclusively as there

is no reference made either in the note-sheet about handing over the coy of FIR meant for the court to Sh. A. De, nor any other documents/officer orders issued to the latter.

3. The charge-IV that Sh. De had deliberately, illegally and with an oblique motive did not submit the FIR in the court of CMM, Calcutta either on 28.8.92 or on the next day i.e. on 29.08.92 could not be proved fully, since there is no evidence to support/substantiate the charges of "deliberately, illegal and oblique motive."

4. The charge-V could be established. The practice followed at CBI, ACB, Calcutta of the concerned I.O. submitting the FIR meant for the court personally was known to Sh. A. De(C.O.) who registered and signed the FIR in his subject case. He has also admitted in his submission the details of which is already mentioned.

5. The charge-VI could not be established since there is no evidence on record to substantiate the charge of deliberately, illegally and with oblique motive on the part of the C.O. while submitting the FIR to the court nor any evidence to show the charge, "prejudice was caused to the accused" by the action of Sh. A. De".

Submitted.
Sd/- N.M. Singh
Dy. Superintendent of Police,
CBI:SPE:Aizawl
(ENQUIRY OFFICER)

Aizawl
PhuZawl

To
 The Joint Director (East) & Appeabte Authority,
 Central Bureau of Investigation,
 2nd MSO Building, Nizam Palace,
 15th Floor,
 234/4, A.J.C. Bose Road,
Calcutta - 700 020.

Sub : Appeal against order dtd. 13.12.99 and
 order vide Fax No.2762/114/97-99/NER
 dtd. 28.12.99, issued by DIG/CBI/NER & DA.

Respected Sir,

With due respect I beg to state below my grievances
 against the orders mentioned in the subject for redressal at
 your end after due consideration.

GRIEVANCES AGAINST THE ORDER OF DIG : CBI : NER & DA.

1.1. That on the day of filing the FIR of RC-38/92-Cal.
 i.e CBI : ACB : Cal to the C/o. Ld. CMM/Cal., i.e. on 8.6.95,
 the Hon'ble CMM dictated in the order Sheet "It is necessary
 that the matter be brought to the notice of the highest auth-
 ority of CBI for proper enquiry. Accordingly, a copy of this
 order be sent to the Director of CBI in New Delhi in his per-
 sonal name for causing proper enquiry for avoiding the recur-
 ence of incidents of this type.

A report in this matter may be submitted before the
 court by 20.7.95." (copy enclosed as Annexure-A).

1.2. That subsequently in the order sheet dated 26.10.95
 (copy enclosed as Annexure-B), the Ld. CMM observed, "The
 matter was referred to CBI by my order dated 08.06.95. In the
 said order Director, CBI was requested to hold an enquiry and
 submit a report. No report has been received as yet. It is
 necessary that the matter should be referred to the concerned
 SP : CBI based in Calcutta for looking into and taking up the
 same with the Director. Accordingly, a copy of this order,
 along with copy of order dated 8.6.95 be sent to SP : CBI in

Contd.....2.

Attached
 P.M. (L)

his personal name for taking appropriate action and for submitting report by 04.12.95."

1.3. That this particular Enquiry Report was requisitioned by me from the Ld. E.O. vide my letters dated 1.10.97 and 23.06.98. (Copies of these letters are enclosed as Annexures - C & D).

1.4. That Ld. E.O. commented in his Order dated 10.11.97, "The PO has been instructed to furnish all the documents cited by the C.O. as defence documents for which the Inquiry Officer has already given the permission...." (copy enclosed as Annexure-D(i)).

1.5. That in Daily Order Sheet dated 04.12.97 Ld. E.O. commented, "The Charged Officer requested 9(nine) nos. of documents to defend his case vide his letter dated 01.10.97 Out of the 9 documents, 6 documents are in the custody of CBI, ACB, Calcutta and since all the documents are relevant in the enquiry, the Enquiry Officer permitted the C.O. to cite them." (Copy of Daily Order Sheet dated 04.12.97 is enclosed as Annexure - E).

1.6. That in Daily Order Sheet dated 04.02.98, Ld. E.O. further commented, "Out of 9 nos. of documents which were cited by the C.O. to defend his case and which were duly permitted by the E.O., only 3 nos. of documents which are in the custody of the SP : CBI : Silchar Branch have been made available"

1.7. That in the 2nd page of the same order sheet Ld. E.O. also commented, "The relevance of the documents were carefully checked and found that these are relevant and denial of these documents to C.O. will go against the principle of natural justice." (Copy of Daily Order Sheet dated 04.02.98 is enclosed as Annexure - F).

1.8. That in the Daily Order Sheet dated 11.03.98, Ld. E.O. observed, "The Presenting Officer has already intimated that most of the defence documents are being made available to him, and that for the remaining documents, ~~xxxxxx~~ ~~xxxxxx~~ which are voluminous documents, the C.O. has been permitted and directed to inspect and take extracts, if required, by visiting Calcutta Office of CBI. " (Copy of Daily Order Sheet dated 11.03.98 is enclosed as Annexure - G).

1.9. That in the meantime, the P.O. intimated vide his letter no. 1873/Depttl. Enquiry/A.De/97 dated 12.03.98, "It is to intimate that the remaining defence documents (excepting Sl. 1 & 2) as requisitioned by the C.O. have been received from the SP : CBI : ACB : Calcutta....."

"As regards Sl.1, no mention was made by the SP, CBI, ACB, Calcutta....." (Copy of the letter is enclosed as Annexure - H). It is pertinent to mention here that the Sl.No. 1 mentioned in the said letter is the Enquiry Report sought for by me vide Annexure - C.

1.10. That as per order of Ld. E.O., (contained in Annexure - G), I visited the O/o SP/CBI/ACB/Calcutta on 15.04.98 & 16.4.98. But I ~~am~~ did not get any document for inspection there on the plea that he (SP/CBI/ACB/Cal.) did not get any intimation from CBI/Silchar office regarding my requirement of documents. I intimated this fact to both of Ld. E.O. & P.O. vide my letter dated 27.04.98 and 30.04.98. (Copies of letters are enclosed as Annexure - I and Annexure - I(i)).

1.11. That so the comment of Ld. E.O. in his Report, ~~xxxx~~ dated 27.08.98 submitted to the DIG/CBI/NER/GHY., "The C.O. visited Calcutta and inspected his defence documents." Under subpara 8 at para 5 captioned "The date list of the proceedings conducted," is far from truth and misleading. (Copy of Report

dated 27.08.98 is enclosed as Annexure - J).

1.12. That the fact that the aforesaid comment of Ld. E.O. is far from truth and misleading is further evident from the scrutiny of his Order Sheet dated 23.06.98, wherein he observed, "2 more defence documents namely Enquiry Report (to be submitted to the court) for conducting enquiry against Sri Arijit Dey before initiating D.E. and (2) Despatch Register of CBI : ACB, Calcutta were allowed by the Enquiry Officer to produce as defence documents since they are relevant to the enquiry. P.O. has submitted that the O.S, CBI, ACB, Calcutta is on the job.....

Page 2 of this order sheet further states, "The P.O. and C.O. have been directed to ensure that Despatch Register, Enquiry Report etc. are collected before the general examination/self-examination of Charge Officer." (Copy of Order Sheet dated 23.06.98 is enclosed as Annexure - K).

1.13. I did not get the said Enquiry Report as mentioned in Annexures - A & B even after issue of penalty order by the DIG/CBI/NER/Guahati & Disciplinary Authority (hereinafter called DA) vide Order No. 2548/114/97-99-NER dated 13.12.99.

1.14. That it is pertinent to mention here that Ld. E.O. further furnished wrong information in Annexure - J while he commented, "Thus the inspection of the defence was completed and C.O. was supplied with all the extracts of documents required for his defence." at sub-para 11 of para 5 captioned The date list of the proceedings conducted.

1.15. That I never issued any Documents Inspection Certificate to that effect.

1.16. That I also intimated about non-receipt of the said Enquiry Report for conducting enquiry against me before initiating the Departmental Enquiry at the 2nd part of para 6 of my Defence Brief dated 04.08.98. (copy of my Defence Brief is enclosed as Annexure - L)

1.17. That I could not properly defend my case in absence of the Enquiry Report and was deprived of natural justice.

1.18. That it becomes apparent from various facts stated below that the direction of the Court of Lt. CMM, Calcutta for "causing proper enquiry" and submission of " a report " in the matter before the Court as contained in its order dated 08.06.95 and 26.10.95 (Annexures A & B) were violated.

a) As defined in Sec.2(g) of Cr.P.C. Enquiry means "every enquiry, other than a trial conducted under this code by a Magistrate or Court." It is generally understood that the stage prior to framing of charge is an enquiry and the stage after the charge is framed is a trial. So all the proceedings before a Magistrate before framing the charge which do not result in conviction or acquittal can be termed as enquiry.

b) On the otherhand the Court in its order dated 26.10.95 asked the department to submit a report which meant that the court was making an enquiry and reserved the right of taking decision on the matter, as defined in Sec.2(g), of Cr.P.C.

c) It has been stated in Daily Order Sheet dated 18.08.97 (copy enclosed as Annexure - M), "The P.O. vide his letter dated 29.07.97 addressed to DIG/CBI/NER/Guwhati and Disciplinary Authority

(a copy of which was also made available to me) has requested to make available the Calender of Evidence and statement of witnesses which are not available in the P.O.'s file handed over to him so as to enable him to present the case. On being asked whether he has received the required information, namely, the calender of evidence, statement of witnesses etc. the P.O. has stated that he has not yet received."

d) It has further been stated in the order sheet dated 25.06.98, ".... since there was no recorded statement or specific identification of the PWs by name, he wants to drop the Court Peskar and the typist." (copy of Order Sheet dated 25.06.98 is enclosed as Annexure - N).

e) At sub-para 11 of para 5 captioned, "The date list of proceedings conducted" of Annexure - J, the E.O. further stated, "The P.O. had also admitted that there was no statements of witnesses nor any ~~g~~ gist or ~~ex~~ calender of evidence to show what the witness will prove. It was also submitted that one of the PW was the typist who typed the FIR of RC-38(A)/98-Cal. and another PW is the Peskar of CMM, Calcutta in which the identification of the concerned persons are difficult as the name was not given and the address/designation was not specific and incomplete."

f) While Ld. E.O. dealt with several aspects of this departmental enquiry in his Report (Annexure - J), nowhere he mentioned therein about whether any enquiry was caused by CBI and whether any report was submitted to the Ld. CMM, Calcutta as per his (Ld. CMM's) directions contained in his ~~xxxx~~ orders

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dated 08.06.95 and 26.10.95 (Annexures-A & B). He did not also mention in Annexure - J about what was was the direction of the court on the report submitted by CBI (If at all submitted).

g) DIG/CBI/NER/Guwhati & DA dealt with many aspects of the concerned departmental proceedings in his order no. nil dated 13.12.99 (copy of order is enclosed as Annexure - O). At para 9 of the page no.3 of the said order he mentioned about the order dated 08.06.95 of Ld. CMM, Calcutta wherein the matter of sending the copy of Court's order to the Director, CBI for causing proper enquiry is written. But one more important direction of Ld. CMM, Calcutta was not mentioned at the said para 9 of the order of ^{Respected} Disciplinary Authority. The Ld. CMM, Calcutta vide his order dated 08.06.95 (Annexure - A) also directed, " A report in this matter may be submitted before the court by 20.07.95." Respec-
ted DIG/CBI/NER & DA did not also mention anywhere in his aforesaid order about (i) whether any enquiry was caused by CBI before initiating the Department Enquiry against me as per Court's order, (ii) whether any report was submitted to the Court of Ld. CMM/Calcutta as per his directions contained in his orders dated 08.06.95 & 26.10.95 (Annexures-A & B), (iii) what was the direction of the court after submission of enquiry report by CBI, if any.

1.19. Thus it is crystal clear from the discussion at the sub-paras from (a) to (g) of para 1.18 that (i) CBI did not obey the orders of the Court, (ii) CBI started departmental proceedings against me, note while the matter was subjudice.

1.20. That departmental proceedings initiated against the C.O. cannot be considered as enquiry as desired by the Court of Lt. CMM, Calcutta and as envisaged in Sec. 2(g) of Cr. P.C. because such proceedings which has resultant action of either awarding punishment or acquittal ~~xxx~~ is tantamount to a quasi-judicial trial. So it is reiterated that CBI started the departmental proceedings against me (the C.O.) by defying the court's directions as it (CBI) neither caused any enquiry before initiation of departmental proceedings against me nor it submitted any report to the court nor it took any direction from the court about the future course of action to be followed while the matter was sub-judice.

2.1. That while the CBI initiated departmental proceedings against me, I moved to Central Administrative Tribunal, Calcutta Bench with O.A. No. 950 of 1996. CAT, Calcutta Bench vide its order dated 12.02.98 stated, "We make it clear that nothing in this order would preclude the respondents to continue the disciplinary proceedings against the petitioner but no final order shall be passed without the leave of the Court." (copy of ~~xxx~~ Order dated 11.11.99 is enclosed as Annexure - P)

Mention of the aforesaid order is also there at para 6 (page-2) of order no. nil dated 13.12.99 issued by Respected DIG/CBI/NER & DA. The date of order has been erroneously put as 12.02.90 instead of 12.02.98.

2.2. That it is also seen in para 5 of the said order of Respected DIG/CBI/NER & DA, "After completing the Inquiry, the Inquiry Officer submitted his findings holding that the charges against Shri Arijit De had been partly established during the Inquiry. Shri N.R. Roy, the then DIG/CBI/Calcutta Region who was holding the Additional charge of N.E. Region

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being the Disciplinary Authority of Shri Arijit De, Inspector examined the report of the Inquiry but did not agree with the findings of the Inquiry Officer, Shri N.R. Ray, DIG, therefore proposed to award a penalty as specified under Rule 6(vii) of DSPE (Subordinate Rank) (Discipline and Appeal) Rules, 1961.

2.3. That there are a few notwarthy points in the matter mentioned at para 2.2 which are as follows :-

- i) The interim order dated 12.02.98 of CAT, Calcutta Bench was effective from 12.02.98 to 10.11.99 (i.e. the previous date when the CAT disposed of O.A No. 950 of 1996 with a direction to the Disciplinary Authority to conclude the ~~Max~~ Disciplinary Proceeding within 8 weeks from the date of communication of the order dated 11.11.99).
- ii) E.O. submitted his Report about the departmental proceedings on 22.08.98.
- iii) Respected Sri N.R. Ray, DIG and the previous DA about my departmental proceedings relinquished his charge of CBI in March, 1999, as far as I know. He was well aware of the interim order dated 12.2.98 of CAT, Calcutta Bench.
- iv) Respected Sri Ray, the then DA passed written order in the concerned file to award a penalty as specified under Rule 6 (vii) of DSPE (Subordinate Rank) (Discipline and Appeal) Rules, 1961 by defying the interim order of CAT dated 12.02.98.
- v) He (Sri Ray) also denied me of natural justice by not following the laid down procedures to be followed before awarding major penalty by (a) not

forwarding a copy of the report of Inquiry Officer to me to make any representation/ submission and by (b) not considering the representation, if any, proposed to be submitted by me before passing final orders.

vi) Respected Sri Ray, the then DIG & DA, thus showed total biasness and revengeful attitude to me so much so that he did not even care for observing the laid down procedures to be followed before awarding major penalty and did not mind flouting the interim order dated 12.02.98 of CAT, Calcutta Bench.

vii) Respected Sri Ray also influenced the present DA by expressing his biased opinion in the concerned file of disciplinary proceedings without considering the representation supposed to be submitted by me on the report of the Lt. E.O. and by passing order in the file about the penalty to be imposed on me which he was not empowered as per the CAT's order dated 12.02.98.

3.1. That Respected DIG/CBI/NER & DA (present incumbent) in his order awarding major penalty mainly dealt with charge nos. (iii) and (v) in paras from 9 to 12 and charge no. (iv) in para 13. But he did not discuss charge no. (vi) anywhere. Some noteworthy features of his relevant order are listed below.

a) He did not forward the copy of report of Inquiry Officer to me to make my representation/ submission.

b) Final Orders were passed by Respected DA without considering my representation on the report of Inquiry Officer resulting in denial of natural justice to me.

c) Though Respected DA himself admitted at para 13 of his order, "Although there is no direct evidence to prove the allegation that Shri Arijit De had deliberately and with oblique motive did not submit the FIR in the court on 28.08.92....." i.e. charge no. (iv) of Articles of charge and did not at all throw any light about charge (vi) therein, he commented in the same para, "Therefore I hold that the charges against Shri Arijit De, Inspector, CBI stand proved....." So his view seems to be confusing and judgement appears to be contradictory and biased.

3.2. That Charge nos. (i) and (ii) were mere statements of facts regarding my posting in CBI/ACB/Calcutta and registration of FIR of RC-38/92-Cal. by me. So these were never disputed by me at any stage. E.O. in his Enquiry Report drew conclusion at para 10 as follows :-

a) "The charge (III) that the FIR meant to be submitted to the Court of CMM, Calcutta cannot be proved conclusively as there is no reference made either in the notesheet..... nor any other documents/ office orders issued to the latter." This is mentioned at point no.2 of para 10 captioned "conclusion."

b) At point no.3 of the said "Conclusion" mention is there, "The charge IV that Sri De had deliberately, illegally and with oblique motive did not submit the FIR could not be proved fully since there is no evidence to support/substantiate the charges of "deliberately, illegally and oblique motive."

c) At point no. 5 of the said "Conclusion" it is mentioned, "The charge VI could not be established since there is no evidence on record to substantiate the charge of deliberately, illegally and with oblique motive on the part of the C.O....."

3.3. (a) That the P.O. also in his written brief (enclosed as Annexure - Q) stated about Point (charge)(IV) of Articles of Charge, "There is neither documentary nor oral evidence to substantiate the allegation that Sri De had deliberately, illegally and with an oblique motive did not submit the FIR in the Court of CMM, Calcutta either on 28.08.92 or on the next date/day i.e. on 29.08.92."

(b) Regarding Point (charge)(VI), the P.O. expressed in Annexure - Q, "This charge appears to be self-contradictory. On the one hand, it is alleged that "he deliberately, illegally with an oblique motive filed the aforesaid FIR of the aforesaid case in the Court of CMM, Calcutta after a great delay i.e. on 8.6.95," whereas on the otherhand, it was alleged "just for enabling him to submit the FIR for obtaining the order from the aforesaid Court." In the same breath, the charge goes to allege that "as a result of which a great prejudice was caused to the accused."

"As the P.O. cannot understand this portion of the charges, he cannot present this point."

3.4. Thus after going through the paras 3.1, 3.2 and 3.3 the following conclusion comes out.

a) The point (charge) nos. 1 & 2 were admitted by me

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as these were related to mere statements of facts like my period of posting in Calcutta and registration of FIR for RC- 38(A)/92-Cal.

(b) Regarding point (charge) no. (iii) the P.O. drew the conclusion in Annexure - Q, "Even if the FIR copy meant for the court was not handed over to him, it was his duty to get hold of it somehow and submit the same to the court. He cannot simply shirk his responsibility by taking advantage of a minor lapse on the part of the Crime Clerk as an excuse." Ld. E.O. drew the conclusion in Annexure - J about point (charge) no. (iii), "The charge III that the FIR meant to be submitted to the Court of CMM, Calcutta was handed over to Shri A. De, the I.O. of the case for submission in the Court of CMM, Calcutta cannot be proved conclusively as there is no reference made either in the note sheet about handing over the copy of FIR meant for the court to Sri A. De nor any other documents/office orders issued to the latter."

Respected DA in his Order dated 13.12.99 commented about this charge-III at para 12 of page no. 4, "The P.O. has therefore rightly argued in the written brief dated 09.07.98 submitted by him that even if the FIR copy meant for the court was not handed over to Arijit De, it was his duty to obtain the copy of the FIR from the Dealing Asstt./Crime Section and submit it in the Court..... The undersigned fully agrees with the above reasoning of the P.O."

c) Regarding Point (charge) No. (iv) the P.O. drew the conclusion in Annexure-P, "This specific/particular charge cannot be proved." Ld. E.O. drew the conclusion about this charge-IV in Annexure - J, "The charge IV that Shri De had deliberately, illegally and with

an oblique motive did not submit the FIR in the Court of CMM, Calcutta either on 28.8.92 or on the next day i.e. on 29.08.92 could not be proved fully since there is no evidence to support/substantiate the charges of "deliberately, illegal and oblique motive."

Respected DA observed about charge-IV at para 13 of page 4 of his Order dated 13.12.99, "Although there is no direct evidence to prove the allegation that Sri Arijit De had deliberately and with oblique motive did not submit the FIR in the court on 28.8.92 or on the next day and subsequently thereafter until he did on 08.06.95, there is undoubtedly gross negligence on the part of Inspector Arijit De....."

d) Regarding Point (charge)no. V, the P.O. came to the conclusion in Annexure .. Q, "This charge is well established in the arguments for point (iii), and as such, need not be repeated." Ld. E.O. in Annexure - J came to the conclusion about Charge-V, "The Charge V could be established"

Respected DA in his order dated 13.12.99 at para 10 stated, " The fact that this practice has been in vogue since the time of joining of Sri Arijit De, in ACB, CBI, Calcutta Branch was admitted by Shri Arijit De, in his statement recorded by E.O. during departmental enquiry on 25.06.98....."

e) Regarding Point (charge) no.VI, the P.O. in Annexure- P commented, "This charge appears to be self contradictory, As the P.O. cannot understand this portion of the charge, he cannot present this point."

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Ld. E.O. in his Annexure - J drew the conclusion about charge no.VI, "The charge VI could not be established since there is no evidence on record to substantiate the charge of deliberately, illegally and with oblique motive on the part of C.O. while submitting the FIR to the court nor any evidence to show the charge, " prejudice was caused to the accused " by the action of Sri A.De."

Respected DA in Annexure - O neither discussed this charge VI nor expressed his opinion anywhere there on this charge.

f)

Now a clear picture can come out from the following table about the opinion regarding proving/non-proving of the charges as per Articles of charge by the P.O., Ld. E.O. and Respected DA.

Charges	Not disputed	Proved/not proved by P.O.	Proved/not proved by Ld. E.O.	Proved/not proved by Respected DA
I	Not disputed	-	-	-
II	Do.	-	-	-
III	-	Proved	Not Proved	Proved
IV	-	Not proved	Do	Not proved
V	-	Proved	Proved	Proved
VI	-	Not proved	Not proved	No opinion

Thus it becomes vividly clear from the aforesaid table (i) there was consensus about proving the charge V among the P.O., Ld. E.O. and Respected DA. (ii) Respected DA, Ld. E.O. and P.O. were in consensus about not proving the charge IV. (iii) while Ld. E.O. and P.O. were in consensus ~~xx~~ about not proving the charge-VI, Respected DA did not express himself about this charge. (iv) there was difference of opinion among the P.O., Ld. E.O. and Respected DA about charge no. III.

g) Thus from the discussion conducted at the foregoing sub-paras from 3.4 (a) to (f) it is reiterated that the opinion of Respected DA at para 13, " Therefore I hold that the charges against Shri Arjit De, Inspector, CBI stand proved....." is wholly contradictory, biased and a glaring example of denial of natural justice.

4.1. That now a gist can be prepared about how I have been denied of natural justice even from the stage before initiation of departmental proceedings against me till the stage of preferring this appeal.

- i) No enquiry was caused by the CBI authority as per direction of Ld. CMM, Calcutta contained in Annexure - A.
- ii) No report was submitted to the Court of Ld. CMM, Calcutta as per Annexures-A & B.
- iii) No direction about the future course of action to be followed by CBI, was obtained from the Court of Ld. CMM, Calcutta on the basis of the report supposed to be submitted by CBI.

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iv) Thus CBI started the departmental proceedings against me suo moto when the matter was subjudice.

v) Inspite of my requisition for the Enquiry Report as desired vide Annexures - A & B and admitting the relevance of the same as defence document in the interest of natural justice by Ld. E.O. the document (Enquiry Report) was never handed over to me.

vi) CAT, Calcutta Bench passed interim order dated 12.02.98 vide Annexure - P stating, "..... no final order shall be passed without the leave of the Court." But the then Respected DA, Sri N.R. Ray, DIG/CBI/Calcutta passed final order proposing to award a major penalty as specified under Rule 5 (vii) of DSPE (Subordinate Rank) (Discipline and Appeal) Rules, 1961 even when the interim order stated above was in vogue. At the time of passing the order proposing a penalty he flouted the laid down procedures to be observed before awarding a major penalty by (a) not forwarding a copy of Enquiry Report submitted by Ld. E.O. for submitting my representation and (b) by not considering the representation supposed to be submitted by me. By expressing his opinion after getting the Enquiry Report from Ld. E.O. and passing an order proposing to award major penalty against me in the concerned file Respected DA Sri Ray also influenced the present DA for taking decision in the departmental proceedings against me.

vii) Wrong data was furnished by Ld. E.O. in Annexure-J when he stated, "The C.O. visited Calcutta and inspected his defence documents." In fact I visited Calcutta at the time in question i.e. 15th & 16th April, 1998 but did not get any defence document for inspection from the O/o the SP/CBI/ACB/Cal. on the plea that his (SP's) office did not get intimation about my requirement of documents from CBI/Silchar Branch. I also intimated this fact vide Annexure - I and I(i). I never issued any Documents Inspection Certificate to this effect.

Ld. E.O. further furnished wrong information in Annexure - J when he stated, "Thus the inspection of the defence was completed and the C.O. was supplied with all the extracts of documents required for his defence." In fact, I never got the copy of Enquiry Report supposed to be submitted by CBI to the Court of Ld. CMM, Calcutta before initiation of departmental proceedings against me. I could not defend my case properly in absence of this vital defence document.

Respected DA was also mislead in the matter of taking his decision and awarding penalty to me on the basis of these vital wrong data.

viii) It has already been shown in para 3.4 (f) that Respected DA (present incumbent) was in agreement of opinion with the P.O. and the Ld. E.O. that charge-IV was not proved and did not express any opinion on charge-VI which both of P.O. and Ld. E.O. opined that this charge could not be proved.

But still Respected DA opined in para 13 of Annexure - O, "Therefore I hold that the charges against Shri Arijit De, Inspector, CBI stand proved....."

Before awarding the major penalty against me the Respected DA did not also follow the laid down procedures like (a) forwarding a copy of Enquiry Report submitted by the Ld. E.O. to the C.O. for submitting his (C.O's) representation, if any and (b) considering the representation supposed to be submitted by the C.O. before taking any final decision.

ix) After going through para 3.4 (f) it further becomes clear that Respected DA did not agree with Ld. E.O. in case of charge no. (iii) because while Ld. E.O. expressed his view that the charge was not proved, ~~the~~ Respected DA stated that the charge was proved. So as per laid down procedures I was supposed to get a statement of the findings of the Inquiry Authority with brief reasons for disagreement, if any, of the Disciplinary Authority where the Disciplinary Authority is not the Inquiring Authority.

Thus total contradiction, biasness have been shown by Respected DA against me exposing my career on the verge of great perils.

x) Although six nos. of charges were levelled against me, virtually it should have been only one charge, i.e. charge no. (iv) and other charges are nothing but ancillary or parasites of the said charge. When the main charge is not established both according to the E.O. and ~~the~~ the D.A. the other charges automatically fails.

xii) That even if the charge no. (v) is proved as per the ~~XXXXXX~~ the opinions of the P.O., Lt. E.O. and Respected DA, the punishment awarded to me is excessively harsh in the context of such minor charge.

xiii) Major penalty order was firstly passed in the concerned file in violation of the interim order passed by CAT, Calcutta Bench by the then Respected DA Sri N.R. Ray under Rule 6 (vii) of DSPE (Sub-ordinate Rank) (Discipline and Appeal) Rules, 1961. Thereafter, again I was found guilty under Rule 3(i) (ii) and (iii) of CCS (conduct) Rule 1964 and was awarded major penalty as per CCS (conduct) Rule, 1964 by Respected DA (present incumbent). So I am perplexed about which Rule/Act should be applicable towards me for punishment.

xiv) That I intimated the o/o SP/CBI/S1c. through my letter dated 24.12.99 about my preference of an appeal to the appropriate authority against order dated 13.12.99 issued by Respected DA. (copy of my letter is enclosed as Annexure - R).

But on 28.12.99, I received a copy of fax message no. 2762/114/97-99/NER dated 28.12.99 issued by Respected DA which read, "Sub : Shri Arijit De, S.I., CBI, Imphal(.) Refer your no. DP/SIL/1999/ 06350/235/10/99 dated 23.12.99(.) Shri Arijit De should be shown demoted from 20.12.99 as S.I. (.) The suspension of Shri Arijit De stands revoked and he may be directed to join duty as S.I. immediately(.)" (copy of Fax No. 2762/114/97-99/NER dated 28.12.99 is enclosed as Annexure - S).

An order for revocation of suspension has to be issued as per required standard format and not like the one which has been issued vide the aforesaid fax message (Annexure - S). Specific orders are to be there regarding (1) the pay and allowances to be paid to the suspended official during the period of suspension and (2) treatment of the period of suspension upto reinstatement. These two decisions are independent. Neither flows from the other. Thus the order for revocation of suspension and resultant reinstatement with a direction to join at a demoted rank of Sub Inspector communicated vide ~~xxxxxxxx~~ Annexure - S followed by a reminder No. 1/8/96-99/CBI/IP/3 dated 03.01.2000 issued by the Incharge/CBI/Imphal Unit (copy enclosed as Annexure - T), inspite of the fact that I intimated the O/o SP/CBI/S1c. on 24.12.99 (vide Annexure - R) about my preference of an appeal against the order dated 13.12.99 by Respected DA appears to be unconstitutional, illegal, and prejudiced and administrative oppression.

xiv) I came to know from our Silchar Br. that Respected DA intimated the SP/CBI/S1c. not to draw and disburse any money in my name from the office from January 2000 onwards if I do not join to the demoted rank of S.I. This type of direction appears to be not only a burning example of denial of natural justice and continuance of administrative oppression but a glaring example of misusing of authority by dint of influencing

the subordinate members of staff to follow the unconstitutional and illegal orders.

xv) In view of the above analysis, I would request Your Kindself to examine my appeal with judicious mind and I am sure that you would be convinced that gross injustice, irregularity, violation of extant rule, denial of natural justice, disobeying the orders of Hon'ble CAT/Calcutta etc. have been committed in dealing with the case. As such, I would pray to you for cancellation of the irregular/illegal penalty order alongwith the Inquiry Report and exonerate me of the charges levelled against me. It is further regretted that the oppression which is being meted out to me by way of threatening of non-payment of my subsistence allowance and other oppressive measures are immediately removed to ~~xx~~ allow me to live with my family in a tension-free manner. I may kindly be granted with a personal hearing before passing appellate order.

With sincere regards,

Yours faithfully,

Arijit De
14. 01. 2000

(ARIJIT DE)
Inspector of Police (U/s)
C.B.I./Imphal Unit.
Camp : Calcutta.

Enclo : As per list of Annexires attached.

Attnk
P.W. Deo

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LIST OF ANNEXURES

(THE RELEVANT PORTION HAS BEEN MARKED WITH MARKING INK)

- 1) A - Order dtd. 08.6.95 issued by CMM/Cal.
- 2) B - Order of CMM/Cal. dtd. 26.10.95.
- 3) C - Letter dtd. 01.10.97 issued by C.O.
- 4) D - " " 23.06.98 " " "
- 5) D(i)-Order dtd. 10.11.97 issued by E.O.
- 6) E - " " 04.12.97 " " "
- 7) F - " " 04.02.98 " " "
- 8) G - " " 11.03.98 " " "
- 9) H - Letter no. 1873/Dept.l.Eng/A.De/97 dtd. 12.3.98.
- 10) I - Letter dtd. 27.4.98 issued by C.O.
- 11) I(i)-" " 30.4.98 " " "
- 12) J - Enquiry Report by E.O.
- 13) K - Order dtd. 23.6.98 by E.O.
- 14) L - Defence Brief
- 15) M - Order dtd. 18.8.97
- 16) N - Order " 25.6.98
- 17) O - Order of DIG/CBI/NER & DA.
- 18) P - Order of CAT/Cal Bench dtd. ~~22.11.99~~ 11.11.99.
- 19) Q - Written Brief of P.O.
- 20) R - Letter dtd. 24.12.99 issued by the C.O.
- 21) S - Fax No. 2762/114/97-99/NER dtd. 28.12.99 issued by the DIG/CBI/NER & DA.
- 22) T - Letter No. 1/8/96-99/CBI/IP/3 dtd. 03.01.2000 issued by the I/C/CBI/Imphal.

Anujit D.

***** X *****

1. *Revised*
2. *Min*
3. *24/12/99*
4. *Central Bureau of Investigation*
5. *Imphal, Manipur*
6. *Serial No. 1/8/96-99/CBI/IP/3*

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92

Received an Appeal in original alongwith
enclosures bearing Sl. Nos. from 1 to 22
from Sri Arijit De, Inspector (U/s)/CBI/
Imphal.

Recd.
14/8/2000

Office of the S. D. C. S.

C. B.
Nizam Palace
End MSC Building 1612 Floor
C34/1, 6, J. C. Rose Road
Calcutta 700020

After Red
P.W.D.

OFFICE OF THE ADDL. DIRECTOR
CENTRAL BUREAU OF INVESTIGATION
GOVERNMENT OF INDIA
2ND MSO BLDG., (15TH FLOOR), NIZAM PALACE
234/4, A. J. C. BOSE ROAD
CALCUTTA - 20

Office Order No. 77 /2000

Dated : 26.09.2000

Shri Arijit De, formerly Inspr. of Police, CBI, ACB, Calcutta now Inspr., CBI, Silchar Branch and posted at Imphal Unit (Under Suspension) (hereinafter referred as the Official) was issued with a Memorandum No. 886/45(8)/Estt./96-Cal. dated 27.2.96 alongwith enclosures in Annexure I to Annexure IV containing Article of Charge (Annexure I), Statement of Imputation of Misconduct in support of Article of Charges (Annexure II), List of Documents (Annexure II) and List of Witnesses (Annexure IV) by DIG, CBI, Calcutta Region, Calcutta for having contravened Rule 3(i), (ii) and (iii) of Central Civil Services (Conduct) Rules, 1964. The above Memorandum was issued under provisions of Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rules, 1961.

The charges against the official, in short, is that he had registered RC38(A)/92-Cal. on 28.08.92 and he did not submit the FIR in the Court either on 28.08.92 or on 29.08.92. Subsequently, he filed the FIR in the Court on 08.06.95. This gross negligence on the part of the Official is not in consonance with departmental practice/procedure and law which ultimately invited opprobrium and stricture from the Court. The Official was directed to submit written statement of his defence within 10 days of receipt of this Memo.

2. The Official submitted his written statement of defence to the DIG, CBI, Calcutta wherein he had denied all the charges. The reply of the Official was not found satisfactory by the Disciplinary Authority. Accordingly, the Disciplinary Authority appointed Shri S. R. Mukherjee, Dy.SP, CBI, Calcutta as Inquiry Officer under the provisions of Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rules, 1961. While the enquiry was in progress the Official was transferred and posted under SP, CBI, Silchar first at Aizawl and later on transferred to Imphal both under SP, CBI, Silchar which is under the overall control of Dy. Inspector General of Police, CBI, N. E. Region, Guwahati.

3. Pursuant to the transfer of the Official, Shri N. M. Singh, Dy.SP, CBI, Silchar was appointed as Inquiry Officer vide Officer Memo No. 1709-1710 dated 15.07.97.

4. On completion of inquiry, the Inquiry Officer submitted his Inquiry Report dated 27.08.98 wherein he has held the following :

- i) The charge I & II were admitted and not disputed by the Official.
- ii) Charge III that FIR meant to be submitted to the Court of CMM, Calcutta was handed over to the Official, who was I.O. of the case for submission to the Court could not be proved conclusively.
- iii) Charge IV that the Official deliberately, illegally and with an oblique motive did not submit the FIR in the Court either on 28.08.92 or on 29.08.92 could not be proved fully since there was no evidence to substantiate the charge 'deliberately, illegally and with an oblique motive'.

X
AS

- iv) Charge V regarding practice of submission of FIRs in the Court by the concerned I.O. have been fully established.
- v) Charge VI could not be established since there was no evidence on record to substantiate the charge that the Official deliberately, illegally and with an oblique motive submitted the FIR in the Court after a great delay.

5. On receipt of the Inquiry Report, Shri N. R. Ray, the then DIG, CBI, Calcutta Region, Calcutta holding additional charge of DIG, CBI, NER, Guwahati and being the Disciplinary Authority examined the Report and did not agree with the findings of the Inquiry Officer. Shri Ray, therefore, proposed to award a penalty as specified under Rule 6 (vii) of Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rules, 1961.

6. While the above matter was under process, the Official filed a petition in the Central Administrative Tribunal (CAT), Calcutta Bench vide OA 950 of 1996. The Central Administrative Tribunal vide order dated 12.02.98 has allowed the CBI to continue with the Disciplinary Proceedings against the Official but not to pass the final order without the leave of the Tribunal. The aforesaid petition was finally disposed of on 11.11.99 when the CAT ordered that the Disciplinary Proceedings initiated against the Official should be finalised as per Rule and should be concluded within eight weeks.

7. DIG, CBI, NER, Guwahati being the Disciplinary Authority, after carefully going through the Inquiry Report, Document exhibited during the departmental proceedings, Statement of Witnesses recorded during the

departmental proceedings, Statement of the Charged Official recorded during the departmental proceedings, Written Brief submitted by the Presenting Officer and Defence Brief submitted by the Official during the Departmental Proceedings came to the conclusion that charges against the Official stand proved for he (the Official), by his gross negligence failed to discharge his duties and failed to uphold the dignity and prestige of the organisation by his unbecoming conduct and thereby contravened Rule 3(1)(ii) and (1)(iii) of C.C.S. (Conduct) Rules 1964.

The Disciplinary Authority after taking the whole thing into account including the past conduct of the Official imposed penalty on the Official and demoted him to the rank of Sub-Inspector with immediate effect for a period of three years, and with all the consequences that follow vide his order dated 13.12.99. Copies of the Inquiry Report, Written Brief and Written Statement of defence were sent to the Official alongwith the aforesaid order.

8. Agrieved with the aforesaid Order, the Official preferred an appeal before Joint Director (East), CBI, Calcutta being the Appellate Authority. In his appeal the Official has, in short, raised following points:

- i) The order of I.d. CMM for causing an enquiry and submitting a report was violated.
- ii) That the departmental proceedings was initiated by defying the order of the C.A.T. Calcutta Bench, Calcutta.
- iii) That Shri N. R. Ray, the then DIG, CBI, Calcutta Region, Calcutta defied and flouted the interim order of the C.A.T dated 12.02.98 by passing order in the file.

- iv) That the Disciplinary Authority denied natural justice to the Official by not forwarding copies of enquiry report before award of the punishment.
- v) That the Disciplinary Authority has wrongly rejected the findings of the Inquiry Officer, who has held there is no evidence on record to substantiate the charge of 'deliberately, illegally and with oblique motive on the part of the C.O.....' .
- vi) That the Official was denied natural justice during the course of the proceedings.
- vii) That the punishment awarded is too harsh.

9. ADCBI after carefully examining the matter in its entirety is of the considered opinion that the points raised by the Official are devoid of any merit.

10. The plea of the Official regarding flouting of order of Lt. CMM carry no weight as this is a matter between Lt. CMM and Director, CBI in which the Official has no locus standi. Further no order of the Central Administrative Tribunal was ever violated during the entire proceedings. The CAT did not find anything wrong in the departmental proceedings against the Official. Further, it is wrong to say that Shri N. R. Ray, the then DIG had flouted the interim order dated 12.02.98 of CAT as Shri Ray did not pass any final order neither any final order of Shri Ray was communicated to the Official when the interim order of CAT was in force.

11. The plea that the Official was denied natural justice by not providing copies of the Inquiry Report written brief etc before passing the final order is also devoid of merit as copies of aforesaid documents were made available to the Official at the time of making available order of the Disciplinary Authority.

Further the Disciplinary Authority by his reasoned order has rightly rejected that part of the Enquiry Report which says that there is lack of evidence to substantiate the charge of "deliberately, illegally and with an oblique motive on the part of the C.O....". There is no doubt that it was illegal as the law required the FIR should be sent to the Court forthwith. Regarding oblique motive, no direct evidence is normally found in such case as motive is captive in the mind of a delinquent official which is difficult to be unmasked indubitably. But undoubtedly there has been gross negligence on the part of the C.O. ✓

12. The plea that the Official was denied natural justice is also devoid of merit as not a single instance of denial of natural justice to the Official has come on record during the entire proceedings.

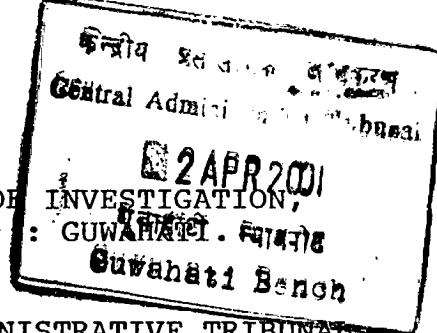
13. Lastly the Official has stated that the punishment awarded is too harsh. AJDCBI is of the opinion that the punishment awarded is condign and commensurate with the misconduct which is grave in nature.

14. In view of the above, ADCBI after considering all relevant facts leading to the misconduct committed by the Official and subsequently awarding of penalty of demotion to the rank of Sub-Inspector with immediate effect for a period of three years with all the consequences to follow by the Disciplinary Authority and the explanation given by the Official in the present appeal, is of the view that there is no extenuating factor in the appeal to warrant reconsideration of penalty imposed and hence, his appeal is rejected.

16.9.2000
(Dr. T. N. Biswas)
Additional Director
CBI, Calcutta

Attested
P. N. Biswas

CENTRAL BUREAU OF INVESTIGATION,
N.E. REGION : : GUWAHATI. গুৱাহাটী
Guwahati Bench



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH (OA NO.62 of 2001)

BETWEEN

Shri Arijit De, Sub-Inspector,
Office of the Dy. Supdt. of Police,
Central Bureau of Investigation,
Lamphelpat, Imphal-795 004

...Applicant.

AND

1. Union of India,
through the Secretary, Ministry
of Personnel, Public Grievances &
Administrative Reforms, New Delhi.
2. The Director,
Central Bureau of Investigation,
Special Police Establishment,
CGO Complex, Block No. III, 3rd. Floor,
New Delhi -110 003.
3. The Additional Director/
Joint Director, Eastern Zone,
Central Bureau of Investigation,
234/4, Acharya Jagadish Chandra Bose Road,
14th. Floor, Calcutta- 700 020.
4. The Deputy Inspector General of Police,
Central Bureau of Investigation.
North Eastern Region,
Guwahati

...Respondents.

REPLIES ON BEHALF OF RESPONDENTS.

Background of the case:

The applicant, as stated under Para 4.2. of the application, is an Officer of the Central Bureau of Investigation (CBI), who joined CBI as Sub-Inspector of Police, on 7.9.1984, later on he was promoted to the rank of Inspector on 31.7.1989.

2. During the year, 1992 the applicant was posted in

26/3/01
P. D. R. 26/3/01
(A. DEB RON)
Sr. C. C. S. C.
C. A. T., Guwahati Bench 29

ACB Calcutta Branch of CBI as Inspector and in that capacity was assigned the Investigation of RC.38/92-CAL, which he had registered on 28.8.92.

3. The First Information Report (F.I.R) of the above case i.e. RC.38/92-CAL, as per requirement of law and practice was to be submitted by the applicant, as I.O. in the Court of Ld. CMM Calcutta immediately after the registration. But the applicant for the reasons best known to him, did not submit the F.I.R. of the said case in the Court and kept it with him which showed his gross negligence and dereliction of duty. He submitted the F.I.R. in the Court only on 8.6.95, i.e. almost after three years, for obtaining order of the Ld. CMM, Calcutta allowing closure of the above case.

4. The investigation of the case was conducted by the applicant which finally ended in closure, obviously due to lack of sufficient evidence collected during investigation for prosecution which the applicant was unable to marshall during investigation, although the applicant, for the sake of it, recommended prosecution of the accused, in this case. The Ld. Public Prosecutor who examined the case, did not agree with the recommendation of the I.O. (Applicant) and finally the applicant submitted closure report of the above case in the Court of Ld. CMM, Calcutta on 8.6.95.

5. On 8.6.95 when the Ld. CMM, Calcutta perused the relevant Case file for passing the requisite order in the above case , it was found that the Case F.I.R. was not submitted in the Court by the Investigating Officer (Applicant). The applicant therefore filed a written

submission before the Ld. CMM admitting his lapses as under:- :

"As per requirement of law, I was supposed to forward F.I.R. to the Ld. Court for favour of information and record. However, due to inadvertance I forgot to forward the F.I.R. to the Learned Court".

6. The Ld. CMM Calcutta not being satisfied with the explanation of the applicant (I.O) seriously viewed the conduct of the I.O.(Applicant) as reported above and accordingly informed the matter to the Director, CBI, for taking appropriate action against the I.O. after causing proper Inquiry in order that recurrence of such incidence is avoided in future. The report / order of the Ld. CMM Calcutta sent to Director, CBI is reproduced under :-

"Heard the I.O.

It appears that the F.I.R. was lodged on 28.8.92. The I.O. has submitted the F.I.R. before this court to-day, that is about three years and ten months after its lodging. He has stated in his petition submitted with the F.I.R. that there was a mistake on his part in filing the F.I.R. and that such mistake was not deliberate. The explanation is not at all tenable. I.O. now, intends to submit F.I.R. and , as such, he has submitted the F.I.R to-day.

I.O. is an Inspector of Police and attached to the C.B.I. He appears to have kept the F.I.R. with him deliberately for about four years and then he filed the same just for enabling him to submit the F.I.R. for obtaining an order from the Court. It is necessary that the matter be brought to the notice of the highest authority of the C.B.I. for proper enquiry. Accordingly a copy of this

order be sent to the Director, CBI, in New Delhi in his personal name for causing proper enquiry for avoiding the recurrence of incidents of this type".

7. The Director, CBI viewed the above conduct of the I.O. seriously and ordered for initiating disciplinary action against him for major penalty. Subsequently the applicant was kept under suspension w.e.f. 13.1.98 for committing other grave misconduct. Charge sheet was served on the applicant and Departmental Proceedings for major penalty was started against him. After the Departmental Proceedings against the applicant was completed and when the Disciplinary Authority was about to impose punishment, the applicant filed an application (vide OA. No. 950 of 1996) in the Hon'ble CAT Calcutta Bench and Hon'ble Tribunal was pleased, inter alia, to pass the following order on 12.2.98:-

"ORDER.

"We make it clear that nothing in this order would preclude the respondents to continue the disciplinary proceedings against the petitioner but no final order shall be passed without the leave of the Court". The Order of the Hon'ble Tribunal passed in the above case is marked as Annexure A/1.

8. In view of above order passed by Hon'ble Tribunal, Calcutta Bench, though the Departmental proceedings against the applicant was completed but no final order could be passed without the leave of the Tribunal.

9. The matter was finally decided by the Hon'ble

Tribunal Calcutta Bench on 11.11.99. The gist of the order passed in the case was communicated by SP CBI ACB Calcutta to DIG CBI N.E.Region, Guwahati vide fax Message No.0369/103/3/ESTT/96-CAL Dated 11.11.99. Later on certified copy of the order dt. 11.11.99 was also obtained. The copy of the Fax Message alongwith the copy of the Order of Hon'ble Tribunal are marked as Annexure A/2(1) and A/2(2) respectively. The order is reproduced below :-

Heard on 11.11.99 Dated on 11.11.99

ORDER.

Heard both the counsel. In this O.A. the petitioner has challenged the Disciplinary Proceedings drawn up against him by the respondent authorities on the basis of the impugned charge sheet dated 27.2.96. By an interim order dated 21.8.96 passed by an earlier Bench of this Tribunal, the petitioner was given the liberty to engage his defence helper within a month from the date. The Tribunal did not however, interfere with that part of the impugned order that no legal practitioner should be engaged as a defence helper. By a subsequent order dated 12.2.98, this Bench passed an order in the following manner:

"We make it clear that nothing in this order would preclude the respondents to continue the disciplinary proceedings against the petitioner but no final order shall be passed without the leave of the Court".

Mr. R.K.De, Ld. Counsel appearing for the applicant submits that his client would be satisfied if a peremptory direction is issued on the respondent

authorities to conclude the impugned Disciplinary proceedings according to extant rules, within a time bound period. Ms. K.Banerjee, Ld. Counsel appearing for the respondents has no objection to such prayer being allowed.

Accordingly we dispose of the O.A. with a direction on the respondent authorities especially on the Disciplinary Authority to conclude the Disciplinary Proceedings against the Petitioner as per Extant rules within 8 weeks from the date of communication of this order.

No order as to cost."

10. In the light of the above order of Hon'ble CAT, Calcutta Bench, DIG CBI Guwahati (Respondent No.4) passed the final order on 13.12.99, imposing major penalty of demotion of the applicant to the rank of Sub-Inspector, for a period of 3 years with all consequences.

11. Since the applicant was kept under suspension, Respondent No.4 revoked the suspension order of the applicant, vide Fax Message No.2762/114/97-99/NER Dt. 27/28.12.99, which is marked as Annexure A/3. The applicant was asked to report for duty with immediate effect. But the applicant defied the above order of the Disciplinary Authority (Respondent No.4), in as much as, although he reported for duty but he continued to write as Inspector and not Sub-Inspector of Police on the ground that he had preferred an appeal against the order of the Disciplinary Authority dt. 13.12.99. The petition of the applicant submitted in this regard dt. 29.12.99, is marked as Annexure A/4, alongwith forwarding letter of SP CBI Silchar.

12. The applicant had filed an appeal before Appellate Authority (Respondent No.3) against the order dt. 13.12.99

passed by the Disciplinary Authority (Respondent No.4). The Respondent No.3, before passing final order had called for parawise comments on the Representation of the applicant, from Respondent No.4, which was forwarded by the Respondent No.4 to Respondent No.3, vide CBI ID No.337/114/97-99/NER dt. 8.2.2000 (marked as Annexure A/5.)

. The letter of Appellate Authority dt. 28.1.2000 is marked as Annexure A/6.

13. The Appellate Authority, (Respondent No.3) after persual of the representation of the applicant, Parawise comments of Respondent No.4 and after consulting and discussing with Ld. Addl. Legal Adviser of CBI was satisfied that there is no merit in the Appeal filed by the applicant which deserved to be rejected. The decision of the Appellate Authority was communicated to respondent No.4 by DSP CBI East Zone Calcutta, vide No. 538/50/Estt/EZ/96-Cal dt. 16.5.2000, (marked as Annexure A/7). Subsequently the respondent No.3 being in the capacity of Appellate Authority issued order vide O.O. No.77/2000 dt. 26.9.2000 giving reasons for rejection of the Appeal made by the applicant.

14. The above order passed by the Appellate Authority, rejecting the appeal of the Applicant has been enclosed with the applicant's application vide Annexure A/5. It is apparent from the above that the order passed by the Appellate Authority is detailed order, running into 5 pages containing 14 paragraphs, giving proper and valid reasons for rejection, the summum bonum of which is summarised in

last three paras which are quoted below.

"The plea that the official was denied natural justice is also devoid of merit, as not a single instance of denial natural justice to the Official has come on record during the entire proceedings.(Para No.12)

Lastly the official has stated that he punishment awarded is too harsh. ADCBI is of the opinion that the punishment awarded is condign and commensurate with the misconduct which is grave in nature (Para 13).

In view of the above, ADCBI after considering all relevant facts leading to the misconduct committed by the official and subsequently awarding of penalty of demotion to the rank of Sub-Inspector with immediate effect for a period of three years with all consequences to follow by the Disciplinary Authority and the explanation given by the Official in the present appeal, is of the view that there is no extenuating factor in the appeal to warrant reconsideration of penalty imposed and hence, his appeal is rejected.(Para 14) "

15. The applicant has also urged the following points for consideration, which are devoid of any merit.

(i) The order of the Disciplinary Authority is illegal as because no copy of the Inquiry Report was furnished to the applicant, prior to passing of the order imposing major penalty. As a result the applicant was denied opportunity to submit any representation against the finding of the Inquiry officer (Para 4.5, 4.14)

(No illegality and prejudice has been caused to the applicant in this regard as a copy of the Inquiry Report

was furnished to him alongwith the order dt. 13.12.99 of the Disciplinary Authority which was received by the applicant on 20.12.99. The applicant while preferring an appeal to the Appellate Authority represented all those facts which he wanted to bring, before the Appellate Authority. Moreover, the final order imposing major penalty on the applicant, passed by the Disciplinary Authority came into force after the appeal made by the applicant was rejected by the Appellate Authority).

(ii) The Disciplinary Authority, while imposing major penalty, also took into consideration the past conduct of the applicant, though the same did not form a part of the memorandum of the charges (Para 4.7, 4.17)

(The past conduct of a charge official, whether good or bad is always a relevant factor to be considered by the Disciplinary Authority while deciding the quantum of punishment against the charged official. There is, therefore, no question of the same being forming a part of the charge).

(iii) According to the applicant, it was the Inquiry officer who had held that there was no evidence to show that any prejudice was caused to the accused, due to delayed submission of the F.I.R. (Para 4.9)

(The question of causing any prejudice to the accused, which was not a part of the charge or statement of imputation served on the applicant, does not arise. The relevant fact in issue is the alleged misconduct of the applicant, his lack of devotion to duty / negligence / lack / of integrity, caused on account of grossly delayed submission of the FIR which brought bad name for the CBI and

which could have been avoided . In fact, delayed submission of the FIR is a circumstance in favour of the accused which it seems the applicant was trying to cause, as ultimately the case against the accused ended in closure, as the investigation done by the applicant (I.O) was not found upto the mark, though the applicant, as the I.O., had recommended prosecution of the accused without collection of proper evidence which recommendation seems to have been actuated by the I.O. / applicant / for saving his own skin, rather based on merit of the case.)

(iv) The applicant has urged that as per CBI Crime Manual, it is the duty of the SP CBI and the despatch section in the Crime Branch to ensure submission of the FIR before the concerned Court. Therefore, in the facts and circumstances of the case, the applicant has reasons to believe that inorder to protect the senior officers and the personnel of the Despatch Section of the Crime Branch, the applicant was made the scapegoat.

(The submission of F.I.R. in the Court, immediately after registration of the case, is the duty of the Investigating Officer which the applicant himself had admitted before the Ld. CMM, in his petition dt. 8.6.95 stating as under :-

"As per requirement under law, I was supposed to forward the F.I.R. to this Ld. Court for favour of information and record. However, due to inadvertence, I forgot to forward the FIR to the Ld. Court.

Therefore, the plea of the applicant that SP of the CBI Branch is responsible etc. is without substance. The applicant has also not furnished relevant provision of CBI

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Manual in this regard on which he wants to rely. In any case it was the prevalent practice and legal duty of the Officer Incharge of the PS to ensure timely submission of F.I.R. in the Court and the applicant being an Inspector of CBI was deemed to be an Officer Incharge of P.S. as per DSPE Act, 1964)

(v) The applicant has submitted that he could never have any oblique motive or extraneous consideration, in delayed submission of the F.I.R., in as much as, he was the person who had recommended prosecution of the suspect officer; whereas contrary to his recommendation, the Branch Public Prosecutor had recommended closure of the case and the Supdt. of Police had recommended regular departmental action for major penalty against the suspect officer. Ultimately, as per the direction of the higher authority in CBI, the case against the suspect officer was closed before the concerned Magistrate.

(The appellate Authority (Respondent No.3) while passing order vide office order No.77/2000 dt. 26.9.2000 (which the applicant has enclosed as Annexure A/5 with his application) has observed, under para 11 of the above order, as under:-

"There is no doubt that it was illegal as the law required the FIR should be sent to the Court forthwith. Regarding oblique motive, no direct evidence is normally found in such case as motive is captive in the mind of a delinquent official which is difficult to be unmasked indubitably. But undoubtedly, there has been gross negligence on the part of the C.O".

Moreover, the recommendation made by the applicant

for prosecuting the accused without collecting proper evidence against the accused was mere eye-wash which the I.O. (applicant) had adopted for saving his own skin. The Public Prosecutor, after examining the case found no evidence collected by the I.O. for prosecution and as such recommended for closure which was finally agreed by the Appropriate Authority in CBI. The above conduct of the I.O. (applicant) shows clearly that he might have wanted to favour the accused as he did not conduct proper investigation and did not collect proper evidence against the accused. Moreover, the delayed submission / non-submission of the F.I.R. could have gone in favour of the accused, had the case been sent for trial, as recommended by the I.O.)

(vi) The penalty imposed upon the applicant is grossly disproportionate to the wrong he committed.

(The penalty imposed on the applicant was done by the Disciplinary Authority, after due deliberation and after taking every relevant factor into account which has also been approved by the Appellate Authority, as mentioned above).

16. In view of the above facts, there is no merit in the application filed by by Shri Arijit Dey, S.I., CBI' which may kindly be dismissed, in limine.

Recd. 15-03-2013
(K.C.Kanungo),
Dy. Inspector General of Police,
CBI, N.E.Region, Guwahati.

ANNEXURE - A/1.
IN REPLY TO OA NO.62/2001.
CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

13

545

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OA. 950 of 1996

Date of Order: 12-02-96.

Presents Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.
Hon'ble Mr. S. Dasgupta, Administrative Member.

ARIJIT DE

-VS-

UNION OF INDIA & ORS.

For the petitioner: Mr. Samir Ghosh, counsel.
For the respondents: Mrs. K. Banerjee, counsel.

O R D E R

After hearing the 1st. counsel for both the parties, the application is admitted. Respondents to file reply within 4 weeks and the applicant to file rejoinder within 2 weeks thereafter. Registry to enlist the matter for hearing according to its own turn.

We make it clear that nothing in this order would preclude the respondents to continue the disciplinary proceedings against the petitioner but no final order shall be passed without the leave of the Court.

Plain copy to both the parties.

(S. Dasgupta)
Member (A)

(S.N. Mallick)
Vice-Chairman.

Arifur Rahman
Court Officer
Central Administrative Tribunal
Calcutta Bench

FAX MESSAGE

TO : DIG CBI GUWAHATI REGION GUWAHATI
INFO : DIG CBI CALCUTTA REGION CALCUTTA
INFO : ADMINISTRATIVE OFFICER (E) CBI HO NEW DELHI
INFO : SP CBI SILCHAR
FROM : SP CBI ACB CALCUTTA

NO. 3639 /103/3/ESTT/96-CAL

DATED: 11/11/99

OA NO. 950/1996 ARIJIT DE INSPECTOR VS. UNION OF INDIA AND OTHERS CAME UP FOR HEARING TODAY (11/11/99) (.) THE HON'BLE JUDGE OF CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA DISPOSED OF THE CASE BY PASSING AN ORDER TO THE EFFECT THAT THE RDA PROCEEDING INITIATED AGAINST SRI ARIJIT DE INSPECTOR SHOULD BE FINALISED AS PER RULE AND SHOULD BE CONCLUDED WITHIN 8 WEEKS (.) THE COUNSEL ON BEHALF OF CBI HAS BEEN REQUESTED TO OBTAIN CERTIFIED COPY OF ORDER PASSED BY THE HON'BLE CAT (.) ON RECEIPT OF THE CERTIFIED COPY IT WILL BE FORWARDED (.)

Superintendent
11/11/99
SUPERINTENDENT OF POLICE
CBI : ACB : CALCUTTA

Y
IC1
17/11/99
ACB

No. OA 950 of 96

Present : Hon'ble Mr. Justice S.N.Mallick, Vice-Chairman
 Hon'ble Mr. B.P.Singh, Administrative Member



ARBITER

VS

UNION OF INDIA & ORS.

The applicant : Mr.R.K.De, counsel

For the respondents: Ms.K.Banerjee, counsel

Heard on : 11.11.99

Order on : 11.11.99

O R D E RS.N.Mallick, VC

Heard both the counsel. In this OA the petitioner has challenged a Disciplinary Proceeding drawn up against him by the respondent authorities on the basis of the impugned charge sheet dated 27.2.96. By an interim order dated 21.8.96 passed by an earlier Bench of this Tribunal the petitioner was given the liberty to engage his defence helper within a month from the date. The Tribunal did not however, interfere with that part of the impugned order that no legal practitioner should be engaged as a defence helper. By a subsequent order dated 12.2.98, this Bench passed an order in the following manner :

"We make it clear that nothing in this order would preclude the respondents to continue the disciplinary proceedings against the petitioner but no final order shall be passed without the leave of the Court."

2. Mr.R.K.De, 1d. counsel appearing for the applicant submits that his client would be satisfied if a peremptory direction is issued on the respondent authorities to conclude the impugned Disciplinary Proceeding according to extant rules within a time bound period. Ms.K.Banerjee, 1d. counsel appearing for the respondents has no objection to such prayer being allowed.

3. Accordingly we dispose of the OA with a direction on the respondent authorities especially on the Disciplinary Authority to conclude the Disciplinary Proceeding against the petitioner as per extant rules within 8 weeks from the date of communication of this order. No order as to costs.

S.47
MEMBER (A)

in



V. S. S.
VICE-CHAIRMAN

Central administrative copy

Court Officer
केन्द्रीय प्रशासनीय अधिकार
Central administrative Tribunal
कलकत्ता न्यायालय
Calcutta Bench

(a) Sl. No of the "Appn	5154
(b) Name of the applicant.....	M.B. K. Banerjee
(c) Dt. of presentation of application for copy.....	11.11.99
(d) No. of pages	02
(e) Copying fee charged.....	Five
(f) Dt. of preparation of copy.....	19/11/99
(g) Dt. of delivery of the copy to the applicant.....	22.11.99

ANNEXURE - A/3.
IN REPLY TO OA NO. 62/2001.

FAX MESSAGE.

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1235

TO SP CBI ACB SILCHAR

TO SP CBI ACB SILCHAR
INFOR INCHARGE IMPHAL UNIT CBI IMPHAL

FROM DIG CBI NER GUWAHATI.

ORGN. NO. 2762/114/97-99/NER DT. 27.12.99 (.)

SUB: SHRI ARIJIT DE, SI CBI IMPHAL

REF: YOUR NO DP SIL 1999/06350/235/10/99 DT. 23.12.99.

SHRI ARIJIT DE SHOULD BE SHOWN DEMOTED FROM
20.12.1999 AS SUB-INSPECTOR (.) HIS SUSPENSION STANDS
REVOKED AND HE MAY BE DIRECTED TO JOIN DUTY AS S.I.
IMMEDIATELY (.)

NO. 2763

27.12.99 (K.C.KANUNGO)
DIG CBI NER GUWAHATI.

Copy to Incharge CBI Imphal Unit for immediate
compliance and report by Fax.

OPC

-000-

ANNEXURE- A/4.
IN REPLY TO OA NO.62/2001.
BY SPEED POST

(17)



NO. DPSIL1999/06456/140/11/99 116

GOVERNMENT OF INDIA
CENTRAL BUREAU OF INVESTIGATION
OFFICE OF THE SUPDT. OF POLICE
SILCHAR BRANCH, PANCHAYAT ROAD,
SILCHAR- 4.

Date. 30/12/99

TO

The Dy. Insp. Genl. of Police
Central Bureau of Investigation
NER/ Guwahati.

Sub: Using the designation as Inspector instead of
the demoted rank of Sub-Inspr. reg.-

Sir,
Kindly refer to R.O. Fax No. 2740/114/97-99/NER
dtd. 24.12.99 on the subject cited above.

I am sending herewith the statement received
from Shri Arijit De on the subject cited above for
favour of further necessary action please.

Yours faithfully

Enclo: As stated

B. C. S.
30/12/99
In- Charge
CBI: SPE: Silchar

Enclosed
16/12/99

Dy. No	89
Date	30/12/99
O/H

EE

06354
29/12/99

Case No. 1163 in 29.12.99
CBI, N.P.B. Imphal

(X)

18/1X

To
The Deputy Inspector General of Police,
Central Bureau of Investigation,
NE Region, Guwahati.

Sub : Using the designation of
Inspector instead of the denoted
rank of Sub Inspector ordered
by Order No. Nil dtd. 13-12-99
issued by DIG(CB)NER

through proper channel

Respected Sir,

With ref. to the aforesaid note
and FAX No. DP/SI/L/1999/06435/140/11/99
dtd. 28-12-99 giving ref. to FAX No. 2740/11
97-98/97-99/NER/ dtd. 28-12-99 I humbly
submit as follows : —

1. That I already intimated the SP/CB
SIC, vide my letter dtd. 24-12-99 to

10.11.8/99/CB/1P/1529 I wish to
prefer an appeal to the appropriate
authority against the Order dtd. 20-12-
99 vide endorsement no. 2548/14/
97-98/NER dtd. 13-12-99 issued
SP/CB/1/ Silchar

Yours Obediently,

Amul
29/12/99
Vishwanath Singh
C.A.I.B.P.D. M.C.I.B. 27.
SIC

preferring
not the process of filing an appeal
stated since had started since 24
99 and as per rules the station
has to be maintained for lecture on

Time limit (45 days) for preferring an appeal against the questioned order and disposal of the concerned appeal. Accordingly, I have been going on using the designation Inspector of Police.

3. That I sent one TTP ^{to S.P./C.B.S./City add.} dated 20-12-99 and one letter ^{dated 20-12-99} addressed to Your Goodself applying for permission to leave HQ w.e.f. 11-01-2000 ~~for 01-01-01~~ for contacting my lawyer in Belgaum for emergency discussion on the order dt. 13-12-99 issued by Your Goodself for taking further course of action. The PL coincided with my proposed tour to Shantad and Asansol. I submitted my TTP for a period w.e.f. 02-01-2000 to 18-01-2000 including PL from 11-01-2000 to 14-01-2000.

4. That nothing was known by me either about the concerned TTP or about my proposed PL till date (29-12-99).

5. That it can be mentioned here that as per FAX No. 7102/3/14/87(D) dt. 26/12/99 issued by S.P./C.B.S./Shantad, "Now as

20

19

Magistrate allowed last chance to produce

witnesses and fixed the case on 10-01-2000

Request direct Sri Anjali De, Insp., Empthal

Court to attend the Court on 10-01-2000 at

10 a.m. precisely and also direct him to

attend the o/o SP/CB3/Dhankeld on 07-01-2000

for discussion of the case with APP. 11

6. That if I am not allowed to move on Court &

Dhankeld and Asansol as stated above I

may kindly be granted permission to

leave HQ w.e.f. 11-01-2000 to 22-01-2000

for discussing with my lawyers in Calcutta
regarding order dttd. 13-12-99, Fax no.

2762/114/97-99/NER dttd. 28-12-99 issued by

SP/CCS/SC and Fax No. IDP/SIL/1999/06435

140/11/99 dttd. 28-12-99 issued by SP/CB3/

SLC.

7. That it is my constitutional right and
right within the ambit of natural
justice to defend myself properly
including ^{taking of} legal assistance, if
required.

8. That I fervently suggest you to
grant the said permission to ~~me~~

(21)

(21)

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— 4 —

Leave HQ for emergency discussion with
my lawyer in Calcutta about the issue
arising out of your relevant order
dtd. 13-12-99 and the facts mentioned
above in the interest of natural justice.

With regards,

Yours faithfully,

Arjitt

29-12-99

Inspr. (U/S)/CIS/29/29ptd.

Advise a copy to (1) Director, CIS, New Delhi
(2) D. Director (East)/CIS/G.I.
for kind information and re.

Arjitt

29-12-99

Inspr. (U/S)/CIS/29/29ptd.

GOVERNMENT OF INDIA
CENTRAL BUREAU OF INVESTIGATION
N.E.REGION :: :: GUWAHATI

Sub: Appeal against order dt. 13.12.99 and order vide FAX No.2762/114/97-99 /NER Dt. 28.12.99 issued by DIG/CBI/NER/ Guwahati and D.A.

JD(E) may please refer to his CBI ID No. DP JDE 2000 88/50/Ett/EZ/96-Cal Dt. 28.01.2000 on the above subject enclosing a copy of the representation submitted by Shri Arijit De, who has been demoted to the rank of S.I. by Disciplinary Authority(DIG/CBI/Guwahati) , consequent upon the completion of departmental proceedings launched against him. The annexures submitted by Shri Arijit Dey, along with his representation have however, not been forwarded to us.

2. As desired, comments of the undersigned on the said representation is given below:

3. First of all, Shri Arijit Dey has submitted a joint appeal/representation to JD(E) against (i) order dt. 13.12.99 and (ii) order vide FAX No. 2762 /114/97-99/NER dt. 28.12.99 issued by DIG CBI NER as the Disciplinary Authority. This is improper and incorrect procedure. He should have submitted two separate representation, relating to each of these two orders.

4. Para 1(page.1): In this para the official has purportedly quoted the order of Ld. CMM Calcutta dated 8.6.95,(enclosed as Annexure'A') asking DCBI , for conducting an inquiry into the matter and submitting a report to the court by 20.7.95 - no comment.

Para 1.2 (page.1): In this Para, the official has referred to subsequent order of Ld. CMM Calcutta dt. 26.10.95(copy enclosed as Annexure'B'), referring the matter to SP, CBI, Calcutta after no report was received from Director, CBI for looking into it and taking up the same with the Director- no comment.

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6. Para 1.3(page.2): In this, the official has stated that he requisitioned the Enquiry Report from E.O vide his letter dated 1.10.97 and 23.06.98(copy enclosed as annexure C and D)- no comment.

7. Para 1.4(page.2): This refers to the purported comments of E.O. vide his order dt. 10.11.97 directing I.O. to furnish all documents cited by C.O.(copy enclosed as annexure D(i)- no comment.

8. Para 1.5(page.2): In this the Official has cited extract of order sheet of E.O. dated 04.12.97(enclosed as Annexure E), according to which the official asked for 9 (nine) defence documents to defend his case, vide his letter dated 01.10.97 out of which 6 documents were in the custody of SP, CBI, Calcutta- no comment.

9. Para 1.6(page.2) : In this Para the official has cited Extract of daily order sheet dt. 4.02.98 of E.O. to show that only 3 documents available with S.P. CBI, Silchar had been made available to him(C.O.) - no comment.

10. Para 1.7(Pg. 2): In this ,the official has referred to purported order sheet D. 04.02.98 (enclosed as Annexure -F) to show that documents cited by him as defence documents were relevant, the denial of which goes against principle of nature of justice- no comment.

11. Para 1.8(Page.3): In this, the Official has cited extract of daily order sheet dated 11.03.98(enclosed as Annexure-G) to show that P.O. had reported that most of the defence documents cited had been made available to C.O. and E.O. permitted to inspect the remaining documents at calcutta and take extract, if required, by visiting Calcutta office of CBI - no comments.

(24)

12. Para 1.9(Page.3): This show that all defence documents had been supplied to C.O. except documents at sl 1 and 2 ; the documents at sl no.1 being Enquiry report, referred to above, sought by Lt CMM Calcutta from Director CBI- no comment.

13. Para 1.10 (Page 3) -This shows that the official visited Calcutta, as per order of E.O. to inspect the remaining 2 documents but could not do so as SP, CBI, Calcutta had received no intimation from SP, CBI, Silchar for the above which fact was intimated by the Official to both E.O. and P.O, vide his letter dt. 27.04.98 and 30.04.98 . (Copies given in Annexure-1 and Annexure 1(i))-no comment.

14. Para 1.11(Page. 3)-In this the official has cited extract from report of E.O. dt. 27.08.98 (Annexure-J) in which it was mentioned that C.O. had visited Calcutta and inspected defence documents, which the Official says is not correct: no comment.

15. Para. 1.12(Page.4): This refers to copy of order sheet dt. 23.06.98 (enclosed as Annexure -K) in this regard. The documents at sl no '1' is the Enquiry Report and at Sl. No. 2 is Despatch Register of CBI ,ACB, Calcutta. E.O. directed that Despatch Register and Enquiry Report be collected before examination and self examination of Charge Officer : no comment

16. Para 1.13(page. 4)-The official says that he has not received the enquiry report till date. no comment.

17. Para 1.14(page. 4) : It refers to order of E.O. (given in Annexure J) about completion of inspection of defence documents which the Official says is not correct as Enquiry report was not furnished to him. (no comment)

18. Para 1.15(page. 4)-The Official says he did not issue any certificate about inspection of documents. (no comment)

19. Para 1.16(page. 5): Non receipt of Enquiry Report is again highlighted, as reported by the official in his defence Brief dated 04.08.98(enclosed as Annexure L)(Nothing to for comment)

20. Para. 1.17, Page .5-That the official says that he could not properly defend his case, in the absence of the Enquiry Report and was deprived of natural justice.

Comment: This is absurd and preposterous , the Enquiry Report, as envisaged was a preliminary Enquiry which it seems might not have bee done. As full fledged departmental enquiry was held against the Official, the question of denial of natural justice does not arise.

21. Para 1.18(page. 5 to Page 7)-The official says that the order of Ld. C.M.M. for causing enuqiry and submitting a report was violated. Comment :This is totally irrelevant.The conducting of any enquiry and submission of report to C.M.M. is a matter between Director, CBI and Ld. C.M.M. in which the official has no locus standi. Had the CBI done any enquiry and submitted report to C.M.M. Calcutta , the report would have been available with C.M.M. only. Since, as the official himself admitted, that no report was submitted to C.M.M. , the asking for such a report which was not submitted to C.M.M. Calcutta seems to be a mischievous ploy and adopted as dilatory tactics for frustrating the cause of justice.

22. Para 1.19(page 7)-The official seems to overstepping by making remark that CBI disobeyed order of the court. The official himself

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filed petition in the CAT, Calcutta which resulted in long delay in disposal of Enquiry against him. All his grievances are supposed to have been disposed of by CAT, Calcutta Bench which has given green signal for passing final order against the official.

23. Para 1.20(page 8) : The official says that the departmental proceeding started against him was done by defying the court's directive.

Comment : This is totally incorrect and baseless. Had this been so he would have sought relief from the CAT, Calcutta bench which was not done.

24. Para 2.1 page 8 :The official has referred to the order 12.02.98 of CAT. Calcutta Bench with OA No 950 of 1996 where in it was stated "We make it clear that nothing in this order would preclude the respondent to continue the disciplinary proceeding against the petitioner but no final order should be passed without the leave of the court"(copy enclosed as nnesure P)

Comment :This shows further that CAT found nothing wrong in the departmental proceeding against the Official.

25. Para 2.2 Page-8-The Official says that the Disciplinary Authority Sh. N.R. Roy , DIG did not agree with the findings of E.O. and proposed to awarded a penalty as specified under Rule 6(vii) of DSPE (Subordinate Ranks) (Discipline and Appeal) Rule 1961. Nothing to comment.

26. Para 2.3 (Page 9 & 10)- The official has stated that Shri N.R. Roy DIG (the then DA) defied and flouted the interim order of CAT dt. 12.02.98 by passing order in the file etc.

Comment : The official has thoroughly misunderstand and has deliberately misinterpreted the interim order of CAT dt. 12.02.98 which prohibited the passing of final order. Shri Roy, the then DIG did not obviously pass any final order and neither any final order of Shri Roy was communicated to the Charged Official when the interim order of CAT was in force. Therefore , he is casting unnecessarily aspersion on the DA with a view to taking shelter which is uncalled for, unwarranted and unjustified and ,as such , untenable.

27. Para 3.1(page 10 & 11)-The official says that the D.A.(the undersigned) did not forwarded the copy of Report of Inquiry Officer. Comment : This is in correct. A copy of the Enquiry Report was sent to him along with the order dated. 13.12.99, apart from copy of written brief and written statement of defence. copy of which was endorsed to JD E vide No 2549 dt. 13.12.99 . Furthermore, it is in correct that the Official's representation i.e written statement of defence was not taken into consideration by DA while passed the final order 13.12.99 . This fact is clearly mentioned in para 2 of the order itself and hence there is no question of denial of any natural justice to him .

28. The official has referred to para 13 of the order dt 13.12.99 in para 3.1(c) but in the said para it is clearly mentioned that there is undoubtedly gross negligence on the part of the Inspector Arijit De who did not discharge his duty as envisaged under departmental practice/procedure and law thereby inviting opprobrium and stricture from the court . In view of this ,a rather lenient view has been taken and he has not been dismissed from service, though departmental procedure was for major penalty the official was kept under suspension under order of DCBI in view of the seriousness of charge levelled against him by the Ld. C.M.M. , Calcutta

29. Para 3.2(page 11 and 12):The official says that he has never disputed the charges no (i)(ii) which are statements of facts relating to his posting at calcutta and sequestration of FIR of RC 38/92-Cal . In para 3.2(A)(B)(C)he has quoted some observation of E.O. from the Enquiry Report. - no comment

30. Under para 3.2 (A), (B) and (C) , the official has referred to the conclusion i.e para 10.2 the Report of E.O. which says, interalia "the charge No III,i.e. the FIR meant to be submitted to the court of CMM Calcutta was handed over to Shri A. De , the I.O. of case for submission in the court of CMM , Calcutta can not be proved conclusively as there is no reference made

either in the note sheet about handing over the copy of FIR meant for the Court to Shri A. De nor any other document/office order issued to the latter."

31. Comment: No further proof is called for in this regard as the official i.e Shri Arijit Dey in his petition submitted to the Lt CMM on 8.6.95 admitted that the delay in filing the FIR was a mistake on his part on which CMM in his order dt. 8.6.95 observed "He appears to have kept the FIR with him deliberately for about four years and then he filed the same just for enabling him to submit the FIR for obtaining an order from the court."

32. In para 3.2 (B), the Official has referred to the conclusion of E.O. in the Inquiry Report relating to Charge No. IV: which is as regards non submission of FIR by the C.O. deliberately, illegally and with obliquely motive.

Comment: There is no doubt that it was illegal as the law required that the FIR should be sent to the court forthwith. Regarding oblique motive, no direct evidence is normally found in such case as motive is locked up in the mind of the accused/delinquent official which is difficult to unlock. But undoubtedly there has been gross negligence on the part of C.O. but for which he was kept under suspension and disciplinary proceedings started against him.

33. Para 3.3 (page 12) similar observation made by P.O. in the written brief which calls for no comment, as already explained above.

34. Para 3.4-Page -12-The official has drawn his own conclusion on basis of remarks made at para 3.1 3.2 and 3.3. under 'a' to 'g'

35. 3.4 He says he admitted charged (i) & (ii) being matter of facts- no comments.

36. 3.4 Page .13- He has pointed out remarked of EO, PO and DA about relating to charge No (ii)- no comment

37. 3.4(c) As above, relating to charge No (iv)- no comment.

38. 3.4(d) As above, relating to charge No. V which says "Being the Inspector, it was his duty to submit the FIR in the court of CMM

(29)

Calcutta on 28.08.92 or on the next date ie 29.8.92 which he failed to do- no comment.

(29)
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39. 3.4(e)-As above, relating to charge No vi comment-The official has stated that the DA has neither discussed this charge nor expressed his opinion any where there or this charge.

40. Comments-This is not correct. This is discussed in the order dated 13.12.99. Para 13 also highlights specifically which says "Although there is no direct evidence to prove the allegation that Shri Arijit De has deliberately and with oblique motive did not submit the FIR in the court on 28.8.92 or on the next date and subsequently thereafter until he did on 8.6.95, there is undoubtedly gross negligence on the part of Inspector Arijit De who did not discharge his duty under departmental practice/procedures and law thereby inviting opprobrium and stricture from the court. This shows that charge no VI has been proved though not by direct evidence but by circumstance trial evidence.

41. Para 4.1(page 16 to 22)

The official has listed vide point (i) to (xiii) saying how he has been denied natural justice from the stage but initiation of departmental proceedings against him till he has filed the present appeal. These are as under:

42. Point No (i): He says no inquiry was caused by CBI authority as directed by Ld. CMM, Calcutta, which resulted in denial of natural justice to him.

Comment :It is incomprehensible how natural justice has been denied to him when all opportunities have been give to him during the inquiry.

43. Point No (ii): The official says that no report was submitted to the court, and hence there was denial of natural justice

Comment. This is no denial of natural justice to him, which allegation has been made frivolously, it seems.

44. Point No. (iii): The Official says that no direction about future course of action was obtained from the court.

Comments: This is not necessary. The DA is competent to initiate disciplinary action against him on his own, which was further necessitated due to order of Lt. C.M.M. , Calcutta.

45. Point No (iv): The CBI started Dept. proceeding suo moto.

Comment : This was necessary which was reinforced by the order of CMM, Calcutta , as mentioned above .

46. Point No. (v) : The Inquiry report was not supplied to him.

Comment: When no enquiry report was submitted to CMM Calcutta, as the official himself has admitted, the question of supply of Inquiry report to him does not arise.

47. Point No. (vi): Shri N.R. Roy DIG passed final order proposing to award a major penalty as specified under Rule 6(vii) of DSP (Subordinate rank).

Comment: No final order was passed by Shri N.R. Roy the then DIG and communicated to C.O. Hence such charge is misconceived and mischievous.

48. Point No.(vii): The E.O. ordered that the C.O. inspected all defence documents but CO could not inspected the Enquiry Report

Comment: As mentioned above, since no Enquiry Report was submitted to CMM, Calcutta , the inspection of the said report by C.O. was out of question.

49. Point No (viii) (a) The DA did not express any opinion about charge No V;

Comments: already discussed at para 40 above.

(b) The DA did not furnish copies of Enquiry Report

This was done as mentioned in the copy of the order itself. Had it not been so the official should have asked for a copy from D.A.

50. Point (ix) : As DA did not agree with E.O. about charge No III , a copy of E.O. should have been furnished to him. The official has charged DA with bias .

Comment: The allegation of biases by DA is utterly misconceived and baseless. The copy of the Enquiry Report was furnished to Shri A. De along with the order dated 13.12.99

51 Point No (x) : Though six charges were levelled against the C.O. , it should have been one.

Comment: This is his interpretation which in any case does not cause any prejudice to the official.

52. Point No (xi) : The punishment awarded is exceedingly harsh.

Comment: It is not so .That the official was kept under suspension under order of DCBI is a pointer to the gravity of charge against him. Since the charges have been found proved, the punishment is not harsh at all. In any case Appellate Authority has to decide finally, the adequacy of punishment.

53. Point No (xii) Shri N.R. Roy, DIG violated CATs order by passing order in the file.

Comment: There was no violation of CAT's order as no final order was passed and communicated to C.O.

54. Point No (xiii) The official says he had shown his preference for appealing against the order of punishment as communicated to the SP CBI Silchar under his letter dt. 24.12.99 but on 28.12.99 he received fax message No 2762/114/97-99/NER dt. 28.12.99

Comment: As order of punishment was received by the officer on 20.12.99 he stood demoted as per the said order w.e.f. that date.

55. Point No (xiii) (a) An order for revocation of suspension has to be issued as per required standard form. He has alleged unconstitutionality and illegality

Comment: It makes no difference even if standard format, if there is any ,was not used as it has not caused any prejudice to the charged official. There is no unconstitutionality and illegality involved, as alleged, by the official which is baseless and misconceived.

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56. Point No (xiv) : The official has stated that he came to know from Silchar Branch that no salary should be paid if he does not join duty, as his suspension order is withdrawn.

Comment: The official has not cited any order in this regard and hence no comments can be given on hearsay and rumors.

57. Moreover Head Office vide Fax No DPDA12000/00480/A.20014/733/84(RDA dt. 2.2.2000(copy enclosed) has intimated SP CBI Silchar that necessary order for fixation of his pay in the rank of SI may be issued and his salary may be drawn and paid to him from the date of his joining in the rank of SI.

58. Accordingly SP CBI Silchar vide office order No DPSIL 20000/00300-0618/9/2000 dt. 12.1.2000(office order no 8/2000 dt. 10.1.2000 fixed pay of Shri Arijit Dey (copy enclosed).

59. The final order dated 13.12.99 issued by the undersigned was got vetted by DLA before issue. In view of this, JD (E) may, if considered necessary, obtain comments DLA also.

Encl: As above.

(K.C. Kanungo)
DY.INSPECTOR GENERAL OF POLICE
CBI NER GUWAHATI

To

Joining Director (East)

CBI, Calcutta

CBI I.D. No 237/114/9799/DEK

Dated 8.2.2000

q

CENTRAL BUREAU OF INVESTIGATION
EAST ZONE : CALCUTTA

Sub : Appeal against order dt.13.12.99 and order vide Fax No.2762/114/97-99/NER dt.28.12.99 issued by DIG/CBI/NER/Guwahati and DA.

Enclosed please find a copy of representation submitted by Shri Arijit De, who has been demoted to the rank of S.I. by Disciplinary Authority (DIG/CBI/NER/Guwahati) consequent upon the completion of departmental proceedings launched against him. To enable JD (East) to take a sound decision, please send your parawise comments.

28/1/2000
(Dr.U.N. Biswas)

Joint Director (East)
CBI : Calcutta

Encl: As stated.

DIG/CBI/NER/Guwahati

CBI ID No.DP JDE 2000 88/50/Estt/EZ/96-Cal.

Dated: 28/01/2000

(34) -

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**CENTRAL BUREAU OF INVESTIGATION
EAST ZONE :: CALCUTTA**

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Sub : Appeal against order dt. 13.12.99 and order vide fax no. 2762/114/97-99
NER dt. 28.12.99 issued by DCB, CBI, NER, Guwahati and DA
May kindly refer to ID/U.O./Letter/FAX No. 337/114/97-99/PER
dated 8.2.2000 on the above noted subject.

Observation / comments of DCB / SDCB / JD (East) is / are reproduced below /
enclosed for information and necessary action.

JD (EAST) DISCUSSED THIS MATTER WITH LD. ALA
IN DETAIL. JD (EAST) HAS PERUSED THE APPEAL AND
HE IS OF THE OPINION THAT THERE IS NO MERIT
IN THE APPEAL AND DESERVES TO BE REJECTED. A
DETAILED ORDER WILL BE ISSUED.

Dy. Superintendent of Police
CBI East Zone : Calcutta

DIG/CBI/NER/GUWAHATI

CBI ID No. 538/50/East/EZ/96-Cal

Dated : 16.5.2000

Copy to SP/CBI/ Guwahati, Silchar and subr Arijit Das, super. (275), Guwahati
for information and necessary
action please.

Dy. No.	7507
Date.	24/5/2000
O/C.	Guwahati

Dy. Superintendent of Police
CBI East Zone : Calcutta